

Note 1

Section 48 of the *Legal Profession Act 2007* ('the Act') is extracted below.

48. Application for grant or renewal of local practising certificate

- (1) An Australian lawyer may apply to the prescribed authority for the grant or renewal of a local practising certificate if eligible to do so under this section.
- (2) An Australian lawyer is eligible to apply for the grant or renewal of a local practising certificate if the lawyer complies with any regulations and legal profession rules relating to eligibility for the practising certificate and if –
 - (a) in the case of a lawyer who is not an Australian legal practitioner at the time of making the application –
 - (i) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or
 - (ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to determine whether subparagraph (i) applies to the lawyer, the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia; or
 - (b) in the case of a lawyer who is an Australian legal practitioner at the time of making the application –
 - (i) the jurisdiction in which the lawyer engages in legal practice solely or principally is this jurisdiction; or
 - (ii) the lawyer holds a current local practising certificate and engages in legal practice in another jurisdiction under an arrangement that is of a temporary nature; or
 - (iii) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or
 - (iv) if subparagraph (i), (ii) or (iii) does not apply to the lawyer or it is not reasonably practicable to determine whether subparagraph (i), (ii) or (iii) applies to the lawyer, the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia.
- (3) For the purposes of subsection (2)(b), the jurisdiction in which an Australian lawyer engages in legal practice solely or principally is to be decided by reference to the lawyer's legal practice during the certificate period current at the time –
 - (a) the application is made; or
 - (b) in the case of a late application, the application should have been made.
- (4) An Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in respect of a financial year if the lawyer would also be the holder of another Australian practising certificate for that year, but this subsection does not limit the factors determining ineligibility to apply for the grant or renewal of a local practising certificate.
- (5) An Australian lawyer must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.
- (6) An Australian legal practitioner who –
 - (a) engages in legal practice solely or principally in this jurisdiction during a financial year; and
 - (b) reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year –must apply for the grant or renewal of a local practising certificate in respect of the following financial year.
- (7) Subsection (6) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice solely or principally in this jurisdiction under an arrangement that is of a temporary nature.
- (8) The exemption provided by subsection (7) ceases to operate at the end of the period prescribed by the regulations for the purposes of this subsection.

- (9) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia. Accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section so that eligibility is determined by reference to the person's practice in Australia.

Note 2

Sections 9, 43 and 53 of the Act are extracted below.

The Society must not grant or renew a practising certificate unless it is satisfied the applicant is a fit and proper person to hold the certificate. In considering whether a person is fit and proper, the Society may take into account any matter it thinks appropriate, including any 'suitability matters' defined in section 9 of the Act or the matters set out in sections 43 and 53 of the Act.

9. Suitability matters

- (1) Each of the following is a 'suitability matter' in relation to a natural person:
- (a) whether the person is currently of good fame and character;
 - (b) whether the person is or has been an insolvent under administration;
 - (c) whether the person has been convicted of an offence in Australia or a foreign country, and, if so –
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person's age when the offence was committed;
 - (d) whether the person engaged in legal practice in Australia –
 - (i) when not admitted to the legal profession, or not holding a practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law; or
 - (ii) if admitted to the legal profession, in contravention of a condition on which admission was granted; or
 - (iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended;
 - (e) whether the person has practised law in a foreign country –
 - (i) when not permitted by or under a law of that country to do so; or
 - (ii) if permitted to do so, in contravention of a condition of the permission;
 - (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:
 - (i) this Act or a previous law of this jurisdiction that corresponds to this Act;
 - (ii) a corresponding law or corresponding foreign law;
 - (g) whether the person –
 - (i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or
 - (ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt;
 - (h) whether the person's name has been removed from –
 - (i) a local roll, and has not since been restored to or entered on a local roll; or
 - (ii) an interstate roll, and has not since been restored to or entered on an interstate roll; or
 - (iii) a foreign roll;
 - (i) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;
 - (j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
 - (k) whether, under this Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;

- (l) whether the person is or has been subject to an order, under this Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;
- (m) whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.

(2) A matter is a suitability matter even if it happened before the commencement of this section.

43. Suitability to hold local practising certificate

- (1) This section has effect for the purposes of section 53 (Grant or renewal of local practising certificate) or any other provision of this Act where the question of whether or not a person is a fit and proper person to hold a local practising certificate is relevant.
- (2) The prescribed authority may, in considering whether or not the person is a fit and proper person to hold a local practising certificate, take into account any suitability matter relating to the person, and any of the following, whether happening before or after the commencement of this section:
 - (a) whether the person obtained an Australian practising certificate because of incorrect or misleading information;
 - (b) whether the person has contravened a condition of an Australian practising certificate held by the person;
 - (c) whether the person has contravened this Act or a corresponding law, or the regulations or legal profession rules under this Act or a corresponding law;
 - (d) whether the person has contravened –
 - (i) an order of the Supreme Court, Tribunal or Board; or
 - (ii) an order of a corresponding disciplinary body or of a court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;
 - (e) without limiting any other paragraph –
 - (i) whether the person has failed to pay a required contribution or levy to the Guarantee Fund; or
 - (ii) whether the person has contravened a requirement imposed by the prescribed authority about professional indemnity insurance; or
 - (iii) whether the person has failed to pay other costs or expenses for which the person is liable under this Act or the regulations;
 - (f) other matters the prescribed authority thinks appropriate.
- (3) A person may be considered a fit and proper person to hold a local practising certificate even though the person is within any of the categories of the matters referred to in subsection (2), if the prescribed authority considers that the circumstances warrant such a determination.
- (4) If a matter was –
 - (a) disclosed in an application for admission to the legal profession in this or another jurisdiction; and
 - (b) determined by a Supreme Court, or by the certifying body or a corresponding authority, not to be sufficient for refusing admission –the matter cannot be taken into account as a ground for refusing to grant or renew or for suspending or cancelling a local practising certificate, but the matter may be taken into account when considering other matters in relation to the person concerned.

