

PART B:

MAKING APPLICATION FOR ADMISSION TO THE COURT (for QUALIFIED OVERSEAS APPLICANTS applying for admission to the legal profession in Tasmania)

This version of Part B is for the benefit of applicants who have obtained their academic qualifications and practical legal training wholly, or principally outside Australia and who have not previously been admitted to the legal profession in any jurisdiction. It provides information, following on from the general information in Part A, about making an application for admission to the legal profession to the Court.

An application to the Court for admission to the legal profession

The following lists the steps that must be undertaken to make an application to the Court for admission to the legal profession.

1. **Application to the Board for a Certificate of Eligibility:** It is usual for overseas qualified applicants and overseas practitioners to be required to pass some additional academic subjects and/or practical legal training before they will be certified to be eligible for admission in Tasmania. Further information about this should be sought from the Board. The contact details for the Board are provided above under the heading “Admission to the Legal Profession in Tasmania”.

2. **Other preliminary preparations:** Prior to lodging an application for admission with the Court prospective applicants should make preparations to ensure that the application will be ready to go ahead when the time comes by for example:
 - applying for a report from the police in the overseas jurisdiction where the applicant obtained their academic qualifications and or practical training setting out the applicant’s criminal record if any (this report must have been prepared not more than 2 years before the date of swearing of the affidavit)- see rule 783AE(2)(a)(iii)(C) of the *Supreme Court Rules 2000*);

- identifying and obtaining the consent of two acceptable deponents to provide affidavits as to character (see more detailed advice as to this below under the hearing “The affidavits as to character”); and,
- if you wish to be represented for the application then identifying a legal practitioner to do this. The Tasmanian Law Society website provides lists and contact details for legal practitioners operating in Tasmania
<http://www.taslawsociety.asn.au/web/en/lawsociety.html>

3. Originating application:

- An application for admission is commenced by originating application to the Court (see rule 783AD(1) of the *Supreme Court Rules 2000*, and form 3 of the *Supreme Court Forms Rules 2000*).
- The order sought in the application should be something like;
“a.) That the applicant [applicant’s name] be admitted to the legal profession.”
- The Court’s filing fee for an originating application for the purpose of admission is \$150.00.
- A date for the hearing of the application will be provided by the Court at the time that the application is lodged with the Court.
- Applicants should bring sufficient copies of their application to the Court registry at the time of lodgment of the original application so that copies can be stamped for service and for their records.

4. Notice of intention to apply for admission:

- Not less than one month, or more than three months before the listing of the application, notice of intention to apply for admission in the prescribed form (see form 57BA *Supreme Court Forms Rules 2000*) must be published in two Tasmanian newspapers in accordance with rule 783AC of the *Supreme Court Rules 2000*.
- The rule also prescribes in which newspapers the notice should appear.

5. Supporting materials/ Evidence:

- As directed by rule 783AE(2) of the *Supreme Court Rules 2000* the application must be supported by affidavits and other documents being: an affidavit in

support of the application (see form 57BB of the *Supreme Court Forms Rules 2000*) including annexures; and two affidavits as to character (see form 57BC of the *Supreme Court Forms Rules 2000*) made by “acceptable deponents” (as to which, see rule 783AA). More detailed information to assist applicants to prepare their affidavits and to select acceptable deponents is provided below under the headings “The affidavit in support of the application for admission” and “The affidavit as to character”.

- Supporting affidavits may be lodged with the Court some time after the originating application has been filed, and the notice of intention to apply for admission has been published, but in sufficient time to enable service to be effected prior to the required minimum period before the hearing of the application. Service must take place not less than 14 days before the application is to be heard.
- Applicants should bring sufficient copies of their supporting materials to the Court registry at the time of lodgment of the original affidavits and annexures so that copies can be stamped for service and for their records.

6. Oath:

- Section 34 of the Act provides that a person who applies for admission to the legal profession must take and subscribe an oath. The form for the oath is given at form 57BG of the *Supreme Court Forms Rules 2000*.
- The unsigned oath (to be signed on the day the application is heard as per rule 783AJ of the *Supreme Court Rules 2000*) is lodged with the Court by the applicant prior to the date of the application. As a matter of convenience this is usually done at the same time as the supporting materials are lodged with the Court.

