



Queensland

Supreme Court (Legal Practitioner Admission) Rules 2004

Subordinate Legislation 2004 No. 110

made under the

Supreme Court of Queensland Act 1991

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Part 1 Preliminary

1 Short title

These rules may be cited as the *Supreme Court (Legal Practitioner Admission) Rules 2004*.

2 Commencement

These rules commence on 1 July 2004.

3 Overview

- (1) These rules deal with the admission of legal practitioners in Queensland.
- (2) Part 2 sets out the academic qualifications and practical legal training requirements approved under these rules for admission as a legal practitioner in Queensland.¹
- (3) Part 3 sets out rules relating to the admission process.
- (4) Part 4 deals with miscellaneous matters.
- (5) Part 5 deals with repeals and transitional matters.

4 Definitions

The dictionary in schedule 2 defines particular words used in these rules.

5 Words and expressions have same meaning as in Legal Profession Act 2004

Words and expressions used in the *Legal Profession Act 2004* have the same respective meaning in these rules.

1 However, see the *Trans-Tasman Mutual Recognition (Queensland) Act 2003* and <http://www.courts.qld.gov.au> for admission of a New Zealand registered lawyer as a legal practitioner in Queensland.

Part 2

Approved academic qualifications and practical legal training requirements

6 Approved academic qualifications—Australia

- (1) Academic qualifications attained by the satisfactory completion of a tertiary course approved by the Chief Justice and the board are approved academic qualifications for admission under the *Legal Profession Act 2004* as a legal practitioner.²
- (2) The course must be conducted in Australia.
- (3) The course must require—
 - (a) the equivalent of at least 3 years full-time study of law; and
 - (b) a satisfactory level of understanding and competence in the areas of knowledge mentioned in appendix A to the Law Admissions Consultative Committee Report.
- (4) The course does not have to lead to a degree in law.
- (5) Appendix A to the Law Admissions Consultative Committee Report is—
 - (a) set out in attachment 1; and
 - (b) not part of these rules.³

7 Approved practical legal training requirements—Australia

- (1) The requirements of a course approved by the Chief Justice and the board are approved practical legal training

2 Under the *Legal Profession Act 2004*, section 29(1)(b), a person is eligible for admission only if the person has, among other things, attained approved academic qualifications.

3 Minor errors in the appendix have been corrected in the attachment.

requirements for admission under the *Legal Profession Act 2004* as a legal practitioner.⁴

- (2) The course must be conducted in Australia.
- (3) The course must require understanding and competence in the skills, values and practice areas set out in appendix B to the Law Admissions Consultative Committee Report at the level of proficiency set out in that appendix.
- (4) In applying subrule (3), regard must be had to the matters set out in the preface to appendix B to the Law Admissions Consultative Committee Report.
- (5) Appendix B to the Law Admissions Consultative Committee Report is—
 - (a) set out in attachment 2; and
 - (b) not part of these rules.

8 Approved academic qualifications—foreign country

- (1) Academic qualifications attained in a foreign country and approved by the board are approved academic qualifications for admission under the *Legal Profession Act 2004* as a legal practitioner.
- (2) When deciding whether to approve academic qualifications attained in a foreign country, the board may take into account the extent to which the qualifications satisfy the minimum criteria for academic qualifications that may be approved under rule 6.
- (3) The board may require that particular foreign academic qualifications are supplemented with other academic qualifications before approving the aggregate academic qualifications as approved academic qualifications for admission under the *Legal Profession Act 2004* as a legal practitioner.

⁴ Under the *Legal Profession Act 2004*, section 29(1)(c), a person is eligible for admission only if the person has, among other things, satisfactorily completed approved practical legal training requirements.

9 Approved practical legal training requirements—foreign country

- (1) Legal training requirements completed in a foreign country and approved by the board are approved practical legal training requirements for admission under the *Legal Profession Act 2004* as a legal practitioner.
- (2) When deciding whether to approve legal training requirements completed in a foreign country, the board may take into account—
 - (a) for all applicants—the extent to which the requirements satisfy the minimum criteria for legal training requirements that may be approved under rule 7; and
 - (b) for an overseas-registered foreign lawyer—the nature and length of the lawyer’s practical legal training and legal practice in the foreign country or another foreign country or the lawyer’s work for a legal practice in Australia.
- (3) The board may require that particular foreign legal training requirements are supplemented with other legal training requirements before approving the aggregate legal training requirements as approved practical legal training requirements for admission under the *Legal Profession Act 2004* as a legal practitioner.
- (4) The other legal training requirements mentioned in subrule (3) may include legal training requirements in written and spoken English.

Part 3 Admission process

10 Sittings where person may apply for admission

- (1) A person may apply for admission as a legal practitioner at—
 - (a) any sittings fixed as an admission sittings of the Court of Appeal; or

- (b) any sittings fixed as an admission sittings of the court at Rockhampton, Townsville or Cairns.
- (2) However, a person must apply to an admission sittings of the Court of Appeal if—
 - (a) the person has not complied with the Act and these rules; or
 - (b) the board's recommendation raises a matter for consideration by the court.
- (3) The Chief Justice is to fix sittings as admission sittings of the Court of Appeal.
- (4) A judge at Rockhampton, Townsville or Cairns is to fix sittings as admission sittings of the court at the relevant place.

11 **Additional document to be filed with application for admission**

- (1) If a person applying for admission as a legal practitioner relies on service as an articled clerk or a judge's associate for eligibility for admission, the applicant must, with the application for admission, file a separate response statement completed by each master or judge with whom the person has served.
- (2) In this rule—
 - judge's associate* means an associate to a judge of—
 - (a) the Supreme Court; or
 - (b) the District Court; or
 - (c) the Federal Court; or
 - (d) the High Court.

response statement means a statement in the approved form of questions about the applicant's service with the person required to complete the statement.

12 Notice of intention to apply

- (1) Before a person applies for admission as a legal practitioner, the person must arrange for a notice of intention to apply in the approved form to be displayed—
 - (a) at the registrar's office at Brisbane; and
 - (b) for an application to the court at Rockhampton, Townsville or Cairns—also at the registrar's office at the relevant place.
- (2) The notice must be displayed at least 21 days before the sittings at which the person applies for admission.
- (3) The person must also arrange for the notice to be published—
 - (a) once in a newspaper published in, and circulating throughout, Brisbane; and
 - (b) once in a publication approved by the Chief Justice under a practice direction; and
 - (c) for an application to the court at Rockhampton, Townsville or Cairns—also once in a newspaper published in, and circulating throughout, the relevant place.
- (4) The notice must be published at least 10 but not more than 28 days before the sittings at which the person applies for admission.

