Law Council
OF AUSTRALIA

Automatic Mutual Recognition of Occupational Registrations

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Table of Contents

About the Law Council of Australia **3**
Executive Summary **4**
Part A – Legal profession regulatory reforms **6**
Part B – Mutual recognition principles and legal profession regulation **7**
Core principles 7
Current *Mutual Recognition Act 1992* 7
Proposed Part 3A to the *Mutual Recognition Act 1992* 8
Exceptions to the mutual recognition principles 9
Application of other proposed amendments 11
Definition of "activity" 11
Principal place of residence or work 12
Entitlement to automatic deemed registration 13
Exceptions to the entitlement to automatic deemed registration 13
Exception 42D(3)(a) 13
Exception 42D(3)(c) 14
Exception 42D(3)(e) 15
Summary 15
Recommendations **15**

About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2021 Executive as at 1 January 2021 are:

- Dr Jacoba Brasch QC, President
- Mr Tass Liveris, President-Elect
- Mr Ross Drinnan, Treasurer
- Mr Luke Murphy, Executive Member
- Mr Greg McIntyre SC, Executive Member
- Ms Caroline Counsel, Executive Member

The Chief Executive Officer of the Law Council is Mr Michael Tidball. The Secretariat serves the Law Council nationally and is based in Canberra.

Executive Summary

1. This submission responds to calls for comments and feedback on the consultation paper and exposure draft Bill to give effect to the 11 December 2020 Intergovernmental Agreement on the automatic mutual recognition of occupational registrations across all Australian jurisdictions, and addresses only those matters related to legal profession regulation.

2. The proposed Part 3A reforms build upon the mutual recognition principles contained in the *Mutual Recognition Act 1992* (Cth) by providing for "automatic deemed registration" so that a member of a licensed or registered occupation in one jurisdiction is entitled to carry on the activities of that occupation in any other jurisdiction, without the need for separate, additional registration in each other jurisdiction. The proposed reforms will also include measures directed at maintaining high standards of consumer protection, including by denying or removing automatic deemed registration for a member of a licensed or registered occupation who has been the subject of disciplinary action or who has had conditions imposed on their licence as a result of disciplinary, civil or criminal action in relation to the carrying out of that occupation.

3. In the years since the *Mutual Recognition Act 1992* (Cth) was first introduced and adopted, a series of reforms to State and Territory legal profession laws have embedded mutual recognition of both admission to the profession and the entitlement of the holder of a practising certificate or registration as an Australian-registered foreign lawyer granted in one jurisdiction, to engage in legal practice in any other Australian jurisdiction. These reforms have obviated the need to rely upon the force of the *Mutual Recognition Act 1992* (Cth) and the establishment of systems of notification and registration to facilitate the practice of law and provision of legal services across the States and Territories (i.e. interstate legal practice).

4. In addition, the laws of the States and the Territories regulating legal practice and the provision of legal services have been extensively harmonised to provide common, and in many cases, uniform standards relating to the attainment of qualifications for admission to the profession and the practice of law. A similar approach has been taken to the core public and consumer protections such as professional indemnity insurance, fidelity funds, trust moneys, legal costs and cost disclosure, and complaints and discipline handling. These protection measures are supported by common provisions for inter-jurisdictional cooperation and information sharing, and mutual recognition of conditions, limitations, suspensions, and cancellation of practising entitlements.

5. The Law Council considers that the existing legal profession laws of the States and the Territories achieve the same core mutual recognition policy objectives as both Part 3 of *Mutual Recognition Act 1992* (Cth) and the proposed Part 3A.

6. Also, the Law Council understands that, in relation to existing Part 3 of the *Mutual Recognition Act 1992*, it has long been accepted that:

    - the exception in subsection 17(2) applies to the legal profession because of the equal application of the legal profession laws of each the States and Territories to both local practising certificate holders and interstate practising certificate holders engaging in legal practice in those jurisdictions; and
    - as envisaged by section 6(2), the legal profession laws of the States and Territories can operate concurrently with the *Act*.

