QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v O'Brien* [2025] QCAT 190
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **BENJAMIN JOSEPH O'BRIEN** (respondent)
APPLICATION NO:	OCR167-24
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	17 June 2025
HEARING DATE:	9 May 2025
HEARD AT:	Brisbane
DECISION OF:	Justice Williams Assisted by: Mr Geoffrey Sinclair, Practitioner Panel Member Mr Keith Revell, Lay Panel Member
ORDERS:	**1. The Respondent's conduct identified in respect of each of Charges 1, 2, 3 and 4 in the discipline application is proved and is found to constitute professional misconduct.** **2. The Respondent is publicly reprimanded.** **3. The Respondent pay a pecuniary penalty in the sum of $4,000 within three months of these orders being made.** **4. The Respondent successfully complete the next available QLS Remedial Ethics Course at his own expense and provide to the Applicant, within a month of having complete the course, evidence of his successful completion of the course.** **5. The Respondent pay the Applicant's costs of and incidental to the discipline application, to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent failed to disclose traffic infringements

when applying to renew his practicing certificate on two occasions – where the respondent falsely declared that he had not been subject to any suitability matters mentioned in ss 9 and 46 of the *Legal Profession Act 2007* (Qld) on two occasions – where the respondent had a history of failing to disclose traffic offences and had previously been issued a practicing certificate on the condition that he undertake the Queensland Law Society Ethics Course because of the failure to disclose these offences – whether the respondent engaged in unsatisfactory professional conduct or professional misconduct – where the amount of a pecuniary penalty was in dispute

Australian Solicitors Conduct Rules 2012, r 5
Legal Profession Act 2007 (Qld), s 9, s 46, s 418, s 419, s 420, s 456, s 462

Adamson v Queensland Law Society Incorporated (1990) 1 Qd R 498, cited
Council of the Law Society of NSW v Nguyen [2010] NSWADT 128, considered
Heffernan v Law Society Northern Territory [2023] NTCA 10, cited
Legal Profession Board of Tasmania v Haque [2015] TASSC 5, considered
Legal Services Commissioner v Bradshaw [2009] QCA 126, cited
Legal Services Commissioner v Challen [2019] QCAT 273, cited
Legal Services Commissioner v Cruise [2019] QCAT 182, cited
Legal Services Commissioner v Laylee [2016] QCAT 237, cited
Legal Services Commissioner v Scott [2014] QCA 266, cited
Legal Services Commissioner v Telehus (Legal Practice) [2013] VCAT 2185, considered
Prothonotary of the Supreme Court of New South Wales v Montenegro [2015] NSWCA 409, cited

APPEARANCES & REPRESENTATION:

Applicant:	F Wood instructed by the Legal Services Commissioner
Respondent:	B Cohen of Bartley Cohen

REASONS FOR DECISION

[1] This is a discipline application by the Legal Services Commissioner (**LSC**) under s 452 of the *Legal Profession Act 2007* (Qld) (**LP Act**) for disciplinary orders pursuant to s 456 of the LP Act. The discipline application includes four charges against the Respondent, Benjamin O'Brien (**Respondent**), being:

(a) two charges of failing to disclose a suitability matter within the meaning of s 9(1)(a) of the LP Act when applying to renew his practising certificate; and

(b) two charges of having made a false declaration in his applications to renew his practising certificate submitted to the Queensland Law Society (**QLS**).

[2] The key facts and characterisation of the conduct are not in dispute between the LSC and the Respondent.

[3] At the hearing of the discipline application, several concessions were made in respect of matters that were in dispute between the parties. Consequently, the hearing of the disciplinary application proceeded on the basis that:

(a) Charges 1 and 2 were limited to the second limb set out in the charge.[1] That is, that the Respondent engaged in conduct in the course of practice or otherwise which is likely, to a material degree, to bring the profession into disrepute.

(b) The Respondent's conduct underlying the charges was not deliberate and, in particular, that the Respondent did not make the declarations knowing them to be false.[2]

(c) The LSC did not press the particulars at [1.19], [1.21], [2.5] and [2.7] of the discipline application.[3]

(d) The Respondent accepts that, in the particular context that arises here, the additional traffic offences were suitability matters that he was obliged to disclose on the renewal applications.

[4] Both the LSC and the Respondent agree on the following matters:

(a) Taking a global approach, it is open for the Tribunal to be satisfied that the charges are proven and that the conduct is properly characterised as professional misconduct.

(b) The sanction should be:

(i) a public reprimand;

(ii) the Respondent undertake and successfully complete the QLS Remedial Ethics Course at his own expense; and

(iii) a pecuniary penalty.

(c) There are no exceptional circumstances justifying an order departing from s 462(1) of the LP Act and the Respondent should pay the LSC's costs of and incidental to the discipline application.

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1 T1-7 lines 10 to 42. In the circumstances where the Respondent was granted a practising certificate in 2023/2024 without conditions and it could be inferred that the Respondent was a fit and proper person to hold the certificate, and the LSC was not contending that the Respondent should be found to be, at the date of the hearing, permanently or temporarily unfit to practise.

2 T1-5 line 47 to T1-6 line 3 and T1-20 line 41 to T1-21 line 8.

3 T1-10 lines 8 to 9 (noting that the transcript incorrectly references [1.9] rather than [1.19]). That is, the LSC did not press for consideration and determination in this matter that a single traffic infringement was a suitability matter pursuant to s 9(1)(a) of the LP Act, or that a traffic infringement was a suitability matter pursuant to s 9(1)(e) of the LP Act as it constituted a conviction of an offence in Australia.

[5] The issue in dispute between the parties is the amount of the pecuniary penalty. The LSC contends for a pecuniary penalty in the sum of $7,500 and the Respondent contends for pecuniary penalty in the sum of $2,500.

