

South Australia

Rules of the Legal Practitioners Education and Admission Council 2018

Legal Practitioners Act 1981

The Rules of the Legal Practitioners Education and Admission Council 2018, dated 27th August 2018, came into operation on 2nd October 2018 (*Government Gazette* 30 August 2018, p. 3289).

These Rules have been varied by amendments:

- to Rule 14 which were made on 11th September 2019 (*Government Gazette* 19 September 2019, p. 3312) and they come into effect four months after the day on which they were made (11 January 2020).
Note: The *Government Gazettal* notice refers to the amendments as the *Legal Practitioners Education And Admission Council Rules Amendment Rules 2019*.
- That were made on 22nd February 2021 (*Government Gazette* 15 February 2021, p. 705 and come into effect 1 April 2021).

Pursuant to the *Legal Practitioners Act 1981* the *Legal Practitioners Education and Admission Council* makes the following rules:

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Part 1 – Preliminary

1 Citation

These rules may be cited as the *LPEAC Rules 2018*.

2 Commencement

These rules will come into operation on 2 October 2018.

3 Repeal

The LPEAC Rules 2004 are repealed.

4 Interpretation

(1) Terms used in the *Legal Practitioners Act 1981* and in these rules will have the same meaning in these rules as they have in the Act.

(2) In these rules, unless the contrary intention appears –

Act means the *Legal Practitioners Act 1981*.

admission means admission and enrolment under section 15 of the Act.

ALPMC means a Law Practice Management Course that has been accredited by LPEAC

Board of Examiners or *Board* means the Board of Examiners established under Part 2A Division 2 of the Act.

Category A, B, BA, C or D practising certificate – see rule 10.

CPD means continuing professional development.

CPD year means any year beginning on 1 April and ending on the following 31 March.

employed practitioner means a practitioner with an employee practising certificate employed to perform predominantly the work of a legal practitioner–

- (a) in a private law practice; or
- (b) in a government department or semi-government authority, if the employment requires the performance of the work of a legal practitioner which LPEAC considers appropriate for the purposes of these rules; or
- (c) in the legal office or department of a corporation; or
- (d) in a community legal centre; or
- (e) in the office of the Crown Solicitor, the Director of Public Prosecutions, the Commonwealth Australian Government Solicitor or the Commonwealth Director of Public Prosecutions; or

- (f) in any other organisation, department or office which LPEAC approves under subrule (3); or
- (g) as a judge's associate.

Full Court means the Full Court of the Supreme Court.

judge's associate means—

- (a) an associate of a judge of the Supreme Court or District Court of South Australia; or
- (b) an associate of a judge of the Federal Court of Australia; or
- (c) an associate to magistrates in the Magistrates Court of South Australia.

Original applicant means a person applying for admission on the basis of academic and practical qualifications obtained in Australia.

mandatory continuing professional development or **MCPD** – see rule 13 and Appendix C.

prescribed amount of MCPD is as set out in Appendix C.

Registrar means the Registrar of the Supreme Court.

supervised practice means practice as an employed practitioner or a volunteer practitioner that qualifies under rule 5.

Supreme Court means the Supreme Court of South Australia.

Supreme Court Admission Rules means the Rules of the Supreme Court that are relevant to the qualification or admission of legal practitioners (including any processes or procedures associated with the qualification or admission of legal practitioners).

State means the State of South Australia.

volunteer or **volunteer practitioner** means a practitioner who receives no remuneration for the work the practitioner does or who is only reimbursed for expenses actually incurred during the course of carrying out work.

- (3) For the purposes of paragraph (f) of the definition of **employed practitioner** under these rules, LPEAC may from time to time—
 - (a) grant approvals to such entities as it thinks fit; and
 - (b) revoke the approval of an entity if LPEAC considers that an approval is no longer appropriate.

- (4) For the purposes of Part 3 Division 3 and Appendix C, a reference to the *Law Society* is a reference to the Law Society while it continues to be assignee of the functions of the Supreme Court in respect of the issue and renewal of practising certificates pursuant to the Supreme Court Admission Rules and section 52A of the Act and, if it ceases to be such an assignee, then the term is to be read as a reference to the Supreme Court.

5 Supervised practice

- (1) For the purposes of these rules, practice by a practitioner qualifies as supervised practice if–
- (a) the work of the practitioner is controlled or managed by a legal practitioner who has been in practice for at least 5 years preceding the commencement of the proposed supervised practice and who holds a Category A or Category B or unrestricted Category C practising certificate during the period of supervised practice (the *supervising practitioner*); and
 - (b) during the period of practice–
 - (i) the practitioner is employed or engaged by the supervising practitioner; or
 - (ii) the practitioner is employed and the supervising practitioner is employed or engaged by the same person; or
 - (iii) the practitioner is employed and the supervising practitioner is employed or engaged to perform the work of a legal practitioner in the same practice; and
 - (c) during the period of supervised practice the practitioner and the supervising practitioner work, or substantially work, at the same location.
- (2) During the period of supervision, the practitioner and the supervising practitioner must, insofar as is reasonably practicable, comply with any guidelines issued by LPEAC for the purposes of this rule.
- (3) If a practitioner is subject to a condition which requires that the practitioner must not practice without supervision, the requirement for supervision will not cease until the Board of Examiners is satisfied that there has been adequate compliance with that condition such that it is appropriate for the person to be permitted to practice without supervision.

Part 2 – Requirements for admission

Division 1 – General scheme

6 Interpretation

In this Part, unless the contrary intention appears –

appropriate workplace, for the purposes of overseas work experience as part of an approved practical legal training course, means–

- (a) the office of a legal practitioner in private practice; or
- (b) the legal office or department of a government or semi-government body; or

- (c) the legal office or department of a corporation,

in a common law jurisdiction where the nature of the legal work is equivalent to the legal work undertaken in a comparable office in Australia.

approving body means an organisation responsible to deliver a course of practical legal training which is accredited by LPEAC under these rules as providing through its training the required competence in the skills, values and practice areas set out in Appendix B.

eligible supervisor means a legal practitioner who—

- (a) has been in practice for at least 5 years preceding the commencement of proposed work experience; and
- (b) has not been the subject of any finding by a relevant court, licensing authority or disciplinary body under any law relating to the legal profession that, in the opinion of the approving body, makes it inappropriate for that person to act as a supervisor; and
- (c) demonstrates to the satisfaction of the approving body that the legal practitioner will be in a position to devote adequate time to supervising the work experience of a relevant applicant.

legal practitioner means a person who—

- (a) has been admitted to practice; and
- (b) holds a practising certificate or equivalent authorisation,

in either an Australian jurisdiction, or in the jurisdiction where the relevant student's approved workplace experience will occur.

relevant experience means experience in delivering legal services of a type, and in a manner, comparable with the delivery of legal services in Australia, which includes experience in applying common law legal knowledge and skills to practical legal problems—

- (a) in the procedures and relationships commonly found in a legal office; and
- (b) in meeting and dealing with clients of a legal office; and
- (c) in a manner that promotes professional legal attitudes, ethics and responsibilities, comparable to those required to practise law in Australia,

and if the approving body so requires, completion of either or both of:

- (d) a minimum period of workplace experience; and
- (e) particular tasks specified in advance by the approving body.

7 Academic requirements

- (1) The academic requirement for admission is the successful completion of a tertiary academic course in Australia, whether or not leading to a degree in law—
 - (a) which includes the equivalent of at least 3 years full-time study in law; and
 - (b) which, in the opinion of LPEAC, requires a satisfactory level of understanding and knowledge in the areas of knowledge referred to in Appendix A.
- (2) The following academic qualifications are taken to satisfy the requirements of this rule:
 - (a) Bachelor of Laws of the University of Adelaide;
 - (b) Bachelor of Laws or Bachelor of Laws and Legal Practice or the Juris Doctor of the Flinders University;
 - (c) Bachelor of Laws of the University of South Australia.
- (3) Subsection (2) does not apply in relation to a particular qualification if LPEAC determines that the qualification no longer provides a satisfactory level of understanding and competence in the areas of knowledge referred to in Appendix A.
- (4) If an applicant has completed a requirement under a preceding subrule more than 5 years before applying for admission, LPEAC may, after assessing the applicant's academic qualifications, require the applicant either or both to undertake further academic studies and to pass such further examinations as LPEAC may determine.

8 Practical requirements

- (1) The practical requirement for admission is—
 - (a) the successful completion of a course of study commenced in accordance with the requirements of Appendix B and which, in the opinion of LPEAC, requires understanding and competence in the knowledge, values and skills, in each of the practice areas set out in that Appendix at the level of proficiency prescribed by that Appendix; or
 - (b) the successful completion of—
 - (i) the course of study leading to the grant of the Graduate Diploma in Legal Practice of the University of Adelaide and the Law Society of South Australia; or
 - (ii) the degree of Bachelor of Laws and Legal Practice of the Flinders University; or
 - (iii) the course of study provided by the College of Law Limited known as the South Australian PLT Program; or
 - (iv) the course of study leading to the grant of the Graduate Diploma in Legal Practice of the Flinders University,unless the LPEAC determines, in relation to a particular course, that any of the courses referred to in subrule (1) to (iv) hereof no longer requires understanding and competence in the skills, values and practice areas set out in Appendix B at the level of proficiency prescribed by that Appendix.

- (2) A course of study must, in order to qualify under subrule (1), include a period of workplace experience at an appropriate workplace, being–
 - (a) a workplace in Australia; or
 - (b) a workplace overseas if prior approval has been given by the relevant approving body in respect of the workplace experience.
- (3) For the purposes of subrule (2)(b), an approving body may give an approval if the approving body–
 - (a) receives and approves an application to undertake workplace experience at the relevant place before the applicant commences the workplace experience; and
 - (b) is satisfied that the applicant will obtain relevant experience in an appropriate workplace under the supervision of an eligible supervisor.
- (4) For the purpose of subrule (2) workplace experience must be undertaken for a least 15 hours per week in blocks of not less than three hours unless exemption is obtained by the applicant prior to the commencement of work place experience.

9 Practical requirements – related matters

- (1) In order to assist LPEAC to determine whether or not a course offered wholly or in part in-house by an employer during the course of employment of an applicant for admission is of a nature and standard to enable LPEAC to form an opinion for the purposes of rule 8, LPEAC may require an employer, or a principal engaged in the practice conducted by an employer, to certify that the course offered by the employer, together with such other training or experience which the applicant for admission has received or will receive before admission, will, in the opinion of the person furnishing the certificate, be sufficient to impart an adequate understanding and competence in the skills, values and practice areas set out in Appendix B at the level of proficiency prescribed by that Appendix.
- (2) In forming an opinion as to a course of study for the purposes of rule 8, LPEAC may take into account the fact that an admitting authority in another State or a Territory has recognised the particular course as satisfying, wholly or in part, the practical requirement for admission in that State or Territory.
- (3) If an applicant has completed a requirement under rule 8 more than 5 years before applying for admission, LPEAC may, after assessing the applicant’s practical legal training qualifications, require the applicant to undertake such further practical legal training requirements as LPEAC may determine.

Part 3 – Practice

Division 1 – Categories of practising certificates

10 Categories of practising certificates

- (1) Practising certificates issued under the *Legal Practitioners Act 1981* will be in the following categories:

- (a) Category A: a principal practising certificate which enables the practitioner to practise as the principal of a law practice entitled to receive and manage trust monies;
 - (b) Category B: a principal practising certificate which enables the practitioner to practise as a principal of a law practice but not entitled to receive and manage trust monies, including as a barrister;
 - (ba) Category BA: a principal practising certificate for practitioners who have undertaken to practise exclusively as counsel;
 - (c) Category C: an employee practising certificate which enables the practitioner to undertake work of an employed practitioner on a supervised basis pursuant to rule 11 (a *restricted practising certificate*) and, on certification by the Board of Examiners that the practitioner has satisfied rule 11, as an employed practitioner (an *unrestricted Category C practising certificate*);
 - (d) Category D: a volunteer practising certificate which enables the practitioner to undertake legal practice in the manner they are otherwise entitled to in accordance with rule 11, but only as a volunteer for a community legal centre, or for an institution or project approved by LPEAC, and where the practitioner is covered by professional indemnity insurance (being a *restricted practising certificate* while the practitioner is undertaking supervised practice) and, after compliance with rule 11, as a volunteer legal practitioner (an *unrestricted Category D practising certificate*).
- (2) This rule applies subject to—
- (a) the operation of rule 12; and
 - (b) any other provision made by or under these rules as to a requirement for supervised practice.

Division 2 – Right to practice following admission

11 Required experience

- (1) An original applicant admitted to practise in this State will not be entitled to hold a Category A, B, BA unrestricted C or unrestricted D practising certificate until he or she has completed supervised practice in this State or in another State or a Territory by way of—
- (a) a continuous period of 2 years’ full-time employment as an employed practitioner, or an equivalent period of part-time employment, following the first issue to the original applicant of a practising certificate; or
 - (b) a combination of employment as an employed practitioner and work as a volunteer practitioner, or an equivalent period of part-time employment, which together are the equivalent of 2 years’ full-time

employment or work, provided that the work as a volunteer practitioner does not exceed 3 months (in total) (full-time equivalent), or such longer period as may apply on application under subrule (2)(b).

- (2) For the purposes of subrule (1)–
 - (a) an original applicant may accumulate periods of practice as an employed practitioner in more than one State or Territory where he or she is entitled to practise; and
 - (b) the Board may, in its discretion, on application by the relevant practitioner, extend the period of 3 months of work as a volunteer under subrule (1)(b), provided that the total period of such work does not exceed 6 months (in total) (full-time equivalent); and
 - (c) the Board may, in its discretion, on application by the relevant practitioner, permit continuous or discontinuous periods of employment, whether full-time or part-time, to be accumulated.
- (3) This rule applies subject to–
 - (a) the operation of rule 12; and
 - (b) any other provision made by or under these rules as to a requirement for supervised practice.

12 Practising without supervision

- (1) A practitioner must not practise as a local legal practitioner without supervision unless the person holds–
 - (a) a Category A, B or BA practising certificate; or
 - (b) an unrestricted Category C practising certificate; or
 - (c) an unrestricted Category D practising certificate.
- (2) If the Board of Examiners determines that a person has contravened subrule (1), the Board may–
 - (a) direct the person to complete a period of supervised practice that is in addition to the requirements of rule 11, subject to such conditions determined to be appropriate by the Board, before the person is entitled to a category of practising certificate referred to in that subrule; or
 - (b) refer the matter to the Court, and the Court may then deal with the matter as it thinks fit; or
 - (c) refer the matter to the Legal Profession Conduct Commissioner under Part 6 of the Act.

- (3) Subject to subrule (4), a practitioner will be entitled to hold a Category A or B practising certificate on satisfying the Board of Examiners that he or she has:
- (a) completed supervised practice pursuant to Rule 11; and
 - (b) completed an ALPMC.

Transitional

- (4) A practitioner who was the holder of a Category A or B practising certificate, or who has applied to hold a Category A or B practising certificate before the commencement of this Rule will be entitled to hold a Category A or B practising certificate:
- (a) on the condition that the practitioner completes an ALPMC within 12 months of the renewal of the Category A or B practising certificate; or
 - (b) on satisfying the Board of Examiners that he or she has, within the last 5 years prior to the date of next renewal, satisfactorily completed a law practice management course in another common law jurisdiction which has been accredited by that jurisdiction; or
 - (c) on satisfying the Board of Examiners that he or she has, for the period of five years prior to the date of the the next renewal of their practising certificate, practised as a principal of a South Australian legal practice with sufficient responsibilities and obligations such that he or she need not complete an accredited law practice management course. In determining whether to exempt a practitioner from the need to complete an accredited law practice management course, the Board will take into consideration:
 - i. the qualifications and experience of the practitioner;
 - ii. the nature of the legal practice of which the practitioner is currently a principal;
 - iii. any findings of professional negligence made against the practitioner;
 - iv. the trust account audit history of the practitioner; and
 - v. any other relevant circumstances.

The entitlement to a Category A or B practising certificate gained through this sub-rule (4)(c) is not available if:

- i. the practitioner has been subject to a finding of unsatisfactory professional conduct or professional misconduct; or
- ii. any practice of which the practitioner has been a principal has had, while the practitioner was a principal of that firm, a supervisor or manager appointed to it.

- (5) A practitioner will be entitled to hold a Category BA practising certificate on satisfying the Board of Examiners that he or she has:
 - (a) completed supervised practice pursuant to Rule 11; and
 - (b) given an undertaking to practise exclusively as a barrister.
- (6) For the avoidance of doubt, a practitioner who has undertaken to practise exclusively as a barrister and who, on the commencement of these Rules, holds a Category A or Category B practising certificate will, after the commencement of these Rules and from the next date of renewal of their practising certificate, hold a Category BA practising certificate, unless the practitioner completes an accredited practice management course.
- (7) A practitioner will be entitled to hold a unrestricted Category C or unrestricted Category D practising certificate on satisfying the Board of Examiners that he or she has completed supervised practice pursuant to Rule 11.

