



Law Council
OF AUSTRALIA

Admission of foreign lawyers

Legal Services Council

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About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2023 are:

- Mr Luke Murphy, President
- Mr Greg McIntyre SC, President-elect
- Ms Juliana Warner, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Ms Tania Wolff, Executive Member

The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Acknowledgements

The Law Council notes that submissions responding to the consultation paper have separately been made by the Law Society of New South Wales, the New South Wales Bar Association, the Law Institute of Victoria, and Law Firms Australia.

The views of these Law Council constituent bodies have been incorporated into this submission.

Submission

The Law Council of Australia welcomes and supports the purpose of the proposals outlined in the *Consultation paper on admission of foreign lawyers*.

Proposed Admission Rule 6A of the *Legal Profession Uniform Admissions Rules 2015* will address years-long concerns about the centrality and inflexible application of the “substantially-equivalent” approach to deciding eligibility for admission of experienced foreign legal practitioners, which has continued despite the introduction of section 18 *Legal Profession Uniform Law*.

The proposed Rule 6A reflects the policy intent of section 18 of the Uniform Law, as set out in the explanatory memorandum to the *Legal Profession Uniform Law Application Bill 2014* (Vic)—in particular, the emphasis on legal skills that are, or relevant experience that is, “sufficient” to ameliorate the “substantially equivalent” requirements imposed:

Section 18 allows the designated local regulatory authority to make exemptions from the academic qualifications or practical legal training prerequisites for a compliance certificate where the authority is satisfied that the applicant has sufficient legal skills or relevant experience obtained either in Australia or overseas or both, so as to render the applicant eligible for admission. It does not matter whether the skills and experience were obtained in legal practice, in service to a government authority or another way considered appropriate by the authority.

The intention of this section is to allow the designated local regulatory authority to ameliorate the requirements imposed on experienced foreign lawyers when seeking admission to the Australian legal profession.

Also, the proposed Legal Services Council Guideline to designated local regulatory authorities on conditional admission of foreign lawyers will give effect to the policy intent of section 20 of the Uniform Law, as set out in the explanatory memorandum:

Section 20 enables the designated local regulatory authority to recommend in a compliance certificate for a foreign lawyer that the lawyer be admitted subject to one or more of the conditions specified in the section. This section is intended to facilitate the entry of foreign lawyers to practise in Australia for a limited period of time or subject to appropriate supervision, training or other limitation.

Giving practical effect to the policy intentions of sections 18 and 20 of the Uniform Law, as set out in proposed Rule 6A and the proposed Legal Services Council Guideline, is a significant—and welcome—shift from the substantially-equivalent approach.

Set out below are matters the Law Council and constituent bodies have identified.

Admission and practising certificates

Barristers

The NSW Bar Association has observed that there is an additional step between admission and the grant of a practising certificate for a barrister: the Bar Examination. Uniform General Rule 13(3) provides that a matter that a designated regulatory authority may have regard to in considering whether an applicant is a fit and proper person to hold a practising certificate for a barrister is whether the applicant has successfully completed an examination required by the designated regulatory authority. Passing the Bar Examination is a prerequisite in section 50 of the Uniform Law to granting a practising certificate for a barrister with the statutory condition that the holder undertake a bar reading program.

Conditional admission

Early clarification will be needed about how conditions imposed on admission pursuant to section 20 of the Uniform Law will be monitored for compliance. The Law Council has previously expressed concern that conditional admission arrangements may unnecessarily add to the Court's administrative workloads. Consideration will need to be given to whether designated local regulatory authorities for admission or for practising certificates might be involved in the administration of conditions, noting that section 48(1) of the Uniform Law provides that it is a statutory condition of an Australian practising certificate that the holder must not contravene a condition that was imposed on admission.

Government lawyers

Proposed Rule 6A is directed to the case of a foreign lawyer who has engaged in legal practice in a foreign country, while section 18(2) of the Uniform Law also refers to relevant experience obtained "in service with a government authority or in another way considered appropriate". The Law Council suggests that consideration be given to developing an Admission Rule relating to granting an exemption under section 18 of the Uniform Law, or conditional admission under section 20, to government lawyers or government legal practitioners including those from another country.

The experience threshold

The view of the Law Council's constituent bodies is that five years rather than seven years is a more appropriate benchmark for drawing a distinction between experienced and inexperienced foreign lawyers.

The Law Council appreciates that a choice between five years and seven years is necessarily subjective, but it is important that whichever benchmark be set, it must not operate as a brightline in each and every case. There will inevitably be cases "at the margins" that need to be addressed.

Further, clarification will be needed about whether the seven years mentioned in draft rule 6A(2)(a) refers to a continuous period of being engaged in legal practice in a foreign country or whether it would be appropriate to consider aggregation of separate periods.

Trust monies

The Law Council agrees with the observations that an applicant's level of responsibility and experience in holding money on trust should not be a factor in proposed Rule 6A, noting that not all foreign lawyers will have engaged in legal practice where trust monies are involved; or where their law practice may have handled trust money but the applicant

was not required to. The better approach would be that, where a foreign lawyer anticipates managing trust money, admission would be subject to a condition that the required practical legal training be undertaken. This would be followed with additional practice management course conditions determined by the designated local regulatory authority for practising certificates.

Admission Rule 11 and compliance certificates

There is an apparent lack of clarity about the way in which the requirements for the issue of a compliance certificate under section 19(3) applies to a person given a direction under Rule 11 as to additional qualifications or training the person needs to acquire

Where a foreign lawyer (or a person who has wholly or partially completed the academic requirements for admission in a foreign country) is given, and subsequently satisfies, a direction as to additional qualifications or training, that person would be eligible for admission through a combination of academic subjects and practical legal training topics completed in both Australia and a foreign country.

However, both section 19(3)(a) of the Uniform Law, and the Note to proposed Admission Rule 11(2) make a clear distinction between satisfying the specified prerequisites (referred to in section 17 of the Uniform Law) and being exempted under section 18 of the Uniform Law. Further, Admission Rule 5(1) states that the specified academic qualifications prerequisite includes “successfully completing a tertiary academic course in Australia ... which includes the equivalent of 3 years’ full-time study of law”.

The Law Council suggests that the better view is that the eligibility of an applicant for admission in these circumstances is ultimately an exercise of the discretion in section 18 of the Uniform Law, on the basis of sufficient legal skills obtained partly in Australia and partly overseas.

Admission Rule 27—the dispensing power

Admission Rule 27 provides that the Board (the designated local regulatory authority) may, subject to any conditions it thinks fit, dispense with or vary any requirement of the Admission Rules if it is satisfied that to do so will not materially detract from any of the prerequisites for the issue of a compliance certificate set out in section 17 of the Uniform Law, or any other requirement of the Uniform Law or Admission Rules relating to the issue of a compliance certificate.

The combination of sections 18 and 20 of the Uniform Law, together with proposed Admission Rules 6A and Rule 11, provides a new approach to admission of foreign lawyers and persons who have wholly or partially completed the academic requirements for registration or authorisation in another country. In light of this, the Law Council suggests that the Admission Rules be amended to make clear that Rule 27 does not affect or limit Rule 6A or Rule 11.

The Uniform Principles

The Law Council notes that, following the introduction of new Admission Rules 6A and 11, and the Legal Services Council guideline on admission of foreign lawyers, the *Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission to the Australian Legal Profession* will need to be revised in light of the changed relevance of that document in the Uniform Law jurisdictions.