

Consultation paper on the admission of foreign lawyers

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LEGAL PROFESSION
Uniform Law

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Introduction and background

Lawyers in New South Wales, Victoria and Western Australia are regulated under the Legal Profession Uniform Law (**Uniform Law**). It commenced in New South Wales and Victoria on 1 July 2015 and in Western Australia on 1 July 2022.

The Legal Services Council's (**Council**) Admissions Committee (**Committee**) has been exploring options to address concerns about barriers to the admission of foreign lawyers under the Uniform Law raised by foreign lawyer applicants for admission and law practices.

The Committee has also been considering ways to address uncertainty about the operation of conditional admission under s 20 of the Uniform Law.

Call for submissions

The Committee invites written submissions on:

- a proposed rule to amend the Legal Profession Uniform Admission Rules 2015 (**Admission Rules**) regarding the admission of foreign lawyers to the Australian legal profession, pursuant to s 426(3)(b), and
- a draft Council guideline on conditional admission of foreign lawyers under s 20 of the Uniform law.

Please send submissions to submissions@legalservicescouncil.org.au by 6 November 2023. Submissions may be published on the Council's website unless you ask for your submission to be treated as confidential.

Operation of the Uniform Law

Part 2.2 of the Uniform Law deals with admission to the Australian legal profession.

The Supreme Court of a participating jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer only if:

- (a) the designated local regulatory authority¹ has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force
- (b) the person is not already admitted to the Australian legal profession, and
- (c) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.²

The prerequisites for the issue of a compliance certificate in respect of a person are that he or she:

¹ Currently the Legal Profession Admission Board of NSW, the Victorian Legal Admissions Board and the Legal Practice Board in Western Australia. In the Admission Rules, these regulators are referred to as Boards and they are otherwise commonly referred to as the admitting authorities.

² Legal Profession Uniform Law, s 16(1).

- (a) has attained the academic qualifications specified under the Admission Rules (the specified academic qualifications prerequisite)
- (b) has satisfactorily completed the practical legal training requirements specified in the Admission Rules (the specified practical legal training prerequisite), and
- (c) is a fit and proper person to be admitted to the Australian legal profession.³

The specified prerequisites are set out at rules 5 and 6 of the Admission Rules.

Under s 18 of the Uniform Law, the designated local regulatory authority may exempt a person from satisfying the specified academic qualifications prerequisite or the specified practical legal training prerequisite or both, if it is satisfied that the person has sufficient legal skills or relevant experience so as to render the person eligible for admission.⁴ The legal skills or relevant experience or both can be obtained in legal practice, in service with a government authority or in another way considered appropriate by the designated local regulatory authority. The legal skills or relevant experience can be obtained wholly in Australia or overseas or obtained partly in Australia and partly overseas.⁵

Section 20(1) of the Uniform Law provides that the designated local regulatory authority may recommend in a compliance certificate in respect of a foreign lawyer that the foreign lawyer be admitted subject to conditions of one or more of the following kinds:

- (a) a condition limiting the period of the foreign lawyer's admission
- (b) a condition requiring the foreign lawyer to undertake particular academic or practical legal training or both
- (c) a condition requiring the foreign lawyer to engage in supervised legal practice
- (d) a condition limiting the area of law in which the foreign lawyer may engage in legal practice
- (e) a condition otherwise restricting the foreign lawyer's practising entitlements.⁶

The admission of a foreign lawyer is subject to the conditions (if any) recommended by the designated local regulatory authority in the compliance certificate and those conditions may be varied or revoked.⁷

Proposed amendments to the Admission Rules

The Committee has refined earlier proposed amendments to the Admission Rules which were intended to provide clearer guidance for the admission of foreign lawyers. This work has resulted in the draft Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023 (**Draft Rule**).

A copy of the Draft Rule is attached (**Attachment A**).

If made, the Draft Rule would add a new rule 6A to the Admission Rules and replace the current rule 11.

³ Legal Profession Uniform Law, s 17(1).

⁴ Legal Profession Uniform Law, s 18(1).

⁵ Legal Profession Uniform Law, s 18(2).

⁶ Legal Profession Uniform Law, s 20(1).

⁷ Legal Profession Uniform Law, s 20(2)-(3).

Draft rule 6A – Exemptions from certain prerequisites

Draft rule 6A is intended to guide the discretion of the admitting authorities in relation to exemptions from the specified academic qualifications and practical legal training prerequisites under s 18 of the Uniform Law.

Draft rule 6A(2) draws a distinction between experienced and inexperienced foreign lawyers, using seven years of legal practice (including any qualifying period of supervision) as the relevant threshold. That threshold has been set in consultation with stakeholders and reflects the point at which a lawyer will represent a low risk to the public from a regulatory perspective and will generally rely less on their undergraduate studies as a resource for legal practice.

The draft rule provides that the Board must have regard to specific factors in respect of foreign lawyers who have at least seven years' experience. The Committee would welcome particular feedback on whether the nature of the applicant's level of responsibility in holding money on trust (draft rule 6A(2)(a)(iv)) should be included as one of these factors.

