

## Response to Grounds

### 4. Ground 1: The Defendant's Decisions were made without jurisdiction and in breach of the Uniform Law

#### *PC Decision*

- 4.1 Pursuant to s 45(1) of the Uniform Law, the Council, as the designated local regulatory authority pursuant to ss 3 and 11(1) of the Application Act, may grant or renew an Australian practising certificate.
- 4.2 Pursuant to s 45(2) of the Uniform Law, the Council "must not" grant or renew an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold the certificate, subject to s 45(4) of the Uniform Law.
- 4.3 Section 45(3) of the Uniform Law states that in considering whether a person is or is not a fit and proper person to hold an Australian practising certificate, the designated local regulatory authority "may" have regard to the matters specified in the Uniform Rules for the purposes of s 45.
- 4.4 Section 45(4) of the Uniform Law provides that a person may be considered a fit and proper person to hold an Australian practising certificate even though the person does not satisfy the requirements for a matter to which the designated local regulatory authority may have regard, if it is satisfied that this action is warranted in the circumstances.
- 4.5 Section 13(1) of the *Legal Profession Uniform General Rules 2015* (NSW) provides that "for the purposes of section 45 of the Uniform Law, in considering whether an applicant is or is not a fit and proper person to hold an Australian practising certificate, the designated local regulatory authority may, have regard to any of the following matters—
- (a) whether the applicant is currently of good fame and character,
  - ...
  - (m) whether the applicant is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner,
  - (n) whether the applicant has provided incorrect or misleading information in relation to any application for an Australian practising certificate under an Australian law relating to the legal profession..."
- 4.6 There is no statutory requirement for:
- (a) the Council to give consideration to Chapter 5 of the Uniform Law when making a decision pursuant to s 45 of the Uniform Law; or
  - (b) a referral to the NSW Civil and Administrative Tribunal or a finding of professional misconduct or unsatisfactory professional conduct to be made before the Council can make a decision pursuant to s 45 of the Uniform Law.
- 4.7 The Plaintiff has a right of appeal by way of a merits review of the PC Decision pursuant to s 100 of the Uniform Law.

*Manager Decision*

- 4.8 Pursuant to s 326(a) of the Uniform Law, external intervention may take place in relation to a law practice in circumstances where "a legal practitioner associate involved in the law practice ... ceases to hold a current Australian practising certificate or a current Australian registration certificate ...".
- 4.9 Section 327(1) provides that s 327 applies "when the designated local regulatory authority becomes aware that one or more of the circumstances referred to in s 326 exist in relation to a law practice and decides that, having regard to the interests of the clients of the law practice and to other matters that it considers appropriate, external intervention is warranted".
- 4.10 Pursuant to s 327(2)(b)(iii) of the Uniform Law, the Council may determine to initiate the appointment of a manager for the law practice, if it is of the opinion "that there is a need for an independent person to be appointed to take over professional and operational responsibility for the law practice".
- 4.11 In its reasons for the Manager Decision, the Council noted:
- (a) Ms Odtojan is the principal of Odtojan Bryl Lawyers;
  - (a) no other principal solicitors are attached to Odtojan Bryl Lawyers;
  - (b) at its meeting on 29 May 2025, the Council resolved to refuse Ms Odtojan's application for a practising certificate for the practising year ending 30 June 2025, which will result in Odtojan Bryl Lawyers no longer having a principal; and
  - (c) accordingly, it was necessary for an independent person to be appointed to take over professional and operational responsibility.
- 4.12 Pursuant to s 334 of the Uniform Law, the Council may, if it determines to appoint a manager for a law practice, appoint a person as manager by instrument in writing.
- 4.13 The Plaintiff has a right of appeal of the Manager Decision pursuant to s 358 of the Uniform Law.
- 4.14 This Ground is not made out.

5. Ground 2: The Defendant's Decision Denied Procedural Fairness and Natural Justice
- 5.1 The Law Society and the Council say that procedural fairness and natural justice were provided to the Plaintiff.
- 5.2 By letter dated 8 July 2024 from the Law Society, the Plaintiff was asked to provide, by 2 August 2024, submissions in respect of the alleged conduct specified in the letter.
- 5.3 On 2 August 2024, the Plaintiff wrote to the Law Society requesting, inter alia, an extension of time of seven days to respond to the letter of 8 July 2024 and stating that "the listed documents on page 1 and 5 on you said Annexure A are incomplete".
- 5.4 On 14 August 2024, the Plaintiff provided a response to the letter dated 8 July 2024 and the alleged conduct by email, attaching a letter dated 13 August 2024 to the Law Society and others.
- 5.5 On 15 August 2024, the Plaintiff and Mr Artem Bryl sent a joint email and letter to the Law Society and others from the account <artemb7@gmail.com>.
- 5.6 On 12 February 2025, the Plaintiff and Mr Bryl sent a joint email to the Law Society and others from the account <admin@odtojanbryllawyers.com.au> in respect of their practising certificates.
- 5.7 By letter dated 24 March 2025, the Law Society:
- (a) drew the Plaintiff's attention to the fact that in addition to the matters raised within the letter of 8 July 2024, the Council would have regard to material contained on her social media accounts and the website of 'Odtojan Bryl Lawyers'; and
  - (b) provided the Plaintiff with a further opportunity to provide, by 17 April 2025, any submissions in relation to the concerns raised the regarding Odtojan Bryl Lawyers' website and LinkedIn account or her LinkedIn account, and any additional submissions she may wish to make in relation to the issues arising from the Court of Appeal referrals.
- 5.8 No response to the letter of 24 March 2025 was received by 17 April 2025.
- 5.9 On 15 May 2025, after the expiry of the period for submissions, the Plaintiff and Mr Bryl sent a joint email to the Law Society and others from the account <admin@odtojanbryllawyers.com.au> requesting, inter alia, copies of the social media posts and the amended letter referred to in the letter of 24 March 2025. The email further stated that the Plaintiff and Mr Bryl reserved their right to respond to the