7. Service:

- The application and supporting material/evidence must be served on the Law Society of Tasmania and the Legal Profession Board in accordance with rule 783AD(2), not less than 14 days before the application is to be heard.

- The documents to be served should be sealed copies (copies of the documents filed with the Court and stamped by the registry with the Court's office seal) (see rule 132 of the *Supreme Court Rules 2000*).
- The documents should be served in accordance with rule 133 of the *Supreme Court Rules 2000* which can be done by delivery of the sealed copies of the document to the offices of the Law Society of Tasmania and the Legal Profession Board (see rule 135 of the *Supreme Court Rules 2000*).
- An officer of the Law Society and the Legal Profession Board should be asked to sign an acknowledgement of receipt of the documents at the time that the documents are delivered. This acknowledgement will be annexed to the Affidavit of Service.

8. Affidavit of service:

- An affidavit of service (see form 57BF of the *Supreme Court Forms Rules 2000*) on the Law Society of Tasmania and the Legal Profession Board must be filed with the Court not less than 7 days before the application is to be heard in accordance with rule 783AH of the *Supreme Court Rules 2000*.
- The affidavit of service should have two signed acknowledgments of service annexed to it: one from the Law Society and one from the Legal Profession Board.

9. Additional material or evidence: The Judge hearing the application for admission may require the applicant to provide additional evidence.

10. Judge's Papers:

- In accordance with Practice Direction 16 of 2005, one set of papers for the use of the Judge must be filed at least two clear days before the hearing.
- Judge's papers are a collation of copies of the application, the affidavits, including any annexures, and the oath relied upon in support of the application.
- The materials should be placed in a logical order, given page numbers, bound securely with staples or similar and should contain a title page which includes the title of the proceeding and an index to the collation.

11. ***Appearing in Court for the application:***

- Applicants should attend the Court promptly and dress for the occasion in such a way as to demonstrate respect for the Court and the application being made. Neat business attire is appropriate.
- Applications for admission are civil applications and they are heard in Court. The Judge and counsel robe, but do not wear wigs.
- Applicants for admission should be seated in the public seating available in the Court, or in such other area as directed by court staff. Legal practitioners representing the applicant, the Legal Profession Board and the Law Society will be seated at or near to the bar table.
- The order of the matters to be heard in the Court is co-ordinated by the Judge's Associate in accordance with the direction of the Judge and the circumstances. When a number of admissions are to be heard on the same day some aspects of the hearing may be dealt with collectively.
- When the application is called on by the Judge's Associate the legal practitioner appearing on the applicant's behalf, or the applicant if appearing him or herself, will stand and announce his or her appearance and submit that the application should be granted.
- If there is any objection to admission, need for further evidence to be brought, or difficulty with the application that has not already been addressed administratively, the Judge will deal with this.
- If there are no difficulties with the application the applicant will then be asked to stand and orally swear or affirm the oath before the Court. The oath is signed by the applicant once this is done.
- The Judge will then make the order admitting the applicant to the legal profession.

Affidavit in support of the application for admission

The affidavit of the applicant provides a major part of the evidence upon which the Court reaches its determination that the applicant is eligible and suitable for admission.

The form for the affidavit is form 57BB of the *Supreme Court Forms Rules 2000*. The form lists a number of paragraphs and suggests the wording of these. The number and

precise wording of paragraphs does not need to be adhered to slavishly. The content of your affidavit may suit some variation in wording, or a larger number of paragraphs.

The affidavit provides evidence of the applicant's eligibility for admission (that they have the academic qualifications and have completed the practical legal training requirements) by referring to and annexing a certificate of eligibility from the Board.

The affidavit provides evidence that the applicant is a fit and proper person for admission. In so doing the applicant must address the suitability matters, the relevant matters and must indicate whether or not they are aware of any objections to their application for admission.

Suitability matters:

Rule 783AE (2) of the *Supreme Court Rules 2000* requires the applicant to address **each** of the suitability matters listed in section 9 of the Act. It is not sufficient to say for example:

- "I have no suitability matters to disclose"; or
- "I have no suitability matters to disclose other than a conviction for fraud".

The applicant must address **every** suitability matter and also **explain** any matters that are disclosed. In the case of criminal convictions, section 9 of the Act requires that the applicant disclose the nature of the offence, how long ago it was committed and their age when the offence was committed.

