

# NORTHERN TERRITORY OF AUSTRALIA

## LEGAL PRACTITIONERS ADMISSION RULES

As in force at 5 February 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 5 February 2004

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## LEGAL PRACTITIONERS ADMISSION RULES

### Rules under the *Legal Practitioners Act*

#### Part 1 Preliminary

##### 1 Citation

These Rules may be cited as the *Legal Practitioners Admission Rules*.

##### 2 Definitions

In these Rules, unless the contrary intention appears:

***application for admission*** means an application referred to in rule 7.

***articled clerk*** means a person serving under articles.

***articles*** means articles of clerkship.

***Board*** means the Admission Board.

***competency standards*** means the standards of competency specified in Schedule 4, Part B.

***entry level legal practitioner*** means a legal practitioner when first admitted, or otherwise first granted an entitlement, to practise the profession of the law in a State or Territory of the Commonwealth.

***local applicant*** means a person applying for admission to practise on the basis of academic qualifications and practical training and experience obtained in Australia.

***overseas applicant*** means a person to whom Part 3, Division 3 applies.

***principal***, in relation to an articled clerk, means the person with whom the articled clerk enters into articles.

**Roll** means the Roll of Legal Practitioners.

**to practise** means to practise as a legal practitioner of the Court.

## **Part 2                      Roll of Legal Practitioners**

### **3                      Entry of names etc. on Roll kept by Registrar**

- (1) The Registrar must keep a roll, to be known as the Roll of Legal Practitioners of the Supreme Court of the Northern Territory.
- (2) The Registrar must enter on the Roll:
  - (a) the name of each person admitted to practise; and
  - (b) the date of each person's admission to practise.
- (3) If a person who is admitted to practise satisfies the Registrar that the person intends to practise in the Territory exclusively as a barrister and independently of another legal practitioner, the Registrar must enter the person's name on the Roll with a notation that the person is a Counsel.
- (4) A Counsel may apply in writing to the Registrar to remove the notation entered with the Counsel's name, and the Registrar must do so as soon as practicable.

### **4                      Oath or affirmation before admission**

- (1) Before being admitted to practise a person must take an oath or make an affirmation, in accordance with the relevant form in Schedule 1, before the Court or before a person specified by subrule (2) or (3).
- (2) If a person applies under the *Mutual Recognition Act 1992* of the Commonwealth to be registered in the Territory and elects not to appear in person before the Court to be admitted to practise, the person must take the oath or make the affirmation before the principal registrar of the Supreme Court of a State or Territory or before any other officer of that Court designated by the Board.
- (3) If a person applies under the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth to be registered in the Territory and elects not to appear in person before the Court to be admitted to practise, the person must take the oath or make the affirmation before the Registrar of the High Court of New Zealand or before any other officer of that Court designated by the Board.

- (4) If a person takes the oath or makes the affirmation in accordance with subrule (2) or (3), the signature on the form in Schedule 2 of the officer before whom the oath or affirmation is taken or made is sufficient proof that the person has complied with the subrule.

## **5                      Legal practitioners to sign Roll**

- (1) A person whose name is entered on the Roll must sign the Roll.
- (2) A person who elects under rule 4(2) or (3) not to appear in person before the Court must, at the time of taking the oath or making the affirmation, sign a pro-forma in accordance with the form in Schedule 2 for insertion in the Roll.

## **6                      Removal of name from Roll**

If under section 52(2)(d) of the Act the Court orders that the name of a legal practitioner be struck off the Roll, the Registrar must remove the name from the Roll as soon as practicable after the order is made.

# **Part 3                      Admission of legal practitioners**

## **Division 1                Applications for admission to practise**

### **7                      Application to Court**

- (1) A local applicant or overseas applicant must apply to the Court for admission to practise.
- (2) The application for admission must be by originating motion accompanied by the relevant affidavits and other documents specified by Division 2 or in a direction under Division 3.

### **8                      Inquiries and report by Board**

- (1) Before making a report to the Court under section 13 of the Act, the Board may make the inquiries it considers appropriate in respect of the applicant for admission, including the following:
- (a) inquiries to establish whether the applicant has been struck off any roll of legal practitioners or otherwise suspended from practice or is presently subject to a disciplinary inquiry or proceeding;
- (b) inquiries to verify the applicant's academic qualifications, academic honesty, and practical training and experience.

- (2) Before an application for admission is considered by the Court, the Board must provide the applicant with a copy of its report made under section 13 of the Act.

## **9            Consideration of application by Court**

If, after considering an application for admission and the report made by the Board, the Court is satisfied the applicant:

- (a) is of good fame and character and a fit and proper person to be admitted to practise;
- (b) has completed the relevant academic and practical requirements for admission specified by Division 2 or in a direction under Division 3; and
- (c) has otherwise complied with these Rules,

the Court may admit the applicant to practise as a legal practitioner of the Court and direct the Registrar to enter the applicant's name on the Roll.

## **Division 2            Local applicants**

### **10           Affidavit and documents to accompany application**

- (1) An application for admission made by a local applicant must be accompanied by an affidavit stating that the applicant:
- (a) is of good fame and character and a fit and proper person to be admitted to practise as a legal practitioner of the Court;
  - (b) has not at any time been struck off the roll of legal practitioners in any State or Territory of the Commonwealth or, if applicable, has been struck off such a roll and stating the details;
  - (c) has not been charged with a criminal offence or, if applicable, has been charged with a criminal offence and stating the nature and outcome of the charge; and
  - (d) has not been found to have engaged in academic dishonesty (such as plagiarism) or, if applicable, has been found to have engaged in academic dishonesty and stating the details.
- (2) The affidavit must be accompanied by evidence of the academic qualifications and practical training and experience of the applicant.

## **11                      Academic requirement for admission**

- (1) The academic requirement for the admission of a local applicant is the completion of a tertiary academic course in Australia, whether or not leading to a degree in law, that:
  - (a) includes the equivalent of at least 3 years full-time study of law; and
  - (b) subject to subrule (2), requires a satisfactory level of knowledge and understanding of the areas of knowledge specified in Schedule 3.
- (2) If a local applicant has completed a tertiary academic course in Australia that does not include the study of professional conduct or basic trust accounting, the applicant need not acquire a satisfactory level of knowledge and understanding of that area of knowledge but must do so when completing the practical requirement for admission.

## **12                      Practical requirement for admission**

- (1) The practical requirement for the admission of a local applicant is the completion, at the level of competence required by the competency standards:
  - (a) of a course approved under rule 13; or
  - (b) of:
    - (i) at least one year of articles; and
    - (ii) if required by the Board – a supplementary course approved under rule 13.
- (2) The Board may specify that a supplementary approved course must be completed by all articulated clerks, a particular articulated clerk or a class of articulated clerks.
- (3) To assist the Board to decide whether to require a particular articulated clerk to complete a supplementary approved course, the Board may require the articulated clerk or the articulated clerk's employer or principal to give to the Board, in the manner specified by the Board:
  - (a) details of the nature and scope of the legal work undertaken or likely to be undertaken by the articulated clerk during articles; and
  - (b) the extent of the supervision and training provided or to be provided to the articulated clerk.