Division 3 – MCPD requirements

13 MCPD requirements

- (1) The qualifications for the issue and renewal of a practising certificate to an individual legal practitioner will include completion of the prescribed amount of Mandatory Continuing Professional Development (*MCPD*).
- (2) It is a condition of a practising certificate issued or renewed by an individual legal practitioner that the practitioner undertake the prescribed amount of MCPD.
- (3) Before a practising certificate will be issued to or renewed by an individual legal practitioner, the applicant practitioner must first satisfy the Law Society that the practitioner has completed the prescribed amount of MCPD in respect of the preceding CPD year.

14 Non-compliance

- (1) If an individual legal practitioner has not completed the prescribed amount of MCPD in respect of the preceding CPD year, the Board may, on application by the Law Society or the relevant applicant –
 - (i) direct that a practising certificate be issued to or renewed by the practitioner subject to a condition or conditions determined to be appropriate by the Board;
 - (ii) direct that the practising certificate of the practitioner is to be cancelled, or is not to be renewed, and no new practising certificate is to be issued to the person until stipulated conditions have been complied with;(and both subparagraphs (i) and (ii) may be applied if the Board so determines in a relevant case).
- (2) A legal practitioner whose practising certificate is subject to one or more conditions imposed under this rule must comply with that condition or those conditions

Division 4 – Renewal of practising certificates after break in practice

15 Renewal of practising certificates

- (1) This rule applies–
 - (a) to a practitioner who applies, or who is seeking to apply, for a practising certificate for the first time in this State more than 3 years after the practitioner was admitted in this State; and
 - (b) to a practitioner who applies, or who is seeking to apply, for a practising certificate after his or her last practising certificate, including an interstate practising certificate, has expired and has not been renewed for a period of 3 years or more from the date of expiry.
- (2) A practitioner to whom this rule applies is not eligible to be issued a practising certificate unless the practitioner has, on application under this rule, satisfied the Board that he or she remains a fit and proper person to undertake work as a legal practitioner.
- (3) An application under this rule must be by way of a statutory declaration lodged with the Board setting out the evidence on which the practitioner relies and exhibiting to the declaration documentary evidence relied on by the practitioner in support of his or her application.
- (4) On application by a practitioner under this rule, the Board may–
 - (a) direct that a practising certificate be issued to the practitioner;
 - (b) direct that a practising certificate–
 - (i) not be issued to the practitioner; or
 - (ii) not be issued to the practitioner until further direction, or until a specified event happens;
 - (c) direct that the practitioner–
 - (i) undertake further specified training or acquire further experience, or both;
 - (ii) provide further information or take further steps in relation to his or her fitness to practise;
 - (d) direct that a practising certificate be issued subject to conditions determined by the Board while the practitioner complies with any direction under paragraph (c).
- (5) Subject to subrule (4)(d), the practitioner must satisfy the Board that he or she has satisfactorily complied with any direction under subrule (4)(c) before a practising certificate may be issued.

- (6) The authority responsible for the issue or renewal of a practising certificate will act on a certificate of the Board in relation to the issuing of a practising certificate to a practitioner to whom this rule applies.

Part 4 – Overseas applicants

16 Applicants who have not been admitted overseas

- (1) A person who holds qualifications obtained outside Australia which are recognised as qualifying the person to be admitted in an overseas jurisdiction, including New Zealand, but who is not admitted to practise in that jurisdiction, may apply to the Board for a direction as to what further, if any, academic or practical requirements must be complied with in order to satisfy the requirements for admission as an original applicant in the State.
- (2) An application under this rule must be accompanied by a statutory declaration that–
- (a) states the nature and provides details of the applicant’s academic qualifications and practical qualifications and experience; and
 - (b) provides evidence that the applicant has the academic and practical qualifications referred to by that applicant; and
 - (c) states whether the applicant has applied for admission in any other Australian jurisdiction, and the result of any such application.
- (3) The statutory declaration must have annexed to it original or authenticated documentary evidence that supports the academic and practical qualifications relied on by the applicant under subrule (2)(b).
- (4) On application by a person under this rule, the Board may–
- (a) decline to give a direction; or
 - (b) direct that the applicant–
 - (i) comply with any further academic requirements as may be specified by the Board; and
 - (ii) obtain further specified practical training or experience, or both; or
 - (c) direct that the applicant is not required to undertake any further academic requirements or practical training.

17 Applicants who have been admitted overseas

- (1) A person who is admitted to practise in an overseas jurisdiction, other than New Zealand, may apply to the Board for a direction as to what further, if any,

academic or practical requirements must be complied with in order to satisfy the requirements for admission as an original applicant in the State.

- (2) An application under this rule must be accompanied by a statutory declaration that–
 - (a) states the nature and provides details of the applicant’s academic qualifications and practical qualifications and experience; and
 - (b) provides evidence that the applicant has the academic and practical qualifications referred to by that applicant; and
 - (c) states that the applicant is currently admitted and entitled to practise in the overseas jurisdiction, has not at any stage been struck off the roll of practitioners or otherwise suspended from practice, and is not presently subject to disciplinary inquiry or proceedings; and
 - (d) describes the nature, range, duration and character of the applicant’s practice in the overseas jurisdiction; and
 - (e) states whether the applicant has applied for a direction or for admission in any other Australian jurisdiction, and the result of any such application.
- (3) The statutory declaration must have annexed to it original or authenticated documentary evidence that supports the academic and practical qualifications relied on by the applicant under subrule (2)(b).
- (4) On application by a person under this rule, the Board may–
 - (a) decline to give a direction; or
 - (b) direct that the applicant–
 - (i) comply with any further academic requirements as may be specified by the Board; and
 - (ii) obtain further specified practical training or experience, or both; or
 - (c) direct that the applicant is not required to undertake any further academic requirements or practical training.

18 Related matters

- (1) In formulating a direction under this Part, the Board must endeavour to ensure that the applicant’s qualifications, training and experience equate as closely as may be reasonably practicable with those of an original applicant.
- (2) On completion of any requirements of the Board under this Part, or if the Board determines that no further academic or practical training is required, the

applicant will be taken to have satisfied the academic and practical requirements for admission in the State.

- (3) A person who seeks a direction under this Part must, when applying for the direction, in addition to the other requirements of this Part, provide to the Board—
 - (a) evidence (such as a passport) to verify the applicant's identity; and
 - (b) independent evidence that the applicant is the person who has obtained the academic, practical and professional qualifications relied on as part of the application, such as a notarised certification from the tertiary institution or professional body which has awarded or conferred the relevant qualification which identifies the applicant by reference to the applicant's passport (or other document of identity) including (in the case of a passport) the passport's number and the country of issue and, in any other case, similar identifying information; and
 - (c) if the applicant has not been admitted to practise in an overseas jurisdiction, two statutory declarations (or the overseas equivalent of a statutory declaration) from persons of good repute who have known the applicant for at least 5 years, attesting to the applicant's good character; and
 - (d) if the applicant has been admitted to practice in an overseas jurisdiction, two statutory declarations (or the overseas equivalent of a statutory declaration) from legal practitioners in that jurisdiction who have known the applicant for at least 2 years and who themselves have been admitted in that jurisdiction for at least 5 years, attesting to the applicant's good character and fitness to be admitted; and
 - (e) documentation relating to any academic or practical qualification relied on by the applicant (including a syllabus or other document describing course details and coverage) issued by the body which has awarded the qualification; and
 - (f) the original or duly authenticated copy of the applicant's student record relating to the academic subjects and practical courses undertaken, the year in which each subject or course was taken and the grade achieved by the applicant in respect of each subject or course.
- (4) If the first language of an applicant for admission in the State is not English, the applicant must satisfy the Board that the applicant has sufficient knowledge of written and spoken English to practise in Australia.
- (5) The Board may, in relation to an application under this Part, make such further inquiries as the Board thinks fit concerning—
 - (a) the system of jurisprudence of the country in which the applicant has obtained his or her qualifications or in which the applicant has been admitted as a legal practitioner (as the case may be); and

- (b) the nature and adequacy of the applicant's training and experience in the practice of the law; and
- (c) the applicant's fitness to be admitted to practise in this State,

and the Board may act in respect of such matters on the written advice of the Attorney-General or the Solicitor-General for the State of South Australia, the Dean or Associate Dean of Law of the University of Adelaide, the Flinders University, or the University of South Australia, or of the Victorian Council of Legal Education, Victorian Legal Admissions Board, any other admitting authority in Australia, or on report of a committee appointed by the Board for the purposes of this subrule.

Part 5 – Board of Examiners

19 Proceedings

- (1) Any question before the Board will be decided by a majority of the members present at the relevant meeting, and the presiding member (and in the absence of the presiding member, the presiding member's deputy) will have a casting vote as well as a deliberative vote.
- (2) When the Board makes a report to the Court or to LPEAC, any member may make a dissenting or individual report.

20 Requirement to attend before Board

The Board may require an applicant for admission or for a practising certificate, or a practitioner to whom an applicant has been articled, or under whose supervision the applicant has served, or with whom the applicant has served as a bona fide pupil, to answer in writing, or to attend before it and to answer orally, such questions as the Board thinks fit.

21 Exemptions

- (1) Subject to subrule (3), the Board may exempt a person from the requirements of, or from compliance or further compliance with, any of these rules (or any part of these rules).
- (2) An exemption may be granted subject to such conditions as the Board thinks fit.
- (3) Subrule (1) does not extend to a rule where a specific power of exemption is vested in LPEAC (other than rule 25).
- (4) Subrules (1) and (3) do not limit the power of LPEAC to delegate any power of exemption to the Board.
- (5) Without limiting a preceding subrule, a person who claims to have been qualified for admission under rules that have been repealed or any previous Admission Rules made pursuant to section 72(1)(j) of the *Supreme Court Act 1935* but has not been admitted to practise as a legal practitioner in the State, may apply to the Board for an exemption from compliance with these rules or for a direction as to

what further (if any) academic or practical requirements must be complied with in order to satisfy the requirements for admission (and any such exemption or direction may be given on such terms or conditions as the Board thinks fit).

22 Reference of questions

The Board may refer any matter before the Board under these rules or under the Act to the Court or to LPEAC, and the Court or LPEAC may–

- (a) deal with the matter as it thinks fit; or
- (b) refer the matter back to the Board with such directions as it thinks fit.

23 Inquiries

(1) In addition to any other inquiry that the Board may be authorised to undertake under any other law, the Board will inquire into every application for admission, and any objection to any such application, and report to the Court whether the applicant–

- (a) is eligible for admission; and
- (b) is a fit and proper person to be admitted; and
- (c) has complied with the Act, these Rules and the Supreme Court Admission Rules insofar as the applicant has been required to do so; and
- (d) has complied with any other requirement as to which the Board has been requested to report by the Court.

(2) In the process of inquiry into the question of whether or not an applicant is a fit and proper person to be admitted, the Board may make a request in writing to any teaching institution at which the applicant has undertaken a course of study that is relevant to the practical or academic requirements for admission for a statement in writing as to whether or not the applicant has, to the knowledge of the institution, during the time when the applicant was enrolled in any such course, been guilty of any dishonest conduct (including plagiarism), of any other conduct relevant to the determination of the question whether the applicant is a fit and proper person to be admitted.

(3) Subject to any rule in the Supreme Court Admission Rules, where the Board enquires into an application for readmission, the Board will, in addition to the matters referred to in subrule (1), report to the Court as to the fitness and capacity of an applicant to act as a practitioner in all business and matters usually transacted by or entrusted to practitioners.

(4) If the circumstances so require, a report of the Board will be prefaced by, or have attached to it, a statement of the Board's findings in relation to the facts of the particular case.

24 Intimation as to eligibility

- (1) Any person may at any time apply to the Board for an intimation as to whether or not he or she would, in the opinion of the Board, be eligible on grounds relating to his or her character or fitness (or both) to be admitted as a practitioner.
- (2) The Board may require a person who has made application under this rule to attend before the Board and to furnish such evidence of his or her good character and fitness as the Board thinks fit.
- (3) The Board may (in its absolute discretion) give such intimation as to the eligibility of applicant as the Board thinks fit.
- (4) If, on an application for admission, the applicant relies on an intimation given by the Board under this rule, or by the Board constituted pursuant to the Supreme Court Admission Rules, the Board must give effect to the intimation when preparing its report to the Court in respect of the application for admission, except where the Board is satisfied—
 - (a) that the intimation was obtained by fraud; or
 - (b) that the intimation was obtained in circumstances where the applicant, whether deliberately or otherwise, failed to disclose to the Board facts material to the application for an intimation; or
 - (c) that the conduct of the applicant since the intimation was given requires a reconsideration by the Board as to whether or not the applicant is ineligible for admission by reason of his or her character or fitness to be admitted.

Part 6 – Miscellaneous and exemptions

25 Exemptions by LPEAC

LPEAC may exempt a person from the requirements of, or from compliance or further compliance with, any of these rules, either entirely or in part, and subject to such conditions as LPEAC may think fit to impose.

26 General powers of Council

LPEAC may, for any purpose relating to the exercise of any of its powers under these rules—

- (a) seek a report from the Board;
- (b) appoint an ad hoc advisory committee (which may comprise or include persons who are not members of LPEAC or of the Board) to report to LPEAC;
- (c) either in a particular case or generally, have regard to and give such weight as it thinks fit to any approval, exemption, condition or decision given, allowed, imposed or made by any admitting authority or other statutory or regulatory body whose activities relate to legal practitioners in any other State or Territory of Australia.

27 Breach of conditions

If the Board determines that a person has breached a condition applying in relation to the person under these rules, the Board may–

- (a) direct the person to complete a period of supervised practice (being a period that is in addition to any other period of supervision that may be required under these rules); or
- (b) refer the matter to the Court or to LPEAC, and the Court or LPEAC may then deal with the matter as it thinks fit; or
- (c) refer the matter to the Legal Profession Conduct Commissioner under Part 6 of the Act.

28 Exercise of power, discretion or function

In exercising any power, discretion or function granted by these rules, LPEAC, the Board and the Law Society will have regard to guidelines prepared by the Law Admissions Consultative Committee contained in Appendix D.

29 Law Society entitlement to representation

The Law Society is entitled to be represented by a solicitor or counsel before LPEAC or the Board at any inquiry, or in relation to any application, under these rules.

30 Appointment of investigator

LPEAC or the Board may request the Law Society to appoint a practitioner to investigate any matter relating to any inquiry or application before it, or to assist LPEAC or the Board in relation to any such inquiry or application.

Law Admissions Consultative Committee

Prescribed academic areas of knowledge

Although the topics below are grouped for convenience under the headings of particular areas of knowledge, there is no implication that a topic needs to be taught in a subject covering the area of knowledge in the heading rather than in another suitable subject.

Criminal Law and Procedure

- (1) The definition of crime.
- (2) Elements of crime.
- (3) Aims of the criminal law.
- (4) Homicide and defences.
- (5) Non-fatal offences against the person and defences.
- (6) Offences against property.
- (7) General doctrines.
- (8) Selected topics chosen from:
 - (a) attempts
 - (b) participation in crime
 - (c) drunkenness
 - (d) mistake
 - (e) strict responsibility.
- (9) Elements of criminal procedure. Selected topics chosen from:
 - (a) classification of offences
 - (b) process to compel appearance
 - (c) bail
 - (d) preliminary examination
 - (e) trial of indictable offences. OR

Topics of such breadth and depth as to satisfy the following guidelines:

The topics should provide knowledge of the general doctrines of the criminal law and, in particular, examination of both offences against the person and against property. Selective treatment should also be given to various defences and to elements of criminal procedure.

Torts

- (1) Negligence, including defences.
- (2) A representative range of torts (other than negligence) and their defences.
- (3) Damages.
- (4) Concurrent liability.
- (5) Compensation schemes. OR
- (6) Topics of such breadth and depth as to satisfy the following guidelines.

The potential compass of this area is so large that considerable variation might be anticipated. At the very least, there should be a study of negligence and of a representative range of torts, with some consideration of defences and damages, and of alternative methods of providing compensation for accidental injury. Examples of these topics are: concurrent liability, defamation, economic torts, nuisance, breach of statutory duty and compensation schemes.

Contracts

- (1) Formation, including capacity, formalities, privity and consideration.
- (2) Content and construction of contract.
- (3) Vitiating factors.
- (4) Discharge.
- (5) Remedies.
- (6) Assignment. OR

Topics of such breadth and depth as to satisfy the following guidelines.

Some variation may be expected in the breadth and detail of the topics. In general, however, knowledge of the formal requirements for concluding contracts, capacity, the content and interpretation of contracts, their performance and discharge, and available remedies, together with an understanding of the broad theoretical basis of contract would be expected.

