

# KELLEHERS AUSTRALIA

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## In-House Briefing Memorandum

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### *Legal Obligation*

Lawyers in Victoria are bound to act professionally in accordance with statutory obligations proscribing the high ethical standards set out in the *Legal Profession Act 2004* (Vic) ("LP Act"). These obligations fall not only upon legal practitioners, lawyers and accredited specialists, but also upon any staff in their employ at any level within the practice.

The Law Institute of Victoria notes that it may be difficult to define *legal practice* (no definition exists in the LP Act). However it is possible to broadly classify legal practice as "... doing something which, in order that the public might be adequately protected, is required to be done only by those who have the necessary training and expertise in the law" (*Cornall v Nagle* [1995] 2VR 188 at 210). Indeed, Justice Lasry has noted the important role of the solicitor especially at trial in *R v Chaouk* [2013] VSC 48.

Actions that are considered to be legal services may include drawing up documents of a legal nature, giving legal advice, appearing in Court or using the name of an Australian legal practitioner or someone qualified to engage in legal practice. Actions that are not legal services include clerical or administrative tasks, selling legal documents or advising of incidental legal requirements. A small variety of exemptions exist, including in connection with a conveyancing business. The *Conveyancers Act 2006* (Vic) defines what is or is not conveyancing work.

#### Seeking Legal Advice

Clerks and administrative staff, as 'employees of a legal office' must follow strict rules concerning responses to approaches to them, be it by phone or in person. Clerical and administrative officers **are not allowed to give legal advice**. The primary rule is that:

*You cannot do anything a lawyer would do, unless you are employed by a legal practitioner or lawyer and instructed by them to do so.*

As part of the standard triage procedure at Kellehers Australia, all of our law clerks are meticulously trained to listen carefully and sensitively to new callers but to explicitly say "I cannot give you advice." In many cases, substantial pressures are put on staff to bend to the needs of a prospective client – often this is so because our telephone clerks are the front line and front face of the office and have a strong degree of legal knowledge and training.

Kellehers Australia views the matter as primarily one of respect: respect for the trained professional that is a lawyer, respect for the law clerk as a conscientious and trained staffer and, finally, respect for the caller who is often in a difficult and stressful situation. It is important to be aware that legal services exist for all persons in Australia. Handbooks are available for consumers to help them understand legal issues (see [The Law Handbook](#), Fitzroy Legal Service).

Law staff can also find themselves asked to help friends with legal problems. People at parties are a frequent highlight. All Kellehers Australia staff are trained that they never give advice or any opinion whatsoever except to encourage the person to seek good legal advice.

Payment is irrelevant. The key issues that face our staff are:

- Would the person think that they are getting legal advice (what would their expectation be)?
- What would a reasonable person think?

As a rule WE JUST DON'T DO IT. So next time you speak to a friend working in a legal office, be aware of the responsibility they carry.

The solution is simple – seek sound legal advice.

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This fact sheet is intended only to provide a summary and general overview on matters of interest. It does not constitute legal advice. You should always seek legal and other professional advice which takes account of your individual circumstances.

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