

WHAT A LAWYER CAN AND CANNOT DO AT EACH STAGE OF THEIR CAREER

Legal practice in New South Wales is strictly regulated. *Without a current Australian practising certificate a person cannot engage in legal practice and provide legal services. Furthermore, a legal practitioner's entitlement to engage in legal practice is determined by their category of practising certificate (in NSW there are five categories that apply to solicitors – principal of a law practice, employee of a law practice, corporate legal practitioner, government legal practitioner and volunteer), as well as the conditions imposed on their practising certificate. No matter how far along you are in your legal career, it's important to know what type of legal practice you are authorised to engage in and what steps you need to take if you wish to change your practising circumstances.*

ENTITLEMENT TO ENGAGE IN LEGAL PRACTICE IN NSW

To understand what type of legal work you may or may not be able to undertake, legal practitioners should familiarise themselves with the following definitions and sections in the Legal Profession Uniform Law (NSW) (the Uniform Law) and Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Conduct Rules).

QUALIFIED ENTITY

Under section 6 of the Uniform Law, a 'qualified entity' means:

- a. an Australian legal practitioner; or
- b. a law practice; or
- c. either—
 - i. an Australian-registered foreign lawyer; or
 - ii. a foreign lawyer who is not an Australian-registered foreign lawyer but only to the extent that the foreign lawyer's legal practice is limited to the practice of foreign law and is carried out in accordance with the applicable requirements of Part 3.4; or
- d. an individual engaged in legal practice under the authority of a law of the Commonwealth or of a jurisdiction, other than this Law or the Uniform Rules; or
- e. an entity engaged in legal practice of a kind specified in the Uniform Rules for the purposes of this definition, but only while the entity engages in the legal practice in accordance with any applicable requirements of the Uniform Rules.

ENGAGE IN LEGAL PRACTICE

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) [section 6 of the Uniform Law].

LEGAL SERVICES

means work done, or business transacted, in the ordinary course of legal practice [section 6 of the Uniform Law].

S10 OF THE UNIFORM LAW

Prohibition on engaging in legal practice by unqualified entities

1. An entity must not engage in legal practice in this jurisdiction, unless it is a qualified entity. Penalty: 250 penalty units or imprisonment for 2 years, or both.
2. An entity is not entitled to recover any amount, and must repay any amount received, in respect of anything the entity did in contravention of subsection (1). Any amount so received may be recovered as a debt by the person who paid it.
3. Subsection (1) does not apply to an entity or class of entities declared by the Uniform Rules to be exempt from the operation of subsection (1), but only to the extent (if any) specified in the declaration.

S43 OF THE UNIFORM LAW

Entitlement to practise

1. An Australian legal practitioner is entitled to engage in legal practice in this jurisdiction.
2. That entitlement is subject to any requirements of this Law, the Uniform Rules and the conditions of the practitioner's Australian practising certificate.

