

Proposed Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019

Purposes

To provide:

1. a brief background to the decision of the Admission Committee (**Committee**) to develop amendments to the Legal Profession Uniform Admission Rules 2015 (**UARs**) in relation to the admission of foreign lawyers; and
2. a summary (see page 4 below) of the effect of the proposed amendments.

Background

At its meeting on 17 November 2017, Stuart Clark informed the Committee that concerns had been expressed in relation to the admission of foreign lawyers in the Uniform Law (**UL**) States. Specifically, a number of law firms and foreign applicants for admission in NSW and Victoria (**Applicants**) were concerned that s 18 UL could be applied more broadly so as to facilitate the employment of experienced foreign lawyers in large law firms; enhance the opportunity for foreign lawyers to share their expertise with local lawyers; and increase Australia's ability to offer legal services in the global market.

The view was expressed that, on a proper application of s 18 UL (which provides for exemptions from certain prerequisites for admission), a foreign lawyer who has practised in a particular area for many years overseas should be credited with skills and experience for that practice, as well as for the incidental learning that accompanies years of practice.¹ It was argued that such crediting should manifest in exemptions not only from practical legal training (**PLT**) requirements but also from any requirement to complete a set of subjects that may have no relevance to the foreign lawyer's specialist expertise or legal practice. It was suggested that, while experienced local lawyers rarely retain a full knowledge of all of the core subjects studied for their original qualifications, experienced Applicants, who are unable to demonstrate equivalent qualifications in such subjects attained overseas, are required to complete further studies in some or all of those subjects.

The view was also expressed that the process of assessing admission applications is insufficiently transparent in that the Admitting Authorities do not provide an Applicant with its reasons for giving a direction to undertake further study and/or PLT, or for declining to grant an exemption.

¹ This is especially so in the case of an experienced foreign lawyer who has developed a particular speciality or area of practice and has practised in that area for a number of years.

Committee's response to the concerns

On 1 March 2018, in response to those concerns, the Committee resolved to conduct a review of the procedures for the admission of foreign lawyers in NSW and Victoria. Between 9 July and 23 October 2018, information and comment was invited from the relevant Admitting Authorities, the Council of Australian Law Deans, the Law Council of Australia, Law Firms Australia, the Law Society of NSW, the Victorian Legal Services Board, the Law Institute of Victoria, the Australian Bar Association and NSW and the Victorian Bar Associations. The Committee received materials from several of those bodies.

Issues identified in the review

Section 17 UL provides for prerequisites for admission. The content of the prerequisites is dealt with by UARs 5 and 6. It may be thought, however, that those rules do not provide sufficient guidance to the Admitting Authorities in assessing whether an Applicant's academic and practical training qualifications are sufficient to fulfil the objectives of the UL². In particular, the rules do not draw a distinction, in relation to suitability for admission, between experienced and in experienced lawyers. In the absence of guidance within the UL for assessing foreign lawyers' applications for admission, the Admitting Authorities have continued to rely on the Law Admissions Consultative Committee's Uniform Principles for Assessing the Qualifications of Overseas Applicants for Admission to the Australian Legal Profession (**Uniform Principles**). However, the Uniform Principles are without any legislative basis and promote equivalence testing in both academic and practical legal education. Further, while the Uniform Principles refer to experience that is *current, relevant and substantial*, the word 'relevant' has been construed so that an Applicant's experience in a certain area will only result in subject exemptions in the same area. There is no scope for incidental learning through years of practice to be taken into account for the purposes of satisfying the academic requirements of UAR 5.

Section 18 UL is broad in its terms. It allows partial as well as full exemptions, in appropriate cases, from further academic study and PLT. However, there are currently no UARs to guide the Admitting Authorities when assessing an application for exemption from prerequisites under s 18 UL.

The word 'relevant' in s 18 UL appears to be construed in the same way as it is in the Uniform Principles. Such a construction fails to acknowledge the fact that an

² Section 3 UL: promoting the administration of justice and an efficient and effective Australian legal profession by ... ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; ...

Applicant with five or more years' experience in any area of practice will also be experienced in matters of ethics and professional responsibility.

The process for admitting foreign lawyers appears the same in both UL States. No skilled and experienced foreign lawyer who obtained a law degree overseas has been admitted in a UL jurisdiction without the requirement to undergo further academic study. That raises the question as to whether s 18 UL is being applied in NSW and Victoria as it was intended.

In response to the concern that the processes of the Admitting Authorities lack transparency, the Authorities indicated that they provide reasons for their decisions upon request. Accordingly, the alleged lack of transparency may be an issue of perception rather than reality. Nevertheless, it remains an issue that the Committee believes should be addressed.