Property

- (1) Meaning and purposes of the concept of property.
- (2) Possession, seisin and title.
- (3) Nature and type (i.e. fragmentation) of proprietary interests.
- (4) Creation and enforceability of proprietary interests.
- (5) Legal and equitable remedies.

- (6) Statutory schemes of registration.
- (7) Acquisition and disposal of proprietary interests.
- (8) Concurrent ownership.
- (9) Proprietary interests in land owned by another.
- (10) Mortgages. OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the nature and type of various proprietary interests in chattels and land, and their creation and relative enforceability at law and in equity. Statutory schemes of registration for both general law land and Torrens land should be included. A variety of other topics might be included, e.g., fixtures, concurrent interests and more detailed treatment of such matters as sale of land, leases, mortgages, easements, restrictive covenants, etc.

Equity

- (1)
 - (a) The nature of equity.
 - (b) Equitable rights, titles and interests.
 - (c) Equitable assignments.
 - (d) Estoppel in equity.
 - (e) Fiduciary obligations.
 - (f) Unconscionable transactions.
 - (g) Equitable remedies.
- (2) Trusts, with particular reference to the various types of trusts and the manner and form of their creation and variation. The duties, rights and powers of trustees should be included, as should the consequences of breach of trust and the remedies available to, and respective rights of, beneficiaries. (It is expected that about half the course will be devoted to trusts.) OR
- (3) Topics of such breadth and depth as to satisfy the following guidelines.

The topics should cover the elements of trust law, equitable doctrines apart from those relating to trusts, and equitable remedies. The following aspects of trusts law should be dealt with: various kinds of trusts; the rights, duties and powers of trustees; the consequences of breach of trust. Apart from trusts, the following equitable doctrines might be covered, for example, fiduciary obligations, equitable assignments, unconscionability and confidential information. The remedies of specific

performance, injunction, declaration and damages in equity should be included. (It is expected that about half the course will be devoted to trusts.)

Company Law

- (1) Corporate personality.
- (2) The incorporation process.
- (3) The corporate constitution.
- (4) Company contracts.
- (5) Administration of companies and management of the business of companies.
- (6) Duties and liabilities of directors and officers.
- (7) Share capital and membership.
- (8) Members' remedies.
- (9) Company credit and security arrangements.
- (10) Winding up of companies. OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include an analysis of incorporation and its effects, management and control of a company, the various methods of financing - by the issue of shares and by debt - and the processes of winding up a company.

Administrative Law

- (1) Organisation and structure of the administration.
- (2) Administrative law theory.
- (3) Common law and statutory avenues of judicial review at Commonwealth and State level.
- (4) Grounds of judicial review.
- (5) Remedies.
- (6) Crown immunity.
- (7) Administrative Appeals Tribunal.
- (8) Statutory review.
- (9) Freedom of information. OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should not only embrace traditional common law remedies concerning judicial review of administrative action, but should also cover the range of Commonwealth and State statutory regimes.

Federal and State Constitutional Law

- (1) State constitutions and constitutional systems.
- (2) The Commonwealth Constitution and constitutional system.
- (3) The constitution and operation of the legislature, executive and judiciary.
- (4) The relationship between the different institutions of government and the separation of powers.
- (5) The relationship between the different levels of government. OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include knowledge of the major principles of both the relevant State or Territory Constitution and the Commonwealth Constitution, including the relations between the different Commonwealth and State or Territory laws. A general knowledge of the scope of both State or Territory and Commonwealth Constitutions is required, although the topics will differ in the depth of treatment of specific heads of power, particularly in the Commonwealth sphere.

Civil Dispute Resolution

- (1) Court adjudication under an adversary system.
- (2) The cost of litigation and the use of costs to control litigation.
- (3) Service of originating process – as foundation of jurisdiction, including service out of the relevant state or territory and choice of forum.
- (4) Joinder of claims and parties, including group proceedings and the defence of prior adjudication as instances of the public interest in avoiding a multiplicity of proceedings and inconsistent verdict.
- (5) Defining the questions for trial – pleadings, notices to admit and other devices.
- (6) Obtaining evidence – discovery of documents, interrogatories, subpoena and other devices.
- (7) Disposition without trial, including the compromise of litigation.
- (8) Extra-judicial determination of issues arising in the course of litigation.
- (9) Judgment.

- (10) Appeal.
- (11) Enforcement.
- (12) Alternative dispute resolution.
- (13) Obligations of parties and practitioners relating to the resolution of disputes. OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topic should embrace the general study of rules of civil procedure and alternative dispute resolution relevant in the State or Territory. The law concerning jurisdiction, the initiation and service of process, the definition of issues through pleadings and judgment and enforcement should all be included.

Evidence

Explanatory Note:

The following topics are fundamental to understanding the major features of evidence law and procedure, both statutory and common law, and the major sources of judicial interpretation relevant to a general study of the role, sources and foundation of the law of evidence and a trial procedure, of pre-trial obligations and of rules concerning the burden and standard of proof. These topics explicitly take into account the language of procedural changes created by the common law and uniform evidence law in Australia, including High Court jurisprudence that is indispensable to understanding the conduct of a trial.

- (1) Introduction
 - (a) The relevant sources of the law of evidence and procedure.
 - (b) Fair trials, proof and adversarialism, including principles underpinning accusatorial justice.
 - (c) Evidentiary issues to be addressed before trial: disclosure, notices and requests.
- (2) Forms of evidence
 - (a) Witnesses: Competence and compellability:
 - (i) The examination of witnesses, including vulnerable witnesses
 - (ii) The accused as a witness, including the privilege against self-incrimination
 - (b) Documentary evidence, including proof of contents.
 - (c) Real evidence.
- (3) Evidentiary principles and rules, and exceptions to the rules

- (a) Relevance.
 - (b) Original evidence including res gestae.
 - (c) Hearsay evidence.
 - (d) Opinion evidence.
 - (e) Admissions and confessions.
 - (f) Tendency and coincidence evidence.
 - (g) Credibility evidence.
 - (h) Character evidence.
- (4) The bases for privilege including legal professional and client privilege
 - (5) Judicial warnings, comment and directions
 - (6) Mandatory and discretionary exclusions and the limitations on evidence

Ethics and Professional Responsibility

- (1) Professional and personal conduct in respect of a practitioner's duty:
 - (a) to the law;
 - (b) to the Courts;
 - (c) to clients, including a basic knowledge of the principles relating to the holding of money on trust; and
 - (d) to fellow practitioners. OR
 - (e) Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include knowledge of the various pertinent rules concerning a practitioner's duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles relating to the holding of money on trust.

Appendix B: Competency Standards for Entry Level Lawyers

Law Admissions Consultative Committee¹

**Practical Legal Training
Competency Standards For Entry-
Level Lawyers**

Commencement Date: 1 January 2015
(Revised: October 2017)

¹ LACC's Charter is approved by the Council of Chief Justices which also appoints its Chairman. LACC is not, however, a committee of the Council, nor does it act on the Council's behalf

1 BACKGROUND

In 2002, Admitting Authorities finally endorsed proposed national *PLT Competency Standards for Entry-level Lawyers*, which were recommended to them by LACC.

The *Standards* had been jointly developed by the Australasian Practical Legal Education Council (APLEC) and LACC and sought to describe the observable performance in several key areas relating to legal practice, required of entry-level lawyers at the point of admission to the legal profession.²

Subsequent changes in both the training of lawyers and legal practice led LACC in 2010 to seek the assistance of APLEC and other stakeholders to undertake a review of the PLT Competency Standards. APLEC undertook a review, which was completed in 2013 following extensive consultation. This document is based on suggestions made by APLEC, as a result of that review.

One of the most significant changes in the intervening years is that, in several jurisdictions, many intending legal practitioners now obtain their PLT qualifications through PLT courses, conducted by PLT providers, rather than through serving a period as an articled clerk, to which service the Standards did not apply. In other jurisdictions, instead of articles, intending legal practitioners can choose either to undertake a PLT course or to engage in Supervised Workplace Training in a legal office. In one jurisdiction, intending practitioners still undertake articles but also are required to undertake a program of assessment conducted by a PLT provider, to assess whether they have attained each of the prescribed competencies. Whichever form of PLT is now followed, all intending practitioners are required to demonstrate that they have attained prescribed competence in the Skills, Practice Areas and Values summarised in item 3 set out in detail in item 4 below.

Another significant change is that, since 2000, all jurisdictions have developed or applied means of accrediting and monitoring PLT courses and the performance of PLT providers. So-called Uniform Standards for PLT Courses and Providers, initially developed by the Victorian Council of Legal Education have been successfully deployed and revised in the light of that experience. APLEC has asked that they should be applied in all jurisdictions and LACC has commended successive versions to Admitting Authorities.

In those jurisdictions which allow SWT, means of approving and monitoring the performance of SWT providers are also being developed. Such procedures enhance the possibility that entry-level lawyers will all have attained the various competencies prescribed by, or pursuant to, this document.

² The recommended Standards were drafted in the light of the *National Competency Standards Policy and Guidelines*, National Training Board, Canberra, 1991 and Heywood, Goncz and Hager, *A Guide to the Development of Competency Standards for Professions*, Department of Employment, Education and Training, Canberra, 1992.

2 INTERPRETATION

(1) Definitions

In this document:

Admitting Authority means the body responsible in a jurisdiction for approving the content of either or both of PLT courses and SWT.

applicant means applicant for admission to the legal profession.

PLT means Practical Legal Training.

PLT course means a PLT course approved by an Admitting Authority, conducted by a PLT provider.

PLT provider means a body authorised by an Admitting Authority to provide a PLT course in that jurisdiction.

programmed training means structured and supervised training activities, research and tasks, each with comprehensive assessment.

SWT means supervised workplace training and includes articles of clerkship.

SWT provider means a body providing SWT in a jurisdiction.

workplace experience means supervised employment in a legal office, or supervised paid or unpaid placement in a law or law-related work environment.

(2) Interpretation of Item 5

The following principles apply when interpreting item 5.

- (a) An Element describes a relevant competence that an applicant is required to demonstrate in relation to the relevant prescribed Skill, Practice Area or Value.
- (b) A Performance criterion sets out an activity by reference to which an applicant's achievement of an appropriate level of competence in the corresponding Element may be demonstrated. An applicant may, however, demonstrate the requisite achievement in relation to an Element:
 - (i) by attaining some, but not all, of the relevant Performance criteria nominated in item 5 for that Element; and
 - (ii) by attaining equivalent Performance criteria in the course of undertaking another Practice Area set out in item 5.
- (c) Where a Performance criterion refers to an action which can only be performed by a person who has both been admitted to the legal profession and holds a practising certificate, the requisite competency may be demonstrated by

satisfactorily completing a simulated exercise offered, and assessed in accordance with item 4.6(a), by a PLT provider or SWT provider.

- (d) Where a Performance criterion provides for a competency to be demonstrated by observing something:
 - (i) the entry-level lawyer must document in writing and critically evaluate what has been observed; and
 - (ii) the resulting record must be assessed by the relevant PLT provider or SWT provider in accordance with item 4.6(a),

before the relevant Performance criterion can be satisfied.

- (e) The expression of particular Elements, Performance criteria or Explanatory Notes in relation to a Skill, Practice Area or Value is not intended either:
 - (i) to limit the way in which that Skill, Practice Area or Value is taught; or
 - (ii) to prevent either wider or more detailed training in that Skill, Practice Area or Value.

3 REQUIREMENTS FOR APPLICANTS FOR ADMISSION

(1) Required Competencies

- (a) Every applicant is required to satisfy the Admitting Authority that the applicant has achieved the prescribed competence in the Skills, Compulsory and Optional Practice Areas and Values set out in item 5 and summarised as follows:

Skills

Lawyer's Skills Problem Solving
Work Management and Business Skills Trust and Office Accounting

Compulsory Practice Areas

Civil Litigation Practice
Commercial and Corporate Practice Property Law
Practice

Optional Practice Areas

Subject to paragraph (b), any two of:

Administrative Law Practice
Banking and Finance Criminal Law Practice
Consumer Law Practice
Employment and Industrial Relations Practice
Family Law Practice

Planning and Environmental Law Practice
Wills and Estate Practice.

Values

Ethics and Professional Responsibility

- (b) Paragraph (a) applies to every applicant who has undertaken PLT in Australia, whether by completing a PLT course, undertaking SWT, or any combination thereof approved by the relevant Admitting Authority.

(2) When PLT may be commenced

(a) An applicant may commence PLT:

- (i) in the case of SWT, only after the applicant has completed an academic qualification in law, leading to admission to the legal profession;
- (ii) in the case of a PLT course that is not integrated with the applicant's academic qualification in law, only after the applicant has completed an academic qualification in law leading to admission to the legal profession, unless the applicant has no more than two academic subjects to complete:
 - a. neither of which is one of the Academic Requirements for admission; and
 - b. for which the applicant must be enrolled while undertaking the PLT course,

and the applicant has received the prior permission of the Admitting Authority to commence the PLT course.

- (b) Despite paragraph (a), an applicant may undertake an integrated program of academic study and PLT that:
 - (i) requires the equivalent of three years' full-time academic study of law, apart from the time required to undertake the PLT components of the program; and
 - (ii) has been recognised by the relevant Admitting Authority for the purposes of preparing students for admission to the legal profession.

4 REQUIREMENTS FOR EACH FORM OF PLT

(1) Programmed training and workplace experience

PLT must comprise both programmed training and workplace experience as follows:

- (a) subject to paragraph (d), in the case of a graduate diploma:
 - (i) programmed training appropriate to such a diploma³; and
 - (ii) the equivalent of at least 15 days' workplace experience;
- (b) subject to paragraph (d), in the case of a training course other than a graduate diploma, the equivalent of at least 900 hours' duration, comprising:
 - (i) at least 450 hours of programmed training; and
 - (ii) at least 15 days' workplace experience;
- (c) in the case of SWT the equivalent of at least 12 months' full-time work which includes a minimum of at least 90 hours' programmed training.
- (d) for the purposes of paragraphs (a) and (b), one day comprises seven working hours.

(2) Timing and duration of workplace experience

- (a) 15 days of workplace experience, as specified in clauses 4.1(a)(ii) and 4.1(b)(ii), is the **minimum requirement**.
- (b) require a student, as part of a PLT course, to undertake more than the minimum requirement of workplace experience (**additional requirement**).
- (c) A student must undertake the minimum requirement –
 - (i) within Australia; and
 - (ii) concurrently with or after completing the programmed training of the PLT course.
- (d) On or after 1 July 2018, a student may only obtain credit for the minimum requirement if the student undertakes not less than –
 - (i) 2 full days of workplace experience per week; or
 - (ii) 4 x 4 hour sessions of workplace experience per week.
- (e) A student may undertake any additional requirement –
 - (i) within Australia; or
 - (ii) with the permission of the PLT provider, outside Australia.
- (f) A PLT provider may grant credit towards any additional requirement of workplace experience for any workplace experience acquired by a student up to 2 calendar years before the student commences programmed training for a

PLT course, if the workplace experience was acquired –

- (i) while the student was enrolled in an academic law course accredited for professional admission purposes by an Australian Admitting Authority ;and
 - a. as part of a clinical education program, internship or externship program of that law course; or
 - b. in a legal office or during supervised placement in a law or law-related workplace; or
 - (ii) after the student has completed an academic law course, but before the student commences programmed training for a PLT course.
- (g) A PLT provider may grant credit towards either or both of the minimum requirement and any additional requirement of workplace experience for any workplace experience acquired by a student up to 2 calendar years after the student has completed the programmed training component of a PLT course.

(3) Common requirements

The requirements in items 4.4 to 4.7 apply to both PLT courses and SWT.

(4) Level of training

PLT must be provided at a level equivalent to post-graduate training and build on the academic knowledge, skills and values about the law, the legal system and legal practice which a graduate of a first tertiary qualification in law should have acquired in the course of that qualification.

(5) Qualification of instructors and supervisors

A person instructing or supervising an applicant while acquiring competence in any Skill, Practice Area or Value must:

- (a) either have substantial current or recent experience in practising law; or
- (b) have comparable relevant qualifications or experience; and
- (c) comply with any other relevant legislative or regulatory requirements in the relevant jurisdiction.

(6) Assessment of applicants

- (a) Each form of PLT must employ comprehensive methods, appropriate to post-graduate training, of:
 - (i) assessing an applicant's competence; and

- (ii) certifying whether or not an applicant has demonstrated the requisite level of competence,

in each relevant Skill, Practice Area and Value.

- (b) Wherever practicable, an applicant's competence in any Practice Area should be assessed in a way that allows the applicant, at the same time, to further develop and to demonstrate competence in, relevant Skills and Values.

