

GUIDE TO EMPLOYMENT IN THE LEGAL PROFESSION

May 2006

GUIDE ONLY**GUIDE TO EMPLOYMENT IN THE LEGAL PROFESSION**

The council of the Law Society, with the assistance of its Workplace Committee and its Young Lawyers' Committee has approved this guide to matters which may be considered for inclusion in contracts of employment or employment policies applying to solicitors, law graduates, law students or paralegals.

Aim

This guide has been produced in response to membership inquiries regarding the sorts of matters that may be included in employment contracts.

The aim of this guide is to provide a basis for discussion and negotiation between legal service providers and employees about terms and conditions of employment (in New South Wales). This could take place either before employment commences or when considering any proposed variation to the employee's terms and conditions of employment.

While there is significant variation in the size, needs and resources of legal service providers, the Law Society and Young Lawyers encourage the open communication of expectations and desires of all parties. It is hoped that such consideration and discussion will assist in fostering and encouraging a positive and professional work environment, and lead to productive, fulfilling and lasting employment in the legal profession.

This guide updates and replaces any previous publications of the Law Society concerning terms and conditions of employment in the legal profession.

Format

This guide is divided into three parts. Part I provides some background information on employment law in New South Wales. Part II considers terms and conditions that may be included in employment contracts. Part III deals with other considerations relating to the employment contract which may be included in employment policies.

Important qualifications

The Law Society, being a representative of both employers and employees, does not and cannot require members to include particular provisions in contracts of employment or employment policies. This guide is not a legal document nor is it intended to create a code or standard for employment.

The matters addressed in this guide are not exhaustive and parties are free to negotiate their own terms. The general suggestions included in this guide are not intended to be a substitute for legal advice. The individual circumstances of each employment relationship require specific consideration and the employment contract drafted accordingly. Therefore, both parties may wish to seek legal advice from other legal practitioners with experience in the employment law field prior to executing any employment contract. For example, an employer may wish to seek advice as to the drafting of the contract and an employee may wish to obtain advice as to the content of the contract and its terms. After receiving advice the parties may wish to negotiate further prior to finalising the contract.

PART I - THE LEGAL FRAMEWORK

- 1.1 The terms and conditions of Australian employees are regulated by a combination of contracts, the Australian Fair Pay and Conditions Standards (“**AFPCS**”), industrial awards and agreements, against a backdrop of state and federal legislation and the common law of employment. A short introduction to these areas follows.

Contracts

- 1.2 In any employment relationship there is a contract of employment, the terms of which are written, oral, implied, or a combination thereof. The fact that an agreed term or condition is not documented does not prevent it from becoming a term or condition of the employment.
- 1.3 While there is no legal requirement for an employment contract to be in writing it is usually helpful in avoiding uncertainty to have at least the key terms and conditions of employment properly recorded.
- 1.4 Part II of this guide considers the matters which may be included in a contract of employment for a solicitor, law graduate, law student or paralegal.

AFPCS, industrial awards and agreements

- 1.5 From the time that the Federal Government introduced the “Work Choices” amendments to the *Workplace Relations Act* 1996 (Cth) on 27 March 2006, many employees became automatically covered by the Federal System. If the employer is a corporation, the employee is almost certainly covered by the provisions of the Workplace Relations Act (“the **WR Act**”). If the employer is the typical solicitors’ partnership, the employee would be covered by the NSW State system unless a Federal Workplace Agreement (“**WA**”) has been agreed and lodged under the Federal system. WAs include both collective agreements and Australian Workplace Agreements (“**AWA**”). The latter agreement is one between an employer and a single employee.
- 1.6 If covered by the WR Act, an employee is entitled to the AFPCS minimum conditions, consisting of:
- minimum rate of pay and casual loadings;
 - maximum ordinary hours of work of 38 hours per week with provision for payment for reasonable additional hours;
 - annual leave of four weeks per annum;
 - paid personal/carer’s leave of 10 days per annum (including sick leave) and 2 days paid compassionate leave per annum;
 - 12 months unpaid maternity, paternity or adoption leave.
- 1.7 AFPCS, industrial awards and agreements set out minimum terms and conditions of employment for employees who come within the terms of those instruments. It is not possible to contract out of an AFPCS or Award. However, if a WA is negotiated and lodged with the Office of the Employment Advocate (“**the OEA**”) it will completely displace any underlying Award, with the possible exception of protected Award conditions. If a WA is contemplated it is advisable to obtain legal advice in relation to these issues.
- 1.8 Solicitors employed by law firms are not covered by any industrial award, however, other employees who are employed in the legal industry may be covered by such instruments.