[6] Accordingly, the issues to be determined by the Tribunal are as follows:

(a) Are Charges 1, 2, 3 and 4 proved?

(b) In respect of Charges 1, 2, 3 and 4, is the Respondent's conduct properly characterised as professional misconduct?

(c) What are the appropriate orders pursuant to s 456 of the LP Act?

(d) What is the appropriate costs order?

[7] Before dealing with each of the issues in turn, it is appropriate to consider the relevant statutory provisions.

Statutory provisions relevant to characterisation of unsatisfactory professional conduct or professional misconduct

[8] In determining the discipline application:

(a) Pursuant to s 656C(1) of the LP Act, the Tribunal must be satisfied of the allegations against the Respondent on the balance of probabilities.

(b) Pursuant to s 656C(2) of the LP Act, the degree of satisfaction required as to whether proof has been established depends upon the gravity of the allegations in question and the consequences for the Respondent.

[9] Sections 418, 419 and 420 of the LP Act state as follows:

> "**418 Meaning of *unsatisfactory professional conduct***
>
> ***Unsatisfactory professional conduct*** includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.
>
> **419 Meaning of *professional misconduct***
>
> (1) ***Professional misconduct*** includes—
>
> (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
>
> (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
>
> (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the

legal profession under this Act or for the grant or renewal of a local practising certificate.

420 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

(1) The following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

(a) conduct consisting of a contravention of a relevant law, whether the conduct happened before or after the commencement of this section;

Note—

Under the Acts Interpretation Act 1954, section 7, and the *Statutory Instruments Act 1992*, section 7, a contravention in relation to this Act would include a contravention of a regulation or legal profession rules and a contravention in relation to a previous Act would include a contravention of a legal profession rule under the *Legal Profession Act 2004*.

(b) charging of excessive legal costs in connection with the practice of law;

(c) conduct for which there is a conviction for—

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

(d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;

(e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;

(f) conduct of an Australian legal practitioner in failing to comply with an order of a disciplinary body made under this Act or an order of a corresponding disciplinary body made under a corresponding law, including a failure to pay wholly or partly a fine imposed under this Act or a corresponding law;

(g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

(2) Also, conduct that happened before the commencement of this subsection that, at the time it happened, consisted of a contravention of a relevant law or a corresponding law is capable of constituting unsatisfactory professional conduct or professional misconduct.

(3) This section does not limit section 418 or 419."

[10] In considering the conduct, it is relevant that, pursuant to s 420(1)(a) of the LP Act, conduct consisting of a contravention of a relevant law,[4] which includes the *Australian*

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[4] The term "relevant law" is defined in Schedule 2 of the LP Act to mean "this Act". See also s 1 of the LP Act.

Solicitors Conduct Rules 2012 (**ASCR**),[5] is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

[11] The LSC alleges the Respondent contravened Rule 5.1.2 of the ASCR and the conduct is capable of being unsatisfactory professional conduct or professional misconduct.

[12] Rule 5 of the ASCR states as follows:

> "**Dishonest and disreputable conduct**
>
> 5.1 A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to:
>
> 5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or
>
> 5.1.2 bring the profession into disrepute."

[13] Further, in determining whether the relevant conduct amounts to unsatisfactory professional conduct or professional misconduct, the following authorities considering the general principles are of some assistance.

[14] In *Legal Services Commissioner v Laylee* [2016] QCAT 237, the Tribunal states the test required to establish unsatisfactory professional conduct as follows:

> "The test required to determine whether conduct is unsatisfactory professional conduct is such that the relevant 'falling short' does not embrace all cases of error but must be sufficiently substantial. There must be an appreciable departure from the standard for the conduct to be unsatisfactory professional conduct. An isolated instance, not involving unethical conduct, and more in the nature of conduct which might give rise to an assertion of negligence, is less likely to amount to unsatisfactory professional conduct. Serious, or repeated instances, are more likely to amount to unsatisfactory professional conduct or professional misconduct."[6]

[15] In *Legal Services Commissioner v Bradshaw* [2009] QCA 126, McMurdo P considered what must be demonstrated by the applicant to establish whether conduct falls within the statutory definition of unsatisfactory professional conduct and stated as follows:

> "In establishing whether conduct is unsatisfactory professional conduct, the commissioner is not required to prove what a member of the public expects of a reasonably competent Australian legal practitioner. This is not something easily capable of direct proof. But in any case, s 418 refers to what 'a member of the public is entitled to expect of a reasonably competent Australian legal practitioner'. This is a standard to be determined by the tribunal after considering all the relevant circumstances pertaining in each case."[7]

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5 Being the version of the ASCR in force at the time of the Respondent's conduct. Section 420(1)(a) of the LP Act includes a note that a contravention in relation to the LP Act includes a contravention of a regulation or legal profession rules.

6 At [43] per Thomas J.

7 At [54].

[16] The test for professional misconduct was described by Thomas J in *Adamson v Queensland Law Society Incorporated* (1990) 1 Qd R 498 as follows:

> "The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency."[8]

[17] Having established the relevant test to apply, the relevant factual circumstances can be considered.

Are Charges 1, 2, 3 and 4 proved?

[18] The discipline application sets out four separate charges, but they arise out of the same conduct and factual circumstances. Accordingly, the LSC and the Respondent contend that the Tribunal should consider the charges globally. The Tribunal accepts that is the appropriate approach, particularly in the circumstances of this case.

[19] The charges in the discipline application are as follows:

(a) Charge 1: "On 12 May 2021 the Respondent engaged in conduct, in the course of practice or otherwise, … which is likely, to a material degree, to bring the profession into disrepute".[9]

(b) Charge 2: "On 25 May 2022, the Respondent engaged in conduct, in the course of practice or otherwise, … which is likely, to a material degree, to bring the profession into disrepute".

