

**Policy**

**Compliance and Enforcement**

<b>Introduction</b>	1.1	This policy outlines the Victorian Legal Services Board and Commissioner’s approach to compliance and enforcement under the <i>Legal Profession Uniform Law Application Act 2014</i> (Application Act), including the Legal Profession Uniform Law (Uniform Law).
	1.2	This policy provides a general overview of the compliance and enforcement actions that may be taken by the Board and Commissioner. More detailed guidance is provided in the Compliance and Enforcement Guidelines that sit under this policy.
	1.3	Accordingly, this policy should be read with: <ul style="list-style-type: none"> <li>• Compliance and Enforcement (Criminal Prosecution, Regulatory Sanctions and Removal from the Roll) Guidelines; and</li> <li>• Compliance and Enforcement (Disciplinary Actions) Guidelines.</li> </ul>
	1.4	As regulators of the legal profession, the Board and Commissioner’s objectives include: <ul style="list-style-type: none"> <li>• Ensuring standards are maintained in the legal profession;</li> <li>• Protecting clients and consumers of legal services;</li> <li>• Educating lawyers, consumers and the community (this includes recognising and affirming best practice and good behaviour).</li> </ul>
	1.5	The Uniform Law confers a range of compliance and enforcement functions on the Board and Commissioner to enable them to meet these objectives.
<b>Compliance and Enforcement ‘Tools’</b>	2.1	The Board and Commissioner have a regulatory interest in behaviour which falls short of the professional standards set by legislation and rules, the common law and by the profession itself.
	2.2	A range of compliance and enforcement ‘tools’ may be used to address such behaviour. The tool used will depend on the nature and seriousness of the conduct and its consequences, the circumstances of each case, and the objectives noted above.
	<b>Education and information</b>	
	2.3	Educational and informational activities are commonly used to engage with professional associations and other interest groups.
	2.4	As enforcement and compliance ‘tools’ they are generally employed in response to breaches of the Application Act, Uniform Law or Legal Profession Uniform Rules (Uniform Rules) that may be classified as minor, technical or administrative and where there is little risk of any detriment to consumers. They can be used in conjunction with unsatisfactory professional conduct findings and may, in that context, be identified as negotiated sanctions. Such ‘tools’ are unlikely to be appropriate where a breach involves dishonesty, or is otherwise deliberate in nature.
2.5	Targeted educational activities may include: <ul style="list-style-type: none"> <li>• Formally or informally liaising with a lawyer or class of lawyers.</li> <li>• Recommending a lawyer undertake an educational activity (‘counselling’).</li> </ul>	

**Negotiated Sanctions**

- 2.6 Negotiated sanctions may be pursued if there is evidence that a lawyer has breached the Application Act, Uniform Law or Uniform Rules. A lawyer's willingness to negotiate and likely compliance with negotiated sanctions is critical. This 'tool' will not generally be used if a lawyer has previously not complied with a negotiated sanction.
- 2.7 Negotiated sanctions may include:
- Seeking an undertaking from a lawyer;
  - Consenting to a reprimand;
  - Imposing or varying conditions on a practising certificate with the lawyer's consent;
  - Cancelling a practising certificate with the lawyer's consent.

**Disciplinary Sanctions**

- 2.8 Disciplinary sanctions are available when, following an investigation, the behaviour of a lawyer is found to be likely to amount to professional misconduct or unsatisfactory professional conduct.

- 2.9 Disciplinary sanctions include:
- Where the Commissioner is satisfied following an investigation that the alleged conduct may amount to unsatisfactory professional conduct the Commissioner may make a determination against the lawyer, including an order to:

- caution or reprimand the lawyer;
- require the lawyer to apologise;
- require the lawyer to redo the work;
- require the lawyer to undertake training;
- fine the lawyer;
- recommend to the Board, the imposition of a condition on the lawyer's practising certificate.

The Commissioner may also apply to the Victorian Civil & Administrative Tribunal (VCAT) for an order against the lawyer where the Commissioner is satisfied following an investigation that either the alleged conduct may amount to:

- unsatisfactory professional conduct that would be more appropriately dealt with by VCAT; or
- professional misconduct.

VCAT may make a range of orders including those above and in addition a fine, imposition of various management and practising certificate conditions, a recommendation for removal from the roll and/or a payment of compensation.

All orders made, except an order cautioning the lawyer, are published on the Register of Disciplinary Action available to members of the public on the Board and Commissioner's website.