balance of the letter dated 24 March 2025 after receipt of a response to matters raised in that email.

5.10 On 21 May 2025, the Law Society sent an email to the Plaintiff and Mr Bryl responding to the email of 15 May 2025. The Law Society noted that the reference to an "amended letter" was a typographical error and that the reference should have been to the corrections of the two inadvertent errors that had been explained in previous correspondence. It noted that it would revert in due course regarding the outcome of the Plaintiff and Mr Bryl's applications for renewal of the practising certificate for the practising certificate year ending 30 June 2025.

5.11 The Law Society and the Council otherwise rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

5.12 This Ground is not made out.

6. Ground 3: The Section 45 Decision was an abuse of power and a misuse of regulatory discretion

6.1 The Law Society and the Council say that the Council appropriately followed the proper statutory process as provided for in the Uniform Law.

6.2 The Law Society and the Council otherwise rely upon paragraphs [4.1] to [4.6] of this Response.

6.3 This Ground is not made out.

7. Ground 4: The Defendant's conduct amounts to a serious interference with the administration of justice and the statutory disciplinary framework

7.1 To the extent that Ground 4 alleges an error of law on the basis of legal unreasonableness, the Law Society and the Council say that the Council appropriately followed the proper statutory process as provided for in the Uniform Law.

7.2 Law Society and the Council otherwise rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

7.3 This Ground is not made out.

8. Ground 5: The Decisions [were] made in bad faith and constituted a retaliatory act against the Plaintiff and Mr Bryl, who are witnesses, victims and whistleblowers in relation to matters stemming from the reports made by Ms Odtojan to the OLSC and Law Society of NSW PSD from 2016.

8.1 To the extent that Ground 5 alleges an error of law on the basis of legal unreasonableness or lack of evidence, or a denial of procedural fairness, the Law Society and the Council say that the Council appropriately followed the proper statutory process as provided for in the Uniform Law.

8.2 This Ground is not made out.

9. Ground 6: Apprehended Bias and Denial of an Impartial Decision-Maker

9.1 The Law Society and the Council say that the Council appropriately followed the proper statutory process as provided for in the Uniform Law.

9.2 The Law Society and the Council otherwise rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

9.3 This Ground is not made out.

10. Ground 7: Consequences of the Decisions

10.1 The Law Society and the Council say that Ground 7 does not disclose an independent basis for judicial review.

10.2 The PC Decision was made based on the material considered by the Council in accordance with the Uniform Law.

10.3 The Manager Decision was made following proper statutory process.

10.4 The Law Society and the Council rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

10.5 This Ground is not made out.

11. Ground 8: Failure to Consider Relevant Matters

11.1 The Law Society and the Council say that the Council appropriately followed the proper statutory process as provided for in the Uniform Law.

11.2 The Law Society and the Council rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

11.3 This Ground is not made out.

12. Ground 9: Legal Unreasonableness.

12.1 The Law Society and the Council say that the Council appropriately followed the proper statutory process as provided for in the Uniform Law.

12.2 The Law Society and the Council rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

12.3 This Ground is not made out.

13. Ground 10: No Reasonable Decision-Maker Could Have Concluded Unfitness.

13.1 The Law Society and the Council say that Ground 10 does not disclose an independent ground of judicial review to that alleged in Ground 9.

13.2 The PC Decision was made based on the material considered by the Council in accordance with the Uniform Law.

13.3 The Law Society and the Council rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

13.4 This Ground is not made out.

14. Ground 11: Public Interest Considerations

14.1 The Law Society and the Council say that Ground 11 does not disclose an independent ground of judicial review.

14.2 The Law Society and the Council say that the Council appropriately followed the proper statutory process as provided for in the Uniform Law.

14.3 The Law Society and the Council rely upon paragraphs [4.1] to [4.6] and [4.8] to [4.12] of this Response.

14.4 This Ground is not made out.

15. Ground 12: Error of Law on the Face of the Record and Jurisdictional Error
- 15.1 The Law Society and the Council say there has been no error of law on the face of the record or jurisdictional error.
- 15.2 The Law Society and the Council rely upon paragraphs [4.1] to [4.6], [4.8] to [4.12] and [5.1] to [5.10] of this Response.
- 15.3 This Ground is not made out.

**SIGNATURE OF LEGAL REPRESENTATIVE**

Signature

*Heaver* per Chloe Ellis, Solicitor on record

Capacity

Solicitor on record

Date of signature

25 July 2025