QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Murray* [2025] QCAT 292
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **COLIN PHILIP HENRY MURRAY** (respondent)
APPLICATION NO/S:	OCR201-24
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	19 August 2025
HEARING DATE:	30 July 2025
HEARD AT:	Brisbane
DECISION OF:	Justice Williams Assisted by: Mr John Sneddon, Practitioner Panel Member Ms Patrice McKay, Lay Panel Member
ORDERS:	**1. The Applicant has leave to amend the discipline application to correct the year to 2022 in Charge 2 and [2.2].** **2. The Respondent's conduct identified in respect of Charge 1 in the discipline application is proved and is found to constitute professional misconduct.** **3. The Respondent's conduct identified in respect of Charge 2 in the discipline application is proved and is found to constitute unsatisfactory professional conduct.** **4. The Respondent is publicly reprimanded.** **5. The Respondent pay a pecuniary penalty in the sum of $1,500 within 90 days of these orders being made.** **6. 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.** **7. 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 – GENERALLY – where the Respondent prepared and filed an affidavit under the hand of his client which contained a false statement and irrelevant and scandalous material regarding the opposing solicitor – where the Respondent knew the statement in the affidavit was incorrect – where the Respondent did not correct the record – where the Respondent sent correspondence to the opposing solicitor that was inappropriate and discourteous – whether the Respondent engaged in unsatisfactory professional conduct or professional misconduct – where the sanction was in dispute

Australian Solicitors Conduct Rules 2012, r 3.1, r 4.1.2, r 17.1, r 19
Federal Circuit and Family Court of Australia (Family Law) Rules 2021, r 8.16, r 8.18
Legal Profession Act 2007 (Qld) s 418, s 419, s 420, s 452, s 456, s 462

Adamson v Queensland Law Society Incorporated (1990) 1 Qd R 498, cited
Lander v Council of the Law Society of the Australian Capital Territory [2009] ACTSC 117, considered
Legal Services Commissioner v Bradshaw [2009] QCA 126, cited
Legal Services Commissioner v Challen [2019] QCAT 273, cited
Legal Services Commissioner v Cooper [2011] QCAT 209, considered
Legal Services Commissioner v Cruise [2019] QCAT 182, cited
Legal Services Commissioner v Janes [2013] QCAT 551, considered
Legal Services Commissioner v Kirin [2024] QCAT 489, considered
Legal Services Commissioner v Laylee [2016] QCAT 237, cited
Legal Services Commissioner v Manz [2019] QCAT 147
Legal Services Commissioner v XBN [2016] QCAT 471, considered
Victorian Legal Services Commissioner v McDonald [2019] VSCA 18, considered

APPEARANCES & REPRESENTATION:

Applicant: B Clements (sol) of Clements Fitzgerald Lawyers

Respondent: Self-represented

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.

[2] The discipline application raises two charges against the Respondent, Colin Murray (**Respondent**): preparing and subsequently filing an affidavit for a client that was misleading and contained irrelevant and scandalous material, and sending correspondence to another practitioner that was inappropriate and discourteous.

[3] The underlying facts are not in dispute.[1] However, the effect of the conduct, the characterisation of the conduct, and the appropriate sanction are in dispute.

[4] The LSC contends that:

(a) Charge 1 is proved and is characterised as professional misconduct.

(b) Charge 2 is proved and is characterised as unsatisfactory professional conduct.

(c) Appropriate disciplinary orders are a public reprimand, an order that the Respondent complete the Queensland Law Society (**QLS**) Remedial Ethics Course at his own expense at the next available intake, and a pecuniary penalty of $8,000 payable within 30 days.

[5] The Respondent contends that the Tribunal should find that Charge 1 and Charge 2 are not proved and that the charges should be dismissed. Alternatively, if the Tribunal finds that Charge 1 and Charge 2 are proved, then at most the conduct should be characterised as unsatisfactory professional conduct with a public reprimand only.

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

(a) Is Charge 1 proved and properly characterised as professional misconduct?

(b) Is Charge 2 proved and properly characterised as unsatisfactory professional conduct?

(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.

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[1] This is apparent from the affidavit of the Respondent filed 9 December 2024 at [2] to [5].

(b) Pursuant to s 656C(2) of the LP Act, satisfaction 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 determining whether the relevant conduct amounts to unsatisfactory professional conduct or professional misconduct, the following authorities considering these general principles are of some assistance.

[11] In *Legal Services Commissioner v Laylee* [2016] QCAT 237, the Tribunal stated 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."[2]

[12] 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

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[2] Thomas J at [43].

