

QUESTIONS AND ANSWERS: AUSTRALIAN LEGAL EDUCATION AND BAR ADMISSIONS

by Murray Hawkins

FOREWORD

by Ross Ray QC, President of the Law Council of Australia

The Law Council of Australia is very pleased to introduce BAR EXAMINER readers to the Australian legal education and admission processes.

The Law Council is the national representative body of the Australian legal profession (representing approximately 50,000 Australian lawyers through their representative bar associations, law societies, and the large law firm group). The Law Council works for the improvement of the law and of the administration of justice and represents the Australian legal profession both nationally and internationally.

The Law Council has been active in promoting access to the Australian legal services market for overseas lawyers, and in working with the United States Council of

Chief Justices, the American Bar Association, and individual jurisdictions within the United States to improve opportunities for Australian lawyers both to practise Australian law in the United States and to be able to sit for bar admission in U.S. jurisdictions.

Australia and the United States have much in common in terms of their legal systems. The Law Council of Australia firmly believes that the ability of lawyers of both countries to offer seamless cross-border national and international legal services to their clients is an inevitable and worthwhile corollary of the increasingly globalised markets in which we practise. The following text is provided to give American bar examiners a general overview of the Australian legal education and admission processes in the hope that better understanding will lead to fewer obstacles to cross-border practice.

GENERAL REQUIREMENTS

Q:

How does a person become a legal practitioner in Australia?

A:

There is a two-stage process. The first stage is to be admitted to the legal profession. The second is to be granted a practising certificate.

To be admitted to the legal profession an applicant must demonstrate to an *admitting authority* that he or she:

has approved academic qualifications (typically an approved law degree from an accredited university); and

has completed an approved course of practical legal training, through an accredited institution or through an approved traineeship or articled clerkship; and

RECENT DEVELOPMENTS IN THE REGULATION OF AUSTRALIAN LAWYERS

Regulation of the legal profession in Australia is a function of the individual states and territories. While the federal Parliament can rely on other constitutional powers to support regulation of certain service providers, including legal services providers, it is acknowledged that these powers are limited and not plenary. In effect, each state or territory has the ability to make laws regulating the legal profession within that state or territory.

In the 1990s, legislative reforms were implemented in many states and territories to remove jurisdictionally based regulation of occupations and professions, which was seen as an impediment to free trade in services. Mutual recognition laws, as they were known, were designed to allow a person registered to carry out an occupation or profession in one state or territory to carry out the same occupation or profession in another state or territory without the need to undergo any further assessment by the local registration body as to the person's capability and fitness.

For legal practitioners, however, mutual recognition schemes were of limited success. Not all states enacted reciprocal legislation. A lawyer still had to be admitted (and have his or her qualifications assessed) in every state or territory in which he or she wished to practise. Also, differing admission standards between jurisdictions created a risk that a practitioner could use mutual recognition laws to "forum shop" and obtain admission and/or practising entitlements in any jurisdiction with different standards than those of his or her home jurisdiction. Furthermore, the admission rules in various jurisdictions were geographically restrictive—local admitting authorities would recognise qualifications only from local practical legal training courses or academic institutions.

Following a federal inquiry into national competition policy, the Council of Australian Governments decided in 1994 that reform of the legal profession was needed, with the objective of removing constraints on the development of a national market in legal services and developing other efficiency-enhancing reforms.

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is otherwise a fit and proper person to be admitted to the profession.

A person is admitted to the legal profession by the supreme court of a state or territory. The supreme court will consider the application and the recommendation or advice of the admitting authority about whether the applicant is eligible for admission and is a fit and proper person.

A person who has been admitted to the legal profession is generally called an *Australian lawyer*. He or she must then apply to a *regulatory authority* and be granted a *restricted* or *unrestricted practising certificate* before becoming legally entitled to engage in legal practice.

To be granted a practising certificate, an applicant must demonstrate to a regulatory authority that he or she:

is an Australian lawyer; and

is a fit and proper person to be granted a practising certificate.

A restricted practising certificate entitles the practitioner to engage in legal practice only under the supervision of a practitioner who holds an unrestricted practising certificate. Normally, a person must hold a restricted practising certificate for two years before becoming eligible to apply for an unrestricted practising certificate.

