



Legal
Services
Commission

Annual Report
2009-2010



31 October 2010

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 Legal Services Commission's sixth annual report, for the reporting year 2009-10.

The *Legal Profession Act 2007* (the Act) requires (at section 490) that the report 'deals with the system established under the Act... for dealing with complaints' and (at section 489) that it 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.

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

Yours faithfully



John Briton
Legal Services Commissioner

2009
-2010

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Commissioner's overview



The *Legal Profession Act 2007* (the Act) creates and gives the Legal Services Commission a specific set of responsibilities that we describe throughout the body of the report and which, taken together, give us the responsibility to monitor and enforce appropriate standards of conduct in the delivery of legal services in Queensland. They are not responsibilities we exercise mechanically or for their own sake but with a keen sense of values and a purpose - to protect the rights of the users of legal services and to promote high standards of conduct in the delivery of those services and, even more fundamentally, to do our bit to help protect and promote public confidence in the legal system, the administration of justice and the rule of law. I hope our sense of purpose is apparent in our work and apparent also in the descriptions of our work throughout this report.

“We prefer prevention and persuasion to prosecution and ethical capacity building to excoriation.”

from initiating disciplinary action but nor do we believe that disciplinary action is the only or always the best way to achieve our purposes. We prefer prevention and persuasion to prosecution whenever that's sufficient to the task and ethical capacity building to excoriation.

The Act gives us responsibility to receive and deal with complaints about lawyers and to hold them to account by initiating disciplinary action when their conduct falls short of the mark. We note under the sub-heading *Complaints* that we don't shy away

We interpret and apply the key term 'unsatisfactory professional conduct' very broadly, to include one-off and careless but honest mistakes and poor standards of service and the like - conduct that in most other contexts wouldn't be seen to warrant a disciplinary response but rather appropriate consumer redress and perhaps some performance management. That is because (cutting a longer story short) the Act describes the main purposes of the system for dealing with complaints to be to provide a means of redress for complaints but yet makes all but wholly voluntary redress entirely contingent upon a disciplinary body making a finding of unsatisfactory professional conduct or worse, professional misconduct.

It is significant, then, in this context, aggregating the data that we describe under the sub-headings *Complaints, own motion investigations and discipline and enforcement*, that 242 (or 19%) of the 1259 complaints and own motion investigations we closed during the year involved by our reckoning an issue of unsatisfactory professional conduct or professional misconduct but that we closed only 28 (or 2%) of them by deciding to initiate disciplinary action. Those 28 matters involved 20 lawyers or just one quarter of one percent of all Queensland practitioners.

Importantly we closed 214 (or 17%) of those 1259 complaints and own motion investigations on the basis that, while they may have involved an issue of unsatisfactory professional conduct or professional misconduct, no public interest would be served by initiating disciplinary action. These figures tell us that the conduct was at the lesser end of the spectrum of conduct that might amount to unsatisfactory professional conduct and that

the lawyers subject to complaint agreed after we intervened to do all they reasonably could to put things right with the complainant or otherwise to fix the problem - by acknowledging their error and apologizing, by remedying the fault in the service they provided or reducing or waiving their fee, by agreeing to be supervised, by undertaking some further education, by improving their management systems - whatever was fair and reasonable in all the circumstances of the matter. We achieved the same good result in many hundreds of other matters that we dealt with informally, as 'inquiries' rather than complaints.

These are good figures. They tell us that we achieved our purposes by persuasion, without having to exercise our option to initiate disciplinary action. It would be preferable, however, and far quicker, less adversarial and kinder to all concerned not to implicitly threaten lawyers with disciplinary action but to deal with complaints of these kinds administratively, by authorizing us (as we've argued for some years now) to require the parties to a complaint to try to resolve the complaint by mediation and, if they fail to reach a fair and reasonable agreement, by authorizing us to decide the issue.

The complaints data tells us a lot more besides, and for example highlights an unfortunate gap in our system for dealing with complaints. We have no jurisdiction to deal with costs disputes, and had little choice but to 'summarily dismiss' 85 complaints that described a costs dispute and to refer those 85 complainants to the appropriate court. Similarly we could do nothing to help another 1244 people who expressed their concerns about a lawyer's costs informally, by way of telephone or other inquiry - almost 1 in 3 of the people who made inquiries of us during the year. It would be quicker, simpler and less confusing from a consumer's point of view if the Commission was a 'one stop shop' for receiving and dealing with complaints about lawyers, including complaints disputing a lawyer's costs.

Similarly the complaints data tells us that the system for dealing with complaints, while it gives users of legal services a means of redress for complaints, is an ineffective and inefficient means of monitoring and enforcing appropriate standards of conduct in the delivery of legal services and protecting consumers more generally. We don't need the data to tell us that the system for dealing with complaints is inherently backward looking and reactive, nor that it allows us to deal with individual lawyers but not with law firms, but the data underscores the problem. It reminds us that most substantiated complaints have their origins not in any incompetence or dishonesty on the part of individual lawyers but rather inadequacies in their firms' management systems and supervisory arrangements and their workplace culture more generally, and were readily preventable.

“Most substantiated complaints have their origins not in any incompetence or dishonesty on the part of individual lawyers but rather inadequacies in their firms' management systems and supervisory arrangements.”

And the data tells us something else again - that the system for dealing with complaints is highly selective and effectively discriminatory. We get disproportionately many complaints about sole practitioners and lawyers who work for small law firms and who do family law or personal injury and deceased estate work or conveyances and disproportionately few about lawyers who work for medium-sized and bigger law firms and who practice other areas of law, to the extent that lawyers who work for medium-sized and larger law firms and practice other areas of law are only nominally subject to regulatory scrutiny. There is no reason however to think that they are any more competent or ethical.

It follows in our view that the system for dealing with complaints should be supplemented with regulatory tools that are genuinely preventative in character; that are directed to ethical capacity-building more so than the threat of punishment; that engage all lawyers rather than a mere sub-set of lawyers; and that engage not only individual lawyers but law firms also.

The Act gives us precisely those tools in relation to incorporated legal practices, the steadily growing minority (now almost 20%) of law firms that have structured themselves as companies since they were first allowed to do so only 3 years ago. We describe these

tools and how we use them and crucially their effectiveness under the sub-heading *Compliance audits*. The Act requires incorporated legal practices to have at least one legal practitioner director and requires legal practitioner directors 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’ - in effect to ensure that their firms have the ‘ethical infrastructure’ they need to enable them to go about their business competently and ethically. Crucially the Act also authorizes us to conduct an audit of an incorporated legal practice to monitor its compliance.

“The system for dealing with complaints should be supplemented with regulatory tools that are genuinely preventative in character; that are directed to ethical capacity-building more so than the threat of punishment; that engage all lawyers rather than a mere sub-set of lawyers; and that engage not only individual lawyers but law firms also.”

We believe that the same regulatory arrangements should apply not only to incorporated legal practices but to all law firms. There have always been powerful normative arguments to this effect. We need only ask how it can possibly be that legal practitioner directors of incorporated legal practices are required, but that principals of law firms which provide legal services under a partnership structure are not required to ensure that their firm has management systems and supervisory arrangements in place to enable their firms to provide competent and ethical legal services. Similarly we might ask whether it makes any sense that regulators are authorized to conduct compliance audits of the ways a partnership handles the monies it holds on trust for its clients but not the competence and integrity of the way it handles its clients affairs more generally. There is now a compelling evidence-based argument as well. We document under the sub-heading *Compliance audits* the overwhelming evidence that the regulatory arrangements that apply to incorporated legal practices have dramatically improved standards of conduct in their delivery of legal services and achieved extraordinary cultural change.

We bring the same sense of purpose to our other, non-operational work. It’s a recurring theme in the work we describe under the sub-heading *Education, projects and research*, best illustrated perhaps by the work we’ve done to further develop our web-based ‘ethics checks’ surveys and the hugely encouraging take-up rate when we’ve asked law firms to consider taking part. The ethics checks are ethical capacity building tools we’ve designed deliberately to engage not only a firm’s leaders but all its people in reflecting on ethical issues that arise in the everyday practice of law, to prompt both spontaneous and organized discussion within the firm about those issues, and to help the firm identify any gaps or

“Regulatory arrangements that apply to incorporated legal practices have dramatically improved standards of conduct in their delivery of legal services and achieved extraordinary cultural change.”

weakness in its approach and to make any improvements that may be required. The feedback we get tells us they do just that, and add a transparency and accountability to the way law firms go about the business of law - we publish the de-identified results on our website and so not only allow participating firms to compare their results but expose hitherto hidden aspects of law firm culture to public scrutiny.

Similarly, we describe under the heading *Our people and our systems* the progress we've made developing www.lpportal.org.au. The Attorney-General launched the portal in March and it is now not only 'pulling' regulatory data in by allowing incorporated legal practices to complete and lodge various forms on-line but 'pushing' information out, by giving them access to their firm's complete complaints histories, information that has never previously been available. We will add further functionalities over the year ahead, including by giving all law firms access to their complaints histories and other 'risk data' relevant to their firm. We will also give lawyers, legal academics and members of the public access to de-identified and aggregated complaints and other regulatory and profession analysis data supported by a search engine which will allow them to interrogate the data. The Attorney noted when he launched the portal that this 'will bring unprecedented transparency and accountability to the Commission's work.'

We're proud of what we've achieved and are looking forward to the imminent national legal profession reforms. We noted in last year's report that the Council of Australian Governments (COAG) established a National Legal Profession Reform Taskforce in April 2009 and charged it to prepare nationally uniform legislation for the regulation of the legal profession and recommend an appropriate regulatory architecture. The Taskforce published a series of discussion papers and on 14 May this year a consultation package including a draft *National legal profession law*. It will report back to COAG including with a draft Bill by the end of the calendar year.

