

General

Inconsistencies between rules

- Rules from Law Society or Bar Association ineffective if inconsistent with legislation or regulation.
- They are 'a reliable and important indicator of the accepted opinion of the members of the profession' (*Chamberlain v ACT Law Society*).
- Rules will assist court (*Re a Medical Practitioner* per Dowsett J).
- Primary goal of professionals isn't pecuniary gain but to serve public (*Re Foster*).
- **6(1) LPA** An Australian legal practitioner is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate.
- **5(1) LPA** An Australian lawyer is a person who is admitted to the legal profession under this Act or a corresponding law.

Overarching Legislative Points:

Solicitors

5.1 Solicitor must not engage in conduct, in course of practice/otherwise, which demonstrates solicitor is not fit and proper person to practise law, or likely to material degree to:

- **5.1.1** be prejudicial/diminish public confidence in administration of justice; or
- **5.1.2** bring profession into disrepute.

Barristers

12. Barrister must not engage in conduct which is:

- **a)** dishonest or otherwise discreditable to a barrister;
- **b)** prejudicial to administration of justice; or
- **c)** likely to diminish public confidence in legal profession/administration of justice/otherwise bring legal profession into disrepute.

Structure & regulation

- Legal Services Commission **s591 LPA** to provide users of legal services timely, effective, fair means of redress for complaints. Promote, monitor enforce standards of conduct in provision of legal services. Fundamental purpose: help promote public confidence in legal system, administration of justice and rule of law.
- Practitioner panel (barristers & solicitors) = one lay member, one practitioner with tribunal (judicial member) **s607 LPA**.
- Legal Practice Committee **s621**

Duty to the court

- Despite being in relationship of confidence with lay client, first duty of barrister is to court. Duty to instructing solicitor of client is secondary. When conflicting duty to court is paramount (*D'Orta-Ekenaike v Victoria Legal Aid*).
- Lawyers duty to court paramount (*Giannarelli v Wraith*).
- **S227 LPA** Binding nature of legal profession rules
 - o Binding on Australian Legal Practitioner, AU registered foreign lawyer and gov legal officers
 - o Failure to comply may = unsatisfactory professional conduct (*falls short of standard of competence & diligence that member of public is entitled to expect of reasonably competent ALP s418 LPA* or professional misconduct (*substantial or consistent failure to reach/keep reasonable standard of competence & diligence + justify finding that not fit & proper person to practice*) **s419 LPA**).

Extending liability to associates

- Chinese Walls
 - o Usually liability extended beyond lawyer to entire firm. In exceptional circumstances erection of 'Chinese Walls' may protect others from liability where matters unrelated

and no risk of detriment to complainant (*Australia Liquor Marketers v Tasman Liquor Traders Pty Ltd*).

- Geographical distance
 - o Geographical separation of lawyers acting in matter cannot itself void conflict (*Unioil Int'l Pty Ltd v Deloitte Touche Tohmatsu (a firm)*).

Two types of practice rules (Clyne)

- Contravention rules
 - o Regulating conduct – e.g. written rules re advertising, correspondence, retainer.
- Fundamental rules
 - o Implied generally accepted standards of common decency and fairness e.g. not lie to judicial officer, not misled inferior court.

Applying for license/renewing license yearly (s67 LPA)

Legal Services Commissioner v Nguyen: Practitioner claimed his offences of engaging in legal practice without current practicing certificate originated from oversight in failing to renew on time. Continued to practice for six months. Found guilty of professional misconduct. Various penalties imposed - order restraining ability to hold practicing certificate and limiting terms on which could seek further certificate.

In relation to:

- Bankruptcy, serious offences, tax offences must provide Law Society Council/Bar Council (**s67(3) LPA**):
 - o Within 7 days of happening of event:
 - Written notice that event happened
 - o Within 28 days after happening of event:
 - Written statement explaining why (despite show cause event), person considers themselves fit and proper to hold local practicing certificate.
 - o If breached = Professional misconduct (meaning in **s419 LPA**, conduct capable of PM in **s420 LPA**).

Values of Australian Legal Practitioner:

Emotions	Morals	Honesty
Candour	Integrity	Fidelity
Detachment	Confidence in law	Public interest
Fit and proper	Connectedness with lawyer's functions (Cummins)	Conitriion (Repent)
Rehabilitation	Trust	Competence

Admission into practice

Requirements for admission as lawyer s30 LPA

- 18 years of age
- Academic requirement **Supreme Court (Admission) Rules 2004 r 6**
- PLT requirement – **SC(A) Rules 2004 r 7**

Suitability for admission s31 LPA

- Fit & proper person
 - o Suitability matters (must be appropriate)
 - o Other matters court considers relevant
 - o Supreme Court may admit despite suitability matter
- Suitability matters **s9 LPA**
 - o 1A) person of good fame and character
 - o 1B) is/has been insolvent or under administration
 - o 1C) has been convicted of offence in AU/foreign country. Consider:
 - Nature of offence
 - How long ago offence committed
 - Person's age when committed
 - o 1D) whether person engage in legal practice in AU:
 - When note admitted to legal profession/not holding certificate
 - If admitted in contravention of condition of admission

- If holding certificate in contravention of condition applicable to certificate or while certificate suspended
- o 1E) Whether person practiced law in foreign country
 - When not permitted under law
 - If permitted, under contravention of condition of permission.
- o 1F) whether person is currently subject to unresolved complaint, investigation charge/order under:
 - Relevant law
 - Corresponding law
 - Corresponding foreign law
- o 1G) whether person:
 - Subject of disciplinary action in other profession/occupation in Au/foreign country; or
 - as above + involved a finding of guilt
- o 1H) whether person's name removed from:
 - Local roll but has not since been entered
 - Interstate roll
 - Foreign roll
- o 1I) whether person's right to engage in legal practice has been suspended/cancelled in AU or foreign country
- o 1J) whether person contravened, in AU or foreign country, law about trust money/trust accounts
- o 1K) manager/receiver etc. is or has been appointed in relation to any legal practice engaged in by person; of this section
- o 1L) order under act 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
- o 1M) currently is unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner

- o 1N) matter declared under an Act to be a suitability matter.
- (2) A matter under subsection (1) is a suitability matter even though it happened before the commencement of this section.

Costs:

- Pay application fees (Board's consideration of application \$578.00 + Filing application in Supreme Court Registry \$65.40)
- Legal Practitioners Admissions Board **s657 LPA**

Practicing when not entitled s24 LPA

- (1) A person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner. Maximum penalty: 300 penalty units/2 years imprisonment

Certification

- Each legal practitioner in practice in QLD must take out annual Practising Certificate: **s45 LPA**
- Have professional indemnity insurance: **s353 LPA**

S44(1) LPA Entitlement to practice in this jurisdiction. An Australian legal practitioner is, subject to this Act, entitled to engage in legal practice in this jurisdiction. Also Government legal officers.

Suitability to hold local practicing certificate

(1) This section has effect for purposes of section 51 & any other provision of this Act where question of whether or not person is fit and proper person to hold/continue to hold, local practising certificate is relevant.

(2) A regulatory authority of this jurisdiction, in considering whether person is, or no longer, a fit and proper person to hold local practising certificate, may take into account any suitability matter relating to person, and any of following, whether happening before or after the commencement of this section— ...

(g) other matters the authority thinks are appropriate.