

Advice to applicants

Application for an early consideration of suitability for admission to the legal profession

The following information relates to the rules applicable to the process in Tasmania to enable persons (whether they be local applicants, overseas qualified applicants, or overseas practitioners) to apply to the Supreme Court for an early consideration of their suitability for admission to the legal profession.

General information relating to admission to the legal profession in Tasmania:

To gain admission to the legal profession one must be:

- eligible for admission (generally one must have appropriate academic qualifications and practical legal training as certified by the Tasmanian Board of Legal Education (the Board)); and
- suitable for admission (one must be a fit and proper person for admission, as determined by the Supreme Court of Tasmania, (the Court)).

Why would a person need to apply for an early consideration of suitability?

Individuals considering a career as a legal practitioner and concerned that there is a suitability matter, or a relevant matter relating to them that may result in the Court determining that they are not a fit and proper person for admission, may wish to apply to the Court for an early consideration of suitability **before** they seek to obtain relevant academic qualifications, practical legal training and/or a certificate of eligibility from the Board.

While the duty of disclosure of suitability matters and relevant matters (discussed below under the heading “Suitability for admission and the duty of disclosure) extends to some minor sorts of infringements, this does not mean that a minor infringement, such as a

speeding offence, should result in an application for an early consideration of suitability. It is not possible to make precise recommendations about the sorts of suitability and relevant matters or combination of them that should prompt a prospective applicant for admission to make an application for an early consideration of suitability. Concerned prospective applicants should refer to case law and other relevant materials to weigh up whether their situation would benefit from an early consideration of suitability.

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 1993* (It should be noted that new rules are currently being drafted to replace the 1993 rules in response to the *Legal Profession Act 2007*).
- 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 from these pieces of legislation relevant to applications for an early consideration of suitability are referred to below. However, reading summaries or extracts from legislative provisions in this document is no substitute for careful reading of the provisions themselves.

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” *Frugniet 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.

Disclosure Guidelines for Applicants for Admission

To assist applicants for admission, we reproduce below the Law Admissions Consultative Committee’s Disclosure Guidelines for Applicants for Admission to the Legal Profession¹.

1. PURPOSES OF THESE GUIDELINES

An applicant for admission is required to satisfy the Admitting Authority that the applicant is “a fit and proper person” for admission to the legal profession.² In Tasmania, the Admitting Authority is the Supreme Court of Tasmania. In all jurisdictions other than South Australia, the relevant legislation also requires the Admitting Authority to consider whether the applicant is currently “of good fame

¹ LACC’S Charter is approved by the Council of Chief Justices which also appoints its Chairman. LACC is not, however, a committee of the Council, nor does it act on the Council’s behalf.

² *Legal Practitioners Act 1981* (SA) section 15(1)(a); *Legal Profession Act 2006* (ACT) section 26(2)(b); *Legal Profession Act 2006* (NT) section 25(2)(b); *Legal Profession Act 2007* (Qld) section 35(2)(a)(ii); *Legal Profession Act 2007* (Tas) section 31(6)(b); *Legal Profession Act 2008* (WA) section 26(1)(a)(ii); *Legal Profession Uniform Law* (NSW & Vic) section 17(1)(c)..

and character”.³ Each of these tests reflects the overarching requirements of the pre-existing common law.

The purposes of these Guidelines are:

- (a) to bring home to applicants that Admitting Authorities and Courts place a duty and onus squarely on each applicant to disclose to the Admitting Authority any matter that could influence the Admitting Authority’s decision about whether the applicant is “currently of good fame and character” and “a fit and proper person”; and
- (b) to remind applicants that failure to do so, if subsequently discovered, can have catastrophic consequences for an applicant. An applicant might either be refused admission, or struck off the roll, if the applicant has been admitted without making a full disclosure.

There are many judicial explanations of what the phrase “fit and proper person” means in different contexts.⁴ For example:

The requirement for admission to practice (*sic*) law that the applicant be a fit and proper person, means that the applicant must have 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 all of those duties is a commitment to honesty and, in those circumstances when it is required, to

³ *Legal Profession Act 2006 (ACT)* section 11(1)(a); *Legal Profession Act 2006 (NT)* section 11(1)(a); *Legal Profession Act 2007 (Qld)* section 9(1)(a); *Legal Profession Act 2007 (Tas)* section 9(1)(a); *Legal Profession Act 2008 (WA)* section 8(1)(a); *Uniform Admission Rules 2015 (NSW & Vic)* rule 10(1)(f).