(c) Charge 3: "On or about 12 May 2021, the Respondent made false declarations in his application to renew his practising certificate submitted to the QLS".

(d) Charge 4: "On or about 25 May 2022, the Respondent made false declarations in his application to renew his practising certificate submitted to the QLS".

[20] The particulars in respect of each of the charges can be considered together. The relevant facts include:

(a) At all material times the Respondent was an Australian legal practitioner pursuant to s 6(1) of the LP Act, having been admitted as a lawyer in the Supreme Court of Queensland on 13 July 2015.

(b) Between 24 June 2015 and on or about 3 April 2019 the following occurred (**Historical Context**):

(i) On 24 June 2015, the Respondent exceeded the speed limit by at least 13km per hour but not more than 20km per hour, the penalty being a $227 fine and accumulation of 3 demerit points (**June 2015 Traffic Infringement**).

(ii) On 17 July 2015, the Respondent exceeded the speed limit by at least 13km per hour but not more than 20km per hour, the penalty being a $235

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8 At 507.

9 Given the concession outlined at 3(a) above, the first limb of Charges 1 and 2 (being "the Respondent engaged in conduct, in the course of practice or otherwise, demonstrating that the Respondent is not a fit and proper person to practise law") is not considered.

fine and accumulation of 3 demerit points (**July 2015 Traffic Infringement**).

(iii) On 13 August 2015, the Respondent applied to the QLS for a practising certificate for the 2015/16 financial year and declared that he had not been subject to any suitability matters within s 9 and s 46 of the LP Act and did not disclose the June 2015 Traffic Infringement and the July 2015 Traffic Infringement.

(iv) On 19 May 2016, the Respondent exceeded the speed limit by at least 13km per hour but not more than 20km per hour, the penalty being a $235 fine and accumulation of 3 demerit points (**May 2016 Traffic Infringement**).

(v) On 31 August 2016, the Respondent used a handheld mobile phone while driving, the penalty being a $365 fine and accumulation of 3 demerit points (**August 2016 Traffic Infringement**).

(vi) On 26 September 2016, the Respondent became subject to a 1-year good behaviour period (**Good Behaviour Period**).

(vii) On 18 October 2016, the Respondent exceeded the speed limit by at least 13km per hour but not more than 20km per hour, the penalty being a $243 fine and accumulation of 3 demerit points (**October 2016 Traffic Infringement**).

(viii) On 23 November 2016, the Respondent used a handheld mobile phone while driving, the penalty being a $365 fine and accumulation of 3 demerit points. He received a further penalty of an accumulation of 3 demerit points for having more than two mobile phone offences within 12 months (**November 2016 Traffic Infringement**).

(ix) On 21 December 2016, the Respondent's drivers' licence was suspended for accumulating 3 demerit points during the 1-year Good Behaviour Period (**Suspension**).

(x) On 4 July 2017, the Respondent applied to the QLS to renew his practising certificate for the 2017/18 financial year and declared that he had not been subject to any suitability matters in s 9 and s 46 of the LP Act and did not disclose the June 2015 Traffic Infringement, the July 2015 Traffic Infringement, the May 2016 Traffic Infringement, the August 2016 Traffic Infringement, the Good Behaviour Period, the October 2016 Traffic Infringement, the November 2016 Traffic Infringement and the Suspension (together, the **2015 to 2016 Traffic History**).

(xi) On 29 May 2018, prior to submitting an application to renew his practising certificate for the 2018/19 financial year, the Respondent sent an email to the QLS and disclosed that:

A. His licence was suspended due to an accumulation of demerit points on or about 22 February 2017; and

B. He breached a good behaviour bond on or about 23 November 2017 (**29 May 2018 Disclosure**).

(xii) On 1 June 2018, the Respondent provided a copy of his traffic history which outlined the 2015 to 2016 Traffic History.

(xiii) On or about 6 August 2018, as a result of the failure to disclose the 2015 to 2016 Traffic History, the Respondent's practising certificate was renewed with the condition that the Respondent undertake the next available QLS Ethics Course.

(xiv) On or about 3 April 2019, the Respondent undertook the QLS Ethics Course.

(c) In respect of Charge 1:

(i) On 27 March 2021, the Respondent exceeded the speed limit by less than 11km per hour, the penalty being a $177 fine and accumulation of 1 demerit point (**2021 Traffic Infringement**).

(ii) On 12 May 2021, the Respondent applied to the QLS to renew his practising certificate and declared that he had not been subject to any suitability matters within s 9 and s 46 of the LP Act in the previous 12 months "which may affect [his] eligibility or fitness to hold a practising certificate".

(iii) In making the application to renew his practising certificate, the Respondent:

A. did not disclose the 2021 Traffic Infringement; and

B. was aware or ought to have been aware that he was required to disclose the 2021 Traffic Infringement having regard to:

I. the Historical Context; and

II. the fact that the Respondent accepts that the 2021 Traffic Infringement should have been disclosed.

(d) In respect of Charge 2:

(i) On 21 March 2022, the Respondent exceeded the speed limit by less than 13km per hour, the penalty being a $183 fine and accumulation of 1 demerit point (**2022 Traffic Infringement**).

(ii) On 25 May 2022, the Respondent applied to the QLS to renew his practising certificate and declared that he had not been subject to any suitability matters within s 9 and s 46 of the LP Act in the previous 12 months "which may affect [his] eligibility or fitness to hold a practising certificate".

(iii) In making the application to renew his practising certificate, the Respondent:

A. did not disclose the 2022 Traffic Infringement; and

B. was aware or ought to have been aware that he was required to disclose the 2022 Traffic Infringement having regard to:

I. the Historical Context; and

II. the fact that the Respondent accepts that the 2022 Traffic Infringement should have been disclosed.

(e) In respect of Charge 3:

(i) On or about 12 May 2021, the Respondent applied to the QLS for renewal of his practising certificate by completing the approved form published by the QLS (**Approved Form**) and submitting the Approved Form to the QLS before 31 May 2021.

