



Law Council
OF AUSTRALIA

Law Council of Australia Jurisdiction Report

LAWASIA

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Telephone +61 2 6246 3788 • *Fax* +61 2 6248 0639
Email mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 90,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12-month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2022 Executive as at 1 January 2022 are:

- Mr Tass Liveris, President
- Mr Luke Murphy, President-Elect
- Mr Greg McIntyre SC, Treasurer
- Ms Juliana Warner, Executive Member
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member

The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

Legal Professional Regulation in Australia

Qualification and admission as an Australian legal practitioner

1. A person who has been admitted to the legal profession is generally called an Australian lawyer. He or she must then apply to a regulatory authority and be granted a practising certificate before becoming legally entitled to engage in legal practice. Once a person has been granted a practising certificate, they are called an Australian legal practitioner.
2. A person is admitted to the legal profession by the Supreme Court of a state or territory. The Supreme Court will consider the application and the recommendation or advice of the admitting authority about whether the applicant is eligible for admission.
3. To be admitted to the legal profession, an applicant must demonstrate to an admitting authority that he or she:
 - (a) has approved academic qualifications (typically an approved law degree from an accredited university);
 - (b) has completed an approved course of practical legal training, through an accredited institution or through an approved traineeship or articulated clerkship; and
 - (c) is a fit and proper person to be admitted to the profession.
4. To be granted a practising certificate, an applicant must demonstrate to a regulatory authority that he or she:
 - (a) is an Australian lawyer; and
 - (b) is a fit and proper person to be granted a practising certificate.
5. A restricted practising certificate is the first kind of practising certificate issued. It entitles the practitioner to engage in legal practice only under the supervision of a practitioner who holds an unrestricted practising certificate. Usually, a person must hold a restricted practising certificate for two years before becoming eligible to apply for an unrestricted practising certificate.

Local admission on the basis of foreign legal qualifications

6. Foreign lawyers can also apply to be admitted to the Australian legal profession on the basis of qualifications obtained outside Australia.
7. To become an Australian lawyer, a foreign lawyer must demonstrate that they have completed a tertiary legal qualification and that they have undertaken a formal training program that is substantially equivalent to the Australian requirements in terms of minimum duration, areas of study, skills, practice areas and values. In some cases, extensive experience in legal practice can be considered as a substitute for formal qualifications and training.
8. Further avenues for local admission exist in New South Wales, Victoria and Western Australia under the *Legal Profession Uniform Law*. In these states, foreign lawyers with sufficient legal skills and relevant experience gained from foreign law practice can seek an exemption from the legal qualification and training requirements to be

admitted in Australia, however their admission may be subject to conditions (e.g., that they are permitted to practice for a limited period of time, to practise only within their area of expertise, or to practise only under supervision).

Regulation of foreign lawyers

9. Australia's regulation of foreign lawyers aims to facilitate the internationalisation of legal services in Australia by providing a hospitable framework for the practise of foreign law by foreign lawyers as a recognised aspect of legal practice in Australia.
10. Under legal profession legislation enacted in all Australian states and territories, there are no formal barriers for foreign lawyers providing legal services in relation to foreign law on a fly-in, fly-out basis. Australia enables foreign lawyers to practise foreign law in Australia to the extent that they are entitled to practise law in their home and/or other foreign jurisdiction, rather than with reference to their nationality or residential status.
11. Foreign lawyers working on a fly-in, fly-out basis, are entitled to come to Australia and act for their clients and provide legal services (for example in commercial negotiations, on transnational contracts, or international arbitrations), for a maximum period of 90 days in any 12-month period without any requirement to register with the Australian legal profession regulatory bodies.
12. Foreign lawyers who wish to establish a commercial presence (i.e. an office) may do so through a simple registration process that is purely based on their right to engage in legal practice in one or more foreign jurisdictions. This involves registration with the local state or territory authority as an 'Australian-registered foreign lawyer'.¹ Registration typically takes less than three weeks.
13. Once registered, a foreign lawyer is permitted to practise the law of those foreign jurisdictions in which the lawyer is appropriately qualified and international law. An Australian-registered foreign lawyer may also work in commercial association with Australian legal practitioners and/or other Australian-registered foreign lawyers.
14. The only significant restriction which applies to a foreign lawyer is that they are not entitled to appear before a court or in proceedings before a tribunal or other body in which the rules of evidence apply. Foreign lawyers are, however, entitled to provide legal services in relation arbitration proceedings, or conciliation, mediation and other forms of consensual dispute resolution.