The public debate about the discussion papers and draft Law has been dominated by controversy about the powers, composition and manner of appointment of the proposed National Legal Services Board. That is an important debate but, regrettably, has distracted attention from other proposed reforms, not least reforms that will:

- enable us to guarantee users of legal services a means of redress when their lawyers make honest but careless mistakes or provide unacceptably poor standards of service and the like, but happily without having to initiate disciplinary action. The draft Law would require us to try to resolve consumer disputes by mediation but envisages us having the authority, if a dispute can't be resolved by mediation, to resolve the dispute it by making a binding determination - a determination that the lawyer must apologize to the complainant, redo the relevant work, complete the work at a reduced fee, pay compensation of up to \$25,000, undertake further education or training or do whatever else is fair and reasonable in all the circumstances of the complaint to 'put things right';
- simplify the 'regulatory maze' for users of legal services by making the Commission a 'one stop shop' for complaints about lawyers, including complaints about a lawyer's costs. The draft Law envisages us having jurisdiction to deal with costs disputes involving legal costs of up to \$100,000 by mediation and, if we can't resolve a dispute by mediation and the amount in dispute is less than \$10,000, having the authority to make a binding determination in relation to the amount in dispute; and
- require the principals not only of incorporated legal practices but of all law firms to take 'all reasonable action' to ensure that the firm and its lawyers comply with the applicable professional obligations and standards and authorizes us, if we consider it necessary to do so, to conduct an audit of a firm's compliance with the applicable standards including the management of its provision of legal services and if needs be to issue a management system direction to a law firm 'to ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the [firm] in accordance with the applicable standards.'

These are significant and welcome reforms and, as we've argued in previous annual reports, reforms that will strengthen our current regulatory arrangements and add powerfully to our capacity to achieve our purposes, and to achieve them more effectively and efficiently.

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, the Director-General, Rachel Hunter who retired during the year and the Acting Director-General, Phil Clarke for their generous support and encouragement, the many staff of the

Department of Justice and Attorney-General who provide us with financial management and systems support behind the scenes, and similarly our data systems consultant, Stephen Pickering of Genesys Software Solutions.

We have respectful and productive working relationships with the office bearers and staff of the Queensland Law Society and the Bar Association of Queensland and I thank them for that. I especially want to thank the members of the Commission's Reference Group for making themselves available to meet with me both individually and as a group and giving me invaluable feedback and advice: Dr Geoffrey Airo-Farulla, Margo Couldrey, Margaret Jones, Dr Julian Lamont, Professor the Hon Michael Lavarch, the Hon Martin Moynihan QC AO, Ross Perrett, Zoe Rathus and Mark Ryan.

Finally I want to acknowledge and thank the staff of the Commission. They do demanding and often thankless work and they do it well. They should take credit for that, and for continuing to make the Commission such a good place to come to work everyday.

A handwritten signature in black ink, appearing to read 'John Briton', with a stylized, cursive script.

John Briton
Legal Services Commissioner

Our core business and our values

The Legal Services Commission protects the rights of legal consumers and promotes high standards of conduct in the delivery of legal services.

Our most fundamental purposes are to protect the rights of legal consumers and to promote high standards of conduct in the delivery of legal services.

Our core business is to:

- deliver an efficient and effective system for dealing with complaints about lawyers and other people over whom we have jurisdiction¹;
- commence ‘own motion’ investigations into the conduct of lawyers and law firms when we reasonably suspect them to have acted improperly;²
- audit incorporated legal practices to help them develop and maintain appropriate management systems and an ‘ethical infrastructure’;³
- take fair and timely disciplinary and other enforcement action as appropriate;⁴
- communicate what we learn as we go about our work, contribute to related policy debate, and undertake projects and research directed to helping lawyers and law firms achieve and maintain high standards of conduct in their delivery of legal services; and
- create and maintain a productive and motivating work environment.

We will be well informed, thorough, fair and accountable. We will be open, transparent, and responsive. We will value our independence but 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

Complaints

“Thank you for the very prompt manner my complaint was handled and attended to.”

The *Legal Profession Act 2007* (the Act) describes the main purposes of the system for dealing with complaints to be ‘to provide for the discipline of the legal profession, to promote and enforce the professional standards, competence and honesty of the legal profession, to provide a means of redress for complainants about lawyers and to otherwise protect members of the public from unlawful operators.’⁵

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 the advertising of 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 comprehensive detail at Appendix 1 in both written and diagrammatic form. We will not repeat ourselves here except to say that the Act requires us to produce information about the making of complaints and the procedure for dealing with complaints; to ensure that information is available to members of the public on request; to give help to members of the public in making complaints; and to deal with complaints ‘as efficiently and expeditiously as is practicable’.

We assess our performance accordingly, including by our timeliness in dealing with complaints. We have set ourselves the targets of responding to 80% of the inquiries we receive within 1 working day and 100% within 2 working days; assessing 90% of all new complaints within 1 month of receipt, in a median time-frame of less than 2 weeks; of finalizing 90% of the complaints we assess to be consumer disputes within 2 months of receipt, in a median time-frame of less than 1 month; and of finalizing 75% of the complaints we assess to be conduct complaints (that is to say, to involve an issues of unsatisfactory professional conduct or professional misconduct) within 6 months of receipt, in a median time-frame of less than 4 months. We have regard also to our ‘clearance ratio’ (that is to say, the number of complaints we finalise compared to the number we receive); the outcomes we achieve (including for example the number of complaints we finalise on public interest grounds because the lawyers subject to complaint have ‘put things right’ with the aggrieved complainant); our pro-activity (the extent to which we have used our complaint-handling powers to improve standards of conduct in the delivery of legal services); and of course to the feedback we receive both from complainants and the lawyers who were the subject of those complaints. We reflect over the pages that follow on our performance against those measures.

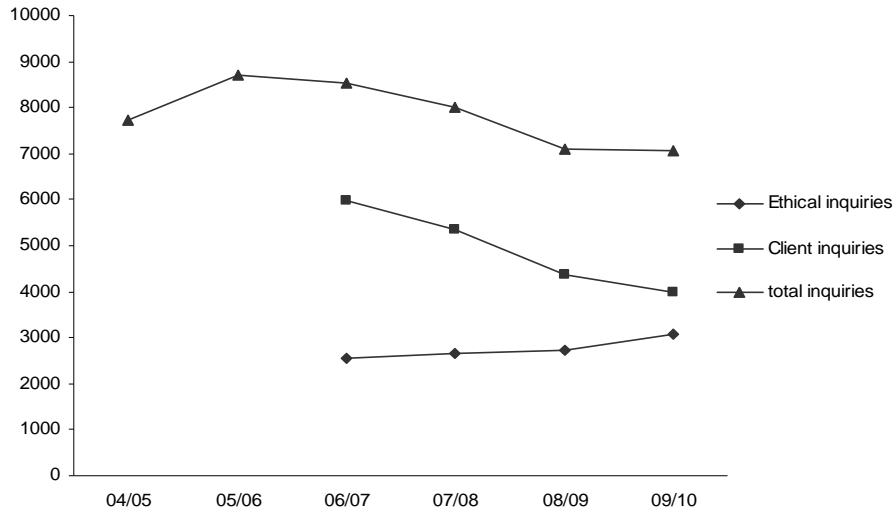
⁵ Section 416

Some key facts about complaints

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

- the number of telephone and other inquiries we received - for this purpose, the Queensland Law Society (the QLS) and the Commission between us - continued the downward trend of recent years, albeit less dramatically (by 8%) in 2009-10 than in 2008-09 (when it was 18% down on 2007-08) – see Figure 1.

Figure 1 Number of inquiries received



- we received 1182 complaints in 2009-10, or 10% more than the 1066 we received in 2008-09 (when we noted that the number of complaints had settled at 1100 over each of the previous 3 years, give or take a few). That number remains notably fewer (27%) than the 1600 plus complaints our predecessor received over each of the 2 years immediately before the Commission commenced in 2004 notwithstanding the significant increase (55%) over that same time in the number of lawyers potentially subject to complaint - see Figures 2 and 3. There was 1 complaint for every 3.4 practitioners in 2003-04 and 1 for every 7.3 in 2009-10 – see Figure 4. That is good news by any measure.

Figure 2 Number of new complaints received

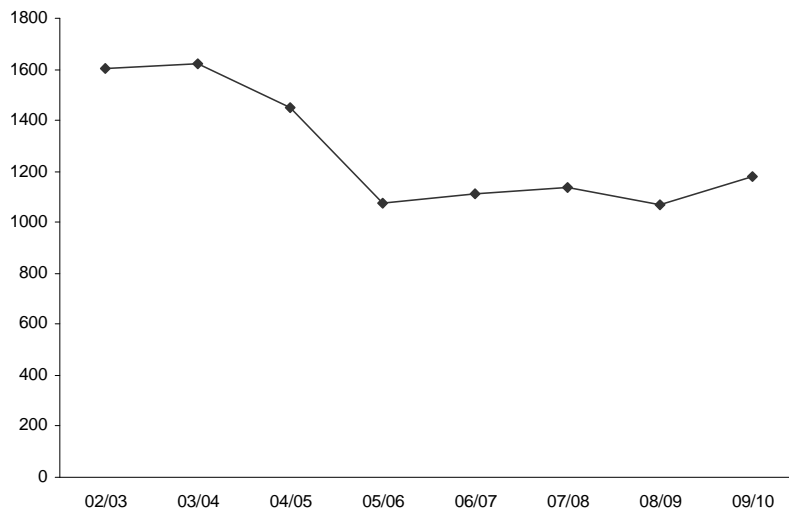
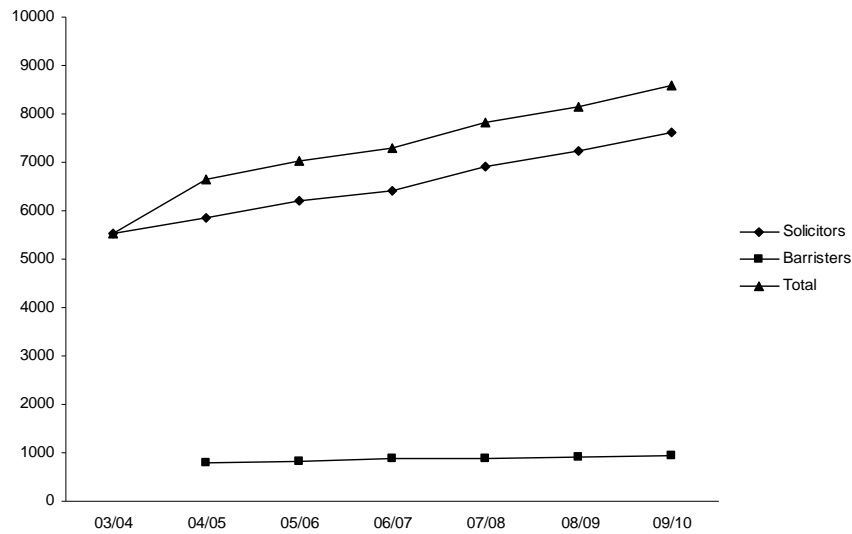
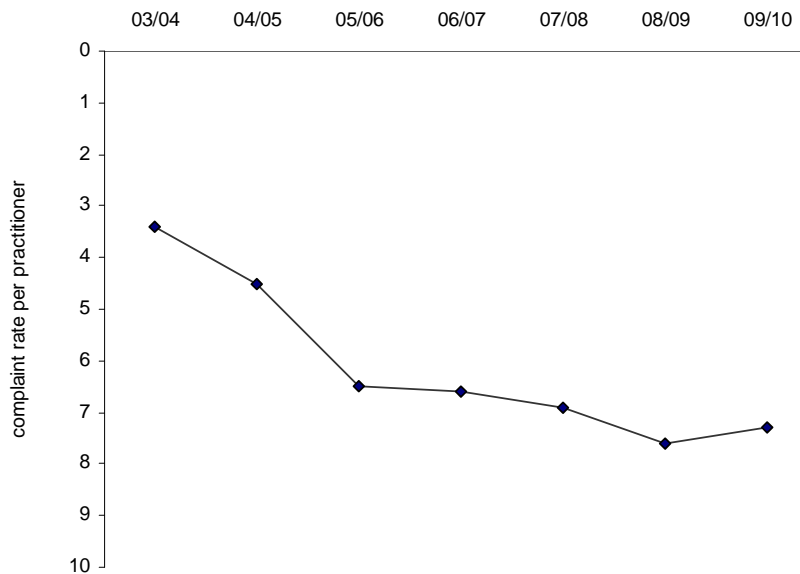


