

“Engage in legal practice” and “legal services” under the Legal Profession Uniform Law (NSW)

‘Engage in legal practice’ and ‘legal services’ are broadly defined in the NSW legal profession legislation.

However, there are a number of cases which assist solicitors in the interpretation of what it means to engage in legal practice and provide legal services. This article aims to help practitioners distil these concepts by summarising helpful case law principles.

Uniform Law provisions

[Section 43](#) of the *Legal Profession Uniform Law* (NSW) (**Uniform Law**) provides that an Australian legal practitioner, meaning a lawyer admitted to the Australian legal profession and who holds a current Australian practising certificate, is entitled to engage in legal practice in NSW.

[Section 10](#) of the Uniform Law provides that *only* a qualified entity can engage in legal practice. A ‘qualified entity’ is defined under section 6 as follows:

- 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.

The above provisions prohibit unqualified legal practice. Their purpose is to protect consumers by ensuring that only individuals and entities properly licensed and insured can engage in legal practice.

For the proper administration of justice, legal services should only be provided by persons who are qualified to do so.

The maximum penalty for engaging in unqualified legal practice is a fine of 250 penalty units or imprisonment for 2 years under [Section 10](#) of the Uniform Law. The maximum penalty for an unqualified entity that holds itself out as entitled to engage in legal practice is 250 penalty units under [Section 11](#) of the Uniform Law. Currently, one penalty unit is equal to \$110.^[1]

'Engage in legal practice' and 'legal services' are broadly defined under [section 6](#) of the Uniform Law as follows.

- **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).
- **Legal services** mean work done, or business transacted, in the ordinary course of legal practice.

Issue of fact to be determined objectively

Whether a person or entity has engaged in legal practice is an issue of fact to be determined objectively in each case^[2] The court scrutinises the nature of work and services provided, and the circumstances and context in which they are provided, in each individual case to determine if a person has engaged in legal practice.

Subjective considerations are irrelevant. Whether a person intends to engage in legal practice or has expressly told clients that they are not legal practitioner has no bearing on whether the person's actions amount to engaging in legal practice^[3]

Case law

It is impossible to provide an exhaustive list of work or services that constitute 'engage in legal practice', as each case is decided on its own facts. There are some principles emerging from case law which may help in interpreting the meaning of 'engage in legal practice' and 'legal services'.

- The essence of legal practice is 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.^[4]
- Generally, the responsibility for and conduct of litigation (including threatening legal action on another person's behalf, court appearances, preparation of evidence, advising and participating in alternative dispute resolution procedures, corresponding with opposing parties representing the legal rights and contentions of the client, advising on prospects of success of proceedings or settlement of proceedings) are exclusively within the province of barristers and solicitors.^[5]
- Discussions with clients as to rights under an act, relevant legal processes, outlining their options in relation to claims under the act, and discussions regarding the consequences of various options available are strong indications of undertaking legal work.^[6]
- It has been held that the following forms of behaviour can be regarded as 'acting or practising as a solicitor' which is similar to 'engage in legal practice':
 - i. by doing something which, though not required to be done exclusively by a solicitor, is usually done by a solicitor and by doing it in such a way as to justify the reasonable inference that the person was doing it as a solicitor;
 - ii. by doing something that is positively proscribed by an Act or by the rules of Court unless done by a duly qualified legal practitioner; or
 - iii. by 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, like the giving legal advice as part of a course of conduct and for reward.^[7]

- If a person does something that is usually done by a legal practitioner and does it in such a way as to lead to the reasonable reference that the person is a legal practitioner, that person is likely to be considered as engaging in legal practice.^[8] Reasonable inference means the person has performed the work in such a way that the only inference which could be reasonably drawn from his conduct was that he was a solicitor.^[9]
- Purely clerical work like filling blanks in a printed form or preparing documents of a general type without determining the legal effect of facts would not generally be regarded as legal services. However, if a person produces a document from a mass of facts and conditions and has carefully analysed its legal effect to produce a specific result, then such work would likely be considered as engaging in legal service.^[10]
- While solicitors are usually rewarded for providing legal services, the charging of fees is not a pre-condition to a finding that a person has engaged in legal practice.^[11] It is possible that a person is engaging in legal practice by acting pro bono. For example, lawyers working in community legal centres or as volunteers in pro bono matters.
- Legal services should be distinguished from providing legal information, which is not regulated under the Uniform Law. Legal information is information about the law generally and not tailored to the specific circumstances of an individual or a specific case. Legal information can include providing an interpretation of the law or researching on a topic of law for the purposes of general interest or education. It can also include providing documents which assist members of the public understand the law or a legal process or procedure. Legal information is an explanation of the law, which is not intended to be relied upon, and which cannot reasonably be relied upon, by the recipient to adopt a course of conduct that augments their legal rights and responsibilities.^[12]

