

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/233 – Legal Services Award 2010

Applicant: Russell Kennedy & ors

SUBMISSIONS IN SUPPORT OF SUBSTANTIVE ISSUES

1. The Applicant is a group of 21 law firms referred to in AM2014/233 as "Russell Kennedy & Ors" or "the Firms" (**Firms**).
2. The Firms make the following submissions in response to the Directions issued by Deputy President Gostenchik on 23 January 2018, in support of the following substantive variations referred to in those Directions:
 - (a) **Item 13**¹ – Ordinary hours of work and roster cycles – day workers; and
 - (b) **Item 18** – Law Graduates.
3. For the avoidance of doubt, the Firms maintain their position in respect of any outstanding issues, including:
 - (a) **Item 9** – Casual employees;
 - (b) **Item 15** – Annual salary; and
 - (c) **Item 17** – Time off instead of payment for overtime.
4. The Firms refer to and rely upon all prior submissions, comments and correspondence in support of the variations they propose at Items 13 and 18, including:
 - (a) Submissions in response to preliminary views as to the Exposure Draft of the *Legal Services Award 2015* (24 November 2017);
 - (b) Response to 14 December 2016 Directions (7 February 2017);
 - (c) Submissions in support of proposed variations to the *Legal Services Award 2010* (20 January 2017);
 - (d) Comments regarding Summary of Submissions (10 January 2017);

¹ Item numbers refer to the Summary of Submissions published 10 October 2017.

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- (e) Correspondence – Admission requirements for graduates (29 August 2016);
- (f) Proposed variations to the *Legal Services Award 2010* (2 March 2015).

20 February 2018

**K&L Gates
Lawyers for Russell Kennedy & ors**

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/233 – Legal Services Award 2010

Applicant: Russell Kennedy & Ors

WITNESS STATEMENT OF NICK GRANT

I, Nick Grant, Director of Human Resources, [REDACTED]

[REDACTED] STATE as follows:

1. I am employed by K&L Gates as Director of Human Resources, Australia.
2. I have been involved with the submissions made by a group of 21 law firms interested in the review of the *Legal Services Award 2010 (LS Award)* in matter number AM2014/233. These law firms have been referred to in these proceedings as "the Law Firms" and also as "Russell Kennedy & Ors".
3. I am authorised by the Law Firms, to make this witness statement on their behalf.
4. I make this statement from my own knowledge unless I indicate otherwise. Where I have received information from a third party, I believe that information to be true unless I state otherwise.

My background and experience

5. I have been employed by K&L Gates (and its predecessor firm Middletons) since July 2012.
6. In my role as Director of Human Resources, Australia, I am responsible for the implementation and execution of the human resources strategy for the Australian offices of K&L Gates. I lead and manage the human resources team to execute a wide range of activities and programs in accordance with the firm's overall strategy,

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and also plan, manage and allocate external expenditure whilst ensuring that human resources practices are carried out in a cost effective manner.

7. Prior to my current role, I worked in Seattle as an Attorney Recruiting Manager for a period of two years. Before that, I was employed by Freehills (now Herbert Smith Freehills) as its National Resourcing Manager for a period of almost 7 years. I accordingly have extensive experience in human resources in the legal industry.
8. In addition to the direct experience I have gained in my own roles, I am also the President of HR Minds, an association of human resources professionals working in the legal industry. I accordingly have a strong understanding of themes, trends and practices in law firms nationally, and not just within K&L Gates.
9. In particular, through my role, I am familiar with the requirements for law graduates seeking admission. I am also familiar with the working arrangements for lawyers and legal support staff.

Admission requirements for graduates

10. The *Legal Profession Uniform Admission Rules 2015* (**Admission Rules**) set out the requirements for a law graduate to be admitted as an Australian Lawyer. In particular, section 17 of the *Legal Profession Uniform Law* sets out the academic qualifications and practical legal training requirements a graduate must satisfy in order to be admitted as a qualified practising lawyer.
11. I have summarised below the requirements of the Admission Rules in relation to practical legal training. A copy of the complete Admission Rules is attached as **Annexure NG-1**.
12. Rule 5 of the Admission Rules specifies that the academic requirement prerequisite involves the successful completion of a law degree.
13. Rule 6 of the Admission Rules then provides that the legal training requirements are obtained by acquiring and demonstrating appropriate understanding and competence in each element of the skills, values and practice areas set out in Schedule 2 (save where otherwise determined). This can be satisfied by successfully completing either:
 - (a) a practical legal training course conducted by an accredited provider (otherwise known as a graduate diploma); or

- (b) supervised legal training in a workplace for a period of at least 12 months under a training plan which the Board considers adequate.

14. Schedule 2 of the Admission Rules sets out the practical legal training competencies for graduates seeking admission. 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.
- 15. 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.
- 16. The Admission Rules also provide requirements for a course other than a graduate diploma or supervised legal training. In my experience, these are not undertaken by employed law graduates. I understand that the College of Law has had a similar experience,
- 17. Items 6-9 of Schedule 2 contain further common requirements for practical legal training courses and supervised legal training. These relate to the quality of the training, supervision by a practising lawyer or equivalent, and assessment methods.
- 18. 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.
- 19. There is no mandated training time that a graduate must fulfil in order to complete a graduate diploma.
- 20. In my experience, and from what I know of the experience of my colleagues in other law firms, law graduates do not require more than 20 days of leave for such purposes, and are generally able to complete the graduate diploma with fewer days leave.

Supervised legal training requirements

21. There are additional requirements for undertaking supervised legal training which are outlined in Schedule 3 of the Admission Rules. These include:
 - (a) implementing and following a training plan, documented by a workbook; and
 - (b) completion of 12 months of supervised legal training.
22. 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.
23. Graduates must complete 12 months of supervised legal training before they can be eligible for admission.
24. Section 6(c) of Schedule 3 provides that graduates undertaking supervised legal training must also acquire an appropriate understanding of each element of Ethics and Professional Responsibility and Lawyer's Skills, and the Risk Management element of Work Management and Business Skills as set out in Schedule 2.
25. This course of instruction must be equivalent in content and depth to, and the assessment must be as rigorous as, the comparable element of a practical legal training course.

Competencies required

26. Competence in the relevant skills, practice areas and values does not require the completion of particular "subjects", unlike in the legislation that existed prior to the Admission Rules.
27. In particular, the Admission Rules do not provide for the completion of "subjects" or any equivalent to a "subject".

Working hours of employees

28. Most professional staff in law firms, including K&L Gates, are not covered by any award. As a consequence, the ordinary hours of work may be averaged over a period of 26 weeks.

29. The demands of legal work mean that work fluctuates significantly between busy and quiet periods, over which an averaging arrangement is appropriate. This can be in response to cyclical demands on clerical and administrative staff (such as billing periods) as well as irregular demands on legal professionals such as litigation.
30. Law firm employees work together in teams with qualified and admitted lawyers and support those lawyers in their work. However, only award-free employees are able to arrange their work to meet these demands, whereas currently the LS Award is more restrictive for award-covered employees in the legal industry.
31. It would be of great administrative assistance if the terms governing the hours of work performed by the minority of staff covered by the LS Award were consistent with the terms governing the majority of employees in the industry.

21 February 2018

Nick Grant

Legal Profession Uniform Admission Rules 2015

under the

Legal Profession Uniform Law

The Legal Services Council has made the following rules under the *Legal Profession Uniform Law* on 26 May 2015.

Dale Boucher
Chief Executive Officer, Legal Services Council

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LEGAL PROFESSION UNIFORM ADMISSION RULES 2015

PART 1 – PRELIMINARY

1 Citation

These Rules are designated as Admission Rules and may be cited as the Legal Profession Uniform Admission Rules 2015.

2 Commencement

These Rules come into operation on 1 July 2015.

3 Objective and authorising provision

- (1) The objective of these Rules is to provide for aspects of admission to the legal profession in participating jurisdictions including –
 - (a) specifying the academic qualifications prerequisite and practical legal training prerequisite for admission;
 - (b) accrediting and reaccrediting law courses and providers of practical legal training; and
 - (c) procedural requirements for admission to the legal profession.
- (2) These Rules are made by the Legal Services Council under Part 9.2 of the Uniform Law.

4 Definitions

In these Rules, unless the context or subject matter otherwise indicates or requires –

application for a compliance certificate means an application made under rule 12(1) or rule 14;

Board means either the Legal Profession Admission Board constituted under Division 1 of Part 3 of the *Legal Profession Uniform Law Application Act 2014* of New South Wales or the Victorian Legal Profession Admission Board established by section 19 of the *Legal Profession Uniform Law Application Act 2014* of Victoria, as the case requires.

domestic partner means:

- (a) a person who is in a registered domestic relationship with the applicant; or
- (b) a person to whom the applicant is not married but with whom the applicant is, or has previously been, living as a couple on a genuine domestic basis (irrespective of gender);

Uniform Law means the Legal Profession Uniform Law as applied in a participating jurisdiction.

PART 2 – QUALIFICATIONS AND TRAINING REQUIRED FOR ADMISSION

5 Specified academic qualifications prerequisite

- (1) For the purposes of section 17(1)(a) of the Uniform Law, subject to these Rules, the specified academic qualifications prerequisite is successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, which –
 - (a) includes the equivalent of at least 3 years' full-time study of law;
 - (b) is accredited by the Board; and
 - (c) the Board determines will provide for a student to acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards.
- (2) If an applicant has attained the specified academic qualifications prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board, after assessing the applicant's academic qualifications and any other relevant experience, may require the applicant to:
 - (a) undertake any further academic subjects;
 - (b) pass any further examinations; and
 - (c) apply for a compliance certificate within any period, determined by the Board.

6 Specified practical legal training prerequisite

- (1) For the purposes of section 17(1)(b) of the Uniform Law, subject to these Rules, 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 subrule (1).
- (3) A person is eligible to commence training referred to in subrule (2) in the circumstances set out in item 4 of Schedule 2, or when otherwise determined by the Board.

- (4) If an applicant has completed the specified practical legal training prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board, after assessing the applicant's practical legal training qualifications and any other relevant experience, may require the applicant to:
- (a) undertake any further practical legal training; and
 - (b) apply for a compliance certificate within any period, determined by the Board.

7 Accrediting law courses and practical legal training providers

- (1) For the purposes of section 29 of the Uniform Law, the Board may, from time to time in accordance with this rule, accredit or reaccredit either or both of the following –
- (a) a law course for the purpose of providing the academic qualifications prerequisite specified in rule 5(1);
 - (b) a practical legal training provider for the purpose of providing the practical legal training prerequisite specified in rule 6(1).
- (2) In considering whether to accredit a course or provider referred to in subrule (1), the Board –
- (a) must take into account any appraisal criteria for such courses or providers from time to time endorsed for use in other Australian jurisdictions; and
 - (b) may have regard to any other matter it considers material.
- (3) The Board may accredit a course or provider referred to in subrule (1) on any conditions that it may specify, including without limitation any condition relating to the duration of accreditation.
- (4) Unless the Board determines otherwise, any law course or practical legal training provider that is recognised by another Australian jurisdiction as –
- (a) satisfying either or both the academic requirements and the practical legal training requirements for admission in that jurisdiction; and
 - (b) requiring a student successfully to complete either or both of the academic qualifications prerequisite specified in rule 5(1) and the practical legal training prerequisite specified in rule 6(1),
- is deemed respectively to be accredited by the Board under this rule, provided that the Board is also satisfied that –
- (c) the relevant law course is in all significant respects substantially equivalent to law courses accredited under subrule (1)(a) in this jurisdiction; or
 - (d) the practical legal training provided by the relevant practical legal training provider is in all significant respects substantially equivalent to practical legal training provided by practical legal training providers accredited under subrule (1)(b) in this jurisdiction,
- as the case requires.