**13                      Approval of course for completion by local applicant**

- (1) Before approving a course or supplementary course for completion by a local applicant, the Board:
  - (a) must have regard to Schedule 4, Part A;
  - (b) must be satisfied the course will provide the applicant with the practical training required to enable the applicant to achieve the level of competence required by the competency standards; and
  - (c) may take into account that an admitting authority in a State or another Territory of the Commonwealth has recognised the particular course as one which will enable an applicant for admission in that State or Territory to achieve the level of competence required by the competency standards.
- (2) Before approving a course that the employer of an articled clerk offers the clerk wholly or partly in-house, the Board may require the clerk's employer or principal to provide the Board with all the information necessary to satisfy itself as required by subrule (1)(b).
- (3) In this rule:

**course** means a course or program of practical legal training or tuition.

**14                      Court may grant exemption from practical requirement**

If the Court is satisfied a local applicant has experience in the practice of the law in Australia other than by completing the practical requirement referred to in rule 12, the Court may grant the applicant the exemption from compliance with rule 12 that the Court considers appropriate in the circumstances.

**Division 3                      Overseas applicants**

**15                      Application of Division**

This Division applies to the following persons:

- (a) a person who holds qualifications obtained in a place outside Australia which are recognised as qualifying the person to be admitted to practise the profession of the law in a place outside Australia (including New Zealand), but who is not admitted to practise the profession of the law in that place;

- (b) a person who holds qualifications, obtained in a place outside Australia, which:
  - (i) in that place are required for the practise of the profession of the law but are not recognised as qualifying the person to be admitted to practise that profession; and
  - (ii) the person believes may be recognised as qualifying the person to be admitted to practise the profession of the law in Australia;
- (c) a person who is admitted to practise the profession of the law in a place outside Australia, other than New Zealand.

## **16        Applications for directions**

- (1) Before making an application for admission, an overseas applicant must apply to the Board for directions as to whether the overseas applicant is required to obtain further academic qualifications or practical training and experience in order to satisfy the requirements for admission to practise.
- (2) An overseas applicant who is a person referred to in rule 15(a) or (b) must lodge with the Board a statutory declaration:
  - (a) stating the nature and details of the applicant's academic qualifications and practical training and experience;
  - (b) providing original or authenticated documentary evidence that the applicant has the academic qualifications and practical training and experience detailed; and
  - (c) stating whether the applicant has applied for similar directions or for admission in any State or other Territory of the Commonwealth and, if so, the result of the application.
- (3) An overseas applicant who is a person referred to in rule 15(c) must lodge with the Board a statutory declaration:
  - (a) stating the nature and details of the applicant's academic qualifications and practical training and experience;
  - (b) providing original or authenticated documentary evidence that the applicant has the academic qualifications and practical training and experience detailed;
  - (c) providing original or authenticated documentary evidence of the applicant's admission in the place outside Australia;

- (d) stating that the applicant is currently admitted and entitled to practise in the place outside Australia, has not at any stage been struck off any roll of legal practitioners or otherwise suspended from practice and is not presently subject to disciplinary inquiry or proceedings or, if applicable, stating the details of any such striking off, suspension or disciplinary inquiry or proceedings;
- (e) describing the nature, range, duration and character of the applicant's practice in the place outside Australia; and
- (f) stating whether the applicant has applied for similar directions or for admission in any State or other Territory of the Commonwealth and, if so, the result of the application.

## **17            Directions by Board**

- (1) After considering an application by an overseas applicant, the Board may:
  - (a) decline to give a direction if the applicant has made a similar application or applied for admission in any State or other Territory of the Commonwealth; or
  - (b) give any of the following directions:
    - (i) the applicant is required to obtain further academic qualifications as specified by the Board;
    - (ii) the applicant is required to obtain further practical training or experience as specified by the Board;
    - (iii) the applicant is not required to obtain any further academic qualifications or practical training and experience, and may make an application for admission.
- (2) When giving directions, the Board must ensure the qualifications, training and experience required of the overseas applicant equate as closely as is reasonably practicable with those required of a local applicant.
- (3) When giving a direction that an overseas applicant may make an application for admission, the Board must give the applicant directions about the affidavit and any documents the applicant is required to provide to the Court with the application.

## **18            Board may make further inquiries**

- (1) To assist the Board to give appropriate directions to an overseas applicant, the Board may make the inquiries it considers appropriate about any of the following matters:
  - (a) the system of jurisprudence of the place in which the applicant obtained qualifications or is admitted to practise as a legal practitioner (or both);
  - (b) the nature and adequacy of the applicant's training and experience in the practice of the law;
  - (c) the applicant's fitness to be admitted to practise in the Territory.
- (2) Inquiries about the applicant's fitness to be admitted to practise in the Territory may include the following:
  - (a) inquiries to establish whether the applicant has been struck off any roll of legal practitioners or otherwise suspended from practice or is presently subject to a disciplinary inquiry or proceeding;
  - (b) inquiries to verify the applicant's academic qualifications, academic honesty, and practical training and experience.
- (3) If the Board considers it appropriate, it may submit the results of its inquiries to any of the following persons or bodies for written advice on any of the matters referred to in subrule (1):
  - (a) the Attorney-General for the Northern Territory or the Solicitor-General for the Northern Territory;
  - (b) the Dean or Associate Dean of a Faculty or School of Law;
  - (c) any other admitting authority in Australia;
  - (d) a committee appointed by the Board to give that advice.

## **19            Knowledge of English language required**

If the first language of an applicant under this Division is not English, the applicant must satisfy the Board that the applicant has a sufficient knowledge of written and spoken English to practise in the Territory.

## **Part 4                      Articles of clerkship**

### **20                      Entry into articles**

- (1) A person may enter into articles with any of the following persons:
  - (a) a legal practitioner who holds an unrestricted practising certificate and is practising as a solicitor or as a barrister and solicitor;
  - (b) the Secretary within the meaning of section 10 of the *Law Officers Act*;
  - (c) the Director of Public Prosecutions within the meaning of the *Director of Public Prosecutions Act*;
  - (d) the Director of Legal Aid within the meaning of the *Legal Aid Act*;
  - (e) a person authorised under the *Judiciary Act 1903* of the Commonwealth to act in the name of the Australian Government Solicitor;
  - (f) the Commonwealth Director of Public Prosecutions within the meaning of the *Director of Public Prosecutions Act 1983* of the Commonwealth or a person nominated by him or her and approved by the Board.
- (2) A person who has entered or is about to enter into articles with a person referred to in subrule (1) must apply to the Board for approval to do so.
- (3) The application for approval must be in accordance with a form approved by the Board and accompanied by the documents specified by rule 21.
- (4) The Board may approve the entry into articles only if the Board is satisfied:
  - (a) the applicant has satisfied the academic requirement of rule 11;
  - (b) the applicant is of good fame and character;
  - (c) the person with whom the applicant proposes to enter or has entered into articles is a person referred to in subrule (1); and
  - (d) the articles or proposed articles will provide the applicant with satisfactory training and experience.

