

# **Ethics Advisory Committee**

## **Charter**

August 2023

# Ethics Advisory Committee Charter

As approved by the Queensland Law Society Council and effective as of 30 August 2023.

## 1. Establishment

- 1.1. The Ethics Advisory Committee (**Committee**) is established.
- 1.2. On and from the date the Committee is established, there will no longer be an Ethics Committee (**Former Committee**), and paragraph 15 of this Charter applies to the transition of certain members, functions and documents to the Committee.

## 2. Role

- 2.1. The Committee will:
  - a. on behalf of Council, and together with the QLS Ethics and Practice Centre (the **Centre**) have stewardship of all matters relating to:
    - a. the *Australian Solicitors Conduct Rules 2012 (Qld)* (**ASCR**); and
    - b. any commentary to the ASCR;including any proposed amendments;
  - b. consider, raise and provide advice to Council, the QLS Ethics and Practice Centre (the **Centre**) or another area within the Society on issues and matters relating to the development and maintenance of high ethical standards in the legal profession;
  - c. consider and advise on the implications of trends and developments in the areas of professional ethics, or within the profession as they relate to professional ethics;
  - d. assisted by the Centre, have oversight of QLS Senior Counsellors;
  - e. issue non-binding guidance in the form of Guidance Statements;
  - f. issue non-binding ethics rulings (**NBERs**) to members on matters of professional ethics where a dispute is referred to the Committee by those members;
  - g. provide input on Society proposals, plans and submissions and participate on working groups, and otherwise consult with other committees of the Society;
  - h. request research on a specific issue related to professional legal ethics to assist with its work;
  - i. initiate or request consultation with stakeholders on ethical issues which have relevance to the legal profession; and
  - j. otherwise assist, advise and report on matters relating to professional ethics as requested by Council of the Society.
- 2.2. The Committee:
  - a. is independent from and does not provide governance or oversight of the Centre or QLS Solicitor Support Pty Ltd; or
  - b. does not provide legal advice.

### 3. Membership

- 3.1. Committee members are appointed by Council.
- 3.2. Members of the committee must hold Full, Associate or Honorary membership of the Society and, except for government lawyers and the academic member, a current practising certificate. Membership of the Committee is automatically terminated if a person ceases to meet these criteria.
- 3.3. Committee members are appointed for a term of five (5) years and may be renewed by Council for a further term of five (5) years.
- 3.4. The Chair will consider expressions of interest for membership and make a recommendation to Council regarding appointment, after consultation with the Committee and Secretary.
- 3.5. The Committee is to consist of:
  - a. at least eight (8) and no more than 20 members;
  - b. to include, as much as is practically possible:
    - i. at least one solicitor based outside Southeast Queensland (1);
    - ii. at least one sole practitioner (1);
    - iii. at least one early career solicitor (1);
    - iv. at least one in-house counsel or government lawyer (1);
    - v. at least one large Queensland or national firm solicitor (1);
    - vi. a nominee of Lexon Insurance Pte Limited, who is to be a solicitor (1);
    - vii. no more than one academic with experience in lawyers' professional ethics (1); and
    - viii. at least one representative from Council (1).
- 3.6. A member may be counted against more than one of the categories listed in paragraph 3.5(b).
- 3.7. The role of a Committee member is set out at **Attachment 1**.
- 3.8. A leave of absence may be granted to a member with the consent of the Chair, such absence to count as part of the member's term.
- 3.9. A Committee member may resign from the Committee at any time upon written advice to the Secretary.
- 3.10. If a Committee member becomes the subject of legal professional disciplinary proceedings or is charged with a serious criminal offence, then that member must notify the Secretary. The Committee member may then be granted a leave of absence pending the outcome of those proceedings, such absence to count as part of the member's term.
- 3.11. Membership of the Committee is automatically terminated if a person is found guilty of a charge of unsatisfactory professional conduct or professional misconduct, or of a serious criminal offence.
- 3.12. Membership of the Committee may also be terminated by Council if it considers that a member has failed to discharge their duties under, or acted inconsistently with, the role of a Committee member as detailed in **Attachment 1** (including breaching confidentiality of Committee discussions) or otherwise brought the Society or the Committee into disrepute.

