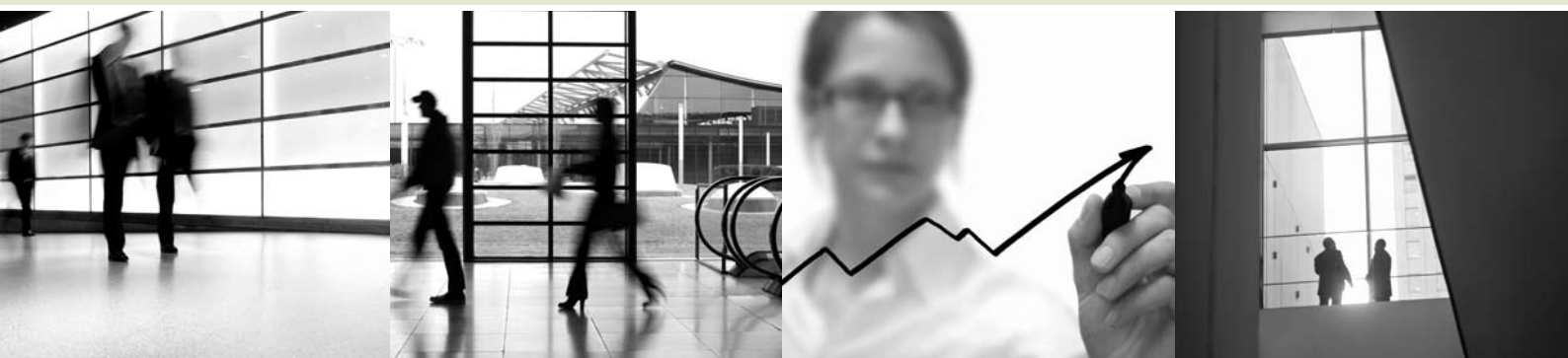


Legal Services Commission Annual Report 2008–09





31 October 2009

The Honourable Cameron Dick MP
Attorney-General and Minister for Industrial Relations
State Law Building
Ann Street
Brisbane Qld 4000

Dear Attorney

I am pleased to give you the Commission's annual report for the reporting year 2008–09, our fifth year since we commenced on 1 July 2004.

The report describes the system established under the *Legal Profession Act 2007* for dealing with complaints (as the Act requires at section 490). It also describes the performance criteria I have developed in conjunction with the staff of the Commission for dealing with complaints and my assessment of our performance against those criteria (as the Act requires at section 489).

The report also describes the Commission's other core functions including our function to conduct compliance audits of incorporated legal practices and my assessment of our performance in discharging those functions, and the projects and research we have undertaken to support and promote high standards of conduct in the delivery of legal services.

Yours faithfully

John Briton
Legal Services Commissioner

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Commissioner's overview



The 2008–09 reporting year was the Commission's fifth since our inception on commencement of the *Legal Profession Act 2004* on 1 July 2004, and our second since the commencement of its successor legislation, the *Legal Profession Act 2007*, on 1 July 2007.

We've continued to consolidate our performance of the complaints-handling responsibilities we were given under the 2004 Act and continued to craft new and innovative ways to perform the responsibilities we were given under the 2007 Act to regulate the delivery of legal services by incorporated legal practices. We've set out to protect the rights of legal consumers and to promote high standards of conduct in the profession and to achieve change where change is required by persuasion wherever possible, not by prosecution, and we've had some fair measure of success. We're on the cusp of making a significant breakthrough in the use of web-based technologies to help us achieve our goals, and we've taken practical and concrete steps to make

ourselves more accessible, transparent and accountable. We have a lot to be proud of.

I noted in last year's report that the number of new complaints had settled over each of the previous three years at about 1100, give or take a few, significantly fewer than the 1400 plus we received in our first year and the 1600 plus the professional bodies received over each of the two years before. The flat-line continues – we received 1066 new complaints in 2008–09. The figures tell a remarkable story. The number of new complaints reduced by 33% over our first two years at the same time as the number of lawyers potentially subject to complaint increased by 10%. The number of new complaints may have flat-lined since then but the number of lawyers has continued to grow, by another 15% to 30 June 2009. In short, there was 1 new complaint for every 4 Queensland lawyers in 2003–04 but only 1 for every 7 in 2005–06 and just 1 for every 8 in 2008–09. The complaint rate per lawyer has all but

halved in five years. That is good news by any measure.

The disciplinary bodies heard and decided a record 30 discipline applications during the year. They made 48 findings of professional misconduct and 27 of unsatisfactory professional conduct against a total of 29 practitioners, 6 of whom were 'struck off', 1 of whom was suspended, and 14 of whom were reprimanded and ordered to pay financial penalties totaling \$70,250. The record number of prosecutions reflected the bank-up of matters that had developed in the disciplinary bodies over previous years, however – a bank-up that the record throughput this year thankfully has now resolved – and not a pattern of increasing resort to disciplinary action. We finalised 1136 complaints and 'own motion' investigation matters during the year, only 37 or just over 3% of them by deciding to initiate disciplinary proceedings. Those 37 matters involved 21 lawyers or one quarter of 1% of all Queensland

lawyers. The number last year was one third of 1%. That is a reassuringly small proportion of the profession.

Those few individuals will all be held to account in public hearings before the disciplinary bodies but we achieve a far greater number of happier outcomes out of public view, behind the scenes. We secured redress for many hundreds of people whose lawyers let them down and who sought our assistance by making inquiries or complaints and gave several thousands of others peace of mind by providing them with information and explanations which helped them understand what happened, by referring them for legal or other advice or assistance or simply by listening.

We're especially pleased that we've been able to use our complaint-handling powers to drive some significant systemic change. I noted last year, for example, that we had sought and obtained judgments in the Supreme Court and subsequently in the Court of Appeal which resolved any uncertainties there may have been about the proper meaning of the so-called 50/50 rule – the rule that was introduced in 2003

to 'cap' the fees lawyers are entitled to charge in speculative or 'no win, no fee' personal injuries matters. I noted that we promptly published *Guidelines for charging fees in speculative personal injury matters* to assist lawyers and law firms to understand their obligations in this regard and that we wrote to every personal injury lawyer and law firm in the state in June 2008 to ask them to review their files and to reimburse any clients they had overcharged and to pay them interest. Well we might have – as at 30 June 2009, 34 law firms have reimbursed a total of 183 of their former clients amounts totaling \$180,256, and we have secured undertakings that we hope and expect will see a further 20 people reimbursed amounts totaling \$197,882. We doubt that will be the end of it. Few if any of these people knew they'd been sold short.

The *Legal Profession Act 2007* introduced a paradigm shift in the regulation of the delivery of legal services – it puts not only individual lawyer behaviour but also law firm culture at the very front and centre of a new regulatory regime. It allows law firms to form companies – to become incorporated legal practices

– but gives the firms which choose that business structure some quite specific additional obligations. It requires them to keep and implement appropriate management systems – to have an ‘ethical infrastructure’, in effect – and it authorises us to conduct compliance audits to see that they do. We think there are powerful policy-based arguments and increasingly powerful evidence-based arguments why all law firms should be subject to the same regulatory arrangements, incorporated or otherwise.

There were 190 incorporated legal practices in Queensland at 30 June 2009, or 13.7% of all Queensland law firms. We’ve required all of them but for the firms which incorporated only late in the year to undertake self-assessment audits of the kind that has been pioneered over recent years in New South Wales. Notably, however, we’ve built upon that foundation by developing three innovative web-based surveys which enable law firms to ‘hold an ethical mirror to themselves’ – a workplace culture check, a complaints management systems check and a billing practices check for medium

to large law firms. The ‘ethics checks for law firms’ are a world first, to our knowledge, and are attracting national and international interest. They are all available on our website.

We trialled the workplace culture check with 15 volunteer law firms in February and March 2009 – only 3 of which were incorporated legal practices – and in May we asked 50 incorporated legal practices to complete the complaints management systems check as a form of compliance audit, 35 of which completed the survey by 30 June. We published the aggregated and de-identified results on our website, both to enable the law firms to compare themselves with their peers and the de facto industry standard and to serve a broader public interest by exposing hitherto hidden aspects of law firm culture to public scrutiny. The feedback has been overwhelmingly positive. It’s still early days, but we have every reason to believe the web-based ‘ethics checks’ will become a well accepted and useful regulatory and ethical capacity building tool.

We’re proud of what we’ve achieved in our complaints-handling and

compliance auditing roles over the past year but proud, too, of what we've achieved to make ourselves more accessible, transparent and accountable. We have:

- given our website a 'makeover' to make it easier to navigate and to make more and better information and resources available to the public and the profession alike. We communicate our priorities on an *Our Headline Issues* page; publish our monthly reports and other performance data on an *Our performance* page; invite lawyers, law students and members of the public to problem-solve some everyday ethical dilemmas on an *Interactive scenarios* page; and publish the ethical capacity building web-based surveys and the survey results on an *Ethics checks for law firms* page;
- systematically sought feedback about our performance from the people we deal with as we go about our work and published that feedback on a *Your feedback* page of our website;
- published an on-line inquiry and complaint form;
- published an interactive 'website comparer' to help personal injury lawyers and law firms understand the restrictions on the advertising of personal injury services on law firm websites;
- established two in-house project teams to review and recommend improvements to the way we process inquiries and complaints from receipt to closure, having regard not only to our values and the performance criteria we've set ourselves but to the feedback we've received;
- built the foundations which will make the database we share with the Queensland Law Society (QLS) equally available to the Bar Association of Queensland (BAQ) and give it the potential to become the first consolidated and fully integrated database for the regulation of the delivery of legal services in any Australian state and territory; and

- developed an on-line point of entry to the database – www.lppportal.org.au – which will go live at about the same time this report is published in November. We've designed the portal in the first instance to enable incorporated legal practices to complete their self-assessment audits on-line. We plan to progressively add other functionalities which will give law firms, lawyers, legal academics and other authenticated users and members of the public seamless, one-stop shop access to a range of regulatory 'products' published by multiple participating regulators. Those products will not only 'pull' regulatory information in by replacing various hard copy forms but 'push' regulatory information out – by enabling law firms to access de-identified complaints data relevant to their firm, for example, and enabling legal academics and members of the public to access and interrogate the kinds of profession analysis, complaints and other regulatory data we include at Appendix 4 to this report. The portal

will set a new benchmark for the regulation of the legal profession in Australia.

We describe these achievements and more in the main body of the report. They will hold us in good stead going into what we know will be a challenging year ahead. Change is coming.

The new Queensland Civil and Administrative Tribunal (QCAT) will absorb the role of the Legal Practice Tribunal from 1 December 2009. We are grateful for the opportunities we've been given to comment on early drafts of the QCAT legislation and more recently the draft QCAT rules and we expect a smooth transition. But there are bigger and more all encompassing changes in the making.

All the Australian states and territories but for South Australia have now enacted local Legal Profession Acts based on national model laws that were agreed by the Standing Committee of Attorneys-General (SCAG) in 2004. That is a significant achievement but has served to highlight the many differences that remain – hence the

Council of Australian Governments (COAG) agreed on 30 April 2009 to establish a National Legal Profession Reform Project Taskforce.

The Taskforce comprises the Chief Executives of the Commonwealth and New South Wales Attorney-General's Departments and the Victorian Justice Department, the Deputy Chief Executive of the ACT Department of Justice and Community Safety and the Secretary-General of the Law Council of Australia. COAG has charged it to prepare nationally uniform legislation by 30 April next year and to recommend the regulatory structures that will be required to achieve uniformity of regulatory practice. The Taskforce has now established a National Legal Profession Reform Project website – www.ag.gov.au/legalprofession – which describes its mandate in greater detail and will include progress reports as events unfold.

The Taskforce will be assisted by a Consultative Group chaired by Professor the Hon Michael Lavarch. It comprises 18 people who are between them broadly representative of the profession, the courts, regulators, legal educators and consumers. I am pleased to have been appointed to be one of the group's two Queensland members other than Professor Lavarch. The Chief Executive Officer of the QLS, Noela L'Estrange, is the other. We will consult as broadly as we can.

It's too early to say but the likely outcomes are that the *Legal Profession Act 2007* will be repealed in the relatively near future and replaced by national legislation of one kind or another and that the regulatory functions which are currently performed by a multiplicity of state-based regulatory bodies will be consolidated in the hands of a much smaller number of national bodies or bodies performing to national standards.

It remains to thank the many people who have contributed to the work of the Commission during the past year. I want to thank the Attorney-General, the Hon Cameron Dick, and his predecessor, the Hon Kerry Shine, for their practical support and encouragement during the year, and also the Director-General of the Department of Justice and Attorney-General, Rachel Hunter and her predecessor, Julie Grantham, and the many staff of the department who provide us with financial management and systems support behind the scenes, and similarly our data systems consultant, Stephen Pickering.

We have good relationships with the QLS and the BAQ and I thank them for that. I especially want to acknowledge the work of the staff of the Professional Standards Unit of the QLS who are an integral part of the system for dealing with complaints but who get less than their fair share of the credit when credit is due.

We owe many other people a debt of gratitude. There are too many of them to name but they include the members of our reference group, the partners and legal practitioner directors of the law firms which volunteered to trial our workplace culture check, and the many lawyers and legal academics who have participated in our symposia or otherwise supported and advised us.

Finally I want to acknowledge and thank the staff of the Commission for doing their job and doing it well in sometimes thankless and trying circumstances, and for making it and continuing to make the Commission such a good place to come to work everyday.

Our core business and our values



Our most fundamental purposes are to protect the rights of legal consumers and to promote high standards of conduct among lawyers and law firms. Our core business is to:

- deliver an efficient and effective system for dealing with complaints ¹
- commence investigations on our own initiative (investigation matters) when we have reason to believe lawyers or law firms have acted inappropriately ²
- audit incorporated legal practices to help them develop and maintain ethical workplace cultures ³
- take fair and timely regulatory or disciplinary action when lawyers and law firms have acted inappropriately ⁴
- communicate what we learn as we go about our work, contribute to related policy discussion, and undertake projects and research directed to helping lawyers and law firms deliver legal services to high ethical standards, and
- create a productive and motivating work environment.

We commit to being well informed, thorough, fair and accountable. We put a high value on being open, transparent, accessible and responsive. We value our independence but will be consultative in approach.

¹ see the *Legal Profession Act 2007*, Chapter 4, Complaints and Discipline. See also the *Personal Injuries Proceedings Act 2002*, Chapter 3, Part 1, Restriction on advertising of personal injury services and touting

² *Legal Profession Act 2007*, section 435(1)(c)

³ *Legal Profession Act 2007*, Chapter 2, Part 2.7, Incorporated Legal Practices and Multi-Disciplinary Partnerships, especially sections 118 and 130

⁴ *Legal Profession Act 2007*, sections 447-448, section 446(2)(a) and Chapter 2, Part 2.7

Our performance criteria



We have published a comprehensive performance plan on the Commission's website including the performance indicators, targets and standards we have set ourselves in each of our core business areas. In short, we will assess our performance having regard to:

- our clearance ratios – the number of complaints, investigation matters, compliance audits and prosecutions we complete compared to the number we commence. The clearance ratio is (the number completed divided by the number commenced) x 100. We aim to achieve a clearance ratio of 100% or better.
- our timeliness – we aim to respond to at least 80% of inquiries within 1 working day of receipt; to assess 90% of all new complaints within 1 month of receipt, in a median time frame of less than 2 weeks; to finalise 90% of consumer disputes within 2 months of receipt, in a median time frame of less than 1 month; and to finalise 75% of conduct complaints and investigation matters within 6 months of receipt, in a median time frame of less than 4 months. It is premature to set meaningful timeliness targets in relation to compliance audits and prosecution matters although we closely monitor how long it takes to bring those matters to completion and will set targets in due course.
- the outcomes we achieve – including for example the number and

percentage of inquiries and consumer disputes we resolve to the inquirers' and complainants' satisfaction, the number of complaints we finalise on public interest grounds because the lawyers subject to complaint have 'put things right', and the number of disciplinary charges we prove in the disciplinary bodies compared to the number they dismiss.

- our pro-activity – including the number and nature of investigation matters compared to complaints, the number and nature of compliance audits, the extent to which we have used our complaints and compliance audit powers to drive systemic change by helping improve standards of conduct in the profession, and the number and nature of the research and other projects we undertake and the number and range of our partners in those projects.
- stakeholder feedback – the feedback we receive about our performance from people who have made inquiries or complaints and lawyers who have been subject to complaints, and from our stakeholders more generally.

We systematically capture and publish information about our performance against these criteria and we include that information under the relevant sub-headings later in the report.

Our performance

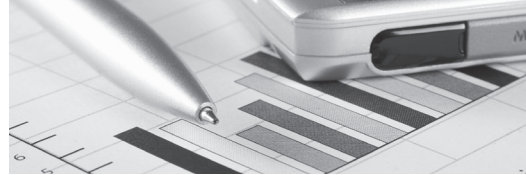


Our performance: complaints

The *Legal Profession Act 2007* (the Act) establishes a system for dealing with complaints for the purposes of:

- providing for the discipline of the legal profession
- promoting and enforcing the professional standards, competence and honesty of the legal profession
- providing a means of redress for complainants about lawyers, and
- otherwise protecting members of the public from unlawful operators.

The Act establishes the Commission to receive and deal with complaints and authorises us to deal with complaints not only about lawyers (people who are appropriately legally qualified and who have been admitted to the legal profession in accordance with the Act) and unlawful operators (people who engage in legal practice or represent themselves to be entitled to engage in legal practice but who don't hold a current practising certificate) but also law practice employees and anyone who is suspected of contravening the



restrictions on advertising personal injury services and the prohibition of touting under chapter 3, part 1 of the *Personal Injuries Proceedings Act 2002* (PIPA).

We describe the system established under the Act for dealing with complaints in detail at Appendix 1 but, in summary, it requires us to deal with complaints 'as efficiently and expeditiously as is practicable' and:

- to produce information about the making of complaints and the procedure for dealing with complaints and to ensure that information is available to members of the public on request;
- to give help to members of the public in making complaints;
- to assess every complaint we receive to decide whether we should deal with the complaint;
- if we decide to deal with the complaint, to decide whether to deal with it as a consumer dispute or a conduct matter;

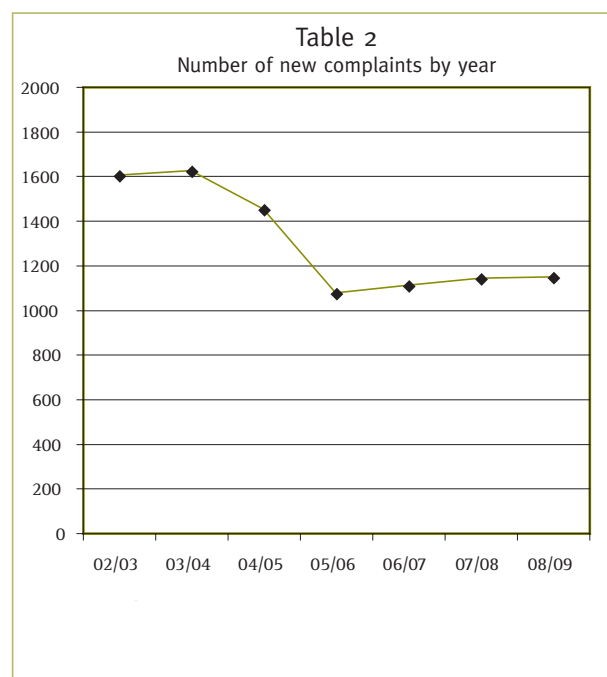
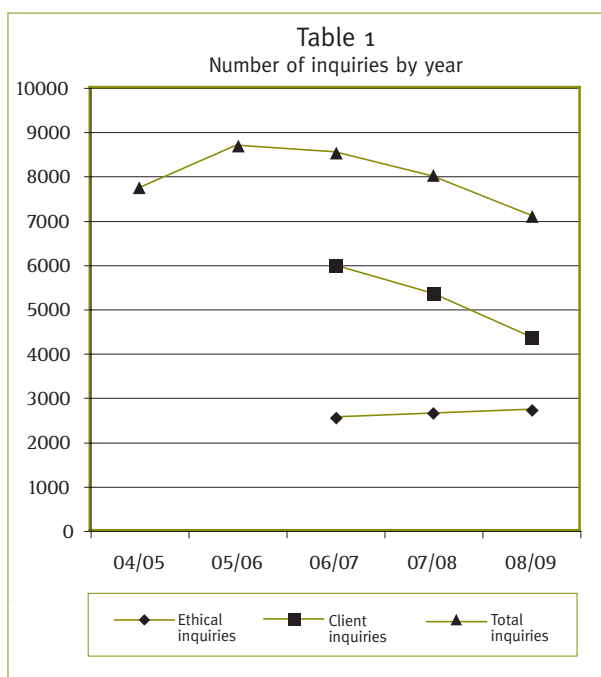
- to mediate the complaints we assess to be consumer disputes;
- to investigate the complaints we assess to be conduct matters; and
- if we investigated the complaint as a conduct matter, to decide after investigation whether to dismiss the complaint or to initiate disciplinary proceedings.

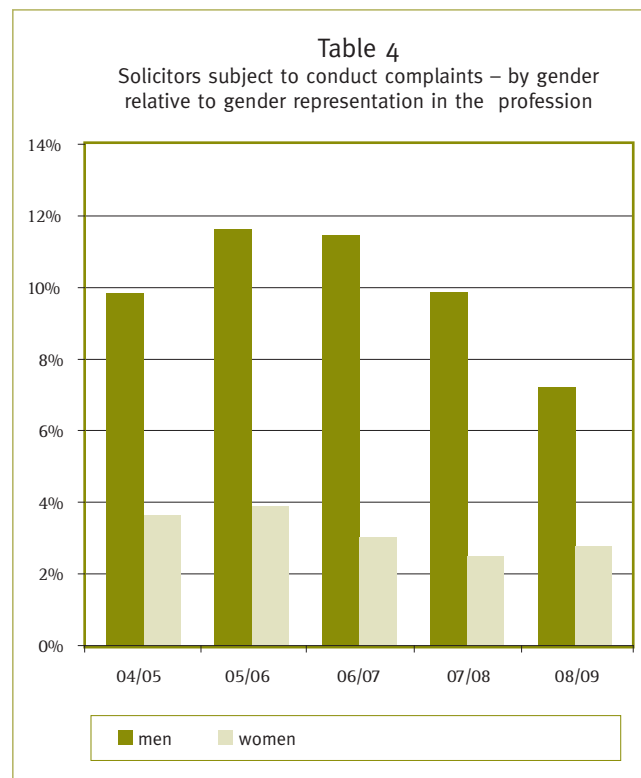
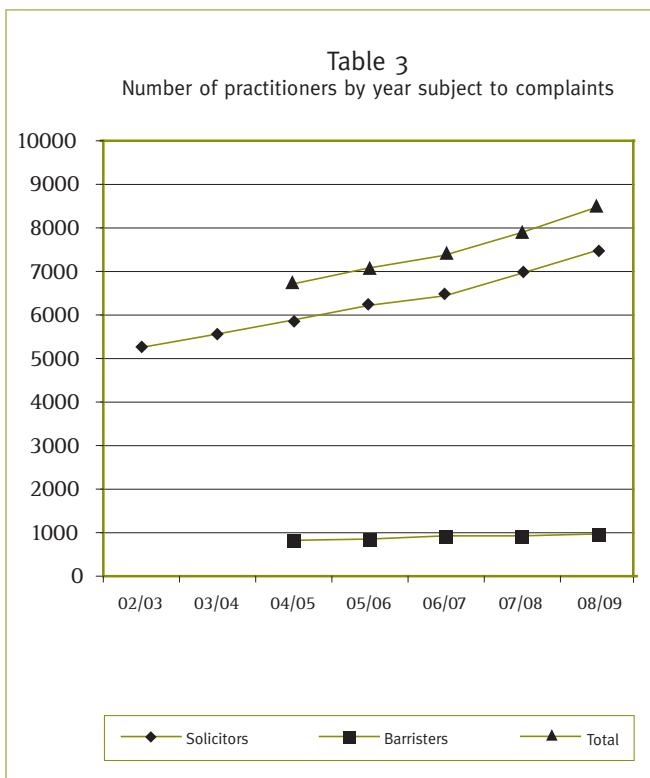
We reflect over the pages that follow on our performance of each of these functions.

Some key facts

We've attached a wealth of statistical data about the inquiries and complaints we dealt with over the past and recent years at Appendix 4. The key facts as we see them are these:

- we received significantly (27%) fewer telephone and other inquiries in 2008–09 than 2007–08 when the number had already trended down on previous years, albeit less dramatically – see table 1.



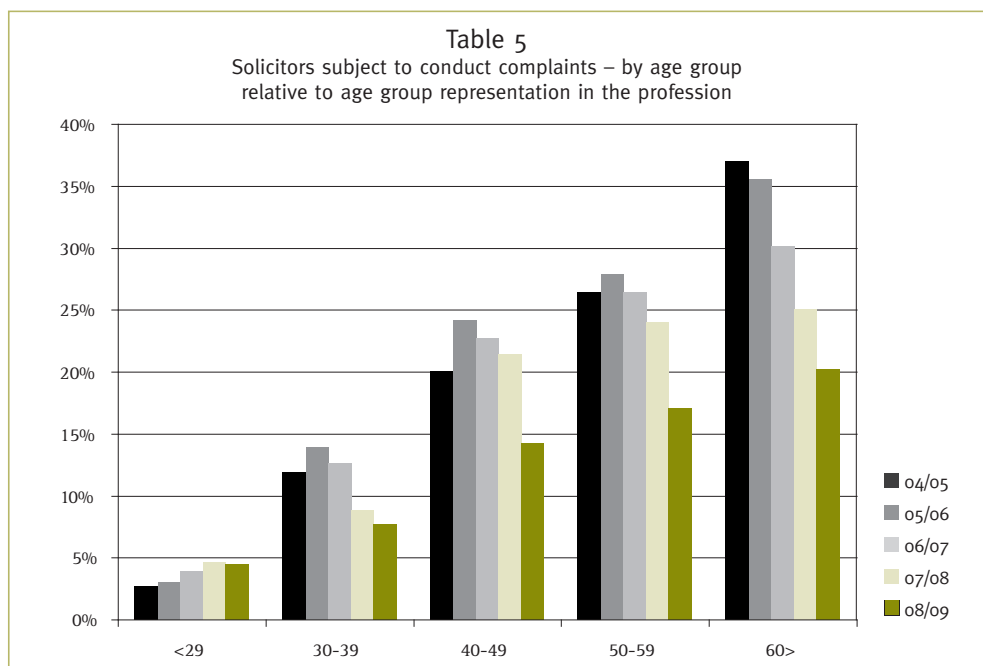


- we received 1066 new complaints in 2008–09. That is much the same number we received over each of the previous three years but significantly (33%) fewer than the number our predecessor received in each of the two years before the Commission commenced on 1 July 2004. That significant reduction in the number of complaints coincides with an almost equally significant increase (26%) in the number of lawyers potentially subject to complaint – see tables 2 and 3.

- we finalised 1035 complaints in 2008–09, slightly fewer than we received and 11% fewer than in 2007–08. We achieved a clearance ratio of 97% compared to 104% in 2007–08.
- the vast majority (90%) of the complaints we received concerned solicitors and a small minority (5.6%) concerned barristers.

Solicitors make up 89% of the legal profession in Queensland, and barristers 11%. We received 1 complaint for every 7 solicitors and 1 for every 14 barristers.

