3 Admission

I.	**Relevant legislation**

Part 2.2 Legal Profession Uniform Law (NSW) No 16a (2014) (LPUL) *and the* ***Legal Profession Uniform Admission Rules (2015) (LPUAR)*** *provide for admission into the Australian Legal Profession.*

- **s 15 LPUL** provides that they are only eligible if: (a) they have appropriate academic qualifications and PLT, whether obtained in Australia or elsewhere; and (b) they are fit and proper persons to be admitted.

II.	**Outline of admission requirements**

General requirements per s 16(1) note that the NSWSC has jurisdiction to admit any individual over the age of 18 if: (a) the designated local regulatory authority has provided the SC with a compliance certificate in that is is still in force; ***and*** (b) person is not already admitted to the Australian legal profession; ***and*** (c) the person takes an oath of office, or makes an affirmation of office.

- *A compliance certificate requires competence (s 17(1)(a)-(b)) and character (s 17(1)(c)). The authority may have regard to any relevant matter, however it comes into their attention (s 17(2)(a))* ***and*** *the r 10 LPUAR matters (s 17(2)(b)). X holds a [law degree] and will complete PLT – likely circumventing the >5 years scenario in rr 5-6 of the LPUAR, so academic eligibility is satisfied.* ***At issue is his character per s 17(1)(c).***
- *The statutory test is in the* ***present tense*** *– whether the applicant '****is currently of good fame and character****" and "****is a fit and proper person****"; the onus is on the applicant to establish fitness (Disclosure Guidelines).*
- *The following matters arise: [e.g. conviction and imprisonment (r 10(h)), etc.] Because the test is present-tense, historic matters do not automatically bar X (Re Lenehan); each matter is assessed for what it shows about current fitness.*

1. ***Competence***
   a. Attained academic qualifications (**s 17(1)(a) *LPUL***); and
      i. **r 5 LPUAR (1)** Tertiary academic course in Australia including: (a) At least three years' full-time study of law; (b) Accredited by the Board, and (c) Knowledge set out in LPUAR Schedule 1 – i.e. Priestley 11 subjects.
      ii. If attained >5 years before applying for compliance certificate, Board may require the applicant to undertake further subjects or exams, or apply within any period determined by the Board (**r 5(2)**).
   b. Completed PLT requirements (**s 17(1)(b) *LPUL***).
      i. **r 6 LPUAR (1)** Demonstrate appropriate understanding and competence of skills, values and practice areas in Schedule 2 or otherwise determined by the Admissions Committee; **(2)** either by completing PLT by a training provider or under supervision in a legal workplace for at least 12 months.
      ii. If attained >5 years before applying for compliance certificate, Board may require the applicant to undertake further training or apply within any period determined by the Board (**r 6(4)**).
2. ***Character*** **– see r 10 LPUAR**.
   a. The person is a 'fit and proper person' to be admitted (**s 17(1)(c) *LPUL***)) – See below III. Step 1.
3. ***Early assessment of the suitability of the compliance certificate.***
   a. **s 21 *LPUL*** provides that a person may apply to the designated local authority for a declaration that the person is a fit and proper person **prior** to the completion of their studies.
   b. Rights of appeal set out in **ss 26-27 *LPUL*.**

III.	**Fitness for admission**

1. **Overall**, the designated local regulatory authority may have regard to: **any matter relevant to the person's**

eligibility, however the matter comes to its attention (**s 17(2)(a) *LPUL***) ***and*** matters specified in **r 10 LPUAR (s 17(2)(b)):**

r 10 LPUAR

(a) any statutory declaration as to the person's character, referred to in rule 16,

(b) any disclosure statement made by the person under rule 17,

(c) any police report provided under rule 18,

- R 18(1) An application for a compliance certificate must be accompanied by a report from police in Australia on the applicant's criminal history in Australia, prepared within 6 months before the application is made.

(d) any student conduct report provided under rule 19,

- R 19(2)(a) A report must reveal whether or not the applicant was the subject of any disciplinary action, howsoever described, taken by the institution or the provider, and (b) the outcome of any such disciplinary action, prepared within 6 months before the application is made.

(e) any certificate of good standing provided under rule 20,

(f) whether the person is currently of good fame and character,

(g) whether the person is or has been a bankrupt or subject to an arrangement under Part 10 of the Bankruptcy Act or has been an officer of a corporation that has been wound up in insolvency or under external administration,

- If bankrupt → not good at managing their own money.
- So cannot be expected to manage other people's money.

(h) whether the person has been found guilty of an offence including a spent offence in Australia or in a foreign country, and if so –

(i) nature of the offence, and –

(ii) how long ago the offence was committed, and –

(iii) the person's age when the offence was committee

(i) whether the person has been the subject of any disciplinary action, howsoever expressed, in any profession or occupation in Australia or in a foreign country

(j) whether the person has been the subject of disciplinary action, howsoever expressed, in any profession or occupation that involved a finding adverse to the person,

(k) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner,

(l) whether the person has a sufficient knowledge of written and spoken English to engage in legal practice in this jurisdiction.

As X is academically eligible and 'competent', fitness will turn on his candid disclosure.

2. **Disclosure statement**

- *X has a **personal duty to disclose** any matter that may bear on fitness for administration (**LPUAR r 17(2)**). The test is **whether a reasonable applicant would consider the Board might regard the matter as not favourable;** it is better to over-disclose, since selective disclosure may itself show an appropriate desire to distort by screening facts (Fruignet v Board of Examiners).*
    a. **Rationale**: honesty and candour demonstrated in disclosure is at the heart of the duties of a lawyer.
    b. **Court must exercise its discretion** when determining an applicant's fitness & properness by relevance to the particular circumstances of each case – not a question of law to be determined by relevance to previous decisions (*Re Lenehan* (1948)).

3. **Disclosure is at the heart of determining whether someone is a fit and proper person of good fame and character (r 20).**

- *E.g. **Isolated personal offending** may not affect fitness (Ziems), but serious personal violence has led to striking off (Franklin)* **[See 2023 Q1(b)].**