(ii) The Approved Form required the Respondent to:

> "disclose whether he had been subject to any of the suitability matters mentioned in sections 9 and 46 of the [LP Act] within the 12 months before the lodgement of his application to renew his practising certificate which may affect his eligibility or fitness to hold a practising certificate."[10]

(iii) The Respondent falsely declared in the Approved Form that:

A. he had not been subject to any of the suitability matters mentioned in s 9 and s 46 of the LP Act within the last 12 months which may affect his eligibility or fitness to hold a practising certificate; and

B. all information and particulars in the Approved Form were complete and accurate in every detail.

(iv) The statements were false because in the 12 months before the Respondent completed the Approved Form, he had been subject to a suitability matter within the meaning of s 9 of the LP Act.

(f) In respect of Charge 4:

(i) On or about 25 May 2022, the Respondent applied to the QLS for renewal of his practising certificate by completing the Approved Form and submitting the Approved Form to the QLS before 31 May 2022.

(ii) The Approved Form required the Respondent to:

> "disclose whether he had been subject to any of the suitability matters mentioned in sections 9 and 46 of the [LP Act] within the 12 months before the lodgement of his application to renew his practising certificate which may affect his eligibility or fitness to hold a practising certificate."[11]

(iii) The Respondent falsely declared in the Approved Form that:

A. he had not been subject to any of the suitability matters mentioned in s 9 and s 46 of the LP Act within the last 12 months which may affect his eligibility or fitness to hold a practising certificate; and

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10 Application for Disciplinary Proceedings filed 28 June 2024, at 3.3.

11 Ibid at 4.3.

B. all information and particulars in the Approved Form were complete and accurate in every detail.

(iv) The statements were false because in the 12 months before the Respondent completed the Approved Form, he had been subject to a suitability matter within the meaning of s 9 of the LP Act.

[21] The Respondent admits:

(a) the relevant facts and the Historical Context;

(b) that the 2021 Traffic Infringement in conjunction with the Historical Context is a suitability matter within s 9(1)(a) of the LP Act; and

(c) that the 2022 Traffic Infringement in conjunction with the Historical Context is a suitability matter within s 9(1)(a) of the LP Act.

[22] The parties relied on the following affidavits:

(a) affidavit of the Respondent sworn 20 November 2024;

(b) affidavit of Martin Daniel affirmed 20 November 2024;

(c) affidavit of David John Edwards affirmed 29 October 2024;

(d) affidavit of Rachel Ann Leeding affirmed 7 May 2025; and

(e) affidavit of Sumi An sworn 7 May 2025.

[23] The affidavit of Mr Edwards identifies a further factual matter relevant to the Historical Context and the Respondent's conduct. The Respondent made an application to the Magistrates Court for a Special Hardship Order following the suspension of his driver's licence. On 22 February 2027, the Magistrate made an order permitting the Respondent to continue to drive subject to certain conditions. The conditions included the Respondent being permitted to drive for the purpose of earning a living as a "trainee solicitor", maintaining a logbook, and travelling between home and work by the most direct route.

[24] The affidavit of Mr Edwards exhibits an affidavit sworn by the Respondent on 15 February 2017 in support of the application to the Magistrate. In the affidavit the Respondent states:

> "[9] I acknowledge that my actions have fallen short of the standard required of the normal driver, and even further short of the standard of a lawyer. It is incumbent upon me to lead by example and as an Officer of the Court, I am to meet a higher standard.
>
> [10] I understand that my driving was unsafe, and I offer my apologies to the Court, my profession and most importantly, the public whom I endangered."

[25] On the basis of the admissions by the Respondent[12] and the affidavit evidence, the Tribunal is satisfied that the relevant facts constituting Charges 1, 2, 3 and 4 have been

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12 In the Respondent's response to the discipline application dated 19 August 2024, the Respondent's written submissions dated 26 February 2025 and the oral submissions at the hearing.

established on the balance of probabilities, taking into account the gravity of the allegations in question and the consequences for the Respondent.

In respect of Charges 1, 2, 3 and 4, is the Respondent's conduct properly characterised as professional misconduct?

[26] The parties contend that considering the Respondent's conduct globally, the proper characterisation of the conduct is professional misconduct.

[27] A failure to declare a suitability matter and making a false declaration as to a suitability matter as part of an application to renew a practising certificate is serious. It goes to the very heart of the regulatory regime and the ability of a legal practitioner to practise as a solicitor.

[28] The characterisation exercise is done by a consideration of the seriousness of the conduct itself. Subsequent events, such as rehabilitation and reaffirmation of character, are to be considered at the sanction stage and not as part of the characterisation exercise.[13]

[29] The characterisation exercise requires consideration of whether the conduct fell short of, or substantially departed from, the accepted standard of competence and diligence expected of a lawyer.

[30] Relevant considerations include:

(a) Section 9 of the LP Act outlines suitability matters, including whether the person is currently of good fame and character.

(b) Section 46 of the LP Act deals with suitability to hold a practising certificate, including consideration of any suitability matter, the identified matters, and "other matters the authority thinks are appropriate" in respect of whether a person is, or is no longer, a fit and proper person to hold a practising certificate.

(c) A central component of the practising certificate regime is the candour of legal practitioners in disclosing matters for consideration by the QLS.

(d) The online application for a renewal of a practising certificate asks the question:

> "Have you been subject to any of the suitability matters mentioned in ss 9 and 46 of the [LP Act] within the last 12 months which ***may*** affect your eligibility or fitness to hold a practising certificate?" (emphasis added)

(e) This question requires the legal practitioner to actively engage in a consideration of their own conduct and potential suitability matters to satisfy themselves of whether any matters need to be disclosed.

