
NEW ZEALAND COUNCIL OF LEGAL EDUCATION

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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 Productivity Commission with information and feedback on the Council’s experience of the operation of the Trans Tasman Mutual Recognition Arrangement in New Zealand.
2. The New Zealand Council of Legal Education is an independent statutory body constituted under the Lawyers and Conveyancers Act 2006.
3. The general activities of the Council concern public interest and regulatory matters. They centre on the Council’s responsibilities for the quality and provision of legal education and training which is required to be undertaken by any person either within New Zealand or from overseas wishing to be admitted as a barrister and solicitor of the High Court of New Zealand. However, the Council is not responsible for issuing practising certificates: that is the responsibility of the New Zealand Law Society. A practising certificate is sought after admission if a person wishes to practise law.
4. Under section 274(f) of the Lawyers and Conveyancers Act 2006 (NZ) the Council is empowered to prescribe mechanisms and criteria for the recognition of [Australian] qualifications for the purposes of giving effect to the Trans-Tasman Mutual Recognition principle as regards occupations. In accordance with this statutory function, the Council has promulgated the Trans-Tasman Mutual Recognition Admission Regulations 2008. Candidates are admitted as barristers and solicitors by the High Court.
5. The Council wishes to make the following comments in particular, but would be pleased to provide any additional information that may assist the Commission in its review.

Differences in Occupational Licensing

6. There are differences between some Australian States and New Zealand in terms of admission to the Bar. Jurisdictions such as Western Australia and New Zealand have a fused system in which legal practitioners can be admitted as both barristers and solicitors, while jurisdictions such as Queensland recognise these as separate professions.
7. The Council does not consider that these differences create difficulties in practice. While New Zealand lawyers are admitted as barristers and solicitors, they can be issued practising certificates as barristers and solicitor or as barristers sole. This enables effective recognition of different legal occupations.

Requirements for Ongoing Registration

8. The Council notes that since the last review of the Arrangement the New Zealand Law Society has promulgated Rules creating Continuing Professional Development requirements for admitted New Zealand lawyers who hold practising certificates. In principle, serial or deliberate failure to comply with the Rules, or serious misconduct in relation to the required annual declaration could have ramifications for a lawyer's practising certificate and/or status as an admitted lawyer.
9. The Council notes that mandatory CPD has not been in place long enough in New Zealand to permit an assessment as to whether the requirement will cause or is likely to cause administrative difficulties in assessing equivalency between occupations, or in dealing with lawyers who have been admitted and granted practising certificates pursuant to the Arrangement.
10. Nevertheless, the Commission may wish to consider whether CPD requirements should be addressed in more detail as part of the Arrangement.

Differences in Occupational Standards

11. The Council considers that both New Zealand and Australia have stringent standards for the registration of lawyers. The Council does not consider that there is a significant issue with candidates "jurisdiction shopping".
12. Admission to practice in New Zealand requires a candidate to obtain a New Zealand law degree or its equivalent, complete practical legal training, prove they are of good character, and take the required oaths at the High Court. Or if the person is applying under the overseas admission system, the person must complete stringent Council prescribed conversion requirements, in addition to the character aspects. However, Australian jurisdictions have similarly onerous requirements.
13. It follows that the Council does not consider that a candidate could realistically seek to circumvent the requirements for registration of lawyers in New Zealand by obtaining registration in an Australian jurisdiction and seeking admission in New Zealand. In essence, the required educational standard would be very similar for both categories of admittees.

Awareness and Expertise

14. The Council considers that there is adequate information made available online regarding the operation of the Arrangement as regards lawyers. For example, in most

jurisdictions Law Societies publish information about how to be admitted to the profession, which includes information about the mutual recognition scheme.

15. However, the Council notes that it often receives queries from Australian law graduates and practitioners who are unaware they can be admitted in New Zealand through the Arrangement. The Commission may wish to consider whether more can be done to inform students about the applicability of the Arrangement to the legal profession.

Inconsistencies with Treatment of Graduates

16. The TTMRA provides for mutual recognition of Barristers and Solicitors admitted in Australia or New Zealand. The TTMRA does not extend to law graduates. This is because of the additional necessity for "registration". An Australian law graduate is required to sit extra exams to be admitted in New Zealand (and vice versa).
17. However, the same graduate would in principle be entitled to registration in the equivalent legal occupation in New Zealand if they obtained registration in an Australian jurisdiction, without the requirement for further examination in New Zealand. We understand the same situation would apply to a comparable New Zealand applicant.
18. The inconsistency in the treatment of graduates and practitioners under the TTMRA does not appear to serve a purpose. It increases compliance costs for graduates, admissions boards and employers.
19. In addition, a distinction is currently made between Australian practitioners with current and lapsed practising certificates. In short the former group may apply under the Arrangement, whereas the latter group may not. In reality there may be no real point of distinction between the holder of a practising certificate and the holder of a recently lapsed certificate.
20. The Productivity Commission may wish to consider whether the Arrangement should be amended to address these issues and avoid unnecessary administrative complexity.
21. As noted above, the Council would be pleased to provide any further information that may assist the Commission.

Yours sincerely

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