Legal Profession Uniform Law

15. On 1 July 2022, the state of Western Australia officially joined the Legal Profession Uniform Law scheme, becoming the first state to join the founding jurisdictions of Victoria and New South Wales since the scheme's inception in 2015. The Uniform Law scheme now regulates over 70% of the Australian legal profession.
16. The objective of the Uniform Law Framework is to create a common legal services market underpinned by a uniform regulatory system. The Uniform Law Framework includes the Legal Profession Uniform Law (which is implemented by local legislation); Uniform General Rules; Uniform Admission Rules; Uniform Continuing Professional Development (CPD), Legal Practice and Professional Conduct Rules for solicitors; and Uniform CPD and Professional Conduct Rules for barristers.

¹ See for example *Legal Profession Act Uniform Law, Part 3.4*.

Activities of the Law Council of Australia in 2022

17. The Law Council's activities in 2022 have largely responded to the context of the Federal Election which took place on 21 May 2022.
18. Prior to the election, the Law Council developed its [Call to Parties](#), which outlines the key issues of concern to Australia's legal profession and sought the commitment of various political parties and independent candidates to a set of reforms the Law Council considers necessary to improve law and policy.²
19. The theme of the 2022 Call to Parties was Improvements to laws and the administration of justice in a post-pandemic society.

First Nations Voice to Parliament

20. Following the Federal Election, the Law Council made a [public statement](#) urging the incoming Parliament to move swiftly to progress a successful referendum to amend the Australian Constitution to enshrine within it a First Nations Voice to the Australian Parliament.
21. Under the proposal, a Voice would provide First Nations peoples with a means to advise Parliament on laws and issues affecting them.
22. The Law Council's position in support of a First Nations Voice to Parliament enshrined in the Australian Constitution, is underpinned by its longstanding policy position that First Nations peoples, through their representatives, have a right to be consulted about and participate in decision-making concerning legislative and policy changes affecting their rights and interests.³
23. The Law Council has supported the Indigenous Law Centre and Australian Association of Constitutional Lawyers to conduct a series of workshops in September and October 2022 on the wording of the Constitutional amendment and referendum working, and has sought the assistance of its Constituent Bodies to provide views and nominate relevant experts to attend the workshops.
24. Moving forward, the Law Council intends to:
 - (a) take a leadership role in encouraging/assisting the legal profession to inform and educate the public about the referendum process and applicable legal issues, to the broader public benefit; and
 - (b) contribute constructively to any consultation process managed by the Australian Government in relation to the wording of the proposed Constitutional amendment or the referendum question, and amendments to legislation underpinning the referendum process.

National Anti-Corruption Commission

25. Since 2019, the Law Council has actively engaged with the Federal Attorney General's Department in consultations regarding the proposed model for a National Anti-Corruption Commission (**NACC**), also referred to as a "Commonwealth Integrity

² Law Council of Australia [2022 Federal Election Call to Parties: Improvements to laws and the administration of justice in a post-pandemic society](#) (April 2022).

³ Law Council of Australia, [Indigenous Australians and the Legal Profession](#) (Policy Statement, 2010) 2 (clause 10).

Commission”.⁴ The Law Council has welcomed efforts of the new Federal Government to prioritise legislation for the establishment of a NACC in 2022.

26. In July and August 2022, the Law Council undertook a consultation process with its Constituent Bodies, Sections and Committees on design principles which should underpin the NACC, specifically:
 - (a) the ability for the Commission to investigate past conduct;
 - (b) the availability of judicial review through various stages of the NACC’s decision-making process;
 - (c) the independence of the Commission (including its discretion to initiate investigations and hearings, and an independent budgetary and reporting framework); and
 - (d) whistle blower protections.
27. Views gathered as part of the above consultation process were used to produce written submissions on the National Anti-Corruption Commission Bill 2022 and National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 (Cth), introduced to Parliament on 28 September 2022.⁵ The Law Council appeared before the Parliamentary Joint Select Committee on National Anti-Corruption Commission Legislation on 20 October 2022 in support of its submission, and further addressed aspects of the proposed legislation.