(f) The online application for a renewal of a practising certificate requires a solemn and sincere declaration by the legal practitioner, including that the information and particulars are "complete and accurate in every detail".

(g) The declaration requires the legal practitioner to reflect on the completeness and accuracy of the information being provided and to actively engage with what is

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13 *Legal Services Commissioner v Munt* [2023] QCAT 479 at [105] and *Legal Services Commissioner v Kirin* [2024] QCAT 489 at [15].

required by the LP Act, the ASCR, and any other matters relevant to the regulatory regime.

(h) The standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner includes an understanding of the suitability factors in the LP Act, the importance of candour in disclosing matters, and the ability to self-assess.

(i) The online renewal application for a practising certificate consists of a number of dialogue boxes to be completed and the insertion of the legal practitioner's name to complete the declaration. It appears similar to many other online forms of a general administrative nature. However, the completion of an online renewal application for a practicing certificate is not a simple "tick and flick" exercise.

(j) The online renewal application for a practising certificate requires the legal practitioner to personally engage with the requirements of the application and to apply intellectual rigour to what is required.

[31] The obligation to make candid and comprehensive disclosure of matters was described in *Heffernan v Law Society Northern Territory* by Grant CJ, Blokland and Brownhill JJ as follows:

> "The duty of candour applies to each of the suitability matters … If one of those suitability matters applies to an applicant for a practising certificate, or the holder of a practising certificate, the duty of candour obliges them to disclose it to the Law Society in comprehensive fashion. That, however, is not the limit of the duty of candour. It also obliges such a person to disclose to the Law Society any circumstances which might reasonably be considered to bring such a person within one of those suitability matters or otherwise to bear or reflect adversely on an assessment of fitness. It is then for the Law Society to determine, with all of the relevant information, whether the person is a fit and proper person to hold a practising certificate."[14]

[32] In *Prothonotary of the Supreme Court of New South Wales v Montenegro*, the New South Wales Court of Appeal in a joint judgment of Meagher JA, Leeming JA and Emmett AJA found that the practitioner in that case had "no appreciation of the content and importance of his obligation of candour".[15] The obligation required disclosure of:

> " … all of the circumstances of his past misconduct which were likely to reflect adversely on his character and fitness to practise as a lawyer …in making disclosure he was required to focus on and disclose the aspects of his past misconduct that involved dishonesty or revealed a disrespect for the rule of law or otherwise affected his suitability to engage in the activities and enjoy the privileges [of the legal profession]".[16]

[33] The Queensland Court of Appeal in *Legal Services Commissioner v Scott* considered a potential failure to disclose relevant information in an application for admission. In that case the non-disclosure was admitted, and steps were taken to remedy it which

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14 [2023] NTCA 10 at [67].

15 [2015] NSWCA 409, at [76].

16 At [77], citing the comments of Spigelman CJ in *New South Wales Bar Association v Cummins* [2001] NSWCA 284 at [19]-[20].

were accepted by the QLS.[17] The question on the application concerned what should be done about the admission and continuing practice as a lawyer in light of the non-disclosures. Relevantly to this matter Alan Wilson J, with whom Fraser JA and Atkinson J agreed, stated:

> "… it is critical that all practitioners understand that the burden of full and frank disclosure is extremely onerous and must be met in full and with all necessary particulars, regardless of an individual applicant's circumstances".[18]

[34] The Tribunal accepts the submission by the LSC that members of the public are entitled to expect that a reasonably competent Australian legal practitioner would:

(a) understand their disclosure obligations;

(b) understand the content and importance of the duty of candour;

(c) undertake adequate due diligence to satisfy themselves that they do, or do not, have any suitability matters to disclose;

(d) if already censured for non-disclosure, appreciate that matters of a similar nature would need to be disclosed in the future; and

(e) otherwise comply with their disclosure obligations.

[35] In respect of the solemn declaration, it is clear that the making of a false declaration by a legal practitioner is a serious matter. A legal practitioner is expected to carefully consider the questions asked on an application to renew a practising certificate and to take steps to satisfy themselves that any declaration made is true and correct. Making a false declaration is conduct which goes to the integrity of the legal practitioner and would involve a significant departure from accepted standards of competence.

[36] In *Legal Services Commissioner v Telehus (Legal Practice),* the Tribunal considered a false statutory declaration in support of an application for the issuing of a practising certificate and found that the seriousness of the conduct was "magnified by the circumstances in which [the] false statements were made".[19] Whilst the declarations here were not statutory declarations, they were solemn declarations made to the QLS as part of the regulatory scheme for the issuing of practising certificates "whereby a solicitor is granted the privileges and takes on special responsibilities to the courts, clients and the community generally".[20] Accordingly, the seriousness of the conduct in the present case is similarly "magnified".

[37] In *Legal Profession Board of Tasmania v Haque,* Blow CJ considered the conduct of a barrister providing false information in an application to renew a practising certificate.[21] The conduct was found to be unsatisfactory professional conduct in that the conduct fell short of the standard of diligence to be expected of a reasonably competent Australian legal practitioner in the sense that:

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17 [2014] QCA 266 at [56].
18 At [56].
19 [2013] VCAT 2185, at [115].
20 At [115].
21 [2015] TASSC 5.

