VLAB VICTORIAN LEGAL ADMISSIONS BOARD

Suitability Guide

for Admission to the Legal Profession

Victorian Legal Admissions Board

Updated May 2023

VICTORIA State Government | Justice and Community Safety

Introduction

This Guide is prepared for applicants seeking admission.

You must disclose to the Board details of any matters which:

- might be relevant to the Board's consideration of whether you are a fit and proper person to be admitted to the Australian legal profession, and/or
- a reasonable applicant would consider that the Board might regard as not being favourable to you when considering whether you are a fit and proper person to be admitted to the Australian legal profession.

Disclosure Statement

See "Disclosure Statement template" on our website.

You must read and attest to having read the "Disclosure Guidelines for Applicants for Admission to the Legal Profession".

You must exhibit documentary evidence to support the essential details of the matter/s you are disclosing. If you do not attach such evidence, we may request that you supply it to us, after you have lodged your application, and this may cause a delay in considering your application.

It is possible that a disclosure may contain several factors. In such a case, it will be necessary to consider whether these factors, individually, or together, are likely to be unfavourable to the Board's assessment of your fitness and propriety.

You also have an ongoing obligation of disclosure to the Board whilst your application is in progress and if any relevant matter occurs subsequent to your admission, you must notify the Board in writing in a statutory declaration.

A PDF copy of your disclosure statement, with a maximum file size of 65MB, must be uploaded to the online portal. Collate your disclosure statement, exhibit certificates and exhibit documents into one file. If your document exceeds 65MB, you will need to split it into two or more subsequent documents.

Contact Us

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LAW ADMISSIONS CONSULTATIVE COMMITTEE[1]
DISCLOSURE GUIDELINES FOR APPLICANTS FOR ADMISSION TO THE LEGAL PROFESSION
These Guidelines have been adopted and amended by the Victorian Legal Admissions Board

1. PURPOSES OF THESE GUIDELINES

As an applicant for admission, you need to satisfy your Admitting Authority that you are "a fit and proper person" to be admitted to the legal profession.[2] In all jurisdictions other than South Australia, the relevant legislation also requires the Admitting Authority to consider whether you are currently " of good fame and character".[3] Each of these tests reflects the overarching requirements of the pre-existing common law.

The purposes of these Guidelines are -

(a) to emphasise that Admitting Authorities and Courts place a duty and onus squarely on *you* to disclose to your Admitting Authority any matter that could influence its decision about whether you are "currently of good fame and character" and "a fit and proper person";

(b) to explain that, when you do make a disclosure, you must do so honestly and candidly, and be full and frank in what you say; and

(c) to remind you that failure to do so, if subsequently discovered, can have catastrophic consequences. You might either be refused admission, or struck off the roll, if you have been admitted without making a full disclosure.

There are many judicial explanations of what the phrase "fit and proper person" means in different contexts. For example –

> The requirement for admission to practice (*sic*) law that the applicant be a fit and proper person, means that the applicant must have the personal qualities of character which are necessary to discharge the important and grave responsibilities of being a barrister and solicitor. A legal practitioner, upon being admitted to practice, assumes duties to the courts, to fellow practitioners as well as to clients. At the heart of all of those duties is a commitment to honesty and, in those circumstances when it is required, to open candour and frankness, irrespective of self-interest or embarrassment. The entire administration of justice in any community which is governed by law depends upon the honest working of legal practitioners who can be relied upon to meet high standards of honesty and

[1] LACC'S Charter is approved by the Council of Chief Justices which also appoints its Chairman. LACC is not, however, a committee of the Council, nor does it act on the Council's behalf.

[2] *Legal Practitioners Act 1981* (SA) section 15(1)(a);*Legal Profession Act* 2006 (ACT) section 26(2)(b); *Legal Profession Act* 2006 (NT) section 25(2)(b); *Legal Profession Act 2007* (Qld) section 35(2)(a)(ii); *Legal Profession Act 2007* (Tas) section 31(6)(b); *Legal Profession Uniform Law* (NSW & Vic) section 17(1)(c)..

[3] *Legal Profession Act* 2006 (ACT) section11(1)(a); *Legal Profession Act 2006* (NT) section 11(1)(a); *Legal Profession Act 2007* (Qld) section 9(1)(a); *Legal Profession Act 2007* (Tas) section 9(1)(a); Uniform Admission Rules *2015* (NSW & Vic) rule10(1)(f).

ethical behaviour. It is the legal practitioner who is effectively the daily minister and executor in the administration of justice when advising clients, acting for clients, certifying documents, and making presentations to courts, governments, other professionals, and so on. The level and extent of trust placed in what legal practitioners say or do is necessarily high and the need for honesty is self-evident and essential.[4]

2. STATUS OF THESE GUIDELINES

These Guidelines do not, and cannot, diminish or supplant in any way your personal duty to disclose any matter which may bear on your fitness for admission. They merely provide information about how Admitting Authorities approach the requirement of disclosure. They also give examples of matters which you might otherwise overlook when deciding what to disclose.

The examples given are not, and could not be, comprehensive or exhaustive. You must disclose any matter which is or might be relevant to your fitness, whether or not that matter is mentioned in these Guidelines. Please err on the side of disclosing, rather than concealing, information that might turn out to be relevant in the eyes of an Admitting Authority.

3. RELEVANT PRINCIPLES

Your Admitting Authority will apply the following principles when determining your fitness for admission.

(a) The onus is squarely o*n you* to establish your fitness.

(b) The statutory test is cast in the present tense – whether you are "*currently* of good fame and character" and, except in South Australia, whether an applicant "*is* a fit and proper person". Your *past* conduct, though relevant, is therefore not decisive.

(c) The honesty and candour with which you make any disclosure is relevant when determining your present fitness. High standards are applied in assessing honesty and candour. Full and frank disclosure is essential - although in most circumstances your disclosure of past indiscretions will not result in you being denied admission.

(d) Your present understanding and estimation of your past conduct at the time you make your application is relevant.

[4] *Frugtniet v Board of Examiners [2002] VSC 140* per Pagone, J

(e) Any disclosure you make that may be relevant to whether you are currently able to carry out the inherent requirements of practice is confidential.

4. WHAT YOU NEED TO DISCLOSE

Your duty is to disclose any matter that might be relevant to your Admitting Authority considering whether you are currently of good fame and character and are a fit and proper person for admission to the legal profession.

This means that you *must* state whether any of the matters set out in **Appendix 1** applies to you. Your Admitting Authority has a statutory duty to have regard to each of those matters when considering your application.

But you also need to disclose any *other* matter that might be relevant to your Admitting Authority's decision about whether you are a fit and proper person for admission. Courts now clearly consider that you must disclose any matters relevant to the assessment of your honesty.

Unfortunately, it is not possible to provide you with an exhaustive list of everything that might turn out to be relevant to assessing whether you are currently of good fame and character, or a fit and proper person for admission - and which you should therefore disclose.

Generally, however, your duty is to disclose *any* matter which does or might reflect negatively on your honesty, candour, respect for the law or ability to meet professional standards. You need to provide a full account of any such matter, including a description of your conduct (whether acts or omissions).

Avoid editing, or just selecting those matters that *you* believe *should* be relevant to your Admitting Authority's decision. Rather, you need to fully disclose every matter that might fairly assist the Admitting Authority or a Court in deciding whether you are a fit and proper person.

Revealing more than might strictly be necessary counts in favour of an applicant - especially where the disclosure still carries embarrassment or discomfort. Revealing less than may be necessary distorts the proper assessment of the applicant and may itself show an inappropriate desire to distort by selecting and screening relevant facts.[5]

You will find a list of helpful dos and don'ts in item 6 below to help you decide how to frame any disclosure you need to make. Item 8 also includes further information about disclosures about your capacity.

[5] *Frugtniet v Board of Examiners* [2002] VSC 140, per Pagone J.

