

**Position Paper**  
**People Unlawfully**  
**Engaging in Legal Work:**  
**Protecting the Community**

**THE ESSENTIAL MEMBERSHIP**  
**FOR THE LEGAL PROFESSION**

Prepared by the Law Society of Western Australia

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# People Unlawfully Engaging in Legal Work: Protecting the Community

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## 1. Executive Summary

- 1.1. In Western Australia, people who are not legal practitioners are generally prohibited from engaging in legal practice. The purpose of the prohibition is to protect both the public interest in the proper administration of justice and the community by ensuring that legal work is carried out only by those who are properly qualified and entitled to do so.
- 1.2. The term “engage in legal practice” is difficult to define clearly and comprehensively. That said, there are typically three circumstances in which a person who is not a qualified lawyer undertakes activities that may, depending on the circumstances, be characterised as engaging in legal practice.
- 1.3. The first is where a lay person performs legal work outside the context of carrying on any profession for which he or she is qualified.
- 1.4. The second is where a professional, who is not a legal practitioner, performs legal work in the course of other activities associated with the practice of their own profession. An example is a financial professional involved in the preparation of a trust deed.
- 1.5. The third is where a non-lawyer is permitted by legislation to represent a party, as agent, in certain proceedings. An example is where a party is authorised to be represented by a non-lawyer in proceedings before the Liquor Commission or the Fair Work Commission.
- 1.6. In addition, developments and innovations such as the dissemination of online templates for the creation of legal documents and the provision of legal advice through artificial intelligence, also give rise to related questions.
- 1.7. The provision of services involving legal work by non-lawyers exposes clients to a range of hazards. Apart from the obvious risks such as incorrect or inadequate advice about the law and its application, and of poorly drafted contracts, deeds or wills, clients of unregulated non-lawyers do not enjoy the significant protection afforded by legal professional privilege over communications with their advisor. Nor is confidentiality over those communications generally guaranteed.
- 1.8. In addition, unregulated non-lawyers are usually not:
  - (a) required to maintain professional indemnity insurance;
  - (b) regulated as to the manner and form of costs disclosures;
  - (c) required to hold trust accounts; or
  - (d) bound by codes of professional conduct and ethics (including, significantly, duties to avoid conflicts of interest).
- 1.9. These important features distinguishing unregulated non-lawyers from legal practitioners provide significant protection to the public, and are often not readily apparent to all but the most sophisticated of clients.
- 1.10. The Law Society recommends that a series of steps

be taken to address the risks arising from unqualified persons engaging in legal practice. The recommended steps include advocating for appropriate legislative change, preparing guidelines and raising awareness within the community as to the risks of instructing unqualified persons.

## 2. Introduction

- 2.1. The legal profession is strictly regulated. Lawyers must meet set standards to be able to engage in legal practice. These standards protect both legal practitioners and their clients. However, some people who are unqualified to do so also engage in conduct that may constitute “engaging in legal practice”, i.e. they undertake legal work without the appropriate qualifications. In other cases, members of other professions may inadvertently stray into areas of legal practice when working in their area of expertise. The boundaries of what people are and are not permitted to do in their field may sometimes be difficult to recognise.
- 2.2. In all professional regulatory models, the regulatory body is expected to operate in the public interest.
- 2.3. The primary purpose of professional regulation is to protect the public, not to enhance the status of the profession. All decisions of a regulatory body must be made, and its activities must be performed, in the “public interest”. In other words, the primary purpose behind all regulatory body activity should be to protect the public from incompetent or unethical practitioners and to ensure the effective provision of and access to professional services.
- 2.4. Unregulated non-lawyers pose a potential risk to the public where they engage in legal practice. Some of those risks are identified in paragraphs 1.7 and 1.8 of the Executive Summary above. This paper sets out (by reference to various areas of legal practice) the main issues associated with legal practice undertaken by unqualified people.

## 3. Relevant Legislation

- 3.1. The *Legal Profession Act 2008* (WA) (“**the Act**”) regulates lawyers and legal practice in Western Australia. According to the Act, “an **Australian lawyer** is a person who [has been] admitted to the legal profession under this Act or a corresponding law”,<sup>1</sup> an **Australian legal practitioner** is “an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate”<sup>2</sup> and “a **local legal practitioner** is an Australian lawyer who holds a current local practising certificate”.<sup>3</sup>
- 3.2. In the Act, the extent of the definition of the words to “engage in legal practice” is limited to “include practice law”.<sup>4</sup>
- 3.3. Sections 12 and 13 of the Act place a prohibition on engaging in legal practice, or representing or advertising entitlement to engage in legal practice, when a person is not entitled to do so.

3.4. Section 12(2) provides that “[a] person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner”. There are exceptions to this rule, as outlined in section 12(3). The type of actions which are exempt from the prohibition on engaging in legal practice are:

- (a) legal practice engaged in under the authority of a law of this jurisdiction or of the Commonwealth;
- (b) legal practice engaged in by an incorporated legal practice in accordance with Part 7 Division 2;
- (c) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 8;
- (d) appearing or defending in person in a court;
- (e) drawing or preparing a transfer under the *Transfer of Land Act 1893*;
- (f) a public officer doing legal work in the course of his or her duties;
- (g) a person doing legal work under the supervision of an Australian legal practitioner, as a paid employee of a law practice or in the course of approved legal training;
- (h) legal practice of a kind prescribed by the regulations.<sup>5</sup>

3.5. Section 12(4) of the Act provides a defence if the person who did the legal work is able to provide evidence that they did not directly or indirectly receive or expect any remuneration for the work done.

3.6. Section 12(5) provides that the defence in section 12(4) does not apply if the person directly or indirectly receives, expects or is promised, pay or remuneration for or in respect of other work or services relating to, connected with or arising out of the same transaction or subject matter as that to which the unpaid work relates.

3.7. Section 13(1) states that “[a] person must not represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner”. Section 13(2) also applies to body corporates, in that “[a] director, officer, employee or agent of a body corporate must not represent or advertise that the body corporate is entitled to engage in legal practice unless the body corporate is an incorporated legal practice”.

3.8. Section 14 of the Act and Reg 5 of the *Legal Profession Regulations 2009 (WA)* provide restrictions on using certain titles and descriptions – lawyer, legal practitioner, barrister, solicitor, attorney, and counsel may only be used by specified people.

## 4. Commentary on Relevant Legislation

4.1. The vagueness of the definition of “engaging in legal practice” in the Act is an issue having regard to some of the activities of many categories of professionals discussed in this paper. While some activities, such as representation in court proceedings, clearly amount to legal practice, others, such as a human resources department in a private company taking steps to ensure compliance with the *Fair Work Act 2009 (Cth)*, may be uncertain. It is difficult to draw a line between what is and is not considered to be “engaging in legal practice”.

4.2. Any attempt at a clearer, or more comprehensive,

definition of the concept of “engaging in legal practice” risks both a narrowing of its scope and the potential for conflict with other statutory provisions.

4.3. The Law Institute of Victoria has published *Unqualified Practice Guidelines* that provide examples of actions that are legal services. These 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.”<sup>6</sup>

The same publication notes that “advising of incidental legal requirements by a person in the pursuit of an occupation other than law”<sup>7</sup> does not necessarily constitute engaging in legal practice.

4.4. In Western Australia the statutory definition of “engage in legal practice” does not of itself provide useful guidance to those who are expected to abide by the legislation or who are charged with ensuring compliance. A publication similar to the Victorian *Unqualified Practice Guidelines* issued by the Legal Practice Board of Western Australia (“**Board**”) or the Law Society may be helpful.<sup>8</sup>

4.5. The purpose of section 12 of the *Legal Profession Act* is to protect the public from harm caused by acting on unqualified advice. The defence that the advisor has not charged for the relevant work is inconsistent with that policy position.<sup>9</sup>

4.6. Further, some professionals who might be at risk of crossing the boundary into performing legal work when undertaking work in their own field may be unaware that charging for associated work, even in their own field, may well prevent them from relying on the section 12(4) defence. For example, professionals who are not legal practitioners sometimes order trust deeds from the Internet, provide advice in relation to other documents or the overall structure/transaction, do not charge directly for the provision of the deed but do charge for associated work. Section 12(5) applies in this situation. Raising awareness of that provision may well assist in reducing the instances of such professionals carrying out legal work.

## 5. Types of Unqualified People Engaging in Legal Practice

5.1. There appear to be, typically, three circumstances in which persons who are not qualified lawyers, undertake activities that may, depending on the circumstances, be characterised as engaging in legal practice.

5.2. The first is where lay persons perform legal work outside the context of carrying on any profession for which they are qualified.

5.3. The second, and possibly largest category, is where professionals, who are not legal practitioners, perform legal work in the course of other activities associated with the practice of their own professions. Examples include tax agents, real estate agents, patent attorneys, accountants and contract managers.

- 5.4. Finally, there is the situation where non-lawyers or agents are permitted by legislation to represent a party in certain proceedings.