Relevant matters:

Rule 783AE (2) of the *Supreme Court Rules 2000* requires the applicant to address **any** relevant matters. The matters listed in the definition at rule 783AB of the *Supreme Court Rules 2000* are examples of the sorts of matters that should be disclosed. They are not the only sorts of matter that may be relevant. The above part of this document headed "*Suitability for admission and the duty of disclosure*" contains information about the type of matters that must be disclosed to the Court.

It is not necessary for the applicant to specifically address all of the types of matter defined as relevant matters. Only a relevant matter that does arise with respect to the applicant need be disclosed.

Objections:

It is customary for applicants to indicate in their affidavit whether they are aware of any objections to their application for admission to the legal profession (see section 32 of the Act for the right to object to admission).

If publication of the notices of intention to apply for admission to the legal profession, or service of the applications, has resulted in no objections then the applicant could include a paragraph saying something like:

“No notice of objection to my application for admission has been forwarded to me by the Registrar of the Supreme Court of Tasmania and I have not been notified of any other objections by any other means.”

If the applicant has been made aware of an objection to their application then the applicant should indicate this in an affidavit and provide any explanation of the circumstances giving rise to the objection that they can.

The affidavits as to character

Affidavits as to character are intended to provide evidence that the applicant is of good reputation and character. They must be made by an “acceptable deponent”. The affidavit as to character must therefore include information about three things:

- i. why the deponent is acceptable;
- ii. the nature of the deponent’s relationship with the applicant; and
- iii. information about the good character of the applicant.

The form for the affidavit is form 57BC. The form lists a number of paragraphs and suggests the wording of these. The number and precise wording of paragraphs do not need to be adhered to slavishly. The content of the affidavit may suit some variation in wording, or a larger number of paragraphs.

Who is an acceptable deponent?

An acceptable deponent is defined in rule 783AA of the *Supreme Court Rules 2000*:

“**acceptable deponent**”, in relation to an applicant, means a person who is not married to the applicant, in a significant relationship, within the meaning of the Relationships Act 2003, with the applicant or a close blood relative of the applicant and –

(a) is a commissioner for declarations pursuant to section 12 of the Oaths Act 2001 and has known the applicant for a period of not less than 12 months; or

(b) has an occupation in an overseas jurisdiction, or is authorised to practise in a profession in an overseas jurisdiction, that is substantially equivalent to one that would qualify the person as a commissioner for declarations pursuant to section 12(2) of the Oaths Act 2001 and has known the applicant for a period of not less than 12 months; or

(c) is, or was, employed at a secondary or tertiary teaching institution and taught the applicant for not less than the equivalent of one year of tertiary studies, or one of the two final years of secondary studies; or

(d) is a person determined by the Court to be an acceptable deponent.”

Section 12 of the *Oaths Act 2001* in turn states that a person is a commissioner for declarations if they are a member of a profession listed in Part 1 of the Schedule to the *Statutory Declarations Regulations 1993 (Cwth)* or a person listed in Part 2 of that Schedule. Overseas qualified applicants should refer to these lists in order to select deponents who are members of equivalent professions to those listed if this is necessary.

In summary a deponent will need to address the following matters in their affidavit in order for the Court to be satisfied that they are an “acceptable deponent”:

- That they are not married to the applicant, in a significant relationship with the applicant, or a close blood relative of the applicant;
- Details of their profession, employment history or background; and
- The length of time that they have known the applicant.

The details of profession or employment that must be provided by the deponent depend upon the category in which the person falls within the definition of “acceptable deponent”. For some deponents stating that they are a member of a particular profession in a particular jurisdiction for example a legal practitioner, or a medical practitioner in the United Kingdom will be sufficient detail. For some others, the person providing the affidavit as to character will need to include further information relating to their employment or circumstances. For example, a state public servant may provide an affidavit as to character if they are a “permanent employee of ... a State... authority... with 5 or more years of continuous service” (see item 230 of Part 2 of Schedule 2 *Statutory Declarations Regulations 1993 (Cwth)*). Such a person would need to state something like the following in their affidavit:

“I have been a permanent employee in the Department of Health in the United Kingdom continuously since 2001.”

In some instances it may be appropriate or necessary to obtain an affidavit as to character from a person who does not have one of the professions indicated in paragraphs

a-c of the definition of an acceptable deponent. For example, the applicant's circumstances may be such that the people best placed to assure the Court of the applicant's good character do not fit the criteria. In these cases the Court can "determine" that the deponent is acceptable. To make this determination the Court must be provided with information about the deponent's background such as details of their employment or employment history, their un-paid work, their community or charity work. This information should be provided in the deponent's affidavit.