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Paralegals, undergraduate law students or graduates performing paralegal work (but who do not come within the definition of a Graduate-at-Law as defined in the *Graduate-At-Law (State) Award*) are likely to be covered by the *Clerical and Administrative Employees Legal Industry Consolidated (State) Award* (“**the Clerical Award**”). Where an employee is employed by a corporation, an employee will be covered by the WR Act, the AFPCS and some of the terms and conditions of the Clerical Award as a Preserved State Award.

The Clerical Award is expressed to apply to clerical and administrative employees employed by solicitors, solicitor corporations, solicitor service companies, solicitor service partnerships and solicitor service trusts in the state of New South Wales. At its highest, the type of employees covered by the Clerical Award are those who can acquire and apply a knowledge of professional legal functions under direct supervision as a clerk by being able to interview clients, draft documents, instruct on standard legal matters, attend court and advise clients on basic legal issues.

The *Graduate-At-Law (State) Consolidated Award* applies to law graduates who are Graduates-at-Law, being persons who have completed a course of study which is recognised as an academic qualification for admission by the Supreme Court of New South Wales and who is registered as a student of a Practical Legal Training Course listed in the Fourth Schedule of the Legal Practitioners Transitional Admission Rules 1994 in force under the *Legal Profession Act 2004* (“the Graduate-At-Law Award”).

Again, if any of the firm’s employees are employed by a corporation, those employees will be covered by the WR Act and the AFPCS.

- 1.9 Government and corporate lawyers may be covered by industrial awards or agreements that apply specifically to those enterprises, including the *Crown Employees - Legal Officers (Crown Solicitor’s Office, Legal Services Commission, Office of the Solicitor for Public Prosecutions and the Clerk of the Peace and Parliamentary Counsel’s) Award*.

Legislation

- 1.10 The employment relationship may also be affected by a range of legislative duties included in a variety of statutes and regulations, such as the:

State:

- (a) *Annual Holidays Act 1944 (NSW)*;
- (b) *Anti-Discrimination Act 1977 (NSW)*;
- (c) *Employment Protection Act 1982 (NSW)*;
- (d) *Industrial Relations Act 1996 (NSW)*;
- (e) *Industrial Relations (General Regulation) 2001 (NSW)*;
- (f) *Legal Profession Act 2004 (NSW)*;
- (g) *Legal Profession Regulation 2005 (NSW)*;
- (h) *Long Service Leave Act 1955 (NSW)*;
- (i) *Occupational Health and Safety Act 2000 (NSW)*;
- (j) *Occupational Health and Safety Regulation 2001 (NSW)*;
- (k) *Restraints of Trade Act 1976 (NSW)*;
- (l) *Workers Compensation Act 1987 (NSW)*;
- (m) *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*;

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(n) *Workplace Injury Management and Workers Compensation Regulation 2002 (NSW);*

(o) *Workplace Surveillance Act 2005 (NSW);*

Commonwealth:

(p) *Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Cth);*

(q) *Age Discrimination Act 2004 (Cth);*

(r) *Copyright Act 1968;*

(s) *Disability Discrimination Act 1992 (Cth);*

(t) *Racial Discrimination Act 1975 (Cth);*

(u) *Sex Discrimination Act 1984 (Cth);*

(v) *Human Rights and Equal Opportunity Act 1986 (Cth);*

(w) *Workplace Relations Act 1996 (Cth); and*

(x) *Workplace Relations Regulations 1996 (Cth).*

1.11 Please note that this is not an exhaustive list of the legislation and regulations which may affect the contract of employment.