13 Documents to be given to board

- (1) To enable the board to consider an application for admission as a legal practitioner and to make a recommendation about it, the applicant must give the board a copy of the following documents unless the board advises otherwise—
 - (a) the applicant's application;
 - (b) any document filed under rule 11;
 - (c) a certificate of a registrar or similar officer of an academic institution stating the applicant's academic qualifications;

- (d) a certificate of a registrar or similar officer of an institution providing practical legal training;
 - (e) a certificate of the applicant's suitability given by each of 3 persons who are not near relatives of the applicant and have personally known the applicant for at least 2 years, one of whom, if possible, must be—
 - (i) a registrar or similar officer of an academic institution, or an institution providing practical legal training, the applicant has attended; or
 - (ii) a local legal practitioner; or
 - (iii) a justice of the peace or commissioner for declarations;
 - (f) an affidavit of compliance with the *Legal Profession Act 2004* and these rules;
 - (g) any other documents required by the board.
- (2) The documents mentioned in subrule (1)(c) to (f) must be in the approved form.
 - (3) The applicant must also pay to the board the fee prescribed under the *Legal Profession Regulation 2004* for considering the application.
 - (4) The applicant must comply with this rule at least 10 days before the sittings at which the applicant applies for admission.
 - (5) However, the board may shorten the time set out in subrule (4).

14 Objection to admission

- (1) A person (*objector*) may object to the admission as a legal practitioner of an applicant who has given notice of intention to apply under rule 12.
- (2) The objector objects by giving the board a notice of objection at least 5 days before the sittings notified by the applicant as the sittings at which the applicant intends to apply for admission (the *relevant sittings*).

- (3) However, the board may shorten the time set out in subrule (2).
- (4) The board must consider the objection as part of its consideration of the applicant's eligibility and suitability for admission.
- (5) If the board considers the objection affects the applicant's eligibility or suitability for admission, the board must give the applicant—
 - (a) a copy of the objection or a notice stating the substance of the objection at least 3 days before the relevant sittings; and
 - (b) an opportunity to respond to the objection.
- (6) It is sufficient compliance with subrule (5)(a) for the board to give, or to make reasonable attempts to give, the copy or notice to the applicant using the contact details provided to the board by the applicant.
- (7) The board must give the objector a notice stating the board's decision in relation to the objection and brief reasons for its decision at least 1 day before the relevant sittings.
- (8) It is sufficient compliance with subrule (7) for the board to give, or to make reasonable attempts to give, the notice to the objector using the contact details provided to the board by the objector.
- (9) At an admission sittings of a court, an objector may object to an admission only with the leave of the court.
- (10) If the court grants leave under subrule (9), the admission application must be heard by the Court of Appeal.
- (11) If the board shortens the time set out in subrule (2), it is sufficient compliance with subrules (5) and (7) for the board to comply with those subrules as soon as practicable.

15 Board's recommendation

- (1) If the board is satisfied the applicant is eligible and suitable for admission, the board's recommendation must state—

- (a) that the board recommends the applicant's admission; and
 - (b) whether the board recommends that the admission be unconditional or on conditions; and
 - (c) if the board recommends that the admission be on conditions, the conditions the board recommends.
- (2) If the board is not satisfied the applicant is eligible and suitable for admission, the board's recommendation must state—
- (a) that the application raises a matter for consideration by the court; and
 - (b) the matter for the court's consideration.
- (3) At least 2 days before the sittings notified by the applicant as the sittings at which the applicant intends to apply for admission, the board must—
- (a) make the recommendation and file a copy of it in the registry at the place where the applicant intends applying for admission; and
 - (b) give a copy of the recommendation to the applicant.
- (4) It is sufficient compliance with subrule (3)(b) for the board to give, or to make reasonable attempts to give, the copy to the applicant using the contact details provided to the board by the applicant.

16 Refund on withdrawal of application

If an applicant withdraws the application for admission, the board may refund to the person the fee paid under rule 13(3) less the amount the board considers is the reasonable cost of work performed by the board in considering the person's application up to the day of withdrawal.

17 Admission

- (1) To be admitted as a legal practitioner, the person seeking admission must—

- (a) attend in person before the relevant court; and
 - (b) take the oath or affirmation of allegiance; and
 - (c) take the oath or affirmation of office set out in rule 18.
- (2) Subrule (1)(a) and (b) is subject to any direction of the court in a particular case.
 - (3) The registrar must issue a certificate of admission to each person who signs the roll.
 - (4) Subrule (3) does not apply in relation to a person who is conditionally admitted as a legal practitioner until the person's admission is made unconditional.

18 Oath of office

- (1) The oath of office is as follows—

‘I, [state full name] do sincerely promise and swear that I will truly and honestly conduct myself, in the practice of a legal practitioner of this Court, according to law to the best of my knowledge and ability.

So help me God.’.
- (2) The affirmation of office is as follows—

‘I, [state full name] do sincerely promise and affirm that I will truly and honestly conduct myself, in the practice of a legal practitioner of this Court, according to law to the best of my knowledge and ability.’.

19 Roll to be signed in order

The board must, by written notice, advise the registrar of the court at which an admission sittings is to be held of the order in which the names of the persons admitted at the admission sittings are to be entered on the roll.

20 Admission of overseas-registered foreign lawyers

- (1) This rule applies if the court makes an order admitting an overseas-registered foreign lawyer as a legal practitioner.

- (2) Unless the court directs otherwise, the order is—
 - (a) for the conditional admission of the lawyer for a period of 1 year; and
 - (b) on condition that during the year the lawyer engages in legal practice in Australia for a period of, or periods totalling, at least 9 months.

21 Application for conditional admission to be made unconditional

- (1) A person who complies with the conditions of the person's conditional admission as a legal practitioner may apply to the Court of Appeal for the person's admission to be made unconditional.
- (2) The person must apply to the court no later than 14 days before the first admission sittings after the period of conditional admission ends.
- (3) An affidavit in the approved form must be filed at least 21 days before the person applies for the conditional admission to be made unconditional.
- (4) Also, the person must give a copy of the application and the affidavit to the board, the bar association and the law society within 2 days after the relevant document is filed.

