



VICTORIAN BAR

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## GUIDANCE NOTE

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# LIST COMMITTEE ANNUAL WRITTEN STATEMENTS (LICENSING CRITERIA FOR CLERKS)

### Guidance Note 1 - Issued by the Bar Council under the *Clerking Regulations 2020*

1. The purpose of this Guidance Note is to provide guidance as to the matters that may assist a list committee in the provision of information of its written annual statement to the Bar Council as referred to in regulation 27 of the *Clerking Regulations 2020* (**the Regulations**).
2. For the purposes of a list committee's determination as to whether a clerk satisfies, and will continue to satisfy, the licensing criteria in regulation 9 of the Regulations, the following matters may be relevant:
  - (a) As to whether the clerk is a 'fit and proper' person (see regulation 9(a) of the Regulations):
    - (i) whether the clerk and each person engaged by the clerk is appropriately trained in:
      1. the clerking business or relevant part thereof;
      2. the content and application of the Regulations or any applicable law in relation to trust money; and
      3. the standards reasonably expected of a clerk or a clerking business; and
    - (ii) whether the clerk's business systems and processes are adequate for the purpose of providing an accurate and complete records of the clerk's:
      1. dealings with members of the list and third parties; and
      2. financial transactions engaged in by the clerk whether as agent for members of the list or on the clerk's own account; and
    - (iii) whether the clerk has appropriate internal controls in place to receive and pay out barristers' money and to transact the business of the list, specifically considering whether duties of staff involved in transaction processing are appropriately segregated and/or independently oversighted;

- (iv) whether investigation of any reports of non-compliance with the Regulations or any applicable law in relation to management of trust money have failed to be satisfactorily resolved;
  - (v) whether investigation of any reports of impropriety in the clerk's dealings with members of the list, the list committee and/or third parties have failed to be satisfactorily resolved; and
  - (vi) whether the clerk has complied in a timely way with reasonable directions or requests made by the list committee; and
- (b) as to whether the clerk's business is financially viable (see regulation 9(b) of the Regulations):
- (i) whether the clerking business is and is likely to continue to be generally profitable, based on historical earnings and estimates of future maintainable earnings;
  - (ii) whether the clerking business requires or may require injections of capital or additional finance in the foreseeable future; and
  - (iii) whether there are foreseeable financial or business risks which are not able to be managed in the ordinary course of its business operations; and
- (c) will be able to provide adequate services as a clerk (see regulation 9(c) of the Regulations):
- (i) whether the clerk offers and provides to members of the list the range and quality of services reasonably required or expected by them; and
  - (ii) whether the clerk has systems in place to deal with complaints by members of the list and whether complaints have been adequately dealt with.

*This Guidance Note was issued by the Bar Council on 21 May 2020*