

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Kemp* [2025] QCAT 257

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

MICHAEL WILLIAM KEMP
(respondent)

APPLICATION NO/S: OCR119-23 & OCR039-24

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 3 July 2025

HEARING DATE: 26 May 2025

HEARD AT: Brisbane

DECISION OF: Justice Freeburn

Assisted by:

Ms Susan Forrest, Practitioner Panel Member

Mr Keith Michael Revell, Lay Person Panel Member

- ORDERS:
- 1. The Tribunal finds that the respondent engaged in professional misconduct in respect of the 2023 proceedings and Charge 8 of the 2024 proceedings.**
 - 2. The Tribunal finds that the respondent engaged in unsatisfactory professional conduct in respect of charges 1, 2, 3 and 4 of the 2024 proceedings.**
 - 3. The Tribunal recommends that Mr Michael William Kemp is removed from the local roll.**
 - 4. The Tribunal orders that Mr Michael William Kemp be publicly reprimanded.**
 - 5. A compensation order of \$7,500 be made in favour of the complainant, Ms Tran Duy Truong.**
 - 6. The respondent pay the costs of both proceedings, including the costs of the Legal Services Commissioner and the complainant.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – GENERALLY – where the Legal Services Commissioner applies for orders against the respondent – where two matters are heard together – where the respondent did not appear at the hearing – where the respondent continued to advertise himself as entitled to practice as a solicitor despite

cancellation of his practising certificate – where the respondent billed invoices to a client’s file without proper authority or justification – where the respondent did not provide a client with a costs statement – where the respondent failed to progress a client’s claim towards a resolution in a timely way – where the respondent invoiced a client for expenses without their authority or knowledge – where the respondent failed to make compulsory superannuation contributions on behalf of six former employees – whether the respondent’s conduct is unsatisfactory professional conduct or professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – GENERALLY – where the Legal Services Commissioner applies for orders against the respondent – where the tribunal may make any order it thinks fit where a practitioner has engaged in unsatisfactory professional conduct or professional misconduct – where it is relevant to consider public protection and deterrent elements – whether the appropriate sanction is to recommend that the respondent’s name is removed from the local roll – whether the appropriate sanction is to recommend that the respondent be publicly reprimanded

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PARTIES AND REPRESENTATION – DESCRIPTION OF PARTIES – where the respondent seeks a non-publication order – where the Legal Services Commissioner opposes the non-publication order – where the respondent’s grounds for seeking a non-publication order is for health reasons – where the medical or health evidence relied on by the respondent is limited – where there is a public interest in the proper administration of justice – whether a non-publication order should be made

Legal Profession Act 2007 (Qld), s 418, s 419, s 456
Australian Solicitors Conduct Rules 2012, r 5.1

Attorney-General v Bax [1999] 2 Qd R 9, applied
Legal Services Commissioner v Hewlett [2008] 2 Qd R 292, applied
Legal Services Commissioner v Wrightway Legal [2015] QCAT 174, applied
New South Wales Bar Association v Cummins (2001) 52 NSWLR 279, cited
New South Wales Bar Association v Somosi [2001] NSWCA 285, cited

Victorian Legal Services Commissioner v Henderson
[2017] VSC 202, cited

**APPEARANCES &
REPRESENTATION:**

Applicant: P C O'Connor, instructed by the Legal Services
Commissioner

Respondent: No appearance for the respondent

REASONS FOR DECISION

- [1] The applicant, the Legal Services Commissioner, applies for orders against the respondent, Michael William Kemp. The LSC alleges that Mr Kemp is guilty of professional misconduct and/or unsatisfactory professional conduct and seeks disciplinary orders pursuant to s 456 of the *Legal Profession Act 2007* (Qld) (“LPA”).
- [2] Mr Kemp did not appear at the hearing.¹ At an earlier stage in the proceedings, when Mr Kemp was represented, the parties agreed on a statement of agreed and disputed facts.
- [3] There are two proceedings which have been heard together. One charge against Mr Kemp is the subject of proceeding OCR119-23. Five charges (numbered 1, 2, 3, 4 and 8) are the subject of proceeding OCR039-24.

