

Admission to Practice- Topic 2

S15, Uniform Law, Ch 2, Pt 2: Legal Profession Uniform Admission Rules (2015)

- Uniform Law protects “**the administration of justice and the clients ...**”, so **Persons are eligible for admission** to the Australian legal profession **only if**-
 - They have **appropriate academic qualifications** and **practical legal training**, whether obtained in Australia or elsewhere; **and**
 - They are **fit** and **proper persons** (general meaning) to **be admitted**.
- Controlling and regulating admission to law profession is about protecting the community.
- **S15- Admission to becoming an Australian lawyer is only the first step** towards being allowed to practice, as after admission must gain a practice certificate to be able to practice law.
- Supreme Court makes the decision of whether to admit a person.
 - ‘This jurisdiction’- as is a **Uniform Law** that applied across different states.

New Law Admission Changes

- **VLAB**- is responsible for documentation of legal admissions. VLAB is still in the process of admitting people during a transition process of new procedures and documentation.
- When the **university is required to give a report on the conduct of the student**, university is required to send to VLAB a report of student academic conduct, now with new law is a much more detailed account of matters relating to student discipline or honesty or any warnings from course. Now a more important matter for student and university, with a **higher bar**.
 - *Re OG*: Fraud got a student struck off bar and another refused admission. Issue was with a non-law subject.
- The case law over admission are still relevant and indication of court reaction to different kinds of errors or judgements or mistakes, not just academic work but criminal matters and other things.
- Practicing certificates have been altered under new **Uniform law**.

Overall Regulation of Admission

Victorian Legal Admissions Board (VLAB)

- **VLAB was established by the *Application Act***
 - Specifically in the *Application Act* and not in **Uniform Law** section, as is specific to Victoria and not uniform law to every state.
- **Must apply to VLAB for a compliance certificate**, in **order to be admitted as a lawyer in the supreme court of Victoria**, so **VSC can make a decision based on documentation from VLAB and your information**.
 - Process governed by **Uniform Law**

- So when sitting of court to hear admission applications, compliance certificate has been made available to VSC by VLAB.
- **Formal notice of intention to submit is required**, application must be filed with **VLAB at least 2 months ahead of admission date preferred**
 - (From set dates advertised e.g. 10 November 2015)
 - This is said to be because the documentation sent to VLAB is for them, it is not a document addressed directly to the Supreme Court.

Supreme Court of Victoria

- **VSC receives advice in order to make its decision** over someone seeking admission.
- **Advice is in the form of compliance certificate**, which is generated by the 'designated local regulatory authority'- VLAB and is essential, **s16(1)** and **s17 UL**.
- **Supreme court retains inherent discretion to refuse admission**, **s16(4)** of **Uniform Law**
 - Protecting independence and inherent jurisdiction of the courts.
- **S17(2): VLAB- May have regard to any matter relevant to a person's eligibility or suitability for admission.** (Not just academic matters)
 - VLAB not restricted to just information from student or university
- **S19 Uniform law: VLAB must publicly announce names of those seeking compliance certificate** from VLAB i.e. seeking admission in Victoria
 - Open to public to raise any objections about persons seeking admission.
 - If VLAB receives any objection, VLAB has to consider whether objections are relevant to the admission of a person.
- **VLAB creates a compliance certificate for VSC**, so when VSC holds its decision making process, it gives consideration to compliance certificate.
 - If there is enough information supporting the applicant, then court can admit that person to the court as an Australian Lawyer.
 - **Gaining a practicing certificate** is then **the next step**.

Legal Profession Uniform Admission Rules (LPUAR)

- Rules Chapter 9. 2 [i.e. chapter 9 Part 2] of **Uniform Law**, provides for the making of **Legal Profession Uniform Rules** by the Legal Services Council (**ss 421, 426**)
- **Schedule 1: Priestley's 11 required subjects.**
- **Schedule 2 LPUAR**, is about Practical Legal Training (PLT).
 - Indicates performance standards required after finishing PLT, such as: work management and business skills; problem solving; the lawyer's skills e.g. communication – in addition to content areas like property, crime, and ethics & professional responsibility.
- **Schedule 3 LPUAR: Supervised Legal Training** (formerly known as Articles)
 - Still possible to gain practical legal training in supervision.

