1. Introduction

The Legal Profession Act 2004 ("the Act") prohibits a person from engaging in legal practice or representing or advertising that the person is qualified to engage in legal practice, unless that person holds a current practising certificate.\(^1\)

It is difficult to define legal practice and no definition exists in the Act. However it is possible to broadly classify legal practice as "…doing something which, in order that the public might be adequately protected, is required to be done only by those who have the necessary training and expertise in the law."(Cornall v Nagle [1995] 2VR 188 at 210)

A person may have engaged in unqualified legal practice where that person does not hold a current practising certificate and either:

a) provides legal services (see paragraph 2 below); or

b) behaves in a way which creates a reasonable inference that the person is qualified to provide legal services.

A practitioner should also be aware of the restrictions in the Act concerning:

i) the employment of lawyers who do not hold a current practising certificate or who have been found guilty of a "relevant offence"\(^2\) or who have been disqualified from practice;\(^3\)

ii) engaging in business with an unqualified person including:
   a. income sharing;\(^4\)
   b. incorporated legal practice or multidisciplinary partnerships;\(^5\) and

iii) permitting or assisting an unqualified person to engage in legal practice;\(^6\)

2. Actions that are legal services

Legal practice can be the provision of legal services. Examples of legal services may include;

a) drawing documents of a legal nature;

b) giving legal advice;

c) appearing in Court; or

d) using the name of barrister, solicitor or Australian legal practitioner or any other name used to describe someone who is qualified to engage in legal practice.\(^7\)
3. Actions that are not legal services

Undertaking work in association with the law or legal practice will not necessarily constitute engaging in legal practice. Examples may include:

a) clerical or administrative tasks - inserting parties’ names in a document, which is later approved by a practitioner (see paragraph 6);

b) selling of legal documents; or

c) advising of incidental legal requirements by a person in the pursuit of an occupation other than law - tax agents advising on the requirements of tax legislation.

4. Exemptions to engaging in legal practice

The Act details circumstances where a person or business is not to be taken to engage in legal practice, whilst providing what appears to be legal services. Examples may include:

a) an Incorporated Legal Practice;

b) a Community Legal Centre;

c) a government lawyer (who may not need to hold a current Practising Certificate in order to undertake some legal work); or

d) a lay person who has been granted special permission by a Court or Tribunal to represent themselves or another person in proceedings before that Court or Tribunal.

5. Conveyancing Businesses

From 1 October 2008 a person must be licensed in order to carry on a business as a conveyancer in Victoria (unless the person is a current practitioner or an Incorporated Legal Practice).

Registered conveyancers may undertake some “legal work” if it is conveyancing work.

The Conveyancers Act 2006, defines what is or is not conveyancing work.

6. Delegation of legal practitioner’s work

A practitioner may delegate some types of legal work to a law clerk, provided that the work is carried out with the supervision and authority of the practitioner (eg. inserting the name and address in a caveat and subsequent lodging of that caveat), but this would not extend to some tasks that only a legal practitioner can perform (eg. appearing in court).

References:

[1] ss. 2.2.2 & 2.2.3 Legal Profession Act 2004
[2] s. 2.2.7 Legal Profession Act 2004
[3] ss. 1.2.1, 2.2.7 & 2.7.21 Legal Profession Act 2004
[4] s. 2.2.9 Legal Profession Act 2004
[5] ss. 2.7.20; 21; 48 & 49 Legal Profession Act 2004
[6] s. 2.2.10 Legal Profession Act 2004
[7] s. 2.2.4 Legal Profession Act 2004 and Sch. 2 Legal Profession Regulations 2005
[8] s. 2.2.2(2) Legal Profession Act 2004
[9] s.4 Conveyancers Act 2006

How can we help you?

Visit the Ethics Department’s website at: www.liv.asn.au/ethics.

These are guidelines only and do not have the force of law. A practitioner must comply with the Professional Conduct & Practice Rules and the Legal Profession Act 2004.

To discuss concerns about unqualified practice, contact the Ethics Department on 9607 9336.

Adopted by the Council of the Law Institute of Victoria on 25 September 2009