

## Qualifications to Practice

### Introduction

'Qualifications to Practice' refers to the requirements required for entry to a profession and the ongoing licence to practice within that profession. This title explains:

- Pathways to practice
- Continuing requirements for ongoing practice
- Variations on the qualifications to practice
- Organisations determining qualifications to practice.

### Qualifications to Practice

Qualifications to practice fall into two categories. First, there are 'pathways to practice' describing the core requirements that candidates must fulfil before they enter the profession. Second, there are continuing requirements for practice, comprising standards and obligations that must be upheld for an accredited professional to remain qualified and legally licensed to continue their practice. While there are similarities between these two types of qualifications, they remain distinct. Even when both categories incorporate the same types of requirements, such as a 'fit and proper person' requirement, the actual processes and standards applied in each case can differ considerably.

### Pathways to Practice

In established professions such as medicine, pharmacy, nursing, law, accounting and teaching where practitioners have a direct, hands-on relationship with clients, these professions require high standards in their professional education programs and accreditation processes. While there can be variations on the template (see below), the standard suite of requirements constituting pathways to practice in the major professions usually includes:

- A tertiary degree in the relevant knowledge speciality
- Internship or other supervised, probationary work
- Ethics education
- The professional exam
- The 'Fit and Proper Person' test.

In the contemporary professional context, the pathway to practice almost always begins with an approved program of tertiary study at the Bachelor or Masters level. The curriculum for such programs is usually developed through contact, collaboration and partnership between the universities and the broader professional society.<sup>1</sup>

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<sup>1</sup> For the most part, practitioners accept the role of the universities in training entrants to the profession and share academic interest in developing the knowledge base of their professions: Helen Cameron, 'Monitoring Standards for Professional Education' (2001) 53 *Journal of Vocational Education and Training* 279, 279-300.

Internship and other programs of probationary, supervised work may take place in the period following the degree course, but it is increasingly common for the university education itself to include as part of the curriculum a period of placement within a professional organisation.<sup>2</sup> In the health professions, for example, when nearing the end of the degree, students apply for 'provisional' registration with the relevant Board. This enables them to obtain an internship under the guidance of an appropriate registered professional. During internship (normally a one to two-year period depending on the profession), interns, with supervision, gain knowledge and practical experience.

Ethics education and testing will normally be a further requirement to qualification, though different professions in different jurisdictions can implement this requirement in differing ways (see the Ethics Education title.) Sometimes, ethics education and assessment will be one part of the accredited university degree course. In other cases, professional bodies will undertake ethics training of aspiring professionals. Either way, there is often a dedicated exam assessing (at minimum) knowledge of the relevant codes, standards and regulations. In some cases, ethics assessment may occur as part of the larger professional exam.

Most major professions require candidates to sit a registration examination. This professional exam is usually designed and administered by the professional organisation, though sometimes regulatory bodies will also have a formal role in the process. The examination requirement may include a single exam, or a course of exams. There may be written, online or oral components (see the Professional Exam title).

As a final requirement to practice, candidates will usually be subject to a 'Fit and Proper Person Test'.<sup>3</sup> Despite the title, these tests normally focus not upon evidence of good character, but rather on ensuring the absence of clear evidence of bad character.<sup>4</sup> To this end, requested information usually centres on criminal records (especially felonies), violations of other institutional codes and employment records.<sup>5</sup> Most professional bodies administering the requirement rely on self-reporting, asking candidates to supply the desired information. However, criminal records and social services checks are sometimes performed (see the 'Fit and Proper Person' Test title).

### **International Pathways to Practice**

One further aspect of pathways to practice of increasing contemporary importance is the process for the accreditation and licensing of international professionals, who may have fulfilled their educational and other requirements overseas but require local recognition of their credentials. Requirements for these pathways

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<sup>2</sup> Alternatively, the curriculum might include other practices of placement in the form of 'work integrated learning': see Mark Brimble et al, 'Collaborating with Industry to Enhance Financial Planning and Accounting Education' (2012) 6 *Australasian Accounting Business and Finance Journal* 79.