- about half the complaints we dealt with in 2008–09 as in previous years concerned the conduct of lawyers in the course of conveyances, family law, personal injury or deceased estate matters. More than half of them went to issues of quality of service, costs or poor communication and about a third alleged unethical conduct of one kind or another. The numbers are small, but we are beginning to see more inquiries and
- complaints than previously about solicitors not paying staff wages and superannuation contributions, barrister's fees and specialist's fees for medical reports and the like.
- almost three-quarters of the complaints we received could easily have been avoided, on our reckoning, more than half of them as in previous years if only the practitioners had better work practices or better communicated with the complainants.
- women lawyers were several times less likely than men lawyers per head of population in the profession

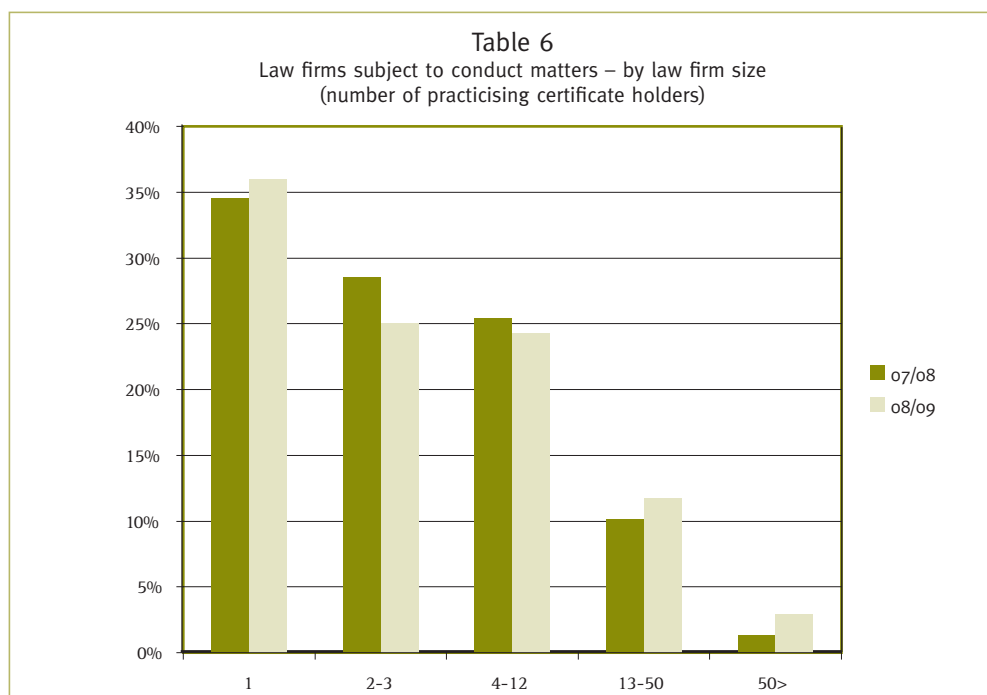


to be subject to complaint, although the trend data over the last few years suggests that the gap (while still vast) may be closing – see table 4.

- the older they are, and the longer they’ve been practising, the more likely lawyers are to become subject to complaint – see table 5.
- the larger their law firm, the less likely lawyers are to become subject to complaint. About 10% of Queensland lawyers work in firms that have only 1 lawyer working for them but they were subject between them to 36% of all conduct matters, and about

28% of Queensland lawyers work in firms that have between 1 to 3 lawyers working for them but they are subject between them to 61% of all conduct matters. Conversely, about 35% of all Queensland lawyers work in firms that have 25 or more lawyers working for them but those lawyers are subject to only 5% of all conduct matters – see table 6.

These are facts but we should be careful not to jump to conclusions. The complaints data is a handy indicator of the extent of dissatisfaction with lawyers within the community but tells us very little in our view about the extent or distribution of misconduct within the profession.



Producing information about the making of complaints

We publish a series of ‘plain English’ fact sheets which describe how to make a complaint and how we deal with complaints and in particular a lawyer’s obligations to disclose his or her costs and the process for challenging a lawyer’s costs. The fact sheets are readily available both in hard copy and on our website. We have been at pains this year to give our website a cleaner look, to make it easier to navigate and to include more and better information about our role, our processes and our performance. We have included among other things an interactive scenario which enables prospective complainants, complainants and lawyers alike to track an imaginary complaint through the system to see how it works.

Giving help to members of the public in making complaints

We give help to members of the public in making complaints in the ways we have already described but also and

specifically by means of a complaint form which prompts complainants to give us the information we require to properly assess their concerns and to deal with them expeditiously. We make the complaint form readily available in hard copy on request and on our website. Our website now also includes an on-line inquiry and complaint form which enables people who have internet access to make inquiries and complaints electronically. The on-line form has been available since February and the take-up has been good – almost 10% of the inquiries and complaints we have received since March have been made on-line.

We give help to members of the public in making complaints primarily however through an inquiry service – by promptly responding to anyone who contacts us with an inquiry, most commonly by phone but also electronically, in writing and in person. The Act requires complaints be made in writing, but many inquiries are complaints in all but name. The QLS also accepts and deals with inquiries, and we’re comfortable with that. No good purpose would be served by requiring inquirers to put a ‘complaint’ in writing if their concerns lend

Snapshots of some happily resolved inquiries

- the inquirer told us he was the executor of a small but messy deceased estate, and that the beneficiary of the estate had not been well provided for. He said he engaged a solicitor to assist him administer the estate and had just received an itemised bill for \$23,000 which would all but exhaust the estate. We dealt with the inquiry as an informal complaint and negotiated an outcome which saw the solicitor reduce his fee to \$4,700.00 on compassionate grounds.
- the inquirer told us that a solicitor who was acting for him in a leasing matter had registered not just the one lease in the inquirer's name but several. We rang the solicitor who accepted that the error was his and undertook to remedy the situation at his own expense – problem resolved.
- the inquirer told us that he had monies held on his behalf in his solicitor's trust account that he wanted to be invested but that the solicitor had failed to make the investments – hence he had not received any interest. We spoke with the solicitor and the solicitor's managing partner, and negotiated that the law firm would pay the inquirer \$1,500 by way of compensation for lost interest. Both solicitors reported that they had learned from the experience and would institute procedures to ensure they would not repeat their mistake in future.

themselves to an informal resolution, and similarly no good purpose would be served by expecting the QLS to refer people to us if it can deal with their concerns there and then. People who make inquiries need to know, however, that they remain fully entitled to make a formal written complaint if their concerns can't be resolved informally.

We dealt with 1490 inquiries during 2008–09 and the QLS dealt with a

further 2,878 – a total between us of 4,368. That is significantly (27%) fewer than in 2007–08, and a sharp downward turn in the gentler downward trend of recent years. The QLS also received 2737 ethical inquiries during the year from solicitors. Furthermore:

- more than half the inquiries we received as in years past concerned conveyances and family law, deceased estates and personal

injury matters – and we note the steady increase in recent years in the number of inquiries concerning deceased estate matters. About half the inquiries we received concerned costs, quality of service and communication issues or were simply seeking advice. Fewer than 10% concerned ethical issues.

- we resolved the inquirer's concerns in 12% of the calls we received, sometimes simply by ringing the lawyer concerned to get some background information or an explanation or to learn the current status of the matter and passing it on, and just as often by negotiating some appropriate redress – with the lawyers agreeing to acknowledge an error and to apologise, to re-do the work to make good a mistake, or to reduce or waive their fee or pay some other appropriate compensation.
- we referred 16% of inquirers for legal or other advice, recommended to the same number of inquirers that they make a formal written complaint, and recommended to 14% that they discuss their concerns directly with their lawyer or law firm.
- we provided 13% of inquirers with information about the legal system and how it works and, in 12% of inquiries simply listened to a caller's concerns. These are important functions. Many of the people who contact us have had a bruising encounter with the legal system – in a family law matter, for example, or some other hurtful dispute. There is often little we can do in these circumstances other than listen empathetically and explain how the adversarial system works or the role opposing solicitors play in the system or that a lawyer is obliged to exercise independent professional judgment and not simply follow his or her client's instructions to the letter.

Deciding whether to deal with a complaint

The Act gives the Commissioner power (a 'summary dismissal' power) to decide not to deal with a complaint in certain circumstances – if the complaint has been investigated previously and there is no good reason to reconsider the matter, for example, or if it's about conduct that happened more than

three years before the making of the complaint and doesn't involve an issue of professional misconduct and there are no good reasons for the delay; or if it's about the conduct of a lawyer 'happening otherwise than in connection with the practice of law and the conduct would not justify a finding that the practitioner is not a fit and proper person to engage in legal

practice, or 'if, having considered the matter, the Commissioner forms the view that the complaint requires no further investigation'.

We get more than a few complaints about lawyers which involve their conduct in a private capacity – as an executor of a relative's deceased estate, for example, as a company director or

Snapshots of some complaints we decided not to deal with

- the complainant alleged that the practitioner who acted for him in a criminal law matter failed to put into evidence a document which proved that he was not guilty of the offence with which he'd been charged. Our preliminary inquiries revealed that the 'evidence' was in fact a document the complainant had generated himself which, while it was a useful aide-memoir, was not a document which was admissible in a trial.
- the complainant alleged that the practitioner representing 'the other side' in a family law matter filed a false affidavit which contained lies. We dismissed the complaint on the basis that the affidavit was in fact sworn by the complainant's former partner, that there was no evidence other than the complainant's assertion that the affidavit was untruthful and that its truthfulness was an issue for the court to determine as part of the ongoing litigation.
- the complainant, the beneficiary of an estate, alleged that the executor of the estate, a solicitor, had unduly delayed the administration of the estate and the distribution of the assets. Our preliminary inquiries revealed that the solicitor was acting solely as the executor of, not as the solicitor for the estate, and that there was a likely family maintenance application against the estate, hence the delay.

a secretary of a body corporate – and we don't deal with these complaints unless they allege dishonesty or other unethical conduct which, if proved, would bring their fitness to practise into question.

Similarly we get more than a few complaints about lawyers which clearly involve their conduct as lawyers but which, having considered them, we decide not to investigate – typically we refer these complainants to some other investigative process on the understanding that we will have another look at the matter if the other investigative process reveals misconduct. Some of these complaints allege criminal activity which should be dealt with by the police and some corruption which should be dealt with by the Crime and Misconduct Commission. Some allege professional negligence and involve complex issues of fact and opinion that can only be decided by a court and, if the negligence is proved, that can only be remedied by a court.

We decided not to deal with 443 complaints in 2008–09, or 40% of all the complaints we received. We came to that decision in 88% of those matters

in less than a month after receiving the complaint, in a median time frame of 14 days. We gave every complainant written reasons and referred them as appropriate to another regulatory body or complaints-handling agency or suggested they consider taking legal advice about other possible remedies that might be open to them.

More than a few of the complaints we decided not to deal with – 20% in 2008–09, much the same as in previous years – arose out of obviously hurtful family law matters, and more than a few of these alleged misconduct by lawyers for the 'other side' including allegations that they made or encouraged or colluded with the estranged partner to make false and insulting suggestions or to tell lies. As a general rule we can deal with complaints about lawyers for 'the other side' only if the complainants give us some reason to believe that the lawyers acted without or contrary to their clients' instructions – and that is hard to prove unless the estranged partner waives his or her legal professional privilege. We take a particular interest, however, when lawyers for the other side appear to have been over-zealous or to have gone 'over the top'.

And finally more than a few of the complaints we decided not to deal with – 16% in 2008–09 – disputed a lawyer’s costs but revealed no *prima facie* evidence of overcharging. Cost disputes are more appropriately dealt through the costs-assessment process established under the Uniform Civil Procedure Rules (and which we describe in our fact sheet *Your Right to Challenge Legal Costs*). This is a less than satisfactory state of affairs in our opinion – it would be quicker, simpler and less confusing from a consumer’s point of view if the Commission was a ‘one stop shop’ for complaints about lawyers and so managed the cost assessment process – but our hands are tied.

Assessing complaints to be consumer disputes or conduct complaints

The Act gives us only two ways to deal with a complaint – as a consumer dispute or as a conduct complaint. Conduct complaints are complaints that involve an issue of unsatisfactory professional conduct or professional misconduct and consumer disputes are complaints that don’t. The meaning of the terms *unsatisfactory professional*

conduct and *professional misconduct* is crucial.

The Act says nothing about the meaning of the term *unsatisfactory professional conduct* other than to say it ‘includes conduct happening in connection with the practice of law 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 that *professional misconduct* ‘includes substantial or consistent unsatisfactory professional conduct... and conduct happening otherwise than in connection with the practice of law that would, if established, justify a finding that the person is not a fit and proper person to engage in legal practice.’

The Act gives us no duties or powers in relation to consumer disputes other than a discretion to ‘suggest to the complainant and the respondent that they enter into a process of mediation’ and, if they agree, to help the parties if we can to resolve the complaint by mutual agreement – or to refer the complaint to the QLS or BAQ to see if they can help the parties to resolve the complaint by mutual agreement.

We have no powers to require the parties to enter into a process of mediation, and no powers to require practitioners to make redress when redress is due – when it would be fair and reasonable in all the circumstances of a complaint for the practitioner to acknowledge having made an error and apologise, for example, or to make good a mistake at no cost to the complainant or to reduce or waive the fee or to pay some other appropriate compensation. Nor do we have any powers to require practitioners to take appropriate action to reduce the risk they will repeat a mistake in future – by fixing their office systems, for example, or undertaking some further training and the like.

The Act does however give us a very specific obligation in relation to conduct complaints – it requires us to conduct an investigation. And it gives us only two options after we've completed the investigation – to take no further action on (to dismiss) the complaint or to initiate disciplinary proceedings before a disciplinary body, either the Legal Practice Committee in relation to minor matters or the Legal Practice Tribunal in relation to more serious matters.

Obviously we assess complaints that allege dishonesty or similarly unethical conduct and gross incompetence to be conduct complaints and, if they're substantiated after investigation, initiate disciplinary proceedings. But how should we assess the vast majority of complaints that involve only minor incompetence and poor standards of service and careless but honest mistakes and the like?

The question goes to the heart of the system for dealing with complaints. Solicitors sometimes miscalculate rates or body corporate adjustments in conveyances, for example, with the result that their purchaser clients complain when they get letters of demand from council or bodies corporate. Clearly complainants in these and like circumstances have a legitimate grievance and are entitled to appropriate redress. Should we assess their complaints to be consumer disputes and suggest to the parties that they enter into a process of mediation? But what if they fail to agree how the complaint should be resolved? Or should we assess the complaints to be conduct matters and commence an investigation and, if they're substantiated, initiate disciplinary proceedings?

The question turns on the meaning of the term *unsatisfactory professional conduct*. We interpret the term broadly, and we assess complaints that involve minor incompetence and poor standards of service and careless but honest mistakes and the like to be conduct complaints whenever the complaints if substantiated would establish a legitimate grievance and entitle the complainant to appropriate redress.

That is because, as we've seen, the Act describes its most fundamental purposes to include providing complainants with a means of redress, but it makes all but wholly voluntary redress entirely contingent on a finding by a disciplinary body of unsatisfactory professional misconduct or professional misconduct. It gives the disciplinary bodies powers to require practitioners to make redress to complainants when redress is due and to undertake some further training and the like – powers it doesn't give us – but only if they make a finding of unsatisfactory professional conduct or professional misconduct. And it creates the Legal Practice Committee

as a 'lesser' disciplinary body to deal with relatively minor but yet important disciplinary matters of these kinds.

Crucially, however, the Act gives us a discretion to dismiss conduct complaints after investigation if no public interest would be served by initiating disciplinary proceedings, notwithstanding that there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct. Hence we can decline to initiate disciplinary proceedings in circumstances in which the unsatisfactory professional conduct is at the lesser end of the spectrum that fits that description and the practitioners subject to complaint have acknowledged their error and made fair and reasonable redress. And – clearly – the public interest will rarely if ever be served by initiating disciplinary proceedings in relation to unsatisfactory professional conduct which comprises only minor incompetence or poor standards of service or careless but honest mistakes and the like if the practitioner has put things right.

Snapshots of some happily resolved consumer disputes

- the complainant – the applicant in a litigation matter – noted in his complaint that the solicitor who acted for him in the litigation had placed a caveat upon a property he believed to be the property of the defendant but was in fact the property of the defendant's father (who had the same name) but was refusing to remove the caveat unless the father paid the costs. We negotiated with the solicitor and his managing partner with the result that the caveat was removed at no cost to either the client or the defendant's father.
- the complainant instructed a solicitor in relation to an acrimonious ongoing dispute. He alleged that the solicitor had delayed acting on his instructions with the result that the other side took action which he had to go to extra expense to defend. We mediated a mutually acceptable outcome which saw the solicitor waive his unpaid fees and pay \$6,000 by way of compensation.
- the complainant, who had purchased a property, alleged that the solicitor who handled the conveyance miscalculated the rates adjustment upon settlement with the consequence that he was \$265.14 out of pocket. We spoke to the solicitor who acknowledged her mistake but said the vendor's solicitor was having difficulty extracting the money from the vendor. We suggested and she agreed, because the error was hers, that she should apologise, reimburse her client and pursue the debt herself.

Mediating consumer disputes

We assessed 90 complaints to be consumer disputes during 2008–09, or 9% of all the complaints we received, and we referred only 4 of them to the QLS. We finalised 87 consumer disputes, all but 1 of them in less than 2 months after we first received the

complaint, in a median time frame of 21 days. Furthermore:

- the majority (60%) of consumer disputes like inquiries and complaints more generally arose out of conveyances, family law, deceased estates and personal injury matters, and the vast majority (73%) involved disputes

about costs, quality of service and communication.

- we were unable to resolve a substantial minority (39%) of them and we came to the view that more than a quarter (26%) of them were unfounded but, happily, we successfully resolved more than a quarter (26%) of them.

Investigating conduct matters

The Act requires us to investigate conduct complaints or to refer them to the QLS or to the BAQ for investigation, in which case the QLS and the BAQ must return them to us after investigation with a recommendation as to what further action, if any, we should take on the complaints. The QLS and the BAQ have no authority to decide what further action should be taken on a complaint. We have as noted already only two options – to take no further action on (to dismiss) the complaint or to initiate disciplinary proceedings. And we can dismiss a complaint for either of two reasons – either because there is no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct or, as we’ve noted already, because

there is no public interest in initiating disciplinary proceedings.

We assessed 530 complaints to be conduct complaints during 2008–09, or 51% of all the complaints we received, and we referred 287 (45%) to the QLS and 18 (3%) to the BAQ for investigation. We finalised 514 conduct complaints, 350 or 68% of them within 6 months after we first received the complaint, in a median time frame of 175 days. That is significantly higher than last year’s median time frame of 131 days and we will make it a priority over the year ahead to bring the number back down. The explanation for the ‘blow out’ is in large measure that we had little choice but to redirect resource during the year from dealing with complaints to preparing a record number of matters for hearing in the Legal Practice Tribunal, more than a few of which were more than usually complex and time consuming. We return to this issue later in the report under the heading *Our performance: discipline*. That said, we note that:

- the QLS returned 285 complaints for review and we disagreed with its recommendations in 30 or 10% of the reviews we completed by 30 June. The BAQ for its part returned

12 complaints for review and we disagreed with its recommendations in 5 or 425% of the reviews we completed by 30 June. The apparently large percentage of rate of disagreement, especially with the BAQ, is deceptive. There were no substantial disagreements, but simply different ‘judgment calls’ in circumstances where reasonable minds might differ – by deciding to dismiss a complaint on ‘no public interest’ as opposed to ‘no reasonable likelihood’ grounds, for example, or to initiate disciplinary proceedings but on different charges.

- we finalised 336 or 65% of the 514 conduct complaints we finalised during the year on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct – that there was insufficient evidence to prove the complaint, or evidence to prove it wrong.
- we finalised 94 or 18% of them on the basis that, while the conduct subject to complaint might amount to unsatisfactory professional conduct, no public interest would

be served by initiating disciplinary proceedings. This is a good result. It means in most cases, as we explained earlier, that the conduct was at the lesser end of the spectrum of unsatisfactory professional conduct and that the practitioners had done all they reasonably could to put things right with the complainant or to prevent or reduce the risk they might make the same mistake in future – by acknowledging their error and apologising, by remedying the fault in the service they provided or reducing or waiving their fee or fixing their office systems or undertaking some further training, whatever was fair and reasonable in all the circumstances of the complaint.

- we finalised 26 or 5% of the conduct complaints we finalised during the year, or 2.5% of the 1035 complaints we finalised in total, by deciding to initiate disciplinary proceedings. We canvass these matters in more detail later in the report under the heading *Our performance: discipline*. We urge everyone who is interested in these matters and wants to understand why and how lawyers find themselves subject to

Snapshots of some ‘no public interest’ dismissals

- the complainant, a police prosecutor, alleged that a solicitor made inappropriate comments about the prosecutor and the presiding magistrate during the course of a heavily defended hearing in the Magistrates Court. We investigated the complaint and decided that no public interest would be served by initiating disciplinary proceedings because, while the practitioner’s conduct clearly over-stepped the mark and amounted to unsatisfactory professional conduct, he acknowledged his error when we put the complaint to him and forwarded written apologies to the prosecutor and the magistrate, both of whom accepted his apology.
- the complainant alleged that his solicitor had issued him with an account which was calculated on a basis he hadn’t agreed to and that his solicitor hadn’t disclosed and, when he objected, that his solicitor issued him with an account for preparing an itemised account. The solicitor apologised when we drew his attention to his errors and promptly withdrew his account and request for payment, waived his outstanding fees and offered to complete the matter free of charge. The evidence suggested he had made a one-off mistake and learned a salutary lesson.
- the complainant, a solicitor, alleged that he had received improper correspondence from a solicitor who was a relative and who was also acting for a relative. We decided after investigation that the complaint was substantiated – the correspondence clearly breached the relevant rules – but that it had occurred in the context of a heated family dispute and that there was no public interest in initiating disciplinary proceedings because the solicitor eventually acknowledged that his conduct was inappropriate and apologised and gave us an assurance which we accepted that it would not happen again.

disciplinary action to read the decisions of the disciplinary bodies, everyone of which is published on our website under the heading *Decisions of the disciplinary bodies*.

Your feedback

We made a concerted effort during 2008–09 and it will be an ongoing effort to solicit feedback from the people who made inquiries of us or made complaints or were subject to complaint, and from our stakeholders more generally. We discuss how we went about it in more detail later in the report under the heading *Our performance: projects and research*, and we've published the complete and unedited feedback we received on the *Your feedback* page of our website, together with some analysis.

The take-up rate wasn't great, despite our best efforts, but we are encouraged by the fact that the majority of the

people who made inquiries of us and almost half the people who made complaints were either satisfied or very satisfied with the way we handled their concerns, and that most inquirers and complainants felt that we dealt with them fairly and reasonably even if they were less than satisfied with the outcome. We are similarly encouraged that two-thirds of practitioners subject to complaint were either satisfied or very satisfied with the way we dealt with the complaint against them, and that two-thirds of our stakeholders more generally rated our performance as either satisfactory or very satisfactory. We are also encouraged by the typically very positive, unsolicited feedback we get from time to time by way of thank you notes.

A representative selection of the feedback we received during the year

from people who made inquiries:

- I had instant feedback on the problem I had to deal with. The person I talked to was very friendly and helpful and had already made contact with the company involved. She also asked me to call back in a couple of days if I had not heard back from the solicitor involved
- the person I was speaking to treated me with respect. I received prompt and professional assistance and felt supported

- we visited your office this morning. We were welcomed by [a named staff member] who received us warmly and listened to us patiently

from complainants:

- I would like to sincerely thank [you] for your assistance with this matter... I am 100% certain that without your intervention, this legal firm would not have agreed to rectify their error.
- I was delighted with the outcome, although I had no idea what was happening, how long it was going to take etc, so it was a pretty nervous wait
- the process took a long time and no-one would answer the bloody phone
- I cannot find the words to thank you for helping me in finalising my concerns with [a solicitor]. After all this time I can now hopefully move past this dreadful period and finally the grief can fade
- I didn't know such a service was available for use by the public – what a beautiful service. We were taken for a ride... Then enter your [complaints officer]. She was so helpful in explaining our rights within the law world. When things were at a stalemate she got us an outcome close to our original agreement
- you turned out to be just what I expected – another insipid, useless, puffed up, toothless government department that wastes people's time with promises they cannot live up to
- thank you for helping me. My problems have been solved. It was a bad experience but the result was much better with your help

from respondents:

- I take careful note of your comments [in your closure letter]... May I say that I entirely agree with your comments and observations. I thank you and your office for the courtesy shown towards me during this matter
- the LSC seems to treat all practitioners equally. The allegation was put to rest after

an investigation by an objective third party. I believe [you] gave me a sound and fair hearing considering [you] have the general public to satisfy

- I want to congratulate you on the work you are doing. I have to say that I have found the LSC to be exemplary... It is trying to reduce prosecutions and not increase them. The great assistance to me is your willingness to work with me whenever an issue has emerged to find a quick and good solution for clients
- the Law Society used to try and resolve complaints without court action. The LSC takes an approach which is very adversarial. I believe this approach will increase the number of complaints

stakeholders said among other things:

- continue with your very transparent approach, which encourages discussion of difficult issues in the community
- we are the most over regulated profession in Australia. I have never been in strife with the LSC so this is not sour grapes. I simply resent a bunch of public servants on easy street judging us when you wouldn't have a clue.

Our performance: investigation matters

The *Legal Profession Act 2007* authorises the Commissioner to start an investigation without having received a complaint 'if the Commissioner believes an investigation about a matter (an investigation matter) should be started into the conduct of an Australian legal practitioner, law practice employee or unlawful operator.' The Act also and specifically authorises us to investigate lawyers or anyone else the Commissioner suspects may have contravened the *Personal Injuries Proceedings Act 2002* (PIPA) by touting at the scene of an accident or advertising personal injury services contrary to the restrictions set out in chapter 3, part 1 of that Act.

The investigation matter power is an important power for the obvious reason that we can never assume that everyone who might have cause for complaint knows they have cause for complaint or that they'll always make a complaint if they do. It gives us a measure of pro-activity we would be



denied if we were confined simply to responding to complaints.

We initiated 79 investigation matters in 2008–09, or 6.9% of all new complaints and investigation matters, compared to 119 or 9.5% in 2007–08, 199 or 15.2% in 2006–07, 73 or 6.4% in 2005–06 and 35 or 2.4% in our first year, 2004–05. The numbers are smaller this year for reasons we explain shortly. We finalised a total of 91 investigation matters, 12 more than we initiated. That is a clearance ratio of 132%.

We report on the two categories of investigation matter separately, because they have quite different characteristics – investigation matters about apparent breaches of the restrictions on the advertising of personal injury services (PIPA investigation matters), and all other investigation matters (investigation matters other than PIPA).

Investigation matters other than PIPA

We initiate investigation matters in a variety of different circumstances that cause us to suspect a lawyer has engaged in conduct capable of amounting to unsatisfactory professional conduct or professional misconduct. Sometimes we receive information anonymously, but sufficient information to justify a reasonable suspicion; sometimes we read reports in the media; sometimes the professional bodies bring matters to our attention, if a trust account inspection reveals anomalies in a solicitor's handling of trust monies, for example; and sometimes judges or magistrates or investigative agencies such as the Crime and Misconduct Commission bring information to our attention.

We initiate the majority of investigation matters, however, when we are already dealing with a complaint about a lawyer's conduct. We always keep an eye out when we're dealing with complaints for any other conduct that falls short of expectation and broaden our inquiries as appropriate. It is not uncommon for us to be dealing with a complaint about delay or discourtesy or

failure to communicate, for example, only to discover evidence of possible overcharging of which the complainant is totally unaware.

We note that:

- we initiated 62 investigation matters other than PIPA in 2008–09, some of which dealt with conduct that occurred in the delivery of personal injury services but not with a suspected breach of the advertising restrictions). We initiated 60 investigation matters other than PIPA in 2007–08, 101 in 2006–07, 73 in 2005–06 and 35 in 2004–05.
- we finalised 84 other than PIPA investigation matters, 9 or 11% of them by deciding to initiate disciplinary proceedings; 24 or 29% on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct; and 40 or 48% on the basis that the conduct might have amounted to unsatisfactory professional conduct or professional misconduct but no public interest would be served by initiating disciplinary proceedings.

We are pleased at the relatively low percentage of matters we finalised on ‘no reasonable likelihood grounds’. It would be worrying if the number was high – a high number would suggest we too often came to the belief that we had reasonable grounds to justify initiating an investigation when the evidence after investigation is insufficient to support an adverse finding. We are equally pleased at the high percentage that we were able to finalise this year as we have in the past on ‘no public interest’ grounds. It means that the evidence after investigation confirmed our reasonable suspicions but that we managed to negotiate an outcome which saw the lawyers subject to investigation put things right.

- 22 or 26% of the 84 matters we finalised involved ethical issues; 18 or 21% of them involved costs issues including overcharging and/or a failure to properly account for or explain costs, and 15 or 18% of them trust account issues, typically involving a failure to account and technical breaches in relation to

trust account authorities. Notably more than a few of the 22 matters that involved ethical issues involved personal conduct of kinds that might justify a finding that the lawyer is not a fit and proper person to engage in legal practice – conduct including dishonesty, taxation, stalking and sexual offences.

About 1 in 5 of all the complaints we receive allege some impropriety in relation to costs, and almost all complaints involve an issue of costs even if it isn’t the complainant’s primary concern. We’re always on the lookout for inappropriate billing practices, irrespective of what first prompted the complaint, and we know from past experience to be on the look out for two kinds of inappropriate billing practice in particular:

- the first is the practice we identified several years ago now of lawyers charging fees dressed up as disbursements or outlays that are not true expenses incurred on a client’s behalf. Our counterparts in England and Wales describe such fees as ‘secret profits’. The practice takes a number of forms. One form

involves charging clients undisclosed mark-ups or surcharges on the true amount of a disbursement – by charging a client \$50 for a search fee, for example, when the firm paid out only \$25. Another involves charging clients for ‘internal’ costs disguised as disbursements – photocopying and stationery charges, for example, and file opening and closing fees, in-house stamping fees, settlement fees when there is no agent and contributions to the firm’s professional indemnity insurance premium.

