

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Shane Noel Tyrell* [2025]
QCAT 259

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

SHANE NOEL TYRELL
(respondent)

APPLICATION NO/S: OCR290-23

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 3 July 2025

HEARING DATE: 27 May 2025

HEARD AT: Brisbane

DECISION OF: Justice Freeburn

Assisted by:
Elizabeth Shearer, Practitioner Panel Member
Mr Keith Michael Revell, Lay Panel Member

ORDERS:

- 1. The Tribunal finds that the respondent engaged in professional misconduct.**
- 2. The Tribunal recommends that the name of Mr Shane Noel Tyrell be removed under a corresponding law from an interstate roll pursuant to section 456(3)(a) of the *Legal Profession Act 2007* (Qld).**
- 3. The respondent pay the applicant's costs of the discipline application.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – CRIMINAL OFFENCES – where the respondent was convicted of two offences involving the distribution and possession of child exploitation material – where the offending occurred in 2021 – where the respondent has not held a practicing certificate since 2016 – where the respondent's offences are serious offences for the purposes of the *Legal Profession Act 2009* (Qld) – where the offending did not happen in connection with legal practice – where the respondent's

insight to his offending is a relevant consideration – whether the respondent has engaged in unsatisfactory professional conduct or professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – CRIMINAL OFFENCES – where the respondent was convicted of two offences involving the distribution and possession of child exploitation material – where the tribunal may make any order it thinks fit if a practitioner has engaged in unsatisfactory professional conduct or professional misconduct – where the applicant submits the respondent should be removed from an interstate roll – where the respondent submits he should be allowed to remain on the roll – where the respondent’s insight into his offending is a relevant consideration – where the tribunal should recommend that the respondent be removed from an interstate roll

Legal Profession Act 2007 (Qld), s 418, s 419, s 420, s 456, s 462

Legal Services Board v McGrath (No 2) (2010) 29 VR 325, cited

Legal Services Commissioner v CBD [2012] QCA 69, considered

Legal Services Commissioner v Ferguson [2021] QCAT 205, considered

Legal Services Commissioner v Shand [2018] QCA 66, applied

Re application for admission as a legal practitioner by MCF [2015] QCA 154, considered

APPEARANCES & REPRESENTATION:

Applicant: A Angeli, instructed by the Legal Services Commissioner
Respondent: The respondent appeared on his own behalf

REASONS FOR DECISION

- [1] The Legal Services Commissioner applies for orders against the respondent, Shane Noel Tyrell. The LSC alleges that Mr Tyrell is guilty of professional misconduct and seeks disciplinary orders pursuant to s 456(3) of the *Legal Profession Act 2007* (Qld) (“LPA”) for Mr Tyrell to be removed under a corresponding law from an interstate roll.¹

¹ The Corresponding law is Section 4.4.17(a0) of the *Legal Profession Act 2004* (Vic).

[2] Mr Tyrell characterises his conduct as a “*fall from grace*”. That is, to say the least, an understatement.

[3] The disciplinary application before the tribunal concerns a charge for distributing and possessing child exploitation material:²

On various dates between 24 January 2021 and 22 February 2021, the respondent engaged in conduct for which he was convicted of two serious offences involving the distribution and possession of child exploitation material.

[4] The respondent does not dispute the charge; the parties are agreed on the facts. However, the Respondent disputes the appropriate sanction.

The Charge

[5] The facts underlying the charge are not contested.

[6] Mr Tyrell was an Australian lawyer as defined by section 5(1) of the LPA and an interstate lawyer pursuant to section 5(3) of the LPA at all material times.

[7] On 24 January 2021, Mr Tyrell responded to an advertisement posted by a South Australian covert policer officer pretending to be a 37-year-old female residing in South Australia. The advertisement was titled “*lifes taboo short*” and the body of the advertisement read “*37 real Female into taboo. Love family ;-)*”.

