

FACT SHEET ENGAGING IN LEGAL PRACTICE IN THE NT



Engaging in legal practice without a current practising certificate

If you engage in legal practice in the Northern Territory, you must hold a current practising certificate issued by this Society or by the designated regulatory authority in another Australian jurisdiction.¹ Each year the Society becomes aware of practitioners who forget or neglect to renew their practising certificate or believe in error that they do not need to hold a practising certificate to engage in legal practice in the role that they are employed in. Often these practitioners will explain that they had thought that their firm would renew their practising certificate or that historically their role did not need a practising certificate so they thought that they did not need one.

The obligation rests squarely with a practitioner to renew or obtain a practising certificate and the Society is not aware of any local law that permits a practitioner to engage in legal practice without a practising certificate.² Some Commonwealth laws do have the effect that a lawyer employed by the Commonwealth will not need a practising certificate in certain and very limited circumstances. Further, some foreign lawyers (that is, people authorised to engage in legal practice in a foreign country) are permitted to practice foreign law in this jurisdiction once they are Australian-registered.³ There are very strict limitations on that permission. It also means that a foreign lawyer, whether or not he or she is also an Australian-registered foreign lawyer is not qualified to practise Australian law in the Northern Territory unless and until he or she becomes admitted to the Australian legal profession and holds a current Australian practising certificate.

Taking or using titles, names or descriptions and representations

Unless a person holds an Australian practising certificate they are not entitled to represent or imply that they may engage in legal practice.⁴ Furthermore, a person cannot take certain titles or names or use certain descriptions unless they are the kind of person and their circumstances are such that they are entitled to use those titles, names or descriptions.⁵ Some restricted titles and names include lawyer, legal practitioner, counsel, barrister, Senior Counsel or SC, Queens Council or QC and attorney.⁶ The use of a restricted title, name or description when not entitled gives rise to a rebuttable presumption that a person has represented an entitlement to engage in legal practice.⁷

Why the limitations?

The purposes of the prohibitions contained in Part 2.1 of the LPA are to:

- Protect the public interest in the proper administration of justice by ensuring legal work is carried out only by those who are properly qualified to do so;
- Protect consumers by ensuring persons carrying out legal work are entitled to do so.

What are the consequences?

The maximum penalty for the offence of engaging in legal practice without an Australian practising certificate is a fine of 500 penalty units. The maximum fine is the same for the offence of making representations or advertising an entitlement to engage in legal practice when not entitled.

Additionally, when an Australian lawyer breaches these offence provisions that can also amount to unsatisfactory professional conduct or professional misconduct.⁸ If the Society has reasonable grounds to suspect that a legal practitioner has engaged in conduct capable of being characterised as either unsatisfactory professional conduct or professional misconduct, consideration will be given to commencing an own motion complaint against the practitioner.⁹

What is “engage in legal practice”?

This concept is not usefully defined in the LPA as it provides that engage in legal practice includes practise law, which is not defined. Accordingly, guidance must be obtained from the case law.¹⁰ The Society considers the following types of work to be evidence of engaging in legal practice, including but not limited to:

1. Giving legal advice – or the “provision of legal advice on matters involving legal interpretation or on legal rights or duties...”;
2. Interpreting and applying legislation or case law for the use of a client, whether or not for a fee;
3. Drafting legal documents including but not limited to pleadings, submissions or affidavits; or
4. 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 doing it is a solicitor.

The Society does not generally consider that the following types of work are legal practice:

1. Work done by a paralegal;
2. Work as a judge’s associate;
3. Policy work;
4. Working as a conveyancing agent or real estate agent;¹¹
5. Working as a tax agent; or
6. Working as a migration agent.

If you are unsure whether you are engaging in legal practice in your role as yourself: who is my client? Does my work require training or expertise in law? Is this work normally done by a legal practitioner? Is this work required by an Act or Rules to be done by a lawyer (for example, witnessing some documents).

Disclaimer: this document is prepared as a guide and does not constitute legal advice. The Society does not provide legal advice. To obtain legal advice, you must seek the assistance of an Australian legal practitioner instructed by you in relation to your particular issue or question. The Society can provide you with a list of local lawyers in relation to a specific area of law on which you require advice.

1. See section 18 of the *Legal Profession Act 2006* (NT) (LPA)
2. See section 18(2) of the LPA.
3. See Part 2.7 of the LPA.
4. See section 19 of the LPA.
5. See section 20 of the LPA and Schedule 1 of the *Legal Profession Regulations 2007* (LPR).
6. See Schedule 1 of the LPR.
7. See section 20(3).
8. See sections 23(1) and 466(1) of the LPA.
9. See Chapter 4 of the LPA.
10. See for example: *Cornell v Nagle* [1995] 2 VR 188 per JD Phillips J at 189 and 208; *In Re Sanderson*; ex parte the Law Institute of Victoria [1927] VLR 394 at 397; *Legal Services Commission v Walter* [2011] QSC 132; *Downey v O’Connell* [1951] VLR 117 at 122;
11. See section 18(2)(e) of the LPA.