We have published *Guidelines for charging outlays and disbursements* to assist lawyers and law firms to better understand their professional obligations in this regard. We are pleased that we once again managed to resolve every matter of this kind by persuasion, without having to resort to prosecution. We are pleased, too, that the practice appears to be less common than it once was and that we have achieved some systemic change.

- the second is the practice of charging clients more in fees in ‘no win-no fee’ personal injury matters than the law allows – the law commonly known as the 50/50 rule that caps a lawyer’s fees in speculative personal injury matters at no more than half the judgment or settlement amount after deducting any refunds and disbursements for which the client is liable.⁵ We received a number of complaints in 2007 which alleged that a practitioner had charged more than he was entitled to charge under the rule and responded in the first instance by initiating proceedings in the Supreme Court to determine its true meaning.⁶ The practitioner appealed to the Court of Appeal in 2008, unsuccessfully,⁷ and we promptly published *Guidelines for charging fees in speculative personal injury matters* to assist lawyers and law firms better understand their professional obligations in this regard also.

⁵ see the *Legal Profession Act 2007*, sections 345–347

⁶ *LSC v Dempsey* [2007] QSC 270

⁷ *LSC v Dempsey* [2008] QCA 122

We proceeded in June 2008 to contact every personal injury lawyer and law firm in the state to ask them to review their files and to reimburse any clients they may have overcharged and to pay them interest. As at 30 June 2009, 34 law firms have reimbursed 183 clients amounts totaling \$180,256 and we have secured undertakings that will see another 20 clients reimbursed amounts totaling \$197,882 over the year ahead.

Similarly, we routinely ask ourselves when we've investigated a complaint and identified some misconduct whether the conduct could have been prevented or at least detected and dealt with earlier in the piece if only the law firm's principal(s) had properly supervised its employees and kept and implemented appropriate management systems – and, if so, whether we should initiate an own motion investigation into their apparent 'failure to supervise'. We note that:

- the *Legal Profession (Solicitors) Rule 2007* says at rule 37 that '*a principal is responsible for exercising reasonable supervision over solicitors and all other employees in their provision of legal services by the practice.*' Riley's Solicitors Manual 'unpacks' the rule by saying it implies that principals should 'set in place procedures and systems that all employees of a law practice must follow in processing work and regularly monitor compliance at various trigger points, as well as review those procedures and systems.'
- the *Legal Profession Act 2007* requires legal practitioner directors of incorporated legal practices to keep and implement 'appropriate management systems to enable the provision of legal services by the practice under the professional obligations of Australian legal practitioners' and to take 'all reasonable action' to ensure that practitioners employed by

the practice comply with their professional obligations and take ‘appropriate remedial action’ if and when they don’t.

- a principal’s failure to comply with the conduct rule is conduct ‘*capable of constituting unsatisfactory professional conduct or professional misconduct*’⁸ no less than a legal practitioner director’s failure to comply with the statute.⁹
- rule 37 is more broadly expressed and less well articulated than the statutory requirement of legal practitioner directors but differs little in substance. Only a very brave sole practitioner or partner will argue that they have any lesser supervisory responsibilities than a legal practitioner director.

We have used the strategy to powerful ‘capacity building’ effect. We described an investigation matter in last year’s report that we had only just commenced at the time into the conduct of each of several partners of a small law firm. We initiated the investigation after partly investigating a number of serious complaints about the conduct of one of the firm’s employed solicitors and it

became apparent that there had been any number of ‘warning bells’ that should have alerted the partners to the difficulties their employee was getting himself into. We asked the partners to explain why they had failed to heed the signs, or even to notice them, or to have even the most basic systems in place which might have alerted them to the problem – and we put them on notice that we were contemplating initiating disciplinary action alleging their failure to supervise.

We have now finalised the investigation. It prompted the partners to take advice, to undertake supervision training, to oversight all inwards and outwards correspondence including emails, to design and implement appropriate supervisory arrangements and other relevant managementsystems including a complaints management system, and to conduct regular audits of all work in progress. That was a good outcome, from their point of view and ours – and so we finalised the investigation on the basis that there was no public interest in taking the matter further. No better outcome would or could have been achieved.

⁸ Legal Profession Act 2007, section 227

⁹ Legal Profession Act 2007, sections 117–118

PIPA investigation matters

The *Personal Injuries Proceedings Act 2002* (PIPA) imposed restrictions on the advertising of personal injury services in response to a public perception that some personal injury lawyers were ‘ambulance chasing’. PIPA failed to provide any effective enforcement regime, however, and the restrictions were widely flouted. It was amended with effect from May 2006 and the *Legal Profession Act* was amended at the same time to make the Commission responsible for their enforcement through a simple extension to our complaints and investigation matter powers.

We sometimes get complaints about alleged contraventions of the restrictions on the advertising of personal injury services but we don’t think it’s appropriate to confine ourselves to responding to complaints. We believe we have a broader and more pro-active role to ensure compliance and so we systematically monitor the places personal injury advertisements most commonly appear – in the Yellow Pages, local newspapers and on lawyer’s websites – and use our investigation matter power to commence investigations into the advertisements we suspect are non-compliant.

We published *A Guide to Advertising Personal Injury Services* soon after we were given responsibility for enforcing the restrictions and subsequently *A Guide to Advertising Personal Injury Services on the Internet*. The *Guides* set out how we understand the restrictions and propose to enforce them. They make it clear that we want to achieve a much greater measure of compliance, but by persuasion and not prosecution, and that remains our approach – we don’t want to pounce on and prosecute lawyers for non-compliance but want them to review their advertising and to remedy or withdraw any advertisements that fall short of the mark. We also made it clear, however, that we won’t hesitate to prosecute flagrant or wilful or repeated non-compliance.

We make a deliberate effort to ensure that personal injury lawyers and law firms have ready access to clear, relevant and practical advice. We have the *Guides* under constant review and update them from time to time to reflect the feedback we receive from practitioners and others including our colleagues at the QLS and our experience conducting investigations.

We published revised versions of both *Guides* on our website in June and, to ensure their widest possible distribution, published them in the QLS News in July – the weekly electronic newsletter the QLS distributes to its members – and have arranged to publish them in its monthly magazine, *Proctor*, in September.

The advertising restrictions as they apply to law firm websites in particular require careful explanation and preferably illustration and, accordingly, we developed and published an interactive ‘website comparer’ at the same time we published the revised Guides. The ‘website comparer’ enables personal injury lawyers and law firms to view and compare two fictional law firm websites, one of them PIPA-compliant and the other not. It comes complete with pop up boxes that highlight and explain the features which make the dummy websites either compliant or non-compliant.

The 2008–09 reporting year was the third year we’ve been responsible for enforcing the restrictions on the advertising of personal injury services. We commenced and finalised many fewer investigations into alleged or

apparent breaches of the restrictions this year than in either of the two previous years:

- we commenced 23 investigations in 2008–09 compared to 67 in 2007–08 and 98 in 2006–07. They comprised 17 investigation matters and 6 investigations that were prompted by complaints, most of them complaints made by or on behalf of rival law firms competing for business on what they want to be a level playing field.
- we finalised 12 investigations compared to 57 in 2007–08 and 95 in 2006–07. They comprised 7 own motion investigations and 5 investigations that were prompted by complaints.

There are a number of reasons why this year’s numbers are smaller. The first is that we concentrated this year as we said we would in last year’s report not on print advertisements as we have previously but on advertising on law firm websites. This is a more subtle and time consuming exercise. The second is that we made prevention a priority in preference to cure by serial band-aiding, by putting time and

energy into getting the *Guides* right and developing the ‘website comparer’. That took time and energy away from investigation. The third is that we received several complaints early in the year about websites maintained by a number of high profile firms which practise across state borders. It was important to work with these firms to get their websites right, because they set the benchmark by attracting attention, but it was no quick or easy task either for them or us because no two states set the same rules. We met face to face several times with senior people from each of the firms and we want to acknowledge their cooperative approach. Last but not least, we had little choice but to redirect resource during the year to preparing a record number of matters for hearing in the Legal Practice Tribunal, more than a few of which were more than usually complex and time consuming. We return to this issue later in the report under the heading *Our performance: discipline*.

That said, and while the numbers are small, we are pleased to report that:

- we finalised none of the 12 complaints and investigations matters that we finalised during the year by deciding to initiate disciplinary proceedings. We finalised 4 of them on the basis that there was no reasonable likelihood that a disciplinary body would find the advertisement subject to investigation to be non-compliant but, more significantly, we finalised 8 or 67% of them on the basis that no public interest would be served by initiating disciplinary proceedings because the law firms fixed the advertisements subject to investigation to make them compliant.

That is a good result, despite the small numbers. We set out once again and we’ve achieved our goal once again of securing compliance through persuasion, not prosecution. Most law firms have willingly cooperated and we thank them. It is an especially

good result given that we interpret the restrictions strictly to leave the least possible room for slippage and the ‘thin end of the wedge’ arguments that would inevitably accompany any broader interpretation. This seems to us to be the best and probably the only practical way to achieve some certainty and to keep a level playing field – and in particular to look after the majority of lawyers and law firms who do the right thing and who are rightly annoyed by and stand to be disadvantaged by the minority of their colleagues who push the boundaries. They deserve our support.

We expect to initiate very many more investigations during the year ahead. We have conducted a preliminary review of every Queensland law firm website and identified 599 websites which advertise personal injury services and require further investigation. We will progressively work our way through

the list by randomly selecting websites for investigation, identify the website we believe to be non-compliant, contact the firms to tell them what we believe they need to solve the problem, set a time frame and work with them to help them bring their websites into compliance by the due date.

We will take a particular interest in websites published by claims-harvesters – very often people other than lawyers who solicit and assess personal injury claims and pass them on to selected law firms for a fee. These websites are subject to more stringent restrictions than law firm websites, because PIPA prohibits touting,¹⁰ but are difficult to police. Most of them have a national rather than local focus and their proprietors sometimes go to great lengths to disguise their identities, and the identities of the law firms they deal with.

¹⁰ section 68(i) says ‘person must not pay, or seek payment of, a fee for the soliciting or inducing of a potential claimant to make a claim’

Our performance: incorporated legal practices



Standards of conduct in the delivery of legal services have been regulated until very recently almost exclusively by establishing a system for dealing with complaints about the conduct of individual lawyers and, if a lawyer's conduct is shown to fall short of the ethical standards and the standards of competence and diligence that their professional peers and members of the public are entitled to expect, by holding the lawyer to account through a disciplinary process. That system suffers some significant limitations, however, not least that it ignores the reality that lawyers conduct themselves in ways that are a function in part at least of the workplace cultures of the law firms within which they work – that lawyers sell their services for profit within commercial enterprises and that law firms like other commercial enterprises have workplace cultures that shape the

conduct of the people who work for them, for better or worse.

The commencement of the *Legal Profession Act 2007* on 1 July 2007 caused a paradigm shift. It allowed law firms in Queensland to incorporate and to trade as incorporated legal practices. It requires them to keep and implement appropriate management systems, in effect to have an 'ethical infrastructure', and it empowers the Commission to conduct compliance audits of their management systems and supervisory arrangements. It puts their workplace culture to the very front and centre of a new regulatory regime. We think there are strong policy-based arguments and increasingly strong evidence-based arguments why all law firms should be subject to the same regulatory arrangements, incorporated or otherwise.¹¹

¹¹ The Commissioner has argued the case in a series of papers, most recently a paper he delivered at the recent Australian Legal Practice Management Association 2009 Annual Conference. The paper is headed *Rethinking the Regulation of Lawyer Conduct: the Centrality of Law firm Management and Ethical Infrastructures* and is published on the Commission's website.

Some key facts

The number of incorporated legal practices engaged in legal practice in Queensland has grown steadily since 1 July 2007 and continues to grow – see Table 7, below. There were 190 incorporated legal practices in Queensland at 1 July 2009 or 13.7% of all Queensland law firms – 177 of them local firms and 13 of them interstate firms with one or more local offices. We have included more comprehensive data at Appendix 4, but the key facts about incorporated legal practices two years year down the track are these:

- 222 ‘brand new law firms’ have started engaging in legal practice in Queensland since 1 July 2007 – 142 (or 64%) as partnerships, 78 (or 35%) as incorporated legal practices and 2 (or 1%) as multi-disciplinary partnerships;
- 148 existing law firms have restructured since 1 July 2007 – 113 (or 76%) of them to become incorporated legal practices, 33 (or 22%) of them to become partnerships and 2 (or 1.4%) to become multi-disciplinary partnerships;
- 290 law firms have ceased engaging in legal practice in Queensland since 1 July 2007 – 267 partnerships, 21 incorporated legal practices and 2 multi-disciplinary partnerships;
- the 190 incorporated legal practices that were engaged in legal practice at 1 July 2009 employed 754 solicitors (or 10% of all Queensland solicitors) and the 2 multi-disciplinary partnerships a further 164 (or 2% of all Queensland solicitors);

Table 7: incorporated legal practices as a proportion of all Queensland law firms

| | 30 June 07 | 1 July 08 | 1 July 09 | 31 Aug 09 |
|----------------------------|------------|-----------|-----------|-----------|
| Total number of law firms | 1308 | 1328 | 1384 | 1434 |
| Total number of ILPs | 0 | 117 | 190 | 205 |
| ILPs as % of all law firms | n/a | 8.8% | 13.7% | 14.3% |

- 56 or 32% of the 177 incorporated legal practices that have provided us with the relevant information employ only 1 solicitor, 57 or 32% of them employ 2-3 solicitors and only 9 or 5% employ more than 12 practitioners; and
- 25 or 42% of the 49 incorporated legal practices that have provided us with the relevant information anticipate a gross fee income for the year of less than \$500,000, 11 or 19% of them an income of less than \$1,000,000, 10 or 17% and income of between \$1,000,000 and \$5,000,000 and only 3 or 5% an income of more than \$5,000,000.

We also know (although the numbers are small and it's too early to make much of it) that incorporated legal practices are significantly less likely than their more traditionally structured counterparts to be subject to complaint. We know that:

- incorporated legal practices made up almost 9% of all Queensland law firms at 1 July 2008 and almost 14% at 1 July 2009 but were subject to only 2.8% of the complaints we received during the 2008–09 year; and
- 1 in 7 incorporated legal practices were subject to a consumer dispute or conduct matter during the year compared to 1 in 4 of traditionally structured firms.

We note in this respect that Dr Christine Parker of the Melbourne University Law School last year researched the first six years of data from New South Wales (where law firms have been allowed to incorporate since 2001) and found 'compelling evidence' that the regulatory requirement that incorporated legal practices keep and implement appropriate management systems and undertake compliance

audits significantly reduces their exposure to complaints. She found that the complaint rate per practitioner per year for incorporated legal practices *after* they completed their initial compliance audits is one third the complaint rate *before* they completed the audit, and that the reduction is ‘statistically significant at the highest level’.¹²

The regulatory framework

We will regulate the provision of legal services by incorporated legal practices in part at least in exactly the same way we regulate the provision of legal services by any other law firm – by responding to complaints and, if we suspect all is not as it should be, by initiating ‘own motion’ investigations.

Notably, however, the Act requires incorporated legal practices to have at least one legal practitioner director and imposes obligations on legal practitioner directors over and above their ordinary professional obligations as lawyers. There are others, but their key additional obligation is to ‘keep and implement appropriate management systems to enable the provision of

legal services by the practice under the professional obligations of Australian legal practitioners and other obligations imposed under the Act’.

The word ‘enable’ is important – it means that management systems count as appropriate in this context only if they support and encourage a firm’s employees to do the right thing and discourage and deter them from doing the wrong thing and, allowing for the fact that even the best systems might be less than completely successful in that regard, only if they maximise the likelihood any wrongdoing will be detected and dealt with, including with appropriate remedial action.

The obligation to keep and implement appropriate management systems is in effect an obligation to build and maintain an ‘ethical infrastructure’ and it is no small matter. Legal practitioner directors who fail to take ‘all reasonable steps’ to honour their obligations in this regard can be found guilty of unsatisfactory professional conduct or professional misconduct for that reason and that reason alone.

¹² We have published Dr Parker’s research report on our website – www.lsc.qld.gov.au – at the bottom of the Incorporated Legal Practices and Multi-Disciplinary Partnerships page, under the heading *Research report: Assessing the impact of management based regulation on NSW incorporated legal practices*, 25 September 2008.

Importantly, the Act empowers us to conduct an audit (a ‘compliance audit’) of an incorporated legal practice – and to conduct an audit ‘whether or not a complaint has been made’ – about:

- ‘the compliance of the practice, and of its officers and employees, with the requirements of [the Act] or a regulation, the legal profession rules or the administration rules so far as they apply to incorporated legal practices’; and
- ‘the management of the provision of legal services by the incorporated legal practice, including the supervision of the officers and employees providing the services.’

The Act says nothing about how we should go about a compliance audit but gives us if we need them all the same powers and more than we have in relation to complaints and investigation matters – powers to require reasonable help and cooperation in conducting an audit, to require the production of documents and information, to enter places including if needs be by warrant, to examine books, to seize evidence, to examine persons and to hold hearings. These are significant powers.

Compliance audits

We conduct two types of audit – internal or self-assessment audits that we require incorporated legal practices to undertake themselves, through their legal practitioner directors, and external audits that we undertake, looking in from the outside.

Internal or self-assessment audits

We have adopted the self-assessment audit process that has been used for some time now in New South Wales. We require legal practitioner directors to audit their firm’s management systems and supervisory arrangements shortly after they give the required notice of the firm’s intention to start engaging in legal practice as an incorporated legal practice and to assess how effectively their systems achieve:

- competent work practices to avoid negligence
- effective, timely and courteous communication
- timely delivery, review and follow up of legal services to avoid delay

- acceptable processes for liens and file transfers
- shared understandings and appropriate documentation covering cost disclosure, billing practices and termination of retainer
- timely identification and resolution of conflicts of interests
- appropriate records management
- well understood procedures for authorising and monitoring compliance with undertakings
- effective supervision of the practice and its staff, and
- compliance with trust account regulations and accounting procedures.

We expect legal practitioner directors to engage positively with the exercise and to candidly identify any aspects of their practice's management systems that might require or benefit from improvement. We require them to return the completed self-assessment form to us within a designated period and we evaluate the information and begin a conversation with them about what further steps they might take, if any, to fix any perceived weaknesses.

We've published the self-assessment form on the Commission's website and expect that incorporated legal practices will be able to complete and lodge the form on-line from October. It is an only slightly revised version of the form that has been used in New South Wales for some years now but includes an entirely new section which requires legal practitioner directors to provide us with information about the firm's non-legal directors and their occupations, its shareholders and their relationship to the law practice, the number of lawyers it employs, its gross fee income and the nature of the services it provides other than legal services, if any. We require incorporated legal practices to update that information annually, in an annual survey that will also be available on-line from October.

External audits

We have implemented a program of external audits to test whether the self-assessment audits legal practitioner directors undertake at our request are giving us a fair and reasonable and for that matter an honest appraisal of the actual state of play. We can't simply take their word for it. Our external audits are designed to meet four fundamental criteria:

- to be and be seen by incorporated legal practices and our other stakeholders to be credible and robust, and sufficiently credible and robust to justify public confidence in the provision of legal services by incorporated legal practices and that we're on the job, as it were;
- to be fully consistent with and to complement the 'ethical capacity building' thrust of the initial self-assessment audits. They should make a difference and a difference for the better, and add value in ways we can point to and defend;
- to allow for the fact that we will inevitably have limited resources to put to the task; and
- to not add any unjustifiable regulatory burden but to keep compliance costs to incorporated legal practices proportionate to the potential significance of the information we're seeking to obtain.

It follows that we conduct comprehensive external audits only occasionally, and only of those incorporated legal practices we believe to be most at risk of non-compliance. We are rapidly acquiring the data and

the skills and the analytical capacity we need to make evidence-based risk assessments of those kinds.

We conduct two types of external audit – web-based surveys and comprehensive on-site reviews.

a) web-based surveys

We have designed three short, sharp web-based surveys to date which test discrete aspects of a law firm's ethical infrastructure – a workplace culture check, a complaints management systems check and a billing practice check for medium to large law firms. We have several more surveys in various stages of preparation – they address issues to do with civility in professional communications, supervision and a lawyer's duties to courts and third parties – and we plan to be continually adding to them.

The surveys are directed not just to a firm's legal practitioner director(s) but to all its employees, or in larger firms at least good-sized samples of the different levels and classifications of their employees – directors, senior lawyers, junior lawyers, paralegals and other support staff. We want them to give us, and give their firm, a window on how the firm's policies and

procedures and systems are understood and implemented ‘down the line’. Their answers and in particular the patterns of their answers across the different levels and classifications of a firm’s employees will be a handy indicator of which of its management systems if any might need improvement.

The surveys are purpose-built to take no more than and preferably less than 30 minutes to complete and to be equally resource-friendly from our point of view – we build them using ‘off the shelf’ software that automatically calculates the results.

They have potential to add value beyond the window they give us and they give the firms subject to audit on their ethical infrastructure. We will publish the aggregated and de-identified results on the Commission’s website both to enable law firms to compare themselves with their peers and the de facto industry standard and to serve a broader public interest by exposing law firm culture to public scrutiny.

b) on-site reviews

On-site reviews by their very nature are a more resource intensive exercise both from our point of view and the point of view of the law firms

subject to audit, and it follows that we envisage conducting audits of this more intensive kind very much less frequently than web-based surveys and only on an ‘as needs’ basis – on the basis of a risk assessment that tells us that a firm or some aspects of its practice are or are highly likely to be non-compliant. They comprise tailor-made combinations of some or all the following kinds of activities:

- further web based surveys of the kinds we have already described
- traditional desk-top policy and procedure reviews
- detailed analyses of the firms’ complaints history, including detailed analyses of the investigation files held by the Commission
- interviews with legal practitioner directors, supervisors and managers
- interviews with and / or focus groups of individual employees ‘down the line’
- interviews with and / or focus groups of clients, including but not only clients who have lodged complaints with the Commission

- interviews with third parties including, for example, practitioners from other law firms that have regular dealings with the law firm subject to audit
- reviews of selected or randomly selected client files and bills, in-house complaints registers and the like
- client satisfaction surveys, and
- mystery or 'shadow' shopping – having real or pretend consumers deal with the firm and behave exactly as a genuine client might behave and asking them to report their experience.

Our performance to date

It is early days, but:

- we initiated self-assessment audits of 74 incorporated legal practices during the year (in addition to the 102 we initiated in 2007–08) and completed 90 (in addition to the 61 we completed in 2007–08). They most commonly identified their systems in relation to communication, delay, negligence, and supervision as needing improvement and least commonly identified their systems in relation to their trust accounts.

- we asked 50 incorporated legal practices to complete the complaints management systems check in May and June 2009 and 36 firms, and a total of 278 people at those firms including lawyers, managers, paralegals and other support staff completed the survey by 30 June. We have published the aggregated and de-identified results on our website (on the Ethics Checks for Law Firms results page).

We note that 64% of the 278 people who completed the survey said they found it to be either very helpful or helpful in assessing their firm's complaints management systems and that only 4% said they found it unhelpful. Notably 80% of them said their firm has a complaints management policy and/or procedure and 96% of them that their firm encourages the reporting of complaints to management.

We sent the legal practitioner directors of each of the 36 firms which completed the survey by 30 June an audit report setting out their firm's results and included the aggregated results of all 36 firms to enable them to make the obvious comparisons. The aggregated

results suggest a number of ways in which law firms could improve their complaints management systems:

- by defining what they count as a complaint – only 44% of the people who completed the surveys said their firm's complaints management policy and /or procedures defined what they meant by a 'complaint';
- by reviewing and monitoring their complaints data – the results suggest that few if any firms monitor or regularly review the data they capture about complaints to help them identify and correct problems in the firm's delivery of legal services; and
- by informing their clients and other stakeholders about their complaints management policies and procedures – only 5% of the participating firms which have websites include relevant information to assist their clients and others who have concerns to bring their concerns to attention by way of complaint and to understand how the firm deals with complaints.

We asked those legal practitioner directors to give us feedback. Notably 14 of the 22 who responded said they found the survey to be either helpful or very helpful in assessing the adequacy of their complaints management systems and only 1 of them said it was unhelpful. Similarly, 14 of them said their firm had changed the way it goes about its business as a result of participating in the survey and all but 1 of them said it could potentially have changed the way they go about their business, even if it didn't on this occasion.

One legal practitioner director sent us the following unsolicited feedback: 'I just wanted to thank you and your team for your proactive approach in assisting firms step up to the mark in complaints management. Clearly we have a lot of work to do, and your work has provided me with some great ideas on preparing the materials we need...'

We are working currently with two leading legal academics to put our use of this innovative methodology on the public record by publishing an article in an Australian legal journal which explains our

rationale, describes how the law firms responded, further analyses the results and exposes this aspect of law firm culture to public scrutiny.

- we initiated 2 on-site reviews during the year and completed 1 of them by 30 June. The audit took a week and involved visiting each of the firm's 3 offices, interviewing 30 of its staff, reviewing its policy and procedure manuals and sample client files and undertaking a tailor-made web-based survey. The information obtained during the audit took approximately three weeks to review. We provided the firm's legal practitioner director with a draft audit report which identified several management practices we believed to pose 'ethical risks' and recommended corrective action. The firm's legal practitioner directors responded positively to the draft report and implemented strategies in response to each of our recommendations.
- finally, we have continued to adapt and enhance our data base to achieve a two fold purpose – to improve

the range and quality of the data we keep about incorporated legal practices with a view to helping us develop increasingly evidence based risk-assessments and in turn to direct our scarce regulatory resource to where it is most needed; and to enable incorporated legal practices to complete, lodge and manage their self-assessment and related audits and annual surveys on-line, both for their convenience and ours. We have developed a test portal which not only 'pulls' self-assessment and annual survey data in from incorporated legal practices but 'pushes' helpful data out to them including de-identified but comprehensive complaints and other risk data specific to their firm, information that to our knowledge has previously never been made available. The portal will have the address www.lpportal.org.au and will be live by the time this report is published in November. We describe the portal in more detail later in the report under the heading *Our people and our systems*.

Our performance: discipline

The Act gives the Commissioner sole authority to decide what action, if any, to take on a complaint or investigation matter after it has been investigated and it gives the Commissioner wide discretion in the exercise of that authority. It authorises the Commissioner to make a discipline application to a disciplinary body following a complaint or investigation matter ‘as the Commissioner considers appropriate’ and to dismiss a complaint or investigation matter if ‘there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct... or it is in the public interest to do so.’

We make a discipline application to the Legal Practice Tribunal (LPT) if we believe there’s a reasonable likelihood of a finding of professional misconduct and to the Legal Practice Committee (LPC) if we believe there’s a reasonable likelihood of a finding of unsatisfactory professional conduct but not of professional misconduct. We’ve developed guidelines which describe



how the Commissioner exercises those discretions and have published them on the Commission’s website for the information of the profession, legal consumers and members of the public.

We are also responsible for commencing criminal prosecutions for certain offences under both the *Legal Profession Act 2007* (engaging in legal practice without having a practising certificate, for example, or causing or inducing or attempting to cause or induce a legal practitioner director of an incorporated legal practice to contravene his or her professional obligations) and the *Personal Injuries Proceedings Act 2002* (touting at the scene of an accident or breaching the restrictions on the advertising of personal injury services).

Disciplinary action in 2008–09

We have attached more detailed statistical data at Appendix 4 but set out the key facts in Tables 8 and 9. The single most notable fact is the significant increase in the number of matters that were heard

and decided by the disciplinary bodies during the year – 30 compared to 10 in 2007–08, excluding 2 additional matters that were part-heard and 3 that were heard but not finally decided at 30 June (because they were waiting judgement or within the appeal period). The increase is not due to an increase in the number of prosecution matters – we opened fewer prosecution files in 2008–09 than in any other year since we commenced in 2004–05 – but because of the disciplinary bodies’ improved case management processes, particularly the LPT.