> practitioner'. This is a standard to be determined by the tribunal after considering all the relevant circumstances pertaining in each case."[3]

[13] 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."[4]

[14] It is also relevant that, pursuant to s 420(1)(a) of the LP Act, conduct consisting of a contravention of a relevant law,[5] which includes the *Australian Solicitors Conduct Rules 2012*[6] (**the ASCR**),[7] is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

[15] Accordingly, non-compliance with a relevant rule of the ASCR is capable of constituting unsatisfactory professional conduct or professional misconduct.

[16] Rule 3.1 of the ASCR states as follows:

> "3.1 A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty."

[17] Rule 4.1.2 of the ASCR states as follows:

> "4.1 A solicitor must also:
>
> 4.1.2 be honest and courteous in all dealings in the course of legal practice."

[18] Rule 17.1 of the ASCR states as follows:

> "17.1 A solicitor representing a client in a matter that is before the court must not act as the mere mouthpiece of the client or of the instructing solicitor (if any) and must exercise the forensic judgments called for during the case independently, after the appropriate consideration of the client's and the instructing solicitor's instructions where applicable."

[19] Rule 19 of the ASCR states as follows:

> "19.1 A solicitor must not deceive or knowingly or recklessly mislead the court.
>
> 19.2 A solicitor must take all necessary steps to correct any misleading statement made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading.
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> 19.3 A solicitor will not have made a misleading statement to a court simply by failing to correct an error in a statement made to the court by the opponent or any other person."

[20] It is now necessary to consider the factual circumstances.

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3 At [54].
4 At 507.
5 The term "relevant law" is defined in Schedule 2 of the LP Act to mean "this Act" and see also s 1 of the LP Act.
6 The 2012 ASCR were in force at the time of the relevant conduct. The 2023 ASCR did not come into force until 27 September 2024.
7 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.

Is Charge 1 proved?

[21] Charge 1 states:

> "In or around 22 September 2022, the Respondent prepared and subsequently filed an affidavit for a client in the Federal Circuit and Family Court of Australia (**FCFCOA**) that was misleading and contained irrelevant and scandalous material."

[22] The particulars of Charge 1 include the following:

(a) The Respondent:

(i) Is an Australian lawyer as defined in section 5(1) of the LP Act, having been admitted on 7 June 2021.

(ii) Was at all relevant times an Australian legal practitioner, as defined in s 6(1) of the LP Act, holding a restricted employee level practising certificate.

(iii) Has been an employed solicitor and director at Murray Laws Pty Ltd (**Murray Laws**) since 2 February 2022.

(b) On 19 August 2022, another solicitor commenced family law proceedings on behalf of her client, the applicant father, in the FCFCOA (the **Proceedings**).

(c) On 22 August 2022, at 5.22 pm, the solicitor emailed the initiating documents in the Proceedings to the respondent mother by way of service.

(d) On 22 August 2022, at 6.46 pm, the respondent mother forwarded the documents to the Respondent by email.

(e) Between 22 August 2022 and 22 September 2022, the Respondent was engaged by the respondent mother to prepare a response and related material, including the client's affidavit, for the Proceedings.

(f) On 22 September 2022, the Respondent filed his client's affidavit in the FCFCOA for the Proceedings (**Affidavit**).

(g) The Affidavit relevantly stated:

> "23. I received an email from [the opposing law firm] dated Monday 22 September (sic) 2022 at 5.22 PM purporting to serve Family Law documents on me.
>
> 24. It was by sheer chance that, several days after the date of the email, I noticed it in my junk mail before it was automatically deleted.
>
> 25. This course of action seemed lazy and very unprofessional. My understanding is that these documents should have been served personally.
>
> 26. Upon discovering these documents, I contacted my legal representative."

(h) In [23] of the Affidavit there is a typographical error and the reference should be to the email dated 22 August 2022, rather than 22 September 2022.

(i) Further, and in particular, the Applicant submits that:

> "The Respondent, in preparing and filing the Affidavit, put information before the [C]ourt that was:
>
> (a) misleading, in that it stated that the email of 22 August 2022 … was only discovered 'several days after the date of the email' in the circumstances where it was in fact sent to the Respondent by his client only 1 hour and 24 minutes after it was received …; and
>
> (b) irrelevant and scandalous, in that it made allegations that [the opposing solicitor] had engaged in a 'course of action [that] seemed lazy and unprofessional' in circumstances that she had not."

[23] The LSC submits that the Tribunal can be satisfied that the particulars of Charge 1 have been proved to the requisite standard on the evidence contained in the affidavit of Thea Johnson and the affidavit of the Respondent.

