

First print



New South Wales

Legal Profession Amendment (Practice of Foreign Law) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* so as to regulate the practice of foreign law in New South Wales by foreign lawyers. The Bill inserts a new Part 3C into the Act. The new Part will require foreign lawyers (who are not also legal practitioners who are barristers or solicitors within the meaning of that Act) who are engaging in the practice of foreign law in New South Wales otherwise than on a temporary basis to register with either the Bar Council or the Law Society Council. While registered foreign lawyers will be prohibited from practising in matters governed by Australian law they will be permitted to provide various equivalent services in matters that specifically relate to or are governed by the law of their country. Foreign lawyers will be subject to similar requirements relating to handling of disputes, complaints and trust accounts as those governing New South Wales legal practitioners. Foreign lawyers will be allowed to go into partnership with or be employed by New South Wales legal practitioners. They may (if practising in partnership with or as an employee of a domestic lawyer or firm of domestic lawyers) also be required to make contributions to the Fidelity Fund and will be required to obtain professional indemnity insurance.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* as set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts definitions into section 3 of the Principal Act for the purposes of proposed Part 3C.

Schedule 1 [2] inserts section 5A into the Principal Act to make it clear that a locally registered foreign lawyer who practises foreign law in this State is not an officer of the Supreme Court.

Schedule 1 [3] amends section 48E of the Principal Act so that a locally registered foreign lawyer who does legal work that the lawyer is permitted to do under proposed Part 3C does not commit the offence contained in section 48E of directly or indirectly doing any general legal work, or any probate work for a fee, when not a barrister or solicitor.

Schedule 1 [4] inserts a new Part 3C (sections 48ZE–48ZAE) into the Principal Act. It contains provisions regulating the practice of foreign law in New South Wales by foreign lawyers. Foreign lawyers who are engaging in the practice of law other than on a temporary basis will be required to obtain registration from either the Bar Council or the Law Society Council. The new Part contains the following provisions:

Division 1 Preliminary

Section 48ZE sets out definitions of terms and expressions used in the new Part. *Practise foreign law* is defined to mean doing work, or transacting business, in New South Wales concerning foreign law, being work or business of a kind that, if it concerned the law of New South Wales, would ordinarily be done or transacted by a domestic lawyer. A *domestic lawyer* is defined as a person (including a foreign lawyer) who is a barrister or solicitor (within the meaning of the Principal Act). A *foreign lawyer* is defined as a person who is duly registered to practise law in a place outside Australia by a foreign registration authority.

Section 48ZF states that the principal purpose of the new Part is to encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for the regulation of the practice of foreign law in the State by foreign-registered lawyers as a recognised aspect of legal practice in the State.

Section 48ZG makes it clear that the new Part applies to any individual (other than a person who is a domestic lawyer) who practises foreign law in the State and states that nothing in the Part requires a domestic lawyer (including a foreign lawyer who is also a domestic lawyer) to be registered as a foreign lawyer under the Part in order to practise foreign law in the State.

Division 2 Local registration of foreign lawyer

Section 48ZH makes it an offence for a person to practise foreign law in the State unless the person is a domestic lawyer (or a person employed by a domestic lawyer to provide advice on foreign law to, and for use by, the domestic lawyer) or a foreign lawyer who is either registered in accordance with the new Part or is only practising in the State on a temporary basis.

Section 48ZI enables a foreign lawyer to apply to the Bar Council or the Law Society Council (the **domestic registration authorities**) for registration and sets out the information and documents that must be provided with the application. The domestic registration authority is not required to carry out any independent investigations of its own in deciding whether or not to grant registration but may require the applicant to verify the information by statutory declaration or other proof acceptable to it or by provision of evidence from the authority that registered the foreign lawyer to practise law in a place outside Australia.

Section 48ZJ requires an applicant for registration as a foreign lawyer to pay such an application fee as is determined by the domestic registration authority and approved by the Attorney General. The fee cannot include any component for compulsory membership of a professional association such as the Bar Association or the Law Society.

Section 48ZK requires the domestic registration authority to grant registration if the requirements for registration set out in the section are satisfied. The foreign lawyer is not required to reside in the State in order to obtain registration.

Section 48ZL enables the domestic registration authority to impose certain conditions on the practice of foreign law in the State of a foreign lawyer registered by the authority. The conditions may reflect New South Wales

practice requirements. However, the domestic registration authority must not impose a condition that is more onerous than a condition that it would impose on a domestic lawyer in analogous circumstances.

Section 48ZM requires the domestic registration authority to give the applicant written notice of its decision in relation to registration. For the purposes of any appeal under proposed section 48ZR, if notice is not given within the prescribed period after the application is lodged the application is taken to have been refused.

Section 48ZN provides for the duration of registration and enables a foreign lawyer to apply for renewal of registration on payment of an annual fee.

Section 48ZO enables the domestic registration authority to refuse to register, or renew the registration of, a foreign lawyer under the new Part in specified circumstances.

Section 48ZP enables the domestic registration authority to publish the names of, and relevant particulars concerning, foreign lawyers registered by it.

Section 48ZQ enables the domestic registration authority to cancel the registration of a foreign lawyer on grounds set out in the section. Grounds listed include failure to comply with any condition imposed on the lawyer's registration under the new Part or with any requirements of the new Part. Registration may be cancelled if the foreign lawyer's registration to practise as a lawyer in his or her own country is cancelled as a result of criminal, civil or disciplinary proceedings. It may also be cancelled if the lawyer's registration to practise as a lawyer in his or her own country lapses. However, registration is not to be cancelled on this ground if the lapse results from circumstances beyond the lawyer's control (for example, civil war in the lawyer's own country).

Section 48ZR enables a foreign lawyer to appeal to the Supreme Court against a refusal to register or renew the registration of the lawyer under the new Part, a cancellation of registration or any action taken against the lawyer under section 55 of the Principal Act.