53. Grant or renewal of local practising certificate

- (1) The prescribed authority must consider an application that has been made for the grant or renewal of a local practising certificate and may –
 - (a) grant or refuse to grant the certificate; or
 - (b) renew or refuse to renew the certificate –and in granting or renewing the certificate may impose conditions as referred to in section 56 (Conditions imposed by prescribed authority).

- (2) The prescribed authority may refuse –
 - (a) to consider an application if –
 - (i) it is not made in accordance with this Act or the legal profession rules; or
 - (ii) the required fees and costs have not been paid; or
 - (b) to grant or renew a local practising certificate if the applicant has not complied with the regulations or the legal profession rules in relation to the application.
- (3) The prescribed authority must not grant a local practising certificate unless it is satisfied that the applicant –
 - (a) was eligible to apply for the grant when the application was made; and
 - (b) is a fit and proper person to hold the certificate.
- (4) The prescribed authority must not renew a local practising certificate if it is satisfied that the applicant –
 - (a) was not eligible to apply for the renewal when the application was made; or
 - (b) is not a fit and proper person to continue to hold the certificate.
- (5) The prescribed authority must not grant or renew a local practising certificate if the prescribed authority considers the applicant’s circumstances have changed since the application was made and the applicant would (having regard to information that has come to the prescribed authority’s attention) not have been eligible to make the application when the application is being considered.
- (6) Without limiting any other provision of this section, the prescribed authority may refuse to grant or renew a local practising certificate if a finding of unsatisfactory professional conduct or professional misconduct has been made in respect of the applicant and –
 - (a) a fine imposed because of the finding has not been paid; or
 - (b) costs awarded against the applicant have not been paid or, if an arrangement for their payment has been made, the applicant is in default under the arrangement.
- (7) Without limiting any other provision of this section, the prescribed authority may refuse to grant or renew a local practising certificate if –
 - (a) any costs of an investigation or examination payable under Part 3.2 (Trust Money and Trust Accounts) by or in respect of the applicant have not been paid; or
 - (b) any fees, costs or expenses of external intervention payable under Chapter 5 (External Intervention) by or in respect of the applicant have not been paid; or
 - (a) any other fees, costs or levies required under the Act have not been paid.
- (8) Without limiting any other provision of this section, the prescribed authority may refuse to grant or renew a local practising certificate on any ground on which the local practising certificate could be suspended or cancelled.
- (9) This section does not affect any other provision of this Act that provides for the refusal to grant a local practising certificate.
- (10) If the prescribed authority grants or renews a local practising certificate, the prescribed authority must, as soon as practicable, give the applicant –
 - (a) for the grant of a certificate, a local practising certificate; or
 - (b) for the renewal of a certificate, a new local practising certificate.
- (11) Within 30 days after receiving an application for the grant of a local practising certificate, the prescribed authority must –
 - (a) grant the certificate; or
 - (b) refuse to grant the certificate.
- (12) Within 60 days after receiving an application for renewal of a local practising certificate, the prescribed authority must –
 - (a) renew the certificate; or

(b) refuse to renew the certificate.

(13) If the prescribed authority –

- (a) refuses to grant or renew a local practising certificate; or
- (b) imposes a condition on the certificate and the applicant does not agree to the condition – the prescribed authority must, as soon as practicable, give the applicant an information notice.

Note 3

Practitioners are under a continuing obligation to disclose ‘Show Cause Events’ to the Society including providing:

- within 7 days of the event occurring, a notice of the event, and
- within 28 days after the event occurring, a written statement explaining why, despite the event, the practitioner still considers himself/herself to be a fit and proper person to hold a practising certificate.

‘**Show Cause Event**’ in relation to a person, means –

- (a) his or her becoming bankrupt or being served with notice of a creditor’s petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth; or
- (b) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth of his or her intention to present a debtor’s petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or
- (c) his or her applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit; or
- (d) his or her conviction for a serious offence or a tax offence; whether or not –
 - (i) the offence was committed in or outside this jurisdiction; or
 - (ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer, as the case requires; or
 - (iii) other persons are prohibited from disclosing the identity of the offender;

Note 4

‘**Serious Offence**’ means, an offence whether committed in or outside this jurisdiction that is –

- (a) an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily); or
- (b) an offence against a law of another jurisdiction that would be an indictable offence against a law of this jurisdiction if committed in this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or
- (c) an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth or this jurisdiction if committed in this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction);

‘**Tax Offence**’ means any offence under the *Taxation Administration Act 1953* of the Commonwealth, whether committed in or outside this jurisdiction;