We noted in last year’s report that there was a ‘bank up’ of matters waiting finalisation by the disciplinary bodies, especially by the LPT, in large part because we were experiencing difficulties getting respondent practitioners to respond to discipline applications in a timely way in the absence of set hearing dates, and in particular to identify the allegations they intended to concede or dispute. We noted that the Chief Justice and the Senior Judge Administrator acted promptly to resolve the problem when it was brought to their attention and that we expected the remedial measures

Table 8: prosecution matters commenced since 2004/05

| | 04-05 | 05-06 | 06-07 | 07-08 | 08-09 |
|--|-------|-------|-------|-------|-------|
| Prosecution file opened but discipline application/summons not yet filed as at 30 June | 9 | 15 | 10 | 12 | 6 |
| Discipline application filed with the Legal Practice Committee | 6 | 13 | 11 | 8 | 6 |
| Discipline application filed with the Legal Practice Tribunal | 11 | 24 | 25 | 20 | 16 |
| Summons issued in the Magistrates Court (in relation to alleged offences) | 0 | 0 | 0 | 0 | 2* |
| Number of prosecution files opened | 26 | 43 | 33 | 29 | 21 |
| Number of prosecution files on hand at 30 June | 24 | 42 | 34 | 44 | 31 |

* Both these matters involve an allegation that a person has engaged in legal practice when not entitled (because the person is not an Australian legal practitioner).

they took would resolve the problem this year and it has.

Notably the Senior Judge Administrator scheduled the LPT to sit at regular intervals well in advance, the Chief Justice issued practice directions (Practice Directions 1 and 2 of 2008) which require respondent practitioners to file a reply to a discipline application

within 28 days specifically to narrow and isolate the issues in dispute, and the LPT conducted call-overs of all outstanding matters at the commencement of each of its sittings.

We note, incidentally, that the significant extra prosecution throughput this year, which included more than a few

Table 9: prosecution matters heard and finally decided since 2000/01

| | 01-02 | 02-03 | 03-04 | 04-05 | 05-06 | 06-07 | 07-08 | 08-09 |
|--------------------------------------|--------------|--------------|--------------|----------|-----------|-----------|-----------------|------------------|
| Solicitors Complaints Tribunal | 23 | 26 | 25 | 3* | n/a | n/a | n/a | n/a |
| Legal Practice Committee | n/a | n/a | n/a | - | 10 | 8 | 5 | 6 |
| Legal Practice Tribunal | n/a | n/a | n/a | 2 | 9 | 18 | 5 [#] | 21 ^{^^} |
| Court of Appeal | [^] | [^] | [^] | - | 2 | - | 0 ^{**} | 3 |
| Magistrates (or other) court | - | - | - | - | - | - | - | - |
| Total heard and decided | 23 | 26 | 25 | 5 | 21 | 26 | 10 | 30 |
| <i>plus withdrawn / discontinued</i> | u/a | u/a | u/a | - | - | 15 | 9 | 5 |
| Prosecution files closed | 23 | 26 | 25 | 5 | 21 | 41 | 19 | 35 |

* These 3 matters were part-heard in the SCT when the new Act came into effect on 1 July 2004.

[^] The Court of Appeal figures for these years are included in the figures for the SCT.

[#] This figure does not include a further 2 matters that were heard but not finally decided at 30 June 2008.

^{**} There were 2 matters under appeal at 30 June, 1 of which was heard but not finally decided and 1 which was yet to be heard.

^{^^} This figure does not include a further 3 matters that were heard but not finally decided at 30 June and 2 matters that were part heard.

complex contested matters that required significant preparation, required that we redirect resource from dealing with complaints and investigation matters – hence explaining in part at least our reduced throughput this year in those areas.

We note the following:

- we had 44 prosecution matters on hand at 1 July 2008. We opened 21 prosecution files during the year arising from 37 separate complaint and investigation matters and had 31 matters on hand at 30 June (including 5 matters that were either part-heard or heard but not finally decided by the LPT). We filed 16 discipline applications with the LPT during the year and 6 with the LPC, and we commenced 2 matters in the Magistrates Court (both of them alleging the offence of engaging in legal practice when not entitled).
- the 30 matters that the disciplinary bodies heard and finally decided during the year involved 24 solicitors (or 1 in every 310

of the state's solicitors) and 6 barristers (or 1 in every 158 of the state's barristers) and, while not every charge was proved, only 1 practitioner (a barrister) was completely exonerated – 29 of the respondent practitioners were subject to one or more findings of unsatisfactory professional conduct and / or professional misconduct.

- the Court of Appeal heard and decided 3 matters on appeal from the LPT – 2 of them appeals by the respondent practitioners, 1 of which was dismissed and 1 upheld, and 1 of them an appeal by the Commissioner. The Commissioner's appeal was dismissed.
- the LPT made a total of 48 findings of professional misconduct and 20 of unsatisfactory professional conduct against 20 practitioners in all, 6 of whom were struck off, 1 of whom was suspended and ordered to undergo further professional development, 9 of whom were reprimanded and fined, 2 of whom were reprimanded and ordered to

undergo some further professional development or mentoring and 2 of whom were reprimanded only.

- the LPC made 7 findings of unsatisfactory professional conduct against 6 practitioners, 2 of whom were fined and reprimanded, 3 of whom were reprimanded only and 1 of whom was not subject to any penalty.
- the numbers are relatively small but the 2008–09 prosecutions data in relation to age and gender reflects this year as in previous years the same pattern as the complaints data – women lawyers are several times less likely than men lawyers per head of population in the profession and younger lawyers and comparatively inexperienced lawyers are significantly less likely than older and more experienced lawyers to find themselves being prosecuted for misconduct.

We made it our practice this year as in years past to include the names of all the practitioners who were subject to findings of professional misconduct or unsatisfactory professional conduct on the discipline register on our website and to include a link in each case to the judgment of the disciplinary body which found against them. The judgments set out the charges and the disciplinary body's findings, reasons for decision and orders.

It is fundamentally important, in our view, that this information be published and readily accessible both to practitioners and the public – to ensure the openness and transparency of the disciplinary process, and to alert practitioners and the public alike to forms of conduct that the courts and disciplinary bodies have decided fall short of the ethical standards and the standards of competence and diligence that members of the public are entitled to expect of a reasonably competent

Australian legal practitioner and to deter such conduct.

Some of the judgments that were delivered during the year dealt with issues that are central to a practitioner's fitness to practise,¹³ for example, and others with the duty of confidentiality¹⁴ and the duty not to mislead an opponent even by silence in circumstances in which the opponent relies on information provided by a practitioner which the practitioner subsequently comes to know is false.¹⁵

Those judgments all made findings of professional misconduct but several other important and instructive judgments made findings not of professional misconduct but of unsatisfactory professional conduct. One of those judgments dealt with the standard of competence and diligence a member of the public is entitled to expect of practitioners who take instructions to execute an enduring power of attorney from someone they ought realise might lack capacity

to give instructions,¹⁶ and two the standard a member of the public is entitled to expect of solicitors and barristers preparing criminal matters for trial.¹⁷

We have included findings of unsatisfactory professional conduct on the discipline register for the benefit of the profession and the public but the Ombudsman has recommended that we cease that practice, that we restrict the register to identifying practitioners who have been subject to findings of professional misconduct and that we remove any information that identifies practitioners subject to findings of unsatisfactory professional conduct but not of professional misconduct. We have accepted that recommendation and, accordingly, have agreed to amend the register by October. Discussions are continuing, but the likely outcome is that we will publish the judgments of the disciplinary bodies including judgments which make findings of unsatisfactory professional conduct on

13 see *LSC v Madden No.2* [2008] QCA 301 and *LSC v Voll* [2008] QCA 293

14 *LSC v Tampoe* [2009] LPT 014

15 *LSC v Garrett* [2009] LPT 012

16 *LSC v Ford* [2008] LPT 012

17 *LSC v Krebs* [2009] LPT 011 and *LSC v Anderson* [2009] LPT 001

another page of our website, completely separate to the discipline register. The background to the issue is this:

- the *Legal Profession Act 2007* (the Act) requires the Commissioner to keep a discipline register of practitioners who have been subject to disciplinary action taken under the Act.¹⁸ It defines ‘disciplinary action’ to be a decision by a court or the Tribunal that finds a practitioner guilty of professional misconduct.¹⁹
- we have included on the register the names of practitioners who have been subject to findings of unsatisfactory professional conduct on the basis that, while the Act does not require us to include that information, nor does it prevent us.²⁰
- the Ombudsman expressed a contrary view – that the Act prevents us including that information on the register. We sought advice from senior counsel and were told that ‘reasonable minds could differ’ but that the ‘better view, albeit finely balanced’ is that the Ombudsman

is correct. Hence we have agreed to remove the information from the register.

- it is common ground, however, that the Act allows the courts and the disciplinary bodies to publish their decisions and, accordingly, the Court of Appeal and the LPT publish their disciplinary decisions on the Queensland courts website and we are at liberty to reproduce them on ours. The LPC has no independent capacity to publish its decisions – it relies on the Commission to provide it with administrative support²¹ – but is at liberty to ask the Commission as its secretariat to publish them on its behalf.

Hence we propose to publish every disciplinary decision of the courts and the disciplinary bodies on our website, on a separate page to the discipline register, subject only to the LPC formally asking us to publish its decisions on its behalf and subject, obviously, to any non-publication orders.²²

¹⁸ section 472

¹⁹ section 471

²⁰ we relied primarily on section 705(1)(d) in coming to this view

²¹ section 625

²² see section 650

Our performance: projects and research

We have no specific obligation under the *Legal Profession Act 2007* but we see it as part of our core business to communicate what we learn as we go about the work we have described earlier in the report and to contribute to related policy discussion. We also see it as part of our core business to support and undertake projects and research directed to helping lawyers and law firms deliver legal services to high ethical standards. We want to be proactively preventative, in so far as we can, and not confine ourselves merely to dealing with complaints and non-compliance after the event. We set out accordingly to:

- publish and disseminate information describing our experience to date and future plans for dealing with complaints and conducting compliance audits



- analyse our experience and data base to identify the lawyers, law firms and aspects of legal practice most at risk of complaint or non-compliance and to publish and disseminate our findings
- contribute speakers to and otherwise support undergraduate and continuing legal education programs directed to helping lawyers and law firms to deliver legal services to high ethical standards
- undertake, facilitate, broker and partner the professional bodies, university law schools and other legal services stakeholders in undertaking practical projects and research directed to helping lawyers and law firms to deliver legal services to high ethical standards, and to

- contribute to the development of legislative and regulatory reforms and policy directed to helping lawyers and law firms to deliver legal services to high ethical standards.

We've been busy, and are pleased to report that:

- we recreated our website into 'red dot' format which enables us to add content ourselves, without relying unduly on technical support, and set about a 'makeover' to give the site a cleaner look; to make it easier to navigate; to make our roles and processes more transparent; to make more and better information and interactive resources available to the profession and the public alike; to enable inquirers and complainants to make their inquiries and complaints on-line; to solicit feedback about our performance and to publish that feedback – and generally to 'push' more information out there and to 'pull' more information in to make ourselves more accessible and accountable. We refer in particular to the *Our performance* button on the drop down menu under the *About the Commission* box on the home page, and the *Headline Issues*,

Your Feedback, Ethics Checks for Law Firms and Interactive Scenarios boxes on the home page.

- we have collected and analysed our complaints data as in previous years and cross-referenced that data with data about the characteristics of the lawyers subject to complaint including their age, gender, post-admission experience and the geographic location, size and business structures of the law firms in which they practice. Similarly we have collected data about the compliance audits we have undertaken of incorporated legal practices and begun thinking through how we might best make evidence-based risk assessments which identify the lawyers and law firms most at risk of complaint or non-compliance with a view to better positioning ourselves to craft preventative strategies and direct our scarce resource to where it can be most effective.

We have included the de-identified and aggregated data at Appendix 4 and 'cherry-picked' it for inclusion under the relevant sub-headings in the main body of the report. We

will make the data available on-line during the year ahead, and in due course with a search engine that will enable legal academics and others to interrogate the data. We discuss this project in more detail later in the report under the heading *Our People and Our Systems*.

- we have continued the research we commenced last year with Dr Francesca Bartlett of the University of Queensland Law School which seeks to understand why the complaints data shows year after year that women lawyers are several times less likely per capita than their male counterparts to find themselves subject to complaint and to prosecution for disciplinary offences. Dr Bartlett published the findings in an article in the July 2009 edition of the Griffith Law Review (Volume 17, Part 1) under the title *Professional Discipline against Female Lawyers in Queensland – a Gendered Analysis*.
- we completed 32 speaking engagements during the year, exactly half as many as last year but better targeted. The Commissioner and/or staff of

the Commission spoke at all 6 practice management courses conducted by the QLS for solicitors who are seeking to upgrade their practising certificates to enable them to become principals of law firms, whether as a sole practitioner, partner or legal practitioner director; 5 at compulsory professional development workshops conducted by the professional bodies and private continuing legal education providers; 6 to law students completing their undergraduate law degrees or practical legal training; 3 at professional conferences including the BAQ Annual Conference, the Annual QLS Symposium and the Australian Lawyer's Alliance Annual Conference and 2 at the Third International Legal Ethics Conference (ILEC). The Commissioner also addressed the judges of the Supreme Court.

We have published the more significant of those speeches on the Commission's website and several of them have been or will be published elsewhere. An edited version of the paper the Commissioner and Practice Compliance Manager gave at the

ILEC conference has been published in the International Journal Legal Ethics (Volume 11, Part 2, Winter 2008) and an edited version of the paper Dr Bartlett and our Policy and Research Coordinator gave at the conference has been submitted for publication to the International Journal of Legal Practice.

- we have planned the sixth and seventh symposia in the highly successful *Lawyers, Clients and the Business of Law* series we have co-hosted with Griffith Law School since November 2005 – one on *Shouldering the Supervision Load* and the other on *Educating Lawyers for the Ethical Challenges of Practice*. They will be held in August and October respectively and we will publish reports of both events on our website as we have of all the previous symposia in the series.
- we encouraged people who made inquiries of us or complaints to give us their feedback by completing a *Your feedback* survey, and similarly lawyers who have been respondents to complaints and our stakeholders more generally. The

survey forms are readily accessible on our website in both on-line and downloadable versions and we provide hard copies on request. We routinely include an invitation to complainants and respondents to consider participating in the survey in the closure letters we send them advising them of the outcome of the complaint and we made a special effort periodically to improve the take up – we personally contacted everyone who made an inquiry during November and May to invite them to complete the survey and similarly the complainant and respondent to every complaint we finalised in August and February. We contacted them by email wherever possible and included a link to the relevant survey form, or alternatively by writing and enclosing a hard copy survey form together with a stamped self-addressed envelope. We invited our stakeholders to give us feedback in the electronic mail-outs that the QLS, BAQ, the Women Lawyers Association and other professional groups send their members, and made a special effort by emailing invitations to everyone we knew to have attended

any of our symposia or participated in a project or represented a practitioner subject to complaint.

The take up rate was not great, despite our best efforts – only 35 or less than 2% of inquirers completed the survey, only 50 or less than 5% of complainants, only 15 or just more than 1% of respondents, and only 100 of potentially many thousands of stakeholders. We have published the results in full on the *Your Feedback* page of our website, including the ‘raw’ statistical results, the complete and unedited comments that most of the people who answered the surveys added in the free text boxes that accompanied many of the survey questions, and our analysis of – ‘our take’ on – the results.

- we finalised the first 3 of what we hope and expect will become a varied and growing suite of web-based surveys or ethics checks – a workplace culture check, a complaints management systems check and a billing practices check for medium to large law firms. We designed them to enable law firms to test their ethical infrastructure

– the policies and procedures they have in place to support them in delivering legal services ‘under the professional obligations of Australian legal practitioners’ and the unwritten rules and ‘the way we do things around here’, the values, the customs, the management behaviours and patterns of incentives and disincentives explicitly stated or otherwise that motivate and sustain their people to conduct themselves ethically or alternatively that leave them to their own devices or worse, by implicitly encouraging them to conduct themselves unethically.

We encourage law firms to complete the surveys voluntarily, to take their ethical pulse, but we also use them as a form of compliance audit of incorporated legal practices. We described the concept in some detail earlier in the report under the heading *Our performance: incorporated legal practice*, and described the results and the feedback we received after we required 35 incorporated legal practices to complete the complaints management systems check. We will not repeat ourselves here except to say, while it’s early

days, that the evidence to date is that they will be a well accepted, important and useful regulatory and ethical capacity building tool.

The feedback has been overwhelmingly positive, and not only from those 35 incorporated legal practices – 15 law firms volunteered to complete the workplace culture check survey in February and (because some of them had branch offices) 30 law firm offices and 478 of their people took part. Only 3 of those firms were ILPS. We have published the results on our website, both the aggregated results and the results for each of the 15 firms and 30 branch offices. They make interesting reading, not least the cross-tabulations which compare the individual respondents' answers against their seniority within their firm, the length of their post-admission experience and their gender.

Importantly 73% of the 478 individual respondents said they found the exercise either very helpful or helpful in reflecting on the ethical culture of their firm and only 3% said they found it unhelpful. Similarly

all but 1 of the 15 senior partners and legal practitioner directors we asked to give us feedback after the results were published told us that the exercise was either very helpful or helpful to them in helping them assess the strength of their firm's ethical culture. None of them said it was unhelpful – indeed 8 of them said that their firm decided to adjust some of its systems following the survey, by changing their induction program, for example, and including ethics as a standard agenda item at partners meetings. Notably 9 of them answered 'no' when we asked them 'would expecting firms to undertake the workplace culture check of similar survey annually as a mandatory regulatory exercise be too great a regulatory burden?' and only 5 of them answered 'yes' – and 4 of the 5 who answered 'yes' qualified their answer and only 1 of them appears to have rejected the proposition outright.

Developing the surveys has been a 'learning by doing' exercise. We designed the 3 surveys in close consultation with sympathetic

lawyers and legal academics and we road-tested early versions with several equally sympathetic law firms and they are all the better and more practical and relevant for that. We will continue to take that collaborative approach. We have begun a detailed statistical analysis of the results of the workplace culture check survey with researchers at the Melbourne and Griffith University Law Schools and that process has been instructive also, from a methodological and survey design point of view, and the survey instruments will be the better for it in future and that is good news too.

We have several further surveys in various stages of development – a supervision practices check, a civility check and a duties to the courts and third parties check.

- we finalised the third in the elder law series and the fourth overall of the interactive on-line ethical scenarios we have developed over the past few years in collaboration with the Centre for Biological Information Technology at the University of Queensland and published on our website. We wanted to explore

new and interesting ways to give lawyers, law students and members of the public opportunities to engage with and try out their preferred solutions to some real world ethical dilemmas that arise in the everyday practice of law. It seems the project is beginning to bear fruit. We received, accidentally it seems, some glowing feedback from a law student at QUT who described the scenarios as ‘absolutely brilliant’. We discovered on further inquiry that their teachers asked final year law students at QUT to complete the scenarios as part of their Learning in Professional Practice course and to post their feedback in an on-line discussion forum as part of their assessment. We’re told that the feedback that was posted to us by mistake is typical. We developed a feedback survey accordingly, and included it with the scenarios on our website. So far 9 people have responded, including 6 students, 2 legal academics and a lawyer. They describe the scenarios as realistic and useful for thinking through the issues – a lecturer wrote that they were ‘a useful tool for teaching a small class... The [story

lines] within the scenarios were representative of important issues that arise in small general practice. They lend themselves to wider discussion about confidentiality, loyalty and lawyer-client interactions.' A student said they are 'interesting, fun and entertaining... and encouraged me to think.' We note that other agencies have followed our lead and are beginning to use the same problem-based learning software for purposes of their own, including the Queensland Public Law Clearing House (QPILCH).

- we made further written and oral submissions to the Tribunals Review Project team about the Queensland Civil and Administrative Tribunal (QCAT) legislation and related regulations and consequential amendments to other legislation.
- we continued our membership of the Working Group on Well-being and Depression in the Queensland Legal Profession convened by the QLS in partnership with the Commission, the BAQ, the College of Law, Lexon Insurance, LawCcare, and industry representatives. The group was

established to strategise how best to address the unacceptably high levels of depression, work-related stress and psychological ill-health in the legal profession which both local and international research shows to be several times greater than in other professions and the public at large. This is an issue of the greatest importance – their lethargy and impaired judgment puts these lawyers at ethical risk and comes at a high cost to them and their families if left untreated, and at a high cost to their law firms and of course their clients – and is arguably the single greatest ethical challenge facing the profession.

The group has set itself some quite specific objectives, including to measurably reduce the incidence of depression among Queensland lawyers, to measurably reduce the number of professional indemnity claims made against lawyers where 'personal factors' are a major contributing factors, to measurably increase the use of LawCare and other employee assistance services and to ensure that all university law school curricula

and continuing legal education programs including the Practice Management Course specifically include training related to personal resilience, well-being, supervision and sustainable performance.

We have set ourselves a specific objective, too. We estimate that a significant percentage of the lawyers we deal with as respondents to complaints and discipline applications, perhaps a third of them, are struggling to cope. We will make it a priority over the year ahead to find ways in conjunction with the QLS and the BAQ to use our respective powers to best advantage to give respondent practitioners appropriate professional and personal support should they need it at the same time as taking appropriate measures including disciplinary measures if needs be to protect their clients and the public.

Our people and systems



Our performance in dealing with the world beyond our office is inevitably a function of our ‘internal’ performance and the strength of our workplace culture. We make a deliberate effort to nurture and sustain a productive and motivating, collegiate work environment.

Our people

The Commission may be the centrepiece but the system established under the Act for dealing with complaints extends beyond the Commission to include the people at the QLS and the BAQ who deal with complaints on our behalf. The system is best conceived holistically.

We have attached a chart at Appendix 2 that describes how the system as a whole has been staffed since its inception on 1 July 2004. We note that the total number of full-time equivalent staff has settled in recent years at a number (32.2) only slightly greater than the number (28) when the system first commenced. That is a good outcome given that the Commission has taken on significant additional responsibilities – for enforcing the restrictions on advertising personal

injury services and for conducting compliance audits of incorporated legal practices – and at the same time added value to the system by developing a capacity that was previously lacking to undertake projects and research. We’ve included for completeness at Appendix 3 a table describing what it all costs.

The Commission for its part is only a small organisation of 18.2 full-time equivalent people. We set out on our inception to get the right people with the right values in the right numbers and we believe we have got that pretty right. We note, because we are sometimes accused by practitioners who find themselves subject to complaint of ‘being out of touch with life at the coal face’, that 11 of our 19 people are lawyers and that between them they brought 171 years of practical legal experience to the Commission on their commencement – 119 years in private legal practice as solicitors or barristers, 39 years as government legal officers and 13 years as in-house counsel. We note also that there has been little staff turnover but for the comings and goings associated with several staff taking maternity leave – only one of our people resigned in 2008–09, to go

interstate for personal reasons, and only one the year before, to undertake full time study.

We have set out to squeeze the best possible advantage from our small size by creating a workplace culture characterised by open communication and knowledge sharing of both formal and informal kinds. We encourage our people to seek and take and give advice to each other as a routine part of the way they go about their work, and they do. We note that:

- the Commissioner or the Manager-Complaints as the Commissioner's delegate in many day to day matters are formally responsible for making the key decisions that need to be made but we make as many as possible of those decisions including every decision to initiate disciplinary or other regulatory action or to take no further action when that might be a line ball decision only after a team discussion where the staff member who has carriage of the matter presents the arguments and all staff have an opportunity to and are expected to have their say. It's a useful process especially in matters of often fine judgement where

reasonable minds can differ, but has the particular advantage of turning core decision-making processes into a team building, culture setting and professional development exercise which nurtures a consistency of approach. It works well on all counts.

- those collegiate processes aside, the Commissioner and the Manager-Complaints meet individually with every member of staff at least twice a year to review both their and the Commission's performance, how they're travelling, their professional development and how we might as a team do things better and smarter. The feedback we get is encouraging.
- every member of the Commission's staff is expected to undertake the equivalent of at least two days of professional development activity a year and we've achieved that goal. Our staff between them participated in a total of 41 conferences, symposia or other training activities during the year including training in conducting financial and corporate investigations and

quality management systems audits, continuing professional development events hosted by the professional bodies and private providers, and various departmental training events. We owe the QLS in particular a debt of gratitude for allowing our people to attend numerous continuing legal events free of charge.

We include the reference group among ‘our people’. The Commissioner established the group in May 2005 to act as a sounding board and to give him advice and suggestions about the big pictures and strategic issues confronting the Commission, and to give him feedback about the Commission’s performance and how the profession perceives its performance. It comprises several lay people who have significant experience dealing with complaints and consumer protection issues – Margo Couldrey and Dr Julian Lamont – and an experienced and broadly representative group of practitioners – Margaret Jones, Professor the Hon Michael Lavarch, Ross Perrett, Zoe Rathus, and Mark Ryan. The group recently farewelled Gary Crooke QC on his retirement as Integrity Commissioner – Gary served

enthusiastically on the reference group from its inception – and welcomed Dr Geoffrey Airo-Farulla and the Hon. Martin Moynihan QC AO. They each participate on an entirely voluntary basis and have each provided invaluable advice and wisdom. We owe them a great debt.

Our systems

We have noted already that 2008–09 was a demanding year which required us to put more resource than usual to preparing the larger than usual number of matters that came before the Legal Practice Tribunal. We took the opportunity in June when the pressure eased to establish two internal project teams and asked them to consult widely with their colleagues and, having particular regard to the results of the *Your Feedback* surveys we conducted during the year, to:

- review the content and tone of our standard letters and clause bank and to identify any gaps and recommend improvements, and to review and update our fact sheets and related publications; and
- review how we process inquiries

and complaints from receipt to closure and to recommend ways we can improve our efficiency and effectiveness and mitigate any risks to the quality of our processes, having regard also to the values and performance criteria we committed to in our strategic and performance planning framework 2008-10 and the recommendations of the recent performance reviews of the Office of the Legal Services Ombudsman for England and Wales.

The project teams will report back to staff meetings in September and October respectively with a view to our making the necessary changes to our precedent system and procedures manual by the end of the year.

Our most fundamental system – the system we rely on in almost everything we do – is our case management system (CMS). The CMS has grown organically in recent years and ‘morphed’ now into what we conceive to be not so much ‘ours’ but a data warehouse we share with the QLS and in the near future with the BAQ also and potentially the two other bodies with regulatory responsibilities under the Act – the Supreme Court and the Legal Practitioners Admissions

Board (the LPAB). We have re-badged the database accordingly, by giving it the organisationally neutral name LPCentral.

LPCentral has potential to become the first consolidated and fully integrated database for storing the complete data required to be kept in connection with the regulation of the delivery of legal services in any Australian state or territory. It will be useful therefore to document how it came to be – which, in short, is this:

- the decision was taken before the Commission commenced on 1 July 2004 not to give us a new and standalone database but remote access to the database the QLS used to keep the data it was required to keep in relation to complaints when it had responsibility for dealing with complaints – the CMS – and to adapt the CMS to the requirements of the new regulatory regime. The decision was taken for reasons of expedience at the time but as it happens gave us unique opportunities.
- the CMS proved to be not only readily adaptable but a powerful reporting tool and, crucially,

operator-friendly. It readily adapted not only to the requirements of the new regulatory regime but the additional responsibilities we were given subsequently to enforce the restrictions on the advertising of personal injury services and to conduct compliance audits of incorporated legal practices. It was readily accepted by the users, not all of them computer literate; it allowed us to add a fully integrated document management system; and it enabled us to produce increasingly sophisticated monthly and annual performance reports.

- meanwhile, as we adapted the CMS for our purposes, the QLS adapted it for purposes of its own, to serve as its database of choice in connection with its regulatory responsibilities in relation to law firm trust accounts and the fidelity guarantee fund.
- crucially, however, the CMS included when we inherited it an automated data feed from the separate database the QLS used at the time and continues to use in connection with its other primary regulatory responsibility, issuing practising certificates. This meant and means

that we record and store the information and documents we're required to keep about complaints and disciplinary matters, and more recently about the restrictions on advertising personal injury services and compliance audits of incorporated legal practices, in the same data warehouse the QLS uses to record and store the data it's required to keep about lawyers and law firms – and in the same data warehouse as it kept the data it was required to keep about lawyers and law firms and complaints and disciplinary matters before the Commission commenced.

- and this means, while we could each choose to secure and deny the other access to the data we're each required to keep, equally we can decide, by entering into an Information Sharing Agreement (pursuant to section 704 of the *Legal Profession Act 2007*), to give each other access to all or an agreed subset of the data we each keep.
- we have chosen to give each other the fullest possible access to each other's data, to facilitate the more

effective and efficient discharge of our respective regulatory responsibilities – and this means, among other things, that we can cross-refer the data we’re required to keep about complaints, compliance audits and disciplinary matters with the data the QLS is required to keep about lawyers and law firms. And that allows us to generate the wealth of information we’ve included at Appendix 4 and cherry picked throughout the main body of the report – it gives us a uniquely powerful capacity to generate and report comprehensive regulatory data about the delivery of legal services. None of our counterpart regulators in the other states and territories have a similar reporting capacity.

There was a downside, however, to remotely accessing and sharing a database housed at the QLS. It meant that we were reliant on the QLS to support and maintain our user profiles and security settings and hence dependent on circumstances beyond our control and beyond the control also of the department’s (thus our) information technology support staff. This was sometimes problematic.

