



Queensland

*Queensland Law Society Act 1952*

# Queensland Law Society (Solicitors Complaints Tribunal) Rule 1997

Reprinted as in force on 3 November 2000

Reprint No. 2 \*

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the Office of the Queensland Parliamentary Counsel  
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NOT FURTHER AMENDED  
LAST REPRINT BEFORE REPEAL  
See 2007 Act No. 24 s 767

\* Minor differences in presentation between this reprint and another reprint with the same number are due to the conversion to new styles. The content has not changed.

# Information about this reprint

This rule is reprinted as at 3 November 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use different spelling consistent with current drafting practice (s 26(2))
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**



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# Queensland Law Society (Solicitors Complaints Tribunal) Rule 1997

[as amended by all amendments that commenced on or before 3 November 2000]

## Part 1 Preliminary

### 1 Short title

This rule may be cited as the *Queensland Law Society (Solicitors Complaints Tribunal) Rule 1997*.

### 2 Definitions

In this rule—

*address for service* means the address a party gives as the address for service of documents under this rule.

*clerk* means the person holding office for the time being as the clerk of the tribunal.

*hearing date* means the day fixed by notice under the Act, section 6G<sup>1</sup> for hearing a charge.

*party* means—

- (a) for a charge—
  - (i) the person bringing the charge; or
  - (ii) the person against whom the charge is brought; or
- (b) for a costs assessment—
  - (i) the client; or
  - (ii) the practitioner or firm.

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1 Section 6G (Notice of hearing)

## **2A Application of rule**

If this rule does not make provision or sufficient provision for a matter and the tribunal has not ordered otherwise, the Supreme Court Rules or the Supreme Court practice or procedure applies for the matter.

## **2B Extending and shortening time**

- (1) The tribunal may, at any time, extend a time set under this rule.
- (2) If a time set under this rule, including a time for service, has not ended, the tribunal may shorten the time.

## **2C Effect of noncompliance with rules**

- (1) Noncompliance with this rule does not invalidate a proceeding, unless the tribunal directs otherwise.
- (2) If this rule has not been complied with, the tribunal may—
  - (a) waive the noncompliance; or
  - (b) set aside all or part of the proceeding; or
  - (c) make any other necessary order.

# **Part 2 Charges**

## **Division 1 Rules applying before hearing**

### **3 Bringing a charge against practitioner, clerk or employee**

- (1) A person bringing a charge against a practitioner or a practitioner's clerk or employee must give to the tribunal written notice of the charge in the approved form.
- (2) The notice must state the particulars on which the person intends to rely.

- (3) More than 1 charge may be included in a single notice.
- (4) If the person bringing the charge is the council, the notice must be signed by the secretary of the society, someone else authorised by the council to sign applications, or the society's solicitor.

#### **4 Address for service**

Within 14 days after the person charged is given notice of the charge, the person must give written notice of the person's address in Queensland for service of notices under this rule to—

- (a) the person bringing the charge; and
- (b) the clerk.

#### **5 Prescribed period for giving notice**

For section 6G of the Act, the prescribed period of notice is 28 days.

#### **6 List of documents**

- (1) Each party must give to the clerk and each other party a list of documents on which the party intends to rely at the hearing at least 14 days before the hearing date, unless the tribunal otherwise orders in a particular case.
- (2) A party giving a list of documents must also make the documents included in the list available for inspection at least 7 days before the hearing date.
- (3) At the request of a party inspecting documents, and on payment of the appropriate amount, the party relying on the document must give to the inspecting party a copy of a document requested.
- (4) The appropriate amount is the amount worked out at the rate fixed for photocopies under the Rules of the Supreme Court, schedule 2.<sup>2</sup>

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<sup>2</sup> Now see the *Supreme Court of Queensland Act 1991*, section 130.

- (5) Subsection (4) does not prevent a party recovering the cost of copies as part of the costs of the proceeding.

## **7 Affidavits**

- (1) Each party must give to the clerk and each other party a copy of each affidavit on which the party intends to rely at the hearing.
- (2) The copy must be given as soon as practicable, but no later than 5 days, before the hearing date.
- (3) If a party requires someone who has sworn an affidavit for another party to attend the hearing to give evidence or for cross-examination, the party requiring the attendance must, at least 3 days before the hearing date, give to the clerk and the other party, a list of the persons the party requires to attend for the purpose.<sup>3</sup>

## **Division 2 Rules applying to hearing**

### **8 Amendment of charge**

- (1) The tribunal may allow the amendment of a charge or an allegation in a charge.
- (2) However, if the tribunal considers the amendment will take the person charged by surprise, the tribunal may adjourn the hearing on conditions the tribunal considers appropriate.