## 6. Lay People Engaging in Legal Practice

- 6.1. There have been two cases in recent years in Western Australia where a person has been convicted under sections 12 and 13 of the Act.
- 6.2. The case of *Dean v Legal Practice Board*<sup>10</sup> was a matter on appeal to the Supreme Court where the appellants had been convicted under section 12 of the Act for engaging in legal practice whilst unqualified to do so. The appellants were not Australian legal practitioners.
- 6.3. Their client found the legal fees for engaging a lawyer to represent him in a property settlement with his then wife were too expensive, and a friend suggested the client should speak to one of the appellants. During a meeting between the client and that appellant, the other appellant was present too. An agreement was made for the appellants to provide the client with legal assistance during the proceedings – the one appellant was to assist in “the court processes” and the other would draft necessary legal documents.
- 6.4. The appellants told the client that their services would cost \$5,000 and the client transferred the money to them.
- 6.5. One of the appellants provided advice to the client in relation to the proceedings, attended a meeting and at the Magistrates Court and assisted in preparing the documents for an annulment. The other appellant also drafted two versions of settlement agreements that were provided to the client.
- 6.6. The appeal was heard and dismissed by Martino J. His Honour’s decision was taken on further appeal to the Court of Appeal. That appeal was dismissed too.
- 6.7. On the meaning of the words “engaging in legal practice”, Martino J said:

“Section 11 makes clear that the prohibition in s12 on a person who is not an Australian legal practitioner engaging in legal practice is a prohibition on such a person doing legal work. In *Barristers’ Board v Palm Management Pty Ltd*,<sup>11</sup> Brinsden J quoted with approval the following passage from *Florida Bar v Town*, saying that the case well illustrated what may be included in the practice of the law:

*It is generally understood that the performance of services in representing another before the courts is the practice of law. But the practice of law also includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court. We think that in determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such*

*advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and acknowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitutes the practice of law.*

The court held that:

*... the preparation of charters, by-laws and other documents necessary to the establishment of a corporation, being the basis of important contractual and legal obligations, comes within the definition of the practice of law as defined in the Sperry case, supra. The reasonable protection of the rights and property of those involved requires that the persons preparing such documents and advising others as to what they should and should not contain possess legal skill and knowledge far in excess of that possessed by the best informed non-lawyer citizen.”*

- 6.8. *Van Der Feltz v Legal Practice Board*<sup>12</sup> concerned an appeal to the General Division of the Supreme Court. The appellant had been convicted of breaching section 13 of the Act. It was alleged that Van Der Feltz, who was not an Australian legal practitioner, had represented and advertised on Gumtree that he was entitled to engage in legal practice.
- 6.9. The appellant’s advertisement stated that he was not a lawyer and did not give legal advice, but that he had completed an overseas law degree and had extensive experience in court proceedings. At trial the prosecution had alleged that the appellant had represented that he held skills and knowledge beyond that possessed by average citizens. It was also alleged that the appellant had made offers to do work that would usually be done by a lawyer through offering to prepare court documents and the offer of guidance to people through the court system.
- 6.10. The magistrate had found that the appellant had used words in the advertisement suggesting particular knowledge and expertise in the law and court system, as well as offering to assist members of the public for a fee that, in the words of the appellant, was comparable to the costs of a lawyer. It was held that the appellant had given the impression that he was entitled to engage in activities falling in the category of legal practice. The sentence imposed was a fine of \$2,500, costs and a spent conviction order.
- 6.11. The appellant’s appeal against sentence and costs was unsuccessful, while the Board was granted leave to appeal the spent conviction order.
- 6.12. The Court of Appeal later granted leave to the appellant to appeal against the setting aside of the spent conviction order. However, leave to appeal on a variety of other grounds was refused and the appellant’s appeal to the Court of Appeal was dismissed (to the extent that it related to the refusal of leave to appeal

against conviction and sentence and to the dismissal of the appeal to the General Division of the Supreme Court).<sup>13</sup> In its judgment, the Court of Appeal also clearly confirmed that the Board has authority to prosecute non-lawyers who engage in legal practice under section 592(1) of the *Legal Profession Act*.<sup>14</sup>

6.13. There are similar cases in other Australian jurisdictions, where the relevant governing legal body has successfully prosecuted unqualified people whose actions have been deemed to be engaging in legal practice.

6.14. In *Cornall v Nagle*<sup>15</sup> an unqualified person was deemed not to be permitted to do any of the following:

“(1) 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....

(2) doing something that is positively proscribed by the Act or by Rules of Court unless done by a duly qualified legal practitioner...

(3) 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...”

6.15. Further cases where activities have been held to constitute engaging in legal practice include the following:

Case	Activity	Engaging in legal practice?
<i>Dean v Legal Practice Board</i>	Provided advice in relation to court proceedings	Yes
<i>Dean v Legal Practice Board</i>	Prepared documents for an annulment	Yes
<i>Attorney General at the Relation of the Law Society of Western Australia v Quill Wills Ltd</i>	Representative worked with non-lawyers and helped testators to select clauses from a bank of clauses held within a computer program	Yes

## 7. Professionals Engaging in Legal Practice

### 7.1. Accountancy

7.1.1. CPA Australia has a Code of Professional Conduct (“CPA Code”) that all CPA Australia members must comply with. The CPA Code states that “the fundamental principle of professional competence and due care requires that a Member in Business only undertake significant tasks for which the Member in Business has, or can obtain, sufficient specific training

or expertise.”<sup>16</sup>

7.1.2. A “Member in Business” is defined as “a member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a member contracted by such entities.”<sup>17</sup>

7.1.3. This suggests that the CPA Code precludes members of CPA Australia from engaging in legal practice unless they are qualified to do so.

7.1.4. Accountants may be asked to prepare a variety of different documents, including paperwork relating to trusts. Cases such as *Mercanti v Mercanti*<sup>18</sup> highlight the issues in preparing trust deeds and the importance of using plain language. However, issues raised in decisions by courts of law are not necessarily considered when these documents are prepared.

7.1.5. Section 32(4) of the *Administrative Appeals Tribunal Act 1975* (Cth) allows for parties before the Administrative Appeals Tribunal (“AAT”) to be represented by another person. This entitles accountants to appear on behalf of their clients in that jurisdiction. Challenges are sometimes experienced when accountants who do not hold legal qualifications act as representatives in proceedings before the AAT, including:

- (a) a lack of appreciation by the accountant of what constitutes “evidence” for the purposes of proving a case and the concept of the onus of proof;
- (b) a lack of forensic advocacy skill;
- (c) conflicts of interest – an accountant may provide advice to their client, only to find themselves representing their client in proceedings before the AAT where they must defend their own advice; and
- (d) the lack of regulation of accountants’ fees, meaning that clients could possibly pay large sums of money notwithstanding challenges of the kind identified in (a), (b) and (c) above.

7.1.6. In Western Australia, the Board brought an action against an accounting firm in *Legal Practice Board v Computer Accounting and Tax Pty Ltd*<sup>19</sup>. Although this matter was brought under the *Legal Practice Act 2003* (WA) (“**Legal Practice Act**”), it still holds some relevance. The defendant was an accounting firm that provided services relating to self-managed superannuation funds. A client spoke to a director of the defendant company. The client required a trust deed for a self-managed super fund, and the director informed the client that a trust deed would be prepared, and this was carried out.

7.1.7. The court considered whether the *Legal Practice Act* section 123(1) applied to corporations, and if it did, whether the conduct of the defendant could be considered to be engaging in legal practice under the *Legal Practice Act* section 123(1) read with section 4(b) or (c)(i).

7.1.8. Although much consideration was given to various sections in the *Legal Practice Act*, the court held that section 123(1) of the *Legal Practice Act* did not apply to corporations. Therefore, the application was dismissed. The court also considered whether, if section 123(1) had applied, the accounting company would have been in breach. The court held that it would have been.

Section 4 of the *Legal Practice Act* defined “engaging in legal practice” as a person that “draws or prepares any deed, instrument or writing relating to or in any manner dealing with or affecting real or personal estate or any interest in real or personal estate”.<sup>20</sup>

- 7.1.9. As with most areas of professional expertise, there is a grey area around what work exactly constitutes engaging in legal practice. Following Martino J in *Dean v LPB*, the term “legal practice” appears to encompass the provision of services affecting the legal rights of the client which, in order to be performed competently, require legal skill and knowledge of the law greater than that of the average citizen. Arguably, in light of *Felman*<sup>21</sup>, in the case of professionals (rather than the “average citizen”) the standard may be the average professional’s knowledge of the law applying to the normal work of their profession.
- 7.1.10. It has been held in the UK that advice about law given by accountants is not covered by legal professional privilege.<sup>22</sup> While recognising that the Commissioner has the legislative power to request access to most documents, in Australia it is accepted that there is a class of documents which should, in all but exceptional circumstances, remain within the confidence of taxpayers and their professional accounting advisers. The ATO acknowledges that taxpayers should be able to consult with their professional accounting advisers on a confidential basis, in respect of such documents, regarding their rights and obligations under taxation laws to enable full and frank discussion to take place and for advice to be communicated on that basis.<sup>23</sup> However, this administrative concession by the ATO does not equate to legal professional privilege. The distinction may not be fully understood by many taxpayers and, importantly, production to other parties of documents that are not subject to legal professional privilege may be compelled in litigation in any event.
- 7.1.11. The above challenges are not confined to accountants. They also manifest themselves with a variety of other professionals who are also permitted to appear in the AAT and other forums.

