

ADMISSION

- **Purpose of admission proceedings:** Admission proceedings are not ordinarily legal proceedings because they are concerned with the protection of the public. Admission proceedings are not directed to the resolution of some contest as to private rights of disputing parties: *Wentworth v New South Wales Bar Association (1992) 176 CLR 239, 252 per Deane, Dawson, Toohey and Gaudron JJ*.
- S15 LPUL provides that the objective is to protect the administration of justice and provides that persons are eligible for admission to the Australian legal profession only if:
 - (a) **educational** - they have appropriate academic qualifications and practical legal training, whether obtained in Australia or elsewhere; and
 - (b) **character-based** - they are fit and proper persons to be admitted

Statutory Framework

- Part 2.2 of Chapter 2 of the LPUL focuses on the admission rules to the Australian legal profession
- Division 1 (s.15) addresses the objective. Division 2 (ss. 16-25) addresses the criteria for eligibility and suitability for admission and related matters. Division 3 (ss. 26-28) deals with appeals and Division 4 (s.29) addresses miscellaneous matters.
- In each jurisdiction including NSW the Supreme Court admits a person to practice as an Australian lawyer on the advice of the NSW Admission Board if criteria are met.
- S 16 of the LPUL highlights the role of Supreme Court in the admission process and states one of the age eligibility criteria for admission (natural person 18 and over). The SC may admit an applicant as an Australian lawyer if the Admission Board advises the Court that the Board considers that the applicant has fulfilled the admission requirements.
- Section 17 of the LPUL states the prerequisites for compliance certificates.
- Section 19 of the LPUL focuses on compliance certificates. (The advice of the Board is to be given in the form of a compliance certificate prescribed by the admission rules).

Practice Certificates

- S17(1) LPUL: The prerequisites for the issue of a compliance certificate in respect of a person are that he or she:
 - (a) specified academic qualifications prerequisite -
 - (b) specified practical legal training prerequisite
 - (c) is a fit and proper person to be admitted to the Australian legal profession
- (2) In considering whether a person is a fit and proper person to be admitted to the Australian legal profession
 - (a) the designated local regulatory authority may have regard to any matter relevant to the person's eligibility or suitability for admission, however the matter comes to its attention
 - (b) the designated local regulatory authority must have regard to the matters specified in the Admission Rules for the purposes of this section
- Rule 10 of LPUAR (2015): For the purposes of section 17(2)(b) of the Uniform Law, the following matters are specified as matters to which the Board must have regard

Character-based Criteria

- ‘Fit and proper’ test - reason for inquiry into character is to inspire public confidence
- S 17(2)(b): the designated local regulatory authority must have regard to the matters specified in the Admission Rules for the purposes of this section
- The phrase does not have a specific technical meaning but is used in its ordinary sense, and is a ‘fluid concept’.
- Moffitt P in *Re B* at 380 states that as long as an individual meets the admission requirements, no other “discretionary bar to admission, whether on the basis of race, colour, religion, sex, political outlook” should stand in their way.

Disclosure - LACC: Disclosure Guidelines for Applicants for Admission

- Principle 4: The applicant must state whether any of the suitability matters set out in Appendix 1 apply to the applicant, which mirror Rule 10(1) factors the board considers
- An applicant has a personal duty to disclose any matter which may bear on the applicant’s fitness for admission
- Test: what a reasonable applicant would consider the Board might regard as not being favourable to the applicant when considering whether or not they are a fit and proper person to be admitted
- ‘Revealing more than might strictly be necessary counts in favour of an applicant. Revealing less than may be necessary distorts the proper assessment of the applicant may itself show an inappropriate desire to distort by selecting and screening relevant facts: *Frugniet v Board of Examiners [2002] VSC 140 per Pagone J*

Factors Relevant to Good Fame and Character

Previous Criminal Behaviour

- Whether the person has been found guilty of an offence in Australia or overseas is a ‘suitability matter’ that must be considered – r10(1)(h). Consider the:
 - (i) nature of the offence
 - (ii) how long ago the offence was committed
 - (iii) the person’s age when the offence was committed
- Dishonesty is regarded as prima facie evidence of unfitness to practice: *Thomas v LPAB [2005]* where the appellant failed to disclose to the LPAB his conviction for fraudulent misappropriation when he was almost 21 years old and was fined \$2500. In addition, he also mischaracterise the charge as a ‘debt charge’ – highlighting how.
- **(i) Nature of the offence:** Some offences in the past may be so incompatible with being a barrister that the court will not be persuaded that the applicant can presently be fit and proper for admission – *Re B (1981) 2 NSWLR 372, 381 per Moffitt P*
- **(iii) Age:** *Age as a mitigating factor:* The false steps of youth and early manhood are not always final proof of defective character and unfitness. An unsatisfactory beginning may be displaced by a completely satisfactory subsequent career sustained over a lengthy period of time – *Ex parte Lenehan* (1948) 77 CLR 403, 424–5 per Latham CJ
- *Owen:* youth was regarded as a mitigating factor in a case involving dishonest conduct where the applicant had made full disclosure and there was evidence of his rehabilitation and restoration of integrity in the intervening period.

