

WEEK 2: FOUNDATIONS OF ETHICAL LEGAL PRACTICE

LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2014

Section 25 – Australian Lawyers are officers of the Supreme Court

An Australian lawyer is an officer of the Supreme Court of this jurisdiction for as long as his or her name remains on the Supreme Court roll for any jurisdiction

Section 264 - Jurisdiction of Supreme Courts

(1) The inherent jurisdiction and powers of the SC with respect to the control and discipline of Australian lawyers are not affected by anything in this Chapter, and extend to Australian legal practitioners whose home jurisdiction is this jurisdiction and to other Australian legal practitioners engaged in legal practice in this jurisdiction.

(2) Nothing in this Chapter is intended to affect the jurisdiction and powers of another Supreme Court with respect to the control and discipline of Australian lawyers or Australian legal practitioners.

NOTE: Maintains the inherent power of the SC with respect to the admission & the striking of practitioners.

LEGAL PROFESSION UNIFORM LAW: AUSTRALIAN SOLICITORS' CONDUCT RULES 2015

3. Fundamental Duty to the Court and the Administration of Justice

3.1 A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty (note: prevails over the duty to act in the best interest of the client)

4. Other Fundamental Ethical Duties

4.1 A solicitor must also:

- (a) Act in the best interests of a client in any matter in which the solicitor represents the client;
- 4.1.2 be honest and courteous in all dealings in the course of legal practice;
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably as possible;
- 4.1.4 avoid any compromise to their integrity and professional independence; and
- 4.1.5 comply with these Rules and the law.

EXAM: Can claim professional misconduct, unsatisfactory professional conduct, breach of contract, breach of fiduciary duty or negligence etc.

5. Dishonest and Disreputable Conduct

5.1 A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practice law, or which is likely to a material degree to:

- 5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or
- 5.1.2 bring the profession into disrepute.

WEEK 3: REGULATION OF THE LEGAL PROFESSION

LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2014

Section 10 - Prohibition on engaging in legal practice by unqualified entities

- (1) 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.

Section 6 - *Entity* includes –

- (a) An individual, an incorporated body and an unincorporated body or other organisation;

Engage in legal practice includes practice law or provide legal services, but does not include engage in policy work (which, without limitation, includes developing and commenting on legal policy);

Exceptions to Monopoly: Legal Profession Uniform General Rules 2015 r 10

- (1) Conveyancing work
- (2) Government lawyers engaged in purely policy work (s 6 Uniform Law)
- (3) Officer or employee of a government other than parliamentary counsel, legislative counsel or legislative drafter;
- (4) 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 Cth;
- (5) Public trustee or a company that performs the functions of a public trustee
- (6) Industrial organization

Engaging in Legal Practice?

Cornall v Nagle [1995] 2 VR 188 at 210:

- A person who was neither admitted nor enrolled as a barrister/solicitor might act or practice as a solicitor (1) by doing something which, though not required to be done exclusively, 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 or (2) by doing something that is positively proscribed by the Act or by Rules of Court unless done by a duly qualified legal practitioner or (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 the law.

ACCC v Murray (2002) 121 FCR 428 at 448:

- Essence of legal practice: the advising of a particular person in a particular situation & the production of a document which affects legal rights & which is tailored to the particular needs of that person' for unlicensed legal practice.

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Admission & eligibility

S 15 – Objectives

To be admitted as an Australian Lawyer, a person must:

- be 'admitted to practice' (a one-off event); and
- obtain, annually, a 'practicing certificate' (licence).

S 16 – Admission

- (1) The Supreme Court of this jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer, but only if—
 - (b) the designated local regulatory authority has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force; and

- (c) the person is not already admitted to the Australian legal profession; and
- (d) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.

S 17 - Prerequisites for compliance certificates

- (1) The prerequisites for the issue of a compliance certificate in respect of a person are that he or she –
 - (a) has attained the academic qualifications specified under the Admission Rules for the purposes of this section (the *specified academic qualifications prerequisite*); and
 - (b) has satisfactorily completed the practical legal training requirements specified in the Admission Rules for the purposes of this section (the *specified practical legal training prerequisite*); and
 - (c) is a fit and proper person to be admitted to the Australian legal profession.