22 Removal from roll of person conditionally admitted

- (1) This rule applies if a person who is conditionally admitted for a period has not applied to the Court of Appeal for unconditional admission within 14 days before the first admission sittings of the court after the period of conditional admission ends.
- (2) The registrar may remove the person's name from the roll.
- (3) In this rule—

conditionally admitted includes conditionally admitted under the previous admission rules.

23 Seniority

The seniority of a person who is admitted as a legal practitioner must be decided according to the order in which the person signed the roll.

Part 4 Miscellaneous provisions

24 Appeal from registrar's decision under mutual recognition legislation

- (1) A decision of the registrar in relation to the admission of a person under a mutual recognition Act as a legal practitioner in Queensland is not subject to appeal or review by the court or the Court of Appeal.⁵
- (2) Subrule (1) applies despite the *Uniform Civil Procedure Rules 1999*, rules 791 and 792.⁶
- (3) In this rule—
mutual recognition Act means—
 - (a) the *Mutual Recognition Act 1992* (Cwlth); or
 - (b) the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth).

25 Appeal

- (1) An applicant who is dissatisfied with a decision of the board or a previous board, whether under these rules or the previous admission rules, may appeal to the Court of Appeal against the decision.

⁵ Under the *Mutual Recognition Act 1992* (Cwlth), section 34 and the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth), section 33 a person may apply for the review of a decision of a local registration authority in relation to its functions under that Act.

⁶ *Uniform Civil Procedure Rules 1999*, rules 791 (Rehearing after decision of judicial registrar or registrar) and 792 (Leave to appeal)

- (2) The appeal must be filed within 28 days after the date of the decision.

Part 5 Repeal and transitional provisions

26 Repeal of the previous admission rules that are superseded by these rules

- (1) The following provisions of the *Barristers' Admission Rules 1975* are repealed—
- rule 3
 - part 2
 - part 5 (other than rule 43(a) and (d))
 - part 6 (other than rules 52, 55 and 56)
 - part 8
 - schedule 1.
- (2) The following provisions of the *Solicitors' Admission Rules 1968* are repealed—
- rules 3A, 18, 19, 92 and 93
 - parts 2, 6, 6A, 7, 7A and 9
 - schedule 1.⁷

27 References to boards and previous admission rules

- (1) A reference in the previous admission rules to a board may, if the context permits, include a reference to the board under the *Legal Profession Act 2004*.

⁷ The provisions of the previous admission rules that are not repealed will coexist with these rules to ease the transition to the new system in relation to admission under the *Legal Profession Act 2004* as a legal practitioner.

- (2) Also, a reference in the previous admission rules to ‘these rules’ may, if the context permits, include a reference to these rules.

28 Admission eligibility

- (1) Despite the *Legal Profession Act 2004*, section 29,⁸ a person is also eligible for admission under that Act as a legal practitioner if the person satisfies the requirements for admission under—
- (a) the *Barristers’ Admission Rules 1975*, rule 15(a), (b), (c) and (d)(1) and (2);⁹ or
 - (b) the *Solicitors’ Admission Rules 1968*, rule 16(1).¹⁰
- (2) Despite the *Legal Profession Act 2004*, section 29, a person who is conditionally admitted under the previous admission rules is also eligible for admission under that Act as a legal practitioner if the person satisfies the requirements for absolute admission under the previous admission rules.
- (3) The *Legal Profession Act 2004*, section 40(2) and (3)¹¹ applies in relation to a person who is conditionally admitted under the previous admission rules.¹²

29 References to approved forms

- (1) In relation to an application for admission under rule 28(1)(a), a reference in these rules to an approved form is taken to be a reference to the corresponding approved form under the *Barristers’ Admission Rules 1975*.
- (2) In relation to an application for admission under rule 28(1)(b), a reference in these rules to an approved form is taken to be a

8 *Legal Profession Act 2004*, section 29 (Eligibility for admission under this Act as a legal practitioner)

9 *Barristers’ Admission Rules 1975*, rule 15 (Admission)

10 *Solicitors’ Admission Rules 1968*, rule 16 (Qualifications for admission)

11 *Legal Profession Act 2004*, section 40 (Conditional admission)

12 See the *Supreme Court of Queensland Act 1991*, section 118(2A).

reference to the corresponding approved form under the *Solicitors' Admission Rules 1968*.

- (3) Subrules (1) and (2) apply only until the rules committee or the board approves forms to be used in relation to applications for admission.
- (4) In relation to an application for conditional admission to be made unconditional, a reference in rule 21 to the approved form is taken to be a reference to the corresponding approved form under the *Solicitors' Admission Rules 1968*.
- (5) Subrule (4) applies only until the rules committee approves a form for the purpose of rule 21.

30 Students-at-law

- (1) On or after 1 July 2004, the board may admit a person as a student-at-law only if, before 1 January 2005, the person—
 - (a) possesses the qualifications mentioned in the *Barristers' Admission Rules 1975*, rule 15(d)(2)(A) and (B); and
 - (b) has applied to be admitted as a student-at-law.
- (2) In this rule—

student-at-law means a student-at-law under the *Barristers' Admission Rules 1975*.

31 References to solicitors

For applying the *Solicitors' Admission Rules 1968*, part 4¹³ after the commencement of these rules, a reference to a solicitor is taken to be—

- (a) a reference to a local legal practitioner who holds a current practising certificate to practise as a solicitor granted or renewed by the law society; or
- (b) a reference to an interstate legal practitioner who—
 - (i) holds a current interstate practising certificate that is not subject to a condition that allows the

13 *Solicitors' Admission Rules 1968*, part 4 (Provisions relating to practical training)

practitioner to practise only as a barrister or in the manner of a barrister; and

- (ii) is principally engaged in practice in this jurisdiction.

Part 6 Consequential amendments

32 Amendment of previous admission rules

Schedule 1 amends the rules it mentions.

Schedule 1 Consequential amendments

rule 32

Solicitors' Admission Rules 1968

1 Rule 30(1), 'fee mentioned in schedule 1'—

omit, insert—

'application fee prescribed under the *Legal Profession Regulation 2004*'.

Barristers' Admission Rules 1975

1 Rule 18—

insert—

'(2) The applicant must pay the examination fee prescribed under the *Legal Profession Regulation 2004*'.