7. However, proposed Part 3A would also introduce additional provisions, including exceptions to the entitlement to automatic deemed registration, that are inconsistent with existing legal profession laws. This raises a question about whether aspects of the existing legal profession laws would continue to be taken as capable of concurrent operation with the *Mutual Recognition Act 1992* (Cth) or whether the proposed additional provisions would displace the State and Territory legal profession laws, to the extent of any inconsistency between those laws and proposed Part 3A.

8. The Law Council submits that such an outcome would be undesirable and inconsistent with many years of legal profession regulatory reform directed toward establishing a truly national legal profession and national market for legal services through progressive uniformity of the State and Territory laws regulating the legal profession and the provision of legal services.

9. It is noted that consultation paper states an intention that the proposed amendments will not "disrupt existing national registration schemes or existing state-based automatic mutual recognition schemes", and the Law Council would welcome confirmation that this policy position will not be disturbed by the amendments proposed in the exposure draft Bill.

Part A – Legal profession regulatory reforms

10. The integration of the principles and objectives of mutual recognition into State and Territory legal profession laws has been achieved through three major legal profession regulatory reform initiatives, undertaken in the years following the enactment of the *Mutual Recognition Act 1992* (Cth) (**MRA**) and the State and Territory adoption *Acts*.

11. On 7 August 2003, the Standing Committee of Attorneys-General (**SCAG**) announced their endorsement of comprehensive model provisions developed as a basis for consistent laws to facilitate a truly national legal profession.[1] During the period 2004-2007 the Legal Profession Models Laws devised under the policy guidance of SCAG were enacted by all jurisdictions, apart from South Australia, as a *Legal Profession Act*. South Australia completed its adoption of the core elements of the Model Laws with amendments made in 2014 to its *Legal Practitioners Act 1981*. These reforms conferred an automatic entitlement on legal practitioners and Australian-registered foreign lawyers to engage in legal practice in any other jurisdiction.

12. On 3 February 2009, the then Commonwealth Attorney-General and the Minister for Finance and Deregulation confirmed that further legal profession reform would be pursued through the Council of Australian Governments' (**COAG**) micro-economic reform agenda, to address remaining areas of overly complex and inconsistent regulation, including that each jurisdiction still maintained its own regulatory structure. While the resulting proposed *Legal Profession National Law* developed by the COAG National Legal Profession Reform Taskforce did not proceed, it formed the basis of further reforms initiated by New South Wales and Victoria.

13. On 6 December 2013, the then Attorney-Generals of New South Wales and Victoria announced an Intergovernmental Agreement (IGA) to establish a Legal Profession Uniform Framework. The Uniform Framework came into operation on 1 July 2015, establishing a common legal services market across New South Wales and Victoria, under a uniform set of laws, rules and policies. The Uniform Framework is overseen by a Legal Services Council (an inter-jurisdictional body drawn from each participating jurisdiction) and a Commissioner for Uniform Legal Services Regulation. Ministerial responsibility sits with a Standing Committee of Attorneys-General of the participating jurisdictions.

14. The IGA provides for other jurisdictions to join the Uniform Law Framework, and on 28 February 2019 the Attorney-General for Western Australia announced that Western Australia had formally agreed to join the scheme.[2] Further, the Uniform Framework has maintained the automatic mutual recognition and regulatory cooperation arrangements between the jurisdictions that participate in the scheme and the non-participating jurisdictions.

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1 https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/JK2A6/upload_binary/jk2a64.pdf;fileType=application/pdf#search=%22Communique%20Historic%22

2 https://www.mediastatements.wa.gov.au/Pages/McGowan/2019/02/Western-Australia-to-adopt-uniform-law.aspx

15. The Law Council of Australia emphasises that mutual recognition of admission and practising entitlements across all States and Territories has been the foundation of the legal profession regulatory reform agenda over the years since the MRA was fist enacted, all of which have been directed towards achieving a national legal profession and common market for legal services in Australia.