[24] The affidavit of the Respondent includes evidence that on 22 August 2022 at 6.46 pm, the client/respondent mother forwarded the initiating documents to the Respondent. Time and date of receipt of the email by the client/respondent mother and when it was forwarded to the Respondent is clear from Exhibit CM-1 of the affidavit of the Respondent.[8]

[25] The Respondent also deposes in his affidavit to the client/respondent mother telephoning the Respondent on the evening of 22 August 2022 and "inform[ing] [him] that she had forwarded email correspondence to Murray Laws from [the opposing solicitor]".[9]

[26] The Respondent was retained by the client/respondent mother in respect of the Proceedings and filed and served documents on behalf of the client/respondent mother, including the Affidavit, on 22 September 2022.[10]

[27] An important factual consideration is also that the affidavit court form requires the completion of the following statement:

> "This affidavit was prepared/settled by [ ] deponent/s
>
> [ ] lawyer".

[28] In the current case, the box for "lawyer" was marked.[11]

[29] The LSC submits that on the evidence the Respondent prepared and/or settled the Affidavit and the Respondent also witnessed and filed the affidavit.[12] In particular, the LSC contends that by preparing and filing the Affidavit, the Respondent put information before the Court that was misleading and irrelevant and scandalous.

[30] The statement that the email dated 22 August 2022 purportedly serving the initiating documents was only discovered "several days after the date of the email" was false in that it was forwarded by the client/respondent mother to the Respondent approximately an hour and 24 minutes after it was received by the client/respondent mother.

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8 At page 71 of Exhibit 1, being the Hearing Book (HB).
9 At [4] of the affidavit of the Respondent: HB at 65.
10 See Exhibit CM-II of the affidavit of the Respondent: HB at 73.
11 HB at 59; Exhibit TMG-3 to the affidavit of Thea Johnson at page 23.
12 HB at 59; Exhibit TMG-3 to the affidavit of Thea Johnson at page 23.

[31] The Respondent was also telephoned by the client/respondent mother and the Respondent's own evidence is that he was told in that conversation in the evening of 22 August 2022 that the documents had been forwarded to him by email.

[32] In respect of Charge 1 the Respondent raises a number of matters in response, including:

(a) "[The LSC] falsely asserts that 'I had full knowledge of when [the] client received materials'. This is a baseless, unsubstantiated, unsupported allegation and provides no evidence to support the proposition. I did not knowingly deceive the Court and no evidence is presented demonstrating in what way 'I' was deceiving the Court."[13]

(b) "I had no knowledge of any inaccuracy or whether my client was mistaken, or being deliberately misleading."[14]

(c) "Again, it is up to the opposing practitioner or the Court itself to raise the issue or oppose the inclusion when the materials are read to the [C]ourt and then argument and submissions are made for the presiding judicial officer to determine the issue. No such objections were raised by the opposing representative or the Court."[15]

(d) "I placed nothing before the [C]ourt; misleading, irrelevant, scandalous or otherwise.

If by 'prepare' my client's affidavit, the Applicant actually means:

i. Fill out the set fields of the required FCRCA form
ii. Fill out/complete the names/addresses of the Parties
iii. Fill/out complete the footer identifying the law firm
iv. Cut and paste [the client's] pre-prepared MS Word document into the correct form
v. Printing out the Affidavit
vi. Witness my client affirming the affidavit
vii. Scanning and uploading the document

then the statement is correct.

However, if by 'prepare' the applicant is suggest[ing] that I wrote the 'facts' for the Deponent or that I directed the [client] as to what her evidence was, that is an incorrect, baseless, unsubstantiated and unsupported assertion."[16]

[33] The Applicant also relies on professional development training in respect of the preparation of affidavits, including that the words of the deponent are to be used.[17]

[34] At the hearing the Respondent also made submissions, at times straying into evidence, that he was unaware of the date and time on the email that was forwarded to him.

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13 At [32] Respondent's Submissions: HB at 19.
14 At [33] Respondent's Submissions: HB at 19.
15 At [40] Respondent's Submissions: HB at 19 – 20.
16 At [B.1] of Exhibit 2 "Further Particulars of Response to Legal Services Commissioner's Application for Referral".
17 At [B.1] of Exhibit 2 "Further Particulars of Response to Legal Services Commissioner's Application for Referral".

Further, the Respondent submitted that, in effect, it was not his role or his responsibility to question or change his client's evidence.

[35] Considering the evidence, the Respondent was aware from the telephone conversation with his client that the relevant documents had been forwarded to him that day, 22 August 2022. That was also the day that the Respondent was retained. Therefore, the Respondent had knowledge of when they were received by him, even if he did not look at the date and time on the email.

[36] In any event, it is difficult to accept that a legal practitioner would not be aware of the time of purported service of an initiating court document as that is usually relevant to the calculation of the time by which a response is due.

[37] The Respondent can be understood to have prepared the Affidavit, particularly given the requirement of the court form for the involvement of a lawyer to be noted on the completed affidavit. The Respondent also on his own submissions did prepare and finalise the Affidavit, witness the execution of the Affidavit, and file it with the Court.

[38] From his own knowledge the Respondent knew that the statement in the Affidavit that the email of 22 August 2022 was only discovered "several days after the date of the email" was incorrect.