Federal Judicial Commission

28. Since 2006, the Law Council has advocated for the establishment of an independent Federal Judicial Commission to provide a clear and structured framework to fairly and punctually address complaints directed to the judiciary. This call was recently echoed by the Australian Law Reform Commission in its report [*Without Fear or Favour: Judicial Impartiality and the Law on Bias*](#), which, among other recommendations, called for the establishment of a Federal Judicial Commission in Australia.
29. The Law Council maintains that a Federal Judicial Commission should be underpinned by four key features — independence, coherence, accessibility and transparency — and established at arm’s length from the executive government and any National Anti-Corruption Commission, to ensure the independence of the judiciary and the separation of powers.⁶
30. The Law Council has renewed its call for the Australian Government to support the establishment of a Federal Judicial Commission, and to engage the federal judiciary and other stakeholders in a consultation process regarding its design. It has welcomed recent public statements made by the Attorney-General in favour of establishing a Federal Judicial Commission.

⁴ See, e.g. Law Council of Australia [Commonwealth Integrity Commission: Proposed Reforms](#) (January 2019); Law Council of Australia [Commonwealth Integrity Commission Consultation Draft](#) (February 2021).

⁵ See Law Council of Australia, [National Anti-Corruption Commission Bills 2022](#) (14 October 2022).

⁶ See Law Council of Australia [Principles underpinning a Federal Judicial Commission](#) (December 2020).

Climate Change

31. In November 2021, the Law Council published its [Climate Change Policy](#),⁷ which is intended to:
 - (a) provide an evidence-based policy position on climate change which furthers the Law Council's objects and is clearly linked to its remit, for use in its work;
 - (b) ensure that the legal implications of climate change from different perspectives, as including the implications for the legal profession itself; and
 - (c) set out the Law Council's position on the principles that should inform the role and development of the law, the role of the legal profession, legal education and legal practice in this area.

32. The Law Council has also developed a [Background Paper](#) to provide additional context for the Policy.⁸ The Background Paper:
 - (a) discusses the high level scientific, social, and economic context of human induced climate change, including the drivers of climate change and the resultant physical and transition risks;
 - (b) considers the legal implications of climate change, including Australia's international law obligations, domestic legal and policy frameworks, and litigation trends; and
 - (c) discusses the implications of climate change for the legal profession, including changing client demands, the emergence of novel issues of law, changes in legal practices, access to justice, education and continuing professional development and professional ethical standards.

33. On 10 August 2022, the Law Council made a [submission](#) to a Senate Committee for its inquiry into the provisions of the Climate Change Bill 2022 (Cth) and the Climate Change (Consequential Amendments) Bill 2022 (Cth).⁹ The submission raised ambiguities in the bills' intended operation, drafting issues and questions about the role, functions and composition of the Climate Change Authority.

34. The Law Council's recommendations influenced amendments to the bills (now Australia's *Climate Change Act 2022* (Cth)) particularly in relation to the transparency of the process by which the Climate Change Authority would provide advice to the Minister for the purpose of the Minister's annual climate statement. That statement, amongst other things, relates to progress made during the year towards achieving Australia's greenhouse gas emissions reduction targets.

35. The Law Council has welcomed opportunities to participate in international meetings of bar associations and law societies to discuss the legal implications of climate change, and the responses of legal professional associations around the world. The Law Council is particularly interested to share information on how lawyers are currently grappling with the legal implications of climate change across diverse practise areas, and how domestic laws are evolving to address climate change in the public interest.

⁷ Law Council of Australia [Climate Change Policy](#) (November 2021).

⁸ Law Council of Australia [Legal Implications of Climate Change \(Background Paper\)](#) (November 2021).

⁹ Law Council of Australia [Climate Change Bill 2022 and Climate Change \(Consequential Amendments\) Bill 2022](#) (August 2022).

Access to Justice

36. The Law Council's Access to Justice Committee is currently developing a set of Best Practice Principles for Courts and Tribunals when considering the appropriateness of online proceedings. These principles are likely to focus attention on how best to utilise online proceedings to meet the access to justice needs of the parties, and for there to be a case-by-case determination of the appropriateness of Online Dispute Resolution (**ODR**) with reference to a set of considerations.
37. These considerations may include the preferences of the parties, whether a party can effectively participate in the ODR process, whether they are self-represented, or whether a party's individual characteristics favour an in-person or online proceeding.

