

## LEGAL PRACTICE COMMITTEE

### PRACTICE DIRECTION NUMBER 1 OF 2010

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#### PROCEDURES FOR DISCIPLINE APPLICATIONS

Under section 640(2) of the *Legal Profession Act 2007* ("Act") the Chairperson or Deputy Chairperson of the Legal Practice Committee ("*Committee*") may issue directions of general application about the Committee's procedures.

This Practice Direction is intended to replace the relevant procedural provisions of the repealed *Legal Profession (Tribunal and Committee) Rule 2007* which were applicable to the Committee and to consolidate previous directions relating to the Committee's procedures for dealing with discipline applications.

#### PREVIOUS PRACTICE DIRECTIONS REPEALED

1. Practice Direction 2 of 2008 is repealed.
2. Practice Direction 3 of 2008 is repealed.
3. Practice Direction 1 of 2009 is repealed.


#### THE SECRETARIAT

4. The *Secretariat* is the person appointed by the Commissioner to provide administrative support for the Committee pursuant to section 635 of the Act.
5. The address for service of the Secretariat is c/- Legal Services Commission, Level 25, 307 Queen St, Brisbane 4000.
6. The secretariat is responsible for the custody of the Committee's records.

#### GENERAL PROCEDURES FOR DISCIPLINE APPLICATIONS

##### **7. How to make a discipline application - Act, s 452**

- 7.1 The Legal Services Commissioner may make a discipline application pursuant to section 452 of the Act.
  - 7.2 The discipline application must be in the approved form (Form 1 *attached*) and be filed with the secretariat.
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- 7.3 A discipline application may relate to more than 1 complaint or investigation matter.
- 7.4 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.
- 7.5 The Secretariat will give the Commissioner a sealed copy of the discipline application for service upon the respondent/s.

#### **8. Commissioner to serve copy of discipline application**

- 8.1 The Commissioner must serve a copy of the discipline application personally on each respondent to the discipline application.

#### **9. Substituted service**

- 9.1 On the Commissioner's application, the Chairman or the Committee may make an order substituting another way of serving a discipline application on a respondent in circumstances where personal service can not be effected.<sup>1</sup>

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

- 10.1 Within 14 days after a respondent is served with a discipline application, the respondent must—
- (a) file with the secretariat a notice of address for service, in the approved form (Form 2 *attached*); and
  - (b) serve a copy of the notice on the commissioner; and
  - (c) serve a copy of the notice on each of the other parties to the discipline application.

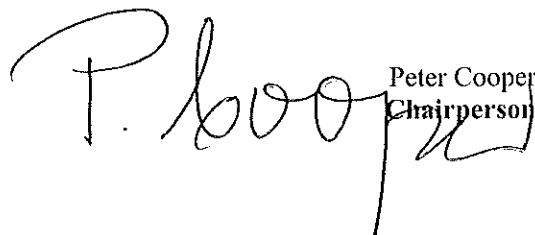
#### **11. Respondent to file Statement in Response to Discipline Application**

- 11.1 Within 28 days of the filing of the Notice of Address for Service, the Respondent must file in the Secretariat and serve on the Commissioner a Statement specifying which of the allegations and particulars contained in the Discipline Application are admitted, which are denied, or any allegations or particulars which can not be admitted, specifying the reason for the non-admission.

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

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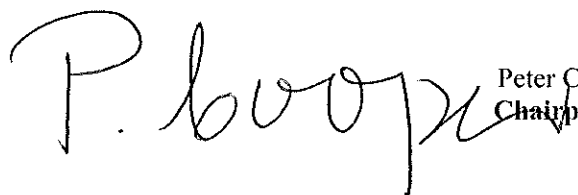
  
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- 11.2 Should the Respondent's position in relation to the matters in paragraph 11.1 change subsequently, the Respondent must forthwith advise, in writing, the Secretariat and Commissioner of that circumstance and reason for the change.
- 11.3 The Committee may in an appropriate case, take account of the Respondent's compliance, or non compliance, with this Practice Direction in determining the order to be made in the event that any unsatisfactory professional conduct is established.