2023 Proceeding

- [4] Mr Kemp was admitted as a solicitor on 16 December 2004. He was therefore an Australian lawyer as defined by s 5(1) of the LPA.
- [5] On 17 June 2021 the Queensland Law Society met and resolved that Mr Kemp was no longer a fit and proper person to hold a practising certificate. Mr Kemp’s practising certificate was cancelled with effect from 22 June 2021. That cancellation meant that Mr Kemp was no longer an Australian legal practitioner as defined in s 6(1) of the LPA and was prohibited from representing or advertising that he was entitled to engage in legal practice.²
- [6] Despite the cancellation of his practising certificate, Mr Kemp continued to represent and advertise himself as entitled to practice as a solicitor. He did that through social media. It is necessary to explain the details.
- [7] On 23 August 2021, Mr Kemp represented or advertised an entitlement to engage in legal practice when he made public, or caused someone else to make public, the following five statements on the home page of the *Kemp Help website*:
- (a) “*injured yourself at work or in a motor vehicle accident? Get free advice from Kemp Help*”;
- (b) “*At Kemp, We Care...Who is eligible for personal injury claims?*”;

¹ The Tribunal accepts that every attempt has been made to effect service, including by substituted service as per the order made by the President on 9 May 2025.

² LPA s 25(1).

- (c) “*At Kemp Help, we ensure you are dealing directly with Michael and his team who become initially knowledgeable about your care. We know legal talk can feel overwhelming when you don’t know what’s going on. Which is why we’re people focused and explain your claim process in a jargon free manner*”;
- (d) “*No Win, No Fee, No Risk*”, accompanied by “*Kemp Help clients successfully resolve 99% of claims*” and “*you pay nothing unless you win*”; and
- (e) “*Don’t Put Your Claim Off Any Longer As Strict Time Limits Apply...Kemp Help provides jargon-free advice on what your next move should be and what happens next when making a claim*”.
- [8] In August 2021 Mr Kemp represented or advertised his entitlement to engage in legal practice by posting, or causing someone else to post, five similar advertisements or contact details on the *Kemp Help Facebook* page. In July and August 2021 Mr Kemp, or someone on his behalf, posted similar advertising on the *Kemp Help Instagram* page. Similar advertising was posted on the *Call Kemp Instagram* page in July and August 2021.
- [9] Finally, despite not having a practising certificate, Mr Kemp also had an active social media presence on *LinkedIn*. Between 29 June and 27 August 2021 Mr Kemp, or somebody on his behalf, posted on *Kemp LinkedIn* 16 separate messages. Those messages, amongst other things, boasted of new clients, advertised the new *Kemp Help* website, and broadcast that Kemp Help was open as usual and was available “24/7”.
- [10] On 2 September 2021, the QLS applied to the Supreme Court for an injunction restraining Mr Kemp from representing or advertising that he was entitled to engage in legal practice. On 29 September 2021, consent orders were made by Jackson J enjoining Mr Kemp for, in effect, holding himself out as entitled to practice.³
- [11] None of that is contested.⁴
- [12] There is no explanation for Mr Kemp’s conduct in maintaining a vigorous social media presence whilst not holding a practising certificate.
- [13] The conduct is a sustained course of conduct. The evident objective was to generate professional work for his legal practice. All of that was during a period when his practising certificate was cancelled and whilst he was prohibited from representing or advertising that he was entitled to engage in legal practice. Without explanation Mr Kemp has failed to comply with the requirements of the law. The regulator was forced to bring proceedings to ensure compliance.
- [14] There are, of course, no clean lines between conduct that qualifies as unsatisfactory professional conduct and conduct that qualifies as professional misconduct. The definitions that appear in s 418 and s 419 of the LPA are non-exclusive definitions that refer to what each category of conduct ‘includes’. The test to be applied for the more serious category, professional misconduct 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.⁵

³ There were two exclusions for the consent (an Instagram profile and costs).

⁴ The facts are recorded in an agreed statement of facts.