- (5) The Board must publish on its website the name of each course or provider from time to time accredited by it under subrule (1).
- (6) The Board may accredit any law course or practical legal training provider that provides either or both of the specified academic qualifications prerequisite or the specified practical legal training prerequisite wholly or partly on-line.
- (7) The Board may, as the Board thinks fit, by notice in writing to a law course provider or a practical legal training provider –
 - (a) in the case of a law course provider, withdraw the accreditation of any law course offered by that provider; or
 - (b) in the case of a practical legal training provider, withdraw the accreditation of that provider; or
 - (c) in either case, impose or vary any condition attached to that accreditation.
- (8) It is a condition of the accreditation of any law course or practical legal training provider that, unless the Board determines otherwise, the costs of any accreditation, monitoring, review or reaccreditation are borne by the relevant provider.

8 Monitoring and reviewing accredited law courses and practical legal training providers

- (1) The Board must monitor and may periodically review any aspect of the performance of –
 - (a) an accredited law course in providing the specified academic qualifications prerequisite; and
 - (b) an accredited practical legal training provider in providing the specified practical legal training prerequisite.
- (2) The Board may, after consulting the relevant provider of a law course or practical legal training course –
 - (a) appoint one or more persons to conduct a review referred to in subrule (1); and
 - (b) determine the terms of reference for such a review.
- (3) A review conducted under subrule (1) –
 - (a) must take into account any appraisal criteria for law courses, practical legal training courses or practical legal training providers from time to time endorsed for use in other Australian jurisdictions; and
 - (b) may have regard to any other matter it considers material.
- (4) The provider of a law course referred to in subrule (1)(a) or a practical legal training provider referred to in subrule (1)(b) must, at its cost, provide such information to the Board or its reviewer as the Board or reviewer may require for the purpose of any monitoring or review carried out under this rule.
- (5) The Board –

- (a) must give a copy of any report received by it as a result of a review conducted under subrule (1) to the relevant provider conducting the law course or practical legal training course; and
- (b) may publish a copy or summary of that report on the Board's website.

9 Supervised legal training

- (1) The Board may determine whether supervised legal training may be undertaken for the purposes of rule 6(2)(b) in this jurisdiction.
- (2) If the Board makes a determination under subrule (1), Schedule 3 applies.

10 Determining whether someone is a fit and proper person

- (1) For the purposes of section 17(2)(b) of the Uniform 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 rule 16;
 - (b) any disclosure statement made by the person under rule 17;
 - (c) any police report provided under rule 18;
 - (d) any student conduct report provided under rule 19;
 - (e) any certificate of good standing provided under rule 20;
 - (f) whether the person is currently of good fame and character;
 - (g) whether the person is or has been a bankrupt or subject to an arrangement under Part 10 of the Bankruptcy Act 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 a foreign country, and if so –
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person's age when the offence was committed;
 - (i) whether the person has been the subject of any disciplinary action, howsoever expressed, in any profession or occupation in Australia or in a foreign country;
 - (j) whether the person has been the subject of disciplinary action, howsoever expressed, in any profession or occupation that involved a finding adverse to the person;
 - (k) whether the person is currently unable satisfactorily to carry out the inherent requirements of 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.
- (2) The Board may require a person to –
 - (a) take an examination; and

- (b) obtain a result in that examination,
specified by the Board for the purposes of subrule (1)(l).

11 Directions about qualifications

- (1) A person who has completed the academic requirements for admission in a foreign jurisdiction may apply to the Board for a direction about what additional academic qualifications must be acquired by that person in order to meet the requirements of rule 5.
- (2) A person who has completed the practical legal training requirements for admission and has been admitted in a foreign jurisdiction may apply to the Board for a direction about what additional practical legal training understanding and competence must be acquired by that person in order to meet the requirements of rule 6.
- (3) The Board must take into account—
 - (a) before making a direction under subrule (1), the extent to which the academic qualification in law leading to legal practice in the foreign jurisdiction completed by the applicant is substantially equivalent to the academic qualifications prerequisite specified in rule 5(1);
 - (b) before making a direction under subrule (2), the extent to which any practical legal training in the foreign jurisdiction completed by the applicant is substantially equivalent to the practical legal training prerequisite specified in rule 6(1); and
 - (c) before making a direction under either subrule (1) or (2), any principles for assessing the qualifications of overseas applicants for admission from time to time endorsed for use in other Australian jurisdictions.
- (4) The Board may give a direction under subrule (1) or (2) in any terms, and subject to any conditions that it thinks appropriate including, without limitation, that the applicant must –
 - (a) take an examination referred to in rule 10(2); and
 - (b) complete any other requirements directed by the Board; and
 - (c) apply for a compliance certificate within any period determined by the Board.

PART 3 – ADMISSION PROCEDURE

12 Application for a compliance certificate

- (1) For the purposes of section 19(1) of the Uniform Law, an application for a compliance certificate must –
 - (a) be made by statutory declaration in a form determined by the Board; and
 - (b) include any documents required by rules 15, 16, 17, 18, 19 or 20.
- (2) For the purposes of section 19(6) and section 19(9) of the Uniform Law, the Board must ensure that notice is published on the Board's website of the name of every person who makes an application for a compliance certificate, promptly after the Board receives that application.

13 Admission of New Zealand practitioners in Victoria

- (1) In this rule –

New Zealand practitioner means a person who–

 - (a) is admitted; and
 - (b) at the time of seeking registration in Victoria under the mutual recognition legislation, is entitled or eligible to practise,

as a legal practitioner in New Zealand;

mutual recognition legislation means the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth as adopted in Victoria.
- (2) If the Supreme Court of Victoria advises the Board that a person who is a New Zealand practitioner is seeking registration in Victoria under the mutual recognition legislation, the Board may make any enquiries it sees fit concerning that person's proposed registration.
- (3) If the Board is satisfied that such documents as are provided to the Board by the Supreme Court comply with the mutual recognition legislation, it must issue a compliance certificate, in a form determined by the Board, stating that the New Zealand practitioner appears to be entitled to be admitted to the legal profession in Victoria.
- (4) If the Board is not satisfied of the matters referred to in subrule (3), it must refer the notice and accompanying documents to the Supreme Court for determination, in accordance with the mutual recognition legislation.

Note:

In New South Wales, the admission of New Zealand practitioners is dealt with in the Supreme Court Rules.

14 Application for readmission

- (1) An application for a compliance certificate by a person whose name has previously been removed from the Supreme Court roll must, in addition to meeting the requirements of rule 12, set out –
 - (a) the circumstances which led to the applicant's name being removed from the Supreme Court roll;

- (b) the applicant's views about those circumstances and the decision to remove the applicant's name from that roll;
 - (c) events which tend to re-establish the applicant's good fame and character;
 - (d) the applicant's law-related experience since the applicant's name was removed from that roll;
 - (e) any other matters that the applicant considers relevant to the application.
- (2) The Board must provide a copy of any application made under subrule (1) to the designated local regulatory authority responsible for issuing practising certificates in this jurisdiction.
- (3) If the Board issues a compliance certificate to a person referred to in subrule (1), it may provide a written report to the Supreme Court setting out the nature of the application and the Board's reasons for issuing the certificate.

15 Evidence of qualifications

- (1) An application for a compliance certificate must include –
- (a) an original academic transcript setting out the results obtained by the applicant in the academic qualification on which the applicant relies as complying with the requirements of rule 5(1);
 - (b) an original certificate of successful completion of any practical legal training course on which the applicant relies as complying with the requirements of rule 6(1).
- (2) Where an applicant relies on supervised legal training as complying with the requirements of rule 6(1), the application must include –
- (a) a statutory declaration, in a form determined by the Board, by the person who executed the applicant's training plan on behalf of the trainee's employer, or that person's nominee;
 - (b) the work diary kept by the trainee under clause 6(1)(d) of Schedule 3, that has been certified as being correct by –
 - (i) the person referred to in paragraph (a); and
 - (ii) the applicant;
 - (c) an original certificate by an institution or body referred to in clause 6(1)(c) of Schedule 3 that the applicant has successfully completed assessment in the elements referred to in that paragraph; and
 - (d) a statutory declaration, in a form determined by the Board, by –
 - (i) each person who acted as a supervisor of the applicant; and
 - (ii) the applicant.

16 Evidence of character

- (1) Except for an application referred to in subrule (2), an application for a compliance certificate must include 2 statutory declarations as to the applicant's character

made by persons who are not related to the applicant by blood, marriage or as a domestic partner.

- (2) An application for a compliance certificate by any person who is or has been a legal practitioner in a foreign jurisdiction must include 2 statutory declarations as to the applicant's character made by persons with whom the applicant has been associated in legal practice in that jurisdiction.
- (3) Unless the Board determines some other period, a person making a statutory declaration under this rule must have known the applicant for a period of at least 2 years.
- (4) A person making a statutory declaration under this rule must –
 - (a) have read any disclosure made by the applicant under rule 17(1); and
 - (b) attest to that fact in the statutory declaration.
- (5) Subrule (4) does not apply to any disclosure made under rule 17(4).
- (6) The Board may require an applicant to provide any other evidence determined by the Board about the applicant's fame and character, before determining whether the applicant satisfies the requirements of section 17(1)(c) of the Uniform Law.

17 Disclosure statement

- (1) An application for a compliance certificate must include a statutory declaration by the applicant disclosing any matter to which a reasonable applicant would consider that the Board might regard as not being favourable to the applicant when considering whether the applicant is currently of good fame and character and a fit and proper person to be admitted to the Australian legal profession.
- (2) It is the duty of every applicant to make a full and complete disclosure of every matter referred to in subrule (1).
- (3) Any application including a statutory declaration under subrule (1) must also include original or certified copies of any available documentary evidence relating to any matter disclosed.
- (4) A person may make any disclosure relating to that person's physical or mental capacity in a separate statutory declaration from that referred to in subrule (1).
- (5) The Boards may jointly determine Disclosure Guidelines for applicants for admission relating to matters to be disclosed under this rule.
- (6) If Disclosure Guidelines have been determined under subrule (5), any statutory declaration made under subrule (1) or (4) must include a statement that the applicant has read and understood those Disclosure Guidelines.
- (7) If Disclosure Guidelines have been determined under subrule (5), an applicant who does not make a statutory declaration under subrule (1) or (4) must include the following statement in any application for a compliance certificate –

I have read and understood the Disclosure Guidelines for applicants for admission. I further state that I am and always have been of good fame and character. 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.

18 Police reports

An application for a compliance certificate must include -

- (a) in the case of an applicant who -
 - (i) relies on qualifications obtained; or
 - (ii) has been admitted to the legal profession,in an Australian or any other jurisdiction, a report from the police in -
 - (iii) that jurisdiction; and
 - (iv) any jurisdiction in which the applicant has previously resided,on the applicant's criminal history, prepared within 6 months before the application is made;
- (b) in the case of an applicant who has lived in Australia for more than 3 months in the past 2 years before the application is made, a report from the police in Australia on the applicant's criminal history in Australia, prepared within 6 months before the application is made;
- (c) in the case of any applicant, a report from the police in any country or jurisdiction that the Board considers appropriate, on the applicant's criminal history.