[8] On 25 January 2021, Mr Tyrell exchanged a string of messages with the covert police officer, including the below:

CPO: “*So ur interested in the same things? (emojis)*”

Mr Tyrell: “*I believe so*”

CPO: “*Lol ... ok*”

Mr Tyrell: “*You mention family*”

CPO: “*Yes ...*”

Mr Tyrell: “*Is it fantasy or real*”

CPO: “*(emojis)*”

Mr Tyrell: “*I’ve someone coming over my place today. I’ll take (emoji) as real lol*”

Mr Tyrell: “*Daughter of a cousin. She’s very inquisitive and quite deviant*”

CPO: “*mmmmm how old is she?*”

Mr Tyrell: “*4+10*
Is that your thing”

CPO: “*Is that 2 girls?*”

Mr Tyrell: “*Yes*”

² The LSC has grouped the charges into a singular charge in its submissions however, Mr Tyrell’s indictment consisted of two charges, one for possession of child exploitation material, and one separately for distributing child exploitation material.

CPO: *“omfg im jealous
Is this real or just fantasy chat tho”*

Mr Tyrell: *“Real I'll take some photos”*

CPO: *“mmmmm u are in to wot im in to (emojis)”*

Mr Tyrell: *“want to trust you as there's not many people you can
speak to about this. Send me something (emojis)”*

CPO: *“Lol now I understand the scam
I thought it was to good to b truth”*

Mr Tyrell: *“No not a sca[m]. I want to trust you, you don't have to
send anything. I can send to so you know I'm real and
we can go from there ok?”*

CPO: *“(emoji)”
“K”*

Mr Tyrell *“Give me a moment and I'll download to my phone and
send you something”
[One image of child exploitation material sent by the
respondent. The image depicted a young female
being anally penetrated by an adult male.]*

CPO: *“Omfg (emojis)
U found that so quick”*

Mr Tyrell: *“See, I'm real.
What would you do with her?”*

CPO: *“She looks like she knos wot she is doing (emojis)”*

Mr Tyrell: *“She's been doing it for a while. Tell me what you like?”*

CPO: *“I like wen the girl is innocent looking and maybe
mummy teaches her how to lick”*

Mr Tyrell: *“Can you also send something. It'll make me a little less
nervous.”*

...

Mr Tyrell: *“How old are your kids?
Why cant you?”*

CPO: *“6 and 12”*

Mr Tyrell: *“Nice. Do you play with your kids?”*

CPO: *(emojis)*

Mr Tyrell: *“Ok. have you any experience in enjoying our thing?”*

CPO: *“Yes
Lol hbu”*

Mr Tyrell: *“Yes, do you like boys and girls.”*

CPO: *“I have daughters
I only seen a bit of boy stuff ...i didn't hate it (emojis)
U?”*

Mr Tyrell: *“Ok, I love to watch boys and girls fucking. Yes I like
both”*

CPO: *“Wots ur fav age?”*

Mr Tyrell: *“Any, I can go quite young. you
6-12 is good range lol”*

CPO: *“Lol
My (emojis) is 4 to 8”*

Mr Tyrell: *Those innocent eyes (emojis)*
*“Beautiful. As I said I’ve got a 4 coming over this arvo.
 Wish you were here!”*

- [9] Mr Tyrell deleted the image sent to the undercover police officer shortly after sending it.
- [10] On 22 February 2021, the Queensland Police executed a search warrant at Mr Tyrell’s residence. They found four images and one video depicting child exploitation material on Mr Tyrell’s MacBook.
- [11] Mr Tyrell’s was arrested on 22 February 2021 for:
- (a) one count of distributing child exploitation material in contravention of section 228C(1) of the *Criminal Code Act 1899* (Qld); and
 - (b) one count of possessing child exploitation material in contravention of section 228D(1) of the *Criminal Code Act 1899* (Qld).
- [12] On 22 June 2022, the Respondent was arraigned and convicted on his own plea of guilty for both offences.
- [13] Mr Tyrell was sentenced to imprisonment for nine months for the distribution charge and three months for the possession charge. Both terms were fully suspended.
- [14] As a result of those convictions, Mr Tyrell is on the Sex Offender’s register until 2027.
- [15] Mr Tyrell has not held a practicing certificate since 2016.
- [16] As the charges and the underlying facts are not contested,³ the two related issues remaining are:
- (a) the appropriate characterisation of the conduct; and
 - (b) the appropriate sanction which should be imposed.

