

PART 2: ADMISSION TO PRACTICE

(1) Purpose of admission

- s 10: Prohibition on engaging in legal practice by unqualified entities – entity must not engage in legal practice, unless it is a qualified entity
- s 15: Objective – to protect the administration of justice and clients of law practices by ensuring persons practicing: (a) have appropriate academic qualifications and practical legal training; and (b) are fit and proper persons to be admitted
- s 16: Admission
 - (1) Supreme Court may admit an individual over 18 years of age if: (a) the designated local regulatory authority has provided a compliance certificate; (b) person is not already admitted; (c) person takes an oath/affirmation of office
 - (2) no residence requirements
 - (3) any person may object to the admission of a particular person
 - (4) Supreme Court, in its inherent jurisdiction, may refuse admission

(2) Requirements for admission

- s 17 (1): prerequisites for the issue of a compliance certificate:
 - (a) has attained the academic qualification;
 - (b) has satisfactorily completed practical legal training requirements; and
 - (c) is a fit and proper person
- s 17 (2): considerations for whether person is ‘fit and proper’:
 - (a) may have regard to any matter relevant to the person’s eligibility or suitability for admission, however the matter came to its attention; and
 - (b) must have regard to the matters specified in the Admission Rules
- Applicants must provide:
 - Original academic transcripts, original evidence of PLT, statement disclosing any matter which may affect assessment of fitness, two character references, a statutory declaration, and an application fee
 - Must also give LPAB consent to arrange police check and obtain student conduct records
- Twofold requirements for admission
 - (a) Competence (educational qualifications – academic and PLT)
 - (b) Character (fit and proper person – suitability matters)

(a) Competence

LPU Admission Rules 2015 (NSW) rule 5: specified academic qualifications prerequisite:

- (1) ... successfully completing a tertiary academic course in Australia, which:

- (a) includes equivalent of at least 3 years' full time study of law;
- (b) is accredited by the Board; and
- (c) Board determines will provide for student to acquire and demonstrate appropriate understanding and competence in each element of academic areas of knowledge
- (2) if qualifications obtained more than 5 years before applying, Board may require the applicant to:
 - (a) undertake further academic subjects;
 - (b) pass further examinations; and
 - (c) apply for compliance certificate within any period determined by the Board

LPU Admission Rules 2015 (NSW) rule 6: specified legal training prerequisite:

- (1) ... legal training prerequisite is applying and demonstrating appropriate understanding and competence in each element of skills, values, and practice areas
- (2) requirements may be satisfied by successfully completing either:
 - (a) practical legal training course; or
 - (b) supervised legal training in a workplace for period of not less than 12 months, under training plan approved by the Board
- (4) if training completed more than 5 years before applying, Board may require applicant to:
 - (a) undertake further practical legal training; and
 - (b) apply for compliance certificate within any period determined by Board

(b) Character

Early Assessment of Suitability

- *LPUL s 21*: declaration of early assessment of suitability for compliance certificate
 - (1) person may apply for declaration that matters disclosed will not, without more, adversely affect an assessment as to whether person is fit and proper
 - (2) designated regulatory authority may make the declaration in relation to any or all of the matters, or may refuse to do so
 - (3) declaration is binding, **unless** applicant failed to make full and fair disclosure of all matters relevant to declaration
- *LPUL s 27*: right of appeal about early assessment of suitability
 - (1) applicant may appeal to Supreme Court against refusal to make declaration
 - (2) Supreme Court may make any order it considers appropriate on the appeal
 - (3) declaration is binding, **unless** applicant failed to make full and fair disclosure of all matters relevant to declaration

Common Law factors for assessing Fitness ('good fame and character')

- Onus is on applicant to establish current fitness
- Statutory test: whether an applicant 'is currently of good fame and character' and is 'a fit and proper person'