Figure 3 Number of practitioners subject to complaints regime



- we finalized 1111 complaints in 2009-10, slightly more than in 2008-09 but fewer than we received. We achieved a clearance ratio of 94% compared to 97% in 2008-09 and 104% in 2007-08. It is too early to worry but the trend will become concerning if the clearance ratio remains negative over the year ahead.

Figure 4 Complaint rate per practitioner

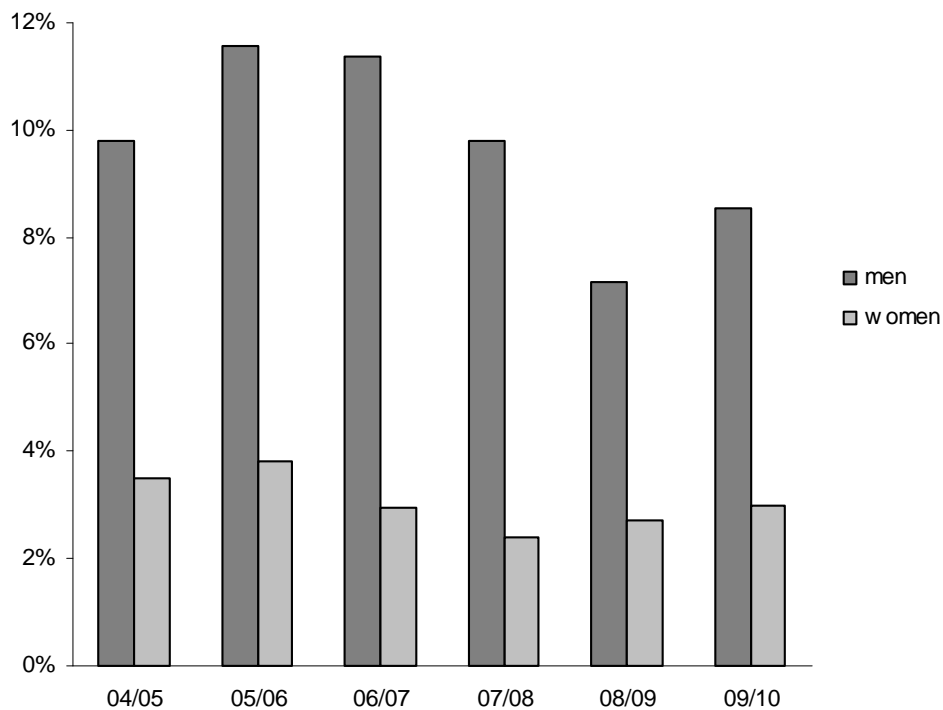


- we assessed 87% of all new complaints within a month of receipt in a median time-frame of 14 days (compared to 88% and 14 days in 2008-09 and our target of 90% and 14 days); we finalized 94% of consumer disputes within 2 months of receipt in a median time-frame of 36 days (compared to 98% and 22 days in 2008-09 and our target of 90% and 60 days); and we finalized 69% of conduct matters within 6 months of receipt in a median-time frame of 140 days (compared to 57% and 175 days in 2008-09 and our target of 75% and 180 days).

We can be modestly pleased with these figures, especially the figures in relation to conduct matters and assessments (the latter because, while the raw data doesn't show it, we are receiving increasing numbers of complaints on-line and as often as not we need to get back to these complainants to ask them to provide us with more information before we can properly assess their complaint).

- almost three-quarters of the complaints we received could easily have been avoided by 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.
- the vast majority (92%) of the complaints we received concerned solicitors and a small minority (4%) concerned barristers. We received one complaint for every seven solicitors and one for every 20 barristers. Solicitors make up 89% and barristers 11% of the Queensland legal profession.

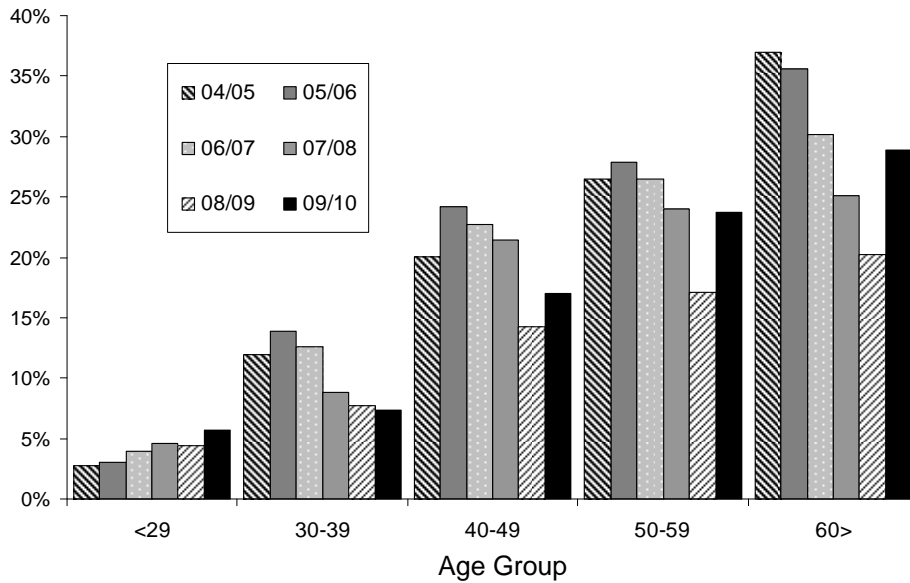
Figure 5 Solicitors subject to conduct complaints by gender



- women lawyers this year as in years past were almost 3 times less likely than men lawyers than men lawyers per head of population in the profession to be subject to complaint - see Figure 5. Similarly lawyers remain increasingly more likely to be subject to complaint the older they get and the longer they've been practising - see Figure 6. These are facts but we should be careful not to jump to conclusions. It may be, for example, that the lower complaint rates against women than men lawyers is as much a function of their age and the size of the law firms they work for as their gender. Certainly they are younger than their male counterparts on average and concentrated in the larger law firms.⁶

⁶ The Commission's Dr Lyn Aitken and Dr Francesca Bartlett of the University of Queensland Law School have researched why it is that women lawyers are so much less likely than men lawyers to be subject to complaint - see the discussion under the heading Education, Projects and Research later in the report.

Figure 6 Solicitors subject to conduct complaints by age group



- the larger their law firm, the less likely lawyers are to become subject to complaint. About 10% of Queensland solicitors work in sole practitioner firms and about 28% in 1-3 solicitor firms yet sole practitioner firms are subject to 36% of all complaints and 1-3 solicitor firms are subject to about 58% of all complaints. Conversely 20% of Queensland solicitors work in 13-50 solicitor firms and 27% in 50+ solicitor firms yet these firms are subject to only 12% and 3% respectively of all complaints – see Figure 7 and 8. Again we should be careful not to jump to conclusions. It may be that the lower complaint rates about large firms compared to small firms is as much a function of their different client base and the different areas of law they practice as it is their ethical standards, competence and diligence. Certainly our complaints data tells us that the vast majority of complaints are made by ordinary people caught up in hurtful family disputes and residential conveyances gone wrong and only very few by corporate clients caught up in primarily commercial disputes.

