

# Explaining the LPA's show cause regime

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"Get in on the Act" is a regular column from the Law Society's Ethics & Practice Unit which details practitioners' statutory professional obligations and responsibilities

Sweeping changes to the *Legal Practitioners Act 1981* (Act) were implemented on 1 July, 2014. The introduction of requirements with respect to "show cause events" was one of those changes.

Prior to July 2014, section 49 of the Act provided for the automatic suspension of a legal practitioner's practising certificate on becoming bankrupt. The bankrupt practitioner would then be required to apply to the Supreme Court (Court) for permission to practise. The Court would then determine whether, under the circumstances, it was safe to allow the practitioner to continue practising and, if so, any conditions that might apply. The primary concern of the Court was to ensure the protection of the public.

The introduction of the show cause regime in 2014 widened the circumstances in which practitioners must seek the Court's consent to be able to continue to practice but permits the subject practitioner to continue to practise until an order is made to the contrary by the Court. The main concern of the Court remains the protection of the public.

The current show cause regime, which is adopted from the Uniform Law, requires a practitioner who holds or is applying for a practising certificate and who has experienced a show cause event to notify the Court of the occurrence of the event and then show cause as to why they

should be permitted to practise despite the occurrence of the event.

Section 5 of the Act provides a detailed definition of what constitutes a show cause event for the purposes of Part 3 Division 2B which includes becoming bankrupt, being served with notice of a creditor's petition, and being convicted of a serious offence or a tax offence.

A practitioner who has experienced a show cause event and who applies for a practising certificate is required to disclose the event and provide a statement to the Court (unless they have previously done so) as to why, despite the event, they are a fit and proper person to hold a practising certificate (see section 20AG of the Act).

A practitioner who experiences a show cause event while holding a practising certificate is required to provide the Court with notice, within seven days, of the occurrence of the event and a statement, within 28 days, as to their fitness to practise (see section 20AH of the Act).

Sections 20AG and 20AH also require the practitioner to serve copies of their 20AG/AH statement and 20AH notice (if applicable) to the Law Society and the Legal Profession Conduct Commissioner (Commissioner) both of which are entitled to make submissions to the Court on the matter.

Division 3 of Part 6 of the *Supreme Court Civil Rules 2006* (encompassing rules 390 to 393) details what is required for the purpose of a 20AG/AH statement and 20AH notice in terms of content and format.

The onus is on the practitioner to satisfy the Court that they are a fit and proper person to hold a practising certificate despite the show cause event. This may

require the practitioner to demonstrate that their circumstances permit them to be able to practise without risk to the public or that they will change their circumstances for that purpose. Issues such as the ability to act in the best interest of clients, the protection of trust money, disciplinary history, any relevant medical matters, and access to resources to ensure the quality, timeliness and competency of the legal services provide by the practitioner (such as the supervision by another practitioner) will all be important considerations for the Court. The Law Society and the Commissioner may assist the Court with its enquiries into these and other matters.

The usual progress of such matters through the Court is as follows. On receipt of the initiating document from the practitioner the Registrar will allocate the matter to a single Judge who will then list it for directions. The Law Society and the Commissioner are informed and have a right of appearance (as well as to make written submissions). The subject practitioner is entitled to be represented throughout.

If it does not consider that the practitioner has shown that they are fit to hold a practising certificate, the Court has the power to refuse to issue or renew, or may amend, suspend or cancel, a practising certificate (see section 20AI of the Act).

If, during the directions stage, the practitioner, the Society, the Commissioner and the Court all agree on an outcome, the matter will usually be finalised without the need for a formal hearing.

If the matter does not resolve at directions it will be listed for a formal hearing.

If you have any questions about this article please contact the Ethics and Practice Unit on 8229 0200. If you need legal advice or support in relation to show cause proceedings please contact our support services co-ordinator, Annie MacRae, on 8229 0263 or by email at [annie.macrae@lawsocietysa.asn.au](mailto:annie.macrae@lawsocietysa.asn.au). **B**

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