



LEGAL  
PRACTITIONERS'  
REGISTRY  
SECRETARIAT TO THE BOARD OF EXAMINERS

20 January 2010

124 Waymouth Street  
Adelaide  
South Australia 5000  
  
GPO Box 2066  
Adelaide  
South Australia 5001  
  
DX 333 Adelaide  
  
Phone 08 8229 0251  
Fax 08 8231 1929  
Email [registry@lawsociety.sa.asn.au](mailto:registry@lawsociety.sa.asn.au)  
[www.lawsociety.sa.asn.au](http://www.lawsociety.sa.asn.au)

Professor the Hon Michael Lavarch  
Executive Dean  
Law Faculty  
Queensland University of Technology  
GPO Box 2434  
Brisbane Qld 4001

Dear Professor Lavarch

**National Legal Profession Reform Project**

I refer to Mr Roger Wilkins letter to you dated 11 December 2009 and express dismay and concern that the Taskforce has taken the view that the important topic of admissions should not be referred for consultation.

This letter is written both in my capacity as Secretary to the Board of Examiners in South Australia and as a founding member of Administrators of Australasian Law Admitting Authorities (AALAA), although does not purport to express the views of the Board.

I note the intention to retain the Supreme Court as guardian of the profession and believe this approach is widely supported. It is imperative that the role of the Court not be diminished to rubber stamping admissions but rather retain their current authority with full inherent jurisdiction over the legal profession.

By way of background, the Board of Examiners in South Australia considers all applications for admission. The Board is established by s.14I of the Legal Practitioners Act and consists of 15 members appointed by the Chief Justice and comprising a Master of the Supreme Court (Presiding Member), 2 nominees of the Attorney-General and 12 legal practitioners. To give you some insight to the work of the Board, which meets monthly, it considers applications for:

- local admission
- re-admissions
- registrations pursuant to the Mutual Recognition Act (South Australia is not part of the National Model Laws regime therefore practitioners requiring a South Australian practising certificate must be enrolled in South Australia)
- registration pursuant to the Trans Tasman Mutual Recognition Act
- accreditation of academic and practical qualifications for the purposes of admission and migration to Australia by persons trained and qualified overseas
- accreditation of interstate degrees to confirm the academic requirements have been

satisfied in accordance with the Admission Rules (this is necessary as not all Australian degrees fully comply with the National Admission Rules)

- o intimations as to suitability for admission
- o approvals to any variations in the supervision requirements for post-admission supervised employment
- o to vary or remove conditions on practising certificates imposed by virtue of admission, registration or Board determination
- o determine conditions to be placed upon a right of practice of a practitioner returning to practise having not held a practising certificate for 3 or more years.

In relation to local admissions the Board considers any disclosure in relation to suitability which occasionally can involve some reasonably complex investigation. Once satisfied that the applicant is eligible and suitable for admission the Board issues a brief report to the Court recommending admission thereby limiting the Court's time in actually admitting a practitioner. The Supreme Court admits the practitioner in a relatively simple ceremony where the applicant takes the oath and signs the Roll.

It is in recognition of the workload of the Board in considering such applications that I suggest that such work could never be completed by a single body such as the National Legal Services Board but would need to be delegated to a local authority within each jurisdiction. This is especially so when you consider that there were 4813 admissions in Australia during the 2008 calendar year.

AALAA comprises representatives of all the admitting authorities in Australia and New Zealand. We represent the coal face of admissions and therefore understand the real issues associated with admissions which members of the Taskforce may not necessarily appreciate. AALAA members and staff assist applicants by guiding them through the jurisdictional interpretation of the Uniform Admission Rules. Members of AALAA meet to identify issues encountered in relation to admissions and oversees qualifications. It always astounds us how each jurisdiction interprets a Uniform Rule in terms of process and procedure so differently.

Sandy Clark (Chairman of LACC) has been a regular guest at our annual meetings for the past few years and through this association the members of AALAA and the admitting authorities are often requested to have input into matters being considered by LACC.