(7) Resilience and well-being

All PLT providers and SWT providers should:

- (a) make applicants aware of the importance of personal resilience in dealing with the demands of legal practice;
- (b) provide applicants with appropriate access to resources that will help them develop such resilience;
- (c) provide applicants with information about how and where to seek help in identifying mental health difficulties and in dealing with their effects;
- (d) make applicants aware of the benefits of developing and maintaining personal well-being in their professional and personal lives; and
- (e) provide applicants with information about how and where to find resources to help them develop and maintain such well-being.

5 COMPETENCY STANDARDS

Item 2.2 sets out particular principles of interpretation that apply to items 5.1 – 5.16.

(1) Administrative Law Practice

Descriptor: An entry-level lawyer who practises in administrative law should be able to:

- (a) obtain information for clients under freedom of information legislation and otherwise;
- (b) seek review of administrative decisions; and
- (c) represent parties before courts and administrative tribunals.

Element**Performance criteria**

The lawyer has competently:

1. Obtaining information
 - identified whether "freedom of information" or "right to information" legislation applies to the situation.
 - identified the specific legislation under which the information may be obtained.
 - taken the steps required under that legislation.
 - identified and taken any other practical steps required to obtain the information.
2. Obtaining review of administrative decisions
 - concluded correctly that the decision may be reviewed.
 - identified and advised the client, or participated in or observed discussions with the client, about alternative means of obtaining a review.
 - completed all preparation required by law, good practice and the circumstances of the matter.
 - represented the client effectively at, or participated in or observed, any mediation, hearing or other review forum, where this is appropriate and permitted.
 - identified all alternative means of obtaining redress and discussed them with the client.
3. Representing a client
 - completed all preparation required by law, good practice and the circumstances of the matter.
 - represented the client effectively at, or participated in or observed, any mediation, hearing or other proceeding, where this is appropriate or permitted.

Descriptor: An entry-level lawyer who practises in administrative law should be able to:

Explanatory notes

This competency standard applies to both State and Federal administrative law and practice and to proceedings before both State and Federal courts and tribunals.

In the Performance criteria for Elements 2 and 3, "preparation" includes drafting written submissions.

(2) Banking and Finance

Descriptor: An entry-level lawyer who practises in Banking and Finance should be able to demonstrate competence in advising clients on some of the common ways to finance commercial transactions and they should be able to demonstrate competence in drafting simple loan agreements and associated security documents, and in taking the actions required to perfect those securities.

Element	Performance criteria
	The lawyer has competently:
1. Preliminary investigation	<ul style="list-style-type: none"> • identified one or more ways of financing a borrower’s proposal and identified the securities available to a financier in the situation • undertaken any necessary preliminary searches and inquiries to investigate issues of ownership, title and the capacity of any party to enter into the proposed financial arrangement • identified any consents to, or notifications of, the proposed financial arrangement required by existing financial or contractual arrangements • identified any requirements imposed on the financier by law in respect of the proposed financial arrangement.
2. Planning	<ul style="list-style-type: none"> • planned the steps to be taken to effect the proposed arrangement including identifying and recording any critical dates, identifying any necessary searches and inquiries and identifying the required documentation
3. Documentation	<ul style="list-style-type: none"> • drafted the relevant loan and security documents • informed the borrower of their obligations in relation to the arrangement including any personal obligations under any guarantees • complied with any legislative requirements relating to the proposed arrangement
4. Due Diligence	<ul style="list-style-type: none"> • undertaken any further searches and inquiries required and advised the client what experts need to be engaged for due diligence (accountants etc.)
5. Finalisation	<ul style="list-style-type: none"> • had the transaction documentation executed, and (if necessary) stamped and registered according to law and good practice.

Explanatory Note

An entry-level lawyer may not demonstrate competence in this elective practice area by submitting the same or similar work, to work that the entry-level lawyer submits to demonstrate competence in the Commercial and Corporate Practice area.

(3) Civil Litigation Practice

Descriptor: An entry-level lawyer should be able to conduct civil litigation in first instance matters in at least one State or Territory court of general jurisdiction, in a timely and cost-effective manner.

Element**Performance criteria**

The lawyer has competently:

1. Assessing the merits of a case and identifying dispute resolution alternatives
 - assessed the strengths and weaknesses of both the claimant's and opponent's cases.
 - identified the facts and evidence required to support the claimant's case.
 - advised the client of relevant rights and remedies in a way that a reasonable client could understand.
 - identified means of resolving the case, having regard to the client's circumstances.
 - where possible, confirmed in writing any instructions given by the client in response to initial advice.
 - Identified and complied with the relevant limitation period.
2. Advising on costs of litigation
 - identified any litigation funding options and a means of reducing or recovering costs.
 - identified alternative types of costs orders and how they may be affected by formal and informal offers of compromise and the manner of conducting the litigation.
 - advised the client of relevant cost considerations in a way that a reasonable client could understand.
3. Initiating and responding to claims
 - identified an appropriate claim or defence.
 - identified a court of appropriate jurisdiction.
 - identified the elements of the claim or defence, according to law.
 - followed procedures for bringing the claim or making the defence in accordance with the court's rules and in a timely manner.
 - drafted all necessary documents in accordance with those procedures.
4. Taking and responding to interlocutory and default proceedings
 - identified any need for interlocutory steps, according to the court's rules.
 - followed procedures for taking those steps in accordance with the court's rules and in a timely manner.
 - drafted all necessary documents in accordance with those procedures and rules.
5. Gathering and presenting evidence
 - identified issues likely to arise at the hearing.
 - identified evidence needed to prove the client's case or disprove the opponent's case, according to the rules of evidence.
 - identified various means of gathering evidence, and used at least one of them to gather evidence.
 - presented, or observed the presentation of, that evidence according to law and the court's rules.

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| 6. Negotiating settlements | <ul style="list-style-type: none"> • conducted, participated in or observed, settlement negotiations. • identified any revenue and statutory refund implications. • properly documented any settlement reached. |
| 7. Taking action to enforce orders and settlement agreements | <ul style="list-style-type: none"> • identified available means of enforcing the order or settlement according to law and the court's rules. • followed procedures relevant to the chosen means of enforcement in a timely manner. |

Explanatory notes

This competency standard applies to first instance civil litigation in local lower and higher courts of an Australian State or Territory, having general jurisdiction, and in the Federal Court.

In the Performance criteria for Element 1, "means of resolving a case" includes:

- negotiation;
- mediation;
- arbitration;
- litigation;
- expert appraisal.

In the Performance criteria for Element 5, "means of gathering evidence" includes:

- statements from witness;
- notices to admit;
- discovery;
- subpoena;
- expert reports;
- certified official records, banker's books and similar documents.

In the Performance criteria for Element 5, reference to presenting evidence includes presenting evidence:

- orally on oath;
- by affidavit;
- by video or telephone link.

In the Performance criteria for Element 7, "means of enforcement" includes:

- execution process including attachment of debts;
- taxation or assessment of costs;
- oral examination.

(4) Commercial and Corporate Practice

Descriptor: An entry-level lawyer should be able to:

- (a) conduct standard commercial transactions such as the sale and purchase of a

small business;

- (b) understand the relevant risks associated with such a transaction for both parties;
- (c) set up simple business structures using entities such as companies, trusts and partnerships;
- (d) provide basic advice on finance and securities and on the obligations of companies and their officers; and
- (e) appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

Element

Performance criteria

The lawyer has competently:

1. Conducting commercial transactions

- identified the nature of the transaction.
- undertaken sufficient searches and inquiries to investigate any relevant issues of title to real or personal property.
- drafted documents, had them executed, and (if necessary) certified, stamped and registered, according to law and good practice.
- obtained or given any necessary consents to, or notifications of, the transaction required by law.

2. Setting up commercial structures

- selected a structure that will achieve the client's objectives
- drafted all documents required to set up the structure (including establishing any discrete entities that will form part of the structure).
- had the documents executed and (if necessary) certified, stamped and registered, according to law and good practice.
- informed the client of any continuing obligations in relation to the structure, and, where the structure involves a corporation, of the continuing obligations of the company and its officers.

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| 3. Dealing with loans and securities | <ul style="list-style-type: none"> • identified one or more types of financial arrangements and securities available to the borrower and lender. • informed the borrower and lender of their immediate, continuing, and potential liabilities under any proposed financing and security arrangements. • drafted loan or security documents which reflect the agreement between lender and borrower. • had the loan or security documents executed and (if necessary) stamped and registered, according to law and good practice. |
| 4. Advising on revenue law and practice | <ul style="list-style-type: none"> • identified in a general way the possible revenue implications of the client's proposed commercial venture or arrangement. • referred the client to experts for more comprehensive or detailed advice, where appropriate. |

Explanatory notes

In Element 2, "structure" includes:

- basic trusts;
- private companies;
- partnerships;
- joint ventures;
- franchise arrangements.

In Element 3, "securities" includes:

- personal property security agreements;
- chattel leases;
- loans agreements;
- guarantees, including guarantees from spouses.

In the Performance criteria for Element 4, "revenue implications" includes:

- stamp duties;
- income tax;
- capital gains tax;
- GST;
- fringe benefits tax;
- land and property taxes.

(5) Consumer Law Practice

Descriptor: An entry-level lawyer who practises in consumer law should be able to:

- (a) advise clients on the procedures and remedies available in relation to consumer protection complaints and disputes; and

- (b) represent the client in any related negotiations or proceedings.

Element	Performance criteria
	The lawyer has competently:
1. Obtaining information	<ul style="list-style-type: none">• identified the consumer protection complaint or dispute as one to which consumer protection legislation applies.• identified the relevant legislation and any applicable case law.• identified any possible common law remedies.
2. Drafting documents	<ul style="list-style-type: none">• drafted any documents required, in accordance with the client's instructions and the relevant legislation.
3. Initiating and responding to claims	<ul style="list-style-type: none">• identified the appropriate forum for initiating or responding to a claim.• initiated a claim or taken action to oppose a claim in accordance with the rules and procedures of the relevant court or tribunal, in a timely manner.• obtained all necessary evidence and drafted all necessary documents in accordance with those rules.
4. Representing the client	<ul style="list-style-type: none">• identified all possible means of resolving the consumer protection complaint or dispute to the satisfaction of the client; and discussed them with the client, or participated in or observed, such discussions.• completed all necessary preparation in accordance with the law, good practice and the circumstances of the matter.• represented the client effectively at, or participated in or observed, any negotiation, mediation, hearing or other proceedings.
5. Taking action to implement outcomes	<ul style="list-style-type: none">• documented any order or settlement properly and explained it to the client in a way which a reasonable client could understand.• identified any procedures necessary to enforce the order or settlement and implemented them in a timely manner.

Explanatory notes

This competency standard applies to the practice of consumer law under both State and Federal consumer protection legislation and codes.

In the Performance criteria for Element 1, "consumer protection dispute" includes a dispute relating to:

- competition and consumer legislation;
- misleading and deceptive conduct;
- motor car traders;

- domestic building contracts;
- consumer credit;
- guarantees;
- residential tenancies.

In the Performance criteria for Element 1 "consumer protection legislation" includes State and Federal legislation and codes concerning:

- competition and consumer law;
- misleading and deceptive conduct;
- motor car traders;
- domestic building contracts;
- consumer credit;
- residential tenancies.

In the Performance criteria for Element 3, "court or tribunal" includes:

- Federal courts;
- State courts;
- statutory tribunals;
- industry complaint panels;
- industry ombudsmen.

(6) Criminal Law Practice

Descriptor: An entry-level lawyer who practises in criminal law should be able to advise clients before arrest, seek bail, make pleas, participate in minor contested hearings and assist in preparing cases for trial.

Element

Performance criteria

The lawyer has competently:

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| 1. Providing advice | <ul style="list-style-type: none"> • identified the client's legal rights and legal powers of the police or other prosecutors or investigators in relation to a criminal matter. • informed the client of those rights and powers in a way that a reasonable client could understand. • identified the legal elements of any offence with which the client is charged. • where possible, confirmed in writing any instructions given by the client in response to initial advice. • implemented the client's instructions, when it is appropriate in the circumstances to do so. |
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2. Applying for bail
 - identified the client's options and communicated them to the client in a way a reasonable client could understand.
 - helped the client to make an informed decision about which option to select.
 - made, or been involved in the process of making, or observed, an application for bail or taken other action effectively in the circumstances.
 - fully advised the client of any bail conditions.

3. Making pleas
 - identified the client's options and communicated them to the client in a way a reasonable client could understand.
 - identified and gathered all material useful to the plea, according to law and good practice.
 - presented, or been involved in the process of presenting or observed the presentation of the plea in an effective and persuasive manner, having regard to the circumstances of the case.
 - advised the client fully of the outcome in a way a reasonable client would understand.

4. Representing a client in minor matters
 - completed all preparation required by law, good practice and the circumstances of the case.
 - represented, or been involved in representing the client, or observed the client being represented, effectively at a contested hearing.

5. Assisting to prepare cases for trial
 - identified and gathered the evidence needed to support the client's case.
 - identified and briefed, or been involved in briefing, appropriate experts (including counsel) having regard to good practice and the requirements of the case.

Explanatory notes

In the Performance criteria for Element 1, "criminal matter" includes:

- traffic offences;
- domestic violence and apprehended violence orders;
- drink driving;
- drug offences.

(7) Employment and Industrial Relations Practice

Descriptor: An entry-level lawyer who practises in the area of employment and industrial relations should be able to:

- (a) advise clients on the relevant law and procedures;
- (b) represent clients in negotiations; and

- (c) initiate and respond to applications in relevant State and Federal courts and tribunals.

Element	Performance criteria
	The lawyer has competently:
1. Assessing the merits of the dispute and identify the dispute resolution alternatives	<ul style="list-style-type: none">• identified the relevant facts.• assessed the strengths and weaknesses of the dispute according to the relevant law.• identified all means of resolving the dispute, having regard to the client's circumstances.
2. Advising client on procedures	<ul style="list-style-type: none">• advised the client of means of avoiding a dispute, where appropriate.• advised the client of available steps to strengthen the client's position.
3. Commencing negotiations	<ul style="list-style-type: none">• explored opportunities for a negotiated settlement, subject to the client's instructions.• represented, or been involved in representing, the client, or observed the client being represented, effectively at any negotiations.
4. Initiating and responding to proceedings	<ul style="list-style-type: none">• identified the appropriate jurisdiction.• initiated or opposed, or been involved in initiating or opposing, a claim or observed the initiation or opposition of a claim, in accordance with the rules of the relevant court or tribunal, in a timely manner.• obtained all necessary evidence and drafted all necessary documents in accordance with those rules.
5. Representing the client	<ul style="list-style-type: none">• completed all preparation required by law, good practice and the circumstances.• represented, or been involved in representing the client, or observed the client being represented, effectively at any mediation, hearing or other forum.
6. Taking action to implement outcomes	<ul style="list-style-type: none">• properly documented any order or settlement and explained it to the client in a way which the client can understand.• identified and implemented, or been involved in identifying and implementing, any procedures required to enforce the order or settlement.

Explanatory notes

This competency standard applies to the practice of employment and industrial relations law at both State and Federal levels.

In the Performance criteria for Elements 1 and 2, "dispute" includes:

- award negotiations;

- an industrial dispute relating to an individual employee or to a workplace or industry;
- an equal employment opportunity or anti-discrimination claim;
- a claim for unfair dismissal.

In the Performance criteria for Element 1, "means of resolving the dispute" includes:

- negotiation;
- mediation;
- conciliation;
- arbitration;
- litigation.

In the Performance criteria for Element 2, "means of avoiding a dispute" and "steps to strengthen the client's position" include:

- altering internal employment practices and procedures;
- revising employment contracts;
- entering or revising enterprise bargaining agreements;
- altering individual employment contracts;
- taking disciplinary proceedings;
- allowing industrial representation.

(8) Ethics and Professional Responsibility

Descriptor: An entry-level lawyer should act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community and other lawyers.

Element	Performance criteria
	The lawyer has competently:
1. Acting ethically	<ul style="list-style-type: none"> • identified any relevant ethical dimension of a particular situation. • taken action which complies with professional ethical standards in that situation.
2. Knowing when to raise ethical problems with others	<ul style="list-style-type: none"> • identified circumstances in which matters relating to the ethical conduct of legal practice should be brought to the attention of others. • identified with whom different matters of this type should be raised (for example, employers, professional associations, legal services boards, police). • learned about relevant protocols, institutional procedures and difficulties, associated with raising such matters with others.