S47 OF THE UNIFORM LAW

Conditions – categories of practice and trust money

1. An Australian practising certificate granted in this jurisdiction is subject to the condition, as determined by the designated local regulatory authority, that the holder is authorised to engage in legal practice—
 - a. in one or more of the following categories—
 - i. as a principal of a law practice;
 - ii. as an employee of a law practice;
 - iii. as a corporate legal practitioner;
 - iv. as a government legal practitioner; or
 - b. as or in the manner of a barrister only; or
 - c. both as a volunteer at a community legal service and otherwise on a pro bono basis, only.
 2. An Australian practising certificate granted in this jurisdiction is subject to a condition, as determined by the designated local regulatory authority, that the holder is authorised or not authorised to receive trust money.
 3. An Australian practising certificate authorising the holder to engage in legal practice as a principal also authorises the holder to engage in legal practice as an employee of a law practice or a corporate legal practitioner or government legal practitioner.
 4. Until the Australian practising certificate concerned is renewed, and subject to any relevant conditions—
 - a. an Australian practising certificate authorising the holder to engage in legal practice as an employee of a law practice also authorises the holder to engage in legal practice as a corporate legal practitioner or government legal practitioner; and
 - b. an Australian practising certificate authorising the holder to engage in legal practice as a corporate legal practitioner also authorises the holder to engage in legal practice as a government legal practitioner; and
 - c. an Australian practising certificate authorising the holder to engage in legal practice as a government legal practitioner also authorises the holder to engage in legal practice as a corporate legal practitioner.
 5. An Australian practising certificate that is subject to a condition that the holder is authorised to engage in legal practice as set out in subsection (1)(a) or (b) also authorises the holder to engage in legal practice as a volunteer at a community legal service, or otherwise on a pro bono basis.
- Note: Discretionary conditions imposed by the designated local regulatory authority under section 53 may prohibit, restrict or regulate the provision of legal services by an Australian legal practitioner at community legal services or otherwise on a pro bono basis.*
6. An Australian practising certificate also authorises the holder to supervise legal practice by others. This does not apply—
 - a. if the certificate is subject to a statutory or discretionary condition that the holder must engage in supervised legal practice only; or
 - b. to the extent that the certificate is subject to a discretionary condition to the effect that the holder may not supervise legal practice by others.

Note: Section 211 provides that an Australian legal practitioner must not engage in legal practice in this jurisdiction unless the practitioner holds or is covered by a complying policy of professional indemnity insurance.

CONDUCT RULE 4

Other fundamental ethical duties

4.1 A solicitor must also—

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client,
- 4.1.2 be honest and courteous in all dealings in the course of legal practice,
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible,
- 4.1.4 avoid any compromise to their integrity and professional independence, and
- 4.1.5 comply with these Rules and the law.

LEGAL PRACTICE MATRIX

To understand the types of legal work you can or cannot perform, depending on your legal qualifications and practising entitlements, refer to the legal practice matrix below.

The Law Society's team of Professional Support Solicitors is available to give free and confidential guidance to help legal practitioners understand their practising entitlements and restrictions under legal profession legislation. Call (02) 9926 0115 or email regulatory.compliance@lawsociety.com.au if you have any questions or concerns about your practising entitlements.

	DRAFT LEGAL CORRESPONDENCE	CERTIFY DOCUMENTS	WITNESS AN AFFIDAVIT	PROVIDE LEGAL ADVICE	DRAFT COURT DOCUMENTS	APPEAR IN DIRECTIONS HEARINGS	BE THE SOLICITOR ON THE RECORD	SIGN A BILL OF COSTS	WITHDRAW TRUST MONEY	PROVIDE PRO BONO LEGAL SERVICES
Law graduate e.g., a summer clerk	Provided the legal correspondence is settled and approved by the principal ¹	²	³	Not directly. The advice must be settled and approved by the principal ⁴	Provided the documents are settled and approved by the principal ⁵	⁶	⁷	⁸	Only if the principal is unavailable and the law graduate has authority from the law practice. Even then, the law graduate must act jointly with another authorised associate of the practice ⁹	Not directly. Legal services provided must be under supervision of the principal ¹⁰
Employee of a law practice (supervision required)	Subject to reasonable supervision by the principal ¹¹	Subject to reasonable supervision by the principal ¹²	Subject to reasonable supervision by the principal ¹³	Subject to reasonable supervision by the principal ¹⁴	Subject to reasonable supervision by the principal ¹⁵	Subject to reasonable supervision by the principal ¹⁶	¹⁷	¹⁸	Only if the principal is unavailable and provided the legal practitioner employee has authority from the law practice ¹⁹	Subject to reasonable supervision & an approved PII policy ²⁰
Employee of a law practice (no supervision required)								²¹	Only if the principal is unavailable and provided the legal practitioner employee has authority from the law practice ²²	Subject to an approved PII policy ²³
Principal of law practice										
Corporate legal practitioner	So far as it is on behalf of the employer, or on a volunteer or pro bono basis ²⁴		So far as it is in the course of employment, or on a volunteer or pro bono basis ²⁵	So far as it is in the course of employment, or on a volunteer or pro bono basis ²⁶	So far as it is in the course of employment, or on a volunteer or pro bono basis ²⁷	So far as it is in the course of employment, or on a volunteer or pro bono basis ²⁸	So far as it is on behalf of the employer, or on a volunteer or pro bono basis ²⁹	³⁰	³¹	Subject to an approved PII policy ³²