Note that if you don't disclose anything, you must include the following statement in your application -

> *I have read and understood the Disclosure Guidelines for Applicants for Admission to the Legal Profession. I am and always have been of good fame and character and am a fit and proper person to be admitted and I have not done or suffered anything likely to reflect adversely on my good fame and character or on whether I am a fit and proper person. I am not aware of any matter or circumstance that might affect my suitability to be admitted as an Australian lawyer and an officer of the Court.*

5. SOME EXAMPLES

The following are examples of matters which you may need to disclose in addition to the matters set out in **Appendix 1**.

(a) **Social security overpayments or offences**

You must disclose any overpayment to you of any kind of Centrelink or social security entitlements at any time, or for any reason, whether or not you have already repaid the relevant amount or the amount has been waived or removed; or whether or not you have been prosecuted in relation to the overpayment.

(b) **Academic misconduct**

You must disclose any academic misconduct, whether or not a formal finding was made or a record of the incident retained by the relevant organisation.

Academic misconduct includes, but is not limited to, plagiarism, impermissible collusion, cheating and any other inappropriate conduct, whereby you have sought to obtain an academic advantage either for yourself or for some other person.

(c) **Inappropriate or criminal conduct**

You must also disclose general misconduct which occurred, say, in your workplace, educational institution, volunteer position, club, association or in other circumstances, if such conduct may reflect on whether you are a fit and proper person to be admitted to the legal profession. This is so, even if the misconduct does not directly relate to your ability to practise law.

General misconduct may include, but is not limited to, offensive behaviour, workplace or online bullying, property damage, sexual harassment or racial vilification.[6]

You also need to disclose any misconduct relating to dishonesty on your part, whether or not that conduct may have amounted to an offence; and whether or not you were charged with or convicted of an offence. This includes conduct that involved misappropriating any sort of property in any way or making false or misleading statements of any kind.

You must disclose any criminal charges or conviction (including spent convictions) for any offence whatsoever - even if the charge was subsequently withdrawn or you were acquitted.

(d) **Intervention orders and apprehended violence orders**

(e) **Infringement or traffic offences**

You must declare offences resulting in a court-ordered fine or other sanction or even an administrative penalty, such as traffic or public transport offences.

(f) **Making a false statutory declaration**

(g) **Tax Offences**

(h) **Corporate insolvency, penalties or offences**

You must disclose any instances of insolvency, offences or penalties relating to any company or organisation of which you were a director or responsible officer at the time.

6. DOS AND DON'TS

A number of recent cases consider the over-arching obligation to be candid and honest when making a full and frank disclosure of something you choose to disclose**.** The following dos and don'ts emerge from those cases.

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(a) You need to make sure that what you tell the Admitting Authority is completely accurate.

[6] By way of illustration, in *XY v Board of Examiners* [2005] VSC 250, Habersberger, J found that an applicant was under a duty to disclose that a volunteer position had been terminated as a result of making offensive remarks to a fellow worker and that she was also required to disclose property damage she had caused at a meditation retreat, notwithstanding that charges were not laid.

(b) Check the relevant facts to ensure that your statement cannot be misleading. If necessary, check those facts with third parties who know about them.

(c) Even if the matter you are disclosing seems to you to be relatively minor, you must provide full and frank details to the Admitting Authority. You need to include *all matters* that could be relevant to your Admitting Authority's assessment.

(d) You must do this *when you first make your disclosure*. Don't wait for the Admitting Authority to ask you for further information.

(e) Failing to make a full and frank disclosure first up may show that you do not fully understand the honesty and candour that a legal practitioner must demonstrate – even if you didn't intend to mislead or conceal information.

(f) This failure, alone, may show that you are not yet a fit and proper person to be admitted.

(g) If you deliberately or recklessly misrepresent or conceal facts relevant to your disclosure, you may not be admitted.

(h) If you are admitted after deliberately or recklessly concealing facts relevant to your disclosure, your admission may well be revoked once your deception is uncovered.

(i) Make sure that you give the Admitting Authority as much information about the circumstances of the event you are disclosing as will allow it to assess the gravity of the event for itself.

(j) Give a full picture of the events and a thorough explanation of your conduct.

(k) Views can differ about what level of detail is sufficient to demonstrate honesty, candour and full and frank disclosure. The Admitting Authority's view may be different from yours. If in doubt, it may be wise to give more, rather than less, information.

(l) Don't seek to minimise your culpability; to deflect blame onto others; or to conceal information that may be unfavourable to you.

(m) Try to show the Admitting Authority that you have insight into why and how the event occurred; that you take full responsibility for it; and why the Admitting Authority can be satisfied that you will not do similar things in the future.

(n) It is not enough simply to express remorse. Because your fitness to practise is assessed at the time you make your application, you need to show the Admitting

Authority that what you have done to redeem yourself, or to rehabilitate yourself since the event occurred.

(o) You may need to produce independent evidence from others to show that you are now a fit and proper person. Your own assertions may not be enough.

(p) If you can show the Admitting Authority the active steps you have taken to rehabilitate yourself, this may demonstrate that you have appreciated the gravity of your conduct; have accepted responsibility for it; have taken steps to rehabilitate yourself; and understand the obligation of honesty, candour and full and frank disclosure.

(q) If, however, your past conduct was very serious or involved extreme dishonesty, it may be hard to convince an Admitting Authority that you are a fit and proper person to be admitted.

7. CERTIFICATES OF CHARACTER

Please also note that any person who supplies a certificate of character to support an application -

(a) must be aware of, and have actually read, any disclosure you make of the type mentioned above; and

(b) must attest to those facts in the person's certificate of character.

Because of the privacy implications of disclosures about your capacity, a person who supplies a certificate of character need not be aware of any disclosure you have made about your capacity: see item 8.

8. DISCLOSURES ABOUT CAPACITY

8.1 What the law says

An Admitting Authority is also required to consider whether, at the time of making your application, you are able to carry out the inherent requirements of legal practice.

The requirement of capacity is separate and distinct from the requirement to be a fit and proper person or of good fame and character.

The Legal Profession Acts and Admission Rules variously describe matters relating to an applicant's capacity about which an Admitting Authority must satisfy itself, in the following ways -

(a) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner; [7]

(b) whether the person is currently unable to carry out the inherent requirements of practice as an Australian legal practitioner; [8]

(c) whether the person currently has a material inability to engage in legal practice. [9]

Further, in deciding whether you are a fit and proper person, most Admitting Authorities also have power to have regard to any other matter it considers relevant, in addition to each of the matters particularly prescribed by legislation.

Your precise obligation thus depends on the relevant legislation in the jurisdiction in which you seek admission.

Note, however, that apart from making disclosures which respond to the particular legislative requirement relevant to your capacity, it would be sensible for you to disclose any other matters which an Admitting Authority might think relevant when assessing your current capacity to engage in legal practice.

8.2 What your Admitting Authority does

Your Admitting Authority has a positive, encouraging approach to people seeking admission who experience mental, physical or other health conditions or disabilities. It wishes to ensure that such people are assisted, encouraged and supported to seek admission and to engage in legal practice.

It encourages people to seek medical or psychological help before seeking admission and, indeed, whenever they feel the need. Willingness to seek help counts in one's favour. Seeking early help can both demonstrate appropriate insight into one's condition or disability and also avert the risk of conduct that could become relevant to one's suitability for admission. Seeking psychological or medical help will not, of itself, prejudice one's ability to be admitted. Similarly, telling the Admitting Authority about the circumstances underlying the help received will not, of itself, prejudice one's ability to be admitted. On the contrary, it may show that one has appropriate strategies to deal with any stresses that arise in the course of legal practice; and that any former difficulties have been overcome.

If you happen to have, or to have experienced in the past, a mental, physical or other health condition or disability -

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[7] *Legal Profession Act 2006* (ACT) section 11(m); *Legal Profession Act 2004* (NSW) section 9(m); *Legal Profession Act* 2007 (Qld) section 9(1)(m); *Legal Profession Act 2007* (Tas) section 9(m); Uniform Admission Rules 2015 (NSW & Vic) rule 10(1)(k)

[8] *Legal Profession Act 2008* (WA) section 8(m).

[9] *Legal Profession Act* (NT) section 11(1)(m).

