

POLICY ON MUTUAL RECOGNITION OF ACCREDITED SPECIALISTS – FRAMEWORK FOR NATIONAL POLICY

Purpose

The purpose of this policy is to secure agreement on a co-operative framework for recognition of Accredited Specialisation amongst States.

This policy provides a framework for Accredited Specialisation in one State to be recognised in other States. The outcome of recognition is that legal practitioners may, subject to conditions, be eligible to hold Accredited Specialisation in more than one State. On an ongoing basis, renewal of each Accredited Specialisation is the responsibility of each State in which Accredited Specialisation is held.

Mutual recognition may enable Accredited Specialists who work in more than one State to maximise the opportunity to promote the services they offer. For Accredited Specialists who move their practice to a different State, it may provide a straightforward way to have their Accredited Specialisation recognised in that State.

Implementation of this mutual recognition policy by each State will be on a good faith best endeavours basis and is not intended to detract from each State's authority to establish and operate its own Scheme as it sees fit.

This policy is based on the understanding that the *Mutual Recognition Act 1992 (Cth)* does not apply to Accredited Specialisation on the grounds that Accredited Specialisation does not affect a legal practitioner's right to practise in a particular jurisdiction; it is merely a recognition of specialist skills in a particular jurisdiction.

Target groups

Implementation of this policy is expected to be of particular importance to three groups of legal practitioners:

- (a) Legal practitioners who practise in a location close to a border and who are likely to draw clients from both States;
- (b) Legal practitioners who practise in two or more States and who deal with clients from those States; and
- (c) Legal practitioners whose practice is located in a State different to that of their original Accredited Specialisation.

Summary of policy

Applicants must hold an appropriate Australian practising certificate as outlined in the *Legal Profession Act* (or relevant equivalent legislation) as a prerequisite to application of this policy.

It is agreed that legal practitioners who hold Accredited Specialisation in one State should have the opportunity to be recognised as Accredited Specialists in other States where the specialisation exists.

In areas of practice which are nationally uniform (Category 1) a legal practitioner who is an Accredited Specialist in their home State will, on application to another State, be automatically given Accredited Specialisation in that other State.

In areas of practice with a high degree of similarity (but not uniformity) between States (Category 2) a legal practitioner who is an Accredited Specialist in their home State will need to

successfully complete some assessment in other States in order to be given Accredited Specialisation in those States.

Mutual recognition will be not available for areas of practice:

- not offered in other States; or
- where substantial differences exist between States. In those cases a legal practitioner who is an Accredited Specialist in their home State will need to complete all requirements for Accredited Specialisation in other States in order to be given Accredited Specialisation in those States.

To give legal practitioners some certainty as to the mutual recognition Category that may apply to them, the National Steering Committee will agree on the areas included in each Category which may be published on each Law Society's website (to be updated annually or when substantial developments occur in particular areas of law eg. federalisation of laws).

Advertising by Accredited Specialists must use the appropriate logo for their area of Accredited Specialisation and identify the State(s) in which the Accredited Specialisation(s) are held.

Interpretations

In this policy, unless the contrary intention appears:

Accredited Specialisation means the assessment and recognition by a Law Society of the specialist competencies of legal practitioners and **Accredited Specialist** means a legal practitioner who has passed such assessment and been so recognised.

Advertising means all materials in which Accredited Specialisation is mentioned including, without limitation, letterheads, business cards, advertising in any media (including website), signature blocks (eg. used on emails).

Advisory Committee means a committee established by the Board of the relevant State, consisting of members of the legal profession (solicitors, academic solicitors and barristers) and responsible for the development of the assessment requirements (including performance standards, performance criteria and core areas of knowledge) and the Method of assessment.

Board means the board or other body of the Law Society which is responsible for Accredited Specialisation in the relevant State.

Current Accredited Specialisation means the legal practitioner has met all renewal requirements as set out by the Law Society and paid the annual renewal fee at the commencement of the reaccreditation cycle.

Law Society means a law society or equivalent entity of a State.

Method of assessment means the tasks endorsed by the Board of the relevant Law Society and developed by the relevant Advisory Committee, which the legal practitioner must successfully complete to the requisite performance standard, in order to be granted recognition as an Accredited Specialist. There are generally three forms of assessment including formal examination, take home assessment and live assessment. The formal examination is a written exam, usually 3 hours in duration, completed under formal exam conditions. The take home assessment includes, but is not limited to, mock files, resumes, portfolios and take home exams. The live assessment includes any assessment that takes place with the legal practitioner present, including peer/core competency interviews, simulated interviews and mock hearings.

National Steering Committee means the national committee made up of persons responsible for the management and administration of the Scheme in each relevant Australian jurisdiction.

