

LAW ADMISSIONS CONSULTATIVE COMMITTEE

**UNIFORM PRINCIPLES FOR
ASSESSING QUALIFICATIONS
OF
OVERSEAS APPLICANTS FOR ADMISSION
TO THE AUSTRALIAN LEGAL PROFESSION**

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1. SUMMARY OF REQUIREMENTS

To be admitted to the legal profession in an Australian jurisdiction on the basis of qualifications obtained outside Australia, an applicant must usually have:

- (a) completed a tertiary course leading to legal practice in the applicant's home jurisdiction, which is substantially equivalent to a three-year full-time law course that leads to admission to the legal profession in Australia ; and
- (b) successfully completed subjects, either as part of that course or otherwise, which are substantially equivalent to the areas of study which Australian applicants must successfully complete before being admitted to the legal profession in Australia; and
- (c) acquired and demonstrated an appropriate understanding of, and competence in, certain skills, practice areas and values, which are substantially equivalent to the skills, practice areas and values which Australian applicants must acquire and demonstrate an understanding of and competence in, before being admitted to the legal profession in Australia; and
- (d) undertaken, or been exempted from, the International English Language Testing System Academic Module (**IELTS**) test within two years before seeking admission, and obtained minimum scores of 8.0 for writing, 7.5 for speaking and 7.0 for reading and listening, in the components of that test.

An Admitting Authority may dispense with one or more of the requirements referred to in items (b) and (c) in the case of an experienced practitioner from an overseas jurisdiction if it considers that the applicant's experience is sufficiently relevant, substantial and current to justify a dispensation.

Except for a lawyer trained and admitted in New Zealand, every lawyer trained outside Australia who wishes to become eligible for admission in Australia must first apply to an Admitting Authority for an assessment of whether the person's academic and practical legal training qualifications are substantially equivalent to the qualifications required of local applicants. That assessment will set out what additional studies the applicant must undertake in Australia, and the period within which the applicant must complete those studies and apply for admission. Information about making an application for assessment is set out in item 9.

A lawyer trained and admitted to the legal profession in New Zealand may apply to have those qualifications recognised under the *Trans-Tasman Mutual Recognition Act 1997* (Cth).

These Uniform Principles show how Australian Admitting Authorities approach the task of assessing an applicant's compliance with each of these requirements.

Once an overseas applicant has been admitted to the legal profession, the applicant must obtain a practising certificate before commencing to practise law. The relevant authority in each jurisdiction will invariably require an overseas applicant to undertake a period of restricted practice under supervision, before full rights of practice are granted. Item 8 sets out the prevailing practices.

2. SUBSTANTIALLY EQUIVALENT TYPE OF LAW COURSE

2.1 Requirements for Australian-trained applicants

An applicant trained as a lawyer in Australia must have acquired a tertiary qualification in law that is recognised for the purposes of admission to the legal profession. While acquiring that qualification the applicant must have satisfactorily completed studies in each of the areas of knowledge prescribed in Schedule 1.

The course leading to that qualification must be designed to be completed by a full-time student over at least three full-time academic years. Where the course is divided into semesters, it should comprise at least six semesters of approximately 13 weeks each.

2.2 Requirements for overseas-trained applicants

An overseas applicant must also have acquired a relevant academic qualification, while following a tertiary course, which:

- (a) normally leads to admission to practise law in the applicant's home jurisdiction; and
- (b) is substantially equivalent to a three-year full-time course that leads to admission to the legal profession in Australia.

An applicant may have completed the course over more than three years, or as a part-time (rather than full-time) student. In some circumstances an applicant may be eligible if such a course has been completed in less than three years.

2.3 Irregular or unusual qualifications

Where a qualification is offered at a post-graduate level, or as an external degree, or through distance education, or partly on-line, it may not be "substantially equivalent to a three-year full-time course" for the purposes of item 2.2(b). A person who has completed such a qualification must explain:

- (a) the nature of the qualification; and
- (b) whether the qualification obtained by the applicant is sufficient to qualify the applicant to undertake practical legal training in the applicant's home jurisdiction; and
- (c) why the qualification should be regarded as complying with item 2.2(b).

A qualification will not be regarded as "substantially equivalent to a three-year full-time course", unless it qualifies the applicant to undertake practical legal training in the jurisdiction in which the qualification was obtained.

2.4 Second degree in law or postgraduate subjects

Overseas graduates in law, or overseas practitioners often undertake post-graduate work in Australia. A post-graduate Doctorate, Masters or Diploma course, taken in Australia or elsewhere, is generally not a relevant qualification for admission purposes. A Graduate Diploma in law undertaken in England, Wales or Northern Ireland, and the Common Professional Examination are exceptions to this principle.

Credit will only be given for subjects taken as part of such a qualification if they are substantially equivalent in content to a relevant subject normally taken as part of a course leading to admission to practise law.

2.5 Practical Legal Training Courses and Bar Exams

In some jurisdictions, notably England, Wales and Northern Ireland, an applicant may have undertaken some proportion of academic training at a university without completing a three-year degree in law, and the remaining training as part of a professional legal training course. In the United States of America, an applicant may have completed some subjects as part of a law degree and others in the course of preparing for bar examinations in a particular state.

Academic credit will rarely be given for subjects undertaken as part of a practical legal training course, or bar examination preparation, even if the subjects bear similar names to the areas of knowledge prescribed in Schedule 1, or are undertaken during an academic law course.

2.6 **Special purpose subjects**

Academic credit will only be given for completing subjects specially designed to allow potential overseas applicants to undertake studies in, say, Australian Federal and State Constitutional Law or Administrative Law before applying for admission in Australia if:

- (a) the subject is conducted by a tertiary institution which is approved by an Australian Admitting Authority for the purpose of providing a full course of study in the areas of knowledge specified in Schedule 1; and
- (b) the head of the relevant faculty or department at that tertiary institution has certified that the subject is substantially equivalent to a subject offered as part of the course of study already accredited for admission purposes at that institution.

3. **SUBSTANTIALLY EQUIVALENT ACADEMIC QUALIFICATIONS**

Subject to item 5, all applicants, however eminent or experienced they may be in their home jurisdictions, must have undertaken subjects in the following areas of study:

- Administrative Law
- Civil Procedure
- Contracts
- Company Law
- Criminal law and procedure
- Equity (including Trusts)
- Ethics and Professional Responsibility
- Evidence
- Federal and State Constitutional Law
- Property (including Torrens System Land)
- Torts

In each case, the content of the subject must be substantially equivalent to that described in broad terms in Schedule 1.

3.1 **Demonstrating equivalence**

An applicant for credit must supply an original or duly-certified copy of the applicant's official academic transcript, setting out the marks and results obtained in each law subject which the applicant wishes to have assessed.

As noted in item 2.5, academic credit will not be given for subjects completed as part of a practical legal training course or bar exam course.

Credit will not be granted for a subject where a result of less than 50% was achieved, unless:

- (a) the applicant also supplies an official statement by the relevant institution which explains the marking policy of the institution and the standard of knowledge and competence signified by that result; and
- (b) the Admitting Authority is satisfied that the result is equivalent to a pass mark from an approved Australian educational institution.

In addition to information set out in the official academic transcript, the applicant should supply information about the precise content of each subject which the applicant wishes the Admitting Authority to assess. This will help determine whether subjects are substantially equivalent to those described in Schedule 1.

3.2 Schedule 2 sets out the common practices of Admitting Authorities when assessing overseas academic qualifications. That Schedule should help an applicant to anticipate what additional

academic studies may be required in Australia. Note that all applicants will be required to undertake further study of Federal and State Constitutional Law in Australia.

Each application is assessed on its own merits, in the light of information lodged in support of the application. It must be stressed, however, that eminence, seniority or, subject to item 5, length of service as a practitioner in an applicant's home jurisdiction, do not constitute grounds for exempting an applicant from studies which the applicant has not previously undertaken.

3.3 **Satisfying further requirements**

An applicant who is required to complete additional academic requirements will be able to do so only by undertaking corresponding subjects at a tertiary institution which is recognised for the purpose of providing pre-admission academic training in law in the Australian jurisdiction in which the applicant has applied for admission. Studying subjects at other institutions will not suffice.

An applicant will generally be required to complete any additional academic study and practical legal training and to apply for admission within a period specified by the relevant Admitting Authority.

3.4 **Stale qualifications**

An applicant who has completed an academic qualification more than 5 years before seeking admission in Australia may be required to undertake further law studies or sit further examinations in Australia, in addition to any further academic studies referred to in item 3.2 above. This is likely to happen if an applicant has not previously been admitted to the legal profession or has not practised as a lawyer in the applicant's home jurisdiction. It may also happen in other circumstances where the Admitting Authority considers some or all of the applicant's academic qualification to be out of date.

Schedule 6 sets out some common considerations which an Admitting Authority may, but is not obliged, to take into account when considering such an applicant. They do not, however, either imply or require that an Admitting Authority will act in a particular way, or limit the Admitting authority's discretion.

4. **SUBSTANTIALLY EQUIVALENT PRACTICAL LEGAL TRAINING QUALIFICATIONS**

4.1 **Requirements for Australian-trained applicants**

An Australian-trained, local applicant, after acquiring an appropriate Australian academic qualification, must also acquire and demonstrate an appropriate understanding of, and competence in, the Skills, Practice Areas and Values set out in Schedule 3. An applicant must usually do this either by attending a practical legal training course or by acquiring supervised workplace experience under a training contract where the relevant understanding and competence are acquired, or by a combination of both methods.

For the purpose of this requirement, in some Australian jurisdictions an Australian-trained, local applicant can undertake a training contract with a legal firm, or, in some circumstances, as an employee of a corporation, a court officer or a government official.

The applicant's duties must be purely legal and must relate to areas of legal practice. Further, the applicant's supervisor must hold a current practising certificate or equivalent authorisation, except where the training contract is undertaken with a judge.

An Australian-trained local applicant may then be admitted, but is required to engage in *supervised* legal practice for a period after admission.

4.2 **Requirements for overseas-trained applicants**

An applicant who has been educated overseas will be expected to have acquired, or to obtain, practical legal training qualifications which are substantially equivalent to those required of an Australian-trained local applicant.

4.3 Applicants who have been admitted to legal practice overseas

Subject to item 5, all applicants, however eminent or experienced they may be in their home jurisdictions, must have acquired and demonstrated an appropriate understanding of, and competence in, each of the Skills, Practice Areas and Values set out in Schedule 3, before they can be admitted to the legal profession in Australia.

Where an applicant has already been admitted in the applicant's home jurisdiction and has had experience of legal practice, the applicant will often have acquired understanding of, and competence in, some, if not all, of the Skills, Practice Areas and Values set out in Schedule 3.

The applicant may have acquired these either:

- (a) by undertaking a practical legal training course in the applicant's home jurisdiction; or
- (b) by working as a lawyer in the applicant's home jurisdiction, either in private practice or as an employee of a corporation, or as a court officer or government official.