Part B – Mutual recognition principles and legal profession regulation

Core principles

Current *Mutual Recognition Act 1992*

16. The mutual recognition principle for occupations in section 17(1) of Part 3 of the MRA, is that a person who is registered in one state for an occupation is, by virtue of the MRA, entitled after notifying the local registration authority in another state for the equivalent occupation:

    - to be registered in the second State for the equivalent occupation; and
    - pending such registration, to carry on the equivalent occupation in the second State.

17. As mentioned earlier in this submission, State and Territory legal profession laws have for many years now embedded a mutual recognition principle of interstate practising entitlements. The holder of a practising certificate or registration as an Australian-registered foreign lawyer granted in one jurisdiction, is entitled under the legal profession laws to engage in legal practice in another jurisdiction, without the need for additional registration or deemed registration in that other jurisdiction.

18. The requirement to obtain a practising certificate or registration in another jurisdiction arises only when a legal practitioner or Australian-registered foreign lawyer moves his or her sole or principal place of legal practice to that other jurisdiction, which then becomes his or her new "home jurisdiction". The legal profession laws do not permit or require a person to hold a practising certificate or registration in a jurisdiction other than the practitioner's home jurisdiction, to be entitled to engage in legal practice in that other jurisdiction.

19. The statutory framework for conferring interstate practising entitlements in, for example, the *Legal Profession Act 2007* (Qld) is as follows:

> **5 Terms relating to lawyers**[3]
>
> (1) An ***Australian lawyer*** is a person who is admitted to the legal profession under this Act or a corresponding law.
>
> (2) A ***local lawyer*** is a person who is admitted to the legal profession under this Act, whether or not the person is also admitted under a corresponding law.

[3] See also: *Legal Profession Act 2006* (ACT), section 7; *Legal Profession Act 2007* (NT), section 5; *Legal Profession Act 2007* (Tas), section 5; Legal Profession Uniform Law, section 6; "Australian lawyer" is not defined in the *Legal Practitioners Act 1981* (SA) but used in the *Legal Practitioners Education and Admission Council Rules 2018.*

(3) An **interstate lawyer** is a person who is admitted to the legal profession under a corresponding law, but not under this Act.

6. Terms relating to legal practitioners[4]

(1) An ***Australian legal practitioner*** is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate.

(2) A ***local legal practitioner*** is an Australian lawyer who holds a current local practising certificate.

(3) An ***interstate legal practitioner*** is an Australian lawyer who holds a current interstate practising certificate, but not a local practising certificate.

44 Entitlement to practise in this jurisdiction[5]

(1) An Australian legal practitioner is, subject to this Act, entitled to engage in legal practice in this jurisdiction.

Schedule 2 Dictionary[6]

Australian-registered foreign lawyer means a locally-registered foreign lawyer or an interstate-registered foreign lawyer.

interstate-registered foreign lawyer means a person who is registered as a foreign lawyer under a corresponding law.

Locally-registered foreign lawyer means a person who is registered as a foreign lawyer under this Act.

166 Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction[7]

An Australian-registered foreign lawyer is, subject to this Act, entitled to practise foreign law in this jurisdiction.

Proposed Part 3A to the *Mutual Recognition Act 1992*

20. Proposed Part 3A of the MRA will add an additional mutual recognition principle relating to "activities". The mutual recognition principle in proposed section 42B(1) is that "subject to this Part, a person who is registered in the person's home state for an occupation is, by force of this Act, entitled to carry on in the second State the activities covered by the occupation."

21. The Law Council submits that the policy objective of the new proposed principle is also provided for under the existing legal profession laws of the States and the Territories outlined above.

[4] See also: *Legal Profession Act 2006* (ACT), section 8; *Legal Profession Act 2007* (NT), section 6; *Legal Profession Act 2007* (Tas), section 6; Legal Profession Uniform Law, section 6; *Legal Practitioners Act 1981* (SA), Sch 1A-1.
[5] See also: *Legal Profession Act 2006* (ACT), section 34; *Legal Profession Act 2007* (NT), section 45; *Legal Profession Act 2007* (Tas), section 40; Legal Profession Uniform Law, section 43; *Legal Practitioners Act 1981* (SA), see section 21(1).
[6] See also: *Legal Profession Act 2006* (ACT), Dictionary; *Legal Profession Act 2007* (NT), section 4; *Legal Profession Act 2007* (Tas), section 4; Legal Profession Uniform Law, section 5; *Legal Practitioners Act 1981* (SA), section 5.
[7] See also: *Legal Profession Act 2006* (ACT), section 156; *Legal Profession Act 2007* (NT), section 173; *Legal Profession Act 2007* (Tas), section 166; Legal Profession Uniform Law, section 62; *Legal Practitioners Act 1981* (SA), Sch 1A-5.