(a) you are encouraged to obtain medical or psychological help if you feel you need it; and

(b) that condition or disability, or the fact that you have sought or are obtaining help, will not necessarily prejudice your application for admission; but

(c) your Admitting Authority is likely to consider that any behaviour or conduct arising from, or attributable to, that condition or disability is relevant, and should therefore be disclosed.

Your Admitting Authority's task is to determine if you are *currently* able to carry out the inherent requirements of practice. It will do this in the light of any disclosures you make and any supporting information you choose to provide.

Any mental, physical or other health condition or disability which you have, or may have had in the past, will only be relevant if it affects your current ability to carry out the inherent requirements of practice.

Except for the purposes of the administration of its relevant legislation, or as otherwise required by law, your Admitting Authority will not disclose to others (including any prospective employer) any personal or medical evidence that you disclose to it. In order to further protect your privacy, you may make any disclosure about your capacity in a separate statutory declaration lodged with your application.

8.3 When a health condition may be relevant

(a) Very occasionally, *the mere existence* of a health condition or disability may directly affect your current ability to carry out the inherent requirements of practice. For example, if you earlier had a car accident, or an illness, which means you are no longer able to remember instructions which you are given, you may not currently be able to carry out the inherent requirements of practice. You need to disclose any such difficulties to your Admitting Authority.

(b) Sometimes your *past conduct* (whether by act or omission) might raise questions about whether you are currently able to carry out the inherent requirements of practice. Repeated instances of certain conduct might cast doubt on your insight, or on your ability to make sound judgments. You need to disclose any such conduct to your Admitting Authority.

(c) If you think that conduct might be wholly or partly explained by, or associated with, some physical, mental or other health condition or disability (whether diagnosed or not), you can choose to disclose that condition or disability; and may provide any supporting medical evidence that you think might assist your Admitting Authority to decide whether you are currently able to carry out the inherent requirements of practice. Such information may well explain the reasons underlying your conduct; and demonstrate that

the underlying cause has been effectively dealt with or appropriately managed.

If you seek to demonstrate that your condition or disability is appropriately managed and stable, a certificate to that effect from one or more of your treating medical practitioners would greatly assist your Admitting Authority.

8.4 Examples

The following examples are merely indicative illustrations. An Admitting Authority responds to the particular circumstances of each application. The examples cannot thus be considered as binding.

(a) S found first year law very difficult. She wasn't prepared for the work required and found it hard to meet all deadlines. As she had always done well at school, she was surprised that her law school marks were always bare passes. She became anxious about her capacity and questioned whether she should be doing law.

On the recommendation of a lecturer, she attended the University's counselling service. The counsellor helped her to recognise the causes of her anxiety; advised her how to manage those causes; and recommended that she should attend a mindfulness course. After working with the counsellor, and undertaking the mindfulness course, S still felt stressed about law school. Having learned how to manage her stress appropriately, however, she successfully completed her law course and PLT course.

S would not need to disclose these circumstances to her Admitting Authority.

(b) P comes from a family with a history of severe depression and has suffered depression for many years, attempting suicide on several occasions. He managed to get through his law course with difficulty, often requiring substantial special consideration to complete assessments and examinations.

He has completed an on-line PLT course, but his depression persists. It severely affects his ability to engage in daily activities; and he often finds that he is unable to get out of bed in the morning.

P would need to disclose his difficulties to his Admitting Authority, as they raise questions about whether he is currently able to carry out the inherent requirements of practice. Disclosing his condition to the Admitting Authority does not necessarily mean that he would not be admitted, however. The Admitting Authority would probably wish to know whether, and if so how, his present difficulties might be overcome or managed. It would be sensible for P to answer these questions in his initial disclosure, rather than waiting to be asked for further information by the Admitting Authority.

(c) M enjoyed the early years of his law course and was doing well. In his third year, however his mother was diagnosed with a serious illness and died late in the year. M was her primary caregiver during her illness and was devastated by her death. He failed several subjects that year, because of the stress of nursing his mother and his inability to talk about his circumstances with others, and obtained special consideration.

Subsequently, however, he became depressed and stopped attending law school. He consulted his GP who diagnosed depression and assisted him to undertake a series of treatments. M found that a combination of medication and counselling helped him regain his equilibrium. He re-enrolled and successfully completed both law and a PLT course. He no longer requires either medication or counselling.

M would not need to disclose these circumstances to his Admitting Authority.

(d) During the law course, T developed delusions that his teachers were conspiring to have him removed from the law school. He wrote angry, hostile emails to law school and university staff, and alleged serious misconduct and mistreatment on their part to a number of authorities.

When several internal University investigations found no proof of his allegations, he became convinced that the conspiracy was widespread. Several University disciplinary actions followed in response to his behaviour, one of which referred him to his GP who, in turn, referred him to a specialist who diagnosed paranoid schizophrenia.

T would need to disclose the activities which preceded his reference to his GP. Given the seriousness of his diagnosis, it would also be prudent for T to declare that condition and how it is being treated and managed, as each of these matters reflect on whether he is currently able to carry out the inherent requirements of practice.

Disclosing his condition and treatment to the Admitting Authority does not necessarily mean that he would not be admitted, however. The Admitting Authority would need to know whether, and if so how, his present difficulties are being overcome or managed.

9. MATTERS PRESCRIBED BY LEGAL PROFESSION LEGISLATION

You must disclose any matter relevant to suitability that is prescribed by legislation relating to the legal profession in the jurisdiction where you seek admission. The matters prescribed are set out in **Appendix 1**.

10. FORM OF DISCLOSURE

Any disclosure which you are required to make must be included either in your statutory declaration applying for a compliance certificate or, in the case of a disclosure about capacity, in a supplementary statutory declaration, if you prefer. To corroborate your disclosures, you should make any available supporting document an exhibit to your statutory declaration.

APPENDIX 1

PRESCRIBED MATTERS RELATING TO SUITABILITY FOR ADMISSION

As noted in items 4 and 8 of the Guidelines, your Admitting Authority is required to satisfy itself about each of the following matters. Accordingly, you need to disclose anything that your Admitting Authority might consider relevant when satisfying itself about each of these matters.

(1) For the purposes of section 17(2)(b) of the Law, the following matters are specified as matters to which the Board must have regard –

(a) any statutory declaration as to the person's character, referred to in rule16;

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

(c) any police report provided under rule 18;

(d) and academic conduct report provided under rule 19;

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

(f) whether the person is currently of good reputation and character;

(g) whether the person is or has been a bankrupt or subject to an arrangement under Part 10 of the Bankruptcy Act 1966 of the Commonwealth or has been an officer of a corporation that has been wound up in insolvency or under external administration;

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

- the nature of the offence; how long ago the offence was committed; and
- the person's age when the offence was committed

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

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

(k) whether the person is currently unable to satisfactorily carry out the inherent requirements of legal 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.

TYPES OF DISCLOSURES

Note: For the assistance of Victorian applicants

Social Security Social Security overpayments are common disclosures made by applicants. What should be considered in determining the significance of the matter is the amount owing, the period over which the overpayments occurred, and the explanation behind why the overpayments occurred. There are generally three reasons why an applicant would incur a debt from Centrelink: 1. **Under-declaring Income** is considered the most serious if an applicant is found to be intentionally under-declaring income in order to gain a financial advantage, this would be deemed significant. 2. Overpayments incurred due to a **change in study circumstances** is generally considered a minor offence 3. **Change to family allowance** based on spousal income is generally considered a minor offence.	An overpayment incurred from under-reporting income less than $3000 is considered **minor** and may be approved. Any overpayment more than $3000 may be considered significant and require further information or referral to a Committee meeting. The Committee takes into consideration the amount of the debt and whether it is outstanding. It is a general rule that debts should be paid off prior to admission although this remains at the discretion of the Committee.
Academic Misconduct Academic misconduct refers to the failure of an applicant to maintain the high standards of academic integrity. There are three categories of Academic Misconduct: 1. **Plagiarism** refers to presenting someone else's work or ideas as your own, with or without consent, by incorporating it into your work without full acknowledgment or references. (significant) 2. **Collusion** includes providing work for another student to submit as part of their assignment or co-writing or sharing the background information that will be used in assessable work. (significant)	Most forms of academic misconduct are generally deemed significant and further information will most likely be required including copies of plagiarised material, correspondence between the university and the applicant and further reflections Referral to a Committee meeting may be required if the facts relate to a significant disclosure. The Committee also considers the amount of time that has elapsed since the misconduct and whether the offence occurred in a relevant law degree or practical legal training course. You must disclose any misconduct, whether or not a formal finding was made or a record of