An applicant may be granted an exemption from further studying a Skill, Practice Area or Value in Australia, if the Admitting Authority is satisfied that the applicant has acquired and demonstrated an appropriate understanding of, and competence in, a substantially equivalent Skill, Practice Area or Value, in the applicant's home jurisdiction but, subject to item 5, will not be granted an exemption in relation to:

Trust and Office Accounting

Ethics and Professional Responsibility.

4.4 Applicants who have not been admitted overseas

An applicant who has not been admitted to legal practice overseas will not receive any exemption from Australian practical legal training requirements. Such an applicant will be required to complete the same practical legal training as an applicant trained in Australia, regardless of any practical legal training that the applicant may have previously undertaken overseas.

4.5 Demonstrating equivalence

In order for an applicant to satisfy an Admitting Authority that the applicant has acquired and demonstrated an appropriate understanding of, or competence in, a particular Skill, Practice Area or Value, the applicant must provide documentary evidence which:

- (a) explicitly sets out how the applicant has acquired and demonstrated appropriate understanding and competence in the relevant Skill, Practice Area or Value for which exemption is sought;
- (b) shows how the practice undertaken by the applicant has satisfied each relevant element set out in the Schedule 3 for that Skill, Practice Area or Value; and
- (c) is corroborated by written evidence from the applicant's employer or a person with whom the applicant has been associated in practice, verifying each of the matters referred to in paragraphs 4.5(a) and 4.5(b).

Documentary evidence that an applicant has successfully completed a particular Skill, Practice Area or Value in a Practical Legal Training course conducted in a country referred to in item 4.1 of Schedule 4 will satisfy the requirement in paragraph 4.5(a).

Documentary evidence that an applicant has undertaken, and has been assessed as successfully competing, a skills or work training element of a recognised Continuing Legal Education program in another country may be evidence in an appropriate form for the purposes of paragraphs 4.5(a) and (b).

Unless an application clearly complies with each of the requirements in paragraphs 4.5(a), (b) and (c), an Admitting Authority will not grant an exemption: see item 9 below.

Admitting Authorities apply the common practices set out in Schedule 4 when assessing applicants with practical legal training qualifications from other countries. These common practices are based on the practical legal training systems applying in each listed country. Schedule 4 should help an applicant to anticipate what additional practical legal training may be required in Australia.

Each application is assessed on its merits, in the light of information lodged in support of the application. It must be stressed that eminence, seniority or, subject to item 5, length of service as a practitioner in an applicant's home jurisdiction does not constitute grounds for exempting an applicants from acquiring practical legal training knowledge and competence which the applicant does not possess.

No applicant will be granted an exemption in relation to:

Trust and Office Accounting
Ethics and Professional Responsibility

4.6 **Satisfying further requirements**

An applicant who is required to complete additional practical legal training in Australia will only be able to do so by acquiring and demonstrating an appropriate understanding of, or competence in, a particular Skill, Practice Area or Value mentioned in Schedule 3, by undertaking relevant study in that topic with a practical legal training provider recognised for the purpose of providing pre-admission practical legal training, or by undertaking a training contract in the jurisdiction in which the applicant has applied for admission. Studying a topic of the same name or with a similar content at another institution will not suffice.

4.7 **Stale qualifications**

An applicant who has completed a practical legal training qualification or practical legal training experience more than 5 years before seeking admission in Australia may be required to undertake further practical legal training studies or examinations or experience in Australia, in addition to the requirements referred to above. This is likely to happen if an applicant has not previously been admitted to the legal profession; has not practised as a lawyer in the applicant's home jurisdiction; or has not been in active practice for some time. It may also happen in other circumstances where the Admitting Authority considers some or all of the applicant's practical legal training qualification to be out of date.

Schedule 6 sets out some common considerations which an Admitting Authority may, but is not obliged, to take into account when considering such an applicant. They do not, however, either imply or require that an Admitting Authority will act in a particular way, or limit the Admitting authority's discretion.

5. **EXPERIENCED PRACTITIONERS**

Admitting Authorities deal with most applications from overseas lawyers in the ways described in items 3 and 4. However, an Admitting Authority does have a broad discretion to dispense with some or all of the additional academic studies or practical legal training usually required in accordance with Schedule 2 and Schedule 4. This discretion may be exercised in favour of an established legal practitioner in an overseas jurisdiction where the Admitting Authority considers the applicant's experience in practice to be relevant, substantial and current. Schedule 5 sets out some common considerations which an Admitting Authority may, but is not obliged, to take into account when considering such an applicant. Certain other matters are mentioned in Schedule 5 as

background for applicants. They do not, however, either imply or require that an Admitting Authority will act in any particular way, or limit the Admitting Authority's discretion.

An applicant who wishes to be considered in this category will be required to provide the Admitting Authority with documentary evidence which:

- (a) explicitly sets out how the applicant's experience corresponds to, and exemplifies, some or all of the common considerations set out in Schedule 5; and
- (b) sets out any additional considerations which may be relevant to an Admitting Authority when deciding to allow the applicant's relevant, substantial and current experience in practice to offset particular academic or practical legal training requirements that might otherwise be imposed; and
- (c) is corroborated by evidence from the applicant's employer, or other persons with whom the applicant has been associated in practice; and
- (d) gives the applicant's consent to a copy of the application and accompanying documentary evidence, and the decision of the Admitting Authority, being made available to other Admitting Authorities in Australia.

Unless an application clearly sets out these matters in sufficient detail, an Admitting Authority is unlikely to decide that an applicant's experience offsets academic or practical legal training requirements which would usually apply under items 3 and 4 above. *An Admitting Authority is not obliged to seek further information from an applicant if appropriate and sufficient information is not provided in an initial application.*

6. ENGLISH LANGUAGE PROFICIENCY

- 6.1 Each Admitting Authority requires an applicant for admission to the legal profession to demonstrate a high level of English proficiency in reading, writing, listening and speaking.
- 6.2 Subject to item 6.3, every applicant for admission must usually satisfy the relevant Admitting Authority that the applicant has, in the two years immediately preceding that person's application for admission:
 - (a) completed the International English Language Testing System Academic Module (**IELTS**) test; and
 - (b) obtained minimum scores of 8.0 for writing, 7.5 for speaking and 7.0 for reading and listening, in the components of that test.
- 6.3 An Admitting Authority may exempt an applicant from complying with item 6.2, if the applicant:
 - (a) has, with the medium of instruction being English, undertaken the academic qualification in law upon which the applicant relies, in a country where English is the native or first language, while living in that country, for the whole of that time; or
 - (b) otherwise satisfies the Admitting Authority that the applicant's proficiency in the English language is comparable to the proficiency demonstrated by completing the IELTS test with the minimum scores set out in item 6.2(b).
- 6.4 An applicant must meet the cost of undertaking the IELTS test and of providing the relevant Admitting Authority with evidence that the applicant has complied with the requirements set out above.

Further information about the IELTS Academic Module, including information about its cost and where and when it may be taken, can be obtained from:

IELTS Australia
GPO Box 2006
CANBERRA ACT 2601
AUSTRALIA
Phone: +61 2 6285 8222
Fax: +61 2 6285 3233
Email: ielts@idp.com

7. TIME LIMITS

An Admitting Authority, when giving a direction about any additional academic study and practical legal training, will also fix a time limit within which an applicant must comply with those requirements and make an application for admission to the legal profession. The relevant time limit will depend upon the additional requirements imposed, but in no case will exceed five years.

An Admitting Authority may extend a time limit before it expires if an applicant seeks an extension and the Admitting Authority is satisfied that the applicant has produced sound reasons for granting an extension

A person who fails to comply with a time limit imposed by an Admitting Authority will be required to make a further application for a direction as to any additional academic or practical legal training requirements. Those requirements may differ from the requirements imposed on an earlier application.

8. RESTRICTED RIGHTS OF PRACTICE

Once an applicant has been admitted to the legal profession in Australia, the applicant must obtain a practising certificate before commencing to practise law. The relevant Authority in each jurisdiction invariably requires an Australian applicant to undertake a period of supervised practice before full rights of practice are granted. Some jurisdictions have a mechanism for seeking exemption from some or all of this requirement. An application for exemption will usually be considered by the body responsible for issuing practising certificates in the relevant jurisdiction. The applicant's prior experience in legal practice will be relevant to such an application.

9. APPLYING FOR AN ASSESSMENT OF QUALIFICATIONS

Precise requirements for an application for a direction about qualifications may be obtained from the Admitting Authority to which application is to be made. They will, however, include:

- (a) an original official academic transcript, setting out marks and results obtained in relevant law subjects, or a certified copy of the original: see item 3.1;
- (b) if any result shows a mark of less than 50%, an official statement from the relevant institution that adequately explains its marking policy and the relative knowledge and competence signified by the result: see item 3.1;
- (c) information about the precise content of every academic subject which the applicant wants the admitting authority to assess: see item 3.1;
- (d) an original official transcript of the results of any practical legal training course completed by the applicant, or a certified copy of the original: see item 4.5;
- (e) except for a an applicant from a country mentioned in item 4.1 of Schedule 4, a detailed description of the content of any practical legal training course that the applicant wants the Admitting Authority to assess: see item 4.5;
- (f) if an applicant has not undertaken a practical legal training course, but wants the Admitting Authority to assess whether the applicant's experience in practice is substantially equivalent to requirements set out in Schedule 3, the information described in item 4.5;

- (g) if an applicant who is an experienced overseas practitioner wishes to invoke the Admitting Authority's discretion to dispense with any usual academic or practical legal training requirement, the additional information referred to in item 5.

Please note that material enclosed in support of an application will not be returned to an applicant. Please also note that an Admitting Authority is not obliged to seek further information from an applicant if an application is incorrect or incomplete; or if appropriate and insufficient information is not provided in an initial application.

SCHEDULE 1
PRESCRIBED AREAS OF KNOWLEDGE

Although the topics below are grouped for convenience under the headings of particular areas of knowledge, there is no implication that a topic needs to be taught in a subject covering the area of knowledge in the heading rather than in another suitable subject.

CRIMINAL LAW AND PROCEDURE

1. The definition of crime.
2. Elements of crime.
3. Aims of the criminal law.
4. Homicide and defences.
5. Non-fatal offences against the person and defences.
6. Offences against property.
7. General doctrines.
8. Selected topics chosen from:
 - attempts
 - participation in crime
 - drunkenness
 - mistake
 - strict responsibility.
9. Elements of criminal procedure. Selected topics chosen from:
 - classification of offences
 - process to compel appearance
 - bail
 - preliminary examination
 - trial of indictable offences.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the general doctrines of the criminal law and, in particular, examination of both offences against the person and against property. Selective treatment should also be given to various defences and to elements of criminal procedure.

TORTS

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

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The potential compass of this area is so large that considerable variation might be anticipated. At the very least, there should be a study of negligence and of a representative range of torts, with some consideration of defences and damages, and of alternative methods of providing compensation for accidental injury. Examples of these topics are: concurrent liability, defamation, economic torts, nuisance, breach of statutory duty and compensation schemes.

