

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CHANGES FOR THE LEGAL PRACTICE TRIBUNAL

What did the Legal Practice Tribunal do?

The Legal Practice Tribunal (LPT) heard and decided:

- applications made by the Legal Services Commissioner for a disciplinary order against Australian legal practitioners for professional misconduct or unsatisfactory professional conduct; and
- appeals from disciplinary decisions of the Legal Practice Committee.

Decisions it made were:

- an order that the Australian legal practitioner pay a penalty of a stated amount, not more than \$100,000;
- a compensation order;
- an order that the practitioner undertake and complete a course of further legal education;
- an order that, for a stated period, the practitioner engage in legal practice under supervision;
- an order that the practitioner do or refrain from doing something in connection with legal practice;
- an order that the practitioner stop accepting instructions as a public notary in relation to notarial services; and
- an order that engaging in legal practice by the practitioner is to be managed for a stated period / way / subject to stated conditions.

The Legal Practice Committee is a disciplinary body which also hears and decides disciplinary matters. Its jurisdiction is restricted to hearing and deciding applications by the Legal Services Commissioner about unsatisfactory professional conduct of a practitioner or misconduct of a law practice employee. Decisions it may make are:

- an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;
- an order that the practitioner pay a penalty of not more than \$10,000;
- a compensation order;
- an order that the practitioner do or refrain from doing something in connection with legal practice;
- an order that engaging in legal practice by the practitioner is to be managed for a stated period / way / subject to stated conditions;
- an order that engaging in legal practice by the practitioner is to be subject to periodic inspection; and
- an order that the practitioner seek advice from a person nominated by the relevant regulatory authority in relation to the practitioner's management of legal practice.

Are the Legal Practice Tribunal, the Legal Practice Committee and the inherent jurisdiction of the Supreme Court retained?

The LPT is abolished and its jurisdiction included in the jurisdiction of Queensland Civil and Administrative Tribunal (QCAT) under the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. The provisions in the *Legal Profession Act 2007* establishing the LPT were repealed.

The Legal Practice Committee continues the functions it previously performed under the *Legal Profession Act 2007*.

The inherent jurisdiction of the Supreme Court in relation to the supervision of the legal profession will continue to be preserved.

Has the role of the Legal Services Commissioner changed?

No, the Legal Services Commissioner continues to have the same functions and powers.

Who hears these matters in QCAT?

The LPT was previously constituted by a Supreme Court judge. The judge was assisted by a member of the practitioner panel and a member of the lay panel established under the *Legal Profession Act 2007*. The panel members were not members of the LPT.

Amendments to the *Legal Profession Act 2007* contained in *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* require QCAT to be constituted by a member who is a Supreme Court judge for hearing and deciding disciplinary matters for legal practitioners. The amendments also continue to require a member of the practitioner panel and a member of the lay panel to assist in legal profession disciplinary proceedings in QCAT.

How does QCAT deal with legal profession disciplinary matters?

There are no significant changes to how these matters are dealt with. QCAT has the same jurisdiction, functions and powers to make decisions under the *Legal Profession Act 2007* as the LPT had before the amalgamation process.

The *QCAT Act 2009* sets out the generic powers and procedures of QCAT. Where the generic provisions of the *QCAT Act 2009* are appropriate for legal profession disciplinary matters, corresponding provisions have been removed from the *Legal Profession Act 2007*. For example, provisions in part 7.4 of the *Legal Profession Act 2007* relating to the parties, general procedural requirements such as complying with natural justice, public hearings and proceeding in the absence of a party are similar to the generic provisions in the *QCAT Act 2009*. These provisions have been amended so that they only apply to the Committee. However, specific functions and powers required for

this jurisdiction, including the types of disciplinary orders QCAT can make, are retained in the *Legal Profession Act 2007*.

Are legal practice matters heard in the original or review jurisdiction of the QCAT?

QCAT exercises original jurisdiction when it makes a primary decision about a matter. It is the first decision made by an independent body, even if the matter has gone through mediation or conciliation prior to being determined by QCAT. Disciplinary matters are part of QCAT's original jurisdiction. QCAT exercises review jurisdiction when it reviews a decision made by another body such as a regulatory authority, including the Queensland Law Society and the Bar Association of Queensland. Applications to QCAT for review of disciplinary decisions of the Legal Practice Committee are part of QCAT's review jurisdiction.

Where is the QCAT registry located?

The registry for matters dealt with under the *Legal Profession Act 2007* in QCAT will be part of the QCAT registry on Level 9, Bank of Queensland Building, 259 Queen Street, Brisbane.

How are decisions of QCAT about legal profession disciplinary matters appealed?

The *QCAT Act 2009* sets out the general rights of appeal from decisions of QCAT (see part 8 of Chapter 2 of the *QCAT Act 2009*). The right of appeal set out in section 468 of the *Legal Profession Act 2007* has been retained. This section will prevail over the *QCAT Act 2009* provisions to the extent of any inconsistency. This means that parties and the Minister retains the right of appeal to the Court of Appeal and the appeal is by way of rehearing on the evidence given in the matter before the tribunal.

What has happened to the former rules of the LPT?

As with other jurisdictions, specific procedures for legal profession disciplinary matters are set out in the QCAT Rules and in practice directions. This means that the *Legal Profession (Tribunal and Committee) Rule 2007* has been repealed and the relevant rules included in the QCAT rules. The procedural rules for the Legal Practice Committee are now included in the *Legal Profession Regulation 2007*.

What has happened to applications which were in the LPT when QCAT commenced?

The transitional provisions in the *QCAT Act 2009* set out the standard approach to how matters are dealt with as of the date of commencement of QCAT on 1 December 2009 (see chapter 7 of the *QCAT Act 2009*).

If a person is able to apply to the LPT before 1 December 2009, but has not done so and is still within time to apply, the person must apply to QCAT from 1 December 2009. The functions, powers and procedures that apply to the

matter are those set out in the *QCAT Act 2009* and the amended *Legal Profession Act 2007*.

If the Legal Services Commissioner or another person had already filed an application in the LPT before 1 December 2009 but the matter had not yet begun to be heard, the matter is heard in QCAT. The procedure is that of QCAT under the *QCAT Act 2009* and the amended *Legal Profession Act 2007*. However QCAT only has the functions and powers the former tribunal had. The right of appeal from QCAT's decision are the rights set out under the *QCAT Act 2009* and the amended *Legal Profession Act 2007* (although, as noted above, this does not change the former appeal rights).

If the application had already started to be heard by the LPT before 1 December 2009, the proceeding continues before the same person but is taken to be a proceeding before QCAT and the person is taken to be a QCAT member. The procedure is that of QCAT under the *QCAT Act 2009* and the amended *Legal Profession Act 2007*. However QCAT may only perform the functions and exercise the powers of the LPT. The right of appeal is the right of appeal that applied to decisions of the LPT (although, as noted above, it is not proposed to change the current the appeal rights).

If the application was finalised before 1 December 2009, the decision is deemed to be a decision of QCAT. The right of appeal is the right of appeal that applied to decisions of the LPT (although, as noted above, there is no change to the former appeal rights).