

## LEGAL PROFESSION ADMISSION GUIDELINES

In these Guidelines:-

**Act** means the *Legal Profession Act 2006*.

**Board** means the Legal Practitioners Admission Board of the Northern Territory.

**Court** means the Supreme Court of the Northern Territory.

**Disclosure Guidelines** means the document titled “Disclosure Guidelines For Applicants For Admission To The Legal Profession” published by LACC.

**LACC** means the Law Admissions Consultative Committee

**pro forma affidavit** means the precedent affidavit for admission applicants published on the Court’s website.

**Rules** means the *Legal Profession Admission Rules 2007*.

**Supreme Court Rules** means the *Supreme Court Rules 1987*.

**NSW Board** means the New South Wales Legal Practitioners Admission Board.

A reference to a section in legislation refers to that section in the Act unless otherwise stated.

A reference to a rule refers to that rule in the Rules unless otherwise stated.

A term or phrase that appears within inverted commas has the meaning assigned to it by the Act.

### 1. INTRODUCTION

Persons are admitted under the Act as “local lawyers” (sections 4, 5(b) and 25). The Rules provide for the admission of local lawyers as “local applicants”, being persons applying for admission on the basis of qualifications obtained in Australia (rules 2 and 10), or as “overseas applicants”, being persons with qualifications obtained in a foreign country (rules 2 and 12).

Applicants must be both eligible for admission and suitable for admission. The role of the Board is to advise the Court whether it considers an applicant for admission satisfies both requirements (see generally sections 11, 25, 29, 30 and 35). It is then for the Court to determine the application for admission.

Applicants are required to consult these Guidelines and it is important that applicants do so, as well as the relevant sections of the Act and the Rules, carefully before applying for admission or directions. The affidavit in support of the application for admission requires applicants to acknowledge that they have read, understood and have had regard to these Guidelines when making their application.

Failure to comply with all requirements set out in these Guidelines may result in the rejection of the documents by the Registry or the deferral of the application by the Board, until full compliance occurs.

Often the deferral of an application could have been avoided had the applicant properly considered these Guidelines. Most commonly that occurs in respect of the requirements of the Board in relation to nexus (see 4.1 below) and concurrent study (see 4.2 below). It is for that reason that the Board requires that an applicant’s supporting affidavit contains confirmation that the applicant has read and understood these Guidelines.

LACC has published Model Admission Rules. These can be found on the website of the Legal Services Council (<https://www.legalservicescouncil.org.au/Documents/model-admission->

rules-2015.pdf). The Model Admission Rules form the basis of many of the provisions in the Rules, as well as the corresponding rules in other Australian jurisdictions. Certain requirements specified by the Board are based on the Model Admission Rules. The Model Admission Rules may therefore prove to be a good resource to assist applicants in the preparation of their applications for admission.

## **1.1 Filing and Service**

The completed applications, namely the Originating Motion and the supporting affidavit annexing all relevant and required documents, must be filed electronically by email to NTSC.efile@nt.gov.au by 11.59pm on the Wednesday in the week preceding the relevant meeting of the Board.

Applications filed after this time will only be dealt with by the Board with the prior approval of the Chairperson of the Board. That approval is not routinely given and will only be given if there is a satisfactory reason for the late filing and otherwise if good reason exists to grant the approval.

Practice Direction No 3 of 2020 - Electronic Filing in Civil Proceedings sets out requirements in relation to filing, in particular the format of the filed document (paragraph 4) and the requirement to bookmark annexures (paragraphs 2.1 and 18).

Any other documents relating to an application before the Board, such as an Application for Directions, must also be filed within the same time period. In the case of supplementary affidavits, the Board **may** determine to consider such documents notwithstanding late filing.

A filing fee is payable at the time of lodgement of the application. The filing fee is to be paid by providing credit card details to the Court Registry, or by completing the electronic payment form available on the Court's website.

A copy of the documents must also be served on the Law Society. The documents are to be served at least three business days, not counting the day of filing, before the Board meets.

The Law Society is to be served electronically by emailing the documents to raa@lawsociety.nt.asn.au.