CONTRACTS

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

OR

Topics of such breadth and depth as to satisfy the following guidelines.

Some variation may be expected in the breadth and detail of the topics. In general, however, knowledge of the formal requirements for concluding contracts, capacity, the content and interpretation of contracts, their performance and discharge, and available remedies, together with an understanding of the broad theoretical basis of contract would be expected.

PROPERTY

1. Meaning and purposes of the concept of property.
2. Possession, seisin and title.
3. Nature and type (i.e. fragmentation) of proprietary interests.
4. Creation and enforceability of proprietary interests.
5. Legal and equitable remedies.
6. Statutory schemes of registration.

7. Acquisition and disposal of proprietary interests.
8. Concurrent ownership.
9. Proprietary interests in land owned by another.
10. Mortgages.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the nature and type of various proprietary interests in chattels and land, and their creation and relative enforceability at law and in equity. Statutory schemes of registration for both general law land and Torrens land should be included. A variety of other topics might be included, e.g., fixtures, concurrent interests and more detailed treatment of such matters as sale of land, leases, mortgages, easements, restrictive covenants, etc.

EQUITY

1.
 - (a) The nature of equity
 - (b) Equitable rights, titles and interests
 - (c) Equitable assignments
 - (d) Estoppel in equity
 - (e) Fiduciary obligations
 - (f) Unconscionable transactions
 - (g) Equitable remedies
2. Trusts, with particular reference to the various types of trusts and the manner and form of their creation and variation. The duties, rights and powers of trustees should be included, as should the consequences of breach of trust and the remedies available to, and respective rights of, beneficiaries. (It is expected that about half the course will be devoted to trusts.)

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should cover the elements of trust law, equitable doctrines apart from those relating to trusts, and equitable remedies. The following aspects of trusts law should be dealt with: various kinds of trusts; the rights, duties and powers of trustees; the consequences of breach of trust. Apart from trusts, the following equitable doctrines might be covered, for example, fiduciary obligations, equitable assignments, unconscionability and confidential information. The remedies of specific performance, injunction, declaration and damages in equity should be included. (It is expected that about half the course will be devoted to trusts.)

COMPANY LAW

1. Corporate personality.
2. The incorporation process.

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

OR

Topics of such breadth and depth as to satisfy the following guidelines.

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

ADMINISTRATIVE LAW

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

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should not only embrace traditional common law remedies concerning judicial review of administrative action, but should also cover the range of Commonwealth and State statutory regimes.

FEDERAL AND STATE CONSTITUTIONAL LAW

1. State constitutions and constitutional systems.
2. The Commonwealth Constitution and constitutional system.

3. The constitution and operation of the legislature, executive and judiciary.
4. The relationship between the different institutions of government and the separation of powers.
5. The relationship between the different levels of government.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include knowledge of the major principles of both the relevant State or Territory Constitution and the Commonwealth Constitution, including the relations between the different Commonwealth and State or Territory laws. A general knowledge of the scope of both State or Territory and Commonwealth Constitutions is required, although the topics will differ in the depth of treatment of specific heads of power, particularly in the Commonwealth sphere.

CIVIL DISPUTE RESOLUTION

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 verdict
5. Defining the questions for trial – pleadings, notices to admit and other devices
6. Obtaining evidence – discovery of documents, interrogatories, subpoena and other devices
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
12. Alternative dispute resolution
13. Obligations of parties and practitioners relating to the resolution of disputes.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topic should embrace the general study of rules of civil procedure and alternative dispute resolution relevant in the State or Territory. The law concerning jurisdiction, the initiation and service of process, the definition of issues through pleadings and judgment and enforcement should all be included.

EVIDENCE

Explanatory Note:

The following topics are fundamental to understanding the major features of evidence law and procedure, both statutory and common law, and the major sources of judicial interpretation relevant to a general study of the role, sources and foundation of the law of evidence and a trial procedure, of pre-trial obligations and of rules concerning the burden and standard of proof. These topics explicitly take into account the language of procedural changes created by the common law and uniform evidence law in Australia, including High Court jurisprudence that is indispensable to understanding the conduct of a trial.

1. Introduction

- (a) The relevant sources of the law of evidence and procedure
- (a) Fair trials, proof and adversarialism, including principles underpinning accusatorial justice
- (b) Evidentiary issues to be addressed before trial: disclosure, notices and requests

2. Forms of Evidence

- (a) Witnesses: Competence and compellability
 - (i) The examination of witnesses, including vulnerable witnesses
 - (ii) The accused as a witness, including the privilege against self-incrimination
- (b) Documentary evidence, including proof of contents
- (c) Real evidence

3. Evidentiary principles and rules, and exceptions to the rules

- (a) Relevance
- (b) Original evidence including res gestae
- (c) Hearsay evidence
- (d) Opinion evidence
- (e) Admissions and confessions
- (f) Tendency and coincidence evidence
- (g) Credibility evidence
- (h) Character evidence

4. The bases for Privilege including legal professional and client privilege

5. Judicial warnings, comment and directions

6. Mandatory and discretionary exclusions and the limitations on evidence.

ETHICS AND PROFESSIONAL RESPONSIBILITY

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

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

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include knowledge of the various pertinent rules concerning a practitioner's duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles relating to the holding of money on trust.

SCHEDULE 2

COMMON ADDITIONAL ACADEMIC REQUIREMENTS

This Schedule should be read in conjunction with items 2, 3 and 9 of the Uniform Principles. It sets out the additional academic requirements commonly required of applicants who have qualified and been admitted to practise overseas. It indicates which of the Prescribed Subjects an applicant will commonly be required to study in Australia, unless the applicant is considered to be an experienced practitioner for the purpose of item 5 of the Uniform Principles.

Prescribed Subjects, in this Schedule means:

Administrative Law
Civil Procedure
Contracts
Company Law
Criminal law and procedure
Equity (including Trusts)
Ethics and Professional Responsibility
Evidence
Federal and State Constitutional Law
Property (including Torrens System Land)
Torts,

as described in Schedule 1.

Note: Applicants relying on academic qualifications from –

- (a) **any country not mentioned below; or**
- (b) **an institution within a country, other than an institution that is specifically identified below with respect to that country,**

will be required to study all Prescribed Subjects.

Canada

- (a) *Civil Law Degree*

An applicant who has a Civil Law degree and who has not studied common-law subjects will be required to study all Prescribed Subjects.

- (b) *Common Law Degree*

An applicant who has a Common Law degree will be required to study Administrative Law, Federal and State Constitutional Law, Property and any other Prescribed Subjects not included in that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

Credit may also be given for Property if, as part of that degree, the applicant has studied Torrens-system land registration in more than a cursory way.

England and Wales

(a) *Law Degree*

An applicant with a degree in law from an English or Welsh university will be required to take Administrative Law, Federal and State Constitutional Law, Ethics and Professional Responsibility and any other Prescribed Subjects not studied during that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

Credit may be given for Ethics and Professional Responsibility if the applicant has successfully completed Professional Conduct and Regulation as part of the Legal Practice Course, or Professional Ethics as part of the Bar Professional Training Course.

(b) *Common Professional Examination and Postgraduate Diploma in Law*

An applicant who has completed the Foundations of Legal Knowledge subjects, will be required to study Administrative Law, Federal and State Constitutional Law, Evidence, Civil Procedure, Company Law and Ethics and Professional Responsibility.

(c) *Chartered Institute of Legal Executives*

An applicant who has:

- (i) completed the CILEx Level 6 examinations in the Foundations of Legal Knowledge subjects; and
- (ii) has also been granted credit for each of the CPQ examinations relating to the Foundations of Legal Knowledge by the Solicitors Regulation Authority; and
- (iii) thereafter successfully completed the Legal Practice Course,

will be required to study Administrative Law, Federal and State Constitutional Law, Evidence, Civil Procedure, Company Law and Ethics and Professional Responsibility.

An applicant who has completed either or both the CILEx Level 4 and Level 6 examinations, but who has not otherwise met each of the requirements set out in the previous paragraph, is not eligible to have those qualifications assessed under these Principles. Such a person will be required to qualify as a local Australian applicant, but may apply to an Australian law school or the New South Wales Legal Profession board law course for academic credit for any CILEx examinations previously completed.

(d) *Qualified Lawyers Transfer Test*

An applicant who has been admitted to legal practice as a result of completing the Qualified Lawyers Transfer Test will be required to study the same Prescribed Subjects as apply to the country in which the applicant's initial academic qualification in law was completed.

Hong Kong

- (a) An applicant with a law degree from the United Kingdom or elsewhere will be required to study the same Prescribed Subjects as apply to the country in which that degree was obtained.
- (b) Applicants who, before 1982, completed Part I of the English Law Society Qualifying Examination in Hong Kong and thereafter passed Part II, administered by the Hong Kong Law Society will be required to study Administrative Law, Federal and State Constitutional Law, Property and any other Prescribed Subjects not studied as part of those qualifications.

- (c) An applicant with a law degree from Hong Kong will be required to study Administrative Law, Federal and State Constitutional Law, Property and any other Prescribed Subjects not studied as part of that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

India

An applicant with a law degree from the OP Jindal Global Law School will be required to study Administrative Law, Equity and Trusts, Federal and State Constitutional Law, Property and any other Prescribed Subjects that have not been successfully completed with a grade of at least A- or a mark of at least 65%, during that degree.

Israel

An applicant with a law degree from Israel will be required to study Administrative Law, Contract, Equity Federal and State Constitutional Law, Property and Tort and any other Prescribed Subjects that have not been studied as part of that degree.

Malaysia

- (a) An applicant with a law degree from the United Kingdom, Australia or elsewhere will be required to study the same Prescribed Subjects as apply to the country in which that degree was obtained.
- (b) An applicant with a law degree from Malaysia will be required to study Administrative Law, Federal and State Constitutional Law and any other Prescribed Subjects not studied as part of that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

Malta

- (a) An applicant with a law degree from the United Kingdom or elsewhere will be required to study the same Prescribed Subjects as apply to the country in which that degree was obtained.
- (b) An applicant with a law degree from the University of Malta will be required to study all Prescribed Subjects except Criminal Law and Company Law.

New Zealand

- (a) An applicant who has been admitted to legal practice in New Zealand may apply for admission under the provisions of the *Trans-Tasman Mutual Recognition Act 1997* (Cth). A person eligible to be admitted in Australia under this Act is not required to undertake additional academic study.
- (b) An applicant who has completed a law degree in New Zealand but has not been admitted to legal practice, will be required to study Federal and State Constitutional Law and any other Prescribed Subjects that have not been studied as part of that degree.

Northern Ireland

- (a) An applicant with a law degree from England, Wales, the Republic of Ireland or elsewhere will be required to study the same Prescribed Subjects as apply to the country in which that degree was obtained.