We devised and have all but completed a two-stage solution, and a solution which has the added benefit of giving us an all but guaranteed disaster recovery capacity should either server fail. The solution was to enable us to access the CMS on our own server within the QLS information technology environment in the first instance and provide for the two-way replication of the agreed data between the two servers, and then relocate our server to the departmental information technology environment. The first stage was completed in November 2008 and we expect the second stage to be completed in September 2009, before this report is published. Meanwhile:

- we have developed an on-line inquiry/complaint form to enable inquirers and complainants to make an inquiry or complaint electronically. The form went live in February and is being well used – more than 10% of the inquiries and complaints we received over the period 1 March to 30 June were made on-line.
- we have agreed with the BAQ to give it remote access to LPCentral as soon as possible after we have

relocated our server from the QLS to the department. We have agreed to enter into an Information Sharing Agreement that will enable designated people at the BAQ to view and record data in connection with the complaints about barristers that we refer to the BAQ for investigation, and it will give us access to an agreed subset of the data the BAQ keeps about barristers and hence the same or similar reporting capacity in relation to complaints about barristers that we have in relation to solicitors – and it will give the BAQ access to that aggregated and de-identified data also. It will mean that all three agencies with co-regulatory responsibilities in this area will share the one consolidated database.

- we have had initial discussions with the Supreme Court and the LPAB to offer them access to LPCentral, to manage applications for admission to the profession, and with our counterparts in Victoria and Western Australia neither of who have developed databases in relation to incorporated legal practices and both of whom have expressed interest in having access

to standalone instances of the LPCentral for that purpose. Hence we have designed LPCentral to be not only organisationally but jurisdictionally neutral as well.

We are also well on the way to building LPPortal – an on-line point of entry to LPCentral which will give law firms, lawyers, legal academics and other authenticated users and members of the public seamless, one stop shop access to a range of regulatory ‘products’ published by the multiple participating regulators. We have developed a test site and expect that the portal will go live in October, soon after our server is relocated to the department and we’ve done the necessary testing. It will be useful to document how LPPortal came to be also:

- it is crucial that we develop a capacity to enable incorporated legal practices to complete and lodge self-assessment audits and annual surveys on-line, to make the exercise more accessible and user-friendly from their point of view and significantly more efficient from ours. It is currently a hugely resource intensive paper-based exercise and the resource it consumes will

- be much better applied to service delivery than manual, double-handled data entry. The challenge is to build an on-line point of entry to LPCentral which, unlike the software that enables members of the public to complete and lodge inquiries and complaints on-line, includes identity management software which authenticates the identity of the person lodging the information (much like the software banks use to support on-line banking).
- it became obvious to us the identity management software we needed has any number of other applications beyond enabling incorporated legal practices to complete and lodge their self-assessment audits and annual surveys on-line – it could just as well enable law firms to give the QLS the required notice of their intention to commence or cease legal practice as an incorporated legal practice, for example, or enable accountants to lodge external examination reports of law firm trust accounts or, if the Supreme Court opts to go down this track, to enable law graduates to apply for admission.
 - equally, it could be used not only to ‘pull’ information in but to ‘push’ information out. We ask incorporated legal practices to rate how well their management systems support the delivery of legal services ‘under the professional obligations of Australian legal practitioners’, for example, but we have any amount of information that is relevant to the assessment we’re asking them to make but which has never previously been made available to them – information about the number and character and outcomes of any complaints that have been made against the lawyers they employ, for example. We should give them access to de-identified ‘risk’ data of that kind, and the more sophisticated evidence-based risk assessments we envisage making in due course (and described earlier in the report, under the heading *Incorporated legal practices*).
 - similarly, we are often asked by legal academics for information comparing complaints about incorporated legal practices with complaints about traditionally structured firms, for example, or for information comparing the

characteristics of regional and rural lawyers and law firms with their metropolitan counterparts. Why not give them on-line access to the aggregated and de-identified profession analysis and complaints data we keep and publish in our annual reports, and why not make it available in a searchable form? And why wouldn't we make that same information available to members of the public?

We have developed a test portal and it will be live with the address www.lpportal.org.au by the time this report is published in November, soon after we relocate our LPCentral server from the QLS to the department. It will enable incorporated legal practices to complete and lodge their self-assessment audits and annual surveys on-line, enable all Queensland law firms to access any complaints data relevant to their firm, enable Queensland lawyers to access their individual complaints histories, if they have one, and enable legal academics and members of the public to access to the sorts of profession analysis and complaints data we include at Appendix 4.

We will add other functionalities over coming months and years. Our early priorities include building a search engine that will enable us and other stakeholders including legal academics to interrogate the LPCentral database and a 'risk alerts' function that automatically notifies us when incorporated legal practices meet certain pre-determined risk criteria, helping us to direct our scarce compliance-auditing and investigative resource to the firms where it is most needed. We will add other functionalities as a matter of priority also, as requested – to enable trust account auditors to lodge external examination reports on-line, for example, should the QLS see that to be a priority.

This is an exciting prospect. LPPortal will far exceed current national best practice and set a new benchmark for the regulation of the delivery of legal services in Australia.

Appendix 1



The system established under the *Legal Profession Act 2007* for dealing with complaints

We have described the system for dealing with complaints in considerable detail on the Commission's website www.lsc.qld.gov.au. We are happy to make web-based factsheets available in hard copy on request.

The system can be summarised in both words and as a flow chart. Note that the Commission is the sole body authorised to receive formal written complaints about lawyers and law practice employees under the *Legal Profession Act 2007* (the act) and has been since the *Legal Profession Act 2004* first commenced on 1 July 2004.

We encourage people who have a complaint to consider discussing and attempting to resolve their concerns directly with the lawyer or law practice employee concerned and/or his or her supervisor. Sometimes that's all it takes. Not everyone wants to do that, however, as it isn't always appropriate and doesn't always work. People in those circumstances remain fully entitled to

make a formal written complaint to the Commission. Indeed we encourage people in these circumstances to make a complaint so that their concerns can be addressed.

Similarly many people who have complaints about lawyers or law practice employees find their way to the Queensland Law Society (QLS) and Bar Association of Queensland (BAQ) the first instance. The society and the association can often help them resolve their concerns informally. They remain fully entitled to make a complaint to the Commission if their concerns can't be resolved informally.

When we receive a complaint, our first task is to assess it against a series of threshold criteria to decide whether we have jurisdiction to deal with it. The assessment process is sometimes straightforward, but not always. The Act obliges us, for example, to check whether the conduct that is the subject of the complaint:

- was ‘conduct happening in connection with the practice of law’. If not, we can proceed to deal with the complaint only if the Commissioner is satisfied that the conduct ‘would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice’
- happened less than three years before the complaint was received. If not, we can proceed to deal with the complaint only if the Commissioner is satisfied that ‘it is just and fair to deal with the complaint having regard to the extent of, and the reasons for, the delay’ or that the conduct ‘may be professional misconduct’ and it is ‘in the public interest to deal with the complaint’
- might amount to negligence. If so, we can proceed to deal with the complaint only if the negligence is obvious on its face or the lawyer admits being negligent and the negligence amounts to unsatisfactory professional conduct, and even then any compensation order will be capped at \$7500 unless both parties agree. As a general rule, only a court of competent jurisdiction can decide

if a practitioner has been negligent and award compensation.

Importantly, we have to assess complaints to decide not only whether we can proceed to deal with them but, if we can, how. The Act gives us different powers and obligations to deal with a complaint depending on whether the conduct complained of, if the complaint were to be proved, would amount to unsatisfactory professional conduct or professional misconduct.

Applying the statutory definitions, the Commissioner has to decide whether the conduct complained of would, if the complaint were proved:

- ‘fall 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’; or
- ‘justify a finding that the practitioner is not a fit and proper person to engage in legal practice’.

If neither of these apply, the complaint is assessed to be what the Act calls a consumer dispute and the Commission’s powers are limited to suggesting to the parties that they enter into mediation.

The Commission can then either attempt to mediate the complaint itself or refer it to the Law Society or Bar Association for mediation, and that's the end of the matter.

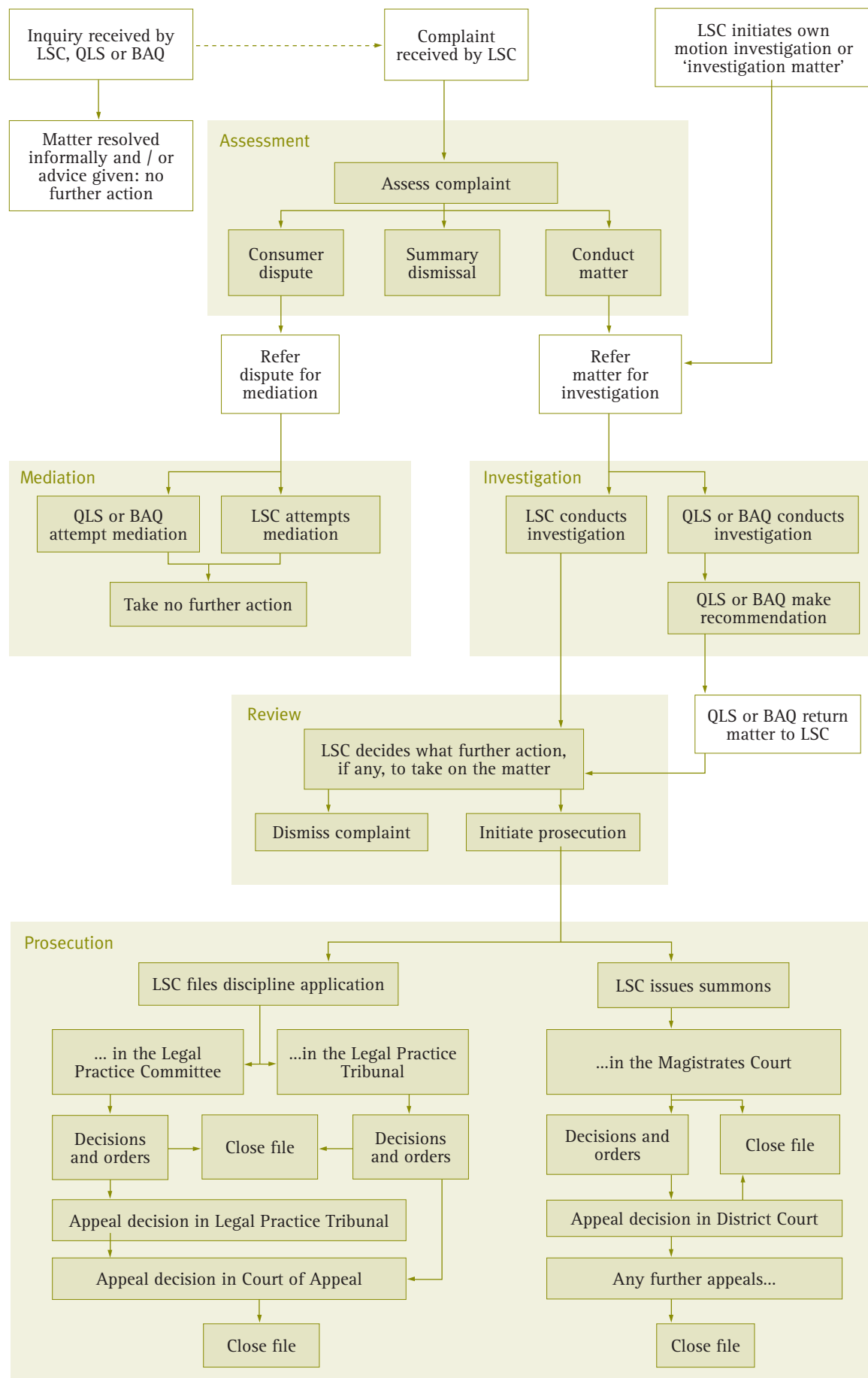
If either one applies, the complaint is classed as a 'conduct complaint' and the Act obliges us to ensure the complaint is investigated. We will investigate it ourselves or refer it to the Law Society or the Bar Association for investigation.

Importantly, if the Commissioner decides to refer a conduct complaint or investigation matter to one of the professional bodies for investigation, it remains subject to our direction and control and they have no authority to decide how those matters should be resolved, only to report their findings and recommendations to the Commissioner for decision.

The Commissioner alone has the power to decide whether the evidence after investigation is sufficient to warrant a disciplinary response and, if so, the power to initiate and prosecute disciplinary proceedings.

The Commissioner must decide whether 'there is a reasonable likelihood of a finding by a disciplinary body of either unsatisfactory professional conduct or professional misconduct' and, even if there is, whether it is 'in the public interest' to initiate disciplinary proceedings. These are sometimes quite difficult questions, but:

- if both apply, the Act obliges the Commissioner to initiate disciplinary proceedings in either the Legal Practice Tribunal (in relation to more serious disciplinary matters), the Legal Practice Committee (in relation to less serious disciplinary matters) or a court (in relation to offences)
- if either do not apply, the Act obliges the Commissioner to dismiss the complaint or investigation matter—or in other words, to take no further action in the matter.



Appendix 2



Staffing the system for dealing with complaints

We have described the system established under the *Legal Profession Act 2007* for dealing with complaints elsewhere in this report (including at Appendix 1). It comprises not only the Legal Services Commission (LSC) but also the relevant staff of the Professional Standards Unit of the Queensland Law Society (QLS) and the staff and Professional Conduct Committee of

the Bar Association of Queensland (BAQ) that deal with complaints on referral from the Commission. It is best conceived holistically.

Table 2.1 sets out how the system has been staffed since its inception on 1 July 2004 and going into 2009–10 and beyond.

Table 2.1: numbers of full-time equivalent staff by agency and year

| | start up: 01/07/04 | at 30/06/05 | at 30/06/06 | at 30/06/07 | at 30/06/08 | at 30/06/09 | 2009–10 | 2010–11 |
|-------|-----------------------|----------------|----------------|----------------|----------------|------------------|------------------------------|------------------|
| LSC | 8 | 10.7 | 17.5 | 18.2 | 18.2 | 18.2 | 18.2^ (19.2) | 19.2 |
| QLS | 19.95 | 19.95 | 19.95 | 12.72 | 13.72# | 14 | 13 | 13 |
| BAQ | - | - | - | - | - | (.5) * | (.5) * | (.5) * |
| Total | 27.95 | 30.65 | 37.45 | 30.92 | 31.92 | 32.2 (32.7) * | 31.2 (31.7) ^ (32.7) * | 32.2 (32.7) * |

* The costs of this half-time position of Manager, Professional Standards, unlike all the other positions that together go to make up the system for dealing with complaints, are met by BAQ through its own funds not through Legal Practitioner Interest on Trust Accounts Fund (see Appendix 3).

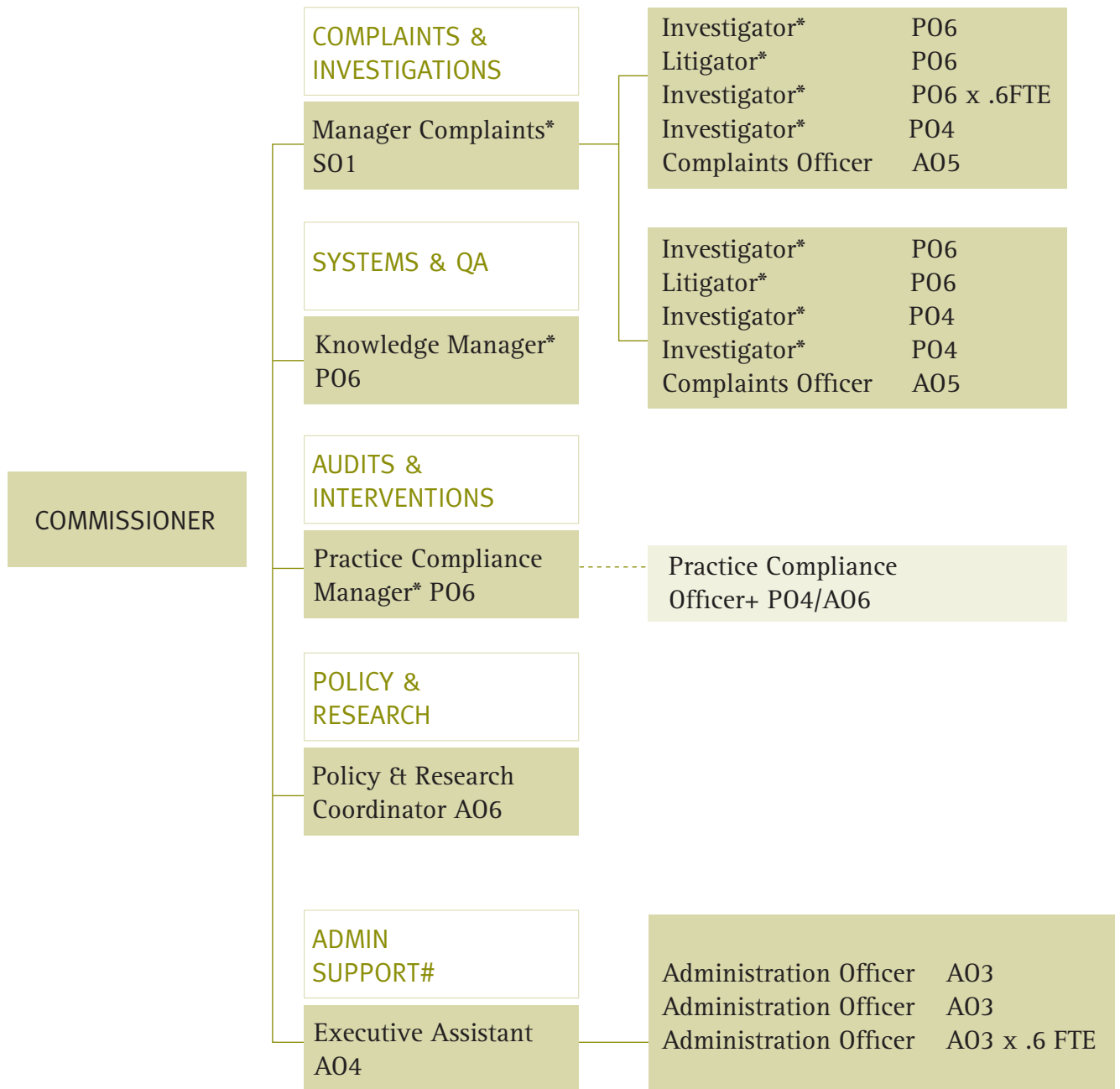
- # The *Legal Profession Act 2007* enabled law firms to engage in legal practice as companies—as an incorporated legal practice (ILP)—and empowered LSC and QLS to conduct compliance audits of an ILP’s management systems and supervisory arrangements. The Act came into effect on 1 July 2007. LSC and QLS were funded from 1 July 2007 to engage a Practice Compliance Manager and a Practice Management Consultant respectively to undertake this new regulatory function, QLS via its service level agreement with LSC (see Appendix 3). LSC engaged a Practice Compliance Manager primarily to design and undertake compliance audits and QLS engaged a Practice Management Consultant primarily to work with ILPs and prospective ILPs to assist them to design and implement appropriate management systems.
- ^ QLS had no wish to take on compliance auditing functions and came to conceive its advisory functions to be a membership service rather than regulatory function. Accordingly QLS relinquished the related funding effective from 1 July 2009 and it reverted to LSC. LSC has decided to apply that funding to systems development work in 2009–10 rather than to engage a Practice Compliance Officer with a view to enabling ILPs to complete the bulk of compliance audits online, and to engage a Practice Compliance Officer commencing in July 2010. That will enable that officer to undertake auditing functions in 2010–11 rather than labour intensive and double-handled, manual data entry functions. For more information, refer to the sections in the main body of the report which discuss our performance in relation to ILPs, and *Our people and our systems*.

The figures tell an interesting story. The system initially needed additional staff, primarily to deal with the large backlog of complaints inherited at its inception. However, the number of staff fell once the backlog was resolved going into 2006–07. It has now stabilised at a number only slightly greater than the number when the system first commenced.

That is despite the fact that the Commission was given additional responsibilities in May 2006 under amendments to the *Personal Injuries*

Proceedings Act 2002 to investigate and prosecute apparent breaches of the restrictions on advertising personal injury services and touting, and despite the fact that the Commission was given significant additional responsibilities effective from 1 July 2007 to conduct compliance audits of incorporated legal practices. The Commission has managed over that same time to add value to the system by developing a capacity that was previously lacking to undertake projects and research.

Table 2.2: LSC organisational structure going into 2009–10



Total full time equivalent staff: 19.2

* These positions require legal qualifications

The admin support team also provides secretariat support to the Legal Practice Committee

+ This position will remain vacant until 2010 – 2011

Appendix 3



Funding the system for dealing with complaints

Table 3.1 sets out the costs in 2008–09 of administering the system established under the *Legal Profession Act 2007* (the Act) for dealing with complaints and discipline.

The system comprises the Legal Services Commission together with the relevant staff of the Professional Standards Unit of the Queensland Law Society (QLS) and the staff and Professional Conduct Committee of the Bar Association of Queensland (BAQ) that deal with complaints on referral from the Commission. It also includes for these purposes the two disciplinary bodies—the Legal Practice Tribunal (LPT) and the Legal Practice Committee (LPC).

The Commission and the disciplinary bodies are funded by direct grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF). QLS is funded for these regulatory purposes by means of a grant from LPITAF made to the Commission in the first instance and then transferred to the society

pursuant to a service level agreement with the Commission. BAQ is not funded for these purposes but relies on its own funds and on the members of its professional conduct committee who give of their time pro bono.

Grants from LPITAF are made at the discretion of the Attorney-General on the recommendation of the Director-General of the Department of Justice and Attorney-General in accordance with sections 289–290 of the Act.

For completeness, table 3.2 sets out the monies we have expended to meet brief-out costs incurred in obtaining legal advice in relation to complaints and pending disciplinary matters and/or in representing the Commission in complex matters before the Legal Practice Tribunal, and table 3.3 sets out the monies that have been returned to, or are due to return to LPITAF in 2008–09 as a consequence of disciplinary action initiated by the Commission in the disciplinary bodies.

Table 3.1: the cost of administering the system for dealing with complaints and discipline in 2008–09

| | employee related expenses | all other costs | 2008–09 total | 2007–08 total for comparison | 2009–10 budget for comparison |
|-------|---------------------------|--------------------------|----------------------------|------------------------------|-------------------------------|
| LSC | \$1 806 911 | \$1 265 663 ⁱ | \$3 072 574 | \$2 879 946 | \$3 313 333 ⁱⁱ |
| QLS | n/a | n/a | \$1 756 638 ⁱⁱⁱ | \$1 670 909 | \$1 725 214 |
| BAQ | - | - | - | - | - |
| LPT | \$85 483 | \$7 097 | \$92 580 | \$103 962 | \$115 240 |
| LPC | \$29 960 | \$10 030 | \$36 990 | \$31 781 | \$46 625 |
| Total | n/a | n/a | \$5 105 906 | \$4 685 855 | \$5 200 412 |

Table 3.2: brief out costs

| 2004–05 | 2005–06 | 2006–07 | 2007–08 | 2008–09 |
|---------|-----------|-----------|-----------|------------------------|
| u/a | \$128 477 | \$127 701 | \$290 172 | \$455 453 ^v |

Table 3.3: monies returned or due to return to LPITAF in 2008–09

| | LPT | LPC | Total |
|--|-----------|---------|-----------|
| Financial penalties ordered in 2008–09 | \$67 500 | \$2 750 | \$70 250 |
| Penalty payments received in 2008–09 | \$28 000 | - | \$28 000 |
| Costs ordered, agreed or assessed in 2008–09 ^{vi} | \$106 400 | \$5 000 | \$111 400 |
| Costs payments received in 2008–09 | \$29 500 | \$3 000 | \$32 500 |
| Costs written off in 2008–09 | \$12 500 | - | \$12 500 |
| Costs payments pending | \$68 400 | \$2 000 | \$70 400 |

- i This figure **includes** ‘brief-out’ costs (including costs-assessors costs) of \$455 453 which obviously can vary significantly from year to year—see table 3.2. It **does not include** the monies that were transferred from LSC to QLS under the service level agreement (see the main body of the text, above, and note iii, below).
- ii This figure includes a draw down budget for ‘brief-out’ costs of \$500 000. The actual costs are impossible to predict in advance but will very likely be much less than that just as it was in 2008–09 and in the years previous to that—see Table 3.2 and note v, below.
- iii This figure is the amount that was transferred from LSC to QLS in 2008–09 to enable it to meet its obligations under the service level agreement between LSC and QLS (see the main body of the text, above).
- iv BAQ has not requested nor received a grant to enable it to fulfil its functions in relation to complaints and discipline but met the costs from its own funds and relied on the members of its professional conduct committee who gave of their time pro bono.
- v This figure is much higher than in previous years because of the higher than usual number of matters that were heard by LPT during the year. That number is likely to return to normal in 2009–10 (for more information, refer to the discussion in the main body of the report on our performance in relation to discipline).
- vi LSC paid out \$55 000 in agreed costs in 2008–09.

Appendix 4



Performance statistics

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2. Introduction

2.1. Purpose

This report provides a statistical analysis of the complaints handling and compliance audit work undertaken by the Legal Services Commission (LSC) during the reporting year 2008–09.

2.2. Scope

This report describes the data in relation to the LSC's handling of the informal inquiries, formal written complaints, investigation matters, compliance audits and prosecutions it dealt with during the year.

2.3. Acronyms, and abbreviations

| Term | Description |
|-------------|---|
| BAQ | Bar Association of Queensland |
| ILP | Incorporated Legal Practice |
| LSC | Legal Services Commission |
| MDP | Multi-disciplinary Partnership |
| PC | Practising Certificate |
| PIPA | Personal Injuries Proceedings Act 2002 |
| Pre-Act | Complaints lodged prior to LSC's inception on 1 July 2004 |
| Post-Act | Complaints lodged after LSC's inception on 1 July 2004 |
| QLS | Queensland Law Society |

2.4. Definition of key terms

The LSC database distinguishes four discrete types of matter—inquiries, complaints, ILP compliance audits and prosecutions, each with various sub-types—as follows:

1. **Inquiries** are typically made by telephone but sometimes in writing, by email or in person. They include:
 - inquiries by legal consumers, other members of the public and sometimes legal practitioners about how to make a complaint or seeking help to make a complaint about a legal practitioner or law practice employee, or queries about how the complaints and disciplinary process works or whether something a legal practitioner has said or done is proper or what it means. Inquiries might be made of either LSC, QLS or BAQ
 - informal complaints—concerns or ‘complaints’ made by legal consumers, other members of the public and sometimes legal practitioners about the conduct of a legal practitioner or law practice employee or some other person over whom LSC may have jurisdiction that are made other than in writing and which the ‘complainant’ requests or agrees be dealt with informally, at least in the first instance (on the understanding that the ‘complainant’ remains entitled to make a formal written complaint if his or her concerns can’t be resolved informally). Informal complaints might be made to LSC, to QLS or to BAQ and are typically dealt with as if they were consumer disputes (see below)
 - ethical inquiries—inquiries by solicitors or barristers of QLS or BAQ respectively as their professional body about their ethical obligations as legal practitioners.
2. **Complaints** comprise formal written complaints that are made and dealt with pursuant to Chapter 4 of the Legal Profession Act 2007 (the Act) including investigation matters pursuant to section 451(1)(c). The Act requires that complainants make their complaints in writing and to LSC (and only to LSC). Complaints are logged on the CMS in the first instance simply as complaints. They are then assessed as

falling into one of three mutually exclusive categories and logged appropriately as follows:

- summary dismissals: complaints that are beyond LSC's jurisdiction or out of time or that are otherwise dismissed pursuant to section 448
- consumer disputes: complaints that describe disputes between consumers and legal practitioners and / or law practice employees but do not raise an issue of unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or misconduct on the part of a law practice employee. The Act provides that LSC may try to mediate consumer disputes or alternatively refer them to QLS or BAQ for mediation (and does not require QLS or BAQ to report the outcome to LSC)
- conduct matters: conduct complaints, ILP conduct complaints, investigation matters, PIPA investigation matters and ILP investigation matters, as follows:
 - conduct complaints:* complaints (whether or not they also describe consumer disputes) which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct by a legal practitioner (in their capacity as a legal practitioner, but not as a legal practitioner director of an ILP) or misconduct by a law practice employee or that the person subject to complaint is guilty of an offence (other than an offence in relation to ILPs)
 - ILP conduct complaints:* complaints about the conduct of legal practitioner directors of ILPs (in their capacity as legal practitioner directors of ILPs) which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the Act or that a legal practitioner director or other director, officer, employee or agent of an ILP has committed an offence pursuant to those or other ILP specific sections of the Act

- investigation matters:* matters other than PIPA and ILP related matters (see below) that LSC decides to investigate of its own motion because it suspects a legal practitioner (in his or her capacity as a legal practitioner, but not as a legal practitioner director of an ILP) has engaged in conduct in which, if the suspicions are proved, would justify a finding of unsatisfactory professional conduct or professional misconduct or that some other person over whom it has jurisdiction is guilty of an offence (other than offences in relation to PIPA or ILPs). Investigation matters are logged on the CMS as if the Commissioner had made a conduct complaint
- PIPA investigation matters: matters that LSC decides to investigate of its own motion because it suspects a legal practitioner or other person has breached the restrictions on the advertising of personal injury services or touted for personal injury services in contravention of the Personal Injuries Proceedings Act 2002
- ILP investigation matters:* matters that LSC decides to investigate of its own motion because it suspects a legal practitioner director of an ILP has engaged in conduct which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the Act or that a legal practitioner director or other director, officer, employee or agent of an ILP has committed an offence pursuant to those or other ILP specific sections of the Act.

