

Disciplinary hearings

Our role

The *Legal Profession Act 2004* (the Act) established the Legal Services Commission as the sole body responsible for receiving and managing the investigation of complaints about the conduct of lawyers and law practice employees (referred to as the respondent in a disciplinary case).

When the Commissioner has decided to commence disciplinary action, the matter goes to a hearing before either the Legal Practice Tribunal or the Legal Practice Committee (see factsheet 5 *Discipline applications*). If you brought the original complaint to the Commission, you may be asked to provide an affidavit (see *Common questions* below) and attend the hearing as a witness.

Prior to the hearing you will be contacted by the Commission to make arrangements and to discuss any concerns or special needs.

The Commissioner commences disciplinary action for the protection of the public and not on behalf of an individual complainant.

At the hearing

Hearings start at either 9.30am or 10.00am. If you are giving evidence the Commission will usually arrange for someone to meet you at the Tribunal or Committee.

The Tribunal hears discipline applications in the Supreme Court Complex located at George Street, Brisbane.

The Committee hears discipline applications in several court locations around Brisbane.

In the courtroom you will see the Tribunal or Committee sitting at the front facing the bar table and public gallery. The Commission's lawyers and the respondent (and possibly their lawyers) will be sitting at the bar table.

In court the Commission goes first. The hearing will generally start with an opening address by the Commission's lawyers which presents a short summary of the evidence expected to be heard in more detail during the case.

Note: If you are attending court as a witness, you will be asked to leave the courtroom for the opening address. This is to ensure the opening address does not influence your evidence.

After the opening address, the Commission's lawyer will call any witnesses to give oral evidence in support of their affidavit.

A Commission legal officer will come outside and call your name. The officer will then take you into the courtroom.

Note: When appearing in the Tribunal, bow to the judge when entering and leaving the courtroom as a traditional mark of respect.

Step 1

Commission gives opening address.

Step 2

Witnesses are called.

Step 3

Giving evidence.

Step 4

Cross examination.

Step 5

Making a decision.

Giving evidence

The officer will escort you to the witness box.

In the witness box you will be asked to take an oath or to affirm that the evidence you give will be the truth. If you take an oath you will be asked to place your hand on the Bible or Koran, according to your preference. You will then be administered the oath, to which you reply, 'So help me God'.

Important: Contact the Commission as soon as possible if you have:

- difficulty speaking or understanding English OR
- a disability or special needs when giving evidence.

The Commission will arrange for an interpreter or other assistance.

Your affidavit is called your evidence in chief and will already have been presented to the Tribunal or Committee. In most cases you will simply be asked by the Commission's lawyers whether or not there are any amendments or additions to be made to your affidavit and to confirm the accuracy of the contents.

Cross-examination

Once you have given your evidence, the respondent's lawyers will have an opportunity to question you. This process is called cross-examination.

The respondent's lawyer will ask you questions about what you have stated in your affidavit and any other matters relevant to the case. If your answers cause confusion, the Commission's lawyer may ask you some more questions to clarify matters. This is known as re-examination.

The members of the Tribunal and Committee may also ask you questions.

Exhibits and evidence

During the course of the hearing, the Commission's lawyer or the respondent's lawyer may submit documents or other items into evidence as part of the case. Those items are then called exhibits and become part of the evidence. Exhibits may include photographs, invoices, contracts and similar items that relate to the case. You may be asked to explain or comment upon an exhibit.

Leaving the witness box

After you have finished giving evidence you will be excused from the witness box. You are then free to leave the courtroom or sit in the public gallery and observe the rest of the hearing.

At the end of the Commission's case, the respondent may also call witnesses. Just like the Commissioner, the respondent then has an opportunity to put their

case by calling witnesses and tendering documents which rebut the complaint against them.

At the conclusion of the respondent's case, final submissions will be made by each party.

The decision

The Tribunal or Committee will then consider the evidence. A decision may be made on the same day the hearing finishes but usually a disciplinary body may take some weeks before notifying the parties of their decision.

When a decision is made you will be advised of the result and the amount of any compensation (see factsheet 4 *Compensation orders*). The decision will usually be in writing. You don't need to attend court on this date. You will be advised of the outcome in writing by the Commission. Your letter will include a copy of the decision.

Common questions

Who is a witness?

A witness is generally you (the complainant), the person who filed the original complaint with the Commission, or another person who has evidence which may assist the Commission's case.

What is the role of the witness?

The witness provides evidence to either the Tribunal or Committee. Your evidence in both the Committee and Tribunal is initially presented as an affidavit. Then you may be required to give oral evidence.

What is an affidavit?

An affidavit is a document setting out your evidence in writing. You make it under oath. If you are required to be a witness, the Commission's staff will contact you to obtain an affidavit.

In your affidavit, you provide facts from your direct experience of the events and circumstances of the case.

Checking your affidavit

When your affidavit is complete:

- ✓ Read it through or have it read to you to check that it is true and accurate and says all that you want to say, as clearly as you can.

- ✓ Check the information has been presented in a logical order.
- ✓ If there are no changes to be made, sign and date each page.
- ✓ Sign the affidavit in the presence of a Justice of the Peace, lawyer or a Commissioner for Declarations.

Your affidavit becomes part of the Commission's case and may be filed with the appropriate registry. As soon as your affidavit is filed it becomes a public document and may be inspected by any third party.

What if I can't attend the hearing?

If you live outside the Brisbane metropolitan area, the hearing may be conducted by telephone. This is entirely at the discretion of the Tribunal or Committee.

Witness expenses

If you are required to appear as a witness, you may be paid in accordance with a set scale, as a contribution towards travelling and related expenses.

Hints for giving evidence

When giving evidence remember:

- Be honest.
- Listen very carefully to each question and consider what is being asked before you give your answer.
- If you do not understand a question, say so.
- Take your time and give a complete answer.
- Do not guess. If you're not sure about an answer, just say so.
- Do not say what someone has told you unless you are specifically asked.
- Speak clearly so that your evidence can be easily understood. There is a microphone in front of you but it only records your voice for a legal transcript, it does not make it louder.

Note: Don't let the formal language and surroundings make you feel uneasy or intimidated. Just be yourself.

Who can appeal?

The Commissioner, the respondent or the Attorney-General may appeal the decision of the Tribunal to the Court of Appeal.

The respondent or the Commissioner may appeal a decision by the Committee to the Tribunal.

An appeal must commence within 28 days of the disciplinary body's decision.

If you as the original complainant are dissatisfied with the decision, you do not have any right of appeal. This is because in this case you did not bring the discipline application, the Commissioner did.

Where can you get more information?

If you have any questions regarding this information or wish to enquire about the role of the Legal Services Commission, please visit the LSC website or contact the Commission on:

Telephone: **07 3406 7737** (Brisbane)
1300 655 754 (outside Brisbane)
133 677 (if you require the use of the National Relay Service)
131 450 (if you require a translator/interpreter)

For more information visit the Legal Services Commission website <www.lsc.qld.gov.au>.