- (b) An applicant with a law degree from Northern Ireland will be required to study Administrative Law, Federal and State Constitutional Law, and any other Prescribed Subjects not studied as part of that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

Credit may be given for Ethics and Professional Responsibility if the applicant has successfully completed Professional Conduct and Regulation as part of the Legal Practice Course, or Professional Ethics as part of the Bar Professional Training Course.

Papua New Guinea

- (a) An applicant with a law degree from Australia or elsewhere will be required to study the same Prescribed Subjects as apply to the country in which that degree was obtained.
- (b) An applicant with a law degree from the University of Papua New Guinea or the University of the South Pacific will be required to take Administrative Law, Equity, Federal and State Constitutional Law, Property and any other Prescribed Subjects that have not been studied as part of that degree.

Philippines

An applicant with a law degree from the Philippines will be required to study Administrative Law, Criminal Law, Equity, Federal and State Constitutional Law, Property, Torts and any other Prescribed Subjects that have not been studied as part of that degree.

Republic of Ireland

- (a) An applicant with a law degree from the Republic of Ireland will be required to study Administrative Law, Federal and State Constitutional Law and, subject to paragraph (c), any other Prescribed Subject that has not been studied as part of that course.
- (b) Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.
- (c) An applicant who has also completed the entrance examination to the Irish Law Society, known as the *Final Examination First Part (FE - 1)*, will be granted credit for any other Prescribed Subject completed in that examination which has not been included in the applicant's law degree.

Scotland

An applicant with a law degree from Scotland will be required to study Administrative Law, Civil Procedure, Equity, Federal and State Constitutional Law, Property and any other Prescribed Subjects that have not been studied as part of that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

Credit may be given for Ethics and Professional Responsibility if the applicant has successfully completed the Professional Ethics and Standards component of the Law Society of Scotland's Professional Education and Training Stage 1 (PEAT 1).

Singapore

- (a) An applicant with a law degree from England, Australia or elsewhere will be required to study the same Prescribed Subjects as apply to the country in which that degree was obtained.

- (b) An applicant with a law degree from Singapore will be required to study Administrative Law, Federal and State Constitutional Law and any other Prescribed Subjects not studied as part of that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

South Africa

An applicant with a law degree from South Africa will be required to study Administrative Law, Equity, Federal and State Constitutional Law, Property and any other Prescribed Subjects that have not been studied as part of that degree.

Credit may be given for Administrative Law if it has been studied as a separate, comprehensive subject in that degree.

South Pacific countries

- (a) An applicant with a law degree from the United Kingdom, New Zealand or elsewhere will be required to study the same Prescribed Subjects as apply to the country in which that degree was obtained.
- (a) An applicant with a law degree from the University of the South Pacific will be required to do Federal and State Constitutional Law, Property and any other Prescribed Subjects that have not been successfully completed with a grade of C+, or a mark of at least 57%, during that degree.

Sri Lanka

- (a) An applicant with legal qualifications from Sri Lanka will be required to study Administrative Law, Federal and State Constitutional Law, Property and, subject to paragraphs (b) and (c), any other Prescribed Subject that has not been studied as part of that qualification.
- (b) An applicant who has completed the subject Succession and Trusts at the Sri Lanka Law College will be required to study Equity. An applicant who has completed the subject Equity & Trusts at the University of Colombo will not be required to study Equity.
- (c) An applicant who has graduated in law from the University of Colombo who has also passed the Final Examinations of the Sri Lanka Law College will be granted credit for any of the other Prescribed Subjects that the applicant has passed in those Final Examinations but which has not been included in the applicant's law degree.

United States

- (a) An applicant with a degree in law from a law school not approved by the American Bar Association will be required to complete all Prescribed Subjects. Approved schools are listed at:
www.abanet.org/legaled/approvedlawschools/approved.html
- (b) An applicant with a degree in law from a law school that has been approved by the American Bar Association will be required to study Administrative Law, Federal and State Constitutional Law, Property and any other Prescribed Subjects that have not been studied as part of that degree.

Credit may also be given for Property if, as part of that degree, the applicant has studied Torrens System land registration in more than a cursory way.

SCHEDULE 3

PLT COMPETENCY STANDARDS FOR ENTRY LEVEL LAWYERS

7. BACKGROUND

In 2002, Admitting Authorities finally endorsed proposed national *PLT Competency Standards for Entry-level Lawyers*, which were recommended to them by LACC.

The *Standards* had been jointly developed by the Australasian Practical Legal Education Council (APLEC) and LACC and sought to describe the observable performance in several key areas relating to legal practice, required of entry-level lawyers at the point of admission to the legal profession.¹

Subsequent changes in both the training of lawyers and legal practice led LACC in 2010 to seek the assistance of APLEC and other stakeholders to undertake a review of the PLT Competency Standards. APLEC undertook a review, which was completed in 2013 following extensive consultation. This document is based on suggestions made by APLEC, as a result of that review.

One of the most significant changes in the intervening years is that, in several jurisdictions, many intending legal practitioners now obtain their PLT qualifications through PLT courses, conducted by PLT providers, rather than through serving a period as an articled clerk, to which service the *Standards* did not apply. In other jurisdictions, instead of articles, intending legal practitioners can choose either to undertake a PLT course or to engage in Supervised Workplace Training in a legal office. In one jurisdiction, intending practitioners still undertake articles but also are required to undertake a program of assessment conducted by a PLT provider, to assess whether they have attained each of the prescribed competencies. Whichever form of PLT is now followed, all intending practitioners are required to demonstrate that they have attained prescribed competence in the Skills, Practice Areas and Values summarised in item 9 set out in detail in item 11 below.

Another significant change is that, since 2000, all jurisdictions have developed or applied means of accrediting and monitoring PLT courses and the performance of PLT providers. So-called *Uniform Standards for PLT Courses and Providers*, initially developed by the Victorian Council of Legal Education have been successfully deployed and revised in the light of that experience. APLEC has asked that they should be applied in all jurisdictions and LACC has commended successive versions to Admitting Authorities.

In those jurisdictions which allow SWT, means of approving and monitoring the performance of SWT providers are also being developed.

Such procedures enhance the possibility that entry-level lawyers will all have attained the various competencies prescribed by, or pursuant to, this document.

8. INTERPRETATION

8.1 Definitions

In this document:

¹ The recommended Standards were drafted in the light of the *National Competency Standards Policy and Guidelines*, National Training Board, Canberra, 1991 and Heywood, Goncz and Hager, *A Guide to the Development of Competency Standards for Professions*, Department of Employment, Education and Training, Canberra, 1992.

Admitting Authority means the body responsible in a jurisdiction for approving the content of either or both of PLT courses and SWT.

applicant means applicant for admission to the legal profession.

PLT means Practical Legal Training.

PLT course means a PLT course approved by an Admitting Authority, conducted by a PLT provider.

PLT provider means a body authorised by an Admitting Authority to provide a PLT course in that jurisdiction.

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

SWT means supervised workplace training and includes articles of clerkship.

SWT provider means a body providing SWT in a jurisdiction.

workplace experience means supervised employment in a legal office, or supervised paid or unpaid placement in a law or law-related work environment.

8.2 Interpretation of Item 5

The following principles apply when interpreting item 11.

- (a) An **Element** describes a relevant competence that an applicant is required to demonstrate in relation to the relevant prescribed Skill, Practice Area or Value.
- (b) A **Performance criterion** sets out an activity by reference to which an applicant's achievement of an appropriate level of competence in the corresponding Element may be demonstrated. An applicant may, however, demonstrate the requisite achievement in relation to an Element:
 - (i) by attaining some, but not all, of the relevant Performance criteria nominated in item 11 for that Element; and
 - (ii) by attaining equivalent Performance criteria in the course of undertaking another Practice Area set out in item 11.
- (c) Where a Performance criterion refers to an action which can only be performed by a person who has both been admitted to the legal profession and holds a practising certificate, the requisite competency may be demonstrated by satisfactorily completing a simulated exercise offered, and assessed in accordance with item 4.5(a), by a PLT provider or SWT provider.
- (d) Where a Performance criterion provides for a competency to be demonstrated by observing something:
 - (i) the entry-level lawyer must document in writing and critically evaluate what has been observed; and
 - (ii) the resulting record must be assessed by the relevant PLT provider or SWT provider in accordance with item 10.5(a),

before the relevant Performance criterion can be satisfied.

- (e) The expression of particular Elements, Performance criteria or Explanatory Notes in relation to a Skill, Practice Area or Value is not intended either:
 - (i) to limit the way in which that Skill, Practice Area or Value is taught; or
 - (ii) to prevent either wider or more detailed training in that Skill, Practice Area or Value.

9. REQUIREMENTS FOR APPLICANTS FOR ADMISSION

9.1 Required Competencies

- (a) Every applicant is required to satisfy the Admitting Authority that the applicant has achieved the prescribed competence in the Skills, Compulsory and Optional Practice Areas and Values set out in item 11 and summarised as follows:

Skills

Lawyer's Skills
Problem Solving
Work Management and Business Skills
Trust and Office Accounting

Compulsory Practice Areas

Civil Litigation Practice
Commercial and Corporate Practice
Property Law Practice

Optional Practice Areas

Subject to paragraph (b), any two of:

Administrative Law Practice
Banking and Finance
Criminal Law Practice
Consumer Law Practice
Employment and Industrial Relations Practice
Family Law Practice
Planning and Environmental Law Practice
Wills and Estate Practice.

Values

Ethics and Professional Responsibility

- (b) Paragraph (a) applies to every applicant who has undertaken PLT in Australia, whether by completing a PLT course, undertaking SWT, or any combination thereof approved by the relevant Admitting Authority.

9.2 When PLT may be commenced

- (a) An applicant may commence PLT:
 - (i) in the case of SWT, only after the applicant has completed an academic qualification in law, leading to admission to the legal profession;

- (ii) in the case of a PLT course that is not integrated with the applicant's academic qualification in law, only after the applicant has completed an academic qualification in law leading to admission to the legal profession, unless the applicant has no more than two academic subjects to complete:
 - (A) neither of which is one of the Academic Requirements for admission; and
 - (B) for which the applicant must be enrolled while undertaking the PLT course, and the applicant has received the prior permission of the Admitting Authority to commence the PLT course.
- (b) Despite paragraph (a), an applicant may undertake an integrated program of academic study and PLT that:
 - (i) requires the equivalent of three years' full-time academic study of law, apart from the time required to undertake the PLT components of the program; and
 - (ii) has been recognised by the relevant Admitting Authority for the purposes of preparing students for admission to the legal profession.

10. REQUIREMENTS FOR EACH FORM OF PLT

10.1 Programmed training and workplace experience

PLT must comprise both programmed training and workplace experience as follows:

- (a) subject to paragraph (d), in the case of a graduate diploma:
 - (i) programmed training appropriate to such a diploma²; and
 - (ii) the equivalent of at least 15 days' workplace experience;
- (b) subject to paragraph (d), in the case of a training course other than a graduate diploma, the equivalent of at least 900 hours' duration, comprising:
 - (i) at least 450 hours of programmed training; and
 - (ii) at least 15 days' workplace experience;
- (c) in the case of SWT the equivalent of at least 12 months' full-time work which includes a minimum of at least 90 hours' programmed training.