⁵ *Adamson v Queensland Law Society* (1990) 1 Qd R 498 at 507.

- [15] The sustained conduct here is akin to failing to comply with an order of a professional or disciplinary body and continuing to do so until compelled to stop. In the circumstances, the conduct comprised professional misconduct.

2024 Proceedings – Charge 1

- [16] On 16 April 2018 Mr Kemp was retained by a client, Ms Pinnell. During the time that Mr Kemp acted for Ms Pinnell four invoices were billed to her file, namely:

- (a) 7 March 2018 – Invoice 0405 - \$880 – Attendance on further instructions/Further IME DOCS/Advice from Counsel requests. Referral. (Brisbane).
- (b) 24 March 2018 – Invoice 0411 - \$660 – Attendance on further instructions/Further IME DOCS/Advice from Counsel requests. Referral. (Brisbane).
- (c) 20 August 2018 – Invoice 0444 - \$560 – Attendance on collection of documentation, commencement of MVA claim. (Brisbane). Final referral.
- (d) 29 October 2018 – Invoice 0466 - \$450 – Referral. (Brisbane).

(collectively, “**the Partially Written Off Pinnell Disbursements**”).

- [17] As can be seen, two of the invoices pre-date Mr Kemp’s retainer. All four invoices were included in the litigation costs calculated in August 2019 but subsequently the two pre-dated invoices were written off.

- [18] Mr Kemp has not tendered any evidence which explains the billing of those invoices against Ms Pinnell’s file. Ms Pinnell did not have any knowledge of the invoices until her new solicitors were retained.

- [19] The invoices were billed to Ms Pinnell’s file without her knowledge or authority.

- [20] Rule 5.1 of the *Australian Solicitors Conduct Rules 2012* stipulates that 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 be prejudicial, or diminish public confidence in, the administration of justice or bring the profession into disrepute.

- [21] Billing invoices to a client’s file without proper authority or justification is contrary to rule 5.1 and qualifies as unsatisfactory professional conduct.

2024 Proceedings – Charge 2

- [22] On 26 August 2019 Kemp Law signed a certificate of readiness pursuant to s 51B of the *Motor Accident Insurance Act 1994*. That certificate stated that Kemp Law had given Ms Pinnell a costs statement.

- [23] Ms Pinnell’s evidence is that she was not given a costs statement.

- [24] Because Mr Kemp has not appeared at the hearing there is no evidence to the contrary. If Mr Kemp had given Ms Pinnell a costs statement, then one would expect Mr Kemp to be able to produce a copy of that costs statement or some other evidence by way of a ‘paper trail’ (for example, an email enclosing the costs statement). However, no evidence has been provided to the tribunal showing that a costs statement was given pursuant to the MAIA Act.

- [25] The tribunal accepts Ms Pinnell's evidence that she was not provided with a costs statement.
- [26] The failure to provide the costs statement, and the certification that a costs statement had been provided, are breaches of Mr Kemp's duties as a solicitor under rule 5.1 and qualifies as unsatisfactory professional conduct.