Division 3 Legal practice

Section 48ZS restricts the legal services that may be provided by a locally registered foreign lawyer. Legal services that may be provided are those that consist of doing work, or transacting business, concerning the relevant

foreign law, those that relate to arbitration proceedings of a kind prescribed by the regulations and those that relate to proceedings where knowledge of the relevant foreign law is essential.

Section 48ZT allows a locally registered foreign lawyer (subject to any conditions to the contrary imposed under proposed section 48ZL) to practise as a sole practitioner or as a partner or employee of a New South Wales firm. The partnership may be with any combination of domestic lawyers or with other registered foreign lawyers.

Section 48ZU prohibits a locally registered foreign lawyer from engaging in any conduct in practising foreign law that would, if the conduct were engaged in by a domestic lawyer practising Australian law in New South Wales, constitute professional misconduct or unsatisfactory professional conduct.

Section 48ZV provides for disciplinary action to be taken against locally registered foreign lawyers under Part 10 of the Principal Act. In assessing whether disciplinary action should be taken, the domestic registration authority may take into account whether the conduct concerned was consistent with the standards of professional conduct of the legal profession in the foreign lawyer's own country.

Sections 48ZW and **48ZX** set out the designations that locally registered foreign lawyers may use to describe themselves. Apart from the foreign lawyer's own name, the foreign lawyer may use the title or business name the lawyer uses in his or her own country. The lawyer may also use the name of any foreign partnership or body corporate with which the lawyer is associated so long as the lawyer has provided the domestic registration authority with proof of membership and that use of the name complies with the laws of New South Wales about business names and will not lead to confusion with any local firm. A locally registered foreign lawyer is not required to describe himself or herself as a legal practitioner and may continue to use the titles (for example, "barrister", "lawyer" or "solicitor" used by the lawyer in his or her own country). Foreign lawyers may similarly include in the description of any Australian partnership of which they are a member, and which contains both domestic lawyers and locally registered foreign lawyers, a combination of the distinguishing titles that the domestic and foreign lawyers are each entitled to use in their respective jurisdictions (for example, "Australian Solicitors and US Attorneys").

Section 48ZY requires locally registered foreign lawyers to comply with any relevant advertising restrictions imposed by the domestic registration authority or by law and prohibits them from using any advertising suggesting that they are domestic lawyers.

Section 48ZZ allows a locally registered foreign lawyer to employ one or more domestic lawyers. This does not entitle the foreign lawyer to engage in legal practice (other than practice of foreign law) in New South Wales. Generally, a domestic lawyer employed by a foreign lawyer may not engage in legal practice or provide advice on the law of New South Wales or another Australian jurisdiction to or for the use of a foreign lawyer.

Section 48ZAA requires locally registered foreign lawyers to maintain professional indemnity insurance that is broadly equivalent to the coverage required to be held by domestic lawyers.

Section 48ZAB requires locally registered foreign lawyers who receive money on behalf of other persons in the course of practising as foreign lawyers in New South Wales to maintain trust accounts and provides for the application of Part 6 to such lawyers and prevents locally registered foreign lawyers from practising unless any Fidelity Fund requirements imposed by regulations under proposed section 78A are complied with.

Section 48ZAC gives the domestic registration authority the power to exempt locally registered foreign lawyers, whether individually or in classes, from having to comply with specified provisions of the Principal Act or regulations or from compliance with any rule.

Division 4 Miscellaneous

Sections 48ZAD and **48ZAE** make provision for certain miscellaneous matters relating to membership of professional associations and the rules to which the practice of a locally registered foreign lawyer is subject.

Schedule 1 [5]–[16] make consequential amendments to sections 54 and 55 of the Principal Act relating to the conferral on the Law Society Council of functions as a domestic registration authority under proposed Part 3C. The amendments to section 55 enable the Law Society Council to investigate the affairs of a locally registered foreign lawyer in certain circumstances.

Schedule 1 [17]–[19] amend sections 57A–57C of the Principal Act to enable the Bar Council and the Law Society Council to make rules for or with respect to practice as a locally registered foreign lawyer.

Schedule 1 [20] inserts a new section 57CA into the Principal Act to enable the Bar Council and the Law Society Council to make joint rules for or with respect to practice as a locally registered foreign lawyer.

Schedule 1 [21]–[25] make consequential amendments to provisions of Parts 6 and 7 relating to the requirements imposed on locally registered foreign lawyers under new Part 3C to keep trust accounts and make Fidelity Fund contributions. A locally registered foreign lawyer who practises in partnership with, or as an employee of, a domestic lawyer or firm of domestic lawyers may be required by the regulations to make Fidelity Fund contributions.

