

QCAT Practice Direction No 2 of 2010

Directions relating to the *Legal Profession Act 2007*

Updated: 10 November 2011

Under section 226 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) the President of QCAT may issue directions of general application about the Tribunal's procedures.

This practice direction is intended to streamline QCAT procedures in proceedings under the *Legal Profession Act 2007*.

Forms for starting a proceeding

1. The proceeding referred to in section 452(1) of the *Legal Profession Act 2007* which is called, in section 452(2) and 453, a *discipline application* should be brought in QCAT form 22 with appropriate amendments to comply with QCAT rule 115.

Discipline applications: case management

2. The Commissioner will file any discipline application with the Principal Registrar. It is not necessary to file any affidavit material supporting the discipline application at that time.
3. The Commissioner will serve a copy of this Practice Direction upon the Respondent with the discipline application.
4. The Respondent must file with the Principal Registrar, and serve on the Commissioner and any other party, a notice of address for service within 14 days of service of the discipline application.
5. Within 28 days of the filing of the notice of address for service, the Respondent must file in the Registry and serve on the Commissioner a response complying with QCAT rule 44.
6. Should the Respondent's position in relation to the matters in the discipline application and the response subsequently change, the Respondent must forthwith advise the Principal Registrar and Commissioner in writing of that circumstance and the reason for the change.

7. The Tribunal may in an appropriate case, take account of the Respondent's compliance, or non compliance, with this Practice Direction in determining the orders to be made in the event that any professional misconduct and/or unsatisfactory professional conduct is established.
8. The Principal Registrar will arrange a directions hearing within 6 weeks of filing and service of the Notice of Address for Service by the respondent and provide written notification of the date of that hearing to the Commissioner and the Respondent.
9. At the directions hearing the presiding Tribunal Member will consider necessary directions in the matter and may refer the matter to a compulsory conference.
10. At a compulsory conference, the presiding Tribunal Member may:
 - a. confer with the parties to identify and clarify the issues in dispute;
 - b. promote a settlement of issues that may be in dispute, such as facts to be presented to the tribunal, the consequences of any agreed facts, and a range of penalty that may be appropriate;
 - c. confer with the parties to identify the questions of fact and law to be decided by the tribunal;
 - d. if the issues in dispute cannot be settled, make orders and give directions about the further conduct of the proceeding.
11. To facilitate the compulsory conference the parties will provide each other with a list of the directions sought at least three days before it commences.
12. At any other time the Principal Registrar may convene a directions hearing, usually by telephone, to decide what steps need to be taken before the matter can be heard.

Discipline applications: filing of submissions

13. The purpose of this part of this practice direction is to ensure that where written submissions are presented by or on behalf of a party to an application:
 - a. the submissions will be retained on the Tribunal file in relation to the matter, and thereby available for future reference; and
 - b. the submissions are available for search.

14. Unless the Tribunal otherwise orders, it will therefore be taken that where written submissions are presented by or on behalf of a party in an application, there is a concurrent grant of leave that they be filed and read.
15. In such situations, the Principal Registrar, or other proper officer of the Tribunal, will endorse the file in relation to the application, recording the filing and reading of the submissions and identifying the submissions (as to the relevant party, and date), and will place a copy of the submissions on the file in the appropriate place.
16. Where such submissions are presented, four copies should be provided, one for the file and three 'working copies' for the Tribunal.
17. Such submissions may be searched, inspected and copied by any interested person, upon payment of any applicable fee.

Compensation orders

18. The *Legal Profession Act 2007* provides that QCAT may make compensation orders.
19. Where a compensation order is sought, the Legal Services Commissioner must file in the QCAT Registry a 'notice of intention to seek compensation order'. The form of the document should accord with the annexure to this practice direction.
20. The Commissioner should forthwith serve upon the Respondent a copy of the notice which has been filed.
21. The filing and serving of the notice must be accomplished sufficiently in advance of the hearing date:
 - a. to allow the Respondent time to prepare any relevant response; and
 - b. to ensure that the hearing proceeds without interruption on the appointed day.

Justice Alan Wilson
President
9 March 2010