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**Regulatory Sanctions**

- 2.10 If there is evidence that a lawyer has committed a relatively serious offence (that is, or is not, related to legal practice) which poses an actual or likely risk of consumer detriment, regulatory sanctions may be used.
- 2.11 Regulatory sanctions may include:
- Refusing to grant or renew a practising certificate;
  - Varying, suspending or cancelling a practising certificate;
  - Imposing conditions on a practising certificate;
  - Initiating external intervention;
  - Applying to VCAT for an order that a person pay a pecuniary penalty for contravening a civil penalty provision.

**Criminal Prosecution**

- 2.12 This 'tool' will only be employed in cases where there is admissible, substantial and reliable evidence that a serious offence has been committed by a lawyer.
- 2.13 Serious offences include:
- Engaging in unqualified legal practice;
  - Destroying regulated property;
  - Causing a trust account deficiency without reasonable excuse;
  - Other serious offences not related to legal practice, for example, theft.

**Removal from the roll**

- 2.14 Removal from the roll prevents a lawyer from working, and earning their living, as a lawyer. Accordingly, this 'tool' is generally only pursued following a series of disciplinary breaches or a very serious breach. This includes when:
- A lawyer has been found guilty of a serious offence in Australia;
  - A lawyer has a demonstrated history of not being a fit and proper person;
  - A lawyer has been removed from an interstate roll.

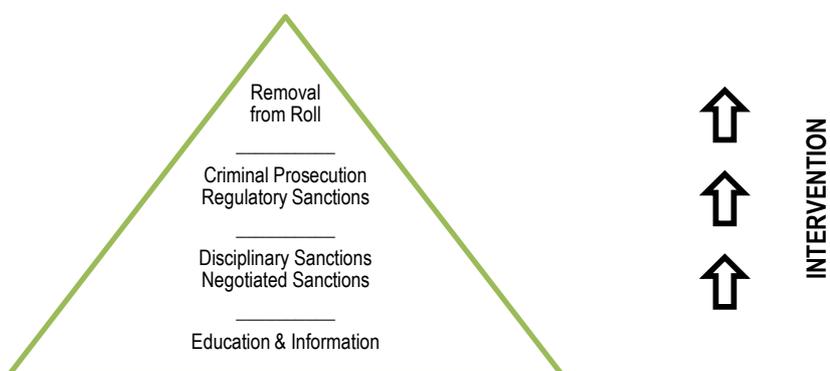
**When Compliance and Enforcement 'tools' will be used**

- 3.1 The Board and Commissioner respond to misbehaviour in a way that is both proportionate and efficient. The compliance and enforcement 'tool' used by the regulator will be no more than is required to meet its statutory objectives.
- 3.2 Accordingly, the Board and Commissioner adopt a graduated approach to compliance and enforcement. This means that, generally, the more serious the misbehaviour, the more interventionist the response.

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- 3.3 Educational and informational tools are the most commonly used. This reflects the fact that most lawyers are willing and able to comply with their professional obligations. Educational and informational tools are designed to assist lawyers in doing so.
- 3.4 A greater level of intervention is applied to those lawyers who attempt to, but do not always, meet their obligations. The regulator’s intention here is to help those lawyers to comply.
- 3.5 The highest level of intervention is reserved for those lawyers who do not wish, and/or have chosen not, to meet their professional standards.

**Board and Commissioner ‘Compliance and Enforcement’ Pyramid**



- 3.6 In choosing the most appropriate ‘tool’ the following matters should be considered:
  - the seriousness of the conduct, including whether the offence is of a ‘technical’ nature only;
  - the need to protect the public from the lawyer;
  - the need to maintain public confidence in the regulation of the legal profession;
  - the need to deter other lawyers;
  - whether the conduct raises a matter of general or special importance;
  - whether the conduct involved dishonesty, an abuse of power and/or criminality;
  - the lawyer’s personal and professional circumstances, including the lawyer’s health, age, years of experience and financial situation;
  - whether the lawyer acknowledges their conduct and/or has shown remorse;
  - whether the lawyer made a mistake and is unlikely to repeat the conduct;
  - whether the lawyer is cooperative toward the regulator;
  - whether the conduct is systemic and affects, or may affect, a class of people;
  - whether a guilty finding may entitle those adversely affected to compensation;
  - whether there is a history of complaints against the lawyer concerning similar conduct;

