



Queensland

# Legal Profession (Tribunal and Committee) Rule 2004

## Subordinate Legislation 2004 No. 108

made under the

*Legal Profession Act 2004*

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## **Part 1 Preliminary**

### **1 Short title**

This rule may be cited as the *Legal Profession (Tribunal and Committee) Rule 2004*.

### **2 Commencement**

This rule commences on 1 July 2004.

### **3 Dictionary**

The dictionary in the schedule defines particular words used in this rule.

## **Part 2 Legal practice tribunal**

### **Division 1 Preliminary matters for discipline application**

#### **4 How to make a discipline application—Act, ss 248 and 276**

- (1) A discipline application must be in the approved form and filed with the registrar.
- (2) A discipline application may relate to more than 1 complaint or investigation matter.
- (3) A discipline application must state—
  - (a) for an application for an order against an Australian lawyer or former Australian lawyer—particulars of the lawyer's alleged unsatisfactory professional conduct or professional misconduct; or

- (b) for an application for an order against a law practice employee—particulars of the employee’s alleged misconduct in relation to the relevant practice.
- (4) A discipline application must also state—
- (a) the commissioner’s address for service; and
  - (b) the commissioner’s telephone number, fax number and email address.

## **5 Commissioner to serve copy of discipline application**

The commissioner must serve a copy of the discipline application personally on each respondent to the discipline application.

## **6 Respondent to file and serve notice of address for service**

- (1) Within 14 days after a respondent is served with a discipline application, the respondent must—
- (a) file with the registrar a notice of address for service, in the approved form; and
  - (b) serve<sup>1</sup> a copy of the notice on the commissioner; and
  - (c) serve a copy of the notice personally on each of the other parties to the discipline application.
- (2) The notice of address for service must state the respondent’s contact details.

## **Division 2 Preliminary matters for appeals**

### **7 Starting appeal to tribunal—Act, s 293(1)**

- (1) An appeal is started by filing a notice of appeal with the registrar.
- (2) A notice of appeal must be in the approved form and state—

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<sup>1</sup> See the *Acts Interpretation Act 1954*, section 39 (Service of documents).

- (a) whether the whole or part of the relevant decision is appealed from; and
  - (b) briefly and specifically the grounds of appeal; and
  - (c) the decision the appellant seeks.
- (3) If the appellant is the commissioner, the notice of appeal must state—
- (a) the commissioner’s address for service; and
  - (b) the commissioner’s telephone number, fax number and email address.
- (4) If the appellant is not the commissioner, the notice of appeal must state the appellant’s contact details.

## **8 Appellant to serve copy of notice of appeal**

The appellant must serve a copy of the notice of appeal personally on each respondent to the appeal.

## **9 Respondent to file and serve notice of address for service**

- (1) Within 14 days after a respondent to an appeal is served with a copy of the notice of appeal, the respondent must—
- (a) file with the registrar a notice of address for service, in the approved form; and
  - (b) serve a copy of the notice personally on each of the other parties to the appeal.
- (2) If the respondent is the commissioner, the notice of address for service must state—
- (a) the commissioner’s address for service; and
  - (b) the commissioner’s telephone number, fax number and email address.
- (3) If the respondent is not the commissioner, the notice of address for service must state the respondent’s contact details.

## **Division 3                      Other matters for discipline    application or appeal**

### **10            Substituted service**

The tribunal may make an order substituting another way of serving a document required to be served under this rule.

### **11            Address for service**

- (1) Subject to subsection (3), the commissioner's address for service is—
  - (a) for a discipline application—the commissioner's address for service stated in the discipline application;  
or
  - (b) for an appeal—the commissioner's address for service stated in the commissioner's notice of appeal or notice of address for service.
- (2) Subject to subsection (3), the address for service of a respondent to a discipline application or a respondent to an appeal, other than the commissioner, is—
  - (a) for a respondent acting personally—the respondent's residential or business address stated in the respondent's notice of address for service; or
  - (b) for a respondent for whom a law practice is appointed to act—the practice's law practice address stated in the respondent's notice of address for service.
- (3) To change a party's address for service or any other contact details, the party must—
  - (a) file with the registrar a notice of address for service stating the new address for service or contact details;  
and
  - (b) serve a copy of the notice on each of the other parties to the discipline application or appeal.

**12 Directions for hearing**

- (1) The tribunal may set a time, day and place for a directions hearing in a proceeding before the tribunal.
- (2) The registrar must give the parties to the proceeding written notice of the day, time and place set for the directions hearing as soon as practicable after it is set.
- (3) The tribunal may, in writing, require each party within a stated time—
  - (a) to serve the other parties with a copy of the directions, if any, the party wants the tribunal to issue; and
  - (b) to confer with the other parties with a view to agreeing, as far as practicable, on the directions the tribunal should be asked to issue.

**13 Setting down for hearing**

- (1) The tribunal or registrar may set the time, day and place for the hearing of a discipline application or an appeal.
- (2) The registrar must give the parties written notice of the day, time and place set for the hearing of the discipline application or appeal as soon as practicable after it is set.

**14 List of documents**

- (1) A party to a proceeding for a discipline application or an appeal must—
  - (a) at least 14 days before the hearing day for the discipline application or appeal, serve a list of documents the party intends to rely on at the hearing on all other parties, unless the tribunal orders otherwise; and
  - (b) make the documents mentioned in the list available for inspection by the other parties at least 7 days before the hearing day; and
  - (c) if asked by another party for a copy of a document or documents mentioned in the list and on payment of the appropriate amount, give the other party a copy of the document or documents.

