

Law Council of Australia

# Admission of experienced foreign legal practitioners

Policy Position

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Law Council  
OF AUSTRALIA

## Introduction

1. Attracting experienced foreign legal practitioners to the Australian legal profession is vital to the future growth and development of the Australian legal profession, and to enrich the range and quality of legal services available in Australia.
2. This policy position on the *Admission of Experienced Foreign Legal Practitioners to the Australian Legal Profession* sets out principles the Law Council of Australia regards as the appropriate framework for admission of experienced foreign legal practitioners to the Australian legal profession.
3. The Law Council calls upon foreign jurisdictions to adopt the same principles in their jurisdictions as the framework for admission of experienced Australian legal practitioners in those jurisdictions.

## Context

4. There is growing demand in Australia and internationally for experienced legal practitioners capable and authorised to practice law in multiple jurisdictions. Factors driving this demand include:
  - the need to support businesses to realise opportunities from bilateral and multilateral agreements that commit to liberalising domestic markets for goods and services;
  - the increasing need for specialist legal practitioners with experience and expertise in international markets, particularly in relation to financial markets, mergers and acquisitions, and infrastructure projects; and
  - increasing mobility and connectedness of people and families between nations, which will increase demand for cross-border legal services to support private and family-related transactions and needs.
5. For many years, the eligibility of an experienced foreign legal practitioner for admission to the Australian legal profession has been based on a policy of substantial equivalence of the foreign legal practitioner's original academic qualifications and training measured against those required of an 'entry-level' Australian applicant for admission.
6. The Law Council considers that entry-level qualifications and training should not be the benchmark against which to assess the suitability of an experienced foreign legal practitioner for admission as an Australian legal practitioner. The appropriate benchmark should be the foreign legal practitioner's current legal skills and experience, acquired through years of successful legal practice.
7. The Law Council notes that legal profession laws already provide for, or contemplate, this outcome by providing for exemptions from the entry-level academic and practical legal training prerequisites for the admission of foreign legal practitioners. This intention is further evidenced by legal profession laws providing for admission to the Australian legal profession being subject to conditions, including conditions relating to post admission training.
8. The Law Council calls upon jurisdictions to give full effect to the following policy principles:

## Policy Principles

- 1. The eligibility of an experienced foreign legal practitioner for admission to the Australian legal profession should be based on the sufficiency of the individual's legal skills and experience, having regard to the nature and extent of the legal practitioner's past, current and intended areas of legal practice.**
- 2. Substantial equivalence to entry-level qualification and training prerequisites must not be the benchmark to assess the eligibility of experienced foreign legal practitioners seeking admission in Australia.**
- 3. Where appropriate, conditions may be applied to an experienced foreign legal practitioner admitted to the Australian legal profession.**

## Explanatory Notes

### Principle 1

9. The appropriate basis for determining eligibility for admission to the Australian legal profession must be the sufficiency of the experienced foreign legal practitioner's legal skills and experience, developed and demonstrated over a period of years of successful legal practice. The focus must be on the circumstances and experience of the individual, not on predefined, determinative entry-level admission requirements.
10. Factors relevant to assessing an experienced foreign legal practitioner's eligibility for admission could include, for example: the length of time the foreign legal practitioner has engaged in legal practice; the legal system and regulatory framework of the country in which the foreign legal practitioner has engaged in legal practice; the areas of law and the type of legal practice the experienced foreign legal practitioner has engaged in; the nature and extent of experience in legal practice; and the nature of the foreign legal practitioner's intended legal practice as an Australian legal practitioner.
11. The Policy Position relates only to admission to the legal profession. It does not relate to the basis on which a practising certificate may be granted, which may be the subject of separate requirements.

### Principle 2

12. Admission to the Australian legal profession involves acquiring a base level of knowledge and practice skills across a broad range of subject areas and topics. Having acquired that base, a person will be regarded as eligible for *entry-level* admission to the legal profession, provided they are also a fit and proper person to be admitted. Once admitted to the Australian legal profession, an entry-level lawyer must, during the early years of actual legal practice, practice under the supervision and guidance of experienced legal practitioners.
13. An experienced legal practitioner possesses knowledge and skills that transcend and surpass those of an entry-level lawyer. An experienced legal practitioner necessarily develops a deeper understanding of the law, the legal process, their ethical duties and professional responsibilities, and the conduct of legal practice.

### Principle 3

14. The basis for admission of an experienced foreign legal practitioner to the Australian legal profession is that they possess sufficient legal skills and relevant experience to be eligible for admission. Thus, admission subject to conditions should not be viewed as a determination that the foreign legal practitioner lacks sufficient legal skills or relevant experience to be eligible for admission.
15. Instead, conditional admission should be viewed as a mechanism to assist a foreign legal practitioner, once admitted to the Australian legal profession, to transition to practising Australian law in his or her chosen field or area of legal practice.
16. Conditions attached to admission, which are tailored to the individual foreign legal practitioner, also serve the public interest in the administration of justice and protection of clients.
17. Conditions attached to admission may include, for example: undertaking post-admission training in particular aspects of Australian law or legal practice; practising for a period of time under the supervision of an established Australian legal practitioner; limiting the area of practice of Australian law; or limiting the nature of the work conducted, such as appearance work.
18. Foreign legal practitioners should be able to obtain training in particular aspects of Australian law or legal practice through bridging courses and 'practice-ready' training programs as an alternative to undertaking the equivalent of undergraduate tertiary study.