22. Accordingly, the Law Council submits that, so far as the core mutual recognition objectives are concerned, the laws of the States and Territories are capable of operating concurrently with the MRA, and are therefore not limited in their operation, as envisaged in section 6(2) of the MRA.

Exceptions to the mutual recognition principles

23. Both section 17(2)(a) of the MRA and proposed section 42B(2)(a) provide that the mutual recognition principles are subject to an exception that they do not affect the operation of laws that regulate the manner of carrying on an occupation, or the activities of an occupation, in a second State so long as those laws apply equally to all persons carrying on or seeking to carry on the occupation or activities under the law of the second State.

24. The legal profession reforms mentioned earlier in this submission have had the objective of eliminating jurisdictional differences in regulation of the legal profession, and hence eliminating barriers to interjurisdictional legal practice and the provision of legal services in other jurisdictions, through harmonisation of standards and/or uniformity of legislation.

25. In relation to laws regulating the conduct of legal practice, there is harmonisation and/or uniformity in the core regulatory requirements relating to:

- Grant or renewal of practising certificates and foreign lawyer registration.
- Trust money and trust accounts
- Costs disclosure and assessment.
- Fidelity cover
- Professional indemnity insurance.
- Complaints and discipline handling.

26. While it necessary to draw distinctions between local and interstate legal practitioners and foreign-lawyers in some matters, those distinctions are broadly uniform across all States and Territories, and do not inhibit the core entitlement to engage in legal practice in another jurisdiction. Taking the *Legal Profession Act 2007* (Qld) for example:

> **75 Extent of entitlement of interstate legal practitioner to practise in this jurisdiction**[8]
>
> (1) This part does not authorise an interstate legal practitioner to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practising certificate.
>
> (2) Also, an interstate legal practitioner's right to engage in legal practice in this jurisdiction—
>
> (a) is subject to—
>
> (i) specific provisions under this Act applying to interstate legal practitioners[9]; and

[8] See also: *Legal Profession Act 2006* (ACT), section 73; *Legal Profession Act 2007* (NT), section 80; *Legal Profession Act 2007* (Tas), section 80; Legal Profession Uniform Law, Sched 3-3; *Legal Practitioners Act 1981* (SA), per section 23B.

(ii) any conditions imposed by the relevant regulatory authority under section 76 in relation to the interstate legal practitioner; and

(b) is, to the greatest practicable extent and with all necessary changes—

(i) the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and

(ii) subject to any condition applicable to the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on his or her admission to the legal profession in this or another jurisdiction.

76 Additional condition on interstate legal practitioner engaging in legal practice in this jurisdiction[10]

(1) The relevant regulatory authority may impose a condition on an interstate legal practitioner engaged in legal practice in this jurisdiction that the authority may impose under this Act on a local practising certificate at the time it is granted or renewed.

(2) However, conditions imposed under this section must not be more onerous than conditions applying to local legal practitioners.

207 Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction[11]

(1) This part does not authorise an interstate-registered foreign lawyer to practise foreign law in this jurisdiction to a greater extent than a locally registered foreign lawyer could be authorised under a local registration certificate.

(2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction—

(a) is subject to any conditions imposed by the law society under section 208, and any conditions imposed under the legal profession rules as mentioned under that section; and

(b) is to the greatest extent and with all necessary changes—

(i) the same as the interstate-registered foreign lawyer's right to practise foreign law in the lawyer's home jurisdiction; and

(ii) subject to any condition on the interstate-registered foreign lawyer's right to practise foreign law in that jurisdiction.