In an age where simplicity and uniformity are desired outcomes from this review, it seems that now would be an ideal opportunity for the Taskforce to have input through National Rules in achieving such an outcome through the standardisation of documentation, practices and procedures for admission throughout Australia. At the last AALAA meeting in September 2009, members questioned the real value of applicants having to advertise their intention to seek admission. Not all jurisdictions have this requirement. No-one could recall having received an objection to admission on the basis of advertisement so why do it? This is an example of something the National Rules could standardise.

Also national guidelines in respect of all matters required to be disclosed would result in consistency throughout the country.

There needs to be greater standardisation with respect to academic misconduct. In Victoria, for example, the Board of Examiners requires educational institutions to provide a certificate in respect of each applicant for admission to disclose any academic misconduct. This is not a consensus approach and probably not one that should be universally adopted. There is however some scope for guidance to be given in relation to

academic disclosure so as to ensure that an applicant for admission in any Australian jurisdiction has the same obligations to disclose, or the same exemptions from disclosure, as in any other Australian jurisdiction. I mention exemptions because in South Australia the Board exempts from disclosure of minor incidence of academic misconduct where the applicant was counselled. Only where the misconduct resulted in a loss of marks or requirement to re-submit a paper is the application required to make disclosure. This action was taken by the Board due to the high number of disclosures for inappropriate referencing being made by applicants from one of the Law Schools.

Without some national guidelines on such matters the current regime of jurisdictional inconsistencies will continue.

Turning to registration of foreign lawyers and foreign qualified lawyers seeking admission in Australia. Under the Model Laws foreign lawyers are required to be registered. Given the relatively few numbers of such applications there is merit in a single body assuming responsibility for assessing the suitability of all such applicants and thereby developing an appropriate body of knowledge and experience in this area which would be more cost effective than leaving such assessments to each jurisdiction. A certificate of approval could be issued enabling registration by the appropriate body in each jurisdiction. Registration for regulation purposes would still be required in each jurisdiction where the foreign lawyer maintained their practice.

In relation to foreign qualified lawyers and graduates seeking admission in Australia. LACC has developed the Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission which have been adopted by the jurisdictions. As part of a nationalisation to achieve greater consistency the number of assessing authorities was reduced to four, Western Australia, Queensland, Victoria and New South Wales. It was at about this time that New South Wales unfairly attracted disdain particularly in relation to English applicants who were required to comply with the Principles. Prior to the adoption of the Principles, applicants from England seeking admission in South Australia were required to complete any of the Priestly academic subjects that had not been completed overseas as part of their law qualifications, however, by making application in New South Wales often no further academic study was required of them and the practitioners may only be required to complete a practical trust accounting course in order to qualify for admission in Australia.

There was clearly a different approach taken in New South Wales compared to the other Australian jurisdictions.

Whilst the adoption of the LACC Principles does assist in providing a more consistent result with respect to applicants who obtained their qualifications in those countries mentioned in the Principles, others, such as applicants from India can be disadvantaged. Whilst I appreciate that not all Indian Universities may be of an academic standard equivalent to that in Australia, I consider that it is inequitable to require all applicants from India to be required to complete all 11 academic subjects at an Australian University. I raise this example, not to criticise LACC, but rather to encourage the proposed National Legal Services Board to work with LACC in further developing the Principles with a view to ensuring a fair and consistent outcome for overseas qualified applicants without diluting the standard of qualifications expected of local applicants for admission.

It would be my view that whilst there may be merit in a single body performing the task of assessing applications from overseas qualified practitioners, given the time taken in responding to enquiries and working with applicants it may not be viable for a single body to deal with such applications and that consideration should be given to retaining the status quo with perhaps a review by the National Board in 2-3 years to ensure that the best and most cost effective outcomes are being achieved. In the meantime LACC should be encouraged to continue to review the Principles and Guidelines with a view to developing a mechanism to provide a consistent and unbiased outcome for all applicants.

I thank you for considering this submission.

Yours sincerely

A handwritten signature in cursive script that reads "David Milne". The signature is written in black ink and is positioned above the printed name and title.

David G Milne  
Legal Practitioners' Registrar

cc. Roger Wilkins AO  
Attorney General's Department  
3-5 National Circuit  
Barton ACT 2600