19 Student conduct reports

- (1) An application for a compliance certificate must include a report by -
 - (a) any tertiary academic institution at which the applicant obtained the academic qualification upon which the applicant relies as satisfying the requirements of rule 5(1); and
 - (b) any practical legal training provider attended by the applicant,about the conduct of the applicant.
- (2) A report under subrule (1) must reveal -
 - (a) whether or not the applicant was the subject of any disciplinary action, howsoever described, taken by the institution or the provider; and
 - (b) the outcome of any such disciplinary action; andmust be prepared within 6 months before the application is made.
- (3) If the Board so requests in writing, the applicant must take all reasonable steps to cause the institution or practical legal training provider referred to in subrule (1) to provide for inspection or copying by the Board any documents that are relevant to the Board's consideration of any disciplinary action referred to in subrule (2).

20 Certificate of good standing

An application for a compliance certificate made by a person who has been admitted to the legal profession in an Australian non-participating jurisdiction or a foreign jurisdiction must include a statement by the relevant professional body in that jurisdiction that the applicant -

- (a) is a member of the legal profession in good standing; and
 - (b) is not subject to any current or pending disciplinary matters,
- made within 2 months before the application is made.

21 Early assessment of suitability

Every application made under section 21(1) of the Uniform Law must –

- (a) be made by statutory declaration in a form determined by the Board;
- (b) include a disclosure statement referred to in rule 17, as if the application were an application for a compliance certificate; and
- (c) include any documents referred to in rules 15, 16, 18, 19 and 20 that may reasonably be regarded as relevant by the Board when considering the circumstances of the applicant and the application.

22 Further inquiries and hearings

- (1) For the purposes of determining whether an applicant for admission –
 - (a) has complied with these Rules; or
 - (b) is a fit and proper person to be admitted to the Australian legal profession,the Board may –
 - (c) in addition to information referred to in section 437 of the Uniform Law, seek and obtain any further information it may require from an institution providing the specified academic qualifications prerequisite or specified practical legal training prerequisite to the applicant, on which the applicant relies; and
 - (d) require the applicant to appear in person before the Board, or a committee of the Board.
- (2) In any application for a compliance certificate the applicant must authorise the Board to obtain the further information referred to in subrule (1)(c), in the terms determined by the Board.

23 Health assessments

- (1) If there is material before the Board to indicate, on reasonable grounds, that an applicant for a compliance certificate may be currently unable, for reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner, the Board may require the applicant to provide a health report to the Board.
- (2) A health report must be –
 - (a) prepared by a registered medical practitioner;
 - (b) about the applicant's ability satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner; and
 - (c) provided by a date nominated by the Board.

- (3) If either -
- (a) a health report is not provided by the date nominated by the Board; or
 - (b) the Board reasonably considers that any health report provided by the applicant is insufficient for the Board to form a view whether or not the applicant is currently unable, for reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner,
- the Board may -
- (c) require the applicant to undergo a health assessment; and
 - (d) appoint one or more appropriately-qualified persons (one of whom must be a registered medical practitioner) as a health assessor to conduct all or part of that health assessment.
- (4) The Board -
- (a) must inform the applicant in writing if a health assessment is required, setting out -
 - (i) the name and qualifications of the health assessor; and
 - (ii) the date (at least 28 days after the date of the written notice), time and place for the assessment, each of which must be reasonable having regard to the circumstances of the applicant, as known to the Board; and
 - (b) may disclose to the health assessor any information in the Board's possession that the Board considers relevant to the health assessment, including any documents included in the application for a compliance certificate.

24 Health assessment reports

- (1) A requirement under rule 23(3) to undergo a health assessment is not satisfied unless the health assessor conducting the assessment-
- (a) prepares a report setting out the health assessor's findings as to whether, and to what extent, the applicant is currently unable, for reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner;
 - (b) gives a copy of the report to the Board;
 - (c) if the health assessor considers that disclosing to the applicant the information set out in the report is unlikely to be prejudicial to the applicant's health or well-being, gives a copy of the report to the applicant;
 - (d) if the health assessor considers that disclosing the information to the applicant is likely to be prejudicial, gives a copy of the report to a registered medical practitioner nominated by the applicant.
- (2) A report prepared under this rule, or evidence about a report or its contents, is confidential and may not be disclosed to any person except where permitted by law or with the consent of the applicant.

25 Documents to be provided directly

If the Board so requires, a person applying for a compliance certificate must take all reasonable steps to cause any document or certificate, that is to be provided to the Board by a third person under these Rules, to be provided directly to the Board.

26 Compliance certificates

A compliance certificate issued by the Board under section 19 of the Uniform Law must be in a form jointly determined by the Boards.

PART 4 - GENERAL

27 Dispensing power

The Board may, subject to any conditions it thinks fit, dispense with or vary any requirement of these Rules if the Board is satisfied that to do so will not materially detract from –

- (a) any of the prerequisites for the issue of a compliance certificate set out in section 17 of the Uniform Law; or
- (b) any other requirement of the Uniform Law or these Rules relating to the issue of a compliance certificate.

28 Documents

Subject to the Uniform Law and these Rules, the Board may determine the form and required content of any application or other document to be provided to the Board under these Rules.

29 Review of decisions

The Board may review, vary or set aside any decision of the Board, or of any committee, sub-committee or delegate of the Board, or anything done under the authority of any of them, in the circumstances and in the manner determined by the Board.

30 Committees

The Board may establish, and determine the terms of reference of, any committee or sub-committee and may, if jurisdictional legislation in this jurisdiction so allows, delegate any function of the Board to a committee or sub-committee.

31 Acting on the advice of others

The Board may –

- (a) in determining whether a law course or practical legal training course complies with the requirements of rule 5(1) or 6(1), act on a certificate relating to that matter provided by the head of a law course or of a practical legal training provider respectively accredited under these Rules for the purpose of rule 5(1) or 6(1), as the case requires;
- (b) in determining any matter under these Rules, act on the report of a committee of the Board.

PART 5 – TRANSITIONAL AND SAVINGS PROVISIONS

32 Transitional and savings provisions

- (1) In this rule, **former rules** means either the *Legal Profession Admission Rules 2005* of New South Wales or the *Legal Profession (Admission) Rules 2008* of Victoria, as the case requires.
- (2) Anything done by the Legal Profession Admission Board, the Council of Legal Education, the Board of Examiners or by any of their respective committees, sub-committees or delegates, or under the authority of any of them, under the former rules –
 - (a) continues to have effect as if the former rules had not ceased to have effect;
 - (b) insofar as the thing could be done by the Board under these Rules, has effect as if it had been done by the Board and may be varied or set aside by the Board.
- (3) Without limiting subrule (2) –
 - (a) the course for the Diploma in Law granted under rule 80 and the course for any law degree accredited under Part 6 of the New South Wales former rules is each taken to be accredited as a course under rule 7(1)(a) for the purposes of rule 5(1);
 - (b) any course of study approved under rule 2.04 of the Victorian former rules is taken to be accredited under rule 7(1)(a) as a course for the purposes of rule 5(1);
 - (c) any practical legal training provider conducting a practical legal training course set out in the Fourth Schedule to the New South Wales former rules is taken to be accredited under rule 7(1) as a practical legal training provider for the purposes of rule 6(2)(a), conducting that practical legal training course;
 - (d) any PLT provider approved under rule 3.02(1) of the Victorian former rules is taken to be accredited under rule 7(1) as a practical legal training provider for the purposes of rule 6(2)(a);
 - (e) any training course approved under rule 3.04(1) of the Victorian former rules is taken to be a practical legal training course conducted by an accredited practical legal training provider for the purposes of rule 6(2)(a).
- (4) The Board may make any determination or direction it considers necessary to resolve any issue arising as a result of these Rules operating to succeed the former rules.

SCHEDULE 1

ACADEMIC AREAS OF KNOWLEDGE

PART 1 - PRELIMINARY

1. Objective

The objective of this Schedule is –

- (a) to incorporate; and
- (b) to adapt, as far as is practicable and convenient for the purpose of these Rules, the form of,

the *Prescribed Areas of Knowledge* published by the Law Admissions Consultative Committee as Schedule 1 to the Law Admissions Consultative Committee's Uniform Admission Rules 2014.

2. Interpretation

Although the topics below are grouped for convenience under the headings of particular areas of knowledge, there is no implication that a topic needs to be taught in a subject covering the area of knowledge in the heading rather than in another suitable subject.

PART 2 – ACADEMIC AREAS OF KNOWLEDGE

3. Criminal Law and Procedure

Either the following topics –

- (a) The definition of crime
- (b) Elements of crime
- (c) Aims of the criminal law
- (d) Homicide and defences
- (e) Non-fatal offences against the person and defences
- (f) Offences against property
- (g) General doctrines
- (h) Selected topics chosen from -
 - (i) attempts
 - (ii) participation in crime
 - (iii) drunkenness
 - (iv) mistake
 - (v) strict responsibility;

- (i) Elements of criminal procedure. Selected topics chosen from -
 - (i) classification of offences
 - (ii) process to compel appearance
 - (iii) bail
 - (iv) preliminary examination
 - (v) trial of indictable offences;

or topics of such breadth and depth as to satisfy the following guidelines -

The topics should provide knowledge of the general doctrines of the criminal law and, in particular, examination of both offences against the person and against property. Selective treatment should also be given to various defences and to elements of criminal procedure.

4. Torts

Either the following topics -

- (a) Negligence, including defences
- (b) A representative range of torts (other than negligence) and their defences
- (c) Damages
- (d) Concurrent liability
- (e) Compensation schemes;

or topics of such breadth and depth as to satisfy the following guidelines -

The potential compass of this area is so large that considerable variation might be anticipated. At the very least, there should be a study of negligence and of a representative range of torts, with some consideration of defences and damages, and of alternative methods of providing compensation for accidental injury. Examples of these topics are: concurrent liability, defamation, economic torts, nuisance, breach of statutory duty and compensation schemes.

5. Contracts

Either the following topics -

- (a) Formation, including capacity, formalities, privity and consideration
- (b) Content and construction of contract
- (c) Vitiating factors
- (d) Discharge
- (e) Remedies
- (f) Assignment;

or topics of such breadth and depth as to satisfy the following guidelines -

Some variation may be expected in the breadth and detail of the topics. In general, however, knowledge of the formal requirements for concluding contracts, capacity, the content and interpretation of contracts, their performance and discharge, and available remedies, together with an understanding of the broad theoretical basis of contract would be expected.

6. Property

Either the following topics -

- (a) Meaning and purposes of the concept of property
- (b) Possession, seisin and title
- (c) Nature and type (i.e. fragmentation) of proprietary interests
- (d) Creation and enforceability of proprietary interests
- (e) Legal and equitable remedies
- (f) Statutory schemes of registration
- (g) Acquisition and disposal of proprietary interests
- (h) Concurrent ownership
- (i) Proprietary interests in land owned by another
- (j) Mortgages;

or topics of such breadth and depth as to satisfy the following guidelines -

The topics should provide knowledge of the nature and type of various proprietary interests in chattels and land, and their creation and relative enforceability at law and in equity. Statutory schemes of registration for both general law land and Torrens land should be included. A variety of other topics might be included, e.g., fixtures, concurrent interests and more detailed treatment of such matters as sale of land, leases, mortgages, easements, restrictive covenants, etc.

7. Equity

(1) The following topics -

- (a) The nature of equity
- (b) Equitable rights, titles and interests
- (c) Equitable assignments
- (d) Estoppel in equity
- (e) Fiduciary obligations
- (f) Unconscionable transactions
- (g) Equitable remedies

(2) Either Trusts, with particular reference to the various types of trusts and the manner and form of their creation and variation. The duties, rights and powers of

trustees should be included, as should the consequences of breach of trust and the remedies available to, and respective rights of, beneficiaries. (It is expected that about half the course will be devoted to trusts.);

or Topics of such breadth and depth as to satisfy the following guidelines.