The Act requires LSC to investigate conduct matters or alternatively to refer them to QLS or BAQ for investigation in which case it requires QLS and BAQ to report their findings and recommendations to LSC for review and decision as to what further action is appropriate, if any.

3. **ILP compliance audits** comprise audits of incorporated legal practices undertaken pursuant to section 130 of the Act. They comprise both internal and external audits, as follows:

- ILP self-assessment audits: internal audits undertaken by or on behalf of legal practitioner directors of ILPs to assess their compliance with their obligation under section 117(3) of the Act to ensure that the ILP keeps and implements appropriate management systems. LSC requires ILPs to undertake self-assessment audits immediately or shortly after they notify QLS (under section 114 of the Act) of their intention to engage in legal practice and periodically thereafter to assess their continuing compliance;
 - ILP web-based surveys: external audits in which LSC requires all or representative samples of the different levels and classifications of an ILP's employees to complete a short on-line survey which reviews aspects of the firm's 'ethical infrastructure';
 - ILP on-site reviews: more comprehensive external audits undertaken on-site at an ILP's offices which review the firm's and its employees' compliance with their statutory and ethical obligations. On-site reviews are undertaken by LSC or by QLS on referral from LSC in which case QLS reports its findings and recommendations to LSC for its consideration as to what further action, if any, is appropriate.
4. **Prosecutions** comprise conduct matters (including ILP and PIPA related conduct matters) that LSC finalises after investigation on the basis that the Commissioner believes the evidence satisfies two criteria, viz.:
- that there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct by a legal practitioner or misconduct by a law practice employee or a court that an ILP should be banned, that a person should be disqualified from managing an ILP or that a person is guilty of an offence under the Act; and
 - that it is in the public interest that the matter be determined by a disciplinary body or court,
- and hence initiates proceedings in the appropriate disciplinary body or court.

* The terms ‘conduct complaint’ and ‘investigation matter’, and ‘ILP conduct complaint’ and ‘ILP investigation matter’, are defined such that a conduct complaint or investigation matter about the conduct of a legal practitioner who happens to be a legal practitioner director of an ILP counts as an ILP conduct complaint or ILP investigation matter if and only if the conduct subject to investigation is conduct in the legal practitioner’s capacity as a legal practitioner director of an ILP – that is to say, conduct that would, if proved, fall foul not of his or her obligations as a legal practitioner per se, but of his or her obligations under chapter 2, part 2.7 or other ILP specific provisions of the Act.

3. Reporting Framework

3.1. Law Firms

We have decided, for the purpose of the profession analysis, to define a law firm to include only those law practices that have one of the following business structures:

- partnership
- ILP
- MDP

This excludes business structures such as the following.

- community legal centres
- government/other

We have also decided to distinguish local law firms from interstate law firms with a local office.

3.2. Inquiries

We have decided to measure our performance in relation to this category of work simply by counting the number of inquiries received (‘opened’). That is because we respond to the overwhelming majority of all inquiries within one working day of their receipt and hence the number of ‘inquiries opened’ can be assumed to be the same as the number of inquiries closed for the same period. We do not consider inquiries to have any ‘on-hand’ values.

3.3. Complaints

We have decided to measure our performance in relation to this category of work by counting the number of:

- complaints on-hand at the start of the year
- complaints opened during the year
- summary dismissals during the year
- consumer disputes closed during the year
- conduct matters closed during the year
- complaints on-hand at the end of the year.

The number of complaints on-hand at the end of the year clearly should reconcile with the number generated by adding the number of new complaints to the number on-hand at the beginning of the year and subtracting the numbers of complaints of different kinds that were closed during the year.

We have decided to use the point at which complaints of various kinds were closed as the key measure of our performance in relation to this category of work since it is the only point within the complaint-handing process that yields definitive and accurate information about the complaint (because the information about a complaint is only fully determined at this stage of the process).

Importantly, we count complaints under the consolidated category ‘complaints’ only until such time as complaints have been assessed and either summarily dismissed or assessed to be consumer disputes or conduct complaints, and count them subsequently under those categories. That is because the three types of complaints can be expected to have quite different characteristics by a ‘length of time opened’ measure, for example, and it would be misleading to report our performance using only the one consolidated category ‘complaints’.

Similarly, we count investigation matters separately from conduct complaints for most, although not all, purposes rather than counting both types of conduct matter under that one consolidated category. That is because those matters can be expected to have quite different characteristics by an ‘outcome’ measure.

3.4. ILP compliance audits

We have decided to measure our performance in relation to this category of work by counting the number of:

- self assessment audits, web based surveys and on-site reviews on-hand at the start of the year
- self assessment audits, web based surveys and on-site opened during the year
- self assessment audits, web based surveys and on-site closed during the year
- self assessment audits, web based surveys and on-site on-hand at the end of the year.

The number of compliance audits on-hand at the end of the year clearly should reconcile with the number generated by adding the number of compliance audits opened during the year to the number on-hand at the beginning of the year and subtracting the numbers of compliance audits that were closed during the year.

3.5. Prosecutions

We have decided to measure our performance in relation to this category of work by counting the number of:

- prosecutions on-hand at the start of the year
- prosecutions opened during the year
- prosecutions filed with each of the two disciplinary bodies and the Magistrates Court

- prosecutions closed during the year (that is to say, heard and finally decided by each of the two disciplinary bodies and the various courts)
- prosecutions on-hand at the end of the year.

The number of prosecutions on hand at the end of the year clearly should reconcile with the number generated by adding the number of prosecutions opened during the year to the number on-hand at the beginning of the year and subtracting the numbers of prosecutions that were closed during the year in each of the various forums.

4. Profession analysis—Queensland solicitors

The following section provides an analysis of the make-up of the profession for the respondent types of solicitor and barrister.

We have used 1 July 2007 as the reference point for the analysis because that is the renewal date for practising certificates for solicitors in Queensland—hence complaints about solicitors during 2007–08 will be profiled against the solicitor’s attributes as they were recorded at 1 July 2007.

The profession has been profiled by counting the number of practising certificate holders and the law firms in which they are employed. The following tables provide a brief summary.

4.1. Solicitors by type of locally issued practising certificate as at 1 July each year

| Year | Practising certificate type | | | | | | | Total |
|------|-----------------------------|----------|-------------|-------------------|----------------------|-------------------------|----------------------|-------------|
| | Principal | Employee | Conditional | Limited principal | Restricted principal | Un-restricted volunteer | Restricted volunteer | |
| 2009 | 2364 | 3526 | 1514 | 20 | 3 | 10 | 21 | 7458 |
| 2008 | 2341 | 3277 | 1568 | 19 | 4 | 6 | 8 | 7239 |
| 2007 | 2302 | 3010 | 1584 | 19 | 4 | 4 | 3 | 6926 |
| 2006 | 2297 | 2932 | 1185 | n/a | n/a | n/a | n/a | 6414 |
| 2005 | 2317 | 3074 | 801 | n/a | n/a | n/a | n/a | 6192 |
| 2004 | 2290 | 3049 | 520 | n/a | n/a | n/a | n/a | 5859 |

4.2. Law firms by business structure

| | Partnership (local) | Partnership (interstate with local office) | ILP (local) | ILP (interstate with local office) | MDP (local) | Total |
|---|---------------------|--|-------------|------------------------------------|-------------|---------------|
| Active as at 1/7/2006 | 1297 | 19 | 0 | 0 | 0 | 1316 |
| Number commenced during year | 105 | 7 | 0 | 0 | 0 | 112 |
| Number ceased during year | 118 | 2 | 0 | 0 | 0 | 120 |
| Active as at 30/6/2007 | 1284 | 24 | 0 | 0 | 0 | 1308 |
| Active as at 1/7/2007 | (1293) | (23) | (20) | 0 | (0) | (1336) |
| Number commenced during year (new firms) | 60 | 6 | 32 | 7 | 1 | 106 |
| Number commenced during year (re-structure) | 19 | | 61 | 3 | 11 | 84 |
| Number ceased during year | 150 | 10 | 6 | 0 | 1 | 167 |
| Active as at 1/7/2008 | 1222 | 19 | 107 | 10 | 1 | 1328 |
| Number commenced during year (new firms) | 74 | 2 | 36 | 3 | 1 | 116 |
| Number commenced during year (re-structure) | 13 | 1 | 47 | 2 | 1 | 64 |
| Number ceased during year | 103 | 4 | 13 | 2 | 1 | 123 |
| Active as at 1/7/2009 | 1206 | 18 | 177 | 13 | 2 | 1384 |
| % of total | | | | | | |

4.3. Law firms by business structure and size of firm (practising certificate holders)
as at 1 July 2009

| | Partnership (local) | % of total | ILP (local) | % of total | MDP (local) | Other | Total |
|--------------|------------------------|------------|-------------|------------|-------------|-----------|--------------|
| 1 | 542 | 45.85 | 56 | 32.94 | - | - | 595 |
| 2-3 | 379 | 32.06 | 57 | 33.53 | - | - | 446 |
| 4-6 | 130 | 11.00 | 27 | 15.88 | - | - | 157 |
| 7-12 | 70 | 5.92 | 21 | 12.35 | 1 | - | 91 |
| 13-24 | 33 | 2.79 | 7 | 4.12 | - | - | 39 |
| 25-50 | 13 | 1.10 | - | - | - | - | 13 |
| 51-100 | 12 | 1.02 | 2 | 1.18 | - | - | 14 |
| 101-200 | 3 | 0.25 | - | - | 1 | - | 4 |
| Unknown | 24 | - | 7 | - | - | 31 | 57 |
| Total | 1206 | | 177 | | 2 | 31 | 1416 |

4.4. Law firm practising certificate holders employed by size of firm as at 1 July 2009

| | Partnership (local) | ILP | MDP | Other | Total |
|--------------|------------------------|------------|------------|-------------|--------------|
| 1 | 542 | 56 | - | 2 | 600 |
| 2-3 | 892 | 118 | | 7 | 1017 |
| 4-6 | 622 | 129 | | | 751 |
| 7-12 | 502 | 198 | 7 | | 707 |
| 13-24 | 589 | 116 | | | 705 |
| 25-50 | 460 | - | | | 460 |
| 51-100 | 868 | 137 | | | 1005 |
| 101-200 | 427 | - | 157 | | 584 |
| Unknown | 37 | - | - | 1592 | 1629 |
| Total | 4939 | 754 | 164 | 1601 | 7458 |

4.5. Law firm business structures by practising certificate type as at 1 July 2009

| | Practising certificate type | | | | | | | |
|----------------------|-----------------------------|----------|-------------|-------------------|----------------------|-------------------------|----------------------|-------|
| | Principal | Employee | Conditional | Limited principal | Restricted principal | Un-restricted volunteer | Restricted volunteer | Total |
| Law firms—local | | | | | | | | |
| Partnership | 2025 | 1925 | 986 | - | 3 | - | - | 4939 |
| ILP | 276 | 327 | 151 | - | - | - | - | 754 |
| MDP | 40 | 76 | 48 | - | - | - | - | 164 |
| Law firms—interstate | | | | | | | | |
| ILP | - | 6 | - | - | - | - | - | 6 |
| Partnership | - | 2 | 1 | - | - | - | - | 3 |
| Other | | | | | | | | |
| Community legal | - | 95 | 41 | 18 | - | 8 | 20 | 182 |
| Government/ other | 23 | 1095 | 287 | 2 | - | 2 | 1 | 1410 |
| Total | 2364 | 3526 | 1514 | 20 | 3 | 10 | 21 | 7458 |

4.6. Solicitor practising certificate holders by law firm business structure

| | July 2008 | % of total | July 2007 | % of total | July 2006 | % of total |
|-------------------------|-------------|--------------|-------------|--------------|-------------|--------------|
| Law firms—local | 5718 | 78.99 | 5593 | 80.75 | 5273 | 99.79 |
| Law firms—interstate | 44 | 0.61 | 19 | 0.27 | 11 | 0.21 |
| Law firm total | 5762 | 79.60 | 5612 | 81.02 | 5284 | 82.38 |
| Community legal centres | 154 | 2.13 | 134 | 1.93 | 121 | 1.89 |
| Other | 1323 | 18.27 | 1180 | 17.04 | 1009 | 15.73 |
| Total | 7239 | | 6926 | | 6414 | |

4.7. ILP summary by gross fee income

| Gross fee income (07–08) | Number of firms (08–09) | % of total | Number of firms (07–08) | % of total |
|----------------------------|-------------------------|------------|-------------------------|------------|
| Under \$25 000 | 3 | 5.08 | 2 | 4.08 |
| \$25 000 to \$49 999 | 2 | 3.39 | 3 | 6.12 |
| \$50 000 to \$499 999 | 20 | 33.90 | 16 | 32.65 |
| \$500 000 to \$999 999 | 11 | 18.64 | 10 | 20.41 |
| \$1,000 000 to \$2 499 999 | 6 | 10.17 | 10 | 20.41 |
| \$2 500 000 to \$4 999,999 | 4 | 6.78 | 5 | 10.20 |
| \$5 000 000 to \$9 999 999 | 2 | 3.39 | 1 | 2.04 |
| Over \$10 000 000 | 1 | 1.69 | 2 | 4.08 |
| Not specified | 10 | 16.95 | | |
| Total | 59 | | 49 * | |

Note: We have obtained this information from completed self assessment audits—refer to table 8.1.

4.8. ILP summary by number of practising certificate holders

| Gross fee income (07–08) | Number of practising certificate holders | | | | | | | | | Total |
|----------------------------|--|-----|-----|------|-------|-------|--------|---------|------|-----------|
| | 1 | 2–3 | 4–6 | 7–12 | 13–24 | 25–50 | 51–100 | 101–200 | 200+ | |
| Under \$25 000 | 1 | 2 | - | - | - | - | - | - | - | 3 |
| \$25 000 to \$49 999 | 2 | - | - | - | - | - | - | - | - | 2 |
| \$50 000 to \$499 999 | 12 | 8 | - | - | - | - | - | - | - | 20 |
| \$500 000 to \$999 999 | 3 | 5 | 2 | 1 | - | - | - | - | - | 11 |
| \$1,000 000 to \$2 499 999 | - | 3 | 1 | 2 | - | - | - | - | - | 6 |
| \$2 500 000 to \$4 999,999 | - | 1 | 2 | 1 | - | - | - | - | - | 4 |
| \$5 000 000 to \$9 999 999 | - | - | - | - | 2 | - | - | - | - | 2 |
| Over \$10 000 000 | - | - | - | - | 1 | - | - | - | - | 1 |
| Not specified | - | - | - | - | - | - | - | - | - | 10 |
| Total | | | | | | | | | | 59 |

4.9. Barristers by locally issued practising certificate as at 1 July each year

| | Total |
|------|-------|
| 2009 | 948 |
| 2008 | 901 |
| 2007 | 891 |
| 2006 | 892 |
| 2005 | 825 |
| 2004 | 789 |

5. Inquiries

5.1. Inquiries by agency and year

| | LSC | QLS | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 |
|---|------|------|----------------|----------------|----------------|----------------|
| Client inquiries from public received during year | 1490 | 2878 | 4368 | 5345 | 5980 | 8696 |
| Ethical inquiries from practitioners during year | N/A | 2737 | 2737 | 2646 | 2561 | n/a |
| Total inquiries received during year | 1490 | 5615 | 7105 | 7991 | 8541 | 8696 |

Note: We started to count client and ethical inquiries separately only in 2006-07. Previously they were included under the one category of inquiries. See also table 4.5 below.

5.2. Inquiries by area of law

| | Number of inquiries | % of total 2008–09 | % of total 2007–08 | % of total 2006–07 | % of total 2005–06 |
|--|---------------------|--------------------|--------------------|--------------------|--------------------|
| Family law | 882 | 20.19 | 20.11 | 19.26 | 15.32 |
| Deceased estates or trusts | 589 | 13.48 | 11.54 | 9.18 | 7.39 |
| Conveyancing | 529 | 12.11 | 18.24 | 21.72 | 15.50 |
| Personal injuries/workcover litigation | 380 | 8.70 | 8.66 | 10.30 | 9.96 |
| Commercial/company law | 258 | 5.91 | 5.59 | 5.02 | 2.74 |
| Litigation | 248 | 5.68 | 5.33 | 6.19 | 5.79 |
| Criminal law | 201 | 4.60 | 4.53 | 3.65 | 3.24 |
| Property law | 180 | 4.12 | 2.96 | 2.22 | 2.37 |
| All other areas of law combined | 1100 | 25.18 | 23.03 | 22.46 | 37.69 |
| Total | 4368 | | | | |

5.3. Inquiries by nature of the inquiry

| | Number of inquiries | % of total 2008–09 | % of total 2007–08 | % of total 2006–07 | % of total 2005–06 |
|---------------------------------------|---------------------|--------------------|--------------------|--------------------|--------------------|
| Costs | 1375 | 20.05 | 24.64 | 24.40 | 19.95 |
| Quality of service | 876 | 15.13 | 21.59 | 21.52 | 14.50 |
| Advice | 416 | 9.36 | 13.53 | 21.35 | 32.16 |
| Ethical matters | 409 | 7.81 | 8.91 | 10.18 | 8.41 |
| Communication | 341 | 2.88 | 7.60 | 5.85 | 4.75 |
| Documents | 126 | 1.88 | 3.26 | 2.88 | 2.32 |
| Trust funds | 82 | 0.98 | 2.08 | 2.51 | 2.23 |
| All other natures of inquiry combined | 743 | 17.01 | 18.41 | 11.31 | 15.67 |
| Total | 4368 | | | | |

5.4. Inquiries by outcome

| | Number of inquiries | % of total 2008-09 | % of total 2007-08 | % of total 2006-07 | % of total 2005-06 |
|--|---------------------|--------------------|--------------------|--------------------|--------------------|
| Provided referral for legal advice or other assist | 699 | 16.00 | 14.09 | 14.60 | 10.32 |
| Provided complaint form | 689 | 15.77 | 13.66 | 8.29 | 5.83 |
| Recommended direct approach to firm about concerns | 607 | 13.90 | 14.35 | 12.39 | 9.21 |
| Provided information about the legal system | 563 | 12.89 | 14.87 | 15.82 | 18.18 |
| Inquirer satisfied | 518 | 11.86 | 17.06 | 15.69 | 10.36 |
| Listened to callers concerns | 509 | 11.65 | 8.91 | 8.86 | 5.46 |
| Lost contact with complainant/inquirer | 244 | 5.59 | 5.20 | 5.48 | 5.22 |
| Mediation attempted | 176 | 4.03 | n/a | n/a | n/a |
| Referred to LSC | 74 | 1.69 | 2.75 | 10.95 | 5.72 |
| Provided information about LSC to a legal practitioner | 32 | 0.73 | 0.95 | 0.38 | 20.79 |
| All other 'outcomes' combined | 175 | 4.01 | 8.16 | 7.54 | 8.91 |
| Total | 4368 | | | | |

5.5. Inquiries by inquirer type

| | Number of inquiries | % of total 2008-09 | % of total 2007-08 | % of total 2006-07 | % of total 2005-06 |
|-------------------------------------|---------------------|--------------------|--------------------|--------------------|--------------------|
| Client/former client | 2983 | 68.29 | 70.40 | 70.90 | 50.11 |
| Non-client | 509 | 11.65 | 11.88 | 10.80 | 8.29 |
| Third party | 360 | 8.24 | 9.24 | 10.20 | 8.23 |
| Solicitor | 248 | 5.68 | 3.44 | 3.68 | 27.02 |
| All other 'inquirer types' combined | 268 | 6.14 | 5.03 | 4.42 | 6.35 |
| Total | 4368 | | | | |

6. Complaints

6.1. On hand summary—total

| Complaint type | As at 30 June 09 | As at 30 June 08 | As at 30 June 07 | As at 1 July 06 | As at 1 July 05 | As at 1 July 04 |
|------------------|------------------|------------------|------------------|-----------------|-----------------|-----------------|
| Consumer dispute | 5 | 4 | 8 | 3 | 88 | 273 |
| Conduct matters | 404 | 391 | 409 | 401 | 818 | 665 |
| Under assessment | 49 | 58 | 60 | 96 | 26 | N/A |
| Total | 458 | 449 | 477 | 500 | 932 | 938 |

6.2. On hand summary by matter type

| Complaints/investigation matters | 2008–09 | 2007–08 | 2006–07 | 2005–06 |
|---|------------|------------|------------|------------|
| Under assessment/awaiting assessment | 22 | 39 | 41 | 64 |
| Under assessment/awaiting further information | 27 | 19 | 19 | 32 |
| Consumer disputes | 5 | 4 | 8 | 3 |
| Conduct complaints | 363 | 326 | 344 | 320 |
| Investigation matters | 41 | 57 | 65 | 52 |
| Total conduct matters as at 30 June | 404 | 383 | 409 | 372 |
| Total complaints as at 30 June | 458 | 449 | 477 | 471 |

6.3. Throughput summary

| Complaints/investigation matters | 2008–09 | 2007–08 | 2006–07 | 2005–06 |
|--|-------------|-------------|-------------|-------------|
| Matters on hand at 1 July | 449 | 477 | 471 | 503 |
| Plus matters opened during the year | 1145 | 1258 | 1308 | 1147 |
| • includes complaints received from public | 1066 | 1139 | 1109 | 1074 |
| • includes investigation matters opened (non-PIPA) | 62 | 60 | 101 | 73 |
| • includes investigation matters opened (PIPA) | 17 | 59 | 98 | n/a |
| Less summary dismissals | 443 | 444 | 433 | 365 |
| Less consumer disputes closed | 88 | 102 | 83 | 234 |
| Less conduct matters closed | 605 | 740 | 786 | 580 |
| • includes complaints received from public | 514 | 620 | 600 | |
| • includes Investigation matters (non-PIPA) | 84 | 62 | 91 | |
| • includes Investigation matters (PIPA) | 7 | 58 | 95 | |
| Total complaints/investigation matters closed | 1136 | 1286 | 1302 | 1179 |
| Complaints/investigation matters on hand at 30 June | 458 | 449 | 477 | 471 |

6.4. Throughput summary—non (PIPA & ILP) investigation matters

| | Total 2008–09 | Total 2007–08 | Total 2006–07 | Total 2005–06 | Total 2000–05 |
|---|------------------|------------------|------------------|------------------|------------------|
| On hand at start of year | 54 | 62 | 52 | 24 | 0 |
| Opened during year | 62 | 60 | 101 | 73 | 35 |
| • % of new complaints/investigation • matters opened | 5.41 | 4.77 | 7.72 | 6.36 | 2.36 |
| Closed during year | 84 | 68 | 91 | 45 | 11 |
| On hand at end of year | 32 | 54 | 62 | 52 | 24 |

6.5. Throughput summary—PIPA investigation matters

| | Total 2008–09 | Total 2007–08 | Total 2006–07 |
|--|------------------|------------------|------------------|
| On hand at start of year | 4 | 3 | 0 |
| Opened during year | 17 | 59 | 98 |
| • % of new complaints/investigation matters opened | 1.48 | 4.69 | 7.49 |
| Closed during year | 12 | 58 | 95 |
| • includes opened in error | (5) | | |
| On hand at end of year | 9 | 4 | 3 |

6.6. Assessment summary

| | Total | % 2008–09 | % 2007–08 | % 2006–07 | % 2005–06 |
|---|-------|--------------|--------------|--------------|--------------|
| New complaints/investigation matters allocated for assessment during the year | 1066 | | | | |
| Of these: | | | | | |
| • currently under assessment as at 30 June | 36 | 3.38 | 4.81 | 1.64 | 8.11 |
| • number of new matters assessed this year | 1030 | 96.62 | 95.19 | 98.36 | 91.89 |
| Of these: | | | | | |
| • number summarily dismissed | 410 | 39.81 | 37.51 | 37.10 | 31.59 |
| • number assessed to be consumer disputes | 90 | 8.74 | 8.98 | 7.31 | 17.08 |
| • number assessed to be conduct matters | 530 | 51.46 | 53.13 | 55.60 | 51.33 |

6.7. Complaints by area of law

| | Consumer disputes | Conduct matters | Summary dismissals | Total | % of Total |
|--|-------------------|-----------------|--------------------|-------------|------------|
| Administrative law | 2 | 13 | 7 | 22 | 1.94 |
| Bankruptcy and insolvency | 2 | 4 | 12 | 16 | 1.58 |
| Building/construction law | 2 | 8 | 5 | 15 | 1.32 |
| Commercial law | 3 | 26 | 30 | 59 | 5.19 |
| Conduct not in the practice of law | 1 | 6 | 3 | 10 | 0.88 |
| Conveyancing | 15 | 76 | 30 | 121 | 10.65 |
| Criminal law | 4 | 50 | 38 | 92 | 8.10 |
| Deceased estates or trusts | 9 | 39 | 38 | 86 | 7.57 |
| Family law | 20 | 105 | 91 | 216 | 19.01 |
| Immigration | - | 2 | 2 | 4 | 0.35 |
| Industrial law | - | 5 | 4 | 9 | 0.79 |
| Leases/mortgages | 3 | 12 | 12 | 27 | 2.38 |
| Litigation | 3 | 54 | 31 | 88 | 7.75 |
| Personal injuries/workcover litigation | 9 | 66 | 45 | 120 | 10.56 |
| Property law | 7 | 32 | 24 | 63 | 5.55 |
| Trust account breaches | - | 25 | 2 | 27 | 2.38 |
| All other areas of law combined | 8 | 82 | 69 | 159 | 14.00 |
| Total | 88 | 605 | 443 | 1136 | |

6.8. Complaints by nature of matter

| | Consumer disputes | Conduct matters | Summary dismissals | Total | % of Total |
|--------------------------------------|-------------------|-----------------|--------------------|-------------|------------|
| Communication | 13 | 55 | 62 | 130 | 11.44 |
| Compliance | 2 | 38 | 8 | 48 | 4.23 |
| Costs | 24 | 96 | 72 | 192 | 16.90 |
| Documents | 3 | 6 | 4 | 13 | 1.14 |
| Ethical matters | 14 | 177 | 134 | 325 | 28.61 |
| ILP | - | 1 | - | 1 | 0.09 |
| Personal conduct | 1 | 16 | 9 | 26 | 2.29 |
| PIPA | - | 11 | 6 | 17 | 1.50 |
| Quality of service | 27 | 156 | 116 | 299 | 26.32 |
| Trust funds | 4 | 39 | 13 | 56 | 4.93 |
| All other natures of matter combined | - | 10 | 19 | 29 | 2.55 |
| Total | 88 | 6.5 | 443 | 1136 | |

6.9. Complaints by respondent type

| | Consumer disputes | Conduct matters | Summary dismissals | Total | % of Total |
|-----------------------|-------------------|-----------------|--------------------|-------------|------------|
| Barrister | 1 | 39 | 24 | 64 | 5.63 |
| Corporation | - | 5 | 4 | 9 | 0.79 |
| Law practice employee | 1 | 6 | 4 | 11 | 0.97 |
| Legal practitioner | - | 1 | 2 | 3 | 0.26 |
| Other | - | 9 | 9 | 18 | 1.58 |
| Solicitor | 86 | 532 | 398 | 1016 | 89.44 |
| Unlawful operator | - | 13 | 2 | 15 | 1.32 |
| Total | 88 | 605 | 443 | 1136 | |

6.10. Complaints by law firm business structure—solicitors only

| | Consumer disputes | Conduct matters | Summary dismissals | Total | % of Total |
|--------------------------|-------------------|-----------------|--------------------|-------------|------------|
| Partnerships—local | 65 | 407 | 288 | 760 | 74.80 |
| Partnerships—interstate | - | - | - | - | - |
| ILPs—local | 1 | 14 | 11 | 26 | 2.56 |
| ILPs—interstate | - | 1 | 2 | 3 | 0.30 |
| MDPs—local | - | - | - | - | - |
| All other business types | 20 | 110 | 97 | 227 | 22.34 |
| Total | 86 | 532 | 398 | 1016 | |