- (2) The **appropriate amount** is the amount worked out on the total number of pages copied at the rates set for copies under the *Uniform Civil Procedure Rules 1999*, schedule 1.<sup>2</sup>
- (3) Subsection (1)(c) does not prevent a party recovering the cost of copies as part of the costs of the proceeding.

## 15 Affidavits

- (1) A party to a proceeding for a discipline application or an appeal must—
  - (a) file with the registrar each affidavit the party intends to rely on at the hearing of the discipline application or appeal; and
  - (b) serve a copy of the affidavit on all other parties.
- (2) A party must comply with subsection (1) as soon as practicable, but no later than 5 days, before the hearing day.
- (3) Subsection (4) applies if a party requires someone who has sworn an affidavit for another party to attend the hearing to give evidence or for cross-examination.
- (4) The party must, at least 3 days before the hearing day, file with the registrar and serve on all other parties a list of the persons the party requires to attend to give evidence or for cross-examination.
- (5) Subsection (4) does not affect any power, practice or procedure under this rule, in relation to subpoenas.

## 16 Application of subpoena provisions of Uniform Civil Procedure Rules 1999

The *Uniform Civil Procedure Rules 1999*, chapter 11, part 4<sup>3</sup> (**subpoena provisions**) applies in relation to a discipline application or appeal as if a reference in the subpoena provisions to the court were a reference to the tribunal.

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2 See the *Uniform Civil Procedure Rules 1999*, schedule 1 (Scale of Costs—Supreme Court), item 5.

3 *Uniform Civil Procedure Rules 1999*, chapter 11 (Evidence), part 4 (Subpoenas)



**17 Application of appeal provisions of Uniform Civil Procedure Rules 1999**

- (1) The practice and procedure for an appeal includes the practice and procedure under the provisions of the *Uniform Civil Procedure Rules 1999*, chapter 18<sup>4</sup> mentioned in subsection (2) (*appeal provisions*) as if—
- (a) a reference in the appeal provisions to the Court of Appeal were a reference to the tribunal; and
  - (b) a reference in the appeal provisions to the court that made the order appealed from were a reference to the committee; and
  - (c) a reference in the appeal provisions to a practice direction were a reference to a direction issued under section 434<sup>5</sup> of the Act.
- (2) The provisions are—
- rule 749
  - rule 751
  - rule 754
  - rule 755
  - rule 756
  - rule 757
  - rule 761
  - rule 762
  - rule 769
  - rule 775
  - rule 788.<sup>6</sup>

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4 *Uniform Civil Procedure Rules 1999*, chapter 18 (Appellate proceedings)

5 Section 434 (Practice directions) of the Act

6 *Uniform Civil Procedure Rules 1999*, rules 749 (Parties to appeal), 751 (Amendment of notice of appeal), 754 (Cross appeals), 755 (Notice of cross appeal), 756 (Effect of notice of cross appeal), 757 (Affirmation on other ground), 761 (Stay of decision under appeal), 762 (Dismissal by consent), 769 (Insufficient material), 775 (Effect of failure to prosecute appeal) and 788 (Consent order)

## **Division 4                      General**

### **18        Extending and shortening time**

- (1) The tribunal may, at any time, extend a time set under this rule.
- (2) If a time set under this rule, including a time for service, has not ended, the tribunal may shorten the time.

### **19        Effect of non-compliance with rule**

- (1) Noncompliance with this rule by a party to a proceeding before the tribunal does not invalidate the proceeding, unless the tribunal directs otherwise.
- (2) If this rule has not been complied with by a party, other than the commissioner, the tribunal may—
  - (a) waive the noncompliance; or
  - (b) by order, set aside part or all of the proceeding; or
  - (c) make any other appropriate order.
- (3) If the tribunal makes an order under section 481<sup>7</sup> of the Act in relation to a non-compliance with this rule by the commissioner, the tribunal may also make any other appropriate order.
- (4) If this rule has not been complied with by the commissioner and the tribunal is not satisfied it should make an order under section 481 of the Act in relation to the non-compliance, the tribunal may—
  - (a) by order, set aside part or all of the proceeding; or
  - (b) make any other appropriate order.

### **20        Custody of records**

The registrar is responsible for the custody of the tribunal's records.

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<sup>7</sup> Section 481 (Power to disregard procedural lapses) of the Act

## **Part 3                      Legal practice committee**

### **21           Practice and procedure for discipline application**

The practice and procedure for a discipline application to the committee is the practice and procedure under part 2 for a discipline application to the tribunal, with necessary changes.

## Schedule                      Dictionary

### section 3

***appeal*** means an appeal to the tribunal against a final decision of the committee about a discipline application.

***contact details***, of a person, means—

- (a) if the person intends to act personally, the following details—
  - (i) the residential or business address of the person;
  - (ii) if the person has a telephone number—the telephone number;
  - (iii) if the person does not have a telephone number—a way of contacting the person by telephone;
  - (iv) the fax number and email address, if any, of the person; or
- (b) if a law practice is appointed to act for the person, the following details—
  - (i) the residential or business address of the person;
  - (ii) the name under which the law practice is carried on;
  - (iii) either of the following (the ***law practice address***)—
    - (A) if the law practice has a place of business in Queensland—a place of business in Queensland of the law practice;
    - (B) otherwise—an address, in Queensland, for service of the person;
  - (iv) a telephone number of the law practice;
  - (v) a fax number and email address, if any, of the law practice.

***law practice address*** see definition *contact details*, paragraph (b)(iii).

## ENDNOTES

1. Made by the Governor in Council on 24 June 2004.
2. Notified in the gazette on 25 June 2004.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.