Certifying and witnessing documents

Certifying a document as a true copy of the original is generally regarded as a public service and would not be considered a legal service under the Uniform Law. There is no legislation that prescribes how to certify a document. It is up to the organisation requesting the certified copy to decide who is acceptable to certify a digital or hard copy document.

Before witnessing a document, carefully consider whether in doing so you are providing a legal service. In some circumstances, a witness may be required to explain the legal effect of the instrument or document being signed. If there is any chance that witnessing a document may be construed as providing a legal service, carefully consider whether the conditions on, and category of, your practising certificate authorise you to do so.

Please refer to the Law Society's [Checklist for Witnessing Signatures and Certifying Documents in NSW](#) for guidance.

Exceptions and exemptions under the Uniform Law

- The definition of 'qualified entity' under [Section 6](#) of 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.^[13]
- The definition of 'engage in legal practice' under [Section 6](#) of the Uniform Law specifically excludes policy work.
- The *Legal Profession Uniform General Rules 2015 (Uniform Rules)* declares a number of persons as being exempt from the operation of [Section 10 \(1\)](#) of the Uniform Law (prohibition on engaging in legal practice by unqualified entities). The exemptions include, but are not limited to, the following:^[14]
 - i. A person carrying out conveyancing work in accordance with a licence in force under relevant jurisdictional legislation;
 - ii. An officer or employee of a government authority drawing instruments in the course of the person's duty otherwise than as parliamentary counsel, legislative counsel or legislative drafter;
 - iii. 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;
 - iv. 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; and
 - v. An industrial organisation providing legal services but only to the extent as set out in the Uniform Rules.

Further guidance

Solicitors who would like further guidance on the conditions of legal practice in NSW are encouraged to contact the Professional Support Unit's (PSU) regulatory compliance team for support.

PSU provides **free and confidential** guidance to solicitors in NSW who require assistance understanding their regulatory, ethical and professional obligations in legal practice.

AML/CTF	amlctf@lawsociety.com.au	(02) 9926 0249
Costs	costs@lawsociety.com.au	(02) 9926 0116
Ethics	ethics@lawsociety.com.au	(02) 9926 0114
Regulatory Compliance	regulatory.compliance@lawsociety.com.au	(02) 9926 0115

Endnotes

[1] [Section 17](#) of *Crimes (Sentencing Procedure) Act 1999*.

[2] *Abboud v Council of the Law Society of NSW* [2025] NSWCATOD 34 at [43].

[3] *Ibid* para 43.

[4] *Australian Competition & Consumer Commission v Murray* [2002] FCA 1252 at [94]

[5] *Overdean Development Pty Ltd v Garslev Holdings Pty Ltd (No 3)* [2021] NSWSC 1482 at [793]; *Council of the NSW Bar Association v Dwyer* [2015] NSWCA 302 at [14]; *Council of the Law Society of New South Wales v Sideris* [2024] NSWCATOD 3 at [101].

[6] *The Council of the Law Society of NSW v Australian Injury Helpline Ltd* [2008] NSWSC 627 at [96].

[7] *Cornall v Nagle* [1995] 2 VR 188.

[8] *Council of the Law Society of New South Wales v Sideris* [2024] NSWCATOD 3 at [105].

[9] *The Council of Law Society of NSW v Seymour* [1999] NSWCA 117 at [19].

[10] *Abboud v Council of the Law Society of NSW* [2025] NSWCATOD 34 at [48] citing *Legal Practice Board v Giraudo* [2010] WASC 4[13].

[11] *Legal Services Commissioner v Walter* [2011] QSC 132 at [20].

[12] See discussion on "What is legal information?" in Legal technological innovation and the Uniform Law-Information sheet for Lawyers by Legal Services Council dated August 2019.

[13] For further information on the operation of the exception see *The Law Society of NSW v Stephen Gary Spring and Another* [2007] NSWSC 1273

[14] Rule 10 of the *Legal Profession Uniform General Rules 2015*.

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