The topics should cover the elements of trust law, equitable doctrines apart from those relating to trusts, and equitable remedies. The following aspects of trust law should be dealt with: various kinds of trusts; the rights, duties and powers of trustees; the consequences of breach of trust. Apart from trusts, the following equitable doctrines might be covered, for example, fiduciary obligations, equitable assignments, unconscionability and confidential information. The remedies of specific performance, injunction, declaration and damages in equity should be included. (It is expected that about half the course will be devoted to trusts.)

8. Company Law

Either the following topics -

- (a) Corporate personality
- (b) The incorporation process
- (c) The corporate constitution
- (d) Company contracts
- (e) Administration of companies and management of the business of companies
- (f) Duties and liabilities of directors and officers
- (g) Share capital and membership
- (h) Members' remedies
- (i) Company credit and security arrangements
- (j) Winding up of companies;

or topics of such breadth and depth as to satisfy the following guidelines -

The topics should include an analysis of incorporation and its effects, management and control of a company, the various methods of financing - by the issue of shares and by debt - and the processes of winding up a company.

9. Administrative Law

Either the following topics -

- (a) Organisation and structure of the administration
- (b) Administrative law theory
- (c) Common law and statutory avenues of judicial review at Commonwealth and State level

- (d) Grounds of judicial review
- (e) Remedies
- (f) Crown immunity
- (g) Administrative Appeals Tribunal
- (h) Statutory review
- (i) Freedom of information;

or Topics of such breadth and depth as to satisfy the following guidelines -

The topics should not only embrace traditional common law remedies concerning judicial review of administrative action, but should also cover the range of Commonwealth and State statutory regimes.

10. Federal and State Constitutional Law

Either the following topics -

- (a) State constitutions and constitutional systems
- (b) The Commonwealth Constitution and constitutional system
- (c) The constitution and operation of the legislature, executive and judiciary
- (d) The relationship between the different institutions of government and the separation of powers
- (e) The relationship between the different levels of government;

or topics of such breadth and depth as to satisfy the following guidelines -

The topics should include knowledge of the major principles of both the relevant State or Territory Constitution and the Commonwealth Constitution, including the relations between the different Commonwealth and State or Territory laws. A general knowledge of the scope of both State or Territory and Commonwealth Constitutions is required, although the topics will differ in the depth of treatment of specific heads of power, particularly in the Commonwealth sphere.

11. Civil Procedure

Either the following topics -

- (a) Court adjudication under an adversary system
- (b) The cost of litigation and the use of costs to control litigation
- (c) Service of originating process - as foundation of jurisdiction, including service out of the relevant State or Territory and choice of forum
- (d) Joinder of claims and parties, including group proceedings and the defence of prior adjudication as instances of the public interest in avoiding a multiplicity of proceedings and inconsistent verdicts

- (e) Defining the questions for trial - pleadings, notices to admit and other devices
- (f) Obtaining evidence - discovery of documents, interrogatories, subpoena and other devices
- (g) Disposition without trial, including the compromise of litigation
- (h) Extra-judicial determination of issues arising in the course of litigation
- (i) Judgment
- (j) Appeal
- (k) Enforcement;

or topics of such breadth and depth as to satisfy the following guidelines -

The topics should embrace the general study of rules of civil procedure relevant in the State or Territory. Rules concerning jurisdiction, the initiation and service of process, the definition of issues through pleadings and judgment and enforcement should all be included.

12. Evidence

Either the following topics -

- (a) Introduction
- (b) Competence and compellability
- (c) Privilege
- (d) The examination of witnesses
- (e) Disposition and character
- (f) Similar fact evidence
- (g) The accused as a witness
- (h) Burden and standard of proof
- (i) Documentary evidence
- (j) Opinion evidence and prior determination
- (k) Hearsay -
 - (i) the exclusionary rule
 - (ii) the common law and statutory exceptions
- (l) Admissions and confessions in criminal cases
- (m) Illegally obtained evidence and confirmation by subsequent fact
- (n) Res gestae
- (o) Corroboration;

or topics of such breadth and depth as to satisfy the following guidelines -

The topics should include examination of both the sources and acceptability of evidence, including rules concerning the burden and standard of proof and technical rules concerning such matters as hearsay, admissions and confessions, illegally obtained evidence and res gestae.

13. Ethics and Professional Responsibility

Either the following topic -

Professional and personal conduct in respect of a practitioner's duty:

- (a) to the law;
- (b) to the Courts;
- (c) to clients, including a basic knowledge of the principles relating to the holding of money on trust; and
- (d) to fellow practitioners;

or topics of such breadth and depth as to satisfy the following guidelines -

The topics should include knowledge of the various pertinent rules concerning a practitioner's duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles relating to the holding of money on trust.

SCHEDULE 2

PRACTICAL LEGAL TRAINING COMPETENCIES FOR ENTRY-LEVEL LAWYERS

PART 1 - PRELIMINARY

1. Objective

The objective of this Schedule is –

- (a) to incorporate; and
- (b) to adapt, as far as is practicable and convenient for the purpose of these Rules, the form of,

the *PLT Competency Standards for Entry-level Lawyers* published by the Law Admissions Consultative Committee, which came into effect on 1 January 2015.

2. Definitions and interpretation

- (1) In this Schedule –

applicant means a person making an application under rule 12(1).

PLT means Practical Legal Training.

PLT course means a PLT course conducted by a PLT provider.

PLT provider means a practical legal training provider accredited, or deemed to be accredited, under rule 7.

programmed training means structured and supervised training activities, research and tasks, each with comprehensive assessment.

SLT means supervised legal training and includes articles of clerkship.

SLT provider means a body providing SLT in this jurisdiction.

workplace experience means supervised employment in a legal office, or supervised paid or unpaid placement in a law or law-related work environment.

- (2) The following principles apply when interpreting Part 4.

(a) An **Element** describes a relevant competence that an applicant is required to demonstrate in relation to the relevant prescribed Skill, Practice Area or Value.

(b) A **Performance criterion** sets out an activity by reference to which an applicant's achievement of an appropriate level of competence in the corresponding Element may be demonstrated. An applicant may, however, demonstrate the requisite achievement in relation to an Element –

(i) by attaining some, but not all, of the relevant Performance criteria nominated in a clause for that Element; and

(ii) by attaining equivalent Performance criteria in the course of undertaking another Practice Area set out in Part 4.

(c) Where a Performance criterion refers to an action which can only be performed by a person who has both been admitted to the legal profession

and holds a practising certificate, the requisite competency may be demonstrated by satisfactorily completing a simulated exercise offered, and assessed in accordance with clause 9(a), by a PLT provider or SLT provider.

- (d) Where a Performance criterion provides for a competency to be demonstrated by observing something -
- (i) the entry-level lawyer must document in writing and critically evaluate what has been observed; and
 - (ii) the resulting record must be assessed by the relevant PLT provider or SLT provider in accordance with clause 9(a),
- before the relevant Performance criterion can be satisfied.
- (e) The expression of particular Elements, Performance criteria or Explanatory Notes in relation to a Skill, Practice Area or Value is not intended either -
- (i) to limit the way in which that Skill, Practice Area or Value is taught; or
 - (ii) to prevent either wider or more detailed training in that Skill, Practice Area or Value.

PART 2 - REQUIREMENTS FOR APPLICANTS FOR ADMISSION

3. Required competencies

- (1) Every applicant is required to satisfy the Board that the applicant has achieved the prescribed competence in the Skills, Compulsory and Optional Practice Areas and Values set out in Part 4 and summarised as follows -

Skills

Lawyer's Skills
Problem Solving
Work Management and Business Skills
Trust and Office Accounting

Compulsory Practice Areas

Civil Litigation Practice
Commercial and Corporate Practice
Property Law Practice

Optional Practice Areas

Subject to subclause (2), any two of -

Administrative Law Practice
Banking and Finance
Criminal Law Practice
Consumer Law Practice
Employment and Industrial Relations Practice
Family Law Practice
Planning and Environmental Law Practice
Wills and Estates Practice.

Values

Ethics and Professional Responsibility

- (2) Subclause (1) applies to every applicant who has undertaken PLT in Australia, whether by completing a PLT course, undertaking SLT, or any combination thereof approved by the Board.

4. When PLT may be commenced

- (1) An applicant may commence PLT -
- (a) in the case of SLT, only after the applicant has completed an academic qualification in law, accredited, or deemed to be accredited, under rule 7;
 - (b) in the case of a PLT course that is not integrated with the applicant's academic qualification in law, only after the applicant has completed an academic qualification accredited, or deemed to be accredited, under rule 7, unless the applicant has no more than two academic subjects to complete:
 - (i) neither of which is one of the academic areas of knowledge set out in Schedule 1; and
 - (ii) for which the applicant must be enrolled while undertaking the PLT course,and the applicant has received the prior permission of the Board to commence the PLT course.
- (2) Despite subclause (1), an applicant may undertake an integrated program of academic study and PLT that requires the equivalent of 3 years' full-time academic study of law, apart from the time required to undertake the PLT components of the program; and -
- (a) the academic study is part of a law course accredited, or deemed to be accredited, by the Board under rule 7; and
 - (b) the PLT is conducted by a PLT provider accredited, or deemed to be accredited, by the Board under rule 7.

PART 3 - REQUIREMENTS FOR EACH FORM OF PLT

5. Programmed training and workplace experience

PLT must comprise both programmed training and workplace experience as follows -

- (a) subject to paragraph (d), 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) subject to paragraph (d), in the case of a training course other than a graduate diploma, the equivalent of at least 900 hours' duration, comprising -

- (i) at least 450 hours of programmed training; and
- (ii) at least 15 days' workplace experience;
- (c) in the case of SLT the equivalent of at least 12 months' full-time work which includes a minimum of at least 90 hours' programmed training.
- (d) For the purposes of paragraphs (a) and (b), one day comprises 7 working hours.

6. Common requirements

The requirements in clauses 5, 7, 8, 9 and 10 apply to both PLT courses and SLT.

7. Level of training

- (1) PLT must be provided at a level equivalent to post-graduate training and build on the academic knowledge, skills and values about the law, the legal system and legal practice which a graduate of a first tertiary qualification in law should have acquired in the course of that qualification.
- (2) The level referred to in subclause (1) is a level appropriate for at least a Level 8 Qualification under the Australian Qualifications Framework.

8. Qualification of instructors and supervisors

A person instructing or supervising an applicant while acquiring competence in any Skill, Practice Area or Value must -

- (a) either have substantial current or recent experience in practising law; or
- (b) have comparable relevant qualifications or experience; and
- (c) comply with any other relevant legislative or regulatory requirements in the relevant jurisdiction.

9. Assessment of applicants

- (1) Each form of PLT must employ comprehensive methods, appropriate to post-graduate training, of -
 - (a) assessing an applicant's competence; and
 - (b) certifying whether or not an applicant has demonstrated the requisite level of competence,in each relevant Skill, Practice Area and Value.
- (2) Wherever practicable, an applicant's competence in any Practice Area should be assessed in a way that allows the applicant, at the same time, to further develop and to demonstrate competence in, relevant Skills and Values.