A person who has been granted a practising certificate is generally called an *Australian legal practitioner*.

LEGAL EDUCATION IN AUSTRALIA

Q:

Does Australia have professional schools that confer legal degrees? If not, how do students gain a legal education? Are there alternatives to the traditional legal education?

A:

Australia presently has 30 accredited university law schools that confer law degrees which meet the academic requirements for admission to the legal profession.

Universities in Australia are accredited through the internationally recognised Australian Qualifications Framework (AQF). (For more information on accreditation, see the sidebar on pages 18 to 19.)

An alternative to university-based legal education is provided by the New South Wales Legal Profession Admission Board, which offers a Diploma in Law to qualifying applicants who pass the Board's examinations in 17 compulsory and three elective law subjects. This course is tuitioned through the Law Extension Committee of the University of Sydney. The Diploma in Law satisfies the academic requirements for admission and has been retained in New South Wales as a pathway to legal practice for people (such as those in remote areas) who cannot otherwise attend a university campus to undertake full-time law studies.

Many Australian universities also offer legal education through external or distance-education programs to meet the needs of students who cannot otherwise attend university on a full-time basis.

Q:

What are the prerequisites for undertaking legal study?

A:

To gain admission to a university law program, an applicant who has completed secondary education in Australia would need to be placed approximately in the top 5% of secondary school graduates in terms of academic achievement. Overseas applicants generally need a qualification equivalent to

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The legal profession, through its national body, the Law Council of Australia, released a *Blueprint for the Structure of the Legal Profession* in mid-1994. The stated objectives were to enable lawyers admitted in any state or territory to practise law throughout Australia, to remove practising certificate barriers restricting lawyers from practising in more than one state or territory, and to enhance consumer protection by improving information about quality and costs for consumers of legal services.

The mutual desire by governments and the legal profession to create a truly national legal services market resulted in a Memorandum of Understanding¹ establishing the National Legal Profession Model Laws Project. This project aims to develop and implement agreed-upon uniform or consistent standards for the regulation of the legal profession and delivery of legal services in Australia, in the form of model legislation and regulations.² The key areas of focus for the project include:

- reservation of legal work;
- eligibility and suitability for admission;
- entitlement to legal practice, including the issuance of practising certificates;
- professional indemnity insurance;
- interstate legal practitioners and legal practice;
- practice of foreign law in Australia by foreign lawyers;
- fidelity cover, trust money, and trust accounts;
- publication of disciplinary action and exchange of information between regulators; and
- costs disclosure and assessment.

1 Signed in 2001 by the Standing Committee of (Federal, State, and Territory) Attorneys-General.

2 To be legislated as a *Legal Profession Act* in each state and territory.

ACADEMIC QUALIFICATIONS AND PRACTICAL LEGAL TRAINING REQUIREMENTS IN AUSTRALIA—GUIDELINES APPLIED IN THE ADMISSIONS PROCESS

Guidelines about qualifications for admission to the legal profession in Australia are determined by a committee known as the Law Admissions Consultative Committee. The charter of the Committee (which is commonly referred to as LACC) is to consider, conduct or encourage research upon, report upon, propose guidelines about, and express views to stakeholders about matters concerning qualifications for, or admission to, legal practice in Australian jurisdictions. These matters can be referred to LACC by the Council of Chief Justices, or can be matters examined by LACC on its own initiative.

The current membership of LACC is comprised of a judicial officer from the supreme court of each state and territory and is currently chaired by an eminent legal academic and practitioner. LACC also involves the legal profession (through the Law Council of Australia) and the law schools (through the Council of Australian Law Deans) in its meetings and deliberations.

Academic Qualifications

LACC has identified and described a core group of 11 prescribed areas of knowledge in which an applicant for admission must have demonstrated a satisfactory level of understanding and competence in attaining his or her academic qualifications. These are:

- Criminal Law and Procedure
- Torts
- Contracts
- Property
- Equity
- Company Law
- Administrative Law
- Federal and State Constitutional Law
- Civil Procedure
- Evidence
- Professional Conduct

Practical Legal Training Requirements

“Entry-level” lawyers must also undertake a course or program of practical legal training and demonstrate

competency in 10 areas before being considered eligible for admission and, subsequently, being licensed to hold themselves out to the community as legal practitioners.