Rules:

- **R5- Person must have completed tertiary academic course, accredited by VLAB, covering Priestley 11 areas, and at least 3 years full time equivalent of Law study, 'whether or not leading to a degree in law'.**

- R6- PLT requirements
- R7- Accreditation of academic course ((e.g. of Deakin's LLB))
- R10 Fit and Proper person- VLAB must have regard to e.g. – police report, student conduct report (from Uni), and [r 10(1) (f)] whether the person is currently of good fame and character. VLAB must also have regard to whether the person:
 - Is bankrupt or has been disciplined in a profession.
- R11- is about overseas training academic and/or PLT
- R17- when person seeking admission they must make a disclosure statement – what should be in it is listed.

Schedule 5- The application to VLAB

- Schedule 5 is the application form to VLAB for a compliance certificate.
- Note that application to VLAB is now a Statutory Declaration not an Affidavit (as previously) (i.e. previously involved an oath or affirmation).

Guide for Applicants for Admission

- VLAB has created a sub-entity, called the Victorian Legal Admission Committee to process the compliance certificates of applicants.
- **At end of guide there is four schedules.**
 - Schedule 8: Is disclosure of conduct that VLAB should know about, in the form of a statutory declaration.
 - Statutory declaration can be witnessed by a lot more people than an affidavit.
 - Statutory declaration has a legal status. It is the lowest level of a witnessed document.

Note this document includes Schedules: (All Stat Decs)

- **8 (Disclosure-public crimes and academic matters** etc.)
- **8A (Capacity Disclosure-** making a note in relation to any matters affecting your admission such as mental health and capacity).
- **9 (Evidence of Character-** getting a person who knows you well to indicate you are a fit and proper person to enter the profession),
- **9A (Evidence of Character for legal practitioner from foreign jurisdiction – statement of good standing in their professional position elsewhere)**
- Note p9 of guide for applicants- disclosure, part G of schedule 5, consequences of failure to disclose what should be disclosed, or 'attempt to mislead the Board':
 - Refused admission (i.e. by Supreme Court)
 - Compliance certificate revoked by VLAB if already issued but not yet processed by Supreme Court hearing.
 - Struck off roll if have already been admitted

Guide also includes

- Capacity statements, see Sched 8A,
- Character Statements, see Sched 9
 - Once admitted as a fit and proper person must remain that way throughout profession as a lawyer.

- And good standing if from overseas.
- How to lodge if doing it for real.
- How to pay fees (ditto)
 - (currently \$ 926.60 includes library membership fee at Supreme Court)
- Description of the ceremony in Supreme Court when admission is sought (attendance is compulsory if you seek admission)
- Must have a person to move your admission. Admission is moved by an Australian Lawyer, relying on certificate of compliance as issued by VLAB.
 - There are three justices who sit at admission. Person moving admission refers to compliance certificate and says applicant should be admitted.

Disclosure Guidelines

- **Duty of applicant to disclose anything that could influence the decision** about “[currently of] **good fame and character**” and “**fit and proper person**”
 - ‘Fit and proper person; is in s17 uniform law
 - Good fame and character requirement :R10(1)(f)

1. Judicial explanation of the criteria, from *Frugtniet*- Statement of fit and proper person

2. Court looks at the person now- when admission is decided

- **Must be currently of good fame and character**
 - Errors, delinquency in earlier years may not prevent admission
 - “**Past conduct not decisive** “ say these Guidelines at 3b
 - Person has to keep up standards of good fame and character in profession. Must ensure person admitted once maintains those standards: Candour (*Re OG*), honesty and trustworthy.

3. Candour, full and frank disclosure- required

- **Present understanding of past actions.**
 - E.g. not minimise or dismiss.
- **Accepting full degree of seriousness**, [also see #4]
- 3(e) is about ‘condition’ relevant to capacity – e.g. medical/health condition – ‘appropriately managed’, e.g. mental health or addiction; see 7

4. When not disclosing anything

- **If no matters disclosed then must use the form of words** here, set few words.
- Tick a box when no disclosure.