The nature of the deponent's relationship with the applicant:

In addition to details of why a person is an "acceptable deponent" the deponent must provide information about the length and circumstances of their acquaintance with the applicant.

The deponent's belief that the applicant is of good character:

Finally the deponent should be able to provide reasons why they believe that the applicant is of good reputation and character. If there are matters adverse to the applicant that have been disclosed in the application then the deponent **must** be able to indicate that they are aware of those adverse matters. If the matters are serious ones then the deponent should explain why they believe that the applicant is of good character despite the adverse matters that have been disclosed.

Common errors in the formal requirements for the application

Like any other application to the Court, the application for admission should comply with the formal requirements for Court documents. Making an application for admission is an opportunity for applicants to familiarise themselves with relevant parts of the *Supreme Court Rules 2000*. For example: see Part 7 Divisions 1, 2, 4, 7 and 9 with regard to the requirements for documents, filing, originating process, originating applications and service; and see Part 19, Division 4 for the requirements relating to affidavits.

The following pieces of advice have been compiled as a result of common errors made by applicants:

1. Make sure that you explain any adverse matters that you disclose in your affidavit in support of your application for admission and that such issues are also addressed in the affidavits as to character. Remember that you are providing the Court with

evidence that you are a “fit and proper” person. If you do not explain then the Court may not have enough evidence upon which to make its determination.

2. The Legal Practitioner’s Oath you will take at the hearing of the application should be lodged with your other supporting materials and must be **unsigned** and **without** a jurat.
3. You should be consistent about whether you swear or affirm in relevant cases. For example if your affidavit in support of your application for admission is “sworn” before an appropriate person, then you should also “swear that you will honestly conduct yourself...” in your oath on the day of your admission and the written version of your oath lodged with the Court should be worded accordingly. However, if you prefer to affirm, the documents should be worded accordingly.
4. Rules 511, 512 and 513 of the *Supreme Court Rules 2000* specify persons before whom an affidavit may be sworn. It is wise to swear affidavits before a person who is familiar with the appearance and formal requirements for affidavits and the annexures to them since they are unlikely to make an error or omission on your documents and may pick up an error or omission you have made.
5. Original documents ought to be annexed to the affidavit in support of the application for admission which is filed with the Court. In the case of the notice published in the newspaper, ensure that the newspaper’s publication date is also visible on the extracted part of the newspaper annexed.
6. Documents annexed to an affidavit must be formally endorsed by the person before whom the affidavit is sworn as the exhibit on each page as follows:

Short title:

I certify that this is page of the annexure marked “.....”

Referred to in the affidavit of

Sworn this day. Signed..... Dated.....

A Justice of the Peace.

Court contact details:

Contact details for further enquiries about admission are as follows:

HOBART REGISTRY:	
Address:	Salamanca Place Hobart Tasmania 7000
Postal:	GPO Box 167 Hobart 7001

Ausdoc:	DX 18 Hobart
Telephone:	(03) 6233 6385
Facsimile:	(03) 6223 7816
Email:	courts@justice.tas.gov.au
Office Hours	9.00am - 4.30pm (Monday-Friday)

The addresses of the district registries of the Supreme Court are as follows:

LAUNCESTON DISTRICT REGISTRY:	
Address:	Cameron St, Launceston 7250, Tas
Postal:	GPO Box 190 Launceston 7250
Ausdoc:	DX 70117 Launceston
Telephone:	(03) 6236 2386
Facsimile:	(03) 63318618
Email:	courts@justice.tas.gov.au
Office Hours	9.00am - 4.30pm (Monday-Friday, not including the lunch hour between 1.00 and 2.00 pm)

BURNIE DISTRICT REGISTRY:	
Address:	38 Alexander St, Burnie, 7320, Tas
Postal:	GPO Box 690 Burnie 7320
Ausdoc:	DX 70228 Burnie
Telephone:	(03) 6434 6390
Facsimile:	(03) 6431 1480
Email:	courts@justice.tas.gov.au
Office Hours	9.00am - 4.30pm (Monday-Friday, not including the lunch hour between 1.00 and 2.00 pm)