

## QCAT Practice Direction No 2 of 2015

### Proceedings relating to legal costs agreements under the *Legal Profession Act 2007*

**Effective: 4 March 2015**

Pursuant to section 226 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) the President may make practice directions for the tribunal about the practices and procedures of the tribunal.

The purpose of this practice direction is to provide procedures for proceedings relating to legal costs agreements under the *Legal Profession Act 2007*.

#### **Application to the tribunal**

1. The form and content of an application to the Tribunal pursuant to section 328(1A) of the *Legal Profession Act 2007* to set aside a cost agreement must comply with rule 10 of the *Queensland Civil and Administrative Tribunal Rules 2009* (QCAT Rules).
2. Without limiting the requirements of rule 10, the application must include:
  - a) Details of the legal costs agreement, and annexing (only if relevant to the dispute) a copy of the agreement the subject of the application;
  - b) The grounds upon which the legal costs agreement is sought to be set aside, with reference (where applicable) to the matters referred to in section 328(2) of the *Legal Profession Act 2007*;
  - c) A summary of the facts and any relevant circumstances regarding the making of the agreement and/or dispute regarding the agreement; and
  - d) Orders the applicant is seeking the Tribunal make pursuant to section 328 of the *Legal Profession Act 2007*.
3. The application must be accompanied by two copies of the application and any annexures. An additional copy is required for any additional respondent.

#### **Service of application and response**

4. Once the application is filed in the registry the Applicant must serve upon the Respondent in a way which complies with the QCAT Rules:
  - a) the application and any annexed documents filed; and
  - b) a copy of this Practice Direction.

5. Within 28 days after service of the application the Respondent must file in the Registry a response, in approved Form 36, complying with rule 44 of the QCAT Rules.

## **Directions Hearing**

6. The Principal Registrar may arrange a directions hearing and provide written notification of the date of the direction hearing to the parties.
7. At the directions hearing the presiding Tribunal Member will consider necessary directions in the matter and may refer the matter to a compulsory conference.
8. 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;
  - 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.

## **Filing of submissions/evidence**

9. Where submissions or evidence are filed in the tribunal by a party, two copies should be provided, one for the Tribunal file and one 'working copy'. A copy of submissions/evidence filed in the Tribunal must also be given to the other party.

## **Orders to pay legal costs**

10. The *Legal Profession Act 2007* provides that if the Tribunal orders a costs agreement be set aside it may make an order as it considers appropriate in relation to the payment of legal cost the subject of the agreement.
11. The Tribunal may, for an order for the payment of legal costs, pursuant to section 328(4) of the *Legal Profession Act 2007*:
  - a) apply the applicable scale of costs, if any; or
  - b) decide the fair and reasonable legal costs in relation to the work to which the agreement related, with reference to the matters in section 328 of the *Legal Profession Act 2007*.

12. The Tribunal may seek submissions from the parties in relation to paragraphs 10 and 11 above at any time in a proceeding.

### **Adjournment of proceedings**


13. The Tribunal may in an appropriate case, adjourn the proceedings as provided for in section 328(3) of the *Legal Profession Act 2007* pending the completion of any investigation or decision concerning a complaint or investigation matter about the conduct of any Australian legal practitioner or Australian-registered lawyer.

### **Tribunal Hearing**

14. If the matter is listed for a tribunal hearing the Tribunal may make directions for the filing of materials by the parties.
15. The directions may include that the Applicant and the Respondent are to file an indexed and paginated bundle of documents incorporating all applications and documents filed in the proceeding, a copy of submissions filed and a copy of any authorities referred to.

### **Costs of proceedings**

16. The Tribunal may take account of the applicant's or respondent's compliance, or non-compliance, with this Practice Direction in determining any application for costs of the proceedings.



*Justice David Thomas  
President*

*4 March 2015*