<sup>3</sup> Other terms are sometimes used for this requirement, including that professionals be 'of good character', 'of moral character', 'fit to practice', 'suitable to practice' or 'of good reputation'.

<sup>4</sup> Alice Woolley, 'Tending the Bar: The "Good Character" Requirement for Law Society Admission' (2007) 70 *The Dalhousie Law Journal* 28.

<sup>5</sup> For a detailed analysis of US law as at 1985, see Deborah Rhode, 'Moral Character as Professional Credential' (1985) 94 *Yale Law Journal* 493, 593-603.

can vary significantly, both with respect to different professions, different source countries and different destination countries. The main pathways for practice in these cases can come through the professional exam (or additional specialised exams), through 'trans-skilling' training courses or through work-based assessments of the probationary candidates' day-to-day professional practice.<sup>6</sup>

## Continuing Requirements for Ongoing Practice

To maintain registration in most major professions, a practitioner must continue to meet certain standards and to fulfil specific requirements. These include:

- Renewal of registrations
- Maintaining recency of practice
- Living up to professional standards, including conforming to the code of ethics and remaining a 'Fit and Proper Person'
- Continuing professional development ('CPD').

Renewal of registrations requires practitioners to renew their registration with the professional body. This usually occurs annually and requires payment of a fee. Renewal of registration will typically involve ensuring the other requirements (recency of practice, professional standards and CPD) have been fulfilled.<sup>7</sup>

Maintaining recency of practice acknowledges that recent practice within the profession is an important way that practitioners maintain their professional skills and knowledge. The specific requirements for recency depends on the profession, the level of experience of the practitioner and, if applicable, the length of absence from the field.<sup>8</sup>

To maintain their accreditation, professionals must uphold professional standards. Professional standards define the practice and behaviour of the professions and include codes of conduct, codes of ethics, guides

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<sup>6</sup> See, e.g., Carlos Zubaran, 'The International Migration of Health Care Professionals' (2012) 20 *Australasian Psychiatry* 512, 515-6; Barbara Bush, 'Global Nurse Migration Today' (2008) 40 *Journal of Nursing Scholarship* 20, 21.

<sup>7</sup> Registration and accreditation schemes oversight occurs through professional boards and/or national and State agencies. Such organisations regulate the profession, registers practitioners and develops standards, codes and guidelines for the profession: see, e.g., Pharmacy Board of Australia, 'Registration Standards' <<http://www.pharmacyboard.gov.au/Registration-Standards.aspx>> (accessed 31 October 2017); Queensland College of Teachers, 'Full Registration Fact Sheet' <<http://www.qct.edu.au/pdf/Full%20Registration%20Fact%20Sheet.pdf>> (accessed 31 October 2017); Queensland College of Teachers, 'Continuing Professional Development and Framework' <<http://www.qct.edu.au/professional-development/continuing-professional-development>> (accessed 31 October 2017); Australian Institute for Teaching and School Leadership ('AITSL'), 'Australian Professional Standards for Teachers' <[https://www.aitsl.edu.au/docs/default-source/apst-resources/australian\\_professional\\_standard\\_for\\_teachers\\_final.pdf](https://www.aitsl.edu.au/docs/default-source/apst-resources/australian_professional_standard_for_teachers_final.pdf)> (accessed 31 October 2017); Australian Health Practitioner Regulation Agency, 'AHPRA – Regulating Australia's Health Practitioners in Partnership with the National Boards' <<https://www.ahpra.gov.au/>> (accessed 31 October 2017).