3. **Other Misconduct** includes purchasing, commissioning or selling essays, copying or possession of unauthorised materials in examinations; falsification or misrepresentation of data, inappropriate behaviour. (significant)	the incident was retained by the relevant organisation. All informal findings must be disclosed whether or not they appear on a conduct report.
Traffic Infringements Traffic infringements are the most common disclosures made by applicants. They include: 1. Speeding 2. Using Mobile Phone whilst driving 3. Disobeying Road Rules 4. Driving an unregistered vehicle 5. Driving without a licence 6. Driving on a toll road without registration	Traffic infringements are generally considered as minor. The frequency or number of fines, or the failure to pay fines may give rise to concern in the eyes of the Committee and may then be deemed significant. The Committee also takes into consideration the time that has elapsed since the last infringement. A copy of a VicRoads report can be useful. Disclosure of less than 10 infringements over 10 years is considered minor, above 10 infringements may be considered as a significant disclosure and therefore will require further information including a driver's history report and further details.
Transit Infringements Transit infringements are common and generally considered minor disclosures. They include: 1. Failure to produce valid ticket 2. Failure to produce evidence of concession 3. Placing feet anywhere other than the train seat 4. Other transit related offences	Transit infringements are generally considered to be minor. The frequency and number of fines, or the failure to pay fines must be considered and may give rise to concern in the eyes of the Committee and then deemed significant.
Parking Infringements Parking infringements are generally considered minor disclosures. They include all aspects or parking a vehicle illegally.	Parking infringements are considered a minor disclosure. The frequency, number of fines and failure to pay fines may influence the determination of the severity of the matter which may escalate to a significant disclosure.
Summary Offences Summary offences generally refer to offences that are heard by lower Courts, these include:	Although summary offences are considered to be less serious in a court, they may be significant disclosures in the eyes of the Committee.

1. Road Traffic Offences including careless driving, drink driving and unlicensed driving. 2. Minor assaults 3. Property damage 4. Offensive behaviour Public intoxication refers to being drunk in public.	The Committee also considers, the time that has passed since the offence and whether the applicant's disclosure shows rehabilitation and remorse.
Criminal Offence A criminal offence is an offence punishable to imprisonment. You must disclose a criminal charge, as distinct from a criminal conviction, even if charges were subsequently withdrawn or the applicant was acquitted. The fact that an applicant's character has been brought into question may be sufficient to give rise to a need to disclose. Any criminal conviction is likely to be considered a significant disclosure. A criminal charge may be considered minor depending on circumstances of the matter. There are circumstances where serious drink driving offences are deemed criminal offences. **Intervention Orders or Apprehended Violence Orders** IO or AVO are likely to be considered minor if cross applications and dates elapsed	In most cases criminal conduct is considered a significant disclosure. The Committee also considers, the time that has passed since the offence and whether the applicant's disclosure shows rehabilitation and remorse. Matters of a criminal nature are generally referred to the Committee. All matters must be disclosed whether or not it appears on a National Police Report. The Committee takes into the account the circumstances and the period of time passed since the orders were made.
Drug Offences A drug offence refers to the possession, use, sale or furnishing of any drug or intoxicating substance or drug paraphernalia, that is prohibited by law.	See Criminal Conduct

Theft Theft refers to: 1. Obtaining by deception 2. Burglary 3. Robbery/armed robbery 4. Handling/ receiving stolen goods	See Criminal Conduct
Property Damage Property Damage refers to: 1. Arson 2. Posting bills or defacing property, including graffiti and vandalism 3. Tampering with a motor vehicle 4. Threats to damage or destroy property	See Criminal Conduct
Bankruptcy and Part IX Debt Agreements Bankruptcy refers to a legal process where an applicant is declared unable to pay their debt. Insolvency refers to an applicant or company that can no longer meet their financial obligations with its lender as debts become due.	Matters of bankruptcy and insolvency where the applicant was a responsible officer are considered as a significant disclosure. In matters of bankruptcy and insolvency, further information will most likely be required including statement of affairs and relevant correspondence. The Committee takes into the account the circumstances and the period of time passed since the bankruptcy.
Unlawful taxation offences Unlawful taxation offences refer to crimes that abuses the tax and superannuation systems for financial benefit. These crimes refer to: 1. Hiding cash wages to avoid tax; 2. Using complex offshore secrecy arrangements to falsify claiming refunds and benefits not entitled to.	Similar to matters of Social Security, if the motive of the applicant was to gain financial benefit it would be considered a significant disclosure.
BAS and taxation returns Late payment of BAS and Tax Returns may result in a Failure to Lodge penalty imposed by the Australian Taxation Office.	Matters relating to late payments are generally considered minor if in order at time of application for admission.

Sexual harassment and Bullying Sexual harassment refers to behaviour characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation. Bullying refers to the use of force, threat, or coercion to abuse, intimidate or aggressively dominate others.	Matters of sexual harassment and bullying are considered significant.
Failure to vote Failure to vote at a federal, state or local election without a valid and sufficient reason is an offence.	Failure to vote infringements are generally considered as minor. The frequency or number of fines, or the failure to pay fines may give rise to concern in the eyes of the Committee and may then be deemed significant. The Committee also takes into consideration the time that has elapsed since the last infringement.
False declarations An applicant who makes a declaration, either a statement or an affidavit, that they know is false, whether or not the applicant is permitted or required by law to make a declaration.	A false declaration puts into question an applicant's integrity and honesty and may be considered a significant disclosure.
Civil offences Civil offences relate to: 1. Defamation 2. Breach of contract 3. Property damage	Civil offences are considered significant. The Committee takes into consideration the time that has elapsed since the offence and may require further information relating to the relevant tribunal.

Capacity Statement

The Board must have regard, when deciding whether to grant a compliance certificate, to whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner.

A mental health condition may be relevant to consideration of this question and hence may need to be disclosed to the Board.

If you wish to make a disclosure relating to capacity, you should set out the details in a separate statutory declaration.

When an applicant for admission discloses a health condition the primary focus of the Board is whether, at the time of making the application, an applicant is able to carry out the inherent requirements of legal practice. The requirement of capacity is separate and distinct from the requirement to be a fit and proper person or of good fame and character. A particular diagnosis or course of treatment taken by an applicant is not directly relevant to the assessment of suitability.

Evidence that the applicant has obtained appropriate medical or psychological treatment will help to satisfy the Board the underlying cause has been addressed. The Board encourages prospective applicants to seek medical or psychological help for health issues. A willingness to seek this help will count in an applicant's favour. The Board takes the view that untreated conditions pose the greatest risk of problems in legal practice.

If the condition is current, the Board is assisted by a letter from a treating physician setting out the current condition and attesting to the fitness and suitability of the applicant to be admitted as an Australian Lawyer.

Although there is no strict definition of the inherent requirements of practice of an Australian legal practitioner in the legislation directing the Board, the following can be used as a guide:

a. Able to perform the day-to-day tasks associated with the provision of legal service which includes communicating in a professional manner.
b. Able to discharge professional and fiduciary duties to the client.
c. Able to discharge duties to the Court.
d. Able to be honest and courteous in legal practice
e. Abide by duty not to engage in conduct which is likely to be prejudicial or diminish the public's confidence in the administration of justice or bring the profession into disrepute.
f. Abide by duty not to mislead the Court knowingly or recklessly.

A PDF copy of your capacity statement, with a maximum file size of 65MB, must be uploaded to the online portal. Collate your capacity statement, exhibit certificates and exhibit documents into one file. If your document exceeds 65MB, you will need to split it into two or more subsequent documents. See Capacity Statement on our website.

