

## Foreign Qualifications

### Introduction

This title looks at the way in which professions in Australia consider foreign qualifications when considering a foreign applicant for entry into a profession. The authorising body that admits or registers a professional, may be a statutory body, an associated private body or a professional association. It will normally give some level of credit towards a foreign qualification based on how similar the foreign qualification is to Australian requirements. There are situations, however, where an Australian body can approve the authorising body of a foreign jurisdiction so that the degrees or training that body approves will generally be accepted by the Australian body. For education and training received in New Zealand, some Australian authorising bodies automatically accept that education and training as equivalent to Australian requirements given the close historical and cultural ties between the two countries.

Where there are areas lacking in the foreign qualification, the Australian authorising body will normally require the application complete additional subjects. The body may also have discretion to exempt certain individuals with extensive experience, although the authorisation may limit the person to practicing in their area of expertise. In some circumstances, the government may be willing reduce requirements to achieve the policy objective of increasing foreign professionals in an area of need, such as a remote region where it may be difficult to entice Australian professionals to work.

The title discusses the following issues:

- Automatic approval for special foreign jurisdictions
- Recognition of foreign education
- 'Topping-up' foreign qualifications
- Recognition of foreign practical training
- Exemptions for experienced foreign professionals
- Other admission requirements
- Focused-needs exemptions.

### Automatic Approval for Special Foreign Jurisdictions

For some professions, certain foreign professionals may be admitted or registered automatically – or virtually automatically – due to the foreign jurisdiction being fully recognised by the Australian profession. This special status can apply, in particular, to New Zealand graduates, through mutual recognition arrangements, given New Zealand's close cultural and historical connections with Australia.<sup>1</sup> For example, New Zealand-qualified lawyers can simply apply to the Supreme Court of NSW for admission as provided for under Australia-New Zealand 'Mutual Recognition' Acts together with the Rules of the NSW Supreme Court.<sup>2</sup> Similarly, the Medical Board of Australia, the statutory regulator of Australian doctors, allows New Zealand

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<sup>1</sup> See, e.g., *Mutual Recognition Act 1992* (Cth); *Trans-Tasman Mutual Recognition Act 1997* (NSW).

<sup>2</sup> *Mutual Recognition Act 1992* (Cth); *Trans-Tasman Mutual Recognition Act 1997* (NSW); *Supreme Court Rules 1970* (NSW) Practice Note No SC Gen 8.

medical school graduates to apply for Australian internships and, subsequently, registration on the same basis as Australian medical school graduates.<sup>3</sup>

## Recognition of Foreign Education

Where there is no automatic recognition process, the first step towards a foreign-qualified professional gaining admission in Australia is normally for the relevant authorising body or an associated standard-setting body to assess the extent to which their foreign academic qualifications will be recognised for Australian admission purposes. For example, foreign-qualified lawyers wanting to practice in NSW must apply to the Legal Profession Admission Board for a decision on the extent to which the applicant's foreign-qualifications have 'substantial equivalence' to an Australian law degree.<sup>4</sup>

For foreign-qualified doctors, while the Medical Board of Australia makes the final decision on registration as an Australian doctor, it relies on a private body, the Australian Medical Council, to assess the extent to which a foreign qualification satisfies Australian educational standards.<sup>5</sup> The Council is the 'independent national standards body for medical education and training' tasked 'to assess programs of study ... leading to general or specialist registration'.<sup>6</sup> So it is appropriate that it also assesses foreign qualifications. As with most aspects of the process for a foreign professional becoming admitted or registered in Australia, there is usually a significant level of discretion involved to give the deciding body flexibility. The extent of that discretion, however, can vary and will normally be set out in the body's rules or in a policy document. For example, the Law Profession Admissions Board has published a set of Principles on how it assesses foreign qualifications.<sup>7</sup>

Some professions give specific foreign academic qualifications special status, providing automatic recognition for Australian academic qualification purposes or otherwise giving it some form of special status. This automatic recognition of education qualifications is distinguished from the case of automatic admission or registration through mutual recognition, discussed above. As an example, the Medical Board of Australia, under its 'Competent Authority pathway', approves certain foreign degrees for largely automatic approval as equivalent to an Australian degree. To do this, it has approved several overseas authorising bodies in the UK, Canada, New Zealand, the US and Ireland.<sup>8</sup> Therefore, any degree or other qualification these foreign

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<sup>3</sup> Medical Board of Australia, *Interns* <<http://www.medicalboard.gov.au/Registration/Interns.aspx>> (accessed 22 March 2018).