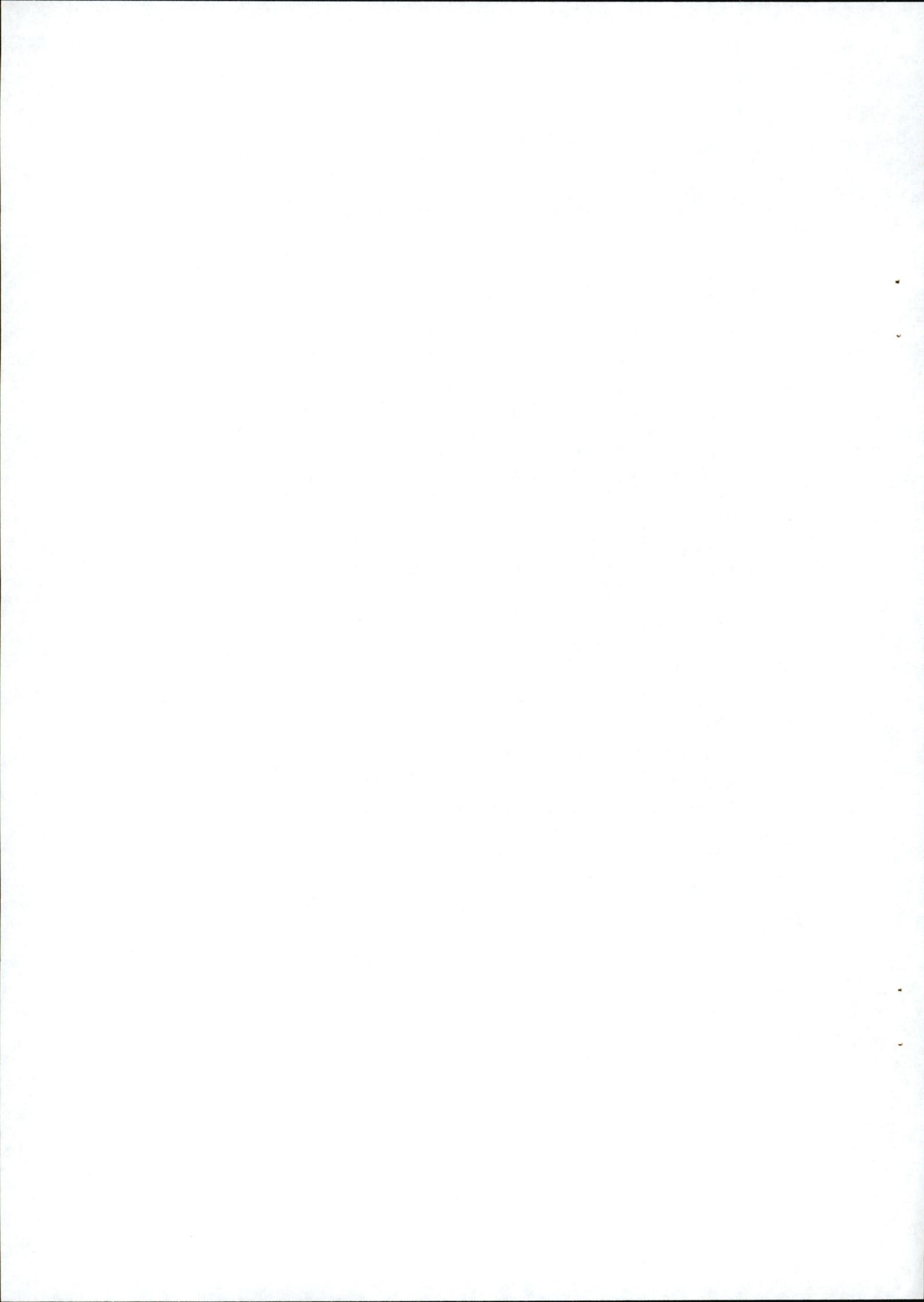
Schedule 1 [26] inserts a new section 91A into the Principal Act to apply the provisions of Part 8 (Receivers) of the Principal Act to locally registered foreign lawyers.

Schedule 1 [27]–[31] make consequential amendments to various provisions of Part 10 of the Principal Act required because of the application of that Part to locally registered foreign lawyers under proposed Part 3C.

Schedule 1 [32] inserts a new section 174B into the Principal Act to apply Part 11 (Legal fees and other costs) to locally registered foreign lawyers.

Schedule 1 [33] extends section 213A (Evidentiary certificates) of the Principal Act to locally registered foreign lawyers.

Schedule 1 [34] amends section 216 of the Principal Act to enable certain regulations to be made with respect to locally registered foreign lawyers.



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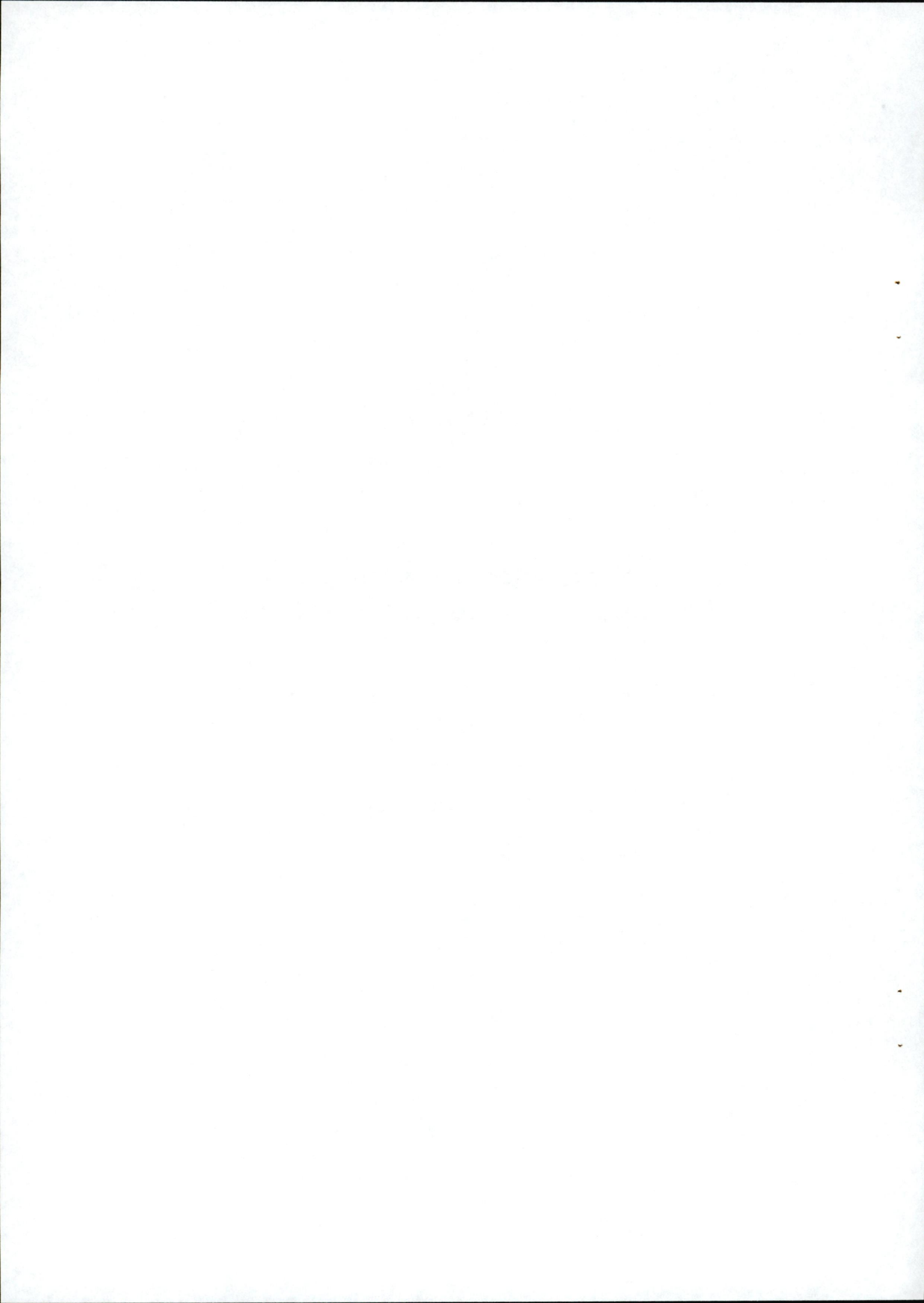