For the purposes of paragraphs (a) and (b), one day comprises seven working hours.

10.2 Common requirements

The requirements in items 10.3 to 10.6 apply to both PLT courses and SWT.

² Equivalent to a Level 8 qualification under the Australian Qualifications Framework.

10.3 **Level of training**

PLT must be provided at a level equivalent to post-graduate training³ and build on the academic knowledge, skills and values about the law, the legal system and legal practice which a graduate of a first tertiary qualification in law should have acquired in the course of that qualification.

10.4 **Qualification of instructors and supervisors**

A person instructing or supervising an applicant while acquiring competence in any Skill, Practice Area or Value must:

- (a) either have substantial current or recent experience in practising law; or
- (b) have comparable relevant qualifications or experience; and
- (c) comply with any other relevant legislative or regulatory requirements in the relevant jurisdiction.

10.5 **Assessment of applicants**

- (a) Each form of PLT must employ comprehensive methods, appropriate to post-graduate training, of:
 - (i) assessing an applicant's competence; and
 - (ii) certifying whether or not an applicant has demonstrated the requisite level of competence,in each relevant Skill, Practice Area and Value.
- (b) Wherever practicable, an applicant's competence in any Practice Area should be assessed in a way that allows the applicant, at the same time, to further develop and to demonstrate competence in, relevant Skills and Values.

10.6 **Resilience and well-being**

All PLT providers and SWT providers should:

- (a) make applicants aware of the importance of personal resilience in dealing with the demands of legal practice;
- (b) provide applicants with appropriate access to resources that will help them develop such resilience;
- (c) provide applicants with information about how and where to seek help in identifying mental health difficulties and in dealing with their effects;
- (d) make applicants aware of the benefits of developing and maintaining personal well-being in their professional and personal lives; and

³ That is, at a level appropriate for at least a Level 8 qualification under the Australian Qualifications Framework.

- (e) provide applicants with information about how and where to find resources to help them develop and maintain such well-being.

11. COMPETENCY STANDARDS

Item 8.2 sets out particular principles of interpretation that apply to items 11.1 – 11.16.

11.1 Administrative Law Practice

Descriptor: An entry-level lawyer who practises in administrative law should be able to:

- (a) obtain information for clients under freedom of information legislation and otherwise;
- (b) seek review of administrative decisions; and
- (c) represent parties before courts and administrative tribunals.

Element	Performance criteria
	The lawyer has competently:
1. Obtaining information	<ul style="list-style-type: none"> • identified whether "freedom of information" or "right to information" legislation applies to the situation. • identified the specific legislation under which the information may be obtained. • taken the steps required under that legislation. • identified and taken any other practical steps required to obtain the information.
2. Obtaining review of administrative decisions	<ul style="list-style-type: none"> • concluded correctly that the decision may be reviewed. • identified and advised the client, or participated in or observed discussions with the client, about alternative means of obtaining a review. • completed all preparation required by law, good practice and the circumstances of the matter. • represented the client effectively at, or participated in or observed, any mediation, hearing or other review forum, where this is appropriate and permitted. • identified all alternative means of obtaining redress and discussed them with the client.
3. Representing a client	<ul style="list-style-type: none"> • completed all preparation required by law, good practice and the circumstances of the matter. • represented the client effectively at, or participated in or observed, any mediation, hearing or other proceeding, where this is appropriate or permitted.

Explanatory notes

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

In the Performance criteria for Elements 2 and 3, "preparation" includes drafting written submissions.

11.2 Banking and Finance

Descriptor: An entry-level lawyer who practises in Banking and Finance should be able to demonstrate competence in advising clients on some of the common ways to finance commercial transactions and they should be able to demonstrate competence in drafting simple loan agreements and associated security documents, and in taking the actions required to perfect those securities.

Element	Performance criteria
	The lawyer has competently:
1. Preliminary investigation	<ul style="list-style-type: none">• identified one or more ways of financing a borrower's proposal and identified the securities available to a financier in the situation• undertaken any necessary preliminary searches and inquiries to investigate issues of ownership, title and the capacity of any party to enter into the proposed financial arrangement• identified any consents to, or notifications of, the proposed financial arrangement required by existing financial or contractual arrangements• identified any requirements imposed on the financier by law in respect of the proposed financial arrangement.
2. Planning	<ul style="list-style-type: none">• planned the steps to be taken to effect the proposed arrangement including identifying and recording any critical dates, identifying any necessary searches and inquiries and identifying the required documentation
3. Documentation	<ul style="list-style-type: none">• drafted the relevant loan and security documents• informed the borrower of their obligations in relation to the arrangement including any personal obligations under any guarantees• complied with any legislative requirements relating to the proposed arrangement
4. Due Diligence	<ul style="list-style-type: none">• undertaken any further searches and inquiries required and advised the client what experts need to be engaged for due diligence (accountants etc.)
5. Finalisation	<ul style="list-style-type: none">• had the transaction documentation executed, and (if necessary) stamped and registered according to law and good practice.

Explanatory Note

An entry-level lawyer may not demonstrate competence in this elective practice area by submitting the same or similar work, to work that the entry-level lawyer submits to demonstrate competence in the Commercial and Corporate Practice area.

11.3 Civil Litigation Practice

Descriptor: An entry-level lawyer should be able to conduct civil litigation in first instance matters in at least one State or Territory court of general jurisdiction, in a timely and cost-effective manner.

Element	Performance criteria
	The lawyer has competently:
1. Assessing the merits of a case and identifying dispute resolution alternatives	<ul style="list-style-type: none">assessed the strengths and weaknesses of both the claimant's and opponent's cases.identified the facts and evidence required to support the claimant's case.advised the client of relevant rights and remedies in a way that a reasonable client could understand.identified means of resolving the case, having regard to the client's circumstances.where possible, confirmed in writing any instructions given by the client in response to initial advice.identified and complied with the relevant limitation period.
2. Advising on costs of litigation	<ul style="list-style-type: none">identified any litigation funding options and a means of reducing or recovering costs.identified alternative types of costs orders and how they may be affected by formal and informal offers of compromise and the manner of conducting the litigation.advised the client of relevant cost considerations in a way that a reasonable client could understand.
3. Initiating and responding to claims	<ul style="list-style-type: none">identified an appropriate claim or defence.identified a court of appropriate jurisdiction.identified the elements of the claim or defence, according to law.followed procedures for bringing the claim or making the defence in accordance with the court's rules and in a timely manner.drafted all necessary documents in accordance with those procedures.
4. Taking and responding to interlocutory and default proceedings	<ul style="list-style-type: none">identified any need for interlocutory steps, according to the court's rules.followed procedures for taking those steps in accordance with

the court's rules and in a timely manner.

- drafted all necessary documents in accordance with those procedures and rules.
5. Gathering and presenting evidence
- identified issues likely to arise at the hearing.
 - identified evidence needed to prove the client's case or disprove the opponent's case, according to the rules of evidence.
 - identified various means of gathering evidence, and used at least one of them to gather evidence.
 - presented, or observed the presentation of, that evidence according to law and the court's rules.
6. Negotiating settlements
- conducted, participated in or observed, settlement negotiations.
 - identified any revenue and statutory refund implications.
 - properly documented any settlement reached.
7. Taking action to enforce orders and settlement agreements
- identified available means of enforcing the order or settlement according to law and the court's rules.
 - followed procedures relevant to the chosen means of enforcement in a timely manner.

Explanatory notes

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

In the Performance criteria for Element 1, "means of resolving a case" includes:

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

In the Performance criteria for Element 5, "means of gathering evidence" includes:

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

In the Performance criteria for Element 5, reference to presenting evidence includes presenting evidence:

- orally on oath;
- by affidavit;
- by video or telephone link.

In the Performance criteria for Element 7, "means of enforcement" includes:

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

11.4 Commercial and Corporate Practice

- Descriptor:** An entry-level lawyer should be able to:
- (a) conduct standard commercial transactions such as the sale and purchase of a small business;
 - (b) understand the relevant risks associated with such a transaction for both parties;
 - (c) set up simple business structures using entities such as companies, trusts and partnerships;
 - (d) provide basic advice on finance and securities and on the obligations of companies and their officers; and
 - (e) appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

Element	Performance criteria
	The lawyer has competently:
1. Conducting commercial transactions	<ul style="list-style-type: none">• identified the nature of the transaction.• undertaken sufficient searches and inquiries to investigate any relevant issues of title to real or personal property.• drafted documents, had them executed, and (if necessary) certified, stamped and registered, according to law and good practice.• obtained or given any necessary consents to, or notifications of, the transaction required by law.
2. Setting up commercial structures	<ul style="list-style-type: none">• selected a structure that will achieve the client's objectives.• drafted all documents required to set up the structure (including establishing any discrete entities that will form part of the structure).• had the documents executed and (if necessary) certified, stamped and registered, according to law and good practice.• informed the client of any continuing obligations in relation to the structure, and, where the structure involves a corporation, of the continuing obligations of the company and its officers.
3. Dealing with loans and securities	<ul style="list-style-type: none">• identified one or more types of financial arrangements and securities available to the borrower and lender.• informed the borrower and lender of their immediate, continuing, and potential liabilities under

any proposed financing and security arrangements.

- drafted loan or security documents which reflect the agreement between lender and borrower.
 - had the loan or security documents executed and (if necessary) stamped and registered, according to law and good practice.
4. Advising on revenue law and practice
- identified in a general way the possible revenue implications of the client's proposed commercial venture or arrangement.
 - referred the client to experts for more comprehensive or detailed advice, where appropriate.

Explanatory notes

In Element 2, "structure" includes:

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

In Element 3, "securities" includes:

- personal property security agreements;
- chattel leases;
- loans agreements;
- guarantees, including guarantees from spouses.

In the Performance criteria for Element 4, "revenue implications" includes:

- stamp duties;
- income tax;
- capital gains tax;
- GST;
- fringe benefits tax;
- land and property taxes.

11.5 Consumer Law Practice

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

Element

Performance criteria

The lawyer has competently:

- 1. Obtaining information
 - identified the consumer protection complaint or dispute as one to which consumer protection legislation applies.
 - identified the relevant legislation and any applicable case law.

