
NEW ZEALAND COUNCIL OF LEGAL EDUCATION

Productivity Commission
Locked Bag 2
Collins St East
Melbourne
Vic 8003
AUSTRALIA

Email: mutual.recognition@pc.gov.au

21 July 2015

Response to Draft Report of review of the operation of the trans-tasman mutual recognition arrangement

- 1 The New Zealand Council of Legal Education (“**the Council**”) welcomes the opportunity to provide the Australian Government Productivity Commission (“**the Commission**”) with its response to the draft report of the review of the operation of the Trans-Tasman Mutual Recognition Arrangement (“**TTMRA**”) in New Zealand released on 26 June 2015 (“**the Draft Report**”).
- 2 As stated in the Council’s original submission dated 24 February 2015, the Council is an independent statutory body constituted under the Lawyers and Conveyancers Act 2006.
- 3 The Council has a public interest role in ensuring that entrants to the legal profession are trained to the highest standards. The Council therefore sets and monitors the qualification and educational requirements for candidates for admission as barristers and solicitors of the High Court. In accordance with this statutory function, the Council has promulgated the Trans-Tasman Mutual Recognition Admission Regulations 2008 in respect of the TTMRA regime.
- 4 The Council wishes to thank the Commission for considering its original submission and for the Commission’s acknowledgement and inclusion of a number of issues that the Council raised. In particular, the Council was pleased to read that the Commission acknowledges that there may be a need for greater public awareness of the TTMRA.¹
- 5 In the Council’s original submission, the Council raised the following issues:
 - (a) Differences in Occupational Licensing;
 - (b) Requirements for Ongoing Registration;
 - (c) Differences in Occupational Standards;
 - (d) Awareness and Expertise; and
 - (e) Inconsistencies with Treatment of Graduates.

¹ At page 189 of the Draft Report.

- 6 The Council wishes to make the following additional comments in response to the Draft Report. The Council would be pleased to provide any additional information that may assist the Commission in finalising the Draft Report.

Forum Shopping

- 7 The Council notes, in relation to the issue of forum shopping, the Commission's draft finding² that (our emphasis added):

The concerns of occupational regulators about harmful 'shopping and hopping' are concentrated in those occupations **where vocational education and training is not being delivered to the standards expected by regulators**, and are not symptomatic of deficiencies in the mutual recognition schemes.

- 8 The Council is pleased that the Commission does not consider such 'shopping and hopping' to be an issue for the legal profession.³ In order to assist the Commission, the Council provides the following information regarding the checks and balances in place for the New Zealand legal profession, which minimise the occurrence of harmful 'shopping and hopping' in the profession.
- 9 The Council has made the Professional Examinations in Law Regulations 2008 and set the standards for admission to the legal profession in New Zealand, including standards for the degree, core subjects and a course in legal ethics, and provides moderation to the core subjects and Legal Ethics course. The assessment of overseas law qualifications is a robust process, which brings overseas applicants to the New Zealand standard for admission to the legal profession.
- 10 In addition to the quality assurance provided by the New Zealand Qualifications Authority ("NZQA") and Universities New Zealand during undergraduate degrees, the Council controls the content of graduate training through the Professional Legal Studies Course and Assessment Standards Regulations 2002. This leads to a robust system ensuring that New Zealand's standards are sufficient to prevent forum shopping.
- 11 The Council is also unique in having a training delivery arm, the Institute of Professional Legal Studies ("IPLS"). This allows the Council to ensure that vocational education and training for the legal profession is of the requisite standard. IPLS is one of two accredited providers of the Professional Legal Studies course, the other being the College of Law, which operates in both Australia and New Zealand. The Council undertakes monitoring of the quality of both providers and their programmes.
- 12 These checks and balances also help ensure the education and training in the New Zealand legal profession is being delivered to the standard expected.

Requirements for Ongoing Registration

- 13 The Council notes page 131 of the Draft Report, regarding the Australian TTMRA legislation being unclear as to whether professional bodies are permitted to impose ongoing continuing professional development ("CPD") requirements, with interest.

² Draft Finding 5.2, at page 128 of the Draft Report.

³ At page 123 of the Draft Report.

- 14 At paragraph 9 of its original submission, the Council stated that since the last review of the TTMRA, the New Zealand Law Society has implemented the Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education - Continuing Professional development) Rules 2013. The Rules created CPD requirements for admitted New Zealand lawyers who hold practising certificates.
- 15 The Council reiterates that these rules have not been in place long enough for the Council to assess whether or not mandatory CPD requirements will cause any difficulties in assessing candidates for admission under the TTMRA.

Background Checks and Disciplinary Responsibility

- 16 The Council notes the emphasis in the Draft Report on background checks⁴ and refers the Commission to the submission of the New Zealand Law Society dated 27 February 2015. The New Zealand Law Society has responsibility for ensuring that candidates for admission are of sufficient character for admission to the profession. Therefore, the Council does not conduct background checks on these applicants.
- 17 Likewise, the New Zealand Law Society is responsible for administering the legal professions' disciplinary body; the Lawyers and Conveyancers Disciplinary Tribunal. Therefore, the Council cannot comment on these matters.

Inconsistencies with Treatment of Graduates and Lapsed Practising Certificates

- 18 At paragraphs 16 to 20 of its original submission, the Council raised the concern that although the TTMRA provides for mutual recognition of admitted Barristers and Solicitors, the TTMRA does not extend to law graduates or those whose practising certificates have lapsed.
- 19 In particular, at paragraph 20 of its original submission, the Council suggested that the Productivity Commission might wish to consider whether the TTMRA should be amended to address this issue and avoid unnecessary administrative complexity and reduce compliance costs. The Draft Report does not mention the Council's concern over the disparity in treatment of graduates and those with lapsed practising certificates under the TTMRA, and it is not apparent if the Commission has considered the Council's views.
- 20 The Council believes that there is a case for considering whether the TTMRA could be extended to also include legal graduates and holders of lapsed practising certificates.
- 21 As stated previously, the Council would be pleased to provide any further information the Commission may require.

Yours sincerely

Rosemary Gordon, MNZM
Chief Executive
Barrister and Solicitor
New Zealand Council of Legal Education

⁴ In particular, at pages 137 – 139 of the Draft Report.