## 7.2. Intellectual Property

- 7.2.1. Patent attorneys are regulated by the *Patents Act 1990* (Cth) which provides for the registration of such attorneys as well as their roles and privileges. Trade marks attorneys, (as well as patent attorneys to an extent) are similarly regulated by the *Trade Marks Act 1995* (Cth).
- 7.2.2. Patent and trademarks attorneys (“PTAs”) are not required to be admitted or hold a practicing certificate. However, their activities are covered to an extent by section 12(3)(a) of the Act as people who carry out “legal practice engaged in under the authority of a law of ... the Commonwealth”, namely acts are authorised under the *Patents Act* and the *Trade Marks Act*.
- 7.2.3. The *Patents Act* at section 200(1) outlines the privileges of patent attorneys in somewhat vague terms:
- “A registered patent attorney:
- a. is entitled to prepare all documents, transact all business and conduct all proceedings for the purposes of this Act; and

b. has such other rights and privileges as are prescribed.”

- 7.2.4. Sections 200(2) and 200(2A) of the *Patents Act* provide that communication and records or documents “made for the dominant purpose of a registered patent attorney providing intellectual property advice to a client” are covered by privilege in the same manner and extent as a communication and records or documents that a legal practitioner makes for the dominant purpose of providing legal advice to a client.
- 7.2.5. Section 200(3) implicitly prohibits registered patent attorneys from preparing documents to be issued from or filed in a court and from transacting business or conducting proceedings in a court.
- 7.2.6. Section 229 of the *Trade Marks Act* does not state what a registered trademarks attorney or patent attorney may in fact do. However, it extends the same privilege over communications and documents, and contains the same implicit prohibition on certain types of activities by trade mark attorneys, as relate to patent attorneys under the *Patents Act*.
- 7.2.7. Section 229 was considered in the recent case of *Titan Enterprises (Qld) Pty Ltd v Cross*<sup>24</sup> where a firm of trade mark attorneys was issued a subpoena to produce particular documents in relation to a trademarks and copyright dispute. It was held that the privilege under section 229 only extends to providing “intellectual property advice”, and does not cover every service provided by a registered trademarks attorney.<sup>25</sup> Patent oppositions are a large source of work for patent attorneys. Having particular regard to the substantially similar wording in section 200 of the *Patents Act*, any lack of privilege over communications involving the services of a patent attorney in that context may be significant for a client.
- 7.2.8. *Legal Practice Board v Giraudo*<sup>26</sup> concerned contempt proceedings brought against a patent attorney under the equivalent of section 12 of the Act in the *Legal Practitioners Act 1893* (WA) for doing legal work whilst not being a legal practitioner.<sup>27</sup>
- 7.2.9. A client was referred to the defendant as a patent attorney. During two different proceedings relating to the client’s automotive repair business, the defendant assisted him. He admitted to preparing court documents and letters, as well as attending conferences, but said that it was done “as a secretary or scribe”.
- 7.2.10. Although it is not stated in the judgment whether the defendant was a registered patent attorney, the client’s evidence was that the defendant had told him that he was one and could therefore give legal advice. The Supreme Court considered the language and interpretation of letters prepared by the defendant, using such terms as “representing” and “instructed to”.
- 7.2.11. Hall J found that the defendant had held himself out as acting on behalf of the defendant, prepared documents, gave advice, attended conferences, obtained instructions and acted on those instructions. The defendant also provided these services for a fee.
- 7.2.12. It is interesting to note that the Institute of Patent and Trade Mark Attorneys of Australia list specifically what

patent attorneys can do. It states that patent attorneys can:

- Advise on intellectual property (IP), and help IP owners register and maintain their property
- Apply for and secure patents, registered trademarks, industrial designs and plant variety types in Australia and overseas
- Help transfer technology by licensing and other processes
- Conduct IP audits of organisations and products
- Conduct litigation in Australia and overseas
- Determine whether a development is new and sufficiently inventive enough to justify a patent
- Determine the nature and ambit of inventions and prepare patent specifications
- Lodge documents with the Patent Office, and guide applications through the process
- Assist clients manage their IP portfolios, advise on patents and registrations held by others, and advise on whether developments infringe or might infringe rights held by others.<sup>28</sup>

7.2.13. Following this, trademarks attorneys can help clients:

“Apply for and obtain trade mark protection or registration in Australia and overseas by:

- advising on use and registration of trademarks;
- assisting in licensing and assignment of trademarks; and
- assisting in the enforcement of trade mark rights in Australia and overseas.”<sup>29</sup>

7.2.14. Although the limitations of what PTAs are permitted to do may be unclear at times, Neave JA found in *Law Institute of Victoria Ltd v Maric*<sup>30</sup> that the “courts are ... required to give weight to the legitimate exercise of professional work of non-lawyers”.<sup>31</sup>

### 7.3. Property Dealings

7.3.1. It is difficult to ascertain the extent of work that real estate agents are permitted to carry out without being in breach of section 12 of the Act. There are anecdotal reports of experienced real estate agents engaging in the longstanding practice of preparing contracts for the sale of land. Often that work involves preparing special conditions which may have a significant legal effect. Legal advice is also sometimes given – for example, how to avoid double duty under contracts for the sale of land without consideration for what the consequences may be if the Office of State Revenue were to investigate.

7.3.2. In Victoria, the case of *Maric* considered whether a conveyancer was engaging in legal practice by preparing a vendor disclosure statement. Neave JA considered the approach taken in *Cornall* and held that Ms Maric did not engage in legal practice for a number of reasons. These included that the preparation of the statement did not require the provision of legal advice, it was a typically routine process and the statement did

not create binding legal obligations.

7.3.3. Neave JA quoted Kenny JA in *Felman v Law Institute of Victoria*<sup>32</sup> who held that Phillips J in *Cornall*:

“was not saying that any person who, in the lawful pursuit of an occupation other than law, gives advice (for reward) on matters lying within his or her area of expertise necessarily acts as a solicitor or legal practitioner simply because the advice involves the expression of an opinion about the requirements of relevant legislation, statutory rules or the like”.<sup>33</sup>

7.3.4. Section 24 of the *Legal Profession Act 2007* (Qld) defines what “POA” employees and licencees are permitted to do without being considered to be “engaging in legal practice”.

7.3.5. A POA employee is defined as a real estate salesperson under the *Property Occupations Act 2014* (Qld), and a POA licensee means an auctioneer, real estate agent or resident letting agent under the *Property Occupations Act*.<sup>34</sup>

7.3.6. Section 24(3A) of the *Legal Profession Act 2007* (Qld) provides that:

“neither a POA licensee nor a POA employee is engaging in legal practice only because the licensee or employee provides, prepares or completes a property contract or other document as part of performing either of the following (each of which is a POA licensee's work) –

- a. the work of a POA licensee;
- b. other work ancillary or incidental to the work of a POA licensee and part of the ordinary course of business undertaken generally by a POA licensee.”

7.3.7. However section 24(3B) provides that a POA licensee's work does not include:

- “ – giving legal advice in relation to a property contract or other document; or
- providing, preparing or completing a document prescribed under a regulation.”

7.3.8. In summary, POA licensees or employees are permitted, as a part of the normal conduct of their business, to:

- “ – prepare or complete (by filling in blanks or choosing options)
  - a generally accepted form of contract for property transactions ... or a contract prepared by an Australian legal practitioner; and
  - documents required under an Act or prepared or completed as part of a [POA] licensee's work relevant to a property contract; and
- add special conditions or otherwise alter the terms of a document if the insertion or alteration:
  - is given to the licensee by a party for use in the transaction;
  - is provided by an Australian legal practitioner, whether or not in relation to the particular transaction ... ; or



- is authorised by a party to the transaction, and as long as the [POA] licensee or employee does not change the insertion or alteration except by changing the details for the transaction, choosing an alternative or changing the grammatical form of words.”<sup>35</sup>

- 7.3.9. It is likely that agents in Queensland will “continue to have the ability to prepare contracts, including drafting special conditions, without “engaging in legal practice.”<sup>36</sup>
- 7.3.10. It is still prohibited for real estate agents to prepare contracts that do not fall within the boundaries of their normal business, to provide advice of a legal nature as to the effect of a contract term, or to charge a fee for their work in preparing or completing a property contract.<sup>37</sup>
- 7.3.11. The position in Western Australia is not free from doubt.

