

NORTHERN TERRITORY OF AUSTRALIA
LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL RULES

Subordinate Legislation No. 13 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 13 of 2011*

Legal Practitioners Disciplinary Tribunal Rules

I, Terence Francis Coulehan, chairperson of the Legal Practitioners Disciplinary Tribunal, under section 677A(1) of the *Legal Profession Act*, make the following rules.

Dated 28 February 2011

Chairperson

* Notified in the *Northern Territory Government Gazette* on 27 April 2011.

Part 1 Preliminary matters

1 Citation

These Rules may be cited as the *Legal Practitioners Disciplinary Tribunal Rules*.

2 Definitions

In these Rules:

address for service, of a party to proceedings, means the address specified in rule 11(1) or (2).

appeal means an appeal to the Disciplinary Tribunal under section 506 of the Act.

applicant, in proceedings, means the following persons:

- (a) for an appeal against a decision to dismiss a complaint about an Australian legal practitioner under section 498 of the Act – the complainant;
- (b) for an appeal against a decision to take action against an Australian legal practitioner under section 499(2) of the Act – the Australian legal practitioner;
- (c) for a disciplinary application – the Law Society.

chairperson, see section 668 of the Act.

contact details, of a party to proceedings, means the details specified in rule 11(3).

Disciplinary Tribunal, in relation to particular proceedings, means:

- (a) the members constituting the Tribunal to hear and decide the proceedings; or
- (b) the member conducting a directions hearing or interlocutory hearing in the proceedings.

file means to file a document in accordance with rule 4.

proceedings means proceedings in the Disciplinary Tribunal for an appeal or disciplinary application.

registrar means the person holding or occupying the office of registrar of the Disciplinary Tribunal mentioned in section 677A(4) of the Act.

respondent, to proceedings, means the following persons:

- (a) for an appeal by a complainant – each of the following:
 - (i) the Law Society;
 - (ii) the Australian legal practitioner against whom the complaint was made;
- (b) for an appeal by an Australian legal practitioner – each of the following:
 - (i) the Law Society;
 - (ii) the complainant;
- (c) for a disciplinary application – the Australian legal practitioner against whom the complaint was made.

sealed means marked with the stamp mentioned in rule 3(2).

3 Seal of Disciplinary Tribunal

- (1) There is to be a seal of the Disciplinary Tribunal, approved by the chairperson.
- (2) The registrar must keep a stamp of a design as near as practicable to the seal of the Tribunal.
- (3) A document marked with the stamp kept by the registrar is taken to have been sealed with the seal of the Tribunal.

4 Filing documents

- (1) A document is filed with the Disciplinary Tribunal by lodging it with the registrar in the Registry of the Supreme Court.
- (2) A party to proceedings who is required by these Rules to serve a sealed document on another party must file sufficient copies of the document to enable service of a sealed copy on each other party.

Part 2 Starting proceedings

Division 1 Appeal against decision of Law Society

5 Section 506 – form of notice of appeal

- (1) A notice of appeal must be in the approved form and include the following information:
- (a) the full name, address for service and other contact details of the applicant;
 - (b) the name and address of each respondent;
 - (c) the grounds for the appeal, set out briefly and specifically in consecutively numbered paragraphs;
 - (d) a brief description of the alleged conduct the subject of the appeal, set out in consecutively numbered paragraphs;
 - (e) whether the applicant appeals against the whole decision or part of the decision;
 - (f) the decision and orders (including a compensation order) the applicant seeks;
 - (g) a statement that:
 - (i) each respondent served with the notice of appeal must file and serve a notice of the respondent's address for service in accordance with rule 7; and
 - (ii) a directions hearing in the proceedings will be held, details of which will be notified to the parties by the registrar in accordance with rule 13.
- (2) The applicant must attach to the notice of appeal a copy of the information notice given to the applicant under section 499 or 501 of the Act.

6 Applicant to serve copy of notice of appeal

Within 14 days after filing the notice of appeal, the applicant must serve a sealed copy of the notice personally on each respondent to the proceedings.