**21 Documents to accompany application for approval**

- (1) An application for approval of entry into articles must be accompanied by:
  - (a) a certificate or other document showing that the applicant has satisfied the academic requirement of rule 11;
  - (b) certificates relating to the good fame and character of the applicant, given by at least 2 persons; and
  - (c) a copy of the articles or proposed articles.
- (2) A certificate relating to the good fame and character of the applicant must state:
  - (a) the name, address and occupation of the person giving the certificate;
  - (b) the period during which and the circumstances in which the person giving the certificate has known the applicant; and
  - (c) whether, in the opinion of the person giving the certificate, the applicant is a person of good fame and character.
- (3) The Board may require the applicant to provide one or more additional certificates relating to the good fame and character of the applicant if the Board considers the circumstances warrant it.

**22 Articles to be lodged with Board**

A person who enters into articles must lodge the articles with the Secretary to the Board not later than 14 days after the date on which the articles are executed or within a further time allowed by the Board.

**23 Effective date of articles and period of service**

- (1) Subject to subrule (2), the effective date of articles is the date of execution of the articles.
- (2) If articles are executed more than 90 days before the date on which the Board approves the entry into articles, the effective date of the articles is 90 days before the date of approval.
- (3) If articles are entered into before an application for approval is made under rule 20 and the Board refuses to give approval, the articles have no effect under these Rules.

- (4) Articles are taken to contain a provision requiring the articulated clerk to render service in accordance with the articles for 12 months from the effective date but the Court may, on application, order that the period of service be reduced.
- (5) If a person has rendered service as an associate or a clerk to a Judge, the period for which the person is required to serve under articles is reduced by the lesser of the following periods:
  - (a) a period equal to one-half of the service as an associate or clerk to the Judge;
  - (b) 6 months.

**24 Certain principals not to have more than 2 articulated clerks**

A person referred to in rule 20(1)(a) must not be the principal of more than 2 articulated clerks at the same time.

**25 Additional training during service under articles**

With the prior approval of the Board, an articulated clerk may receive tuition or training from a person referred to in rule 20(1) in addition to the tuition or training received from the articulated clerk's principal.

**26 Assignment of articles**

- (1) Articles may be assigned to a person referred to in rule 20(1) if all parties consent to the assignment and the Board gives its approval.
- (2) The articulated clerk must lodge the assignment with the Secretary to the Board not later than 14 days after the date of execution of the assignment or within a further time allowed by the Board.

**27 New articles if principal dies etc.**

- (1) This rule applies to an articulated clerk if, before the end of the period during which the clerk is required to serve under articles (**original articles**):
  - (a) the principal dies or ceases to practise as a solicitor or as a barrister and solicitor; or
  - (b) the articulated clerk is otherwise unable to complete service under the original articles.
- (2) The clerk may enter into articles (**new articles**) with another person referred to in rule 20(1) if the Board gives its approval.

- (3) The new articles must contain a provision requiring the articulated clerk to render service in accordance with the new articles for a period equal to the remaining period of service under the original articles.
- (4) The clerk must lodge the new articles with the Secretary to the Board not later than 14 days after the date of execution of the new articles or within a further time allowed by the Board.

## **28 Certificate of completion of clerkship**

- (1) If at the end of an articulated clerk's period of service the articulated clerk requests it, the principal must give the articulated clerk a certificate stating whether, in the principal's opinion:
  - (a) the service of the articulated clerk was satisfactory throughout the period of service; and
  - (b) the articulated clerk attained the level of competence specified by the competency standards.
- (2) If the principal states that the service of the articulated clerk was not satisfactory throughout the whole period of service, or that the articulated clerk did not achieve the level of competence required by the competency standards, the principal must include the reasons for the statement.

## **Part 4 Repeal and transitional provisions**

### **29 Definitions**

In this Part:

***commencement date*** means the date on which these Rules come into operation.

***repealed rules*** means the Rules repealed by rule 30.

### **30 Repeal**

The Rules specified in Schedule 5 are repealed.

### **31 Roll**

The Roll of Legal Practitioners in force immediately before the commencement date is taken to be the Roll kept under these Rules.

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**32 Admission and articles**

- (1) On and after the commencement date, the repealed Rules continue to apply in relation to the following matters as if these Rules had not come into operation:
- (a) applications for admission to practise made under Part 3, Division 1 of the repealed Rules that have not been dealt with by the Court before the commencement date;
  - (b) applications for directions made under Part 3, Division 4 of the repealed Rules that have not been dealt with by the Board before the commencement date;
  - (c) applications for admission to practise made under these Rules after the commencement date by a person who applied for directions referred to in paragraph (b);
  - (d) applications for approval of entry into articles made under Part 4 of the repealed Rules that have not been dealt with by the Board before the commencement date;
  - (e) articles entered into in accordance with the repealed Rules (including by assignment);
  - (f) the academic and practical requirements for admission of the following persons:
    - (i) a person who has made an application referred to in paragraph (a), (b) or (d);
    - (ii) a person who makes an application referred to in paragraph (c);
    - (iii) a person who has satisfactorily completed service under articles referred to in paragraph (e).
- (2) If immediately before the commencement date a person is serving as an associate or clerk to a Judge, Part 3, Divisions 1 and 2 and Part 4 of the repealed Rules apply after the commencement date in relation to that person as if these Rules had not come into operation.
- (3) However, subrule (2) ceases to have effect in relation to the person if, within 2 months of completing the service, the person does not apply for approval of entry into articles under Part 4 of the repealed Rules.

- (4) If a person considers he or she has suffered special prejudice as a result of the commencement of these Rules, the person may apply to the Court for relief and the Court may make the orders it considers appropriate in the circumstances.

## **Schedule 1**

rule 4(1)

### **OATH**

I, [full name], do swear that I will well and honestly conduct myself in the practice of my profession as a legal practitioner of the Supreme Court of the Northern Territory according to the best of my knowledge and ability.

SO HELP ME GOD!

### **AFFIRMATION**

I, [full name], solemnly and sincerely affirm and declare that I will well and honestly conduct myself in the practice of my profession as a legal practitioner of the Supreme Court of the Northern Territory according to the best of my knowledge and ability.