Practical legal training equips academic graduates with a set of values and practical skills considered fundamental to all forms of legal practice, covering three focus areas:

- values—the manner in which a lawyer goes about using the law to achieve the client’s objectives;
- skills—what lawyers need to do to achieve a client’s objectives; and
- legal practice—core building blocks of legal practice, as well as some subjects relevant to a particular career path or area of specialisation.

The *National Competency Standards for Entry-Level Lawyers*, jointly developed by the Law Admissions Consultative Committee and the Australian Professional Legal Education Council, are used as guidelines by admitting authorities for approving practical legal training.

The competency standards incorporate 15 subject areas: one relating to values, four relating to skills, and 10 relating to specific areas of legal practice. Applicants for admission must demonstrate competence across each of the values and skills areas, together with five of the specified legal practice areas (three of which are also compulsory).

A summary of the competency areas is set out below.

1. VALUES AND SKILLS AREAS

Ethics and Professional Responsibility

An entry-level lawyer should act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community, and other lawyers.

The duties and obligations imposed by law on legal practitioners include duties to maintain confidentiality, to act competently and to maintain competence, to act honestly, not to mislead the court, and not to pervert the course of justice or the due administration of justice.

Lawyer’s Skills

An entry-level lawyer should demonstrate skills in oral communication, legal interviewing,

advocacy, negotiation and dispute resolution, letter writing, and legal drafting.

This competency standard applies to “composite” skills which require a lawyer to synthesise several generic skills and apply them in a specific legal context. Lawyers must be able to exercise skills such as communicating effectively, interviewing clients, writing letters, drafting other documents, negotiating settlements and agreements, facilitating early resolution of disputes, and representing a client in court.

Problem-Solving Skills

An entry-level lawyer should be able to investigate and analyse facts and law, provide legal advice, and solve legal problems.

This competency standard applies to analysing facts, analysing legal and practical issues, analysing law, interpreting statutes, giving advice, and solving problems in the context of legal practice. The elements within this competency standard are analysing facts and identifying issues, analysing law, providing legal advice, and generating solutions and strategies.

Work Management and Business Skills

An entry-level lawyer should be able to manage workload, work habits, and work practices in a way that ensures that clients’ matters are dealt with in a timely and cost-effective manner.

This competency standard applies to the exercise of good work habits in a legal practice to ensure that clients do not suffer loss or damage from a lawyer missing deadlines or neglecting matters, that clients are kept informed regularly and fully of the progress of their matters, and that clients’ matters are dealt with in a cost-effective manner.

Trust and Office Accounting

An entry-level lawyer should have a sound general knowledge of the significance of, and the principles governing, trust and general accounting in legal practice, and should have sufficient knowledge, skills, and values to maintain trust and general account records according to law and good practice, to the extent usually permitted and expected of an employed solicitor.

2. LEGAL PRACTICE SKILLS

Civil Litigation Practice

An entry-level lawyer should be able to conduct civil litigation in first-instance matters in courts of general jurisdiction, in a timely and cost-effective manner.

This competency standard applies to first-instance civil litigation in a local lower and a local higher court of an Australian state or territory, having general jurisdiction, and in the federal court. The means by which a dispute might be resolved include, but are not limited to, negotiation, mediation, arbitration, litigation, and expert appraisal.

Commercial and Corporate Practice

An entry-level lawyer should be able to conduct commercial transactions such as the sale or purchase of a small business. The lawyer should be able to set up standard business structures using entities such as companies, trusts, and partnerships; provide basic advice on finance and securities and the obligations of companies and their officers; and appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

Property Law Practice

An entry-level lawyer should be able to convey, lease, and mortgage real property, using the main system of land title operating in a state or territory. The lawyer should also be able to provide general advice on standard matters arising under legislation relating to land use in that state or territory.