Ordinary Meaning

- (i) Previous criminal behaviour
- (ii) Previous improper conduct in curial process (see *Re B*)
- (iii) Previous improper conduct in course of profession/employment (see *Re Lenehan*)
- (iv) Infirmary (see *Skerritt* [in Mental Health/Academic Misconduct section])
- (v) Non-disclosure of prior impropriety on admission application
- (vi) Disclosure of criminal convictions, particularly where dishonesty is relevant (see *Davis*)
- (vii) Disclosure of criminal charges – even if they were withdrawn or applicant was acquitted (see *Del Castillo*)
- (viii) Disclosure of academic misconduct (see *Re OG* [in Mental Health/Academic Misconduct section])

Mitigating Factors

- (i) Age of applicant at time of misconduct/lapse of time since misconduct (see *Re Lenehan*)
- (ii) Evidence of redemption/rehabilitation (see *Re Lenehan*)
- (iii) External stressors (see *Del Castillo*)

<i>Re B</i>	
Facts	○ When B was paralegal she put money forward for client's bail – client was drug dealer so there was suspicion money came from him ○ B accused of assigning client in improper way ○ B also serial protester (which was common at uni in the 1970s) and was arrested a few times
Decision/Reasoning	HELD: application to Bar <u>rejected</u> and she could not be admitted.

<i>Re Lenehan</i>	
Facts	○ L engaged in improper dealings with client money – paralegal at time and part of scheme where supervising solicitors stealing money from clients – initially found <u>not</u> to be fit and proper ○ L went to WW2 and redeemed his reputation; re-applied
Decision/Reasoning	HELD: application for admission <u>accepted</u> as 'the false steps of youth and early manhood are not always final proof of defective character and unfitness.' '... under bad influence without proper guidance and dealing with difficult circumstances.. [now an] adult... of seemingly correct and exemplary conduct and every outward manifestation of good character.'

<i>Davis</i>	
Facts	○ D admitted as Barrister; but was then discovered he had been convicted of breaking/entering and stealing 13 years earlier, which had not been disclosed

Decision/ Reasoning	HELD: <u>removed from the roll</u> due to lack of disclosure. *C.f. <i>Re Lenehan</i> : L was honest about previous conduct, so Court looked upon him more favourably.
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<i>Del Castillo</i>	
Facts	○ Failed to disclose murder charge D was acquitted of ○ Lie to police about knife, concealed knife, left deceased with no help
Decision/ Reasoning	HELD: <u>was a fit and proper person</u>, as lies told at trial were not serious defects of conduct, as conduct took place in ‘extraordinarily unusual circumstances... so remote from those which a legal practitioner is likely to encounter ... not safe guide to how opponent would behave in practice.’ ‘...lying can be wrong, but it is not always wrong... if the opponent was trying to protect his wife, his culpability must be judged in light of the fact that many people think lying to protect someone’s family is in many circumstances not blameworthy.’

(3) Disclosure Requirements

- Common law duty of disclosure: 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 when considering whether or not they are a fit and proper person
 - Any failure to disclose or serious academic misconduct will be considered unacceptable for admission and re-admission (e.g. *Frugtniet*; *Cummins*)
- *Cummins*: C did not pay taxes – held this was cheating the public revenue and is an example of a person who is not of ‘fit and proper character’

<i>Frugtniet</i>	
Facts	○ F did not disclose all offences he was committed and charged with, both in Vic and England
Decision/ Reasoning	‘Revealing more than might strictly be necessary <u>counts in favour of an applicant</u> – especially where the disclosure still carries embarrassment or discomfort’ ‘A legal practitioner .. assumes duties to the Courts, fellow practitioners, as well as to clients. At the heart of all those duties is a commitment to <u>honesty</u> and, in those circumstances when it is required, to <u>open candour and frankness</u>, irrespective of self-interest or embarrassment.’