[39] A solicitor preparing an affidavit on behalf of a client and witnessing a client executing an affidavit should be mindful of whether there is anything in the affidavit which is misleading or false.

[40] Here there is no allegation of intentional dishonesty. However, knowingly or recklessly misleading a court is alleged.[18]

[41] A solicitor is permitted to question and test evidence to be given by a witness and is permitted to draw to the witness' attention inconsistencies and other difficulties with the evidence. Here, that would extend to pointing out that the email of 22 August 2022 received from the opposing solicitor had in fact been forwarded to the Respondent at 6.46 pm on 22 August 2022. Further, this had been confirmed in the telephone call between the client and the Respondent on the evening of 22 August 2022 at the commencement of the retainer.[19]

[42] The contents of the Affidavit did also contain irrelevant and scandalous material in the statement that the steps taken to purportedly serve the initiating documents seemed "lazy and unprofessional". The comments were irrelevant and totally unnecessary.

[43] On the basis of the affidavit evidence, the Tribunal is satisfied that the relevant facts constituting Charge 1 have been established on the balance of probabilities, taking into account the gravity of the allegations in question and the consequences for the Respondent.

[44] Turning to consider the characterisation of the conduct in Charge 1.

[45] The LSC contends that in preparing, witnessing, and filing the Affidavit, while having full knowledge of when his client actually received the documents, the Respondent has become an active participant in misleading the Court. Accordingly, the

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18 Consistent with Rule 19.1 of the ASCR.

19 This is consistent with Rule 24 of the ASCR.

Respondent has failed to comply with his paramount duty to the Court under Rule 3.1 and has knowingly deceived the Court in breach of Rule 19.1 of the ASCR.

[46] Further, the LSC contends that there is no evidence that the Respondent has corrected the record of the Court despite being put on notice and being aware at all material times that the Affidavit contained false information.[20]

[47] The LSC relies on a number of authorities in respect of the characterisation of the conduct.

[48] In *Legal Services Commissioner v XBN*,[21] the Tribunal found professional misconduct in respect of filing an affidavit that was misleading. In that case, the conduct involved an affidavit by a legal practitioner that was misleading in that the practitioner knew or ought to have known facts that were at odds with the affidavit. The conduct breached Rule 19.1 of the ASCR.

[49] In making the finding of professional misconduct the Tribunal observed at [43]:

> "Accuracy and honesty in dealings with a Court are fundamental to the duties which are owed by a solicitor. Conduct which misleads a Court falls short, to a substantial degree, of the standard of professional conduct observed or approved by members of the profession of good repute and competency."

[50] While the conduct in *Legal Services Commissioner v XBN* may be considered to be more serious as the affidavit was that of the legal practitioner, similar issues arise in respect of an affidavit prepared and filed by a solicitor on behalf of a client where the solicitor knows or ought to know that facts in the affidavit were false.

[51] A further issue arises where a solicitor witnesses an affidavit where they know that a statement contained in the affidavit is false. This should be drawn to the client's attention and, depending on the position of the client, the solicitor may need to refrain from witnessing the affidavit and may also need to cease to act.[22]

[52] The LSC also relies on the decision of *Legal Services Commissioner v Manz.*[23] In that case the respondent misled another solicitor by providing false reasons as to why the respondent's clients proposed to enter into a deed of assignment.

[53] The circumstances in that case included that the respondent had been instrumental in orchestrating an accounting reason to suggest an alternate purpose of the proposed assignment and providing that reason to the body corporate and its solicitor. The respondent contended that the conduct was a "one-off" and was motivated by the desire to protect his clients' interests and not for personal gain.

[54] In finding that the conduct was professional misconduct, the Tribunal commented at [36]:

> "Notwithstanding the matters advanced on behalf of the respondent, his conduct should be characterised as professional misconduct. While it may not fall comfortably within the definition in s 419 of the LP Act, it nevertheless fell

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20 Consistent with Rule 19.2 of the ASCR.

21 [2016] QCAT 471.

22 See discussion in G E Dal Pont, *Lawyers' Professional Responsibility* (Thomson Reuters, 7th ed, 2021) 587-596, particularly at [17.110] and *Kyle v Legal Practitioners Complains Committee* (1999) 21 WAR 56, at 60.

23 [2019] QCAT 147.

> short, to a substantial degree, of the standard of professional conduct approved by members of the profession of good repute and competency, and would reasonably be regarded as dishonourable."

[55] That case was far more serious than the current conduct, which was reflected in the pecuniary penalty of $30,000 ordered by the Tribunal.

[56] In contrast to the facts in *Legal Services Commissioner v Manz*, the misleading conduct in the present case does not appear to have had any impact on the Proceedings.