Characterisation

- [17] Pursuant to section 420 of the LPA, conduct for which there is a conviction for a ‘serious offence’ is capable of constituting unsatisfactory professional conduct or professional misconduct. The latter is a more serious finding.
- [18] A ‘serious offence’ under the LPA includes an indictable offence against a law of the Commonwealth or any jurisdiction, whether or not the offence is or may be dealt with summarily.⁴ It follows that Mr Tyrell’s conviction is a conviction for a ‘serious offence’ under the LPA.
- [19] Section 418 of the LPA defines unsatisfactory professional conduct as follows.

“Unsatisfactory professional conduct” includes conduct of an Australian legal practitioner happening 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 Australian legal practitioner.”

³ See *Legal Profession Act 2007* (Qld) s 656C.

⁴ See *Legal Professional Act 2007* (Qld) at sch 1 (definition of ‘serious offence’).

- [20] Mr Tyrell’s conduct does not fit the criteria of unsatisfactory professional conduct as it did not occur in the course of legal practice.⁵
- [21] It is necessary then to consider whether Mr Tyrell’s conduct may be characterised as professional misconduct pursuant to section 419 of the LPA. Professional misconduct may be found where conduct otherwise than in connection with the practice of law would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
- [22] In considering whether the respondent is a fit and proper person, it is relevant to have regard to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession.
- [23] The suitability considerations relevant here are whether Mr Tyrell is currently of “*good fame and character*” and whether he has been convicted of an offence. The court is then required to consider the nature of the offence, how long ago it was committed and the person’s age at that time.
- [24] A conviction for child pornography offences does not have the automatic consequence that a person is not *prima facie* a fit and proper person. Rather, the court is required to look behind the conviction for an offence to consider the “*real facts of the case*”.⁶ As explained by Warren CJ:

“The nature of the material involved, the extent and circumstances of the offending in question, its relationship to the offender’s professional life, and the behaviour of the offender before, during and after the legal processes which result from that offending will all be relevant to deciding any application to strike that offender from the roll.”⁷

- [25] Mr Tyrell is 68 years old. He was convicted of the relevant offences in 2021, when he was 64 years old. The offending took place between January 2021 and February 2021. The offending was uncovered by a covert police officer after which a search was then carried out at Mr Tyrell’s home where four photos and one video depicting child exploitation material was found. Mr Tyrell had also sent one photo to the covert police officer which formed the basis of the charge of distributing child exploitation material.
- [26] The offences overall concerned a relatively small number of photos and one video, and occurred over a relatively small timeline of a month during which the respondent also sent one photo consisting of child exploitation material.
- [27] During the hearing it was observed that, on the part of Mr Tyrell, there is a lack of introspection, and indeed a lack of understanding as to the gravity of crimes which concern child exploitation material. Mr Tyrell’s submissions state his actions “were essentially self abuse” and then say:

“The corollary of my arrest is counterfactual: **'What would have happened in the absence of the participating police'? My crime occurred in my own quiet 'home', alone and anonymous.** My interaction was with a police officer posing as a female seeking this very sort of interaction, not a 'real'

⁵ *Legal Professional Act 2007* (Qld) at sections 418, 420(3).

⁶ *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, Fullagar J at 288.

⁷ *Legal Services Board v McGrath (No 2)* (2010) 29 VR 325 at [12].

person. On the one hand, **I am the fruit of the poisonous tree**, and on the other, **I failed myself by taking up the offer from the undercover police officer**. This was the only interaction I have ever had with such a person or anyone in this way. I'm not in any way attempting to reduce my offending behaviour. I know I should not have interacted with the advertisement. **I'm simply saying that if the police weren't fishing, I could not have taken that bait**. However, I did, and I've accepted the consequence [emphasis added].”

