

TASMANIA

**LEGAL PROFESSION (DISCIPLINARY
TRIBUNAL) RULES 2021**

STATUTORY RULES 2021, No. 38

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LEGAL PROFESSION (DISCIPLINARY TRIBUNAL) RULES 2021

The Disciplinary Tribunal makes the following rules under section 615(5) of the *Legal Profession Act 2007*.

1. Short title

These rules may be cited as the *Legal Profession (Disciplinary Tribunal) Rules 2021*.

2. Commencement

These rules take effect on 30 June 2021.

3. Interpretation

In these rules –

Act means the *Legal Profession Act 2007*;

application means –

- (a) an application to the Tribunal, under section 458 of the Act, in respect of a determination; or
- (b) an application to the Tribunal, under section 464(1) of the Act, for the hearing and determination of a complaint; or
- (c) a referral to the Tribunal, under section 464(2) of the Act, with a recommendation that the Tribunal make a compensation order;

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notice of hearing means a notice served by the Tribunal under section 467(1) of the Act in respect of an application;

relevant party means –

- (a) in relation to an application under section 458 of the Act, the complainant or the practitioner against whom the complainant has made the complaint; and
- (b) in relation to an application under section 464 of the Act, the applicant or the respondent;

Secretary means the secretary to the Tribunal appointed under section 616 of the Act.

4. Form of application

- (1) An application to the Tribunal, under section 458 of the Act, in respect of a determination is to be in accordance with Form 1 in Schedule 1.
- (2) An application to the Tribunal, under section 464(1) of the Act, to hear and determine a complaint is to be in accordance with Form 2 in Schedule 1.
- (3) A referral to the Tribunal, under section 464(2) of the Act, with a recommendation that the Tribunal make a compensation order is to be in accordance with Form 3 in Schedule 1.

5. Notice of address for service

- (1) A person who is served with a copy of an application and intends to take part in the proceedings to which the application relates is to lodge with the Secretary a notice of address for service within 8 days of being served with the copy of the application.
- (2) For the purposes of subrule (1), the notice of address for service is to be in accordance with Form 4 in Schedule 1.

6. Procedural directions

- (1) The Tribunal may give any directions, or make any orders, it considers appropriate –
 - (a) in respect of –
 - (i) the preparation of an application for hearing; or
 - (ii) the fair and just determination of an application; or
 - (iii) the manner in which a directions hearing is to be conducted or held and the persons who are to attend it; and
 - (b) at any stage of the application process; and
 - (c) either of its own motion or at the request of a relevant party.

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- (2) The Tribunal may hold a directions hearing for the purpose of giving directions or making orders under subrule (1).
- (3) A relevant party may make a request under subrule (1) by –
 - (a) lodging with the Secretary a notice setting out the directions or orders sought and the grounds for seeking those directions or orders; and
 - (b) providing a copy of the notice so lodged to all other relevant parties.
- (4) Without affecting the generality of subrule (1), the Tribunal may give a direction, or make an order, in respect of any one or more of the following:
 - (a) the simplification of, or more adequate definition of, an issue;
 - (b) the amendment of an application, or any document connected to the application, and the terms of such an amendment;
 - (c) admission of a fact or a document;
 - (d) discovery, listing, inspection and proof of a document;
 - (e) any matter which may reduce the costs of a witness attending a hearing;
 - (f) limiting the number of expert witnesses;

- (g) the preparation and service of an affidavit;
- (h) a timetable for taking any step or complying with any order or direction in the proceeding;
- (i) the determination of an issue of fact before any other issue;
- (j) the determination of a point of law before a hearing;
- (k) the preparation and settlement of an issue;
- (l) the revocation or variation of a previous order made under this rule.

7. Form of summons

- (1) A relevant party may request, in writing, that the Tribunal issue a summons under section 466(1)(a) of the Act.
- (2) A written request under subrule (1) is to include a draft of the summons requested.
- (3) The draft summons is to be in accordance with Form 5 in Schedule 1.
- (4) A party, at whose request a summons under section 466(1)(a) of the Act is issued, must serve a copy of the summons on the person who is the subject of the summons.

8. Evidence by affidavit

- (1) The Tribunal may –
 - (a) direct that evidence be taken by affidavit, including cross-affidavit, in accordance with rule 9; and
 - (b) specify, in the direction, a timetable for the lodgement and serving of any affidavit and any notice to cross-examine the deponent of the affidavit.
- (2) The Tribunal is to serve all relevant parties with notice of any directions given under subrule (1).
- (3) If a direction is given under subrule (1) regarding evidence to be taken by affidavit, a party wishing to cross-examine the deponent of an affidavit must serve on the party who lodged the affidavit a notice requiring the deponent to attend the hearing for cross-examination.
- (4) If the Tribunal does not specify a time for service of a notice requiring a deponent to attend a hearing, the notice must be served a reasonable time before the deponent is required to attend.
- (5) An affidavit must not be used in evidence unless –
 - (a) the deponent of the affidavit attends in accordance with any notice served on the deponent under subrule (3) in respect of the application; or

- (b) the Tribunal makes an order exempting the deponent of the affidavit from cross-examination.