[57] In respect of the irrelevant and scandalous statement in the Affidavit, the LSC recognises that the *FCFCOA Rules 2021* (**FCFCOA Rules**) provide for a variety of options for service, including by a respondent filing a notice of address for service or a solicitor for a respondent filing an acknowledgement of service.[24]

[58] It is not necessary or appropriate for this Tribunal to express a definitive view as to the appropriateness or otherwise of the purported service of the initiating documents under the FCFCOA Rules. It is sufficient to acknowledge that the course adopted was open and was not prohibited under the relevant rules.

[59] In respect of the requirements of an affidavit filed under the FCFCOA Rules, Rule 8.16 provides that an affidavit must be "confined to facts about the issues in dispute" and "confined to admissible evidence". Rule 8.18 of the FCFCOA Rules provides that the Court may order material be struck out of an affidavit if it is "inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative" or "contains opinions of persons not qualified to give them."

[60] Service was not in dispute between the parties. Therefore, the inclusion of evidence about that issue was irrelevant. However, the particular statement about the "laziness" and "unprofessionalism" of the opposing solicitor was not relevant on any basis, was not founded on the relevant rules, and was an opinion that the deponent client was not qualified to give in any event.

[61] The LSC contends that the statement is scandalous in that it seeks through inadmissible and irrelevant evidence to criticise the opposing solicitor's conduct in personal terms. The LSC accepts that it is not scandalous to a serious degree, but submits that it is properly characterised as scandalous.

[62] The Respondent contends that he was relying on instructions from his client and that his client wanted to put that statement in the Affidavit. At the hearing, the Respondent says he questioned his client about paragraph [25] specifically.

[63] The LSC submits that this is not an answer as a solicitor by Rule 17.1 of the ASCR is not to be a mere mouthpiece for the client.

[64] In this respect, the LSC also relies on another aspect of the decision of the Tribunal in *Legal Services Commissioner v XBN* concerning correspondence critical of the opposing solicitor and their client.[25] The Tribunal found that the practitioner had engaged in unsatisfactory professional conduct in respect of the correspondence and also a separate charge of unsatisfactory professional conduct in respect of making

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24 Rule 2.32 of the FCFCOA Rules.

25 [2016] QCAT 471.

statements when they were not his opinions but made on instructions with him being a mere mouthpiece for his client.

[65] It is acknowledged that the deception in the present case is relatively minor. The LSC contends that the aggravating features are that the misleading conduct occurred before the Court, there has been no effort to correct the misleading statement, and the misleading statement was used to advance irrelevant and scandalous allegations against another solicitor, with potential negative impacts for the Respondent's client.[26]

[66] The Respondent in submissions argued that the Court was not mislead as the matter only proceeded to a conciliation conference rather than further proceedings before the Court. However, the definition of "court" in the glossary of terms in the ASCR is an extended definition which includes any form of dispute resolution. That submission does not avoid the operation of the ASCR in respect of the obligation not to mislead the Court.

[67] A competent and diligent solicitor would:

(a) be mindful of checking and verifying the factual accuracy of statements made by a client in an affidavit;

(b) be mindful of the overriding obligations to the Court and the administration of justice and the obligation to not deceive or knowingly or recklessly mislead the Court;

(c) be mindful of not facilitating a witness to swear an affidavit containing information known by the solicitor, or which ought to have been known by the solicitor, to be false; and

(d) carefully advise a client and refrain from witnessing the affidavit and/or ceasing to act if a client insisted on proceeding to swear the affidavit.

[68] Considering the Respondent's conduct:

(a) The Respondent's conduct contravenes the identified Rules in the ASCR.

(b) The conduct goes to the accuracy and honesty of dealings with the Court and the fundamental obligations owed by a solicitor to the Court.

(c) The obligation of frankness in Court and the overriding obligation to the Court and the administration of justice is of fundamental and central importance in legal practice.

(d) Conduct by which the Court is knowingly or recklessly misled is serious.

(e) Whilst the current conduct may be considered minor, in all of the circumstances the Respondent's conduct falls short of the standard of professional conduct observed or approved by members of the profession of good repute and competency to a substantial degree.

[69] In the circumstances of this case, the Respondent's conduct amounts to conduct which falls short of the standard of competence and diligence that a member of the public is

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[26] For example, a potential costs order against the party pursuant to Rule 8.18 of the FCFCOA Rules in any application to strike out the offending parts of the Affidavit.

entitled to expect of a reasonably competent legal practitioner and is a substantial failure within s 419 of the LP Act.

[70] Accordingly, in respect of Charge 1 the Tribunal is satisfied that the Respondent's conduct is properly characterised as professional misconduct.

Is Charge 2 proved and properly characterised as unsatisfactory professional conduct?

[71] Charge 2 states:

> "On 23 September 2023 the Respondent sent correspondence to another legal practitioner that was inappropriate and discourteous."

