

## NOTICE OF DETERMINATION

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

**Complainant: Victorian Legal Services Commissioner**  
**Respondent Lawyer / Law Practice:** [REDACTED]  
**Case reference:** [REDACTED]

### Orders

Pursuant to s299(2) of the Uniform Law, I have decided that the Respondent Lawyer has engaged in unsatisfactory professional conduct and I make the following order –

the Respondent Lawyer is cautioned pursuant to s299(1)(a).

### Statement of Reasons

#### **Background**

1. The Respondent Lawyer was admitted to practice in New South Wales on 27 May 2005, and her first Victorian practising certificate was issued on 18 April 2016.
2. On 20 May 2016, the Respondent Lawyer contacted the Victorian Legal Services Board (the Board) to discuss the process of applying for an exemption from supervised legal practice. At that time, the Respondent Lawyer advised staff that she had been working for [REDACTED] as a corporate practitioner between 2010 and 2014.
3. The Board's staff member then advised the Respondent Lawyer that Board records indicated that she did not hold a practising certificate between 2010 and 2014. She was informed that if she was engaging in legal practice she must hold a valid practising certificate and that engaging in legal practice without a certificate is a matter going to suitability to practice. It was recommended that she inform the Board of her oversight by way of a disclosure.
4. On 30 May 2016 via email, the Respondent Lawyer submitted a written statement to the Board outlining her reasons for failing to hold a valid practising certificate.
5. On 29 August 2016, the Complainant notified the Respondent Lawyer that in addition to unqualified legal practice her conduct appeared to amount to unsatisfactory professional conduct. The Complainant proposed a caution as an appropriate determination of the Respondent Lawyer's conduct.
6. On 12 September 2016, the Respondent Lawyer consented in writing to the proposal to determine her conduct as unsatisfactory professional conduct and order a caution.

#### **Issue under investigation**

7. Whether the Respondent Lawyer engaged in a period of legal practice without a practicing certificate.

#### **Relevant law**

8. Section 10(1) of the Uniform Law states an entity must not engage in legal practice, unless it is a qualified entity. A qualified entity is defined in s6 of the Uniform Law as an Australian

legal practitioner, and an Australian legal practitioner is defined as someone who holds a current practising certificate.

9. The penalty for breach of this provision is 250 penalty units or imprisonment for two years, or both. The objectives of these 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 (s9 of the Uniform Law).
10. Section 2.2.2 of the now repealed *Legal Profession Act 2004* also prohibited a person from engaging in legal practice unless that person was an Australian lawyer with a current practising certificate.
11. 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.
12. 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**

13. The Respondent Lawyer submitted in her written statement that;
  - a) The work undertaken during the relevant period was predominantly centred on contracts between entities overseas.
  - b) Her only work on an Australian entity, centred on a contract with [REDACTED], in which her role was largely about negotiating changes and working with counterparts within [REDACTED] to draft mutually acceptable positions. All final drafting was done by external legal advisors.
  - c) She worked part-time and took 1.5 years of maternity leave during the relevant period.
14. Whilst it was acknowledged that an amount of the work undertaken by the Respondent Lawyer is not relevant, it is evident that she engaged in legal practice in Victoria without a valid practising certificate in breach of s10 of the Uniform Law for at least 2.5 years.

#### **Determination & Reasons**

15. Having considered all of the evidence and relevant law, and having found that the Respondent Lawyer engaged in legal practice without a valid practising certificate 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.
16. The Respondent Lawyer consents to this course of action and order.

#### **Appeal or Review**

17. A respondent lawyer may seek an appeal or review in accordance with s314(1)(b) of the Uniform Law (pursuant to jurisdictional legislation) of a determination made under s299 in relation to a disciplinary finding. Division 3 of the *Victorian Civil and Administrative Tribunal Act 1998* allows for that review by the VCAT.

Michael McGarvie  
**Legal Services Commissioner**  
**7 November 2016**