The seven remaining legal practice areas are divided into two groups. Practical legal training must include one topic from each group, with the choice of topics depending upon the individual’s career preferences.

Group A

- Administrative Law Practice
- Criminal Law Practice
- Family Law Practice

Group B

- Consumer Law Practice
- Employment and Industrial Relations Practice
- Planning and Environmental Law Practice
- Wills and Estate Planning

the Australian Year 12 qualification and must also demonstrate English language proficiency.

There are also some alternative university entry schemes and programs based on, for example, professional or paraprofessional qualifications and mature-age or special tertiary admissions tests.

Some Australian law schools are moving to, or considering moving to, a graduate-only model for admission to law programs. The Melbourne Law School at the University of Melbourne, for example, has phased out its undergraduate law degree program and has introduced a graduate law degree program in its place. Applicants for the graduate law degree program must already hold or be in the final year of an undergraduate degree and are required to sit for the Law School Admission Test (LSAT) and submit a personal statement. The personal statement can include any previous work experience or extracurricular activity which is relevant to the study of law. Acceptance into the graduate law degree program is dependent upon academic results in previous tertiary studies, the score on the LSAT, and the personal statement, which assists the law school in deciding whether an applicant is suited to the graduate study of law and whether he or she is likely to succeed.

Q:

How long does the typical course of law study take?

A:

An undergraduate law degree program takes the equivalent of four years' study. Most students studying law in Australia as undergraduates complete combined degrees. Arts/Law, Commerce/Law, Business/Law, and Science/Law are the most common combinations, any of which gener-

ally extends the total period of study to a minimum of five years.

Graduates of another discipline are required to undertake the equivalent of three years' study of law, including coverage of the essential core areas of legal knowledge.

An Australian law degree is in substance very similar to the law degree in the United States. A student who undertakes a combined program is, by the time he or she reaches the fourth and fifth years, to all intents and purposes in the same position as his or her American counterpart doing a graduate J.D., even though the Australian law degree may in theory be characterised as an "undergraduate" degree. It is on this basis of de facto equivalence that a number of U.S. law schools have entered into exchange arrangements with Australian law schools involving mutual recognition of study undertaken in the other institution.

Q:

What are the main subject areas taught in legal education?

A:

Universities offer a range of legal subjects, depending on the pedagogical aspirations of the university and the expertise of its teaching staff. Admission to the legal profession requires law graduates to have satisfactorily completed 11 compulsory subject areas as part of their overall academic legal education. These are: criminal law and procedure, torts, contracts, property law, equity, company law, administrative law, federal and state constitutional law, civil procedure, evidence, and professional conduct.

The subject areas and course duration of legal education are based on the Australian Uniform Admission Rules set by the Law Admissions Consultative Committee (an advisory body established by the Australian Council of Chief Justices). These rules have been adopted by the admitting authority in every state and territory.

Q:

Do law students typically work in legal jobs while they are in school?

A:

There is no formal requirement. Students studying full time for an undergraduate degree typically start their legal study immediately or shortly after completing secondary education. Many law firms provide “summer clerkships” or employ graduates while they complete practical legal training. Also, many law schools offer part-time or distance-education programs to meet the needs of students who work while studying for their legal academic qualifications.

Q:

Is clinical education a part of a typical legal education? What does “practical legal training” mean and how does it differ from “academic legal training”?

A:

Practical legal training is a compulsory prerequisite for admission to the legal profession. Elements of practical legal training are integrated into the law program at some universities. By and large, practical legal training is done as a postgraduate program at a university, or through an approved institution other than a university, or by supervised workplace experience that complies with the admission rules.

All practical legal training programs involve a period of legal practice experience.

Practical legal training builds on knowledge, skills, and values acquired through academic training by equipping academic graduates with a set of values and practical skills considered fundamental to all forms of legal practice. Understanding and competence must be demonstrated across 10 subject areas. Ethics and professional responsibility, lawyer’s skills, problem solving, work management and business skills, trust and office accounting, civil litigation, commercial and corporate practice, and property practice are compulsory for all students. The ninth subject area must be administrative law practice, criminal law practice, or family law practice. The tenth subject area must be consumer law, employment and industrial relations, planning and environmental law, or wills and estates.