### **9 Charge may be decided on affidavit evidence**

If the tribunal receives in evidence an affidavit of 1 party, the tribunal may proceed to decide all or part of a charge or any relevant fact on the evidence given in the affidavit—

- (a) if the other party does not appear; or

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<sup>3</sup> Under section 6M of the Act, if a person does not voluntarily attend, the tribunal may, on application of a party or of its own initiative, issue an attendance notice requiring the person to attend and give evidence before the tribunal.

- (b) with the written consent of the other party; or
- (c) if the party filing the affidavit has given the other party a copy of the affidavit and the name of the person making the affidavit is included in a list of documents given to the other party under section 6.

## **Division 3                    Rehearing and stays**

### **10            Rehearings**

- (1) This section applies if the tribunal proceeds to hear and decide a charge in the absence of a party.
- (2) Within 28 days after the absent party is given written notice of the tribunal's decision, the absent party may, by written notice given to the clerk and each other party, apply to the tribunal for a rehearing of the charge.
- (3) The application must state the grounds on which the absent party relies to establish grounds for the rehearing.
- (4) If the tribunal is satisfied the charge should be reheard—
  - (a) the tribunal may grant the application on conditions the tribunal considers appropriate; and
  - (b) the decision and orders of the tribunal on the charge are stayed.
- (5) The persons constituting the tribunal for the original hearing must not constitute the tribunal for the rehearing.
- (6) The tribunal—
  - (a) must decide the rehearing as if the earlier hearing had not taken place; and
  - (b) may make the order it considers appropriate; and
  - (c) on making the order—must revoke the original orders.

## **11 Stay of decision**

- (1) Within 7 days after the tribunal makes an order against a person charged, the person may apply in writing to the tribunal for a stay of the order.
- (2) The application must state the grounds on which the person relies to establish grounds for the stay.
- (3) The tribunal may stay the order on conditions the tribunal considers appropriate.
- (4) The tribunal must not file the order in the Supreme Court while the order is stayed.

## **Division 4 General**

### **12 Leave needed to withdraw charge**

- (1) A charge of which the tribunal is given notice can not be withdrawn unless the tribunal gives leave to withdraw it.
- (2) The tribunal may either give leave to withdraw a charge on conditions the tribunal considers appropriate or dismiss the charge.

### **13 Directions**

The tribunal may give directions in relation to the procedures to apply at hearings.<sup>4</sup>

### **14 Findings**

The tribunal's findings must include the following—

- (a) the charge or charges to which it relates;
- (b) the affidavit material relied on by the parties;
- (c) a record of who appeared;
- (d) a record of the exhibits tendered;

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<sup>4</sup> See also section 6MA (Applications for directions) of the Act.

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- (e) the names of witnesses called;
- (f) the decision of the tribunal;
- (g) the orders made by the tribunal;
- (h) the reasons for making the orders.

## **15 Record of proceedings**

The clerk must ensure—

- (a) shorthand notes or tape recordings or both are taken of proceedings before the tribunal; and
- (b) the notes or recordings are transcribed.

## **16 Transcript**

Unless the tribunal otherwise orders, the clerk must not make a transcript of a proceeding before the tribunal available to anyone other than—

- (a) if asked by a party, the Minister or the legal ombudsman—the person who asked; or
- (b) for a following purpose—
  - (i) the proceeding to which the transcript relates;
  - (ii) an appeal to the Court of Appeal;
  - (iii) to answer a subpoena of a court.

# **Part 3 Provisions about appeals**

## **17 Starting appeals to be by application**

- (1) An appeal against an order of the tribunal is started by application.
- (2) The application must state the decision appealed and the grounds of the appeal.

- (3) The appellant must give to the clerk and each other party a copy of the filed application.
- (4) The appeal is to be heard as soon as practicable after 28 days after it is filed.

## **18 Notice of abandonment**

- (1) The appellant may, at any time after starting the appeal, abandon the appeal by written notice filed with the registrar of the Court of Appeal and each party to the appeal.
- (2) On giving notice under subsection (1), the appeal is taken to have been dismissed.

## **Part 3A Costs assessments**

### **18A Qualifications for costs assessor for the tribunal**

A costs assessor for the tribunal must be—

- (a) a solicitor who has been in actual practice for at least 5 years; or
- (b) a person who has practised as a costs assessor for at least 5 years; or
- (c) a person the tribunal considers has appropriate experience to be a costs assessor for the tribunal.

*Example of a person the tribunal may consider has appropriate experience for paragraph (c)—*

A person employed in a court registry, with a costs assessor, or as an accountant.

### **18B Tribunal register of persons approved as costs assessors for the tribunal**

- (1) The tribunal register of persons approved as costs assessors for the tribunal (*approved costs assessors*) must contain the following particulars for each approved costs assessor—

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- (a) qualifications and experience;
- (b) any matter giving rise to an apparent conflict of interest in carrying out assessments generally or for particular matters;
- (c) the way in which the costs assessor's fees are calculated;
- (d) if the costs assessor has given the clerk written notice of the matter—
  - (i) the geographical area in which the costs assessor prefers to make assessments; and
  - (ii) the nature of the work that the costs assessor prefers to assess; and
  - (iii) details of any professional indemnity insurance held by the costs assessor.