⁴ *Frugtniet v Board of Examiners* [2002] VSC 140; *Frugtniet v Board of Examiners* [2005] VSC 332; *XY v Board of Examiners* [2005] VSC 250; *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321; *Re Legal Profession Act 2004; re OG, a lawyer* [2007] VSC 520; *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279; *Incorporated Law Institute of NSW v Meagher* (1909) 9 CLR 655; *Re Lenehan* [1948] HCA 45; *Re Evatt; Ex Parte NSW Bar Association* (1967) 67 SR (NSW) 236; *In the matter of an application for admission as a legal practitioner* [2004] SASC 426; *In re Davis* [1947] 75 CLR 409; *New South Wales Bar v Murphy* (2002) 55 NSWLR 23; *New South Wales Bar Association v Cummins* (2001) NSWLR 279; *New South Wales Bar Association v Hamman* [1999] NSWCA 404; *Prothonotary of the Supreme Court of NSW v P* [2003] NSWCA 320; *Prothonotary of the Supreme Court v Alcorn* [2007] NSWCA 288; *New South Wales Bar Association v Einfeld* (2009) 259 ALR 278; *In the matter of the Legal Practitioners Act 1970 and in the matter of an application by Hinds* [2003] ACTSC 11; *In the matter of an application for admission as a practitioner* [1997] SASC 6487; *Jackson (previously known as Subramaniam) v Legal Practitioners Admission Board* [2006] NSWSC 1338; *Legal Services Board v McGrath* [2010] VSC 266

open candour and frankness, irrespective of self-interest or embarrassment. The entire administration of justice in any community which is governed by law depends upon the honest working of legal practitioners who can be relied upon to meet high standards of honesty and ethical behaviour. It is the legal practitioner who is effectively the daily minister and executor in the administration of justice when advising clients, acting for clients, certifying documents, and making presentations to courts, governments, other professionals, and so on. The level and extent of trust placed in what legal practitioners say or do is necessarily high and the need for honesty is self evident and essential.⁵

2. STATUS OF THESE GUIDELINES

These Guidelines do not, and cannot, diminish or supplant in any way an applicant's personal duty to disclose any matter which may bear on the applicant's fitness for admission. They merely provide information about how Admitting Authorities and Courts approach the requirement of disclosure. They also give examples of matters which an applicant might otherwise overlook when deciding what to disclose.

It is important to understand that any matter bearing on an applicant's fitness should be disclosed, whether or not that matter is mentioned in these Guidelines. It is thus prudent to err on the side of disclosing, rather than concealing, information which may turn out to be relevant in the eyes of an Admitting Authority or a Court.

3. RELEVANT PRINCIPLES

Admitting Authorities apply the following principles when determining an applicant's fitness for admission:

- (a) The onus is on an applicant to establish fitness.

⁵ *Frugtniet v Board of Examiners [2002] VSC 140 per Pagone, J*

- (b) The statutory test is cast in the present tense – whether an applicant “*is currently* of good fame and character” and, except in South Australia, “*is* a fit and proper person”. Past conduct, though relevant, is not decisive.
- (c) The candour demonstrated in any disclosure by an applicant is highly relevant when determining present fitness. High standards are applied in assessing the candour of any disclosures. Full and frank disclosure is essential, although in most circumstances disclosure of past indiscretions will not result in an applicant being denied admission.
- (d) An applicant’s present understanding and estimation of the applicant's past conduct is relevant.
- (e) If an applicant makes a full disclosure of a condition relevant to the applicant's capacity and demonstrates that the condition is appropriately managed, it is highly unlikely that the disclosure will lead to an adverse assessment of the applicant's suitability for admission.

