

13 February 2020

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
CANBERRA ACT 2601

By email: Tarryn.Gaffney@lawcouncil.asn.au

Dear Ms Nicoll

**PROPOSED AMENDMENTS TO THE LEGAL PROFESSION UNIFORM
ADMISSION RULES: REMOVAL OF THE WORD 'FAME'**

Thank you for the memorandum dated 20 December 2019 inviting the Law Society of Western Australia to comment on the proposal to remove the word 'fame' from the *Legal Profession Uniform Admission Rules 2015 (Admission Rules)*.

The Law Society opposes the omission of the reference to 'good fame and character' from the Admission Rules for the following reasons:

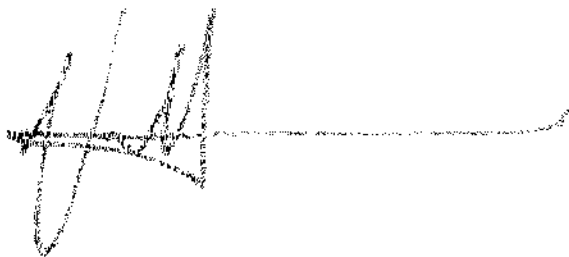
1. The phrase 'good fame and character' in the context of admission has been in use for a considerable period and has a recognised meaning. It describes the test of ethical fitness for admission to the legal profession: *Re Davis* [1947] HCA 53; (1947) 75 CLR 409 at 420 (Dixon J) (***Re Davis***). A person may be of good fame (that is, of good reputation amongst those who knew him or her) but intrinsic character is a different matter (at 416 per Latham CJ).
2. The expression 'good character and repute' (or, using the word in the *Legal Profession Act 2008 (WA)*, 'fame') involves two discrete elements. The phrase 'good character' ordinarily refers to a person's moral qualities (whether known to others or not) as opposed to the estimation in which (fairly or unfairly) the person is held by others; that is, their repute: *Real Estate and Business Agents Supervisory Board v LJW* [2011] WASCA 35 [28] per Newnes JA (***LJW***).
3. His Honour went on to say that 'good character and repute' (and therefore 'fame') respectively are to be used in their ordinary sense. A person may be of good repute, but unbeknown to those who hold that opinion, have serious deficiencies in their moral character, and conversely, a person may not be of good repute or fame because of a widespread but mistaken belief that (for instance) he or she is dishonest, but in fact might be possessed of good moral qualities: *LJW* [30].
4. Although it is correct that the Uniform Law does not refer to 'good fame and character' as a criterion for admission (unlike section 8(1)(a) of the *Legal Profession Act 2008 (WA)*), section 17(2) of the Uniform Law states that, in considering whether a person is a fit and proper person to be admitted, the

designated local authority may have regard to any matter relevant to the person's eligibility or suitability for admission and must have regard to the matters specified in the Admission Rules.

5. It appears that Parliament has opted not to prescribe the suitability matters for admission in the legislation, but rather to leave it to the rule makers when formulating the Admission Rules. In that case, the omission of 'good fame and character' from the Uniform Law is irrelevant to whether it should be in the Admission Rules.
6. In conclusion:
 - a. The requirement to be of 'good fame and character' is of long standing and has a recognised, and important, meaning. Its potential removal should be treated with considerable caution.
 - b. A sufficient case for the omission of 'good fame and character' from rule 10 has not been made. The fact that the reference to fame draws attention to the maintenance of public confidence in the integrity and honesty of the legal profession is a reason to keep the reference in the Law Society's view, not replace it.
 - c. The issue of 'fame' is addressed in the Law Council's memorandum, but not 'character'. The fact that rule 16 requires evidence of character (and rule 10(1)(a) requires a statutory declaration as to character) adds to the view that the reference to character should be retained in rule 10(1)(f).

Thank you for the opportunity to comment on the proposed amendments to the Admission Rules. If you have any queries please contact Mary Woodford, General Manager Advocacy on (08) 9324 8646 or mwoodford@lawsocietywa.asn.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. van Hattem', with a long horizontal line extending to the right.

Nicholas van Hattem
President