

Admission to the Legal Profession in Tasmania

Advice to Applicants

The “*Admission to the Legal Profession in Tasmania- Advice to Applicants*” document is published in two parts that have been drafted to be read together. Part A contains general information that is of relevance to all applicants for admission to the legal profession in Tasmania. Part B has three versions, each containing information that is of relevance to particular types of applicant. These types of applicant are:

- i. **Local applicants:** persons who have not previously been admitted to the legal profession in any jurisdiction and who obtained their academic qualifications and practical legal training wholly or principally in Australia; or
- ii. **Qualified overseas applicants:** persons who have not previously been admitted to the legal profession in any jurisdiction and who obtained their academic qualifications and practical legal training wholly, or principally outside Australia; or
- iii. **Overseas practitioners:** persons admitted and entitled to practice in a jurisdiction outside Australia.

Prospective applicants should ensure that they refer to the Part B that is appropriate to their circumstances.

PART A:
GENERAL INFORMATION FOR ALL APPLICANTS
for admission to the legal profession in Tasmania

The general information in this part concerns the law relating to admission to the legal profession in Tasmania applying to all applicants for admission in Tasmania, whether they have obtained their qualifications and training in Australia, or in some other jurisdiction and including overseas practitioners.

In order to practice law in Australia you need to:

- be admitted to the legal profession in an Australian state or territory; and,
- obtain a practising certificate from an Australian State or Territory authority (practising certificates are renewed on an annual basis and include a professional indemnity insurance component).

The relevant Acts relating to admission and practising certificates are very similar in all Australian jurisdictions and a person admitted and holding a practising certificate in one state or territory can, generally speaking, practice in another state or territory. However, the legal profession is regulated separately by each jurisdiction. There are therefore local variations in admission rules and procedures and different admitting bodies and institutions to determine eligibility for admission. This document refers to the admission process in Tasmania.

Relevant Tasmanian Legislation

Tasmanian legislation, including statutory rules, can be accessed on the following website <http://www.thelaw.tas.gov.au/index.w3p>

- The relevant Act regulating admission and the practice of law in Tasmania is the *Legal Profession Act 2007* (see in particular Part 2.2 for admission, and Part 2.3 for practising certificates).
- The rules relating to qualifications necessary for admission, and the process for application for a certificate of eligibility for admission are the *Legal Profession (Board of Legal Education) Rules 2010*.

- Rules relating to the application to the Court for admission can be found in Division 2AA of Part 32 of the *Supreme Court Rules 2000*.
- Forms for the application to the Court for admission can be found in the *Supreme Court Forms Rules 2000* (see in particular forms 5 and 57BA- 57BG).

Particular sections and rules are referred to below. However, reading summaries or extracts of legislative provisions in this document is no substitute for careful reading of the provisions themselves. The provisions should be referred to when preparing an application for admission to the legal profession.

Admission to the legal profession in Tasmania

Admission to the legal profession is by order of the Supreme Court of Tasmania (the Court). To gain admission the Court must be satisfied that the applicant is:

- eligible for admission (which must be certified by the Tasmanian Board of Legal Education (the Board)); and
- suitable for admission.

To be eligible for admission one must have:

- appropriate academic qualifications (generally meaning a law degree that includes certain core subjects from an approved institution); and,
- appropriate practical legal training (generally meaning practical legal training from an approved facility or of an acceptable type).

Further information about eligibility for admission and the process for applying for a certificate of eligibility for admission to the legal profession from the Board can be found in the *Legal Profession (Board of Legal Education) Rules 2010* and/or should be sought from the Board. Contact details for the Board are as follows:

Attention of:	Secretary of the Board of Legal Education
Address:	28 Murray Street Hobart Tasmania 7000
Postal:	GPO Box 1133 Hobart 7001
Ausdoc:	DX 111 Hobart
Telephone:	(03) 6234 4133
Facsimile:	(03) 6223 8240
Email:	info@taslawsociety.asn.au
Office Hours:	9.00am - 5.00pm (Monday-Friday)

Suitability for admission relates to the character of the applicant for admission. The applicant must be a fit and proper person for admission. This is explained further below.