It is the responsibility of each applicant to ensure that the necessary documents, which satisfy all the requirements, are filed and served within the required times.

## **1.2 Important Dates**

The meeting dates of the Board in 2021 are 16 February, 27 April, 22 June, 17 August and 16 November. Dates for subsequent years can be ascertained on enquiry to the Supreme Court Registry.

In 2021 the Court will hear applications for admission in Darwin on 2 March, 4 May, 6 July, 31 August and 30 November. Dates for subsequent years can be ascertained on enquiry to the Supreme Court Registry.

Admissions in Alice Springs may be arranged with the associate of the visiting Judge.

## 2. ELIGIBILITY

Eligibility for admission relates to the “approved academic qualifications” and the “approved practical legal training requirements” for admission (sections 4, 10 and 29(1), rules 4, 5 and Schedules 3 and 4).

### 2.1 Overseas Qualifications

The qualifications, training and experience required of an overseas applicant must equate as closely as reasonably practicable to those required of a local applicant (rule 14(1)). An applicant who relies on qualifications obtained overseas must ordinarily first apply to the Board for directions (see rule 13) and an assessment of the applicant’s qualifications will be required.

The Board does not conduct assessments of overseas qualifications and would ordinarily refer any application for assessment to the NSW Board. Applicants should therefore apply directly to the NSW Board for assessment of their overseas qualifications and then apply to the Board for adoption of that assessment, as well as to seek any necessary consequential directions, via an Application for Directions.

The Board usually adopts the assessments of the NSW Board without variation.

### 2.2 Certificates from Educational Institutions

Eligibility for admission in respect of the “approved academic qualifications” and the “approved practical legal training requirements” is determined by the Board based on certificates from the relevant educational institution (rule 10(2)(b) and (c) and paragraphs 5 and 7 of the pro forma affidavit).

If an applicant has undertaken courses at a university or practical legal training provider outside of the Northern Territory, certificates which certify compliance with the equivalent of rules 4 and 5 of the Rules in the jurisdiction where the study was undertaken are sometimes provided. That is **not** acceptable in an application for admission in the Northern Territory. The certificates **must** in every case certify compliance with the requirements of the Rules, not the rules of another jurisdiction irrespective of the similarity of any interstate rules.

In some cases an applicant may have undertaken study at more than one University. A degree may be conferred by one University after having granted status for study at another University. In that situation the applicant’s academic record (paragraph 4 of the pro forma affidavit) sometimes only notes that a status credit was given without any further details such as where the study was undertaken and when. Reliance on that academic record alone may therefore mean that there is insufficient evidence to enable the Board to determine that the applicant has the necessary academic qualifications or whether any of those qualifications are stale (see 2.3 below).

In such cases, the supporting affidavit should specify where and when any study which forms part of an applicant’s “approved academic qualifications” was undertaken.

Although unusual, a similar situation can arise in respect of the “approved practical legal training requirements” if an applicant has undertaken a practical legal training course with more

than one practical legal training provider. In that case, the supporting affidavit should provide details of where and when that practical legal training was undertaken.

Further, if an applicant has been granted status for study undertaken at another University, if status has been granted for a unit which forms part of an applicant's "approved academic qualifications", the certificate required by rule 10(2)(b) (paragraph 5 of the pro forma affidavit) in respect of that unit is required to be obtained from the University where the applicant undertook the study.

Likewise, in respect of "approved practical legal training requirements" and the certificate required by rule 10(2)(c) (paragraph 6 of the pro forma affidavit).

An appropriate amendment is required to paragraph 5 and/or paragraph 6, as the case may be, of the pro forma affidavit in either case.

The Board will only accept a certificate as evidence of "approved academic qualifications" or "approved practical legal training requirements" if it is given by the educational institution where the study or training, as the case may be, was undertaken.

### **2.3 Stale Qualifications**

One aspect of the Model Admission Rules which has been specifically adopted by the Board relates to what are vernacularly referred to as "stale" qualifications (paragraphs 2(2) and 3(3) of the Model Admission Rules and paragraph 6 of the pro forma affidavit).

The purpose of the requirement is to ensure that academic qualifications and practical legal training competencies are current as at the time of the application for admission.

