

Guideline – Authorisations

Guide to the Tribunal's jurisdiction under the *Legal Practitioners Act 1981*

The purpose of this guideline is to provide guidance to legal practitioners, or incorporated legal practices, who seek an authorisation to employ, engage or otherwise associate with a “disqualified person” under the *Legal Practitioners Act 1981 (the Act)*. Under the Act, the Tribunal has jurisdiction to:

- Determine originating disciplinary proceedings
- Review certain decisions and determinations of the Legal Profession Conduct Commissioner (**Commissioner**)
- Authorise a legal practitioner to engage or employ a disqualified person
- Authorise an incorporated legal practice to employ, engage or otherwise be associated with a disqualified person

This guideline is informational only and is not a substitute for legal advice nor does it replace your own review of the relevant legislation. Please refer to SACAT's rules and practice directions to supplement this guideline.

For further information in relation to the Tribunal's jurisdiction to impose disciplinary action against legal practitioners under the Act, please refer to the Guideline on Disciplinary Complaints. SACAT has also published a guideline on the Tribunal's jurisdiction to review certain decisions of the Commissioner under the Act.

1. Jurisdiction

Authorisations

The Act places restrictions on the employment, engagement and association of certain individuals who are *disqualified persons* from practicing law.

A *disqualified person* includes a person who:

- has been removed from the Roll of Legal Practitioners and has not been re-admitted;
- has had their practising certificate cancelled or is currently subject to a suspension;
- has been refused renewal of a practising certificate and has not subsequently obtained one;
- is subject to an order prohibiting their employment or remuneration in connection with legal practice;
- is subject to an order prohibiting a legal practitioner from entering into partnership with them; or
- is subject to an order disqualifying them from involvement in the management of a legal practice.

Under section 23AA of the Act, a legal practitioner may commit an offence if they are party to an agreement or arrangement to employ or engage a disqualified person.

In addition, schedule 1 clause 18 of the Act provides that an incorporated legal practice may commit an offence if a disqualified person:

- is an officer or employee of the practice;
- engages in legal practice in partnership with the practice;
- shares in receipts, revenue or other income arising from the provision of legal services by the practice; or
- is engaged or remunerated in connection with the provision of legal services by the practice.

However, the Act also provides a mechanism by which a legal practitioner or incorporated

legal practice may seek authorisation to employ, engage or otherwise associate with a disqualified person. An application for authorisation may be made to the Tribunal.

Before granting an authorisation, the Tribunal must be satisfied that the disqualified person will not engage in the practice of law and that the proposed arrangement will not pose a risk to the public. The Tribunal may impose conditions on any authorisation granted to address these considerations.

Please note, the Commissioner is entitled to be heard and make submissions in proceedings concerning applications for authorisation.

2. Commencement

Constitution of Tribunal

For proceedings in the Tribunal's 'authorisations' jurisdiction, the Tribunal will be constituted by either:

- a Presidential Member; or
- a designated Senior Member; or
- a designated Magistrate.¹

Lodging Applications

The legal practitioner, or incorporated legal practice, who is applying to the Tribunal for an authorisation must lodge an application through SACAT's Online Lodgement System. The applicant must file the proposed agreement or arrangement that they seek the disqualified person become a party to, as well as any further evidence they wish to rely on.

Fees

Applications for an authorisation will incur a fee. The online application form states the applicable fee for the application. The fee must be paid at the time of making the application or the applicant may make an application for the fee to be waived.

SACAT will not do anything with the application until any applicable fees have been paid or waived.

Further information about SACAT fees and charges is available at our website, Fees and charges and Fee waivers and exemptions.

Representation

The applicant may wish to self-represent or alternatively be represented by another lawyer. If the applicant wishes to be represented in the Tribunal proceedings, then a Notice of Acting must be filed with the Tribunal as soon as practicable after legal representation is engaged.

3. Directions hearing

Initial directions hearing

The Tribunal will call the matter on for a directions hearing within the first four to six weeks of the application being filed. This directions hearing may be conducted by telephone, video conference or in person.

