

# UNLAWFULLY ENGAGING IN LEGAL WORK

## The law

Section 12(2) of the *Legal Profession Act 2008* (WA) (“LPA”) provides that a person is prohibited from engaging in legal practice unless the person is an Australian legal practitioner. There are certain exceptions to this, which are outlined in section 12(3) LPA. There is a penalty of up to \$20,000 for contravening this law.

## The defence

A defence exists under section 12(4) LPA that the person who engaged in the legal practice did not receive or expect any remuneration for the work. However, under section 12(5), the defence does not apply if the person receives or expects remuneration for other work done that relates to the same transaction or subject matter as the unpaid legal work. Members of other professions therefore need to be cautious, as charging for associated work, even in your own field, may prevent you from relying upon the defence if you inadvertently engage in legal practice.

## Why does this prohibition exist?

The purpose 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. Lawyers are also required to have professional indemnity insurance.

## What is legal practice?

The term “legal practice” is not defined in the LPA, but includes undertaking legal work. The term “legal work” is defined as:

- (a) any work in connection with the administration of law; or
- (b) drawing or preparing any deed, instrument or writing relating to or in any manner dealing with or affecting —
  - (i) real or personal estate or any interest in real or personal estate; or

- (ii) any proceedings at law, civil or criminal, or in equity.

‘The administration of law’ has been interpreted to mean ‘the practice of law’. A general rule is that the practice of law 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. If the giving of advice and performance of services affects important rights of a person under the law and requires some skill and knowledge of the law greater than that possessed by the average citizen, then the advice and services given constitute the practice of the law (see *Dean v Legal Practice Board* [2015] WASC 260).

## Examples of actions classified as legal practice:

- Preparing documents that affect legal rights, e.g.
  - Court documents
  - Documents for an annulment
  - Assisting clients to create documents of legal effect through selecting clauses from a range of pre-prepared options, whether online or otherwise.
- Giving legal advice, e.g.
  - A real estate agent providing advice as to the effect of a contract term.
  - An accountant preparing a trust deed for a self-managed super fund or giving tax minimisation advice to institute a trust system.
- Appearing in a court or tribunal on behalf of someone else (unless permitted by other legislation and/or the court).
- Using the name of a barrister, solicitor or any other name used to describe someone who is qualified to engage in legal practice. There is also a prohibition against representing, advertising or implying that a person is entitled to engage in legal practice when they are not (see s13 LPA).

## Examples of actions not classified as legal practice:

- Clerical or administrative tasks e.g. filling out blanks in a document not requiring the exercise of judgment.
- Mere selling of legal documents that were prepared by a qualified lawyer.
- Representing yourself in a court or tribunal.
- Preparing a transfer under the *Transfer of Land Act 1893* (WA).

## Need assistance to find a lawyer?

If you are unsure as to whether you are permitted to undertake particular work, the work should be referred to a qualified lawyer. The Law Society of Western Australia operates a Find a Lawyer service which can be accessed at <https://www.lawsocietywa.asn.au/find-a-lawyer/> or by contacting the Society reception on (08) 9324 8600.

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## For more information

Refer to the Law Society of Western Australia's Position Paper, '*People Unlawfully Engaging in Legal Work: Protecting the Community*' which can be accessed at: <https://www.lawsocietywa.asn.au/policy-and-advocacy/>

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