Therefore, whenever any of the "approved academic qualifications" and the "approved practical legal training requirements" have been obtained more than 5 years before the filing of the application for admission, relevant details must be provided in the supporting affidavit. That is to enable the Board to determine if, and what, further study will be required before the applicant will be considered eligible for admission.

Those details are to include the reason for the delay and details of any relevant work or study undertaken by the applicant in the interim.

In some cases the Board will make that determination based solely on the details provided in the supporting affidavit and without requiring further information, e.g., if the qualifications are just outside the 5 year period.

In cases of long delays the Board has required applicants to obtain course outlines of the stale qualifications as they were at the time of study together with current course outlines for the same or corresponding units from the same institution.

If major changes have occurred in the relevant law since the study was undertaken the Board will likely require an applicant to undertake additional study. For example, if an applicant has stale qualifications in the Law of Evidence and that study occurred prior to the enactment of the Uniform Evidence Legislation, further study will likely be required depending on the circumstances of the particular case.

An applicant may seek directions from the Board in respect of stale qualifications in advance of their application for admission. Those directions can be sought by Application for Directions (see 6 below).

### **3. SUITABILITY**

Determining suitability for admission requires the applicant to satisfy the Board that the applicant is a “fit and proper person” for admission to the legal profession (sections 25 and 30). In determining fitness, section 30(1)(a) requires the Board to have regard to the “suitability matters” set out in section 11(1) and the Board may also have regard to “any other matter it considers relevant” (section 30(1)(b)).

Applicants for admission are required to disclose any matter which might be relevant to the Board in considering both of these requirements. The applicant **must** state whether any of the “suitability matters” set out in section 11(1) of the Act apply to the applicant and that is specifically provided for in the pro forma affidavit.

#### **3.1 Disclosures**

Very relevant to an applicant’s fitness is the suitability matter in section 11(1)(c) which makes any conviction for a criminal offence a suitability matter. However, the Board considers that any criminal offending, whether resulting in a conviction or a finding of guilt or otherwise, is a relevant matter for the purposes of section 30(1)(b) (see also paragraph 5(c) of the Disclosure Guidelines.)

In respect of criminal offending, the effect of rule 18(1) is that an offence which comes within the definition of “excluded offence” in rule 17 is not required to be disclosed. This includes certain offences under the Traffic Act 1987, parking offences, offences the subject of an infringement notice expiated by payment and offences which are spent records pursuant to the *Criminal Records (Spent Convictions) Act 1992*. An applicant may, but need not, disclose such offending.

The Disclosure Guidelines are designed to assist applicants in determining what conduct should be disclosed and the requisite level of detail that should be disclosed. The Disclosure Guidelines need to be read in conjunction with the Act and the Rules. The Disclosure Guidelines, as modified for the Northern Territory, are available on the Court’s website.

Applicants are required to consult the Disclosure Guidelines. The affidavit in support of the application for admission requires applicants to acknowledge that they have read, understood and have had regard to the Disclosure Guidelines when making their application and supporting affidavit.

### **4. SUNDRY REQUIREMENTS**

#### **4.1 Nexus and Forum**

In general it is expected that an applicant for admission will apply in the jurisdiction most appropriate to the applicant having regard to, for example, where the applicant is ordinarily resident or where the applicant’s qualifications were obtained or according to any other relevant

circumstances. If the Board is not satisfied that the Northern Territory is the most appropriate forum for the application it may decline to deal with the application on that ground.

Therefore, if it is not otherwise evident from the applicant's affidavit that the Northern Territory is the most appropriate forum, the supporting affidavit should explain why admission is sought in the Northern Territory.

Without limiting the foregoing, if an applicant has completed the full law degree at Charles Darwin University or the Practical Legal Training course of the College of Law in the Northern Territory, that is considered to be sufficient nexus. As that will otherwise be apparent from the pro forma affidavit, in the usual case an applicant will not need to depose to that in their supporting affidavit.