THE DUTY OF FULL AND FRANK DISCLOSURE

Note: For the assistance of Victorian applicants

The duty of full and frank disclosure is critical in demonstrating that an applicant is a fit and proper person to be admitted as a legal practitioner. It demonstrates that the applicant has understood a legal practitioner's paramount duty of honesty and candour to the Court.

Disclosure which is inadequate or inaccurate can demonstrate that the applicant is not a fit and proper person, even where the underlying misconduct might not of itself have been so serious as to prevent admission.

This document is designed to assist you to understand the extent of disclosure that is expected by highlighting some examples of applicants who have faced difficulties because of their inadequate candour. It provides some illustrative examples but does not exhaustively list all issues that applicants must address. It is essential that applicants read as many relevant cases as necessary to feel satisfied that they have understood their duty and complied with it.

1. Lack of understanding of the duty of disclosure can of itself be an indication of unfitness for admission, even if the failure to disclose is not intentional

Full and frank disclosure is just as important, if not more important, than the underlying conduct being disclosed. Even if inadequate disclosure is not an intentional or deliberate attempt to mislead or conceal the specifics from the Board, it demonstrates that the applicant has not sufficiently understood the obligations of honesty and candour that a legal practitioner must demonstrate. This lack of understanding can alone demonstrate that the applicant is not yet a fit and proper person to be admitted to the legal profession.

Onyeledo [2016] NTSC 60

The applicant disclosed that she had been found to have engaged in academic dishonesty in two subjects at university. The first time, she had used model answers her lecturer had posted on a discussion board without attribution. The second time, she submitted an assignment that was largely copied and pasted from other sources with inadequate referencing.

The applicant's initial affidavit deposed that the explanation for the second instance of dishonesty was that she wasn't familiar with the law referencing style and was under pressure as the assignment was due to be submitted alongside other assignments. She later filed a second affidavit deposing that the plagiarism was not intentional, and that she did not do her research properly and struggled with paraphrasing as English is not her first language.

The Board later received information from the University to the effect that the university regarded the first instance of dishonesty to be an honest error, but that the second instance was deceptive. The applicant then filed a third affidavit deposing that in preparing the second assignment, she prepared a first draft by cutting and pasting material from various sources with the intention of paraphrasing the content into her own words. However, she ran out of time and was not very proficient with paraphrasing.

The Court accepted that the applicant did not intend to pass off the work of others as her own and that her academic misconduct was likely attributable to her poor grasp of essay writing and referencing skills, and to her running out of time.

However, the Court was not satisfied that the applicant was full and frank in her disclosures to the Board. Her initial affidavit was incomplete and did not explain that her second assignment was cut and pasted from multiple sources. Whilst her later disclosure was more satisfactory; it came seven months after she had filed her first affidavit and after the university had sent further information.

The Court accepted that the applicant did not deliberately attempt to conceal the specifics of her misconduct from the Board but found that her conduct reflected a lack of understanding of the stringent nature of the obligation of disclosure to the Board and to the Court. The Court was also not satisfied that she had gained the requisite insight into legal citation, referencing and plagiarism which are concepts essential to the honesty required of a legal practitioner.

The applicant was not admitted. Her application was adjourned for at least six months to allow her to attempt to demonstrate to the Court that she had acquired the necessary understanding of her ethical obligations.

2. Deliberate concealment or attempts to mislead the Board are extremely serious

Deliberate or reckless misrepresentation or concealment demonstrates that an applicant has not understood and complied with their duty of disclosure and is not a fit and proper person to be admitted. Any admission achieved by misleading conduct is likely to be revoked once the deception is discovered.

OG [2007] VSC 520

OG and GL were students together at university. In a particular subject, they completed a group assignment together. A further assignment was to be based on the results of group assignment but completed individually.

OG and GL's second assignments contained striking similarities. Each of the students were called before academic staff to explain the similarities on suspicion of collusion. Neither explanation was accepted and each received a zero mark for the assignment.

Both OG and GL later applied for admission. GL disclosed to the Board that he had been accused of collusion with a fellow student and received a zero mark. He did not name OG as the fellow student. OG disclosed that he had received a zero mark but deposed that it was because he had misunderstood the nature of the assignment. He said that he believed it to be an individual assignment whereas it was a group assignment.

On the basis of this disclosure, OG was successfully admitted. GL was referred to a special hearing of the Board. OG's involvement in the collusion GL had disclosed was only discovered in the course of GL's hearings before the Board.

GL and OG's evidence differed significantly. OG denied ever being told by the relevant academics that he was suspected of collusion. He denied discussing the assignment or colluding with GL. He denied various later conversations with GL about GL's disclosures to the Board.

When first asked to give evidence about the issue, OG's affidavit to the Board did not give any explanation for the similarities between the two assignments or suggest that GL had copied from OG. However, in cross-examination, he accused GL of accessing his computer files and copying his assignment. He later also accused GL of changing OG's document to make it look as if OG had copied GL, and OG had not noticed the changes at the time.

The Court found that OG's evidence was false. The Court inclined to believe that GL had prepared an outline or plan as the basis of the assignment and that both students had then colluded to make a draft which each then settled individually.

The Court found that the academics involved must have conveyed to OG that he and GL were believed to have colluded. His original affidavit of disclosure deposing that he had received a zero mark because he mistakenly wrote up the assignment individually was false.

The Court found that OG had deliberately or recklessly misrepresented the situation and failed to make full and frank disclosure of the true circumstances in which he received a zero mark.

The Court emphasised that the obligation of disclosure requires that an applicant be frank and honest with the Board. Increasingly, there is an expectation that even ancient peccadillos

should not be left out. An applicant must at least disclose anything which he or she honestly believes should not be left out. Plainly, candour does not permit of deliberate or reckless misrepresentation pretending to be disclosure. OG's actions were the antithesis of a realization of his obligation of candour to the court in which he desires to serve as an agent of justice.

OG submitted that he should not be struck off the roll because since his admission he had performed satisfactorily at the Bar as a member of counsel. The Court disagreed. It found that he should not be permitted to benefit from the fact that he managed to mislead the Board.

OG's admission was revoked and he was struck off the roll of practitioners.

3. The applicant must demonstrate appropriate insight into their misconduct and demonstrate that they have rehabilitated themselves

Previous misconduct, even if serious, does not necessarily mean that an applicant cannot be a fit and proper person to be admitted to practice. Fitness is assessed at the time of the application, not at the time of the offending, and takes into account whether the applicant has taken steps to redeem their character.

It is therefore not enough simply to provide a brief description of past misconduct or offending and profess remorse. It is important to give the Board as much information possible about the surrounding circumstances so that the Board can assess for itself the gravity of the misconduct. It is essential that the disclosure gives the full picture and does not seek to minimise culpability, deflect blame or conceal unfavourable information. The applicant must give a full explanation for the past conduct, demonstrate insight into why and how the conduct occurred, satisfy the Board that they have taken full responsibility and demonstrate why the Board can be satisfied that such conduct will not be repeated in the future.

Saunders – [2011] NTSC 63

Whilst doing his law degree, the applicant did not declare additional income and over a period of 2 years he received over $9000 in Austudy benefits to which he was not entitled. He was charged with and pleaded guilty to criminal offences and was released on a bond in the sum of $2000 in his own recognizance to be of good behaviour for 12 months.

The applicant applied for admission in the Northern Territory and disclosed his convictions to the Board. He attached the magistrate's sentencing remarks. He deposed that when he started working, he attempted three times to inform Centrelink to declare his income but was not sent the right forms. He then felt frustrated and was in financial need, so decided to continue

receiving his benefits with the intention of repaying any debt later. He saw the money as a loan which he would repay with interest.

The Northern Territory Supreme Court found that he was not a fit and proper person to be admitted to legal practice.

First, the Court rejected the applicant's evidence that at the time he committed the offence, he was not aware that his conduct would amount to a criminal offence. The Court found that his evidence was fanciful and reflected an effort to minimise his culpability. It demonstrated that he was not fully accepting of responsibility for his criminal conduct and, at the time he sought admission, did not acknowledge the true state of his mind as it existed at the time of the offending. His explanations to the Court sought to deflect blame on others.