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| 3. Discharging the legal duties and obligations of legal practitioners | <ul style="list-style-type: none"> • identified any duty or obligation imposed on the lawyer by law in a particular situation. • discharged that duty or obligation according to law and good practice. |
| 4. Complying with professional conduct rules | <ul style="list-style-type: none"> • identified any applicable rules of professional conduct. • taken action which complies with those rules. |
| 5. Complying with fiduciary duties | <ul style="list-style-type: none"> • recognised and complied with any fiduciary duty, according to law and good practice. |
| 6. Avoiding conflicts of interest | <ul style="list-style-type: none"> • identified any potential or actual conflict, as soon as is reasonable in the circumstances. • taken effective action to avoid a potential conflict or, where a conflict has already arisen, dealt with it in accordance with law and good practice, or been involved in the process of doing one or more of those things. • taken, or been involved in the process of taking, appropriate action, where applicable, to prevent such a conflict arising in the future. |
| 7. Acting courteously | <ul style="list-style-type: none"> • demonstrated professional courtesy in all dealings with others. |
| 8. Complying with rules relating to the charging of fees | <ul style="list-style-type: none"> • identified any rules applying to charging professional fees. • complied with those rules, where they are relevant. • maintained file notes and records in accordance with law and good practice. |
| 9. Being aware of the importance of pro bono contributions | <ul style="list-style-type: none"> • recognised the importance of pro bono contributions to legal practice. • identified various means whereby lawyers may provide pro bono contributions. • where necessary, used resources provided by professional or community organisations to facilitate pro bono contributions. • Identified when a client with insufficient resources may be entitled to legal aid, or assistance from professional or community organisations. |

Explanatory notes

The purpose of this standard is to assist entry-level lawyers to adopt ethical habits in legal practice to ensure that they effectively and appropriately discharge their obligations to the Court, to the legal profession and to clients by:

- acting ethically;
- observing general and statutory law relating to the duties and obligations of legal practitioners;
- observing written and unwritten rules of professional conduct; or

- observing written and unwritten rules of professional courtesy.

In the Performance criteria for Element 3, "duty or obligation" includes the duties and obligations:

- of confidentiality;
- to maintain competence;
- to act honestly;
- not to mislead the court;
- not to pervert the course of justice or the due administration of justice.

In Element 6, "conflicts of interest" include conflicts between:

- joint venture partners;
- directors and shareholders of a company;
- trustees and beneficiaries in a family trust;
- parties to any transaction where the interests of the parties may differ.

(9) Family Law Practice

Descriptor: An entry-level lawyer who practises in family law should be able to:

- advise and take action in relation to parenting matters, property settlements, spouse maintenance and child support problems;
- identify appropriate dispute-resolution processes for such matters, in the light of the client's circumstances and concerns; and
- advise clients on pre-action procedures.

Element

Performance criteria

The lawyer has competently:

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| 1. Advising on matters relating to children and property | <ul style="list-style-type: none"> • elicited information necessary to identify the client's options. • informed the client of all relevant available options, in a way that a reasonable client could understand. • identified any pre-action procedures that apply to the matter. • taken any steps necessary to enable the client to obtain access to those procedures. |
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2. Representing a client in matters relating to children and property
 - prepared, or been involved in preparing, or observed the preparation of, either an application for interim, final or consent orders relating to a matter concerning children or property, or a response to such an application.
 - pursued, or been involved in the pursuit of, the case in accordance with good practice for the chosen dispute resolution process.
 - identified and explained, or been involved in identifying and explaining, to the client the revenue implications of any proposed settlement.
 - documented and acted upon, or been involved in documenting and acting upon, any results of the chosen dispute resolution process, in accordance with law and good practice.

Explanatory notes

This competency standard applies to children and property matters arising from the breakdown of marriages or other domestic relationships, rather than the dissolution of marriage. It includes:

- responsibility for parenting, including residence of and contact with, children;
- property settlements;
- spouse maintenance;
- child support;
- domestic violence orders;
- injunctions and sole-use orders;
- de facto proceedings.

(10) Lawyer's Skills

Descriptor: An entry-level lawyer should be able to demonstrate oral communication, legal interviewing, advocacy, negotiation, dispute resolution, letter-writing and drafting skills.

Element

Performance criteria

The lawyer has competently:

1. Communicating effectively
 - identified the purpose of a proposed communication, the most effective way of making it, and the content of the proposed communication.
 - presented thoughts, advice, and submissions in a logical, clear, succinct and persuasive manner, having regard to the circumstances and the person or forum to whom they are made.

- 2. Cross-cultural awareness
 - identified and appropriately dealt with verbal and non-verbal aspects of cross-cultural communication.
 - taken any follow-up action in accordance with good practice.
 - demonstrated awareness of difficulties of communication attributable to cultural differences; their possible effect on a client's dealings with lawyers, the police, courts, government and legal agencies; and the desirability of cross-cultural communications training for all lawyers.

- 3. Interviewing clients
 - prepared for the interview properly, having regard to relevant information available before the interview and all known, relevant circumstances.
 - conducted, participated in conducting or observed, the interview, using communication techniques appropriate to both the client and the context.
 - ensured that the client and lawyer have both obtained all the information which they wanted from the interview in a timely, effective and efficient way, having regard to the circumstances.
 - ensured that the lawyer and client left the interview with a common understanding of the lawyer's instructions (if any) and any future action that the lawyer or client is respectively to take.
 - made a record of the interview that satisfies the requirements of law and good practice.
 - taken, or participated in taking, any follow-up action in a timely manner.

- 4. Writing letters
 - identified the need for, and purpose of, the letter.
 - written the letter in plain English that conveys its purpose clearly and could be understood by the person to whom it is sent, acting reasonably.

- 5. Drafting other documents
 - identified the need for, and purpose of, the document.
 - devised an effective form and structure for the document having regard to the parties, the circumstances, good practice, plain English principles and the relevant law.
 - drafted the document effectively having regard to the parties, the circumstances, good practice, plain English principles, and the relevant law.
 - considered whether the document should be settled by counsel.
 - taken every action required to make the document effective and enforceable in a timely manner and according to law (such as execution by the parties, stamping, delivery and registration).

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| 6. Negotiating settlements and agreements | <ul style="list-style-type: none"> • prepared, or participated in the preparation of, the client's case properly having regard to the circumstances and good practice. • identified the strategy and tactics to be used in negotiations and discussed them with and obtained approval from the client, or been involved in or observed that process. • carried out, been involved in or observed, the negotiations effectively having regard to the strategy and tactics adopted, the circumstances of the case and good practice. • documented any resolution as required by law or good practice and explained it, or been involved in the process of explaining it, to the client in a way a reasonable client could understand. |
| 7. Facilitating early resolution of disputes | <ul style="list-style-type: none"> • identified the advantages and disadvantages of available dispute resolution options and explained them to, or been involved in explaining them to, the client. • performed in the lawyer's role, or been involved in or observed that performance, in the dispute resolution process effectively, having regard to the circumstances. • documented any resolution as required by law or good practice and explained it, or been involved in explaining it, to the client in a way a reasonable client could understand. |
| 8. Representing a client in a legal forum | <ul style="list-style-type: none"> • observed the etiquette and procedures of the forum. • organised and presented in an effective, strategic way: <ul style="list-style-type: none"> • factual material; • analysis of relevant legal issues; and • relevant decided cases. • presented and tested evidence in accordance with the law and good practice. • made submissions effectively and coherently in accordance with law and good practice. |

Explanatory notes

Assessment of competence for this standard should require the entry-level lawyer to synthesise or combine the above skills and apply them in one or more specific legal contexts.

In the Performance criteria for Element 2, "difficulties of communication attributable to cultural differences" includes difficulties of communication encountered by Indigenous people.

In the Performance criteria for Element 7, "dispute resolution options" includes:

- negotiation;
- mediation;
- arbitration;
- litigation;
- expert appraisal.

In Element 8, "Representing" refers to appearing, being involved in appearing, or observing another appearing, on behalf of a client in a court, tribunal or other legal forum on a matter, including:

- an aspect of preliminary or pre-trial civil or criminal proceedings;
- an aspect of first instance trial advocacy in a simple matter;
- leading evidence-in-chief, cross-examination and re-examination; and
- making submissions.

(11) Planning and Environmental Law Practice

Descriptor: An entry-level lawyer who practises in planning and environmental law should be able to:

- (a) advise, and generally assist, clients on the relevant law and planning process;
- (b) apply for approvals and consents under relevant planning legislation;
- (c) object to applications; and
- (d) initiate or defend planning or environmental actions.

Element

Performance criteria

The lawyer has competently:

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| 1. Assessing the merits of the matter and advising the client | <ul style="list-style-type: none">• obtained full instructions from the client.• analysed the facts in accordance with the relevant law.• obtained and clarified any relevant technical information.• advised, or been involved in advising, the client of any rights and obligations of the client and potential penalties if obligations are not observed.• identified, or been involved in identifying, all options and developed a plan of action in accordance with the client's instructions.• alerted, or been involved in alerting, the client to the need to identify the commercial, political and public relations implications of any proposed action. |
| 2. Preparing planning applications or objections | <ul style="list-style-type: none">• identified and analysed relevant provisions of the appropriate planning scheme.• identified any appropriate grounds of objection.• prepared either an application for development or other planning approval, or an objection to such an application.• identified any need to obtain plans or other information. |

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| 3. Initiating or responding to environmental claims | <ul style="list-style-type: none"> • identified the appropriate forum for initiating or responding to a claim. • initiated or opposed, or been involved in initiating or opposing, a claim in accordance with the rules of the relevant court or tribunal, in a timely manner. • obtained all necessary evidence and drafted all necessary documents in accordance with those rules. |
| 4. Representing the client in resolving a planning matter or environmental claim | <ul style="list-style-type: none"> • identified appropriate means of resolving the matter to the satisfaction of the client and discussed them, or been involved in discussing them, with the client. • completed all preparation required by law and good practice. • represented, or been involved in representing, or observed the representation of, the client effectively in any negotiation, mediation, hearing or other proceedings. |
| 5. Implementing outcomes | <ul style="list-style-type: none"> • properly documented any order or settlement and explained, or been involved in explaining it to the client in a way which a reasonable client could understand. • identified and carried out any procedures to enforce the order or settlement in a timely manner. |

Explanatory notes

This competency standard applies to the practice of planning and environmental law under both common law and State and Federal legislation.

In Element 4, "planning matter or environmental claim" includes:

- an application for, or an application for exemption from the need for, a permit, licence, approval or other authority;
- an objection, appeal or application for review of a decision, relating to such an application;
- a prosecution for breach of relevant planning or environmental legislation;
- a civil action relating to either or both a planning and environmental matter.

(12) Problem Solving

Descriptor: An entry-level lawyer should be able to:

- (a) investigate and analyse facts and law;
- (b) provide legal advice; and
- (c) solve legal problems.

Element	Performance criteria
	The lawyer has competently:
1. Analysing facts and identifying issues	<ul style="list-style-type: none"> • identified and collected all relevant facts as far as is practicable. • analysed the facts to identify any existing or potential legal issues. • distinguished relevant facts from other facts, if the matter so requires.
2. Analysing law	<ul style="list-style-type: none"> • identified any questions of law raised by the matter. • researched those questions of law properly, having regard to the circumstances. • identified and interpreted any relevant statutory provisions and applied them appropriately to the facts.
3. Providing legal advice	<ul style="list-style-type: none"> • applied the law to the facts of the matter in an appropriate and defensible way. • given, or been involved in giving, the client advice in a way which a reasonable client could understand. • identified any developments that might affect the accuracy of previous advice and told, or been involved in telling, the client about the effect of those developments.
4. Generating solutions and strategies	<ul style="list-style-type: none"> • identified the problem and the client's goals as fully as is practicable. • investigated the facts and legal issues as fully as is practicable. • developed creative options and strategies to meet the client's objectives. • identified the advantages and disadvantages of pursuing each option or strategy. • assisted, or been involved in assisting, the client to choose between those options in a way consistent with good practice. • developed a plan to implement the client's preferred option. • acted, or been involved in acting, to resolve the problem in accordance with the client's instructions and the lawyer's plan of action. • remained open to new information and ideas and updated advice to the client where necessary.

Explanatory notes

In Element 2, "Analysing law" includes:

(a) researching legal issues by using:

- law libraries;

- on-line searches;
- electronic data bases;
- legal citators and digests; and

(b) applying principles of precedent and statutory interpretation.

(13) Property Law Practice

Descriptor: An entry-level lawyer should be able to:

- (a) convey, lease and mortgage real property; and
- (b) provide general advice on standard matters arising under local government, planning, environmental or other legislation relating to land use in the relevant State or Territory.

Element	Performance criteria
	The lawyer has competently:
1. Transferring title	<ul style="list-style-type: none"> • identified the nature of the interest being dealt with, pursuant to the pre-eminent title system in the relevant jurisdiction. • prepared, commented on and advised, or been involved in advising, on an appropriate contract of sale or other type of agreement for transferring the relevant interest in land; and had it executed according to law and good practice. • undertaken sufficient searches and inquiries to investigate title, any issues about land use and responsibility for outgoings. • drafted an appropriate instrument of transfer or conveyance and had it executed and (if necessary) stamped and registered, according to law. • obtained or given any consents to, or notifications of, the transfer or conveyance, according to law. • arranged for the instrument to be executed and (if necessary) stamped and registered, as required by law.
2. Creating leases	<ul style="list-style-type: none"> • made and obtained all searches and consents required by law and good practice. • drafted, commented on and advised, or been involved in advising, on a lease in a form allowed by law, reflecting the agreement between lessor and lessee and protecting their respective interests. • arranged for the lease to be executed and (if necessary) stamped and registered, according to law.

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| 3. Creating and releasing mortgages | <ul style="list-style-type: none"> • made and obtained all searches and consents required by law and good practice. • drafted, commented on and advised, or been involved in advising, on an effective instrument to create or release the security, reflecting the agreement between the grantor and grantee and protecting their respective interests. |
| 4. Advising on land use | <ul style="list-style-type: none"> • identified any planning scheme or other statutory provisions regulating the relevant use. • Advised, or been involved in advising, the client generally about processes to be followed to obtain permission for, or to object to the use, as the case requires. |
| 5. Advising on revenue implications | <ul style="list-style-type: none"> • identified the revenue implications of any transaction and advised, or been involved in advising, the client accordingly. |

Explanatory notes

In Element 1, "Transferring title" refers to title pursuant to the pre-eminent title system in the relevant jurisdiction.

In the Performance criteria for Element 1, "contract of sale" includes a contract of sale subject to special conditions.

In Element 2, "Creating leases" refers to residential tenancies or leases and standard commercial leases.

In Element 3, "mortgages" includes any other relevant security over land. In Element 4, "Advising on land use" includes advising on issues relating to:

- town planning schemes;
- local government by-laws;
- environment and heritage legislation;
- revenue and tax legislation.

(14) Trust and Office Accounting

Descriptor: An entry-level lawyer should have sufficient knowledge, skills and values to maintain trust and general account records according to law and good practice, to the extent usually permitted and expected of an employed solicitor: See Explanatory notes below.

Element	Performance criteria
	The lawyer has competently:
1. Understand relevant fiduciary and other duties	<ul style="list-style-type: none"> • identified and applied: • general law fiduciary and other duties; codified duties; • duties to supervise and report in relation to trust monies; and • duties and obligations of maintaining a trust account.
2. Receiving money	<ul style="list-style-type: none"> • dealt with money received from or on behalf of a client, as required by law and good practice. • where the law and good practice requires money to be deposited in a trust account or general account, recorded the deposit as required by law and good practice. • issued any receipt required by law and good practice.
3. Making outlays	<ul style="list-style-type: none"> • made any outlay from the correct account, according to law and good practice. • recorded the outlay as required by law and good practice.
4. Rendering costs	<ul style="list-style-type: none"> • demonstrated an ability to comply with regulations relating to disclosure of costs and a client's rights relating to costs. • calculated the costs in accordance with law, good practice and any agreement between the lawyer and client. • added to the bill all outlays made by the firm for which the client is responsible. • accounted to the client for any money received from the client on account of costs and outlays, as required by law and good practice. • drafted the bill and delivered it in accordance with law and good practice.

Explanatory notes

This competency standard applies to trust and general accounting and to rendering bills of costs. It requires a general knowledge of solicitors' trust account law and practice and costs regulation in the relevant jurisdiction and an understanding of the general principles of maintaining trust and office records.

(15) Wills and Estates Practice

Descriptor: An entry-level lawyer who practises in wills and estates should be able to draft wills, administer deceased estates and take action to solve problems about wills and estates.

Element

Performance criteria

- The lawyer has competently:
1. Drafting wills
 - advised the client of issues, options, and potential problems that might arise in respect of the client's testamentary intentions.
 - obtained instructions reflecting the client's informed and independent wishes, which can be effectively implemented.
 - drafted a will reflecting the client's instructions.
 - identified any issues of testamentary capacity and resolved them in accordance with law and good practice.
 - ensured that the client executed the will in accordance with law.
 - given any necessary follow up advice to the client.
 2. Administering deceased estates
 - obtained a grant of probate or letters of administration where required.
 - identified the debts and assets of the estate.
 - gathered in the estate or transferred or transmitted assets directly to beneficiaries, as appropriate, having regard to the law, good practice, and the circumstances.
 - discharged the estate's debts, distributed specific gifts and the residue and ensured that the executors have been released of their obligations in a timely fashion.
 3. Taking action to resolve wills and estates problems
 - identified the nature of the problem properly, having regard to the law of the jurisdiction.
 - identified the client's options for dealing with the problem, having regard to the law of the particular jurisdiction and the client's circumstances.
 - explained the options to the client in a way a reasonable client could understand.
 - taken action to resolve the problem in accordance with the client's instructions.