Depending on the circumstances such as dates and duration, a sufficient period of residence in the Northern Territory will often be sufficient to satisfy the nexus requirement. A sufficient period of employment in the Northern Territory, or future plans to be employed in the Northern Territory also will often be sufficient to satisfy the nexus requirements.

## **4.2 Concurrent Study**

There are restrictions as to the extent of concurrent study between a law degree and a practical legal training course. The Rules confer a discretion on the Board to approve of the commencement of a practical legal training course while up to two electives of a law degree remain incomplete.

There is no discretion to approve concurrent study if there are more than two electives. There is also no discretion to approve the commencement of a practical legal training course while any of the "approved academic qualifications" are incomplete (rule 5, Schedule 4, clause 3.2).

In any case, any approval is discretionary and the applicant must demonstrate good reason as to why the Board should exercise its discretion.

An application for approval of concurrent study is to be made by Application for Directions supported by an affidavit which sets out the reasons for seeking that approval. Any special circumstances should be deposed to as well as an explanation as to why the applicant has not been able to complete their law degree prior to commencing a practical legal training course.

## **4.3 Language Requirements**

If the first language of an overseas applicant is not English, the applicant must satisfy the Board that the applicant has sufficient knowledge of written and spoken English to engage in legal practice (rule 16).

An applicant to whom rule 16 applies is therefore required to depose to all relevant facts in their supporting affidavit and provide evidence of the matters in rule 16(2).

# **5. THE APPLICATION**

## **5.1 General**

The application for admission is made to the Court (section 25) by filing an Originating Motion and supporting affidavit. The pro forma affidavit, and these Guidelines are a guide as to the matters required to be deposed to in the supporting affidavit.

The Originating Motion must comply with all of the requirements set out in the Supreme Court Rules, for example, rule 6.05(1) in respect of the address for service endorsed on the Originating Motion.

The supporting affidavit must also comply with the general requirements of affidavits as set out in the Supreme Court Rules. Order 43 of the Supreme Court Rules sets out requirements as to form, content etc. In addition, Practice Direction 3 of 2009 has additional requirements in relation to pagination and bookmarking of annexures. Affidavits must be made in accordance with Part 3 of the *Oaths, Affidavits and Declarations Act 2010*. See generally the pro forma affidavit.

Documents which fail to comply with any of the requirements will not be accepted for filing without the prior approval of the Chairperson of the Board and for demonstrated good reason.

The pro forma affidavit sets out the documents which are to be annexed to the supporting affidavit. If an applicant is unable to annex the specific document referenced in the pro forma affidavit, the applicant should explain that in the affidavit. Likewise if an alternative document is provided.

The *Evidence (National Uniform Legislation) Act 2011* has abolished the best evidence rule and therefore it is not necessary to annex original documents to the pro forma affidavit. Annexing a true copy is sufficient for all purposes. A certification that the copy of the document annexed is a true copy, or has been compared to the original, is not required as long as the applicant deposes that the document is a true copy.

## **5.2 Criminal History Checks**

Until recently, the Board required every applicant to provide an Australian national criminal history check and, in certain circumstances, an overseas criminal history check. Criminal history checks, whether issued by an Australian jurisdiction or an overseas jurisdiction, are now only required where an applicant discloses the commission of criminal offending in their supporting affidavit (paragraph 11 of the pro forma affidavit). In that case, a criminal history check in accordance with the following must be provided.

In respect of any offending committed within Australia, applicants are required to obtain an Australian national criminal check. As the level of disclosure in criminal history checks can vary according to the Australian jurisdiction where the application is made, and sometimes also according to the purpose stipulated on the application, the Board has made special arrangements with SAFE NT to ensure that the Board's specific requirements are satisfied.

For that reason, in respect of offending committed within Australia, the Board will only accept a criminal history check obtained on application to SAFE NT. Further, so that SAFE NT can identify an application as one required for admission purposes and therefore provide the required level of disclosure, the Board requires that the purpose stated on the application precisely be: "NT Supreme Court proceedings for admission as a lawyer".

To verify that the application has been made to SAFE NT and that the correct purpose has been stipulated, the Board requires applicants to depose to that in their supporting affidavit and to annex a true copy of the application for the criminal history check. If it is not apparent from the application that the application was made to SAFE NT, then other documentary evidence such as a receipt issued by SAFE NT, should also be annexed.