4. THE DUTY OF DISCLOSURE

An applicant for admission is required to disclose, in the application, any matter which might be relevant to the Admitting Authority considering whether the applicant is currently of good fame and character and is a fit and proper person for admission to the legal profession. The applicant *must* state whether any of the matters set out in **Appendix 1** applies to the applicant. This requirement reflects the statutory obligations of the Admitting Authority.

Further, any *other* matter that might be relevant to a decision by an Admitting Authority or a Court about whether the applicant is a fit and proper person for admission should also be disclosed. Recent cases demonstrate that the Courts believe there is an increasing expectation that any matters relevant to the assessment of an applicant’s honesty will be disclosed.

If an applicant discloses no matters relevant to fitness for admission, the application must contain the following statement:

I have read and understood the Disclosure Guidelines for Applicants for Admission to the Legal Profession. I am and always have been of good fame and character and am a fit and proper person to be admitted and I have not done or suffered anything likely to reflect adversely on my good fame and character or on whether I am a fit and proper person. I am not aware of any matter or circumstance that might affect my suitability to be admitted as an Australian lawyer and an officer of the Court.

Unfortunately it is not possible to provide applicants with an exhaustive list of all matters which can turn out to be relevant to assessing whether an applicant is currently of good fame and character, or a fit and proper person for admission, and which therefore should be disclosed.

Stated in general terms, however, the duty of disclosure extends to *any* matter which reflects negatively on the applicant's honesty, candour, respect for the law or ability to meet professional standards. An applicant should provide a full account of any such matter in the applicant's disclosure, including a description of the applicant's conduct. The description should not be limited merely to listing criminal charges or other consequences of the conduct. As already noted, there is an increasing expectation that *any* matters relevant to assessing an applicant's honesty will be disclosed.

An applicant should also avoid editing, or selecting only those matters which the *applicant* believes should be relevant to the decision to be made by the Admitting Authority. Rather, an applicant should disclose every matter that might fairly assist the Admitting Authority or a Court in deciding whether the applicant is a fit and proper person.

Revealing more than might strictly be necessary counts in favour of an applicant - especially where the disclosure still carries embarrassment or discomfort. Revealing less than may be necessary distorts the proper assessment of the applicant and may itself show an inappropriate desire to distort by selecting and screening relevant facts.⁶

⁶ *Frugtniet v Board of Examiners* [2002] VSC 140, per Pagone J.

5. MATTERS WHICH AN APPLICANT MAY NEED TO DISCLOSE

The following are examples of matters which an applicant may need to disclose in addition to the matters set out in **Appendix 1**:

(a) Criminal conduct

An obligation to disclose a criminal *charge*, as distinct from a criminal conviction, may arise, even if charges were subsequently withdrawn or the applicant was acquitted. The fact that an applicant's character has been brought into question may be sufficient to give rise to a need to disclose in the eyes of an Admitting Authority or a Court.

It is usually inadequate for an applicant disclosing criminal conduct merely to list the relevant charges and convictions. An applicant needs to explain, in the applicant's own words, the circumstances giving rise to the charge or conviction.

Whether or not a criminal charge (as distinct from a conviction) should be disclosed will depend on the circumstances. If the charge did not proceed for a technical reason, such as the expiration of a time limit, disclosure *may* be required. On the other hand, if the charge was denied and the matter did not proceed because of an acknowledged lack of evidence, disclosure may not be necessary.

An applicant should carefully consider whether the facts giving rise to a criminal charge are such that an Admitting Authority might reasonably regard them as relevant in assessing the applicant's suitability for admission. An applicant should carefully consider whether it is prudent to disclose an offence, even if spent convictions legislation applies to that offence. Where spent convictions legislation does not apply, an applicant should declare any offence of which the applicant has been convicted.

(b) Intervention orders and apprehended violence orders

(c) Infringement Offences

Offences resulting in a court-ordered fine or other sanction or else an administrative penalty, such as traffic or public transport offences, may need to be disclosed in circumstances where the frequency or number of fines, or the failure to pay fines, may give rise to concern in the eyes of an Admitting Authority or a Court about the applicant's respect for the law.

(d) Traffic Offences

See item (c) above.