6.11. Consumer disputes/conduct matters—respondent law firms as a proportion of the profession

| | Consumer disputes | Conduct matters | Firms with both matter types | Respondent law firms | Total law firms as at 30/6/09 | % rep. * |
|--------------------------|-------------------|-----------------|------------------------------|----------------------|-------------------------------|----------|
| Partnerships—local | 59 | 259 | 27 | 291 | 1206 | 24.13 |
| Partnerships—interstate | - | - | - | - | 18 | - |
| ILPs—local | 1 | 12 | - | 13 | 177 | 7.34 |
| ILPs—interstate | | 1 | - | 1 | 13 | 7.69 |
| MDPs—local | - | - | - | - | 2 | - |
| All other business types | 11 | 50 | 4 | 57 | - | - |
| Total | 71 | 322 | 31 | 362 | | |

• 10% means that 1 in every 10 solicitors within this grouping were subject to a consumer dispute

* This figure is the total respondent law firms which may differ from the total of the consumer disputes and conduct matters columns as the same law firm could appear in both columns

6.12. Timeliness

| Complaint type | Matters completed | Time band | Actual % | Cumulative% | Target % | Median days open (08-09) |
|--------------------|-------------------|---------------|----------|-------------|----------|--------------------------|
| Conduct matters | 350 | <= 6 months | 57.85 | 57.85 | 80 | 175 |
| | 195 | 7 – 18 months | 32.23 | 90.08 | 100 | |
| | 60 | > 18 months | 9.92 | 100 | 0 | |
| Consumer disputes | 87 | <= 2 months | 98.86 | 98.86 | 80 | 21.5 |
| | 1 | 2 – 5 months | 1.14 | 100 | 100 | |
| | 0 | > 5 months | 0 | 100 | 0 | |
| Summary dismissals | 392 | <= 1 month | 88.49 | 88.49 | 80 | 14 |
| | 29 | 1 – 2 months | 6.55 | 95.03 | 100 | |
| | 22 | > 2 months | 4.97 | 100 | 0 | |

6.13. Online complaints summary

| | Total 08-09 | Avg/mth |
|----------------------------------|-------------|---------|
| Complaints received this year ** | 44 | 8.8 |
| Inquiries received this year ** | 41 | 8.2 |
| Total | 85 | |

** the capture of online complaints commenced in February 2009

6.14. Avoidable complaints summary

The following table records for every consumer dispute and conduct matter that the Commission has closed over the year to date, whatever its merits, whether in the complaint-handler's opinion the respondent could have done something to pre-empt or avoid the consumer dispute or conduct matter arising in the first place. Note that the table does not count complaints that were summarily dismissed.

| Complaint/investigation matters closed since 1 July, excluding summary dismissals: | Number 2008–09 | % | Number 2007–08 | % |
|--|-------------------|-------|-------------------|-------|
| Number assessed to be unavoidable | 218 | 31.64 | 239 | 28.52 |
| Number assessed to be avoidable | 471 | 68.36 | 599 | 71.48 |
| Total | 689 | | 838 | |

6.15. Unavoidable complaints summary

The following table records for every consumer dispute and conduct matter that the Commission has closed over the year, and that in the complaint-handler's opinion was unavoidable, the reason why the complaint was considered unavoidable:

| The consumer dispute/conduct matter was unavoidable because | % 2008–09 | % 2007–08 |
|--|--------------|--------------|
| • the complainant had ulterior motives | 10.86 | 16.27 |
| • the complainant wouldn't take advice | 2.71 | 5.56 |
| • the complainant had unrealistic expectations and/or made unreasonable demands | 24.43 | 32.14 |
| • the complainant misunderstood the obligations of practitioners acting for the other side | 18.55 | 13.49 |
| • the 'problem' is inherent in the adversarial system of justice | 3.17 | 5.16 |
| • the complaint was baseless and could not have been avoided (eg: by better communication) | 19.46 | 14.29 |
| • of some reason other than the above | 21.72 | 13.10 |

6.16. Avoidable complaints summary

The following table records for every consumer dispute and conduct matter that LSC has closed over the year and that in the complaint-handler's opinion was avoidable, how in the complaint-handler's opinion it might have been avoided. The complaint might have been avoided had the respondent performed better in the following areas:

| Category | % 2008-09 | % 2007-08 | % 2006-07 |
|----------------------|--------------|--------------|--------------|
| Work practices | 28.88 | 29.08 | 31.82 |
| Communication | 25.74 | 27.65 | 28.36 |
| Costs | 18.66 | 14.47 | 17.71 |
| Trust accounts | 10.41 | 6.59 | 6.39 |
| Timeliness | 6.09 | 6.16 | 5.33 |
| Conflict of interest | 4.13 | 4.01 | 3.86 |
| Liens and transfers | 2.75 | 1.72 | 1.46 |
| Supervision | 2.16 | 7.31 | 2.53 |
| Record keeping | 1.18 | 1.15 | 0.8 |
| Undertakings | - | 1.86 | 1.73 |

6.17. Summary dismissals by area of law

| | Total 2008-09 | % of total 2008-09 | % of total 2007-08 | % of total 2006-07 | % of total 2005-06 |
|--|------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Family law | 91 | 20.54 | 20.05 | 23.56 | 25.14 |
| Personal injuries /workcover litigation | 45 | 10.16 | 8.33 | 7.62 | 7.10 |
| Criminal law | 38 | 8.58 | 8.11 | 9.01 | 8.20 |
| Deceased estates or trusts | 38 | 8.58 | 9.91 | 11.55 | 7.38 |
| Litigation | 31 | 7.00 | 6.76 | 14.32 | 10.38 |
| Conveyancing | 30 | 6.77 | 9.23 | 7.85 | 7.10 |
| Commercial law | 30 | 6.77 | 4.50 | - | - |
| Property law | 24 | 5.42 | 6.53 | 5.31 | 6.56 |
| All other areas of law combined | 116 | 26.19 | 26.56 | 20.79 | 28.14 |
| Total | 443 | | | | |

6.18. Summary dismissals by nature of matter

| | Total 2008-09 | % of total 2008-09 | % of total 2007-08 | % of total 2006-07 | % of total 2005-06 |
|---|------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Ethical matters | 134 | 30.25 | 31.98 | 43.65 | 52.88 |
| Quality of service | 116 | 26.19 | 28.83 | 21.71 | 13.70 |
| Costs | 72 | 16.25 | 17.79 | 18.01 | 11.78 |
| Communication | 62 | 14.00 | 7.43 | 8.08 | 11.51 |
| Trust funds | 13 | 2.93 | n/a | n/a | n/a |
| PIPA | 6 | 1.35 | 2.70 | 0.69 | 0.27 |
| Documents | 4 | 0.90 | 2.48 | 2.08 | 0.82 |
| All other natures of matter combined | 36 | 8.13 | 8.78 | 5.77 | 5.68 |
| Total | 443 | | | | |

6.19. Summary dismissals by respondent type

| | Total 2008-09 | % of total 2008-09 | % of total 2007-08 | % of total 2006-07 | % of total 2005-06 |
|-----------------------|------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Solicitor | 398 | 89.84 | 93.02 | 89.61 | 85.48 |
| Barrister | 24 | 5.42 | 4.05 | 6.70 | 7.67 |
| Law practice employee | 4 | 0.90 | 1.13 | 1.39 | 0.82 |
| Other | 9 | 2.03 | 0.68 | 2.08 | 6.03 |
| Corporation | 4 | 0.90 | 0.68 | | |
| Legal practitioner | 2 | 0.45 | 0.23 | 0.23 | |
| Unlawful operator | 2 | 0.45 | 0.23 | | |
| Total | 443 | | | | |

6.20. Consumer disputes referred to the professional bodies

| | Total 08-09 | % | Total 07-08 | % | Total 06-07 | % | Total 05-06 | % |
|-----------------|----------------|-------------|----------------|-------------|----------------|-------------|----------------|-------------|
| Referred to QLS | 6 | 6.00 | 4 | 3.88 | 3 | 3.00 | 7 | 3.00 |
| Referred to BAQ | - | - | - | - | - | - | - | - |
| Total | 6 | 6.00 | 4 | 3.88 | 3 | 3.00 | 7 | 3.00 |
| | | | | | | | | |
| Retained at LSC | 94 | 94.00 | 99 | 96.12 | 93 | 97.00 | 198 | 97.00 |

6.21. Conduct matters referred to the professional bodies

| | Total 08-09 | % | Total 07-08 | % | Total 06-07 | % | Total 05-06 | % |
|-----------------|----------------|--------------|----------------|--------------|----------------|--------------|----------------|--------------|
| Referred to QLS | 287 | 44.84 | 309 | 39.22 | 372 | 42.00 | 311 | 48.00 |
| Referred to BAQ | 18 | 2.81 | 15 | 1.90 | 18 | 2.00 | 26 | 4.00 |
| Total | 305 | 47.66 | 324 | 41.12 | 390 | 44.00 | 337 | 52.00 |
| | | | | | | | | |
| Retained at LSC | 335 | 52.34 | 264 | 58.88 | 492 | 56.00 | 314 | 48.00 |

6.22. Conduct matters returned by the professional bodies for review **

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 | Total 04-05 |
|-----------------|----------------|----------------|----------------|----------------|----------------|
| Referred to QLS | 285 | 359 | 355 | 672 | 559 |
| Referred to BAQ | 12 | 16 | 12 | 29 | 3 |
| Total | 310 | 375 | 367 | 701 | 562 |

** Note: The 2006-07, 2007-08 figures only include post-Act complaints. The other years include both pre-Act and post-Act complaints.

6.23. Differences between recommendations and closure for conduct matters returned by the professional bodies

| | Total 08-09 | % | Total 07-08 | % | Total 06-07 | % |
|-----------------|----------------|-------|----------------|-------|----------------|-------|
| Referred to QLS | 30 | 10.52 | 27 | 8.31 | 46 | 12.96 |
| Referred to BAQ | 5 | 41.67 | 7 | 33.33 | 1 | 8.50 |
| Total | 35 | | 34 | | 47 | |

6.24. Complaint Summary—barristers only

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 | Total 04-05 |
|--------------------|----------------|----------------|----------------|----------------|----------------|
| Complaints | 40 | 30 | 17 | 41 | 41 |
| Summary dismissals | 24 | 18 | 29 | 28 | 0 |
| Total | 64 | 48 | 46 | 69 | 41 |

6.25. Complaints (excluding summary dismissals) by area of law—barristers only

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 | Total 04-05 |
|------------------------------------|----------------|----------------|----------------|----------------|----------------|
| Family law | 12 | 6 | 2 | 8 | 8 |
| Litigation | 8 | 5 | 4 | 9 | 9 |
| Criminal law | 8 | 5 | 4 | 9 | 9 |
| PI/ Workcover | 7 | 9 | 6 | 6 | 6 |
| Conduct not in practice of the law | 3 | 1 | | 3 | 3 |
| Building/construction | 1 | | | | |
| Admin law | 1 | | 1 | | |
| Property law | | 2 | | | |
| Commercial/company law | | 1 | 1 | | |
| Industrial law | | 1 | | 3 | 3 |
| Leases/mortgages | | | 1 | 2 | 2 |
| Immigration | | | 1 | 1 | 1 |
| Trust a/c breaches | | | | 1 | 1 |
| All other 'areas of law' | | | | 1 | 1 |
| Total | 40 | 30 | 17 | 41 | 41 |

6.26. Complaints (excluding summary dismissals) by nature of matter—
barristers only

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 | Total 04-05 |
|-------------------------------|----------------|----------------|----------------|----------------|----------------|
| Ethical matters | 12 | 16 | 6 | 26 | 25 |
| Quality of service | 10 | 4 | 3 | 4 | 1 |
| Costs | 6 | 4 | 3 | 5 | 3 |
| Compliance | 5 | 2 | 2 | | 1 |
| Communication | 4 | 2 | 1 | 2 | 4 |
| Personal conduct | 2 | 1 | 1 | 1 | |
| PIPA | | 1 | | | |
| Documents | | | 1 | 1 | |
| Trust funds | | | | 1 | 1 |
| All other 'natures of matter' | 1 | | | 1 | 6 |
| Total | 40 | 30 | 17 | 41 | 41 |

6.27. Complaints (excluding summary dismissals) by outcome—barristers only

| | Total 08–09 | Total 07–08 | Total 06–07 | Total 05–06 | Total 04–05 |
|-----------------------------------|----------------|----------------|----------------|----------------|----------------|
| NRL | 22 | 21 | 10 | 26 | 8 |
| Referred LPT | 5 | 4 | 1 | 2 | 2 |
| NPI | 4 | 3 | 2 | 8 | 5 |
| Refer—other investigative process | 3 | | | | |
| Withdrawn | 2 | | 3 | 2 | 1 |
| Referred LPC | 2 | | | 1 | |
| Outside jurisdiction | 1 | 1 | 1 | | |
| Resolved—consumer satisfied | 1 | | | | 7 |
| Unable to be resolved | | 1 | | 1 | 6 |
| Frivolous | | | | 1 | |
| Unfounded | | | | | 4 |
| Opened in error | | | | | 3 |
| Provide info re. legal system | | | | | 2 |
| Out of time | | | | | 2 |
| All other ‘outcomes’ | | | | | 1 |
| Total | 40 | 30 | 17 | 41 | 41 |

7 Consumer disputes

7.1. Consumer disputes by area of law

| | Number of matters | % of Total 08–09 | % of Total 07–08 | % of Total 06–07 | % of Total 05–06 |
|--|-------------------|------------------|------------------|------------------|------------------|
| Family law | 20 | 22.73 | 13.73 | 20.48 | 18.72 |
| Conveyancing | 15 | 17.05 | 26.47 | 34.94 | 17.87 |
| Deceased estates or trusts | 9 | 10.23 | 18.63 | 4.82 | 12.77 |
| Personal injuries/WorkCover litigation | 9 | 10.23 | 5.88 | 4.82 | 9.79 |
| Property law | 7 | 7.95 | 7.84 | 3.61 | 7.23 |
| Criminal law | 4 | 4.55 | 6.86 | 8.43 | 5.53 |
| Litigation | 3 | 3.41 | 5.88 | 7.23 | 7.66 |
| Commercial/company law | 3 | 3.41 | 1.96 | 6.02 | - |
| All other areas of law combined | 15 | 17.05 | 8.82 | 3.61 | 19.57 |
| Total | 88 | | | | |

7.2. Consumer disputes by nature of matter

| | Number of matters | % of Total 08–09 | % of Total 07–08 | % of Total 06–07 | % of Total 05–06 |
|--------------------------------------|-------------------|------------------|------------------|------------------|------------------|
| Quality of service | 27 | 30.68 | 31.37 | 24.10 | 19.57 |
| Costs | 24 | 27.27 | 31.37 | 40.96 | 40.00 |
| Ethical matters | 14 | 15.91 | 11.76 | 13.25 | 20.43 |
| Communication | 13 | 14.77 | 10.78 | 12.05 | 10.64 |
| Documents | 3 | 3.41 | 11.76 | 9.64 | 4.68 |
| All other natures of matter combined | 7 | 7.95 | 2.94 | - | 4.68 |
| Total | 88 | | | | |

7.3. Consumer disputes by type of complainant

| | Number of matters | % of Total 08-09 | % of Total 07-08 | % of Total 06-07 | % of Total 05-06 |
|---|-------------------|------------------|------------------|------------------|------------------|
| Client/former client | 73 | 82.95 | 81.37 | 81.93 | 76.17 |
| Solicitor | 10 | 11.36 | 4.90 | 2.41 | 3.40 |
| Non client | 3 | 3.41 | 4.90 | 7.23 | 8.09 |
| Third party | 1 | 1.14 | 2.94 | 2.41 | 8.09 |
| Solicitor for client | n/a | - | 4.90 | 3.61 | 2.13 |
| All other types of complainant combined | 1 | 1.14 | 0.98 | 2.40 | 2.13 |
| Total | 88 | | | | |

7.4. Consumer disputes by outcome

| | Number of matters | % of Total 08-09 | % of Total 07-08 | % of Total 06-07 | % of Total 05-06 |
|--|-------------------|------------------|------------------|------------------|------------------|
| Matter unable to be resolved | 34 | 38.64 | 28.43 | 42.17 | 31.91 |
| Resolved – consumer satisfied | 23 | 26.14 | 47.06 | 30.12 | 18.30 |
| Complaint unfounded | 23 | 26.14 | 16.67 | 14.46 | 37.02 |
| Recommended direct approach to firm about concerns | 5 | 5.68 | 1.96 | 6.02 | 2.13 |
| Withdrawn | 2 | 2.27 | 1.96 | 6.02 | 6.81 |
| Outside of jurisdiction | 1 | 1.14 | 1.96 | 1.20 | 2.13 |
| All other ‘outcomes’ combine | 0 | - | 1.96 | - | 1.70 |
| Total | 88 | | | | |

7.5. Consumer disputes by respondent type

| | Number of matters | % of Total 08-09 | % of Total 07-08 | % of Total 06-07 | % of Total 05-06 |
|-----------------------|-------------------|------------------|------------------|------------------|------------------|
| Solicitor | 86 | 97.73 | 97.06 | 98.78 | 96.17 |
| Law practice employee | 1 | 1.13 | 0.98 | 1.22 | 1.28 |
| Barrister | 1 | 1.13 | 0.98 | - | 0.85 |
| Other | - | - | 0.98 | | 1.70 |
| Total | 88 | | | | |

7.6. Consumer disputes by respondent type: solicitor

7.6.1. Consumer disputes regarding solicitors as a proportion of the profession

| | PC Holders | Law Firms | Law Offices |
|---|------------|-----------|-------------|
| Size of profession as at 1/7/2008 | 7,239 | 1,416 | 1,448 |
| Number of solicitors/law firms as respondents 2008-09 | 66 | 60 | 61 |
| Percentage | 0.91 | 4.24 | 4.21 |
| Number of solicitors/law firms as respondents 2007-08 | 77 | 81 | 83 |
| Percentage | 1.11 | 6.13 | 5.64 |
| Number of solicitors/law firms as respondents 2006-07 | 70 | 66 | 66 |
| Percentage | 1.10 | 5.10 | 4.71 |
| Number of solicitors/law firms as respondents 2005-06 | 182 | 169 | 174 |
| Percentage | 2.96 | 13.33 | |
| Number of solicitors/law firms as respondents 2004-05 | 501 | 409 | 432 |
| Percentage | 8.56 | 33.04 | 12.56 |

7.6.2. Solicitors subject to one or more consumer disputes

| | Number of solicitors 08-09 | Number of solicitors 07-08 | Number of solicitors 06-07 | Number of solicitors 05-06 | Number of solicitors 04-05 |
|-------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| 1 matter | 63 | 75 | 65 | 166 | 401 |
| 2 matters | 3 | 1 | 4 | 14 | 80 |
| 3 matters | - | 1 | 1 | 1 | 14 |
| 4 matters | - | - | - | 1 | 4 |
| 5 matters | - | - | - | - | 1 |
| Between 6 and 9 | - | - | - | - | 1 |
| Between 10 and 14 | - | - | - | - | - |
| 15 and > matters | - | - | - | - | - |
| Total | 66 | 77 | 70 | 181 | 501 |

7.6.3. Number of law firms subject to one or more consumer disputes

| | Number of law firms 08-09 | Number of law firms 07-08 | Number of law firms 06-07 | Number of law firms 05-06 | Number of law firms 04-05 |
|-------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| 1 matter | 54 | 73 | 57 | 142 | 259 |
| 2 matters | 6 | 7 | 7 | 20 | 102 |
| 3 matters | - | 1 | 2 | 5 | 21 |
| 4 matters | - | - | - | 1 | 14 |
| 5 matters | - | - | - | 1 | 7 |
| Between 6 and 9 | - | - | - | - | 3 |
| Between 10 and 14 | - | - | - | - | 3 |
| 15 and > matters | - | - | - | - | - |
| Total | 60 | 81 | 66 | 169 | 409 |

7.6.4. Solicitors subject to one or more consumer disputes by gender

| Gender | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008-09 * | % of profession representation 2007-08 * | % of profession representation 2006-07 * |
|--------|-----------------------|---------------|---------------------------------------|--|---|---|---|
| Male | 4,283 | 59.17 | 51 | 77.27 | 1.19 | 1.50 | 1.30 |
| Female | 2,956 | 40.83 | 15 | 22.73 | 0.51 | 0.51 | 0.76 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a consumer dispute

7.6.5. Solicitors subject to one or more consumer disputes by age

| Age | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008–09 * | % of profession representation 2007–08 * | % of profession representation 2006–07 * |
|---------|--------------------|------------|---------------------------------|----------------------------------|--|--|--|
| < 25 | 307 | 4.24 | 3 | 4.55 | 0.98 | 0.70 | 0.47 |
| 25 – 29 | 1,375 | 18.99 | 8 | 12.12 | 0.58 | 0.38 | 0.73 |
| 30 – 34 | 1,135 | 15.68 | 7 | 10.61 | 0.62 | 0.64 | 0.56 |
| 35 – 39 | 1,109 | 15.32 | 9 | 13.64 | 0.08 | 0.69 | 0.97 |
| 40 – 44 | 815 | 11.26 | 6 | 9.09 | 0.74 | 1.63 | 1.44 |
| 45 – 49 | 804 | 11.11 | 13 | 19.70 | 1.62 | 2.29 | 1.51 |
| 50 – 54 | 700 | 9.67 | 10 | 15.15 | 1.43 | 2.13 | 1.22 |
| 55 – 59 | 522 | 7.21 | 6 | 9.09 | 1.15 | 1.62 | 2.24 |
| 60 – 64 | 308 | 4.25 | 2 | 3.03 | 0.65 | 0.36 | 1.73 |
| 65 – 69 | 115 | 1.59 | 2 | 3.03 | 1.74 | 0.88 | 0.00 |
| 70 & > | 49 | 0.68 | - | - | - | 0.00 | 0.00 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a consumer dispute

7.6.6. Solicitors subject to one or more consumer disputes by 'years admitted'

| | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008–09 * | % of profession representation 2007–08 * | % of profession representation 2006–07 * |
|---------|--------------------|------------|---------------------------------|----------------------------------|--|--|--|
| < 5 | 2,481 | 34.27 | 17 | 25.76 | 0.68 | 0.66 | 0.65 |
| 5 – 9 | 1,423 | 19.66 | 6 | 9.09 | 0.42 | 1.13 | 0.62 |
| 10 – 14 | 922 | 12.74 | 10 | 15.15 | 1.08 | 0.98 | 1.57 |
| 15 – 19 | 770 | 10.64 | 14 | 21.21 | 1.82 | 1.46 | 1.57 |
| 20 – 24 | 571 | 7.89 | 5 | 7.58 | 0.88 | 1.82 | 1.28 |
| 25 – 29 | 523 | 7.22 | 8 | 12.12 | 1.53 | 2.29 | 1.41 |
| 30 – 34 | 280 | 3.87 | 4 | 6.06 | 1.43 | 1.17 | 3.04 |
| 35 – 39 | 158 | 2.18 | - | - | - | 1.36 | 1.42 |
| 40 & > | 111 | 1.53 | 2 | 3.03 | 1.80 | 0.00 | 1.04 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a consumer dispute

7.6.7. Solicitors subject to one or more consumer disputes by practising certificate type

| | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008-09 * | % of profession representation 2007-08 * | % of profession representation 2006-07 * |
|---------------------------------|--------------------|------------|---------------------------------|----------------------------------|--|--|--|
| Principal | 2,298 | 32.11 | 40 | 60.61 | 1.71 | 2.56 | 0.31 |
| Employee | 3,253 | 45.46 | 17 | 25.76 | 0.52 | 0.23 | 0.48 |
| Conditional | 1,568 | 21.91 | 3 | 4.55 | 0.19 | 0.44 | 3.83 |
| Limited principal | 19 | 0.27 | - | - | - | - | - |
| Restricted principal | 47 | 0.06 | - | - | - | - | - |
| Unrestricted volunteer | 6 | 0.08 | - | - | - | - | - |
| Restricted volunteer | 8 | 0.11 | - | - | - | - | - |
| Not practising at start of year | | | 6 | 9.09 | | | |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a consumer dispute

* This refers to those solicitors who were subject to a consumer dispute that was finalised during the year but who did not hold a practising certificate as at 01 July 2007

7.6.8. Law offices subject to one or more consumer disputes by location of the law office

| | Size of profession law offices | % of total | Number of respondent law offices | % of total respondent law offices | % of profession representation (2008–09) | % (2007–08) | % (2006–07) |
|--------------------------|--------------------------------|------------|----------------------------------|-----------------------------------|--|-------------|-------------|
| Brisbane city | 264 | 18.23 | 14 | 22.95 | 5.30 | 8.02 | 4.98 |
| Brisbane north suburbs | 230 | 15.88 | 9 | 14.75 | 3.91 | 5.00 | 5.02 |
| Brisbane south suburbs | 226 | 15.61 | 8 | 13.11 | 3.54 | 5.36 | 6.45 |
| Gold Coast | 239 | 16.51 | 11 | 18.03 | 4.60 | 7.96 | 3.51 |
| Ipswich region | 50 | 3.45 | 2 | 3.28 | 4.00 | 2.00 | 3.85 |
| Toowoomba region | 61 | 4.21 | 2 | 3.28 | 3.28 | 1.79 | 0.00 |
| Western Queensland | 9 | 0.62 | - | - | - | 0.00 | 0.00 |
| Sunshine Coast | 148 | 10.22 | 5 | 8.20 | 3.38 | 5.56 | 5.67 |
| Hervey Bay to Gladstone | 43 | 2.97 | 2 | 3.28 | 4.65 | 7.32 | 9.52 |
| Rockhampton region | 30 | 2.07 | 1 | 1.64 | 3.33 | 9.68 | 0.00 |
| Mackay region | 24 | 1.66 | - | - | - | 0.00 | 4.17 |
| Cairns region | 73 | 5.04 | 2 | 3.28 | 2.74 | 2.74 | 2.63 |
| Townsville region | 50 | 3.45 | 5 | 8.20 | 10.00 | 6.25 | 6.82 |
| Norfolk Island | 1 | 0.07 | - | - | - | 0.00 | 0.00 |
| Number PC holders at 1/7 | - | - | - | - | - | - | - |

* This table counts, when law firms have more than one office, the location of the particular office where the conduct subject to complaint occurred.