The common law of employment

1.12 The common law of employment has the effect that certain terms and conditions of employment, such as the employee's duty of good faith and fidelity and the employer's duty to provide a safe workplace, are automatically implied into the employment contract. A written contract may contain express terms which exclude common law implied terms e.g. an express notice period may override the implied common law entitlement of an employee to be provided with reasonable notice of termination. Please note that implied common law duties are not static and are a developing area of the law.

PART II - EMPLOYMENT CONTRACTS

For employees employed by a corporation, the AFPCS will form part of the employee's contract of employment, except if:

- the employment is subject to a State or Federal workplace agreement which was in force before 27 March 2006; or
- if the employment is subject to a State or Federal Award which contains more generous provisions, in which case the latter applies.

The AFPCS is referred to further below, where appropriate.

The types of matters that may be included in a contract of employment are:

(a) The identity of the Employer and Employee

This is particularly important where employees are employed by a service company. The identity of the employer is also important for determining whether the State or Federal industrial system applies in relation to matters concerning the employment relationship. If the employer is a corporation, the employee is covered by the Federal system.

(b) Date of Commencement

Stipulating the date of commencement of employment avoids any doubt that the date from which leave entitlements such as annual leave and long service leave are to be calculated.

(c) Position Description

The position to which a person is appointed may be stated in the contract of employment (e.g. summer clerk, law graduate undertaking practical legal training, solicitor, associate etc), together with a description of the duties to be performed and the responsibilities of the position. The employer may wish to annex a description of the duties of the position, e.g. to enable an employer to move an employee between departments, areas of practice, on and off secondment or to other locations. A position description may be a useful reference for both parties to refer to when considering matters such as job performance and job development.

(d) Fixed term/Indefinite Employment

Employers are required by relevant state and federal industrial laws to keep a record of the status of an employee's employment, indicating whether the employee is employed in a full-time, part-time or casual capacity. As such, if an employee is only to be employed for a fixed term or for a specified project this should be stated in the contract. In the absence of such a provision, employment will usually be considered to be of indefinite duration, subject to notice of termination by either party.

Casual employees are employed on a day-to-day basis with no guarantee of continuing employment. However the courts and tribunals have afforded some casuals greater security of tenure where employment is regular and systematic and/or the employee has a reasonable expectation of ongoing employment.

Given the very technical approach which has been adopted by the Federal and State industrial relations systems in relation to fixed term employment,

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employers may wish to obtain specialist legal advice when engaging employees on fixed term or contracts of employment.

(e) Probation Period

With the exception of casual employment, it has become customary for employers to insert probation periods in offers of employment. To be effective, the duration of the probationary period must be agreed upon prior to the commencement of the employment contract. The probation period readily accepted by the NSW and Australian Industrial Relations Commissions is three months, with review either during or just prior to the end of the probationary period. Unless the clause creating the probation period so allows, it is not possible to extend a probation period.

The relevant Commissions will only sanction a probation period longer than three months in circumstances where such further period is reasonable having regard to the nature and circumstances of employment. These criteria may be difficult to satisfy given the nature of the typical legal employment relationship. It would be advisable for any employer contemplating a probation period greater than three months to seek legal advice in relation to his issue. The period of notice to be given by either party during the probationary period may be a lesser period than the notice that applies if employment extends beyond the probationary period.

For those employees employed by corporations, the WR Act makes an employee's employment subject to a 6 month qualifying period. This qualifying period can be reduced by agreement between the employer and an employee. If the qualifying period is not reduced, an employee who is employed by a corporation employing more than 100 employees, who has not worked for an employer for more than 6 months, will not be able to bring an unfair dismissal claim against their employer if their employment is terminated.

(f) Hours of Work

Parties may wish to include indicative hours of work in a contract of employment where long or irregular hours may be required from time to time (e.g. because of the nature of the work or the need to meet the requirements of clients).

Disputes and disagreements about hours of work may be avoided if the employee understands what may be required before accepting an offer of employment.

If there is any allowance to be made for working long or irregular hours (e.g. additional leave or time off in lieu or more flexible working hours) such arrangements may be formalised in the contract of employment or under an employment policy (see Part III).