Equal Opportunity in the Legal Profession

38. The Law Council's [Equitable Briefing Policy](#) is intended to drive cultural change within the legal profession, support the progression and retention of women barristers, and address the significant pay gap and underrepresentation of women in the superior courts.¹⁰
39. In June 2022, the Law Council Directors approved the [Review](#) of the Law Council's Equitable Briefing Policy, based on a review of data collected over the last four years of the Policy's operation.¹¹ The Review considered matters including the reporting obligations and whether the Policy should address additional areas of diversity.
40. Amongst other things, the Policy sets targets for adoptees to brief women barristers, and data collected from adoptee annual reports over the first four-year term of the Policy showed adoptees' briefing rates to women barristers had increased year-on-year.
41. The Law Council is presently updating the Policy in accordance with the Review.

Anti-Money Laundering and Legal Professional Privilege

42. In March 2022, a Senate Legal and Constitutional Affairs References Committee Inquiry recommended that the Federal Government accelerate consultation on tranche 2 of international anti-money laundering and counterterrorism financing (**AML/CTF**) standards set by the Financial Action Task Force (**FATF**). This will broadly require lawyers, among other designated groups, to conduct initial and ongoing risk assessments, undertake client due diligence, inquire into the sources of clients' funds, keep particular records, introduce compliance monitoring programs and file reports of suspicious activities or transactions. The Law Council has previously expressed concerns that these obligations may undermine legal professional privilege and confidentiality.
43. To obtain a greater understanding of the practical implications of legislative responses adopted in overseas jurisdictions, and to assist in formulating future submissions to the Federal Government, the Law Council has liaised with counterpart legal professional associations including the New Zealand Law Society, the Law Society of England and Wales, the American Bar Association, and the Canadian Federation of Law Societies.

¹⁰ Law Council of Australia [Equitable Briefing Policy](#) (June 2016).

¹¹ Law Council of Australia [Review of the Equitable Briefing Policy](#) (June 2022)

44. The Law Council's AML Working Group is also in the process of updating current Law Council AML/CTF guidance material for the Australian legal profession, and is encouraging the Law Council's Constituent Bodies (and through them, their education providers) to include AML/CTF risk awareness and mitigation content in CPD and practice management courses.

Law Council engagement on the Death Penalty

45. In October 2021, the Law Council published its revised [Policy Statement on the Death Penalty](#).¹² Pursuant to this Policy Statement, the Law Council undertook to respectfully engage with peak legal professional bodies on efforts to restrict the use of the death penalty in accordance with limitations expressed under international law – in particular, that it is restricted to the 'most serious crimes', defined as 'crimes of extreme gravity involving intentional killing', and that courts exercise proper discretion in its imposition and execution. The Law Council has continually drawn upon the revised policy in subsequent correspondence and statements.

United Nations Human Rights Council engagement

46. The Law Council continues to utilise its Special Consultative Status to participate in meetings of the United Nations Human Rights Council. This includes engaging with relevant special procedures mandate-holders in thematic areas including the independence of judges and lawyers, extrajudicial, summary or arbitrary executions and arbitrary detention.

South Pacific Lawyers' Association Secretariat

47. The Law Council continues to act as Secretariat of the South Pacific Lawyers' Association (**SPLA**). SPLA's objects include to represent the interests of South Pacific lawyers within the region and internationally, support the development of independent peak legal professional associations, and to improve the standard of and access to legal education and CPD throughout the region.
48. The Law Council of Australia's International Law Section and the SPLA Secretariat were pleased to partner with LAWASIA, the Commonwealth Lawyers Association and Fiji Law Society to present the successful LAWASIA Alternative Dispute Resolution Conference held in Denarau, Fiji, on 9-10 September 2022.
49. The Law Council, in its capacity as SPLA Secretariat, has arranged a three-day CPD intensive for the legal profession of the Cook Islands from 5-7 December 2022. This intensive is supported by the Bar Association of Queensland's South Pacific CPD Committee, Cook Islands Law Society and the Cook Islands Crown Law Office.
50. SPLA would be grateful for the continued support of LAWASIA and its Member Organisations. Pursuant to LAWASIA's objective to facilitate cross-border legal education, this support could include providing continuing legal education materials or opportunities as well as other technical assistance to SPLA's member organisations.

¹² Law Council of Australia [Policy Statement on the Death Penalty](#) (October 2021).