> "practitioners must be expected to be diligent in providing accurate information, as distinct from misleading information, to the bodies that issue practising certificates".[22]

[38] In that case the legal practitioner contended that he was under a misapprehension of what was required to be disclosed. The LSC contends that here no such misapprehension could arise given the Historical Context. Accordingly, the conduct in the current case is more serious than in *Legal Profession Board of Tasmania v Haque.*

[39] Similarly, in *Council of the Law Society of NSW v Nguyen,* the Tribunal found the legal practitioner's conduct in making a false declaration in applications for renewal of a practising certificate by failing to disclose disciplinary proceedings to be unsatisfactory professional conduct.[23] The conduct was admitted and was not deliberate. The matter proceeded by way of consent order and the Tribunal noted that:

> "this case demonstrates the need for practitioners to be diligent, conscientious and careful with the documents they handle during the course of their practice, especially a document so fundamental to legal practice as the Application [for] renewal of a Practising Certificate".[24]

[40] It appears from that case that a considerable amount of leniency was extended to the legal practitioner in the particular circumstances. In contrast, here it is submitted that the Respondent had already been granted leniency in regard to his earlier non-disclosures which are part of the Historical Context. Accordingly, the conduct in the current case is more serious than in *Council of the Law Society of NSW v Nguyen.*

[41] The Tribunal accepts the submission by the LSC that members of the public are entitled to expect that a reasonably competent Australian legal practitioner would make appropriate and diligent inquiries to ensure they do not make false declarations.

[42] A competent and diligent legal practitioner would:

(a) be mindful in making disclosures and solemn declarations that information provided to the QLS was "complete and accurate in every detail", particularly in relation to an application to renew a practising certificate to be able to undertake work as a solicitor; and

(b) take steps to check whether they had any suitability matters to declare when applying to renew their practicing certificate.

[43] Considering the Respondent's conduct:

(a) The Respondent's conduct "strikes at the heart" of the Respondent's entitlement to practice as a solicitor. It occurred as part of the Respondent's application to renew his practising certificate which increases the seriousness of the conduct.

(b) The conduct goes to a legal practitioner's ability to hold themselves out and to practice as a lawyer and has the potential to damage the public's trust in the legal profession.

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22 At [31].
23 [2010] NSWADT 128.
24 At [9].

(c) The failures to disclose and the false declarations impacted the ability of the QLS to make a proper assessment of whether he was, at the relevant time, a fit and proper person to hold a practising certificate.

(d) The failures to disclose and false declarations occurred after the Respondent completed the QLS Remedial Ethics Course on or about 3 April 2019 as a condition of his 2017/2018 practising certificate (being the Historical Context outlined above).

(e) The conduct involved a significant departure from accepted standards of competence and diligence.

[44] The Respondent concedes that his conduct in relation to Charges 1, 2, 3 and 4 in the particular circumstances constitutes professional misconduct.

[45] Given the Historical Context and considered globally, the Tribunal is satisfied that the particular failures to disclose and the false declarations:

(a) Breach Rule 5 of the ASCR in that they are likely to a material degree to bring the profession into disrepute.

(b) Amount to conduct by the Respondent which falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner and are a substantial failure within s 419 of the LP Act.

[46] Accordingly, the Tribunal finds that the Respondent's conduct in relation to Charges 1, 2, 3 and 4 in the discipline application is properly characterised as professional misconduct.

What are the appropriate orders pursuant to s 456 of the LP Act?

[47] Having made the findings as to professional misconduct, the discretion in s 456 of the LP Act arises.

[48] Section 456 of the LP Act states:

"**456 Decisions of tribunal about an Australian legal practitioner**

(1) If, after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian legal practitioner, the tribunal is satisfied that the practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the tribunal may make any order as it thinks fit, including any 1 or more of the orders stated in this section.

(2) The tribunal may, under this subsection, make 1 or more of the following in a way it considers appropriate—

(a) an order recommending that the name of the Australian legal practitioner be removed from the local roll;

(b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;

(c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;

(d) an order that—

(i) imposes stated conditions on the practitioner's practising certificate granted or to be issued under this Act; and

(ii) imposes the conditions for a stated period; and

(iii) specifies the time, if any, after which the practitioner may apply to the tribunal for the conditions to be amended or removed;

(e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;

(f) an order that no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—

(i) employ or continue to employ the practitioner in a law practice in this jurisdiction; or

(ii) employ or continue to employ the practitioner in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.

(3) The tribunal may, under this subsection, make 1 or more of the following—

(a) an order recommending that the name of the Australian legal practitioner be removed under a corresponding law from an interstate roll;

(b) an order recommending that the practitioner's interstate practising certificate be suspended for a stated period or cancelled under a corresponding law;

(c) an order recommending that an interstate practising certificate not be, under a corresponding law, granted to the practitioner until the end of a stated period;

(d) an order recommending—

(i) that stated conditions be imposed on the practitioner's interstate practising certificate; and

(ii) that the conditions be imposed for a stated period; and

(iii) a stated time, if any, after which the practitioner may apply to the tribunal for the conditions to be amended or removed.

(4) The tribunal may, under this subsection, make 1 or more of the following—

(a) an order that the Australian legal practitioner pay a penalty of a stated amount, not more than $100,000;

(b) a compensation order;

(c) an order that the practitioner undertake and complete a stated course of further legal education;

(d) an order that, for a stated period, the practitioner engage in legal practice under supervision as stated in the order;

(e) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;

(f) an order that the practitioner stop accepting instructions as a public notary in relation to notarial services;

(g) an order that engaging in legal practice by the practitioner is to be managed for a stated period in a stated way or subject to stated conditions;

(h) an order that engaging in legal practice by the practitioner is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;

(i) an order that the practitioner seek advice from a stated person in relation to the practitioner's management of engaging in legal practice;

(j) an order that the practitioner must not apply for a local practising certificate for a stated period.

(5) To remove any doubt, it is declared that the tribunal may make any number of orders mentioned in any or all of subsections (2), (3) and (4).

(6) Also, the tribunal may make ancillary orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (4), as assessed in or under the order or as agreed.

(7) The tribunal may find a person has engaged in unsatisfactory professional conduct even though the discipline application alleged professional misconduct."

