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CONFERENCE OF REGULATORY OFFICERS

Regulation: Dealing with BIG issues

23 - 25 OCTOBER 2023 | HOTEL GRAND CHANCELLOR HOBART | TASMANIA

Unqualified Legal Practice – a perspective from Victoria and Queensland



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Today we will cover:

- What is unqualified practice – Victorian & Queensland provisions
- Risk with unqualified practice and current tools available
- Trends in unqualified practice
- Future approaches



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What are the issues/risks?

- Consumer harm through poor service
- No insurance protection for consumers
- No protections regarding costs charged or trust monies
- Produces bad outcomes within the legal system
- Risks to the reputation of the profession
- Increasingly part of 'Sovereign Rights' movement



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What is an unqualified entity?

- Section 10(1) of the *Legal Profession Uniform Law 2015* (LPUL) provides:

An entity must not engage in legal practice in this jurisdiction, unless it is a qualified entity.
Penalty: 250 penalty units or imprisonment for 2 years, or both.



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What is an unqualified entity?

- Section 11 of LPUL provides:

(1) An entity must not advertise or represent, or do anything that states or implies, that it is entitled to engage in legal practice, unless it is a qualified entity.

Penalty: 250 penalty units.

(2) A director, partner, officer, employee or agent of an entity must not advertise or represent, or do anything that states or implies, that the entity is entitled to engage in legal practice, unless the entity is a qualified entity.

Penalty: 50 penalty units.



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What is an unqualified entity?

Section 6 LPUL definition:

qualified entity means—

- (a) an Australian legal practitioner; or
- (b) a law practice; or
- (c) either—
 - (i) an Australian-registered foreign lawyer; or
 - (ii) a foreign lawyer who is not an Australian-registered foreign lawyer but only to the extent that the foreign lawyer's legal practice is limited to the practice of foreign law and is carried out in accordance with the applicable requirements of Part 3.4; or
- (d) an individual engaged in legal practice under the authority of a law of the Commonwealth or of a jurisdiction, other than this Law or the Uniform Rules; or
- (e) an entity engaged in legal practice of a kind specified in the Uniform Rules for the purposes of this definition, but only while the entity engages in the legal practice in accordance with any applicable requirements of the Uniform Rules



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What is an unlawful operator?

- Section 24(1) of the *Legal Profession Act 2007* (LPA) provides:

A person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner.

Maximum penalty—300 penalty units or 2 years imprisonment.



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What is an unlawful operator?

- Sections 25(1) and (2) of the LPA provide:
 - (1) 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.
Maximum penalty—300 penalty units or 2 years imprisonment.
 - (2) 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.
Maximum penalty—300 penalty units or 2 years imprisonment.



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What amounts to engaging in legal practice?

- *Cornall v Nagle* 1955 2 VR 188

1. By doing something which, though not required to be done exclusively by a solicitor, is usually done by a solicitor and by doing it in such a way as to justify the reasonable inference that the person doing it is a solicitor.
2. By doing something that is positively proscribed by the Application Act or by Rules of Court unless done by a duly qualified legal practitioner.
3. By doing something which, in order that the public may be adequately protected, is required to be done only by those who have the necessary training and expertise in law.



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What amounts to engaging in legal practice?

- Felman v LIV [1998] 4 VR 324

“The carrying on of the profession of law is done by other than a ‘legal practitioner’. Accordingly, in my view, the expression ‘engage in legal practice’ means ‘engage in legal practice as a legal practitioner’, the italicised words being implicit in the notion of legal practice.”



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What amounts to engaging in legal practice?

- *Legal Services Commissioner v Walter* [2011] QSC 132

“The fact that a person carries out legal work ... for reward is indicative ... but is not a necessary pre-condition to a finding that a person has engaged in legal practice.”

“In short, the fact that a person is engaged in the business of providing legal services is indicative ... but a person may be practising law without being in business.”



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What are our current regulatory tools?

- Chapter 4 conduct investigation (s421 LPA)
- Offence prosecutions
- Cease and desist letters
- Injunctions (s 447 LPUL; s703 LPA)



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Recent cases

Victorian Legal Services Board v David McCulloch S ECI 2018 02312

In 2005, Mr McCulloch received a 14 year sentence in Melbourne's Barwon Prison for drug trafficking.

In prison, M used knowledge gained many years before working in a bank in Scotland to develop his profile as what the press would later refer to as a the 'Jailhouse Lawyer'.

Upon his release from prison in 2018, he continued to advise and assist inmates with appeals and legal advice. During 2018, the VLSB was able to obtain copies of phone records between McCulloch and inmates which it relied upon to obtain an injunction in the SCV restraining him from continuing.

Subsequently in 2020, Mr McCulloch was deported back to Scotland.



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Recent cases

Victorian Legal Services Board v Jensen [2018] VSC 740 & Victorian Legal Services Board v Jensen [2022] VSC 603

<https://www.youtube.com/watch?v=7XIB9Vi0TWw>

In August 2018, SCV made orders against Dennis Jensen, restraining him from engaging in unqualified legal practice or representing an entitlement to do so. Jensen's business had been active in advising 'clients' and preparing legal documents in commercial matters.