3.13. In addition, if:

- a. a member is absent for four (4) consecutive meetings without a leave of absence being granted (regardless whether the member has given an apology); or
- b. the Committee determines, on the motion of the Chair, that the member is otherwise not an effective member,

then the Chair may recommend to the Council that the membership of the Committee member be terminated and Council may then decide whether to terminate the member's membership.

## 4. Chair and Deputy Chair

- 4.1. The Chair and Deputy Chair will be appointed by Council on recommendation of the Committee.
- 4.2. The Chair and Deputy Chair of the Committee must be Full Members of the Society.
- 4.3. The term of a Chair and a Deputy Chair is each two (2) years, with Council retaining a discretion to extend the term.
- 4.4. The Chair and Deputy Chair will be appointed from the existing members of the Committee, unless Council is satisfied that there are circumstances which justify the appointment of a Chair from outside of the Committee.
- 4.5. In considering the appointment of a Chair, Council should have regard to:
  - a. the expertise of the candidate in the Committee's area of law;
  - b. the personal leadership qualities of the candidate;
  - c. the performance of the candidate during their time on the Committee;
  - d. how long the member has been a member of the Committee (including of the Former Committee); and
  - e. any submissions made by the Committee in support of the recommendation.
- 4.6. The Chair will be responsible for leading and managing the Committee in carrying out its responsibilities. Further detail on the role of the Chair is at **Attachment 2**.
- 4.7. The Deputy Chair will assist the Chair as needed and chair meetings where the Chair of the Committee is not available. At the cessation of the Chair's appointment, the Deputy Chair will become the Chair and a new Deputy Chair is to be appointed.
- 4.8. A Chair or Deputy Chair may be removed from their position by Council if Council is satisfied that the Chair or Deputy Chair has failed to discharge their duties under, or acted inconsistently with, the role of a chair or deputy chair as detailed in **Attachment 2**, or otherwise brought the Society or the Committee into disrepute.
- 4.9. After completing their term as Chair, or upon resignation, the Chair will cease to be a member of the Committee and may not be considered again for membership of the Committee for a period of four (4) years without leave of Council. However, a former Chair may serve as a Council representative on the Committee during this period.
- 4.10. An outgoing Chair under paragraph 4.10. is appointed as QLS Senior Counsellor for a period of four (4) years from the date they ceased to be member to advise and support the Committee and the Centre as may be required, upon the usual terms applicable to QLS Senior Counsellors, provided that they agree and are otherwise eligible to be appointed a QLS Senior Counsellor.
- 4.11. A Chair or Deputy Chair may take a leave of absence without resigning as Chair, if the Committee so resolves.

## 5. Meetings

- 5.1. The Committee will meet at least six (6) times a year and additionally as the Committee considers necessary.
- 5.2. Committee papers are provided to Committee members, wherever possible, five (5) business days prior to the relevant meeting.
- 5.3. It is the Society's policy to encourage the participation of Committee members in meetings by appropriate means, including by facilitating and encouraging attendance by phone or electronic or digital means where attendance in person is not possible or inconvenient.
- 5.4. The minimum quorum for a Committee meeting is five (5) Committee members, one of which must be the delegated Chair (or member acting in that role under this Charter).
- 5.5. Should the Chair of the Committee be absent from a meeting, the Deputy Chair will act as Chair. If the Deputy Chair is not available, the Guidance Statement Co-ordinator may act as chair and, if the Guidance Statement Co-ordinator is unavailable, the members of the Committee present at a meeting with a quorum have authority to choose one of their number to act as Chair for that particular meeting.
- 5.6. Members of the Committee must attend all scheduled meetings including meetings called on an *ad hoc* basis for special matters, unless prior apology has been submitted to the Secretary or, if required under paragraph 3.14(a), a leave of absence has been granted.
- 5.7. Any matters requiring decision will be decided by a majority of votes of members present or participating.
- 5.8. Minutes must be prepared by the Secretary, approved by the Chair and circulated to Committee members as soon as possible and not later than two weeks after the meeting. The minutes must be ratified by the members.