5. Matters which you may need to disclose:

- Criminal charges even if withdrawn, or acquittal;
- Intervention orders, apprehended violence orders;
- Traffic and infringement offences e.g. fixed fine may need to be disclosed. Especially if a number of, i.e. a pattern.
- **If in doubt disclose**, because if honest about something minor, very unlikely to stop admission.
- Academic misconduct

- Generally prudent to disclose such conduct such as plagiarism or fraud, or colluding with another person.
- Disclosure is known as a disregard for standards and integrity, regardless of whether formal or record of incident.
- General misconduct
 - E.g. in university, social /recreational setting, workplace e.g. bullying, harassment, racial vilification such as on social media like Facebook.
- Social security or tax offences [again goes to honesty, respect for law]

6. Character Certificate

- Person asked to be referee for applicant's character, must be made aware of any matters disclosed under GF&C
 - Character signing a statutory declaration must believe that applicant is still a fit and proper person, regardless of what was disclosed to referee.
- No need to be made aware or take into account capacity questions, e.g. mental health or addiction.

7. Capacity

- Capacity matters may include physical or mental illness, or impairment, addictions, etc.
 - May call for medical report to accompany documentation about future status and that sort of thing.
- Judicial consideration in case *Frugtniet*;

8. Practicalities/documentation

9. Stat Dec/s -- with exhibit/s to statutory declaration if necessary

(1) Educational Requirements

- **LPUAR R5**: Person must have completed tertiary academic course, accredited by VLAB, covering Priestley 11 areas, and at least 3 years full time equivalent of Law study, 'whether or not leading to a degree in law'.
 - The **degree must include Priestley's 11 areas**: Criminal law, tort law, contract law, land and property law, equity and trust law, administrative law, constitutional law, civil procedure, evidence, company law and legal ethics.
- Once a law degree is completed the applicant must either undertake supervised legal training or enrol in a practical legal training course before applying for admission.
 - **LPUAR r6**
 - To graduate from a PLT course and successfully complete a legal traineeship, students or trainees must demonstrate that they have gained skills in being a lawyer, problem solving, work management, business skills and trust and office accounting. Professional responsibility to carry into role as legal practitioner.
- **Supervised Training**: *Application Act*, *Uniform Law Chapter 2*, *LPUAR r6* and *Sched 3*.

(2) Suitability Matters (2-9)

- Once the educational matters have been met, applicant can then apply to be admitted to practice.

- The Supreme Court are assisted by the Victorian Legal Admissions Board that essentially determines if an applicant meets the character requirements necessary for admission.
 - VIC: *S19 Application Act*, established VLAB.
 - Overall criteria Uniform Law s15: Academic+ PLT+ Fit & Proper Person.

Character Requirements (Sch 9, evidence of character Stat Dec) (2-13)

- The requisite characteristics are that an applicant be 'fit and proper person' (uniform law) and of 'good fame and character' (ordinary meaning, no definition) LPUAR 2015, r10(1)f.
- *Victorian Lawyers RPA Ltd v X (2003) 3 VR 601*: Applicant was found to be a person of good fame and character but was not a fit and proper person to be admitted. Applicant failed to disclose her six accounts of making false reports of sexual assaults.
- The Supreme Court controls the profession by admitting applicants to the legal profession who will maintain public confidence.
 - VLAB focuses on the reputation of the applicant and refers to the quality of the person by looking at their former acts and motives.
 - Honesty and fair dealing are weighted highly. *Frugtniet*
- The person must be someone in whose integrity the public can be confident. The Supreme Court is wary to admit someone who has previously engaged in behaviour showing disrespect for the law; an applicant must be trustworthy and have integrity.
- Applicants must obtain evidence to prove they are of good fame and character and fit and proper person to practice. Obligation to disclose anything to the contrary.
- *Ex Parte Lenehn*: As a clerk at a law firm, paid himself without authority. However HC ruled that during his time at law firm was not favoured by good role models and had since led an exemplary life. Applicant made full admission, age was mitigating factor.