2024 Proceedings – Charge 3

- [27] Charge 3 alleges that Mr Kemp failed to progress Ms Pinnell's claim towards a resolution in a timely way.
- [28] Mr Kemp's firm was retained in April 2018. The matter was not resolved for three years. Even appreciating that some delays are likely in litigation, Ms Pinnell's claim moved at a snail's pace. A chronology is set out in the agree statement of facts:
- (a) 16 April 2018 – Kemp Law retained by Ms Pinnell;
 - (b) 5 June 2019 – Counsel's advice on quantum received;
 - (c) 4 October 2019 – Claim and statement of claim filed in Magistrates Court;
 - (d) 30 October 2019 – Notice of intention to defend and defence filed by Allianz Australia;
 - (e) 21 January 2020 – Statement of loss and damage filed;
 - (f) 26 March 2020 – Lists of documents prepared;
 - (g) 14 May 2020 – Ms Pinnell gave instructions to settle;
 - (h) 14 and 15 May 2020 – Allianz sought non-party disclosure from Ms Pinnell's employer and pending that disclosure Allianz's instructions were to be sought;
 - (i) 28 May 2020 – Update provided by Kemp Law to Ms Pinnell;
 - (j) 29 January 2021 – Allianz made an offer and enclosed a request for trial date;
 - (k) February 2021 – Further negotiations.
- [29] It can be seen that there are significant gaps in that chronology. A period of 14 months passed between Kemp Law being retained and receipt of counsel's advice on quantum. And nothing much seems to have happened in the 8 months between May 2020 and January 2021. Of course, that period was a period affected by COVID-19. However, there is no evidence of any specific impact caused by COVID-19 and there is no explanation for the delays.
- [30] A single instance of delay will not ordinarily justify suspension or striking off. But, at the other end of the scale, gross neglect and delay, particularly involving a pattern of gross neglect and delay, can constitute professional misconduct as it brings the profession into serious disrepute.⁶
- [31] The delays were unreasonable and contrary to Mr Kemp's duties as a solicitor. The conduct comprises unsatisfactory professional conduct.

⁶ See the discussion of this topic in *Halsbury's Laws of Australia* at [250-7660].

2024 Proceedings – Charge 4

- [32] On 7 April 2018, Mr Adam Saunders retained Kemp Law in relation to a motor vehicle accident.
- [33] During the course of that retainer Kemp Law billed Mr Saunders for:
- (a) an invoice payable to JRJJ Consulting dated 29 October 2018 for \$450;
 - (b) an invoice payable to Kapital Financing Pty Ltd dated March 2018 for \$1707;
 - (c) an invoice payable to Kapital Financing Pty Ltd, dated 28 March 2018 for \$1307.
- [34] Invoices (b) and (c) pre-dated Mr Saunders' retainer of Kemp Law. Mr Saunders did not authorise these expenses and has no knowledge of them.
- [35] Mr Kemp has not participated in the hearing and so has not tendered an explanation for the three invoices.
- [36] The conduct in claiming these expenses was contrary to Mr Kemp's duties as a solicitor, and contrary to rule 5.1, and comprises unsatisfactory professional conduct.

2024 Proceedings – Charge 8

- [37] Mr Kemp has failed to make the following compulsory superannuation contributions on behalf of the following six former employees of Kemp Law and/or its successor firm Highland Law:
- (a) Johnathan McDonald employed by Kemp Law from 7 May 2017 to 28 August 2020, in the amount of \$37,143.07.
 - (b) Shelley Answerth; employed by Kemp Law from 1 March 2018 to 29 March 2020, in the amount of \$24,089.62.
 - (c) Roberto Chata; employed by Kemp Law from 16 July 2018 to 5 July 2020, in the amount of \$11,792.40.
 - (d) Tran Truong; employed by Kemp Law from 14 April to 30 June, and from 16 July 2020 to 15 February 2021, also employed by Highland Law from 1 to 31 March 2021, in the amount of \$15,318.75.
 - (e) Elisha Stone; employed by Kemp Law from 5 May 2020 to on or about 15 February 2021 and also employed by Highland Law from on or about 1 March 2021 to 19 March 2021, in the amount of approximately \$3,369.
 - (f) Graeme McFayden; employed by Kemp Law from 6 April 2020 to 26 February 2021, in the amount of approximately \$18,000.
- [38] Those payments were required to be made pursuant to the *Superannuation Guarantee (Administration) Act 1991* (Cth).
- [39] Mr Kemp's failure to comply with that Act is similar to those cases where a legal practitioner has been found to have committed a tax offence, or a 'tax indiscretion' not supported by a conviction.⁷ An example was *Victorian Legal Services*

⁷ See the discussion in *Halsbury's Laws of Australia* at [250-7815].

*Commissioner v Henderson*⁸ where the defendant solicitor was struck off by reason of, amongst other misconduct, having omitted to file a tax return for 11 years. Other examples are *New South Wales Bar Association v Cummins*⁹ and *New South Wales Bar Association v Somosi*¹⁰ where barristers were failed to lodge tax returns and pay tax.

