

Procedures to follow when making an application under s26 Legal Profession Act 2007

1. Introduction

1.1 A law practice, a disqualified/convicted person, or both, may apply to the Society under s26(2) of the *Legal Profession Act 2007* (Qld) (the Act) for approval of the disqualified/convicted person to be a lay associate of a law practice. An application should only be made upon an offer of employment.

2. Legislative Framework

2.1 An application can be made under s26(2) of the Act for approval of the disqualified/convicted person to be a lay associate of a law practice.

2.2 Section 26 applies only to lay associates of law practices. A law practice is:

- i. an Australian legal practitioner who is a sole practitioner; or
- ii. a law firm; or
- iii. an incorporated legal practice; or
- iv. a multi-disciplinary partnership.

2.3 A disqualified/convicted person cannot seek to become a lay associate unless they have informed the practice of the disqualification or conviction s26(5) the Act.

2.4 The law society must if it refuses an application or imposes conditions provide the applicant(s) with a notice outlining the reasons for refusal or the imposition of conditions (s26(4)).

3. Application Process

3.1 The onus of satisfying the Society that the application should be granted rests with the applicant(s). Whether approval is granted is decided on a case by case basis.

3.2 The applicant is responsible for providing information relevant to the application and should communicate with the Society in a candidly disclosing all relevant information, whether supportive or unsupportive, within their knowledge or possession.

3.3 The Society should take into account these matters which are drawn from *Camille Eduoard Dezarnauds and Stephen Wawn v The Law Society of New South Wales* (Unreported Supreme Court 27 June 1995) as discussed in *La Fontaine v Law Society of New South Wales* [2006] NSWADT 244:

- a. The discretion is entirely general. No attempt has been made to circumscribe it by reference to particular matters, or to impose any particular threshold test which must be satisfied;
- b. There are no time limits. Theoretically, the practitioner who was struck off could apply the next day to become an associate of a legal firm;
- c. Those guilty of an indictable offence, or who have been guilty of the most extreme offences against the proper conduct of their profession and have been disqualified for such reasons, are equally able to make application to become an associate;
- d. [not relevant in Qld]
- e. There are obvious public interests which are to be served, and which must be taken account of. These interests include:
 - i. The protection of the public;
 - ii. The standing of the legal profession and the standards that are required of it;
 - iii. Affording those who are disqualified, or have been found guilty of indictable offences the chance of rehabilitation and getting paid work in the profession.
- f. While the standing of the profession in the public eye is of great importance, and the need to maintain the integrity of the profession is of equal importance, it is necessary to bear in mind that an associate is not a legal practitioner. One does not, as it were, translate the requirements demanded of practising members of the profession, or of those who are applying for admission to the profession, to those who are applying to become associates. This is perfectly plain as the statute is dealing with situations where a person has been disqualified from legal practice, or may never had been qualified but would otherwise be debarred from acting as an associate because of conviction for an indictable offence.

3.4. Approvals are usually conditional upon both the law practice and the disqualified/convicted person giving undertakings to the Society encapsulating appropriate measures, tailored to the particular circumstances of the case, to ensure the maintenance of professional standards, the protection of the public and appropriate supervision and management. Both the law practice and the disqualified/convicted person can reasonably anticipate that undertakings concerning the following issues will be sought:

- How the disqualified/convicted person will be described in all of the law practice's material, letters, costs agreements, advertising and communications with all other parties.
- Limitations on the disqualified/convicted person handling trust property.
- Limitations on the disqualified/convicted person being in charge of an office or other professionals.

- Limitations on the signing of correspondence by the disqualified/convicted person.
- Supervision and management arrangements concerning the performance of work by the disqualified/convicted person.

4. Procedure

4.1 Every application should, in the first instance, be addressed to:

The General Manager
Regulation
Queensland Law Society
GPO Box 1785
BRISBANE QLD 4001

4.2 Every application should address the following matters:

- i. The circumstances, in detail (including dates), giving rise to the disqualification and/or conviction of the individual in question.
- ii. The passage of time and employment history of the individual since the disqualification and/or conviction.
- iii. Rehabilitative measures undertaken by the individual since the disqualification and/or conviction and the remorse and contrition shown by the applicant for the conduct resulting in his/her disqualification or conviction.
- iv. The capacity in which the individual seeks to be engaged by a law practice, including:
 - The nature and scope of work proposed to be undertaken;
 - Proposed title;
 - Proposed locality where work is to be carried out;
 - Proposed hours of work; and
 - The identity of the principal who will be directly responsible for the supervision and management of the individual.
- v. The attitude of the parties to the giving of undertakings similar to those above.
- vi. Any other relevant information (eg the police brief on prosecution, transcript of the sentence), either supportive or unsupportive, that the Society should be made aware of in considering such an application.

5. Submission of the Application to Council

- 5.1 Once all relevant information in relation to an application has been collated it will be submitted to the Council of the Society or its delegate for determination.
- 5.2 The applicant will be advised of the decision in accordance with the process set out in the subsection 26(4) of the Act.
- 5.3 The s26 procedure does not apply in the absence of an offer of employment by a law practice.