[49] The discretion to make any order the Tribunal thinks fit is a wide discretion and is exercised primarily in the protection of the public.[25] Principles of personal and general deterrence are also relevant.[26]

[50] The LSC concedes that the following matters, including mitigating factors, are relevant to the appropriate sanction:

(a) General and personal deterrence remain of paramount importance.

(b) An aggravating feature is that the Respondent has previously been dealt with by the QLS for identical conduct. As a consequence, specific deterrence remains an important factor.

(c) In shaping the orders, the Tribunal should have regard to the protection of the public by the maintenance of proper professional standards.[27] The protection of the public includes both the protection of the public against further misconduct of the Respondent and also similar conduct by other practitioners.[28]

(d) Mitigating factors include:

(i) The Respondent admitted the facts establishing the charges.

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25 *Legal Services Commissioner v Madden* [2009] 1 Qd R 149, 186 [122].

26 *Attorney-General v Bax* [1999] 2 Qd R 9, 22.

27 *Legal Services Commissioner v Munt* [2019] QCAT 160 at [43]; *Legal Services Commissioner v Madden* [2009] 1 Qd R 149, 186 [122].

28 *Law Society of New South Wales v Walsh* [1997] NSWCA 185 at page 40 per Beazley JA.

(ii) The Respondent cooperated with the Legal Services Commission through the investigation and the proceedings.

(iii) The Respondent has developed insight and currently acknowledges that disclosure of the 2021 Traffic Infringement and the 2022 Traffic Infringement should have been at the forefront of his mind.

(iv) The Respondent has implemented reminders in both the firm bring up system and on his mobile phone to obtain a traffic history report prior to renewing his practising certificate in the future.

(v) The Respondent has shown remorse and is sorry and embarrassed by his conduct the subject of the charges.

(vi) The Respondent self-reported his non-disclosures to the QLS and, on his 2023 application for renewal of his practising certificate, he was granted an unconditional practising certificate.

(vii) The Respondent has positive references and support from more senior practitioners. The character references speak of the Respondent being full and frank about the matters the subject of the charges, the Respondent being remorseful, and the Respondent otherwise being an ethical lawyer.[29]

[51] An order publicly reprimanding the practitioner may be imposed pursuant to s 456(2)(e) of the LP Act. The Respondent concedes that a public reprimand is an appropriate order.

[52] The impact of a public reprimand has been recognised previously by the Tribunal. In *Legal Services Commissioner v Cruise*, the Tribunal[30] referred to the observations made in *Council of the New South Wales Bar Association v Lott* as follows:

> "A reprimand is a serious matter. It marks the disgrace of a member of an honourable profession inherent in the misconduct."[31]

[53] Further, the Tribunal in *Legal Services Commissioner v Challen*, recognised the seriousness of a public reprimand as follows:

> "[39] First, there will be an order that the respondent be publicly reprimanded. The respondent conceded that this was an appropriate order in this case. The impact of such an order being made cannot be understated, particularly when it is made against a practitioner of significant seniority and an otherwise unblemished professional record. As this Tribunal has previously said:
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> > The making of a public reprimand is a serious step by the Tribunal and not one which should be taken or regarded lightly. The public reprimand is and will continue to be a permanent public blemish on the respondent's professional record. It is and will continue to stand as a permanent reminder to the respondent, to the profession and to

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29 See Affidavit of Martin Daniel affirmed 20 November 2024 at [14] to [15]; Affidavit of the Respondent at [21] and pages 1 to 11 of the exhibits.

30 Constituted by Daubney J (President), Mr Michael Meadows and Dr Margaret Steinberg AM.

31 [2019] QCAT 182 at [116], citing *Council of the New South Wales Bar Association v Lott* [2018] NSWCATOD 99 at [35].

> the public at large that there are adverse personal consequences when one engages in professional misconduct of this kind."[32]

[54] In the current case, an order that the Respondent be publicly reprimanded is appropriate.

[55] Section 456(4)(a) of the LP Act provides that the Tribunal may make "an order that the Australian legal practitioner pay a penalty of a stated amount, not more than $100,000". The payment of a pecuniary penalty is directed at general deterrence rather than punishment.

[56] The LSC contends that a pecuniary penalty also marks the Tribunal's disapproval of the conduct.[33] A pecuniary penalty may also operate as a deterrent and to assure the public that serious lapses in conduct of legal practitioners will not be passed over lightly but will be appropriately dealt with.[34]

[57] The Respondent accepts that it is appropriate for the Respondent to be ordered to pay a penalty in these circumstances, however there is a dispute as to what is the appropriate amount.

[58] The amount of the pecuniary penalty is to convey to the legal profession and to the community in general that this type of conduct is inappropriate. Regard is to be had to the circumstances of the conduct but also the mitigating and aggravating features, including any relevant matters after the conduct the subject of the charges.

[59] The appropriate pecuniary penalty also takes into account the totality of the sanction, which is to reflect both personal and general deterrence.

[60] The LSC contends that a pecuniary penalty of $7,500 is appropriate and will deter both the Respondent and other practitioners from engaging in similar conduct.

[61] In addition to the mitigating factors identified in [50(d)] above, the Respondent points to a number of factors in support of a lower pecuniary penalty being appropriate:

(a) The Respondent's conduct should be considered globally and the failures to disclose and the false declarations are two sides of the same conduct.

(b) The failures to disclose, and therefore the false declarations, were as a result of oversight and were not intentional, nor deliberate.

(c) The Respondent accepts that, given the Historical Context, he ought to have had at the forefront of his mind the need to disclose to the QLS the 2021 Traffic Infringement and the 2022 Traffic Infringement.

(d) The Respondent accepts that he should bear the cost to complete the QLS Remedial Ethics Course (being currently $1,500) and he will also be liable for costs by operation of s 462(1) of the LP Act.

