



Legal Services **COMMISSIONER**

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Confronting Regulatory Forgiveness - a Case Study from the Victorian Regulator

Wellness for Law Forum – Brisbane QLD

Friday 7 February – Session Regulation & lawyers' health



Commissioner

- 3 statutory objectives
 - Handle complaints about lawyers
 - Education the profession
 - Educate the public
- Complaints 2,000 pa
- 15% costs; 35% conduct; 50% other
- Conciliation vs charges



Board

- Registry + Trust accounts
- Fidelity Fund + Invested funds
- External Interventions (+ LIV)
- Practising Certificates (+ LIV + BAR)
- Suitability (+ LIV + BAR)
- Foreign lawyer applications
- CPD (+ LIV + BAR)
- ILPs and MDPs
- Policy development
- Financial management



Uniform Laws

- Keep Vic LSB and LSC (and can delegate)
- Keep NSW Law Society and OLSC
- New determinative powers for LSC
 - costs; compensation orders; unsatisfactory professional conduct
- New law firm audit powers for LSB
- PC for Government lawyers
- Phase out Managed Investment Schemes
- New Council and Uniform Commissioner in Sydney



Mental Health in the Law

- *AFR August 2010:*

“The saddest profession of them all”

- 1 in 5 lawyers will face a bout of mental illness during their professional lives



Board approach to mental illness

- Mental impairment is a suitability issue
- Most don't disclose – fear loss of license
- Medical advice is to disclose, discuss and treat
- Unlikely lawyers will disclose to family and colleagues if haven't told the regulator
- LSB wishes to limit the need to disclose to it to help disclosure to others



Mental Health Policy

- LPAct: *'material mental impairment'* is disclosable (capacity rather than conduct)
- **Policy** - No requirement to disclose if:
 - Do not have a current 'material mental impairment' or
 - Have an adequately managed mental impairment that does not affect capacity to engage in legal practice
- Focus on functioning/capacity, encourage lawyers to seek treatment



Mental Health Help

- Help for mental health issues:
 - Family, friends, colleagues
 - Health practitioner
 - LawCare
 - BarCare
 - Beyond Blue
 - The Black Dog Institute
 - The Tristan Jepson Memorial Foundation
 - Vic Lawyers Health Line



Case 1: achieved fair result (AM)

- Barrister no tax 17 years
- 2003 depression, alcohol, gambling + marriage breakdown
- Convicted under Tax Act
- 2006 rehabilitation and fully complied with tax obligations
- 2007 secured barrister work with DPP and disclosed all
- 2008 went bankrupt – monthly payments and full cooperation with Trustee in bankruptcy



Case 1: achieved fair result (AM)

- Court accepted addictions as a mental illness
- Pleaded to misconduct
- By consent: 50K fine + reprimand + costs + show medical evidence of fitness every 6 months for 5 years
- Kept PC
- **Note:** *clear diagnosis of mental illness recognised and acted upon by lawyer*



Case 2: happened by chance (KR)

- Country Victorian solicitor
- 2004 suicide attempt at Uni – limited help, no medication
- Solicitor from 2007 – 2009
- 2009 suicide attempt and hospitalisation
- Poor management and denial of illness
- Ceased work, held PC
- June-Sept 2009 impersonated another in Telstra bill dispute



Case 2: happened by chance (KR)

- Complaint led to misconduct charges
- Plea of guilt + revelation of unmanaged illness + medical opinion: *“no moral or ethical deficiencies”*
- Fine and reprimand and costs
- Charges became a positive turning-point for this lawyer’s life
- Used shock of offences as opportunity for renewal
- January 2010 – solicitor then partnership + helps LSC message
- **Note:** *clear diagnosis of mental illness recognised and acted upon by lawyer*



Case 3: tried and failed (JM)

- 2009 – 2012 17 complaints - poor communications, no calls back, retaining files, ignoring LSC
- 2009 - charges pending
- 2010 depression and marriage break-up then sought LSC's help
- LSC took compassionate course through undertakings and consent to appoint practice adviser



Case 3: tried and failed (JM)

- Failed to respond, complaints continued, undertakings breached
- Charged with misconduct and started receivership actions
- PC suspended 1 month, lost PC with trust for 18 months, more CPD training, reprimand
- Sold practice to avoid receivership
- **Note:** *No clear diagnosis of mental illness and unclear to court how much it contributed to misbehaviour – certainly evidence of denial by lawyer*



Case 4: too late (MS)

- Barrister – tax deceit over \$1M
- Offences under Tax Act
- Avoid and don't admit + misled Bar Ethics Committee
- Procrastination delayed investigation and prosecution
- Repaid 700k, still owes 600k
- Practitioner not willing to give own evidence of fitness to practise



Case 4: too late (MS)

- Misconduct and Unsatisfactory Professional Conduct finding
- 3 year suspension
- Appealed as to severity
- Appeal prompted first-time admission of ill-health
- Adjusted penalty to 2.5 years no PC (part suspended)
- Orders to fix tax and wellbeing issues over 5 years