The regulators report that foreign lawyers admitted to practice in the UL States have not been the subject of complaints and are considered a low risk group.

Committee's response to the issues identified in the review

With the express objectives of the UL in mind, the Committee resolved to develop amendments to the UARs with the following effect:

- Increasing the scope and clarity of UARs 5 and 6 to provide better guidance to the Admitting Authorities when applying s 17 UL.
- Distinguishing between experienced applicants and inexperienced Applicants, where appropriate.
- Guiding the Admitting Authorities in their function of giving a direction.
- Entitling a person with five or more years' post-qualification experience (**PQE**) to have his or her legal skills and relevant experience as envisaged in s 18 UL, assessed by reference to several factors, drawn from areas that in the past have been reliable indicators of risk.
- Empowering the Admitting Authorities to take into account matters they consider relevant to the question of what, if any, further study or PLT the Applicant should undertake.
- Dispelling perceptions of lack of transparency by mandating that, if asked, the Admitting Authority must provide reasons for giving a direction under UAR 11 and/or for refusing to issue an exemption under s 18 UL.

Proposed Rule

The amendments sought by the Committee are drafted in the proposed Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019 (**Proposed Rule**) a copy of which is **Attachment A**.

Effect of the Proposed Rule

For ease of reference, the text of the UARs, as amended by the Proposed Rule, is **Attachment B**. The effect of the proposed changes will be as follows:

UAR 5

The specified academic prerequisites can be satisfied by completing additional academic qualifications as directed by an Admitting Authority under UAR 11, without completing a tertiary academic course in Australia.

UAR 6

The specified PLT prerequisite can be satisfied by completing additional PLT as directed by an Admitting Authority under UAR 11.

UAR 11

- UAR 11 deals with an Admitting Authority providing a direction to a *potential* Applicant about what further academic or practical qualifications he or she must acquire before being eligible for admission.
- A distinction is drawn between experienced (5 or more years PQE) and inexperienced (less than 5 years PQE) *potential* Applicants.
- UAR 11(2A) mandates that prior to formulating a direction about qualifications for an experienced *potential* Applicant, the Admitting Authority must take into account his or her skills and experience by reference to several factors, including the extent to which the legal framework of the foreign jurisdiction is similar to this jurisdiction; the type of legal practice previously engaged in and the nature of previous work, including level of responsibility and whether the *potential* Applicant has previously held trust money.
- In all cases, UAR 11(3A) empowers the Admitting Authorities to take into account any other matter they consider relevant to the content of a direction.
- UAR 11(5) compels the Admitting Authorities to provide reasons for giving a direction under UAR 11, if requested to do so by the *potential* Applicant.

UAR 11A

- UAR 11A applies when an Admitting Authority under s 18 UL considers whether to grant an Applicant an exemption from the prerequisites of UARs 5 and 6.
- A distinction is drawn between experienced (5 or more years PQE) and inexperienced (less than 5 years PQE) Applicants.
- UAR 11A(1) mandates a consideration of factors the same as those listed in proposed UAR 11(2A) for experienced Applicants.
- UAR 11A(2) empowers the Admitting Authorities to take into account any other matter they consider relevant to the grant of an exemption.
- UAR 11A(3) compels the Admitting Authorities to provide reasons for refusing to grant an exemption under s 18 UL, if requested to do so by the Applicant.



New South Wales

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019

under the

Legal Profession Uniform Law

The Legal Services Council has made the following Rule under the *Legal Profession Uniform Law*.

Megan Pitt, Chief Executive Officer
Legal Services Council

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019 [NSW]

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019

under the

Legal Profession Uniform Law

1 Name of Instrument

This Rule is the *Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019*.

2 Commencement

This Rule commences on the day on which it is published on the NSW legislation website.

3 Authorising provision

This Rule is made by the Legal Services Council under Part 9.2 of the *Legal Profession Uniform Law*.

Schedule 1 Amendment of Legal Profession Uniform Admission Rules 2015

[1] Rule 5 Specified academic qualifications prerequisite

Omit “successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, which” from rule 5 (1).

Insert instead “satisfied by any of the following”.

[2] Rule 5 (1) (a) and (b)

Omit rules 5 (1) (a)–(c). Insert instead:

- (a) successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, that:
 - (i) includes the equivalent of at least 3 years’ full-time study of law, and
 - (ii) is accredited by the Board, and
 - (iii) the Board determines will provide for a student to acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards, or
- (b) successfully completing the additional academic qualifications specified in a direction given to the applicant by the Board under rule 11.