## Schedule 2

Rule 5(2)

### **ROLL OF LEGAL PRACTITIONERS OF THE SUPREME COURT OF THE NORTHERN TERRITORY**

I, [full name], sign the Roll of Legal Practitioners of the Supreme Court of the Northern Territory.

Dated

SIGNATURE

DO NOT DETACH LABEL

[Adhesive Label]

This signature is of no effect until the order of the Board has been made and the signature inserted in the Roll by the Registrar.

Oath/Affirmation administered and signing of the Roll witnessed

Dated

Signed: Principal Registrar/Registrar/Designated Officer

[Stamp]

## **Schedule 3**

Rule 11(1)(b)

### **ACADEMIC REQUIREMENT – AREAS OF KNOWLEDGE**

Although topics 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. 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
  - 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 sufficient breadth and depth to satisfy the following guidelines.

The topics should provide knowledge of the general doctrines of the criminal law and in particular examination of offences against both the person and 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.

OR

Topics of sufficient breadth and depth 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; 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 sufficient breadth and depth 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, including contracts, capacity, the content and interpretation of contracts, their performance and discharge, 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 sufficient breadth and depth 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; more detailed treatment of such matters as sale of land, leases, mortgages, easements and restrictive covenants.

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## **EQUITY**

1. Nature of equity.
2. Equitable rights, titles and interests.
3. Equitable assignments.
4. Estoppel in equity.
5. Fiduciary obligations.
6. Unconscionable transactions.
7. Equitable remedies.
8. 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 sufficient breadth and depth 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: fiduciary obligations; equitable assignments; unconscionability; confidential information. The remedies of specific performance, injunction, declaration and damages in equity should be included. (It is expected that about half the course will be devoted to trusts.)

## **COMPANY LAW**

1. Corporate personality.
2. Incorporation process.
3. 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 sufficient breadth and depth to satisfy the following guidelines.

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

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## **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 or Territory 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 sufficient breadth and depth 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 or Territory statutory regimes.

## **COMMONWEALTH, STATE AND TERRITORY CONSTITUTIONAL LAW**

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

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

OR

Topics of sufficient breadth and depth 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 the following should all be included: jurisdiction; the initiation and service of process; the definition of issues through pleadings; judgment; enforcement.

### **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.
10. 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 sufficient breadth and depth 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 a legal practitioner's duty:

- to the law
- to the Courts
- to clients, including a basic knowledge of the principles of trust accounting
- to fellow practitioners.

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OR

Topics of sufficient breadth and depth to satisfy the following guidelines.

The topics should include knowledge of the various pertinent rules concerning a legal 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:

- to impart an understanding of the legal requirements imposed on legal practitioners when dealing with trust property
- to help students obtain a level of competence in, and understudying of, the recording requirements for trust accounts and other trust dealings.

Areas covered should include the following:

- provisions of the relevant State or Territory legislation governing the legal profession that relate to the handling of trust money and other trust property
- legislative provisions that enable the proper identification of trust moneys
- the ramifications of breach of trust
- methods of maintaining trust accounts records, including class exercises in recording of receipts, payments and direct payments of trust moneys and of investments (including mortgage investments) by legal practitioners on behalf of their clients
- a detailed study of any relevant legislation (including regulations and rules) that relates to trust accounting.

## Schedule 4

rule 12

### PRACTICAL LEGAL TRAINING COMPETENCY STANDARDS FOR ENTRY LEVEL LEGAL PRACTITIONERS

#### PART A – PREFACE

The competency standards for practical legal training for entry level legal practitioners 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 legal practitioners in a number of key areas at the point of admission to practise. The competency standards have been drafted in the light of the following publications:

*National Competency Standards, Policy and Guidelines*, National Training Board, Canberra 1991;

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 applicants for admission should be admitted to practise – and subsequently licensed and held out to the public as legal practitioners – only if they have acquired threshold competence to practise by completing appropriate academic and practical training. 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 be expected to provide evidence that the applicant has achieved the competence required of an entry level legal practitioner in the following practice areas, skills and values:

Practice Areas	Skills	Values
Civil litigation Commercial and corporate Property law one of: – Administrative law – Criminal law – Family law and one of: – Consumer law – Employment and industrial relations – Planning and	Legal practitioner's skills Problem solving Work management and business skills Trust and office accounting	Ethics and professional responsibility

environmental law – Wills and estates		
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The Law Admissions Consultative Committee considers that:

1. Every applicant seeking admission to practise should provide evidence that the applicant has attained the requisite competence specified by the competency standards whether the applicant has completed a practical legal training course, articles of clerkship, a Bar admission course or a combination of more than one of them.
2. 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.
3. At whatever stage an applicant undertakes practical legal training, that training should be provided at a level equivalent to postgraduate training. It should build on the knowledge and understanding of the law, the legal system and legal practice which a graduate should have acquired by the end of an undergraduate law degree.
4. Diversity in the ways in which practical legal training is given should be encouraged, provided that the quality of the training is not compromised and remains the paramount consideration.
5. 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 any of the following:
  - (a) a program of academic study at graduate diploma level which incorporates at least 90 hours of workplace training;
  - (b) 12 months (1800 work hours) of closely supervised full time indenture as an articulated clerk incorporating at least 90 hours of programmed training;
  - (c) a non-award training course of at least 6 months (900 hours) of which at least 450 hours is programmed training and at least 90 hours is workplace experience.

When programmed training is delivered as distance training or in electronic form, it should be devised to require an input of time from an applicant of at least 450 hours.

In this paragraph:

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

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

6. While the competency standards propose minimum requirements for entry-level legal practitioners, they are not intended to discourage either wider, or more detailed, practical legal training.
7. The competency standards are designed, where possible, to allow:
  - (a) competence in one relevant area to be acquired in the course of acquiring competence in another relevant area; and
  - (b) 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 practice area, skill or value by undertaking training in any predetermined area of practice or topic.

8. An applicant's competence in each practice area should be assessed in a way which allows the applicant, at the same time, to demonstrate competence in relevant skills and values.
9. Those who teach in practical legal training 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.
10. Any program of practical legal training should:
  - (a) introduce a potential applicant for admission to Legal Aid and pro bono systems and schemes; and
  - (b) include practical experience in the use of current information technology.
11. A 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 the relevant practice area, skill or value.
12. Each admitting authority should:
  - (a) require any course providing components of practical legal training to potential applicants (other than articles of clerkship) to be approved by it; and

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- (b) monitor the provision of practical legal training (including articles of clerkship) to satisfy itself that the training is of an appropriate quality.

## **PART B – COMPETENCY STANDARDS**

### **PRACTICE AREAS**

#### **CIVIL LITIGATION**

##### **Descriptor**

An entry level legal practitioner must be able to conduct civil litigation in first instance matters in courts of general jurisdiction in a timely and cost-effective manner.

