



## PRACTISING IN NSW UNDER THE UNIFORM LAW

# UNQUALIFIED LEGAL PRACTICE

### Prohibition on engaging in legal practice by unqualified entities

The Legal Profession Uniform Law (NSW) (“The Uniform Law”) prohibits an entity from engaging in legal practice in NSW unless it is a qualified entity.<sup>1</sup>

The Uniform Law defines “**engage in legal practice**” as:

*Includes practise law or provide legal services but does not include engage in policy work (which, without limitation, includes developing and commenting on legal policy).*

The term “**practise law**”, is not defined in the Uniform Law however “**legal services**” are defined as:

*means work done, or business transacted, in the ordinary course of legal practice.*

### Relevant case law

There are a number of cases which assist in the interpretation of what it means to ‘engage in legal practice’ or “provide legal services”. The case law evidences that in each matter it is necessary for the court to analyse the work undertaken and then make a judgement as to whether or not a person has engaged in legal practice.

In each case it is a question of fact.

Following, are a number of principles emerging from case law:

1. If a person does a thing usually done by a solicitor, and does it in such a way as to lead to the reasonable inference that he is a solicitor – if he combines professing to be a solicitor with action usually taken by a solicitor – I think he then does act as a solicitor.<sup>2</sup>
2. The giving of advice as to the legal character and prospects of potential litigation especially implying that this would be done following a detailed assessment of evidentiary materials supplied by the person in question is unarguably engaging in legal practice. A statement that this is what will be done necessarily implies that the person to be proffering the advice is entitled to do so.<sup>3</sup>

3. A person who is not admitted to practice as a barrister or a solicitor may be regarded as acting or practising as a solicitor by doing something that is positively proscribed by legislation or rules of court unless done by a duly qualified legal practitioner or by doing something which, in order that the public may be adequately protected, is required to be done only by those who have the necessary training and expertise in the law.<sup>4</sup>
4. Although charging a fee for the work undertaken may be indicative of a person engaging in legal practice it is not a necessary pre-condition to a finding that a person has engaged in legal practice.<sup>5</sup>
5. The following practises especially when taken in combination can be said to lie near the very centre of the practice of litigation law:<sup>6</sup>
  - (a) advising parties to litigation in respect of matters of law and procedure;
  - (b) assisting parties to litigation in the preparation of cases for litigation;
  - (c) drafting court documents on behalf of parties to litigation;
  - (d) drafting legal correspondence on behalf of parties to litigation; and
  - (e) purporting to act as a party’s agent in at least one piece of litigation
6. This is the essence of legal practice, the advising of a particular person in a particular situation and the production of a document which affects legal rights and which is tailored to the particular needs of that person.<sup>7</sup>



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### Exceptions and exemptions

1. The definition of “qualified entity” in the Uniform Law specifically includes an individual engaged in legal practice under the authority of a law of the Commonwealth or of a jurisdiction other than the Uniform Law or the Uniform Rules. Such an occasion may arise where a law authorises representation by an agent without specification that the agent must be a legal practitioner.<sup>8</sup>
2. The definition of “engage in legal practice” in the Uniform Law specifically excludes policy work.
3. The Legal Profession Uniform General Rules 2015 (the Uniform Rules) declare a number of persons as being exempt from the operation of s10 (1) of the Uniform Law (prohibition on engaging in legal practice by unqualified entities). The exemptions include, but are not limited to, the following:<sup>9</sup>
  - A person carrying out conveyancing work in accordance with a licence in force under relevant jurisdictional legislation;
  - An officer or employee of a government authority drawing instruments in the course of the person’s duty other than as parliamentary counsel, legislative counsel or legislative drafter;
  - An officer or employee of a government authority undertaking appearance work in courts or tribunals under the authority of a law of a jurisdiction or of the Commonwealth;
  - A public trustee or a company that performs the functions of a public trustee of a jurisdiction to the extent that the person is performing work in the course of preparing a will or providing a related service or in the course of carrying out any other work involving or in connection with the administration of trusts, the estates of living or deceased persons or the affairs of living persons;
  - An industrial organisation providing legal services but only to the extent as set out in the Rules.

1 Legal Profession Uniform Law (NSW) s10 (1)

2 In *Re Sanderson*; ex parte The Law Institute of Victoria [1927] VLR 394 at 369

3 *The Council of the Law Society of New South Wales v Australian Injury Helpline Limited and ORS* [2008] NSWSC 627 per Adams J

4 *Cornall v Nagle* [1995] 2 VR 188

5 *Legal Services Commissioner v Walter* [2011] QSC 132

6 See note 5 above

7 *ACCC v Murray* [2002] FCA 1252

8 For further information on the operation of this exception see *The Law Society of New South Wales v Stephen Gary Spring and Another* [2007] NSWSC 1273

9 Legal Profession Uniform General Rules 2015 r 10