LEGAL PRACTICE MATRIX

	DRAFT LEGAL CORRESPONDENCE	CERTIFY DOCUMENTS	WITNESS AN AFFIDAVIT	PROVIDE LEGAL ADVICE	DRAFT COURT DOCUMENTS	APPEAR IN DIRECTIONS HEARINGS	BE THE SOLICITOR ON THE RECORD	SIGN A BILL OF COSTS	WITHDRAW TRUST MONEY	PROVIDE PRO BONO LEGAL SERVICES
Government legal practitioner	 So far as it is on behalf of the government entity employer, or on a volunteer or pro bono basis ³³		 So far as it is in the course of employment, or on a volunteer or pro bono basis ³⁴	 So far as it is in the course of employment, or on a volunteer or pro bono basis ³⁵	 So far as it is in the course of employment, or on a volunteer or pro bono basis ³⁶	 So far as it is in the course of employment, or on a volunteer or pro bono basis ³⁷	 So far as it is on behalf of the government entity employer, or on a volunteer or pro bono basis ³⁸	 39	 40	 Subject to an approved PII policy ⁴¹
Australian lawyer (admitted to the legal profession, without PC) E.g., a lawyer who has not renewed their PC	 Provided the legal correspondence is settled and approved by the principal ⁴²	 43	 44	 Not directly. The advice must be settled and approved by the principal. ⁴⁵	 Provided the documents and approved and settled by the principal ⁴⁶	 47	 48	 49	 Only if the principal is unavailable and the lawyer has authority from the law practice, and jointly with another authorised associate of the practice ⁵⁰	 Not directly. Legal services provided must be under supervision of the principal ⁵¹
Australian-registered foreign lawyer	 So far as it is on behalf of a client in a foreign legal matter ⁵²	 So far as it concerns certification under a foreign jurisdiction ⁵³	 So far as it is witnessing under law of a foreign jurisdiction ⁵⁴	 So far as the advice concerns foreign law ⁵⁵	 So far as it relates to a foreign legal proceeding ⁵⁶	 57	 58	 So far as it relates to a foreign legal matter ⁵⁹	 Only if the principal is unavailable and the foreign lawyer has authority from the law practice, and jointly with another authorised associate of the law practice ⁶⁰	 So far as it relates to a foreign legal matter ⁶¹
Consultant/ Contractor ⁶² E.g., a sole practitioner providing legal services to another law practice										
Retired solicitor (without PC)	 Provided the legal correspondence is settled and approved by the principal ⁶³	 64	 65	 Not directly. The advice must be settled and approved by the principal ⁶⁶	 Provided the documents are settled and approved by the principal ⁶⁷	 68	 69	 70	 Only if the principal is unavailable and the retired solicitor has authority from the law practice, and jointly with another authorised associate of the practice ⁷¹	 Not directly. Legal services provided must be under supervision of the principal ⁷²

LEGAL PRACTICE MATRIX

ENDNOTES

¹ ss 10 & 34 of the Uniform Law.

² The type of certifier required is determined by the entity that wants the certified copies. There is no legislation that stipulates how to certify a copy of a document and it is up to the organisation requesting the certified copy to decide who is acceptable to certify a copy- digital document or otherwise. If you need to get a document certified, you should ask the person that requested it if they have rules about who can certify it.