10. Resilience and well-being

All PLT providers and SLT providers should -

- (a) make applicants aware of the importance of personal resilience in dealing with the demands of legal practice;

- (b) provide applicants with appropriate access to resources that will help them develop such resilience;
- (c) provide applicants with information about how and where to seek help in identifying mental health difficulties and in dealing with their effects;
- (d) make applicants aware of the benefits of developing and maintaining personal well-being in their professional and personal lives; and
- (e) provide applicants with information about how and where to find resources to help them develop and maintain such well-being.

PART 4 - COMPETENCY STANDARDS

Note:

Clause 2(2) sets out principles of interpretation that apply to this Part.

11. Administrative Law Practice

Descriptor: An entry-level lawyer who practises in administrative law should be able to:

- (a) obtain information for clients under freedom of information legislation and otherwise;
- (b) seek review of administrative decisions; and
- (c) represent parties before courts and administrative tribunals.

Element	Performance criteria
	The lawyer has competently:
1. Obtaining information	<ul style="list-style-type: none"> • identified whether "freedom of information" or "right to information" legislation applies to the situation. • identified the specific legislation under which the information may be obtained. • taken the steps required under that legislation. • identified and taken any other practical steps required to obtain the information.
2. Obtaining review of administrative decisions	<ul style="list-style-type: none"> • concluded correctly that the decision may be reviewed. • identified and advised the client, or participated in or observed discussions with the client, about alternative means of obtaining a review. • completed all preparation required by law, good practice and the circumstances of the matter. • represented the client effectively at, or participated in or observed, any mediation, hearing or other review forum, where this is appropriate and permitted. • identified all alternative means of obtaining redress and discussed them with the client.
3. Representing a client	<ul style="list-style-type: none"> • completed all preparation required by law, good practice and the circumstances of the matter.

- represented the client effectively at, or participated in or observed, any mediation, hearing or other proceeding, where this is appropriate or permitted.

Explanatory notes

This competency standard applies to both State and Federal administrative law and practice and to proceedings before both State and Federal courts and tribunals.

In the Performance criteria for Elements 2 and 3, "preparation" includes drafting written submissions.

12. Banking and Finance

Descriptor: An entry-level lawyer who practises in Banking and Finance should be able to demonstrate competence in advising clients on some of the common ways to finance commercial transactions and they should be able to demonstrate competence in drafting simple loan agreements and associated security documents, and in taking the actions required to perfect those securities.

Element	Performance criteria
1. Preliminary investigation	<p>The lawyer has competently:</p> <ul style="list-style-type: none"> • identified one or more ways of financing a borrower’s proposal and identified the securities available to a financier in the situation • undertaken any necessary preliminary searches and inquiries to investigate issues of ownership, title and the capacity of any party to enter into the proposed financial arrangement • identified any consents to, or notifications of, the proposed financial arrangement required by existing financial or contractual arrangements • identified any requirements imposed on the financier by law in respect of the proposed financial arrangement.
2. Planning	<ul style="list-style-type: none"> • planned the steps to be taken to effect the proposed arrangement including identifying and recording any critical dates, identifying any necessary searches and inquiries and identifying the required documentation
3. Documentation	<ul style="list-style-type: none"> • drafted the relevant loan and security documents • informed the borrower of their obligations in relation to the arrangement including any personal obligations under any guarantees • complied with any legislative requirements relating to the proposed arrangement
4. Due Diligence	<ul style="list-style-type: none"> • undertaken any further searches and inquiries required and advised the client what experts need to be engaged for due diligence (accountants etc.)

5. Finalisation

- had the transaction documentation executed, and (if necessary) stamped and registered according to law and good practice.

Explanatory Note

An entry-level lawyer may not demonstrate competence in this elective practice area by submitting the same or similar work, to work that the entry-level lawyer submits to demonstrate competence in the Commercial and Corporate Practice area.

13. Civil Litigation Practice

Descriptor: An entry-level lawyer should be able to conduct civil litigation in first instance matters in at least one State or Territory court of general jurisdiction, in a timely and cost-effective manner.

Element

Performance criteria

The lawyer has competently:

- | | |
|---|---|
| 1. Assessing the merits of a case and identifying dispute resolution alternatives | <ul style="list-style-type: none">• assessed the strengths and weaknesses of both the claimant's and opponent's cases.• identified the facts and evidence required to support the claimant's case.• advised the client of relevant rights and remedies in a way that a reasonable client could understand.• identified means of resolving the case, having regard to the client's circumstances.• where possible, confirmed in writing any instructions given by the client in response to initial advice.• identified and complied with the relevant limitation period. |
| 2. Advising on costs of litigation | <ul style="list-style-type: none">• identified any litigation funding options and a means of reducing or recovering costs.• identified alternative types of costs orders and how they may be affected by formal and informal offers of compromise and the manner of conducting the litigation.• advised the client of relevant cost considerations in a way that a reasonable client could understand. |
| 3. Initiating and responding to claims | <ul style="list-style-type: none">• identified an appropriate claim or defence.• identified a court of appropriate jurisdiction.• identified the elements of the claim or defence, according to law.• followed procedures for bringing the claim or making the defence in accordance with the court's rules and in a timely manner.• drafted all necessary documents in accordance with those procedures. |
| 4. Taking and responding to interlocutory and default proceedings | <ul style="list-style-type: none">• identified any need for interlocutory steps, according to the court's rules.• followed procedures for taking those steps in accordance with |

- the court's rules and in a timely manner.
- drafted all necessary documents in accordance with those procedures and rules.
5. Gathering and presenting evidence
- identified issues likely to arise at the hearing.
 - identified evidence needed to prove the client's case or disprove the opponent's case, according to the rules of evidence.
 - identified various means of gathering evidence, and used at least one of them to gather evidence.
 - presented, or observed the presentation of, that evidence according to law and the court's rules.
6. Negotiating settlements
- Conducted, participated in or observed, settlement negotiations.
 - identified any revenue and statutory refund implications.
 - properly documented any settlement reached.
7. Taking action to enforce orders and settlement agreements
- identified available means of enforcing the order or settlement according to law and the court's rules.
 - followed procedures relevant to the chosen means of enforcement in a timely manner.

Explanatory notes

This competency standard applies to first instance civil litigation in local lower and higher courts of an Australian State or Territory, having general jurisdiction, and in the Federal Court.

In the Performance criteria for Element 1, "means of resolving a case" includes:

- negotiation;
- mediation;
- arbitration;
- litigation;
- expert appraisal.

In the Performance criteria for Element 5, "means of gathering evidence" includes:

- statements from witness;
- notices to admit;
- discovery;
- subpoena;
- expert reports;
- certified official records, banker's books and similar documents.

In the Performance criteria for Element 5, reference to presenting evidence includes presenting evidence:

- orally on oath;
- by affidavit;
- by video or telephone link.

In the Performance criteria for Element 7, "means of enforcement" includes:

- execution process including attachment of debts;
- taxation or assessment of costs;
- oral examination.

14. Commercial and Corporate Practice

Descriptor: An entry-level lawyer should be able to:

- (a) conduct standard commercial transactions such as the sale and purchase of a small business;
- (b) understand the relevant risks associated with such a transaction for both parties;
- (c) set up simple business structures using entities such as companies, trusts and partnerships;
- (d) provide basic advice on finance and securities and on the obligations of companies and their officers; and
- (e) appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

Element	Performance criteria
	The lawyer has competently:
1. Conducting commercial transactions	<ul style="list-style-type: none">• identified the nature of the transaction.• undertaken sufficient searches and inquiries to investigate any relevant issues of title to real or personal property.• drafted documents, had them executed, and (if necessary) certified, stamped and registered, according to law and good practice.• obtained or given any necessary consents to, or notifications of, the transaction required by law.
2. Setting up commercial structures	<ul style="list-style-type: none">• selected a structure that will achieve the client's objectives.• drafted all documents required to set up the structure (including establishing any discrete entities that will form part of the structure).• had the documents executed and (if necessary) certified, stamped and registered, according to law and good practice.• informed the client of any continuing obligations in relation to the structure, and, where the structure involves a corporation, of the continuing obligations of the company and its officers.
3. Dealing with loans and securities	<ul style="list-style-type: none">• identified one or more types of financial arrangements and securities available to the borrower and lender.• informed the borrower and lender of their immediate, continuing, and potential liabilities under any proposed financing and security arrangements.• drafted loan or security documents which reflect the agreement between lender and borrower.• had the loan or security documents executed and (if necessary) stamped and registered, according

to law and good practice.

4. Advising on revenue law and practice
- identified in a general way the possible revenue implications of the client's proposed commercial venture or arrangement.
 - referred the client to experts for more comprehensive or detailed advice, where appropriate.

Explanatory notes

In Element 2, "structure" includes:

- basic trusts;
- private companies;
- partnerships;
- joint ventures;
- franchise arrangements.

In Element 3, "securities" includes:

- personal property security agreements;
- chattel leases;
- loans agreements;
- guarantees, including guarantees from spouses.

In the Performance criteria for Element 4, "revenue implications" includes:

- stamp duties;
- income tax;
- capital gains tax;
- GST;
- fringe benefits tax;
- land and property taxes.

15. Consumer Law Practice

Descriptor: An entry-level lawyer who practises in consumer law should be able to:

- (a) advise clients on the procedures and remedies available in relation to consumer protection complaints and disputes; and
- (b) represent the client in any related negotiations or proceedings.

Element

Performance criteria

The lawyer has competently:

1. Obtaining information
 - identified the consumer protection complaint or dispute as one to which consumer protection legislation applies.
 - identified the relevant legislation and any applicable case law.
 - identified any possible common law remedies.
2. Drafting documents
 - drafted any documents required, in accordance with the client's instructions and the relevant legislation.
3. Initiating and responding to claims
 - identified the appropriate forum for initiating or responding to a claim.
 - initiated a claim or taken action to oppose a claim

in accordance with the rules and procedures of the relevant court or tribunal, in a timely manner.

- obtained all necessary evidence and drafted all necessary documents in accordance with those rules.
4. Representing the client
- identified all possible means of resolving the consumer protection complaint or dispute to the satisfaction of the client; and discussed them with the client, or participated in or observed, such discussions.
 - completed all necessary preparation in accordance with the law, good practice and the circumstances of the matter.
 - represented the client effectively at, or participated in or observed, any negotiation, mediation, hearing or other proceedings.
5. Taking action to implement outcomes
- documented any order or settlement properly and explained it to the client in a way which a reasonable client could understand.
 - identified any procedures necessary to enforce the order or settlement and implemented them in a timely manner.

Explanatory notes

This competency standard applies to the practice of consumer law under both State and Federal consumer protection legislation and codes.

In the Performance criteria for Element 1, "consumer protection dispute" includes a dispute relating to:

- competition and consumer legislation;
- misleading and deceptive conduct;
- motor car traders;
- domestic building contracts;
- consumer credit;
- guarantees;
- residential tenancies.

In the Performance criteria for Element 1 "consumer protection legislation" includes State and Federal legislation and codes concerning:

- competition and consumer law;
- misleading and deceptive conduct;
- motor car traders;
- domestic building contracts;
- consumer credit;
- residential tenancies.

In the Performance criteria for Element 3, "court or tribunal" includes:

- Federal courts;
- State courts;
- statutory tribunals;
- industry complaint panels;
- industry ombudsmen.

16. Criminal Law Practice

Descriptor: An entry-level lawyer who practises in criminal law should be able to advise clients before arrest, seek bail, make pleas, participate in minor contested hearings and assist in preparing cases for trial.

