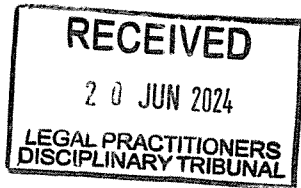


IN THE LEGAL PRACTITIONERS
DISCIPLINARY TRIBUNAL

ACTION No. 4 of 2017, 7 of 2018, 9 of
2018 & 3 of 2023



THE LEGAL PRACTITIONERS ACT 1981

IN THE MATTER OF:

JOHN MARK FITZPATRICK

REASONS (NO.2)

1. On 11 June 2024 the Tribunal published reasons following inquiries in actions numbered 4 of 2017, 7 of 2018, 9 of 2018 and 3 of 2023.
2. John Mark Fitzpatrick ("the **Practitioner**") was found to have engaged in:
 - 12 instances of professional misconduct;
 - 3 instances of unsatisfactory professional conductpursuant to s82(2) of the *Legal Practitioners Act 1981* (SA) ("the **Act**").
3. The Practitioner has one prior disciplinary finding against him, namely in 1999 he was found to have engaged in unprofessional conduct (now called professional misconduct) as a result of his failure to respond to requests for information and statutory notices issued by the Legal Practitioners Conduct Board in the context of a complaint against him made by another legal practitioner. He was reprimanded, fined \$5,000 and required to undertake additional education and training in ethics.¹
4. The Legal Profession Conduct Commissioner ("the **Commissioner**") made submissions orally on 28 May 2024 and in writing.² The Commissioner's submission was that the only appropriate outcome was a recommendation that

¹ *In the matter of John Fitzpatrick* LPDT 14 July 1999.

² Outline of Submissions filed 27 May 2024.

disciplinary proceedings be commenced in the Supreme Court. Commissioner Keane also argued that:

- a. as the Practitioner was not currently working and, as far as the Commissioner is aware, does not have significant assets, imposing a fine of a magnitude appropriate to the conduct would likely be punitive;
 - b. the Practitioner does not currently hold a practising certificate, there was therefore no utility in many of the alternative options available to the Tribunal such as a period of suspension, imposing conditions, requiring counselling, mentoring or further education.
5. The Tribunal invited written submissions from the Practitioner, who is currently self-represented, on the question of appropriate disciplinary outcome which were due to be filed by 18 June 2024. He was also given the option to request an oral hearing. Those invitations were not taken up.
 6. We accept the Commissioner's submission that there is no appropriate alternative disciplinary outcome and we recommend the four actions be dealt with in the Supreme Court.
 7. In particular, we have formed the view that if the Practitioner was to return to legal practice, he would pose a risk to members of the public. What occurred in the Practitioner's incompetent and unethical representation of All Type Roofing Gutters and Verandahs Pty Ltd must never be visited upon another client.
 8. Equally, the Practitioner's repeated failure to cooperate with the Commissioner's investigations suggests the Practitioner was not sufficiently deterred by the outcome imposed by the Tribunal in 1999. It appears that the Practitioner is simply incapable of dealing with the regulator. Stressful and unpleasant as responding to complaints may be, it is an important responsibility which all legal practitioners must take seriously.
 9. The extent to which his depression contributes to his inability to manage the responsibilities of being a member of the profession at the present time is unclear on the evidence available to us. However, we are troubled by the fact that when the Supreme Court imposed conditions on the Practitioner's practising certificate requiring regular reports as to his mental health, he failed to comply.
 10. These factors, together with the extent and seriousness of the Practitioner's conduct over a number of years, warrants consideration by the Supreme Court as to whether his name should remain on the roll.
 11. We are aware that the Practitioner has not renewed his practising certificate and considers himself to be retired, on the basis of ill-health. However, this is not a

proper basis to determine that no disciplinary action should result from the Tribunal's findings.

12. The Tribunal will set a date for a hearing on costs.

The Tribunal Orders:

1. Recommendation that disciplinary proceedings be issued in the Supreme Court against the Practitioner pursuant to s82(6)(v) of the Act.
2. Costs reserved.

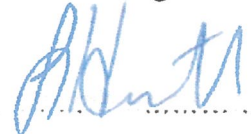
DATED the 19th of June 2024.



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K Clark SC



.....
A Burgess AM



.....
L Hastwell