

29 August 2016

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Award Modernisation Team  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

Partner: Nick Ruskin  
[nick.ruskin@klgates.com](mailto:nick.ruskin@klgates.com)

T +61 3 9640 4431

Contact: Katie Sweatman  
[katie.sweatman@klgates.com](mailto:katie.sweatman@klgates.com)

T +61 3 9640 4297

Our ref: [sweatmka.ruskinn.7390222.00001](mailto:sweatmka.ruskinn.7390222.00001)

Dear Sir / Madam

**AM2014/233: 4-yearly review of the Legal Services Award 2010: Leave of absence for graduates**

We refer to the conference conducted on 9 August 2016 under the auspice of Deputy President Clancy of the Fair Work Commission, where it was agreed that we would provide a summary of current admission requirements for graduates.

**1. Admission requirements for graduates**

1.1 In order to be admitted, Section 17 of the *Legal Profession Uniform Law* (as contained in Schedule 1 of the *Legal Profession Uniform Law Application Act 2014*) requires that graduates seeking admission must:

- (a) have attained the academic qualifications specified under the Admission Rules; and
- (b) have satisfactorily completed the practical legal training requirements specified in the Admission Rules.

1.2 Rule 5 of the *Legal Profession Uniform Admission Rules 2015 (Admission Rules)* specifies that the academic requirement prerequisite involves the successful completion of a law degree.

1.3 Rule 6 of the Admission Rules then provides the following in relation to the above practical legal training prerequisite:

"(1) ...the specified practical legal training prerequisite is acquiring and demonstrating an appropriate understanding and competence in each element of the skills, values and practice areas:

- (a) set out in Schedule 2, or
- (b) otherwise determined by the Admissions Committee after consulting each of the Boards.

- (2) The requirement may be satisfied by successfully completing either:
- (a) a practical legal training course conducted by a practical legal training provider accredited by the Board, or
  - (b) supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides for the trainee to satisfy the requirements of sub rule (1)."

1.4 Schedule 2 of the Admission Rules sets out the practical legal training competencies for entry-level lawyers. The skills, compulsory and optional practice areas and values, are set out in extensive detail in Part 4 of Schedule 2, but are summarised as follows:

**(a) Skills**

- (i) Lawyer's skills
- (ii) Problem solving
- (iii) Work management and business skills
- (iv) Trust and office accounting.

**(b) Practice areas**

- (i) Compulsory
  - (A) Civil litigation practice
  - (B) Commercial and corporate practice
  - (C) Property law practice
- (ii) Optional practice (graduates must complete any two of):
  - (A) Administrative law practice;
  - (B) Banking and finance law practice;
  - (C) Criminal law practice
  - (D) Employment and industrial relations law practice;
  - (E) Family law practice;
  - (F) Planning and environmental law practice; or
  - (G) Wills and estates practice

**(c) Values**

- (i) Ethics and professional responsibility.

- 1.5 In accordance with item 4 of Schedule 2, the practical legal training prerequisite can generally only be commenced after academic qualifications have been completed, unless otherwise approved by the Board.
- 1.6 Item 5 of Schedule 2 provides that a practical legal training course must comprise both programmed training and workplace experience as follows:
- (a) In the case of a graduate diploma:
    - (i) programmed training appropriate to a diploma that is equivalent to at least a Level 8 qualification under the Australian Qualifications Framework; and
    - (ii) the equivalent of at least 15 days' workplace experience.
  - (b) In the case of supervised legal training, the equivalent of at least 12 months' full-time work which includes a minimum of at least 90 hours' programmed training.
- 1.7 The Admission Rules also provide requirements for a course other than a graduate diploma or supervised legal training. However in the experience of firms and The College of Law these are not undertaken by employed law graduates and are therefore not relevant for the purpose of the Award review.
- 1.8 Items 6-9 of Schedule 2 contain further common requirements for practical legal training courses and supervised legal training. Both must:
- (a) be provided at a level equivalent to post-graduate training and build on the skills acquired through tertiary qualifications. They must be appropriate for at least a Level 8 Qualification under the Australian Qualifications Framework;
  - (b) be supervised by someone with substantial current or recent experience in practising law or someone with comparable qualifications or experience. The supervisor must comply with any other legislative or regulatory requirements in the relevant jurisdiction; and
  - (c) employ comprehensive methods of assessment for assessing an applicant's competence and certifying whether or not an applicant has demonstrated the requisite level of competence.
- 1.9 We note that Schedule 2 sets out performance standards and competencies, but does not provide an indication of the time typically required to complete the practical legal training pre-requisite, other than the reference to at least 90 hours of programmed training for the purpose of supervised legal training.
- 1.10 There is no mandated training time that a graduate must fulfil in order to complete a graduate diploma, and in the experience of law firms it is appropriate that the time allowed to be taken as a leave of absence is no more than 20 days.

## **2. Supervised legal training requirements**

- 2.1 The additional requirements for undertaking a supervised legal training are outlined in Schedule 3 of the Admission Rules.

- 2.2 Graduates and their employer are required to implement and follow a training plan, to ensure graduates complete a range of legal work. The graduate must maintain a workbook to exhibit the work they have completed and to demonstrate their competence across the required areas.
- 2.3 Graduates must complete 12 months of supervised legal training before they can be eligible for admission.
- 2.4 Section 6(c) of Schedule 3 provides that graduates must also:

"acquire an appropriate understanding of, and competency in, and satisfactorily complete assessment in:

- (i) each element of Ethics and Professional Responsibility and of Lawyer's Skills, and
- (ii) the Risk Management element of Work Management and Business Skills

as set out in Schedule 2 or otherwise determined under rule 6 (1), through a course of instruction and assessment conducted by:

- (iii) a provider accredited under rule 7 (1) for the purposes of rule 6 (1), or
- (iv) another body approved by the Board for the purpose of providing an equivalent course of instruction and assessment."

- 2.5 This course of instruction must be equivalent in content and depth to, and the assessment must be as rigorous as for the comparable element of a practical legal training course.

### **3. Justification for the proposed changes**

- 3.1 We submit that the proposed change to clause 39 of the Award aligns more closely to the wording of the new legislation, which makes no reference to the completion of subjects.
- 3.2 The revised wording allows graduates to access their entitlements holistically, rather than strictly tying them to certain subjects. This poses tangible benefits for graduates as it enables them utilise their leave of absence as and when they need it. For example, it allows graduates to allocate a greater number of days to a practice area that they are struggling with and fewer days to one in which they are comfortable.

Yours faithfully

  
Nick Ruskin  
Partner