

Application to appoint a legal practitioner director to an Incorporated Legal Practice – s119(5) *Legal Profession Act 2007*

1. Introduction

- 1.1 These guidelines relate to the content of applications to the Queensland Law Society (Society) under s119(5). The *Legal Profession Act 2007* (the Act) provides for incorporated legal practices at Divisions 1 to 7 of Part 2.7 (ss109-143).
- 1.2 Incorporated legal practices are required to have at least one legal practitioner director (s117). There will be occasion where a legal practitioner director can no longer fulfil their duties. This may come about for myriad reasons including bankruptcy or illness. This is dire when there is only one legal practitioner director. Where that situation arises, the prime objective of the remaining directors and/or shareholders should be to appoint a new legal practitioner director.

2. Legislative Framework

- 2.1 When an Incorporated Legal Practice no longer has a legal practitioner director the Incorporated Legal Practice under s119(2) must give notice to the Society as soon as possible on the approved Law Society form.
- 2.2 Legal practitioner directors are responsible for the management of the legal services provided in Queensland by the practice (s117(2)).
- 2.3 Those directors must ensure that appropriate management systems are implemented to enable the provision of legal services by the practice. They must also take all reasonable action available to ensure that breaches of the professional obligations of an Australian Legal Practitioner or other obligations imposed under the Act do not happen, or if they have happened, appropriate remedial action is taken (s117(4)).
- 2.4 Legal practitioner directors also take on particular responsibilities concerning the conduct of employees and fellow directors (see s118).
- 2.5 If the incorporated legal practice does not have a legal practitioner director for a period exceeding 7 days, then it is in breach of the Act (s119(2)) and may not provide legal services after that 7day period until either a new legal practitioner director is appointed, or an appointment is made by the Society pursuant to s119(5) of the Act.

Section 119(5) provides:

The Law Society may, if it considers it appropriate, appoint an Australian legal practitioner who is an employee of the incorporated legal practice or another person nominated by the Law Society, in the absence of a legal practitioner director, to perform or discharge the functions or duties conferred or imposed on a legal practitioner director under this part.

- 2.6 Section 119(5) is not to be regarded as providing an alternate to a director. It exists to allow a stopgap appointment where a director cannot immediately be put in place.

3. Policy and Procedure

- 3.1 The Society notes that the aim of the section is to enable an incorporated legal practice to continue practicing over a period of crisis. As a general rule, the Society sees no reason why a viable practice should be denied that opportunity if it can present a suitable appointee pursuant to s119(5).
- 3.2 The appointee may either be an employee of the incorporated practice or another person nominated by the Society. The Society will not find a person to fill the position; it is the responsibility of the remaining directors and/or shareholders of the legal practice to put forward a candidate.
- 3.3 The candidate must be an Australian Legal Practitioner. That person must hold an unrestricted practicing certificate that is, either an Unrestricted Principal Certificate or an Unrestricted Employee Certificate. The Society would expect in the usual course that person to be an employee of the incorporated legal practice.
- 3.4 The appointment will generally be, save in exceptional circumstances, for not less than three or more than four months. This is sufficient time for the practice to appoint a legal practitioner director. If further applications are required they will be considered on their merits but an explanation will have to be made as to why there has not been an appointment of a legal practitioner director.

4. Application Process

- 4.1 The application must be made by the remaining directors and/or shareholders of the legal practice. It should set out the circumstances in which the previous legal practitioner director ceased to hold that position. Applications should explain why a legal practitioner director is not immediately available for appointment.
- 4.2 The application should further set out the qualifications and experience of the proposed appointee under s119(5), setting out whether he/she is an employee of the practice, the nature of his/her practicing certificate, and his/her practice history and experience especially in managing a law practice.
- 4.3 The application should set out the support available to that person to assist them in the management of the legal practice and show that that degree of assistance is proper relative to their experience in managing a legal practice. The application should also contain a statement by the remaining directors that the practice is financially viable and able to meet its debts as they fall due.

- 4.4 Applications must be accompanied by a written statement from the proposed appointee, setting out their experience (especially in managing a practice), qualifications and their willingness to accept appointment to the position.