

PRACTISING IN NSW UNDER THE UNIFORM LAW

PRACTICE OF FOREIGN LAW IN AUSTRALIA

Definition of a foreign lawyer

A foreign lawyer is defined in the Legal Profession Uniform Law (NSW) ("the Uniform Law") as an individual who is properly registered or authorised to engage in legal practice in a foreign country by the foreign registration authority for the country.

Practice of foreign law in NSW

A foreign lawyer wishing to practice foreign law from this jurisdiction should apply for an Australian registration certificate. When issued with a certificate, a foreign lawyer becomes an Australian registered foreign lawyer. An Australian registered foreign lawyer is entitled to practise foreign law in this jurisdiction.¹ Section 62 of the Uniform Law details the requirements for the grant of an Australian registration certificate. Residence or domicile in Australia is not a prerequisite for or a factor in the entitlement to the grant or renewal of a certificate.²

Limited practice without registration

Section 60 of the Uniform Law provides that a foreign lawyer may practise foreign law from this jurisdiction without the need to become an Australian registered foreign lawyer for one or more periods that do not in aggregate exceed 90 days in any 12 month period or during any period during which any restriction under the Migration Act 1958 (Cth) has the effect of limiting the period during which work may be done by the foreign lawyer in Australia.

To rely on s60, a foreign lawyer:

- must not maintain an office in NSW for the purpose of practising foreign law in Australia; or
- must not be a partner, director or other principal of a law practice in NSW; or
- must not have had his or her Australian registration certificate cancelled or suspended

Statutory conditions

Australian registration certificates are subject to statutory conditions and may also be subject to discretionary conditions.

The following are statutory conditions on Australian registration certificates:

- the holder cannot hold another Australian registration certificate at the same time
- the holder must notify the Law Society Council in writing of certain events within 7 days of the happening of the event³. The events include being charged with or convicted of a serious offence or a tax offence or a bankruptcy related event occurring in relation to the holder or the holder being the subject of disciplinary proceedings as a lawyer in a foreign country.

Scope of Practice

Foreign lawyers, whether holders of Australian registration certificates or engaged in limited practice under s60, may provide only the following legal services in Australia:

- doing work concerning the law of a foreign country where the lawyer is

registered or authorised by the foreign registration authority

- legal services concerning proceedings before bodies (other than courts and where the rules of evidence need not apply) and where knowledge of foreign law is deemed essential
- legal services concerning consensual dispute resolution
- legal services of a kind specified in the Uniform Rules

Foreign lawyers are not entitled to practise Australian law in Australia or appear in any court save on the lawyers own behalf or as permitted by the Uniform Rules. A foreign lawyer may however, advise on the effect of an Australian law if it is necessarily incidental to the practice of foreign law and the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

Trust Money

An Australian registration certificate is subject to a condition that the holder is authorised or not authorised to receive trust money.

Professional Indemnity Insurance

Where an Australian registered foreign lawyer is not covered by professional indemnity insurance, he or she must disclose in writing to each client whether or not the lawyer is covered by other professional indemnity insurance and if so covered the nature and extent of that insurance.

¹ Legal Profession Uniform Law (NSW) s61

² See note 1 above, s62 (5)

³ See note 1 above, s66