

## Legal technological innovation and the Uniform Law

Digital disruption is a fact of life in the legal profession. We now have chatbots, smart contracts, blockchain. This information sheet shows how technological innovation that increases the efficiency and lowers the cost of delivery of quality legal services to informed consumers is consistent with the objectives of the Uniform Law.

### The Uniform Law

The Uniform Law<sup>1</sup> aims to promote the administration of justice and an efficient and effective Australian legal profession by several means, including by ensuring that lawyers are competent and maintain high standards in the provision of legal services; and by empowering clients of law practices to make informed choices about the services they access.<sup>2</sup>

To ensure that the standard of legal services remains high, the Uniform Law regulates legal practice and those who carry it out. By contrast, the Uniform Law does not regulate the dissemination of legal information. This distinction has become increasingly important as the creators of new legal technology are not always legally trained and certified.

It is therefore timely to remind ourselves of the difference between giving legal information and engaging in legal practice; and to clarify who is entitled to do each.

### What is legal information?

Legal information is information about the law generally. It is provided in the absence of personal contact or relationship with a particular individual. It is not tailored to the circumstances of an individual. It arises independently of the confidence and trust that forms the basis of the legal practitioner/client relationship.<sup>3</sup> It can include:

- Interpreting the law to provide an exposition of the meaning and effect of the law or its amendments, historical or current, for the purposes of general interest or education;
- An application of the law to a hypothetical fact situation to illustrate how the law operates or to test

- the understanding of a student;
- Legal research about a general or specific matter undertaken for purposes of interest or education and not to offer legal advice to an individual;
- The production of fact sheets, flow charts, papers, text books, websites and the like to assist any interested member of the public to understand a law, a legal process, or a court or tribunal procedure or convention;
- Expositions that are unintended to be relied upon and cannot reasonably be relied upon to cause a listener or reader to adopt a course of conduct that augments their legal rights and responsibilities.<sup>4</sup>

**Legal information may be given by any person including one without legal education or qualifications. The Uniform Law has no application in these circumstances, and any person who suffers harm as a result of reasonably relying on misinformation will need to look to consumer or commercial remedies for relief.**

### What is legal practice?

#### Legislation

The Uniform Law does not define 'legal practice' but s 6 states that:

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

#### Case law

There are a number of cases which assist with the interpretation of what it means to engage in legal practice. The case law demonstrates that in each matter it is necessary for the court to analyse the work undertaken and the context in which it was undertaken, and then make a

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judgment as to whether or not an entity has engaged in legal practice. In each case, the question of whether or not an entity has engaged in legal practice is a question of fact. Following are a number of principles emerging from case law:

1. Whether a person is carrying on legal practice is very much a question of fact and degree.<sup>5</sup>
2. A person who, in the lawful pursuit of an occupation other than law, gives advice for reward on matters lying within their area of occupational expertise does not necessarily act as a legal practitioner simply because the advice involves the expression of an opinion about the requirements of relevant legislation, statutory rules or the like.<sup>6</sup>
3. A person who gives advice touching on legal matters or who prepares documents having legal effect does not act as a legal practitioner by reason of those acts alone. Limiting the focus simply to the activities of conducting litigation, giving advice and drafting legal instruments fails to illuminate fully what is signified by the expression 'engaging in legal practice'. One may need to examine who performs these activities, as well as how, when and where they perform them.<sup>7</sup>
4. The expression to 'engage in legal practice' signifies to carry on or to exercise the profession of law. The carrying on of the profession of law is done by none other than a legal practitioner. Therefore, the expression 'engage in legal practice' means 'engage in legal practice as a legal practitioner', the italicised words being implicit in the notion of legal practice.<sup>8</sup>
5. A person may 'act or practise as a solicitor' in any of the following ways:
  - i. By doing a thing usually done by a solicitor, and doing it in such a way as to lead to the reasonable inference that they are a solicitor<sup>9</sup> – if they combine professing to be a solicitor with action usually taken by a solicitor – then they act as a solicitor;<sup>10</sup>
  - ii. By doing something that is positively proscribed by an act or by rules of Court unless done by a duly qualified legal practitioner;<sup>11</sup>
  - iii. 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>12</sup> For example, the giving of legal advice as part of a course of conduct, and for reward.
6. Some activities regularly performed by solicitors are also frequently lawfully performed by persons who are not solicitors, eg. by accountants, merchant bankers, financial advisers, town planners<sup>13</sup> etc. Other activities regularly performed by solicitors, including activities which may be lawfully performed by a person who is not a legal practitioner, might seldom, if ever, be performed by any person who is not a solicitor.<sup>14</sup> Where the relevant activity falls into the first category and is limited in number and nature it will be difficult to draw the inference that the actor was a solicitor. There is no policy justification for including within the monopoly of legal practitioners, activities which may be lawfully carried out by any person who does not act as though he or she has a status which he or she does not possess.<sup>15</sup>
7. The giving of legal advice in the context of other proper commercial activities such as those conducted by an accountant in respect, say, of accounting obligations or income tax liabilities, is not legal practice within the meaning of the legislation.<sup>16</sup> A person will not engage in legal practice if advice is given, which although relating to legal requirements, is truly incidental to the conduct of another occupation.<sup>17</sup> For example, compare, for the purposes of establishing whether legal work was done, the Court's analysis of a conveyancer completing a form under s 32 of the *Sale of Land Act 1962* (Vic) with the use of pre-prepared forms or systems to create a will.<sup>18</sup>
8. The inference that a person was acting as a solicitor must be the only inference which can reasonably be drawn from his or her activities.<sup>19</sup> In order to infer that a person performs activities as a solicitor, consideration must be given to the hypothetical reasonable person dealing with the person alleged to have acted as a solicitor. The assessment of the reasonable person's knowledge of the actor's status will include any statement by which the actor misrepresents that he or she is a solicitor, or explains that he or she is not a solicitor. When activities may lawfully be carried out by a person who is not a solicitor, and the actor knows that the person with whom he or she is dealing is aware that the actor is not a solicitor, it is not necessarily the case that the actor acted as a solicitor.<sup>20</sup>
9. To ascertain whether a solicitor is, in fact acting as a solicitor, Palmer J in *Swart v Carr*<sup>21</sup> advanced the following propositions:
  - i. The capacity in which a solicitor has been acting is always a question of fact depending upon the particular circumstances of the case;
  - ii. One of the relevant circumstances is the antecedent relationship between the solicitor and the other party, if any, particularly if there is a history of an acknowledged solicitor/client relationship;
  - iii. A critical circumstance indicating that a solicitor has been acting in his or her capacity as a solicitor is that the solicitor has been acting

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- pursuant to a contract, express or implied, under which the solicitor is to provide services; and the services to be provided under the contract include at least some services which require legal knowledge to perform;
- iv. A material circumstance reinforcing (iii) is that there is an acknowledgement, express or implied, between the parties that the contract of engagement has been entered into wholly or partly because the provider of the services is a solicitor;
  - v. If a contract which qualifies under (iii) also requires services to be performed by the solicitor for which legal knowledge is not necessary but which are customarily performed by solicitors, those services too will be performed in the capacity of solicitor;
  - vi. If a contract with a solicitor for services requires the performance of duties which require no legal knowledge to perform and which are not within the range of services customarily provided by solicitors, it would be unlikely that the solicitor has been engaged in his or her capacity as a solicitor.
10. A solicitor may act in the capacity of a solicitor when involved in activities that may be carried out by a person who is not a legal professional, eg. an entrepreneurial investment scheme described in a joint venture agreement.<sup>22</sup>
  11. '[W]here an instrument is to be shaped from a mass of facts and conditions, the legal effect of which must be carefully determined by a mind trained in the existing laws in order to ensure a specific result and to guard against others, more than the knowledge of the layman is required. [...] A process of that kind goes beyond mechanical or clerical tasks and is of a kind required to be performed by a solicitor.'<sup>23</sup>
  12. The selling of will forms, with or without accompanying instructions and advice, does not per se infringe statutory prohibitions of legal practice by non-lawyers.<sup>24</sup>
  13. It is commonplace that investigators are used in litigation or proposed litigation to obtain statements and procure evidence. To some extent it is necessary to exercise judgments about relevance and the like that are similar to the exercise of legal skill. But it cannot be suggested that merely to do this for the purpose of submitting the material to a solicitor for use in connection with a claim is undertaking legal practice.<sup>25</sup>
  14. Whether a person is engaged in legal practice where work involves some legal advice or the making of legal judgment is a question of fact and degree. In each case it requires the court to analyse in some detail what was undertaken and arrive at a judgment about whether the actor had engaged in prohibited conduct. There is no bright line separating permissible legal work from impermissible legal practice.<sup>26</sup>
  15. The expression *legal advice* is a generic term that covers or applies to advice on a wide range of matters.<sup>27</sup>
  16. 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 proffering the advice is entitled to do so.<sup>28</sup>
  17. The provision of legal advice for reward when briefed to do so is typical of the work undertaken by a barrister. In respect of the work of a barrister when conducting litigation, a wide range of functions is undertaken including the preparation of evidence, advice on gathering evidence, advice on strategic issues, of evidentiary issues, litigation prospects and settlement of proceedings.<sup>29</sup> The functions of advising on evidence, drafting and settling letters and affidavits and making oral and written submissions are, in actions before courts and tribunals, the stuff of barristers' and solicitors' work.<sup>30</sup>

