

NOTICE OF DETERMINATION

A notice made under s 318 of the Legal Profession Uniform Law (Victoria).

Complainant: Victorian Legal Services Commissioner
Respondent Lawyer: [REDACTED]
Ref: [REDACTED]

ORDERS

Pursuant to s 299(2) of the *Legal Profession Uniform Law (Victoria)* ("the Uniform Law"), I have decided that the Respondent Lawyer has engaged in unsatisfactory professional conduct and I make the following order –

- a) The Respondent Lawyer is cautioned pursuant to s 299(1)(a) of the Uniform Law.

STATEMENT OF REASONS

BACKGROUND

1. The Respondent Lawyer was admitted to practice in Victoria on 16 December 2009.
2. The Respondent Lawyer applied for her first practising certificate on 18 August 2016.
3. On 17 August 2016, the Legal Services Board (the Board) received an email from the Respondent Lawyer requesting information on how to apply for a practising certificate. In the email the Respondent Lawyer disclosed that she had been working as a corporate practitioner in Victoria for the last six years (2010 to 2016).
4. Upon further investigation by Board staff it became apparent that the Respondent Lawyer had engaged in legal practice without a valid practising certificate.
5. A Board staff member replied to the Respondent Lawyer advising that Board records indicated she did not hold a practising certificate between 2010 and 2016. She was also advised that if she is engaging in legal practice she must hold a valid practising certificate and that engaging in legal practice without a certificate is a suitability matter.
6. The Respondent Lawyer was advised to immediately apply for grant of a Victorian practising certificate and it was recommended that she inform the Board of her oversight by way of a disclosure.
7. On 18 August 2016, the Respondent Lawyer applied for her first practicing certificate and provided the Board with a written disclosure.
8. After reviewing the Respondent Lawyer's written statement, it was considered that she had engaged in unqualified legal practice from 2010 until 2016.
9. On 25 September, the Legal Services Commissioner notified the Respondent Lawyer that in addition to unqualified legal practice her conduct appeared to amount to unsatisfactory professional conduct and proposed a caution as an appropriate determination.

10. On 3 October 2016, the Respondent Lawyer consented in writing to the proposal to determine her conduct as unsatisfactory professional conduct and order a caution.

ISSUES UNDER INVESTIGATION

11. A suitability matter file ([REDACTED]) was opened on 24 August 2016 to establish if the Respondent Lawyer had engaged in unqualified legal practice and to assess if she is fit and proper to hold a practising certificate.

RELEVANT LAW

12. Section 45(2) of the Uniform Law provides that the Board must not grant a practising certificate if considers that the applicant is not a fit and proper person to hold the certificate. In considering whether a person is fit and proper the Board may have regard to the matters set out in the *Legal Profession Uniform General Rules 2014* (see s 45(3) of the Uniform Law).
13. Most relevant for the purpose of considering the practitioner's suitability is Rule 13(d)(i) which states that the Board may have regard to "...whether the applicant has engaged in legal practice in Australia when not permitted to do so under a law ... of a State or Territory".
14. Section 10(1) of the Uniform Law states that an entity must not engage in legal practice unless it is a qualified entity. A qualified entity is defined in s 6 of the Uniform Law as an Australian legal practitioner, and an Australian legal practitioner is defined, in turn, as someone who holds a current practising certificate.
15. The penalty for breach of this provision is 250 penalty units or imprisonment for two years, or both. The objectives of the unqualified legal practice provisions is to ensure that legal work is carried out only by those who are properly qualified and entitled to do so and to protect clients of law practices (s 9 of the Uniform Law).
16. Section 2.2.2 of the now repealed *Legal Profession Act 2004* also prohibited a person from engaging in legal practice unless that person is an Australian lawyer with a current practising certificate.
17. Section 296 of the Uniform Law states that unsatisfactory professional conduct includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expected of a reasonably competent lawyer.
18. Section 298(a) of the Uniform Law provides that conduct consisting of a contravention of the Uniform Law is capable of constituting unsatisfactory professional conduct.

FINDINGS OF FACT ON ISSUES UNDER INVESTIGATION

19. The key issue under determination is whether the Respondent Lawyer engaged in unqualified legal practice.
20. The Respondent Lawyer argued in her written statement that;
 - A. She was not required to hold a practising certificate to provide legal advice to her employer and related entities;

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- B. Corporate practitioners in Victoria were not required to hold a practising certificate until 1 July 2017;
 - C. Around only 50% of work undertaken was work of a legal nature.
21. The Respondent Lawyer was mistaken in believing that it was not compulsory to hold a practising certificate as a corporate practitioner. Corporate practitioners in this jurisdiction have always been required to hold a valid practising certificate.
22. It appears that the Respondent Lawyer was mistaken with NSW legislation that affords corporate practitioners a two-year grace period effective from 1 July 2015 to obtain a corporate practising certificate.
23. Whilst it was acknowledged that a certain amount of work undertaken by the practitioner may not be considered legal work, it is evident that the practitioner engaged in legal practice in Victoria without a valid practising certificate in breach of s 10 of the Uniform Law.

DETERMINATION & REASONS

24. Having considered all of the evidence and relevant law, and having found that the Respondent Lawyer engaged in unqualified legal practice for such a length of time so as to amount to unsatisfactory professional conduct, I determine that it is fair and reasonable in all the circumstances to make the orders detailed above.
25. The Respondent Lawyer's consent to this course of action and orders was also a reason for this determination.

APPEAL

26. Pursuant to s 314 of the Uniform Law, a respondent lawyer or a legal practitioner associate of a respondent law practice may, in accordance with the applicable legislation appeal to the Victorian Civil and Administrative Tribunal, or seek a review by the VCAT, of this determination made under s 299 of the Uniform Law.

NON-COMPLIANCE

27. A failure to comply with a determination made under s 299 is capable of constituting unsatisfactory professional conduct or professional misconduct pursuant to s 298 (h) of the Uniform Law.

Michael McGarvie
Legal Services Commissioner
Date: 3/11/2016