Some law schools offer clinical legal education as part of the law degree. Clinical legal education programs usually involve placement of students at a community legal center, which offers free legal assistance to disadvantaged people. Students interact with clients and are supervised by the community legal center’s legal practitioners and by law school academic staff.

Q:

What sorts of assessments of student knowledge and skills are conducted during the student’s legal education?

A:

Universities generally use both formative and summative assessment approaches to decide whether a student’s academic learning outcomes are of a standard commensurate with that expected of the holder of a law degree. The process involves

ACCREDITATION OF UNIVERSITIES AND LAW SCHOOLS IN AUSTRALIA

Australia accredits both its universities and their law schools.

Universities are accredited through the internationally recognised Australian Qualifications Framework (AQF). This is a national system of learning pathways endorsed by the Australian federal government and implemented through protocols agreed to by all Australian governments (federal, state, and territory). The criteria for accreditation of a university relates to teaching quality, scholarship, governance, and resources. Once accredited, a university and its law school become subject to a five-year rolling cycle of audits by the Australian Universities Quality Agency (AUQA). This is an independent, national body established by a ministerial council comprising the Education Ministers from all Australian governments to carry out rigorous and transparent quality audits of universities. The recurring audit process plays a crucial role in ensuring that universities that award law degrees do so at a high standard and meet the quality and law content requirements specified by admitting authorities.

University law schools are also subject to what is, in effect, a separate accreditation process by the state or territory admitting authority. This body decides which law degrees will be recognised as accredited in that state or territory. This decision is then generally embodied in legislation or regulations.

Initial accreditation of a law school typically entails a rigorous examination of the curriculum, library resources, and the number and qualifications of the teaching staff. This can be an annual process, at least until the law school is fully operational with a full complement of students in each year of the degree. As discussed above, the university and law school are then subject to the formal five-year rolling audit cycle undertaken by AUQA.

Although there is no single Australian counterpart of the American Bar Association that has responsibility for initial or ongoing accreditation, all accredited law schools also undertake or undergo additional review processes aimed at maintaining the quality of their accredited law degrees. In New South Wales, for example, accreditation

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progressive assessment during the learning period for each legal subject (which can involve both assignments and class participation) together with a formal examination at the conclusion of that learning period. Law schools also provide opportunities for students to engage in, for example, moot-ing and witness examination programs. Typically, the overall grade awarded for the subject is derived from the results of both forms of assessment.

An important aspect of demonstrating the effectiveness of a student's academic education is the requirement by admitting authorities for applicants for admission to lodge a letter from the dean of the law school certifying that the applicant has studied and passed examinations and in effect has been awarded an accredited law degree.

The assessment of knowledge and skills gained during the course of practical legal training usually involves written examinations, simulated legal transactions, oral examinations, and group activities.

BAR ADMISSIONS IN AUSTRALIA

Q:

Are Australian lawyers admitted nationally or to a particular state?

A:

Australian lawyers are admitted to the legal profession in one state or territory and that admission is recognised nationally. This is possible because of uniform standards of academic and practical legal education for admission, legislative uniformity about what is meant by a person's being "fit and proper" to be admitted to the legal profession, and the ability of the state and territory admitting authorities to exchange information.

Q:

What kind of agency is responsible for lawyer admissions? How many such agencies are there in the country?

A:

Formal admission is an inherent power of every state or territory supreme court.

Each state and territory has an *admitting authority* that typically comprises judges, legal practitioners, and, in some jurisdictions, other persons or office holders. Admitting authorities are concerned with ensuring that topic areas, components, and learning outcomes of approved academic and practical legal training courses meet the standards required for admission to the legal profession. Admitting authorities also ensure that appropriate standards are set to determine whether a person is a fit and proper person to be admitted to the profession.

In most states and territories the admitting authority is assisted by an independent *certifying body*. Its role is to assess whether an applicant satisfies all of the admission requirements, and to formulate a recommendation about whether a person should be admitted to the profession. No applicant is admitted to the profession until all of the strict criteria for admission are met.