[72] There is a typographical error in the reference to the year in Charge 2. The correct date is 23 September 2022. It is apparent that both parties were under no misapprehension as to the correct date of the letter, which is at pages 61 – 62 of the Affidavit of Thea Johnson sworn 13 November 2024.

[73] The typographical error was carried over to [2.2] of the particulars, which refers to a letter dated 23 September 2023 when the correct date is 2022. Reference to the Respondent's letter dated 23 September 2022 in [2.3] of the particulars has the correct date of 23 September 2022.

[74] To regularise this issue, the LSC sought leave to amend Charge 2 of the discipline application and [2.2] of the particulars to correct the date from 2023 to 2022.[27]

[75] Turning to consider the particulars of Charge 2:

(a) The particulars at [1.1] to [1.7] of the particulars to Charge 1 are repeated and relied upon. These are the matters summarised at [22 (a) to (h)] above.

(b) On 23 September 2022, the opposing solicitor in the Proceedings sent an email to the Respondent, which relevantly stated:

> "As to the allegation of your client of unprofessionalism and 'laziness' in service please advise of all process servers and bailiffs that facilitate service in Kingaroy. We are aware of nil.
>
> The closest is Toowoomba who charge exorbitant fees to attend the South Burnett for each attempt.
>
> There are also COVDI19 (sic) issues that apply. It is fairly standard practice and there is a form that enables service by electronic means.
>
> **The writer acted in accordance with instructions to serve via email, so all personal attacks on the writer could be the subject of a complaint to the LSC about your conduct as the solicitor with carriage of the matter knowingly placing this in an affidavit, noting that we act on instructions.**
>
> **Please take your client's instructions about retracting such statement as a matter of urgency.**" (emphasis in original but not reproduced in the particulars)

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[27] The Tribunal sent an email on 31 July 2025 seeking clarification of this issue. By email dated 31 July 2025, the solicitor for the LSC confirmed that Charge 2 and particular [2.2] should be amended to read '2022' rather than '2023' and the LSC sought leave to amend the discipline application.

(c) On 23 September 2022, the Respondent replied to the opposing solicitor via email and relevantly stated:

> "Inveighing against me is nonsensical. I place nothing in a client's affidavit. It is the client who deposes the facts and annexes the evidence supporting the facts. I have made no personal attacks on the writer. Perhaps the writer should have advised her client of the legislation and rules regarding service, and the possibility that the Party being served may take offence and not accept service by email, before accepting his instructions."

(d) Further, and in particular:

> "The Respondent, in sending the correspondence particularised above …, sent correspondence that was inappropriate and discourteous, in that it:
>
> (a) used rude or intemperate language by referring to [the opposing solicitor's] complaint about paragraph 25 of the Affidavit, as particularised above …, as 'nonsensical' ";
>
> (b) deflected responsibility for the preparing and filing of the Affidavit; and
>
> (c) effectively re-iterated the allegations in paragraph 25 of the Affidavit by continuing to criticise [the opposing solicitor's] service of documents and implying that [the opposing solicitor's] understanding of the rules of service was deficient."

[76] The Respondent maintains that it is a "baseless, unsubstantiated, unsupported allegation".[28] Further, that:

(a) "[His] statement was a factual statement of the circumstances [he does] not put words in the mouth of [his] clients."[29]

(b) "[He has] stated nothing inappropriate or discourteous in [his] correspondence… Responding assertively to an aggressive and arrogant bully is not unprofessional, discourteous or inappropriate."[30]

(c) "Nothing in [his] correspondence was inappropriate or discourteous. The Applicant erroneously makes use of the terms 'rude' or 'intemperate' to eschew, avoid or circumvent the legislative requirements and common law."[31]

(d) "[He] did not deflect responsibility. [His] client wrote her affidavit; insisted on the subject paragraph being included; and, had good reason to considering a past 'bad experience' from a previous Family Law property settlement some twenty years prior after the dissolution of her first marriage."[32]

(e) "[He] was questioning whether the applicant/client was aware that service may not be accepted via email ([the opposing solicitor] being aware of the DV allegations [his] client had made against her client)."[33]

[77] In the context of family law proceedings, the obligation for legal practitioners to maintain courtesy in dealings with other legal practitioners is of particular importance.

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28 See Exhibit 2.
29 At [48] of the Respondent's Submissions: HB at 20.
30 At [45] to [50] of the Respondent's Submissions: HB at 20. See also [B.2] of Exhibit 2.
31 At [B.2.4(a)] of Exhibit 2.
32 At [B.2.4(b)] of Exhibit 2.
33 At [B.2.4(c)] of Exhibit 2.

That is not to detract from the obligation in other contexts. However, the subject matter in family law proceedings means that there is often heightened emotions between the parties. Legal practitioners should remain dispassionate and objective, and the maintenance of courtesy is a critically important part of legal practice in matters involving family law disputes.