Draft rule 6A(3) sets out that for the purpose of determining the time that a foreign lawyer has engaged in legal practice in a foreign country, time spent working under the supervision of a foreign lawyer to fulfil a requirement for registration or authorisation to engage in legal practice in the foreign country is taken to be time spent engaged in legal practice if the legal system and regulatory framework of the foreign country are substantially equivalent to the legal system and regulatory framework of the Australian jurisdiction.

Draft rule 6A(4) makes it clear that the admitting authority is not prevented from considering other matters when deciding whether to grant an exemption under s 18 of the Uniform Law.

Draft rule 6A(5) provides that the admitting authority must provide reasons for refusing to grant an exemption under s 18 of the Uniform Law if requested to do so by the applicant.

Draft rule 11 – Admission directions about sufficiency of qualifications or training obtained overseas

Draft rule 11 is drafted pursuant to s 421(2)(f) of the Uniform Law, which provides that the Admission Rules may make provision with respect to applications for and the giving of directions by the admitting authority as to the sufficiency of qualifications or training obtained overseas and guidance as to the need (if any) to obtain further qualifications or training.

Draft rule 11(1) sets out that the following persons may apply to the admitting authority for a direction:

- (a) a person who has wholly or partially completed the academic requirements for registration or authorisation to engage in legal practice in a foreign county, or
- (b) a foreign lawyer.

Draft rule 11(2) sets out that the admitting authority may give a direction on whether the person's academic qualifications and practical legal training obtained overseas are sufficient to render the person eligible for admission and guidance as to what additional qualifications or training the person needs to acquire if the person's academic qualifications or practical legal training obtained overseas are not

sufficient. A note to this clause points to the operation of ss 18 and 19(3)(a) of the Uniform Law in relation to eligibility for admission, including that the admitting authority must be satisfied that the person has satisfied or is exempted from the prerequisites.

Draft rule 11(3) would require the admitting authority to provide reasons for giving a direction under rule 11 if requested to do so by the person.

Conditional admission

Sections 18 and 20 of the Uniform Law apply so that the admitting authority may:

- exempt a foreign lawyer from having to satisfy one or both of the specified academic qualifications and practical legal training prerequisites under s 18(1), and
- recommend that the foreign lawyer be admitted with conditions under s 20.

These conditions may include requirements for further academic or practical legal training under s 20(1)(b), including study or training that make up part of the specified prerequisites. In determining whether a foreign lawyer is eligible for an exemption, the admitting authority may have regard to the conditions which can be recommended under s 20(1). For example, it may be relevant that the foreign lawyer will be subject to supervision or limited to a particular area of law.

Given that there has been some uncertainty about the operation of s 20, the Committee has recommended to the Council that it consider issuing a guideline on the operation of ss 18 and 20 to support the admitting authorities in exercising those functions. Section 407(1) of the Uniform Law provides that the Council may issue guidelines or directions about the exercise of functions under the Uniform Law or the Uniform Rules (other than Chapter 5 functions) by local regulatory authorities.

Given that the content of the draft guideline is closely related to the proposed amendments to the Admission Rules, the Council has authorised the Committee to consult on the draft guideline even though there is no statutory requirement to do so.

A copy of the draft guideline is attached (**Attachment B**).

public consultation draft



New South Wales

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023

under the

Legal Profession Uniform Law

[*The following enacting formula will be included if this rule is made—*]

The Legal Services Council has made the following rule under the *Legal Profession Uniform Law*.

Chief Executive Officer, Legal Services Council

public consultation draft

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023 [NSW]

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023

under the

Legal Profession Uniform Law

1 Name of rule

This rule is the *Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023*.

2 Commencement

This rule commences on [*date to be determined*].

3 Authorising provision

This rule is made by the Legal Services Council under the *Legal Profession Uniform Law*, Part 9.2.

public consultation draft

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023 [NSW]
Schedule 1 Amendment of Legal Profession Uniform Admission Rules 2015