Fit and Proper Person Requirements (2-17)

Australian Broadcasting Tribunal v Bond

- Fit and proper person takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The question may be whether improper conduct has occurred, whether the general community will have confidence that it will not occur.
 - Character indicates likely future conduct.
 - Reputation provides indication of public perception as to likely future conduct.
 - Amount of scrutiny the courts can give, is extremely forensic.

Candour and Full Disclosure are essential

- Not for the applicant to decide what is and what is not relevant to place before a court on whether a person is a fit and proper person to be admitted for practice. *Re Evatt*

- **Applicant's duty is to place before the court any matter that might reasonably be regarded by the court as touching on the question of fitness to practice.**
 - Full and frank disclosure is required (only persons who maintain public confidence will be admitted)
 - Disclosure must be made to anyone providing character references (suitability requirements).

Moral Character (2-18)

- Moral character is also taken into account.
- Dishonesty, political activity, personal moral standards, behaviour in past professional life and mental illness are all taken into account.

Academic Misconduct (2-19)

- **VLAB now requires applicants to obtain a report from the university that outlines any misconduct during an applicant's studies.**
 - **Academic misconduct includes** plagiarism, collusion, cheating and inappropriate conduct where an applicant has obtained an academic advantage.
- *Re OG*: VSC revoked the admission of a lawyer for lack of candour. Lawyer colluded on an assignment as a student and did not fully disclose upon admission.
- **Essentially admission board will look at whether an applicant has revealed past misdeeds and has accurately and fully disclosed the nature of any such misdeeds.**
- *Re Liveri*: Plagiarised an assignment and initially denied it. Her unwillingness to acknowledge that misconduct establishes a lack of genuine insight into its gravity and significance; the court is concerned with fitness to practice, which is as significant as academic misconduct. Court rules applicant not fit for admission as legal practitioner.
 - **Lack of genuine insight** into 'the 'gravity and significance' of the dishonesty.
- *Re AJG*: Legal practitioners must exhibit a degree of integrity which engenders in the court and in clients unquestioning confidence in the completely honest discharge of their professional commitments. PLT misconduct,

Criminal Behaviour (2-25)

- The Supreme Court is **wary to admit anyone who has shown disrespect for the law.**
 - The **court will look at everything** though, such as severity, patterns of behaviour, frequency, how long ago it was, type of crime, violent crime, dishonesty crime, partner crime etc. Different trends in emphasis of courts. Different kinds of criminal activity gets treated differently over the years.
- The **admission board has the power to go back as far as required in an applicant's life,** as all matters are potentially relevant.
- The **length of time of good behaviour and full and frank disclosure** that passes the **more likely an applicant will be admitted;**
- *Re Owen*: Past criminal convictions may not be an impediment. Criminal history was long in past and courts decided person here and now that criminal past is in the past.

- *Prothonotary (Clerk) of the Supreme Court of NSW v P* [2003] NSWCA 320: **discipline matter for practitioner** – imported cocaine for own use – **remain in practice conditional on testing for being drug free for 2 years.**
- *Frugniet v Board of Examiners*: Long criminal history is very hard to overcome in seeking admission
 - Courts have said that **fame and character** are shown by **‘facts which give rise to the charges’** even if acquitted
- *NSW Bar Association v Hamman* [1999] NSWCA 404: barrister had a system for paying his taxes that understated income, court stated that **defraud revenue system** is as **serious as defraud a person** or the way he was paid for his barrister services understated his income– **unfit to practice**
- *Re Del Castillo*: raises question of possibility of refusal to admit based on a matter on which a person was tried and acquitted. **Double jeopardy?** From a policy perspective matter already dealt with, even if acquitted.
 - Courts have argued that circumstances around a charge but acquittal on a charge of violence for example, **may still be considered relevant as going to fame and character.**

Prior Improper Conduct (2-32)

- An **applicant’s behaviour in the course of litigation is relevant to their good fame and character.** It is particularly relevant if the behaviour was displayed by a practicing lawyer and attracted disciplinary action. *Re Bell*
 - **An applicant must be candid** and **act with the utmost good faith in disclosing issues which are reasonably regarded as touching** on whether the applicant is a **fit and proper person.**
 - An applicant should not be prone to use any means necessary, but **instead show an intention to act according to the law**, not act in contempt of court and follow court orders and not undermine the court system and justice system.
- *Jackson (previously known as Subramaniam) v Legal Practitioners Admission Board* [2006] NSWSC 1338: **admission refused** on **grounds applicant had in past made a false statutory declaration** and other false evidence, which she **failed to disclose.**

