

Making a complaint

This factsheet explains how to make a complaint against a lawyer or law practice employee. It also describes the role of the Commission in this process.

Issues and problems with legal services

The Legal Services Commission is the sole body responsible for receiving and investigating complaints about the conduct of lawyers and their employees. The Commissioner acts as an independent statutory officer. Anyone can make a complaint. Complaints may be about a current or former:

- lawyer (solicitor or barrister)
- law practice employee.

If you have a complaint about a legal officer employed by government, you must raise your concern with the chief executive officer of that government department or agency. Complaints about a government legal officer can only be made by government chief executive officers, the Queensland Law Society, the Bar Association of Queensland or by other Australian lawyers.

Our role

The regulatory scheme under the *Legal Profession Act 2004* (the Act) enables the Commissioner to investigate complaints about lawyers. In particular the Commissioner may investigate complaints of *professional misconduct* or *unsatisfactory professional conduct* as defined in the Act.

So what do these words mean?

The Act says *unsatisfactory professional conduct* includes 'conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner'.

It says *professional misconduct* includes a substantial or consistent failure to reach that same standard. This is therefore generally more serious and less likely to be a 'one-off', accidental oversight or failure.

It is only when a lawyer's (or their employee's) conduct falls within either of these statutory descriptions that the Commissioner has any power to consider whether disciplinary action should be taken.

Preparing to lodge a complaint

We suggest you consider trying to resolve your concerns by other means before lodging a formal written complaint with the Commission.

Before lodging a complaint, consider less formal ways to resolve your problem, for example:

- ✓ Where possible, talk directly to the person concerned.
- ✓ Raise your concern with a more senior person at the same firm or the firm's client care officer.
- ✓ Contact Legal Services Commission staff and discuss with them other possible options to help you resolve the problem.

Making a complaint

If you decide to make a complaint to the Commission, you must put your complaint in writing and sign it, preferably on the complaint form we have designed to help you give us the information we need. If you are having difficulty in completing the complaint form, staff at the Commission may be able to assist you. We can also arrange telephone interpreters or any other assistance as required.

Note: There is no charge to lodge a complaint. The Commission's services are free.

In your written complaint you must identify yourself and the lawyer or law practice employee you are complaining about. You must also describe the conduct you are complaining about. The more detail you can provide, the better.

You can download a complaint form from <www.lsc.qld.gov.au> or call 07 3406 7737 (or from outside Brisbane 1300 655 754) and request a form. You can also obtain a copy from the Commission's office.

Make sure you sign the declaration on the back page of the form before you send it and attach *photocopies* of any relevant documentation.

Important: Do not send us the original documents.

You may assist a friend or relative to make a complaint by completing the complaint form on their behalf, but you will need to include their written and signed authority.

The complaint process

Once you have lodged a complaint with the Commission:

- The Commission will assess the information you have provided and decide what should happen next. If further information is needed, someone will call you or write to you.
- Your complaint will be classified as either a consumer dispute or a conduct complaint. Consumer disputes are complaints which describe a dispute between a legal consumer and a lawyer but do not describe any conduct on the lawyer's part that falls within the definitions of either unsatisfactory professional conduct or professional misconduct.
- The Commissioner tries to resolve consumer disputes by mediation, or asks the Law Society or the Bar Association to try to resolve them by mediation.
- The Commissioner must investigate conduct matters or alternatively refer them to the Law Society or Bar Association for investigation. The Commissioner is the final decision-maker in any event, whoever carries out the investigation.
- Once the investigation is completed, the Commissioner will decide either:
 - to take no further action on the complaint or
 - to start disciplinary proceedings against the lawyer subject to the complaint.

A complaint can take time to process depending on the complexity and seriousness of the complaint and length of investigation. All complaints received by the Commission are dealt with thoroughly, fairly and as quickly as possible.

Important things to consider when making a complaint:

✓ Can	✗ Cannot
Making a complaint can alter your relationship with the lawyer.	The Commission cannot compel a solicitor to reduce an account or refund any monies to you, nor can the Commission prevent a lawyer from commencing legal proceedings against you to recover fees that have not been paid. Lodging a complaint with the Commission will not delay or alter any proceedings already commenced.
Complaints to the Commission are confidential; however a copy of your complaint may be sent to the lawyer in question so they can respond.	Your lawyer should not charge you for the time it takes him or her to respond to your complaint.
You can withdraw your complaint in person, by phone or in writing; however withdrawal does not prevent the Commissioner taking further action.	You should not be out of pocket for exercising your right to complain.
You can engage the services of another lawyer at any time whether a complaint has been made or not.	
You may be able to claim compensation. (see factsheet 4 <i>Compensation orders</i>)	

Common questions

Is there a time limit on making complaints?

Generally the Commissioner will not investigate complaints where the conduct of the lawyer or law practice employee occurred more than three years ago.

Can I complain about interstate lawyers?

Generally the Commission would refer complaints about interstate lawyers to the governing body in that state or territory.

What happens once the Commissioner determines to investigate my complaint?

The Commissioner will assess all the evidence gathered during the investigation and decide if there is 'a reasonable likelihood' a disciplinary body will find the lawyer guilty of either unsatisfactory professional conduct or professional misconduct *and* if it is in the public interest to prosecute that lawyer.

If *both* conditions are satisfied, the Commissioner will initiate disciplinary proceedings and prosecute the lawyer before either the Legal Practice Committee or the Legal Practice Tribunal.

If the matter goes to the Committee or Tribunal, you may be required to give evidence (see factsheet 5 *Discipline applications*).

The Commission will endeavour to keep you informed of how the investigation is progressing.

What if I am not satisfied with the Commission's decision about my complaint?

You are welcome to provide the Commission with feedback and officers of the Commission will discuss your concerns with you.

If you are still dissatisfied, you can:

- refer your concerns to the Ombudsman
- seek judicial review under the *Judicial Review Act 1991*
- seek independent legal advice.

Where can you get more information?

If you have any questions regarding this information or wish to enquire about the role of the Legal Services Commission, please visit the LSC website or contact the Commission on:

Telephone: **07 3406 7737** (Brisbane)
1300 655 754 (outside Brisbane)
133 677 (if you require the use of the National Relay Service)
131 450 (if you require a translator/interpreter)

For more information visit the Legal Services Commission website <www.lsc.qld.gov.au>.