Second, the applicant's initial disclosure was deficient and misleading. The applicant did not provide further information from Centrelink or a copy of the submissions he had made to the sentencing magistrate until after the Board made a specific request. It is not sufficient to give incomplete information and rely on the Board to request relevant information that gives the whole picture. The disclosure also gave the false impression that the applicant's offending was entirely passive and placed emphasis on Centrelink for failing to follow the proper processes. This attempt to emphasise the role of Centrelink showed that the applicant had failed to accept and acknowledge the level of criminality involved in his deliberate and calculated withholding of information.

Third, the transcript of the sentencing hearing which the Board had requested revealed that his submissions to the sentencing Magistrate were not entirely candid. He gave the impression that he cooperated completely with Centrelink and the Magistrate sentenced him on this basis. However, the information the Board requested from Centrelink showed that his co-operation and disclosure to Centrelink only came after he was made aware that Centrelink was investigating his entitlements. He had submitted to the Magistrate that his offence was one of omission whereas the information from Centrelink revealed that on two occasions he had actively applied for and obtained advances on his benefits in full knowledge that he was not entitled to them. The applicant made no attempt to correct these false impressions.
Fourth, the applicant had provided no evidence of what he had done to rehabilitate himself since the offending.

Saunders [2015] NSWSC 1839

Four years later, the applicant applied for admission in New South Wales. The Supreme Court of New South Wales found that the applicant had by that time become a fit and proper person.

Previous offending, including dishonesty, does not necessarily preclude admission to practice forever. The Court found that in the intervening years, the applicant had accepted that he had dealt poorly with his offending in his first application. He had accepted the criticisms of the Northern Territory Supreme Court and taken active steps to rehabilitate himself, as demonstrated by detailed evidence from his friends and colleagues. He had demonstrated that he accepted proper responsibility was truly remorseful for his offending.

Note: Because fitness to practice is assessed at the time of the application, past offending is not necessarily determinative. The passage of time and evidence of rehabilitation can demonstrate a change in character. However, the passage of time is not of itself enough. Where the past misconduct is very serious or involves extreme dishonesty, an applicant will bear a heavy burden in convincing the Board or the Court that they are fit and proper for admission to practice.

Hilton [2016] NSWSC 1617

The applicant was a very successful criminal solicitor who had been convicted in 1986 of being party of a conspiracy to corrupt the Minister for Corrective Services. He facilitated the Minister receiving bribes from his clients to secure their early release from prison. He was imprisoned and removed from the roll of practitioners. He was 43 years old at the time he was convicted.

After serving his prison sentence, he worked in various roles of responsibility, including as a 'lay associate' in a law firm. Some 30 years after his conviction at the age of 73, he applied to be readmitted as a solicitor.

The Court noted that the applicant's offending had three extremely serious components. First, it involved corruption of a public official at the highest echelon of government. Second, it was committed in the course of his practice as a solicitor. Third, it operated to pervert the course of justice. The offending was the worst category of offences affecting a person's fitness and propriety to join the legal profession.

The Court found that at the time of his offending, the applicant knew that his conduct was dishonest and corrupt. The Court accepted that at the time of his application for re-admission, the applicant was ashamed of his conduct and truly remorseful and had accepted the seriousness of his conduct and the damage he had done to the legal profession.

However, the Court also found that the applicant engaged in the conduct to enhance his practice and that his conduct was not a display of moral weakness or desire to please others.

Rather, it was a display of his amorality in the sense of an indifference to the unethical nature of his conduct. Amorality the most damning type of character defect that a legal practitioner can possess and makes his task of persuading the Court that he has reformed much more difficult. The Court accepted that his work was an insurance and finance broker and a lay associate required him to display honesty and integrity and there was no suggestion that he did not do so. Indeed, 35 people produced affidavits attesting to his good character. That evidence presented a strong case that the applicant was fully contrite for his conduct and demonstrated that he acted honestly in his other work. However, that evidence had its limitations.

First, many of those witnesses had known the applicant before his offending and had not suspected then that he was acting dishonestly. Indeed, the very nature of serious transgressions committed by legal practitioners is that they are committed by persons who appear trustworthy and honest and the ethical rules applying to legal practitioners can only be enforced by the practitioner's own conscience.

The Court found that the applicant came very close to discharging his burden but was ultimately not convinced that he was a fit and proper person to be admitted.

In determining the application, the Court was not exercising a punitive function but a protective role, which required it to have primary regard to the protection of the public interest and the interests of the profession. The long passage of time since the offending without any other transgression is favourable but does not necessarily prove a change in character. The original offending was committed at a time when the applicant was already 43 years old, an age when character is often fully formed.

It was significant that the applicant's crime was not the result of some momentary moral weakness but demonstrated his amorality. It was sustained and committed with deliberate intent. It caused severe losses in the form of damage to the integrity of the State's institutions of government and the legal profession.

Whilst the Court accepted that the prospects of the applicant committing another offence of the same magnitude were so low that they could be discounted, the applicant still had to demonstrate that he would uphold the high standards of honesty and integrity expected in all respects relevant to legal practice.

The Court had to consider the effect that readmission would have on the understanding, in the profession and amongst the public, of the standard of behaviour required of solicitors. The public must have trust in the profession. Fellow practitioners must be able to depend implicitly on the word and behaviour of their colleagues. If practitioners cannot assume in the ordinary

course of dealing that other solicitors are honest and must in prudence check the truth of what the other has suggested, the administration of justice would be seriously impeded.

The Court found that the circumstances of the offending and the finding of amorality were so grave that, notwithstanding the passage of time and the significant evidence in the applicant's favour, a decision to readmit him would undermine public confidence in the standards expected of the legal profession and would unjustifiably place other members of the profession in the position of having to place trust in the applicant when they would be entitled to have serious reservations in doing so.

Petsinis [2016] VSC 389

The applicant was a former solicitor who had, over a period of about 3 years, stolen money from his clients' settlement payments. He was discovered, convicted and sentenced, and struck off the roll.

A few years later, the solicitor began working as a conveyancer and carried on a conveyancing business for many years. During that time, he engaged in several instances of unqualified legal practice including preparing wills and special conditions to contracts of sale, rescission notices and leases.

Some 30 years after the initial theft offences, he applied for readmission. The Board of Examiners referred his application to the Full Court of the Supreme Court of Victoria.

The Court began from the position that the power to reinstate should be exercised with the greatest caution and only on solid and substantial grounds. There is a presumption that, having been struck off the roll, the applicant carries a permanent defect that renders them unfit to be admitted. The applicant must show the defect no longer persists and show his worthiness and reliability for the future. The Court's intention is not to repeatedly impose punishment for past wrongdoing. It's concern is with protecting the public, the administration of justice and the reputation and standing of the legal profession.

There is a public service in reinstating those who have rehabilitated themselves because it encourages rehabilitation and redemption of those who have acted wrongly.

The Court found that the applicant did not have a permanent defect in his character. Over the 30 years of his conveyancing practice, he had handled very large sums of money without any suggestion of dishonesty or impropriety. He would not constitute a risk to the public. His efforts in adapting to his circumstances after being struck off were commendable.

The Court was troubled by the instances of unqualified legal practice. However, it was satisfied that the applicant had not deliberately flouted the law and now learned the risks of such behaviour and would not repeat it. By drawing attention to his various breaches of the law, scrutinising his poor decisions through the process of drafting his affidavits of disclosure, submitting to cross examination and seeking the Court's approval, the applicant had brought the risks of future non-compliance to the forefront of his mind.

Finally, the Court had regard to the fact that he did not intend to seek a practising certificate if readmitted. Rather, he sought readmission only to allow him to obtain an unlimited conveyancing licence and to do legal work related to conveyancing.

The Court admitted the applicant on the conditions that he would not apply for a practising certificate and would confine his practice to conveyancing work.

Note: In some cases, the applicant's own assertions that they have rehabilitated themselves are not sufficient. However, independent evidence from those able to observe and test their character can assist an applicant to show that they have become fit and proper.

Cohen [2012] QCA 106

The applicant was a 66 year old accountant and tax agent. He had some criminal history, had been bankrupt and his company had failed to comply with its tax obligations. His company, which ran a financial studies college, had been found guilty by the Consumer Trade and Tenancy Tribunal of misleading conduct and its appeal to the NSW Supreme Court failed.

