

9 September 20202

Ms Charlotte Stubbs
Policy Lawyer
Law Council of Australia
[REDACTED]

Your ref

Our ref LM:MD

Dear Ms Stubbs

Australia-United Kingdom Free Trade Agreement

Thank you for the opportunity to provide input to the Law Council of Australia (LCA) work to inform the Department of Foreign Affairs negotiations on the UK Free Trade Agreement with respect to legal services.

At the outset, the Queensland Law Society supports the terms of the Generic Legal Services Market Access Request developed by the LCA's Transnational Practice Division as an appropriate starting point for access to the UK market for legal services. In particular, that Australian legal and related services suppliers seek a right to:

- i) Establish a commercial presence (through branch office or other legal presence with a right to establish one or more commercial presences as provided to local lawyers) and, where a commercial presence has been established, the option to use the firm name used in Australia respecting local customs or usage in the host country;
- ii) Provide legal services covering the laws of multiple jurisdictions in respect of which the Australian legal service provider or employees of the Australian legal service provider are qualified to advise;
- iii) Have the option of entering into commercial association with local lawyers and law firms, with the freedom to negotiate fee and profit sharing arrangements;
- iv) Provide legal services on a fly-in/fly-out basis, without mandatory residency or registration requirements;
- v) Include secondments and similar exchange programs to and from the host country;
- vi) Prepare and appear in arbitrations, conciliations and mediations as well as provide services as Arbitrators, Conciliators and Mediators; and
- vii) Free movement of professionals (non-burdensome visa conditions and processes), as both independent service providers and intra-corporate transferees.

Meeting incoming need and identifying outgoing opportunities

The Queensland Government identifies a number of opportunity sectors for trade with the UK in the short and medium term which may be facilitated and underpinned by a trade in legal services. These include, notably:

- Processed food
- Infrastructure, transport and logistics
- Mining equipment, technology and services and advanced manufacturing
- Scientific research and development collaboration
- Tourism investment
- Agribusiness.

Support in access to the provision of legal services to support these industry types would be of great assistance to our State and local law firms.

In terms of inbound need, UK lawyers may be able to bring experience of AML/CTF compliance regimes which may be of significant assistance to local firms should the Australian Government extend that regulatory regime to Australian lawyers under the so called 'Tranche 2'. Additionally, experience of the more mature privacy and data security regimes in operation in the UK through the application of EU frameworks would enhance the local advisory capacity of our firms.

Mutual Recognition of Australian/UK Lawyers

It has been suggested that there may be a place for a mutual recognition of legal professionals between Australia and the UK.

The present regulatory environment is not equivalent to mutual recognition or even equal treatment:

- When coming to Queensland, UK lawyers must undertake at least one additional subject of tertiary studies before they can be admitted (constitutional law). Depending on the discrete subjects undertaken in their undergraduate training they may also have to undertake additional tertiary education in administrative law and ethics and professional responsibility to ensure they have sufficiently covered off the "Priestly 11" legal knowledge requirements for admission.
- When coming to the UK, Queensland lawyers must undertake the Qualified Lawyers Transfer Scheme assessments to become a solicitor in England and Wales. There are exemptions and recognition of prior experience for lawyers qualified in the EEA/EU/Switzerland, lawyers qualified in Northern Ireland or Scotland, barristers who has qualified in England and Wales and completed a pupillage and someone who has successfully completed the LPC in England and Wales, but not for Australian lawyers.

We note that presently there is Trans-Tasman mutual recognition into Queensland for New Zealand lawyers and this comes with none of the requirements prescribed in Schedule 2 - Common Additional Academic Requirements to the LACC Uniform Principles For Assessing Qualifications Of Overseas Applicants For Admission to The Australian Legal Profession¹.

¹ http://lca.lawcouncil.asn.au/LACC/images/202136163_28_Uniform_Principles_for_assessing_Overseas_Qualifications.pdf

Arguments can be made in favour of an equivalent position for UK practitioners *with a right to practice*, as is available to New Zealand practitioners. This is particularly so after the implementation of the Solicitors Qualifying Examination set to be introduced in 2021 in England and Wales to make sure all qualifying solicitors meet a consistent standard.

In considering the domestic impact of mutual recognition, it is important to acknowledge that the pathway between the Australian legal market and the UK is well trodden:

- In terms of outward movement, it has traditionally been junior solicitors leaving their Australian employment in the years post qualification and returning some years later as senior, experienced practitioners, albeit without an established transferable practice or domestic network. This migration of junior practitioners to the UK is one of the factors driving the present scarcity of practitioners in the two to five year post admission qualification demographic.
- In terms of inward movement, it has traditionally been more experienced UK solicitors coming to perform short-term work arrangements in Australia, subsequently deciding to relocate permanently, seeking local admission and establishment of local legal practice.

Any movement to mutual recognition between Australia and the UK will be unlikely to affect this underlying trend toward outward migration of qualified lawyers as the present regulatory threshold for admission in the UK is not sufficiently high to deter the movement of talent.

However, mutual recognition may assist senior and experienced lawyers from the UK to migrate to Australia and establish worthwhile careers and lives in this jurisdiction. This is likely to provide a net benefit to the Australian community associated with the migration of skills and capital to this country.

Having said that, mutual recognition is only one relevant factor in the movement of lawyers between jurisdictions and the ability to obtain visas is a key lever of labour mobility. In this regard we do not consider that there should be any general liberalisation of visa applicability associated with any movement toward mutual recognition, with one exception. There is considerable utility in exploring visa liberalisation for UK qualified legal practitioners with up to five years post admission experience, but with particular focus on the cohort of two to five year PQE practitioners as this represents the other side of the coin to our outward junior lawyer migration.

Intra-jurisdictional inconsistencies

We are conscious that there are significant intra-jurisdictional inconsistencies between the UK and Australian systems for the admission and practice of legal practitioners.

We note that presently an Australian legal practitioner need be only admitted in one Australian State or Territory and they can obtain a practising certificate in any jurisdiction to practice and may travel between jurisdictions freely to practice, provided they are covered by appropriate professional indemnity insurance. A UK practitioner who is admitted in one jurisdiction is free to practice and travel to all Australian jurisdictions.

The position is not the same in the UK, in that the jurisdictions of England and Wales, Northern Ireland and Scotland are disparate and there is not the same arrangements in place to move between those parts of the UK. In this context, speaking about the UK as a single

Australia-United Kingdom Free Trade Agreement

jurisdiction is not equivalent to the Australian context. Our members largely focus their interest in England and Wales over the other UK jurisdictions.

We would be pleased to receive updates on developments in the EU FTA negotiations from you as they progress. Please contact Matt Dunn, General Manager of Advocacy, Guidance and Governance on [REDACTED]

Yours faithfully

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Luke Murphy
President