SAFE NT accepts applications online and that form of application is acceptable to the Board. Applicants should however ensure that a copy of the application is printed or otherwise obtained so that it can be annexed to their supporting affidavit (paragraph 11 of the pro forma affidavit).

There are different requirements in respect of offending committed outside of Australia. Firstly, where an overseas criminal history check is not in English, the applicant must arrange for a translation of the document by a suitably qualified translator. The translation is to be annexed to the supporting affidavit together with documentary evidence of the qualifications of the translator.

Secondly, in the usual case the Board does not accept overseas criminal history checks issued by private organisations. Only official criminal history checks issued by the government, or an agency of the government, of the jurisdiction to which the criminal history checks relates are acceptable. If compliance with this requirement is not apparent on the face of the overseas criminal history checks, applicants should depose to compliance in their supporting affidavit and annex appropriate documentary verification.

If it is not possible or practicable for an applicant to obtain an official overseas criminal history check, the Board **may** accept a private overseas criminal history check. In that case an applicant should depose to the reason why an official overseas criminal history check could not be obtained and why the Board can be satisfied of the integrity of the alternative provided. Ordinarily, that an applicant has not allowed sufficient time to obtain an official overseas criminal history check alone will not be considered sufficient reason to dispense with this requirement.

### **5.3 Referee's Certificates**

Rule 10(2)(d) requires an applicant to provide two certificates as to the applicant's good fame and character. The certificates are to be annexed to the supporting affidavit (paragraph 8 of the pro forma affidavit). Rule 3(1) sets out the specific requirements for those certificates, in particular the referee must be a person who is of standing in the community and who has known the applicant for at least three years and who is not closely related to the applicant by blood or marriage. The referee should also confirm satisfaction of these requirements in the certificate.

Applicants need to ensure that the certificates they provide comply with the requirements of the rule (paragraph 8 of the pro forma affidavit).

Rule 3(2) sets out the minimum content required of the certificates. Importantly, rule 3(2)(c) provides that referees are to acknowledge any matter that might adversely affect the question of whether the applicant is a fit and proper person to be admitted. Clearly this requires that an applicant has informed the referee of all disclosures which the applicant makes. The referee's certificate should acknowledge the specific disclosures made by an applicant and must



acknowledge that the disclosures do not affect their assessment of the fitness of the applicant for admission (see also paragraph 7 of the Disclosure Guidelines).

## **6. APPLICATION FOR DIRECTIONS**

A prospective applicant for admission may seek directions from the Board in relation to that application, for example, for approval to undertake concurrent study (see 4.2 above), or an application for early consideration of suitability (section 31).

Applications for Directions are made by affidavit. An email request, or a request by statutory declaration, is not sufficient and may not be accepted by the Board.

An application for early consideration of suitability pursuant to section 31 of the Act has specific requirements which are set out in rule 11.

There is no filing fee for an Application for Directions, nor is there a requirement for it to be served on the Law Society.

If the Board gives directions following an Application for Directions, evidence of the directions so given must be annexed to the supporting affidavit in any subsequent application for admission. The letter from the Secretary of the Board advising the applicant of those directions will be sufficient evidence for that purpose.

## **7. ARTICLED CLERKS**

The provisions as to articles of clerkship are set out in Part 6 of the Rules.

A person intending to enter into Articles must apply to the Board for approval (rule 19(2)). An applicant for approval must comply with the disclosure requirements as apply to applications for admission *mutatis mutandis*.

Two certificates of good fame and character are required from persons of standing in the community who have known the applicant for at least three years (rules 3 and 20).

The Board must be satisfied that the Articles will enable the applicant to achieve the level of competence required by the competency standards (rule 19(4)(d)). The principal must provide details of the nature and scope of the legal work to be undertaken and the extent of the supervision and training to be provided with detailed reference to the competency standards.

For the purposes of calculating the period of one year of satisfactory service under Articles, the period may include up to 4 weeks annual leave and one weeks sick leave. An applicant for admission must depose to any leave taken.