Suitability for admission and the duty of disclosure

This section of the advice document describes the sort of material the Court needs to receive in evidence in order to be satisfied that the person is suitable for admission.

Applicants are suitable for admission in Tasmania if the Court determines that they are fit and proper persons for admission (see section 26 of the Act). Being “fit and proper” has been described to mean having:

“the personal qualities of character which are necessary to discharge the important and grave responsibilities of being a barrister and solicitor. A legal practitioner, upon being admitted to practice, assumes duties to the courts, to fellow practitioners as well as to clients. At the heart of those duties is a commitment to honesty and, in those circumstances when it is required, to open candour and frankness, irrespective of self interest and embarrassment” *Frugtniet v Board of Examiners* [2002] VSC 140. Matters that may reflect negatively on the applicant’s honesty, candour, respect for the law, or ability to meet professional standards are relevant to the Court’s determination.

As part of this an applicant must:

- make full and frank disclosure about certain matters; and,
- explain the conduct or condition and its circumstances.

The matters which must be disclosed are suitability matters (as defined in section 9 of the Act) and any other relevant matter (as to which see rule 783AB of the *Supreme Court Rules 2000*):

9. Suitability matters

- (1) Each of the following is a "suitability matter" in relation to a natural person:
- (a) whether the person is currently of good fame and character;
 - (b) whether the person is or has been an insolvent under administration;
 - (c) whether the person has been convicted of an offence in Australia or 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;
 - (d) whether the person engaged in legal practice in Australia –
 - (i) when not admitted to the legal profession, or not holding a practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law; or
 - (ii) if admitted to the legal profession, in contravention of a condition on which admission was granted; or
 - (iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended;
 - (e) whether the person has practised law in a foreign country –
 - (i) when not permitted by or under a law of that country to do so; or
 - (ii) if permitted to do so, in contravention of a condition of the permission;
 - (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:

- (i) this Act or a previous law of this jurisdiction that corresponds to this Act;
 - (ii) a corresponding law or corresponding foreign law;
 - (g) whether the person –
 - (i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or
 - (ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt;
 - (h) whether the person’s name has been removed from –
 - (i) a local roll, and has not since been restored to or entered on a local roll; or
 - (ii) an interstate roll, and has not since been restored to or entered on an interstate roll; or
 - (iii) a foreign roll;
 - (i) whether the person’s right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;
 - (j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
 - (k) whether, under this Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;
 - (l) whether the person is or has been subject to an order, under this Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;
 - (m) whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.
- (2)** A matter is a suitability matter even if it happened before the commencement of this section.

Rule 783AB Supreme Court Rules 2000

Relevant Matters:

- (1) A relevant matter is a matter, other than a suitability matter, which a reasonable applicant under this Division may consider would affect whether or not the Court believes the applicant is a fit and proper person for admission.
- (2) Without limiting the generality of subrule (1), relevant matters may include the following matters:
 - (a) any outstanding charges for criminal offences against the applicant;
 - (b) if the applicant is, or has been, the subject of disciplinary action, however described, arising out of conduct in attaining academic qualifications or completing practical legal training;
 - (c) any prior unsuccessful application by the applicant for admission in any jurisdiction including Tasmania;
 - (d) if the applicant suffers from an illness or condition which would affect his or her ability to adequately or safely perform the duties and responsibilities of a practitioner.