#### 7.4. Wills

- 7.4.1. Section 47A(2) of the *Public Trustee Act 1941* (WA) allows non-lawyers to prepare a will or enduring power of attorney, provided it is under the control and supervision of a certified practitioner.
- 7.4.2. Section 47A(1) allows the Public Trustee to charge a fee or recover disbursements for:
- “a) the preparation of a will or an enduring power of attorney;
  - b) the provision of a legal service to a client; or
  - c) the provision of a legal service in relation to estates and trusts administered by the Public Trustee”
- but only if the work was under the direction and control of a certified practitioner.<sup>38</sup>
- 7.4.3. Some legal practitioners have experienced clients of financial planners having been provided with an electronic system for drafting wills, or being heavily marketed to become involved in such a system. The legal practitioners understand that in these cases, the financial planner typically takes instructions from the clients and, in some cases, may even sit in front of the computer with the testator who is simply asked to answer pre-generated questions, with the computer program automatically generating the will without the testator meeting with a solicitor.
- 7.4.4. It is a concern to legal practitioners that a computer system will not consider the need to assess the mental capacity of the testator. There is also an obvious issue that may arise if the computer system has errors and important aspects of the will are not included.
- 7.4.5. Internet searches reveal that a number of free computer generated wills are available online. It is also possible to purchase will “kits” for \$39.95 (reduced to \$29.95) or for \$79.90 (reduced to \$59.90). Both contain forms and a ‘guide to writing your own will’. Although there may be a question as to whether legal advice is being provided through the offering for sale of kits of this kind, the providers may well argue that they are simply providing a form with instructions, that the testator is making the will and, consequently, the product is different from

that which was the subject of the decision in *Quill Wills* (discussed below).

- 7.4.6. *Attorney General at the Relation of the Law Society of Western Australia v Quill Wills Ltd & Ors*<sup>39</sup> considered whether the plaintiff was engaging in behaviour prohibited by section 77 of the *Legal Practitioners Act*. 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 do giving legal advice, the court held that the defendants were drawing and preparing a document within the meaning of section 77. It was 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>40</sup>

#### 7.5. Taxation and Finance

- 7.5.1. The *Tax Agent Services Act 2009* (Cth) provides a code of conduct for registered tax agents, BAS agents and tax (financial) advisors.
- 7.5.2. Section 30-10(7) of that Act provides that those persons must ensure that a tax agent service that they provide occurs at a competent level and goes on to say that they “must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which [they] are providing advice to a client”,<sup>41</sup> and that they “must advise [their] client of the client’s rights and obligations under the taxation laws that are materially related to the tax agent services [they] provide”.<sup>42</sup>
- 7.5.3. The meaning of “tax agent services” is found at section 90-5:
- “(1) A **tax agent service** is any service:
- (a) that relates to:
    - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
    - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
    - (iii) representing an entity in their dealings with the Commissioner; and
  - (b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
    - (i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
    - (ii) to claim entitlements that arise, or could arise, under a taxation law.”

7.5.4. Registered tax agents are accordingly permitted to carry out certain work that is aligned with the *Tax Agent Services Act* and they are duly protected from section 12 of the Act through a law of the Commonwealth in the same manner as PTAs.

7.5.5. There are some older cases in Western Australia which provide guidance as to what may be considered to be engaging in legal practice in the above context. In *The Barristers' Board v Marbellup Nominees Pty Ltd*<sup>43</sup>, the court held that the defendant performed work that constituted work in connection with the administration of the law, by giving tax minimisation advice to institute a trust system. This contravened the *Legal Practitioners Act*.<sup>44</sup>

7.5.6. The Law Council of Australia has published a paper about legal practitioners and the *Tax Agent Services Act*. It states that in summary, "legal practitioners will be able to provide all tax agent services other than the preparation and lodgement of tax and BAS returns, without being required to become registered tax agents".<sup>45</sup>

7.5.7. Legal practitioners have also expressed concern about financial planning firms who offer their services of representation for a percentage of the obtained financial settlement.

## 7.6. Public Officers Undertaking Legal Work

7.6.1. There is a concern in the government sector regarding the exemption under section 12(3)(f) of the Act to the effect that the prohibition on engaging in legal practice does not apply to a public officer doing legal work in the course of his or her duties ("**public officer exemption**").

7.6.2. A public officer is as defined in section 1 of the *Criminal Code Act Compilation Act 1913 (WA)* ("**the Criminal Code**") and covers a broad number of employees or persons engaged in the public sector, including:

- a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law; and
- any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not.<sup>46</sup>

7.6.3. The exemption permits public officers, as defined in the Criminal Code, to provide legal services if that is listed in their relevant job descriptions. Such an officer does not need to have been admitted as a lawyer. It follows that persons in the public sector, without the proper qualifications, may in certain circumstances be permitted to give legal advice based on their job descriptions alone. It may be appropriate to reconsider the breadth of the exemption.

7.6.4. The public officer exemption dates as far back as 1893 when the *Legal Practitioners Act* was enacted and the exemption was provided for under section 47.<sup>47</sup> The *Legal Practitioners Act* did not include a definition of "public officer". An Interpretation Ordinance from 1845 defined "public officer" as "whenever mention is made in any such Act or Ordinance ...of any public officer of the Colony, it shall be construed to mean the

person lawfully acting as such in the Colony for the time being...".<sup>48</sup> Various interpretation Acts<sup>49</sup> have defined public officer, with varying relevance to the time period in which each interpretation Act was enacted, but with similar themes to the Ordinance from 1845.

7.6.5. The *Legal Practice Act* introduced the definition of "public officer" as defined very broadly by the Criminal Code, with seemingly little to no explanation in Hansard or the Explanatory Memorandum. That same definition was carried over into the *Legal Profession Act*.

7.6.6. In New South Wales and Victoria, those employed in the 12 months before the commencement of the Uniform Law relating to the regulation of the legal profession in those jurisdictions ("**Uniform Law**") and who were:

- employed as a government lawyer (NSW); or
- not admitted but were covered under the exemption in the *Legal Profession Act 2004 (VIC)* section 2.2.2(2)(g)

are exempt from the requirement under the Uniform Law to hold a practising certificate.<sup>50</sup>

7.6.7. It should also be noted that the definition of "engaging in legal practice" in New South Wales and Victoria under the Uniform Law "does not include engag[ing] in policy work (...includ[ing] developing and commenting on legal policy)."<sup>51</sup>

7.6.8. The Uniform Law does, however, contain a prohibition on unqualified people engaging in legal practice in section 10. The *Legal Profession Uniform General Rules 2015* ("**General Rules**") provide exemptions to the prohibition in rule 10. The exemptions include "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...".<sup>52</sup>

7.6.9. That exemption means that issues with the public officer exemption under the current Act may still arise should the Uniform Law be adopted, without variation, in Western Australia.<sup>53</sup>

## 7.7. Supervision of Law Graduates

7.7.1. Another concern arises where a person has a law qualification, but has not completed the requirements to practice and provide legal advice, and is providing legal advice as part of that person's employment without adequate supervision. Some graduates and non-lawyers obtain employment in non-legal roles in departments such as health, finance, policy, human resources and procurement. Those with law degrees and qualifications may have valuable skills in a range of roles. However, they should not be providing legal advice or drafting legal documents such as employment agreements, procurement contracts or variations to such documents.

7.7.2. There may also be a perception created with others in the workplace that the graduate or non-lawyer should be able to provide legal advice because of the knowledge they gained during their law degrees.

7.7.3. Similarly, there may be instances of those with law degrees who are not admitted working for non-legal organisations and holding themselves out as lawyers

via use of their qualifications in their email signatures, for example.

- 7.7.4. The high number of graduates who are unable to complete the requirements of “restricted practice” gives rise to heightened potential for challenges such as those described above.

## 7.8. Corporations, Corporate Structuring and Consultancy

- 7.8.1. Business brokers, whether licensed or not, may sometimes provide a heads of agreement document, or a detailed sale of business agreement. These documents are often binding, but when drafted by non-legal professionals, may not contain important provisions, such as those relating to notice, default or jurisdiction.
- 7.8.2. There have been situations where non-legal professionals provide advice to clients about the best way to structure their businesses. Legal practitioners have experienced clients who have received poor advice from non-legal professionals, creating issues such as unnecessary people incurring substantial director guarantee liabilities without any advantage for the company.
- 7.8.3. There is also a range of consulting businesses providing human resources management to private businesses. Many professionals are very capable of working successfully in that area without engaging in what may be considered legal practice. Although consultants are not regulated, there are professional bodies such as the Institute of Management Consultants (“IMC”). The IMC has a code of ethics with which all members are required to comply.<sup>54</sup> However, membership of professional bodies such as IMC is not mandatory and therefore some consultants may not be bound by any code.
- 7.8.4. Similarly compliance, governance, risk and company secretary services within organisations often provide services that have legal work attached. There are no requirements for such organisations to engage legal practitioners to undertake this range of work and many often do not.

## 7.9. Construction Sector

- 7.9.1. The *Construction Contracts Act 2004 (WA)* provides for adjudication of payment disputes under a construction contract. A person does not need to be legally qualified to register as an adjudicator. The *Construction Contracts Regulations 2004 (WA)* provide that a person applying for registration must either have a degree from a university in a number of specified disciplines, including Law; be eligible for membership of certain professional institutions; or be a registered builder. The person must have at least five years’ experience in administering construction contracts or dispute resolution relating to construction contracts and have successfully completed an appropriate adjudicators’ training course.
- 7.9.2. The construction sector sees many claims and contractual consultants, along with litigation support professionals, who provide services to clients in that industry and are non-lawyers. Additionally, construction contract documentation is often put together by

engineers, architects and project managers. Externally engaged superintendents who superintend projects invariably are called upon as part of their role to interpret contracts and determine claims and disputes.