New South Wales

Legal Profession Amendment (Practice of Foreign Law) Bill 1998

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New South Wales

Legal Profession Amendment (Practice of Foreign Law) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Legal Profession Act 1987* to make provision with respect to the practice of foreign law by foreign lawyers in the State.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Legal Profession Amendment (Practice of Foreign Law) Act 1998*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Legal Profession Act 1987 No 109

The *Legal Profession Act 1987* is amended as set out in Schedule 1.

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Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

domestic lawyer see section 48ZE. 5

foreign law see section 48ZE.

foreign lawyer see section 48ZE.

foreign lawyers rules means rules made under section 57A (3), 57B (3) or 57CA.

foreign registration authority see section 48ZE. 10

home registration authority see section 48ZE.

locally registered foreign lawyer see section 48ZE.

[2] Section 5A

Insert after section 5:

5A Locally registered foreign lawyer not to be an officer of Supreme Court 15

A locally registered foreign lawyer who practises foreign law in the State is not an officer of the Supreme Court.

[3] Section 48E Limitation on general legal work and probate work

Insert after section 48E (7): 20

- (8) A foreign lawyer does not contravene this section if he or she is a locally registered foreign lawyer and the work done is work the foreign lawyer is permitted to do under Part 3C.

[4] Part 3C (sections 48ZE–48ZAE)

Insert after Part 3B:

Part 3C Foreign lawyers

Division 1 Preliminary

48ZE Definitions	5
In this Act:	
<i>Australia</i> includes the external Territories.	
<i>Australian law</i> means law of the Commonwealth, a State or a Territory.	
<i>commercial legal presence</i> means an interest in a law firm practising foreign law.	10
<i>domestic lawyer</i> means a person (including a foreign lawyer) who is a barrister or solicitor.	
<i>domestic registration authority</i> means the Bar Council or the Law Society Council.	15
<i>foreign law</i> means law of a place outside Australia.	
<i>foreign lawyer</i> means a person who is duly registered to practise law in a place outside Australia by a foreign registration authority.	
<i>foreign registration authority</i> means the person or authority in a place outside Australia having the function conferred by law of registering persons to practise law in that place.	20
<i>home registration authority</i> of a foreign lawyer means a foreign registration authority stated in the lawyer's application for registration under section 48ZI.	25
<i>law firm</i> means:	
(a) a person practising as a lawyer on the person's own account, or	
(b) a partnership of two or more persons practising as lawyers, or	30
(c) an incorporated legal practice or multidisciplinary partnership that is permitted by a law of the State.	

locally registered foreign lawyer means a person who is registered as a foreign lawyer under this Part.

practise foreign law means doing work, or transacting business, in the State concerning foreign law, being work or business of a kind that, if it concerned the law of the State, would ordinarily be done or transacted by a domestic lawyer. 5

registered:

- (a) when used in connection with a place outside Australia, means having all necessary licences, approvals, admissions, certifications or other forms of authorisation (including practising certificates) required by or under legislation for the carrying on of the practice of law in that place, or 10 15
- (b) when used in connection with the exercise of a function by a domestic registration authority in relation to a domestic lawyer, means the issue of a practising certificate.

48ZF Principal purpose 20

The principal purpose of this Part is to encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for the regulation of the practice of foreign law in the State by foreign-registered lawyers as a recognised aspect of legal practice in the State. 25

48ZG Operation of this Part

- (1) This Part applies to any individual (other than a domestic lawyer) who practises foreign law in the State.
- (2) Nothing in this Part requires a domestic lawyer (including a foreign lawyer who is also a domestic lawyer) to be registered as a foreign lawyer under this Part in order to practise foreign law in the State. 30

Division 2 Local registration of foreign lawyer

48ZH Registration requirement

- (1) A person must not practise foreign law in the State unless the person:
- (a) is a locally registered foreign lawyer and practises foreign law in the State in accordance with this Part, or 5
 - (b) is a foreign lawyer who practises foreign law in the State for a period of 12 months or less or is subject to a migration restriction and who: 10
 - (i) does not maintain an office for the purpose of practising as a lawyer in the State, or
 - (ii) does not have a commercial legal presence in the State, or
 - (c) is a domestic lawyer, or is a person employed by a domestic lawyer to provide advice on foreign law to, and for use by, the domestic lawyer. 15

Maximum penalty: 20 penalty units.