[40] If anything, the conduct in failing to remit the superannuation instalments for the employees of the legal practice can be regarded as serious, or more serious, than a legal practitioner's tax offences. That is because the superannuation entitlements of the legal practice's employees is, in reality, the property of the employees.¹¹ The consequence is that, by failing to remit those funds, the legal practitioner/employer is, in effect, converting the money that ought properly go to the credit of the employees into funds available for the use of the practice. If there is an analogy, it is a breach of trust.

[41] And so, there are three broad problems with Mr Kemp's conduct. The *first* is the problem that Mr Kemp has breached the law. As de Jersey CJ said in *Legal Services Commissioner v Hewlett* (a case involving a solicitor failing to lodge tax returns for 11 years):

"[24] One of the substantial obligations of a legal practitioner is to uphold the law, and to ensure the due application of the law in furthering his or her clients' affairs. The practitioner's capacity and commitment in those regards will be thrown into question where the practitioner is himself or herself guilty of a substantial contravention of the law, knowingly and deliberately, and for his or her own financial advancement.

[25] In this case, the respondent knew that he was abrogating his statutory responsibilities, and deliberately did so, preferring to use his available resources to meet debts other than that due to the ATO."

[42] The *second* problem is that (as in *Hewlett*) Mr Kemp's failure to comply with the law was protracted. He failed to remit the superannuation entitlements of six different employees over a substantial period.

[43] The *third* problem is that the nature of Mr Kemp's failure to make the payments required by the *Superannuation Guarantee (Administration) Act 1991* (Cth) meant that he and his legal practice had the use of money that ought properly to have been put aside for his employees. That is, as I have explained, analogous to a breach of trust.

[44] Thus, Mr Kemp's failure to comply with the Act was a significant one. The practice's employees are owed a total of \$291,572. Mr Kemp's firms have subsequently been placed into liquidation.

[45] The failure to pay those amounts, or to cause those payments to be made, was a breach of Mr Kemp's legal obligations in connection with his practice as a solicitor. They are serious breaches that fall short, to a substantial degree, of the standard of professional

⁸ [2017] VSC 202.

⁹ (2001) 52 NSWLR 279.

¹⁰ [2001] NSWCA 285.

¹¹ Here I am not referring to the legal or proprietary interest in the money but the real objective of the legislation, which is to put aside money for the benefit of employees' superannuation accounts.

conduct that would be expected from competent members of the profession of good repute. This misconduct comprises professional misconduct.

Findings

- [46] It follows that Mr Kemp has been found guilty of professional misconduct in respect of the 2023 charge and Charge 8 (2024) and guilty of unsatisfactory professional conduct in respect of the other charges.

Sanction

- [47] In *Attorney-General v Bax Pincus* JA emphasised that disciplinary action is taken for the protection of the broader community and to deter practitioners from acting contrary to others' rights:

*"...the remedies of suspension or striking-off are not applied by way of punishment, but rather for the protection of the public and of the profession's standing...there is also a deterrent element. Those practitioners minded to engage in or institute, in the course of their professional work, dishonest means designed to deprive people of their legal rights must appreciate that doing so is risky, from the point of view of professional discipline and sometimes that of the criminal law."*¹²

- [48] Those comments were in a context where the practitioner was guilty of dishonest conduct, that is, backdating documents and misrepresenting the date of a transaction. However, the protection of the public element is important in this context.

- [49] The protection of the public element, and the high standards of professionalism expected of the legal profession were emphasised in *Legal Services Commissioner v Wrightway Legal*:

*"The aim is also to maximise and enforce proper standards in the profession and in that context, it is relevant to consider the need to deter other practitioners from engaging in similar conduct. This also is consistent with the objective of protecting the public by enforcing standards upon which the public can rely. Many aspects of the administration of justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people."*¹³

- [50] On a finding that a practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the tribunal may make any order it thinks fit.¹⁴ Such orders may include one or more of the following orders:¹⁵

- (a) recommending that the name of the Australian legal practitioner be removed from the local roll;
- (b) suspension of the practitioner's local practising certificate for a stated period, or cancellation;
- (c) conditions on the practitioner's practising certificate;
- (d) public reprimand of the practitioner;

¹² [1999] 2 Qd R 9 at 22 (McPherson JA and Shepherdson J agreed).