Subsequently, in 2021, Mr Jensen advised the parents of a man facing serious sexual offence charges about how the Accused should respond. In summary he advised the Accused to:

- (i) prepare a lengthy affidavit explaining his version of the alleged facts; and
- (ii) serve this document personally on the Victim and to engage with her about the charges – which he did.



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Recent cases

Victorian Legal Services Board v Jensen [2022] VSC 603

Later that year, the VLSB obtained Orders in the SCV that Jensen had engaged in contempt and he received a 90 day prison term which was wholly suspended for 12 months.

Mr Jensen purported to give legal advice and instructions to the parents, about a particularly serious situation, where the parties involved were desperate and vulnerable, and he created the impression that his advice would have certain legal consequences beneficial to the son. The parents trusted Mr Jensen and acted on his advice to the detriment of all involved, the parents, the accused and the complainant. His advice not only breached a court order itself, but encouraged the accused to breach another order of a court, which has resulted in further charges.

There is no doubt that Mr Jensen's conduct imperilled the due administration of justice. [Justice John Dixon]



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Recent cases

Victorian Legal Services Board v Nida [2023] VSC 154

In 2021, the VLSB obtained an injunction against Ms Nida from engaging in legal practice or holding out that she is qualified to do so. Ms Nida previously practised as a barrister, ceased to hold a practising certificate in August 2021 and was therefore not entitled to engage in legal practice.

In 2022, Ms Nida breached that injunction by appearing as the legal representative in court proceedings. The VSC ultimately found that Ms Nida failed to comply with the court Order.

The VLSB prosecuted Nida for contempt of court. She was found guilty in February 2023 and ordered to pay \$110,000 in costs.



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Recent cases



Fake lawyer spared jail time after taking thousands from unsuspecting clients



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Recent cases

Alexander Stuart Pinnock (aka Alec Stuart and Alec Anton Stuart)

- Bought a degree online from USA website, produced fake practising certificate
- Injunction application in Queensland – January 2023
- Offence prosecution by Council of the Law Society of NSW
 - 1 charge – unqualified practice contrary to section 10(1)
 - 5 charges – representing entitlement to practice contrary to section 11(1)
- Offences dealt with in Local Court:
 - plea of guilty on 20 March 2023, sentenced on 3 April 2023
 - fines totalling \$3,500.00
 - 18 month Community Corrections Order



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Recent cases

Stephen Arulogun

- Law graduate, using Air Tasker to obtain legal work
- Injunction sought in late 2021
- Offence prosecution
 - 32 charges – breach of section 24
 - 32 charges – breach of section 25
 - 1 charge – breach of section 115(2)
- Previous criminal history (conduct related to his previous occupation as pharmacist)
- Offences dealt with in Magistrates Court on 11 October 2023:
 - plea of guilty
 - head sentence of 12 months
 - parole release date set for 11 February 2023 (i.e. 4 months of imprisonment to be served)
 - convictions recorded



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Recent cases

***Legal Services Commissioner v Raghoobar* [2023] QSC 41**

- [29] Mr Raghoobar’s argument was that he had not provided legal advice, but the material is replete with examples of that being done. His own material obtained pursuant to the search warrant shows that he was “assisting his clients to understand the court processes and what was needed to be done or appropriate to be done”. He has:
- (a) assisted with the creation of applications and affidavits;
 - (b) drafted other documents for use in court;
 - (c) advised parties to litigation in respect of matters of law and procedure and assisted them in the preparation of their cases for litigation;
 - (d) drafted correspondence to be sent by the parties to their opponents in the litigation; and
 - (e) charged clients for the work has done.
- [30] Mr Raghoobar has, on any view of the matter, engaged in legal practice.



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Recent cases

***Raghoobar v Legal Services Commissioner* [2023] QCA 191**

[11] The appellant reiterated that he had always been “above board” with his clients, in terms of explaining to them that he could not sign documents for them, or represent them in court. He said he would tell them about his law degree, and his employment history as an articled clerk and then an employed lawyer working for various law firms, but that “the minute I switched from the firm to operating by myself, it would – becomes an issue. That’s why I was – I made it very clear to them what I can and can’t do”.



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Recent cases

***Raghoobar v Legal Services Commissioner* [2023] QCA 191**

[17] ...Importantly in the present case, Martin SJA also endorsed the view that the relevant inquiry is not informed by subjective considerations (that is, whether the person intended to breach the unauthorised practice proscription, or, one might add, whether the person told their clients they were not a legal practitioner) – the inquiry is an objective one. ...

[28] It is not to the point that the appellant might have told these clients he was not a legal practitioner. They were not in a position to know that he should not be “assisting” them with their legal matters in the manner that he was. They were not to know that, because they were dealing with a person who was not a legal practitioner, they had none of the protections that a consumer of legal services otherwise has, by virtue of the regulatory regime that supervises legal practitioners.



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Trends in unqualified practice

- Air Taskers
- Impersonators
- 'Mike Ross' (from Suits)
- AI / technological tools
- Other professionals (accountants, contract managers, etc)
- Sovereign Citizens



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Where to next?



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Thank you

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