Suitability and Disclosure Requirements under the LPU Admission Rules

- r 10: determining whether someone is a fit and proper person: (1) the following matters are specified as matters to which the Board must have regard:
 - (a) any statutory declaration as to the person’s character;
 - (b) any disclosure statement made by the person;
 - (c) any police report;

- (d) any student conduct report;
- (e) any certificate of good standing;
- (f) whether person is currently of good fame and character;
- (g) person is or has been bankrupt or has been the officer of a corporation that has been wound up in insolvency/under external administration
- (h) person has been found guilty of an offence, in Aus or in foreign country + the nature of the offence, how long ago it was committed, and person's age when offence was committed
- (i) person subject of any disciplinary action in any profession or occupation
- (j) person subject of any disciplinary action in any profession or occupation that involved a finding adverse to the person
- (k) person currently unable to carry out the inherent requirements of practice
- (l) person has sufficient knowledge of written and spoken English

(5) Impact of Mental Health and Academic Misconduct

Mental Health

- Reasonable mental health is important factor, but case law suggests that having mental health issues will not necessarily result in finding of unfitness

<i>Skerritt</i>	
Facts	○ S had longstanding depression and attempted suicide; guilty of stalking; told half-truths in application; mental illness and misconduct in the Army
Decision/ Reasoning	HELD: application <u>rejected due to half-truths</u> – but , ‘depression does not seem to us necessarily to detract from a person’s capacity to perform any of the duties required of a practitioner ... [unless it were] so severe ... that it might lead an applicant to neglect the affairs of his or her clients.’

<i>XY v Board of Examiners</i>	
Facts	○ Longstanding mental health and alcohol issues due to childhood sexual assault + some violence related criminal convictions ○ Previously rejected due to failure disclosed; re-applied years later
Decision/ Reasoning	HELD: XY was <u>not fit and proper</u> as mental health issues were addressed/ strategies for management in place, there had been a time lapse, and she was remorseful for past conduct.

Academic Misconduct

- Includes: ‘plagiarism, impermissible collusion, cheating and other inappropriate conduct, whereby you have sought to obtain an academic advantage either for yourself or for some other person’ (LACC, 2013)
- Plagiarism relevant to assessing fitness because ‘it ostensibly involves an element of dishonesty’ (Dal Pint, cited in Booth et al., 2020)

- Where plagiarism not disclosed, likely they will be found not fit and proper; if it is disclosed, still may be found not fit and proper based on their response to their actions
- LACC guidelines say applicants should disclose misconduct ‘whether or not a formal finding was made or record of the incident retained’
- Redemption from academic misconduct = actively making reparation for damage caused, or engaging in social work (e.g. pro bono) to give back to institution wronged
- But, noting there are ‘widely varying university plagiarism rules’ – universities and law schools should ‘establish and maintain clear and robust procedures for handling, including properly recording, any incidents ... to provide appropriate safeguards to ensure any student faced with such allegations is fully aware of the disclosure implications of any adverse findings’ (Booth et al., 2020)

<i>Re OG</i>	
Facts	○ OG and friend GL investigated for academic misconduct – both disclosed zero mark but only GL disclosed allegation of collusion ○ OG admitted prior to GL; GL disclosed whole incident after being cross-examined and his application was refused
Decision/Reasoning	HELD: OG <u>struck off roll</u> on basis of deliberate/reckless misrepresentation, ‘even ancient peccadillos should not be left out.’

<i>Law Society of Tasmania v Richardson</i> – *note: outlier case (don’t rely too much on)	
Facts	○ Decision of academic misconduct of R reversed – R’s parents (both lawyers) advised him not to disclose the incident ○ Board sought to strike off R and his parents
Decision/Reasoning	HELD: <u>not struck off</u> – at most, R made an error in judgment in relying on the advice of his parents.

(6) Application for Readmission

- Potential to be struck off the roll for any misconduct, etc.
- After fair amount of time, individuals may apply for re-admission (e.g. after years)
- Heavy burden on applicant to apply for re-admission:
 - Need to show they have redeemed themselves/rehabilitated + show regret
 - Need to discuss original funding of misconduct and address comments
 - Need to act with complete candour
- Re-admission may be subject to certain conditions

<i>Evatt v NSW Bar</i>	
Facts	○ E charged significant amount for services; part of scheme of solicitors overcharging clients ○ Struck off the roll in 1968 – reapplied 3 years later but Court said this was not enough time – applied again in 1981
Decision/Reasoning	HELD: <u>accepted</u> as he was able to show he had improved his reputation – had now become reputable seller of art.