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		<ul style="list-style-type: none"> <li>the likely length, expense, effectiveness and potential outcomes of using a particular 'tool';</li> <li>whether there are grounds for special leniency;</li> <li>whether the lawyer has offered to make restitution;</li> <li>whether the client has actually suffered loss;</li> <li>any other relevant consideration.</li> </ul>
<b>Obligations</b>	<p>4.1 The Board and Commissioner are committed to the following laws and guidelines in performing their compliance and enforcement functions:</p> <ul style="list-style-type: none"> <li>Model Litigant Guidelines;</li> <li>Confidentiality and privacy legislation;</li> <li>Anti-discrimination legislation.</li> </ul> <p><b>Model Litigant Guidelines</b></p> <p>4.2 The Board and Commissioner's obligations under the Victorian Model Litigant Guidelines include to:</p> <ul style="list-style-type: none"> <li>Act fairly and consistently in handling claims and litigation;</li> <li>Deal with claims promptly and without unnecessary delay;</li> <li>Seek to avoid and limit legal proceedings if reasonable;</li> <li>Keep litigation costs to a minimum.</li> </ul> <p>4.3 The Model Litigant Guidelines can be found at <a href="http://www.justice.vic.gov.au/home/the+justice+system/justice+legislation/victorian+model+litigant+guidelines">http://www.justice.vic.gov.au/home/the+justice+system/justice+legislation/victorian+model+litigant+guidelines</a></p> <p><b>Confidentiality and Privacy Legislation</b></p> <p>4.4 Information provided to the Board and Commissioner is handled in accordance with the Board and Commissioner's Privacy Policy and in accordance with the <i>Privacy and Data Protection Act 2014</i> and the <i>Health Records Act 2001</i> as well as the stringent provisions of the Application Act, Uniform Law and Uniform Rules. The Board and Commissioner may delegate certain functions or activities to authorised bodies and, as a result, will share information with those bodies in relation to those delegated functions or activities.</p>	

## Guidelines

## Compliance & Enforcement (Disciplinary Actions)

<b>Introduction</b>	1.1	The Legal Profession Uniform Law (Uniform Law) provides a scheme for the handling of complaints and the discipline of lawyers.
	1.2	This document provides guidance on the disciplinary actions that may be taken against a lawyer. It should be read with the Compliance and Enforcement Policy.
	1.3	These guidelines are designed to facilitate a consistent approach to the taking of disciplinary action but must be applied flexibly. The guidelines are not exhaustive and the Victorian Legal Services Commissioner (the Commissioner) may consider any other relevant matter in deciding what action to take against a lawyer.

<b>Legislative Framework</b>	2.1	The Commissioner was established by the <i>Legal Profession Uniform Law Application Act 2014</i> (Application Act) to receive and handle complaints about lawyers.
	2.2	Part 5.4 of the Uniform Law concerns disciplinary complaints. The Commissioner must conduct a preliminary assessment of each complaint and may also investigate the conduct of a lawyer on his or her own motion in relation to disciplinary matters.
	2.3	Following an investigation, a range of disciplinary actions may be taken by the Commissioner. The Commissioner will determine the appropriate disciplinary action based on the circumstances of each case and the requirements of the Uniform Law.

### Key Terms

#### Unsatisfactory professional conduct

3.1	“Unsatisfactory professional conduct” is defined by s.296 to include 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.
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#### Professional misconduct

3.2	<p>“Professional misconduct” is defined by s.297 to include:</p> <ul style="list-style-type: none"> <li>unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and</li> <li>conduct of a lawyer, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.</li> </ul>
3.3	The Uniform Law also sets out conduct that constitutes or is capable of constituting unsatisfactory professional conduct or professional misconduct in ss.20(5), 35(2), 123, 178(1)(d), 181(8), 183(3), 290(3), 298 and 466(6).
3.4	As the statutory definitions are inclusive, they preserve the option of charges being laid at common law for misconduct, i.e. “conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency.” <sup>1</sup>

<sup>1</sup> (*Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750; *Re A Solicitor* [1960] VR 617).

## Guidelines

## Compliance & Enforcement (Disciplinary Actions)

<b>Threshold issues</b>	4.1	<p>Before the Commissioner can take any disciplinary action against a lawyer, the Commissioner needs to be satisfied that:</p> <ul style="list-style-type: none"> <li>• the lawyer has engaged in unsatisfactory professional conduct; or</li> <li>• the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the Victorian Civil and Administrative Tribunal (VCAT); or</li> <li>• the alleged conduct may amount to professional misconduct.</li> </ul>
	4.2	The decision as to whether a threshold is met requires a consideration of the strength of the case and in particular the evidence available to sustain it.
	4.3	The more serious an allegation, the more cogent must be the evidence before the Commissioner or VCAT finds that the allegation is established: <i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336.
	4.4	The standard of proof generally applied by the Commissioner and VCAT is the civil standard, i.e. the balance of probabilities.