With respect to those employees covered by AFPCS, industrial awards and agreements (as outlined in clauses 1.5-1.9 of Part I) regard must be had to the treatment of hours of work, overtime and related clauses in these instruments. The AFPCS provides that the maximum ordinary hours of work an employer can require an employee to perform is 38 hours, plus reasonable additional overtime.

(g) Right to Perform Other Employment

An employee's rights (or otherwise) to perform legal or other work for third parties can be set out in the contract, as well as the extent of those rights, if applicable.

GUIDE ONLY**(h) Remuneration**

A contract of employment typically contains a remuneration clause which sets out the employee's salary and superannuation entitlements. There is a minimum wage for employed solicitors, in the relevant AFPCS but it is a safety-net minimum. Those employees covered by industrial awards and agreements (as outlined in clauses 1.5-1.9 of Part I) will also have minimum wage requirements which will need to be satisfied. While employers can always pay their employees above the minimum, they cannot pay them any less than what is stated in the relevant AFPCS or industrial instrument.

Salaries for employees with the same level of post-admission experience tend to vary based on the size and location of their employer and the employee's ability and area of practice. The Law Society conducts regular surveys of salary levels and remuneration packaging for employed solicitors in various types of firms, locations and practice areas.

The level of superannuation contributions which the employer is required to make in order to avoid a tax penalty is prescribed under the *Superannuation Guarantee (Administration) Act 1992* (Cth) and is currently 9% of ordinary time earnings.

Other benefits may be expressed as forming part of the employee's remuneration package or simply as benefits that are in addition to salary and superannuation entitlements. Other benefits may include mobile telephone allowance, parking and toll allowance, university or course fees and so on.

Any reservation by the employer of a right to make deductions from the employee's remuneration may be set out in this clause.

Administrative details such as how and when salary and other benefits are to be paid may also be included in the contract.

If there is a bonus or incentive scheme in place the quantum, timing and criteria for payment (including whether payments under the scheme are fixed or discretionary and whether the employees must still be employed, at the time the bonus or incentive is payable) may be noted in the contract, either under the remuneration clause or in a separate provision. If the bonus or incentive scheme is referred to in the remuneration clause, it is typically qualified by the statement that, subject to any applicable law (e.g. annual leave and long service leave statutes), bonus and incentive payments do not form part of the employee's remuneration for the purposes of calculating the employee's other entitlements under the contract. The details of bonus or incentive schemes, if extensive, may be annexed as a schedule to the contract or as an employment policy (see Part III).

For those employees employed by corporations, the provision of sporadic bonuses and incentives, awarded by the Company at its complete discretion, will not be counted towards satisfying the minimum wage requirement under the AFPCS. This is because the employee's '*basic periodic rate of pay*' definition in the WRA, expressly excludes incentive-based payments and bonuses.

(i) Salary Reviews

Contracts may provide for ongoing salary reviews. While the frequency of such reviews may vary, this commonly occurs on a yearly basis or on the employee's admission as a solicitor. Where the employer has formalised criteria for reviewing salaries, such as the employee's performance against

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budget, the performance of the firm as a whole or post-admission experience, it may be appropriate to state this criteria in an employment policy which can be distributed and explained to the employee (see Part III).

(j) Performance Reviews and Feedback

Having a regular appraisal and feedback process in place may assist in making employees aware of their progress. Formal performance reviews can also allow employees to raise and discuss any concerns they may have such as workloads, career development, training and so on.

(k) Career Training

Formal arrangements for career development may be included in a contract or a separate employment policy. Similarly any training provided or funded by the employer, such as training to satisfy the practical legal training course requirements, specialist accreditation and so on may be formalised in the contract of employment or a separate employment policy (see Part III).

(l) Compliance with Legal Practitioners Act Duties and Other Statutory Duties

The contract may contain a clause requiring that the employee comply with all requirements of the *Legal Profession Act 2004 (NSW)*, Solicitors Rules as well as any other applicable legislation, regulations or ethics which govern the legal profession.

(m) Termination of Employment

It is important to state the means by which either party can bring the employment relationship to an end. In circumstances of serious misconduct, the employment relationship may be terminated without notice. It is advisable to include a term to this effect in the contract of employment. Care should be taken in dismissing an employee on this basis and it is advisable to seek legal advice prior to doing so.