The purpose of the initial directions hearing is primarily for case management; it is not a substantial hearing where the application will be determined.

The Member conducting the first directions hearing may determine that another directions hearing is required, or the Member may decide that the matter should go to conference. If there is a full hearing, it will not be heard by the Member/s presiding over the conference.

Directions hearings throughout proceedings

Directions hearings are often conducted by phone. They will be utilised by the Tribunal for the orderly and efficient preparation of the matter by making timetabling directions, narrowing issues in dispute and fixing the dates

¹ Legal Practitioners Act 1981 s 78.

for full hearing.² They will often be used following a conference or to determine interlocutory applications.

Parties may bring interlocutory applications at a directions hearing, and such applications may be determined at that time where they are relatively straightforward and unopposed. If an interlocutory application is contested or concerns matters of a contentious nature, the Tribunal may adjourn consideration of the application and list a further directions hearing to enable the parties to address the issues raised.

Please note that any directions issued by the Tribunal must be strictly complied with. Extensions of time may not be routinely granted, whether “by consent” or not.

4. Full hearing

At the hearing

Hearings at SACAT are generally conducted in public, with hearing lists posted daily on SACAT’s website, [Today’s hearings](#).

Anything said or done in the course of proceedings under the Act, heard before the Tribunal, is protected by absolute privilege.³

It is expected that the parties and their legal representatives attend the full hearing in person.

The Tribunal will have regard to documentary evidence and written submissions as well as oral evidence and oral submissions presented at the full hearing.

At the conclusion of the full hearing, the Tribunal may deliver its decision orally or reserve its decision, with orders and written reasons to be issued at a later date. Where additional submissions, evidence or enquiries

are required to assist the Tribunal in reaching its decision, the matter may be adjourned to a further hearing date.

5. Costs

At SACAT, parties generally bear their own costs unless it is appropriate for the Tribunal to make an award for costs. The provisions concerning costs are sections 57, 58 and 91 of the *South Australian Civil and Administrative Tribunal Act 2013*. Please also refer to section 85 of the Act for costs provisions relating specifically to this jurisdiction of the Tribunal.

6. Publication/confidentiality

It is the Tribunal’s usual practice and procedure to publish its significant decisions on AustLII, [SACAT Decisions](#).

SACAT operates under the principles of open justice. Given the importance of protecting the public, maintaining confidence in the administration of justice, and upholding standards within the legal profession, there is a strong public interest in ensuring these decisions are publicly available. More information about open justice at SACAT can be found here, [SACAT Hearings and Decisions - Open Justice](#).

The Tribunal has the power to restrict publication and make confidentiality orders (including anonymisation of names) where appropriate.⁴ Such orders are exceptional and parties applying for said orders must be able to provide strong and compelling evidence to support the request. Accordingly, confidentiality orders will be granted in very limited circumstances.

² *South Australian Civil and Administrative Tribunal Act 2013* s 44.

³ *Legal Practitioners Act 1981* s 84B.

⁴ *South Australian Civil and Administrative Tribunal Act 2013* s 60.

The Tribunal does not have power to make suppression orders under the *Evidence Act 1929*.⁵

7. Appeals and internal reviews

A party to these proceedings cannot apply to the Tribunal for internal review of a decision of the Tribunal to grant or refuse an authorisation.⁶

If a party is dissatisfied with a decision of the Tribunal, they may appeal to the Supreme Court of South Australia.

8. Contact the Tribunal

If you would like to speak to a staff member about the disciplinary jurisdiction of the Tribunal, please telephone SACAT on 1800 723 767 (select option 4 and then option 7).

This information sheet does not constitute legal advice and does not relate to the circumstances of any individual matter. If you wish to have legal advice you should seek that independently.

⁵ *FTU v Nursing and Midwifery Board of Australia* [2020] SACAT 5

⁶ *Legal Practitioners Act 1981* s 86.