

Notice of Determination

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

Complainant: Commissioner
Respondent Lawyer: [REDACTED]
Ref: [REDACTED]

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 2 April 1970.
2. The Respondent Lawyer's first practising certificate was issued on 1 January 1981.
3. In June 2016, an investigator from the Law Institute of Victoria ('LIV'), [REDACTED] ('Trust Inspector') attended [REDACTED] ('the law practice') to conduct an Investigation Risk Assessment Review. The Trust Inspector noted in her report that the law practice was intermixing trust money with other money.
4. On 4 July 2016, the law practice wrote to the Legal Services Board ('the Board') advising of the trust account inspection findings and providing an explanation of the non-trust money held by the Law Practice for the [REDACTED] 'Society' a society of which the respondent lawyer is treasurer.
5. On 19 August 2016, the Board received an application from the Law Practice for exemption from the requirement to ensure that trust money is not mixed with other money pursuant to section 146 of the Uniform Law.
6. On 12 October 2016, the Legal Services Commissioner as delegate of the Board notified the Respondent lawyer of his preliminary view against granting the exemption from the requirement to comply with section 146 of the Uniform Law. Additionally, the Respondent Lawyer's conduct appeared to amount to unsatisfactory professional conduct and a caution was proposed as an appropriate determination.
7. On 3 November 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

8. An exemption file ([REDACTED]) was opened on 22 August 2016 to consider the application for exemption from the requirement to ensure that trust money is not intermixed with other money pursuant to section 146 of the Uniform Law.

RELEVANT LAW

9. Section 146 of the Uniform Law restricts a Law Practice from mixing trust money with other money unless authorised to do so by the Board. The penalty for breach of this provision is 50 penalty units.
10. The meaning of trust money is defined in section 129 of the Uniform Law and is money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice.
11. Section 130(4) of the Uniform Law provides that the Board may exempt a law practice from complying with any of the provisions of Part 4.2 – Trust Money and Trust Accounts, subject to any conditions that the Board may impose.
12. 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.
13. 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

14. Non-trust money has been received by the law practice since 25 July 2003 in relation to the Society.
15. The money received from the Society is not trust money as it is not money entrusted to the law practice in the course of or in connection with the provision of legal services by the law practice.
16. In his letter dated 3 November 2016, the Respondent Lawyer states that *“there was no intent to breach the Act and unfortunately I had not turned my mind to the correct issues at the time the ledger was opened”*.

DETERMINATION & REASONS

17. Having considered all of the evidence and relevant law, and having found that the Respondent Lawyer intermixed trust money with other money 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.
18. The Respondent Lawyer’s consent to this course of action and orders was also a reason for this determination.

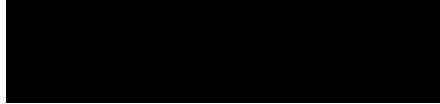
APPEAL

19. Pursuant to section 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

20. 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:17/11/2016