

Guideline – Disciplinary Complaints

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

The purpose of this guideline is to provide guidance to legal practitioners who are the subject of disciplinary complaints 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 review certain decisions of the Commissioner under the Act, please refer to the guideline on reviews of LPCC decisions. SACAT has also published a guideline on the Tribunal’s jurisdiction to grant authorisations under the Act.

It should be noted that persons seeking compensation from a legal practitioner should seek their own legal advice about the appropriate forum.

1. Jurisdiction

Original Jurisdiction

Complaints (formerly a ‘charge’) against legal practitioners may be lodged with the Tribunal

alleging that the legal practitioner has engaged in unsatisfactory professional conduct or professional misconduct.

Complaints may be lodged by:

- The Attorney General
- The Commissioner
- The Law Society of South Australia

A client or member of the public may not directly bring proceedings before SACAT with respect to discipline of a legal practitioner under the Act.

However, any person may make a notification to the Commissioner or the Law Society of South Australia about the conduct and competence of a legal practitioner.

The Tribunal will require the parties to lodge their evidence and file submissions with a view to deciding whether the alleged conduct has been sufficiently established on the balance of probabilities.

If unsatisfactory professional conduct or professional misconduct is established, the Tribunal will usually then make disciplinary orders against the legal practitioner (also known as sanctions). The parties may make submissions as to disciplinary orders but ought not to expect that “consent orders” can or will be made.

Constitution of Tribunal

For disciplinary complaints in the Tribunal’s original jurisdiction, the Tribunal will be constituted of:

- either a Presidential or designated Senior Member; and
- a professional assessor – who is a legal practitioner of at least 5 years standing; and

- a consumer assessor – a lay person who is representative of the public who consume or use legal services.¹

Where appropriate, the President of the Tribunal may determine that a disciplinary complaint is to be heard solely by a Presidential Member or a designated Senior Member.² A Magistrate may, from time to time, preside over proceedings under this Act as the President of the Tribunal considers appropriate.

2. Commencement

Disciplinary Complaints

A complainant must lodge an application with the Tribunal on SACAT's [Online Lodgement System](#), alleging either unsatisfactory professional conduct or professional misconduct against the legal practitioner.

This application will include a brief summary of the allegations against the practitioner as well as any supporting documentation that the complainant wishes to rely upon.

This completed application must then be served by the complainant on the legal practitioner who is the respondent.

Representation

The respondent legal practitioner may wish to self-represent or alternatively be represented by another lawyer. If the respondent 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.

At the initial directions hearing of a complaint, the parties should be prepared to inform the Member about:

- whether the allegations are disputed
- which facts are disputed
- whether any allegations are admitted
- estimated volume of evidence
- whether expert evidence is going to be adduced
- any foreshadowed interlocutory applications
- timetabling proposals as to filing submissions and evidence
- anything else of an ancillary or procedural nature

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 for full hearing.³ They will often be used

¹ *Legal Practitioners Act 1981* s 78.

² *Legal Practitioners Act 1981* s 78.

³ *South Australian Civil and Administrative Tribunal Act 2013* s 44.

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. Conferences

Conferences are an important case management tool in legal practitioner disciplinary proceedings. They provide a confidential and relatively informal opportunity for the parties to discuss the issues in dispute with the assistance of a Member. The purpose of a conference is to clarify issues, identify agreed facts, narrow the matters in dispute, address procedural issues, and where appropriate, explore opportunities for resolution. However, “consent orders” for final resolution will not normally be appropriate in either the original or the review jurisdiction.

A conference is not a hearing and does not determine whether the practitioner has engaged in professional misconduct or unsatisfactory professional conduct. Evidence is not given nor are witnesses cross-examined and no findings are made. Practitioners are generally expected to attend and participate in good faith, ready to discuss procedural and other agreed outcomes.

Conferences can result in agreed facts, consent procedural directions, resolution of ancillary issues, and a shorter or more focused hearing.

5. 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 legal practitioner disciplinary proceedings before the Tribunal is protected by absolute privilege.⁴

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

At the full hearing, parties will be invited to make opening statements, present evidence, cross-examine the other side’s witnesses, make closing submissions and propose disciplinary orders.

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.

While the parties can propose consent disciplinary orders, the Tribunal is not bound by those proposals and can order the disciplinary action it considers necessary in the public interest and for the protection of the public.

⁴ *Legal Practitioners Act 1981* s 84B.

Purpose of disciplinary proceedings

It should be noted that legal practitioner disciplinary proceedings are protective, rather than punitive, in nature. Their primary purpose is not to punish the practitioner but to protect the public, maintain confidence in the legal profession and uphold proper professional standards. Any adverse consequences suffered by the practitioner are incidental to these objectives. The focus of disciplinary action is therefore on ensuring the practitioner's ongoing fitness to practise and preserving the integrity of the administration of justice.

Disciplinary orders

On the hearing of a complaint, the Tribunal may impose the following disciplinary action,⁵ including but not limited to:

- reprimand
- fines
- conditions on the practitioner's practising certificate
- suspension of the practitioner's practising certificate
- cancellation of the practitioner's practising certificate
- disqualification of the practitioner from being issued or renewing their practising certificate

The Tribunal also has the power to require a legal practitioner relinquish their files and records for examination by an approved examiner at specified intervals and for a specified period.⁶

Action not within SACAT's jurisdiction

As a result of disciplinary action taken at the Tribunal, SACAT cannot:

- make an order for compensation

- resolve a dispute between a practitioner and client
- impose any disciplinary action not stated in the Act (even if it is "by consent")
- remove a practitioner from the roll of legal practitioners

Any fine that is imposed by the Tribunal is payable to the Commissioner.

6. 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.

The Tribunal generally makes orders in disciplinary proceedings that costs be agreed between the parties or fixed by the Tribunal where the parties cannot come to an agreement.

7. 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. Accordingly, most decisions in the Tribunal's legal practitioner disciplinary jurisdiction will be published. 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.

⁵ *Legal Practitioners Act 1981* s 81.

⁶ *Legal Practitioners Act 1981* s 81.

The Tribunal has the power to restrict publication and make confidentiality orders (including anonymisation of names) where appropriate.⁷ 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.

The Tribunal does not have power to make suppression orders under the *Evidence Act 1929*.⁸

8. Appeals and internal reviews

Under the Act, if satisfied that the legal practitioner is guilty of unsatisfactory professional conduct or professional misconduct, SACAT has the power to recommend that disciplinary proceedings be commenced against the practitioner in the Supreme Court with a view to having the practitioner struck from the roll of legal practitioners.⁹

A legal practitioner cannot apply to the Tribunal for internal review of a decision imposing disciplinary action.¹⁰

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

9. 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.

⁷ *South Australian Civil and Administrative Tribunal Act 2013* s 60.

⁸ *FTU v Nursing and Midwifery Board of Australia [2020] SACAT 5*

⁹ *Legal Practitioners Act 1981* s 81.

¹⁰ *Legal Practitioners Act 1981* s 86.