

IN THE FAIR WORK COMMISSION

Matter No.: AM2017/53 – Review of the Legal Services Award

Applicant: Russell Kennedy & ors

**SUBMISSIONS IN SUPPORT OF
PROPOSED SPECIAL CONDITIONS FOR LAW GRADUATES**

1. Pursuant to item 2 of the 29 March 2018 Directions of the Fair Work Commission, the Firms continue to press their proposed replacement of the Special Conditions of Employment for Law Graduates detailed at clause 39 of the current *Legal Services Award 2010* with a clause that reads as follows:

39. Special conditions of employment—Law graduate

39.1 *A law graduate is entitled to paid study leave to attend a course of instruction, and prepare for and attend examinations, that relate to the practical legal training required for their admission to practise as an Australian lawyer.*

39.2 *Paid study leave should be taken at a time agreed with the employer and may not, unless otherwise agreed between the employer and the law graduate, exceed a total of 20 days in any 12 month period for the purposes of attending any course of instruction required to complete practical legal training, including one day to prepare for each examination in addition to the time reasonably required to attend the examination.*

2. The following submissions supplement submissions previously provided by the Firms in support of the proposed amendments to the Special Conditions for Law Graduates, addressing in particular the question of why the Firms contend that the clause need not provide an entitlement to paid leave for law graduates undertaking Supervised Workplace Training or a Graduate Diploma of Legal Practice (or relevant equivalent).

Rules for admission to practise

3. While each jurisdiction in Australia has its own rules for the admission of lawyers to practice, each jurisdiction has adopted Schedules 1, 2 and 3 of the Law Council of Australia *Model Admission Rules 2015 (Model Rules)*. A copy of the Model Rules may be viewed [here](#).

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4. Schedule 1 of the Model Rules outlines the prescribed areas of knowledge which law graduate must have studied in their academic law studies. These prescribed areas of knowledge are also referred to as the 11 "Priestley subjects".
5. Schedule 2 of the Model Rules sets out the practical legal training that a law graduate must complete in order to qualify for admission. As described in the Firms' previous submissions to the Commission, this practical legal training is structured around the completion of competencies, not subjects.
6. Schedule 3 of the Model Rules deals with "Common Considerations Relevant to State Qualifications", which is not relevant to the present discussions between the parties.
7. In fulfilling the competencies set out at Schedule 2 of the Model Rules, a law graduate must either through:
 - (a) the completion of a practical legal training (**PLT**) course delivered by an approved PLT provider; or
 - (b) the completion of supervised workplace training (**SWT**).
8. In Victoria, this system of SWT is described as Supervised Legal Training (**SLT**).
9. To the extent that a law graduate undertakes a Graduate Diploma of Legal Practice, this is a form of PLT and is not, in fact, a third standalone stream through which a law graduate may fulfil the requirements for admission to practice. In this regard, the Firms seek to correct Ms Sweatman's agreement to the proposition that there are three streams through which a law graduate may seek admission to practice at PN144 of the transcript of the hearing conducted in this proceeding on 26 March 2018.

How does SWT/SLT differ from PLT?

10. Unlike PLT, which is delivered by an approved PLT provider, SWT/SLT is completed in the workplace for a period of not less than 12 months, under an approved training plan.
11. The training plan requires the completion of a detailed paper or online workbook under a training plan which requires the completion of the prescribed elements and performance criteria set out at Schedule 2 of the Model Rules.
12. At the conclusion of the training plan, a representative of the employer must complete a statutory declaration (see Victorian example [here](#)) attesting to the graduate's attendance at work and other general requirements, and the graduate's supervisor must complete a statutory declaration (see Victorian example [here](#)) attesting to the graduate's satisfactory completion of their training plan and fitness to be admitted. The completed workbook and the mandatory statutory declarations are submitted to the relevant Board which assesses whether the graduate has met the requirements for admission.
13. Most competencies are completed within SWT/SLT within the workplace and not through an external provider. Ethics and Professional Responsibility, Lawyer's Skills and the Risk Management element of Work Management and Business Skills must, however, be completed through an approved PLT provider.
14. We have been instructed that those parts of the SWT/SLT that must be delivered by an approved PLT provider are typically delivered "in house" and graduates attend the

training in the course of their normal working day. That is, it is not necessary for graduates to be released from their duties on leave in order to attend this training. The total period of time that is spent in such training is estimated at five to eight days.

15. We are instructed that it is theoretically possible that a firm may elect not to have these parts of the training delivered in house, and in such a case it would be necessary for the graduate to attend an external provider for this part of their training. To not provide such training in house would, however, be antithetical to the hands on role taken by firms in supporting their law graduates to be admitted by way of SWT/SLT.
16. With this in mind, the Firms contend that there is no relevant need for law graduates undertaking SWT/SLT to be provided an entitlement to paid leave under the Special Conditions for Law Graduates, as SWT/SLT is undertaken in the course of the law graduate's normal working day and there is no need to be absent from work to undertake this training.

Key considerations

17. Having regard to the above, in varying the clause dealing with Special Conditions for Law Graduates, the key considerations for the Firms are:
 - (a) that the clause operates sensibly and does not continue to describe an entitlement that does not reflect the underpinning admissions scheme;
 - (b) in the case that no stream for fulfilling requirements for admission requirements is structured by subjects, no part of the entitlement should be premised on an amount of leave per subject;
 - (c) the entitlement should only extend to employees who have been employed with a view to that employee becoming an employee lawyer of the firm;
 - (d) the employee must have the authorisation of the firm in advance of the need to take leave under the clause.

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