## 8. Agent or Advocate Providing Representation in Proceedings

### 8.1. Liquor Commission

- 8.1.1. The *Liquor Control Act 1988 (WA)* at section 17 discusses the representation of parties at the Liquor Commission.
- “(1) A party to proceedings being determined by the licensing authority may appear —
- personally; or
  - by counsel; or
  - if the party is a member of an association which the licensing authority recognises as having been formed to promote or protect the interests of a section of the liquor industry, or of employees in the liquor industry — by an officer or employee of that association; or
  - if the party is a body corporate — by an officer or employee of the body corporate who has obtained leave of the licensing authority to appear on its behalf; or
  - by any other person approved by the licensing authority.”<sup>55</sup>
- 8.1.2. This section appears to allow parties to be represented by any number of people, some of whom are not legal practitioners. It is at the discretion of the Liquor Commission.
- 8.1.3. In 2012, a matter that had been before the Liquor Commission was appealed to the Supreme Court of Western Australia. In this matter, *Prow Pty Ltd v Commissioner for Police*,<sup>56</sup> the director of the appellant company submitted that he has been given leave to be the company’s representative before the Liquor Commission, and as the Supreme Court proceedings were a continuation of those proceedings, he had a right to appear for the appellant.
- 8.1.4. The director’s right of appearance was pursuant to section 17 of the *Liquor Control Act*. That section specifically mentions “proceedings being determined by the licensing authority”, which by the definitions in section 3 means proceedings before the Liquor Commission or the Director of Liquor Licensing.<sup>57</sup> As the proceedings in the Supreme Court were a matter of appeal and provided for by the *Supreme Court Rules 1971 (WA)* (“SCR”), Order 4 rule 3 of the SCR was held to apply to the proceedings before the Supreme Court and the director’s argument that he had a right to commence and prosecute proceedings on behalf of the appellant was dismissed.
- 8.1.5. The court may exercise a power to allow a non-lawyer to act as a spokesperson for a company in proceedings, as in *Re Hoffman*<sup>58</sup> and *Sammut v AVM Holdings Pty Ltd*.<sup>59</sup> This does not however, overcome O 4 r 3 and the requirement that only a solicitor may begin or carry on proceedings for a body corporate.

- 8.1.6. The court permitted the appellant company 14 days to retain a solicitor to act for them, otherwise an order was made for the appeal to be dismissed without prejudice.
- 8.1.7. There are some issues where non-lawyers are legally permitted to represent another party before the Liquor Commission. Section 17 of the *Liquor Control Act* allows for the representation of parties as approved by the Liquor Commission. It may therefore be considered an exemption under section 12(3)(a) of the Act.
- 8.1.8. The Law Society has previously expressed concern that persons who are not legal practitioners are permitted to represent parties before the Liquor Commission. In a 2013 submission, the Law Society expressed a view that section 17(1)(e) of the *Liquor Control Act* should be repealed and, if not, “there should be written rules or a policy document provided by the Director of Liquor Licensing and the Commission as to the circumstances where leave may be granted for a person to represent a party pursuant to section 17(1)(e) of the Act. These circumstances should be exceptional.”<sup>60</sup>

## 8.2. Fair Work Commission and Industrial Relations Commission

8.2.1. In the Commonwealth jurisdiction, the *Fair Work Act 2009* (Cth) section 596 allows for representation in proceedings before the Fair Work Commission (“**FWC**”) by lawyers and paid agents. However, this may, with limited exceptions<sup>61</sup>, only occur with the permission of the Commission.

8.2.2. Section 596(2) of the *Fair Work Act* states:

“(2) The FWC may grant permission for a person to be represented by a lawyer or paid agent in a matter before the FWC only if:

- (a) it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or
- (b) it would be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or
- (c) it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.”

8.2.3. A paid agent is defined in section 12 as meaning, “in relation to a matter before the FWC... an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.” Consequently, a person other than a legal practitioner may represent a party in proceedings before the FWC, albeit usually subject to permission from the Commission.

8.2.4. The *Fair Work Act* does not require the registration of paid agents.

8.2.5. In the State jurisdiction, a similar restriction exists in relation to the right to legal representation under section 31 of the *Industrial Relations Act 1979* (WA). Under that Act, agents appearing on behalf of a party before the Industrial Relations Commission of Western Australia (“**WAIRC**”) may be paid. Industrial agents are required to be registered under section 112A of the *Industrial Relations Act 1979* (WA), to abide by

the Code of Conduct in the Regulations and also to maintain professional indemnity insurance. However, the insurance requirements for industrial agents are less onerous than for lawyers.

- 8.2.6. A particular issue that arises with paid agents, in both the FWC and the WAIRC, is that former (and even disbarred) lawyers may act and appear for clients in those jurisdictions without holding a practising certificate, and without complying with either the professional indemnity insurance or CPD requirements prescribed under the Act, but whilst nevertheless being perceived by some members of the public to be legally qualified. The risks to the community are obvious.
- 8.2.7. Under section 596(4) of the *Fair Work Act*, organisations essentially have the right to be represented by their employed lawyers, whilst lawyers representing clients privately must usually seek permission to represent their client. It is reported that permission is often refused.
- 8.2.8. In the Law Society’s view, the lack of an unqualified right for a party to be represented by a lawyer before the FWC and the WAIRC is both unfair and incongruous.

## 8.3. WorkCover WA

8.3.1. Under sections 182S(1)(b) and 195(1)(b) of the *Workers’ Compensation and Injury Management Act 1981* (WA), parties to a disputed workers’ compensation claim may have a registered agent represent them when resolving their dispute through WorkCover WA’s conciliation and arbitration services.

8.3.2. Part 4 of the *Workers’ Compensation and Injury Management Regulations 1982* (WA) imposes conditions on a registered agent’s registration, including conditions with respect to professional indemnity insurance and compliance with the code of conduct set out in Appendix IV of the regulations.

8.3.3. Issues have arisen with registered agents who have engaged in conduct beyond the confines of their role by providing legal advice. That said, there has been a decline in problems arising from the conduct of registered agents. There are few freelance registered agents who are currently still active.

8.3.4. Another concern, however, is the conduct of employers not just giving legal advice but giving bad legal advice to employees in relation to workers’ compensation.

## 8.4. Australian Human Rights Commission and the Federal Court

8.4.1. In proceedings for unlawful discrimination under Part IIB of the *Australian Human Rights Commission Act 1986* (Cth), section 46PQ outlines the right of representation in the Federal Court and the Federal Circuit Court as follows:

“(1) A party in proceedings under this Division:

- (a) may appear in person; or
- (b) may be represented by a barrister or a solicitor; or
- (c) may be represented by another person who is not a barrister or solicitor, unless the court is of the opinion that it is inappropriate in the circumstances for the other person to appear.

(2) A person, other than a barrister or solicitor, is not entitled to demand or receive any fee or reward, or any payment for expenses, for representing a party in proceedings under this Division.”<sup>62</sup>

8.4.2. In *Reynolds v Minister for Health and Anor*<sup>63</sup> the applicant alleged that the respondents, his former employer, unlawfully discriminated against him. The applicant filed an application under section 44(c) of the *Federal Magistrates Act 1999* (Cth), now known as the *Federal Circuit Court of Australia Act 1999* (Cth).

“A party to a proceeding before the Federal Circuit Court of Australia is not entitled to be represented by another person unless:

- (a) under the *Judiciary Act 1903*, the other person is entitled to practise as a barrister or solicitor, or both, in a federal court; or
- (b) under the regulations, the other person is taken to be an authorised representative; or
- (c) another law of the Commonwealth authorises the other person to represent the party.”<sup>64</sup>

8.4.3. The applicant requested that a non-lawyer be granted leave to represent him. The *Federal Circuit Court of Australia Act* section 44(c) allows for the court to have discretion under section 46PQ(1)(c) of the *Australian Human Rights Commission Act*.

8.4.4. The court stated:

“When deciding whether to exercise discretion to grant leave to allow a non-lawyer to appear on behalf of a party, courts generally take into account the following principles:

- a. the complexity of the matter;
- b. the genuine difficulties of a self-represented party;
- c. the unavailability of disciplinary measures against, and the absence of any duty to the Court by, lay advocates;
- d. protection of the client and the opponent from the actions of an unqualified person;
- e. whether lay advocates ought to appear in inferior courts and tribunals; and
- f. the interests of justice.”<sup>65</sup>

8.4.5. For numerous reasons, the court did not grant leave for the non-lawyer to act as a representative for the applicant. Some of the reasoning included that the non-lawyer had not shown genuine difficulties beyond the normal circumstances of a self-represented litigant<sup>66</sup>, that he was not qualified or experienced in any relevant sense and owed no professional duty to the court.<sup>67</sup>

8.4.6. In *Groundwater v Territory Insurance Office*,<sup>68</sup> section 46PQ of the *Australian Human Rights Commission Act* was held to allow for a party to be represented by someone who is not a barrister or solicitor “unless the Court is of the opinion that it is inappropriate in the circumstances for the other person to appear”.<sup>69</sup> In this case, the applicant’s father was granted a limited right of appearance.