Element	Performance criteria
	The lawyer has competently:
1. Providing advice	<ul style="list-style-type: none">• identified the client's legal rights and legal powers of the police or other prosecutors or investigators in relation to a criminal matter.• informed the client of those rights and powers in a way that a reasonable client could understand.• identified the legal elements of any offence with which the client is charged.• where possible, confirmed in writing any instructions given by the client in response to initial advice.• implemented the client's instructions, when it is appropriate in the circumstances to do so.
2. Applying for bail	<ul style="list-style-type: none">• identified the client's options and communicated them to the client in a way a reasonable client could understand.• helped the client to make an informed decision about which option to select.• made, or been involved in the process of making, or observed, an application for bail or taken other action effectively in the circumstances.• fully advised the client of any bail conditions.
3. Making pleas	<ul style="list-style-type: none">• identified the client's options and communicated them to the client in a way a reasonable client could understand.• identified and gathered all material useful to the plea, according to law and good practice.• presented, or been involved in the process of presenting, or observed the presentation of, the plea in an effective and persuasive manner, having regard to the circumstances of the case.• advised the client fully of the outcome in a way a reasonable client could understand.
4. Representing a client in minor matters	<ul style="list-style-type: none">• completed all preparation required by law, good practice and the circumstances of the case.• represented, or been involved in representing the client, or observed the client being represented, effectively at a contested hearing.
5. Assisting to prepare cases for trial	<ul style="list-style-type: none">• identified and gathered the evidence needed to support the client's case.• identified and briefed, or been involved in briefing, appropriate experts (including counsel) having regard to good practice and the requirements of

the case.

Explanatory notes

In the Performance criteria for Element 1, "criminal matter" includes:

- traffic offences;
- domestic violence and apprehended violence orders;
- drink driving;
- drug offences.

17. Employment and Industrial Relations Practice

Descriptor: An entry-level lawyer who practises in the area of employment and industrial relations should be able to:

- (a) advise clients on the relevant law and procedures;
- (b) represent clients in negotiations; and
- (c) initiate and respond to applications in relevant State and Federal courts and tribunals.

Element	Performance criteria
	The lawyer has competently:
1. Assessing the merits of the dispute and identify the dispute resolution alternatives	<ul style="list-style-type: none">• identified the relevant facts.• assessed the strengths and weaknesses of the dispute according to the relevant law.• identified all means of resolving the dispute, having regard to the client's circumstances.
2. Advising client on procedures	<ul style="list-style-type: none">• advised the client of means of avoiding a dispute, where appropriate.• advised the client of available steps to strengthen the client's position.
3. Commencing negotiations	<ul style="list-style-type: none">• explored opportunities for a negotiated settlement, subject to the client's instructions.• represented, or been involved in representing, the client, or observed the client being represented, effectively at any negotiations.
4. Initiating and responding to proceedings	<ul style="list-style-type: none">• identified the appropriate jurisdiction.• initiated or opposed, or been involved in initiating or opposing, a claim or observed the initiation or opposition of a claim, in accordance with the rules of the relevant court or tribunal, in a timely manner.• obtained all necessary evidence and drafted all necessary documents in accordance with those rules.
5. Representing the client	<ul style="list-style-type: none">• completed all preparation required by law, good practice and the circumstances.• represented, or been involved in representing the client, or observed the client being represented, effectively at any mediation, hearing or other forum.
6. Taking action to	<ul style="list-style-type: none">• properly documented any order or settlement and

implement outcomes

explained it to the client in a way which the client can understand.

- identified and implemented, or been involved in identifying and implementing, any procedures required to enforce the order or settlement.

Explanatory notes

This competency standard applies to the practice of employment and industrial relations law at both State and Federal levels.

In the Performance criteria for Elements 1 and 2, "dispute" includes:

- award negotiations;
- an industrial dispute relating to an individual employee or to a workplace or industry;
- an equal employment opportunity or anti-discrimination claim;
- a claim for unfair dismissal.

In the Performance criteria for Element 1, "means of resolving the dispute" includes:

- negotiation;
- mediation;
- conciliation;
- arbitration;
- litigation.

In the Performance criteria for Element 2, "means of avoiding a dispute" and "steps to strengthen the client's position" include:

- altering internal employment practices and procedures;
- revising employment contracts;
- entering or revising enterprise bargaining agreements;
- altering individual employment contracts;
- taking disciplinary proceedings;
- allowing industrial representation.

18. Ethics and Professional Responsibility

Descriptor: An entry-level lawyer should act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community and other lawyers.

Element

Performance criteria

The lawyer has competently:

1. Acting ethically

- identified any relevant ethical dimension of a particular situation.
- taken action which complies with professional ethical standards in that situation.

2. Knowing when to raise ethical problems with others
 - identified circumstances in which matters relating to the ethical conduct of legal practice should be brought to the attention of others.
 - identified with whom different matters of this type should be raised (for example, employers, professional associations, legal services boards, police).
 - learned about relevant protocols, institutional procedures and difficulties, associated with raising such matters with others.
3. Discharging the legal duties and obligations of legal practitioners
 - identified any duty or obligation imposed on the lawyer by law in a particular situation.
 - discharged that duty or obligation according to law and good practice.
4. Complying with professional conduct rules
 - identified any applicable rules of professional conduct.
 - taken action which complies with those rules.
5. Complying with fiduciary duties
 - recognised and complied with any fiduciary duty, according to law and good practice.
6. Avoiding conflicts of interest
 - identified any potential or actual conflict, as soon as is reasonable in the circumstances.
 - taken effective action to avoid a potential conflict or, where a conflict has already arisen, dealt with it in accordance with law and good practice, or been involved in the process of doing one or more of those things.
 - taken, or been involved in the process of taking, appropriate action, where applicable, to prevent such a conflict arising in the future.
7. Acting courteously
 - demonstrated professional courtesy in all dealings with others.
8. Complying with rules relating to the charging of fees
 - identified any rules applying to charging professional fees.
 - complied with those rules, where they are relevant.
 - maintained file notes and records in accordance with law and good practice.
9. Being aware of the importance of pro bono contributions
 - recognised the importance of pro bono contributions to legal practice.
 - identified various means whereby lawyers may provide pro bono contributions.
 - where necessary, used resources provided by professional or community organisations to facilitate pro bono contributions.
 - identified when a client with insufficient resources may be entitled to legal aid, or assistance from professional or community organisations.

Explanatory notes

The purpose of this standard is to assist entry-level lawyers to adopt ethical habits in legal practice to ensure that they effectively and appropriately discharge their obligations to the Court, to the legal profession and to clients by:

- acting ethically;
- observing general and statutory law relating to the duties and obligations of legal practitioners;
- observing written and unwritten rules of professional conduct; or
- observing written and unwritten rules of professional courtesy.

In the Performance criteria for Element 3, "duty or obligation" includes the duties and obligations:

- of confidentiality;
- to maintain competence;
- to act honestly;
- not to mislead the court;
- not to pervert the course of justice or the due administration of justice.

In Element 6, "conflicts of interest" include conflicts between:

- joint venture partners;
- directors and shareholders of a company;
- trustees and beneficiaries in a family trust;
- parties to any transaction where the interests of the parties may differ.

19. Family Law Practice

Descriptor: An entry-level lawyer who practises in family law should be able to:

- (a) advise and take action in relation to parenting matters, property settlements, spouse maintenance and child support problems;
- (b) identify appropriate dispute-resolution processes for such matters, in the light of the client's circumstances and concerns; and
- (c) advise clients on pre-action procedures.

Element

Performance criteria

The lawyer has competently:

- | | |
|--|---|
| 1. Advising on matters relating to children and property | <ul style="list-style-type: none">• elicited information necessary to identify the client's options.• informed the client of all relevant available options, in a way that a reasonable client could understand.• identified any pre-action procedures that apply to the matter.• taken any steps necessary to enable the client to obtain access to those procedures. |
|--|---|

2. Representing a client in matters relating to children and property
 - prepared, or been involved in preparing, or observed the preparation of, either an application for interim, final or consent orders relating to a matter concerning children or property, or a response to such an application.
 - pursued, or been involved in the pursuit of, the case in accordance with good practice for the chosen dispute resolution process.
 - identified and explained, or been involved in identifying and explaining, to the client the revenue implications of any proposed settlement.
 - documented and acted upon, or been involved in documenting and acting upon, any results of the chosen dispute resolution process, in accordance with law and good practice.

Explanatory notes

This competency standard applies to children and property matters arising from the breakdown of marriages or other domestic relationships, rather than the dissolution of marriage. It includes:

- responsibility for parenting, including residence of and contact with, children;
- property settlements;
- spouse maintenance;
- child support;
- domestic violence orders;
- injunctions and sole-use orders;
- de facto proceedings.

20. Lawyer's Skills

Descriptor: An entry-level lawyer should be able to demonstrate oral communication, legal interviewing, advocacy, negotiation, dispute resolution, letter-writing and drafting skills.

Element

Performance criteria

The lawyer has competently:

1. Communicating effectively
 - identified the purpose of a proposed communication, the most effective way of making it, and the content of the proposed communication.
 - presented thoughts, advice, and submissions in a logical, clear, succinct and persuasive manner, having regard to the circumstances and the person or forum to whom they are made.

- 2. Cross-cultural awareness
 - identified and appropriately dealt with verbal and non-verbal aspects of cross-cultural communication.
 - taken any follow-up action in accordance with good practice.
 - demonstrated awareness of difficulties of communication attributable to cultural differences; their possible effect on a client's dealings with lawyers, the police, courts, government and legal agencies; and the desirability of cross-cultural communications training for all lawyers.

- 3. Interviewing clients
 - prepared for the interview properly, having regard to relevant information available before the interview and all known, relevant circumstances.
 - conducted, participated in conducting or observed, the interview, using communication techniques appropriate to both the client and the context.
 - ensured that the client and lawyer have both obtained all the information which they wanted from the interview in a timely, effective and efficient way, having regard to the circumstances.
 - ensured that the lawyer and client left the interview with a common understanding of the lawyer's instructions (if any) and any future action that the lawyer or client is respectively to take.
 - made a record of the interview that satisfies the requirements of law and good practice.
 - taken, or participated in taking, any follow-up action in a timely manner.

- 4. Writing letters
 - identified the need for, and purpose of, the letter.
 - written the letter in plain English that conveys its purpose clearly and could be understood by the person to whom it is sent, acting reasonably.

- 5. Drafting other documents
 - identified the need for, and purpose of, the document.
 - devised an effective form and structure for the document having regard to the parties, the circumstances, good practice, plain English principles and the relevant law.
 - drafted the document effectively having regard to the parties, the circumstances, good practice, plain English principles, and the relevant law.
 - considered whether the document should be settled by counsel.
 - taken every action required to make the document effective and enforceable in a timely manner and according to law (such as execution by the parties, stamping, delivery and registration).

- | | |
|--|---|
| 6. Negotiating settlements and agreements | <ul style="list-style-type: none"> • prepared, or participated in, the preparation of the client's case properly having regard to the circumstances and good practice. • identified the strategy and tactics to be used in negotiations and discussed them with and obtained approval from the client, or been involved in or observed that process. • carried out, been involved in or observed, the negotiations effectively having regard to the strategy and tactics adopted, the circumstances of the case and good practice. • documented any resolution as required by law or good practice and explained it, or been involved in the process of explaining it, to the client in a way a reasonable client could understand. |
| 7. Facilitating early resolution of disputes | <ul style="list-style-type: none"> • identified the advantages and disadvantages of available dispute resolution options and explained them to, or been involved in explaining them to, the client. • performed in the lawyer's role, or been involved in or observed that performance, in the dispute resolution process effectively, having regard to the circumstances. • documented any resolution as required by law or good practice and explained it, or been involved in explaining it, to the client in a way a reasonable client could understand. |
| 8. Representing a client in a legal forum | <ul style="list-style-type: none"> • observed the etiquette and procedures of the forum. • organised and presented in an effective, strategic way: <ul style="list-style-type: none"> – factual material; – analysis of relevant legal issues; and – relevant decided cases. • presented and tested evidence in accordance with the law and good practice. • made submissions effectively and coherently in accordance with law and good practice. |

Explanatory notes

Assessment of competence for this standard should require the entry-level lawyer to synthesise or combine the above skills and apply them in one or more specific legal contexts.

