

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.