9. Form of affidavit

- (1) An affidavit is to –
 - (a) be sworn in accordance with rule 11; and
 - (b) state –
 - (i) the title of the application in respect of which the affidavit is sworn; and
 - (ii) the address and occupation, or if no occupation then a description, of the deponent; and
 - (c) be expressed in the first person; and
 - (d) be divided in consecutively numbered paragraphs each of which is to contain a distinct part of the subject; and
 - (e) use only figures when referring to money or numbers; and
 - (f) contain a jurat that states the day on which, and the place at which, the affidavit was sworn; and
 - (g) be signed on each page by the person before whom the affidavit is sworn; and

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- (h) identify each annexure or exhibit by a certificate.
- (2) The Tribunal may accept an affidavit despite any defect or irregularity in its form.
- (3) If the Tribunal believes an affidavit contains material that is not relevant to the application, the Tribunal may order –
 - (a) that any irrelevant material in the affidavit be struck out; or
 - (b) that the affidavit be removed from the file.

10. Lodgement of affidavit

- (1) An affidavit, other than an answering affidavit or affidavit in reply, is not to be used during the hearing of an application unless –
 - (a) it has been lodged with the Secretary; and
 - (b) a copy has been served on each party concerned at least 7 days, or such other period as determined by the Tribunal at a directions hearing in respect of the application, before the time appointed for the hearing of the application.
- (2) An answering affidavit or an affidavit in reply is not to be used during the hearing of an application unless it has been lodged and a copy has been served on each party concerned as soon as practicable.

- (3) If subrule (1) or (2) is not complied with, the Tribunal may –
- (a) permit the affidavit to be used on any terms as determined by the Tribunal, despite the non-compliance; or
 - (b) adjourn the application on any terms as determined by the Tribunal and allow the affidavit to be read on the adjourned hearing.

11. Swearing of affidavit

- (1) Subject to subrule (3), an affidavit sworn in the State must be sworn before any one of the following:
- (a) a Judge or Associate Judge of the Supreme Court;
 - (b) the Registrar, Deputy Registrar, Assistant Deputy Registrar or a district registrar of the Supreme Court;
 - (c) a commissioner appointed under section 193 of the *Supreme Court Civil Procedure Act 1932*;
 - (d) an officer empowered by law to administer oaths;
 - (e) a magistrate;
 - (f) a justice within the meaning of the *Justices of the Peace Act 2018*;

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- (g) an Australian legal practitioner.
- (2) An affidavit sworn in any place out of the State may be sworn in accordance with the *Supreme Court Rules 2000*.
- (3) Despite subrule (1), an affidavit is not sufficient if it is sworn before –
 - (a) an Australian legal practitioner acting on behalf of the party on whose behalf the affidavit is being made; or
 - (b) the agent of such a practitioner; or
 - (c) an associate of the law practice of such a practitioner; or
 - (d) a legal practitioner associate of a law practice if the party on whose behalf the affidavit is being made is also an associate at the practice; or
 - (e) a party to the proceedings.

12. Rules of evidence

- (1) The Tribunal is not bound by the rules of evidence.
- (2) The Tribunal may inform itself of any matter in any manner it thinks fit, including any matter relevant to determining the accepted standards of practice and behaviour within the legal profession.

13. Recording of hearing

- (1) The Secretary is to cause an audio recording to be made of every hearing before the Tribunal, other than a directions hearing.
- (2) The Tribunal may direct the Secretary to cause an audio recording to be made of a directions hearing.
- (3) The Secretary is to make a transcript of the audio recording of a hearing relating to an application available to a relevant party to the application –
 - (a) on the request of the party; and
 - (b) on payment of the cost of production of the transcript by the party.

14. Request for Tribunal to act

- (1) A relevant party to an application may request the Tribunal to exercise its powers under section 466(1)(a), (e), (g) or (h) of the Act in respect of the application or a hearing relating to the application.
- (2) The Tribunal may require a party making a request under subrule (1) to undertake to pay the reasonable costs incurred by any person in complying with –
 - (a) a summons issued under section 466(1)(a) of the Act as a result of the request; or

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- (b) any requirement of the Tribunal made under section 466(1)(e), (g) or (h) of the Act as a result of the request.
- (3) A party at whose request a requirement under section 466(1)(e) of the Act is made must serve a copy of the requirement on the person who is the subject of the requirement.

