

Foreign Lawyers Review Steering Committee

Terms of Reference 15 June 2018

1. Overview

1.1 The Legal Services Council (**LSC**) Admissions Committee has determined to review the operation of legislation and rules relating to the admission of foreign qualified lawyers in New South Wales and Victoria (**Review**).

1.2 To that end the Admissions Committee has established a Foreign Lawyers Review Steering Committee (**Steering Committee**).

1.3 To practise Australian law, a person must hold a current Australian practising certificate.¹ Practising certificates can only be conferred on a person admitted to the Australian legal profession.² To be admitted, a person must obtain a compliance certificate from the Legal Profession Admission Board in NSW (**LPAB**) or the Victorian Legal Admissions Board in Victoria (**VLAB**), together the **Boards**.

1.4 The critical step for a foreign qualified lawyer in this process is the granting of a compliance certificate from the LPAB or the VLAB.³ That process is governed by the following legislative instruments and agreements:

- (i) *Legal Profession Uniform Law Application Act 2014* (Vic) Sch 1 and the *Legal Profession Uniform Law (NSW) (2014)* (**Uniform Law**),
- (ii) Legal Profession Uniform Admission Rules 2015 (NSW) (**Admission Rules**),
- (iii) Uniform Principles for Assessing the Qualifications of Overseas Applicants for Admission to the Australian Legal Profession⁴ (**Uniform Principles**),
- (iv) Agreed Interim Procedures for Admitting Applicants Relying on Qualifications, Skills or Experience Obtained Outside Australia⁵ (**Agreed Interim Procedures**), and
- (v) NSW Admission Board Rules 2015 (NSW) and the Legal (Profession) Admission Rules 2008 (Vic),
- (vi) the *Legal Profession Uniform Law Application Act 2014* (NSW).

1.5 The Admissions Committee last reviewed the Admission Rules in 2014, with the current Admission Rules made in 2015.

2. Purpose and scope

2.1 In conducting the Review, and in light of the objectives of the Uniform Law, the Steering Committee will:

- (a) assess the appropriateness of the regulatory framework by which the Boards determine applications from foreign qualified lawyers for compliance certificates (**Regulatory Framework**), including an assessment of:
 - (i) sections 17 through 20 inclusive and s 440 of the Uniform Law,
 - (ii) the Admission Rules,
 - (iii) the Uniform Principles,

¹ *Legal Profession Uniform Law (Uniform Law)*, ss 6 and 10

² Uniform Law, ss 6 and 45

³ Uniform Law, s 19

⁴ As published by the Law Admissions Consultative Committee in August 2015, as revised in June 2017

⁵ As agreed between the Boards in April 2016

- (iv) the Agreed Interim Procedures,
 - (v) the NSW Admission Board Rules 2015 (NSW) and the Legal (Profession) Admission Rules 2008 (Vic),
 - (vi) the *Legal Profession Uniform Law Application Act 2014* (NSW) s 21.
- (b) assess whether current processes adopted by the Boards for determining applications from foreign qualified lawyers for compliance certificates are consistent with the Regulatory Framework,
 - (c) consider whether any recommendations to amend the Regulatory Framework should be made,
 - (d) consider whether the Regulatory Framework should be consolidated, including whether this should be achieved by amendments to the Admission Rules,
 - (e) consider whether it is desirable for a guideline or direction to be issued by the LSC to the Boards about the determination of applications for compliance certificates from foreign qualified lawyers, and if so, what such a guideline or direction should contain,
 - (f) consider the experience of Western Australia with conditional admissions in its trial held in the period 2009 to 2012,
 - (g) explore the basis for, the parties consulted and the utility of consultation in assessing applications for conditional admission,
 - (h) ascertain the weight (if any) given to the views of the consulted party by the admitting authority in assessing applications for conditional admission,
 - (i) examine the Uniform Law provisions pertaining to the grant or renewal of or the refusal to grant a practising certificate to a lawyer admitted with conditions, and
 - (j) examine the remedies available to the regulatory authorities when a legal practitioner breaches their conditions of admission.

3. **Governance and process**

- 3.1 The Steering Committee will comprise the Hon Justice A R Emmett, Chair of the Admissions Committee and the LPAB; The Hon Bernard Teague, Chair of VLAB; David Habersberger QC, Deputy Chair of VLAB; Ms Megan Pitt, CEO of the LSC; Mr Stuart Clark AM, member of the LSC's Admissions Committee; Ms Kristen Murray, VLAB Principal Policy Officer; and Ms Cora Groenewegen, LSC Policy Officer (Admissions).
- 3.2 The Steering Committee may consult with any stakeholder it sees fit, including stakeholders in jurisdictions outside the Uniform Law scheme as well as:
 - (a) Legal Profession Admission Board of NSW;
 - (b) Victorian Legal Admissions Board;
 - (c) Law Council of Australia;
 - (d) Australian Bar Association;
 - (e) Law Society of NSW;
 - (f) Victorian Legal Services Board + Commissioner;
 - (g) Law Institute of Victoria;
 - (h) NSW Bar Association;
 - (i) Victorian Bar Association;
 - (j) Law Firms Australia;
 - (k) CALD.
- 3.3 The Steering Committee will complete the Review by 30 September 2018.