<sup>8</sup> See, e.g., Medical Board of Australia, 'Registration Standard: Recency of Practice' <<http://www.medicalboard.gov.au/documents/default.aspx?record=WD16%2f19475&dbid=AP&chksum=c1dO2mg590igBem%2fsQqQ06w%3d%3d>> (accessed 31 October 2017); Australian Health Practitioner Regulation Agency, 'Recency of Practice' <<https://www.ahpra.gov.au/Registration/Registration-Standards/Recency-of-practice.aspx>> (accessed 31 October 2017); CPA Australia, 'Ways to Complete CPD' <<https://www.cpaaustralia.com.au/member-services/continuing-professional-development/ways-to-complete-cpd>> (accessed 31 October 2017). Requirements can vary, for e.g., approximately 150 hours a year or 450 hours over three years in APHRA professions and 150 hours per triennium for CPA for accounting and finance.

to professional boundaries and standards for practice/competency standards.<sup>9</sup> Breaches of these standards can result in limitations on, suspensions of, or removal of the license to practice. After admission, the 'fit and proper person test' continues to remain part of the standard employed by professional bodies to discipline practitioners. Usually, however, the standard applied in these cases is somewhat lower than that required for initial applicants. That is, conduct that would see a candidate blocked from professional entry through the fit and proper person test may not attract disciplinary sanction for a practicing professional (see the Fit and Proper Person Test title).

The major new requirement imposed on practicing professionals to ensure their ongoing qualifications to practice is CPD.<sup>10</sup> This requirement mandates that professionals continue to revise, expand and update their professional knowledge throughout their professional life. CPD requirements typically take the form of several credits/points/hours practitioners must spend each year on learning activities. Many professions provide additional detailed guidelines on CPD (for example, the number of credits particularly learning activities will earn) in their Codes and Guidelines. Generally, activities that increase the knowledge, skills and ability to do the job can be included in CPD records, particularly when the activity foci are relevant to the professional's role and planned career development plan (whether vertical or horizontal). Most forms of learning or study that contribute towards the professional's career are allowed, including structured reading, discussion group meetings, technical study programs and attendance at professional conferences (see Continuing Professional Development title.) Ethics education may be a mandatory part of CPD schemes, although requirements here are usually minimal.

## Variations on the Standard Model of Qualifications to Practice

### Variations on Qualifications to Practice in Major Professions

The above requirements for qualifications to practice can vary considerably, both in terms of pathways to practice and continuing requirements. This variation can occur even in archetypal professions like medicine and law. For example, in the UK in 2012, the Solicitor's Regulation Authority considered a substantial expansion of the content and role for the Professional Exam that would situate the exam as the core mechanism for assessing knowledge competencies in the pathway to practice.<sup>11</sup> Centralising the exam's significance and expanding its content and modes of assessment would then open the possibility of increased flexibility with respect to alternative pathways for candidates through degrees, apprenticeships or international accreditation.<sup>12</sup>

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<sup>9</sup> Australian Health Practitioner Regulation Agency, 'Fact Sheet and Faq for Students' <[www.ahpra.gov.au/Registration/Student-Registrations/FAQ-for-Students.aspx](http://www.ahpra.gov.au/Registration/Student-Registrations/FAQ-for-Students.aspx)> (accessed 31 October 2017).

<sup>10</sup> This requirement may also be termed 'Continued Professional Training', 'Continuing Education' or similar formulations.

<sup>11</sup> Solicitors Regulation Authority, *Consultation: Training for Tomorrow: Assessing Competence* <<https://www.sra.org.uk/documents/SRA/consultations/t4t-sqa-consultation.pdf>> (accessed 31 October 2017).

<sup>12</sup> Solicitors Regulation Authority, above n **Error! Bookmark not defined.**, paras 37, 44, 72-3.