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

### Indicators that a person may be engaging in legal practice

As each case turns on its facts, it is impossible to provide a checklist, or an exhaustive list of matters that will indicate that a person is engaging in legal practice. However, in several cases, conduct of the type described below has been identified as engaging in legal practice.

1. 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>31</sup>

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2. The following conduct, especially when taken in combination, can be said to lie near the very centre of the practice of litigation law:
  - i. Advising parties to litigation in respect of matters of law and procedure;<sup>32</sup>
  - ii. Assisting parties to litigation in the preparation of cases for litigation;
  - iii. Drafting court documents such as pleadings and submissions on behalf of parties to litigation;
  - iv. Drafting legal correspondence on behalf of parties to litigation; and
  - v. Purporting to act as a party's agent in at least one piece of litigation.<sup>33</sup>
3. In *Dwyer*<sup>34</sup>, Emmett JA cited the following activities as evidence of engaging in legal practice as a barrister:
  - Advising a solicitor and/or a client in relation to the issues in a dispute; the commencement of proceedings, issues in proceedings, and prospects of success;
  - Conferring with a solicitor, client and/or expert witnesses about a matter;
  - Attending a site visit with a solicitor and the client;
  - Drafting and settling a summons and supporting affidavit;
  - Reviewing correspondence received from the other parties and advising the solicitor in relation to that correspondence;
  - Advising in relation to a directions hearing;
  - Appearing for the client at a directions hearing without seeking the Court's leave to appear;
  - Reading and considering material and preparing an outline of submissions, contract documents and an expert report;
  - Reading documents and a legal opinion that a client had received from a solicitor and providing an opinion about the advice that had been received;
  - Accepting instructions from a solicitor or a brief to appear;
  - Entering into a fees agreement as 'the Barrister' with a solicitor, and describing the legal services to be provided;
  - Describing oneself as a barrister in communications with solicitors;
  - Using email addresses in correspondence and invoices that imply that one is a barrister, eg [xxxx@counsel.net.au](mailto:xxxx@counsel.net.au).
4. Activities described in case law as being the activities of a solicitor engaged in legal practice include:
  - Advising;
  - Representing and otherwise acting as a solicitor in relation to a sale of business and lease of premises;
  - In interviews with police;
  - Drawing, preparing and/or completing an instrument that affects the rights between parties;
  - Providing a solicitor's certificate to a bank in respect of the obligations of a person or entity;
  - Using qualifications 'LLB' on letterhead, which, even though true, may in the context of the substance of the letter, deceive and mislead the reader into believing that the graduate is a solicitor;
  - Using words such as 'solicitor acting for'; and
  - Failing to correct a person known by the actor to falsely believe that the actor is a solicitor and entitled to act.<sup>35</sup>
5. Additional activities that indicate that a person may be engaging in legal practice:
  - Sending notices and tax invoices in property disputes;
  - Offering to contract on behalf of a client;
  - Asserting that affidavits were un rebutted and that a commercial lien stood;
  - Demanding payment of moneys owed on invoices rendered in accordance with the fee schedule;
  - Arranging for clients to give the actor's company full authority to act on their behalf;
  - Alleging that a failure to pay would automatically set legal action in progress;
  - Serving default notices and search certificates;
  - Drafting and serving affidavits;
  - Providing a notice of objection in rate collection proceedings;
  - Providing purported legal documents to a municipal council;
  - Obtaining authorities of various descriptions from clients;
  - Preparing charge sheets and charges for the appointment of a grand jury;
  - Appearances before the court on various occasions representing that the actor is an advocate; and
  - Signing appearance sheets and consenting to adjournments.<sup>36</sup>
6. Additional activities that indicate that a person may be engaging in legal practice:
  - Accepting instructions from a client;
  - Entering an agreement to represent the client, whether or not for reward;
  - Reading material relevant to the client's case;
  - Drafting legal documents and correspondence specific to the client;
  - Applying the law to the facts of the client's case for the purpose of providing personal service to them, whether by way of advice, appearances in court, settlement negotiations etc;
  - Disclosure and costing of legal services;
  - Provision of legal advice under the guise of 'planning advice' or 'consultative services'.<sup>37</sup>