##### **Element**

##### **Performance criteria**

The applicant has competently:

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| <b>1. Assessing the merits of a case and identifying the dispute resolution alternatives</b> | <ul style="list-style-type: none"> <li>– assessed the strengths and weaknesses of both the client's and the opponent's case</li> <li>– identified the facts and evidence required to support the client's case</li> <li>– identified all means of resolving the case, having regard to the client's circumstances</li> <li>– advised the client of relevant rights and remedies in a way the client can easily understand</li> <li>– if possible, confirmed in writing any instructions given by the client in response to initial advice</li> <li>– identified and complied with the relevant limitation period</li> </ul> |
| <b>2. Initiating and responding to claims</b>  | <ul style="list-style-type: none"> <li>– identified an appropriate claim or defence</li> <li>– identified a court of appropriate jurisdiction</li> <li>– identified the elements of the claim or defence according to law</li> <li>– followed procedures for bringing the claim or making the defence in accordance with the court's rules and in a timely manner</li> <li>– drafted all necessary documents in accordance with those procedures</li> </ul>   |
| <b>3. Taking and responding to interlocutory and default proceedings</b>                     | <ul style="list-style-type: none"> <li>– identified any need for interlocutory steps or default proceedings according to the court's rules</li> <li>– followed procedures for taking those steps or proceedings in accordance with the court's rules and in a timely manner</li> <li>– drafted all necessary documents in accordance with those procedures</li> </ul>   |

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| <b>4. Gathering and presenting evidence</b>                         | <ul style="list-style-type: none"><li>– identified issues likely to arise at the hearing</li><li>– identified evidence needed to prove the client's case or disprove the opponent's case according to the rules of evidence</li><li>– gathered the necessary evidence</li><li>– presented that evidence according to law and the court's rules</li></ul> |
| <b>5. Negotiating settlements</b>                                   | <ul style="list-style-type: none"><li>– conducted settlement negotiations in accordance with specified principles</li><li>– identified any revenue and statutory refund implications</li><li>– properly documented any settlement reached</li></ul>  |
| <b>6. Taking action to enforce orders and settlement agreements</b> | <ul style="list-style-type: none"><li>– identified procedures for enforcing the order or settlement according to law and the court's rules</li><li>– followed those procedures in a timely manner</li></ul>  |

### **Explanatory Notes**

This competency standard applies to first instance civil litigation in a State or Territory local lower or local higher court 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 witnesses
- notices to admit
- discovery
- subpoena
- expert reports
- certified official records, banker's books etc.

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.

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## COMMERCIAL AND CORPORATE

### Descriptor

An entry level legal practitioner must be able to conduct commercial transactions such as the sale or purchase of a small business. The legal practitioner must 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; appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

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

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**4. Advising on revenue law and practice**

- identified the possible general revenue implications of the client's proposed commercial venture or arrangement
- if appropriate, referred the client to experts for more comprehensive or detailed advice

**Explanatory Notes**

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
- fringe benefits tax
- land and property taxes.

**PROPERTY LAW**

**Descriptor**

An entry level legal practitioner must be able to convey, lease and mortgage real property. The legal practitioner must also be able to provide general advice on standard matters arising under legislation relating to land use in the particular State or Territory.

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<b>Element</b>	<b>Performance criteria</b>
	The applicant has competently:
<b>1. Transferring title</b>	<ul style="list-style-type: none"> <li>– properly identified the nature of the interest being dealt with, having regard to the applicable title system</li> <li>– 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</li> <li>– undertaken sufficient searches and inquiries to investigate title, any issues about land use and responsibility for outgoings</li> <li>– drafted an appropriate instrument of transfer or conveyance and had it executed and (if necessary) stamped and registered according to law</li> <li>– obtained or given any consents to or notifications of the transfer or conveyance according to law</li> </ul>
<b>2. Creating leases</b>	<ul style="list-style-type: none"> <li>– made and obtained all searches and consents required by law and good practice</li> <li>– 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</li> <li>– arranged for the lease to be executed and (if necessary) stamped and registered according to law</li> </ul>
<b>3. Creating and releasing securities</b>	<ul style="list-style-type: none"> <li>– made and obtained all searches and consents required by law and good practice</li> <li>– 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</li> <li>– arranged for the instrument to be executed and (if necessary) stamped and registered as required by law</li> </ul>
<b>4. Advising on land use</b>	<ul style="list-style-type: none"> <li>– identified any legislative scheme regulating the relevant use</li> <li>– advised the client generally about processes to be followed to obtain permission for or to object to the use, as the case requires</li> </ul>
<b>5. Advising on revenue implications</b>	<ul style="list-style-type: none"> <li>– identified the revenue implications of any transaction and advised the client accordingly</li> </ul>

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## Explanatory Notes

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.

This competency standard includes dealings under the main system of land title operating in the jurisdiction in which the legal practitioner practises. For example, in the Northern Territory it would include dealings under the *Land Title Act* and the *Law of Property Act*.

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:

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

## ADMINISTRATIVE LAW

### Descriptor

An entry level legal practitioner who practises in administrative law must be able to: obtain information for clients under freedom of information legislation and otherwise; seek review of administrative decisions; represent parties before courts and administrative tribunals.

### Element

### Performance criteria

The applicant has competently:

#### 1. Obtaining information

- 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

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| <b>2. Obtaining review of administrative decisions</b> | <ul style="list-style-type: none"> <li>– concluded correctly that the decision may be reviewed</li> <li>– identified and discussed with the client alternative means of obtaining a review</li> <li>– completed all preparation required by law, good practice and the circumstances of the matter</li> <li>– represented the client effectively at any mediation, hearing or other review forum if this is appropriate and permitted</li> </ul> |
| <b>3. Representing a client</b>                        | <ul style="list-style-type: none"> <li>– identified all alternative means of obtaining redress and discussed them with the client</li> <li>– completed all preparation required by law, good practice and the circumstances of the matter</li> <li>– represented the client effectively at any mediation, hearing or other forum</li> </ul>  |

### **Explanatory Notes**

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

For an entry level legal practitioner, 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.

## **CRIMINAL LAW**

### **Descriptor**

An entry level legal practitioner who practises in criminal law must be able to: advise clients before arrest; seek bail; make pleas; participate in minor contested hearings; assist in preparing cases for trial.