## Variations in Other Professions

Some professions do not require anything like the standard ensemble of elements (degree course, exam, internship and so on) in their pathways to practice. For example, the title 'engineer' is not protected in Australia.<sup>13</sup> Anyone can claim to be an engineer and practice without the necessary competencies, understanding of standards or in compliance with a code of ethics. However, there is a class of engineer referred to as 'Chartered' or 'Professional' which follow a registration pathway like the usual ongoing practicing framework for most professions. The common professional pathway is a four-year university degree including mandatory completion of professional engagement programs within industry prior to graduation. Professional accreditation is through Engineers Australia and other major professional engineering institutions.<sup>14</sup> 'Chartered' thereby connotes a status conferred upon an engineer in Australia by the professional body to certify that the member practices in a competent, independent and ethical manner. The status requires professionals to satisfy defined competency standards, agree to maintain those competencies by CPD and commit to ethical standards contained in the relevant codes of ethics.<sup>15</sup>

## Variations in Quasi-Professions

There is no legal regime and therefore no regulatory protection of title and function for social workers in any state of Australia. However, the Australian Association of Social Workers ('AASW') is the standard-setting body for social work and many jobs require eligibility for membership of the AASW. To be eligible for membership, it is a requirement to complete one of the AASW approved degrees.<sup>16</sup>

Some hitherto non-professional services, such as financial services, are being moved by legislation to a more professionalised footing, including legal protection of function and title. Accompanying these changes is the introduction of many of the standard elements of professional pathways, including a professional exam and a relevant undergraduate degree.<sup>17</sup>

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<sup>13</sup> Engineers Australia, 'The Regulation of Engineers: Finding the Right Approach for a National Economy' <<http://picac.vic.edu.au/wp-content/uploads/2012/09/Regulation-of-Engineers1.pdf>> (accessed 31 October 2017).

<sup>14</sup> University of Queensland, 'Engineering Professional Practice' <<https://www.eait.uq.edu.au/engineering-professional-practice>> (accessed 31 October 2017); The University of Sydney, 'Bachelor of Engineering Honours (Civil)' <<https://sydney.edu.au/courses/courses/uc/bachelor-of-engineering-honours-civil.html>> (accessed 31 October 2017).

<sup>15</sup> Obtaining 'chartered' status allows individuals to use the postnominals CPEng. Engineers Australia maintain a register of Chartered Engineers that the public may access. 'Registered' status is gained by satisfying the requirements of the National Engineering Registration Board ('NERB') to attain National Professional Engineering Registration ('NPER') status or by satisfying the requirements of the Board of Professional Engineers Queensland ('BPEQ') to attain Registered Professional Engineer Queensland ('RPEQ') status. Queensland has the only formal legislation covering the registration of Professional Engineers. Becoming 'registered' is like becoming licensed to practice professional engineering. Registration for either NPER or RPEQ requires satisfying the same defined competency standards, agreeing to maintain those competencies by CPD and committing to similar ethical standards as for becoming Chartered. However, individuals do not have to join Engineers Australia or become 'chartered' to become 'registered'. Both Boards are independent of Engineers Australia': see Tom Goldie, 'Professional Registration for Engineers: What Is the Difference between Chartered and Registered?', *SPE News Australasia* (2013) <<http://www.spenewsaustralasia.org/article.aspx?p=1&id=1979>> (accessed 31 October 2017).

<sup>16</sup> NSW Rural Doctors Network, 'Registration Pathways – Social Workers' <<https://www.nswrdn.com.au/site/index.cfm?display=286432>> (accessed 31 October 2017).

<sup>17</sup> See Hugh Breakey and Charles Sampford, 'National Exams as a Tool for Improving Standards: Can Australian Financial Advisers Take a Leaf from the Professionals' Book?' (2017) 40 *University of New South Wales Law Journal* 385, 390-5.

## Organisations Determining Qualifications to Practice

Professions, by their very nature, usually involve some form of legal regulation to ensure protection of clients through a statutory arrangement to oversee entry to the profession, professional conduct and maintenance of professional standards.<sup>18</sup> There are various types of regulatory models adopted for monitoring entry to the professions and continuing registration provisions throughout the life of the professional: self-regulation, government statutory regulation, co-regulation and meta-regulation.<sup>19</sup>

In modern practice, many professionals work across state boundaries and provide professional services across national and international markets. Other professionals shift their mode of work in response to changing demand for their services or to take advantage of a broader range of employment opportunities and new technologies. These shifts have led to changes in the organisations that determine qualifications to practice, including by adopting national systems of registration.<sup>20</sup>

These different models give rise to an array of systems and organizations that determine the qualifications to practice.