<sup>4</sup> See *Legal Profession Uniform Admission Rules 2015* (NSW) r 11; Legal Profession Admission Board of NSW, *Guide for Applicants for Admission as a Lawyer in NSW* (1 July 2017) 15

<<http://www.lpab.justice.nsw.gov.au/Documents/Guide%20for%20applicants%20for%20admission%20-%20Version%202.1%20-%20PUBLISHED%20-%2001-07-2017.pdf>> (accessed 22 March 2018); Legal Profession Admission Board of NSW, Law Admissions Consultative Committee, *Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission to the Australian Legal Profession* (February 2015) 2

<<http://www.lpab.justice.nsw.gov.au/Documents/Uniform%20Principles%20for%20assessing%20Overseas%20Qualifications%20-%20with%20LPAB%20deletions%20on%2017-03-2016.pdf>> (accessed 22 March 2018).

<sup>5</sup> Medical Board of Australia, *Standard Pathways* <<http://www.medicalboard.gov.au/Registration/International-Medical-Graduates/Standard-Pathway.aspx>> (accessed 22 March 2018); Australian Medical Council, *Australian Medical Council* <<http://www.amc.org.au/about>> (accessed 22 March 2018).

<sup>6</sup> Australian Medical Council, above n 5.

<sup>7</sup> See, e.g., Legal Profession Admission Board of NSW, Law Admissions Consultative Committee, above n 4.

<sup>8</sup> Medical Board of Australia, *Competent Authority Pathway* <<http://www.medicalboard.gov.au/Registration/International-Medical-Graduates/Competent-Authority-Pathway.aspx>> (accessed 22 March 2018).

authorities have approved generally receives largely automatic acceptance as being equivalent to an Australian degree.<sup>9</sup> However, here, the Medical Board will still only grant provisional registration until the doctor has completed 12 months of supervised practice.<sup>10</sup> In a similar way, Engineers Australia, the primary professional association regulating engineers nationally, has established affiliation agreements with professional associations around the world. Thus, a member of one of those associations will be granted a similar level of membership in Engineers Australia.<sup>11</sup> Engineers Australia currently has agreements with engineering associations in 11 countries: Canada, Hong Kong, Japan, Ireland, Korea, Malaysia, New Zealand, Singapore, Sri Lanka, the UK and the US.<sup>12</sup>

However, where there is no such 'automatic' equivalence, the relevant authority will normally need to compare the subjects completed in the foreign qualification to the subjects required under an Australian degree. Where the Australian degree has both compulsory and elective subjects, the foreign applicant's degree will normally need to have very close correlation in the compulsory subjects. There may be a lesser level of equivalence required for elective subjects. For example, in assessing a foreign lawyer's degree, the Legal Profession Admissions Board requires the applicant have very close equivalence to the compulsory 'Priestly 11' subjects.<sup>13</sup>

The concept of equivalence also requires not just equivalence in name but also in substance. Thus, for example, the subjects in UK degrees are more likely to be equivalent to the same-name subjects in an Australian degree than the subject in a US degree. This is because the UK's common law background is far closer to that in Australia than in the US. Even then, however, equivalence is not guaranteed. The focus of the Board is on genuine equivalence in substance. Thus, the subject 'property law' in the UK will still not be equivalent to the same subject in an Australian degree until the applicant has also completed additional study in Australia's 'Torrens' statutory regime for registering property titles.<sup>14</sup>

For financial planners, their statutory regime in the *Corporations Act*<sup>15</sup> has recently been amended to require a higher minimum education of a bachelor's degree or equivalent. It has also established a new standards regulator, the Financial Adviser Standards and Ethics Authority ('FASEA'), to administer the new requirements. The Act gives FASEA significant discretion over how it approves foreign qualifications based on the concept of 'equivalence'<sup>16</sup>

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<sup>9</sup> Medical Board of Australia, *Competent Authority Pathway*, above n 8.