- identified any possible common law remedies.
- 2. Drafting documents
 - drafted any documents required, in accordance with the client's instructions and the relevant legislation.
- 3. Initiating and responding to claims
 - identified the appropriate forum for initiating or responding to a claim.
 - initiated a claim or taken action to oppose a claim in accordance with the rules and procedures of the relevant court or tribunal, in a timely manner.
 - obtained all necessary evidence and drafted all necessary documents in accordance with those rules.
- 4. Representing the client
 - identified all possible means of resolving the consumer protection complaint or dispute to the satisfaction of the client; and discussed them with the client, or participated in or observed, such discussions.
 - completed all necessary preparation in accordance with the law, good practice and the circumstances of the matter.
 - represented the client effectively at, or participated in or observed, any negotiation, mediation, hearing or other proceedings.
- 5. Taking action to implement outcomes
 - documented any order or settlement properly and explained it to the client in a way which a reasonable client could understand.
 - identified any procedures necessary to enforce the order or settlement and implemented them in a timely manner.

Explanatory notes

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

In the Performance criteria for Element 1, "consumer protection dispute" includes a dispute relating to:

- competition and consumer legislation;
- misleading and deceptive conduct;
- motor car traders;
- domestic building contracts;
- consumer credit;
- guarantees;
- residential tenancies.

In the Performance criteria for Element 1 "consumer protection legislation" includes State and Federal legislation and codes concerning:

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

In the Performance criteria for Element 3, "court or tribunal" includes:

- Federal courts;
- State courts;
- statutory tribunals;
- industry complaint panels;
- industry ombudsmen.

11.6 Criminal Law Practice

Descriptor: An entry-level lawyer who practises in criminal law should be able to advise clients before arrest, seek bail, make pleas, participate in minor contested hearings and assist in preparing cases for trial.

Element	Performance criteria
The lawyer has competently:	
1. Providing advice	<ul style="list-style-type: none"> • identified the client's legal rights and legal powers of the police or other prosecutors or investigators in relation to a criminal matter. • informed the client of those rights and powers in a way that a reasonable client could understand. • identified the legal elements of any offence with which the client is charged. • where possible, confirmed in writing any instructions given by the client in response to initial advice. • implemented the client's instructions, when it is appropriate in the circumstances to do so.
2. Applying for bail	<ul style="list-style-type: none"> • identified the client's options and communicated them to the client in a way a reasonable client could understand. • helped the client to make an informed decision about which option to select. • made, or been involved in the process of making, or observed, an application for bail or taken other action effectively in the circumstances. • fully advised the client of any bail conditions.
3. Making pleas	<ul style="list-style-type: none"> • identified the client's options and communicated them to the client in a way a reasonable client could understand. • identified and gathered all material useful to the plea, according to law and good practice. • presented, or been involved in the process of presenting, or observed the presentation of, the plea in an effective and persuasive manner, having regard to the circumstances of the case. • advised the client fully of the outcome in a way a

reasonable client could understand.

4. Representing a client in minor matters
 - completed all preparation required by law, good practice and the circumstances of the case.
 - represented, or been involved in representing the client, or observed the client being represented, effectively at a contested hearing.
5. Assisting to prepare cases for trial
 - identified and gathered the evidence needed to support the client's case.
 - identified and briefed, or been involved in briefing, appropriate experts (including counsel) having regard to good practice and the requirements of the case.

Explanatory notes

In the Performance criteria for Element 1, "criminal matter" includes:

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

11.7 Employment and Industrial Relations Practice

- Descriptor:** An entry-level lawyer who practices in the area of employment and industrial relations should be able to:
- (a) advise clients on the relevant law and procedures:
 - (b) represent clients in negotiations; and
 - (c) initiate and respond to applications in relevant State and Federal courts and tribunals.

Element

Performance criteria

The lawyer has competently:

1. Assessing the merits of the dispute and identify 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.
2. Advising client on procedures
 - advised the client of means of avoiding a dispute, where appropriate.
 - advised the client of available steps to strengthen the client's position.
3. Commencing negotiations
 - explored opportunities for a negotiated settlement, subject to the client's instructions.

- represented, or been involved in representing, the client, or observed the client being represented, effectively at any negotiations.
4. Initiating and responding to proceedings
- identified the appropriate jurisdiction.
 - initiated or opposed, or been involved in initiating or opposing, a claim or observed the initiation or opposition of a claim, in accordance with the rules of the relevant court or tribunal, in a timely manner.
 - obtained all necessary evidence and drafted all necessary documents in accordance with those rules.
5. Representing the client
- completed all preparation required by law, good practice and the circumstances.
 - represented, or been involved in representing the client, or observed the client being represented, effectively at any mediation, hearing or other forum.
6. Taking action to implement outcomes
- properly documented any order or settlement and explained it to the client in a way which the client can understand.
 - identified and implemented, or been involved in identifying and implementing, any procedures required to enforce the order or settlement.

Explanatory notes

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

In the Performance criteria for Elements 1 and 2, "dispute" includes:

- 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.

In the Performance criteria for Element 1, "means of resolving the dispute" includes:

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

In the Performance criteria for Element 2, "means of avoiding a dispute" and "steps to strengthen the client's position" include:

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

11.8 Ethics and Professional Responsibility

Descriptor: An entry-level lawyer should act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community and other lawyers.

Element	Performance criteria
	The lawyer has competently:
1. Acting ethically	<ul style="list-style-type: none">• identified any relevant ethical dimension of a particular situation.• taken action which complies with professional ethical standards in that situation.
2. Knowing when to raise ethical problems with others	<ul style="list-style-type: none">• identified circumstances in which matters relating to the ethical conduct of legal practice should be brought to the attention of others.• identified with whom different matters of this type should be raised (for example, employers, professional associations, legal services boards, police).• learned about relevant protocols, institutional procedures and difficulties, associated with raising such matters with others.
3. Discharging the legal duties and obligations of legal practitioners	<ul style="list-style-type: none">• identified any duty or obligation imposed on the lawyer by law in a particular situation.• discharged that duty or obligation according to law and good practice.
4. Complying with professional conduct rules	<ul style="list-style-type: none">• identified any applicable rules of professional conduct.• taken action which complies with those rules.
5. Complying with fiduciary duties	<ul style="list-style-type: none">• recognised and complied with any fiduciary duty, according to law and good practice.
6. Avoiding conflicts of interest	<ul style="list-style-type: none">• identified any potential or actual conflict, as soon as is reasonable in the circumstances.• taken effective action to avoid a potential conflict or, where a conflict has already arisen, dealt with it in accordance with law and good practice, or been involved in the process of doing one or more of those things.• taken, or been involved in the process of taking, appropriate action, where applicable, to prevent such a conflict arising in the future.
7. Acting courteously	<ul style="list-style-type: none">• demonstrated professional courtesy in all dealings with others.
8. Complying with rules relating to the charging	<ul style="list-style-type: none">• identified any rules applying to charging professional

of fees

fees.

- complied with those rules, where they are relevant.
 - maintained file notes and records in accordance with law and good practice.
9. Being aware of the importance of pro bono contributions
- recognised the importance of pro bono contributions to legal practice.
 - identified various means whereby lawyers may provide pro bono contributions.
 - where necessary, used resources provided by professional or community organisations to facilitate pro bono contributions.
 - identified when a client with insufficient resources may be entitled to legal aid, or assistance from professional or community organisations.

Explanatory notes

The purpose of this standard is to assist entry-level lawyers to adopt ethical habits in legal practice to ensure that they effectively and appropriately discharge their obligations to the Court, to the legal profession and to clients by:

- acting ethically;
- observing general and statutory law relating to the duties and obligations of legal practitioners;
- observing written and unwritten rules of professional conduct; or
- observing written and unwritten rules of professional courtesy.

In the Performance criteria for Element 3, "duty or obligation" includes the duties and obligations:

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

In Element 6, "conflicts of interest" include conflicts between:

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

11.9 Family Law Practice

- Descriptor:** An entry-level lawyer who practises in family law should be able to:
- (a) advise and take action in relation to parenting matters, property settlements, spouse maintenance and child support problems;
 - (b) identify appropriate dispute-resolution processes for such matters, in the light of the client's circumstances and concerns; and
 - (c) advise clients on pre-action procedures.

Element	Performance criteria
The lawyer has competently:	
1. Advising on matters relating to children and property	<ul style="list-style-type: none"> • elicited information necessary to identify the client's options. • informed the client of all relevant available options, in a way that a reasonable client could understand. • identified any pre-action procedures that apply to the matter. • taken any steps necessary to enable the client to obtain access to those procedures.
2. Representing a client in matters relating to children and property	<ul style="list-style-type: none"> • prepared, or been involved in preparing, or observed the preparation of, either an application for interim, final or consent orders relating to a matter concerning children or property, or a response to such an application. • pursued, or been involved in the pursuit of, the case in accordance with good practice for the chosen dispute resolution process. • identified and explained, or been involved in identifying and explaining, to the client the revenue implications of any proposed settlement. • documented and acted upon, or been involved in documenting and acting upon, any results of the chosen dispute resolution process, in accordance with law and good practice.

Explanatory notes

This competency standard applies to children and property matters arising from the breakdown of marriages or other domestic relationships, rather than the dissolution of marriage. It includes:

- responsibility for parenting, including residence of and contact with, children;
- property settlements;
- spouse maintenance;
- child support;
- domestic violence orders;
- injunctions and sole-use orders;
- de facto proceedings.

11.10 Lawyer's Skills

Descriptor: An entry-level lawyer should be able to demonstrate oral communication, legal interviewing, advocacy, negotiation, dispute resolution, letter-writing and drafting skills.

Element	Performance criteria
The lawyer has competently:	
1. Communicating	<ul style="list-style-type: none"> • identified the purpose of a proposed communication, the most effective way of making it, and the content of the

- effectively
- proposed communication.
- presented thoughts, advice, and submissions in a logical, clear, succinct and persuasive manner, having regard to the circumstances and the person or forum to whom they are made.
2. Cross-cultural awareness
- identified and appropriately dealt with verbal and non-verbal aspects of cross-cultural communication.
 - taken any follow-up action in accordance with good practice.
 - demonstrated awareness of difficulties of communication attributable to cultural differences; their possible effect on a client's dealings with lawyers, the police, courts, government and legal agencies; and the desirability of cross-cultural communications training for all lawyers.
3. Interviewing clients
- prepared for the interview properly, having regard to relevant information available before the interview and all known, relevant circumstances.
 - conducted, participated in conducting or observed, the interview, using communication techniques appropriate to both the client and the context.
 - ensured that the client and lawyer have both obtained all the information which they wanted from the interview in a timely, effective and efficient way, having regard to the circumstances.
 - ensured that the lawyer and client left the interview with a common understanding of the lawyer's instructions (if any) and any future action that the lawyer or client is respectively to take.
 - made a record of the interview that satisfies the requirements of law and good practice.
 - taken, or participated in taking, any follow-up action in a timely manner.
4. Writing letters
- identified the need for, and purpose of, the letter.
 - written the letter in plain English that conveys its purpose clearly and could be understood by the person to whom it is sent, acting reasonably.
5. Drafting other documents
- identified the need for, and purpose, of the document.
 - devised an effective form and structure for the document having regard to the parties, the circumstances, good practice, plain English principles and the relevant law.
 - drafted the document effectively having regard to the parties, the circumstances, good practice, plain English principles, and the relevant law.