In all other circumstances termination of employment is normally done by way of a specified period of notice or by the employer making a payment in lieu of notice. The parties may wish to outline in the contract the basis upon which any payment in lieu of notice will be calculated (e.g. whether it is to be based on salary or total remuneration package). This will avoid any ambiguity.

The WR Act sets out the minimum notice entitlements for employees whose total remuneration does not exceed the statutory cap. This figure is subject to indexation on 1 July each year.

An express notice period (e.g. one month) is also required to override the implied contractual duty for employers and employees to provide reasonable notice of termination (see Part I). At common law, the amount of notice of termination must be reasonable in all of the particular circumstances of the employment having regard to a number of factors including, but not limited to:

- (i) the employee's length of service,
- (ii) the employee's seniority and age,
- (iii) the employee's ability to secure alternative employment; and
- (iv) the manner in which the employment relationship has come to an end (e.g. redundancy, resignation, serious misconduct etc).

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With respect to those employees covered by industrial awards and agreements (as outlined in clauses 1.5-1.9 of Part I) regard must be had to the treatment of termination of employment and redundancy in these instruments.

While award free employees do not have any minimum redundancy entitlement prescribed by law, the parties may wish to look to the scale of redundancy payments provided under the *Employment Protection Act 1982 (NSW)* as forming the basis for negotiation on this issue.

Quite apart from their strict legal entitlements, employees in New South Wales, who are not employed by corporations, with a total remuneration package less than the requisite statutory caps applying to unfair dismissals and unfair contracts may seek enhanced notice and redundancy payments exceeding their statutory minimum, contractual or common law entitlements on the basis of fairness by way of application under the unfair dismissal (s84) or unfair contract (s106) provisions of the *Industrial Relations Act 1996 (NSW)*. Subject to a number of exceptions, if employed under the Federal system, unfair dismissal claims can be made if an employee is employed by a company which employs more than 100 employees.

(n) Sick Leave

Non-award employees do not have any minimum entitlement to paid sick leave if employed under the New South Wales system. Employees employed by corporations under the Federal system have an AFPCS guarantee of 10 days paid personal/carers leave. This entitlement accrues on an annual basis. However, an employee cannot take any more than 10 days carer's leave per annum, regardless of how much personal/carers leave they have accrued. There is no limit on the number of accrued days of personal sick leave an employee can take per annum.

It is advisable for employment contracts to outline details of sick leave entitlements. If the parties so desire, provisions similar to those contained in an award, such as the Clerical Award, may be inserted.

With respect to those employees covered by industrial awards and agreements (as outlined in clauses 1.5-1.9 of Part I) regard must be had to the treatment of sick leave in these instruments. Casual employees receive a casual loading in place of sick leave and other leave entitlements.

(o) Annual Leave

The *Annual Holidays Act 1944 (NSW)* (“**the AH Act**”) provides for twenty days paid annual leave per year of employment. The Federal AFPCS provides a similar minimum entitlement for those employees who are employed by corporations. However, the AFPCS entitlement accrues on a monthly basis, whereas the entitlement under the AH Act accrues on the anniversary of the employee's service.

Any annual shut down of the workplace (that is, a period of compulsory annual leave where a whole workplace or section closes for a period of time, for example over the Christmas/New Year period), should be specified in the contract. Annual leave loading (usually at the rate of 17.5%) is not compulsory for non-award employees and may not apply for those employees employed under the Federal system if the employees agree. Therefore whether such an entitlement is included in the contract is usually up to the parties.

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With respect to those employees covered by the Federal AFPCS industrial awards and agreements (as outlined in clauses 1.5-1.9 of Part I) regard must be had to the treatment of annual leave in these instruments. Casual employees usually receive a casual loading in place of annual leave.

(p) Long Service Leave

The contract may outline the employee's long service leave entitlements. The *Long Service Leave Act 1955 (NSW)* provides for two months leave after ten years of continuous service, and in some cases a pro rata entitlement after five years' service. This continues to be the entitlement of NSW based employees even if they also fall under the Federal industrial relations system.