- (2) In this section:
- migration restriction* means a restriction imposed on a person who is not an Australian citizen under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person. 20

48ZI Registration application 25

- (1) A foreign lawyer may lodge an application in writing with the domestic registration authority seeking registration as a foreign lawyer under this Part.
- (2) The application must:
- (a) state the applicant's educational and professional qualifications, and 30

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- (b) state that the applicant is registered to practise law by one or more specified foreign registration authorities (the *home registration authorities*) in a place or places outside Australia, and
 - (c) state that the applicant is not the subject of any disciplinary proceedings in any place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration, and 5
 - (d) state that the applicant is not a party in any pending criminal or civil proceedings in any place that is likely to result in disciplinary action being taken against the applicant, and 10
 - (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action, and 15
 - (f) state that the applicant is not otherwise personally prohibited from carrying on the practice of law in any place or bound by any undertaking not to carry out the practice of law in any place, and is not subject to any special conditions in carrying on any practice as a result of criminal, civil or disciplinary proceedings in any place, and 20
 - (g) specify any special conditions imposed in any place as a restriction on the practice of law by the applicant or any undertaking given by the applicant restricting the applicant's practise of law, and 25
 - (h) give consent to the making of inquiries of, and the exchange of information with, such of the home registration authorities as the domestic registration authority considers appropriate regarding the applicant's activities in practising law in the places concerned or otherwise regarding matters relevant to the application. 30
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- (3) The application must (if the domestic registration authority so requires) be accompanied by an original instrument, or a copy of an original instrument, from each home registration authority specified in the application that: 5
- (a) verifies the applicant's educational and professional qualifications, and
 - (b) verifies the applicant's registration by the authority to practise law in the place concerned, and the date of registration, and 10
 - (c) describes anything done by the applicant in practising law in that place of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place. 15
- (4) The applicant must (if the domestic registration authority so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original. 20
- (5) The domestic registration authority may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the authority.
- (6) If the accompanying instrument is not in English it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the domestic registration authority. 25

48ZJ Fee for registration

- (1) The application under section 48ZI is to be accompanied by such fee as the domestic registration authority may determine and as is approved by the Attorney General. 30
- (2) The fee is not to include any component for compulsory membership of any professional association.

48ZK Entitlement to registration

- (1) The domestic registration authority must register a person who lodges an application in accordance with section 48ZI as a foreign lawyer if:
- (a) the domestic registration authority is satisfied that the person is registered to practise law in one or more places outside Australia, and 5
 - (b) the domestic registration authority considers that an effective system exists in one or more of the places referred to in paragraph (a) for the regulation of the practice of law, and 10
 - (c) the domestic registration authority considers that the person is not, as a result of criminal, civil or disciplinary proceedings, subject to any special conditions in carrying on the practice of law in any of the places referred to in paragraph (a) or any undertakings concerning the person's practice of law in any of those places that would make it inappropriate to register the person, and 15
 - (d) the person demonstrates an intention to practise foreign law in the State and to establish an office or a commercial legal presence in the State within a reasonable period after grant of registration for the purpose of so practising. 20
- (2) Residence or domicile in the State is not a prerequisite for, or a factor in determining entitlement to, registration as a foreign lawyer under this Part. 25

48ZL Conditions

- (1) The domestic registration authority may at any time impose any condition on the registration of a foreign lawyer under this Part: 30
- (a) that it might impose by attaching a condition to the practising certificate of a domestic lawyer:
 - (i) under Division 1 of Part 3 as a result of disciplinary action, or 35

- (ii) under section 33 (1), or
- (b) that relates to appearances by the foreign lawyer before courts,
- and may at any time by notice in writing revoke or vary such a condition. 5
- (2) The domestic registration authority may not impose a condition that is more onerous than a condition that it would attach to the practising certificate of a domestic lawyer in the same or similar circumstances.
- 48ZM Notification of decision** 10
- (1) The domestic registration authority must give a foreign lawyer who lodges an application in accordance with section 48ZI written notice of its decision to grant registration under this Part, to refuse registration, or to impose conditions on registration. 15
- (2) The domestic registration authority is taken to have refused registration if registration is not granted within the period prescribed by the regulations after an application is duly lodged in accordance with section 48ZI. 20
- 48ZN Duration of registration and annual fee**
- (1) When granted, registration under this Part takes effect as from the date on which the application under section 48ZI was lodged.
- (2) Registration remains in force, unless sooner cancelled, until the next 1 July after the day on which it takes effect. 25
- (3) A foreign lawyer who has been granted registration under this Part may, during the period prescribed by the regulations before the registration expires, apply to the domestic registration authority for renewal of the registration. 30

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- (4) Subsection (3) does not prevent the domestic registration authority from accepting an application made after the period prescribed by the regulations and before the next 1 July.
- (5) Registration may be renewed by payment of an annual fee determined by the domestic registration authority and approved by the Attorney General. 5
- (6) An application for renewal of registration is to be accompanied by the annual fee.
- (7) The annual fee is not to include any component for compulsory membership of any professional association. 10

48ZO Refusal of application to register or renew registration

- (1) The domestic registration authority must refuse to register, or renew the registration of, a foreign lawyer under this Part if the notice or approval for registration or renewal: 15
- (a) is not accompanied by the appropriate fee, or
- (b) is not accompanied by, or does not contain, the information required by this Part or prescribed by the regulations. 20
- (2) The domestic registration authority may refuse to renew the registration of a foreign lawyer under this Part if a finding that the lawyer has contravened section 48ZU has been made in respect of that lawyer and:
- (a) a fine imposed because of the finding has not been paid, or 25
- (b) costs awarded against the lawyer because of the finding have been assessed but have not been paid or, if an arrangement for their payment has been made, the lawyer is in default under the arrangement, or 30

- (c) any costs of an inspection or investigation payable under section 55 by the lawyer have not been paid, or
- (d) any expenses of receivership payable under section 110 by the lawyer have not been paid. 5

48ZP Publication of information about locally registered foreign lawyers

The domestic registration authority may publish, in circumstances which it considers appropriate, the names of persons registered by it as foreign lawyers under this Part and any relevant particulars concerning those persons. 10

48ZQ Cancellation of registration

- (1) The domestic registration authority may, by notice in writing to a locally registered foreign lawyer, cancel the lawyer's registration under this Part if it is of the opinion that there is sufficient reason for doing so. 15
- (2) Without limiting the grounds for cancellation, registration may be cancelled if:
 - (a) a home registration authority of the foreign lawyer cancels registration of the foreign lawyer as a result of criminal, civil or disciplinary proceedings, or 20
 - (b) the foreign lawyer fails to comply with any requirements of this Part, or 25
 - (c) the registration of the foreign lawyer by one or more of the lawyer's home registration authorities has lapsed, or
 - (d) the foreign lawyer has not established an office to practise foreign law or a commercial legal presence in the State within the period prescribed by the regulations after being granted registration, or 30
 - (e) the foreign lawyer fails to comply with any condition imposed on the lawyer's registration under this Part. 35

