

# Free trade in legal education & challenge of admission requirements by Gordon Hughes and Arjuna Nadaraja

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*Internationalising the Australian Law Curriculum  
for Enhanced Global Legal Education and Practice*

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THE UNIVERSITY OF  
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ILSAC  
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VICTORIA UNIVERSITY  
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# General Agreement on Trade in Services

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- GATS addresses professional mobility in the context of four modes of supply of delivery of cross-border trade:
  - Mode 1 – Cross-Border Supplier (service supplier not present within territory)
  - Mode 2 – Consumption Abroad (service supplier not present within the territory)
  - Mode 3 – Commercial Presence (service delivered through commercial presence in territory of supplier)
  - Mode 4 – Presence of a natural person (service delivered in territory with supplier present as a natural person)



## Australia's current FTAs

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- Australia's existing FTAs are:
  - Australia – United States FTA
  - Singapore – Australia FTA
  - ASEAN – Australia-NZ FTA
  - Australia – Chile FTA
  - Thailand – Australia FTA
  - Australia – NZ Closer Economic Relations



## Current FTA negotiations

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- Australia is currently negotiating FTAs with the following:
  - China
  - Gulf Cooperation Council (GCC)
  - Japan
  - Korea



## Current FTA negotiations (cont'd)

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- Malaysia
- India (Comprehensive Economic Cooperation Agreement)
- Indonesia (Comprehensive Economic Partnership Agreement)
- Pacific Agreement on Closer Economic Relations (PACER) Plus
- Transpacific Partnership Agreement



# Professional mobility and FTA negotiations

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- ❑ Traditionally, not much said specifically about the legal profession
- ❑ Government negotiators are limited in their ability to commit independent regulatory authorities
- ❑ USFTA – established Working Group on Professional Services to support engagement between peak professional bodies (LCA/ILSAC initiatives since 2006)
- ❑ AANZFTA – no outcomes specific to legal services except for Indonesia



## Professional mobility and FTA negotiations (cont'd)

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- Requires engagement between peak professional associations, academics, etc
  - Singapore FTA addresses legal services – number of Australian law degrees recognised doubled from 4 to 8
  - More favourable visa arrangements for professionals and spouses
  - Singapore undertakes not to increase restrictions governing professional services
  - Right for firms to establish commercial presence through joint venture arrangements



## Reciprocal expectations

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- Regardless of the existence of FTAs, note the approach of key overseas jurisdictions towards foreign lawyers:
  - USA – restrictions differ as between States, and are largely restrictive
  - Singapore – no FIFO rules; FLCs permitted (nearly 1000 registered); foreign lawyers with relevant practice experience may sit for Singapore Bar examination
  - Malaysia – no FIFO rules; no FLC registration; only foreign law graduates from universities recognised by Malaysia Qualifying Board can practise





## Reciprocal expectations (cont'd)

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- Japan – FIFO restricted; registered FLCs permitted (currently about 360); foreign law degrees cannot be converted
- Korea – FIFO not permitted; registered FLCs permitted; no formal recognition of foreign legal qualifications
- India – FIFO, FLCs, not permitted (note FIFO decision in Balaji case, however)



## The immediate challenge

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- Ultimately, the challenge is to ensure that quality overseas law degrees are given due recognition by Australian regulatory authorities, but not inferior overseas qualifications



## The immediate challenge (cont'd)

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- Hence, for example:
  - USA – there are 200 ABA accredited law schools (including 6 with provisional accreditation). No correspondence or online law schools are accredited (but 12 such law schools are registered, for example, by the State Bar of California)



## Recognition of Australian law degrees overseas – direct benefits

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- Economic benefits to Australian Universities
  - Increased numbers of foreign students studying law in Australia (Singapore, Brunei, Malaysia and India)
  - *mobility of students and academics (trade in legal education services)*



## Recognition of Australian law degrees overseas – direct benefits

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- Economic and professional benefits to individual lawyers, and the Australian legal profession (and law firms?)
  - Australian trained graduates/lawyers gain a right to practise as local lawyers (USA)
  - *mobility of lawyers (trade in legal services)*



# Overseas legal practitioners – destination Australia

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## □ Two main categories:

1. Legal advisory services in foreign law, and
2. Local legal practitioner (Australian lawyer)

(Additional category of *ad hoc* admission to appear in court on the basis of a close nexus between the Barrister and the particular case)



## Australian registered foreign lawyer

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- Administered by local professional body
  - Temporary practice – fly-in, fly-out (no registration)
  - Ongoing practice (‘limited licence’)
- Registration, not admission – right to practice based on home practicing right/licence




## Overseas qualified lawyers – admission as local practitioners

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- State/Territory admitting authority
- Satisfy academic, practical legal training and good character requirements applicable to Australian trained graduates
- ILSAC vision: promote entry of overseas qualified lawyers – internationalise profession





## Assessment of overseas qualifications (Academic and Practical Legal Training)

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- Uniform principles developed by the Law Admissions Consultative Committee (LACC)
  - agreed criteria for the assessment overseas qualifications (academic & PLT requirements)
  - discretion to take account of experience to offset academic and PLT requirements
- Tension between use of discretion and uniformity



## ILSAC's approach: admission of overseas qualified lawyers?

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- *Central* assessment of overseas qualifications (continue to use LACC's uniform principles):
  - increased expertise in assessment and transparency
  - greater uniformity in the application of discretion (take account of experience to offset formal academic and PLT requirements)
  - greater consistency and fairness in outcomes
- National Legal Profession initiative has the potential to have positive impact



## A truly international law degree?

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- Develop a law degree that is common to multiple countries
  - a law degree that will satisfy the academic requirements necessary for admission to practise in several jurisdictions
  - consider Australia, Canada, England & Wales, New Zealand, and the USA for a start.
  - potential to have positive impact on other countries to join/internationalise.