## 6. Guests

- 6.1. The Committee may have at its meetings regular or *ad hoc* guests who may bring relevant perspectives and expertise on matters under considerations, at the discretion of the Chair (for example, representatives of the Future Leaders Committee or QLS Senior Counsellors).
- 6.2. Guests do not have an automatic right of access to the Committee's papers (which includes agendas and minutes). Access to the Committee's papers is at the discretion of the Secretary, in consultation with the Chair.
- 6.3. Guests (including Centre or other Society staff) have no voting rights at meetings.
- 6.4. Council members, including members who are not voting members, may attend any committee meeting and have access to the Committee's papers, on request to the Secretary.

## 7. Guidance Statements

- 7.1. The Committee may in its discretion issue non-binding Guidance Statements on issues of practical legal ethics.
- 7.2. A Guidance Statement may be, either:
  - a. prepared by the Centre and submitted to the Committee in draft, for the Committee's approval;
  - b. prepared by the Committee at its own initiative; or
  - c. prepared by the Committee at the request of the President or Council.

- 7.3. Guidance Statements submitted under paragraph 7.2.a must be submitted to the Committee through the Secretary.
- 7.4. The Centre must be consulted about Guidance Statements under paragraphs 7.2.b and 7.2.c before approval.
- 7.5. A member of the Committee is to serve as Guidance Statement Co-ordinator, who will:
  - a. receive, review and assign members to review drafts submitted under paragraph 7.2.a;
  - b. assign members to prepare or review drafts under paragraphs 7.2.b or 7.2.c; and
  - c. in consultation with the Chair, circulate drafts for approval by the Committee.
- 7.6. The Guidance Statement Co-ordinator, in consultation with the Chair and with the assistance of the Secretary may consult with:
  - a. other committees or areas of the Society;
  - b. the Legal Services Commission; and
  - c. any other appropriate external party.
- 7.7. The Centre is to assist the Committee with requests for research for the preparation of Guidance Statements.
- 7.8. Guidance Statements are issued by the Committee and will be published online by the Centre on behalf of the Committee, with a statement to that effect.

## **8. Non-Binding Ethics Rulings (NBERs)**

- 8.1. The Committee may in its discretion issue NBERs on issues of practical legal ethics, if such a request from two or more members of the Society is referred to the Committee by the Secretary.
- 8.2. The Deputy Chair, in consultation with the Chair, and with the assistance of the Secretary, will establish an *ad hoc* panel of no more than five (5) members to consider the request, which may include one (1) QLS Senior Counsellor who has previously been a member of this or the Former Committee.
- 8.3. The panel is to provide its ruling on the discrete professional ethics issues presented, based on the agreed questions and statement of facts provided to them by the participating parties, together with each party's submissions and relevant supporting documents directly relevant to the issue in dispute, such as correspondence between the parties, court orders, undertakings, file notes or memoranda.
- 8.4. The Deputy Chair or Chair will chair the panel, if they are available to do so and if they have no conflicts.
- 8.5. To preserve confidentiality and minimize conflict, panel meetings may only be attended by the members of the panel and Secretary or, in the case of a conflict, the Secretary's delegate.
- 8.6. The quorum for panel meetings is three (3) members, including the chair of the panel, but all members must indicate whether they agree or disagree with the ruling before it is issued.
- 8.7. The panel must use its best efforts to produce a written ruling within 20 to 25 business days.
- 8.8. Rulings are to be succinct and as far as possible address only the agreed facts. None of the parties' supporting documentation is to be attached to the ruling.
- 8.9. The panel's determinations are made on behalf of Committee, which delegates its authority to each panel on a standing basis in order to limit potential conflicts and to preserve confidentiality to the greatest extent possible. The full Committee does not vote on decisions of the panel.

- 8.10. Rulings will not show the names of the panel members, but will indicate how many members were on the panel and how many agreed with the ruling.
- 8.11. After being made available to the parties, the ruling is to be appropriately anonymised and approved by the panel chair before being made available to the Committee and published on the Society's website.
- 8.12. The Committee may also approve detailed protocols setting out further procedures, consistent with this paragraph 8, about how to apply for a ruling, the conduct of panels meetings, the publication of rulings and related matters.

