Internationalisation of Legal Services – The Australian Experience

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Presentation will cover:

• Regulation of the legal profession in Australia – an overview
• Regulation of foreign lawyers – a hospitable system
• Statistics – international engagement
Regulation of the legal profession – an overview

• Federal system
  – State/Territory (regional) legislation

• Self regulating
  – Professional bodies, Courts, Special purpose bodies

• A National legal profession
  – Admitted in a State/Territory and practice across Australia

Regulation of foreign lawyers

• Key decision in May 1996
  “that there should, at the very least, be a clear statutory indication that there is no barrier to the practice of foreign law in Australia.”

• Objective
  “to encourage and facilitate the internationalisation of legal services sector by providing a framework for the regulation of the practice of foreign law in Australia by foreign qualified lawyers as a recognised aspect of legal practice in Australia”
Regulation of foreign lawyers

1. **Limited licence** – limited to the practice of foreign law (legal advisory services, Foreign Legal Consultant)
   
   *International Bar Association resolution – June 1998*

2. **Full licence** – full practice rights as an Australian admitted lawyer

3. **Fly-in, fly-out** – temporary practice providing legal advisory services in foreign law (up to 90 days in 12 month period)

Limited Licence – key features

- Legal Advisory services in foreign law.
- Right to appear in arbitration and mediation proceedings.
- Establish on own account or in partnership or other forms of commercial association with Australian or foreign lawyers.
- No limitation on the number of foreign lawyers or law firms or joint ventures.
- Comply with Australian professional ethical and practice standards.
- Non-burdensome registration process – no additional examination but based on evidence of Foreign Lawyer’s home-country licence.
- No minimum residency or experience requirements.
Fly-in, Fly-out (Temporary Practice)

- Same rights of practice as for Limited Licence
- However, no registration
- Maximum of 90 days in any 12 month period
  - no commercial presence of residency requirements
  (consistent with the commercial realities of transnational business where lawyers and law firms follow their corporate clients to provide advisory legal services)

International Engagement: Sector performance

Source: Australian Bureau of Statistics, Catalogue 5368055003
International Engagement: Sector performance 2006-07 year

• **Top four markets**: 1. USA & Canada; 2. China & Hong Kong; 3. the UK; and 4. Europe (excluding the UK).

• Key markets for **commercial presence**: 1. China & Hong Kong; 2. Pacific, including NZ; and 3. Singapore. The main areas of practice were: 1. Corporate, including Mergers and acquisition; 2. Banking & Finance; and 3. Litigation related.

• Key markets for **fly-in, fly-out**: 1. USA & Canada; 2. Africa & Middle East; and 3. the UK. The main areas of practice were: Intellectual Property, Information Technology, and Telecommunications; 2. Corporate, including Mergers and Acquisition; and 3. Energy and Resources.

Summary

• Practice of foreign law by foreign lawyers is a recognised aspect of legal practice in Australia.

• Limited licence (FLC) and full licence systems run concurrently, supplemented by temporary fly-in, fly-out without registration in host-country.

• Internationalisation of legal services: opening the legal services market to foreign lawyers has coincided with increased exports and engagement internationally by Australian lawyers/law firms.
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