(e) The Respondent has of his own volition withdrawn from the Specialist Accreditation Program, disclosed to his local law association these disciplinary proceedings, and stepped back from his active role.

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32 [2019] QCAT 273, citing *Legal Services Commissioner v Brown* [2018] QCAT 263 at [42].

33 *Law Society of New South Wales v Walsh* [1997] NSWCA 185 at page 40 per Beazley JA; *Law Society of New South Wales v Shad* [2002] NSWADT 236 at [70].

34 *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408 at 471.

(f) The Respondent is a relatively young man, and these disciplinary proceedings have, in themselves, been a significant deterrent factor in respect of the risk of future conduct of a similar nature.

(g) The Respondent submits that a pecuniary penalty in the amount sought by the LSC would have the effect of excessively punishing the Respondent. A pecuniary penalty of $2,500 would be appropriate in all of the circumstances.

[62] A pecuniary penalty may be considered in conjunction with a public reprimand for a failure to disclose,[35] and consideration also needs to be given to the protective nature of the sanction in arriving at the appropriate amount.

[63] The authorities referred to in the LSC's written submissions are of some assistance in considering the appropriate penalty, but each case turns on the specific facts and circumstances. Here, the conduct does need to be looked at globally, arising out of a single course of conduct. While there are four charges, it was the same oversight that underscores each charge relating to the 2021 renewal, which was then carried over and compounded in the following year in relation to the 2022 renewal.

[64] The Tribunal is not satisfied that the particular circumstances and the totality of the orders warrants the imposition of the pecuniary penalty sought by the LSC. However, the Tribunal is not satisfied that the pecuniary penalty proposed by the Respondent properly reflects the need for general and specific deterrence.

[65] In all of the circumstances, the Tribunal is satisfied that a pecuniary penalty in the amount of $4,000 is appropriate. The amount reflects the seriousness of the finding of professional misconduct, takes into account the particular conduct of the Respondent, meets the objective of general and specific deterrence, and takes into account considerations of totality.

[66] The LSC also seeks the imposition of an order requiring the Respondent to undertake an ethics course pursuant to s 456(4)(c) of the LP Act and this is not opposed by the Respondent.

[67] In the circumstances of this case, it is submitted that such an order would be apt to protect the public. Whilst the Respondent has previously completed a QLS Remedial Ethics Course, this was approximately five years ago. It is accepted that completion of a further QLS Remedial Ethics Course will enable the Respondent to reflect on the ethical issues that arise from the current conduct and to ensure that the conduct will not reoccur.

[68] The QLS Remedial Ethics Course can be structured to include focused reflections on specific topics of relevance. Given the Respondent's conduct the subject of Charges 1, 2, 3 and 4, a focus on the following topics would be directed at both the protection of the public and maintaining professional standards:

(a) The duty of candour and suitability matters under ss 9 and 46 of the LP Act.

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[35] See for example *Legal Services Commissioner v Hackett* [2006] LPT 15; *Legal Services Commissioner v Richards* [2018] QCAT 128 and *Legal Services Commissioner v Thomson* [2011] QCAT 127 in respect of misleading conduct not involving an element of dishonesty. Modest penalties of $5,000 and $3,000 together with a public reprimand were imposed in *Hackett* and *Richards,* with no penalty in *Thomson*.

(b) The steps required of a practitioner to satisfy themselves that they have complied with the duty of disclosure and candour and that any declarations in an application for the renewal of a practising certificate are correct and accurate.

(c) The standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

(d) Conduct that is likely, to a material degree, to bring the legal profession into disrepute.

(e) The importance of the qualities of honesty and integrity and a preparedness to comply with the law as discussed by Spigelman CJ in *New South Wales Bar Association v Cummins.*[36]

[69] The Tribunal is satisfied that it is appropriate to order that the Respondent undertake the QLS Remedial Ethics Course, with a focus as outlined above.

[70] The next scheduled QLS Remedial Ethics after the hearing was 2 June 2025, with enrolments closing on 19 May 2025. This QLS Remedial Ethics was not suitable given the Tribunal's decision was reserved. The next scheduled QLS Remedial Ethics was identified as 13 October 2025, with enrolments due on 29 September 2025.

[71] The Respondent submitted that the order should be framed to require the Respondent to provide evidence of completion of the QLS Remedial Ethics course to the LSC within a month of having completed the course. This approach is appropriate in the circumstances.

[72] The Respondent is to bear the cost of undertaking the QLS Remedial Ethics Course, which is currently $1,500. The Respondent would also have to take a day off work to attend the course. These matters have been considered and taken into account in arriving at the overall sanction to be imposed.

What is the appropriate costs order?

[73] Section 462(1) of the LP Act states:

> "A disciplinary body must make an order requiring a person whom it has found to have engaged in prescribed conduct to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist."

[74] No exceptional circumstances are identified that would justify any departure from an order in accordance with s 462(1) of the LP Act.

[75] Accordingly, the Tribunal is satisfied that it is appropriate to order that the Respondent pay the LSC's costs of and incidental to the disciplinary application, to be assessed.

[76] For the purpose of s 462(5)(b) of the LP Act, it is appropriate that costs be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.

Orders

[77] For the reasons stated above, the Tribunal orders that:

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36 [2001] NSWCA 284 at [19] – [20].

1. The Respondent's conduct identified in respect of each of Charges 1, 2, 3 and 4 in the discipline application is proved and is found to constitute professional misconduct.

2. The Respondent is publicly reprimanded.

3. The Respondent pay a pecuniary penalty in the sum of $4,000 within three months of these orders being made.

4. The Respondent successfully complete the next available QLS Remedial Ethics Course at his own expense and provide to the Applicant, within a month of having completed the course, evidence of his successful completion of the course.

5. The Respondent pay the Applicant's costs of and incidental to the discipline application, to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.