## 12. Case Management Conference

- 12.1 The Secretariat will organise a preliminary directions hear ("*Case Management Conference*") if required, within 6 weeks of filing and service of the Notice of Address for Service by the Respondent.
- 12.2 The secretariat will give the parties to the proceeding written notice of the day, time and place set for Case Management Conference as soon as practicable after it is set.
- 12.3 At the Case Management Conference, the Chairperson or the Deputy Chairperson will be responsible for managing the case and giving directions. Wherever possible, Discipline Applications will be managed in one of two ways:
- (a) the Discipline Application may be referred directly to hearing without any requirement that the parties file any material in addition to the original Discipline Application; or
  - (b) the parties may be directed to file and exchange affidavits, and to lodge and exchange submissions or other material, and when that is done a hearing date will be set.
- 12.4 At the Case Management Conference, the Chairperson or Deputy Chairperson may:
- (a) confer with the parties to endeavour to narrow the issues in dispute and confirm any facts which may be included in a Statement of Agreed Facts to be prepared jointly by the parties;
  - (b) make directions setting out the steps required of the parties to prepare for the hearing (directions will normally cover the filing and exchange of affidavits, and lodgement and exchange of submissions or other material);
  - (c) make rulings on issues of law and/or procedure;
  - (d) set a date for further directions and/or for hearing the Discipline Application.

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- 12.5 To facilitate the Case Management Conference, the parties will provide each other with a list of the directions sought at least two days before the date of the Case Management Conference.

### **13. Setting down for hearing**

- 13.1 The Committee or secretariat may set the time, day and place for the hearing of a discipline application.
- 13.2 The secretariat must give the parties written notice of the day, time and place set for the hearing of the discipline application as soon as practicable after it is set.

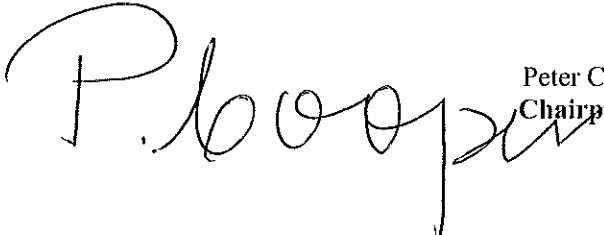
### **14. Affidavits**

- 14.1 A party to a discipline application must—
- (a) file with the secretariat each affidavit the party intends to rely on at the hearing of the discipline application ; and
  - (b) serve a copy of the affidavit on all other parties.
- 14.2 A party must comply with paragraph 11.1(a) as soon as practicable, but no later than 5 days, before the hearing day.
- 14.3 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.
- 14.4 Paragraph 11.3 does not affect any power, practice or procedure under this direction, in relation to subpoenas.

### **15. List of documents (other than affidavits)**

- 15.1 This direction applies to documents other than affidavits filed in the proceeding by a party to the discipline application.
- 15.2 A party to the discipline application must—
- (a) at least 14 days before the hearing day for the discipline application, serve a list of documents the party intends to rely on at the hearing other than affidavits filed on all other parties; 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

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(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<sup>2</sup>, give the other party a copy of the document or documents.

15.3 Paragraph 15.2(c) does not prevent a party recovering the cost of copies as part of the costs of the proceeding.

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

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

### **COMPENSATION ORDERS**

17. This paragraph applies to compensation orders as defined in Part 4.10 of the Act.

17.1 The Act provides that the Committee may make compensation orders.<sup>4</sup>

17.2 Where a compensation order is sought, the Commissioner must file with secretariat and serve on each respondent to the discipline application a Notice of Intention to Seek Compensation Order in the approved form (Form 3 *attached*).

17.3 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.

### **FILING OF SUBMISSIONS**

18. This paragraph applies where written submissions are presented to the Committee by or on behalf of a party to an application.

18.1 Where written submissions are presented to the Committee the submissions will be retained on the Committee file in relation to the matter.

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<sup>2</sup> 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 (Scale of Costs—Supreme Court), item 7

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

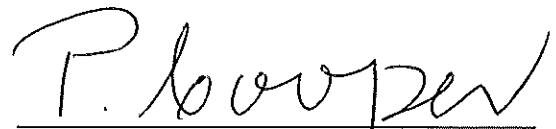
<sup>4</sup> Section 458(2)(c), see also Part 4.10

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- 18.2 Unless the Committee otherwise orders, it will 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.
- 18.3 In such situations, the Secretariat 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.
- 18.4 Where such submissions are presented, four copies should be provided, one for the file and three "working copies" for the Committee.



Peter Cooper  
Chairperson

~~June 2010~~  
16th November 2010