## **9. Temporary sub-committees and working groups**

- 9.1. It is anticipated that, other than panels formed to consider NBERs under paragraph 8, the Committee will undertake its business in meetings of the full Committee.
- 9.2. However, the Committee may establish temporary sub-committees or *ad hoc* working groups of members for periods of up to 6 months' duration.
- 9.3. The Committee will appoint:
  - a. a chair to chair the sub-committee or working group; and
  - b. sub-committee or working group members.
- 9.4. The role, responsibilities and authority of the sub-committee or working group is to be set out in the minutes of the Committee meeting.
- 9.5. A sub-committee or working group will meet as often as necessary to discharge its duties.
- 9.6. The sub-committee or working group will keep a record of meetings convened and work undertaken in the discharge of its duties, which are to be provided to the Committee.
- 9.7. It is within the discretion of the Committee to retire any sub-committee or working group at any time.
- 9.8. The Committee may also assign Committee members, with their agreement, to represent the Committee on working groups, sub-committees or other advisory bodies established by the Society, or other committees of the Society, in accordance with the rules for such bodies.

## **10. Conflicts of interest**

- 10.1. If a Committee member has a conflict of interest (actual or perceived) including a personal interest, or a direct or indirect financial interest, in an issue being considered or about to be considered by the Committee and the interest could conflict with the proper performance of the member's duties about the consideration of the issue, the member must disclose the nature of the interest to a Committee meeting.
- 10.2. Unless the Chair otherwise directs, or the Committee determines, the interested member must not be present when the Committee considers the issue or take part in a decision of the Committee about the issue.
- 10.3. The interested member must not be present when the Committee is considering whether the member ought to be absent from Committee discussions on the issue.
- 10.4. If, because of this paragraph, a member is not present at a meeting for considering or deciding an issue and there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the issue, so long there remain at least two Committee members.
- 10.5. Any disclosure of a conflict of interest must be recorded in the minutes of the meeting.

## 11. Confidentiality

- 11.1. All Committee members and invited guests are expected to observe strict rules of confidentiality with respect to Committee business. They must be conscious that from time to time:
  - a. they may be asked to consider and comment on highly sensitive documents released to the Society by Government and other authorities;
  - b. they may be asked to consider draft policy proposals intended for debate within the Committee which should not be presumed to reflect approved Society policy;
  - c. they may have before them information which may affect the reputation and livelihood of practitioners and other members of the community.
- 11.2. Any breach of confidentiality could materially affect individuals, damage the trust which exists between the Society and a number of institutions and organisations, or create false impressions about Society policy.
- 11.3. It is the responsibility of all Committee members and invited guests to maintain the security of Committee papers and to treat as confidential any information received through their involvement with the Committee. Failure to maintain appropriate confidentiality of Society information and Committee discussions may result in termination of Committee membership pursuant to paragraph 3.13.
- 11.4. Failure to maintain appropriate confidentiality of Society information and Committee discussions may breach section 705 of the **Legal Profession Act 2007 (Qld)**, which is an offence subject to a maximum penalty of 200 penalty units.
- 11.5. The Chair is encouraged to consider the confidentiality of any discussion or matter at the end of each meeting.

## 12. Media

- 12.1. Any media must be managed in accordance with the Society's media policy as in force and amended from time to time.

## 13. Stakeholder liaison

- 13.1. The President must approve any correspondence or communication that contains a position, recommendation, opinion or view of the Society. Such correspondence or communication must be sent out under the President's hand.
- 13.2. The Chair, or Committee members approved by the Chair, may liaise with stakeholders on behalf of the Committee, in consultation with the Secretary.
- 13.3. Any stakeholder liaison by Committee members in that capacity must be conducted in accordance with the Society's core values of respect, integrity and service.
- 13.4. Any stakeholder liaison undertaken on behalf of the Committee must be reported back to the Committee at its next meeting.

## 14. Reporting to Council

- 14.1. The Secretary will prepare and provide periodic summary reports to Council, upon request, on the activities and priorities of the Committee, such reports to be approved by the Chair.