He first applied to be admitted as a legal practitioner in 2008. In that application, his fundamental position was to reject the finding that his company had engaged in misleading conduct. He showed an unacceptable attitude to his company directorships. He allowed his company to be deregistered without paying the sums ordered to students at the college and did not demonstrate any concern about this. His application was unsuccessful.

He applied again in 2012. In the interim, he had approached a number of community legal centres offering his services pro bono. He had worked part time for two solicitors for a total of some 6 months without pay. One of those solicitors gave evidence as to his honesty and diligence. She was extensively cross-examined. She gave evidence that she had discussed his prior conduct with him at length and was convinced that he was now a fit and proper person for admission.

The Court of Appeal noted that in light of the applicant's unimpressive background, deciding whether he had demonstrated his suitability for admission was a difficult and finely balanced question, despite his recent work with the solicitor and her strong evidence in his support. The Court is not concerned to punish the applicant for past misconduct but to ensure the public is well served by the legal practitioner in whom they place their trust, and to maintain the confidence in the legal profession as an institution which serves the public.

The Court also noted that an individual's "understanding of past failings and expressions of remorse may be easily expressed but not easily examined for truth or falsity. In this and in other jurisdictions, including the criminal and disciplinary jurisdictions, expressions of remorse are hard to test".

The applicant's work for the two solicitors provided an opportunity for practitioners to assess his attitude and his conduct and the solicitor's evidence served to confirm his own evidence that he had matured in his attitude.

The application was successful.

4. The applicant must disclose all matters that could possibly be relevant to assessment of the applicant's character or suitability

An applicant must disclose all matters that reflect on their character or may be relevant to the Board's assessment of their fitness for admission, even if those matters do not amount to criminal conduct or were not subject to a formal disciplinary procedure.

XY [2005] VSC 250

The applicant disclosed serious mental health issues she had suffered in the past as a result of abuse and severe alcohol dependence. She had attempted self-harm and been admitted as an involuntary patient for psychiatric treatment on a number of occasions. She had been charged with a number of criminal offences including threatening to kill a police officer, making menacing phone calls, damaging property and resisting arrest. She had stopped drinking in around 1997 and had no further criminal incidents since that time.

However, the applicant did not disclose some incidents that had occurred since 1997 which caused the Board concern.

She did not disclose that whilst volunteering at a legal service in around 2001, she had personal conflict with a fellow volunteer who was a police officer. She told the police officer that she hoped he would be killed. This led the legal service to terminate her position.

She did not disclose that in around 2000 she had damaged property at a meditation retreat run by a religious sect and threatened to stab one of the residents who tried to stop her leaving. She had been sexually assaulted at this retreat earlier in the year. She was not charged and paid for the damage.

The Court emphasised that the matters which should be disclosed to the Board are not simply criminal or other court or tribunal matters but "encompass every matter which could possibly be relevant to the Board's consideration of the applicant's fitness to be admitted to practice".

The Court noted that the legal centre incident was particularly relevant because it was connected to her work at a legal practice and involved not just a personal disagreement with a colleague but threatening statements.

The applicant gave evidence that she thought about disclosing the legal centre incident and made a conscious decision not to disclose it. In doing so, she relied on advice of a respected Reverend (who was also a solicitor) and on information given to her by her educational institution.

The Court emphasised that she must take responsibility for her actions and not try to shift blame on to others. The Court did not consider that she was trying to do this. The Court accepted that she was not intending to mislead the Board, had made an error of judgment and had been candid in saying that she had made a conscious decision about the matter.

The Court also found that her failure to disclose the meditation retreat incident was understandable and explicable by the mental health issues that she was still suffering at the time, but which she was no longer suffering by the time the Court came to hear the application.

The Court noted that, as it had been some 40 months since her initial application, the applicant had learned the very hard way the need for utmost candour by legal practitioners.

5. It is essential that mental health issues be disclosed, even if they have resolved or are under treatment

The disclosure procedures allow for sensitive issues such as mental health to be disclosed in a confidential declaration. It is essential that any mental health issues be disclosed. Mental

health concerns will not necessarily bar admission. The Board's primary concern will be to assess, based on medical evidence, whether the applicant's condition poses a risk to the public. The applicant should therefore produce evidence from their practitioners explaining the condition they suffer, the effect that it may have on their ability to practice and expressing the practitioner's opinion on whether the condition poses any risk to the public if the applicant were to be admitted.

XY [2005] VSC 250

The applicant disclosed serious mental health issues she had suffered in the past as a result of abuse and severe alcohol dependence. She had attempted self-harm and been admitted as an involuntary patient for psychiatric treatment on a number of occasions. She suffered from borderline personality disorder, post-traumatic stress disorder and alcohol dependence.

The Supreme Court received evidence from both treating and independent practitioners. The effect of the evidence was that by the time of the hearing she was no longer suffering from mental illness. The expert evidence was that she was likely to be able to cope with the stress of legal practice and was unlikely to flare up if she continued to have support. There was evidence that she had mechanisms in place to assist her to cope with stressful situations.

There was some delay in the Supreme Court hearing her application which worked in her favour. By that time, some four years had elapsed since the last negative incident.

The Court emphasised that the protection of members of the public from the damage that could be caused by an unsuitable person, such as a possibly mentally unstable practitioner, handling their affairs is one of the main purposes of the Legal Profession Act.

The Court was satisfied by the evidence that had been given about the current state of the applicant's mental health.

The Court was also reassured by the applicant giving an undertaking to the Court that she would not drink alcohol and would maintain her participation in Alcoholics Anonymous as long as she holds a practising certificate.

Re B [2016] ACTSCFC 2

The applicant had a long-term psychiatric history and had been diagnosed with a schizoaffective disorder with psychotic symptoms when manic. He also had a substance abuse disorder and had a history of using illicit drugs.

The ACT Supreme Court emphasised that a mental illness or impairment is not of itself a bar to admission as a legal practitioner. The test is whether the applicant is able to satisfactorily carry out the inherent requirements of practice as a legal practitioner. That is assessed in light of the applicant's mental health.

The Court noted that regrettably, there are cases where professional misconduct by a legal practitioner has been caused or contributed to by mental impairment. Mental health is particularly relevant in legal practice which can be very stressful from time to time.

However, the Court noted that a recognition by the person that he or she has a mental illness which needs to be address is important in ensuring that it does not create problems in legal practice.

The applicant had not used illicit drugs for some 7 years before his application. He also produced two medical reports, from his treating practitioner and two independent practitioners. His treating practitioner's report demonstrated progressive improvement of his mental health condition with a resolution of his psychotic symptoms over the preceding 12 months.

His treating practitioner gave evidence that he was able to reflect with insight on his previous psychotic symptoms and was compliant with his treatment regime. His treating practitioner and an independent psychiatrist expressed the view that he no longer had any ongoing features of a mental illness that would interfere with his capacity to work as solicitor.

The Court accepted that the applicant had reached a stage where his mental health was under control and relatively stable. His compliance with treatment and insight into his condition and the need for treatment was very important. The applicant was admitted with conditions.

It is important to emphasise that the Board's role is not to punish the applicant but to protect the public. Even where misconduct is attributable to or explained by mental illness, such that the applicant might not be morally blameworthy for their actions, the applicant must show insight into their condition and conduct. They must satisfy the Board that they have understood the nature of their actions and that their condition does not pose a risk to their ability to discharge their duties as a legal practitioner.

X [2001] VSC 429

A person may not be fit and proper for admission to practice although their reputation and character are beyond reproach.

The applicant was a person of considerable intelligence and legal ability. She had been a model articled clerk. There was no challenge to her good reputation and character.

However, the applicant disclosed that for a period of about two weeks in the year before her admission, she had made numerous false reports to police and other authorities accusing or suggesting that certain people had committed rape or sexual abuse of children. Those people were innocent. She was charged and pleaded guilty.