Schedule 1 Amendment of Legal Profession Uniform Admission Rules 2015

[1] Rule 6A

Insert after rule 6—

6A Exemptions from certain prerequisites

- (1) For the purposes of section 419(3) of the Uniform Law, this rule applies in addition to section 18 of the Uniform Law.
- (2) When considering whether to grant an exemption under section 18 of the Uniform Law to a foreign lawyer, the Board must have regard to the following—
 - (a) for a foreign lawyer who has engaged in legal practice in a foreign country for a total of at least 7 years—
 - (i) the extent to which the legal system and regulatory framework of the foreign country are substantially equivalent to the legal system and regulatory framework of this jurisdiction, and
 - (ii) the number of years the applicant has engaged in legal practice, and
 - (iii) the type of legal practice the applicant has engaged in, and
 - (iv) the nature of the applicant's previous work, including the applicant's level of responsibility and experience in holding money on trust,
 - (b) for a foreign lawyer who has not engaged in legal practice in a foreign country for a total of at least 7 years—the extent to which—
 - (i) academic qualifications completed by the lawyer to engage in legal practice in the foreign country are substantially equivalent to the specified academic qualifications prerequisite, and
 - (ii) practical legal training completed by the lawyer to engage in legal practice in the foreign country is substantially equivalent to the specified practical legal training prerequisite.
- (3) For the purposes of subrule (2), time spent working under the supervision of a foreign lawyer to fulfil a requirement for registration or authorisation to engage in legal practice in the foreign country is taken to be time spent engaged in legal practice if the legal system and regulatory framework of the foreign country are substantially equivalent to the legal system and regulatory framework of this jurisdiction.
- (4) Nothing in subrule (2) prevents the Board from considering other matters when deciding whether to grant an exemption under section 18 of the Uniform Law.
- (5) The Board must provide reasons for refusing to grant an exemption under section 18 of the Uniform Law if requested to do so by the applicant.

[2] Rule 11

Omit the rule. Insert instead—

11 Admission directions about sufficiency of qualifications or training obtained overseas—section 421(2)(f) of the Uniform Law

- (1) The following persons may apply to the Board for a direction under this rule—

public consultation draft

Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023 [NSW]
Schedule 1 Amendment of Legal Profession Uniform Admission Rules 2015

- (a) a person who has wholly or partially completed the academic requirements for registration or authorisation to engage in legal practice in a foreign country,
 - (b) a foreign lawyer.
- (2) The Board may give a direction about the following matters—
- (a) whether or not the person’s academic qualifications and practical legal training obtained overseas are sufficient to render the person eligible for admission,
 - (b) if the person’s academic qualifications or practical legal training obtained overseas are not sufficient to render the person eligible for admission—guidance as to additional qualifications or training that the person needs to acquire.
- Note—** Section 18 of the Uniform Law provides that the Board may exempt a person from satisfying the specified academic qualifications prerequisite or specified practical legal training prerequisite, or both, if the Board is satisfied that the person has sufficient legal skills or relevant experience so as to render the person eligible for admission.
- Under section 19(3)(a) of the Uniform Law, the Board may issue a compliance certificate for an applicant for the purposes of admission only if satisfied that the applicant—
- (a) has satisfied the specified academic qualifications prerequisite and the specified practical legal training prerequisite, or
 - (b) is exempted under section 18.
- (3) The Board must provide reasons for giving a direction under this rule if requested to do so by the person.

Legal Services Council Guideline

Conditional admission of foreign lawyers

1. This guideline is issued by the Legal Services Council to designated local regulatory authorities (**DLRAs**) exercising functions under s 20(1) of the Legal Profession Uniform Law (**Uniform Law**).
2. Under s 20(1), the DLRA may recommend in a compliance certificate that a foreign lawyer be admitted subject to one or more conditions of the kinds listed in s 20(1)(a)-(e) of the Uniform Law.
3. The DLRA may issue a compliance certificate under s 19(3) of the Uniform Law, including a certificate in which conditions are recommended under s 20(1), if it is satisfied that the foreign lawyer has either:
 - a. satisfied the specified academic qualifications prerequisite and the specified practical legal training prerequisite, or
 - b. been exempted under s 18 of the Uniform Law.

The DLRA must also be satisfied that the foreign lawyer is a fit and proper person to be admitted to the Australian legal profession.

4. The DLRA may, under s 18 of the Uniform Law, exempt a foreign lawyer from satisfying the academic qualifications prerequisite or practical legal training prerequisite, or both, if the Board is satisfied that the person has sufficient legal skills or relevant experience so as to render the person eligible for admission. The DLRA may take into account legal skills or relevant experience obtained in any way considered appropriate by the DLRA. They can be obtained wholly in Australia or overseas or partly in Australia and partly overseas.
5. In considering whether to grant an exemption to a foreign lawyer under s 18 of the Uniform Law, the DLRA must have regard to the matters set out in rule 6A of the Legal Profession Uniform Admission Rules 2015, extracted below.
6. In considering whether to grant an exemption to a foreign lawyer under s 18, the DLRA may have regard to any condition or conditions that may be imposed on the foreign lawyer's admission under s 20(1) of the Uniform Law.
7. A DLRA may therefore exempt a foreign lawyer under s 18 on the basis that it will also recommend in a compliance certificate that the foreign lawyer be admitted subject to one or more conditions specified under s 20(1) of the Uniform Law.
8. The conditions recommended in the compliance certificate may include the completion of particular academic or practical legal training, or both, pursuant to s 20(1)(b) of the Uniform Law.
9. These conditions may require the completion of subjects that make up part of the academic qualifications prerequisite referred to in s 17(1)(a) and/or part of the practical legal training prerequisite referred to in s 17(1)(b), notwithstanding that the DLRA has exempted the foreign lawyer from satisfying one or both of these prerequisites under s 18 of the Uniform Law.

Legal Profession Uniform Admission Rules 2015

[When made, rule 6A to be inserted]