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[9] A typical example is a requirement to notify the relevant regulatory authority if the interstate practitioner establishes an office in the jurisdiction.

[10] See also: *Legal Profession Act 2006* (ACT), section 74; *Legal Profession Act 2007* (NT), section 81; *Legal Profession Act 2007* (Tas), section 81; Legal Profession Uniform Law, Sched 3-4; *Legal Practitioners Act 1981* (SA), per section 23C.

[11] See also: *Legal Profession Act 2006* (ACT), section 198; *Legal Profession Act 2007* (NT), section 215; *Legal Profession Act 2007* (Tas), section 208; Legal Profession Uniform Law, Schedule 3-8; *Legal Practitioners Act 1981* (SA), Schedule 1A-46.

208 Additional conditions on practice of interstate-registered foreign lawyers[12]

(1) An interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction is subject to any condition imposed under this Act.

(2) Without limiting subsection (1), the law society may impose any condition on the interstate-registered foreign lawyer's practice of foreign law in this jurisdiction that it may impose under this Act in relation to a locally registered foreign lawyer.

(3) Conditions imposed under a regulation, the legal profession rules or subsection (2) must not be more onerous than conditions applying to locally registered foreign lawyers in the same or similar circumstances.

27. The Law Council considers that as these provisions give effect to the core mutual recognition objectives, and are laws that apply equally to all persons carrying on an occupation or the activities of an occupation in a State.

Application of other proposed amendments

28. The MRA is a law of the Commonwealth made pursuant to a referral of powers to the Parliament of the Commonwealth by the States (and a request by the Territories for Commonwealth legislation).

29. Section 6(2) of the MRA provides that the MRA does not limit the operation of a law of a State (which is defined to also include a Territory) so far as it can operate concurrently with the MRA. Where a law of a State and Territory is not capable of operating concurrently with the MRA (a law of the Commonwealth) the MRA will apply to the extent of the inconsistency, in accordance with section 109 of the Constitution.

30. Against this background, the Law Council provides comments on additional provisions in proposed Part 3A that are different to comparable provisions in the State and Territory legal profession laws. A policy question arises about whether it is intended that the existing legal profession laws would nevertheless continue to operate, or whether it is intended that existing State and Territory legal profession laws might be displaced to the extent of their inconsistency with the proposed amendments to the MRA.

Definition of "activity"

31. *Activity* is to be defined in section 4 of the MRA to mean an activity authorised to be carried on under a registration for an occupation. The definition relates to the mutual recognition principle in proposed section 42B in Part 3A that a person who is registered in the person's home State for an occupation is, by force of the MRA, entitled to carry on in the second State the activities covered by the occupation.

32. Legal profession laws use different terminology and a two stage process. Admission to the legal profession pursuant to a law of a State or of a Territory does not confer an entitlement to an Australian lawyer to engage in legal practice. In order to engage in legal practice an Australian lawyer must be granted a practising certificate, and the

[12] See also: *Legal Profession Act 2006* (ACT), section 199; *Legal Profession Act 2007* (NT), section 216; *Legal Profession Act 2007* (Tas), section 209; *Legal Profession Uniform Law*, Schedule 3-9; *Legal Practitioners Act 1981* (SA), Schedule 1A-47.

entitlement of an Australian legal practitioner to continue to engage in legal practice requires that his or her practising certificate be renewed each year.

33. This multiple "registration" characteristic of the legal profession is provided for by existing section 18 of Part 3 (mutual recognition of occupations) where the occupation of a legal practitioner is specifically used in subsection 18(3) as an example of an occupation involving more than one system of "registration".

34. Proposed section 42C in Part 3A (automatic deemed registration to carry on activities) achieves the same outcome in relation to "activities" as existing sections 18(1) and (2) achieve in relation to "occupations". However the Law Council questions the significance (if any) of the absence of an equivalent provision to subsection 18(3) and the inclusion instead of a Note to proposed section 42C, which uses the example of transportation of dangerous goods as an activity that requires both a heavy vehicle licence and a dangerous goods driver licence. It could be inferred from the difference between existing section 18 and proposed section 42C (including the Note) that proposed Part 3A is not intended to apply to the legal profession.