Figure 7 Distribution of solicitors by law firm size

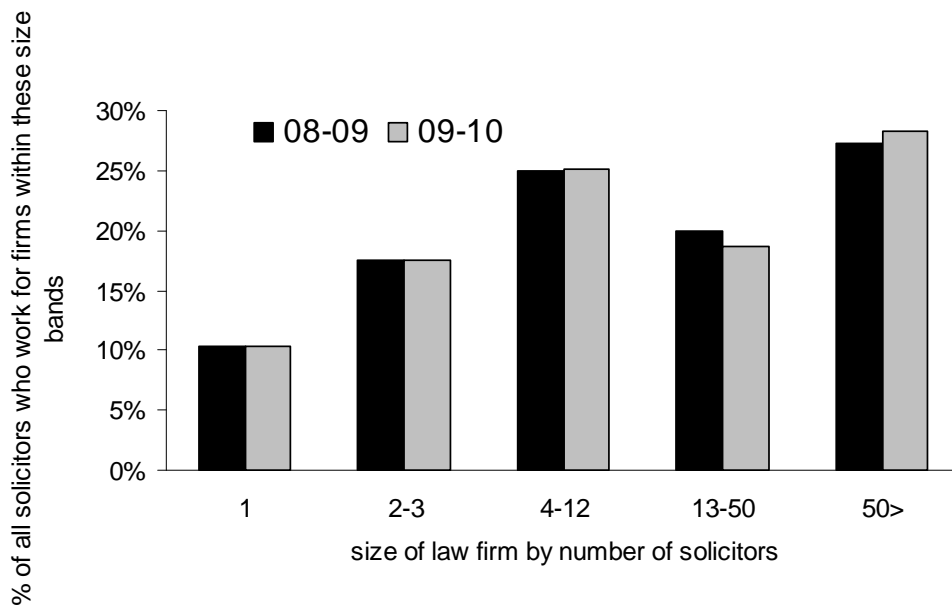
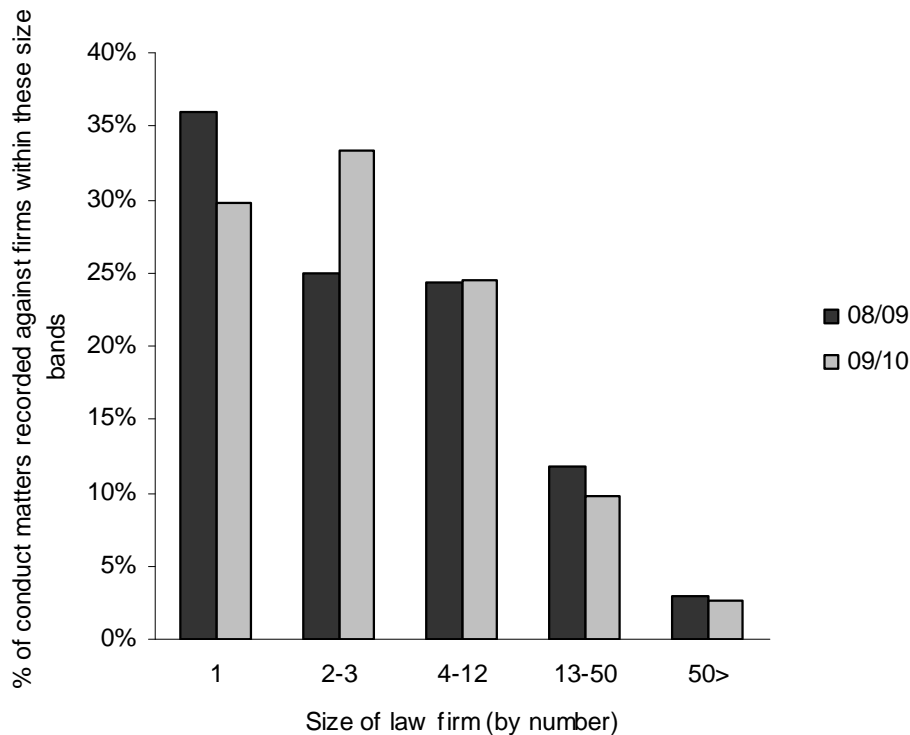


Figure 8 Distribution of conduct matters by law firm size



- interestingly and perhaps significantly, incorporated legal practices appear to be several times less likely than traditionally structured firms to be subject to complaint. We discuss this phenomenon in more detail later in the report, under the heading *Compliance audits*.

Producing information about the making of complaints

We publish a series of ‘plain English’ fact sheets which describe the system for dealing with complaints and in particular a lawyer’s obligations to disclose his or her costs and the process for challenging a lawyer’s costs, and have also arranged this past year for our telephone system to include automated messages directing callers to legal aid services and describing the process for challenging a lawyer’s costs - the two most common kinds of call. The fact sheets are readily available both in hard copy and on our website, which also includes a ‘frequently asked questions’ page and 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 various ways – by producing the information we have described, and specifically by means of a complaint form which prompts prospective complainants to give us the information we require to properly assess their concerns and to deal with them expeditiously. The complaint form is available in hard copy on request and can be printed from our website where it is also available on-line – 23% of the complaints we received last year were completed and lodged on-line.

We help members of the public primarily however by means of our inquiry service – by giving information and advice to people who contact us with an inquiry, most commonly by phone but also electronically, in writing and in person. The Act requires that complaints be made in writing, but many inquiries are complaints in all but name, and no good purpose would be served by requiring inquirers to put a ‘complaint’ in writing if their concerns lend themselves to resolution quickly and informally, typically by a few telephone calls. The Act

also requires that complaints be made to the Commission, but the QLS provides an inquiry service also and we're comfortable with that - 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.

"Thanks heaps. You have treated me with kindness and compassion and genuinely helped me through a difficult process."

We dealt with 1,851 inquiries during 2009-10 and the QLS dealt with a further 2,151 – a total between us of 4002. The number of inquiries is trending down, as we've noted already, but the number we're dealing with at the Commission is trending up, both in absolute terms and as a proportion of the total. Notably:

- more than half the inquiries we received this year as in years past concerned family law matters, residential conveyances, deceased estate and personal injury matters. Notably 1244 or almost 1 in 3 of all the inquiries we received concerned costs and 1076 or just more than 1 in 4 concerned quality of service and communication issues. Only 10% concerned ethical issues.
- we resolved the inquirer's concerns in 13% 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 apologize, to make good a mistake, or to reduce or waive their fee. We suggested that about the same number make a formal written complaint; referred about the same number for legal advice or other assistance; recommended to about the same number again that they approach the law firm directly to resolve their concerns; and in about the same number again simply listened to the callers' concerns, and that can be helpful. Many of the people who call 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 it's about the conduct of a lawyer 'happening otherwise than in connection with the practice of law', for example, 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 elaborate at Appendix 1. We decided not to deal with 455 complaints in 2009-10, or 42% of all the complaints we received (up from 40% in 2008-09 and 38% in each of the previous two years). We gave every complainant written reasons and referred them to another regulatory body or complaints-handling agency as appropriate or suggested they consider taking legal advice about other possible remedies that might be open to them.

"Thank you for pursuing this matter to the extent that you have. It's refreshing to see not all complaints fall on deaf ears."

More than a few of the complaints we decided not to deal with – almost 1 in 4 this year as in years past - arose out of obviously hurtful family law matters, and many of them allege misconduct by the 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’.

“I have noted a couple of things where we can improve our systems arising out of this matter. I appreciate the positive way in which I could deal with you.”

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 or dispute resolution process on the understanding that we will have another look at the matter if the other process reveals misconduct. Many of these complaints - almost 1 in 4 - 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 also get quite 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 a secretary of a body corporate – and we don’t deal with these complaints either unless they allege dishonesty or some other unethical conduct which, if proved, would bring their fitness to practise into question.

Last but not least 85 (or 17%) of the complaints we summarily dismissed described a costs dispute but revealed no prima facie evidence of overcharging or other non-compliance with the lawyer’s cost-disclosure obligations. These complaints are in addition to the 1244 inquiries we mentioned a moment ago that concerned costs. Regrettably we have no jurisdiction to deal with costs disputes in these circumstances and we refer these complainants to the appropriate court pursuant to the process established under the Uniform Civil Procedure Rules (which we describe in our fact sheet *Your right to challenge legal costs*). We say ‘regrettably’ because 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, including complaints disputing a lawyer’s costs.

We note however that the draft Legal Profession National Law which was released for consultation in May will remedy this defect if adopted in its current form. It envisages the proposed National Legal Services Ombudsman (and hence the Ombudsman’s local delegates in each of the states and territories) having jurisdiction to seek to resolve costs disputes involving legal costs of up to \$100,000 by mediation and, if the dispute is not resolved by mediation and the amount in dispute is less than \$10,000, to make a binding determination in relation to the amount in dispute. This would be a welcome reform.

Assessing complaints as consumer disputes or conduct complaints

The Act divides complaints into two kinds - consumer disputes and conduct complaints – and gives us very different responsibilities and powers in relation to the different kinds of complaint. Consumer disputes do not involve an issue of unsatisfactory professional conduct or professional misconduct. Conduct complaints do. It gives us no responsibilities or powers in relation to consumer disputes other than the discretion to ‘suggest to the complainant and the respondent that they enter into a process of mediation’ but it gives us a very specific responsibility in relation to conduct complaints – it requires us to investigate the complaint – and it gives us significant powers of investigation. It gives us only two options after we’ve completed an investigation - to take no further action on the complaint (that is to say, to dismiss the complaint) or to commence disciplinary or other enforcement proceedings before a disciplinary body or a court.

The meaning of the terms *unsatisfactory professional conduct* and *professional misconduct* is therefore crucial. The Act defines the term *unsatisfactory professional conduct* by saying only that 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 defines the term *professional misconduct* by saying only that it ‘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.’

Obviously we assess complaints that allege dishonesty or similarly unethical conduct to be conduct complaints, and also complaints that allege substantial and consistent incompetence. But how should we assess the great majority of complaints that involve only one-off and minor incompetence, careless but honest mistakes and poor standards of service 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 residential conveyances, for example, with the result that their purchaser clients complain when they get letters of demand from council or bodies corporate for the unpaid rates or fees. Clearly the 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? What if a practitioner refuses to mediate a complaint, or refuses to come to a fair and reasonable agreement?

We have no powers to require the parties to enter into 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 to apologize, 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 question turns on the meaning of the term *unsatisfactory professional conduct*. We interpret and apply the term broadly. We assess complaints that involve careless but honest mistakes and poor standards of service and the like to be conduct complaints whenever the complaints if substantiated would establish a legitimate grievance and entitle the complainant to some fair and reasonable redress.

That is because the Act describes the most fundamental purposes of the complaints and disciplinary regime to include providing complainants with a means of redress but makes all but wholly voluntary redress entirely contingent on a finding by a disciplinary body of unsatisfactory professional misconduct or worse, 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 a two-tiered disciplinary system precisely to enable the ‘lesser’ of the two disciplinary bodies to deal with minor but yet important disciplinary matters of these kinds.

This ensures that complainants are provided a means of redress when faced with recalcitrant practitioners but at a cost – it drags the process out and threatens honest and generally competent and diligent practitioners who just happened to have made a mistake with a disciplinary process better suited to dealing with practitioners who are accused of flagrant ethical misdemeanours or gross and persistent incompetence. That seems to us to be harsh and unreasonable. The Act gives us a get out, however, by giving us the discretion to dismiss a complaint after investigation if no public interest would be served by initiating disciplinary proceedings. Clearly the public interest will rarely if ever be served by initiating disciplinary proceedings in relation to careless but honest mistakes and poor standards of service and the like when practitioners have put things right by making fair and reasonable redress.

It would be far better however and kinder to complainants and practitioners alike to deal with matters of these kinds more expeditiously and without the threat of punishment. Notably the draft Legal Profession National Law includes appropriate reforms – and reforms of the kind we’ve urged in previous annual reports. The draft Law envisages the proposed National Legal Services Ombudsman (and hence the Ombudsman’s local delegates) having the power when mediation fails to make binding determinations which put things right, including determinations that a practitioner redo the relevant work, complete the work at a reduced fee, apologize, undertake further education or training, and pay compensation of up to \$25,000. This would be a most welcome reform.