Explanatory notes

In the Performance criteria for Element 1, "follow-up advice" includes advice on:

- the effects of marriage on a will;
- the effects of divorce on a will;
- storage options for a will;
- revocation of a will;
- modification of a will;
- associated documents such as enduring powers of attorney.

In Element 3, "wills and estates problems" include problems of:

- testamentary capacity;
- construction;
- validity of the will;

- validity of gifts;
- assets outside the jurisdiction;
- revenue issues;
- family provision;
- mutual wills;
- trusts;
- informal wills;
- testamentary directions.

(16) Work Management and Business Skills

Descriptor: An entry-level lawyer should be able to manage workload, work habits, and work practices in a way that ensures that clients' matters are dealt with in a timely and cost-effective manner.

Element	Performance criteria
1. Managing personal time	<p>The lawyer has competently:</p> <ul style="list-style-type: none"> • used a diary or another system to record time limits or deadlines and to assist in planning work. • identified conflicting priorities as they arise and managed the conflict effectively. • used available time effectively, to the benefit of the lawyer's clients and employer.
2. Managing risk	<ul style="list-style-type: none"> • conducted each matter in a way that minimises any risk to the client, lawyer or firm arising from missed deadlines, negligence or failure to comply with the requirements of the law, a court or other body. • recognised the limits of the lawyer's expertise and experience and referred the client or matter to other lawyers, counsel or other professionals, as the circumstances require.
3. Managing files	<ul style="list-style-type: none"> • used a file management system to ensure that work priorities are identified and managed; clients' documents are stored in an orderly and secure manner; and to alert the lawyer to any need to follow up a matter or give it other attention. • rendered timely bills, in accordance with law and any agreement between the lawyer and client, which set out the basis for calculating the lawyer's fees. • accurately recorded all communications and attendances, with details of dates and times.

- | | |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. Keeping client informed | <ul style="list-style-type: none"> • communicated with the client during the course of the matter as frequently as circumstances and good practice require. • confirmed oral communications in writing when requested by the client or required by good practice. • dealt with the client’s requests for information promptly. • informed the client fully of all important developments in the matter, in a way which a reasonable client could understand. |
| 5. Working cooperatively | <ul style="list-style-type: none"> • worked with support staff, colleagues, consultants and counsel in a professional and cost effective manner. |
| 6. Self-management | <ul style="list-style-type: none"> • Demonstrated an ability to manage work and personal issues consistent with principles of resilience and well-being. |

Explanatory notes

The purpose of this standard is to assist entry-level lawyers to adopt good work habits in legal practice to ensure that:

- clients do not suffer loss or damage from a lawyer missing deadlines or neglecting matters;
- clients are kept informed regularly and fully of the progress of their matters;
- and
- clients’ matters are dealt with in a cost-effective manner.

Appendix C: Mandatory Continuing Professional Development

1 Definitions

In this Appendix:

- 1.1 **CPD** means continuing professional development.
- 1.2 **CPD activity** means an activity:
 - (a) of significant intellectual or practical content primarily related to the practice of law; and
 - (b) conducted by persons qualified by practical or academic experience in the subject covered; and
 - (c) relevant to the immediate or long-term professional development needs of the legal practitioner undertaking it; and
 - (d) comprising:
 - (i) attendance at or presenting material for, a seminar, workshop, lecture, conference, educational program or course or discussion group; or
 - (ii) viewing or listening to material for, a multi-media, web-based or recorded program; or
 - (iii) preparing material for any seminar, workshop, lecture, conference, education program, course, discussion group, or a multimedia, web-based or recorded program; or
 - (iv) publishing, or substantively editing or refereeing, an article in a legal or non-legal publication; or
 - (v) regular attendance at meetings, and participation as a member, of a committee or other body undertaking work of substantial significance to the practice of the law and which is reasonably likely to assist the attendee's professional development.
- 1.3 **CPD unit** means:
 - (a) in relation to a CPD activity referred to in (d) (i), (ii) or (iii) above, one hour of the activity;
 - (b) in relation to a CPD activity referred to in (d) (iv) above, 1000 words of the article;
 - (c) in relation to a CPD activity referred to in (d) (v) above, two hours of the activity.
- 1.4 **CPD year** means a year beginning on 1 April to the following 31 March.
- 1.5 **Defined Circumstances:** see paragraph 5.1.
- 1.6 **Minimum CPD units:** see paragraph 2.
- 1.7 **The prescribed amount of Mandatory Continuing Professional Development:** see paragraph 3.
- 1.8 Professional skills includes as subject matter the substance of the law and procedures in the legal system.
- 1.9 Required CPD activity: see paragraph 2.2.

2 Minimum CPD units are:

- 2.1 For an individual legal practitioner, 10 CPD units of CPD activity in each CPD year.
- 2.2 The 10 CPD units must include at least 4 units of Required CPD activity as detailed below:
Required CPD activity
 - (a) one CPD unit relating to practical legal ethics;
 - (b) one CPD unit relating to practice management or business skills;
 - (c) one CPD unit relating to professional skills; and
 - (d) one CPD unit relating to bullying, discrimination and harassment.
- 2.3 In calculating the minimum 10 CPD units of CPD activity in respect of a CPD year, the total units must not include more than:
 - (a) 5 CPD units of CPD activity referred to in paragraph 1.2 (d)(ii);
 - (b) 4 CPD units for the preparation of material for any individual seminar, workshop etc. as identified in 1.2 (d)(iii);
 - (c) 5 CPD units of CPD activity referred to in paragraph 1.2 (d)(iv);
or
 - (d) 5 CPD units of CPD activity referred to in paragraph 1.2 (d)(v).
- 2.4 CPD units completed in January, February or March of a CPD year, may at the election of the practitioner be assigned in whole or in part either to that CPD year or to the next CPD year.
- 2.5 Any CPD activity completed in respect of a CPD year pursuant to this paragraph cannot be taken into account for any other CPD year.

3 The prescribed amount of Mandatory Continuing Professional Development is:

- 3.1 Where an individual legal practitioner holds a practising certificate for a full CPD year, the Minimum CPD units.
- 3.2 Where an individual legal practitioner holds a practising certificate for less than a full CPD year, the Minimum CPD units in respect of that year are reduced proportionally in accordance with the following rules:
 - (a) the number of CPD units specified in paragraph 2.1 (10 units) shall be reduced by 1 unit for each whole calendar month of the CPD year for which the practitioner did not hold a practising certificate;
 - (b) the number of required CPD units specified in paragraph 2.2 (4 units) shall be reduced by 1 unit for each 3 units reduced by (a) hereof;
 - (c) the number of CPD Units permitted at paragraph 2.3 (a) (5 units) and (b) (4 units) shall be reduced by 50% (rounded up to the nearest whole number) of the number derived under (a) hereof;
 - (d) the number of CPD Units permitted at paragraph 2.3(c) (5 units) shall be reduced by 1 unit for each 3 units reduced by (a) hereof.
- 3.3 Where during a CPD year Defined Circumstances have occurred which prevented or impeded a practitioner from completing the CPD

units prescribed in sub-paragraphs 3.1 or 3.2, as applicable, the reduced number of CPD units intimated under paragraph 5.

- 3.4 Where rectification has occurred under paragraph 7.1, the CPD units which the Law Society has determined to accept.

4 Records of CPD

- 4.1 An individual legal practitioner must, in respect of each CPD year, maintain and retain for 3 years after the end of that CPD year:
- (a) a written record of CPD activities undertaken and of CPD units completed and of any activities undertaken pursuant to a condition imposed by the Board pursuant to sub-rule 14(b)(1);
 - (b) material indicating the nature of each CPD activity undertaken and of any activity undertaken pursuant to a condition imposed by the Board pursuant to sub-rule 14(b)(1);
 - (c) a record of the fact that the practitioner undertook each such activity.
- 4.2 An individual legal practitioner must provide to the Law Society within 14 days of receipt of a written request for information about and/or evidence of the practitioner's compliance with his or her obligations under this Appendix in respect of any CPD year within the previous 3 years as specified in the request.

5 Inability to Comply

In this paragraph 5, references to completing the prescribed amount of Mandatory Continuing Professional Development are references to the prescribed amount of Mandatory Continuing Professional Development under sub-paragraphs 3.1 or 3.2, as applicable.

- 5.1 In this paragraph, Defined Circumstances means:
- (a) illness or disability;
 - (b) the location of the practitioner's legal practice in Australia;
 - (c) the temporary absence of the practitioner from ongoing legal practice (for example, by reason of a period of leave such as parental leave); or
 - (d) financial hardship; or
 - (e) any other special circumstance
- which prevents, or impedes, the practitioner's completion of the prescribed amount of Mandatory Continuing Professional Development.
- 5.1A It is not a Defined Circumstance for a practitioner to be temporarily absent from legal practice by reason of being engaged in employment unrelated to legal practice.
- 5.2 Where during a CPD year Defined Circumstances exist or occur which are likely to prevent or impede a practitioner from completing the prescribed amount of Mandatory Continuing Professional Development, the practitioner must lodge with the Law Society a statutory declaration as soon as practicable after it becomes apparent that it is likely that the practitioner will not complete the prescribed amount of Mandatory Continuing Professional Development:

- (a) setting out details of the Defined Circumstances and their past and/or likely future effect upon the practitioner's ability or availability to complete the prescribed amount of Mandatory Continuing Professional Development;
 - (b) setting out the number of CPD units (including Required CPD activities) the practitioner has completed and plans to complete during the balance of the CPD year;
 - (c) setting out the evidence and exhibiting any documentary evidence which demonstrates the matters in (a) and (b);
- 5.3 The statutory declaration filed pursuant to paragraph 5.2 shall seek an intimation from the Law Society of the number of CPD units to comprise his or her prescribed amount of Mandatory Continuing Professional Development, the relevant date for their completion and the modification of any Required CPD activity or other limits or requirements of the prescribed amount of Mandatory Continuing Professional Development, and shall:
- (a) in any case where the Defined Circumstances are constituted by parental leave:
 - (i) set out the dates of the proposed parental leave,
 - (ii) where applicable, exhibit a letter from the practitioner's employer confirming the arrangements that have been made for such leave;
 - (b) in any other case:
 - (i) set out full details of the Defined Circumstances and their past and/or likely future effect upon the practitioner's ability or availability to complete the prescribed amount of Mandatory Continuing Professional Development;
 - (ii) set out the evidence and exhibiting any documentary evidence which demonstrates the matters in subparagraphs (b)(i) and (c) of paragraph 5.3.
- 5.4 The employer of a practitioner who takes, or proposes to take, a period of leave due to any Defined Circumstances shall provide confirmation by letter of any leave arrangements to the employed practitioner
- 5.5 A practitioner who does not complete the prescribed amount of Mandatory Continuing Professional Development by 31 March and who seeks to complete a lesser prescribed amount because of Defined Circumstances must by 14 April lodge with the Law Society a statutory declaration setting out:
- (a) the number of CPD units (including required CPD activities) the practitioner completed in respect of that CPD year;
 - (b) whether or not the practitioner has lodged a statutory declaration as required by paragraph 5.2 and any intimation given the Law Society and if not, why not.
 - (c) in any case where the Defined Circumstances were constituted by parental leave:
 - (i) if no statutory declaration as required by paragraph 5.2 has been lodged,
 - (A) sets out the dates of the parental leave,

- (B) where applicable, exhibits a letter from the practitioner's employer confirming such leave;
 - (ii) in any other case:
 - (A) sets out full details of the Defined Circumstances and there upon the practitioner's ability **or availability** to complete the prescribed amount of Mandatory Continuing Professional Development,
 - (B) sets out the evidence and exhibiting any documentary evidence which demonstrates the matters in subparagraphs.
- 5.6 Where during a CPD year Defined Circumstances have occurred which prevented a practitioner from completing the prescribed amount of Mandatory Continuing Professional Development, provided the practitioner has complied with sub-paragraphs 5.2 and 5.3, the prescribed amount of Mandatory Continuing Professional Development which the practitioner is required to accrue is reduced under sub-paragraph 3.3 to the extent that the Defined Circumstances have so prevented compliance.

6 Certification of Compliance

- 6.1 An individual legal practitioner must by 14 April each year lodge with the Law Society a certificate by the practitioner that the practitioner has complied with the obligations contained in paragraphs 3 and 4 of Appendix C in respect of the preceding CPD year.

7 Rectification of Contravention

- 7.1 Where a practitioner has not completed the prescribed amount of Mandatory Continuing Professional Development in accordance with sub-paragraphs 3.1, 3.2 or 3.3, he or she must:
- (a) by 14 April lodge with the Law Society a statutory declaration setting out:
 - (i) the number of CPD units (including Required CPD activities) the practitioner has completed in respect of that CPD year;
 - (ii) the number of CPD units (including Required CPD activities) which the practitioner has not completed in respect of that CPD year;
 - (iii) details of CPD activities which the practitioner proposes to undertake prior to 31 May of that year to rectify the non-compliance;
 - (iv) if Defined Circumstances have existed and an intimation has not previously been sought under paragraph 5.2, details of the matters set out in paragraph 5.2.
 - (b) by 31 May undertake sufficient CPD and other activities as are necessary to rectify the non-compliance; and
 - (c) by 7 June lodge with the Law Society a certificate by the practitioner setting out the number of CPD units (including of

Required CPD activities) completed in respect of the prior CPD year up to the date of the certificate.

The Law Society may determine to accept the number of CPD units so completed as completion of the prescribed amount of Mandatory Continuing Professional Development for the issue of a practising certificate subject to a condition or conditions under Rule 14(1)(a)(i).

- 7.2 If a practitioner has completed the prescribed amount of Mandatory Continuing Professional Development, notwithstanding any failure by the practitioner to adhere to the time limits in paragraphs 5, 6 and 7, the Law Society may be satisfied that the practitioner has completed the prescribed amount of Mandatory Continuing Professional Development within Rule 13.

8 Sundry

- 8.1 The Law Society may be satisfied on the basis of a certificate received in compliance with 6 and 7.1(c) that a practitioner has completed the prescribed amount of MCPD within Rule 13(3).
- 8.2 The Law Society may charge a practitioner who does not comply with a time limit in paragraphs 5, 6 and 7 a reasonable fee for receipt and processing documents lodged after the expiry of the time limit.

Appendix D: LACC Standards for PLT Workplace Experience and LACC Disclosure Guidelines for Applicants for Admission to the Legal Profession

**GUIDELINES PREPARED BY THE LAW ADMISSIONS
CONSULTATIVE COMMITTEE**

**LAW ADMISSIONS CONSULTATIVE COMMITTEE³ STANDARDS
FOR PLT WORKPLACE EXPERIENCE**

³ LACC's Charter is approved by the Council of chief Justices which also appoints its Chairman. LACC is not, however, a committee of the Council, nor does it act on the Council's behalf.

1 INTRODUCTION

Experience in a legal or law-related workplace has long been acknowledged as indispensable to the proper preparation of a legal practitioner. When structured PLT courses were first introduced, it was acknowledged that supplementary workplace experience would still be necessary. In England, this was achieved by requiring students to complete a 2-year training contract after a PLT course, before becoming eligible for admission. The required content of that training contract –and consequently the training which host organisations and supervisors were obliged to provide – is closely regulated by the Solicitors Regulation Authority.

Australia followed a different path. Instead of a 2-year pre-admission training contract, Australian arrangements require a period of workplace training as part of a PLT course, followed by 2 years of supervised practice, after admission – neither element of which is closely regulated.

In 2002, national PLT Competency Standards for Entry-level Lawyers were first adopted by all Australian Admitting Authorities. While these prescribed competencies in certain knowledge, skills and values that PLT providers must impart to their students, little was said about workplace experience. Although the Standards required a student to obtain workplace experience as part of a PLT course, they simply set out a minimum period for such experience.

The minimum period chosen reflected the period of external workplace experience then required by one established PLT provider, whose course was structured to provide substantial simulated workplace experience, while conducting programmed training. Other established PLT providers operated under a different model which required substantially longer periods of external workplace experience.

Apart from setting this minimum period (which suited the courses then offered by all existing PLT providers), Admitting Authorities offered no other guidance to PLT providers about what would constitute appropriate workplace experience, or how it might be accumulated. Like the 2-year post-admission period of supervised practice, workplace experience to be undertaken during a PLT course was otherwise unregulated.