### **Element**

### **Performance criteria**

The applicant has competently:

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|----------------------------|---|
| <b>1. Providing advice</b> | <ul style="list-style-type: none"> <li>– identified the client's legal rights and the legal powers of the police or other prosecutors or investigators in the situation</li> <li>– informed the client of those rights and powers in a way which the client can easily understand</li> <li>– identified the legal elements of any offence with which the client is charged</li> <li>– if possible, confirmed in writing any instructions given by the client in response to initial advice</li> <li>– implemented the client's instructions when it is appropriate in the circumstances to do so</li> </ul> |
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| <b>2. Applying for bail</b>                      | <ul style="list-style-type: none"><li>– identified the client's options and communicated them to the client in a way the client can easily understand</li><li>– helped the client to make an informed decision about the option to select</li><li>– made an application for bail or taken other action effectively in the circumstances</li><li>– fully advised the client of any bail conditions</li></ul>  |
| <b>3. Making pleas</b>                           | <ul style="list-style-type: none"><li>– identified the client's options and communicated them to the client in a way the client can easily understand</li><li>– identified and gathered all material useful to the plea according to law and good practice</li><li>– presented the plea in an effective and persuasive way, having regard to the circumstances of the case</li><li>– advised the client fully of the outcome in a way the client can easily understand</li></ul> |
| <b>4. Representing a client in minor matters</b> | <ul style="list-style-type: none"><li>– completed all preparation required by law, good practice and the circumstances of the case</li><li>– represented the client effectively at a contested and an uncontested hearing</li></ul>  |
| <b>5. Assisting to prepare cases for trial</b>   | <ul style="list-style-type: none"><li>– identified and gathered the evidence needed to support the client's case</li><li>– identified and briefed appropriate experts (including counsel), having regard to good practice and the requirements of the case</li></ul>   |

### **Explanatory Notes**

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 aspect of preparing a matter for hearing, such as briefing counsel
- participating in a minor contested hearing.

Criminal matters include:

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

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## **FAMILY LAW**

### **Descriptor**

An entry level legal practitioner who practises in family law must be able to: apply for dissolution of marriage; advise and take action in relation to parenting matters, property settlements, spouse maintenance and child support problems.

### **Element**

### **Performance criteria**

The applicant has competently:

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

### **Explanatory Notes**

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
- 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 relationship proceedings.

Acting includes:

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

## CONSUMER LAW

### Descriptor

An entry level legal practitioner who practises in consumer law must be able to: advise clients on the procedures and remedies available in relation to consumer complaints; represent the client in any related negotiations or proceedings.

Element	Performance criteria
	The applicant has competently:
1. <b>Obtaining information</b>	<ul style="list-style-type: none"> <li>– identified the situation as one to which consumer protection legislation applies</li> <li>– identified the relevant legislation and any applicable case law</li> <li>– identified any possible common law remedies</li> </ul>
2. <b>Drafting documents</b>	<ul style="list-style-type: none"> <li>– drafted any documents required, in accordance with the client's instructions and the relevant legislation</li> </ul>
3. <b>Initiating and responding to claims</b>	<ul style="list-style-type: none"> <li>– identified the appropriate forum for initiating or responding to a claim</li> <li>– initiated a claim or taken action to oppose a claim in accordance with the rules and procedures of the relevant court or tribunal and in a timely manner</li> <li>– obtained all necessary evidence and drafted all necessary documents in accordance with those rules and procedures</li> </ul>
4. <b>Representing the client</b>	<ul style="list-style-type: none"> <li>– identified all possible means of resolving the dispute to the satisfaction of the client and discussed them with the client</li> <li>– completed all necessary preparation in accordance with the law, good practice and the circumstances of the matter</li> <li>– represented the client effectively at any negotiation, mediation, hearing or other forum</li> </ul>
5. <b>Taking action to implement outcomes</b>	<ul style="list-style-type: none"> <li>– properly documented any order or settlement and explained it to the client in a way the client can easily understand</li> <li>– identified any procedures necessary to enforce the order or settlement and carried them out in a timely manner</li> </ul>

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## Explanatory Notes

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

Consumer protection legislation includes State, Territory and Commonwealth 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
- residential tenancies.

A court or tribunal includes:

- Federal courts
- State and Territory courts
- statutory tribunals
- industry complaint panels
- industry Ombudsmen.

## EMPLOYMENT AND INDUSTRIAL RELATIONS

### Descriptor

An entry level legal practitioner who practises in the area of employment and industrial relations must be able to: advise clients on the relevant law and procedures; represent clients in negotiations; initiate and respond to applications in relevant State or Territory and Federal courts and tribunals.

### Element

### Performance criteria

The applicant has competently:

#### 1. Assessing the merits of the dispute and identifying the dispute resolution alternatives

- 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

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|--|---|
| <b>2. Advising client on procedures</b>            | <ul style="list-style-type: none"><li>– if appropriate, advised the client of means to avoid a dispute</li><li>– advised the client of available steps to strengthen the client's position</li></ul>  |
| <b>3. Commencing negotiations</b>                  | <ul style="list-style-type: none"><li>– explored all opportunities for a negotiated settlement, subject to the client's instructions</li><li>– represented the client effectively at any negotiations</li></ul>   |
| <b>4. Initiating and responding to proceedings</b> | <ul style="list-style-type: none"><li>– identified the appropriate jurisdiction</li><li>– initiated or opposed a claim in accordance with the rules and procedures of the relevant court or tribunal and in a timely manner</li><li>– obtained all necessary evidence and drafted all necessary documents in accordance with those rules and procedures</li></ul> |
| <b>5. Representing the client</b>                  | <ul style="list-style-type: none"><li>– completed all preparation required by law, good practice and the circumstances</li><li>– represented the client effectively at any mediation, hearing or other forum</li></ul>  |
| <b>6. Taking action to implement outcomes</b>      | <ul style="list-style-type: none"><li>– properly documented any order or settlement and explained it to the client in a way the client can understand</li><li>– identified and carried out any procedures required to enforce the order or settlement</li></ul>   |

### **Explanatory Notes**

This competency standard applies to the practice of employment and industrial relations law at both State or Territory 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
- 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

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- entering or revising enterprise bargaining agreements
  - altering individual employment contracts
  - taking disciplinary proceedings
  - allowing industrial representation.