In the Performance criteria for Element 2, "difficulties of communication attributable to cultural differences" includes difficulties of communication encountered by Indigenous people.

In the Performance criteria for Element 7, "dispute resolution options" includes:

- negotiation;
- mediation;
- arbitration;
- litigation;
- expert appraisal.

In Element 8, "Representing" refers to appearing, being involved in appearing, or observing another appearing, on behalf of a client in a court, tribunal or other legal forum on a matter, including:

- an aspect of preliminary or pre-trial civil or criminal proceedings;
- an aspect of first instance trial advocacy in a simple matter;
- leading evidence-in-chief, cross-examination and re-examination; and
- making submissions.

21. Planning and Environmental Law Practice

Descriptor: An entry-level lawyer who practises in planning and environmental law should be able to:

- (a) advise, and generally assist, clients on the relevant law and planning process;
- (b) apply for approvals and consents under relevant planning legislation;
- (c) object to applications; and
- (d) initiate or defend planning or environmental actions.

Element

Performance criteria

The lawyer has competently:

- | | |
|---|---|
| 1. Assessing the merits of the matter and advising the client | <ul style="list-style-type: none">• obtained full instructions from the client.• analysed the facts in accordance with the relevant law.• obtained and clarified any relevant technical information.• advised, or been involved in advising, the client of any rights and obligations of the client and potential penalties if obligations are not observed.• identified, or been involved in identifying, all options and developed a plan of action in accordance with the client's instructions.• alerted, or been involved in alerting, the client to the need to identify the commercial, political and public relations implications of any proposed action. |
| 2. Preparing planning applications or objections | <ul style="list-style-type: none">• identified and analysed relevant provisions of the appropriate planning scheme.• identified any appropriate grounds of objection.• prepared either an application for development or other planning approval, or an objection to such an application.• identified any need to obtain plans or other information. |

- | | |
|--|---|
| 3. Initiating or responding to environmental claims | <ul style="list-style-type: none"> • identified the appropriate forum for initiating or responding to a claim. • initiated or opposed, or been involved in initiating or opposing, a claim in accordance with the rules of the relevant court or tribunal, in a timely manner. • obtained all necessary evidence and drafted all necessary documents in accordance with those rules. |
| 4. Representing the client in resolving a planning matter or environmental claim | <ul style="list-style-type: none"> • identified appropriate means of resolving the matter to the satisfaction of the client and discussed them, or been involved in discussing them, with the client. • completed all preparation required by law and good practice. • represented, or been involved in representing, or observed the representation of, the client effectively in any negotiation, mediation, hearing or other proceedings. |
| 5. Implementing outcomes | <ul style="list-style-type: none"> • properly documented any order or settlement and explained, or been involved in explaining it to the client in a way which a reasonable client could understand. • identified and carried out any procedures to enforce the order or settlement in a timely manner. |

Explanatory notes

This competency standard applies to the practice of planning and environmental law under both common law and State and Federal legislation.

In Element 4, "planning matter or environmental claim" includes:

- an application for, or an application for exemption from the need for, a permit, licence, approval or other authority;
- an objection, appeal or application for review of a decision, relating to such an application;
- a prosecution for breach of relevant planning or environmental legislation;
- a civil action relating to either or both a planning and environmental matter.

22. Problem Solving

Descriptor: An entry-level lawyer should be able to:

- (a) investigate and analyse facts and law;
- (b) provide legal advice; and
- (c) solve legal problems.

Element

Performance criteria

The lawyer has competently:

- | | |
|---|--|
| 1. Analysing facts and identifying issues | <ul style="list-style-type: none"> • identified and collected all relevant facts as far as is practicable. • analysed the facts to identify any existing or potential legal issues. • distinguished relevant facts from other facts, if the matter so requires. |
|---|--|

- 2. Analysing law
 - identified any questions of law raised by the matter.
 - researched those questions of law properly, having regard to the circumstances.
 - identified and interpreted any relevant statutory provisions and applied them appropriately to the facts.
- 3. Providing legal advice
 - applied the law to the facts of the matter in an appropriate and defensible way.
 - given, or been involved in giving, the client advice in a way which a reasonable client could understand.
 - identified any developments that might affect the accuracy of previous advice and told, or been involved in telling, the client about the effect of those developments.
- 4. Generating solutions and strategies
 - identified the problem and the client's goals as fully as is practicable.
 - investigated the facts and legal issues as fully as is practicable.
 - developed creative options and strategies to meet the client's objectives.
 - identified the advantages and disadvantages of pursuing each option or strategy.
 - assisted, or been involved in assisting, the client to choose between those options in a way consistent with good practice.
 - developed a plan to implement the client's preferred option.
 - acted, or been involved in acting, to resolve the problem in accordance with the client's instructions and the lawyer's plan of action.
 - remained open to new information and ideas and updated advice to the client where necessary.

Explanatory notes

In Element 2, "Analysing law" includes:

- (a) researching legal issues by using:
 - law libraries;
 - on-line searches;
 - electronic data bases;
 - legal citators and digests; and
- (b) applying principles of precedent and statutory interpretation.

23. Property Law Practice

Descriptor: An entry-level lawyer should be able to:

- (a) convey, lease and mortgage real property; and
- (b) provide general advice on standard matters arising under local government, planning, environmental or other legislation relating to land use in the relevant State or Territory.

Element	Performance criteria
	The lawyer has competently:
1. Transferring title	<ul style="list-style-type: none"> • identified the nature of the interest being dealt with, pursuant to the pre-eminent title system in the relevant jurisdiction. • prepared, commented on and advised, or been involved in advising, on an appropriate contract of sale or other type of agreement for transferring the relevant interest in land; and had it executed according to law and good practice. • undertaken sufficient searches and inquiries to investigate title, any issues about land use and responsibility for outgoings. • drafted an appropriate instrument of transfer or conveyance and had it executed and (if necessary) stamped and registered, according to law. • obtained or given any consents to, or notifications of, the transfer or conveyance, according to law. • arranged for the instrument to be executed and (if necessary) stamped and registered, as required by law.
2. Creating leases	<ul style="list-style-type: none"> • made and obtained all searches and consents required by law and good practice. • drafted, commented on and advised, or been involved in advising, on a lease in a form allowed by law, reflecting the agreement between lessor and lessee and protecting their respective interests. • arranged for the lease to be executed and (if necessary) stamped and registered, according to law.
3. Creating and releasing mortgages	<ul style="list-style-type: none"> • made and obtained all searches and consents required by law and good practice. • drafted, commented on and advised, or been involved in advising, on an effective instrument to create or release the security, reflecting the agreement between the grantor and grantee and protecting their respective interests.
4. Advising on land use	<ul style="list-style-type: none"> • identified any planning scheme or other statutory provisions regulating the relevant use. • Advised, or been involved in advising, the client generally about processes to be followed to obtain permission for, or to object to, the use, as the case requires.
5. Advising on revenue implications	<ul style="list-style-type: none"> • identified the revenue implications of any transaction and advised, or been involved in advising, the client accordingly.

Explanatory notes

In Element 1, "Transferring title" refers to title pursuant to the pre-eminent title system in the relevant jurisdiction.

In the Performance criteria for Element 1, "contract of sale" includes a contract of sale subject to special conditions.

In Element 2, "Creating leases" refers to residential tenancies or leases and standard commercial leases.

In Element 3, "mortgages" includes any other relevant security over land.

In Element 4, "Advising on land use" includes advising on issues relating to:

- town planning schemes;
- local government by-laws;
- environment and heritage legislation;
- revenue and tax legislation.

24. Trust and Office Accounting

Descriptor: An entry-level lawyer should have sufficient knowledge, skills and values to maintain trust and general account records according to law and good practice, to the extent usually permitted and expected of an employed solicitor: *See Explanatory notes below.*

Element	Performance criteria
	The lawyer has competently:
1. Understand relevant fiduciary and other duties	<ul style="list-style-type: none">• identified and applied: general law fiduciary and other duties; codified duties; duties to supervise and report in relation to trust monies; and duties and obligations of maintaining a trust account.
2. Receiving money	<ul style="list-style-type: none">• dealt with money received from or on behalf of a client, as required by law and good practice.• where the law and good practice requires money to be deposited in a trust account or general account, recorded the deposit as required by law and good practice.• issued any receipt required by law and good practice.
3. Making outlays	<ul style="list-style-type: none">• made any outlay from the correct account, according to law and good practice.• recorded the outlay as required by law and good practice.
4. Rendering costs	<ul style="list-style-type: none">• demonstrated an ability to comply with regulations relating to disclosure of costs and a client's rights relating to costs.• calculated the costs in accordance with law, good practice and any agreement between the lawyer and client.

- added to the bill all outlays made by the firm for which the client is responsible.
- accounted to the client for any money received from the client on account of costs and outlays, as required by law and good practice.
- drafted the bill and delivered it in accordance with law and good practice.

Explanatory notes

This competency standard applies to trust and general accounting and to rendering bills of costs. It requires a general knowledge of solicitors’ trust account law and practice and costs regulation in the relevant jurisdiction and an understanding of the general principles of maintaining trust and office records.

25. Wills and Estates Practice

Descriptor: An entry-level lawyer who practises in wills and estates should be able to draft wills, administer deceased estates and take action to solve problems about wills and estates.

Element

Performance criteria

The lawyer has competently:

- | | |
|--|--|
| 1. Drafting wills | <ul style="list-style-type: none"> • advised the client of issues, options, and potential problems that might arise in respect of the client’s testamentary intentions. • obtained instructions reflecting the client’s informed and independent wishes, which can be effectively implemented. • drafted a will reflecting the client’s instructions. • identified any issues of testamentary capacity and resolved them in accordance with law and good practice. • ensured that the client executed the will in accordance with law. • given any necessary follow up advice to the client. |
| 2. Administering deceased estates | <ul style="list-style-type: none"> • obtained a grant of probate or letters of administration where required. • identified the debts and assets of the estate. • gathered in the estate or transferred or transmitted assets directly to beneficiaries, as appropriate, having regard to the law, good practice, and the circumstances. • discharged the estate’s debts, distributed specific gifts and the residue and ensured that the executors have been released of their obligations in a timely fashion. |
| 3. Taking action to resolve wills and estates problems | <ul style="list-style-type: none"> • identified the nature of the problem properly, having regard to the law of the jurisdiction. • identified the client’s options for dealing with the problem, having regard to the law of the particular |

jurisdiction and the client's circumstances.

- explained the options to the client in a way a reasonable client could understand.
- taken action to resolve the problem in accordance with the client's instructions.

Explanatory notes

In the Performance criteria for Element 1, "follow-up advice" includes advice on:

- the effects of marriage on a will;
- the effects of divorce on a will;
- storage options for a will;
- revocation of a will;
- modification of a will;
- associated documents such as enduring powers of attorney.

In Element 3, "wills and estates problems" include problems of:

- testamentary capacity;
- construction;
- validity of the will;
- validity of gifts;
- assets outside the jurisdiction;
- revenue issues;
- family provision;
- mutual wills;
- trusts;
- informal wills;
- testamentary directions.

