

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

ADMINISTRATIVE LAW

Time: Three Hours This paper consists of **three** questions.

Candidates are required to attempt **Part A, and ONE question only from Part B.**

Part A is worth 60 marks, and all questions in Part B are of equal value (20 marks each).

If a candidate answers more than the specified number of questions in Part B, only the **first** question attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

PART A

Question 1

Answer ALL parts of this Question

Question 1

Stella McMurphy is an applicant for elective health services under the *Public Access to Cosmetics Act 2013* (PAC Act). The objects of the PAC Act are: “public funds and resources will be devoted to cosmetic procedures that are deemed to be necessary, reasonable, and efficient. A panel will grant access to services based on these principles”.

Due to her busy lifestyle Stella has difficulty meeting deadlines and following application procedures. *Public Access Cosmetics Regulations* state:

1. All applicants for cosmetic procedures must apply on or before the first business day of July in the year preceding the year in which services are desired to occur;
2. No late applications will be considered.
3. Only one application will be processed in an 18 month period.

Stella has an important social event on her calendar as she will be step-mother of the bride at the end of 2014. She submits an application for cosmetic procedures on 15 July 2013.

She receives a letter stating that her application will be considered for the intake year 2015, having been submitted on or before 1 July 2014.

Stella speaks by telephone to a clerk in the PAC office. She enquires whether there has been a typographical error and whether it was intended to refer to an intake year of 2014. The clerk says “Oh, not you again! You applied last year for a knee lift and we rejected your application because you didn’t give us all the necessary information. This year, you’re out of time for 2014. In any case, you’re barred from submitting a claim for 2014 under regulation 3. We’ve told you over and over what the procedures are, and have given you every chance. I’ve a good mind to have the 2015 application thrown out for nuisance value”.

Stella can barely remember that she attempted to submit an application in 2012, when her application, for a knee lift, was rejected as being incomplete. For the present application, she prepares a full suite of documents in support. This includes copies of the wedding invitation, photos from her family album, and testimony from her family and friends telling of the important role which Stella will play at her step-daughter’s wedding and her need to look her best at this event. She submits a statement saying that as the wedding is in 2014, it is imperative that she be granted an extension of time to submit the application, and that the intake year of 2015 is too late for her to meet this pressing need.

(Question 1 continues)

Stella receives a letter from the Convenor, PAC panel headed: "Preliminary decision concerning your application under the PAC":

Dear Ms McMurphy, the panel under the PAC Act has convened, and has determined that you have submitted a valid application for the 2015 intake year. The panel notes that your previous application in 2012 was processed and therefore you are not eligible to submit an application for the 2014 intake year. In any case, having regard to regulation 3, the panel never extends the time for an application and you are out of time for the 2014. This decision is final and no correspondence will be entered into.

- a) Advise Stella whether she has validly submitted an application as prescribed under the Act and Regulations. Is it correct that her application in 2012 "was processed"?
- b) Assuming that Stella has a valid application before the PAC office, advise her whether she has been treated fairly, and if not, what are her rights and avenues of review in relation to any decisions that have been made.

(60 marks)

PART B

Attempt ONE (1) question only in this part.

Question 2

Explain the nature and purpose of privative clauses. What are the pros and cons of such clauses, from the government's perspective, and from the perspective of affected parties? Cite examples and case law in your answer.

(20 marks)

Question 3

How important is freedom of information to the wider administrative law regime? In your answer, please refer to the objects and purpose of the FOI Act, as these have been amended by the *Australian Information Commissioner Act 2010* and the *Freedom of Information Amendment (Reform) Act 2010*. What other avenues exist to obtain government information? When would FOI access be preferable to alternative avenues?

(20 marks)

END OF PAPER