- Cf: But conduct extending ‘beyond youth and towards maturity [... which] constitute a sustained course of conduct’ is highly relevant for assessing present fitness and propriety – *Re B* (1981) 2 NSWLR 372, 381 per Moffitt P

Previous Improper Conduct in the Curial Process

- Filing affidavits threatening judicial officers “demonstrated an inability to distinguish between vigorous but legitimate advocacy of a position and a reaction to an adverse decision of the courts which is entirely unacceptable in an officer of the court.”: *Re Bell* [2005] QCA 151 [19] per McMurdo P and Wilson J
- Making baseless allegations of serious misconduct and being a vexatious litigant – *Wentworth v New South Wales Bar Association* (1994) NSWCA

Previous improper conduct in the course of a profession or employment

- Whether person has been the subject of any disciplinary action, howsoever expressed, in any profession or occupation in Australia or in a foreign country, or involved a finding adverse to the person are ‘suitability matters’ that must be considered – r10(1)(i) (j).
- This can shed light on the applicant’s character which is crucial to the practice of law (not displaying appropriate professional judgment and discretion): *Re Hampton*

Non-disclosure of proper impropriety upon admission

- Importance of candour and honesty (e.g., in admission application) - *Re Davis* (HCA 1947): HCA confirmed refusal of admission for failure to disclose prior conviction for breaking, entering and stealing on application for admission
- *Re Del Castillo* 136 ACTR 1, 7: stressed the importance of the duty of frankness.
- Failure to disclose certain conduct could bar admission even if disclosure at the time may not have prevented admission. *Thomas* where CJ de Jersey stated that “the absence of candid and forthright disclosure” meant that the applicant had not demonstrated good fame and character.
- Applicants need not fear that the court will seek to substitute a demand for perfection for the requirement of good fame and character – *Re Del Castillo* (1998) 136 ACTR 1, 7

Failure to disclose criminal conviction

- In light of the significance of convictions for certain offences, the onus on applicant to establish he or she is nonetheless a fit and proper person to be admitted. *Re Application by Hinds* [2003].
- Where a person has since the offence led an honest life, concealment of the crime at the time of admission is an important indicator of present unfitness
 - Concealment and thus presently unfit: *Re Davis* (1947) 75 CLR 409 per Dixon J
 - No concealment and thus presently fit: *Ex parte Lenehan* (1948) 77 CLR 403

Disclosure of criminal charges

- Case law recognises that charges for criminal offences are relevant to an applicant’s good fame and character and should be disclosed. Even those that did not lead to conviction, or those for which the applicant had been acquitted – *Re Del Castillo* (1998) 136 ACTR 1, 7

Failure to disclose prior professional disciplinary proceedings

- Failure to disclose prior professional disciplinary proceedings was regarded as a significant omission. *Morrissey v NSWBA (2006)*.
- Because it either shows that the applicant has ‘failed to appreciate’ the expectations of lawyers, or that the applicant ‘determined not voluntarily to place those matters before the board’ – *Re Hampton [2002] QCA 129 [28]* per DE JERSEY CJ

Disclosure of academic misconduct

- Failure to disclose academic dishonesty is especially serious if the conduct occurred close to the time of admission – *Re AJG [2004] QCA 88 per De Jersey CJ*
- The disclosure of academic misconduct by an applicant during the PLT course rendered him unfit to practice. de Jersey CJ noted that: ‘cheating in an academic course which leads to the qualifications central to practice and at a time so close to the application for admission must preclude our presently being satisfied of this applicant’s fitness’.
- Cf: *Law Society of Tasmania v Richardson [2003] TASSC 9* where Richardson, on advice from his parents, who were both lawyers, did not disclose the finding of an academic misconduct. Crawford J did not find that this lack of disclosure made him unfit to practice and characterised it as an ‘error of judgment’. As Dal Pont notes, this case is anomalous because of its unique facts and goes against the current judicial trend.
- The more rigorous contemporary approach to disclosure of academic misconduct was stated in *Re OG (A Lawyer) (2007)*. The applicant had been subject to disciplinary action arising out of a collusion in a non-law subject which had been dealt with ‘in house’. This in addition to the lack of complete disclosure led to the court to revoke the admission.

Infirmity and mental instability

- Whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner is a ‘suitability matter’ that must be considered r10(1)(k)
- Issues regarding the mental health of the applicant would necessitate inquiry to the extent that they would impact the applicant’s fitness to practice. So, long standing depression even one leading to an attempted suicide, coupled with the taking of anti-depressant medication by itself does not make one unfit for practice: *Skerritt v Legal Practice Board of Western Australia [2004] at [43]* per Malcolm CJ
- Key question is whether depression is so severe and of such long standing that it was thought that it might lead an applicant to neglect the affairs of his or her clients – Skerritt