## 8.5. Town Planning Functions of the State Administrative Tribunal

8.5.1. With reference to town planners representing parties in reviews before the State Administrative Tribunal (“SAT”), section 39 of the *State Administrative Tribunal Act 2004* (WA) (“SAT Act”) headed “Representation in proceedings” provides as follows:

- (1) At a hearing in a proceeding before the Tribunal a party to the proceeding may appear in person or may be represented by another person, but a party cannot be represented by a person other than a legal practitioner unless —
  - (a) the party is a body corporate and the person is a director, secretary, or other officer of the body corporate; or
  - (b) the party is a public sector body as defined in section 3(1) of the *Public Sector Management Act 1994* and the person is a public sector employee authorised by the party to represent it; or
  - (c) the party is a party in the course of or because of the performance, or purported performance, of his or her duties as a public sector employee and the person is another public sector employee authorised by the party to represent him or her; or
  - (d) the person has particular knowledge or experience relevant to the matter that is being dealt with (other than experience obtained as or representing a party in another Tribunal proceeding); or
  - (e) the Tribunal agrees to that person representing the party, and any conditions imposed by the Tribunal are satisfied; or
  - (f) the regulations or the rules authorise it.
- (2) This section does not authorise a person who could not otherwise lawfully demand or receive any fee or reward for representing a party to demand or receive any fee or reward.
- (3) A person who has been struck off the roll of practitioners of the Supreme Court or who is suspended from practice as a legal practitioner cannot represent a party.
- (4) The regulations or the rules may prevent specified persons, or persons of a specified class, from representing a party.

8.5.2. The effect of section 39(1) of the *SAT Act* is similar to that under section 17(1) of the *Liquor Control Act*.

8.5.3. Section 93 of the *SAT Act* makes provision in regard to minor proceedings. Section 93(2) provides that at or before an initial directions hearing in a minor proceeding, the applicant may make a number of elections, including a no legal representation election. Section 93(3) provides that if the applicant makes a no legal representation election, a party cannot be represented by a legally qualified person, and cannot be represented by any other person except as authorised

by section 39(1)(a) to (f).

- 8.5.4. The *Planning and Development Act 2005* (WA) (“**P&D Act**”) is an enabling Act for the purpose of section 93 of the SAT Act. Section 237A(2) of the P&D Act provides that the SAT is to be constituted by one Tribunal member when it is dealing with development applications of a low value and an application to subdivide a lot into not more than three lots. Section 239(1) provides that in case of an application described in section 237A(2), the applicant may, at the time the application is made, elect that no party to the application is to be represented by a legal practitioner. Section 239(2) then sets out the circumstances in which representation by a legal practitioner may be permitted.
- 8.5.5. The *State Administrative Regulations 2004* seem to be silent on the matter. The *State Administrative Tribunal Rules 2004* provide in rule 45(1) as follows –
- (1) If a judicial member is satisfied a person, other than a legal practitioner –
    - (a) has, under the Act section 39(1), represented a party to a proceeding before the Tribunal; and
    - (b) in doing so has acted inappropriately or improperly, the judicial member may, by order, prohibit the person from again representing a party.
- 8.5.6. It appears there are no other provisions in the SAT Act, Regulations or Rules, P&D Act, or other legislation which authorise representation of a party in SAT proceedings by persons other than legal practitioners.
- 8.5.7. Further, there would seem to be no other provision in any statute or subsidiary legislation authorising fees to be charged by a non-lawyer representing a party in SAT proceedings, within the contemplation of section 39(2) of the SAT Act.

## 9. Other Issues

### 9.1. Online Generation of Legal Documents

- 9.1.1. As technology is always evolving and expanding, it is extremely important but difficult for the law to maintain pace with technological developments.
- 9.1.2. There are now websites that allow the general public access to many legal forms and documents, in all areas of law: wills and estates, property, partnership and joint ventures, employment, intellectual property, business and corporate, just to name a few.
- 9.1.3. Some websites provide simple templates that users can access and personalise themselves and other websites generate the document specifically for the user. Both types of websites usually require users to pay a fee (either a membership fee, or a one-off cost for the document that can range from \$9.99 to \$190+).
- 9.1.4. In situations where the website generates the document specifically for the user, it may be as simple as the user selecting their State and inputting details when prompted.
- 9.1.5. On one such site, a person may follow a few simple steps such as:
- selecting their country (found at the bottom of

the page);

- selecting the form they would like to generate from a list of forms available in their jurisdiction (some countries, such as the United States, have a higher number of forms that may be generated); and
  - providing details as prompted for (for example, a contract for the purchase of a property in the United States asks for the State the property is in, the buyer’s details, the seller’s details, the property specifications, the financing details etc).
- 9.1.6. A form is then generated containing all the relevant details, and the user may purchase and download the form.
- 9.1.7. Obvious concerns arise when non-lawyers are able to provide this kind of technology directly to the public.
- 9.1.8. Nothing in these document-generating programs suggests the involvement of a lawyer between the time information is provided by the user and the final document is generated.
- 9.1.9. If non-legal professionals access this technology to provide the service directly to the public, this creates a concern about consumer protection. Legal practitioners have reported experiences where their client has been told by non-legal professionals that there is no need to worry about any professional indemnity consequences, because the entity providing the legal agreements has insurance that the non-legal professional can rely on.
- 9.1.10. The case of *Attorney General at the Relation of the Law Society of Western Australia v Quill Wills Ltd & Ors*<sup>70</sup> (referred to earlier in the paper) is an early example of non-lawyers using products to provide legal services to members of the public. Although that case is now approaching 30 years old, and was decided at a time long before the recent significant advancements in artificial intelligence technology, it was held that the defendant 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>71</sup>
- 9.1.11. With respect to insurance, such technologies may drive higher premiums for the legal profession as a whole, while non-legal professionals may discover that their actions are not in fact covered by their own professional indemnity insurance.
- 9.1.12. All this could lead to a lack of protection for the public.
- ### 9.2. Artificial Intelligence
- 9.2.1. There are also artificial intelligence (“AI”) programs in use that are capable of undertaking some of the tasks currently performed by legal practitioners and law graduates.
- 9.2.2. An example of such a program is Ross Intelligence. It is reported that Ross has capacity to respond to questions posed about specific laws or cases by gathering the evidence, reading through the laws and drawing inferences.<sup>72</sup>
- 9.2.3. AI is already being used in law firms around the world.

RAVN Applied Cognitive Engine (“**RAVN**”) is in use at Berwin Leighton Paisner (“**BLP**”), and it reads, interprets and extracts information from documents.<sup>73</sup> The Head of Legal Risk Consultancy at BLP reports that it delivers perfect results every time they use it, and the team morale and productivity has benefited from the implementation of RAVN.<sup>74</sup>

9.2.4. Some argue that the use of AI in law firms will potentially lead to the “structural collapse” of law firms,<sup>75</sup> While others suggest that courtroom work and “more nuanced” legal work would still be in the domain of legal practitioners, but that lower level procedural work could be delegated to AI.<sup>76</sup>

9.2.5. As with the online generation of documents, law firms using AI in their legal work are covered by professional indemnity insurance which works to protect the legal practitioners and the clients. That same level of protection is unlikely to exist should non-lawyers be permitted to provide similar technology directly to the public.

### 9.3. Multi-disciplinary partnerships

9.3.1. Law firms used to hold the monopoly in providing legal services<sup>77</sup>, as legislation in each State used to prohibit multi-disciplinary partnerships (“**MDPs**”). However, today many clients are seeking integrated service offerings<sup>78</sup> and this has resulted in some change.

9.3.2. In 1994, the Australian Competition and Consumer Commission (known as the Australian Trade Practices Commission at the time) made a submission that all jurisdictions should repeal rules that prevented lawyers from incorporating their practices, which would allow for MDPs to form.<sup>79</sup> In 2001, only New South Wales had taken steps to amend their legislation to allow for the development of MDPs and the sharing of profits of legal practice between lawyers and non-lawyers.<sup>80</sup>

9.3.3. These amendments were eventually made across the board, and various States’ legislation now provides for MDPs across Australia<sup>81</sup>. Because of this, other industries such as accounting, investment and others are crossing over into the legal arena and offering multidisciplinary services. Major accounting firms are increasing the size of their legal teams to manage this demand of integrated services, with several having become providers of these integrated, one-stop services.<sup>82</sup>

9.3.4. There is an increasing trend of businesses handling more legal work in house. Lawyers Weekly (July 2017) asked the profession “in the next 12 months, which of the following economic/market disruptors will have the biggest impact on the legal industry?”. Nearly 40% of respondents answered that it would be corporate counsel taking more work in-house. That is because corporate counsel are becoming more specialist in their roles and are able to act as business advisors, rather than just as the legal sign-off at the end of a deal as they may have been in the past.

9.3.5. Consequently, being simply a black letter law firm may no longer be competitive with in-house counsel, who are expert in the company’s commercial drivers, goals, strategy and risk.

9.3.6. Having said the above, the model has potential for

giving rise to an ethical minefield for lawyers working within MDPs.