<sup>10</sup> Medical Board of Australia, *Competent Authority Pathway*, above n 8.

<sup>11</sup> Engineers Australia, *Membership through MRA* <<https://www.engineersaustralia.org.au/Membership/Membership-Benefits/MRA-Benefits>> (accessed 22 March 2018).

<sup>12</sup> Engineers Australia, *International Affiliates* <<https://www.engineersaustralia.org.au/About-Us/Industry-Partners/International-Affiliates>> (accessed 22 March 2018).

<sup>13</sup> Legal Profession Admission Board of NSW, Law Admissions Consultative Committee, above n 4, 3.

<sup>14</sup> See Legal Profession Admission Board of NSW, Law Admissions Consultative Committee, above n 4, 12.

<sup>15</sup> *Corporations Act 2001* (Cth) ch 7.

<sup>16</sup> *Corporations Act 2001* (Cth) ss 921B, 921V.

## **'Topping Up' Foreign Qualifications**

Where the authority determines that the foreign applicant has not completed all the equivalent subjects, the authority will normally officially inform the applicant which additional subjects they must complete to satisfy the equivalent Australian education level. The applicant will then need to complete these, normally at an Australian university to ensure the subjects are Australian-compliant. Once these have been completed, the authority can then formally acknowledge that the applicant has completed the requisite Australian academic qualifications. For example, FASEA is required to specify what additional courses the foreign applicant must complete before it approves their education as being equivalent to a relevant Australian degree.<sup>17</sup> However, of course, this will then not usually result in admission or registration. The applicant will also then need to have their level of foreign practical training assessed, where training is required, as discussed next.

## **Recognition of Foreign Practical Training**

The second main requirement a foreign applicant needs before being able to practice in Australia is to ensure they have completed a level of practical training like that required for Australian applicants.<sup>18</sup> The procedure will usually be like the procedure to satisfy Australian educational requirements. For example, the Legal Profession Admissions Board requires applicants to have a similar amount of practical legal training as for local lawyers wanting to be admitted.<sup>19</sup> As with local lawyers, it also requires that the training has been completed within the last five years.<sup>20</sup> Further, some professions may automatically acknowledge equivalence where the training is accepted by an approved foreign authority. For example, the Medical Board of Australia automatically accepts the level of training required by an approved foreign authority in the same way that it accepts their approved academic qualifications as equivalent.<sup>21</sup> Alternatively, there may be a limited level of 'automatic' or at least assumed acceptance of foreign authorising bodies requirements around practical training, as occurs with Engineers Australia.<sup>22</sup>

## **Exemptions for Experienced Foreign Professionals**

The above discussion generally refers to becoming a newly admitted practitioner. However, authorising bodies may have discretion to grant exemptions where the foreign applicant has significant experience. Here, the authorising body may be willing to forgo either academic or practical training requirements on the basis that the individual's knowledge far exceeds the knowledge that the university, undergraduate-level subjects would provide, especially where the person is an international expert in the area. The authorising authority will usually have wide discretion over granting such exemptions, given that a level of expertise will normally be unique to the individual. This allows the authority to retain full control over the administration of the exemption process. In such situations, the grant of admission is also likely to be conditional, limiting their authorisation to the expert's specialised area of practice. The Legal Profession Admissions Board, for

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<sup>17</sup> *Corporations Act 2001* (Cth) s 921V.

<sup>18</sup> Legal Profession Admission Board of NSW, above n 4, 5.

<sup>19</sup> Legal Profession Admission Board of NSW, above n 4, 5.

<sup>20</sup> Legal Profession Admission Board of NSW, above n 4, 19; Legal Profession Admission Board of NSW, Law Admissions Consultative Committee, above n 4, 4-6.

<sup>21</sup> Medical Board of Australia, *Competent Authority Pathway*, above n 8.