2 Rule 34—

insert—

'(2) The application must be accompanied by the application fee prescribed under the *Legal Profession Regulation 2004*'.

Schedule 2 Dictionary

rule 4

Law Admissions Consultative Committee Report means the report of the Law Admissions Consultative Committee Towards a National Legal Profession dated February 2002 and endorsed by the Council of Chief Justices.

overseas-registered foreign lawyer has the same meaning as in the *Legal Profession Act 2004*, section 359.¹⁴

previous admission rules means—

- (a) the *Barristers' Admission Rules 1975*; or
- (b) the *Solicitors' Admission Rules 1968*.

roll means the local roll under the *Legal Profession Act 2004*, section 38(1).¹⁵

14 *Legal Profession Act 2004*, section 359 (Definitions for ch 5)

15 *Legal Profession Act 2004*, section 38 (Roll of legal practitioners)

Attachment 1 Appendix A to the Law Admissions Consultative Committee Report

rule 6

SYNOPSIS OF AREAS OF KNOWLEDGE

Appendix A sets out detailed descriptions of the areas of knowledge referred to in rule 2.2.¹⁶

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.

CRIMINAL LAW AND PROCEDURE

1. The definition of crime.
2. Elements of crime.
3. Aims of the criminal law.
4. Homicide and defences.
5. Non-fatal offences against the person and defences.
6. Offences against property.
7. General doctrines.
8. Selected topics chosen from:
 - attempts
 - participation in crime
 - drunkenness

¹⁶ Rule 2.2 corresponds to rule 6 of these rules.

Attachment 1 (continued)

- mistake
 - strict responsibility.
9. Elements of criminal procedure. Selected topics chosen from:
- classification of offences
 - process to compel appearance
 - bail
 - preliminary examination
 - 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.

TORTS

1. Negligence, including defences.
2. A representative range of torts (other than negligence) and their defences.
3. Damages.
4. Concurrent liability.
5. Compensation schemes.

Attachment 1 (continued)

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.

CONTRACTS

1. Formation, including capacity, formalities, privity and consideration.
2. Content and construction of contract.
3. Vitiating factors.
4. Discharge.
5. Remedies.
6. 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

Attachment 1 (continued)

interpretation of contracts, their performance and discharge, and available remedies, together with an understanding of the broad theoretical basis of contract would be expected.

PROPERTY

1. Meaning and purposes of the concept of property.
2. Possession, seisin and title.
3. Nature and type (i.e. fragmentation) of proprietary interests.
4. Creation and enforceability of proprietary interests.
5. Legal and equitable remedies.
6. Statutory schemes of registration.
7. Acquisition and disposal of proprietary interests.
8. Concurrent ownership.
9. Proprietary interests in land owned by another.
10. 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.

Attachment 1 (continued)**EQUITY**

1.
 - (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. 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 trusts 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

Attachment 1 (continued)

should be included. (It is expected that about half the course will be devoted to trusts.)

COMPANY LAW

1. Corporate personality.
2. The incorporation process.
3. The corporate constitution.
4. Company contracts.
5. Administration of companies and management of the business of companies.
6. Duties and liabilities of directors and officers.
7. Share capital and membership.
8. Members' remedies.
9. Company credit and security arrangements.
10. 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.

Attachment 1 (continued)

ADMINISTRATIVE LAW

1. Organisation and structure of the administration.
2. Administrative law theory.
3. Common law and statutory avenues of judicial review at Commonwealth and State level.
4. Grounds of judicial review.
5. Remedies.
6. Crown immunity.
7. Administrative Appeals Tribunal.
8. Statutory review.
9. 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.

FEDERAL AND STATE CONSTITUTIONAL LAW

1. State constitutions and constitutional systems.
2. The Commonwealth Constitution and constitutional system.
3. The constitution and operation of the legislature, executive and judiciary.

Attachment 1 (continued)

4. The relationship between the different institutions of government and the separation of powers.
5. 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.

CIVIL PROCEDURE

1. Court adjudication under an adversary system.
2. The cost of litigation and the use of costs to control litigation.
3. Service of originating process - as foundation of jurisdiction, including service out of the relevant State or Territory and choice of forum.
4. 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.
5. Defining the questions for trial - pleadings, notices to admit and other devices.
6. Obtaining evidence - discovery of documents, interrogatories, subpoena and other devices.

Attachment 1 (continued)

7. Disposition without trial, including the compromise of litigation.
8. Extra-judicial determination of issues arising in the course of litigation.
9. Judgement.
10. Appeal.
11. 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.

EVIDENCE

1. Introduction.
2. Competence and compellability.
3. Privilege.
4. The examination of witnesses.
5. Disposition and character.
6. Similar fact evidence.
7. The accused as a witness.
8. Burden and standard of proof.
9. Documentary evidence.

Attachment 1 (continued)

10. Opinion evidence and prior determination.
11. Hearsay:
 - the exclusionary rule
 - the common law and statutory exceptions.
12. Admissions and confessions in criminal cases.
13. Illegally obtained evidence and confirmation by subsequent fact.
14. Res gestae.
15. 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.

PROFESSIONAL CONDUCT (including basic Trust Accounting)

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

- (a) to the law;
- (b) to the Courts;
- (c) to clients, including a basic knowledge of the principles of trust accounting; and
- (d) to fellow practitioners.

Attachment 1 (continued)

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 of trust accounting.

The aims of the trust account segment of Professional Conduct are:

- (a) To impart an understanding of the legal requirements on solicitors for dealing with trust property.
- (b) To help students obtain a level of competence in, and understanding of, the recording requirements for trust accounts and other trust dealings.

Areas covered should include:

- (a) Provisions of the relevant State or Territory legislation governing the legal profession which relate to the handling of trust money and other trust property.
- (b) Legislative provisions which enable the proper identification of trust moneys.
- (c) The ramifications of breach of trust.
- (d) Methods of maintaining trust accounts records. This includes class exercises in recording of receipts, payments and direct payments of trust moneys and of investments (including mortgage investments) by solicitors on behalf of their clients.
- (e) A detailed study of any relevant legislation, regulations or rules relating to trust accounting.

