

PRACTICE BRIEFING

Overseas lawyers working in New Zealand

The Law Society regularly receives queries about what legal services overseas qualified lawyers can provide in New Zealand and how they can describe themselves. Queries come from overseas lawyers looking to work in New Zealand, firms wanting to hire them and members of the public engaging with overseas qualified lawyers.

LEGAL SERVICES LANDSCAPE

The starting point is to ensure there is no scope for public confusion about the status of any person and whether the services they provide are regulated under the Lawyers and Conveyancers Act 2006 (LCA).

The LCA specifically refers to the types of descriptions an overseas lawyer may use and the work which they can undertake.

Here are some commonly asked questions about overseas lawyers.

Who is a lawyer in New Zealand?

In New Zealand, only people holding a current New Zealand practising certificate issued by the Law Society are 'lawyers' and are regulated as such under the LCA (see section 6 of the LCA).

What work can someone without a practising certificate do?

There is a broad range of legal services which can be provided by people who do not hold a current practising certificate in New Zealand. Only lawyers can provide a limited area of services (these are the 'reserved areas' of work for lawyers).

The reserved areas of work for lawyers are defined in s 6 of the LCA and broadly relate to litigation advice, direction and management, representation and advocacy and anything which by statute only a lawyer may do (for example, certifying a relationship property agreement under the Property (Relationships) Act 1976). There are limited statutory exceptions in s 27 of the LCA.

Only a 'lawyer' or licensed conveyancer (or a person working under the direct supervision of a lawyer or conveyancer) may provide conveyancing services.

Legal advice about general contractual and commercial matters, tax, health and safety and regulatory compliance is typical of the type of work which falls outside the 'reserved areas' for lawyers.

What about overseas qualified lawyers?

An overseas lawyer without a New Zealand practising certificate is not a 'lawyer' for the purposes of the New Zealand regulatory regime. Consequently, an overseas lawyer is able to provide legal services but is unable to undertake any work that involves carrying out any of the 'reserved areas' of work for lawyers (with limited exception).

Exception to 'reserved areas' for overseas lawyers

There is, however, an exception to the reserved areas just for overseas lawyers. Section 25 of the LCA provides that a member of the legal profession in another jurisdiction may undertake:

- » Any work, or transact any business, in New Zealand if that work or business concerns the law of another country or territory or international law; or
- » Provide legal services (including appearances) in New Zealand in relation to any proceedings before any court or other body if, for the purpose of those proceedings it is essential that the provider has knowledge of the law of any overseas country or territory, or international law.

This expressly authorises an overseas lawyer to undertake work that might otherwise fall within the 'reserved areas' for New Zealand lawyers in limited situations.

Practically, many overseas qualified lawyers are employed by law firms and may provide a full range of legal services under the supervision of the firm. Alternatively, they may be employed 'in-house' by corporations and organisations to provide legal services outside the 'reserved areas'.

How can overseas lawyers describe themselves?

An overseas qualified lawyer can use the description used in their home jurisdiction provided the link to that jurisdiction is clear. It is important, however, to take care with any description because of the provisions in s 21 of the LCA and to avoid any confusion or mistaken impression arising about a person's regulatory status.

Section 21 of the LCA provides that it is an offence to provide legal services in New Zealand and refer to oneself as a lawyer, barrister, solicitor, attorney, counsel or, law or legal practitioner if the person is not a 'lawyer' or incorporated law firm. Section 25 (2) provides an exception for overseas lawyers.

In order to rely on this exception, the description used by the overseas lawyer must incorporate reference to the country where the person is able to practise under that description and the fact that the ability to practise under that description is connected with that overseas country or territory. The use of the description must also not contravene any provision of the Fair Trading Act 1986.

A common example is a law firm employing a UK qualified lawyer. In such a case the description 'enrolled barrister and solicitor (England and Wales)' 'causes no difficulty.

Conversely, an overseas qualified lawyer referring to their status simply as 'legal counsel' may raise compliance concerns in relation to s 25. The description 'legal advisor' would be permissible (provided it was clear from the context that the person was not a New Zealand

lawyer). This is because ‘legal advisor’ is not a restricted term under s 21 of the LCA.

A New Zealand and overseas lawyer who has a title such as Senior Counsel from another jurisdiction should qualify that such as “name SC (Australia)” to avoid anyone being misled.

What is the position for Australian lawyers?

Australian lawyers may choose to rely on the provisions of s 25 of the LCA. Alternatively, there is a truncated admission and practice pathway under the Trans-Tasman Mutual recognition scheme and reflected in the LCA (see <http://www.lawsociety.org.nz/for-lawyers/joining-the-legal-profession/guidelines-for-admission-under-the-ttmra>).

Australian lawyers applying to practise on own account in New Zealand will be treated as satisfying the practice on own account requirements if they satisfy the Law Society that they are entitled to practise in one or more Australian jurisdictions in a manner “equivalent to, or materially the same as” practising on one’s own account or as a barrister sole in New Zealand.

This is provided in Regulation 15 of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008. Regulation 15 also covers the situation where the lawyer has applied to the High Court to practise either on own account or as a barrister sole.

The Regulatory department of the New Zealand Law Society is always happy to discuss regulatory concerns and options. Please contact the General Manager Regulatory, Mary Ollivier at mary.ollivier@lawsociety.org.nz or Senior Solicitor Regulatory charlotte.walker@lawsociety.org.nz for more information.

NEW ZEALAND LAW SOCIETY

Law Society Building
26 Waring Taylor Street
WELLINGTON 6011

PO Box 5041
Lambton Quay
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

June 2017