Mediating consumer disputes

The Act gives us no obligations in relation to the complaints we assess to be consumer disputes - complaints that do not involve an issue of unsatisfactory professional conduct or professional misconduct – but simply the option to suggest to the parties that they enter into a process of mediation. We assessed 66 complaints to be consumer disputes during 2009-10, or 6% of the 1087 new complaints we assessed during the year, and we tried to mediate all 66 of them. We finalized 71 (several of which carried over from 2008-09), 30% of which arose out of residential conveyances, and 15%, 10% and 8% respectively out of family law, personal injury and deceased estate matters. Notably 45% involved costs disputes and 42% either quality of service or communication issues. We resolved 27 (38%) to the complainant’s satisfaction; were unable to resolve 25 (35%); and decided that 12 (17%) were unfounded.

Investigating conduct complaints

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 for decision after they’ve completed their investigation together with a recommendation as to what further action, if any, we should take on the complaints. We have only two options – to take no further action (to dismiss the complaint) or to initiate disciplinary proceedings. 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 no public interest in initiating disciplinary proceedings.

“I thought I should drop you a line to express my sincere appreciation for your very professional and courteous manner of doing business.”

We assessed 559 complaints to be conduct matters during 2009-10, or 52% of the 1087 new complaints we assessed during the year; we referred 236 (39%) to the QLS and 16 (3%) to the BAQ for investigation; and we finalized 540. We note that:

- the QLS returned 244 complaints for review and we disagreed with its recommendations in 25 or 10% of the reviews we completed by 30 June. The BAQ for its part returned 15 complaints for review and we disagreed with its recommendations in 2 or 13% of the reviews we completed by 30 June. The rate of disagreement could be easily misconstrued. There were no substantial disagreements but simply different ‘judgment calls’ in circumstances where reasonable minds might differ.
- we finalized 338 or 63% of the 540 conduct complaints we closed 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 finalized 131 or 24% 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 otherwise fix the

problem - by acknowledging their error and apologizing, 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 finalized 21 or 4% of the conduct complaints we closed during the year by deciding to initiate disciplinary proceedings, or 2% of the 1111 complaints we finalized in total. We urge everyone who is interested in these matters and wants to understand why and how lawyers find themselves subject to 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*.

We note that one of the conduct complaints we dismissed on ‘no public interest’ grounds involved a complaint by a judge about a barrister, as it happens a Senior Counsel, who was acting for a defendant in relation to a serious criminal offence. The practitioner had written to the judge, but not copied the letter to the Director of Public Prosecutions, suggesting that the judge allocate the trial to another judge to avoid a reasonable apprehension of bias. The judge complained that the practitioner’s conduct breached rule 57 of the *Legal Profession (Barristers) Rules 2007*. Importantly, there was some evidence in the materials the judge sent us in support of his complaint that the conduct he complained of was not uncommon among the profession. We referred the complaint to the BAQ for investigation.

The BAQ concluded that the practitioner had breached rule 57 and that there was a reasonable likelihood that a disciplinary body would find his conduct to be unsatisfactory professional conduct or professional misconduct. It recommended however that in all the circumstances of this particular matter we dismiss the complaint on ‘no public interest’ grounds provided that the circumstances of the complaint were made public to promote awareness of the rule among the profession and to deter future non-compliance. We accepted that recommendation, dismissed the complaint, and published a *Statement by the Commissioner – Rule 57 of the Barristers Rule 2007*. The statement made it plain, while we will always decide matters on their individual merits and in accordance with our *Prosecution guidelines*, that we will be disinclined to dismiss similar complaints in the future, in the absence of exceptional circumstances, and minded to initiate disciplinary proceedings.

Own motion investigations

"I know how grateful [the practitioner] is for the Commission's care and sensitivity in handling the matter. It is a credit to the approach you have been engendering."

The *Legal Profession Act 2007* authorises the Commissioner to start an investigation on his or her own initiative - an own motion investigation, or investigation matter - 'if the Commissioner believes an investigation about a matter should be started into the conduct of an Australian legal practitioner, law practice employee or unlawful operator.'⁷ 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 own motion investigation power is an important power for the obvious reason that we can never assume that everyone who might have cause for complaint knows that fact 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 have developed a draft policy which sets out the factors the Commissioner will take into account in deciding to start an own motion investigation and will publish that policy on our website early in 2010-11.

We distinguish two kinds of own motion investigations and report on them separately because they have quite different characteristics – investigations into apparent breaches of the restrictions on the advertising of personal injury services (PIPA investigation matters) and all other own motion investigations (investigation matters other than PIPA). Similarly we combine conduct complaints and own motion investigations for certain reporting purposes into the one category, *conduct matters*.

We initiated 122 PIPA and 55 other than PIPA investigation matters in 2009-10, making a total of 177 or 13% of all new conduct matters. That figures compares to 79 or 7% in 2008-09, 119 or 10% in 2007-08 and 199 or 15% the year before that. We finalized 111 PIPA and 37 other than PIPA investigation matters. That makes for a clearance ratio of 85%.

Investigation matters other than *Personal Injuries Proceedings Act 2002* (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 anonymous, but sufficiently credible information to justify a reasonable suspicion; sometimes we read reports in the media; sometimes the professional bodies bring matters to our attention; and sometimes judges or magistrates or investigative agencies such as the Crime and Misconduct Commission bring information to our attention.

We also keep an eye out when we're dealing with a complaint about a lawyer's conduct for any other conduct that might be inappropriate and broaden our inquiries as appropriate. It is not uncommon for us to be dealing with a complaint about alleged delay or discourtesy or

⁷ Section 435(1) (c). See also section 421(d).

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

Similarly, we routinely ask ourselves when we've investigated a complaint and identified some untoward whether it could reasonably have been prevented or at least detected and dealt with earlier in the piece if only the law firm's principal(s) had kept and implemented appropriate management systems and supervisory arrangements and, if so, whether we should start an own motion investigation into the principal(s)' apparent 'failure to supervise'.

We note that the *Legal Profession (Solicitors) Rule 2007* at rule 37 makes principals responsible 'for exercising reasonable supervision over solicitors and all other employees in their provision of legal services by the practice.' We have used the strategy to powerful 'capacity building' effect in the past and we will continue to use it to that same effect into the future, as always with a view to engaging with the principals(s) to encourage them to strengthen their systems if needs be and so to position ourselves to be able to finalize the investigation on the basis that no public interest would be served and no better outcome would be achieved by initiating disciplinary proceedings. We set out always to secure compliance by persuasion wherever possible and appropriate, and not by prosecution.

That said, we note that:

- we finalized 14 (38%) of the 37 matters we closed during the year 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; 14 (38%) on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and 7 (19%) by deciding to initiate disciplinary proceedings. That latter figure is almost 5 times greater than the comparable figure in relation to conduct complaints, as we would hope and expect when we initiate investigations.

"I want to thank you for the professional and very prompt manner my complaint was handled and attended to."

We are pleased by the relatively high percentage that we were able to finalize this year as in years 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.

- 12 (32%) of the 39 matters we finalized during the year involved apparent non-compliance with the Act, most commonly in relation to costs disclosure and interestingly this year the 'unlawful operator' provisions; 6 (16%) involved apparent breaches of trust accounting procedures; 5 (14%) involved ethical issues including acting without or contrary to instructions and 3 (8%) personal conduct happening 'other than in connection with the practice of law' that 'might justify a finding that the practitioner is not a fit and proper person to engage in legal practice' – conduct including dishonesty and sexual offences.

"I take careful note of your comments...may I say that I entirely agree...I thank you for the courtesy shown towards me during this matter."

We've mentioned in previous reports that we were concerned by the apparently widespread practice that our counterparts in England and Wales describe as charging 'secret profits'. The practice takes a number of forms, including charging clients undisclosed mark-ups or surcharges on the true amount of a disbursement, and charging clients for 'internal' costs disguised as disbursements - photocopying and stationery charges, for example, and file opening and closing fees, in-house stamping fees, and the like. We have published *Guidelines for charging outlays and disbursements* to assist lawyers and law firms to better understand their

obligations in this regard and are pleased to report, while we still see it from time to time, that the practice appears to be less common than it once was. That is good news, and suggests that we have achieved some useful systemic change.

We have since come across another disturbing billing practice - a version of 'bill-padding' we believe is unconscionable but perhaps not uncommon. We discovered that one lawyer who was acting for multiple clients charged each of them a unit of time for sending them all a two paragraph email via a group distribution list - and hence in this particular case converted one six minute unit of billable time into three hours and 18 minutes of billable time. We are always on the lookout for inappropriate billing practices, irrespective of what first prompted a complaint, and we'll be on the look out in future for this sort of billing practice in particular. We are currently preparing guidelines for billing clients in multiple-client matters or class actions and hope to publish them on our website before the end of the calendar year.

PIPA investigation matters

The *Personal Injuries Proceedings Act 2002* (PIPA) responded to community concerns that some personal injury lawyers were 'ambulance chasing' by imposing restrictions on the advertising of personal injury services and on touting. PIPA was amended with effect from May 2006 and the *Legal Profession Act* was amended at the same time to make the Commission responsible for enforcing the restrictions by extending our complaints and own motion investigation powers to include alleged or apparent non-compliance.

"I would like to sincerely thank you for your assistance...which until your involvement had been ignored...we have now managed to resolve the matter and achieve the outcome that should have occurred when we first approached our lawyers. I am 100% certain that they would not have agreed to rectify their error without your intervention."

We sometimes get complaints alleging that law firms have contravened the restrictions on the advertising of personal injury services - typically by competitor law firms who have themselves complied and are rightly annoyed that a competitor's non-compliance gives them a commercial advantage - 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 law firm websites - and use our own motion investigation power to commence investigations into 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 - that we don't want to prosecute lawyers for non-compliance but to review their advertising and to remedy or withdraw any advertisements that fall short of the mark. We have also published an interactive 'website comparer'. The '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, and comes complete with pop up boxes that highlight and explain the distinctions.

We prepared a further *Guide* during 2009-10 - an *Advice about personal injury advertising on Internet search engines and Non-lawyer websites* - when we discovered that advertisements for personal injury services appear on the results pages of search engines on websites like Google. We published the *Advice* on our website in February, forwarded a

copy also in February to the principal(s) of every Queensland law firm which provides personal injury services and arranged for articles to appear in the *QLS News* and *Proctor* in February and March respectively.