Attachment 2 Appendix B to the Law Admissions Consultative Committee Report

rule 7

PRACTICAL LEGAL TRAINING

COMPETENCY STANDARDS FOR ENTRY-LEVEL LAWYERS

Australasian Professional Legal Education Council

Law Admissions Consultative Committee

November 2000

PREFACE

The following Competency Standards for practical legal training for entry-level lawyers have been jointly developed by the Australasian Professional Legal Education Council (APLEC) and the Law Admissions Consultative Committee.

They seek to describe the observable performance required of entry-level lawyers at the point of admission to practise, in a number of key areas. The Competency Standards have been drafted in the light of both:

- National Competency Standards, Policy and Guidelines, National Training Board, Canberra 1991; and
- Heywood, Gonczi and Hager, A Guide to the Development of Competency Standards for Professions, Department of Employment, Education and Training, Canberra 1992.

It is in the interests of clients and the public that entry-level lawyers should only be admitted to practise – and subsequently licensed and held out to the public as legal practitioners – if they have acquired threshold competence to practise by completing appropriate academic and practical training.

Attachment 2 (continued)

Before they are admitted to practise they must have the knowledge, values, attitudes and skills required to practise law competently.

At the point of admission, each applicant will thus be expected to provide evidence that the applicant has achieved the requisite competence in the following Skills, Practice Areas and Values:

Skills	Practice areas	Values
Lawyer's Skills	Civil Litigation	Ethics and
Problem Solving	Practice	Professional
Work Management and Business Skills	Commercial and Corporate Practice	Responsibility
Trust and Office Accounting	Property Law Practice	
	One of:	
	Administrative Law Practice	
	Criminal Law Practice	
	Family Law Practice	
	And one of:	
	Consumer Law Practice	
	Employment and Industrial Relations Practice	
	Planning & Environmental Law Practice	
	Wills and Estates Practice	

The relevant Competency Standards for each Skill, Practice Area and Value are set out from page 32 onwards.¹⁷

¹⁷ Page 32 of the appendix corresponds to the next paragraph of these rules.

Attachment 2 (continued)

The Law Admissions Consultative Committee considers that:

- (a) every applicant seeking admission to practise should provide evidence that the applicant has attained the requisite competence required by the Standards, whether the applicant has completed a PLT Course, Articles of Clerkship, a Bar Admission Course or a combination of more than one of them;
- (b) an applicant should generally have undertaken the relevant practical legal training and demonstrated attainment of the requisite competence either in the final year of a law degree or after completing that degree, or a combination of both of them;
- (c) at whatever stage an applicant undertakes practical legal training, that training should be provided at a level equivalent to post-graduate training. It should build on the knowledge and understanding of the law, the legal system and of legal practice which a graduate should have acquired by the end of an undergraduate law degree;
- (d) diversity in the ways in which practical legal training is given should be encouraged, provided that the quality of that training is not compromised and remains the paramount consideration;
- (e) the training requires both programmed training and workplace experience. It requires an allocation of tuition hours and resources to curriculum which are appropriate as an equivalent of:
 - a program of academic study at graduate diploma level which incorporates at least 90 hours of workplace training; or
 - 12 months (1800 work hours) of closely supervised full time indenture as an articulated clerk incorporating at least 90 hours of programmed training; or
 - a non-award training course of at least 6 months (900 hours) in which at least 450 hours is programmed training and at least 90 hours is workplace experience.

“programmed training” means structured and supervised training activities, research and tasks with comprehensive assessment. When programmed training is delivered as distance training or in electronic form, it should be devised to require an input of time from an application of at least 450 hours.

Attachment 2 (continued)

“workplace experience” means supervised employment in a law or law related work environment or equivalent unpaid engagement in such an environment.

- (f) while the Competency Standards propose minimum requirements for entry-level lawyers, they are not intended to discourage either wider, or more detailed, Practical Legal Training;
- (g) the Competency Standards are designed, where possible, to allow:
 - (i) competence in one relevant area to be acquired in the course of acquiring competence in another relevant area; and
 - (ii) practical legal training to be given in flexible and innovative ways, where this is desirable.

It follows that an applicant need not acquire the requisite competence in any particular Skill, Practice Area or Value by undertaking training in any predetermined topic or area of practice;

- (h) an applicant's competence in each Practice Area should be assessed in a way which allows the applicant also to demonstrate competence in relevant Skills and Values, at the same time;
- (i) those who teach in PLT Courses or who supervise the work of potential applicants for admission while they acquire competence in the relevant Practice Areas, Skills and Values, should either have substantial recent experience practising law, or comparable relevant qualifications or experience;
- (j) any program of practical legal training should:
 - (i) introduce a potential applicant for admission to Legal Aid and Pro Bono systems and schemes; and
 - (ii) include practical experience in the use of current information technology;
- (k) any course providing components of practical legal training to potential applicants, including Articles of Clerkship, should have formal means of assessing whether, and certifying that, an applicant has achieved the requisite level of competence in each relevant skill, practice area or value;
- (l) each Admitting Authority should:

Attachment 2 (continued)

- (i) require any course providing components of practical legal training to potential applicants (other than Articles of Clerkship) to be approved by it; and
- (ii) monitor the provision of practical legal training (including Articles of Clerkship) to satisfy itself that the training is of an appropriate quality.

ADMINISTRATIVE LAW PRACTICE

Descriptor: An entry-level lawyer who practises in administrative law should be able to obtain information for clients under freedom of information legislation and otherwise, seek review of administrative decisions, and 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 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 discussed with the client alternative means of obtaining a review. • completed all preparation required by law, good practice and the circumstances of the matter.

Attachment 2 (continued)

3. Representing a client
- represented the client effectively at 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.
 - completed all preparation required by law, good practice and the circumstances of the matter.
 - represented the client effectively at any mediation, hearing or other forum.

Explanatory Note

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

For an entry-level lawyer administrative law practice may be either an area of specialised practice or an ancillary part of general practice.

Preparing to represent a client in a court or tribunal may include drafting written submissions.

CIVIL LITIGATION PRACTICE

Descriptor: An entry-level lawyer should be able to conduct civil litigation in first instance matters in courts of general jurisdiction, in a timely and cost-effective manner.

Element

1. Assessing the merits of a case and identifying the dispute resolution alternatives

Performance criteria

The lawyer has competently:

- assessed the strengths and weaknesses of both the client's and opponent's cases.