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- (3) Registration is not to be cancelled on any of the above grounds unless the foreign lawyer is given reasonable opportunity to make written submissions to the domestic registration authority.
- (4) Registration is not to be cancelled on the ground that the foreign lawyer's registration has lapsed as referred to in subsection (2) (c) if the lawyer demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the lawyer but from circumstances beyond the lawyer's control. 5
10
- (5) Registration as a locally registered foreign lawyer under this Part is automatically cancelled if the lawyer concerned:
- (a) is registered as a domestic lawyer, or
- (b) requests the domestic registration authority to cancel the registration. 15
- (6) Cancellation of registration at the request of a foreign lawyer does not affect the exercise by the domestic registration authority of any power relating to disciplinary proceedings brought against the lawyer before the cancellation. 20

48ZR Appeals

- (1) If the domestic registration authority:
- (a) refuses to register a foreign lawyer under this Part or to renew the registration of a locally registered foreign lawyer, or 25
Note. See sections 48ZK and 48ZO.
- (b) cancels the registration of a locally registered foreign lawyer under this Part, or
Note. See section 48ZQ. 30
- (c) takes any action under section 55 against a locally registered foreign lawyer.
Note. See sections 48ZU and 48ZV.
- the foreign lawyer may appeal to the Supreme Court against the refusal, cancellation or action. 35

- (2) The Supreme Court may make such an order in the matter as it thinks fit.

Division 3 Legal practice

48ZS Scope of practice

- (1) A locally registered foreign lawyer may provide only the following legal services: 5
- (a) doing any work, or transacting any business, in the State concerning the law of any place in which the locally registered foreign lawyer is registered by a home registration authority of the lawyer, 10
 - (b) legal services (including appearances) in relation to arbitration proceedings in the State of a kind prescribed by the regulations.
 - (c) legal services (including appearances) in relation to proceedings before courts and other bodies in which knowledge of the foreign law of the place referred to in paragraph (a) is essential, 15
 - (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in the State of a kind prescribed by the regulations. 20
- (2) Nothing in this Act authorises a locally registered foreign lawyer to practise Australian law.
- (3) Despite subsection (2), a locally registered foreign lawyer may advise on the effect of an Australian law if the giving of advice on Australian law is necessarily incidental to the practice of foreign law and the advice is expressly based on advice given on the Australian law by a domestic lawyer who is not an employee of the foreign lawyer. 25

48ZT Form of practice 30

- (1) A locally registered foreign lawyer may (subject to any condition imposed under section 48ZL to the contrary) practise:
- (a) as a foreign lawyer on the lawyer's own account, 35
 - or

-
- (b) in partnership with other locally registered foreign lawyers or with domestic lawyers (or both) in circumstances in which, were the locally registered foreign lawyer practising as a domestic lawyer, such a partnership would be permitted by a law of the State, or 5
- (c) as a member of an incorporated legal practice or multidisciplinary partnership that is permitted by a law of the State, or
- (d) as an employee of a domestic lawyer or firm of domestic lawyers in circumstances in which, were the locally registered foreign lawyer practising as a domestic lawyer, such employment would be permitted by a law of the State. 10
- (2) Any such affiliation does not entitle the locally registered foreign lawyer to practise Australian law in the State. 15

48ZU Application of Australian professional ethical and practice standards

A locally registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by a domestic lawyer in practising Australian law in the State, constitute professional misconduct or unsatisfactory professional conduct. 20

48ZV Disciplinary action for breach of Australian professional ethical and practice standards 25

- (1) Part 10 applies, subject to this section, to a person who:
- (a) is a locally registered foreign lawyer, or
- (b) was a locally registered foreign lawyer when professional misconduct or unsatisfactory professional conduct the subject of a complaint allegedly occurred but is no longer a locally registered foreign lawyer (in which case Part 10 applies as if the person were a locally registered foreign lawyer). 30
- 35
- as if references in Part 10 to a legal practitioner were references to such a person.

- (2) Without limiting the matters that the domestic registration authority may take into account in determining whether a locally registered foreign lawyer should be disciplined for a contravention of section 48ZU, the domestic registration authority may take into account:
- 5
- (a) whether the conduct of the lawyer was consistent with the standards of professional conduct of the legal profession in any foreign place of registration of the lawyer, and 10
- (b) whether the lawyer contravened the section wilfully or without reasonable excuse.
- (3) The regulations may exempt any foreign lawyer or class of foreign lawyers from compliance with all or specified disciplinary provisions or arrangements. 15

48ZW Letterhead and other identifying documents

- (1) A locally registered foreign lawyer may describe himself or herself and any law firm with which the foreign lawyer is associated in any of the ways designated in section 48ZX. 20
- (2) A locally registered foreign lawyer is required to indicate, on the lawyer's letterhead and any other document used when practising foreign law in the State to identify the lawyer as a lawyer, the fact that the lawyer is a locally registered foreign lawyer. 25
- (3) A locally registered foreign lawyer may (but need not) indicate all States or Territories in which the lawyer (and any of the lawyer's partners) are registered as foreign lawyers on any document referred to in this section.
- (4) A locally registered foreign lawyer may (but need not) indicate all places outside Australia in which the lawyer is registered to practise law on any document referred to in this section. 30

48ZX Designation

- (1) A locally registered foreign lawyer may use the following designations:
- (a) the lawyer's own name,
 - (b) the title the lawyer is authorised by law to use in the place outside Australia in which the lawyer is registered by a home registration authority, 5
 - (c) subject to subsection (2), the name of any law firm outside Australia with which the lawyer is affiliated (whether as a partner or otherwise), 10
 - (d) if the foreign lawyer is a member of any law firm in Australia that includes both locally registered foreign lawyers and domestic lawyers, a description of the firm that includes reference to both domestic lawyers and locally registered foreign lawyers (for example, "Solicitors and locally registered foreign lawyers" or "Australian Solicitors and US Attorneys"). 15
- (2) A locally registered foreign lawyer who is a partner of a law firm outside Australia may use the name of the firm in practising foreign law in the State, or use the name in connection with the practice, only if: 20
- (a) the lawyer indicates, on the lawyer's letterhead and any other document used in the State to identify the lawyer as a lawyer, that the law firm practises only foreign law in the State, and 25
 - (b) the lawyer has provided the domestic registration authority with a copy of the partnership agreement or other acceptable evidence that the lawyer is a partner of the law firm, and 30
 - (c) use of the name does not contravene any requirements of the law of the State concerning use of business names and will not lead to any confusion with the name of any established domestic or foreign law firm in the State. 35

- (3) A locally registered foreign lawyer who is a partner of a law firm may use the name of the firm as referred to in this section whether or not other partners of the firm are locally registered foreign lawyers.