(q) Study Leave

If an employee is undertaking further study (for example a Masters Degree or other training courses) the parties may wish to negotiate a period of study leave and include a provision to this effect in the contract. The Graduate-at-law Award provides up to 3 hours paid study leave per week in order for graduates to attend continuing practical legal training. Apart from award provisions, paid or unpaid study leave is not a mandatory entitlement but may be provided for under a contract or employment policy (see Part III).

(r) Compassionate/Bereavement Leave

Employees employed under the Federal system are entitled to paid compassionate leave of up to two days each time a member of the employee's immediate family or household dies or has a life threatening illness or injury.

Bereavement leave is a standard condition in most NSW industrial awards. Therefore, with respect to those employees covered by NSW industrial awards and agreements (as outlined in clauses 1.5-1.9 of Part I), regard must be had to the treatment of bereavement leave in these instruments. While bereavement leave is not compulsory for award free employees (other than employees covered under the Federal industrial relations system), if the parties agree to its inclusion, provisions similar to those contained in an award, such as the Clerical Award, could be inserted.

(s) Parental Leave

Under the AFPCS, employees are guaranteed 12 months unpaid paternity and maternity leave, after an employee has completed at least one year of continuous service with the employer. It is suggested that employers make themselves aware of their requirements in this regard. Paid parental leave is not compulsory at the time of publication of this guide (see Part III).

(t) Personal/Carer's Leave

Employees covered by the Federal industrial relations system have an AFPCS minimum entitlement up to 76 hours (10 days) paid personal/carer's leave per annum.

Other parties may also wish to make provision for personal/carer's leave. Carer's leave is a standard condition in most NSW industrial awards. Therefore, with respect to those employees covered by NSW industrial awards and agreements (as outlined in clauses 1.5-1.9 of Part I) regard must be had to the treatment of personal/carer's leave in these instruments. While personal/ carer's leave is not compulsory for award free employees (other than Federal employees), if the parties agree to its inclusion, provisions similar

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to those contained in an award, such as the Clerical Award, or the Federal AFPCS, may be inserted.

(u) Legal Professional Costs (e.g. Practising Certificate, Professional Development, Insurance etc)

Legal practitioners are required to meet certain ongoing costs such as those associated with holding a practising certificate at all times during the employment relationship. It can be of assistance in avoiding uncertainty and disputes for the employer and the employee to clearly identify who is to bear the following types of costs, and any conditions that may be attached to the payment of these costs:

- (i) practising certificate (restricted or unrestricted, as applicable),
- (ii) professional indemnity insurance,
- (iii) other professional association memberships,
- (iv) mandatory CLE,
- (v) specialist accreditation courses,
- (vi) practice management courses, and
- (vii) practical legal training costs.

These issues may be dealt with in the contract or under an employment policy (see Part III).

(v) Other Expenses

An employer is responsible for reasonable expenses incurred by the employee in the course of employment, such as travel expenses to and from court, court copying costs and so on. However, if the employer has an expense reimbursement procedure that it wishes the employee to follow, particularly with regard to some less direct expenses such as home telephone or entertainment expenses, this may be specified in the contract or a separate employment policy (see Part III).

(w) Restraints of Trade

Some employers, in order to protect their businesses on the departure of employees, insert restraints of trade in contracts. Any such provision must be carefully drawn so as not to be excessive or unreasonable, and so as to be acceptable to both parties. Regard should be had to the *Restraints of Trade Act 1976 (NSW)* and the remedies available to employees at common law and under the unfair contract provisions of the *Industrial Relations Act 1996 (NSW)* when drafting such clauses. It may be wise to seek specialist legal advice in relation to this issue.

(x) Confidentiality of Information

Some employers, in order to better protect the confidentiality of their information, require employees to provide undertakings as to confidentiality in their contracts of employment. If so, what information is to be regarded as confidential should be outlined in the contract.

(y) Transfer of Moral and Intellectual Property/Rights

Where applicable an appropriate provision dealing with moral and intellectual property/rights which might become vested in the employee as a

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consequence of employment can be included. Regard should be had to Part IX of the *Copyright Act 1968 (Cth)*.