Attachment 2 (continued)

- identified the facts and evidence required to support the client's case.
 - advised the client of relevant rights and remedies in a way which the client can easily understand.
 - identified all 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. Initiating and responding to claims
- 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.
3. Taking and responding to interlocutory and default proceedings
- identified any need for interlocutory steps or default proceedings, according to the court's rules.
 - followed procedures for taking those steps or proceedings in accordance with the court's rules and in a timely manner.
 - drafted all necessary documents in accordance with those procedures and rules.
4. 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.

Attachment 2 (continued)

- 5. Negotiating settlements

 - gathered the necessary evidence.
 - presented that evidence according to law and the court's rules.
 - conducted settlement negotiations in accordance with specified principles.
 - identified any revenue and statutory refund implications.
 - properly documented any settlement reached.
- 6. Taking action to enforce orders and settlement agreements

 - identified procedures for enforcing the order or settlement according to law and the court's rules.
 - followed those procedures in a timely manner.

Explanatory Note

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

Means by which a dispute might be resolved include, but are not limited to:

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

Means by which evidence might be gathered include:

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

Attachment 2 (continued)

Means by which evidence might be presented include:

- orally on oath;
- affidavits;
- video or telephone link.

Means of enforcement include:

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

COMMERCIAL AND CORPORATE PRACTICE

Descriptor: An entry-level lawyer should be able to conduct commercial transactions such as the sale or purchase of a small business. The lawyer should be able to set up standard business structures using entities such as companies, trusts and partnerships; provide basic advice on finance and securities and the obligations of companies and their officers; and appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

Element

1. Conducting commercial transactions

Performance criteria

The lawyer has competently:

- identified the nature of the transaction properly.
- 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 them, according to law and good practice.

Attachment 2 (continued)

- obtained or given any necessary consents to, or notifications of, the transaction required by law.
2. Setting up commercial structures
- 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 them executed and (if necessary) certified, stamped and registered them, 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, the continuing obligations of the company and its officers.
3. Dealing with loans and securities
- identified the various appropriate 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 them according to law.
4. Advising on revenue law and practice
- identified the possible general revenue implications of the client's proposed commercial venture or arrangement.
 - referred the client to experts for more comprehensive or detailed advice, where appropriate.

Attachment 2 (continued)

Explanatory Note

This competency standard applies to commercial and corporate practice. It includes:

- some common commercial transactions, such as the sale or purchase of a small business;
- setting up standard business structures and entities, including companies;
- advising on the legal obligations of corporations and their officers;
- advising on due diligence investigations;
- identifying in a general way the possible revenue implications of standard commercial dealings and structures;
- drafting standard loan agreements and securities.

Business structures include:

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

Securities include:

- bills of sale;
- chattel leases;
- loans agreements;
- guarantees, including guarantees from spouses.

Revenue implications include:

- stamp duties;
- income tax;
- capital gains tax;
- GST;

Attachment 2 (continued)

- fringe benefits tax;
- land and property taxes.

CONSUMER LAW PRACTICE

Descriptor: An entry-level lawyer who practises in consumer law should be able to advise clients on the procedures and remedies available in relation to consumer complaints and to represent the client in any related negotiations or proceedings.

Element	Performance criteria
	The lawyer has competently:
1. Obtaining information	<ul style="list-style-type: none"> • identified the situation 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	<ul style="list-style-type: none"> • drafted any documents required, in accordance with the client's instructions and the relevant legislation.
3. Initiating and responding to claims	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • identified all possible means of resolving the dispute to the satisfaction of the client and discussed them with the client.

Attachment 2 (continued)

- completed all necessary preparation in accordance with the law, good practice and the circumstances of the matter.
 - represented the client effectively at any negotiation, mediation, hearing or other forum.
5. Taking action to implement outcomes
- documented any order or settlement properly and explained it to the client in a way which the client can easily understand.
 - identified any procedures necessary to enforce the order or settlement and carried them out in a timely manner.

Explanatory Note

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

Consumer protection legislation includes State and Federal legislation and codes dealing with:

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

A consumer protection dispute includes disputes relating to:

- trade practices;
- misleading and deceptive conduct;
- motor car traders;
- domestic building contracts;
- consumer credit;
- guarantees;

Attachment 2 (continued)

- residential tenancies.

A court or tribunal includes:

- Federal Courts;
- State Courts;
- statutory tribunals;
- industry complaint panels;
- industry Ombudsmen.

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 the situation. • informed the client of those rights and powers in a way which the client can easily 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 the client can easily understand. |

Attachment 2 (continued)

- 3. Making pleas

 - helped the client to make an informed decision about which option to select.
 - fully advised the client of any bail conditions.
 - identified the client's options and communicated them to the client in a way the client can easily understand.
 - identified and gathered all material useful to the plea according to law and good practice.
 - presented 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 the client can easily understand.
- 4. Representing a client in minor matters

 - completed all preparation required by law, good practice and the circumstances of the case.
 - represented the client effectively at a contested and uncontested hearing.
- 5. Assisting to prepare cases for trial

 - identified and gathered the evidence needed to support the client's case.
 - identified and briefed appropriate experts (including counsel) having regard to good practice and the requirements of the case.

Explanatory Note

This competency standard applies to criminal law practice. It includes:

- advising clients before and after arrest;
- making a simple bail application on behalf of an accused person;
- making a plea in mitigation of penalty in a simple matter;
- some aspects of preparing a matter for hearing, such as briefing counsel;
- participating in a minor contested hearing.

Attachment 2 (continued)

Criminal matters include:

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

EMPLOYMENT AND INDUSTRIAL RELATIONS PRACTICE

Descriptor: An entry-level lawyer who practices in the area of employment and industrial relations should be able to advise clients on the relevant law and procedures, represent clients in negotiations and 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 identifying 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 to avoid 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 all opportunities for a negotiated settlement, subject to the client's instructions.

Attachment 2 (continued)

- 4. Initiating and responding to proceedings
 - represented the client effectively at any negotiations.
 - identified the appropriate jurisdiction.
 - initiated or opposed 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
 - completed all preparation required by law, good practice and the circumstances.
 - represented the client effectively at any mediation, hearing or other forum.
- 6. Taking action to implement outcomes
 - properly documented any order or settlement and explained it to the client in a way which the client can understand.
 - identified and carried out any procedures required to enforce the order or settlement.

Explanatory Note

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

A dispute may involve:

- 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.