48ZY Advertising 5

- (1) A locally registered foreign lawyer is required to comply with any advertising restrictions imposed by the domestic registration authority or by law on the practice of law by a domestic lawyer that are relevant to the practice of foreign law in the State. 10

- (2) Without limiting subsection (1), a locally registered foreign lawyer must not advertise (or use any description on the lawyer's letterhead or any other document used in the State to identify the lawyer as a lawyer) in any way that might reasonably be regarded as: 15

- (a) false, misleading or deceptive, or
(b) suggesting that the locally registered foreign lawyer is a domestic lawyer,

or that contravenes any requirements of the regulations.

48ZZ Employment of domestic lawyer by foreign lawyer 20

- (1) A locally registered foreign lawyer may employ one or more domestic lawyers.

- (2) Employment of a domestic lawyer does not entitle a locally registered foreign lawyer to practise Australian law in the State. 25

- (3) A domestic lawyer employed by a locally registered foreign lawyer may practise foreign law but must not provide advice on Australian law to, or for use by, the foreign lawyer or otherwise practise Australian law in the State in the course of that employment. 30

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- (4) Subsection (3) does not apply to a domestic lawyer employed by a law firm a partner of which is a locally registered foreign lawyer if at least one other partner is a domestic lawyer.
- (5) A period of employment by a locally registered foreign lawyer may not be used by a domestic lawyer to satisfy any requirements concerning a period of supervised practice imposed on the domestic lawyer by the domestic registration authority. 5
- 48ZAA Indemnity insurance** 10
- (1) A locally registered foreign lawyer who practises foreign law in the State must have appropriate indemnity insurance in respect of his or her practice in the State.
- (2) A locally registered foreign lawyer registered by the Bar Council has appropriate indemnity insurance if there is in force in respect of the lawyer a policy of indemnity insurance that provides a level of insurance in respect of his or her practice in the State that is the same as (or higher than) that approved by the Attorney General in respect of insurable barristers under section 38R (2) (b). 15 20
- (3) A locally registered foreign lawyer registered by the Law Society Council has appropriate indemnity insurance if there is in force in respect of the lawyer a policy of insurance:
- (a) that provides a minimum level of indemnity in respect of his or her practice in the State that is the same as (or higher than) that provided by an approved insurance policy required by section 41, and 25
- (b) the terms of which are broadly equivalent to such an approved insurance policy. 30
- 48ZAB Trust accounts and fidelity fund contributions**
- (1) Part 6 applies to a locally registered foreign lawyer who receives money on behalf of another person in the course of practising as a foreign lawyer in the State as if a reference in Part 6: 35

- (a) to a solicitor were a reference to a locally registered foreign lawyer, and
 - (b) to practising as a solicitor were a reference to a locally registered foreign lawyer practising foreign law. 5
- (2) A locally registered foreign lawyer must not practise foreign law in the State in partnership with, or as an employee of, a domestic lawyer or firm of domestic lawyers unless the lawyer complies with any requirement made in accordance with the regulations under section 78A by the domestic registration authority concerning contributions to the Fidelity Fund. 10
- (3) In this section, a reference to money is not limited to a reference to money in the State.
- 48ZAC Exemption by domestic registration authority** 15
- The domestic registration authority may exempt a locally registered foreign lawyer or class of locally registered foreign lawyers from compliance with a specified provision of this Act or the regulations, or from compliance with a specified rule or part of a rule that would otherwise apply to the locally registered foreign lawyer or class of locally registered foreign lawyers. 20
- Division 4 Miscellaneous**
- 48ZAD Membership of professional association**
- A locally registered foreign lawyer is not required to join (but may, if eligible, join) any professional association. 25
- 48ZAE Joint rules**
- Practice as a locally registered foreign lawyer is subject to the foreign lawyers rules.

[5] Section 54 Functions of Law Society

Insert at the end of section 54 (1) (a) (iii):

, or

- (iv) as to conduct that is, or may be, a
contravention of a provision of Part 3C,

5

[6] Section 54 (1) (b)

Insert "or locally registered foreign lawyers registered by the Law Society Council" after "solicitors".

[7] Section 55 Investigation of affairs of solicitor or locally registered foreign lawyer

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Insert after section 55 (1):

(1A) The Law Society may, by instrument signed by the President or 2 members of the Law Society Council, appoint:

- (a) one or more trust account inspectors to inspect, either generally or in a particular case, accounts (if any) required to be kept by regulations made for the purposes of section 48ZAB by a locally registered foreign lawyer registered by the Law Society Council, and
- (b) an investigator to investigate the affairs, or specified affairs, of a locally registered foreign lawyer or registered foreign lawyer.

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[8] Section 55 (3), (7) and (8)

Insert "or locally registered foreign lawyer" after "solicitor" wherever firstly occurring.

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[9] Section 55 (3), (7) and (8)

Insert "or foreign lawyer" after "solicitor" wherever (other than firstly) occurring.

