

Lawyers and Australian Society

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Week Three: Admission to the “Profession” (Chapter 3)

REQUIREMENTS FOR ADMISSION

- Legal Profession Act 2004 (NSW) s4(1) – definition of **admission to the legal profession**
 - Admission by a Supreme Court as:
 - a) a *lawyer*, or (b) a *legal practitioner*, or (c) a *barrister*, or (d) a *solicitor*, or
 - (e) a *barrister and solicitor*, or (f) a *solicitor and barrister*

- Legal Profession Act 2004 (NSW) s24 – **eligibility for admission**

(1) A person is eligible for admission only if the person is a natural person aged 18 years or over and:

- (a) the person has attained:
 - (i) approved academic qualifications, or
 - (ii) corresponding academic qualifications, and
- (b) the person has satisfactorily completed:
 - (i) approved practical legal training requirements, or
 - (ii) corresponding practical legal training requirements.

- Legal Profession Act 2004 (NSW) s25 – **suitability for admission**

(1) In deciding if an applicant is a fit and proper person to be admitted, the Admission Board:

- (a) must consider each of the suitability matters in relation to the applicant to the extent a suitability matter is appropriate, and
- (b) may consider any other matter it considers relevant.

(2) However, the Admission Board may consider a person to be a fit and proper person to be admitted despite a suitability matter because of the circumstances relating to the matter.

- Legal Profession Act 2004 (NSW) s9 – **suitability matters**

(1) Each of the following is a suitability matter in relation to a natural person:

- (a) whether the person is currently of good fame and character,
- (b) whether the person is or has been an insolvent under administration,
- (c) whether the person has been convicted of an offence in Australia or 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,

Note: The rules may make provision for the convictions that must be disclosed by an applicant and those that need not be disclosed. Section 11 (References to convictions for offences) provides that reference to a conviction includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.

- (d) whether the person engaged in legal practice in Australia:
 - (i) when not admitted, or not holding a practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law, or
 - (ii) if admitted, in contravention of a condition on which admission was granted, or
 - (iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended,

- (e) whether the person has practised law in a [foreign country](#):
- (i) when not permitted by or under a law of that country to do so, or
 - (ii) if permitted to do so, in contravention of a condition of the permission,
- (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:
- (i) this Act or a previous law of [this jurisdiction](#) that corresponds to this Act, or
 - (ii) a [corresponding law](#) or [corresponding foreign law](#),
- (g) whether the person:
- (i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a [foreign country](#), or
 - (ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt,
- (h) whether the person's name has been removed from:
- (i) a [local roll](#), and whether the person's name has since been restored to or entered on a [local roll](#), or
 - (ii) an [interstate roll](#), and whether the person's name has since been restored to or entered on an [interstate roll](#), or
 - (iii) a [foreign roll](#),
- (i) whether the person's right to [engage in legal practice](#) has at any time been suspended or cancelled in Australia or a [foreign country](#),
- (j) whether the person has [contravened](#), in Australia or a [foreign country](#), a law about [trust money](#) or trust accounts,
- (k) whether, under this Act, a law of the Commonwealth or a [corresponding law](#), a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person,
- (l) whether the person is or has been subject to an order, under this Act, a law of the Commonwealth or a [corresponding law](#), disqualifying the person from being employed by, or a partner of, an [Australian legal practitioner](#) or from managing a corporation that is an [incorporated legal practice](#),
- (m) whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an [Australian legal practitioner](#).
- (2) A matter is a [suitability matter](#) even if it happened before the commencement of this section.

- According to Ross (52) the **test of ascertaining** if an applicant is a 'fit and proper person' or of 'good character' is a **negative one – presumed to be good** unless evidence otherwise.
- **Failure to disclose** relevant matters is generally regarded as demonstrating **lack of fitness** to be admitted to practice as it shows a **lack of honesty and candour**.
 - It can lead to refusal of admission or, where the lack of disclosure is discovered after admission – removal of the applicant's name from the Roll of Practitioners.
- Despite this, **disclosure doesn't necessarily preclude admission**
- Generally – events of **dishonesty, lack of honesty or candour with the court**, convictions for other **indictable offences** – and offences that point to a **wilful disregard for the rule of law**, or an **attitude of contempt** towards the justice system are regarded as most serious.
- Re Davis (1947) 75 CLR 409:
 - Didn't disclose conviction for break, enter and steal which was 8 years prior
 - Despite that it occurred in unusual circumstance, court found **lack of candour in disclosing** was a bar to admission – until **32 years after** initial application