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LEGAL PRACTICE



Disclosure requirements for applicants for admission to the legal profession in Queensland

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Becoming a lawyer is a rewarding career choice, but the road to admission is not just about academic success or completing practical legal training. It is also about ensuring that applicants meet high ethical standards and suitability requirements.

These standards are in place to protect the integrity of the legal profession and ensure that only those who are “fit and proper” and “of good fame and character” to practise law are admitted.

What we cover in this article

This article will explore the key matters that are taken into consideration by the Legal Practitioners Admissions Board when considering applicants for admission into the legal profession in Queensland. Specifically, we look at:

- **Supreme Court requirements for admission;**
- **interpretation of a “fit and proper person”;**
- **applicant disclosure about suitability;**
- **applicant disclosure about capacity; and**
- **the process if an applicant’s character or suitability are contested.**

Admission into the legal profession

The Supreme Court of Queensland is responsible for the admission of lawyers in Queensland. The Court may admit a person as a lawyer if the person:

- is over 18 years of age; and
- is not already admitted to the Australian legal profession; and
- has attained the required academic qualifications and practical legal training, defined as either 'approved' or 'corresponding' (see section 30 of the *Legal Profession Act 2007*); and
- has sufficient knowledge of written and spoken English to engage in legal practice; and
- is of good fame and character and a fit and proper person to be admitted.

The Supreme Court is assisted by the Legal Practitioners Admissions Board, which assesses each application for admission and issues recommendations as to the eligibility and suitability of applicants in the form of a certificate of compliance.

The phrase "fit and proper person"

The Court must be satisfied that an applicant is "a fit and proper person" to be admitted to the legal profession. The Court also considers whether an applicant is currently "of good fame and character". Each of these tests reflects the overarching requirements of the common law.

There are many judicial explanations of the phrase "fit and proper person" in different contexts. In *Frugtniet v Board of Examiners [2002] VSC 140*, Pagone J held:

"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 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."

Applicants' disclosure obligations

In Queensland, applicants are required to disclose information about their suitability and capacity when applying for admission to the legal profession.

Disclosures about suitability

Suitability matters refer to the factors the Legal Practitioners Admissions Board and Court consider when deciding whether an applicant is fit to practice law in Queensland. These matters primarily focus on an individual's character, ethical standards, and professionalism.

Section 9(1) of the *Legal Profession Act* 2007 (Qld) sets out a number of suitability matters which must be disclosed when an applicant applies for admission into the legal profession. Relevantly, those matters include, but are not limited to:

1. whether the applicant is or has been an insolvent under administration;
2. whether the applicant has been convicted of an offence in Australia or a foreign country;
3. whether the applicant engaged in legal practice in Australia when not admitted to the legal profession, or not holding a practising certificate, as required under a relevant law or a corresponding law; or
4. whether the applicant is currently subject to an unresolved complaint, investigation, charge or order under a relevant law, a corresponding law, or a corresponding foreign law;
5. whether the applicant is subject to or has been the subject of disciplinary action relating to another profession or occupation;
6. whether the applicant's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;
7. whether the applicant currently is unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner; and
8. any other matter declared under an Act to be a suitability matter.

In addition to the above suitability matters set out in section 9 of the *Legal Profession Act* 2007 (Qld), the Law Admissions Consultative Committee's admission guidelines set out other suitability matters applicants should consider disclosing, including:

- any social security overpayments or offences (for example, Centrelink overpayments);
- any instances of academic misconduct;
- any criminal conduct;
- any conduct which demonstrates dishonesty;
- any criminal charges (as distinct from criminal convictions – even if the charge was withdrawn);
- any intervention orders or domestic violence protection orders;
- any infringements or traffic offences;
- any gambling addictions; and

• any instances where an applicant has made a false statutory declaration.

Disclosures about capacity

In addition to suitability matters, section 9(1)(o) of the *Legal Profession Act* 2007 (Qld) requires the Legal Practitioners Admission Board to consider whether an applicant is able to carry out the inherent requirements of legal practice.

The requirement of capacity relates to an applicant's mental health and physical condition, and is separate and distinct from the requirement to be a fit and proper person and of good fame and character.

While mental health conditions and severe physical conditions do not automatically disqualify an applicant from admission, the Legal Practitioners Admissions Board will assess whether the applicant's condition affects their ability to practice law competently, ethically, and professionally. This consideration is part of a broader focus on an applicant's fitness to practice.

If an applicant has a history of mental health conditions and/or severe physical conditions, they are encouraged to provide information, by way of supplementary documentation to the Legal Practitioners Admissions Board about their condition, how that condition has been managed, and how they have maintained their ability to engage in professional work.

The key is whether the applicant can demonstrate that their condition does not interfere with their ability to meet the legal profession's standards of competence and ethical behaviour.

The Law Admissions Consultative Committee's disclosure guidelines provide some examples of capacity matters that applicants should consider disclosing, including:

1. any history of mental health conditions;
2. any current mental health conditions;
3. whether the applicant suffers from chronic pain; and/or
4. whether the applicant has a physical impairment.

Contentious suitability and/or capacity matters

If the Legal Practitioners Admissions Board has concerns in relation to an applicant's character or ability to carry out the inherent requirements of legal practice, it may:

1. Issue an applicant with a 'Section 40 Notice'

A Notice under section 40 of the *Legal Profession Act 2007* means that the Legal Practitioners Board requires an applicant to provide further information and/or documentation to assist the Board to consider their application for admission.

1. Issue an applicant with a qualified certificate of recommendation

If an applicant is issued a qualified certificate of recommendation, the applicant must disclose their suitability matters to the Court. In these circumstances, the applicant's mover (advocate) is required to prepare written submissions on the applicant's behalf.

1. Issue an applicant with a recommendation under Rule 15(2) of the Supreme Court Admission Rules 2004

If an applicant is issued with a recommendation under Rule 15(2) of the *Supreme Court Admission Rules 2004*, this means that the Legal Practitioners Admissions Board is not satisfied that the applicant is suitable for admission into the legal profession.

Conclusion

Properly declaring suitability and capacity matters is a crucial part of the admission process for aspiring lawyers in Queensland. While these suitability requirements might seem daunting, they are in place to maintain the integrity of the legal profession and protect public trust.

If you have a contentious suitability or capacity matter which may impact your application for admission into the legal profession, it is important to seek legal advice prior to making your application. Likewise, if you receive a Section 40 Notice, a qualified certificate of recommendation or experience other hurdles related to your application, you should seek advice early.

Gilshenan &Luton regularly assist applicants with their applications for admission into the legal profession.

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