Once admitted to the legal profession, an Australian lawyer must apply for and be granted a practising certificate, which confers the entitlement to actually engage in legal practice. Practising certificates are granted and renewed on an annual basis by a regulatory authority or licensing body which will need to be satisfied that the applicant or lawyer is or continues to be a fit and proper person to be granted or continue to hold a practising certificate.

must be confirmed by the admitting authority on an annual basis, following certification by the dean of compliance with the accreditation requirements and notification of any changes to the curriculum. In addition, established law schools undertake rigorous processes of regular internal review, often (and typically) by an external panel, or a panel with external members drawn from the legal profession or from other Australian (and overseas) law schools.

Further assurance of coverage of academic requirements, including coverage of the essential core areas of legal knowledge for each applicant for admission, is obtained by the admitting authority through a letter from the dean of the relevant university law school certifying the applicant's examination results and award of an accredited law degree.

Q:

Is there a bar examination that applicants must pass to show competence? If not, how do they demonstrate their competence? If so, how is the examination administered?

A:

Applicants for admission to the legal profession in Australia do not undergo a separate bar examination. Competence is demonstrated by attaining approved academic and practical legal training qualifications and through the assessment process undertaken as part of the admission process.

Q:

Is there a process for determining whether applicants have the proper character and fitness to practice law? If so, what form does this process take?

A:

An applicant for admission must demonstrate that he or she is a fit and proper person to be admitted to the legal profession. Certifying bodies and admitting authorities look to the applicant's fame and character. Applicants are required to provide written references and/or affidavits as to their character and suitability. Other matters are also taken into consideration and

include whether the applicant has (in Australia or a foreign country) engaged in legal practice when not entitled to do so, has been convicted for offences, or has been subject to disciplinary action in relation to legal practice or another occupation or profession, and whether the person is able to satisfactorily carry out the inherent requirements of legal practice.

The process of granting or renewing a practising certificate involves a similar consideration by the regulatory authority or licensing body to determine that the person is and continues to be a fit and proper person to hold a practising certificate.

Q:

Must applicants have an apprenticeship period before they are admitted to practice?

A:

The first practising certificate granted to a newly admitted Australian lawyer usually confers a limited entitlement to engage in legal practice. In general terms, the holder of a *restricted practising certificate* must engage in supervised legal practice for (usually) a minimum of two years before an *unrestricted practising certificate* will be granted. A regulatory authority or licensing body may also require a different period of supervised legal practice, or impose other conditions, depending on the circumstances.

Q:

Are there legal specialties in which an applicant can secure a special admission or a certificate? If so, how does that process work?

A:

A number of law societies provide specialist accreditation in areas including family law, criminal law,

personal injury, property law, wills and estates, mediation, and commercial litigation. Typically, specialist accreditation is available to a legal practitioner who has practised for at least five years and has spent the immediate past three years practising substantially in the area of specialisation.

Specialist accreditation can involve examinations, drafting exercises, simulated interviews, and advocacy and interview tests. The decision to grant specialist accreditation can involve senior practitioners, members of the bar, and academics. Renewal of accreditation usually requires continued legal practice in that area, together with a greater, more specialised focus in continuing professional development programs.

Q:

Once applicants are admitted to practice, how are they regulated and, if necessary, disciplined?

A:

Each state and territory has one or more regulatory authorities involved in regulating the legal profession and the provision of legal services. Depending on the jurisdiction concerned, regulatory functions are shared between the law society, the bar association, and/or an independent statutory regulator or board (such as a legal services commissioner).

Discipline of the legal profession is, ultimately, an aspect of the inherent power of the supreme court in each state and territory. It is treated seriously as a matter that bears on the reputation and standing of the legal profession and because of the importance placed on protecting consumers of legal services.

There are two key concepts underpinning complaints and disciplinary matters in Australia.

Unsatisfactory professional conduct is defined as conduct falling short of the standards of competence and diligence that the public is entitled to expect of a legal practitioner. The more serious concept is *professional misconduct*, which is unprofessional conduct involving a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence. Any conduct that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice is considered to be professional misconduct.