The means by which a dispute might be resolved include, but are not limited to:

- negotiation;

Attachment 2 (continued)

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

Steps available to a client to avoid a dispute or to strengthen the client's position include:

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

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	<ul style="list-style-type: none"> • identified any relevant ethical dimension of a particular situation. • taken action which complies with professional ethical standards in that situation.
2. Discharging the legal duties and obligations of legal practitioners	<ul style="list-style-type: none"> • identified any duty or obligation imposed on the lawyer by law in a particular situation.

Attachment 2 (continued)

- 3. Complying with professional conduct rules

 - discharged that duty or obligation according to law and good practice.
 - identified any applicable rules of professional conduct.
 - taken action which complies with those rules.
- 4. Complying with fiduciary duties

 - recognised and complied with any fiduciary duty, according to law and good practice.
- 5. 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.
 - taken appropriate action, where applicable, to prevent such a conflict arising in the future.
- 6. Acting courteously

 - demonstrated professional courtesy in all dealings with others.
- 7. 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 records and accounts in accordance with law and good practice.
- 8. Reflecting on wider issues

 - reflected on that lawyer's professional performance in particular situations.
 - brought to the attention of an employer or professional association any matters that require consideration or clarification.
 - recognised the importance of pro bono contributions to legal practice.
 - demonstrated an awareness that mismanagement of living and work practices can impair the lawyer's skills, productivity, health and family life.

Attachment 2 (continued)

Explanatory Note

This competency standard applies to:

- ethics;
- statutes and general law relating to the duties and obligations of legal practitioners;
- written and unwritten rules of professional conduct;
- written and unwritten rules of professional courtesy.

The duties and obligations imposed by law on legal practitioners include duties:

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

Conflicts of interest commonly arise between:

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

FAMILY LAW PRACTICE

Descriptor: An entry-level lawyer who practises in family law should be able to apply for dissolution of marriage, and advise and take action in relation to parenting matters, property

Attachment 2 (continued)

settlements, spouse maintenance and child support problems.

Element	Performance criteria:
1. Applying for dissolution of marriage	<p>The lawyer has competently:</p> <ul style="list-style-type: none"> • obtained instructions reflecting the client's informed wishes. • prepared an application complying with the relevant court rules. • filed and served the application in accordance with those rules. • proved service in accordance with those rules. • presented the client's application to the court effectively.
2. Acting in relation to ancillary matters	<ul style="list-style-type: none"> • informed the client of all options, having regard to the circumstances of the case, in a way which the client can easily understand. • fully prepared the client's case having regard to the client's circumstances, the dispute resolution process the client has decided to pursue and good practice. • pursued the case in accordance with good practice for the chosen dispute resolution process. • identified and explained to the client the revenue implications of any proposed settlement. • documented and acted upon any results of the chosen dispute resolution process, as required by law and good practice.

Attachment 2 (continued)

Explanatory Note

This competency standard applies to dissolution of marriage and ancillary matters arising from the breakdown of marriages or other domestic relationships. It includes:

- applying for dissolution of marriage; and
- managing an ancillary matter in a family court up to the first directions hearing.

Ancillary matters include:

- parenting matters;
- property settlements;
- spouse maintenance;
- child support;
- domestic violence orders;
- injunctions and sole use orders;
- de facto proceedings.

Acting includes:

- participating in primary dispute resolution processes;
- informal negotiation;
- initiating or responding to court proceedings for urgent, interim or final relief.

LAWYER'S SKILLS

Descriptor: An entry-level lawyer should be able to demonstrate oral communication skills, legal interviewing skills, advocacy

Attachment 2 (continued)

skills, negotiation and dispute resolution skills, and letter writing and legal drafting skills.

Element	Performance criteria
1. Communicating effectively	<p>The lawyer has competently:</p> <ul style="list-style-type: none"> • identified the purpose of a proposed communication, the most effective way of making it, an appropriate communication strategy, 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 the communication is made. • identified and appropriately dealt with verbal, non-verbal and cross-cultural aspects of the proposed communication. • taken any follow-up action in accordance with good practice.
2. Interviewing clients	<ul style="list-style-type: none"> • prepared for the interview properly, having regard to relevant information available before the interview and the circumstances. • conducted 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 to take.

Attachment 2 (continued)

- made a record of the interview that satisfies the requirements of law and good practice.
 - taken any follow-up action in a timely manner.
3. Writing letters
- identified the need for, and purpose of, the letter.
 - written the letter in simple, straightforward English which conveys its purpose clearly and can be easily understood by the person to whom it is sent.
4. 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, principles of writing simple, straightforward English, and the relevant law.
 - drafted the document effectively having regard to the parties, the circumstances, good practice, principles of writing simple, straightforward English, 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).
5. Negotiating settlements and agreements
- prepared 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.
 - carried out the negotiations effectively having regard to the strategy and tactics adopted, the circumstances of the case and good practice.

Attachment 2 (continued)

- documented the negotiation and any resolution as required by law or good practice and explained it to the client in a way the client can easily understand.
- 6. Facilitating early resolution of disputes
 - identified the advantages and disadvantages of available dispute resolution options and explained them to the client.
 - performed in the lawyer’s role in the dispute resolution process effectively, having regard to the circumstances.
 - documented any resolution as required by law or good practice and explained it to the client in a way the client can easily understand.
- 7. Representing a client in court
 - observed the etiquette and procedures of the forum.
 - organised and presented in an effective, strategic way:
 - factual material;
 - analysis of relevant legal issues;
 - 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 Note

This competency standard applies to “composite” skills which require a lawyer to synthesise several generic skills and apply them in a specific legal context. Lawyers must be able to exercise such skills effectively.

Representation refers to advocacy on behalf of a client in a court, tribunal or other forum. It includes:

- an aspect of preliminary or pre-trial civil or criminal proceedings;
- an aspect of first instance trial advocacy in a simple matter;

Attachment 2 (continued)

- leading evidence-in-chief, cross-examination, re-examination and making submissions.

Dispute resolution options include:

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

PLANNING AND ENVIRONMENTAL LAW PRACTICE

Descriptor: An entry-level lawyer who practises in planning and environmental law should be able to advise clients on the relevant law, generally assist them in the planning process; initiate or oppose applications in, and obtain and present relevant evidence before, appropriate courts or tribunals; and represent clients in various forums.