Principal place of residence or work.

35. Proposed section 42A provides that the home State of a person, in relation to an activity, is the State in which the person has their principal place of residence, or their principal place of work in relation to an activity. Where there is a difference between the State of residence and the State where the work is carried out, the person's *home State* will be whichever of the two States is chosen by the person.

36. Identification of a person's *home State* under proposed section 42A is necessary for the mutual recognition principle in proposed section 42B that a person who is registered in their *home State* for an occupation is entitled to carry on the activities covered by the occupation in the second State.

37. The tests of *home State* in proposed section 42A differ from the tests in legal profession laws regarding the jurisdiction in which an Australian legal practitioner is required to apply for the grant or renewal of a practising certificate. In particular, the choice that can be made under proposed subsection 42A(3) is not one that can be made under legal profession regulation.

38. The basic rule in the *Legal Profession Act* jurisdictions (Queensland, the ACT, Tasmania and the Northern Territory) is that a legal practitioner is eligible to apply for the grant or renewal of practising certificate in a jurisdiction in which he or she:

    - solely or principally engages in the legal practice; or
    - holds a current practising certificate but will be engaging in legal practice in another jurisdiction under a temporary arrangement; or
    - reasonably expects to engage in legal practice solely or principally in the jurisdiction during the currency of the certificate being applied for; or

- if none of the above apply, or it is not reasonably practical to decide, the jurisdiction is that which is the lawyer's place of residence. [13]

39. In *the Uniform Law* jurisdictions (New South Wales, Victoria and, for present purposes Western Australia) the basic rule is that an application for a practising certificate must be made in the participating jurisdiction that the applicant reasonably intends will be his or her principal place of practice during the currency of the certificate.[14]

40. A similar approach applies in South Australia, with the exception that a legal practitioner from another jurisdiction who will be making South Australia his or her principal place of legal practice will also be required to be admitted to the legal profession in South Australia, which is available under the MRA.

Entitlement to automatic deemed registration

41. Proposed section 42D is the operative provision which deems a person registered in one State for an occupation to be taken to be registered in another State to carry on each of the activities covered by the occupation. From the legal profession's perspective, proposed section 42D does not confer any additional entitlements (or set any additional preconditions) to engage in legal practice in other jurisdictions that are not already available (or provided for) under the existing State and Territory legal profession laws.

Exceptions to the entitlement to automatic deemed registration

42. Proposed 42D(3)(a)-(e) sets out five grounds upon which a person is not to be taken to be registered to carry on an activity in a second State.

Exception 42D(3)(a)

43. The ground for exception in proposed section 42D(3)(a) is that the person is the subject of criminal, civil or disciplinary proceedings in any State (including any preliminary investigations or action that might lead disciplinary proceedings).

44. This provision is inconsistent with legal profession regulation.

45. Sections 51 and 66 of the Uniform Law (and similar provisions in the other jurisdictions) place a statutory condition on a practising certificate, and a registration certificate as a foreign lawyer, that the holder must notify the relevant regulatory authority within 7 days:

- of being charged with or convicted of a serious (i.e. indictable) offence, or a tax offence or an offence specified in the Uniform Rules;
- of the occurrence of a bankruptcy-related event; or
- of becoming the subject of disciplinary proceedings as a lawyer in a foreign country.

[13] *Legal Profession Act 2007* (Qld), section 49(2)(b); *Legal Profession Act 2006* (ACT), section 41(2)(b); *Legal Profession Act 2007* (NT), section 50(2)(b); *Legal Profession Act 2007* (Tas), section 48(2)(b).
[14] *Legal Profession Uniform Law*, section 44(4) and *Legal Profession Uniform General Rules*, Rule 20(1)(a)

46. It is to be noted that notification of an event under sections 51 or 66 of the Uniform Law is not, of itself, a ground for immediate suspension or cancellation of a practising certificate or registration certificate. This is a key difference with proposed section 42D(3) of the MRA.