## **PLANNING AND ENVIRONMENTAL LAW**

### **Descriptor**

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

<b>Element</b>	<b>Performance criteria</b>
	The applicant has competently:
<b>1. Assessing the merits of the matter and advising the client</b>	<ul style="list-style-type: none"> <li>– obtained full instructions from the client</li> <li>– analysed the facts in accordance with the relevant law</li> <li>– obtained and clarified any relevant technical information</li> <li>– advised the client of any rights and obligations of the client and potential penalties if obligations are not observed</li> <li>– identified all options and developed a plan of action in accordance with the client's instructions</li> <li>– examined the commercial, political and public relations implications of any proposed action and explained them to the client</li> </ul>
<b>2. Preparing applications</b>	<ul style="list-style-type: none"> <li>– identified and analysed the relevant provisions of the relevant planning scheme</li> <li>– prepared an application for development approval and submitted it with the necessary plans</li> <li>– identified potential grounds of objection</li> </ul>
<b>3. Initiating and responding to claims</b>	<ul style="list-style-type: none"> <li>– identified the appropriate forum for initiating or responding to a claim</li> <li>– initiated or opposed a claim in accordance with the rules and procedures of the relevant court, tribunal or other statutory body and in a timely manner</li> <li>– obtained all necessary evidence and drafted all necessary documents in accordance with those rules and procedures</li> </ul>

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|-----------------------------------|---|
| <b>4. Representing the client</b> | <ul style="list-style-type: none"><li>– identified all available means of resolving the matter to the satisfaction of the client and discussed them with the client</li><li>– completed all preparation required by law, good practice and the circumstances</li><li>– represented the client effectively in any negotiation, mediation, hearing or other forum</li></ul> |
| <b>5. Implementing outcomes</b>   | <ul style="list-style-type: none"><li>– properly documented any order or settlement and explained it to the client in a way the client can easily understand</li><li>– identified and carried out in a timely manner any procedures to enforce the order or settlement</li></ul>  |

### **Explanatory Notes**

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

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, appeal or application for review in relation to such an application
- a prosecution for breach of relevant legislation
- civil action relating to planning or environmental issues, or both.

Preparation for providing representation in a court, tribunal or other statutory body may include:

- drafting written submissions
- briefing counsel.

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## WILLS AND ESTATES

### Descriptor

An entry level legal practitioner who practises in wills and estates must be able to: draft wills; administer deceased estates; take action to solve problems in relation to wills and estates.

### Element

### Performance criteria

The applicant 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 that can be effectively implemented
- drafted a will reflecting the client's instructions
- identified any issues of testamentary capacity and resolved them in accordance with law and good practice
- ensured 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 if 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 the executors have been released of their obligations in a timely manner

#### 3. Taking action to resolve wills and estates problems

- properly identified the nature of the problem, 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

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## **Explanatory Notes**

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

- drafting and advising on standard wills
- obtaining an uncontested grant of letters of administration on an intestacy or probate if a will exists
- administering a standard deceased estate
- 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.

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## SKILLS

### LEGAL PRACTITIONER'S SKILLS

#### Descriptor

An entry level legal practitioner must be able to demonstrate skills in the following: oral communication; legal interviewing; advocacy; negotiation and dispute resolution; letter writing; legal drafting.

Element	Performance criteria
	The applicant has competently:
<b>1. Communicating effectively</b>	<ul style="list-style-type: none"> <li>– 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</li> <li>– 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</li> <li>– identified and appropriately dealt with verbal, non-verbal and cross-cultural aspects of the proposed communication</li> <li>– taken any follow-up action in accordance with good practice</li> </ul>
<b>2. Interviewing clients</b>	<ul style="list-style-type: none"> <li>– prepared properly for the interview, having regard to relevant information available before the interview and the circumstance.</li> <li>– conducted the interview using communication techniques appropriate to both the client and the context</li> <li>– ensured that the client and applicant have both obtained all the information they wanted from the interview in a timely, effective and efficient manner, having regard to the circumstances</li> <li>– ensured that the applicant and client left the interview with a common understanding of the applicant's instructions (if any) and any future action the applicant or client is to take</li> <li>– made a record of the interview that satisfies the requirements of law and good practice</li> <li>– taken any follow-up action in a timely manner</li> </ul>
<b>3. Writing letters</b>	<ul style="list-style-type: none"> <li>– identified the need for and purpose of the letter</li> <li>– written the letter in simple, straightforward English that conveys its purpose clearly and can be easily understood by the person to whom it is sent</li> </ul>

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| <b>4. Drafting other documents</b>                  | <ul style="list-style-type: none"> <li>– identified the need for and purpose of the document</li> <li>– 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</li> <li>– drafted the document effectively, having regard to the parties, the circumstances, good practice, principles of writing simple, straightforward English, and the relevant law</li> <li>– considered whether the document should be settled by counsel</li> <li>– 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)</li> </ul> |
| <b>5. Negotiating settlements and agreements</b>    | <ul style="list-style-type: none"> <li>– prepared the client's case properly having regard to the circumstances and good practice</li> <li>– identified the strategy and tactics to be used in negotiations and discussed them with and obtained approval from the client</li> <li>– carried out 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</li> </ul>  |
| <b>6. Facilitating early resolution of disputes</b> | <ul style="list-style-type: none"> <li>– identified the advantages and disadvantages of available dispute resolution options and explained them to the client</li> <li>– performed in the dispute resolution process effectively, having regard to the circumstances</li> <li>– documented any resolution as required by law or good practice and explained it to the client in a way the client can easily understand</li> </ul>  |
| <b>7. Representing a client in court</b>            | <ul style="list-style-type: none"> <li>– observed the etiquette and procedures of the forum</li> <li>– organised and presented in an effective, strategic way factual material, analysis of relevant legal issues and relevant decided cases</li> <li>– presented and tested evidence in accordance with the law and good practice</li> <li>– made submissions effectively and coherently in accordance with law and good practice</li> </ul>  |

### **Explanatory Notes**

This competency standard applies to "composite" skills that require a legal practitioner to synthesise several generic skills and apply them in a specific legal context. Legal practitioners must be able to exercise such skills effectively.

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Representation refers to advocacy on behalf of a client in 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
- leading evidence-in-chief, cross-examination, re-examination and making submissions.

Dispute resolution options include:

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

## **PROBLEM SOLVING**

### **Descriptor**

An entry level legal practitioner must be able to: investigate and analyse facts and law; provide legal advice; solve legal problems.

<b>Element</b>	<b>Performance criteria</b>
	The applicant has competently:
<b>1. Analysing facts and identifying issues</b>	<ul style="list-style-type: none"> <li>– identified and collected all relevant facts as far as is practicable</li> <li>– analysed the facts to identify any existing or potential legal and other issues</li> <li>– distinguished facts that might be used to prove a claim from other facts, if the matter so requires</li> </ul>
<b>2. Analysing law</b>	<ul style="list-style-type: none"> <li>– identified any questions of law raised by the matter</li> <li>– researched those questions of law properly, having regard to the circumstances</li> <li>– identified and interpreted any relevant statutory provisions and applied them appropriately to the facts</li> </ul>
<b>3. Providing legal advice</b>	<ul style="list-style-type: none"> <li>– applied the law to the facts of the matter in an appropriate and defensible way</li> <li>– given the client advice in a way the client can easily understand</li> <li>– kept up with any developments that might affect the accuracy of previous advice and told the client about the effect of those developments</li> </ul>
<b>4. Generating solutions and strategies</b>	<ul style="list-style-type: none"> <li>– identified the problem of the client's goals as fully as is practicable</li> <li>– investigated the facts and legal and other issues as fully as is practicable</li> <li>– developed creative options and strategies to meet the client's objectives</li> <li>– identified the advantages and disadvantages of</li> </ul>

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- 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 plan
  - remained open to new information and ideas and updated advice to the client as necessary

### **Explanatory Notes**

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 –

(a) researching legal issues using:

- law libraries
- on-line searches
- electronic data bases
- legal citators and digests; and

(b) applying principles of precedent.

