

NOTICE OF DETERMINATION

A notice made under section 318 of the *Legal Profession Uniform Law* (Victoria) ("the Uniform Law").

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

ORDERS

Pursuant to s 299(2) of 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 1 March 1978.
2. The Respondent Lawyer was granted his first practising certificate on 1 April 1987.
3. On 16 December 2016, the Respondent Lawyer contacted the Victorian Legal Services Board ("the Board"), informing a Board Representative that he had been engaging in legal practice in this jurisdiction without a valid practising certificate.
4. The Respondent Lawyer was advised to apply for a grant of a practising certificate immediately via LSB Online and forward a statement in writing to the Board disclosing the matter.
5. On the same date, the Respondent Lawyer submitted a grant application for a principal practising certificate without trust authorisation, attaching a written statement to the Board disclosing a period of unqualified legal practice.
6. After reviewing the Respondent Lawyer's written statement, it was considered that he had engaged in unqualified legal practice without a valid practising certificate from 1 July 2016 until 15 December 2016.
7. On 22 December 2016, the Victorian Legal Services Commissioner notified the Respondent Lawyer that his conduct appeared to amount to unsatisfactory professional conduct and proposed a caution as an appropriate determination.
8. On 2 January 2017, the Respondent Lawyer consented in writing to the proposal to determine his conduct as unsatisfactory professional conduct and order a caution.

ISSUES UNDER INVESTIGATION

9. A suitability matter file ([REDACTED]) was opened on 16 December 2016 to establish if the Respondent Lawyer had engaged in unqualified legal practice without a current practising certificate. The issue under investigation here is whether the conduct amounts to unsatisfactory professional conduct.

RELEVANT LAW

10. Section 45(2) of the Uniform Law provides that the Board must not grant a practising certificate if it 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* (“the Uniform Rules”), see s 45(3) of the Uniform Law.
11. Most relevant for the purpose of considering the Respondent Lawyer’s suitability is r 3(d)(i) of the Uniform Rules 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”.
12. 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.
13. The penalty for breach of this provision is 250 penalty units or imprisonment for two years, or both. The objective 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).
14. 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 expect of a reasonably competent lawyer.
15. 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

16. The key issue under determination is whether the Respondent Lawyer engaged in unqualified legal practice without a valid practising certificate.
17. The Respondent Lawyer submitted in his written statement that the failure to renew his practising certificate was “an oversight ... and was not, in any way intentional”. The Respondent Lawyer mistakenly believed that he had already completed his practising certificate renewal application form online. He further submitted that this matter only came to his attention when he attempted to lodge documents with the Federal Court of Australia.
18. It is clear that the Respondent Lawyer has breached section 10(1) of the Uniform Law by engaging in legal practice from 1 July 2016 until 15 December 2016 without a valid practising certificate.

DETERMINATION & REASONS

19. Having considered all of the evidence and relevant law, and having found that the Respondent Lawyer engaged in unqualified legal practice without a valid practising certificate so as to amount to unsatisfactory professional conduct; I determine that it is fair and reasonable in all the circumstances to make the order detailed above.
20. The Respondent Lawyer's consent to this course of action and orders was also a reason for this determination.

APPEAL

21. 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 ("VCAT"), or seek a review by the VCAT, of this determination made under s 299 of the Uniform Law.



Michael McGarvie
Victorian Legal Services Commissioner

Date: 17 January 2017