9.3.7. Nearly 17 years ago, in September 2000, the Law Council of Australia published an issues paper on MDPs highlighting the potential ethical issues that may arise such as the concept of “imputed knowledge”, the use (and sometimes failure) of information barriers and conflicting duties to disclose.<sup>83</sup>

9.3.8. To the above may be added the heightened risk for conflicts and potential conflicts, along with:

- possible difficulties for non-lawyer partners and employees understanding the professional and ethical obligations binding on lawyers;
- pressure from non-lawyer partners to run the MDP on a “more commercial” basis, which may conflict with the professional and ethical obligations of lawyers within the MDP; and
- possible “confusion” as to whether legal professional privilege applies where legal services are “mixed” with non-legal services.<sup>84</sup>

9.3.9. The potential for risks such as those identified above may be enhanced in MDPs that are not either effectively controlled by lawyers or infused with a corporate culture requiring compliance with the long-standing and rigorous rules and ethical principles which set the standards for appropriate professional conduct by members of the legal profession.

## 10. Conclusion

10.1. As noted earlier in this paper, there are obvious issues where non-lawyers undertake legal work. They do not owe the duties of a lawyer, they may lack adequate training, there may be no protection through professional indemnity insurance or as to the manner and form of any cost disclosure or no requirement to hold a trust account. Nor are non-lawyers necessarily bound by a code of professional conduct and ethics (including any by duty to avoid conflicts of interest).

10.2. Importantly, their clients do not enjoy the protection afforded by legal professional privilege over communications with their advisor. Nor is confidentiality generally over those communications guaranteed.

10.3. A significant concern is the lack of protection to the client or the member of public engaging the non-lawyer. Some clients are unaware or misinformed of the risks they face if the work of the non-lawyer is negligent and a loss is suffered.

10.4. The Law Society considers that appropriate steps are required so as to better protect the public in this area.

10.5. In the report of its 21<sup>st</sup> Century Practice Taskforce, the State Bar of Michigan recognised that non-lawyers provide services addressing legal problems, most notably via the online marketplace, without any regulation, and that the traditional law firm business model and current regulatory systems and rules are ineffective in fostering collaboration while protecting the public.<sup>85</sup>

10.6. The following “first steps” were recommended in that report:

# Recommendations

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- Monitor and evaluate other regulatory models on an ongoing basis, including entity and outcomes-based regulation and licensing/regulation of paraprofessionals, and advise on the desirability of adapting elements of those models to the regulation of legal services in Michigan.
- Evaluate the feasibility and desirability of adopting a rule-based definition of the practice of law in light of recent U.S. Supreme Court decisions.
- Create a taxonomy of legal services and delivery service models. Determine the practicality and value of creating standards for those services, and of regulating the individuals and entities that provide them (from simple registration to full licensing).
- Develop performance measures for delivery of legal services by lawyers and methods for self-evaluation.
- Develop standards for online dispute resolution.
- Develop a blueprint for an online dispute resolution.<sup>86</sup>

instructing unqualified persons and the advantages of instructing legal practitioners.

- 11.4. Prepare and publish guidelines on unqualified legal practice.<sup>88</sup>
- 11.5. Liaise with the Legal Practice Board, and/or the Legal Profession Complaints Committee, as to the adequacy or otherwise of current arrangements for regulation of MDPs in Western Australia (including as to the regulator's powers for the conduct of audits) and, thereafter, engage in such advocacy and other strategies as may be appropriate.
- 11.6. Actively encourage members to report instances of non-lawyers performing legal work, and the provision by the Law Society of such information to the Legal Practice Board for further investigation.
- 11.7. As part of the review of the Joint Form of General Conditions for the Sale of Land, work with REIWA to improve awareness of the need for legal advice for the formulation of non-standard special conditions or variations to the General Conditions.
- 11.8. Re-agitate the Law Society's position in regard to section 17(1)(e) of the *Liquor Control Act* with the new State Government.
- 11.9. In conjunction with the Law Council of Australia continue to agitate for the repeal of s 596(2) of the *Fair Work Act*.
- 11.10. Continue to liaise regularly with its counterparts in other Australian jurisdictions, and with the Law Council of Australia, regarding the various matters the subject of this paper.

## 11. Recommendations

11.1. Representations should be made to the State Attorney General immediately for:

- (a) The repeal of section 12 of the *Legal Profession Act 2008* (WA);
- (b) The substitution in its stead of a provision which reads substantially in accordance with section 10 of the *Legal Profession Uniform Law (NSW)* and the *Legal Profession Uniform Law Application Act 2014 – Schedule 1 (VIC)* (“**Uniform provisions**”);
- (c) The publication of a regulation which reads substantially in accordance with rule 10 of the *Legal Profession Uniform General Rules 2015* currently in force in New South Wales and Victoria (subject to such variations as may be considered appropriate for Western Australia)<sup>87</sup>; and
- (d) The incorporation of a further provision to the effect of the suggested provision in 11.2 below.

11.2. If the Uniform provisions are to be adopted as law in Western Australia in the short term, representations should be made to the State Attorney General and/or the Legal Services Council requesting the insertion of a provision to the following effect immediately below section 10 of the Uniform provisions: “*An entity that is not a qualified entity may not in this jurisdiction give to another entity a product or thing that provides, or is capable of providing, legal services unless the second entity is a qualified entity*”.

11.3. Raise awareness within the community of the risks of



# Notes

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- 1 *Legal Profession Act 2008* (WA) s 4(a).
- 2 *Ibid* s 5(a).
- 3 *Ibid* s 5(b).
- 4 *Ibid* s3.
- 5 *Legal Profession Act 2008* (WA) s12(3).
- 6 Law Institute of Victoria, *Unqualified Practice Guidelines* (25 September 2009) at [2] <<https://www.liv.asn.au/PDF/Practising/Ethics/2011UnqualifiedPracticeGuidelines>>.
- 7 *Ibid* at [3].
- 8 The Victorian Guidelines, to the extent that they are said to provide an example of 'legal services' by reason of a person's use of a name as a descriptor are less than helpful in Western Australia, in that the mere use of such a name could be an act in contravention of s 13 of the *Legal Profession Act 2005* (WA).
- 9 There may be an argument for retaining a much more narrowly cast exception applying, for example, to an Australian lawyer (i.e., an Admitted practitioner) who is not an Australian legal practitioner because he or she no longer holds a current local or interstate practising certificate due to retirement and who, on a single or rare occasion, in good faith acts pro bono in assisting an impecunious member of the community with a legal problem.
- 10 *Dean v Legal Practice Board* [2016] WASCA 63.
- 11 *Barristers' Board v Palm Management Pty Ltd* [1984] WAR 101.
- 12 *Van Der Feltz v Legal Practice Board* [2017] WASC 2.
- 13 *Van der Feltz v Legal Practice Board of Western Australia* [2017] WASCA 113
- 14 *Van der Feltz v Legal Practice Board of Western Australia* [2017] WASCA 113 at [42].
- 15 *Cornall v Nagle* [1995] 2 VR 188
- 16 Accounting Professional & Ethical Standards Board, *APES 110 Code of Ethics for Professional Accounts* (December 2010) at [330.1] <[http://www.apesb.org.au/uploads/standards/apesb\\_standards/standard1.pdf](http://www.apesb.org.au/uploads/standards/apesb_standards/standard1.pdf)>.
- 17 *Ibid* at 8.
- 18 *Mercanti v Mercanti* [2015] WASC 297.
- 19 *Legal Practice Board v Computer Accounting and Tax Pty Ltd* [2007] WASC 184.
- 20 *Legal Practice Act 2003* (WA) s 4(c)(i).
- 21 *Felman v Law Institute of Victoria* [1998] 4 VR 324
- 22 *R (on the application of Prudential Plc and another) v Special Commissioner of Income Tax and another* [2009] EWHC 2494 at [66].
- 23 Australian Taxation Office, Guidelines to accessing professional accounting advisors' papers, available at <<https://www.ato.gov.au/general/gen/guidelines-to-accessing-professional-accounting-advisers--papers/>>
- 24 *Titan Enterprises (Qld) Pty Ltd v Cross* [2016] FCA 1241.
- 25 *Titan Enterprises (Qld) Pty Ltd v Cross* [2016] FCA 1241 at [12].
- 26 *Legal Practice Board v Giraudo* [2010] WASC 4.
- 27 These proceedings were brought under ss 76 and 77 of the *Legal Practitioners Act 1893* (WA).
- 28 The Institute of Patent and Trade Mark Attorneys of Australia, *The Role of Patent & Trade Marks Attorneys* <<https://ipta.org.au/attorneys/role-patent-trade-mark-attorneys/>>.
- 29 *Ibid*.
- 30 *Institute of Victoria Ltd v Maric* (2008) 21 VR 1.
- 31 Francesca Bartlet and Robert Burrell, 'Understanding the 'Safe Harbour': The Prohibition on Engaging in Legal Practice and Its Application to Patent and Trade Marks Attorneys in Australia' (2013) 23(4) *Australian Intellectual Property Journal*.
- 32 *Felman v Law Institute of Victoria* [1998] 4 VR 324.
- 33 *Ibid* at 350.
- 34 *Legal Profession Act 2007* (Qld) s 24(7).
- 35 Matthew Raven, 'The role of real estate agents in the preparation of contracts' (2008) 22(9) *Australian Property Law Bulletin* 128 at 91.
- 36 *Ibid*.
- 37 *Ibid*.
- 38 *Public Trustee Act 1941* (WA) s 47A(2) and 47A(3).
- 39 *Attorney General at the Relation of the Law Society of Western Australia v Quill Wills Ltd & Ors* [1990] WASC 604.
- 40 Matthew Raven, above n 35 at 91.
- 41 *Tax Agents Services Act 2009* (Cth) s 30-10(10).
- 42 *Ibid* s 30-10(12).
- 43 *The Barristers' Board v Marbellup Nominees Pty Ltd* [1984] WAR 335.
- 44 Scoglio Law, *Accountants – Beware of advice limitations* (15 March 2011) <<http://scogliolaw.com.au/articles/view/year/2011/story/accountants---beware-of-advice-limitations>>.
- 45 Law Council of Australia, *Legal Practitioners and the Tax Agent Services Act 2009* at 3 <<http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/TaxAgents.pdf>>.
- 46 *Criminal Code Act Compilation Act 1913* (WA) section 1.
- 47 See section 77(2) of the *Legal Practitioners Act 1893* (WA) reprinted in 2001, which is the corresponding section in later versions of the *Legal Practitioners Act 1893*.
- 48 *Interpretation Ordinance 1845*, 8 Vic., No 11
- 49 See for example *Interpretation Act 1898* (WA) s 3(d).
- 50 *Legal Profession Uniform Law Application Act 2014* (VIC) s 169. See also See also Justice, *Recent change mean you may need to be admitted* (10 June 2016) NSW Government <<http://www.justice.nsw.gov.au/Pages/media-news/news/2016/practising-lawyers-admission-requirements.aspx>>.
- 51 *Legal Profession Uniform Law* (NSW) s 6. See also *Legal Profession Uniform Law Application Act 2014* (VIC) Schedule 1, s 6
- 52 *Legal Profession Uniform General Rules 2015* rule 10(1)(c).