(e) Academic Misconduct

Academic misconduct may need to be disclosed. It will generally be prudent to disclose such conduct whether or not a formal finding was made or a record of the incident retained by the relevant organisation.

Academic misconduct includes, but is not limited to, plagiarism, impermissible collusion, cheating and any other inappropriate conduct, whereby the applicant has sought to obtain an academic advantage either for the applicant or for some other person.

(f) General Misconduct

An applicant may need to disclose misconduct which occurred in a workplace, educational institution, volunteer position, club, association or in other circumstances, if such conduct may reflect on whether the applicant is a fit and proper person to be admitted to the legal profession.

General misconduct may include, but is not limited to, offensive behaviour, workplace or online bullying, property damage, sexual harassment or racial vilification.⁷

(g) Making a false statutory declaration

(h) Social security offences

⁷ By way of illustration, in *XY v Board of Examiners* [2005] VSC 250, Habersberger, J found that an applicant was under a duty to disclose that a volunteer position had been terminated as a result of making offensive remarks to a fellow worker and that she was also required to disclose property damage she had caused at a meditation retreat, notwithstanding that charges were not laid.

- (i) **Tax Offences**
- (j) **Corporate insolvency or penalties and offences relating to a corporate entity where the applicant was a director or responsible officer.**

6. CERTIFICATES OF CHARACTER

Please also note that any person who supplies a certificate of character to support an application:

- (a) must be aware of any disclosure of the type mentioned above that is made by the applicant; and
- (b) must attest to that knowledge in the person's certificate of character.

Because of the privacy implications of disclosures about an applicant's capacity, a person who supplies a certificate of character need not be aware of any disclosure about the applicant's capacity: see item 7.

7. DISCLOSURES ABOUT CAPACITY

An Admitting Authority is also required to consider whether an applicant has the present capacity to carry out the tasks of a legal practitioner. At common law, the principle is as follows:

To be a fit and proper person for admission to the legal profession an applicant must possess the capacity to make the judgments necessary to meet appropriate professional standards in legal practice or otherwise *'discharge the important and grave responsibilities of being a barrister and solicitor'*.⁸

The requirement of capacity is separate and distinct from the requirement that an applicant be a fit and proper person or of good fame and character.

⁸ *Frugniet v Board of Examiners* [2002] VSC 140 per Pagone J.

The Legal Profession Acts and Admission Rules variously describe matters relating to an applicant's capacity about which an Admitting Authority must satisfy itself, in the following ways:

- (a) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner;⁹
- (b) whether the person is currently unable to carry out the inherent requirements of practice as an Australian legal practitioner;¹⁰
- (c) whether the person currently has a material inability to engage in legal practice.¹¹

The precise obligation thus depends on the relevant legislation in the jurisdiction in which an applicant seeks admission.

On the other hand, it is not clear that these various legislative statements displace the underlying common-law principles. Furthermore, in deciding whether an applicant is a fit and proper person, in addition to each of the matters prescribed by legislation, most Admitting Authorities have power also to consider any other matter it considers relevant.¹²

At common law, an applicant who is otherwise qualified to practise is presumed to have capacity to practise unless the contrary is established. Nevertheless, quite apart from making disclosures which respond to the particular legislative requirement relevant to an applicant's capacity in each jurisdiction, it will often be prudent for an applicant to disclose any other matters which an Admitting Authority

⁹ *Legal Profession Act 2006* (ACT) section 11(m); *Legal Profession Act 2004* (NSW) section 9(m); *Legal Profession Act 2007* (Qld) section 9(1)(m); *Legal Profession Act 2007* (Tas) section 9(m); *Uniform Admission Rules 2015* (NSW & Vic) rule 10(1)(k)

¹⁰ *Legal Profession Act 2008* (WA) section 8(m).

¹¹ *Legal Profession Act* (NT) section 11(1)(m).

¹² *Legal Profession Act 2006* (ACT) section 22(2); *Legal Profession Act 2006* (NT) section 30(1)(b); *Legal Profession Act 2007* (Tas) section 26(1)(b); *Legal Profession Act 2004* (Vic) section 2.3.3(1)(b); *Legal Profession Act 2008* (WA) section 22(1)(b). Section 31(2)(b) of the *Legal Profession Act 2007* (Qld) and section 17(2)(a) of the *Legal Profession Uniform Law* (NSW & Vic) are in similar, though not identical, terms.

might think relevant when assessing an applicant's present capacity to engage in legal practice.