## 15. Transitional

- 15.1. The Committee is to be provided with access to all of the papers and deliberations of the Former Committee.
- 15.2. Decisions of the Former Committee will remain in effect, subject to any decisions of the Committee.
- 15.3. The confidentiality obligations imposed on members of the Former Committee continue.
- 15.4. Subject to paragraphs 15.5. and 15.7., members of the Former Committee will become members of the Committee and will be taken to have been appointed for five (5) years on the date this Committee was established.
- 15.5. The members of the Former Committee performing the roles of chair and deputy chair are each appointed for two (2) year terms, to serve as the first Chair and Deputy Chair of the Committee, respectively.
- 15.6. The chair of the Guidance Statement Subcommittee of the Former Committee is appointed as the first Guidance Statement Co-ordinator of the Committee for two (2) years, which may be renewed for a further two (2) years on resolution of the Committee.
- 15.7. In the interests of renewal and to provide the opportunity of membership to other members of the Society, members of the Former Committee who were members of that committee for a period of over 10 years as at the date the Committee was established (including a leave of absence, but excluding any periods where the member was the appointed representative of Council or Lexon Insurance Pte Limited to the Committee), other than the Chair and Deputy Chair, will have an option to seek to remain members of the Committee until 30 June 2024 (**Transition date**). Those Transitional members who do elect to remain will be in addition to the number of Committee members, but will cease to be members after the Transition date.

## 16. Dictionary

In this Charter:

- 16.1. **Associate membership** means an associate member of the Society, as defined from time to time;
- 16.2. **Chair** means the chair of the Committee;
- 16.3. **Council** means the Council of the Society;
- 16.4. **Deputy Chair** means the deputy chair of the Committee;
- 16.5. **Deputy President** means the Deputy President for the time being of the Society;
- 16.6. **Full members** means a person who is a full member of the Society, as defined from time to time;
- 16.7. **Guidance Statement Co-ordinator** has the meaning given to it in paragraph 7;
- 16.8. **Honorary member** means a person who is an honorary member of the Society, as defined from time to time;
- 16.9. **Manager** means the Manager of the QLS Ethics and Practice Centre;
- 16.10. **President** means the Deputy President for the time being of the Society;
- 16.11. **Secretary** means the Manager, their delegate or such other employee of the Society to whom the role of Secretary may be assigned from time to time;
- 16.12. **Society** means the Queensland Law Society Incorporated;
- 16.13. **Transitional member** means those members identified in paragraph 15.7.

## **17. Interpretation**

17.1. Words importing the singular include the plural and vice versa.

17.2. Words importing one gender include any other gender.

17.3. References to legislation or a policy are to that legislation or policy as amended from time to time.

# Your role as a Committee member

## Overview

The position of member of a committee is a voluntary and honorary role which brings necessary skills, knowledge and effort to support the Committee in fulfilling its role.

A Committee member occupies a position of trust, confidence and influence within the Committee and the Society. It is important that members conduct themselves in a manner that will maintain and enhance that trust, confidence and influence.

The Society's three core values underpin the performance of your role as a Committee member.

These are:

1. respect;
2. integrity; and
3. service.

## Respect

Demonstrating respect in carrying out the activities as a Committee member involves valuing people and acknowledging their contributions. It involves:

1. being polite and courteous in all actions;
2. treating Committee members, Society staff, stakeholders and others with dignity; and
3. valuing the contributions, opinions and diversity that other members, guests and stakeholders bring to the Committee's work.

## Integrity

In your role with the Committee you have a responsibility to demonstrate integrity by being honest and fair in all your actions. This includes:

1. being accountable to the Committee and to the Society for your actions as a Committee member;
2. being honest and fair in your dealings with the Committee, the Society, other Society members and stakeholders; and
3. following through with your promises in a timely manner.

## Service

By performing your role as a Committee member, you are providing a valuable service to the Society, the profession and the public. In your role you must work together with the Committee to anticipate needs, exceed expectations and honour commitments. You should:

1. actively listen and respond to member and stakeholder concerns;
2. play your part to ensure meetings and tasks are undertaken efficiently and with respect for others' time commitments; and
3. look for new ways to do things better and work with the Society to continually improve the operation of the Committee.

## Other obligations

1. You must be scrupulous in your use of confidential information and ensure that privacy principles are maintained.
2. You must disclose any potential conflict of interest.
3. Your decision making must be fair and consistent, based on all relevant information and honest, open and impartial.
4. Harassment, discrimination and bullying are unacceptable from any Committee member or anyone involved with the Society. The duties under the *Work Health and Safety Act 2011* apply to all Committee members in the conduct of their roles.
5. When using the Society's premises or facilities, you must ensure that you comply with all rules, directions and procedures including those relating to security and work health and safety which are in effect at those premises or in regard to those facilities.
6. You must act professionally at all times in the performance of Committee duties, exercising skill, care and diligence.