Other issues include:

- risk management
- public relations
- financial implications.

## **WORK MANAGEMENT AND BUSINESS SKILLS**

### **Descriptor**

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

#### **Element**

#### **Performance criteria**

The applicant has competently:

#### **1. Managing personal time**

- 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 client and employer

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|---------------------------------------|---|
| <b>2. Managing risk</b>               | <ul style="list-style-type: none"><li>– conducted each matter in a way that minimises any risk to the client, applicant or firm arising from missed deadlines, negligence or failure to comply with the requirements of the law, a court or other body</li><li>– recognised the limits of the applicant's expertise and experience and referred the client or matter to a legal practitioner, counsel or another professional, as the circumstances require</li></ul>   |
| <b>3. Managing files</b>              | <ul style="list-style-type: none"><li>– used a file management system to ensure work priorities are identified and managed, clients' documents are stored in an orderly and secure manner, and to alert the legal practitioner to any need to follow up a matter or give it other attention</li><li>– rendered timely bills, in accordance with law and any agreement, which set out the basis for calculating fees</li><li>– accurately recorded all communications and attendances, with details of dates and times</li></ul> |
| <b>4. Keeping the client informed</b> | <ul style="list-style-type: none"><li>– communicated with the client during the course of the matter as frequently as circumstances and good practice require</li><li>– confirmed oral communications in writing when requested by the client or required by good practice</li><li>– dealt promptly with the client's requests for information</li><li>– informed the client fully of all important developments in the matter in a way the client can easily understand</li></ul>  |
| <b>5. Working co-operatively</b>      | <ul style="list-style-type: none"><li>– worked with support staff, colleagues, consultants and counsel in a professional and cost effective manner</li></ul>  |

### **Explanatory Notes**

This competency standard applies to the exercise of good work habits in a legal practice to ensure:

- clients do not suffer loss or damage because of missed deadlines or neglect of a matter
- clients are kept informed regularly and fully of the progress of their matter
- clients' matters are dealt with in a cost-effective manner.

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## TRUST AND OFFICE ACCOUNTING

### Descriptor

An entry level legal practitioner must 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 legal practitioner.

### Element

### Performance criteria

The applicant has competently:

- |                                     |  |
|-------------------------------------|--|
| <b>1. Receiving money</b>           | <ul style="list-style-type: none"> <li>– dealt with money received from or on behalf of a client as required by law and good practice</li> <li>– if 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</li> <li>– issued any receipt required by law and good practice</li> </ul>   |
| <b>2. Making outlays</b>            | <ul style="list-style-type: none"> <li>– made an outlay from the correct account according to law and good practice</li> <li>– recorded the outlay as required by law and good practice</li> </ul>   |
| <b>3. Rendering costs</b>           | <ul style="list-style-type: none"> <li>– calculated the costs in accordance with law, good practice and any costs agreement</li> <li>– added to the bill all outlays made by the firm for which the client is responsible</li> <li>– accounted to the client for any money received from the client on account of costs and outlays, as required by law and good practice</li> <li>– drafted the bill and delivered it in accordance with law and good practice</li> </ul> |
| <b>4. Maintaining Trust account</b> | <ul style="list-style-type: none"> <li>– maintained any trust account in accordance with specific statutory requirements, including any requirements relating to common fund deposits and auditing</li> </ul>  |

### Explanatory Notes

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

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## VALUES

### ETHICS AND PROFESSIONAL RESPONSIBILITY

#### Descriptor

An entry level legal practitioner must act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community and other legal practitioners.

Element	Performance criteria
	The applicant has competently:
1. <b>Acting ethically</b>	<ul style="list-style-type: none"> <li>– identified any relevant ethical dimension of a particular situation</li> <li>– taken action that complies with professional ethical standards in that situation</li> </ul>
2. <b>Discharging the legal duties and obligations of legal practitioners</b>	<ul style="list-style-type: none"> <li>– identified any duty or obligation imposed by law on the applicant in a particular situation</li> <li>– discharged that duty or obligation according to law and good practice</li> </ul>
3. <b>Complying with professional conduct rules</b>	<ul style="list-style-type: none"> <li>– identified any applicable rules of professional conduct</li> <li>– taken action which complies with those rules</li> </ul>
4. <b>Complying with fiduciary duties</b>	<ul style="list-style-type: none"> <li>– recognised any fiduciary duty and complied with it according to law and good practice</li> </ul>
5. <b>Avoiding conflicts of interest</b>	<ul style="list-style-type: none"> <li>– identified any potential or actual conflict as soon as is reasonable in the circumstances</li> <li>– taken effective action to avoid a potential conflict or, if a conflict has already arisen, dealt with it in accordance with law and good practice</li> <li>– taken appropriate action, if applicable, to prevent such a conflict arising in the future</li> </ul>
6. <b>Acting courteously</b>	<ul style="list-style-type: none"> <li>– demonstrated professional courtesy in all dealings with others</li> </ul>
7. <b>Complying with rules relating to the charging of fees</b>	<ul style="list-style-type: none"> <li>– identified any rules applying to charging professional fees</li> <li>– complied with those rules where they are relevant</li> <li>– maintained records and accounts in accordance with law and good practice</li> </ul>
8. <b>Reflecting on wider issues</b>	<ul style="list-style-type: none"> <li>– reflected on the applicant's professional performance in particular situations</li> <li>– brought to the attention of an employer or professional association any matters that require consideration or clarification</li> <li>– recognised the importance of pro bono contributions</li> </ul>

- to legal practice
- demonstrated an awareness that mismanagement of living and work practices can impair a legal practitioner's skills, productivity, health and family life

### **Explanatory Notes**

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 obligation 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.

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## Schedule 5

rule 30

### REPEALED RULES

<i>Legal Practitioners Rules</i>	Regulations 1993, No. 38
<i>Amendments of Legal Practitioners Rules</i>	Regulations 1993, No. 42
<i>Amendment of Legal Practitioners Rules</i>	Regulations 1996, No. 36
<i>Amendment of Legal Practitioners Rules</i>	Regulations 1999, No. 7
<i>Amendments of Legal Practitioners Rules</i>	Regulations 2001, No. 36

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## ENDNOTES

### 1

#### KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
*Gaz* = *Gazette*  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2

#### LIST OF LEGISLATION

***Legal Practitioners Admissions Rules (SL No. 58, 2003)***

Notified	5 February 2004
Commenced	5 February 2004