

NOTICE OF DETERMINATION

A notice made under s318 of the *Legal Profession Uniform Law (Victoria)*

Complainant: 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 1 March 1979.
2. The Respondent Lawyer applied for his first practising certificate on 1 January 1981.
3. On 15 November 2016, the Legal Services Board (the Board) became aware that the Respondent Lawyer was engaging in legal practice and operating a trust account in this jurisdiction without a valid practising certificate.
4. On 15 November 2016, a Board Representative contacted the Respondent Lawyer and advised him that he was not holding a valid practising certificate.
5. 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.
6. On 15 November 2016, the Respondent Lawyer submitted a grant application for a principal practising certificate with trust authorisation and emailed a written statement to the Board disclosing a period of unqualified legal practice.
7. After reviewing the Respondent Lawyer's written statement, it was considered that he had engaged in unqualified legal practice and operated a trust account without a valid practicing certificate from 1 July 2016 until 15 November 2016.
8. On 21 November 2016, the 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.
9. On 1 December 2016, the Respondent Lawyer consented in writing to the proposal to determine his conduct as unsatisfactory professional conduct and order a caution.

ISSUES UNDER INVESTIGATION

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

RELEVANT LAW

11. 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.
12. 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".
13. 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.
14. 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).
15. Section 150 (a) of the Uniform Law states that a law practice must not receive trust money unless a principal of the law practice holds an Australian practising certificate authorising the receipt of trust money. The penalty for breach of this provision is 250 penalty units.
16. 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.
17. 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

18. The key issues under determination are whether the Respondent Lawyer engaged in unqualified legal practice and operated a trust account without a valid practising certificate.
19. The Respondent Lawyer submitted in his written statement that on 22 April 2016 the Practice Manager at Rogers & Gaylard Lawyers made payment to the Board for the renewed practising certificates of all practitioners at Rogers & Gaylard Lawyers. The Respondent Lawyer mistakenly believed that the Practice Manager had also completed a renewal application form on his behalf.

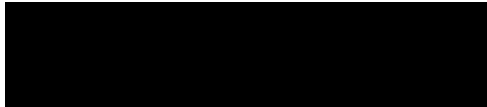
20. It is clear that the Respondent Lawyer has breached section 10(1) of the Uniform Law by engaging in legal practice from 1 July 2016 until 15 November 2016 without a valid practicing certificate.
21. Furthermore, it is clear that the law practice continued to operate a trust account from 1 July 2016 until 15 November 2016 in breach of s150 of the Uniform Law.

DETERMINATION & REASONS

22. Having considered all of the evidence and relevant law, and having found that the Respondent Lawyer engaged in unqualified legal practice and operated a trust account 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 orders detailed above.
23. The Respondent Lawyer's consent to this course of action and orders was also a reason for this determination.

APPEAL

24. 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.



Michael McGarvie
Legal Services Commissioner
Date: 15 December 2016