In the intervening years, the social, technological and other circumstances of students undertaking PLT courses have changed in significant ways, as have the commercial circumstances facing PLT providers in a highly competitive market. Thus, the Australasian Professional Legal Education Council (APLEC) proposed to LACC that now PLT courses "should be predicated on" the following matters that it suggests are "pervasive" –

- (a) the financial costs to students undertaking workplace experience, particularly where students are not paid by the host organisation;
- (b) student carer commitments;
- (c) student commitments to other work;
- (d) the shortage of available workplace experience;

- (e) the (un?) willingness of the profession to contribute to the legal education of law students and law graduates;
- (f) what should be regarded as acceptable periods of unpaid work;
- (g) the cost to a PLT provider of comprehensively administering workplace experience programs; and
- (h) equity and access issues – enabling participation in work experience programs by ALL students and diversity within the legal profession.⁴

Any of these matters, alone or in combination, may present significant obstacles for some intending legal practitioners and for some PLT providers. However sympathetic an Admitting Authority may be to those affected, its inescapable statutory duty is to establish, apply and maintain what it considers to be appropriate standards for the preparation of members of the legal profession. These are the values upon which its regulatory requirements must be predicated. It must strike a balance between factors such as those advanced by APLEC and what it considers to be reasonable and proportionate requirements which will help assure the educational value of workplace experience in the context of a PLT course.

Concern about the effectiveness of, and variation between prevailing practices of PLT providers relating to workplace experience led the Victorian Council of Legal Education, in 2014, to refer questions about the following matters to LACC, arising from an application by a PLT provider to alter its workplace training requirements –

- (a) the purpose of the work experience requirement as an element of a PLT course;
- (b) the appropriate duration of such workplace experience;
- (c) how the relevant workplace experience may be accumulated;
- (d) whether work experience undertaken before a PLT course can be taken into account to satisfy a work experience requirement; and
- (e) whether additional programmed training requirements might be substituted for some of the requisite workplace experience.

LACC received 2 submissions from APLEC about these issues in the intervening years, and has sought and obtained expert advice from other sources. It has also noted that there have been several significant regulatory developments since 2014.

The Legal Profession Uniform Law has come into effect, placing renewed focus on how effectively matters relating to admission to the legal profession are presently being regulated. Further, a completely revised version of the PLT Competency Standards for Entry-level Lawyers came into effect in January 2015, containing much

⁴ APLEC, *Work Placement Requirements for PLT Courses*, 3 February 2015, p4.

more explicit explanatory and regulatory material. Standards for accrediting PLT providers and courses, previously endorsed by LACC have been renamed as Uniform Standards and have already been applied in a number of jurisdictions. Finally, Accreditation Standards for Australian Law Courses are in the final stages of development.

Consistent with these developments, LACC thus considers it is appropriate to adopt the following standards relating to workplace experience.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this document –

Competency Standards means the Law Admissions Consultative Committee's Practical Legal Training Competency Standards for Entry-level Lawyers 2015.

workplace experience means supervised employment in a legal office or supervised paid or unpaid placement in a law or law-related work environment.

2.2 Interpretation

Expressions used in this document and in the Competency Standards that are not defined in clause 1.1 or elsewhere in this document have the same meaning as in the Competency Standards.

3 PURPOSES OF THE STANDARDS

The purposes of these Standards are –

- (a) to assist Admitting Authorities, when accrediting, monitoring or re-accrediting a PLT provider to determine whether the PLT provider will provide for a student of the PLT course to undertake appropriate workplace experience; and
- (b) where appropriate, to provide clear, tangible guidance to PLT providers of ways in which a PLT provider can demonstrate its compliance with the Standards

4 PURPOSE OF WORKPLACE EXPERIENCE

In the context of a PLT course, the purpose of workplace experience is to provide a student with an opportunity –

- (a) to apply, test and reflect on what has been learned during programmed training, while interacting with practising lawyers, other staff, government officers and clients; and
- (b) to develop an understanding of the nature of legal practice and of the student's aptitude for engaging in legal practice.

5 LEARNING OUTCOMES

1. On completing workplace experience, a student will have –

- (a) applied elements of the student's programmed training in the context of legal practice;
 - (b) experienced supervision by a qualified member of the legal profession in the execution of legal or law-related work;
 - (i) acquired a basic understanding of what a legal practitioner does in the course of legal practice;
 - (c) critically reflected upon significant experiences obtained by the student in the course of workplace experience; and considered how those experiences will influence the student's future actions.
2. A PLT provider must satisfy itself that a student has achieved each of the learning outcomes set out in subclause (1) before certifying that a student has satisfied the requirements of clause 4.1(a)(ii) or 4.1(b)(ii) of the Competency Standards, as the case requires.

How can a PLT provider show it has met this standard?

A PLT provider is required to assess whether or not a student has achieved each of the learning outcomes specified in subclause (1). The PLT provider might, for example –

- (a) require a student to keep a journal which records activities undertaken by the student during workplace training, and the student's reflections on those activities;
- (b) assess the content of the journal and the quality of the workplace experience undertaken by the student;
- (c) require a report from the relevant supervisor on the activities undertaken by the student, and the supervision the student received;
- (d) monitor the activities of both supervisors and students in undertaking workplace experience.

6 SUPERVISION OF WORKPLACE EXPERIENCE

A PLT provider must not approve workplace experience for a student unless it is satisfied that –

- (a) before the workplace experience commences, the student will have been instructed how to make the most of available supervision during workplace experience and how to obtain feedback on the student's performance;
- (b) the student will be appropriately supervised throughout the period of workplace experience; and
- (c) any person supervising the student –

- i. is admitted to the legal profession; and
- ii. has substantial experience in practising law; and
- iii. is currently practising law; and
- iv. is currently of good standing in the legal profession.

How can a PLT provider show it has met this standard?

A PLT provider will need to be able to demonstrate that –

- (a) it arranges properly to brief host organisations and proposed supervisors about the purpose of a student's workplace experience; and of the PLT provider's expectations about the nature of supervision required; and
- (b) it requires a potential supervisor to acknowledge that the person -
 - (i) has been informed about the PLT provider's expectations about the nature of supervision required; and
 - (ii) has each of the attributes referred to in paragraph 6(c) above.

A PLT provider might also demonstrate that –

- (a) it arranges for students and host organisations to enter into training contracts setting out mutual undertakings about workplace experience;
- (b) it provides written or web-based resources for host organisations, supervisors and students relating to expectations about their respective roles in offering, supervising and undertaking workplace experience.

7 TIMING AND DURATION OF WORKPLACE EXPERIENCE

1. 15 days of workplace experience, as specified in clauses 4(1)(a)(ii) and 4.1(b)(ii) of the Competency Standards, is the **minimum requirement**.
2. A PLT provider may require a student, as part of a PLT course, to undertake more than the minimum requirement of workplace experience (**additional requirement**).
3. A student must undertake the minimum requirement –
 - (a) within Australia; and
 - (b) concurrently with or after completing the programmed training of the PLT course.
4. On or after 1 July 2018, a student may only obtain credit for the minimum requirement if the student undertakes no less than –

- (a) 2 full days of workplace experience per week; or
 - (b) 4 x 4 hour sessions of workplace experience per week.
5. A student may undertake any additional requirement –
- (a) within Australia; or
 - (b) with the permission of the PLT provider, outside Australia.
6. A PLT provider may grant credit towards any additional requirement of workplace experience for any workplace experience acquired by a student up to 2 calendar years before the student commences programmed training for a PLT course, if the workplace experience was acquired –
- (a) while the student was enrolled in an academic law course accredited for professional admission purposes by an Australian Admitting Authority ; and
 - i. as part of a clinical education program, internship or externship program of that law course; or
 - ii. in a legal office or during supervised placement in a law or law- related workplace; or
 - (b) after the student has completed an academic law course, but before the student commences programmed training for a PLT course.
7. A PLT provider may grant credit towards either or both of the minimum requirement and any additional requirement of workplace experience for any workplace experience acquired by a student up to 2 calendar years after the student has completed the programmed training component of a PLT course.

8 QUALITY OF WORKPLACE EXPERIENCE

A PLT provider must not approve workplace experience for a student unless it is satisfied that the student will receive appropriate legal or law-related work that includes most or all of the following –

- (a) significant interaction with external or in-house clients;
- (b) drafting documents;
- (c) legal research;
- (d) using a file management system.

How can a PLT provider show that it has met this standard?

A PLT provider will need to be able to demonstrate that –

- (a) it arranges properly to brief host organisations and proposed supervisors about the purpose of a student's workplace experience; and of the PLT provider's expectations about the nature of the work that a student will experience;
- (b) it has a system for checking with a student about the nature and quality of work the student is receiving during workplace experience;
- (c) it has a system for advising a host organisation or supervisor of any concerns about the quality of work being assigned to a student.

A PLT provider might also demonstrate that –

- (a) it arranges for students and host organisations to enter into training contracts setting out mutual undertakings about workplace experience;
- (b) it provides written or web-based resources for host organisations, supervisors and students relating to expectations about their respective roles in offering, supervising and undertaking workplace experience.

9 SUBSTITUTION OF PROGRAMMED TRAINING FOR WORKPLACE EXPERIENCE

- (1) A PLT provider that conducts a PLT course which normally would require a student to undertake workplace experience that substantially exceeds the minimum requirement, may permit a student to undertake more programmed training than would normally be required, instead of part of the additional requirement of workplace experience.
- (2) The PLT provider must determine and apply a maximum number of days of workplace experience for which programmed training may be substituted under subclause (1).
- (3) The PLT provider must not fix a maximum number of days under subclause (2) that could have the effect of significantly detracting from the duration or quality of workplace experience –
 - (a) which that PLT course was initially designed to require; and
 - (b) which was nominate in the PLT provider's application to an Admitting Authority for accreditation or reaccreditation.
- (4) A PLT provider must not allow a student to undertake additional programmed learning pursuant to subclause (1) unless the student has previously completed the minimum requirement of workplace experience.
- (5) Additional programmed training referred to in subclause (1) must comprise coursework activities designed to enhance a student's skills in clinical legal practice or practice management.

10 HOW WORKPLACE EXPERIENCE MAY BE ACCUMULATED

A PLT provider must not approve workplace experience for a student unless it is satisfied that the student will undertake not less than –

- (a) 1 full day of workplace experience per week; or
- (b) 2 x 4-hour sessions of workplace experience per week, throughout the whole period of workplace experience.

LAW ADMISSIONS CONSULTATIVE COMMITTEE⁵

DISCLOSURE GUIDELINES

FOR APPLICANTS FOR ADMISSION TO THE LEGAL PROFESSION

CAUTION:

The Appendix to this document refers to legislation which applies in New South Wales and Victoria. Every other Admitting Authority may need to make minor adjustments to this document accurately to reflect variations in both the legislation and admission arrangements in that jurisdiction.

Applicants are therefore advised to consult any version of the attached Guidelines approved by the Admitting Authority in the jurisdiction in which admission is sought.

1 PURPOSES OF THESE GUIDELINES

As an applicant for admission, you need to satisfy your Admitting Authority that you are “a fit and proper person” to be admitted to the legal profession.⁶ In all jurisdictions other than South Australia, the relevant legislation also requires the Admitting Authority to consider whether you are currently “of good fame and character”.⁷ Each of these tests reflects the overarching requirements of the pre-existing common law.

The purposes of these Guidelines are -

- (a) to emphasise that Admitting Authorities and Courts place a duty and onus squarely on *you* to disclose to your Admitting Authority any matter that could influence its decision about whether you are “currently of good fame and character” and “a fit and proper person”;
- (b) to explain that, when you do make a disclosure, you must do so honestly and candidly, and be full and frank in what you say; and
- (c) to remind you that failure to do so, if subsequently discovered, can have catastrophic consequences. You might either be refused admission, or struck off the roll, if you have been admitted without making a full disclosure.

⁵ LACC'S Charter is approved by the Council of Chief Justices which also appoints its Chairman. LACC is not, however, a committee of the Council, nor does it act on the Council's behalf.

⁶ *Legal Practitioners Act 1981* (SA) section 15(1)(a); *Legal Profession Act 2006* (ACT) section 26(2)(b); *Legal Profession Act 2006* (NT) section 25(2)(b); *Legal Profession Act 2007* (Qld) section 35(2)(a)(ii); *Legal Profession Act 2007* (Tas) section 31(6)(b); *Legal Profession Act 2008* (WA) section 26(1)(a)(ii); *Legal Profession Uniform Law* (NSW & Vic) section 17(1)(c)

⁷ *Legal Profession Act 2006* (ACT) section 11(1)(a); *Legal Profession Act 2006* (NT) section 11(1)(a); *Legal Profession Act 2007* (Qld) section 9(1)(a); *Legal Profession Act 2007* (Tas) section 9(1)(a); *Legal Profession Act 2008* (WA) section 8(1)(a); *Uniform Admission Rules 2015* (NSW & Vic) rule 10(1)(f).

There are many judicial explanations of what the phrase “fit and proper person” means in different contexts. For example -

The requirement for admission to practice (*sic*) law that the applicant be a fit and proper person, means that the applicant must have the personal qualities of character which are necessary to discharge the important and grave responsibilities of being a barrister and solicitor. A legal practitioner, upon being admitted to practice, assumes duties to the courts, to fellow practitioners as well as to clients. At the heart of all of those duties is a commitment to honesty and, in those circumstances when it is required, to open candour and frankness, irrespective of self-interest or embarrassment. The entire administration of justice in any community which is governed by law depends upon the honest working of legal practitioners who can be relied upon to meet high standards of honesty and ethical behaviour. It is the legal practitioner who is effectively the daily minister and executor in the administration of justice when advising clients, acting for clients, certifying documents, and making presentations to courts, governments, other professionals, and so on. The level and extent of trust placed in what legal practitioners say or do is necessarily high and the need for honesty is self-evident and essential.⁸

2 STATUS OF THESE GUIDELINES

These Guidelines do not, and cannot, diminish or supplant in any way your personal duty to disclose any matter which may bear on your fitness for admission. They merely provide information about how Admitting Authorities approach the requirement of disclosure. They also give examples of matters which you might otherwise overlook when deciding what to disclose.

The examples given are not, and could not be, comprehensive or exhaustive. You must disclose any matter which is or might be relevant to your fitness, whether or not that matter is mentioned in these Guidelines. Please err on the side of disclosing, rather than concealing, information that might turn out to be relevant in the eyes of an Admitting Authority.

3 RELEVANT PRINCIPLES

Your Admitting Authority will apply the following principles when determining your fitness for admission.

- (a) The onus is squarely on you to establish your fitness.
- (b) The statutory test is cast in the present tense – whether you are “currently of good fame and character” and, except in South Australia, whether an applicant “is a fit and proper person”. Your past conduct, though relevant, is therefore not decisive.

⁸ *Frugtniet v Board of Examiners [2002] VSC 140* per Pagone, J.

- (c) The honesty and candour with which you make any disclosure is relevant when determining your present fitness. High standards are applied in assessing honesty and candour. Full and frank disclosure is essential - although in most circumstances your disclosure of past indiscretions will not result in you being denied admission.
- (d) Your present understanding and estimation of your past conduct at the time you make your application is relevant.
- (e) Any disclosure you make that may be relevant to whether you are currently able to carry out the inherent requirements of practice is confidential.

4 WHAT YOU NEED TO DISCLOSE

Your duty is to disclose any matter that might be relevant to your Admitting Authority considering whether you are currently of good fame and character and are a fit and proper person for admission to the legal profession.

This means that you *must* state whether any of the matters set out in **Appendix 1** applies to you. Your Admitting Authority has a statutory duty to have regard to each of those matters when considering your application.

But you also need to disclose any *other* matter that might be relevant to your Admitting Authority's decision about whether you are a fit and proper person for admission. Courts now clearly consider that you must disclose any matters relevant to the assessment of your honesty.

Unfortunately it is not possible to provide you with an exhaustive list of everything that might turn out to be relevant to assessing whether you are currently of good fame and character, or a fit and proper person for admission - and which you should therefore disclose.

Generally, however, your duty is to disclose *any* matter which does or might reflect negatively on your honesty, candour, respect for the law or ability to meet professional standards. You need to provide a full account of any such matter, including a description of your conduct (whether acts or omissions).

Avoid editing, or just selecting those matters that *you* believe *should* be relevant to your Admitting Authority's decision. Rather, you need to fully disclose every matter that might fairly assist the Admitting Authority or a Court in deciding whether you are a fit and proper person.

Revealing more than might strictly be necessary counts in favour of an applicant - especially where the disclosure still carries embarrassment or discomfort. Revealing less than may be necessary distorts the proper

assessment of the applicant and may itself show an inappropriate desire to distort by selecting and screening relevant facts.⁹

You will find a list of helpful dos and don'ts in item 6 below to help you decide how to frame any disclosure you need to make. Item 8 also includes further information about disclosures about your capacity.