*Examples of paragraph (c)—*

- a percentage of the amount of the account to be assessed
  - an hourly fee
  - a lump sum agreed to by the costs assessor and the parties.
- (2) As soon as practicable after a person becomes an approved costs assessor, the person must give to the clerk written notice of the person's particulars mentioned in subsection (1)(a) to (c).
  - (3) If the particulars contained in the register later change, the person must immediately give to the clerk written notice of the change.

## **18C Access to register**

A person may—

- (a) inspect the tribunal register of persons approved as costs assessors for the tribunal at the clerk's office when the office is open to the public; and
- (b) take extracts from, or obtain a copy of details in, the register.

**18D Application for assessment of account under client agreement**

An application for assessment of account under a client agreement must be made in the approved form.

**18E Appointment of costs assessor by clerk of tribunal**

- (1) In appointing a costs assessor for the tribunal, the clerk must have regard to the following things—
  - (a) the parties' choice, if any, of approved costs assessor for the assessment;
  - (b) the nature of the work to which the account to be assessed related;
  - (c) the account amount;
  - (d) the issues raised by the client about the account;
  - (e) how long the assessment is likely to take;
  - (f) any possible conflict of interest for a proposed appointee apparent from the following documents—
    - (i) the tribunal register of persons approved as costs assessors for the tribunal;
    - (ii) other documents before the clerk;
  - (g) the way in which the proposed appointee's fees are calculated.
- (2) The clerk must make the appointment in the approved form and, as soon as possible after making the appointment, give the original of the appointment document to the appointee and a copy to each party.

**18F Costs assessor's duty about conflict of interest**

- (1) Before starting to assess an account, a costs assessor must consider whether the costs assessor has an actual or apparent conflict of interest in the assessment.
- (2) If the costs assessor considers the costs assessor has an actual or apparent conflict of interest in the assessment, the costs assessor—

- (a) must immediately advise the clerk about the conflict of interest; and
- (b) must not carry out the assessment.

### **18G Conduct of costs assessment**

- (1) Before starting to assess an account, a costs assessor must encourage the parties to attempt to resolve the dispute about the account by mediation.
- (2) If the parties do not agree to attempt to resolve the dispute by mediation, the costs assessor may proceed with the assessment.

### **18H Costs assessor's written assessment**

- (1) A costs assessor's written assessment under section 48P of the Act<sup>5</sup> must be in the approved form.
- (2) A costs assessor must give to the parties a copy of the costs assessor's written assessment within 10 days after making it.

## **Part 4 Miscellaneous**

### **19 Effect of noncompliance with rule**

A proceeding before the tribunal is not a nullity merely because of the failure of a person to comply with this rule.

### **20 Giving notice or documents to tribunal**

A notice or other document that, under this rule, must be given to the tribunal, may be given to the clerk at the tribunal's address for service.

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<sup>5</sup> Section 48P (Written costs assessment) of the Act

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**21 Custody of records**

The clerk is responsible for the custody of the tribunal's records.

**22 Approval of forms**

The chairperson may approve forms for use under this rule.

## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 November 2000. Future amendments of the Queensland Law Society (Solicitors Complaints Tribunal) Rule 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	19 December 1997	15 January 1998
1A	1998 SL No. 197	2 July 1998	28 July 1998
2	1998 SL No. 197	2 July 1998	3 November 2000

## 5 List of legislation

### **Queensland Law Society (Solicitors Complaints Tribunal) Rule 1997 SL No. 454**

made by the solicitors complaints tribunal on 5 December 1997

notfd gaz 19 December 1997 pp 1770–7

commenced on date of notification

exp 1 July 2006 (see 2004 No. 11 s 610(7) as amd 2005 No. 28 s 86A(2))

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

### **Queensland Law Society (Solicitors Complaints Tribunal) Amendment Rule (No. 1) 1998 SL No. 197**

notfd gaz 2 July 1998 pp 1117–18

commenced on date of notification

## 6 List of annotations

### **Definitions**

s 2 def “party” sub 1998 SL No. 197 s 3

### **Application of rule**

s 2A ins 1998 SL No. 197 s 4

### **Extending and shortening time**

s 2B ins 1998 SL No. 197 s 4

### **Effect of noncompliance with rules**

s 2C ins 1998 SL No. 197 s 4

### **Transcript**

s 16 amd 1998 SL No. 197 s 5

### **PART 3A—COSTS ASSESSMENTS**

pt 3A (ss 18A–18H) ins 1998 SL No. 197 s 6