* 10% means that 1 in every 10 law offices within this grouping were subject to a consumer dispute

7.6.9. Law firms subject to one or more consumer disputes by size of the law firm

| Number of PC holders | Size of profession law firms | % of total | Number of respondent law firms | % of total respondent law firms | % of profession representation (2008-09) | % (2007-08) | % (2006-07) |
|--------------------------|------------------------------|------------|--------------------------------|---------------------------------|--|-------------|-------------|
| 1 | 610 | 44.89 | 13 | 21.67 | 2.13 | 4.23 | 2.94 |
| 2 – 3 | 412 | 30.32 | 19 | 31.67 | 4.61 | 6.42 | 5.01 |
| 4 – 6 | 146 | 10.74 | 11 | 18.33 | 7.53 | 7.06 | 7.91 |
| 7 – 12 | 84 | 6.18 | 3 | 5.00 | 3.57 | 7.69 | 12.86 |
| 13 – 24 | 47 | 3.46 | 6 | 10.00 | 12.76 | 14.63 | 7.50 |
| 25 – 50 | 13 | 0.96 | 4 | 6.67 | 30.77 | 15.00 | 18.75 |
| 51 – 100 | 12 | 0.88 | 4 | 6.67 | 33.33 | 33.33 | 0.00 |
| 101 – 200 | 4 | 0.29 | - | - | - | 25.00 | 0.00 |
| Number PC holders at 1/7 | 31 | 2.28 | - | - | - | - | - |

* This table counts law firms only once even if they have more than one office

* 10% means that 1 in every 10 law firms within this grouping were subject to a consumer dispute

8. Conduct matters

8.1. Conduct complaints by area of law

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 |
|--|-------------------|------------------|------------------|------------------|
| Family law | 101 | 19.65 | 17.58 | 20.67 |
| Conveyancing | 66 | 12.84 | 20.81 | 19.83 |
| Personal injuries/workcover litigation | 55 | 10.70 | 8.71 | 9.67 |
| Litigation | 46 | 8.95 | 7.26 | 9.50 |
| Criminal law | 41 | 7.98 | 6.29 | 4.83 |
| Deceased estates or trusts | 35 | 6.81 | 7.10 | 6.67 |
| Property law | 32 | 6.23 | 7.74 | 8.00 |
| Commercial/company law | 24 | 4.67 | 6.13 | 6.83 |
| Administrative law | 12 | 2.33 | n/a | n/a |
| Leases/mortgages | 12 | 2.33 | 2.26 | 3.83 |
| Building/construction law | 8 | 1.56 | 1.94 | 1.00 |
| Industrial law | 5 | 0.97 | 0.65 | 0.67 |
| Bankruptcy and insolvency | 4 | 0.78 | 0.48 | 1.67 |
| All other 'areas of law' combined | 73 | 14.20 | 13.06 | 6.84 |
| Total | 514 | | | |

8.2. Non-PIPA investigation matters by area of law

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 | % of total 05-06 |
|--|-------------------|------------------|------------------|------------------|------------------|
| Trust account breaches | 22 | 26.19 | 30.65 | 17.58 | 20.00 |
| Conveyancing | 10 | 11.90 | 19.35 | 27.47 | 8.89 |
| Criminal law | 9 | 10.71 | 8.06 | 1.10 | 11.11 |
| Litigation | 8 | 9.52 | 14.52 | 5.49 | 8.89 |
| Personal injuries/workcover litigation | 5 | 5.95 | 1.61 | 7.69 | 4.44 |
| Family law | 4 | 4.76 | 4.84 | 1.10 | 2.22 |
| Deceased estates or trusts | 4 | 4.76 | - | 1.10 | 8.89 |
| Conduct not in the practice of law | 3 | 3.57 | - | 3.30 | 8.89 |
| Commercial/company law | 2 | 2.38 | - | 2.20 | |
| Administrative law | 1 | 1.19 | 1.61 | 4.40 | 8.89 |
| Leases/mortgages | - | | 1.61 | 2.20 | 4.44 |
| Bankruptcy and insolvency | - | | - | 1.10 | |
| Immigration | - | | - | 1.10 | |
| All other 'areas of law' combined | 16 | 19.05 | 17.74 | 24.18 | 13.34 |
| Total | 84 | | | | |

8.3. Conduct complaints by nature of matter

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 |
|--|-------------------|------------------|------------------|------------------|
| Ethical matters | 155 | 30.16 | 31.13 | 37.50 |
| Quality of service | 150 | 29.18 | 28.71 | 22.17 |
| Costs | 78 | 15.18 | 16.77 | 17.83 |
| Communication | 54 | 10.51 | 10.81 | 9.17 |
| Compliance | 29 | 5.64 | 3.71 | 3.50 |
| Trust funds | 24 | 4.67 | 4.35 | 3.67 |
| Personal conduct | 7 | 1.36 | 1.61 | 1.00 |
| Documents | 6 | 1.17 | 1.45 | 2.83 |
| PIPA | 4 | 0.78 | 0.97 | 1.17 |
| All other 'natures of matter' combined | 7 | 1.36 | 0.48 | 1.16 |
| Total | 514 | | | |

8.4. Non-PIPA investigation matters by nature of matter

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 | % of total 05-06 |
|--|-------------------|------------------|------------------|------------------|------------------|
| Ethical matter | 22 | 26.19 | 27.42 | 16.48 | 26.67 |
| Costs | 18 | 21.43 | 22.58 | 57.14 | 8.89 |
| Trust funds | 15 | 17.86 | 25.81 | 9.89 | 26.67 |
| Compliance | 9 | 10.71 | 9.68 | 8.79 | 24.55 |
| Personal conduct | 9 | 10.71 | 4.84 | 3.30 | 6.67 |
| Quality of service | 6 | 7.14 | 6.45 | 2.20 | 4.44 |
| Communication | 1 | 1.19 | - | 1.10 | |
| All other 'natures of matter' combined | 4 | 4.76 | 3.22 | 1.10 | 2.22 |
| Total | 84 | | | | |

8.5. Conduct complaints by type of complainant

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 |
|---|-------------------|------------------|------------------|------------------|
| Client/former client | 328 | 63.81 | 68.87 | 66.50 |
| Non client | 77 | 14.98 | 12.74 | 9.50 |
| Solicitor | 52 | 10.12 | 7.74 | 10.17 |
| Solicitor for client | 29 | 5.64 | 5.16 | 5.83 |
| Third party | 15 | 2.92 | 2.10 | 3.83 |
| Barrister | 4 | 0.78 | 0.81 | 0.83 |
| Q.L.S. | 3 | 0.58 | 0.65 | 1.17 |
| Court registrar | 2 | 0.39 | n/a | n/a |
| Government | 1 | 0.19 | 0.81 | 1.50 |
| All other 'types of complainant' combined | 3 | 0.58 | 1.13 | 0.68 |
| Total | 514 | | | |

8.6. Conduct complaints by outcome

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 |
|---|-------------------|------------------|------------------|------------------|
| No reasonable likelihood | 336 | 65.37 | 68.06 | 67.50 |
| No public interest | 94 | 18.29 | 16.77 | 19.00 |
| Withdrawn | 29 | 5.64 | 6.45 | 4.83 |
| Referred to LPT | 23 | 4.47 | 5.48 | 6.17 |
| Referred to other investigative process | 12 | 2.33 | 0.97 | 0.67 |
| Closed – pending criminal proceedings | 6 | 1.17 | n/a | n/a |
| Referred to external agency | 4 | 0.78 | n/a | n/a |
| Referred to LPC | 3 | 0.58 | 1.13 | 0.83 |
| All other 'outcomes' combined | 7 | 1.36 | 1.13 | 1.00 |
| Total | 514 | | | |

8.7. Non-PIPA investigation matters by outcome

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 | % of total 05-06 |
|---|-------------------|------------------|------------------|------------------|------------------|
| No public interest | 40 | 47.62 | 59.68 | 51.65 | 16.28 |
| No reasonable likelihood | 24 | 28.57 | 30.65 | 34.07 | 39.53 |
| Referred to LPT | 9 | 10.71 | 8.06 | 2.20 | 18.60 |
| Referred to LPC | - | - | - | 2.20 | 20.93 |
| Referred to other investigative process | 4 | 4.76 | - | 1.10 | - |
| Withdrawn | 1 | 1.19 | - | 1.10 | 2.33 |
| All other 'outcomes' combined | 6 | 7.14 | 1.61 | 7.69 | 2.33 |
| Total | 84 | | | | |

8.8. PIPA investigation matters by outcome

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 |
|--------------------------|-------------------|------------------|------------------|------------------|
| No public interest | 5 | 71.43 | 94.83 | 93.68 |
| No reasonable likelihood | 2 | 28.57 | 1.72 | 6.32 |
| Referred to LPT | - | | 1.72 | - |
| Withdrawn | - | | 1.72 | - |
| Total | 7 | | | |

8.9. Conduct matters by respondent type

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 | % of total 05-06 |
|-----------------------|-------------------|------------------|------------------|------------------|------------------|
| Solicitor | 532 | 87.93 | 91.49 | 93.00 | 88.85 |
| Barrister | 39 | 6.45 | 3.92 | 2.16 | 3.99 |
| Unlawful operator | 13 | 2.15 | 0.54 | - | - |
| Other | 9 | 1.49 | 1.49 | 3.56 | 5.73 |
| Law practice employee | 6 | 0.99 | 1.76 | 1.27 | 1.33 |
| Corporation | 5 | 0.83 | 0.54 | - | - |
| Legal practitioner | 1 | 0.17 | 0.27 | - | - |
| Total | 605 | | | | |

8.10. Conduct matters by respondent type: solicitor

8.10.1. Conduct matters regarding solicitors as a proportion of the profession

| | Solicitors | Law Firms | Law Offices |
|---|--------------|--------------|--------------|
| Size of profession as at 1/7/2008 | 7,239 | 1,416 | 1,448 |
| Number of solicitors/law firms as respondents 2008–09 | 387 | 272 | 284 |
| Percentage | 5.35 | 19.21 | 19.61 |
| Number of solicitors/law firms as respondents 2007–08 | 477 | 385 | 401 |
| Percentage | 6.89 | 29.14 | 27.26 |
| Number of solicitors/law firms as respondents 2006–07 | 527 | 428 | 442 |
| Percentage | 8.26 | 33.08 | 31.57 |
| Number of solicitors/law firms as respondents 2005–06 | 543 | 459 | 470 |
| Percentage | 8.83 | 36.20 | 33.94 |
| Number of solicitors/law firms as respondents 2004–05 | 450 | 384 | 397 |
| Percentage | 7.69 | 31.02 | 29.80 |

8.10.2. Solicitors subject to one or more conduct matters

| | Number of solicitors 08–09 | Number of solicitors 07–08 | Number of solicitors 06–07 | Number of solicitors 05–06 | Number of solicitors 04–05 |
|-------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| 1 matter | 317 | 380 | 423 | 425 | 365 |
| 2 matters | 50 | 68 | 73 | 75 | 64 |
| 3 matters | 16 | 15 | 15 | 21 | 17 |
| 4 matters | 1 | 9 | 8 | 9 | 2 |
| 5 matters | 0 | 1 | 5 | 7 | 0 |
| Between 6 and 9 | 1 | 3 | 2 | 3 | 1 |
| Between 10 and 14 | 2 | 0 | 1 | 3 | 0 |
| 15 and > matters | 0 | 1 | 0 | 0 | 1 |
| Total | 387 | 477 | 527 | 543 | 450 |

8.10.3. Number of law firms subject to one or more conduct matters

| | Number of law firms 08-09 | Number of law firms 07-08 | Number of law firms 06-07 | Number of law firms 05-06 | Number of law firms 04-05 |
|-------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| 1 matter | 175 | 263 | 283 | 294 | 270 |
| 2 matters | 61 | 70 | 86 | 85 | 70 |
| 3 matters | 27 | 26 | 29 | 43 | 26 |
| 4 matters | 6 | 13 | 14 | 14 | 10 |
| 5 matters | 2 | 4 | 9 | 10 | 2 |
| Between 6 and 9 | 0 | 7 | 6 | 10 | 5 |
| Between 10 and 14 | 1 | 1 | 1 | 2 | 0 |
| 15 and > matters | 0 | 1 | 0 | 1 | 1 |
| Total | 272 | 385 | 428 | 459 | 384 |

8.10.4. Solicitors subject to one or more conduct matters by gender

| Gender | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008-09 * | % of profession representation 2007-08 * | % of profession representation 2006-07 * |
|--------|-----------------------|---------------|---------------------------------------|--|---|---|---|
| Male | 4,283 | 59.17 | 307 | 79.33 | 7.17 | 9.80 | 11.39 |
| Female | 2,956 | 40.83 | 80 | 20.67 | 2.71 | 2.41 | 2.96 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a conduct matter

8.10.5. Solicitors subject to one or more conduct matters by age

| Age | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008–09 * | % of profession representation 2007–08 * | % of profession representation 2006–07 * |
|---------|--------------------|------------|---------------------------------|----------------------------------|--|--|--|
| < 25 | 307 | 4.24 | 8 | 2.07 | 2.61 | 3.48 | 0.93 |
| 25 – 29 | 1,375 | 18.99 | 25 | 6.46 | 1.82 | 1.15 | 3.01 |
| 30 – 34 | 1,135 | 15.68 | 39 | 10.08 | 3.44 | 2.65 | 4.47 |
| 35 – 39 | 1,109 | 15.32 | 47 | 12.14 | 4.24 | 6.21 | 8.12 |
| 40 – 44 | 815 | 11.26 | 49 | 12.66 | 6.01 | 11.03 | 10.50 |
| 45 – 49 | 804 | 11.11 | 66 | 17.05 | 8.21 | 10.43 | 12.22 |
| 50 – 54 | 700 | 9.67 | 73 | 18.86 | 10.43 | 14.08 | 12.20 |
| 55 – 59 | 522 | 7.21 | 35 | 9.04 | 6.70 | 9.90 | 14.26 |
| 60 – 64 | 308 | 4.25 | 39 | 10.08 | 12.66 | 11.07 | 12.99 |
| 65 – 69 | 115 | 1.59 | 4 | 1.03 | 3.48 | 7.02 | 9.28 |
| 70 & > | 49 | 0.68 | 2 | 0.52 | 4.08 | 6.98 | 7.89 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a conduct matter

8.10.6. Solicitors subject to one or more conduct matters by ‘years admitted’

| | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008–09 * | % of profession representation 2007–08 * | % of profession representation 2006–07 * |
|---------|--------------------|------------|---------------------------------|----------------------------------|--|--|--|
| < 5 | 2,481 | 34.27 | 64 | 16.54 | 2.58 | 2.47 | 3.52 |
| 5 – 9 | 1,423 | 19.66 | 69 | 17.83 | 4.85 | 4.77 | 6.32 |
| 10 – 14 | 922 | 12.74 | 47 | 12.14 | 5.10 | 7.97 | 11.36 |
| 15 – 19 | 770 | 10.64 | 64 | 16.54 | 8.31 | 12.23 | 11.57 |
| 20 – 24 | 571 | 7.89 | 46 | 11.89 | 8.06 | 12.96 | 14.29 |
| 25 – 29 | 523 | 7.22 | 47 | 12.14 | 8.97 | 12.95 | 12.73 |
| 30 – 34 | 280 | 3.87 | 28 | 7.24 | 10.00 | 14.06 | 17.39 |
| 35 – 39 | 158 | 2.18 | 16 | 4.13 | 10.13 | 8.84 | 8.51 |
| 40 & > | 111 | 1.53 | 6 | 1.55 | 5.41 | 4.50 | 5.21 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a conduct matter

8.10.7. Solicitors subject to one or more conduct matters by practising certificate type

| | Size of profession | % of total | Number of respondent solicitors | % of total | % Representation 2008-09 * | % Representation 2007-08 * | % Representation 2006-07 * |
|---------------------------------|--------------------|------------|---------------------------------|------------|----------------------------|----------------------------|----------------------------|
| Principal | 2,298 | 32.11 | 233 | 60.21 | 10.14 | 15.63 | 16.80 |
| Employee | 3,253 | 45.46 | 75 | 19.38 | 2.31 | 2.43 | 3.09 |
| Conditional | 1,568 | 21.91 | 22 | 5.68 | 1.40 | 1.20 | 1.62 |
| Limited principal | 19 | 0.27 | - | - | - | - | - |
| Restricted principal | 4 | 0.06 | - | - | - | - | - |
| Unrestricted volunteer | 6 | 0.08 | - | - | - | - | 3.83 |
| Restricted volunteer | 8 | 0.11 | - | - | - | - | - |
| Not practising at start of year | - | - | 57 | 14.73 | - | - | - |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a conduct matter

* This refers to those solicitors who were subject to a conduct matter that was finalised during the year but who did not hold a practising certificate as at 01 July 2007

8.10.8. Law offices subject to one or more conduct matters by location of the law office

| | Size of profession law offices | % of total | Number of respondent law offices | % of total respondent law offices | % of profession representation on (2008–09) | % (07–08) | % (06–07) |
|--------------------------------|--------------------------------|------------|----------------------------------|-----------------------------------|---|-----------|-----------|
| Brisbane city | 264 | 18.23 | 72 | 25.35 | 27.27 | 35.50 | 39.46 |
| Brisbane north suburbs | 230 | 15.88 | 31 | 10.88 | 13.48 | 25.45 | 25.11 |
| Brisbane south suburbs | 226 | 15.61 | 49 | 17.19 | 21.68 | 24.55 | 32.72 |
| Gold Coast | 239 | 16.51 | 46 | 16.14 | 19.25 | 33.63 | 33.77 |
| Ipswich region | 50 | 3.45 | 3 | 1.05 | 6.00 | 18.00 | 21.15 |
| Toowoomba region | 61 | 4.21 | 10 | 3.51 | 16.39 | 26.79 | 25.00 |
| Western Queensland | 9 | 0.62 | 1 | 0.35 | 11.11 | 11.11 | 28.57 |
| Sunshine Coast | 148 | 10.22 | 28 | 9.82 | 18.92 | 29.86 | 30.50 |
| Hervey Bay to Gladstone region | 43 | 2.97 | 6 | 2.11 | 13.95 | 31.71 | 52.38 |
| Rockhampton region | 30 | 2.07 | 7 | 2.46 | 23.33 | 12.90 | 22.58 |
| Mackay region | 24 | 1.66 | 6 | 2.11 | 25.00 | 21.74 | 33.33 |
| Cairns region | 73 | 5.04 | 14 | 4.91 | 19.18 | 23.29 | 17.11 |
| Townsville region | 50 | 3.45 | 11 | 3.86 | 22.00 | 29.17 | 36.36 |
| Norfolk Island | 1 | 0.07 | - | - | - | 0.00 | 0.00 |
| Number PC holders at 1/7 | | | - | - | - | - | - |

* This table counts, when law firms have more than one office, the location of the particular office where the conduct subject to complaint occurred.

* 10% means that 1 in every 10 law offices within this grouping were subject to a conduct matter

8.10.9. Law firms subject to one or more conduct matters by size of the law firm

| Number of PC holders | Size of profession law firms | % of total | Number of respondent law firms | % of total respondent law firms | % of profession representation (2008–09) | % (2007–08) | % (2006–07) |
|--------------------------|------------------------------|------------|--------------------------------|---------------------------------|--|-------------|-------------|
| 1 | 610 | 44.89 | 98 | 36.03 | 16.07 | 23.46 | 25.09 |
| 2 – 3 | 412 | 30.32 | 68 | 25.00 | 16.50 | 27.16 | 32.58 |
| 4 – 6 | 146 | 10.74 | 39 | 14.34 | 26.71 | 34.12 | 41.24 |
| 7 – 12 | 84 | 6.18 | 27 | 9.93 | 32.14 | 51.28 | 52.86 |
| 13 – 24 | 47 | 3.46 | 26 | 9.56 | 55.32 | 58.54 | 67.50 |
| 25 – 50 | 13 | 0.96 | 6 | 2.21 | 46.15 | 75.00 | 68.75 |
| 51 – 100 | 12 | 0.88 | 5 | 1.84 | 41.67 | 44.44 | 50.00 |
| 101 – 200 | 4 | 0.29 | 3 | 1.10 | 75.00 | 25.00 | 66.67 |
| Number PC holders at 1/7 | 31 | 2.28 | - | - | - | - | - |

* This table counts law firms only once even if they have more than one office

* 10% means that 1 in every 10 law firms within this grouping were subject to a conduct matter

8.11. Conduct matters by respondent type: barrister

8.11.1. Conduct matters regarding barristers as a proportion of the profession

| | Barristers |
|---|------------|
| Size of profession as at 1/7/2008 | 901 |
| Number of barristers as respondents 2008–09 | 15 |
| Percentage | 1.66 |
| Number of barristers as respondents 2007–08 | 18 |
| Percentage | 2.02 |
| Number of barristers as respondents 2006–07 | 17 |
| Percentage | 1.91 |

9. ILP Compliance Audits

9.1. Summary

| | Number of matters (08-09) | Number of matters (07-08) |
|----------------------------------|------------------------------|------------------------------|
| Matters on hand at start of year | | |
| self assessment audits | 54 | - |
| web-based surveys | | - |
| on-site reviews | 2 | - |
| Total | 56 | - |
| Plus matters opened | | |
| self assessment audits | 74 | 102 |
| web-based surveys | 50 | - |
| on-site reviews | - | 2 |
| Total | 124 | 104 |
| Less matters closed | | |
| self assessment audits | 90 | 61 |
| web-based surveys | 43 | - |
| on-site reviews | 1 | - |
| Total | 134 | 61 |
| Matters on hand at end of period | | |
| self assessment audits | 38 | 41 |
| web-based surveys | 7 | - |
| on-site reviews | 1 | 2 |
| Total | 46 | 43 |

10. Prosecutions

10.1. Summary

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 | Total 04-05 |
|--------------------------|-------------|-------------|-------------|-------------|-------------|
| On hand at start of year | 44 | 34 | 42 | 24 | 3 |
| Opened during year | 21 | 29 | 33 | 43 | 26 |
| Closed during year | 34 | 19 | 41 | 25 | 5 |
| On hand at end of year | 31 | 44 | 34 | 42 | 24 |

10.2. Breakdown of prosecutions on hand at 30 June

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 |
|---------------------------------|-------------|-------------|-------------|-------------|
| Assigned for prosecution | 5 | 8 | 7 | 10 |
| Legal Practice Tribunal | | | | |
| waiting to file | 1 | 4 | 3 | 4 |
| waiting to serve | 4 | - | 1 | 6 |
| waiting directions hearing | 4 | 12 | 8 | - |
| waiting hearing/decision | 10 | 12 | 8 | 12 |
| Total | 19 | 28 | 20 | 22 |
| Legal Practice Committee | | | | |
| waiting to file | - | - | - | 1 |
| waiting to serve | 3 | 1 | - | 1 |
| waiting directions hearing | 1 | 4 | 2 | 2 |
| waiting hearing/decision | 1 | 1 | 5 | 6 |
| Total | 5 | 6 | 7 | 10 |
| Magistrates Court | | | | |
| waiting to file | 1 | - | - | - |
| waiting hearing/decision | 1 | - | - | - |
| Total | 2 | 0 | 0 | 0 |
| Under Appeal | | | | |
| decisions under appeal | - | 2 | - | - |
| Total | 31 | 44 | 34 | 42 |

10.3. Prosecutions – filed

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 | Total 04-05 |
|-----------------------------|-------------|-------------|-------------|-------------|-------------|
| In Legal Practice Tribunal | 16 | 20 | 25 | 24 | 11 |
| In Legal Practice Committee | 6 | 8 | 11 | 13 | 6 |
| In the Magistrates Court | 2 | - | - | - | - |
| Total | 24 | 28 | 36 | 37 | 17 |

10.4. Prosecutions – heard and decided

| | Total 08-09 | Total 07-08 | Total 06-07 | Total 05-06 | Total 04-05 |
|---------------------------------------|----------------|----------------|----------------|----------------|----------------|
| By the Legal Practice Tribunal | 21 | 5 | 18 | 9 | 2 |
| By the Legal Practice Committee | 6 | 6 | 8 | 10 | - |
| By the Solicitors Complaints Tribunal | n/a | n/a | n/a | n/a | 3 |
| By the Magistrates Court | - | - | - | - | - |
| By the Court of Appeal | 3 | - | - | 2 | - |
| Withdrawn/discontinued | 5 | 8 | 15 | - | - |
| Total | 35 | 19 | 41 | 21 | 5 |

10.5. Prosecutions by area of law (excluding matters withdrawn/discontinued)

| | Number of matters | % of total 08–09 | % of total 07–08 | % of total 06–07 | % of total 05–06 |
|---|-------------------|------------------|------------------|------------------|------------------|
| Criminal law | 6 | 20.00 | 9.09 | - | - |
| Deceased estates or trusts | 5 | 16.67 | - | 11.54 | - |
| Family law | 3 | 10.00 | 27.27 | 7.69 | 4.76 |
| Litigation | 3 | 10.00 | 18.18 | 19.23 | 19.05 |
| Conveyancing | 3 | 10.00 | - | 3.85 | - |
| Conduct not in the practice of law | 2 | 6.67 | 9.09 | - | - |
| Property law | 2 | 6.67 | - | 11.54 | |
| Leases/mortgages | 2 | 6.67 | n/a | n/a | n/a |
| Trust account breaches | 1 | 3.33 | 9.09 | 3.85 | - |
| Commercial/company law | 1 | 3.33 | - | 3.85 | - |
| Personal injuries/ workcover litigation | 1 | 3.33 | - | 3.85 | 14.29 |
| All other 'areas of law' combined | 1 | 3.33 | 27.27 | 34.62 | 42.85 |
| Total | 30 | | | | |

10.6. Prosecutions by nature of matter (excluding matters withdrawn/discontinued)

| | Number of matters | % of total 08–09 | % of total 07–08 | % of total 06–07 | % of total 05–06 |
|--------------------------------------|-------------------|------------------|------------------|------------------|------------------|
| Ethical matters | 14 | 46.67 | 54.55 | 38.46 | 28.57 |
| Quality of service | 6 | 20.00 | 9.09 | - | - |
| Personal conduct | 4 | 13.33 | - | 3.85 | 4.76 |
| Costs | 2 | 6.67 | 18.18 | 3.85 | 4.76 |
| Trust funds | 1 | 3.33 | 18.18 | 46.15 | 33.33 |
| Communication | 1 | 3.33 | - | 3.85 | 9.52 |
| Compliance | 1 | 3.33 | n/a | n/a | n/a |
| All other natures of matter combined | 1 | 3.33 | - | 3.85 | 19.06 |
| Total | 30 | | | | |

10.7. Prosecutions by outcome (excluding matters withdrawn/discontinued)

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 | % of total 05-06 |
|-----------------------------|-------------------|---------------------|---------------------|---------------------|---------------------|
| Fined | 11 | 36.67 | 27.27 | 26.92 | 66.67 |
| Reprimanded | 10 | 33.33 | 18.18 | - | - |
| Removed from roll | 6 | 20.00 | 18.18 | 7.69 | 19.05 |
| Dismissed after hearing | 1 | 3.33 | - | 7.69 | - |
| Finding of LPA offence | - | - | 18.18 | 57.69 | - |
| All other outcomes combined | 2 | 6.67 | 18.18 | - | - |
| Total | 30 | | | | |

10.8. Prosecutions by respondent type (excluding matters withdrawn/discontinued)

| | Number of matters | % of total 08-09 | % of total 07-08 | % of total 06-07 | % of total 05-06 |
|--------------|-------------------|---------------------|---------------------|---------------------|---------------------|
| Solicitor | 24 | 80.00 | 100.00 | 92.31 | 95.24 |
| Barrister | 6 | 20.00 | - | 6.69 | 4.76 |
| Total | 30 | | | | |

10.9. Prosecutions by respondent type: solicitor

10.9.1. Solicitors subject to one or more prosecutions by gender

| | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008–09 * | % 2007–08 * | % 2006–07 * |
|--------|--------------------|------------|---------------------------------|----------------------------------|--|-------------|-------------|
| Male | 4283 | 59.17 | 21 | 87.50 | 0.49 | 0.24 | 0.85 |
| Female | 2956 | 40.83 | 3 | 12.50 | 0.10 | 0.04 | 0.21 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a prosecution

10.9.2. Solicitors subject to one or more prosecutions by age

| | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008–09 * | % of profession representation 2007–08 * | % of profession representation 2006–07 * |
|---------|--------------------|------------|---------------------------------|----------------------------------|--|--|--|
| < 25 | 307 | 4.24 | - | - | - | 0.00 | 0.00 |
| 25 – 29 | 1,375 | 18.99 | - | - | - | 0.08 | 0.09 |
| 30 – 34 | 1,135 | 15.68 | 3 | 12.50 | 0.26 | 0.00 | 0.37 |
| 35 – 39 | 1,109 | 15.32 | 2 | 8.33 | 0.18 | 0.10 | 0.54 |
| 40 – 44 | 815 | 11.26 | 3 | 12.50 | 0.37 | 0.38 | 0.79 |
| 45 – 49 | 804 | 11.11 | 2 | 8.33 | 0.25 | 0.25 | 0.88 |
| 50 – 54 | 700 | 9.67 | 6 | 25.00 | 0.86 | 0.14 | 1.22 |
| 55 – 59 | 522 | 7.21 | 6 | 25.00 | 1.15 | 0.20 | 1.43 |
| 60 – 64 | 308 | 4.25 | 2 | 8.33 | 0.65 | 0.36 | 0.43 |
| 65 – 69 | 115 | 1.59 | - | - | - | 0.88 | 0.00 |
| 70 & > | 49 | 0.68 | - | - | - | 0.00 | 0.00 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a prosecution

10.9.3. Solicitors subject to one or more prosecutions by 'years admitted'

| | Size of profession | % of total | Number of respondent solicitors | % of total respondent solicitors | % of profession representation 2008-09 * | % of profession representation 2007-08 * | % of profession representation 2006-07 * |
|---------|--------------------|------------|---------------------------------|----------------------------------|--|--|--|
| < 5 | 2481 | 34.27 | 1 | 4.17 | 0.04 | 0.04 | 0.05 |
| 5 – 9 | 1423 | 19.66 | 3 | 12.50 | 0.21 | 0.08 | 0.71 |
| 10 – 14 | 922 | 12.74 | 8 | 33.33 | 0.87 | 0.33 | 0.79 |
| 15 – 19 | 770 | 10.64 | 4 | 16.67 | 0.52 | 0.27 | 1.00 |
| 20 – 24 | 571 | 7.89 | 4 | 16.67 | 0.70 | 0.18 | 1.47 |
| 25 – 29 | 523 | 7.22 | 2 | 8.33 | 0.38 | 0.19 | 0.40 |
| 30 – 34 | 280 | 3.87 | 1 | 4.17 | 0.36 | 0.39 | 2.61 |
| 35 – 39 | 158 | 2.18 | 1 | 4.17 | 0.63 | 0.00 | 0.00 |
| 40 & > | 111 | 1.53 | - | - | - | 0.90 | 0.00 |

* 10% means that 1 in every 10 solicitors within this grouping were subject to a prosecution