7 Respondent to file and serve notice of address for service

- (1) Within 14 days after a respondent is served with a copy of the notice of appeal, the respondent must:
 - (a) file a notice, in the approved form, of the respondent's address for service; and
 - (b) serve a sealed copy of the notice personally on each other party to the appeal.
- (2) The notice of address for service must include the respondent's other contact details.

Division 2 Disciplinary application

8 Section 515 – form of disciplinary application

A disciplinary application must be in the approved form and include the following information:

- (a) the name and address of the respondent;
- (b) a description of the respondent's alleged unsatisfactory professional conduct or professional misconduct, set out in consecutively numbered paragraphs;
- (c) a statement that:
 - (i) the respondent must file and serve a notice of the respondent's address for service in accordance with rule 10; and
 - (ii) a directions hearing in the proceedings will be held, details of which will be notified to the parties by the registrar in accordance with rule 13;
- (d) the applicant's address for service and other contact details.

9 Law Society to serve copy of application

The applicant must, within 14 days after filing the disciplinary application, serve a sealed copy of the application personally on the respondent.

10 Respondent to file and serve notice of address for service

- (1) Within 14 days after the respondent is served with a disciplinary application, the respondent must:
 - (a) file a notice of address for service, in the approved form; and
 - (b) serve a sealed copy of the notice on the applicant.
- (2) The notice of address for service must state the respondent's other contact details.

Division 3 Address for service etc.

11 Party's address for service and other contact details

- (1) The address for service of notices and other documents on the Law Society is:
 - (a) the business address of the Society; or
 - (b) if the Society is represented by an Australian legal practitioner – the business address of the practitioner.
- (2) The address for service of notices and other documents on any other party to proceedings is as follows:
 - (a) for a party appearing personally – the residential or business address of the party;
 - (b) for a party represented by an Australian legal practitioner – the business address of the practitioner;
 - (c) for a party represented by a person who is not an Australian legal practitioner – the residential or business address of the person.
- (3) The other contact details of a party to proceedings are as follows:
 - (a) if the party appears personally – the telephone number, fax number and email address of the party;
 - (b) if the party is represented by an Australian legal practitioner or other person – the telephone number, fax number and email address of the practitioner or person.

12 Change of address for service or other contact details

A party to proceedings whose address for service or any other contact detail has changed must:

- (a) within 7 days after the change – file a notice of address for service, in the approved form, stating the new address for service or other contact details; and
- (b) within 14 days after the change – serve a copy of the notice on each other party.

Part 3 Conducting proceedings

Division 1 Directions, hearing and evidence

13 Notice of directions hearing

As soon as practicable after the day on which rule 7 or 10 (as applicable) requires a notice of address for service to be filed, the registrar must set a date, time and place for a directions hearing in the proceedings and notify the parties of the details.

14 Directions hearings

- (1) The first directions hearing in proceedings must be conducted by the chairperson.
- (2) The Disciplinary Tribunal may order further directions hearings in proceedings.
- (3) Any further directions hearing must be conducted by one of the members constituting the Tribunal to hear and decide the proceedings.
- (4) Each party to the proceedings must attend a directions hearing unless directed otherwise by the Tribunal.
- (5) At a directions hearing, the Tribunal may give the directions about the conduct of the proceedings that the Tribunal considers appropriate.

15 Setting down for hearing

- (1) The Disciplinary Tribunal or registrar may set the time, day and place for the hearing of an appeal or a disciplinary application.

- (2) As soon as practicable after the time, day and place for the hearing are set, the registrar must give the parties to the proceedings written notice of those details.
- (3) If the hearing is for a disciplinary application, the Law Society must give the complainant written notice of the hearing and of the complainant's entitlement to appear in relation to an aspect of the hearing mentioned in section 522(3) of the Act.

16 List of documents

- (1) Unless the Disciplinary Tribunal orders otherwise, a party to proceedings must:
 - (a) at least 28 days before the hearing day, serve on each other party a list of documents the party intends to rely on at the hearing; and
 - (b) make the documents in the list available for inspection by each other party at least 21 days before the hearing day; and
 - (c) if another party requests a copy of a document in the list and pays a reasonable amount for the copy – give the other party the copy requested.
- (2) Subrule (1)(c) does not prevent a party recovering the cost of copies as part of the costs of the proceedings.