Element	Performance criteria
1. Assessing the merits of the matter and advising the client	<p>The lawyer has competently:</p> <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 the client of any rights and obligations of the client and potential penalties if obligations are not observed. • identified all options and developed a plan of action in accordance with the client's instructions.

Attachment 2 (continued)

- 2. Preparing applications

 - examined the commercial, political and public relations implications of any proposed action and explained them to the client.
 - identified and analysed the relevant provisions of the relevant planning scheme.
 - prepared an application for development approval and submitted it to the relevant authority.
 - obtained any necessary plans.
 - identified potential grounds of objection.
- 3. Initiating and responding to claims

 - identified the appropriate forum for initiating or responding to a claim.
 - initiated or opposed 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

 - identified all available means of resolving the matter to the satisfaction of the client and discussed them with the client.
 - completed all preparation required by law, good practice and the circumstances.
 - represented the client effectively in any negotiation, mediation, hearing or other forum.
- 5. Implementing outcomes

 - properly documented any order or settlement and explained it to the client in a way which the client can easily understand.
 - identified and carried out any procedures to enforce the order or settlement in a timely manner.

Explanatory Note

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

Attachment 2 (continued)

The client's rights and obligations include rights and obligations under statute and at common law.

A claim or dispute may include:

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

Reference to a court or tribunal includes a body exercising statutory powers.

Preparation for providing representation in a court or tribunal may include:

- drafting written submissions;
- briefing counsel.

PROBLEM SOLVING

Descriptor: An entry-level lawyer should be able to investigate and analyse facts and law, provide legal advice and 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 and other issues. • distinguished facts that might be used to prove a claim from other facts, if the matter so requires. |
|---|---|

Attachment 2 (continued)

- | | |
|--|---|
| 2. Analysing law | <ul style="list-style-type: none">• 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 | <ul style="list-style-type: none">• applied the law to the facts of the matter in an appropriate and defensible way.• given the client advice in a way which the client can easily understand.• kept up with any developments that might affect the accuracy of previous advice and told the client about the effect of those developments. |
| 4. Generating solutions and strategies | <ul style="list-style-type: none">• identified the problem and the client's goals as fully as is practicable.• investigated the facts and legal and other 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 including costs and time factors.• assisted 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 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. |

Attachment 2 (continued)

Explanatory Note

This competency standard applies to:

- analysing facts;
- analysing legal and practical issues;
- analysing law;
- interpreting statutes;
- giving advice;
- solving problems in the context of legal practice.

Analysing law includes researching legal issues using:

- law libraries;
- on-line searches;
- electronic databases;
- legal citators and digests.

It also includes applying principles of precedent.

Other issues include:

- risk management;
- public relations;
- financial implications.

PROPERTY LAW PRACTICE

Descriptor: An entry-level lawyer should be able to convey, lease and mortgage real property. The lawyer should also be able to provide general advice on standard matters arising under legislation relating to land use in that State or Territory.

Attachment 2 (continued)

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 properly, having regard to the applicable title system. • prepared, commented on and advised on an appropriate contract of sale or other type of agreement 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.
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 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 securities	<ul style="list-style-type: none"> • made and obtained all searches and consents required by law and good practice. • drafted, commented on and advised on an effective instrument to create or release the security, reflecting the agreement between the grantor and grantee and protecting their respective interests.

Attachment 2 (continued)

- arranged for the instrument to be executed and (if necessary) stamped and registered, as required by law.
4. Advising on land use
- identified any legislative scheme regulating the relevant use.
 - advised 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
- identified the revenue implications of any transaction and advised the client accordingly.

Explanatory Note

This competency standard applies to dealings with interests in real and leasehold property, land use and securities. It must include:

- contracts for sale of land including special conditions;
- transferring title (or equivalent interest under the scheme of land title that exists in the particular State or Territory);
- creating standard commercial leases;
- creating standard residential tenancies or leases;
- creating and releasing of mortgages;
- some aspect of land use.

The competency standard includes dealings under the main system of land title operating in the jurisdiction in which the lawyer practises. For example, in Queensland it would include dealings in respect of freehold title under the *Land Title Act 1994*.

Aspects of land use might involve issues arising out of:

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

This competency standard is limited to:

Attachment 2 (continued)

- the main system of land title operating in a State or Territory;
- transactions which an entry-level lawyer would be expected to perform.

TRUST AND OFFICE ACCOUNTING

Descriptor: An entry-level lawyer should have a sound general knowledge of the significance of, and the principles governing, trust and general accounting in legal practice and 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.

Element	Performance criteria
	The lawyer has competently:
1. 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, controlled or general account, recorded the deposit as required by law and good practice. • issued any receipt required by law and good practice.
2. 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.
3. Rendering costs	<ul style="list-style-type: none"> • 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.

Attachment 2 (continued)

- 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.
4. Maintaining trust account
- maintained any trust account in accordance with specific statutory requirements, including any requirements relating to common fund deposits and auditing.

Explanatory Note

This competency standard applies to trust and general accounting. It requires a general knowledge of bookkeeping and knowledge of the solicitors' trust account law and practice and auditing requirements in the lawyer's jurisdiction.

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
- 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.

Attachment 2 (continued)

- ensured that the client executed the will in accordance with law.
 - given any necessary follow-up advice to the client.
2. Administering deceased estates
- 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
- 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 the client can easily understand.
 - taken action to resolve the problem in accordance with the client's instructions.

Explanatory Note

This competency standard applies to wills and deceased estate practice. It must include:

- drawing and advising on standard wills;
- obtaining an uncontested grant of letters of administration on an intestacy or probate where a will exists;
- administering a standard deceased estate;

Attachment 2 (continued)

- helping solve at least one common type of will or estate problem.

Wills and estates problems include:

- 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.

Follow-up advice required may include:

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

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

Attachment 2 (continued)

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 other 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.

Attachment 2 (continued)

- | | |
|----------------------------|---|
| 4. Keeping client informed | <ul style="list-style-type: none">• 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 the client can easily understand. |
| 5. Working cooperatively | <ul style="list-style-type: none">• worked with support staff, colleagues, consultants and counsel in a professional and cost-effective manner. |

Explanatory Note

This competency standard applies to the exercise of good work habits in a 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;
- clients' matters are dealt with in a cost-effective manner.

ENDNOTES

1. Made by the Governor in Council on 24 June 2004.
2. Notified in the gazette on 25 June 2004.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.

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