- [28] Downloading and distributing child exploitation material is not a victimless crime. As explained by the learned sentencing judge, Chowdhury DCJ, “*these are children being abused somewhere in the world ...and these children are being physically traumatised and psychologically traumatised for the perverse pleasure of their abusers firstly, and then for people who want to look at it and distribute it*”. Mr Tyrell’s submissions, both written and in the course of the hearing, fail to adequately address the impact of his offending on people other than himself. In that context, Mr Tyrell’s question “What would have happened in the absence of the participating police?” is beside the point. Mr Tyrell’s conduct, whether discovered or not, gave support to an insidious industry.
- [29] It is necessary also to consider the uncontested psychologists’ reports relied on by Mr Tyrell. Those reports all note that Mr Tyrell is diagnosed with chronic depressive disorder with occasional suicidal ideation. The reports further explain that Mr Tyrell was going through a major depressive episode at the time of offending. Importantly, all of the reports note that Mr Tyrell would benefit from ongoing treatment as he has not yet been successfully rehabilitated.
- [30] The test to be applied for the more serious category, professional misconduct, is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.⁸
- [31] The offending, amongst all the available context, cannot not be said to be observed by or approved by members of the profession of good repute and competency. The conduct falls short of that test.

Findings

- [32] It follows that Mr Tyrell is guilty of professional misconduct in respect of the charge of possessing and distributing child exploitation material.

Sanction

- [33] On a finding that a practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the tribunal may make any order it thinks fit.⁹ Such orders may include one or more of the following orders:¹⁰
- (a) recommending that the name of the Australian legal practitioner be removed from the local roll;

⁸ *Adamson v Queensland Law Society* (1990) 1 Qd R 498 at 507.

⁹ *Legal Profession Act 2007* section 456(1).

¹⁰ *Ibid*, ss (2) and (4).

- (b) suspension of the practitioner’s local practising certificate for a stated period, or cancellation;
 - (c) conditions on the practitioner’s practising certificate;
 - (d) public reprimand of the practitioner;
 - (e) the legal practitioner pay a penalty of a stated amount, not more than \$100,000; and / or
 - (f) the practitioner undertake and complete a stated course of further legal education.
- [34] The LSC submits that Mr Tyrell should be removed from the roll for two key reasons:
- (a) *first*, the respondent’s limited insight into the impact of his offending; and
 - (b) *second*, the respondent’s mental health and infirmity which suggests he is not a fit and proper person at the time of hearing.
- [35] Mr Tyrell submits that he should stay on the roll of practitioners for the following reasons:
- (a) his psychological condition is improving;
 - (b) he seeks to be “productive” and to further that end is studying a PhD in Climate Change with the hopes of working in the legal field in a role relevant to his studies.
- [36] Mr Tyrell does not propose an alternative to the sanction proposed by the LSC.
- [37] A court will not necessarily find that a practitioner convicted of an offence, even a serious one,¹¹ should be removed from the roll. Rather the relevant test for removing a practitioner from the roll requires the court to be satisfied, at the time of the hearing, that the practitioner in question is shown not to be a fit and proper person to be a legal practitioner and will likely remain so for the indefinite future.¹²
- [38] Disciplinary action is taken for the protection of the broader community and to deter practitioners from acting contrary to others’ rights, not to punish the practitioner.¹³
- [39] It is relevant to consider cases with comparable offending by a legal practitioner or a prospective legal practitioner.
- [40] In *Legal Services Commissioner v CBD*,¹⁴ the respondent was said to have “*stumbled upon*” the offending material when looking for adult pornography and made the “*mistake*” of continuing to look at it. The court upheld the original order that the respondent pay the applicant’s costs fixed at \$1,500, citing the fact that the respondent had no previous criminal or disciplinary history. The court also considered there that the middle-aged respondent has been punished already, especially since his ability to practice had effectively been curtailed.

¹¹ See for example, *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279.

¹² *Legal Services Board v McGrath* (2010) 29 VR 325, Warren CJ at [9].

¹³ *Attorney-General v Bax* [1999] 2 Qd R 9 Pincus J at 22; see also *Legal Services Commissioner v Madden (No 2)* [2008] QCA 301 at [122].

¹⁴ [2012] QCA 69.