47. Also, sections 86 and 88 of the Uniform Law set out certain events that are designated as *automatic show cause* events, which include bankruptcy-related events; conviction for a serious offence or a tax offence, or particular events specified in the Uniform Rules. If an *automatic show-cause event* occurs, the holder of the certificate must notify the relevant regulatory authority within 7 days and, within 28 days, provide a written statement explaining why, despite the show cause event, the holder considers himself or herself to be a fit and proper person to hold a certificate.

48. It is also to be noted that the happening of an *automatic show cause event* is not of itself, a ground for immediate suspension or cancellation of a practising certificate or registration certificate. This is also a key difference with proposed section 42D(3) of the MRA.

49. Further, the notification requirements outlined above do not apply to civil proceedings.

50. Section 77 of the Uniform Law provides that the relevant regulatory authority may immediately vary or suspend a certificate if the regulatory authority is considering whether to start, continue or complete action in response to the notification, and the immediate variation or suspension is considered necessary in the public interest. However, any investigation or other actions that might lead to disciplinary proceedings are not grounds of themselves for immediate suspension of a practising certificate or registration certificate.

Exception 42D(3)(c)

51. One of the grounds for the exception in proposed section 42D(3)(c) is that the person is subject to any conditions in carrying on the activity as a result of criminal, civil or disciplinary proceedings in any State.

52. Disciplinary proceedings under the Uniform Law (and the laws of other jurisdictions) are undertaken to determine whether the conduct concerned would, if established, amount to unsatisfactory professional conduct or professional misconduct.[15.] Where the relevant regulatory authority determines that the lawyer (which term includes an Australian-registered foreign lawyer) has engaged in unsatisfactory professional conduct, a range of remedies are available, including an order recommending the imposition of a specified condition on a practising certificate or registration certificate.[16] Similarly, where a designated tribunal finds that a lawyer is guilty of unsatisfactory professional conduct or professional misconduct, the tribunal may make an order directing that a specified condition be imposed on a practising certificate or registration certificate.[17]

[15] *Uniform Law*, section 270 and sections 296-298.
[16] *Uniform Law*, section 299(1)(g).
[17] *Uniform Law*, section 302(g).

53. However, it is to be noted that, unlike proposed 42D(3)(c), the imposition of a condition on a practising certificate or registration certificate does not disentitle the holder of the certificate from engaging in legal practice in another State or Territory.

Exception 42D(3)(e)

54. The exception in proposed section 42D(3)(e) is that a law of a second State provides for persons to be, or to be taken to be, registered in that State to carry on the activity because, in another State, the person has a substantive registration for an occupation that covers the activity.

55. It is not clear whether this exception will apply to exclude the legal profession from the automatic deemed registration regime. The legal profession laws of each State and Territory by their own force confer an entitlement on interstate legal practitioners and interstate Australian-registered foreign lawyers to engage in legal practice in their jurisdiction. There is no necessity for relying on provisions that deem an interstate legal practitioner or an interstate Australian-registered foreign lawyer "to be, or be taken to be, registered in that State to carry on the activity". In other words, while dual registration or deemed dual registration is not a requirement (and is in fact not available) under legal profession laws to legal practitioners or Australian-registered foreign lawyers[18], these provisions appear capable of operating concurrently with the core mutual recognition principle in proposed section 42B(1).

Summary

56. The Law Council considers that the core mutual recognition policy objective in the proposed amendments to the MRA is consistent with the mutual recognition principles underpinning the existing State and Territory legal profession laws. However, what is not clear from the exposure draft Bill is the policy objectives of other proposed amendments to the MRA, to the extent that those proposed measures are inconsistent with existing State and Territory legal profession laws.

Recommendations

Recommendation

The Law Council recommends clarification of whether the amendments proposed by the exposure draft Bill, other than the core mutual recognition principle, are intended to apply to the legal profession, noting that there are significant inconsistencies between aspects of those proposals and existing State and Territory legal profession laws.

[18] Admission is available in some jurisdictions under the MRA for persons already admitted to the legal profession in another jurisdiction, but admission to the legal profession, of itself, does not confer practising entitlements.