- considered whether the document should be settled by counsel.
 - taken every action required to make the document effective and enforceable in a timely manner and according to law (such as execution by the parties, stamping, delivery and registration).
6. Negotiating settlements and agreements
- prepared, or participated in the preparation of, the client's case properly having regard to the circumstances and good practice.
 - identified the strategy and tactics to be used in negotiations and discussed them with and obtained approval from the client, or been involved in or observed that process.
 - carried out, been involved in or observed, the negotiations effectively having regard to the strategy and tactics adopted, the circumstances of the case and good practice.
 - documented any resolution as required by law or good practice and explained it, or been involved in the process of explaining it, to the client in a way a reasonable client could understand.
7. Facilitating early resolution of disputes
- identified the advantages and disadvantages of available dispute resolution options and explained them to, or been involved in explaining them to, the client.
 - performed in the lawyer's role, or been involved in or observed that performance, in the dispute resolution process effectively, having regard to the circumstances.
 - documented any resolution as required by law or good practice and explained it, or been involved in explaining it, to the client in a way a reasonable client could understand.
8. Representing a client in a legal forum
- observed the etiquette and procedures of the forum.
 - organised and presented in an effective, strategic way:
 - factual material;
 - analysis of relevant legal issues; and
 - relevant decided cases.
 - presented and tested evidence in accordance with the law and good practice.
 - made submissions effectively and coherently in accordance with law and good practice.

Explanatory notes

Assessment of competence for this standard should require the entry-level lawyer to synthesise or combine the above skills and apply them in one or more specific legal contexts.

In the Performance criteria for Element 2, "difficulties of communication attributable to cultural differences" includes difficulties of communication encountered by Indigenous people.

In the Performance criteria for Element 7, "dispute resolution options" includes:

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

In Element 8, "Representing" refers to appearing, being involved in appearing, or observing another appearing, on behalf of a client in a court, tribunal or other legal forum on a matter, including:

- 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 and re-examination; and
- making submissions.

11.11 Planning and Environmental Law Practice

Descriptor: An entry-level lawyer who practises in planning and environmental law should be able to:

- (a) advise, and generally assist, clients on the relevant law and planning process;
- (b) apply for approvals and consents under relevant planning legislation;
- (c) object to applications; and
- (d) initiate or defend planning or environmental actions.

Element

Performance criteria

The lawyer has competently:

1. Assessing the merits of the matter and advising the client
 - obtained full instructions from the client.
 - analysed the facts in accordance with the relevant law.
 - obtained and clarified any relevant technical information.
 - advised, or been involved in advising, the client of any rights and obligations of the client and potential penalties if obligations are not observed.
 - identified, or been involved in identifying, all options and developed a plan of action in accordance with the client's instructions.
 - alerted, or been involved in alerting, the client to the need to identify the commercial, political and public relations implications of any proposed action.
2. Preparing planning applications or objections
 - identified and analysed relevant provisions of the appropriate planning scheme.
 - identified any appropriate grounds of objection.
 - prepared either an application for development or other planning approval, or an objection to such an application.
 - identified any need to obtain plans or other information.

3. Initiating or responding to environmental claims
 - identified the appropriate forum for initiating or responding to a claim.
 - initiated or opposed, or been involved in initiating or opposing, a claim in accordance with the rules of the relevant court or tribunal, in a timely manner.
 - obtained all necessary evidence and drafted all necessary documents in accordance with those rules.
4. Representing the client in resolving a planning matter or environmental claim
 - identified appropriate means of resolving the matter to the satisfaction of the client and discussed them, or been involved in discussing them, with the client.
 - completed all preparation required by law and good practice.
 - represented, or been involved in representing, or observed the representation of, the client effectively in any negotiation, mediation, hearing or other proceedings.
5. Implementing outcomes
 - properly documented any order or settlement and explained, or been involved in explaining it to the client in a way which a reasonable client could understand.
 - identified and carried out any procedures to enforce the order or settlement in a timely manner.

Explanatory notes

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

In Element 4, "planning matter or environmental claim" includes:

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

11.12 Problem Solving

- Descriptor:** An entry-level lawyer should be able to:
- (a) investigate and analyse facts and law;
 - (b) provide legal advice; and
 - (c) solve legal problems.

Element

Performance criteria

The lawyer has competently:

1. Analysing facts and identifying issues
 - identified and collected all relevant facts as far as is practicable.

- analysed the facts to identify any existing or potential legal issues.
 - distinguished relevant facts from other facts, if the matter so requires.
2. Analysing law
- identified any questions of law raised by the matter.
 - researched those questions of law properly, having regard to the circumstances.
 - identified and interpreted any relevant statutory provisions and applied them appropriately to the facts.
3. Providing legal advice
- applied the law to the facts of the matter in an appropriate and defensible way.
 - given, or been involved in giving, the client advice in a way which a reasonable client could understand.
 - identified any developments that might affect the accuracy of previous advice and told, or been involved in telling, the client about the effect of those developments.
4. Generating solutions and strategies
- identified the problem and the client's goals as fully as is practicable.
 - investigated the facts and legal issues as fully as is practicable.
 - developed creative options and strategies to meet the client's objectives.
 - identified the advantages and disadvantages of pursuing each option or strategy.
 - assisted, or been involved in assisting, 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, or been involved in acting, to resolve the problem in accordance with the client's instructions and the lawyer's plan of action.
 - remained open to new information and ideas and updated advice to the client where necessary.

Explanatory notes

In Element 2, "Analysing law" includes:

- (a) researching legal issues by using:
- law libraries;
 - on-line searches;
 - electronic data bases;
 - legal citators and digests; and

- (b) applying principles of precedent and statutory interpretation.

11.13 Property Law Practice

- Descriptor:** An entry-level lawyer should be able to:
- (a) convey, lease and mortgage real property; and
 - (b) provide general advice on standard matters arising under local government, planning, environmental or other legislation relating to land use in the relevant State or Territory.

Element	Performance criteria
	The lawyer has competently:
1. Transferring title	<ul style="list-style-type: none">• identified the nature of the interest being dealt with, pursuant to the pre-eminent title system in the relevant jurisdiction.• prepared, commented on and advised, or been involved in advising, on an appropriate contract of sale or other type of agreement for transferring the relevant interest in land; and had it executed according to law and good practice.• undertaken sufficient searches and inquiries to investigate title, any issues about land use and responsibility for outgoings.• drafted an appropriate instrument of transfer or conveyance and had it executed and (if necessary) stamped and registered, according to law.• obtained or given any consents to, or notifications of, the transfer or conveyance, according to law.• arranged for the instrument to be executed and (if necessary) stamped and registered, as required by law.
2. Creating leases	<ul style="list-style-type: none">• made and obtained all searches and consents required by law and good practice.• drafted, commented on and advised, or been involved in advising, on a lease in a form allowed by law, reflecting the agreement between lessor and lessee and protecting their respective interests.• arranged for the lease to be executed and (if necessary) stamped and registered, according to law.

- | | |
|-------------------------------------|--|
| 3. Creating and releasing mortgages | <ul style="list-style-type: none"> • made and obtained all searches and consents required by law and good practice. • drafted, commented on and advised, or been involved in advising, on an effective instrument to create or release the security, reflecting the agreement between the grantor and grantee and protecting their respective interests. |
| 4. Advising on land use | <ul style="list-style-type: none"> • identified any planning scheme or other statutory provisions regulating the relevant use. • Advised, or been involved in advising, the client generally about processes to be followed to obtain permission for, or to object to the use, as the case requires. |
| 5. Advising on revenue implications | <ul style="list-style-type: none"> • identified the revenue implications of any transaction and advised, or been involved in advising, the client accordingly. |

Explanatory notes

In Element 1, "Transferring title" refers to title pursuant to the pre-eminent title system in the relevant jurisdiction.

In the Performance criteria for Element 1, "contract of sale" includes a contract of sale subject to special conditions.

In Element 2, "Creating leases" refers to residential tenancies or leases and standard commercial leases.

In Element 3, "mortgages" includes any other relevant security over land.

In Element 4, "Advising on land use" includes advising on issues relating to:

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

11.14 Trust and Office Accounting

Descriptor: An entry-level lawyer should have sufficient knowledge, skills and values to maintain trust and general account records according to law and good practice, to the extent usually permitted and expected of an employed solicitor: See *Explanatory notes below*.

Element

Performance criteria

The lawyer has competently:

- | | |
|---|---|
| 1. Understand relevant fiduciary and other duties | <ul style="list-style-type: none"> • identified and applied: <ul style="list-style-type: none"> general law fiduciary and other duties; codified duties; duties to supervise and report in relation to trust monies; and duties and obligations of maintaining a trust account. |
| 2. Receiving money | <ul style="list-style-type: none"> • dealt with money received from or on behalf of a client, |

as required by law and good practice.

- where the law and good practice requires money to be deposited in a trust account or general account, recorded the deposit as required by law and good practice.
 - issued any receipt required by law and good practice.
3. Making outlays
- made any outlay from the correct account, according to law and good practice.
 - recorded the outlay as required by law and good practice.
4. Rendering costs
- demonstrated an ability to comply with regulations relating to disclosure of costs and a client's rights relating to costs.
 - calculated the costs in accordance with law, good practice and any agreement between the lawyer and client.
 - added to the bill all outlays made by the firm for which the client is responsible.
 - accounted to the client for any money received from the client on account of costs and outlays, as required by law and good practice.
 - drafted the bill and delivered it in accordance with law and good practice.

Explanatory notes

This competency standard applies to trust and general accounting and to rendering bills of costs. It requires a general knowledge of solicitors' trust account law and practice and costs regulation in the relevant jurisdiction and an understanding of the general principles of maintaining trust and office records.

11.15 Wills and Estates Practice

Descriptor: An entry-level lawyer who practises in wills and estates should be able to draft wills, administer deceased estates and take action to solve problems about wills and estates.

Element

Performance criteria

The lawyer has competently:

1. Drafting wills
- advised the client of issues, options, and potential problems that might arise in respect of the client's testamentary intentions.
 - obtained instructions reflecting the client's informed and independent wishes, which can be effectively

implemented.

- drafted a will reflecting the client's instructions.
 - identified any issues of testamentary capacity and resolved them in accordance with law and good practice.
 - ensured that the client executed the will in accordance with law.
 - given any necessary follow up advice to the client.
2. Administering deceased estates
- obtained a grant of probate or letters of administration where required.
 - identified the debts and assets of the estate.
 - gathered in the estate or transferred or transmitted assets directly to beneficiaries, as appropriate, having regard to the law, good practice, and the circumstances.
 - discharged the estate's debts, distributed specific gifts and the residue and ensured that the executors have been released of their obligations in a timely fashion.
3. Taking action to resolve wills and estates problems
- identified the nature of the problem properly, having regard to the law of the jurisdiction.
 - identified the client's options for dealing with the problem, having regard to the law of the particular jurisdiction and the client's circumstances.
 - explained the options to the client in a way a reasonable client could understand.
 - taken action to resolve the problem in accordance with the client's instructions.