Not all misdemeanours or criminal convictions will result in a finding that a person is not of good character and the failure of an application for admission, as the following

passage from paragraph 79 of the decision *Law Society of Tasmania v Richardson* [2003]

TASSC 9 demonstrates:

“It is obvious that not every wrongful act or omission committed by an applicant in his or her past life will prevent the success of an application for admission. "It cannot be that every proof which he may give of human frailty so disqualifies him. The ends which he has to serve are lofty indeed, but it is with man and not with paragons that he is required to pursue them." *Ziems v The Prothonotary of the Supreme Court of New South Wales* [1957] HCA 46, (1957) 97 CLR 27 per Kitto J at 298. Even convictions for crime will not automatically bar an application for admission. The age and seriousness of the crime, and the circumstances in which it was committed, along with all other relevant facts, will usually need to be considered by the Court before it determines whether or not to make an admission order. Dixon CJ at 283 and Fullagar J at 288. "It will be generally agreed that there are many kinds of conduct deserving of disapproval and many kinds of convictions of breach of the law, which do not spell unfitness for the Bar; and to draw the dividing line is by no means always an easy task." Kitto J at 298. "The quality of his conduct is observed". Taylor J at 301. "The vital question ... is whether the conduct of the person concerned, whether it constitutes an offence against the law or not, has been such as to show that he is unfit. ... The fact that his conduct may have amounted to an offence against the law is of course a matter for consideration but for the reasons given it is by no means the end of the inquiry." Taylor J at 303.”

Whilst not all misdemeanours and convictions will result in the failure of an application for admission, the duty to make comprehensive and forthright disclosure to the Court should be taken very seriously. The applicant’s view, for example, that a particular matter is trivial, or that they have grown out of the behaviour, should not replace the need for its disclosure for the judgment of the Court. The applicant should disclose every suitability and relevant matter to the Court and provide an explanation for and about the conduct. Indeed, a failure to make an appropriate disclosure may bar admission or amount to grounds for removal from the roll of practitioners even though disclosure of the matter would not have had that result. The critical importance of candour in an application for admission and as a general duty of a legal practitioner to the Court was discussed in the decision of *Law Society of Tasmania v Scott (No 2)* [2007] TASSC 72 [19].

By way of example the duty of disclosure has been understood to extend to matters including the following:

- Traffic infringements: The necessary explanation for these will depend upon the circumstances. For example, one or two speeding infringements at speeds not much over the legal limit are likely to only require a short explanation stating this and that the fine has been paid. However, if, for example, the applicant has repeatedly broken speeding and/or drink-driving laws at

excessive speeds and/or with high blood-alcohol readings more explanation will be required.

- General misconduct of a serious nature though not resulting in a criminal charge: For example: sexual harassment, racial vilification, property damage, or breach of the rules of conduct of an organisation.
- Matters affecting an applicant's capacity to do the job of a legal practitioner, such as drug and alcohol dependence or other mental impairments.

Parking fines and library fines need not be disclosed unless there is some dishonesty or aggravating factor such as non-payment of the fines.

Professor G E Dal Pont's text, *Lawyers' Professional Responsibility* currently in its 3rd edition, Lawbook Co. 2006 includes useful information about factors that are relevant to "good fame and character" and an applicant's duty of disclosure.

Application for an early consideration of suitability:

Applicants who are concerned that there is a suitability matter or a relevant matter that may result in the Court determining that they are not a fit and proper person for admission when an application for admission is made in the future, may apply to the Court for an early consideration of suitability.

An application for early consideration of suitability is provided for by section 27 of the Act and rules 783AF and 783AG of the *Supreme Court Rules 2000*.

Further information about these applications is available in the information sheet "Application for an early consideration of suitability for admission to the legal profession".

Moving an admission application

The Court will permit routine applications for admission to be moved by counsel if they fall within any of the following categories:

- An admitted Tasmanian practitioner whether or not the holder of a current practising certificate;
- An Australian lawyer holding a local or interstate practising certificate; and
- An Australian lawyer who is exempted from holding a practising certificate pursuant to the *Legal Profession Act 2007* and the regulations made thereunder.

Applicants must inform the Supreme Court registry, at least 7 days in advance of the scheduled admission date, of the identity of counsel whom it is proposed to move the admission application.