## Under the Uniform Law, who is entitled to engage in legal practice?

Under the Uniform Law, a qualified entity may engage in legal practice. An entity is prohibited from engaging in legal practice in NSW and Victoria unless it is a qualified entity.<sup>38</sup>

Section 6 of the Uniform Law defines the following words and expressions:

- An **entity** includes an individual, a body (incorporated or unincorporated) or other organisation or a partnership;
- A **qualified entity** includes an Australian legal practitioner or a law practice or an Australian-registered foreign lawyer, amongst others;
- An **Australian legal practitioner** means an Australian lawyer who holds a current practising certificate;
- An **Australian lawyer** means a person admitted to the Australian legal profession in NSW or any other jurisdiction;
- A **law practice** means a sole practitioner, or a law firm, or a community legal service, or an incorporated or unincorporated legal practice.

Therefore, an individual admitted as an Australian lawyer and who holds a current practising certificate is entitled to engage in legal practice (subject to compliance with the conditions on the practising certificate<sup>39</sup>). An individual admitted as an Australian lawyer but who does not hold a current practising certificate may not engage in legal practice<sup>40</sup> and further, may not claim professional costs when representing him or herself.<sup>41</sup>

A qualified entity cannot delegate its entitlement to engage in legal practice to an unqualified entity. An unqualified entity cannot suggest that an entitlement to engage in legal practice has been delegated to it by a legal practitioner. In *Australian Injury Helpline*,<sup>42</sup> Adams J said that, 'the obligations of the solicitor to the client are of a primary kind and cannot be controlled in any way that might prejudice the client's interests, let alone delegated to a person who is not appropriately qualified and entitled to engage in legal practice.'

## Exceptions and exemptions

The Uniform Law provides exceptions to and exemptions from the rules about engaging in legal practice.

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 non-participating jurisdiction. A law can authorise representation by an agent without specification that the agent must be a legal

2. practitioner.<sup>43</sup>  
The Legal Profession Uniform General Rules 2015 declare that certain persons are exempt from the prohibition from engaging in legal practice by unqualified entities. The exemptions include, but are not limited to, the following:<sup>44</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;
  - An industrial organisation as defined providing legal services but only to the extent as set out in the Rules.<sup>45</sup>

## Prosecutions for engagement in legal practice when disentitled

Section 451(1) of the Uniform Law states that a subsection of that law creates a criminal penalty if the word 'civil' does not precede the word 'penalty' in the relevant subsection. Further, subs (3) provides that proceedings for a criminal offence under the Uniform Law are to be dealt with by jurisdictional law.

Section 165A(1)(b) of the *Legal Profession Uniform Law Application Act 2014* (NSW) (**NSW Application Act**) states that an offence against the Uniform Law that is referred to in s 451, is to be dealt with summarily before the Local Court provided the action is brought at any time within 12 months of the alleged offence.<sup>46</sup> Section 154 of the *Legal Profession Uniform Law Application Act 2014* (Vic) (**Vic Application Act**) authorises the Victorian Legal Services Board (**VLSB**) to commence a prosecution by filing a charge sheet. Subject to exceptions, a proceeding for a summary offence must be commenced within 12 months after the date on which the offence is alleged to have been committed: s 7(1) of the *Criminal Procedure Act 2007* (Vic).

Subsection 14(b) of the Uniform Law provides that the local regulatory authority may institute prosecutions and other proceedings for the contravention of Part 2.1 of the Uniform Law. Section 11 of the NSW Application Act provides relevantly that the Bar Council and the Law Society Council are the designated local regulatory authorities for the purposes of s 14 of the Uniform Law. Section 10 of the Vic Application Act provides relevantly that the VLSB is the designated local regulatory authority in Victoria for the purposes of s 14 of the Uniform Law.

## Other proceedings for the contravention of Part 2.1 of the Uniform Law

Section 447 of the Uniform Law allows the designated local authority to apply to the Supreme Court for an injunction to restrain conduct that has contravened, is contravening or is likely to contravene the Uniform Law or the Uniform Rules.

