

NSW LEGAL PROFESSION ADMISSIONS BOARD
AND VICTORIAN LEGAL ADMISSIONS BOARD

HEALTH ASSESSMENT POLICY

1. Introduction

Under rule 10(1)(k) of the Uniform Admission Rules 2015, when determining whether an applicant for a compliance certificate is a fit and proper person, a Board must have regard to whether the applicant is currently able satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner.

To assist the Board in reaching a conclusion, rules 23 and 24 establish a process whereby a Board can require an applicant to provide a health report, prepared by a medical practitioner chosen by the applicant, about the applicant's ability to satisfactorily to carry out the inherent requirements of practice. If the Board does not receive such a report, or regards the report as insufficient to help it to form a view about whether the applicant has the necessary ability, it may require a formal health assessment to be conducted by one or more health assessors, appointed by the Board.

The processes related to both these assessments and reports are clearly specified in rules 23 and 24.

This document explains how the Board will usually act in relation to a number of matters raised by rules 23 and 24. It provides guidelines which may be helpful to applicants; but it is not intended to give rise to rights or obligations that are binding on either the Board or an applicant

2. When will a health report be required?

The Board will generally require a health report if there is material before the Board to indicate that, on reasonable grounds, the applicant has, or may have, a medical condition that –

- (a) is characterised by significant disturbance of thought, mood, perception or memory (including alcoholism and drug dependence); and
- (b) without management, is likely to adversely affect the applicant's ability to engage in legal practice.

3. What will the Board consider when deciding whether a health report is required?

In reaching a conclusion about whether to require a health report under rule 23(1), the Board will generally consider –

- (a) information provided to the Board by the applicant, including any relevant disclosures made about the applicant's capacity under rule 17;

- (b) information obtained by the Board in the course of performing its functions under the Act and the Admission Rules;
- (c) information provided to the Board by a local or interstate regulatory authority;
- (d) information provided to the Board by a court;
- (e) information provided to the Board by the police, the Director of Public Prosecutions or any other relevant public agency; and
- (f) publicly available information obtained by the Board.

4. **What must a health report include?**

The Board will generally require a health report to include information about –

- (a) the registered medical practitioner's qualifications;
- (b) the nature and extent of any mental impairment experienced by the applicant;
- (c) the extent (if any) to which that impairment may result in the applicant being currently unable to carry out satisfactorily any tasks that the medical practitioner considers a practising lawyer might need to perform, and the nature of those tasks;
- (d) any treatment that the applicant is currently receiving to manage the impairment;
- (e) the applicant's compliance with the requirements of that treatment; and
- (f) whether the medical practitioner considers that –
 - (i) any other treatment might be appropriate, or might assist the applicant to manage the impairment more successfully;
 - (ii) disclosure of the contents of the report to the applicant may be prejudicial to the applicant's mental health or well-being.

5. **When might a requirement to provide a health report be waived?**

The Board may decide not to require a health report if the registered medical practitioner who is requested to provide the report advises the Board that providing such a report would materially damage the therapeutic relationship between the medical practitioner and the applicant.

6. **When might the Board take no further action ?**

After receiving a health report, the Board will generally take no further action if it is satisfied that -

- (a) the applicant does not have a mental impairment, or
- (b) has an impairment which does not affect the applicant being fit and proper to engage in legal practice, or

- (c) has an impairment that may affect the applicant being fit and proper to engage in legal practice but that impairment is not material because of any one or more of the following -
 - (i) the impairment presents a low risk to consumers or others;
 - (ii) the impairment is adequately controlled;
 - (iii) the applicant has a good record of complying with treatment prescribed for the impairment.

7. When might a further health assessment be required under rule 23(3)?

Rule 23(3) explains that the Board may require a further health assessment if either –

- (a) the health report referred to in item 2 has not been provided by the date determined by the Board; or
- (b) the Board reasonably considers that the health report is insufficient for the Board to form a view about whether or not the applicant is currently unable, by reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner.

The Board will meet the cost of any further health assessment under rule 23(3).

8. What must such a health assessment include?

The Board will generally require a health assessment to include similar information to that referred to in item 4. Rule 24(1)(a) also provides that a requirement to undergo a health assessment is not satisfied, unless the health assessor conducting the assessment prepares a report "setting out the health assessor's findings as to whether, and to what extent, the applicant is currently unable, by reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner."

9. How are health assessors selected?

The Board may seek advice from an appropriate medical institution about who would be appropriate persons to conduct a health assessment, before appointing a health assessor.

10. What is disclosed to health assessors?

Pursuant to rule 23(4)(b), but subject to any applicable legislation relating to privacy, the Board will generally provide a health assessor with –

- (a) a summary of all information available to the Board that the Board considers relevant; and
- (b) a copy of any health report prepared under rule 23(1).

11. **How confidential is material supplied by an applicant and the content of a health report or health assessment?**

While rule 17 requires an applicant to make a full disclosure to the Board, rule 17(4) allows an applicant to make any disclosure relating to the applicant's physical or mental capacity in a separate statutory declaration. Because of rule 16(5), the Board will not make any such separate statutory declaration available to any person who makes a statutory declaration as to the applicant's character.

Apart from the Board's obligation to comply with the generally-applicable Privacy Principles, rule 24(2) provides that a health assessment report, or evidence about a report or its contents are both confidential and may not be disclosed by the Board to any person, except where permitted by law, or with the consent of the applicant. However, sections 437 and 439 of the Uniform Law authorise the Board to provide or disclose a health report or health assessment report to other relevant regulatory authorities, such as authorities responsible for issuing practising certificates. Further, such an authority can require the Board to provide it with a health report or health assessment report in the Board's possession.

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