[3] Rule 6 Specified practical legal training prerequisite

Omit “successfully completing either” from rule 6 (2).

[4] Rule 6 (2) (a) and (b)

Omit rules 6 (2) (a) and (b). Insert instead:

- (a) successfully completing either:
 - (i) a practical legal training course conducted by a practical legal training provider accredited by the Board, or
 - (ii) supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides for the trainee to satisfy the requirements of subrule (1), or
- (b) successfully completing any additional practical legal training specified in a direction given to the applicant by the Board under rule 11.

[5] Rule 11 Directions about qualifications

Insert after rule 11 (2):

- (2A) Where an applicant has worked as a practising lawyer in a foreign jurisdiction for a total of at least 5 years, the Board must take into account the applicant’s legal skills and experience before making a direction under subrule (1) or (2), taking into account the following:
 - (a) the extent to which the legal system and regulatory framework of the foreign jurisdiction are equivalent to this jurisdiction,
 - (b) the number of years the applicant has practised law,
 - (c) the type of legal practice the applicant has engaged in,

- (d) the nature of the applicant's previous work, including the applicant's level of responsibility and whether or not the applicant has previously held trust money.

[6] Rule 11 (3)

Omit "The Board". Insert instead "In any other case, the Board".

[7] Rule 11 (3A)

Insert after rule 11 (3):

- (3A) Before making any direction under this rule, the Board may take into account any other matter the Board considers relevant.

[8] Rule 11 (4)

Omit "under subrule (1) or (2)". Insert instead "under this rule".

[9] Rule 11 (4) (b)

Insert "(including further academic subjects, examinations or practical legal training)" after "Board".

[10] Rule 11 (5)

Insert after rule 11 (4):

- (5) The Board must provide reasons for giving a direction under this rule if requested to do so by the applicant.

[11] Rule 11A

Insert after rule 11:

11A Exemptions from certain prerequisites

- (1) When considering whether or not to exempt a person from satisfying the specified academic qualifications prerequisite or the specified legal training prerequisite or both under section 18 of the Uniform Law, the Board must take into account:
- (a) where an applicant has worked as a practising lawyer in a foreign jurisdiction for a total of at least 5 years—the applicant's legal skills and experience, taking into account the following:
 - (i) the extent to which the legal system and regulatory framework of the foreign jurisdiction are equivalent to this jurisdiction,
 - (ii) the number of years the applicant has practised law,
 - (iii) the type of legal practice the applicant has engaged in,
 - (iv) the nature of the applicant's previous work, including the applicant's level of responsibility and whether or not the applicant has previously held trust money, or
 - (b) in any other case—the extent to which:
 - (i) the academic qualification in law leading to legal practice in the foreign jurisdiction wholly or partially completed by the applicant is substantially equivalent to the academic qualifications prerequisite, or
 - (ii) any practical legal training in the foreign jurisdiction completed by the applicant is substantially equivalent to the practical legal training prerequisite.

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019 [NSW]
Schedule 1 Amendment of Legal Profession Uniform Admission Rules 2015

- (2) Before exempting an applicant from satisfying the specified academic qualifications prerequisite or the specified legal training prerequisite or both, the Board may take into account any other matter the Board considers relevant.
- (3) The Board must provide reasons for refusing to issue an exemption under section 18 of the Uniform Law if requested to do so by the applicant.

Part 2 Qualifications and training required for admission

5 Specified academic qualifications prerequisite

- (1) For the purposes of section 17 (1) (a) of the Uniform Law, subject to these Rules, the specified academic qualifications prerequisite is satisfied by any of the following:
 - (a) successfully completing a tertiary academic course in Australia whether or not leading to a degree in law, that
 - i. includes the equivalent of at least 3 years' full-time study of law, and
 - ii. is accredited by the Board, and
 - iii. the Board determines will provide for a student to acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards.
 - (b) successfully completing the additional academic qualifications specified in a direction given to the applicant by the Board under rule 11.

- (2) If an applicant has attained the specified academic qualifications prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board, after assessing the applicant's academic qualifications and any other relevant experience, may require the applicant to:
 - (a) undertake any further academic subjects,
 - (b) pass any further examinations, and
 - (c) apply for a compliance certificate within any period, determined by the Board.

6 Specified practical legal training prerequisite

- (1) For the purposes of section 17 (1) (b) of the Uniform Law, subject to these Rules, the specified practical legal training prerequisite is acquiring and demonstrating an appropriate understanding and competence in each element of the skills, values and practice areas:
 - (a) set out in Schedule 2, or
 - (b) otherwise determined by the Admissions Committee after consulting each of the Boards.

