

QCAT Practice Direction No. 10 of 2021

Directions relating to discipline applications and requests for compensation under the *Legal Profession Act 2007*

1. This Practice Direction replaces QCAT Practice Direction No. 2 of 2010.

Discipline applications

2. A discipline application under the *Legal Profession Act 2007* ('**LPA**') must be brought using the QCAT Form 22 – *Application or referral – disciplinary proceeding*, with appropriate amendments as per QCAT Rule 115. It is not necessary to file any affidavit material supporting the application at that time.
3. The Legal Services Commissioner ('**the Commissioner**') must serve a copy of this Practice Direction on the Respondent with the discipline application.
4. Within 14 days of service of the discipline application, the Respondent must file and serve on the Commissioner and any other party, a Notice of Address for Service.
5. Within 28 days of the filing of the Notice of Address for Service, the Respondent must file and serve on the Commissioner a response complying with QCAT Rule 44.
6. Within 6 weeks of the filing and service of the Notice of Address for Service by the Respondent, a directions hearing will be scheduled by the registry.
7. At the directions hearing the presiding tribunal member will make the directions necessary to progress the proceeding to a final hearing, including directions for the filing of evidence and/or a statement of agreed facts, and/or evidence in reply, as well as the filing of written submissions.
8. Upon the conclusion of the disciplinary matter, the registry must send the tribunal's order and any reasons for decision to the Commissioner, the Respondent, the Supreme Court registry and the Minister.

Filing evidence

9. Unless otherwise directed by the tribunal:
 - a. At least **six weeks** before the hearing, the Commissioner must file and serve a copy of its submissions (which contains hyperlinks to all authorities cited) on the Respondent and the tribunal.
 - b. At least **four weeks** before the hearing, the Respondent must file and serve a copy of its submissions (which contains hyperlinks to all authorities cited) on the Commissioner and the tribunal.

- c. At least **three weeks** before the hearing, the Commissioner may file and serve a copy of any submissions in reply (which contains hyperlinks to all authorities cited) on the Respondent and the Tribunal.
- d. At least **two weeks** before the hearing, the parties must file in the Tribunal an electronic hearing brief containing copies of all documents the parties intend to rely on at the hearing. The electronic hearing brief must be in a searchable PDF format, with hyperlinks to all authorities cited. All other documents disclosed during the proceeding which will not be relied on at the hearing, should not be included.

Compensation orders

- 10. Under Part 4.10 of the LPA, the Tribunal may make compensation orders (as that term is defined in s 464 of the LPA).
- 11. Within 14 days of filing a discipline application under s 452(1)(a) of the LPA against an Australian legal practitioner in relation to a complaint against the legal practitioner, the Commissioner must give the complainant:
 - a. correspondence providing basic information about the availability of a compensation order, including that the complainant may wish to obtain independent legal representation with respect to seeking a compensation order;
 - b. proforma 'Notice of Intention to Seek Compensation Order'; and
 - c. copies of ss 456, 464 and 466 of the LPA.
- 12. If a complainant intends to seek a compensation order, the complainant must:
 - a. prepare a 'Notice of Intention to Seek Compensation Order' which identifies precisely the law practice against which the compensation order is sought ("law practice" is defined in Schedule 2 of the *Legal Profession Act 2007* (Qld)), and
 - b. within 21 days of being given the documents referred to in paragraph 11:
 - i. file the Notice of Intention to Seek Compensation Order with the Tribunal either by:
 - email: EnquiriesQCAT@justice.qld.gov.au;
 - post: QCAT, GPO Box 1639, Brisbane Qld 4001; or
 - in person: QCAT, Level 11, 259 Queen Street, Brisbane Qld 4001.
 - ii. give a copy of the Notice of Intention to Seek Compensation Order to the Respondent and to the law practice identified in the Notice.

13. Upon receipt of the Notice of Intention to Seek Compensation Order, the registry will provide confirmation of receipt to the complainant with advice that the compensation matter will only be dealt with if there is a finding of unsatisfactory professional conduct or professional misconduct by the Tribunal against the Respondent.
14. Nothing in this Practice Direction derogates from the duties imposed on the Commissioner by s 451 of the LPA.
15. After a finding of unsatisfactory professional conduct or professional misconduct, the compensation matter will be listed for a directions hearing in which the presiding Tribunal member will make the directions necessary to progress the compensation matter. Unless otherwise directed by the tribunal, the Commissioner is excused from participating in any further directions or other hearings that relate to the compensation matter.
16. Upon the conclusion of the compensation matter, the registry must send the Tribunal's order and any reasons for decision to the complainant, the Respondent, the law practice, the Commissioner and the Minister.



Hon Justice Kerri Mellifont
President

24 November 2021

Annexure A – Notice of Intention to Seek Compensation Order under the *Legal Profession Act 2007*

Annexure A

NOTICE OF INTENTION TO SEEK COMPENSATION ORDER UNDER THE *LEGAL PROFESSION ACT 2007*

QCAT Case Number of the
Discipline Application (if known):

Legal Practitioner against whom
Discipline Application is filed:

Person Seeking Compensation Order (Complainant)

Name

Address

Postal Address (if different)

Suburb

State/Territory

Postcode

Contacts

Mobile

Alternative number

Email

Sign here

Date

Details of Compensation Order Sought

Name of law practice against
which the compensation order
is sought:

Specify precisely the
compensation order sought
against the law practice:

IMPORTANT NOTES

Section 464 of the *Legal Profession Act 2007* defines “compensation order” as follows:

A **compensation order** is 1 or more of the following—

- (a) an order that a law practice can not recover or must repay the whole or a stated part of the amount that the law practice charged a complainant for stated legal services;
- (b) an order discharging a lien possessed by a law practice in relation to a stated document or class of documents;
- (c) an order that a law practice carry out stated work for a stated person without a fee or for a stated fee;
- (d) an order that a law practice pay to a complainant an amount by way of compensation for pecuniary loss suffered because of conduct that has been found to be—
 - (i) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner involved in the relevant practice; or
 - (ii) misconduct of a law practice employee in relation to the relevant practice.

Schedule 2 of the *Legal Profession Act 2007* defines “law practice” as follows:

- (a) an Australian legal practitioner who is a sole practitioner; or
- (b) a law firm; or
- (c) an incorporated legal practice; or
- (d) a multi-disciplinary partnership.

A complainant who seeks a compensation order must:

- a. Specify the **law practice** against which the compensation order is sought, and
- b. Specify precisely the compensation order which is sought.

QCAT cannot make a compensation order under s 464(d) in an amount of more than \$7,500.00 unless the complainant and the law practice both consent to the order.¹

¹ *Legal Profession Act 2007*, s 466(3).