

## **Admission to practice eligibility**

*Legal Profession Uniform Law Application Act, Schedule 1 (LPUL)*

SC may admit someone > 18 only if they:

1. Must have a compliance certificate issued by VLAB that is still in force;
2. Not already admitted to the Australian legal profession;
3. Take an oath of office or make an affirmation (LPUL s16)

To obtain a compliance certificate, must have

- 1a. attained academic qualifications,
- b. completed PLT, and
- c. be a fit and proper person (LPUL s17)

Admission effective from time person signs SC roll (LPUL s22)

## **Fit and proper person**

- Under LPUL s17(2), VLAB must have regard to (a) any relevant matter, and (b) specific matters in 10AR in determining whether person is fit and proper.
- Breach of the duty of candour and admission to practice are incompatible (Re B)
- One of the factors in **r10AR** is whether person is of **good fame and character**- must disclose anything that would adversely reflect on their fame or character.

Open candour and frankness in disclosure will be viewed favourably.

## **Duty to obey the law**

Paramount duty is to the court and the administration of justice **ASCR 3.1**

- Worsley
  - Giannarelli (avoid unlawful conduct) you are not a mere mouthpiece
  - Be professional, act legally, be honest ASCR r5 BR8 (Sampson)
  - Additional cases: Kapunda, Lester
4. Don't assist or induce a breach of the law ASCR r4 (Segler)
    - If aware of client's illegal activity, should counsel against further breach and advise of own professional responsibilities/cease acting if illegality continues (ASCR r20, BR rr79-82).
    - Cannot mislead the court with respect to client's guilt (e.g. affirmative defence if they know they are guilty) (ASCR r20, BR r80)
    - Must not act as a mere mouthpiece for client (ASCR r17)
    - If client misleads the court, must advise them to inform the court and cease acting if client refuses to inform (ASCR r20, BR r79)
  5. Must advise if legality is doubtful. Failure to advise client of risk of illegality exposes lawyer to liability for negligent advice (Pearce).

## **Confidentiality and privilege**

A lawyer owes a duty of confidentiality to their client, both in equity and arising from the conduct rules (ASCR r9.1; BR rr114-18).

Confidential information includes: (Trowell)

- Information or communication received in connection with the professional relationship
- Views the practitioner formed in relation to the matter
- Any information the practitioner would not have but for the professional relationship
- Extends to information received prior to representation
- May include information in the public domain depending on the extent of the publicity
- Any information the lawyer knew or ought to have known was confidential (Tampoe)

### Exceptions to confidentiality

When can a lawyer reveal confidential information?

- **For work related purposes** (e.g seeking advice from barrister) (ASCR r9).
  - To other lawyers in the firm, barristers or other people employed to work for the client,
  - The solicitor's firm or insurer 9.2.6
  - In a confidential setting to obtain advice about legal or ethical obligation 9.2.3
- If a **fully informed client authorises disclosure** (ASCR r9.2.1(confidentiality); Evidence Act s122 (privilege)). Authorisation may be implicit or explicit.
- To **avoid the probable commission of a serious criminal offence** (ASCR 9.2.4) or to prevent imminent serious physical injury (ASCR r9.2.5)
- Where client **threatens the safety** of another (BR r82)
- If a client informs of intention to **disobey court order** AND conduct threatens a person's safety (ASCR r20.3; BR r81)
- If the information is **public knowledge** and the purpose served by confidentiality no longer exists (Tampoe; Trowell).
- If it is the **public interest** to do so, and the source of the confidentiality arises in equity only
- **Legal compulsion or permission** (doesn't apply to privileged information) (ASCR r9.2.2)- eg. Defending a disciplinary action or revealing costs
- Disciplinary proceedings UL s321 UL
- To collect fees
- Avoid probably commission of a crime- this is limited
- Whistle blowing- where privilege doesn't apply, there may be duty of disclosure to police, regulator, court or via discovery at general law.

### **Privilege**

If confidential information is covered by privilege, it will be immune from compulsory disclosure (Maurice)

- Legal advice/lawyer-client communication (EA s118)
- Documents/communication in anticipation of litigation (EA s119)
- Extends to pre-trial processes (EA s131A).

Only protects information made with the dominant purpose of legal advice/for litigation (Esso).

Attaches to a copy of an original document made to provide advice (even though the original is not privileged) (Propend Finance)

- Client may authorise disclosure of privileged info (EA s122(1))
- Client may act inconsistently with privilege and therefore be unable to rely on it EA s122(2) and 122(3)
- Client may lose privilege if they act in a way that would make it unfair to claim it (EA s131)
- Statute may compel disclosure but there must be a **clear intention** to displace privilege (*Daniels Corporation*)
- Privilege does not protect communications directed **against the public interest** such as communications in the furtherance of a fraud, an offence, or an act that incurs civil liability (*Bell; Hutchings; Evidence Act 2008 s125*)- eg. disclosure of child's whereabouts in family law proceedings

### **Accidental receipt**

Per ASCR 31.1, if you receive information that you know or suspect is confidential and you know you got that material by mistake, you must not use the material and must:

- Immediately return, destroy or delete the material; and
- Notify the other lawyer or the other person of the disclosure and the steps taken to prevent inappropriate misuse of the material.

### **Abuse of process**

- It is an abuse of process to claim privilege without reasonable grounds, as a delaying tactic in litigation
- The Court is empowered to inspect documents and determine if they are privileged (EA s133)

### **Conflicts of interest: lawyer-client conflict**

- Lawyers are under a strict duty not to act where their interests conflict with the best interest of their client (ASCR r12; BR r35, 101)
- The duty to avoid conflicts is also reflected in the fiduciary duty of undivided loyalty and no conflicts and profits rule (*Keech; Nocton*).
- The duty to avoid conflicts of interest is prophylactic in nature (*Cummins*).