

PROTOCOL FOR THE EXCHANGE OF INFORMATION BETWEEN [STATE ADMITTING AUTHORITY] AND THE LAW COUNCIL OF AUSTRALIA

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BETWEEN

[STATE ADMITTING AUTHORITY]

And

THE LAW COUNCIL OF AUSTRALIA

Background:

A. [State Admitting Authority] and the Law Council of Australia recognise the mutual benefits inherent in the trans-jurisdictional mobility of legal practitioners.

B. [State Admitting Authority] and the Law Council of Australia agree that an essential part of any framework regulating the practice of foreign law or the admission of a foreign lawyer to practice local law is an ability to verify the qualifications and experience of that foreign lawyer.

C. In verifying the qualifications and experience of a foreign lawyer, it is essential that the local jurisdiction is fully informed as to that foreign lawyer's professional standing, including the status of any disciplinary proceedings involving that lawyer.

D. This document sets out the protocols which the Law Council of Australia and the [State Admitting Authority] consider appropriate for the exchange of information relevant to foreign lawyers seeking admission as a foreign legal consultant or to the practise of law in a local jurisdiction.

E. These protocols are not intended to be legally binding but are intended to record a process which the signatories believe is capable of implementation on a voluntary and reciprocal basis by the relevant regulatory authorities in the spirit of co-operation and advancement of the interests of the legal profession.

PROTOCOLS

1. In these protocols:

- (a) "local jurisdiction" means the jurisdiction in which a foreign lawyer is seeking to register as a foreign legal consultant or to practise the law of that local jurisdiction;
- (b) "local lawyer" means a lawyer registered in the local jurisdiction;
- (c) " foreign lawyer" means

- (i) a graduate of an Australian law school registered to practice law in Australia who is seeking to register as a foreign legal consultant or to practice law in the [State of the Admitting Authority], or
 - (ii) a graduate of an American law school registered to engage in legal practice in the [State of the Admitting Authority] who is seeking to register as a foreign legal consultant or to practice law in Australia;
- (d) "foreign jurisdiction" means the jurisdiction in which a foreign lawyer is registered as a local lawyer;
- (e) "foreign legal consultant" means a foreign lawyer registered in the local jurisdiction to provide legal services regarding the law of the jurisdiction in which the lawyer is registered and/or international law, but not the law of the local jurisdiction;
- (f) "party" means the appropriate authority or authorities responsible for regulatory and/or disciplinary matters in a foreign or local jurisdiction;
- (g) "professional regulation" means any provision or rule governing the professional activity of a lawyer, including a code of conduct;
- (h) "registered" means having all necessary licences, approvals, admissions, certificates or other forms of authorization (including practising certificates) required for engaging in legal practise; and
- (i) "sanction" means any suspension of admission to the legal profession or the entitlement to engage in legal practise, restriction placed on the entitlement to practise, or other disciplinary measure imposed by a foreign or local jurisdiction for violation of a professional regulation.
2. For any exchange of information to be effective, it is essential for the provider to understand the context in which the request is made and for the recipient to understand the context in which the information was initially collected. For this reason:
- (a) the parties should devise a process for informing each other as to the key elements of relevant legislation, professional rules, admission rules, rules relating to practicing certificates and other related requirements;
 - (b) the parties should ensure that the information described in paragraph (a) is kept up to date; and
 - (c) regardless of the extent to which the process described in paragraphs (a) and (b) is followed, a request for information, and the disclosure of such information, should in each case be accompanied by a summary of the rules and regulatory framework applicable to such request or to such information.

3. Upon request by the local jurisdiction, the foreign jurisdiction should be prepared to provide, to the extent specified in the request, information about a lawyer in any or all of the following categories:

(a) legal education, dates of admission to the legal profession, the grant of entitlement to engage in legal practice and any withdrawal from or suspension of admission to the legal profession or the entitlement to engage in legal practice;

(b) any restriction placed on the entitlement to practise, whether current or past;

(c) results of any previous disciplinary, court or tribunal proceedings;

(d) details of any unresolved complaints or disciplinary proceedings lodged with a relevant regulatory authority;

(e) any other information which could reasonably be expected to be relevant to a determination by the local jurisdiction as to whether the individual is suitable for registration as a foreign lawyer, or is to be entitled to practise the law of the local jurisdiction.

4. The parties should establish a template for requesting information and should nominate specific officers who are authorised to request or provide information. Information exchanges should only take place between such officers.

5. The parties should establish a process for informing each other when sanctions have been imposed on or a complaint received about a lawyer in the following circumstances:

(a) If a party in a local jurisdiction imposes a sanction on a foreign lawyer, it should provide information regarding the basis for and terms of the sanction to the relevant party of the foreign jurisdiction;

(b) If a party in a local jurisdiction receives a complaint regarding an alleged violation of professional regulations by a foreign lawyer who left the local jurisdiction before a determination was made whether a sanction is warranted, it should provide information regarding the basis of the complaint to the relevant party of the foreign jurisdiction;

(c) If a party in a foreign jurisdiction imposes a sanction on a lawyer who is registered or entitled to practice in a jurisdiction from which it received a request pursuant to paragraph 3, it should provide information regarding the basis and nature of the sanction to the relevant party of that jurisdiction.

(d) If a party receives information pursuant to paragraphs (a), (b) or (c), it should provide information to the other party regarding whether in its discretion under the applicable professional regulations, it will impose a sanction on the lawyer and, if so, the nature of that sanction.

6. The provision of information pursuant to these protocols, and the use of that information by the recipient, is subject to any existing legislative or regulatory constraints. Notwithstanding, to the extent it may be considered that existing constraints unnecessarily or inadvertently inhibit the implementation of these protocols, the relevant party should, to the extent practicable, seek to initiate a review of the relevant legislation or regulation.

SIGNED on behalf of the [STATE ADMITTING AUTHORITY] by:

PLACE, DATE

SIGNED on behalf of the LAW COUNCIL OF AUSTRALIA by:

PLACE, DATE