[78] The relevant part of the Respondent's correspondence, while on the lower end of the potential scale, is inappropriate and discourteous.

[79] On the basis of the affidavit evidence, the Tribunal is satisfied that the relevant facts constituting Charge 2 have been established on the balance of probabilities, taking into account the gravity of the allegations in question and the consequences for the Respondent.

[80] Turning to consider the characterisation of the conduct in Charge 2.

[81] Rule 4.1.2 of the ASCR requires legal practitioners to be honest and courteous in all professional dealings. A contravention of the rule may amount to unsatisfactory professional conduct or professional misconduct.

[82] The LSC accepts that the conduct in Charge 2 is at the lower end of the offending spectrum but contends that the correspondence compounds the statements from the affidavit and resulted in needless acrimony between the legal practitioners representing the clients in the Proceedings.

[83] The LSC relies on comparative authorities considering discourteous communications resulting in findings of unsatisfactory professional conduct including:

(a) *Legal Services Commissioner v Cooper*,[34] involving discourteous and offensive language in letters sent to another solicitor.

(b) *Victorian Legal Services Commissioner v McDonald*,[35] involving a letter to the opposing solicitor making accusations of dishonesty which went beyond effective advocacy to further the client's matter and was extraneous to the legitimate pursuit of the matter.

(c) *Legal Services Commissioner v XBN*,[36] involving unfounded allegations about another solicitor's client.

[84] The LSC also refers the Tribunal to the comments of the Supreme Court of the Australian Capital Territory in *Lander v Council of the Law Society of the Australian Capital Territory* where the Court supported and endorsed the general principles that the Legal Practitioners Disciplinary Tribunal at first instance adopted.[37] Relevantly, these principles included the following statement:

> "… practitioners should, in the course of their practice, conduct their dealings with other members of the community according to the same principles of honesty and fairness which are required in relations with the courts and other lawyers namely, to take all reasonable care to maintain the integrity of the legal

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34 [2011] QCAT 209.
35 [2019] VSCA 18.
36 [2016] QCAT 471.
37 [2009] ACTSC 117 per Higgins CJ, Gray and Refshauge JJ, at [24].

> profession by ensuring that the practitioner's communications are courteous and that the practitioner avoids offensive of provocative language or conduct."[38]

[85] The LSC identifies that the case of *Victorian Legal Services Commissioner v McDonald* is the closest to the Respondent's conduct in this case.[39] That is, the discourteous conduct went beyond effective advocacy and did not serve the Respondent's client's best interests. Rather, the conduct could be seen to be an excuse to raise grievances with the opposing solicitor.

[86] In the family law context where dispute resolution processes are an important part of the court processes, the Respondent's conduct was likely to have a detrimental impact on the prospects of the Proceedings being settled as it needlessly antagonised the other party's solicitor.

[87] It is accepted by the LSC that the Respondent's conduct is at the lower end of the offending spectrum. In all of the circumstances, the LSC contends that the conduct should be characterised as unsatisfactory professional conduct.

[88] A competent and diligent solicitor would:

(a) be mindful of the obligation to be courteous in all dealings in legal practice;

(b) be mindful of the particular importance of courtesy in family law matters; and

(c) be mindful of using language in communications that is not likely to have a detrimental impact on the solicitor's own client's interests.

[89] Considering the Respondent's conduct:

(a) Whilst at the lower end of the scale of offending conduct, the Respondent's conduct contravenes the Rule 4.1.2 of the ASCR.

(b) Whilst the current conduct may be considered minor, in all of the circumstances the Respondent's conduct:

(i) 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

(ii) falls short of the courtesy and professionalism that members of the legal profession should be able to expect from fellow legal practitioners.

[90] In the circumstances of this case, the Respondent's conduct amounts to conduct 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 within s 418 of the LP Act.

[91] Accordingly, in respect of Charge 2 the Tribunal is satisfied that the Respondent's conduct is properly characterised as unsatisfactory professional conduct.

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38 [2009] ACTSC 117 at [23], quoting [15] of the Tribunal's reasons.

39 [2019] VSCA 18.

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

[92] Having made a finding of professional misconduct in respect of Charge 1 and unsatisfactory professional conduct in respect of Charge 2, the discretion in s 456 of the LP Act arises.

[93] 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."

[94] The discretion to make any order the Tribunal thinks fit is a wide discretion and is exercised primarily in the protection of the public.[40] Principles of personal and general deterrence are also relevant.[41]

[95] An order publicly reprimanding the practitioner may be imposed pursuant to s 456(2)(e) of the LP Act.

[96] The impact of a public reprimand has been recognised previously by the Tribunal. In *Legal Services Commissioner v Cruise*, the Tribunal[42] 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."[43]

[97] 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:
>
> > 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 the public at large that there are adverse personal consequences when one engages in professional misconduct of this kind."[44]

[98] The LSC seeks a public reprimand, and the Respondent opposes an order for a public reprimand.