Note that if you don't disclose anything, you must include the following statement in your application -

I have read and understood the Disclosure Guidelines for Applicants for Admission to the Legal Profession. I am and always have been of good fame and character and am a fit and proper person to be admitted and I have not done or suffered anything likely to reflect adversely on my good fame and character or on whether I am a fit and proper person. 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 .

5 SOME EXAMPLES

The following are examples of matters which you may need to disclose in addition to the matters set out in **Appendix 1**.

(a) **Social security overpayments or offences**

You should disclose any overpayment to you of any kind of Centrelink or social security entitlements at any time, or for any reason, whether or not you have already repaid the relevant amount; or whether or not you have been prosecuted in relation to the overpayment.

(b) **Academic misconduct**

You should disclose any academic misconduct. You would be wise to disclose such conduct, whether or not a formal finding was made or a record of the incident retained by the relevant organisation.

Academic misconduct includes, but is not limited to, plagiarism, impermissible collusion, cheating and any other inappropriate conduct, whereby you have sought to obtain an academic advantage either for yourself or for some other person.

(c) **Inappropriate or criminal conduct**

You may also need to disclose general misconduct which occurred, say, in your workplace, educational institution, volunteer position, club, association or in other circumstances, if such conduct may reflect on whether you are a fit and proper person to be admitted to the legal profession. This is so, even if the misconduct does not directly relate to your ability to practise law.

⁹ *Frugtniet v Board of Examiners* [2002] VSC 140, per Pagone J.

General misconduct may include, but is not limited to, offensive behaviour, workplace or online bullying, property damage, sexual harassment or racial vilification.¹⁰

You also need to disclose any misconduct relating to dishonesty on your part, whether or not that conduct may have amounted to an offence; and whether or not you were charged with, or convicted of an offence. This includes conduct that involved misappropriating any sort of property in any way, or making false or misleading statements of any kind.

You should disclose any criminal conviction for any offence whatsoever.

You may also need to disclose any criminal *charge*, as distinct from a criminal conviction - even if the charge was subsequently withdrawn or you were acquitted. This will, however, depend on the circumstances. If the charge did not proceed for a technical reason, such as the expiration of a time limit, you should disclose it.

On the other hand, if the charge was denied and the matter did not proceed because of an acknowledged lack of evidence, you need not disclose it, unless your underlying conduct itself warrants disclosure. You should carefully consider whether the facts giving rise to a criminal charge might reasonably be regarded as relevant when assessing your suitability for admission.

You should also carefully consider whether it might be prudent to disclose an offence, even if spent convictions legislation applies to that offence. Where spent convictions legislation does not apply, you should declare any offence of which you have been convicted.

At the other end of the scale, if you had dealings with police as a juvenile, such as being warned for drinking alcohol, it is likely that your Admitting Authority would regard the matter as minor and you would not need to disclose it.

(d) **Intervention orders and apprehended violence orders**

(e) **Infringement or traffic offences**

You may need to declare offences resulting in a court-ordered fine or other sanction or even an administrative penalty, such as traffic or public transport offences. This is certainly necessary if the frequency or number of fines, or your failure to pay fines, could give rise to concern about your respect for the law.

(f) **Making a false statutory declaration**

(g) **Tax Offences**

¹⁰ By way of illustration, in *XY v Board of Examiners* [2005] VSC 250, Habersberger, J found that an applicant was under a duty to disclose that a volunteer position had been terminated as a result of making offensive remarks to a fellow worker and that she was also required to disclose property damage she had caused at a meditation retreat, notwithstanding that charges were not

(h) **Corporate insolvency, penalties or offences**

You may need to disclose any instances of insolvency, offences or penalties relating to any company or organisation of which you were a director or responsible officer at the time.

6 DOS AND DON'TS

A number of recent cases consider the over-arching obligation to be candid and honest when making a full and frank disclosure of something you choose to disclose. The following dos and don'ts emerge from those cases.

- (a) You need to make sure that what you tell the Admitting Authority is completely accurate.
- (b) Check the relevant facts to ensure that your statement cannot be misleading. If necessary, check those facts with third parties who know about them.
- (c) Even if the matter you are disclosing seems to you to be relatively minor, you must provide full and frank details to the Admitting Authority. You need to include all matters that could be relevant to your Admitting Authority's assessment.
- (d) You must do this when you first make your disclosure. Don't wait for the Admitting Authority to ask you for further information.
- (e) Failing to make a full and frank disclosure first up may show that you do not fully understand the honesty and candour that a legal practitioner must demonstrate – even if you didn't intend to mislead or conceal information.
- (f) This failure, alone, may show that you are not yet a fit and proper person to be admitted.
- (g) If you deliberately or recklessly misrepresent or conceal facts relevant to your disclosure, you may not be admitted.
- (h) If you are admitted after deliberately or recklessly concealing facts relevant to your disclosure, your admission may well be revoked once your deception is uncovered.
- (i) Make sure that you give the Admitting Authority as much information about the circumstances of the event you are disclosing as will allow it to assess the gravity of the event for itself.
- (j) Give a full picture of the events and a thorough explanation of your conduct.
- (k) Views can differ about what level of detail is sufficient to demonstrate honesty, candour and full and frank disclosure. The Admitting Authority's view may be

different from yours. If in doubt, it may be wise to give more, rather than less, information.

- (l) Don't seek to minimise your culpability; to deflect blame onto others; or to conceal information that may be unfavourable to you.
- (m) Try to show the Admitting Authority that you have insight into why and how the event occurred; that you take full responsibility for it; and why the Admitting Authority can be satisfied that you will not do similar things in the future.
- (n) It is not enough simply to express remorse. Because your fitness to practise is assessed at the time you make your application, you need to show the Admitting Authority that what you have done to redeem yourself, or to rehabilitate yourself since the event occurred.
- (o) You may need to produce independent evidence from others to show that you are now a fit and proper person. Your own assertions may not be enough.
- (p) If you can show the Admitting Authority the active steps you have taken to rehabilitate yourself, this may demonstrate that you have appreciated the gravity of your conduct; have accepted responsibility for it; have taken steps to rehabilitate yourself; and understand the obligation of honesty, candour and full and frank disclosure.
- (q) If, however, your past conduct was very serious or involved extreme dishonesty, it may be hard to convince an Admitting Authority that you are a fit and proper person to be admitted.

7 CERTIFICATES OF CHARACTER

Please also note that any person who supplies a certificate of character to support an application -

- (a) must be aware of, and have actually read, any disclosure you make of the type mentioned above; and
- (b) must attest to those facts in the person's certificate of character.

Because of the privacy implications of disclosures about your capacity, a person who supplies a certificate of character need not be aware of any disclosure you have made about your capacity: see item 8.

8 DISCLOSURES ABOUT CAPACITY

- (1) **What the law says**

An Admitting Authority is also required to consider whether, at the time of making your application, you are able to carry out the inherent requirements of legal practice.

The requirement of capacity is separate and distinct from the requirement to be a fit and proper person or of good fame and character.

The Legal Profession Acts and Admission Rules variously describe matters relating to an applicant's capacity about which an Admitting Authority must satisfy itself, in the following ways -

- (a) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner;¹¹
- (b) whether the person is currently unable to carry out the inherent requirements of practice as an Australian legal practitioner;¹²
- (c) whether the person currently has a material inability to engage in legal practice.¹³

Further, in deciding whether you are a fit and proper person, most Admitting Authorities also have power to have regard to any other matter it considers relevant, in addition to each of the matters particularly prescribed by legislation.¹⁰

Your precise obligation thus depends on the relevant legislation in the jurisdiction in which you seek admission.

Note, however, that apart from making disclosures which respond to the particular legislative requirement relevant to your capacity, it would be sensible for you to disclose any other matters which an Admitting Authority might think relevant when assessing your current capacity to engage in legal practice.

(2) **What your Admitting Authority does**

Your Admitting Authority has a positive, encouraging approach to people seeking admission who experience mental, physical or other health conditions or disabilities. It wishes to ensure that such people are assisted, encouraged and supported to seek admission and to engage in legal practice.

It encourages people to seek medical or psychological help before seeking admission and, indeed, whenever they feel the need. Willingness to seek help counts in one's favour.

¹¹ *Legal Profession Act 2006* (ACT) section 11(m); *Legal Profession Act 2004* (NSW) section 9(m); *Legal Profession Act 2007* (Qld) section 9(1)(m); *Legal Profession Act 2007* (Tas) section 9(m); Uniform Admission Rules 2015 (NSW & Vic) rule 10(1)(k).

¹² *Legal Profession Act 2008* (WA) section 8(m).

¹³ *Legal Profession Act 2006* (ACT) section 22(2); *Legal Profession Act 2006* (NT) section 30(1)(b); *Legal Profession Act 2007* (Tas) section 26(1)(b); *Legal Profession Act 2004* (Vic) section 2.3.3(1)(b); *Legal Profession Act 2008* (WA) section 22(1)(b). Section 31(2)(b) of the *Legal Profession Act 2007* (Qld) and section 17(2)(a) of the *Legal Profession Uniform Law* (NSW & Vic) are in similar, though not identical, terms.

Seeking early help can both demonstrate appropriate insight into one's condition or disability and also avert the risk of conduct that could become relevant to one's suitability for admission. Seeking psychological or medical help will not, of itself, prejudice one's ability to be admitted. Similarly, telling the Admitting Authority about the circumstances underlying the help received will not, of itself, prejudice one's ability to be admitted. On the contrary, it may show that one has appropriate strategies to deal with any stresses that arise in the course of legal practice; and that any former difficulties have been overcome.

If you happen to have, or to have experienced in the past, a mental, physical or other health condition or disability -

- (a) you are encouraged to obtain medical or psychological help if you feel you need it; and
- (b) that condition or disability, or the fact that you have sought or are obtaining help, will not necessarily prejudice your application for admission; but
- (c) your Admitting Authority is likely to consider that any behaviour or conduct arising from, or attributable to, that condition or disability is relevant, and should therefore be disclosed.

Your Admitting Authority's task is to determine if you are *currently* able to carry out the inherent requirements of practice. It will do this in the light of any disclosures you make and any supporting information you choose to provide.

Any mental, physical or other health condition or disability which you have, or may have had in the past, will only be relevant if it affects your current ability to carry out the inherent requirements of practice.

Except for the purposes of the administration of its relevant legislation, or as otherwise required by law, your Admitting Authority will not disclose to others (including any prospective employer) any personal or medical evidence that you disclose to it. In order to further protect your privacy, you may make any disclosure about your capacity in a separate statutory declaration lodged with your application.

(3) **When a health condition may be relevant**

- (a) Very occasionally, the mere existence of a health condition or disability may directly affect your current ability to carry out the inherent requirements of practice. For example, if you earlier had a car accident, or an illness, that means you are no longer able to remember instructions which you are given, you may not currently be able to carry out the inherent requirements of practice. You need to disclose any such difficulties to your Admitting Authority.
- (b) Sometimes your past conduct (whether by act or omission) might raise questions about whether you are currently able to carry out the inherent requirements of practice. Repeated instances of certain conduct might cast doubt on your insight, or on your ability to make sound judgments. You need to disclose any such conduct to your Admitting Authority.

- (c) If you think that conduct might be wholly or partly explained by, or associated with, some physical, mental or other health condition or disability (whether diagnosed or not), you can choose to disclose that condition or disability; and may provide any supporting medical evidence that you think might assist your Admitting Authority to decide whether you are currently able to carry out the inherent requirements of practice. Such information may well explain the reasons underlying your conduct; and demonstrate that the underlying cause has been effectively dealt with or appropriately managed.

If you seek to demonstrate that your condition or disability is appropriately managed and stable, a certificate to that effect from one or more of your treating medical practitioners would greatly assist your Admitting Authority.

(4) **Examples**

The following examples are merely indicative illustrations. An Admitting Authority responds to the particular circumstances of each application. The examples cannot thus be considered as binding on an Admitting Authority.

- (1) S found first year law very difficult. She wasn't prepared for the work required, and found it hard to meet all deadlines. As she had always done well at school, she was surprised that her law school marks were always bare passes. She became anxious about her capacity, and questioned whether she should be doing law.

On the recommendation of a lecturer, she attended the University's counselling service. The counsellor helped her to recognise the causes of her anxiety; advised her how to manage those causes; and recommended that she should attend a mindfulness course. After working with the counsellor, and undertaking the mindfulness course, S still felt stressed about law school. Having learned how to manage her stress appropriately, however, she successfully completed her law course and PLT course.

S would not need to disclose these circumstances to her Admitting Authority.

- (2) P comes from a family with a history of severe depression and has suffered depression for many years, attempting suicide on several occasions. He managed to get through his law course with difficulty, often requiring substantial special consideration to complete assessments and examinations. He has completed an on-line PLT course, but his depression persists. It severely affects his ability to engage in daily activities; and he often finds that he is unable to get out of bed in the morning.

P would need to disclose his difficulties to his Admitting Authority, as they raise questions about whether he is *currently* able to carry out the inherent requirements of practice. Disclosing his condition to the Admitting Authority does not necessarily mean that he would not be admitted, however. The Admitting Authority would probably wish to know whether, and if so how, his present difficulties might be overcome or managed. It would be sensible for P

to answer these questions in his initial disclosure, rather than waiting to be asked for further information by the Admitting Authority.

- (3) M enjoyed the early years of his law course and was doing well. In his third year, however his mother was diagnosed with a serious illness and died late in the year. M was her primary care-giver during her illness and was devastated by her death. He failed several subjects that year, because of the stress of nursing his mother and his inability to talk about his circumstances with others, and obtained special consideration.

Subsequently, however, he became depressed and stopped attending law school. He consulted his GP who diagnosed depression and assisted him to undertake a series of treatments. M found that a combination of medication and counselling helped him regain his equilibrium. He re-enrolled and successfully completed both law and a PLT course. He no longer requires either medication or counselling.

M would not need to disclose these circumstances to his Admitting Authority.

- (4) During his law course, T developed delusions that his teachers were conspiring to have him removed from the law school. He wrote angry, hostile emails to law school and university staff, and alleged serious misconduct and mistreatment on their part to a number of authorities.

When several internal University investigations found no proof of his allegations, he became convinced that the conspiracy was widespread. Several University disciplinary actions followed in response to his behaviour, one of which referred him to his GP who, in turn, referred him to a specialist who diagnosed paranoidschizophrenia.

T would need to disclose the activities which preceded his reference to his GP. Given the seriousness of his diagnosis, it would also be prudent for T to declare that condition and how it is being treated and managed, as each of these matters reflect on whether he is *currently* able to carry out the inherent requirements of practice.

Disclosing his condition and treatment to the Admitting Authority does not necessarily mean that he would not be admitted, however. The Admitting Authority would need to know whether, and if so how, his present difficulties are being overcome or managed.

9 MATTERS PRESCRIBED BY LEGAL PROFESSION LEGISLATION

You must disclose any matter relevant to an applicant's suitability that is prescribed by legislation relating to the legal profession in the jurisdiction where you seek admission. The matters prescribed for Victoria [*Insert name of relevant jurisdiction*] are set out in **Appendix 1**.

10 FORM OF DISCLOSURE

Any disclosure which you are required to make must be included either in your statutory declaration applying for a compliance certificate or, in the case of a disclosure about capacity, in a supplementary statutory declaration, if you prefer. To corroborate your disclosures, you should make any available supporting document an exhibit to your statutory declaration.

APPENDIX 1 OF DISCLOSURE GUIDELINES FOR APPLICANTS FOR ADMISSION

PRESCRIBED MATTERS RELATING TO SUITABILITY FOR ADMISSION

[This Appendix must set out the particular matters relating to an applicant's suitability for admission prescribed by or under legislation relating to the legal profession in the relevant jurisdiction in which these guidelines are issued. The following example is from the Legal Profession Uniform Admission Rules 2015, rule 10, which applies in New South Wales and Victoria.]

As noted in items 4 and 8 of the Guidelines, your Admitting Authority is required to satisfy itself about each of the following matters. Accordingly you need to disclose anything that your Admitting Authority might consider relevant when satisfying itself about each of these matters.

- (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 16;
 - b. any disclosure or statement made by the person under rule 17;
 - c. any police report provided under rule 18;
 - d. any academic conduct report provided under rule 19;
 - e. any certificate of good standing provided under rule 20;
 - f. whether the person is currently of good reputation 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** of the Commonwealth 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 another profession or occupation that involved a finding adverse to the person;

- k. whether the person is currently unable to satisfactorily 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.

CHIEF JUSTICE

History of Variations

New entries appear in **bold**.

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
4(2) definitions	ins/am	1 April 2021
10(1)	ins	1 April 2021
11(1)	am	1 April 2021
12	sub	1 April 2021
14	sub	11 January 2020
Appendix C para 2	sub	1 April 2021
Appendix C para 3.2(b)	sub	1 April 2021