15. Tribunal may dispense with requirements

If it appears to the Tribunal to be just to do so, the Tribunal may –

- (a) dispense with a requirement of these rules relating to any form, notice, affidavit, document, service, procedure or time; and
- (b) vary or rescind any order or direction it has given in relation to any of those matters.

SCHEDULE 1 – FORMS

Form 1 – Application to Hear Matter Determined by Board

TO: The Disciplinary Tribunal

I/We,
of

(residential address)

Phone Email,

apply to the Tribunal to have the matter, to which the determination made by the Legal Profession Board of Tasmania on relates, heard by the Disciplinary Tribunal.

I/We apply to the Disciplinary Tribunal to stay the determination pending the finalisation of this application.

A copy of the determination and the complaint to which the determination relates is attached to this application.

Dated

Signature of applicant(s)

.....

Filed on behalf of the applicant(s)

Solicitor's name Tel

Solicitor's address Ref:

Solicitor's email

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Form 2 – Application To Hear and Determine Complaint

TO: The Disciplinary Tribunal

I/We,

of

(residential address)

Phone Email,

OR

The Legal Profession Board of Tasmania

apply/applies to the Disciplinary Tribunal for hearing and determination
of a complaint against

.....

(Specify the name of the legal practitioner against whom the complaint is made.)

The particulars upon which the application is based are:

1.

.....

.....

.....

.....

2.

.....

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.....
.....
.....
.....

(attach further documents if necessary)

Signature of applicant(s)
.....

Filed on behalf of the applicant(s)

Solicitor's name Tel

Solicitor's address Ref:

Solicitor's email

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Form 3 – Application for Compensation

TO: The Disciplinary Tribunal

The Legal Profession Board of Tasmania applies to the Disciplinary Tribunal for the making of a compensation order under section 455(1) of the Act, in respect of the following determination by the Legal Profession Board of Tasmania and the recommendation made under section 455(2) of the Act:

.....
.....

(details of the determination and recommendation)

The address for service of documents for the Legal Profession Board is:

.....
.....

Dated

Signed for and on behalf of the Legal Profession Board by:

.....
.....

(position held)

Filed on behalf of the applicant(s)

Solicitor's name Tel

Solicitor's address Ref:

Solicitor's email

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Form 4 – Notice of Address for Service

No. of 20

..... Applicant(s)

BETWEEN: and

..... Practitioner(s)

I/We,
of

(residential address)

intend to appear before the Disciplinary Tribunal upon the hearing of this application.

My/our address for service of documents in connection with the application is

Signature of applicant(s)

.....

Name in full

Phone Email

Filed on behalf of

Solicitor's name Tel

Solicitor's address Ref

Solicitor's email

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Form 5 – Summons to Give Evidence

No. of 20

..... Applicant(s)

BETWEEN: and

..... Practitioner(s)

TO:

of

(residential address)

Under section 466(1)(a) of the *Legal Profession Act 2007* you are required to attend before the Disciplinary Tribunal on the hearing of this application at a.m./p.m. on 20..... at, and at any other times and places as the Tribunal may direct until you are relieved from any further attendance, to give evidence that is material to the application.

Dated

.....

Member

.....

Member

.....

Member

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NOTES

- (1) Section 466(3) of the *Legal Profession Act 2007* provides that the Tribunal may make an order imposing a fine not exceeding 50 penalty units on any person who, if required to do so under section 466(1) of the Act, neglects or fails, without reasonable excuse –
- (a) to comply with the summons; or
 - (b) to make an oath or affirmation; or
 - (c) to produce, or authorise another person to produce, any documents or records when required to do so; or
 - (d) to answer any question when lawfully required to do so; or
 - (e) to assist the Board in an investigation.
- (2) Section 467(7) of the *Legal Profession Act 2007* provides that the Tribunal may make an order imposing a fine not exceeding 50 penalty units on any person who –
- (a) obstructs, hinders or interrupts the proceedings of the Tribunal; or
 - (b) threatens or insults a member of the Tribunal; or
 - (c) gives an answer or makes a statement which, to that person's knowledge, is false or misleading.

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These rules were made by the Disciplinary Tribunal at a meeting held on 10 June 2021.

PHILIP JACKSON SC
Chairperson

DAVID WALLACE
Deputy Chairperson

CHERYL ANNE ARNOL
Member

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 16 June 2021.

These rules are administered in the Department of Justice.

EXPLANATORY NOTE

(This note is not part of the rules)

These rules –

- (a) regulate the making, hearing and determining of applications to the Disciplinary Tribunal under the *Legal Profession Act 2007*; and

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- (b) are made consequentially on the repeal of the *Legal Profession (Disciplinary Tribunal) Rules 2010* under section 11 of the *Subordinate Legislation Act 1992*.