

Guideline – Reviews of LPCC Decisions

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 seeking a review of certain decisions of the Legal Profession Conduct Commissioner (**Commissioner**) 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 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 grant authorisations under the Act.

1. Jurisdiction

Review Jurisdiction

The Tribunal has jurisdiction to review certain decisions and determinations made by the

Commissioner with respect to action taken against legal practitioners.

The Tribunal conducts its reviews by way of rehearing. On a rehearing, the Tribunal must reach the correct or preferable decision and in doing so will have regard to, and give appropriate weight to, the decision of the original decision-maker.¹

The Tribunal has jurisdiction to review:

- a decision of the Commissioner under section 77AA of the Act; and/or
- a determination of the Commissioner under section 77J of the Act.²

On review, the Tribunal may:

- **affirm** the decision being reviewed
- **vary** the decision being reviewed
- **set aside** the decision being reviewed and **substitute** its own decision
- **set aside** the decision being reviewed and **remit** the decision back to the original decision maker for reconsideration with any appropriate directions or recommendations.³

Although the Tribunal will consider submissions made by the parties as to the outcome of the review, "consent orders" will not routinely be made.

Constitution of Tribunal

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

- a Presidential Member; or
- a designated Senior Member; or

¹ *South Australian Civil and Administrative Tribunal Act 2013* s 34.

² *Legal Practitioners Act 1981* s 77P.

³ *South Australian Civil and Administrative Tribunal Act 2013* s 37.

- a designated Magistrate.⁴

2. Commencement

Lodging Applications

Applications for review of a decision of the Commissioner must be made to the Tribunal **within 1 month** of the date on which the legal practitioner is notified of the relevant decision or determination.⁵

The legal practitioner who is applying to the Tribunal for a review of the Commissioner's decision must lodge an application through SACAT's Online Lodgement System. The applicant must file the Commissioner's original decision with their application, as well as any further evidence they wish to rely upon.

Applications for review may be made by:

- the legal practitioner, or former legal practitioner, to whom the Commissioner's decision relates; or
- the complainant who made the complaint on which the Commissioner's decision was based.⁶

Fees

Applications for review of a decision or determination of the Commissioner 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 legal practitioner may wish to self-represent or alternatively be represented by another lawyer. If the practitioner 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 for full hearing.⁷ They will often be used following a conference or to determine interlocutory applications.

⁴ *Legal Practitioners Act 1981* s 78.

⁵ *Legal Practitioners Act 1981* s 77P.

⁶ *Legal Practitioners Act 1981* s 77P.

⁷ *South Australian Civil and Administrative Tribunal Act 2013* s 44.

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.⁸

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.⁹ 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*.¹⁰

7. Appeals and internal reviews

A party to these proceedings cannot apply to the Tribunal for internal review of a decision of

⁸ *Legal Practitioners Act 1981* s 84B.

⁹ *South Australian Civil and Administrative Tribunal Act 2013* s 60.

¹⁰ *FTU v Nursing and Midwifery Board of Australia* [2020] SACAT 5

the Tribunal to affirm, vary or set aside a decision of the Commissioner.¹¹

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.

¹¹ *Legal Practitioners Act 1981* s 86.