Explanatory notes

In the Performance criteria for Element 1, "follow-up advice" includes advice on:

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

In Element 3, "wills and estates problems" include problems of:

- 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.

11.16 Work Management and Business Skills

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

Element	Performance criteria
	The lawyer has competently:
1. Managing personal time	<ul style="list-style-type: none"> • used a diary or another system to record time limits or deadlines and to assist in planning work. • identified conflicting priorities as they arise and managed the conflict effectively. • used available time effectively, to the benefit of the lawyer's clients and employer.
2. Managing risk	<ul style="list-style-type: none"> • conducted each matter in a way that minimises any risk to the client, lawyer or firm arising from missed deadlines, negligence or failure to comply with the requirements of the law, a court or other body. • recognised the limits of the lawyer's expertise and experience and referred the client or matter to other lawyers, counsel or other professionals, as the circumstances require.
3. Managing files	<ul style="list-style-type: none"> • used a file management system to ensure that work priorities are identified and managed; clients' documents are stored in an orderly and secure manner; and to alert the lawyer to any need to follow up a matter or give it other attention. • rendered timely bills, in accordance with law and any agreement between the lawyer and client, which set out the basis for calculating the lawyer's fees. • accurately recorded all communications and attendances, with details of dates and times.

- 4. Keeping client informed
 - communicated with the client during the course of the matter as frequently as circumstances and good practice require.
 - confirmed oral communications in writing when requested by the client or required by good practice.
 - dealt with the client's requests for information promptly.
 - informed the client fully of all important developments in the matter, in a way which a reasonable client could understand.
- 5. Working cooperatively
 - worked with support staff, colleagues, consultants and counsel in a professional and cost effective manner.
- 6. Self-management
 - Demonstrated an ability to manage work and personal issues consistent with principles of resilience and well-being.

Explanatory notes

The purpose of this standard is to assist entry-level lawyers to adopt good work habits in legal practice to ensure that:

- clients do not suffer loss or damage from a lawyer missing deadlines or neglecting matters;
- clients are kept informed regularly and fully of the progress of their matters; and
- clients' matters are dealt with in a cost-effective manner.

SCHEDULE 4

PRINCIPLES FOR ASSESSING PRACTICAL LEGAL TRAINING QUALIFICATIONS OF APPLICANTS FROM OTHER COUNTRIES

This Schedule should be read in conjunction with items 4 and 9 of the Uniform Principles.

1. **Practical Legal Training Competencies**

An applicant for admission must show that the applicant has acquired and demonstrated appropriate understanding of, and competence in, the Practical Legal Training Competencies for Entry-level Lawyers, set out in Schedule 3.

2. **Compulsory elements**

Every applicant will be required to undertake additional studies in Australia in:

Trust and Office Accounting
Ethics and Professional Responsibility.

3. **Possible exemptions**

An applicant may be exempted from undertaking additional studies in Australia in one or more of the following Skills and Practice Areas:

Skills

1. Lawyer's Skills
2. Problem Solving
3. Work Management and Business Skills

Practice Areas

4. Civil Litigation Practice
5. Commercial and Corporate Practice
6. Property Law Practice
7. One of the following:
 - Administrative Law Practice
 - Banking and Finance
 - Consumer Law Practice

- Criminal Law Practice
- Employment and Industrial Relations Practice
- Family Law Practice
- Planning and Environmental Law Practice
- Wills and Estate Practice

4. **Category 1 applicant**

4.1 An applicant who has undertaken a PLT course and has been admitted to legal practice in one of the following Category 1 countries:

England
 Northern Ireland
 Scotland
 Ireland
 Canada (except Quebec)
 South Africa
 Singapore
 Malaysia
 Hong Kong,

is a Category 1 applicant.

4.2 A Category 1 applicant, who has been admitted to practise in the manner of a *solicitor*, will usually be exempt from all additional requirements except:

Trust and Office Accounting
 Ethics and Professional Responsibility.

4.3 A Category 1 applicant who has been admitted to practise only in the manner of a *barrister* will usually be required to undertake:

Trust and Office Accounting
 Property Law Practice
 Ethics and Professional Responsibility.
 Work Management and Business Skills

and, depending upon the scope of the applicant's previous practice after admission:

Commercial and Corporate Practice
 One optional Practice Area from each of Group 7 and 8 in item 3.

4.4 A Category 1 applicant may further be exempted from undertaking additional studies in one of the optional Practice Areas, if the applicant has acquired and demonstrated appropriate understanding of, and competence in, an Area of Practice not included in Group 7 or 8 in item 3 and shows that the applicant has been working in that Practice Area for at least 25% of the applicant's practice during the preceding two years.

4.5 If an applicant has been admitted in a Category 1 country, but did *not* complete a PLT course leading to admission before being admitted in that country, the applicant will also be required to undertake:

Lawyer's Skills.
 Problem Solving.
 Work Management and Business Skills,

unless the applicant clearly demonstrates how each of these Skills has been acquired in the applicant's subsequent practice.

5. Category 2 applicants

5.1 An applicant who:

- (a) has been admitted to legal practice in the United States of America; and
- (b) after admission has, for a period of at least 2 years, had continuous experience in one or more of the following Practice Areas:

Civil Litigation Practice
Commercial and Corporate Practice
Criminal Law Practice
Wills and Estates Practice

is a Category 2 applicant.

5.2 A Category 2 applicant will usually be exempted from:

Lawyer's Skills
Problem Solving
Work Management and Business Skills,

and whichever of the Competencies mentioned in item 6.1(b) in which the applicant has had the experience required by that item.

5.3 A Category 2 applicant may further be exempted from undertaking additional studies in one of the optional Practice Areas, if the applicant has acquired and demonstrated appropriate understanding of, and competence in, an Area of Practice not included in Group 7 or 8 in item 3 and shows that the applicant has been working in that Practice Area for at least 25% of the applicant's practice during the preceding two years.

5.4 A Category 2 applicant will, in all cases, be required to undertake:

Trust and Office Accounting
Property Law Practice
Ethics and Professional Responsibility

and such other compulsory or optional Practice Areas for which exemption is not granted.

6. Category 3 applicant

6.1 An applicant who:

- (a) has been admitted to legal practice in other than a country or jurisdiction not mentioned in either item 4.1 or 5.1(a); and
- (b) who after admission has, for a period of at least two years, had continuous experience in a country or jurisdiction mentioned in item 4.1 in one or more of the following Practice Areas:

Civil Litigation Practice
Commercial and Corporate Practice
Criminal Law Practice
Wills and Estates Practice,

is a Category 3 applicant.

6.2 A Category 3 applicant will usually be exempted from:

Lawyer's Skills
Problem Solving
Work Management and Business Skills,

and whichever of Competencies mentioned in item 6.1(b) in which the applicant has the experience required by that item.

6.3 A Category 3 applicant may further be exempted from undertaking additional studies in one of the optional Practice Areas, if the applicant has acquired and demonstrated appropriate understanding of, and competence in, an Area of Practice not included in Group 7 or 8 in item 3 and shows that the applicant has been working in that Practice Area for at least 25% of the applicant's practice during the preceding two years.

6.4 Such an applicant will, in all cases, be required to undertake:

Trust and Office Accounting
Property Law Practice
Ethics and Professional Responsibility

and such other compulsory or optional Practice Areas for which exemption is not granted.

7. **Category 4 applicant**

7.1 An applicant who is not a Category 1, 2 or 3 applicant is a Category 4 applicant.

7.2 A Category 4 applicant may be exempted from undertaking one or more of the Skills, Practice Areas and Values set out in item 3, if the applicant before or after being admitted to legal practice, has acquired and demonstrated appropriate understanding and competence in, the relevant Skill, Practice Area or Value.

7.3 Such an applicant will, in all cases, be required to undertake:

Trust and Office Accounting
Ethics and Professional Responsibility.

SCHEDULE 5

COMMON CONSIDERATIONS RELEVANT TO EXPERIENCED PRACTITIONERS

Common considerations which an Admitting Authority may choose, but is not obliged, to take into account when considering whether an applicant has –

- (i) relevant, significant and current experience for the purposes of item 5 of the Uniform Principles; or
- (ii) in the case of participating jurisdictions, sufficient legal skills or relevant experience for the purposes of section 18(1) of the Legal Profession Uniform Law,

are -

the nature and quality of the applicant's previous academic and practical legal training qualifications including the results obtained in any academic subjects or practical legal training undertaken in Australia;

(b) the duration and currency of the applicant's experience obtained –

- (i) in legal practice;
- (ii) in service with a government authority; or
- (iii) in another way considered appropriate by the Admitting Authority,

and especially whether the applicant has worked in that way for at least seven years (including any training contract);

(c) the period and degree of the applicant's specialisation in a particular area of legal practice;

(d) in the light of (b) and (c), the applicant's verifiable skills or experience, whether the skills or experience have been acquired through formal coursework and examinations or –

- (iv) in legal practice;
- (v) in service with a government authority; or
- (vi) in another way considered appropriate by the Admitting Authority;

(e) the likelihood that the applicant will continue to practise in a particular established area of legal expertise in Australia;

(f) the nature of an applicant's skills or experience, including skills or experience gained -

- (i) in managing or reporting to other lawyers;
- (ii) working in an Australian jurisdiction, or with Australian lawyers or in Australian law;
- (iii) in the course of practising in areas of law different from an area referred to in paragraph (c);
- (iv) in an environment requiring the regular public or objective testing of the applicant's judgment and knowledge of the law;

- (v) in an area in which skills or experience is likely to provide an adequate substitute for academic study in that area; and
- (vi) in relation to the ethical and professional responsibilities of a practising lawyer.

SCHEDULE 6

COMMON CONSIDERATIONS RELEVANT TO STALE QUALIFICATIONS

Common considerations which an Admitting Authority may choose, but is not obliged, to take into account when considering the qualifications of an applicant for the purposes of item 3.4 or 4.7 of the Uniform Principles are:

- (a) the nature and quality of the applicant's previous academic and practical legal training qualifications including the results obtained in any academic or practical legal training subjects undertaken in Australia;
- (b) the length of time since the applicant successfully completed a particular Academic or Practical Legal Training Requirement;
- (c) the applicant's subsequent verifiable experience in the subject matter of a particular Academic or Practical Legal Training Requirement;
- (d) the nature, duration and currency of the applicant's experience in law-related occupations, including experience gained:
 - (i) in working in an Australian jurisdiction, or with Australian lawyers or in Australian law;
 - (ii) in an environment requiring the regular public or objective testing of the applicant's judgement and knowledge of the relevant law;
- (e) whether there have been any significant changes in the relevant law since the applicant completed an Academic or Practical Legal Training Requirement; and
- (f) any other factor that may bear on the currency or relevance of the applicant's knowledge or experience in relation to a particular Academic or Practical Legal Training Requirement.