17 Affidavits

- (1) This rule applies only if a party to the proceedings intends to rely on affidavits at the hearing.
- (2) As soon as practicable (but no later than 5 days) before the hearing day, the party must:
 - (a) file the affidavits the party intends to rely on; and
 - (b) serve copies of the affidavits on each other party.
- (3) If the party requires a person who has sworn an affidavit for another party to attend the hearing to give evidence or for cross-examination, the party must, at least 3 days before the hearing day:
 - (a) file a notice that the person is required to attend for that purpose; and
 - (b) serve a copy of the notice on each other party.

- (4) A copy or notice served under subrule (2) or (3) must be served personally on a party other than the Law Society.
- (5) Subrule (3) does not affect any power, practice or procedure under these Rules in relation to subpoenas.

18 Subpoenas

Order 42 of the *Supreme Court Rules* applies (with the necessary changes) in proceedings as if a reference in that Order to the Court were a reference to the Disciplinary Tribunal.

Division 2 General practice and procedures

19 Interlocutory applications

- (1) A party to proceedings (***the applying party***) may apply to the Disciplinary Tribunal for an interlocutory order by filing an application in the approved form and an affidavit in support of the application.
- (2) The registrar must set a date, time and place for the hearing of the application and enter the details on the application.
- (3) The applying party must serve a sealed copy of the application and a copy of the affidavit on each other party no later than 3 days before the hearing of the application.
- (4) A party served with the application must, no later than 1 day before the hearing of the application, file and serve on the applying party the affidavit on which the party intends to rely at the hearing.
- (5) The hearing of the application must be conducted by one of the members constituting the Tribunal to hear and decide the proceedings.

20 Substituted service

The Disciplinary Tribunal may make an order substituting another way of serving a document required to be served personally under these Rules.

21 Extending and shortening time

- (1) The Disciplinary Tribunal may, at any time, extend a time set under these Rules.
- (2) If a time set under these Rules (including a time for service) has not expired, the Tribunal may shorten the time.

22 Effect of non-compliance with Rules

- (1) Non-compliance with these Rules by a party to proceedings does not invalidate the proceedings unless the Disciplinary Tribunal orders otherwise.
- (2) If a party other than the Law Society fails to comply with these Rules, the Tribunal may make any order it considers appropriate, including any of the following:
 - (a) an order waiving the non-compliance;
 - (b) an order that part or all of the proceedings be set aside.
- (3) If the Tribunal makes an order under section 524 of the Act in relation to the Law Society's non-compliance with these Rules, the Tribunal may also make any other orders it considers appropriate.
- (4) If the Law Society has not complied with these Rules and the Tribunal is not satisfied it should make an order under section 524 of the Act in relation to the non-compliance, the Tribunal may make any orders it considers appropriate, including an order that part or all of the proceedings be set aside.

23 Procedure if no rule or practice direction

- (1) If, in proceedings, the procedure for taking a step or for the exercise of a power by the Disciplinary Tribunal is not prescribed by these Rules and no practice direction for the procedure has been issued, the Tribunal may apply the procedure it considers appropriate.
- (2) Without limiting subrule (1), the Tribunal may apply (with the necessary modifications) a relevant rule of the *Supreme Court Rules*.

Part 4 Miscellaneous matters**24 Registrar to keep records**

The registrar is responsible for keeping the records of the Disciplinary Tribunal.

25 Signing document by Disciplinary Tribunal

A notice to be given by the Disciplinary Tribunal, or any other document required to be signed by the Tribunal, may be signed by one of the following persons:

- (a) in proceedings – the chairperson, a member of the Tribunal constituted for the proceedings, or any other person the constituted Tribunal has authorised to sign;
- (b) in other circumstances – the chairperson or any other person authorised by the chairperson to sign.

26 Chairperson may engage person to assist

- (1) The chairperson may engage an Australian legal practitioner or another person to assist the Disciplinary Tribunal generally or in particular proceedings.
- (2) The Tribunal may direct an Australian legal practitioner assisting it in proceedings to represent a party who is not otherwise represented in the proceedings.