Complaints against legal practitioners are initially investigated by the relevant law society, bar association, and/or independent statutory regulator. A finding of unsatisfactory professional conduct can attract a fine and/or public reprimand and/or compensation order. If the investigation leads to a reasonable conclusion that the practitioner would be found guilty of professional misconduct, the matter is referred to an independent disciplinary tribunal. A finding by a disciplinary tribunal that there has been unsatisfactory professional conduct or professional misconduct can attract a range of orders by the tribunal. These include cancellation or suspension of the practitioner's practising certificate, imposing conditions on the practising certificate, a compensation order, or, in the most serious of cases, an order recommending to the supreme court that the person be removed from the roll (i.e., disbarred from the legal profession).

PRACTICE IN OTHER GEOGRAPHIC AREAS

Q:

Are Australian lawyers allowed to practice in more than one state? May they travel from state to state without

registration in the new state? If not, how do they become licensed in the new state?

A:

An Australian legal practitioner is required to obtain and annually renew his or her practising certificate in the jurisdiction in which the lawyer intends to solely or principally engage in legal practice. He or she is then entitled (without any further registration requirements) to engage in legal practice in every other Australian jurisdiction. The lawyer is required to hold professional indemnity insurance covering legal practice in each of those jurisdictions. A person who holds a practising certificate granted in one jurisdiction and who undertakes legal practice in another jurisdiction is referred to as an *Interstate Legal Practitioner* in that other jurisdiction.

Q:

Are Australian lawyers allowed to practice in other countries without additional admissions?

A:

An Australian lawyer who intends to practice law in another country will need to satisfy the requirements of that other country for admission to the profession and the right to engage in legal practice. The calibre of Australian legal education is such that our lawyers typically require only a small adjustment to satisfy admission requirements in other common law jurisdictions. Special arrangements are in place to enable most Australian lawyers to be admitted to practice in New Zealand, relying only on their Australian qualifications.

Q:

Does Australia have an equivalent to the American "Foreign Legal Consultant" registration? Are lawyers from other countries allowed to practice in Australia without additional admissions?

A:

Foreign lawyers who practice foreign law in Australia do not need to be admitted to the Australian legal profession, although registration requirements might apply as described below.

A foreign lawyer who practises foreign law in Australia on a fly-in/fly-out basis (i.e., for less than 90 days in total in any period of 12 months) need not register as a foreign lawyer in Australia. A foreign lawyer who intends to practise foreign law in Australia on a lengthier or permanent basis must register as an *Australian-registered foreign lawyer* in the Australian jurisdiction in which the lawyer intends to solely or principally practise foreign law.

A foreign-qualified lawyer who intends to practise Australian law in Australia will need to be admitted to the Australian legal profession and obtain a practising certificate before engaging in that legal practice. The admitting authority or certifying body will assess the extent to which overseas qualifications, practical legal training, experience, and personal suitability are comparable in terms of the subject areas, content, and standards applied to Australian-qualified lawyers. (For a brief description of those requirements, see pp. 14–15.) The admitting authority or certifying body will then make a recommendation about whether the foreign-qualified lawyer satisfies the Australian admission requirements. Typically, a foreign-qualified lawyer from a common law jurisdiction may

be required to satisfactorily complete studies in subject areas such as Australian Constitutional Law, Administrative Law, and Real Property Law. It is not unusual for admission to be granted subject to conditions. Similarly, the regulatory authority that grants practising certificates will determine whether an overseas-qualified lawyer should be granted a practising certificate. It is not unusual for a regulatory authority to impose conditions on a practising certificate. ■

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MURRAY HAWKINS is the Director of the National Legal Profession Project at the Law Council of Australia, a collaborative policy and law design project being undertaken by the federal, state, and territory governments of Australia, in consultation with the Law Council of Australia, and designed to introduce consistent standards in legal profession regulation in the states and territories of Australia. The project's goals include developing a national domestic legal services market, enhancing consumer protection, and facilitating the internationalisation of legal services.

Hawkins joined the Law Council of Australia in January 2007 following a lengthy career with the Australian Public Service involving policy, law, and administrative policy and systems design in the areas of taxation, superannuation, social security, retirement income policy, and family law reform. He holds qualifications in both law and accounting.