In *Jensen*<sup>47</sup>, Garde J applied the principles espoused in *Sanderson*, *Cornall v Nagle*, *Felman* and *Walter* to find that the defendants had contravened s 10 of the Uniform Law by engaging in legal practice when unqualified. As the defendants also advertised or represented that they were entitled to act as they did, they were found to be in breach of s 11 of the Uniform Law. An injunction was ordered under s 447(3) of the Uniform Law to restrain the defendants from further engaging in legal practice when unqualified.

**Unless a statutory exception applies, a person who does not hold a current practising certificate is prohibited from practising law or providing legal services by any means. To do so is a criminal offence. Within one year of the alleged offence occurring in NSW or Victoria, the designated local regulatory authority can bring a prosecution in the Local Court of NSW or the Magistrates Court of Victoria respectively.**

**In addition, the designated local regulatory authority can apply to the Supreme Court for injunctive relief.**

**Any person, qualified or not, may provide legal information - including through technological means.**

- <sup>1</sup> *Legal Profession Uniform Law (NSW) 2014* and Sch 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic)
- <sup>2</sup> Uniform Law, s 3
- <sup>3</sup> *Australian Competition and Consumer Commission v Murray* [2002] FCR 428; [2002] FCA 1252 (*Murray*) at [83]-[91]
- <sup>4</sup> In relation to a client relying on legal advice, Heerey J in *Murray* at [109] stated, 'Any reliance by Mr Murray on the advice of [the solicitor] was not reasonable because Mr Murray did not provide full and accurate instructions'. This statement can be extrapolated to support the proposition that it is unreasonable for a person to rely on information that is disseminated at large and without regard to personal circumstances
- <sup>5</sup> *The Council of the Law Society of New South Wales v Australian Injury Helpline Limited and Ors* [2008] NSWSC 627 (*Australian Injury Helpline*) at [65]
- <sup>6</sup> *Felman v Law Institute of Victoria* (1998) 4 VR 324 [1997] VSC 62 (*Felman*), referred to with approval by the NSW Court of Appeal in *Kekatos v The Council of the Law Society of New South Wales* [1999] NSWCA 288 (*Kekatos*) by Giles JA at [16] (with whom the other judges agreed on this point)
- <sup>7</sup> *Felman* at 351 cited by Hall J in *Council of the New South Wales Bar Association v Davison* [2006] NSWSC 65 (*Davison*) at [143]
- <sup>8</sup> *Felman* at 352 cited by Hall J in *Council of the New South Wales Bar Association v Davison* [2006] NSWSC 65 (*Davison*) at [144]
- <sup>9</sup> *Council of the NSW Bar Association v Dwyer* [2015] NSWCA 302 (*Dwyer*) at [12]
- <sup>10</sup> *In Re Sanderson; ex parte The Law Institute of Victoria* [1927] VLR 394 (*Sanderson*) at 397
- <sup>11</sup> *Cornall v Nagle* [1995] 2 VR 188 at 210
- <sup>12</sup> In *Council of the Law Society of New South Wales v Seymour* [1999] NSWCA 117 (*Seymour*) at [15], Fitzgerald JA, with whom Priestley and Stein JJA agreed, stated that this third proposition extracted from *Cornall v Nagle* 'is too widely stated, and, taken literally, extends to a variety of activities legitimately carried on by legally qualified persons, including judges, legal academics and arbitrators, who are not acting or practising as a solicitor, or purporting to do so, when carrying out those activities.'
- <sup>13</sup> *Davison*. The issue for determination was whether Mr Davison was acting as a town planner or as a barrister, it being accepted that town planners worked extensively with a high degree of expertise in advising and assisting persons preparing and conducting cases, eg. in the Land and Environment Court
- <sup>14</sup> Compare, however conveyancing. In *Law Institute of Victoria v Maric & Anor* [2006] VSC 361 (*Maric*) at [45]

Osborne J said, 'A conveyancer is not engaged in a different area of occupational expertise from a lawyer. A conveyancer is one who provides a limited part only of that category of services normally provided by a lawyer. A conveyancer provides no other category of services as distinct from tax agents, customs agents, and other professionals.... Both [a lawyer and a conveyancer] are engaged in the provision of legal services within the same occupational sphere but only one is engaged in professional practice.'