- 53 The new Labor government elected in March 2017 has stated that “it supports the Legal Profession Uniform Law across Australia with the proviso that the Supreme Court and the WA Legal Practice Board retain control of the admissions and disciplinary functions of the Board.” (Law Society of Western Australia, President’s Report – April (April 2017) <<https://www.lawsocietywa.asn.au/news/presidents-report-april-2/>>. See also Law Society of Western Australia, ‘State Government and Opposition respond to the Law Society’s Policy Positions’ (March 2017) 44(2) Brief 18 at 29). The Law Society supports the adoption of the Uniform Law in Western Australia, subject to conditions, and is working on this matter with State government. Law Society of Western Australia, President’s Report – April (April 2017) <<https://www.lawsocietywa.asn.au/news/presidents-report-april-2/>>.
- 54 Institute of Management Consultants, *Code of Ethics and Pledge* <<https://www.imc.org.au/code-ethics-pledge>>.
- 55 *Liquor Control Act 1988* (WA) s 17(1).
- 56 *Prow Pty Ltd v Commissioner for Police* [2012] WASC 363.
- 57 *Prow Pty Ltd v Commissioner for Police* [2012] WASC 363 at [15].
- 58 *Re Hoffman* [2004] WASCA 238.
- 59 *Sammut v AVM Holdings Pty Ltd* [2011] WASC 194.
- 60 Law Society of Western Australia, *Review of the Liquor Control Act 1988* (26 February 2013) at 8 <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/09/submission-liquor-control-act-february-2013.pdf>>.
- 61 As provided under the procedural rules and under section 596(3) for written submissions dealing with modern awards and minimum wages.
- 62 *Australian Human Rights Commission Act 1936* (Cth) s 46PQ.
- 63 *Reynolds v Minister for Health and Anor* [2010] FCMA 843.
- 64 *Federal Circuit Court of Australia Act 1999* (Cth) s 44.
- 65 *Reynolds v Minister for Health and Anor* [2010] FCMA 843 at [8].
- 66 *Ibid* at [49].
- 67 *Ibid* at [96].
- 68 *Groundwater v Territory Insurance Office* [2004] FCMA 381.
- 69 Australian Human Rights Commission, *Federal Discrimination Law: Chapter 6 – Practice and Procedure* at [6.19.3] <<https://www.humanrights.gov.au/federal-discrimination-law-chapter-6-practice-and-procedure>>.
- 70 *Attorney General at the Relation of the Law Society of Western Australia v Quill Wills Ltd & Ors* [1990] WASC 604.
- 71 Matthew Raven, above n 35 at 91.
- 72 CNBC, *The future of the legal system: Artificial intelligence* (12 May 2016) <<http://www.cnbc.com/2016/05/12/the-future-of-the-legal-system-artificial-intelligence.html>>.
- 73 RAVN, *RAVN Systems’ Artificial Intelligence Platform is Deployed Successfully at Berwin Leighton Paisner* (22 September 2015) <<https://www.ravn.co.uk/ravn-systems-artificial-intelligence-platform-deployed-successfully-berwin-leighton-paisner/>>.
- 74 *Ibid*.
- 75 Dan Bindman, *Report: artificial intelligence will cause “structural collapse” of law firms by 2030* (1 December 2014), Legal Futures <<http://www.legalfutures.co.uk/latest-news/report-ai-will-transform-legal-world>>.
- 76 Isis Madrid, *Report Claims Robots Will Replace Lawyers by 2030* (3 January 2015), The Daily Good <<https://www.good.is/articles/robot-lawyer>>.
- 77 Law Council of Australia, ‘2010: A Discussion Paper – Challenges for the Legal Profession’ (Discussion Paper, September 2001) <[http://www.lawcouncil.asn.au/lawcouncil/images/Discussion\\_Paper.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/Discussion_Paper.pdf)> at 99.
- 78 Lucille Keen, KMPG, Deloitte and EY turn into one-stop legal shops (8 December 2016) Financial Review <<http://www.afr.com/business/legal/kpmg-deloitte-and-ey-turn-into-onestop-legal-shops-20161206-gt579r>>.
- 79 Steven Mark, ‘Harmonization or Homogenization? The Globalization of Law and Legal Ethics – An Australian Viewpoint’ (2001) 34 *Vanderbilt Journal of Transnational Law* 1173 at 1196.
- 80 *Ibid*.
- 81 See *Legal Profession Act 2008* (WA) Part 7.
- 82 Lucille Keen, above n 78.
- 83 Law Council of Australia, Multidisciplinary practices: legal professional privilege and conflict of interest (September 2000) <<https://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/MDPissuespaper.pdf>> at [3.3.2] – [3.3.4].
- 84 Information kit for Multi-disciplinary partnerships (“MDPs”). Queensland Law Society Version 6.0 28 June 2011, p 10: <[www.qls.com.au/files/9637bbfc-c6ad-41b7.../qls\\_guides\\_-\\_mdp\\_information\\_kit.pdf](http://www.qls.com.au/files/9637bbfc-c6ad-41b7.../qls_guides_-_mdp_information_kit.pdf)>
- 85 State Bar of Michigan, 21<sup>st</sup> Century Task Force, *Envisioning A New Future Today*, July 2016 at 24.
- 86 *Ibid* at 33.
- 87 That rule provides:
- (1) The following persons are declared to be exempt from the operation of section 10 (1) of the Uniform Law:
    - (a) a person carrying out conveyancing work in accordance with a licence in force under relevant jurisdictional legislation,
    - (b) a land agent performing work in respect of instruments the person is entitled to draw, fill up or prepare and to charge for, under a law of a jurisdiction or of the Commonwealth,
    - (c) 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 (however described),
    - (d) 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,
    - (e) any of the following:
      - (i) a public trustee (however named) of a jurisdiction,
      - (ii) a company that performs the functions of a public trustee of a jurisdiction,
      - (iii) a company performing trustee work on behalf of the government of a jurisdiction or the Commonwealth,
      - (iv) an officer, employee or member of staff of an entity referred to in subparagraph (i)-(iii),

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,

(f) an industrial organisation providing legal services, but only to the extent that:

(i) the legal services concerned are provided to members of the organisation, and

(ii) the legal services are not provided for fee, gain or reward to the organisation (other than standard membership fees), and

(iii) the legal services are provided by Australian legal practitioners, and

(iv) if any of the legal services are provided by an Australian legal practitioner whose Australian practising certificate is subject to a condition requiring the holder to engage in supervised legal practice only-those legal services are provided under the supervision of an Australian legal practitioner who is authorised to supervise legal practice by others.

88 Cf. Law Institute of Victoria, above, n6.



**The Law Society of Western Australia**

Level 4, 160 St Georges Terrace, Perth WA 6000

**Postal address:** PO Box Z5345, Perth WA 6831 or DX 173 Perth

**Phone:** (08) 9324 8600 | **Fax:** (08) 9324 8699

**Email:** [info@lawsocietywa.asn.au](mailto:info@lawsocietywa.asn.au) | **Website:** [lawsocietywa.asn.au](http://lawsocietywa.asn.au)

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