Matters which an applicant might disclose include any condition which might affect the applicant's present ability to engage in legal practice - such as physical impairment, mental illness or addictions.

An Admitting Authority assesses each applicant's capacity individually, in the light of the applicant's particular disclosures and any other supporting information. Such information should include any historical or current medical evidence submitted by the applicant. For this reason, if an applicant discloses a condition which an Admitting Authority may consider relevant to the applicant's present capacity to practise law, it will be prudent also to provide a report from an appropriately-qualified medical practitioner relevant to the condition disclosed. If an applicant seeks to demonstrate that the relevant condition is appropriately managed and stable, a certificate to that effect from one or more of the applicant's treating medical practitioners would greatly assist an Admitting Authority.

Except for the purposes of the administration of the *Legal Profession Act*, an Admitting Authority must not disclose any personal or medical evidence disclosed to it by or on behalf of an applicant.

For privacy reasons, a disclosure about capacity may be made in a separate affidavit or statutory declaration lodged with an application.

8. MATTERS PRESCRIBED BY LEGAL PROFESSION LEGISLATION

An applicant must disclose any matter relevant to the applicant's suitability prescribed by the Legal Profession legislation in the jurisdiction where admission is sought. In Tasmania, the prescribed matters are set out in s 9 of the *Legal Profession Act 2007* which is reproduced in **Appendix 1**.

9. FORM OF DISCLOSURE

Any disclosure which an applicant is required to make must be included either in the applicant's affidavit or, where required in the particular jurisdiction, the statutory

declaration applying for a compliance certificate. In the case of a disclosure about capacity, that can be made in a supplementary affidavit or statutory declaration, if the applicant prefers. Each disclosure should be supported by any available supporting documents, to corroborate the disclosure. Each such document should be made an exhibit to the statutory declaration.

APPENDIX I
SUITABILITY MATTERS and RELEVANT MATTERS
Section 9 of the *Legal Profession Act (Tas) 2007*
Rule 783AB of the *Supreme Court Rules 2000*

As noted in items 4 and 8 of these Guidelines, the Admitting Authority (in Tasmania, the Supreme Court of Tasmania) is required to satisfy itself about each of the following matters in relation to each applicant. Accordingly an applicant needs to disclose anything that it might consider relevant when satisfying itself about each of these matters.

Suitability matters

9(I) 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;

Note. The rules may make provision for the convictions that must be disclosed by an applicant and those that need not be disclosed.

- (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.

Relevant matters

- 783AB (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.

The application process

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*. The process for making an application for an early consideration of suitability is as follows:

1.) **Originating Application:**

- An application for an early declaration of suitability is commenced by originating application to the Court (see rule 783AF of the *Supreme Court Rules 2000*, and form 3 of the *Supreme Court Forms Rules 2000*).
- The Court filing fee for an originating application is \$410.00
- General rules relating to the requirements for documents, filing and originating process are found in Part 7, Division 1, 2, 4 and 7 of the *Supreme Court Rules 2000*.

2.) **The supporting materials:** The application must be supported by:

- an affidavit of the applicant (see form 57BE) addressing each of the suitability matters and any relevant matters as provided in rule 783AF of the *Supreme Court Rules 2000*; and
- two affidavits as to character from “acceptable deponents” (defined in rule 783AA). See form 57BC of the *Supreme Court Forms Rules 2000* for the affidavit as to character.
- More detail about the preparation of affidavits is provided below under “The affidavit in support of the application” and “The affidavits as to character”.

3.) Service:

- The application and supporting documentation must be served on the Law Society of Tasmania and the Legal Profession Board in accordance with rule 783AF(2), not less than 14 days before the application is to be heard.
- The documents should be served personally (see rule 133 of the *Supreme Court Rules 2000*).
- An officer of the Law Society and the Legal Profession Board should be asked to sign an acknowledgement of receipt of the documents at the time that the documents are delivered. This acknowledgement will be annexed to the Affidavit of Service.