We note that:

- we started 122 PIPA investigations in 2009-10, significantly more than the 17 we started last year when we put our time and energy into updating the *Guides*, building the 'comparer' and working with several high profile firms which practise across state borders to help them bring their websites into compliance with the multiple and different regulatory regimes. We noted in last year's report, those tasks having been completed, that we had conducted a preliminary review of every Queensland law firm website and identified 599 websites which advertised personal injury services. We said we would progressively work our way through them this year by randomly selecting websites for investigation, identify the websites we believe to be non-compliant, contact the firms to tell them what we believe they need to do to solve the problem, set a time frame and work with them to help them bring their websites into compliance by the due date. That is what we've done.
- we finalized 111 of those investigations, 69 (62%) of them on the basis that no public interest would be served by initiating disciplinary proceedings because the law firms had responded to the investigation by withdrawing or fixing their advertisements subject to investigation to making them compliant. We finalized 22 (20%) on the basis that there was no reasonable likelihood a disciplinary body would find the advertisements to be non-compliant. We 'withdrew' 20 (18%) either because the website no longer existed, the law firm had shut down, or the website had been amended to remove any reference to personal injuries. We are pleased to report that we finalized none of them by deciding to initiate disciplinary proceedings.

That is a good result. We set out deliberately to secure 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.

Compliance audits

“The surveys were a very useful tool in raising awareness about how best to handle real life situations and certainly created robust discussion around the partnership table.”

Our regulatory strategies for promoting appropriate standards of conduct in the delivery of legal services have long focussed squarely on individual lawyers and on ‘front end’ controls – by controlling who is admitted to the profession and then to practice; by articulating detailed, prescriptive rules which seek to govern their professional conduct once they’re admitted; and, more recently, by mandating compulsory continuing professional development. Traditionally we have had just one strategy for monitoring and enforcing appropriate standards of conduct – enabling regulators to receive and deal with complaints about the conduct of individual lawyers and to hold them to account when their conduct falls short of the mark.

The *Legal Profession Act 2007* (the Act) introduced a whole new paradigm. It allows lawyers to provide legal services not only as sole practitioners or in partnership with other lawyers as in the past but also in partnership with members of other professions, as ‘multi-disciplinary partnerships’ (or MDPs), and it allows law firms a wider choice of business structure, and in particular to adopt a company structure and to provide legal services as incorporated legal practices (or ILPs).

Crucially the Act ‘topped up’ the familiar regulatory strategies of the past with a form of ‘entity-based’ regulation which focuses not only on the conduct of the individual lawyers who work for incorporated legal practices but on the conduct of their law firm. The new regulatory regime:

- requires incorporated legal practices to have at least one legal practitioner director;
- requires legal practitioner directors
- 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 lawyers who work for the firm comply with their professional obligations; and
- to take ‘appropriate remedial action’ should lawyers who work for the firm fall short of their professional obligations; and
- authorizes us as the relevant regulatory authority to conduct an audit (a ‘compliance audit’) of an incorporated legal practice about ‘the compliance of the practice and of its officers and employees’ with their respective obligations under the Act and related rules and standards of professional conduct and ‘the management of [its] provision of legal services ... including the supervision of the officers and employees providing the services.’ Crucially, it authorizes us to conduct an audit ‘whether or not a complaint has been made.’⁸

⁸ The Act sets out the regulatory framework at sections 117-143 (especially sections 118 and 130) and sections 540-574.

We believe for the reasons the Commissioner described in his *Overview* earlier in the report that this or a similar regulatory regime should be extended to apply not only to incorporated legal practices but to all law firms, and that this would be the single most effective reform we could make to better protect consumers of legal services and to better promote, monitor and enforce high standards of conduct in the delivery of legal services.

Some key facts about law firm business structures

The number of incorporated legal practices engaged in legal practice in Queensland has grown steadily since they were first allowed on 1 July 2007 and continues to grow – see Table 1, below. There were 294 incorporated legal practices in Queensland at 1 July 2010 or almost 1 in 5 of all Queensland law firms, and between them they employed 1,087 or almost 1 in 5 of all those Queensland solicitors who work in private practice. There were only 2 multi-disciplinary partnerships which between them employed 172 solicitors.

We have included more comprehensive data at Appendix 4 but the key facts about incorporated legal practices three years year down the track include the following:

- 148 new ‘start up’ law firms commenced engaging in legal practice in Queensland during 2009-10, 78 of them as unincorporated sole practitioners or partnerships and 70 or just short of half of them as incorporated legal practices. Further, 48 existing firms restructured to become incorporated legal practices in addition to the 113 existing firms that had already restructured in 2007-08 and 2008-09. We believe that the number of existing firms that restructured would be very much larger but for the significant stamp duty impost inherent in the change-over.

Table 1 Incorporated legal practices as a proportion of all Queensland law firms

	30 June 2007	1 July 2008	1 July 2009	1 July 2010
Total number of law firms	1308	1328	1417	1495
Total number of MDPs	0	1	2	2
Total number of ILPs	0	117	188	294
ILPs as a % of all law firms	n/a	8.81%	13.27%	19.67%

- the 294 incorporated legal practices that were engaged in legal practice in Queensland at 1 July 2010 have a very similar profile to the 1199 unincorporated practices. They are mostly small firms - 104 or 38% of them are single practitioner firms (compared to 46% of unincorporated firms); 199 or 72% of them employ fewer than 4 solicitors (compared to 78% of unincorporated firms); and only 11 or 4% of them employ more than 12 solicitors (compared to 6% of unincorporated firms). Of the 2 multi-disciplinary partnerships, 1 of them employs 5 solicitors and the other 167;
- 16 or 13% of the 125 incorporated legal practices that have provided us with the relevant information anticipate an annual gross fee income of less than \$50,000; 49 or 39% of them an income of between \$50,000 and \$500,000; 22 or 18% an income of between \$500,000 and \$1,000,000; 32 or 25% an income of between \$1,000,000 and \$5,000,000; and 6 or 5% an income of more than \$5,000,000.

Compliance audits

We 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 – but also and as a matter of routine by conducting compliance audits.

The Act gives us wide discretion to conduct an audit of an incorporated legal practice but gives us little if any guidance about how we should go about it. It does however give us if we need them all the same powers and more that we have in relation to complaints and investigation matters and they are significant powers.

We conduct three kinds of audit - self-assessment audits, web-based surveys and on-site reviews – and we assess our performance by reference to the number of audits we conduct vis-à-vis the number of incorporated legal practices; the relative number of the different kinds of audit we conduct; the audit outcomes, including the longitudinal outcomes; and complaints performance of incorporated as opposed to un-incorporated legal practices. It is too early in the piece to come to any concluded view but we have good reason to be optimistic that we are doing well.

Self-assessment audits

We contact the legal practitioner directors of every incorporated legal practice shortly after its commencement to ask them to audit their practice’s management systems and supervisory arrangements. We ask them to complete a pro forma self-assessment audit form which requires them to assess and rate how effectively their systems achieve ten fundamental objectives of sound legal practice including competent work practices to avoid negligence; effective, timely and courteous communication; timely delivery, review and follow up of legal services to avoid delay; shared understandings and appropriate documentation in relation to costs disclosure and billing practices; timely identification and resolution of conflicts of interests; the effective supervision of the practice and its staff; and compliance with trust account regulations and accounting standards. We ask them to rate their systems against each of the 10 criteria on a sliding scale ranging from 1 (the firm has not addressed this objective) to 5 (the firm has a documented management system which meets this objective and reviews it regularly).

The self-assessment form 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 annually 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.

“Our lawyers got to express key views about aspects of the firm's operations and we learnt a considerable amount from the exercise. In particular we were able to discover key things the firm needed to focus on to keep improving. I congratulate the Commission on this great initiative. It is a great illustration of true engagement with the legal profession...”

The form is readily accessible on the Commission’s website and we will not elaborate further here except to say that we are proud to say that incorporated legal practices have been able to complete and lodge the form on-line since April, via www.lpportal.org.au, and in that way achieve and allow us to achieve significant efficiency savings. That is a national first. We describe the portal in more detail later in the report, under the heading *Our people and our systems*. It is a hugely exciting initiative that has a much broader application than this, as important and useful as this is.

We require incorporated legal practices to lodge their completed self-assessment form within three months (although we are flexible about giving extensions). We evaluate the information they give us, engage in a conversation with them as appropriate about what further steps they might take, if any, to improve their systems and we ask them

periodically to conduct periodic follow-up or maintenance audits to document their progress. Self-assessment audits, in other words, are ‘gap analyses’ or ‘risk assessments’ or ‘management reviews’ that are designed to be a baseline for future improvements to a practice’s management systems and supervisory arrangements and reports on future improvements.

Notably 105 incorporated legal practices completed a self-assessment audit during the year making a total of 256 over the three years since the regime commenced in 2007, or all but 38 of the 294 incorporated legal practices that have come into existence over that time – see Table 10. Not surprisingly given the nature of the complaints we receive, the main areas they identify as needing improvement relate to communication, negligence and supervision. The remaining 38 incorporate legal practices all commenced only recently and are completing the self-assessment as we speak.

The self-assessment process has been well accepted and we've had excellent cooperation and no 'push back'. The feedback is overwhelming positive, much of it spontaneous and entirely unsolicited. One sole practitioner from a rural town told us recently, for example, that 'I found the exercise, while time consuming, to be most useful, in particular with respect to identifying some areas of my practice that need improvement.' That is typical. We note also that two thirds of the legal practitioner directors who've contacted us after they've completed their firm's self-assessment audit tell us that the process prompted them to make identifiable improvements to their management systems and supervisory arrangements. We have had only one complaint about 'the additional and unnecessary regulatory burden', more than 250 self-assessment audits down the track.

Table 2 Number of compliance audits by year

Audit type	07-08	08-09	09-10	Total
Self-assessment audit	61	90	105	256
Web-based survey	-	37	25	62
On-site review	-	1	2	3
Total	61	128	132	321

The positive feedback is hugely encouraging but on the other hand hardly surprising. Our counterpart Commission in New South Wales has conducted self-assessment audits since 2004, and Dr Christine Parker of Melbourne University Law School conducted detailed research there in 2008 to test the hypothesis that requiring incorporated legal practices to keep and implement appropriate management systems and to undertake self-assessment audits results in improved standards of conduct in those firms. She reviewed the evidence in relation to all 631 incorporated legal practices that had completed a self-assessment audit at that time and found 'compelling evidence' that it did just that. She found that the complaint rate per practitioner per year for incorporated legal practices that had completed self-assessment audits was one third the complaint rate for traditionally structured firms. She found also that the complaint rate per practitioner per year for incorporated legal practices after they'd completed the self-assessment audit was one third their complaint rate before they undertook the self-assessment and that the drop in the complaint rate was 'statistically significant at the highest level'.