### Disciplinary Actions

#### Professional misconduct

5.1	The Commissioner may apply to VCAT for an order against a lawyer subject to an investigation if satisfied that the alleged conduct may amount to professional misconduct.
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#### Unsatisfactory professional conduct

5.2	The Commissioner may take a range of actions against a lawyer where satisfied that the lawyer has engaged in unsatisfactory professional conduct or where the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by VCAT.
5.3	<p>In deciding what action to take in relation to unsatisfactory professional conduct, consideration will be given to a number of factors including:</p> <ul style="list-style-type: none"> <li>• the seriousness of the conduct;</li> <li>• whether the conduct raises a matter of general or special importance;</li> <li>• whether the conduct involved dishonesty, an abuse of power and/or criminality;</li> <li>• the lawyer's personal and professional circumstances;</li> <li>• whether the lawyer acknowledges their unsatisfactory conduct and/or has shown remorse;</li> <li>• whether the lawyer made a mistake and is unlikely to repeat the conduct;</li> <li>• whether the conduct is systemic and affects, or may affect, a class of people;</li> <li>• whether there is a history of complaints against the lawyer concerning similar conduct.</li> </ul>

## Guidelines

## Compliance & Enforcement (Disciplinary Actions)

### Orders or other actions

- 5.4 Following an investigation, where the Commissioner is satisfied that the lawyer has engaged in unsatisfactory professional conduct, the Commissioner may:
- caution or reprimand the lawyer;
  - require the lawyer to apologise;
  - require the lawyer to redo the work;
  - require the lawyer to undertake training;
  - fine the lawyer;
  - recommend to the Board that there be the imposition of a condition on the lawyer's practising certificate.
- 5.5 These actions are kept on the Commissioner's records so that if the lawyer is subsequently investigated it may influence what action is next taken against the lawyer. All orders made, except an order cautioning the lawyer, are published on the Register of Disciplinary Action available to members of the public on the Board and Commissioner's website.

### VCAT

- 5.6 Where the Commissioner is satisfied following an investigation that the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by VCAT, the Commissioner may apply to VCAT for an order against the lawyer.
- 5.7 The matters listed in paragraph 3.6 of the Compliance and Enforcement Policy are relevant to the decision to apply to VCAT, as are the objectives of the Uniform Law, in particular Chapter 5.

## Guidelines

## Compliance & Enforcement

### (Criminal Prosecution, Regulatory Sanctions and Removal from the Roll)

<b>Introduction</b>	1.1	These guidelines provide direction on the performance of compliance and enforcement functions, comprising removal from the roll, prosecutions, regulatory sanctions and education.
	1.2	These guidelines should be read with the Compliance and Enforcement Policy.
	1.3	These guidelines are designed to facilitate a consistent approach to compliance and enforcement but must be applied flexibly. The guidelines are not exhaustive and the Victorian Legal Services Board (the Board) must consider any other relevant matters. It may be appropriate to pursue more than one type of response at the same time.
	1.4	The guidelines: (1) set out appropriate enforcement responses in relation to a range of types of breaches; and (2) specify matters to be taken into account in relation to the conduct of criminal prosecutions and applications for removal from the roll of persons admitted to the legal profession.
<b>Legislative Framework</b>	2.1	The <i>Legal Profession Uniform Law Application Act 2014</i> (Application Act) provides that the objectives of the Board include: <ul style="list-style-type: none"> <li>• the effective regulation of the legal profession</li> <li>• the maintenance of professional standards</li> <li>• the protection of consumers</li> <li>• ensuring the adequate management of trust accounts.</li> </ul>
	2.2	The Legal Profession Uniform Law (Uniform Law) confers a range of compliance and enforcement functions and powers on the Board, to enable it to meet these objectives.
	2.3	The Board responds to breaches of the Application Act, Uniform Law and Legal Profession Uniform Rules (Uniform Rules), as well as to criminal and contempt offences.
	2.4	The Board will determine the appropriate enforcement response based on the circumstances of each case.
<b>Breach</b>	3.1	<b>Minor</b>  <i>Conduct</i>
	3.1.1	Breach is minor, technical or administrative and there is low risk of consumer harm.
	3.1.2	Breach does not involve dishonesty and does not appear to be deliberate nor systemic.
	3.1.3	Low risk of continued breach after provision of information.
	3.1.4	Lawyer has not been the subject of a warning or other more serious enforcement response before.

