



NEW ZEALAND
LAW SOCIETY

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Mutual Recognition Schemes Study
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Australia

By email: mutual.recognition@pc.gov.au

Trans Tasman Mutual Recognition Schemes

The Law Society welcomed the opportunity to meet with Commissioner Jonathan Coppel, Greg Murtough and Imogen Curtis at our offices on 17 February 2015.

We found the meeting to be a useful and fruitful discussion.

We discussed a range of issues surrounding the regulation of lawyers on both sides of the Tasman. As mentioned there is more of a tendency for lawyers to move from New Zealand to Australia rather than the other way round. There may be a number of reasons for this including the larger market providing more opportunities for work in large firms.

Our records indicate that in the period 27.6.2002 to 12.12.2014 the Law Society was notified that approximately 158 Australian lawyers were admitted in New Zealand pursuant to the Trans-Tasman Mutual Recognition Act 1997.¹

New South Wales	82
Victoria	37
Queensland	24
South Australia	5
Australian Capital Territory	4
Western Australia	3
Northern Territory	2
Not stated	1

The Law Society has developed a good working relationship with most of the Australian legal service regulators. The two jurisdictions regularly engage by way of attendance at conferences and teleconferences as well as informally sharing and exchanging information of relevance and good practice for the regulation of lawyers.

¹ Given the Law Society had 14 independent District Law Societies prior to 1 August 2008 the records are as accurate as they can be prior to that date.

We are unaware of any specific issues of concern that have arisen in relation to Australian lawyers using the two step process under the TTMRA legislation for admission and application for a practising certificate in New Zealand. In addition we have not been informed of any procedural issues causing problems for New Zealand lawyers seeking to be admitted in Australia.

Information about the process is available on our website. This seems to have been easily understood by those moving to the jurisdiction. See <https://www.lawsociety.org.nz/for-lawyers/joining-the-legal-profession/guidelines-for-admission-under-the-ttmra>

There are some differences between the various governing legislations.

One issue is the Criminal Records (Clean Slate) Act 2004. The Law Society is not exempt from this legislation and is therefore unable to seek information about any "spent" convictions. Our understanding is that Australian regulators where the relevant state has a "spent convictions" legislation have an exemption and are able to request all criminal history information from candidates for admission. Australian legal regulators may be permitted to request this information from New Zealand lawyers applying for admission in Australia although we are unaware whether this occurs.

We have seen no evidence of any incidents of "forum shopping" for admission on either side of the Tasman.

Regulation 15 of the Lawyers and Conveyancers Act (Practice Rules) Regulations Act 2008 sets out special rules for the legal profession in Australia which enables a lawyer to practise in New Zealand in the same manner as they practise in Australia.

15 Special rules for legal profession in Australia

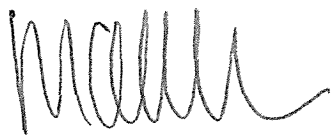
- (1) Despite regulation 12, a person is to be treated as satisfying the requirements and other criteria set out in that regulation if he or she satisfies the Council of the Law Society that he or she is entitled to practise as a member of the legal profession, in 1 or more Australian jurisdictions, in a manner that is equivalent to, or materially the same as, practising on one's own account in New Zealand as a barrister and solicitor, or as a barrister sole, as the case may be.
- (2) Despite regulation 13(1) to (3), the High Court may grant a person leave to practise on his or her own account as a barrister and solicitor, or as a barrister sole, if the person satisfies the court that he or she is entitled to practise as a member of the legal profession, in 1 or more Australian jurisdictions, in a manner that is equivalent to, or materially the same as, practising on one's own account in New Zealand as a barrister and solicitor, or as a barrister sole, as the case may be.
- (3) However, subclauses (4) to (6) of regulation 13 apply when an application is made to the High Court for leave to be granted in accordance with subclause (2) of this regulation.

Regulation 15: replaced, on 1 October 2012, by regulation 6 of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) (Practice on Own Account) Amendment Regulations 2012 (SR 2012/220).

This provision to date has not caused any difficulties. There are some jurisdictional differences such as Australia being able to place conditions on practising certificates which are not permitted by the New Zealand Law Society and some differences in the types of structures in which lawyers practise in each jurisdiction.

We are unaware of any lawyer appealing to the Trans-Tasman Occupations Tribunal.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mary Ollivier', with a stylized, cursive script.

Mary Ollivier
General Manager Regulatory