## Health

Within Australia, a major system of professional registration and accreditation has been set up for the health professions. In July 2006, the Council of Australian Governments ('COAG') agreed to establish a single national registration and accreditation scheme and in March 2008 signed an Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions ('IGA') which set out the principles of the scheme.<sup>21</sup>

In the case of registered health professions, Australian Health Practitioner Regulatory Agency's ('AHPRA') operations are governed by the *Health Practitioner Regulation National Law Act (2009)* in force in each state and territory. This law sees 14 health professions regulated by nationally consistent legislation under the National Registration and Accreditation Scheme. AHPRA supports the 14 National Boards that are responsible for regulating these health professions.<sup>22</sup> The primary role of the National Boards is to protect the public through setting standards and policies that all registered health practitioners must meet. Each Board has entered into a health profession agreement.<sup>23</sup> The National Registration and Accreditation Scheme

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<sup>18</sup> Professions Australia, 'Blueprint for National Registration of the Professions' <[http://www.professions.com.au/images/PDFs/Blueprint\\_for\\_National\\_Registration\\_of\\_the\\_Professions.pdf](http://www.professions.com.au/images/PDFs/Blueprint_for_National_Registration_of_the_Professions.pdf)> (accessed 31 October 2017) 14. The Professional Standards Council ('PSC') is a statutory regulator that relies on meta-regulation.

<sup>19</sup> John Chellew and Alex Roberts, 'Structural Types of Professional Regulation: Comparative Case Studies in Australia and the UK' (Working Paper presented at the Australia Research Council/UNSW Centre for Law, Markets and Regulation Symposium on 'Modern Professional Practice and Its Future', Sydney, 3 March 2016).

<sup>20</sup> On the benefits of these, see Professions Australia, above n **Error! Bookmark not defined.**, 3.

<sup>21</sup> Australian Health Practitioner Regulation Agency, above n **Error! Bookmark not defined.**

<sup>22</sup> Australian Government Department of Health, 'National Registration and Accreditation Scheme ('NRAS')' <<http://www.health.gov.au/internet/main/publishing.nsf/content/work-nras>> (accessed 31 October 2017). Professions currently regulated under the NRAS are: Aboriginal and Torres Strait Islander health practice; Chinese medicine; chiropractic; dental practice; medicine; medical radiation practice; nursing and midwifery; occupational therapy; optometry; osteopathy; pharmacy; physiotherapy; podiatry; psychology. The national regulation of paramedics is underway and their registration as a registered profession under the Act is expected to be finalised by the end of 2018.

<sup>23</sup> Australian Health Practitioner Regulation Agency, above n **Error! Bookmark not defined.**

('NRAS') for health practitioners commenced on 1 July 2010 and has been established by state and territory governments through legislation in all jurisdictions.<sup>24</sup>

## Law

To practise as a lawyer in Australia, a candidate must be admitted to practice by the Supreme Court of an Australian state or territory, and then obtain a practising certificate, generally issued by the local legal professional body.

Similar to the *National Health Practitioner Regulation National Law Act*, the *Legal Profession Uniform Law* ('*Uniform Law*') commenced in NSW and Victoria on 1 July 2015 to create a common legal services market across NSW and Victoria.<sup>25</sup> The scheme aims to harmonise regulatory obligations while retaining local performance of regulatory functions.<sup>26</sup> The *Uniform Law* regulates the legal profession across the two jurisdictions, governing matters such as practising certificate types and conditions, maintaining and auditing of trust accounts, CPD requirements, complaints handling processes, billing arrangements and professional discipline issues.<sup>27</sup>

The *Uniform Law* creates two regulatory bodies: The Legal Services Council and the Commissioner for Uniform Legal Services Regulation, who also acts as CEO of the Legal Services Council.<sup>28</sup> Together these bodies set the policy framework for the new scheme and refine the way it operates by:

- Making rules about how the scheme operates
- Issuing guidelines and directions to local regulatory authorities to make sure the law operates consistently across jurisdictions
- Advising Attorneys-General on any potential amendments.<sup>29</sup>

To take an example from outside this scheme, in Queensland, the Legal Practitioners Admissions Board is the body responsible for making recommendations to the Supreme Court in respect of applications for admission to the legal profession in Queensland. It is a statutory body established under the *Legal Profession Act 2007* (Qld). The Board's primary role is to consider the eligibility (academic qualifications and practical legal training) and suitability (good fame and character) of applications for admission at a local, domestic and international level. In conjunction with the Chief Justice of Queensland, the Board plays a role in approving academic and practical legal training courses offered by universities and educational institutes in Queensland. The Board's duties also include a consultative aspect, in that it considers proposals

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<sup>24</sup> All State Parliaments have passed enabling legislation for the *Health Practitioner Regulation National Law Act* (2009). Each health profession that is part of the National Registration and Accreditation Scheme is represented by a National Board. All Boards are supported by AHPRA in the framework of a Health Profession Agreement.

<sup>25</sup> This arrangement encompasses almost three quarters of Australia's lawyers.

<sup>26</sup> Law Society of New South Wales, 'A New Framework for Practising Law in NSW' <<http://www.lawsociety.com.au/ForSolicitors/professionalstandards/Ruleslegislation/nationalreform/index.htm>> (accessed 31 October 2017).

<sup>27</sup> Law Society of NSW, above n **Error! Bookmark not defined.**

<sup>28</sup> Law Society of NSW, above n **Error! Bookmark not defined.**

<sup>29</sup> Law Society of NSW, above n **Error! Bookmark not defined.**

suggested by other stakeholders such as the Judiciary, the Legal Admissions Consultative Committee, the Queensland Government and the legal profession.<sup>30</sup>

## Teaching

Regulatory bodies in each state and territory provide oversight for teaching in Australia. For example, the Education (*Queensland College of Teachers Act 2005*) establishes the Queensland College of Teachers ('QCT') as the regulatory body for the profession in Queensland.<sup>31</sup> The main roles of the regulatory bodies cover all aspects of the pathways to practice and continuing requirements for ongoing practice, including accrediting and monitoring initial teacher education programs, granting teacher registration and developing and applying professional standards.<sup>32</sup>

## Summary

For many professions, the pathway to practice follows a consistent route involving an approved program of tertiary study at the Bachelor or Masters level, a period of placement within a practicing organisation, ethics education, the professional exam and a 'fit and proper person' test. Continuing practice requires further elements, including conformity to regulation and ethical codes, and CPD. Many of these requirements are administered by professional bodies, often with roles and powers set down by statute, either at the state or federal level. However, significant variations to this template are possible, especially for less-established professions.

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<sup>30</sup> Queensland Law Society, 'Legal Practitioners Admissions Board' <[http://www.qls.com.au/Knowledge\\_centre/Admission\\_Board](http://www.qls.com.au/Knowledge_centre/Admission_Board)> (accessed 31 October 2017).

<sup>31</sup> Queensland College of Teachers ('QCT'), 'Registration' <<http://www.qct.edu.au/registration>> (accessed 31 October 2017).

<sup>32</sup> QCT, above n **Error! Bookmark not defined.**. The role also includes supporting research and review relevant to the profession and promoting the teaching profession. See also, NSW Education Standards Authority, 'Teacher Accreditation: Check Qualifications' <<http://educationstandards.nsw.edu.au/wps/portal/nesa/teacher-accreditation/how-accreditation-works/your-accreditation/overseas-teachers/qualifications>> (accessed 31 October 2017); Victorian Institute of Teaching, 'Registering as a Teacher' <<http://www.vit.vic.edu.au/registering-as-a-teacher>> (accessed 31 October 2017).