Disciplined while a lawyer in another jurisdiction (2-36)

- *Morrissey v New South Wales Bar Association*: M’s character had been marked by **wilful disobedience of court orders** and rules, episodes of violence **and a failure to make appropriate disclosure** and a **lack of candour** with colleagues. **Not admitted.**
 - Community at large to have trust in legal practitioners, stating that this trust is of utmost importance, regardless of skills and experience.
 - Breached the trust of the practitioners who had provided character affidavits by not disclosing the truth to them.
- Disciplined in another profession **may be enough to prevent admission**

Disciplined while working in another profession (2-38)

- Issue taken into account when seeking admission.
- *Re Hampton*: H was a nurse and his registration had been cancelled for inappropriately dealing with 3 females under his care. **Also guilty of working as a nurse while not registered**. Answered no to ever being convicted of a criminal offence. **Ruled lack of professional judgment**.

Mental Instability (2-40)

- **Mental health may have bearing on admission**, depending on the seriousness and treatment of the mental health issue. *Skerritt v Legal Practice Board WA*
- *XY v Board of Examiners*: **Applicant could be admitted as the criminal offence were not related to dishonesty** and could be explained by poor mental health. Also there had been no charges since 1997, became an Australian lawyer.
 - **History of threats**, assault of protective services officers and police, damage to property [8 years previously] – continuing alcohol addiction -- borderline personality disorder – past conduct caused psychiatric history – mental health now improved, Admitted, required to maintain Alcoholics Anonymous for management of alcohol addiction [therefore this includes questions of capacity as well as previous criminal conduct]

Political Activity (2-42)

- *Re B (1981) NSW*: Political activist sought and was barred from admission. The applicant had been known for very confronting gestures and being anti-establishment. Also involved in a **fraudulent bail application and lied about it to the court** when examined.
- Applicant was not candid and **admission was denied**.
 - **Court decided** that she would break the law in furtherance of political views and activism – **inconsistent with upholding law as officer of the Court**.
- **Court will determine whether complete disregard for the law**.

Supervision following Admission- When get first Practising Certificate (2-45)

- **Once admitted, Australian legal practitioners must work under the supervision** of a qualified legal practitioner.
 - **18 months** supervision if **completed supervised workplace training**
 - **2 years** if **completed a PLT course**.

Overseas Qualified Legal Practitioners; (2-46)

- **Overseas practitioners may be admitted, but must complete some or all of Priestley's 11 subjects and or a supervised training or a PLT course**.

Seeking Re-Admission (2-47)

- Applicants seeking re-admission **are in a more disadvantageous position** than original applicants **as they have to prove they are not permanently unfit**. *Ex parte Lenehan*
 - Court will take caution and decide based on circumstances.
 - Court sent a strong message to profession about deterrence and proper standards by suspending applicant for four years.
 - Being remorseful does demonstrate recognition by the applicant of the wrongfulness of their earlier behaviour that led them to being struck off.
 - Will need to demonstrate sufficient change, insight and so on.

Ongoing Professional Development (2-55)

- Each jurisdiction requires practicing certificate holders to complete ongoing professional development on an annual basis.

Signing the Roll as a Barrister (2-56)

- In Victoria, **to become a barrister** applicant must be first admitted to practice **and then sit the Victorian Bar entrance exam** (\$350).
 - Exam covers civil procedure, criminal procedure, evidence and legal ethics. 75% mark is required to pass.
- **Upon successful completion of the exam**, the applicant sits the bar readers course **which runs for 8 weeks** (\$4,300).
 - For seven months the reader will have a mentor and senior mentor.

Effect of non-disclosure

- If non-admission is later found out, **can face prospect of being struck off roll**. *Re Evatt*

Character Affidavits

- Must obtain two character affidavits, from appropriately qualified people. Must provide a copy of their affidavit to each person and explain at length any issues raised in it.
 - Not doing so, may result in not being granted admission or being struck off.
Morrissey