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**Compliance & Enforcement**

(Criminal Prosecution, Regulatory Sanctions and Removal from the Roll)

*Enforcement response*

3.1.5 Formally or informally liaising with a lawyer or class of lawyers.

3.1.6 Recommending a lawyer undertake further education.

**Breach**

4.1 **Reasonable Grounds for Suspecting**

*Conduct*

4.1.1 Reasonable grounds for suspecting a breach of the Application Act, Uniform Law or Uniform Rules has occurred.

*Enforcement response*

4.1.2 Disciplinary investigation.

4.1.3 Trust money/account contravention investigation.

4.1.4 Criminal offence (other than trust money/account contravention) investigation.

4.1.5 Compliance audit of a law practice.

**Breach**

5.1 **Clear Evidence**

*Conduct*

5.1.1 Clear evidence that a breach of the Application Act, Uniform Law or Uniform Rules has occurred.

*Enforcement response*

5.1.2 Negotiated sanctions may be appropriate if the lawyer:

- has indicated willingness to negotiate and is likely to comply with negotiated sanctions; and
- has not been the subject of a negotiated sanction or other more interventionist enforcement response before.

5.1.3 Negotiated sanctions may include:

- taking rectification steps by consent (eg. additional training).
- seeking an undertaking from lawyer.
- imposing conditions on, varying or cancelling, practising certificate at lawyer's request.

## Guidelines

## Compliance & Enforcement (Criminal Prosecution, Regulatory Sanctions and Removal from the Roll)

- 5.1.4 Regulatory sanctions may be appropriate if the breach:
- is relatively serious; and
  - poses actual or likely risk of consumer harm.
- 5.1.5 Regulatory sanctions may include:
- initiating a prosecution for a criminal breach of the Uniform Law.
  - seeking an injunction.
  - making a practising certificate decision:
  - imposing conditions on grant or renewal.
  - imposing, or varying, conditions pending criminal proceedings.
  - varying or revoking conditions during currency of certificate.
  - refusing grant or renewal.
  - cancelling or suspending.
  - immediately suspending.
  - restricting the making of further applications.
  - refusing to grant or renew, or amend, suspend or cancel foreign lawyer registration.
  - external intervention:
    - appointing a supervisor of trust money.
    - appointing a manager.
    - applying to the Supreme Court for appointment of receiver.
  - applying to disqualify a person from being a lay associate.
  - in relation to law practices :
    - applying to disqualify a practice from providing all or specified legal services.
    - applying to disqualify a person (other than a legal practitioner) from being a partner, director, officer, employee or agent of a law practice.

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### Criminal Prosecutions

### Legislative Framework

- 6.1 The Board may institute or continue a criminal prosecution, under s.154 of the Application Act, when:
- there is a reasonable prospect of a finding of guilt; and
  - the prosecution would be in the public interest.

## Guidelines

## Compliance & Enforcement (Criminal Prosecution, Regulatory Sanctions and Removal from the Roll)

### Conduct

- 6.2 Clear evidence that a criminal offence has been committed.
- 6.3 Offence is relatively serious or involves dishonesty.
- 6.4 Offender has committed a disciplinary or criminal offence before.
- 6.5 The following matters should be considered in addition to those listed in provision 3.6 of the Compliance and Enforcement Policy.

### Prospect of Finding Guilt

- 6.6 The Board must consider all relevant facts including, but not limited to, the following (as applicable):
- the availability and probative value of the evidence;
  - the availability, competence and credibility of any victim and/or other witnesses;
  - the admissibility and reliability of any confession or other evidence;
  - lines of defence that seem open to or have been claimed by the lawyer;
  - any other factors that affect the likelihood of a finding of guilt.

### Public Interest

- 6.7 The circumstances of the victim, including:
- their age, health, education or special circumstances;
  - their relationship to the lawyer;
  - the impact of the offending on them;
  - their attitude to the prosecution.
- 6.8 Urgency, including the need to act quickly to prevent:
- further offending;
  - the destruction of evidence;
  - dissipation of the proceeds of the offending;
  - the lawyer leaving Victoria;
  - the expiry of any limitation period.