Renewal fee means an annual fee set by the relevant State and made payable by Accredited Specialists for renewal of their Accredited Specialisation at the commencement of each reaccreditation cycle.

Scheme means the Accredited Specialisation scheme operating in the relevant State.

State means any Australian state in which a Law Society offers Accredited Specialisation and which has formally agreed to adopt this policy. At inception of the policy these states are New South Wales, Victoria, Queensland, Western Australia, and South Australia.

CONDITIONS FOR RECOGNITION

1. *Category 1*

Relationship: *Uniformity between the States*

Recognition: *Automatic following application to the Board*

- 1.1 A legal practitioner who is an Accredited Specialist in his/her home State will automatically be recognised in another State where he/she:
 - (a) provides evidence of Current Accredited Specialisation in his/her home State in an area of federal jurisdiction; and
 - (b) makes a written application to the Board of the other State.
- 1.2 Once the application for mutual recognition is accepted by the Board in the other State, the legal practitioner will be recognised as an Accredited Specialist in both the home State and the other State and will be governed by the rules of the Schemes in both the home State and the other State relating to that Accredited Specialisation, including payment of a yearly renewal fee in each State.
- 1.3 On an ongoing basis, the Accredited Specialist may elect to continue to renew both Accredited Specialisations or withdraw from one Accredited Specialisation and maintain the other.
- 1.4 The Accredited Specialist is entitled to Advertise that he/she holds Accredited Specialisation in both States as long as both remain Current Accredited Specialisations. For example J.Johns, Accredited Specialist in Immigration Law [logo appears] in [home State] and [other State].

2 *Category 2*

Relationship: *High degree of similarity between the States*

Recognition: *After some assessment by the Board*

- 2.1 In areas of practice with a high degree of similarity (but not uniformity) between the laws and procedures governing practice in both States, a legal practitioner who is an Accredited Specialist in his/her home State will be recognised in another State only after applying to the Board in the other State and demonstrating proficiency in those aspects of practice determined by the Board of the other State.
- 2.2 In order for a legal practitioner to be eligible to gain Accredited Specialisation in the other State he/she must:
 - (a) provide evidence of Current Accredited Specialisation in his/her home State in an area of practice described in 2.1; and
 - (b) make a written application to the Board in the other State.
- 2.3 The Advisory Committee in the other State will be responsible for recommending to the Board of the other State those aspects of practice in which the legal practitioner must demonstrate proficiency and the Method of assessment.
- 2.4 The legal practitioner must pay a fee as determined by the Board in the other State to cover the expenses of assessment and administration.
- 2.5 If successful in demonstrating proficiency under the assessment in the other State, the legal practitioner will be recognised as an Accredited Specialist in both the home State and the other State and will be governed by the rules of the Schemes

in both the home State and the other State, including payment of a yearly renewal fee in each State.

- 2.6 On an ongoing basis, the Accredited Specialist may elect to continue to renew both Accredited Specialisations or withdraw from one Accredited Specialisation and maintain the other.
- 2.7 The Accredited Specialist is entitled to Advertise that he/she holds Accredited Specialisations in both States as long as both remain Current Accredited Specialisations. For example J.Johns, Accredited Specialist in Property Law [logo appears] in [home State] and [other State].

AREAS NOT COVERED BY MUTUAL RECOGNITION

- A. Relationship: Substantial differences between the States**
Recognition: Only after completing all requirements for Accredited Specialisation in the other State

- A.1 In areas of practice with substantial differences between the laws and/or the procedures governing practice in both States, a legal practitioner who is an Accredited Specialist in his/her home State must apply to the Board of the other State and satisfactorily complete all the requirements for Accredited Specialisation in that other State.
- A.2 If successful in demonstrating proficiency under the Method of assessment in the other State, the legal practitioner will be recognised as an Accredited Specialist in both the home State and the other State and will be governed by the rules of the Schemes in both the home State and the other State, including payment of a yearly renewal fee in each State.
- A.3 On an ongoing basis, the Accredited Specialist may elect to continue to renew both Accredited Specialisations or withdraw from one Accredited Specialisation and maintain the other.
- A.4 The Accredited Specialist is entitled to Advertise that he/she holds Accredited Specialisations in both States as long as both remain Current Accredited Specialisations. For example J.Johns, Accredited Specialist in Personal Injury Law [logo appears] in [home State] and [other State].

- B. Relationship: Not offered in the other State**
Recognition: None in the other State

- B.1 If an area of practice is offered in the home State but not the other State, no recognition can be granted in the other State.
- B.2 If Advertising in the second State, the legal practitioner is required to specify the State in which the Accredited Specialisation is held. For example, J Johns, Accredited Specialist in Children's Law [logo appears] in [home State].