³ s26 of the Oaths Act 1900 (NSW).

⁴ Ibid.

⁵ Ibid.

⁶ s10 of the Uniform Law. If you are not an Australian legal practitioner, you cannot make a formal appearance before a court unless you have been granted leave of the court. If you would like to seek leave to appear in a matter, check with the relevant court beforehand their requirements for such an application.

⁷ r7.1 of the Uniform Civil Procedure Rules 2005.

⁸ s188 of the Uniform Law.

⁹ r43(2) of the Legal Profession Uniform General Rules 2015.

¹⁰ Ibid.

¹¹ s6 (see definition of 'supervised legal practice'); s49 of the Uniform Law & r37 of the Conduct Rules.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ r7.1 of the Uniform Civil Procedure Rules 2005.

¹⁸ s188 of the Uniform Law.

¹⁹ r43(2) of the Legal Profession Uniform General Rules 2015.

²⁰ Ibid; s211 of the Uniform Law.

²¹ s188 of the Uniform Law.

²² r43(2) of the Legal Profession Uniform General Rules 2015.

²³ s211 of the Uniform Law.

²⁴ s6 of the Uniform Law (see definition of 'corporate legal practitioner') & s47 of the Uniform Law.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ s188 of the Uniform Law.

³¹ r43(2) of the Legal Profession Uniform General Rules 2015.

³² s211 of the Uniform Law.

³³ s6 of the Uniform Law (see definition of 'government legal practitioner') & s47 of the Uniform Law.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ s188 of the Uniform Law.

⁴⁰ r43(2) of the Legal Profession Uniform General Rules 2015.

⁴¹ s211 of the Uniform Law.

⁴² ss 10 & 34 of the Uniform Law.

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⁴⁴ s26 of the Oaths Act 1900 (NSW).

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⁴⁶ Ibid.

⁴⁷ s10 of the Uniform Law. If you are not an Australian legal practitioner, you cannot make a formal appearance before a court unless you have been granted leave of the court. If you would like to seek leave to appear in a matter, check with the relevant court beforehand their requirements for such an application.

⁴⁸ r7.1 of the Uniform Civil Procedure Rules 2005.

⁴⁹ s188 of the Uniform Law.

⁵⁰ r43(2) of the Legal Profession Uniform General Rules 2015.

⁵¹ ss 10 & 34 of the Uniform Law.

⁵² ss 61 & 69 of the Uniform Law.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ s69(3) of the Uniform Law.

⁵⁸ Ibid; r7.1 of the Uniform Civil Procedure Rules 2005.

⁵⁹ ss 61 & 69 of the Uniform Law.

⁶⁰ ss 61 & 69 of the Uniform Law.

⁶¹ s188 of the Uniform Law.

⁶² Neither 'contractor' nor 'consultant' are practising certificate categories under the Uniform Law. If you are providing legal services on your own account to another law practice as an independent contractor, you must hold a 'principal of a law practice' practising certificate and an approved professional indemnity insurance policy in your own name.

⁶³ ss 10 & 34 of the Uniform Law.

⁶⁴ The type of certifier required is determined by the entity that wants the certified copies. There is no legislation that stipulates how to certify a copy of a document and it is up to the organisation requesting the certified copy to decide who is acceptable to certify a copy- digital document or otherwise. If you need to get a document certified, you should ask the person that requested it if they have rules about who can certify it.

⁶⁵ s26 of the Oaths Act 1900 (NSW).

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ s10 of the Uniform Law. If you are not an Australian legal practitioner, you cannot make a formal appearance before a court unless you have been granted leave of the court. If you would like to seek leave to appear in a matter, check with the relevant court beforehand their requirements for such an application.

⁶⁹ r7.1 of the Uniform Civil Procedure Rules 2005.

⁷⁰ s188 of the Uniform Law.

⁷¹ r43(2) of the Legal Profession Uniform General Rules 2015.

⁷² Ibid.