4.) Affidavit of service:

- An affidavit of service (see form 57BF) on the Law Society of Tasmania and the Legal Profession Board must be filed with the Court not less than 7 days before the application is to be heard (see rule 783AH of the *Supreme Court Rules 2000*).
- The affidavit of service should have two signed acknowledgements of service annexed to it: one from the Law Society; and one from the Legal Profession Board.

5.) Additional material or evidence: The Judge hearing the application may require the applicant to provide additional evidence, by affidavit or orally.

6.) *Judge's Papers:*

- In accordance with Practice Direction 16 of 2005, one set of papers for the use of the Judge must be filed at least two clear days before the hearing.
- Judge's papers are a collation of copies of the application and the affidavits, including any annexures, relied upon in support of the application.
- The materials should be placed in logical order, given page numbers, bound securely with staples or similar and should include a cover page containing the title of the proceeding and an index at the front of the collation.

Affidavit in support of the application for admission

The affidavit of the applicant provides a major part of the evidence upon which the Court reaches its determination about suitability for admission.

The form for the affidavit is form 57BE of the *Supreme Court Forms Rules 2000*. The form lists a number of paragraphs and suggests the wording of these. The number and precise wording of paragraphs does not need to be adhered to slavishly. The content of your affidavit may suit some variation in wording, or a larger number of paragraphs. Other general rules relating to the appearance and formal aspects of affidavits are found in Part 19, Division 4 of the *Supreme Court Rules 2000*.

Rule 783AF of the *Supreme Court Rules 2000* requires the applicant to address **each** of the suitability matters listed in section 9 of the Act. It is not sufficient to say for example:

- "I have no suitability matters to disclose"; or
- "I have no suitability matters to disclose other than a conviction for fraud".

The applicant must address **every** suitability matter and also **explain** any matters that are disclosed. In the case of criminal convictions, section 9 of the Act requires that the applicant disclose the nature of the offence, how long ago it was committed and their age when the offence was committed.

Rule 783AF of the *Supreme Court Rules 2000* also requires the applicant to address **any** relevant matters. The matters listed in the definition at rule 783AB of the *Supreme Court Rules 2000* are examples of the sorts of matters that should be disclosed. They are not the only sorts of matter that may be relevant. The above part of this document headed "*Suitability for admission and the duty of disclosure*" contains information about the type of matters that must be disclosed to the Court.

It is not necessary for the applicant to specifically address all of the types of matter defined as relevant matters. Only a relevant matter that does arise with respect to the applicant need be disclosed.

The affidavits as to character

Affidavits as to character are intended to provide evidence that the applicant is of good reputation and character. They must be made by an "acceptable deponent". The affidavit as to character must therefore include information about three things:

- i. why the deponent is acceptable;
- ii. the nature of the deponent's relationship with the applicant; and
- iii. information about the good character of the applicant.

The form for the affidavit is form 57BC. The form lists a number of paragraphs and suggests the wording of these. The number and precise wording of paragraphs do not need to be adhered to slavishly. The content of the affidavit may suit some variation in wording, or a larger number of paragraphs. Other general rules relating to the appearance and formal aspects of affidavits are found in Part 19, Division 4 of the *Supreme Court Rules 2000*.

Who is an acceptable deponent?

An acceptable deponent is defined in rule 783AA of the *Supreme Court Rules 2000*:

"acceptable deponent", in relation to an applicant, means a person who is not married to the applicant, in a significant relationship, within the meaning of the Relationships Act 2003, with the applicant or a close blood relative of the applicant and –

(a) is a commissioner for declarations pursuant to section 12 of the Oaths Act 2001 and has known the applicant for a period of not less than 12 months; or

(b) has an occupation in an overseas jurisdiction, or is authorised to practise in a profession in an overseas jurisdiction, that is substantially equivalent to one that would qualify the person as a commissioner for declarations pursuant to section 12(2) of the Oaths Act 2001 and has known the applicant for a period of not less than 12 months; or

(c) is, or was, employed at a secondary or tertiary teaching institution and taught the applicant for not less than the equivalent of one year of tertiary studies, or one of the two final years of secondary studies; or

(d) is a person determined by the Court to be an acceptable deponent.”