- [41] In *Re application for admission as a legal practitioner by MCF*,¹⁵ in deciding that the applicant should be admitted, the court referred to a number of factors including that the applicant was 17 at the time of the offending, the offending concerned a relatively small number of images and movie files which had only been accessed not saved, and the applicant’s psychiatrist described his treatment outcome as “*extremely favourable*”.
- [42] In *Legal Services Commissioner v Ferguson*,¹⁶ the court recognised that the 60-year-old respondent had demonstrated insight and remorse for his offending and did not seek to excuse his conduct but rather recognised the immediate need for reform and rehabilitation. The court found that the appropriate sanction was a suspension for three years from the date of the Respondent’s conviction for the subject offences. The conduct in question consisted of one Commonwealth offence of using a carriage service to transmit, make available, publish, distribute, advertise or promote child pornography and one state offence of possessing child exploitation material.
- [43] Mr Tyrell’s circumstances are different to those outlined above.
- [44] Mr Tyrell actively saved four photos and one video. He distributed one image consisting of child exploitation material in the context of a conversation about being interested in and enjoying child exploitation material. The respondent was 64 and well past his youth at the time of offending.
- [45] Indeed, the respondent’s offending was driven by his poor mental health. However, the most recent psychologist report relied on suggests Mr Tyrell requires ongoing treatment with a skilled clinical psychologist and a psychiatrist to address his diagnosis of depression.¹⁷
- [46] Significantly, as explained, Mr Tyrell does not show an adequate level of insight regarding his conduct and the impact it has on its victims. As also explained, Mr Tyrell’s submissions focus almost solely on the impact of his conduct on himself. While Mr Tyrell displayed some remorse in relation to his offending, his remorse appeared to be more directed to remorse that his offending was uncovered rather than genuine insight.
- [47] As noted by Warren CJ in *Legal Services Board v McGrath (No 2)*,¹⁸ the offences are important in considering whether a person is fit and proper not only because it calls into question the person’s willingness and ability to obey the law, but also because it calls into question the person’s empathy and insight into the victims of criminal behaviour.
- [48] The LSC submitted, correctly in my view, that the respondent’s place on both the Sex Offender’s register and the on roll of persons admitted to the legal profession are somewhat at odds which each other.
- [49] In *Legal Services Commissioner v Shand* [2018] QCA 66, the court emphasised the importance of considering the community’s confidence in the legal profession:

“The community needs to have confidence that only fit and proper persons are able to practise as lawyers and if that standing, and thereby that

¹⁵ [2015] QCA 154.

¹⁶ [2021] QCAT 205.

¹⁷ 10 May 2022 Report of Dr Paul Bowden at Hearing Book, page 233.

¹⁸ (2010) 29 VR 325 at [15].

confidence, is diminished, the effectiveness of the legal profession, in the service of clients, the courts, and the public is prejudiced. **The Court's Roll of practitioners is an endorsement of the fitness of those who are enrolled** [emphasis added]"

- [50] Those observations of the Court of Appeal are not mere platitudes. Mr Tyrell's conduct, in all the circumstances, has demonstrated that the community cannot have confidence that he is a fit and proper person to practice as a lawyer. It follows that Mr Tyrell cannot be endorsed as a fit and proper person, and will likely remain such in the indefinite future.
- [51] An argument was advanced that Mr Tyrell should be allowed to stay on the roll as he has not held a practicing certificate since 2016 in any case. I reject that argument in circumstances where the respondent still intends to work in the legal field in roles which are only available to him because of the endorsement of the roll of practitioners.
- [52] In considering Mr Tyrell's application and circumstances of the offending as a whole, the Tribunal recommends that the appropriate sanction is to recommend that the name of Mr Tyrell be removed under a corresponding law from an interstate roll pursuant to section 456(3)(a) of the Act.

Costs

- [53] Section 462(1) of the *Legal Profession Act* provides that:
- A disciplinary body must make an order requiring a person whom it has found to have engaged in prescribed conduct to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.
- [54] There are no exceptional circumstances here. Mr Tyrell should pay the costs.