¹³ [2015] QCAT 174 at [28].

¹⁴ LPA s 456(1).

¹⁵ Ibid ss 456(2) and 456(4).

- (e) the legal practitioner pay a penalty of a stated amount, not more than \$100,000; and/or
- (f) the practitioner undertake, and complete, a stated course of further legal education.

[51] The LSC submitted that, in considering the appropriate sanction, the following features personal to Mr Kemp should be taken into account:

- (a) his co-operation in admitting the conduct alleged in OCR199-23 and many of the contextual matters in OCR039-24;
- (b) his self-reported mental health deterioration commencing in 2020;
- (c) the degree of public shaming he has already suffered by reason of adverse publicity; and
- (d) his other positive contributions to the community.

[52] But weighing against those factors are Mr Kemp's serious failures to comply with the standard of conduct required of a legal professional. His failures have adversely affected his clients and his practice's employees.

[53] It is important to note the charge the subject of the 2023 proceedings. Over a variety of social media posts, Mr Kemp flagrantly demonstrated a lack of respect for the lawful actions of the QLS – a regulator of the profession. He continued over months to hold himself out as entitled to practice, when he was not permitted to do so. The QLS was required to obtain an injunction in the Supreme Court.

[54] Mr Kemp's misconduct in failing to pay his employees' superannuation was serious misconduct. It had the effect of transferring his employees' money to his own practice. It was, as described above, akin to a breach of trust.

[55] There ought to be a strong public protection element, as well as deterrent element, to the tribunal's orders. As the LSC submits, Mr Kemp's conduct is sufficiently serious as to warrant a substantial sanction that adequately recognises the gravity of the conduct and provides personal and general deterrence. The orders will be:

- (a) a recommendation that Mr Kemp's name is removed from the local roll;
- (b) a public reprimand.¹⁶

Non-Publication Order?

[56] Mr Kemp seeks a non-publication order to "*minimise the risk of endangering my physical and/or mental health or safety*". The medical or health evidence Mr Kemp relies on is rather limited. A report dated 26 June 2024, nearly 12 months ago, was tendered from Michelle Adkins, a psychotherapist at Salt Recovery House in the Gold Coast hinterland, which is self-described as 'Australia's leading holistic luxury mental health and addictions recovery centre'. The report describes how Mr Kemp voluntarily admitted himself to Salt on 30 October 2023 for mental health, addiction and for being suicidal. He stayed for 7 days. Ms Adkins reports that:

¹⁶ Whether a public reprimand is included has a connection with the next issue to be discussed – whether it is appropriate to make a non-publication order.

“During our psychotherapy sessions, I learned that Mr Kemp’s mental health issues were caused by his law firm that collapsed and having to file for bankruptcy, grieving the loss of not being allowed to practise law again, being investigated by the Law Society and also the significant stress all of these matters placed on his marriage and family life after being shamelessly exploited in the media.”

[57] Ms Adkins states that Mr Kemp has continued to do “weekly/fortnightly” psychotherapy with Ms Adkins since leaving Salt in November 2023.¹⁷ However, that report is only current to June 2024. It is now a year later and there is no evidence that suggests that Mr Kemp’s state of health is precarious.

[58] Ms Adkins directly engages with the issue as to whether there should be a non-publication order:

“It has been brought to my attention that Mr Kemp is seeking a non-disclosure order in regard to any disciplinary proceedings made against him are not made public. It is my professional opinion that further public scrutiny and publication of these matters will negatively impact Mr Kemp’s:

- *Mental health by significantly increasing depression anxiety and stress*
- *Physical health by significantly increasing suicidal ideation and follow through*
- *Addiction recovery and sobriety*

By publicly disclosing Mr Kemp’s name and identifying details of the disciplinary proceedings are likely to not only impact his mental health negatively, but this may undo all the hard work and progress Mr Kemp has achieved in respect to improving his mental health over the past few months. Mr Kemp has significantly improved his mental and physical health. [This] has resulted in improvement in his marriage and family life with his children as well.”

