



**Email**

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Legal Services Council  
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Dear all

**Draft Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023 and draft guideline on the conditional admission of foreign lawyers**

Law Firms Australia (**LFA**) appreciates the opportunity to provide a submission on the draft Legal Profession Uniform Admission Amendment (Qualifications) Rule 2023 (**the draft Rule**) and the draft guideline on the conditional admission of foreign lawyers (**the draft Guideline**). LFA has previously provided comments to the Legal Services Council on these issues, either together or individually, on 16 November 2022, 6 May 2022, 30 July 2021, 20 September 2019, and 10 August 2018.

LFA represents Australia's leading multi-jurisdictional law firms, Allens, Ashurst, Clayton Utz, Corrs Chambers Westgarth, DLA Piper Australia, Herbert Smith Freehills, King & Wood Mallesons, MinterEllison and Norton Rose Fulbright Australia. LFA is also a constituent body of the Law Council of Australia, the peak representative organisation of the Australian legal profession.

By way of overarching comments, LFA: strongly supports the making of the draft Rule and the draft Guideline, and; appreciates both the commitment of the Legal Services Council and the Admissions Committee to resolving the issues identified in the original review of the admission of foreign lawyers. It is appropriate that the draft Rule and draft Guideline:

- recognise that the applications of experienced foreign practitioners should be assessed in light of their legal skills and experience in their country of practice, as opposed to only assessing the subjects undertaken by those practitioners in their study and practical legal training,
- preserve the broad discretion afforded to admitting authorities to direct that applicants for compliance certificates undertake further study or practical legal training,
- confirm that foreign lawyers may seek conditional admission and that conditions granted upon admission may include a requirement to undertake particular academic or practical legal training or both,<sup>1</sup>
- require that admitting authorities provide reasons for decisions when requested by applicants, and
- address issues identified in the drafting of key provisions in the Legal Profession Uniform Admission Rules 2015 (**the 2015 Rules**).

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<sup>1</sup> Uniform Law, s 20(1)(b).



Specific comments on the draft Rule and draft Guideline follow.

1. **The draft Rule**

The draft Rule, if made, would introduce a new r 6A and replace r 11 with an amended rule.

*Rule 6A: Exemptions from certain prerequisites*

Rule 6A would prescribe mandatory considerations that admitting authorities must take into account when considering whether to grant an exemption under s 18 of the Uniform Law to a foreign lawyer as follows:


- for applicants of at least seven years' experience, admitting authorities would be required to take into account specified factors related to an applicant's legal skills and experience, and
- for applicants of less than seven years' experience, admitting authorities would be required to take into account considerations that closely reflect those at extant rr 11(3)(a) and 11(3)(b) (being the 'substantial equivalence' test for academic qualifications and practical legal training).

LFA believes it is appropriate:

- that mandatory considerations relating to an applicant's legal skills and experience apply in respect of experienced applicants,
- that, by inclusion of proposed r 6A(3), time spent working under the supervision of a foreign lawyer to fulfil a requirement for registration or authorisation to practise law in a foreign country will count toward the seven year experience threshold if the legal system and regulatory framework of the foreign country are substantially equivalent to those in Australia,
- that, by the inclusion of proposed r 6A(4), admitting authorities retain a broad discretion with respect to granting exemptions, and
- that, by the inclusion of proposed r 6A(5), admitting authorities must provide reasons for refusing to grant an exemption to an applicant if requested to do so by the applicant.

As noted in respect of earlier draft amendments to the 2015 Rules however, LFA believes that the draft Rule would be improved by addressing the following three issues:

- The experience threshold of seven years' practice should capture those lawyers that have practised overseas for seven years or more in multiple jurisdictions. It is not unusual for practitioners in multinational firms to have been posted to more countries than one during their careers. LFA submits that such persons should have the benefit of the experienced lawyer considerations on the basis of practice arrangements in two or more countries. LFA would appreciate the Legal Services Council giving consideration to whether the draft Rule accounts for this situation.
- It is appropriate that admitting authorities be required to consider 'the nature of the applicant's previous work', but the benefit of including an applicant's 'experience in holding money on trust' is unclear for three reasons.



First, this concept is likely covered by the mandatory considerations to take into account the 'number of years the applicant has engaged in legal practice' (r 6A(2)(a)(ii)), 'the type of legal practice the applicant has engaged in' (r 6A(2)(a)(iii)) and 'the applicant's level of responsibility' (r 6A(2)(a)(iv)). If the handling of trust funds is a concern in relation to a specific application, then it is open to the admitting authority to recommend that a condition prohibiting the relevant lawyer from handling trust moneys until such as time as the lawyer completes appropriate training be imposed.