26. Work Management and Business Skills

Descriptor: An entry-level lawyer should be able to manage workload, work habits, and work practices in a way that ensures that clients' matters are dealt with in a timely and cost-effective manner.

Element	Performance criteria
	The lawyer has competently:
1. Managing personal time	<ul style="list-style-type: none">• used a diary or another system to record time limits or deadlines and to assist in planning work.• identified conflicting priorities as they arise and managed the conflict effectively.• used available time effectively, to the benefit of the lawyer's clients and employer.
2. Managing risk	<ul style="list-style-type: none">• conducted each matter in a way that minimises any risk to the client, lawyer or firm arising from missed deadlines, negligence or failure to comply with the requirements of the law, a court or other body.• recognised the limits of the lawyer's expertise and experience and referred the client or matter to other lawyers, counsel or other professionals, as the circumstances require.
3. Managing files	<ul style="list-style-type: none">• used a file management system to ensure that work priorities are identified and managed; clients' documents are stored in an orderly and secure

- manner; and to alert the lawyer to any need to follow up a matter or give it other attention.
- rendered timely bills, in accordance with law and any agreement between the lawyer and client, which set out the basis for calculating the lawyer's fees.
 - accurately recorded all communications and attendances, with details of dates and times.
4. Keeping client informed
- communicated with the client during the course of the matter as frequently as circumstances and good practice require.
 - confirmed oral communications in writing when requested by the client or required by good practice.
 - dealt with the client's requests for information promptly.
 - informed the client fully of all important developments in the matter, in a way which a reasonable client could understand.
5. Working cooperatively
- worked with support staff, colleagues, consultants and counsel in a professional and cost effective manner.
6. Self-management
- Demonstrated an ability to manage work and personal issues consistent with principles of resilience and well-being.

Explanatory notes

The purpose of this standard is to assist entry-level lawyers to adopt good work habits in legal practice to ensure that:

- clients do not suffer loss or damage from a lawyer missing deadlines or neglecting matters;
- clients are kept informed regularly and fully of the progress of their matters; and
- clients' matters are dealt with in a cost-effective manner.

SCHEDULE 3

SUPERVISED LEGAL TRAINING

1. Definitions

In this Schedule –

supervisor means a person who is eligible under clause 2 to be a supervisor of a trainee;

trainee means a person who undertakes supervised legal training for the purpose of rule 6(2)(b) in accordance with a determination of the Board under rule 9(1);

training means supervised legal training undertaken under this Schedule;

training plan means a training plan executed in accordance with clause 9.

2. Persons eligible to be a supervisor

(1) A person may supervise a trainee if the person is an Australian lawyer engaged –

(a) in legal practice; or

(b) as a government, corporate, commercial or community legal officer –

working principally in this jurisdiction, who has worked as, or in the manner of, either or both of a practising solicitor and a practising barrister for a total of at least 5 years, of which the last 3 years were in practice as a solicitor, or working in the manner of a solicitor.

(2) The Board may approve, either generally or in relation to a particular trainee –

(a) a judge of the High Court, the Federal Court, the Supreme Court of this jurisdiction, or, as the case requires, either the County Court of Victoria or the District Court of New South Wales; or

(b) any Australian lawyer, other than a person referred to in subclause (1), who has worked as, or in the manner of, either or both of a practising solicitor and a practising barrister for a total of at least 5 years, of which the last 3 years were in practice as a solicitor, or working in the manner of a solicitor –

whom the Board considers to have appropriate qualifications and experience to be a supervisor, and to be able to provide the trainee with appropriate training.

(3) If a person referred to in subclause (1) or (2)(b) has not been engaged in legal practice within the last 5 years, the person will not be eligible to be a supervisor until the person has engaged in legal practice for at least 1 further year.

(4) Training may be undertaken under the successive supervision of different supervisors, only if the proposed arrangements are –

(a) set out in the training plan; or

(b) approved in advance by the Board; or

subsequently set out in the statutory declaration referred to in rule 15(2)(a).

- (5) The Board may give approval under subclause (4) subject to any conditions it may determine.

3. Where training must occur

- (1) Subject to subclause (2) training must take place in this jurisdiction.
- (2) Training may take place elsewhere in Australia if the proposed location of that training is –
 - (a) set out in the training plan; or
 - (b) approved in advance by the Board; or
 - (c) subsequently set out in the statutory declaration referred to in rule 15(2)(a).
- (3) The Board may, either generally or in a particular case, give approval for some or all of a trainee's training to take place –
 - (a) elsewhere in Australia; or
 - (b) outside Australia –
subject to any conditions it may determine.
- (4) A trainee who undertakes training outside this jurisdiction must comply with all requirements of clause 6.

4. Obligations of a trainee's employer

- (1) The employer of a trainee must –
 - (a) implement a training plan for each trainee that –
 - (i) provides for the matters set out in clause 9; and
 - (ii) is executed on behalf of the employer and by the trainee; and
 - (iii) is executed by each supervisor nominated in the training plan; and
 - (b) subject to clause 11(3), is given to the Board by the trainee in accordance with clause 10; and
 - (c) ensure that the trainee has appropriate opportunities to carry out the trainee's obligations under the training plan, in the course of the trainee's employment; and
 - (d) ensure that the trainee is appropriately supervised by a supervisor, throughout the trainee's training.
- (2) Unless the Board determines otherwise, a trainee's employer must meet the cost of any training relevant to –
 - (a) a trainee's supervision; and
 - (b) a trainee meeting the requirements of rule 6(1).

5. Number of trainees

- (1) Subject to subclause (2), an employer must not engage more trainees to undertake training at the same time, than the number of eligible supervisors available at the workplace at that time.
- (2) The Board may determine the maximum number of trainees either generally or in a particular case, which an employer or class of employer may engage to undertake training at the same time.
- (3) A supervisor must not supervise more than 1 trainee at the same time without the Board's prior approval.

6. What training requires

- (1) A trainee must –
 - (a) complete at least 12 months' training, worked out in accordance with this Schedule and any guidelines determined by the Board, under the supervision of an eligible supervisor; and
 - (b) subject to paragraphs (c) and (d), meet the requirements set out in rule 6(1); and
 - (c) 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; and
 - (d) keep a work diary in a form determined by the Board throughout the period of training.
- (2) A course of instruction referred to in subclause (1)(c) must be equivalent in content and depth to, and the relevant assessment must be as rigorous as for, comparable elements of a course accredited under rule 7(1) for the purpose of rule 6(1).

7. Employment during training

- A trainee must not engage in any paid work while undertaking training without first obtaining the consent of the person who executed the trainee's training plan on behalf of the employer, except –
- (a) in the business conducted by that employer; or
 - (b) in accordance with the relevant training plan.

8. Leave of absence

- (1) Subject to any applicable award or law relating to leave of absence, during a period of training, a trainee may be allowed leave of absence –
 - (a) on all days that are public holidays in this jurisdiction; and
 - (b) in the case of illness or injury, for a period not exceeding 10 days; and
 - (c) for a further period not exceeding 20 days.
- (2) Any day on which the employer's office is not open for business (other than a Saturday, Sunday or public holiday) must be counted when calculating the period referred to in subclause (1)(c).
- (3) An employee must, during a trainee's employment and training, allow the trainee sufficient time to prepare for, travel to and from and attend any course and any assessment referred to in clause 6(1)(c).

9. Content of training plan

A training plan, in a form determined by the Board, must be executed on behalf of the employer and by the trainee and must set out –

- (a) the period of training which the trainee will undertake; and
- (b) other parties who will ensure that the trainee will acquire and demonstrate the understanding and competence referred to in rule 6(1); and
- (c) who will supervise the trainee and for what part of the training; and
- (d) the name of the relevant provider or body referred to in clause 6(1)(c)(iii) or (iv); and
- (e) undertakings by the person executing the training plan on behalf of the employer, given on behalf of that employer, and each supervisor nominated in the training plan, that the employer and supervisor respectively will use their best endeavours to ensure that –
 - (i) the trainee is properly and thoroughly instructed in the practice and profession of a legal practitioner;
 - (ii) the trainee gains practical experience in the legal business transacted in the legal practice or business of the employer;
 - (iii) the trainee is given appropriate opportunity to participate, under appropriate supervision, in giving legal advice and in drafting the types of legal documents drafted in the legal practice or business of the employer;
 - (iv) if the trainee has properly performed the obligations referred to in paragraph (f), and is qualified to be admitted to the legal profession, the trainee is issued with a compliance certificate; and
- (f) an undertaking by the trainee to undertake the responsibilities and tasks given by or on behalf of the employer and any supervisor nominated in the training plan, consistently with the training plan, diligently and in good faith, to the best of the trainee's ability; and

- (g) a provision that, to the extent that any terms of an employment contract otherwise entered into between the employer and the trainee are inconsistent with the training plan, the terms are void and of no effect; and
- (h) any other matters which the Board may determine.

10. Required information

- (1) Within one month after executing a training plan, a trainee must provide the Board with –
 - (a) a copy of the executed training plan;
 - (b) a statutory declaration in a form determined by the Board made by the person executing the training plan on behalf of the employer, verifying the training plan;
 - (c) evidence that the trainee has obtained the academic qualification referred to in rule 5(1);
 - (d) any other information that the Board may generally require trainees to provide.
- (2) The trainee must provide the Board with any further evidence that the Board may require that the training provided for in the training plan is appropriate and sufficient in the trainee's case.

11. Approval of training and training plan

- (1) After considering the information referred to in clause 10, the Board must approve a trainee's training and training plan if it is satisfied that –
 - (a) the trainee's employer is able to provide the trainee with training in accordance with this Schedule;
 - (b) each person nominated as a supervisor in the training plan is eligible to be a supervisor;
 - (c) proper provision has been made for the trainee to meet the requirements of clause 6;
 - (d) the training plan complies with this Schedule and has been properly executed by the parties.
- (2) Subject to subclause (3), the Board must refuse to approve the training and the training plan if it is not satisfied of the matters in subclause (1).
- (3) The Board may permit a trainee to withdraw a training plan and submit an amended training plan within a period determined by the Board, if the Board is not satisfied of the matters in subclause (1).
- (4) The Board may approve an amended training plan submitted in accordance with subclause (3) if the amended training plan has been duly executed by both parties and the Board is satisfied of the matters in subclause (1).
- (5) If the Board approves an amended training plan under subclause (4), any period of training undertaken before the Board gives its approval must be taken to be training for the purposes of this Schedule.

- (6) The Board may retrospectively approve any departure from, or alteration to, a training plan set out in a statutory declaration made under rule 15(2), if the Board considers that the departure or alteration did not prevent the trainee from satisfying any of the requirements of rule 6(1).

12. Termination of training plan

- (1) If at any time during a period of training the Board considers that –
- (a) a trainee is not receiving appropriate supervision or training; or
 - (b) a training plan is not being complied with; or
 - (c) a trainee is not deriving substantial benefit from the training; or
 - (d) for any other reason, it is appropriate to do so,
- the Board may either –
- (e) terminate the training; or
 - (f) approve another appropriate employer and one or more eligible supervisors to provide the balance of the training, under a revised training plan.
- (2) The Board may act under subclause (1) –
- (a) on the application of one or more of the trainee, the trainee's employer or a supervisor nominated in the training plan; or
 - (b) on its own initiative.
- (3) Where the Board acts under subclause (1), it may disqualify –
- (a) the relevant employer from offering training; or
 - (b) a supervisor nominated in the training plan from acting as a trainee's supervisor,
- either permanently, or for any period that the Board determines.