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

[100] Section 456(4)(a) of the LP Act provides that the Tribunal 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 as a punishment.

[101] The LSC contends that the Tribunal should order that the Respondent pay a penalty in the amount of $8,000 within 30 days. The Respondent contends that there should be no order for a pecuniary penalty.

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40 *Legal Services Commissioner v Madden* [2009] 1 Qd R 149, 168 [122].

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

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

43 [2019] QCAT 182 at [116], citing *Council of the New South Wales Bar Association v Lott* [2018] NSWCATOD 99 at [35].

44 [2019] QCAT 273, citing *Legal Services Commissioner v Brown* [2018] QCAT 263 at [42].

[102] The LSC referred to the following authorities in arriving at this proposed penalty:

(a) In *Legal Services Commissioner v Manz*, the respondent was ordered to pay a $30,000 penalty.[45] As established, the conduct in *Legal Services Commissioner v Manz* was far more serious than in the present case. The LSC accepted at the hearing that the penalty in this case was not really in the range for the current contravention given the extent of the conduct reflected in the penalty of $30,000.

(b) In *Legal Services Commissioner v Janes*, the respondent filed an affidavit which purported to falsely cast blame for non-compliance with court directions upon counsel and misled the Court.[46] The respondent was fined $10,000.

(c) In *Legal Services Commissioner v Kirin*, the respondent sent correspondence that was 'discourteous and … went beyond legitimate advocacy' and was ordered to pay a penalty of $2,000.[47] In that case, the Tribunal noted mitigating factors including the respondent's insight and remorse and positive steps taken in terms of education and self-improvement.[48]

[103] Here the conduct is not at the more serious end of the range of conduct in each of the categories of professional misconduct in respect of Charge 1 and unsatisfactory professional conduct in respect of Charge 2. General deterrence and denunciation of the type of conduct can be achieved by the imposition of a pecuniary penalty, but this needs to be balanced against being a punishment. The protective nature of the orders needs to also be factored into the balancing exercise.

[104] The Respondent shows a lack of insight into the offending conduct and has maintained a position throughout the investigation and the hearing that he is not culpable to any extent.

[105] Consistent with the authorities, a pecuniary penalty:

(a) Would mark the Tribunal's disapproval of the conduct.[49]

(b) Provides an assurance to the public that serious lapses of legal practitioners will not be passed over lightly and will be appropriately dealt with.[50]

(c) Will convey to the legal profession and to the community in general that this type of conduct is inappropriate.[51]

(d) Will deter the Respondent and other practitioners from engaging in similar conduct.

[106] Balancing the various considerations in the particular circumstances and totality, the Tribunal is satisfied that it is appropriate to order that the Respondent pay a pecuniary penalty of $1,500 within 90 days. This penalty is at the lower end of the potential

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45 [2019] QCAT 147.
46 [2013] QCAT 551.
47 [2024] QCAT 489, at [2].
48 At [46].
49 *Law Society of New South Wales v Walsh* [1997] NSWCA 185, at [40] (Beazley JA); *Law Society of New South Wales v Shad* [2002] NSWADT 236, at [70].
50 *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408, 471.
51 *Russo v Legal Services Commissioner* [2016] NSWCA 306, at [82]; *Council of the Law Society of New South Wales v Hunter* [2021] NSWCATOD 22, at [69].

range but reflects the personal circumstances of the Respondent so as not to amount to a punishment.

[107] 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 opposed by the Respondent.

[108] In the circumstances of this case it is submitted that such an order would be apt to protect the public. This is particularly so where the Respondent though of mature years is a relatively junior legal practitioner (having been only admitted approximately 15 months prior to the conduct) and shows no insight or remorse. Accordingly, there is utility in the Respondent undertaking the QLS Remedial Ethics Course.

[109] 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 and 2, a focus on the ASCR and in particular Rules 3.1, 4.1.2, 19 and 24 would be directed at both the protection of the public and maintaining professional standards.

[110] The Tribunal is satisfied that it is appropriate to order that the Respondent undertake the QLS Remedial Ethics Course, with the identified focus.

[111] The Respondent would be required 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?

[112] 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."

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

[114] 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.

[115] 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

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

1. The Applicant has leave to amend the discipline application to correct the year to 2022 in Charge 2 and [2.2].

2. The Respondent's conduct identified in respect of Charge 1 in the discipline application is proved and is found to constitute professional misconduct.

3. The Respondent's conduct identified in respect of Charge 2 in the discipline application is proved and is found to constitute unsatisfactory professional conduct.

4. The Respondent is publicly reprimanded.

5. The Respondent pay a pecuniary penalty in the sum of $1,500 within 90 days of these orders being made.

6. 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.

7. 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.