- (2) The requirement may be satisfied by:
 - (a) successfully completing either:
 - i. a practical legal training course conducted by a practical legal training provider accredited by the Board, or
 - ii. supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides for the trainee to satisfy the requirements of subrule (1), or
 - (b) successfully completing any additional practical legal training specified in a direction given to the applicant by the Board under rule 11.

- (3) A person is eligible to commence training referred to in subrule (2) in the circumstances set out in item 4 of Schedule 2, or when otherwise determined by the Board.
- (4) If an applicant has completed the specified practical legal training prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board, after assessing the applicant's practical legal training qualifications and any other relevant experience, may require the applicant to:
 - (a) undertake any further practical legal training, and
 - (b) apply for a compliance certificate within any period, determined by the Board.

11 Directions about qualifications

- (1) A person who has wholly or partially completed the academic requirements for admission in a foreign jurisdiction may apply to the Board for a direction about what additional academic qualifications must be acquired by that person in order to meet the requirements of rule 5.
- (2) A person who has completed the practical legal training requirements for admission and has been admitted in a foreign jurisdiction may apply to the Board for a direction about what additional practical legal training understanding and competence must be acquired by that person in order to meet the requirements of rule 6.
- (2A) If an applicant has worked as a practising lawyer in a foreign jurisdiction for a total of at least 5 years, the Board must take into account the applicant's legal skills and experience before making a direction under subrule (1) or (2), taking into account the following:
 - (a) the extent to which the legal system and regulatory framework of the foreign jurisdiction are equivalent to this jurisdiction,
 - (b) the number of years the applicant has practised law,
 - (c) the type of legal practice the applicant has engaged in,
 - (d) the nature of the applicant's previous work, including the applicant's level of responsibility and whether or not the applicant has previously held trust money.
- (3) In any other case, the Board must take into account:
 - (a) before making a direction under subrule (1), the extent to which the academic qualification in law leading to legal practice in the foreign jurisdiction wholly or partially completed by the applicant is substantially equivalent to the academic qualifications prerequisite specified in rule 5 (1),
 - (b) before making a direction under subrule (2), the extent to which any practical legal training in the foreign jurisdiction completed by the applicant is substantially equivalent to the practical legal training prerequisite specified in rule 6 (1), and
 - (c) before making a direction under either subrule (1) or (2), any principles for assessing the qualifications of overseas applicants for admission from time to time endorsed for use in other Australian jurisdictions.

- (3A) Before making any direction under this rule, the Board may take into account any other matter the Board considers relevant.
- (4) The Board may give a direction under this rule in any terms, and subject to any conditions that it thinks appropriate including, without limitation, that the applicant must:
 - (a) take an examination referred to in rule 10 (2), and
 - (b) complete any other requirements directed by the Board (including further academic subjects, examinations or practical legal training), and
 - (c) apply for a compliance certificate within any period determined by the Board.
- (5) The Board must provide reasons for giving a direction under this rule if requested to do so by the applicant.

11A Exemptions from certain prerequisites

- (1) When considering whether or not to exempt a person from satisfying the specified academic qualifications prerequisite or the specified legal training prerequisite or both under section 18 of the Uniform Law, the Board must take into account:
 - (a) where an applicant has worked as a practising lawyer in a foreign jurisdiction for a total of at least 5 years—the applicant’s legal skills and experience, taking into account the following:
 - (i) the extent to which the legal system and regulatory framework of the foreign jurisdiction are equivalent to this jurisdiction,
 - (ii) the number of years the applicant has practised law,
 - (iii) the type of legal practice the applicant has engaged in,
 - (iv) the nature of the applicant’s previous work, including the applicant’s level of responsibility and whether or not the applicant has previously held trust money, or
 - (b) in any other case—the extent to which:
 - (i) the academic qualification in law leading to legal practice in the foreign jurisdiction wholly or partially completed by the applicant is substantially equivalent to the academic qualifications prerequisite, or
 - (ii) any practical legal training in the foreign jurisdiction completed by the applicant is substantially equivalent to the practical legal training prerequisite.
- (2) Before exempting an applicant from satisfying the specified academic qualifications prerequisite or the specified legal training prerequisite, or both, the Board may take into account any other matter the Board considers relevant.
- (3) The Board must provide reasons for refusing to issue an exemption under section 18 of the Uniform Law if requested to do so by the applicant.