[10] Section 55 (6)

Insert "or locally registered foreign lawyer" after "solicitor". 5

[11] Section 55 (8B)

Insert after section 55 (8A):

(8B) If the inspection or investigation concerned relates to the accounts or affairs of a firm in which a locally registered foreign lawyer is practising in partnership as referred to in section 48ZT, the Law Society Council may determine the proportion or amount (if any) of the debt due to the Law Society payable by each partner involved. 10

[12] Section 55 (11), definition of "affairs"

Insert "or locally registered foreign lawyer" after "solicitor" where firstly occurring. 15

[13] Section 55 (11), definition of "affairs"

Insert "3C or" after "Part".

[14] Section 55 (11), definition of "affairs"

Insert "or foreign lawyer" after "solicitor" wherever (other than firstly) occurring. 20

[15] Section 55 (11), definition of "associate"

Insert "or locally registered foreign lawyer" after "solicitor".

[16] Section 55 (11)

Insert in alphabetical order:

locally registered foreign lawyer, includes:

- (a) a firm of locally registered foreign lawyers,
- (b) a former locally registered foreign lawyer, 5
- (c) in relation to anything done or omitted by a locally registered foreign lawyer—a deceased locally registered foreign lawyer,
- (d) except in relation to anything done or omitted by a locally registered foreign lawyer—the personal representative of a deceased locally registered foreign lawyer. 10

[17] Section 57A Rules of Bar Council

Insert after section 57A (2):

- (3) The Bar Council may make rules for or with respect to practice as a locally registered foreign lawyer. 15
- (4) The power to make rules is not limited to the matters for which this Act specifically authorises the making of foreign lawyers rules.

[18] Section 57B Rules of Law Society Council

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Insert after section 57B (2):

- (3) The Law Society Council may make rules for or with respect to practice as a locally registered foreign lawyer.
- (4) The power to make rules is not limited to the matters for which this Act specifically authorises the making of foreign lawyers rules. 25

[19] Section 57C Joint rules other than joint rules on foreign lawyers

Insert after section 57C (4):

- (5) This section does not apply to joint rules made under section 57CA.

[20] Section 57CA

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Insert after section 57C:

57CA Joint rules on foreign legal practitioners

The Bar Council and Law Society Council may jointly make rules for or with respect to practice as a locally registered foreign lawyer.

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[21] Part 6 Trust accounts

Insert after the heading to the Part:

Note. This Part applies to locally registered foreign lawyers who receive money in the course of practising as a foreign lawyer in this State in the same way as it applies to a solicitor practising as a solicitor in this State. See section 48ZAB.

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[22] Section 70 The Solicitors' Fidelity Fund

Insert after section 70 (1) (b):

- (b1) the money paid in accordance with the regulations under section 78A on account of the Fidelity Fund by locally registered foreign lawyers.

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[23] Section 78A

Insert after section 78:

78A Contributions and levies from locally registered foreign lawyers

25

The regulations may make provision for or with respect to payments by locally registered foreign lawyers of contributions to the Fidelity Fund and claims against the Fidelity Fund in respect of the actions of locally registered foreign lawyers.

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[24] Section 79 Definitions

Insert after section 79 (2):

- (3) This Division applies to a locally registered foreign lawyer required to pay money in accordance with the regulations under section 78A on account of the Fidelity Fund as if a reference to:
- (a) a solicitor were a reference to the locally registered foreign lawyer, and
- (b) a reference to the practice of a solicitor were a reference to the practice of foreign law in this State of the locally registered foreign lawyer.

[25] Section 80 Claims against Fidelity Fund

Insert after section 80 (1A):

- (1B) Without limiting subsection (1), a claim lies against the Fidelity Fund for the purpose of compensating persons who suffer pecuniary loss occurring wholly in this State from a failure to account or a dishonest default (whether or not in this State) of a locally registered foreign lawyer who has paid a contribution required to be paid in accordance with regulations under section 78A.

[26] Section 91A

Insert after section 91:

91A Application of Part to locally registered foreign lawyers

- (1) This Part applies to a locally registered foreign lawyer as if a reference to a solicitor in this Part were a reference to a locally registered foreign lawyer.
- (2) The regulations may make provisions modifying the application of this Part to locally registered foreign lawyers.

[27] Sections 123–125

Insert “and locally registered foreign lawyers” after “interstate legal practitioners” wherever occurring.

[28] Section 124 Objects of Part relating to users of legal services

Insert “or locally registered foreign lawyer” after “interstate legal practitioner” in section 124 (e). 5

[29] Section 128 Legal practitioner to whom Part applies

Insert at the end of section 128:

Note. This Part also applies to locally registered foreign lawyers.
See section 48ZV. 10

[30] Section 171C Determinations of Tribunal

Insert after section 171C (1) (g):

(g1) in the case of a locally registered foreign lawyer,
order that the registration of the foreign lawyer
under Part 3C be cancelled. 15

Note. This section applies to locally registered foreign lawyers.
See section 48ZV.

[31] Section 171M Jurisdiction of Supreme Court not affected

Insert “or locally registered foreign lawyer” after “practitioner”
where firstly occurring in section 171M (2). 20

[32] Section 174B

Insert after section 174A:

174B Application of Part to locally registered foreign lawyers

(1) This Part applies to a locally registered foreign lawyer as
if a reference to a barrister or solicitor in this Part were a
reference to a locally registered foreign lawyer. 25

(2) The regulations may make provisions modifying the
application of this Part to locally registered foreign
lawyers.

[33] Section 213A Evidentiary certificates

Insert after section 213A (3):

- (4) A certificate that is issued by the Bar Council or Law Society Council and that states that, on a date or during a period specified in the certificate: 5
 - (a) a specified person was or was not registered as a locally registered foreign lawyer, or
 - (b) a specified locally registered foreign lawyer was or was not subject to a specified condition,
- is admissible in any legal proceedings and is evidence of the fact or facts so stated. 10

[34] Section 216 Regulations

Insert after section 216 (3) (j):

- (k) the practice, conduct and discipline of locally registered foreign lawyers, 15
- (l) the accounts (if any) to be kept by a locally registered foreign lawyer in the course of practising as a locally registered foreign lawyer. the operation of any trust account required to be kept by the locally registered foreign lawyer and the authorisation of a person to operate such a trust account. 20