

NOTICE OF DETERMINATION

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

Complainant: Legal Services Commissioner

Respondent Lawyer: [REDACTED]

Ref: [REDACTED] / [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 12 December 2006.
2. The Respondent Lawyer applied for her first practising certificate on 22 December 2006.
3. On 15 November 2016, the Legal Services Board (the Board) became aware that the Respondent Lawyer was engaging in legal practice without being a qualified entity
4. On 15 November 2016, a Board Representative contacted the Respondent Lawyer and advised her that she was not holding a current 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.
7. After reviewing the Respondent Lawyer's written statement, it was considered that she had breached the Uniform Law.
8. On 21 November 2016, the Legal Services Commissioner notified the Respondent Lawyer that her conduct appeared to amount to unsatisfactory professional conduct and proposed a caution as an appropriate determination.

ISSUES UNDER INVESTIGATION

9. A suitability matter file ([REDACTED]) was opened on 16 November 2016 to establish if the Respondent Lawyer had breached the Uniform Law.

10. The issue under investigation here is whether that 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 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.
14. 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

15. The key issues under determination are whether the Respondent Lawyer breached the Uniform Law.
16. The Respondent Lawyer argued in her written statement that she believed her practising certificate was renewed and the prescribed fee paid at the same time as the renewal of her Professional Indemnity Insurance.
17. The Respondent Lawyer states that there must have been an electronic error as she recalls completing and submitting her renewal.
18. The Respondent Lawyer acknowledges that she should have checked her emails to ensure a copy of her renewed certificate had been issued.
19. Upon further investigation, the Board established that the Respondent Lawyer was sent renewal notices on 21 March 2016, 12 April 2016, 26 April 2016, 28 April 2016, 17 May 2016 and 31 May 2016.
20. All renewal notices were sent the Respondent Lawyer's registered email address ([REDACTED]).
21. It is clear that the Respondent Lawyer breached the Uniform Law due to an honest and reasonable mistake.

DETERMINATION & REASONS

22. Having considered all of the evidence and relevant law, and having found that the Respondent Lawyer breached the Uniform Law 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:22 December 2016