<sup>15</sup> *Seymour* at [18]

<sup>16</sup> *Australian Injury Helpline* per Adams J at [59]

<sup>17</sup> *Maric* at [42]

<sup>18</sup> *Maric* at [87] per Osborne J, 'I accept that the completion of a s 32 statement may involve the giving of legal advice, but in my view the Institute could not be entitled to an injunction restraining the defendants from the preparation of s 32 statements unless it can demonstrate that the preparation of such statements will always involve the giving of legal advice or at the very least there is a real and substantial probability that the defendants will in fact engage in the preparation of s 32 statements in circumstances involving the giving of legal advice'. In *Attorney General at the Relation of the Law Society of Western Australia v Quill Wills Ltd & Ors* (*Quill Wills*) (1990) 3 WAR 500; [1990] WASC 604, the defendant was a company that produced 'do it yourself' will kits. The defendant sold the will kits but also offered the services of a representative working with their clients and assisting them to select clauses from a bank of clauses held within a computer program. Despite claims by the defendants that they were not legal practitioners and were not giving legal advice, the court held that the company had gone beyond 'merely giving abstract information as to legal rules and was assisting in the production of a will appropriate to the individual circumstances of the customer.'

<sup>19</sup> *Seymour* at [19]

<sup>20</sup> *Seymour* at [21]. At [23], 'Seymour's notification to those with whom he was dealing that his activities were not being carried on by him as a solicitor removes that transaction from consideration as part of his activities for the purpose of deciding whether he acted as a solicitor in the material period.'

<sup>21</sup> *Swart v Carr; Swart v LawCover Pty Ltd* [2006] NSWSC 1302 (*Swart*) at [85]

<sup>22</sup> *Swart* at [104] and [109], 'It is of no consequence that [the solicitor] did not issue a fee disclosure and fee agreement to [the investor], or open a controlled money account as required under [the legislation], or open a client file or keep file notes or have conferences with [the investor] in his office, or issue a memorandum of fees at any particular time. If [the solicitor] contracted to provide services as a solicitor it was a matter for him as to how he provided those services. It was a matter for

him as to whether, in providing those services, he complied with the requirements of [the legislation] and with good solicitors' practice. If he did neither, he could be guilty of professional misconduct and of professional negligence, but that circumstance would not mean that the capacity in which he had engaged was changed from a professional capacity to a non-professional capacity.'

<sup>23</sup> *Legal Practice Board v Adams* [2001] WASC 78, [28]-[30]

<sup>24</sup> *Murray* [2002] FCR 428; [2002] FCA 1252 at [83]

<sup>25</sup> *Australian Injury Helpline* at [71]

<sup>26</sup> *Australian Injury Helpline* at [55], [65]; *Davison* at [41]

<sup>27</sup> *Davison* at [113]

<sup>28</sup> *Australian Injury Helpline* at [92]

<sup>29</sup> *Davison* at [134] approved by Adams J in *Australian Injury Helpline* at [61] and applied in *Dwyer* at [14]

<sup>30</sup> *The Law Society of NSW v Stephen Gary Spring and Anor* [2007] NSWSC 1273 (*Spring*) at [53]

<sup>31</sup> *Legal Services Commissioner v Walter* [2011] QSC 132 (*Walter*) at [20]

<sup>32</sup> *Cornall v Nagle* [1995] 2 VR 188 at per J D Phillips J at 208, 'In my opinion, the giving of legal advice, at least as part of a course of conduct and for reward, can properly be said to lie at or near the very centre of the practice of the law ...'

<sup>33</sup> *Walter* at [23]

<sup>34</sup> *Dwyer* at [14]-[23]. See also the inclusive list in *Davison* at [38]-[39] and [141(f)]

<sup>35</sup> *Kekatos* at [21]-[23]

<sup>36</sup> *Victorian Legal Services Board v Jensen (Jensen)* [2018] VSC 740 at [45]

<sup>37</sup> *Davison* at [72]

<sup>38</sup> Uniform Law, subs 10(1)

<sup>39</sup> Uniform Law, s 54

<sup>40</sup> *Giurina v Deak & Ors* [2018] VSC 409 at [143]-[147]

<sup>41</sup> *LG v Melbourne Health* [2019] VSC 183 per Richards J at [109]-[115]

<sup>42</sup> *Australian Injury Helpline* at [65]

<sup>43</sup> For further information on the operation of this exception see *Spring*

<sup>44</sup> Legal Profession Uniform General Rules 2015 (General Rules), r 10

<sup>45</sup> General Rules, subr 10(2) and subr 10(1)(f)(iv)

<sup>46</sup> NSW Application Act, subs 165A(3)

<sup>47</sup> *Jensen* at [38]-[46]