The applicant had herself been the victim of serious childhood sexual abuse by a relative. She had not had proper treatment for it but had coped well through dedication to studies and other activities. She led a blameless life. However, shortly before the misconduct, she was sexually assaulted by a colleague. Her psychiatrists and psychologists accepted that her behaviour was precipitated by this incident and that when she engaged in the conduct she was suffering from a dissociative disorder.

The applicant's affidavits of disclosure gave only a vague description of her offending which did not fully reveal its seriousness. Although her disclosure may have accurately reflected the best of her own understanding and beliefs of the incidents, full information was available to her had she wished to obtain it from the police briefs held by the solicitors who had acted for her on the criminal charges. She had failed to make full enquiries in order to make full disclosure to the Board.

The Court found that the applicant had not properly taken into her conscious mind, nor confronted and dealt with, the nature of the false allegations she had made. She had little if any insight on the impact those allegations may have had on the innocent people she had accused.

The Court emphasised that a person "who is not capable of dealing appropriately with awkward facts of this kind in one's own life (that is, that she has or may have caused great harm to others) cannot be entrusted appropriately to advise clients who are similarly placed". The Court found that she should not be admitted until she had shown that she appreciates the significance of what she had done and made for herself a reasonable assessment of the degree of moral turpitude property attributable to her.

Doolan v Legal Practitioners Admissions Board [2013] QCA 43

The applicant sought a declaration from the board that his history of mental illness would not in future preclude him from admission. He produced a number of medical reports and made himself available for examination by psychiatrists nominated by the Board. The Court of Appeal noted that this demonstrated a degree of insight and professionalism on his part.

The various psychiatrists expressed differing opinions as to the precise nature of the applicant's illness and its likely effect on his ability to satisfactorily carry out the inherent requirements of legal practice. The Court recognised that the applicant's illness was no fault of his, but noted that in determining his suitability, its primary concern is not the best interests of the applicant but the interests of the administration of justice and the protection of the public generally, especially consumers of legal professional services.

The Court suggested that concerns about his suitability could potentially be addressed by imposing conditions on his admission such as conditions requiring him to attend consultations with a treating psychiatrist at specified regular intervals and conditions that the psychiatrist must report to the Board if the applicant's health deteriorates to the point where he is unable to carry out the inherent requirements of an Australian Legal Practitioner.

Doolan v Legal Practitioners Admissions Board [2016] QCAT 98

The Court of Appeal referred the matter to Carmody J sitting as the Queensland Civil and Administrative Tribunal to assess conflicting evidence.

Carmody J emphasised that public faith and trust, as well as respect for the legal profession, are integral to its long-term survival and effectiveness. The court is responsible to the community to ensure that the people it holds out as representatives of the legal system can be safely relied on to conduct legal business properly. There is a public interest in ensuring that an applicant with mental illness does in fact follow the appropriate course of action in the future and in ensuring that they can be properly entrusted to undertake the inherent requirements of legal practice.

Whilst the concept of 'inherent requirements of legal practice is broad', it encompasses mental balance and emotional stability, honesty, candour, competence, discretion, respect for society, the authority of the law, the judiciary and the profession, integrity, trustworthiness, judgment, reliability, morality and confidentiality. It also includes taking personal responsibility for competently and diligently meeting a client's needs and demands. High quality legal services cannot be delivered if there is a deficiency or breakdown in the lawyer-client relationship due to misunderstanding or other reason.

Carmody J emphasised that the mere fact that a person has a diagnosed mental illness is not generally in and of itself indicative of unsuitability to practice. It would be wrong to use the admission process as a means of covert discrimination or arbitrary exclusion. Increasing the number of people with disabilities in the legal profession makes it more representative and diverse and better informed about mental illness.

However, the Board has public protection responsibilities and cannot take unacceptable risks with the safety and welfare of the public. It must take all reasonable precautions to prevent avoidable harm.

On the one hand, applicants have a right to a reasonable expectation of being able to enjoy the fruits of their academic labours, to earn a living of their choosing and a right not to be discriminated against or shunned unnecessarily by the legal fraternity. On the other hand, future clients are entitled to protection of their rights as consumers of legal services. The profession's standing, the public reputation of the legal system, respect for the law and the authority of the courts must be protected.

The applicant in this case suffered from very firm paranoid beliefs that could be controlled but not eliminated with treatment. His lack of insight into the nature and extent of his psychiatric condition made it difficult for him to comply with medication and made him prone to impulsive and inappropriate behaviours. Notably, his impulsivity and irrational thinking had brought him into conflict with the law in the past and would possibly do so in the future.

There was a definite correlation between his past bad behaviour and his mental health. It would be overly optimistic to expect him to be able to sufficiently and effectively compartmentalise his personal and professional lives without effective medication and treatment. His delusional thinking was unpredictable and posed significant risk to proper judgment, effective communication and personal relationships. His persecutory delusions made him vulnerable to misinterpreting day to day events which could in turn adversely and unpredictably impair his professional judgment and conduct. He lacked ability to adjudicate rationally and skilfully between alternative courses of action, to assemble all relevant information, understand its true objective significance and effectively convey that understanding to others.

Legal Practitioners Admissions Board v Doolan [2016] QCA 331

Carmody J sitting as the Queensland Civil and Administrative Tribunal had found that the matter of a person's ability to perform the inherent requirements of legal practice was not a matter necessarily rendering them not fit and proper for admission and was best considered by regulatory authorities at the time, they issued a practising certificate.

The Court of Appeal disagreed. In considering whether an applicant is fit and proper, the court must consider each of the suitability matters including ability to perform the inherent requirements of legal practice. It may not ignore or diminish any of them by regarding them as more appropriate for consideration by the regulatory authority issuing practising certificates.

Given Carmody J's finding that the applicant in that case was unable to satisfactorily carry out the inherent requirements of legal practice, the Board ought properly to find that he is not a fit and proper person.

6. Personal misconduct is relevant and must be disclosed even if it does not directly affect legal practice

Re L [2015] ACTSCFC 1

The applicant had a habit of binge drinking leading to him being arrested and detained for public intoxication several times over 4 years.

The applicant frankly acknowledged the foolishness of his behaviour and expressed concern about his offending. He took steps to address his alcohol misuse by seeking professional assistance.

The Court emphasised that personal misconduct is relevant to the question of fitness for admission even if does not directly impinge on the practice of the profession. Misuse of drugs or alcohol is a serious matter.

The applicant's candour and the steps he had taken to manage his problem gave the Court some assurance of future good conduct. The applicant was admitted subject to conditions.

A Solicitor (2004) 216 CLR 253

A solicitor was convicted of indecent assault against his partner's two young daughters. He was later convicted of further similar offences. Whilst the Law Society was investigating the first convictions, the solicitor did not disclose the later convictions as he considered them unjust and hoped they would be overturned on appeal.

Personal misconduct which has nothing to do with a person's legal practice does bear directly on the person's fitness to practice. The conduct may demonstrate qualities that are not compatible with membership of a self-respecting profession. Certain convictions may carry such stigma that judges and members of the profession may be expected to find it too much for their self-respect to associate with the convicted person to the degree required in the profession.

However, there are many kinds of conduct deserving of disapproval and not all of them necessarily render a person unfit.

Both the conduct and the lack of candour were relevant to the solicitor's fitness to remain on the roll of practitioners. However, in that case the offending was isolated and towards the less serious end of the scale, the solicitor had sought professional treatment and he had the continued support of the victims' family and his professional counsellors and psychiatrists. He recognised and readily accepted the seriousness of his conduct and had cooperated fully with the police. He did all he could to ensure that such conduct was not repeated.

Whilst both the offending and the lack of candour were serious, the circumstances did not justify a finding that the solicitor was not a fit and proper person to remain on the roll of practitioners.

Consequences of failure to disclose

A failure to disclose a matter, or an attempt to mislead the Board in relation to a disclosure, can have serious consequences for you. If the information you have provided in your disclosure statement is found to be false, misleading, or incomplete you may be refused admission to the Australian legal profession.

If the Board has already issued a compliance certificate in respect of your admission, the compliance certificate may be revoked and if you have already been admitted, you may be struck from the Roll of Practitioners at any time after being admitted.

May 2023