<sup>22</sup> Engineers Australia, *Membership through MRA*, above n 11.

example, can waive any of its usual requirements for an experienced foreign lawyer and retains full discretion over the process and what conditions it will apply.<sup>23</sup>

## Other Admission Requirements

Along with ensuring a foreign-qualified professional has an equivalent level of education and practical training to that required for an Australian professional, the body authorised to admit or register the foreign applicant will usually require that the individual also satisfy the other admission requirements that apply to local applicants. This might include requiring that the applicant satisfies any good character requirement such as being a 'fit and proper person', being 'of good reputation' or being 'suitable to practice'. (See the Fit and Proper Person Test title and Qualifications to Practice title.) Other requirements applicable to all aspiring practitioners, whether local or foreign, might include, for example, a requirement to swear an oath or make an affirmation.<sup>24</sup> (See the Ethics Codes title.) The Legal Profession Admissions Board, for example, requires a person to be a 'fit and proper person', which essentially means having no serious criminal convictions, and to take an oath or make an affirmation, before the Supreme Court admits them as a lawyer.<sup>25</sup>

## Focused-Need Exemptions

The above discussion has all related to the usual way that an authorising body may admit or register foreign-qualified professionals in Australia. However, there may be situations where the government wants to exempt foreign professionals from the standard requirements to achieve a social policy objective. For example, where there is a shortage of Australian professionals in a certain sector or region, the government may wish to reduce the requirements to boost the supply of professionals not being met by Australian professionals. An example is a Commonwealth-State government scheme to encourage foreign doctors to practice in regional and remote areas of Australia, where there is a significant shortage of Australian doctors willing or able to do the work.<sup>26</sup> This 'area of need' scheme provides for foreign specialists, who are willing to work in rural or remote regions, to be sponsored by an employer, such as a regional hospital or clinic, for a position approved by the relevant State health department.<sup>27</sup> NSW Health describes the program as 'a strategy to provide temporary assistance to locations and services experiencing medical workforce shortages'.<sup>28</sup> However, given the scheme allows for the practitioner to have less than the full suite of academic or practical requirements that Australian practitioners must have, the foreign specialist does not receive full specialist registration. Instead, they only receive conditional registration status being 'limited registration for area of need'.<sup>29</sup>

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<sup>23</sup> Legal Profession Admission Board of NSW, Law Admissions Consultative Committee, above n 4, 6-7.

<sup>24</sup> On the role of an oath generally and especially in relation to 'banking professionals', see Dimity Kingsford Smith, Thomas Clarke and Justine Rogers, 'Banking and the Limits of Professionalism' (2017) 40 *University of New South Wales Law Journal* 411.

<sup>25</sup> Legal Profession Admission Board of NSW, Profession Admission Board of NSW, above n 4, 1.

<sup>26</sup> Medical Board of Australia, *Specialist Pathway - Area of Need* <<http://www.medicalboard.gov.au/Registration/International-Medical-Graduates/Specialist-Pathway/Area-of-need.aspx>> (accessed 22 March 2018).

<sup>27</sup> Medical Board of Australia, *Specialist Pathway - Area of Need*, above n 26.

<sup>28</sup> NSW, Department of Health, *Area of Need Program* <<http://www.health.nsw.gov.au/aon/Pages/default.aspx>> (accessed 22 March 2018).

<sup>29</sup> Medical Board of Australia, *Specialist Pathway - Area of Need Program*, above n 26.

## Summary

This title looks at the way that foreign qualifications can be accepted for the purposes of admission or registration into Australian professions. There may be situations where the education or training system in a foreign jurisdiction is similar enough to the Australian system that the Australian authorising body may automatically approve degrees or training accepted by the equivalent foreign authorising body for Australian purposes. Generally, however, an authorising body will normally look at the level of equivalence in the foreign qualification and determine where there are deficiencies and specify what additional subjects the individual must complete before their qualifications are accepted for entry into the Australian profession. Some authorising bodies may grant exemptions for highly experienced foreign practitioners. Further, to pursue policy aims, the government may allow exemptions from the usual requirements for foreign applicants where there are special needs such as in regional or remote areas of Australia.

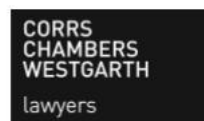
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