Committee members should:	Committee members should not:
Attend meetings (in person or via technology) wherever possible	Consider meeting attendance optional
If unavailable to attend, provide a written apology to the meeting organiser two clear business days prior to the meeting	Be a 'no show'
Review all relevant materials and papers in advance of the meeting	Turn up unprepared
Provide thoughtful and timely input	Ignore emails circulated between meetings
Work toward fulfilling the Committee and Society's objectives	Run their own agenda
Carry out tasks assigned by the Chair	Commit to contributing and then not follow through
Respect the role of the President and Chief Executive Officer as primary public spokespeople for the Society	Represent personal views as the views of the Society
Focus on the Society's best interests	Pursue personal, stakeholder or firm interests

## Ethics Committee Charter Attachment 2

# Your role as Committee chair

The chair of the Committee will be appointed by Council. The chair's role is to lead the Committee in fulfilling its role and complying with its charter.

### Responsibilities

1. Accept and support the Committee charter.
2. Plan meetings and agendas in collaboration with the Society's staff member assigned to support the Committee (Manager).
3. Attend all meetings and maintain awareness of Committee work between meetings.
4. Ensure meetings are efficiently and effectively administered to achieve Committee objectives.
5. Manage membership of the Committee with an emphasis on:
  - a. including as many interested Society members as possible;
  - b. promoting participation of regional, rural and remote practitioners;
  - c. engaging with early career practitioners to support their development into the future leaders of the profession;
  - d. facilitating the regular introduction of new ideas; and
  - e. considering candidates':
    - i. willingness and desire to contribute to the work of the Committee;
    - ii. recognised standing and expertise in the profession; and
    - iii. recognised contribution to the profession.
6. Maintain records of Committee work with the assistance of the Society's staff member assigned to support the Committee (Manager).
7. Facilitate Committee members' active participation and decision-making.
8. Resolve Committee member issues and complaints wherever possible.
9. Ensure that the Committee reports to Council in accordance with the charter.
10. Lead self-assessment of Committee performance.
11. Encourage the Committee to appoint a deputy chair and ensure the deputy chair supports and supplements the chair as necessary.
12. Plan for your successor.
13. Recommend potential new members to Council.

### Tips for meetings

1. Begin on time.
2. At the commencement of each meeting, quickly complete the following administrative tasks:
  - a. confirm the attendees (whether in person or via teleconference) and the apologies;
  - b. ask the Committee to review and confirm the minutes of the previous meeting, or agree on any changes to be made before they are confirmed;
  - c. ask Committee members if there are any material interests to be declared relating to any of the agenda items.
3. Do not pass out a lot of new material during the meeting. People will not have time to read it, and it distracts from good discussion.

4. Focus on the resolutions required of the meeting, ensure that all participants have adequate time to contribute, listen carefully to all contributions, and obtain agreement on decisions taken and future plans.
5. Remind Committee members and guests of their confidentiality obligations at the end of the meeting.
6. Close the meeting on time.

## Using Teleconferencing or Videoconferencing

1. As the chair, call on the people on the telephone or videoconference to express a view on each agenda item: "Sarah, what do you think about this?"
2. Do not allow side conversations. Ask members to speak one at a time.
3. If using teleconferencing, ask members to say who they are before they make their point.
4. Make sure those calling or linking in have access to all of the materials being referred to at the meeting.

A chair is encouraged to:	A chair should not:
Value all members	Be the person who talks most at the meetings
Enable everyone to voice their view	Allow one or two people to dominate meetings
Strive for consensus	Make all the decisions
Encourage new Committee membership	Exclude any member from discussions
Ensure discussions are targeted to achieving a resolution or outcome	Allow meetings to become unproductive
Welcome new members	Make people feel uncomfortable
Allow others to take responsibility	Coerce members to contribute to discussions
Keep calm	Lose their temper
Take the lead in submission work, if necessary	Be afraid to delegate matters to appropriate members
Be responsive to the Society's staff to resolve issues in a timely way	Assume the Society's staff will do all the work