[59] Mr Kemp also submits that he has been publicly punished and shamed and he submits that a private as opposed to a public reprimand would minimise the adverse impact on his mental health as well as the health and well-being of his elderly parents.

[60] The LSC opposed a non-publication order because, in summary:

- (a) there is no formal, medical diagnosis and Ms Adkins’ report appears to be largely based on what Mr Kemp has told her (see, for example, Ms Adkin’s reference to shameless exploitation in the media);
- (b) Ms Adkins’ report is missing some detail – for example, as to the treatment, risk factors, medications;
- (c) an absence of explanation and insight (as to the harm caused to his clients, employees and the profession) in Mr Kemp’s material;
- (d) publicity was already a feature of Mr Kemp’s plight.

[61] A non-publication order can be made under s 656D of the LPA. However, it is important to bear in mind that transparency and accountability are objectives of the

¹⁷ Mr Kemp’s affidavit of 2 February 2024 describes his visits with Dr Adkins as “every 2 to 3 weeks”.

LPA.¹⁸ The Act has a strong public focus, not least because legal practices have a vital role in the administration of justice, which is mostly carried out in public.

- [62] There is a public interest in the proper administration of justice and the Act ensures that legal work is carried out only by those who are properly qualified and entitled to do so.¹⁹ Practitioners are admitted in public, and the register is available for public inspection.²⁰ Practitioners have an exclusive right to practice law and to hold themselves out as entitled to do so. They are subject to rules that are made available to the public,²¹ are subject to a complaints procedure that is available to the public,²² and are subject to a disciplinary process that is generally conducted in public.²³
- [63] In that context, whilst there are no limits on the discretion to make non-publication order under s 656D of the LPA, a good reason should be shown for such an order. Here, the medical/health evidence is rather thin and dated. It is also relevant to note that one of the charges for which Mr Kemp is being disciplined is for continuing to market his firm to the public in social media after his practising certificate was cancelled. And the regulator was forced to commence proceedings in court and in public. In the absence of some current medical evidence as to the health risks I do not accept that sufficient reason has been shown for a non-publication order.
- [64] And given the public and serious elements to the charges, a public reprimand is appropriate.

Costs

- [65] Section 462(1) of the LPA provides:

“A disciplinary body must make an order requiring a person whom it had 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.”

- [66] There are no exceptional circumstances here. Mr Kemp should pay the costs of both proceedings, including the costs of the commissioner and the complainant (discussed below).

Compensation

- [67] Ms Tran Duy Trong appeared at the hearing. She was a former employee of Mr Kemp’s two practices. None of her superannuation entitlements were paid. Ms Truong is owed \$15,319 in superannuation.
- [68] Pursuant to s 464 of the LPA, a compensation order includes an order that a law practice pay to a complainant an amount by way of compensation for pecuniary loss suffered because of conduct that has been found to be unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner involved in a relevant practice.

¹⁸ *Legal Services Commissioner v Sing* [2007] LPT 005 at 4.

¹⁹ See, for example, LPA s 22.

²⁰ LPA ss 81, 210

²¹ LPA s 230.

²² LPA s 486.

²³ See, for example, LPA s 644.

- [69] A compensation order must not be made unless the tribunal is satisfied that:
- (a) the complainant has suffered pecuniary loss because of the conduct; and
 - (b) that it is in the interests of justice that an order of that type be made.
- [70] Here, the tribunal can be satisfied of both requirements. Ms Truong suffered the loss because of Mr Kemp's failure to pay the superannuation. And it is in the interests of justice that a compensation order be made requiring those entitlements be paid.
- [71] Of course, Mr Kemp's legal practices are in liquidation and so there may be little utility in a compensation order. But that is not a legitimate reason for declining to make the order.
- [72] Finally, there is a limit to a compensation order in the absence of consent. Section 466(3) limits compensation to the sum of \$7500. A compensation order will be made in favour of Ms Trong in that amount.