Secondly, trust money is referred to in different ways in different jurisdictions; for instance, the Solicitors Regulation Authority in the United Kingdom distinguishes between 'client money' and 'office money'.

Thirdly, many legal roles do not involve responsibility for trust funds, including in-house or government roles.

This mandatory consideration should either be omitted or, in the alternative, amended to state 'whether or not the legal practice the applicant has engaged in involved holding trust or equivalent money'.

- The experience threshold of seven years' practice should be reduced to five years' practice (including any training contract), as was originally proposed in the Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019.


It is important to note in this regard that establishing an experience threshold of five years' practice (including any training contract) would only require admitting authorities to take into account the considerations at r 6A(2) for relevant applicants; an admitting authority would not be obliged to grant an exemption to a foreign lawyer of five years' standing should the authority deem that it would be inappropriate to do so in light of the mandatory considerations and any other consideration the authority considers relevant.

Furthermore, by requiring 'the number of years the applicant has practised law' to be taken into account, the proposed mandatory considerations implicitly recognise that a foreign lawyer with less experience is less likely, all else being equal, to be granted an exemption than a foreign lawyer with more experience.

#### *Rule 11: Admission directions*

Proposed r 11 provides that a foreign lawyer, or a person who has wholly or partially completed the academic requirements for registration or authorisation to engage in legal practice in a foreign country, may apply to an admitting authority for a direction as to:

- whether the applicant's academic qualifications and practical legal training obtained overseas are sufficient to render the applicant eligible for admission, and
- where such qualifications or training are deemed insufficient, guidance as to the additional qualifications or training that the applicant needs to acquire to be eligible for admission.



It is presumed that, in practice:

- where an applicant's qualifications and training are deemed sufficient, the admitting authority will in most cases determine to grant the applicant an exemption under s 18 upon the applicant making a s 18 application, and
- where an applicant is determined to have insufficient qualifications and training, the applicant will in most cases be granted an exemption under s 18 once they have completed the additional qualifications and/or training stated in the relevant direction from the admitting authority and made a s 18 application.


It is also presumed that, in assessing the sufficiency or otherwise of an applicant's qualifications or training, such sufficiency must relate to whether an applicant satisfies the condition for the granting of a s 18 exemption; that is, whether the applicant 'has sufficient legal skills or relevant experience so as to render the person eligible for admission'. It cannot be the sufficiency of an applicant's qualifications or training so as to satisfy the specified academic qualifications prerequisite at r 5 of the 2015 Rules because such prerequisite requires a person to have, in part, completed a tertiary academic course in Australia that includes the equivalent of at least 3 years' full-time study of law. A foreign lawyer, or foreign law student, will not meet this condition unless they undertake a full law qualification in Australia, in which case they may be admitted in the usual way without applying for a direction under proposed r 11.

With these presumptions in mind, LFA supports the making of proposed r 11. In particular, it is appropriate: that the references to rr 5 and 6 from the extant r 11 have been omitted from the proposed r 11, and; that, by virtue of proposed r 11(3), an admitting authority must provide reasons for giving a direction if requested to do so by an applicant.

## 2. **The draft Guideline**

LFA believes that the Legal Services Council should issue the draft Guideline so as to resolve any uncertainty as to the operation of conditional admission framework. Furthermore, LFA does not have any suggested amendments to its terms. Paragraphs 1 through 5 inclusive accurately and succinctly outline the local admission process for foreign lawyers. Paragraphs 6 through 9 inclusive provide important assurances as to the interaction between the issuance of compliance certificates, the exemption power at s 18, and the power to recommend conditions on legal practice in a compliance certificate issued to a foreign lawyer under s 20.

It will be sensible to include the proposed r 6A considerations in the Guideline if and when proposed r 6A is made, as is provided for in the draft Guideline. LFA submits however, that should the making of proposed r 6A be delayed or rejected, the draft Guideline should still be published as soon as possible, albeit with appropriate amendments.



**Conclusion**

Thank you again for the opportunity to provide a submission on the draft Rule and the draft Guideline.

Please do not hesitate to contact me if the points above require clarification or if LFA can provide further information that will be of assistance.

Yours faithfully



**Mitch Hillier**  
Executive Director  
Law Firms Australia