That is a great result for consumers, obviously, but also for the law firms concerned and for the reputation of the profession more generally. It is too early to replicate the New South Wales research here – our numbers are as yet too small - but the limited data we do have available to us all points in the same direction. We note for example that incorporated legal practices made up just short of 14% of all Queensland law firms at 1 July 2009 and just short of 20% at 1 July 2010 but were subject to less than 5% of the complaints we finalised during the year. We note also that just more than 10% of incorporated legal practices were subject to complaint compared to just short of 30% of traditionally structured firms.

That is interesting data, and data that takes on added significance given that incorporated legal practices have the same size profile as traditionally structured firms and that law firm size is one of two significant predictors of vulnerability to complaint. The other is a law firm's principal areas of practice and, while we do not have comprehensive data comparing the principal areas of practice of incorporated legal practices and traditionally structured

⁹ See C. Parker, T. Gordon and S. Mark, *Research Report: Assessing the Impact of Management-Based Regulation on NSW Incorporated Legal Practices*. The report is accessible on both our website and the website of our counterpart Commission in New South Wales and has also been published under the title *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, *Journal of Law and Society* 37, no.3 (2010): 466-500.

firms, our impression is that they have a similar profile in this regard also. We know for example that more than a few incorporated legal practices principally deliver residential conveyancing and personal injuries services and that these are ‘high risk’ areas of practice.

Web-based surveys

The message we hear as regulators in the feedback we’re getting from incorporated legal practices about self-assessment audits and from Dr Parker’s research is that the simple act of requiring a law firm’s principals to take time out to stock-take just how well their management systems and supervisory arrangements support their firm and its people to deliver competent and ethical legal services – the simple act of prompting them to reflect on the adequacy of their ethical infrastructure – significantly improves standards of conduct within their practice.

We’ve set out in Queensland to build on that insight by asking selected incorporated legal practices to complete an on-line Ethics Check as a form of compliance audit. We describe the Ethics Checks in more detail later in the report, under the heading *Education, projects and research*, and will not elaborate here except to say that we believe they have an important regulatory application in addition to their usefulness to law firms as a voluntary ethical capacity building tool.

We mentioned last year that 37 incorporated legal practices had completed the Complaints Management Systems Check by way of compliance audit and another 25 incorporated legal practices completed the same survey this year. We note that a total of 670 people from those 62 firms completed the survey including not only lawyers but practice managers, paralegals and other support staff. We have published the aggregated and de-identified results on our website (on the Ethics Checks page) both to enable the participating law firms to compare their results with other firms’ results and to serve a broader public interest by exposing this aspect of law firm culture to public scrutiny. Notably Dr Parker and her colleague at the Melbourne University Law School, Dr Linda Haller, have analyzed the results and submitted an article for publication in a respected academic journal.

“The survey made us question ourselves whether we could manage this issue better within the firm. We have since made certain changes.”

We note also that we routinely ask both the individual respondents and the principals of the participating law practices for their feedback after they’ve completed a survey and the response has been profoundly encouraging, and we’ve published their feedback on the website also, entirely in their own words. They tell us, cutting a longer story short, that the surveys have served exactly the ethical capacity-building we hoped they might.

On-site reviews

On-site reviews 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 the practice’s principals, supervisors and managers; interviews with and/or focus groups of individual employees ‘down the line’ and/or clients; interviews with third parties including, for example, practitioners from other law practices that have regular dealings with the law practice 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 - and similarly mystery complaints.

Clearly on-site reviews by their very nature are a more resource intensive exercise both from our point of view and point of view of the law practices subject to audit, and it follows that we envisage conducting audits of this more intensive kind significantly 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.

We have conducted only 3 on-site reviews, 1 in 2008-09 and 2 this last year, all 3 of them in circumstances in which we had good reason to believe the law practices to be non-compliant. The more significant of the audits we conducted during the year involved a firm which had been the subject of numerous complaints and inquiries. The audit involved analyzing the complaints and inquiries and then, over the course of a full day, interviewing key staff and reviewing the reviewing selected client files and the firm's policies, procedures and information management systems. We subsequently provided the firm's legal practitioner director with a report which identified ways we believed the firm could improve its supervision arrangements and recommended that it implement an in-house complaints management system. The director accepted our recommendations and devised and implemented appropriate remedial strategies. We plan to conduct a follow up audit within twelve months. The numbers are too small to warrant drawing any particular conclusion, but we note the number of complaints and inquiries we have received about each of those firms since they were audited is less than half the number we received in the comparable period prior to the audit.

Reflections on compliance audits

We have argued that the regulatory regime that applies to incorporated legal practices should be extended to apply to all law firms and indeed, as the Commissioner noted in his Overview earlier in the report the draft National Law that was released for consultation in May this year includes reforms to just this effect - it envisages the proposed National Legal Services Ombudsman having the power, if the Ombudsman considers it necessary to do so, to conduct a compliance audit of a law practice and to give a law practice a management system direction.

The Law Council of Australia opposes this reform. It argues that the Law as currently drafted authorizes regulators to conduct compliance audit without good reason and in a manner which is unduly intrusive and imposes an unnecessary compliance costs, especially on small law firms. These are perhaps understandable concerns, and it may well be that the draft Law should be amended to provide that no law practice should be subject to any unjustifiable or needless regulatory burden; that regulators should always direct their scarce resource to where it is most needed and can have the most beneficial impact in the public interest; and that the compliance auditing regime should carefully target the law practices most at risk of non-compliance. No one would disagree with that.

That said, the 'compliance audit power', properly implemented, is neither unduly intrusive nor imposes unreasonable compliance costs. Indeed we would be entitled to wonder, if the regulatory regime that applies to incorporated legal practices imposes such an unreasonable regulatory burden, especially on small firms, why it is that so many law firms and most of them small firms are lining up to incorporate. Putting that aside, however, the vast majority - 256 of the 321 compliance audits we have conducted in Queensland since we were first given the power in 2007-08 - have been self-assessment audits. Self-assessment audits are hardly intrusive and have been well accepted by incorporated legal practices and shown to dramatically reduce complaint rates.

That is a good thing, of course, but Dr Parker's research tells us not only that self-assessment audits serve a significant preventative purpose but equally that it's wrong to conceive of the compliance costs to law firms simply as additional costs that sit on top of their pre-existing regulatory burden. There are trade-offs. We know the compliance costs inherent in responding to complaints. Respondents remind us of them often. Dr Parker's research tells us that the compliance costs of the auditing regime as we've implemented it are off-set by reduced compliance costs in responding to complaints, and significantly so, to the point even of not only not adding to but reducing the regulatory burden overall.

Another 62 of the compliance audits we've conducted have been web based surveys which are similarly un-intrusive, similarly well accepted and similarly likely to reduce complaints

rates. Only 3 of the 321 compliance audits we've conducted since we've had the power - the 3 on-site reviews - could properly be described as intrusive and resource-intensive, from both the firm's point of view and ours, but all 3 of them were conducted in circumstances in which we had good reason to believe the firms' management systems needed improvement.

We will only be able to target the law firms most at risk of non-compliance by becoming increasingly skilled at risk analysis. Self-assessment audits and web-based surveys give us two fundamentally useful tools we can use to help identify 'at risk' firms and add powerfully to the risk information we already have at our disposal, including their complaints history. They are risk indicators of a particularly valuable kind - a kind that gives law firms a window on the adequacy of their management systems and supervisory arrangements even before us as the regulator, and an opportunity to fix anything that might need fixing before questions are asked.

Discipline and enforcement

The Act gives the Commissioner authority to decide what action to take on a complaint or investigation matter after it has been investigated.

The *Legal Profession Act 2007* (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 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 Queensland Civil and Administrative Tribunal (QCAT)¹⁰ 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, and 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 and breaching the restrictions on the advertising of personal injury services).

Disciplinary and other enforcement action in 2009-10

We’ve attached more detailed statistical data at Appendix 4 but have set out the key facts at Tables 3 and 4. We note the continuing downward trend in the number of prosecution files we’ve opened in recent years – we opened 20 in 2009-10 compared to an average of 31 over each of the previous four years – and the corresponding reduction in the number of practitioners we’ve decided to prosecute. We note also the reduction in the number of matters that were heard and decided by the disciplinary bodies and courts during the year - 14 compared to 30 in 2008-09 or more relevantly, because the 2008-09 figure was unusually high, compared to an average of 22 over each of the previous four years.

¹⁰ QCAT commenced on 1 December 2009. It replaced the Legal Practice Tribunal (LPT) which ceased on 30 November 2009.

Table 3 Prosecution matters commenced since 2004-05

	04-05	05-06	06-07	07-08	08-09	09-10
Prosecution files on hand 1 July 2009	3	24	42	34	44	31
Prosecution files opened	26	43	33	29	21	20
Prosecution files opened but prosecution not yet commenced at 30 June	9	15	10	12	6	8
Discipline applications filed with the LPC	6	13	11	8	6	4
Discipline applications filed with the LPT (to 30 Nov 2009)	11	24	25	20	16	3
Discipline applications filed with QCAT (from 1 Dec 2009)	n/a	n/a	n/a	n/a	n/a	7
Summons issued in the Magistrates Court (re alleged offences)	0	0	0	0	*2	*3
Prosecution files closed (see Table 4, below)	5	25	41	19	34	23
Prosecution files on hand 30 June 2010	24	42	34	44	31	28

* These matters all involve allegations that a person has engaged in legal practice when not entitled (because the person is not an Australian legal practitioner).

The reduction in the number of matters heard and decided is due in part to the reduction in the number of prosecutions we've commenced but in part also to processing delays caused by the transfer of the functions of the now superseded Legal Practice Tribunal (LPT) to the newly created Queensland Civil and Administrative Tribunal (QCAT) effective from 1 December 2009. We expect those delays to be temporary. QCAT issued a practice direction¹¹ soon after its commencement that largely replicates the practice direction that was issued by its predecessor, the LPT, and which proved so successful in preventing unnecessary delay there. The practice direction requires us to serve a discipline application on the respondent practitioner within 14 days of filing it with the tribunal and requires the respondent practitioner to file a reply within 28 days of being served and specifically to identify the allegations they intend to concede or dispute. We are grateful to the tribunal's President, Justice Alan Wilson, for communicating with us so courteously and proactively to ensure a smooth transition to the new regime.