Section 12 of the *Oaths Act 2001* in turn states that a person is a commissioner for declarations if they are a member of a profession listed in Part 1 of the Schedule to the *Statutory Declarations Regulations 1993 (Cwth)* or a person listed in Part 2 of that Schedule. Applicants should refer to these lists before choosing the person who will provide the affidavit as to character.

In summary a deponent will need to address the following matters in their affidavit in order for the Court to be satisfied that they are an “acceptable deponent”:

- That they are not married to the applicant, in a significant relationship with the applicant, or a close blood relative of the applicant;
- Details of their profession, employment history or background; and
- The length of time that they have known the applicant.

The details of profession or employment that must be provided by the deponent depend upon the category in which the person falls within the definition of “acceptable deponent”. For some deponents stating that they are a member of a particular profession, for example a legal practitioner or a medical practitioner will be sufficient detail. For some others the person providing the affidavit as to character will need to include further information relating to their employment or circumstances. For example, a state public servant may provide an affidavit as to character if they are a “permanent employee of ... a State... authority... with 5 or more years of continuous service” (see item 230 of Part 2 of Schedule 2

Statutory Declarations Regulations 1993 (Cwth)). Such a person would need to state something like the following in their affidavit:

“I have been a permanent employee in the Tasmanian public service continuously since 2001.”

In some instances it may be appropriate or necessary to obtain an affidavit as to character from a person who does not, or who is no longer, an acceptable deponent. For example, the applicant’s circumstances may be such that the people best placed to assure the Court of the applicant’s good character do not fit the criteria. In these cases the Court can “determine” that the deponent is acceptable. To make this determination the Court must be provided with some information about the deponent’s background such as details of their employment or employment history, their un-paid work, their community or charity work.

The nature of the deponent’s relationship with the applicant:

In addition to details of why a person is an “acceptable deponent” the deponent must provide information about the length and circumstances of their acquaintance with the applicant.

The deponent’s belief that the applicant is of good character

Finally the deponent should be able to provide reasons why they believe that the applicant is of good reputation and character. If there are matters adverse to the applicant that have been disclosed in the application then the deponent **must** be able to indicate that they are aware of those adverse matters. If the matters are serious ones then the deponent should explain why they believe that the applicant is of good character despite the adverse matters that have been disclosed.

Court contact details:

Contact details for further enquiries about admission are as follows:

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|-------------------------|---|
| HOBART REGISTRY: | |
| Address: | Salamanca Place Hobart Tasmania 7000 |
| Postal: | GPO Box 167 Hobart 7001 |
| Ausdoc: | DX 18 Hobart |

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|---------------------|--|
| Telephone: | (03) 6165 7421 |
| Facsimile: | (03) 6223 7816 |
| Email: | SupremeCourtHobart@supremecourt.tas.gov.au |
| Office Hours | 9.00am - 4.30pm (Monday-Friday) |

Addresses for the district registries of the Supreme Court are as follows:

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| LAUNCESTON DISTRICT REGISTRY: | |
| Address: | Cameron St, Launceston 7250, Tas |
| Postal: | GPO Box 190 Launceston 7250 |
| Ausdoc: | DX 70117 Launceston |
| Telephone: | (03) 6777 2874 |
| Facsimile: | (03) 6331 8618 |
| Email: | SupremeCourtLaunceston@supremecourt.tas.gov.au |
| Office Hours | 9.00am - 4.30pm (Monday-Friday, not including the lunch hour between 1.00 and 2.00 pm) |

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| BURNIE DISTRICT REGISTRY: | |
| Address: | 38 Alexander St, Burnie, 7320, Tas |
| Postal: | GPO Box 690 Burnie 7320 |
| Ausdoc: | DX 70228 Burnie |
| Telephone: | (03) 6477 7120 |
| Facsimile: | (03) 6464 1902 |
| Email: | SupremeCourtBurnie@supremecourt.tas.gov.au |
| Office Hours | 9.00am - 4.30pm (Monday-Friday, not including the lunch hour between 1.00 and 2.00 pm) |