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## Compliance & Enforcement (Criminal Prosecution, Regulatory Sanctions and Removal from the Roll)

- 6.9 Public interest concerns, including:
- if the offence is of considerable concern to clients of law practices and lawyers;
  - if prosecution would clarify the law;
  - the impact of the offending upon the Fidelity Fund;
  - the number of clients affected;
  - the amount of money involved.
- 6.10 Administrative considerations, including:
- appropriateness of the Board referring the matter to the Commissioner before or after initiating a prosecution;
  - appropriateness of prosecuting the matter after disciplinary action has been commenced by the Commissioner;
  - appropriateness of addressing the offending by other regulatory means instead of, or as well as, prosecution;
  - appropriateness of the victim addressing the offending by private civil action;
  - the effect of prosecution on reparation or forfeiture;
  - appropriateness of referring the matter to another agency for prosecution;
  - double jeopardy issues;
  - the cost of prosecution and the Board's resources.
- Reporting Suspected Offences to Police or the OPP**
- 6.11 The Board may report a suspected criminal offence to Victoria Police or to the Office of Public Prosecutions for prosecution.
- 6.12 When deciding whether to report a suspected offence the Board must consider all relevant matters including, but not limited to, the following:
- the powers and resources available to the Board to investigate and prosecute offences;
  - the reasons for suspecting an offence has been committed;
  - the seriousness of the offence (indictable offences are usually reported);
  - if the lawyer may also be charged with offences arising under other legislation or the common law;
  - if it is appropriate for the Board to both investigate and prosecute the matter;
  - the number of clients affected;
  - the amount of money involved.

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## Compliance & Enforcement (Criminal Prosecution, Regulatory Sanctions and Removal from the Roll)

### Removal from Roll

### Legislative Framework

- 7.1 The Board (or Commissioner as applicable) may apply to the Supreme Court (the Court) for an order that a local lawyer's name be removed from the Court roll:
- in relation to convictions for serious offences;
  - in relation to interstate regulatory action;
  - in response to a lawyer's application, under s.23(3) of the Uniform Law, for an order preventing removal from the local roll;
  - under rule 14.13 of the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008;
  - under the inherent jurisdiction of the Court.
- Local lawyer convicted of a serious offence*
- 7.2 Unless there are mitigating circumstances, the Board will usually apply for removal where a local lawyer has been convicted in Australia and sentenced to a term of imprisonment for:
- A 'serious offence' in any of the following categories:
    - A serious offence involving dishonesty;
    - A serious offence involving violence;
    - A serious drug offence;
    - A serious sex offence; or
  - An administration of justice offence, including any of the following:
    - Contempt of court;
    - An offence, or series of offences, that indicates serious disregard for the law or the administration of justice;
    - An offence, or series of offences, that harms the integrity of the legal profession.
- Interstate regulatory action has been taken*
- 7.3 The Board will usually commence action when it is aware that interstate regulatory action has been taken, unless there are mitigating circumstances.
- Inherent jurisdiction of the Court – fitness and related matters*
- 7.4 Unless there are mitigating circumstances, the Board will usually apply for removal from the local roll when:
- the lawyer is not a fit and proper person to hold a practising certificate; and
  - concerns about the lawyer's fitness cannot be adequately addressed by temporary restrictions on their right to practise due to the seriousness of the circumstances; and

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## Compliance & Enforcement (Criminal Prosecution, Regulatory Sanctions and Removal from the Roll)

- the circumstances include or indicate any of the following:
  - dishonesty;
  - prior history of similar offences or other relevant conduct;
  - material risk of serious harm to consumers of legal services;
  - material risk of serious harm to the administration of justice;
  - material risk of serious harm to the integrity of the legal profession.

### *Inherent jurisdiction of the Court – admission related matters*

7.5 Unless there are mitigating circumstances, the Board will usually apply for removal from the local roll when there has been a material error, omission or misrepresentation about a matter relevant to admission to the roll, including:

- academic qualifications or misconduct;
- practical legal training requirements or misconduct;
- supervised workplace training requirements or misconduct;
- character evidence;
- criminal charges or criminal record;
- evidence of good standing in another jurisdiction (if applicable);
- any other relevant matter unfavourable to the lawyer.

### *Inherent jurisdiction of the Court – long restricted practise*

7.6 Unless there are mitigating circumstances, the Board will usually apply for removal from the local roll when there has been a repeated refusal to grant or renew a local practising certificate.

### *Opposing Applications for Non-Removal*

7.7 The Board will usually oppose an application by a lawyer against removal from the local roll unless there are mitigating circumstances.

### *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008*

7.8 If VCAT makes an order that there be an application to the Supreme Court for a lawyer's name to be removed from the local roll, the Commissioner or Board (whichever commenced the VCAT proceeding) must apply to the Supreme Court to determine whether the lawyer's name should be removed.