(z) External Interests/Conflict of Interest

Where there is a potential for a conflict of interest such as where an external activity or interest (paid or unpaid) of an employee may conflict with the employee's work commitments the parties may wish to discuss and agree upon appropriate boundaries and record that agreement in the contract of employment.

(aa) Special clauses for law graduates, law students and paralegals

The special issues which arise for these employees are as follows:

- (i) as indicated in clauses 1.5-1.9 of Part I, it is likely that these employees would be regarded as having minimum entitlements under the applicable AFPCS or Award (for example with respect to hours of work, meal breaks, overtime, meal allowance, shift work, public holidays, payment of salaries, termination, redundancy, travelling expenses and so on). Therefore, with respect to these employees regard must be had to the treatment of such matters in the applicable industrial instrument;
- (ii) if the employee is a summer clerk or law graduate hired for a fixed period of time it may be desirable to agree upon the date when the employee can expect to receive notification of whether they will be offered permanent employment with the employer;
- (iii) the employer should be aware that a law graduate may need to count service with the employer towards practical legal training requirements which are required to be completed as a condition of admission. If so, then in accordance with the requirements of the Legal Practitioners Admission Board, the employer must monitor, supervise and train the employee in all aspects of the employer's legal practice in order to ensure the employee's eligibility for admission as a competent legal practitioner;
- (iv) if the employer agrees to pay for the employee's practical legal training, the parties may wish to consider the arrangements to be put in place in the event that the employee fails practical legal training or has employment terminated within a certain period of being provided with practical legal training;
- (v) the employer may wish to ascertain the date from which the employee intends to be admitted as a solicitor;
- (vi) the employee may wish to ascertain whether they will receive a pay rise upon admission.

(bb) Execute and Date Contract

After the terms of the contract has been negotiated and set out in writing, both parties should sign and date the contract prior to its commencement date. Each party should retain a copy of the contract for their records.

(cc) Miscellaneous

It is common for contracts to contain miscellaneous clauses concerning the manner in which they may be varied, disclosure of personal information of employees, the governing law of the contract and the fact that the contract

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overrides all previous contracts and negotiations concerning the subject matter of the contract.

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- 3.1 There are a number of employment related issues that are more likely to be expressed in an employment policy rather than a contract of employment.
- 3.2 The contract may contain a provision to the effect that the employee is required to comply with employment policies as varied by the employer from time to time. Alternatively, the employer may rely on its right to require employees to comply with its lawful directions and thereby minimise the risk that by referring to policies in the contract it is somehow importing those policies into the terms and conditions of employment.
- 3.3 The types of employment policies that are issued to employees can vary from employer to employer but may potentially include any of the following policies:
- (a) anti-discrimination and equal opportunity policy;
 - (b) policies condemning bullying in the workplace, consistent with the Law Society's definition of bullying, being "unreasonable and inappropriate workplace behaviour which comprises behaviour that intimidates, offends, degrades, insults or humiliates a worker, possibly in front of co-workers, clients or customers and which includes physical or psychological behaviour". (For more information on this issue please refer to the Law Society's paper '*Strategies to Eliminate Inappropriate Workplace Behaviour*', a copy of which may be obtained from the Law Society.);
 - (c) bonus/incentive policy;
 - (d) casual dress policy;
 - (e) career path/training policy;
 - (f) employee assistance policies (e.g. counselling);
 - (g) expense reimbursement policy (including after-hours meals and after-hours transport);
 - (h) internet, email and computer use policy;
 - (i) non-smoking policy;
 - (j) occupational health and safety and rehabilitation policies;
 - (k) paid parental leave policy;
 - (l) privacy policy;
 - (m) professional development policy (including study leave, payment for practical legal training, continuing legal education, specialist legal accreditation and practice management courses);
 - (n) professional responsibility policy (including payment of practicing certificate and professional indemnity insurance fees);
 - (o) redundancy policy;
 - (p) salary review policy;
 - (q) travel policy (including policy on accumulation of frequent flyer points); and
 - (r) work/life balance and flexible working hours policy (including time off in return for working irregular hours, arrangements for working flexible hours, part time

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work, job share, working from home and the resources required to facilitate working from home).