Table 4 Prosecution matters heard and finally decided since 2003-04

	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Solicitors Complaints Tribunal	25	3 *	n/a	n/a	n/a	n/a	n/a
LPC	n/a	-	10	8	5	6	2
LPT (to 30 Nov 2009)	n/a	2	9	18	5	21	9
QCAT (from 1 Dec 2009)	n/a	n/a	n/a	n/a	n/a	n/a	2
Court of Appeal	-	-	2	-	-	3	-
Magistrates (or other) court	-	-	-	-	-	-	1
Total heard and decided	25	5	21	26	10	30	14
plus withdrawn / discontinued	u/a	-	4	15	9	5	9
Prosecution files closed	25	5	25	41	19	35	23

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

We have not settled the criteria we might use to assess our performance of our discipline and enforcement functions but clearly we need to have regard to the number and ratio of successful discipline applications and other prosecutions vis-à-vis those that are ultimately dismissed, and the number and ratio of the charges we allege vis-a-vis those that are dismissed. We have done well by those measures, and note the following:

- the 14 matters that the disciplinary bodies and courts heard and finally decided during the year involved 11 solicitors (or 1 in every 694 of the state's solicitors), 2 barristers (or 1 in every 474 of the state's barristers) and 1 person (or 'unlawful operator') we alleged had engaged in legal practice when not entitled. All 14 respondents were subject to one or more findings of unsatisfactory professional conduct and/or professional misconduct and in the case of the 'unlawful operator', an offence under the Act.

¹¹ Practice Direction No.2 of 2010. The practice direction is readily accessible on both the QCAT and LSC websites.

- the LPT before it ceased on 30 November and QCAT subsequently made a total of 13 findings of professional misconduct and 4 of unsatisfactory professional conduct against 6 practitioners, 2 of whom were struck off; 1 suspended and ordered to undertake further legal education; 1 reprimanded and fined; and 2 reprimanded and ordered to be mentored and/or to undergo psychological counselling. The findings related to conduct including forging or creating false documents for personal gain, attempting to intimidate an opposing practitioner by threatening litigation, and acting without a client's instructions.

The Act obliges us to include the names of practitioners who are subject to findings of professional misconduct on the discipline register on our website and we have done so, and in each case included a link 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. They make interesting and instructive reading.

- the LPT and QCAT made a total of 16 findings of unsatisfactory professional conduct (but not of professional misconduct) against 3 practitioners, 1 of whom was reprimanded and fined; 1 reprimanded and ordered to be supervised and 1 just fined. The LPC made 1 finding of unsatisfactory professional conduct against each of 2 practitioners, both of whom were reprimanded. These findings related to competence and diligence issues and also delay, making false and misleading statements, breaches of the duty of candour, and unprofessional correspondence.

It is fundamentally important, in our view, that these judgments like judgments which make findings of professional misconduct are published and readily accessible 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. Regrettably for reasons we return to shortly this is not always the case.

- the Magistrates Court found 1 person (as it happens a former legal practitioner) guilty of the offence under section 25 of the Act of 'holding himself out' to be entitled to engage in legal practice when he was not, because he did not have a current practising certificate. He was convicted and fined \$600. This was our first prosecution of an offence under the Act (although there are several more in the wind, each of them potentially more serious).

We note before proceeding that while the numbers are small the 2009-10 data in relation to the gender, age and length of experience of the practitioners subject to prosecution reflect this year as in previous years the same pattern as the complaints data – women lawyers are significantly less likely than men lawyers per head of population in the profession to be prosecuted and similarly younger and comparatively inexperienced lawyers are significantly less likely to be prosecuted than older, more experienced lawyers. We refer in this regard to the observations we made earlier in the report about the corresponding data in relation to complaints.

We mentioned only a few paragraphs back that not all the judgements of the disciplinary bodies that make findings of unsatisfactory professional conduct are published and readily accessible both to practitioners and the public and that this is regrettable. They used to be - we made it our practice since our inception in 2004 to include findings of unsatisfactory professional conduct on the discipline register. We ceased that practice in October 2009 on the recommendation of the Ombudsman that we restrict the register to identifying practitioners who have been subject to findings of professional misconduct and remove any information that identifies practitioners subject to findings of unsatisfactory professional conduct but not of professional misconduct. The background to the issue is this:

- the Act requires the Commissioner at section 472 to keep a discipline register of practitioners who have been subject to disciplinary action under the Act but defines 'disciplinary action' at section 471 to be a decision by a court or the Tribunal that finds a practitioner has engaged in professional misconduct. We adopted the practice of also

including information identifying practitioners who have been subject to findings of unsatisfactory professional conduct on the basis that, while the Act didn't require us to include that information, nor did it prevent us¹² and it was in the public interest to do so.

- the Ombudsman does not accept our reasoning and recommended that we cease the practice and remove the information we had included on the register wrongly in his view. We sought independent advice from senior counsel who told us that 'reasonable minds could differ' but that 'the better view, albeit finely balanced' is that the Ombudsman is right – hence we accepted the Ombudsman's recommendation and removed from the register in October 2009 any information that identified practitioners subject to findings of unsatisfactory professional conduct but not of professional misconduct.

“...the LSC ...is fair and balanced.”

- it is common ground, however, that the Act allows the courts and the disciplinary bodies to publish their

decisions whatever their findings and, accordingly, the Court of Appeal and the LPT before it ceased and now QCAT routinely publish their disciplinary decisions on the Queensland Courts website (and QCAT on its website also) and so we are at liberty to reproduce them on ours, and we do – on a page headed *Disciplinary and other relevant regulatory decisions* (and, whenever they involve findings of professional misconduct, on the discipline register also).

- the LPC has recently developed a website - www.lpcommittee.qld.gov.au - which allows it to publish its decisions but it has decided that 'the question of publication of decisions will be dealt with... on a case by case basis at the time of hearing the matter'. It has made no decision whether to publish the 30 decisions it made from its inception in 2004 all but 1 of which (because the practitioner was found not guilty) we published on the discipline register and have since removed. Those 29 decisions remain accessible only with some difficulty, in hard copy at the Supreme Court Registry (where the Commission is obliged to file the orders of the LPC once the appeal period expires).

This is regrettable in our view for the reasons we've given earlier and easily fixed by a simple legislative amendment – by broadening the definition of 'disciplinary action' at 471 of the Act to include a decision of a court or tribunal which makes a finding not only of professional misconduct but (as is already the case in both New South Wales and Victoria¹³) a finding of unsatisfactory professional conduct also.

¹² We relied primarily on section 705(1)(d) in coming to this view. This section permits the disclosure of otherwise confidential information obtained in the administration of the act if 'the disclosure is made in connection with a legal proceeding under a relevant law or any report of a proceeding, including a proceeding before a disciplinary body relating to a discipline application.'

¹³ See sections 576 and 4.4.25 respectively of their local *Legal Profession Acts*.

Education, projects and research

We see it as part of our core business to get in first before a complaint arises.

The *Legal Profession Act 2007* (the Act) puts us under no obligation but we see it as part of our core business to do whatever we reasonably can to get in first, before things go sour by giving rise to complaint or non-compliance. We see it to be part of our job to proactively protect the rights of the users of legal services and to promote high standards of conduct in the delivery of those services, and ultimately to promote and protect public confidence in the provision of legal services, the administration of justice and the rule of law. We have set ourselves accordingly to:

- learn from what we see and do as we go about our work and to publish and disseminate that information and perspective to the profession and the public at large;
- participate in and otherwise support undergraduate and continuing legal education programs, and undertake, facilitate, broker and partner the professional bodies, university law schools and other legal services stakeholders in undertaking educational activities, projects and research calculated to better protect the rights of the users of legal services and to promote high standards of conduct in the delivery of legal services; and
- contribute to the development of legislative, regulatory and policy reforms and debate relevant to protecting the rights of the users of legal services and promoting high standards of conduct in the delivery of legal services.

We gauge our performance against these objectives having regard to the number and range of education, project and research activities we undertake during the year, the number and range of our collaborations with other legal services stakeholders in undertaking those activities and our stakeholder feedback. We have limited resources to put to the task but believe we have used them to good effect. We are pleased to report that:

- we collected and analysed our complaints and compliance audit data as in previous years and cross-referenced it with data describing 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. We have included the de-identified and aggregated data at Appendix 4 and cherry-picked it for inclusion under the relevant sub-headings throughout the main body of the report. We are especially pleased to report that we have now established a platform that in due course will give lawyers, law firms, legal academics and members of the public on-line access to that data and a capacity to interrogate the data, at www.lpportal.org.au. We discuss the portal in more detail later in the report under the heading *Our people and our systems*.
- we routinely ask people who have made inquiries of us or complaints to give us their feedback by completing a *Your feedback* survey, and similarly lawyers who have been subject 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 lawyers who have been subject to complaint to consider participating in the survey in

the closure letters we send them advising them of the outcome after we've finished dealing with the complaint and, to improve the response rate, we contact and extend a personal invitation to everyone who has made an inquiry or a complaint or been subject to complaint during a designated month or six week period. We contact them by email wherever possible and include 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 extend the same invitation to our stakeholders more generally, via the electronic mail-outs that the QLS, the BAQ, the Women Lawyers Association and other professional groups send their members and by personal email to people who have attended a symposium or participated in a project.

The take up rate is not great, despite our best efforts. Relatively few people respond to the surveys, and indeed we get almost as much feedback by way of unsolicited cards or notes or emails. We remain committed to go looking for it, however, and to learn what we can from the feedback we do get and to publish it in the interests of transparency – we regularly publish and update the results on the *Your feedback* page of our website, including the 'raw' statistical results, the complete and unedited comments that many people add in the free text boxes that accompany many of the questions and of course the unsolicited feedback also.

- the Commissioner and/or staff of the Commission completed 37 speaking engagements during the year - at 12 professional conferences, including the annual conference of District Court judges, the QLS Symposium and various other conferences under the auspices of the QLS, the national conference of the Australian Legal Practice Managers Association and the Australian Academy of Law Roundtable on National Legal Profession Reform; at 10 compulsory professional development seminars and other continuing legal education events including in-house events at law firms; at all 7 practice management courses conducted by the QLS for solicitors who are wanting to upgrade their practising certificates to qualify them to practise as a sole practitioner or principal; to 5 classes of law students undertaking professional responsibility studies as part of their undergraduate legal or practical legal training prior to admission; and at 3 ethics colloquia or other events hosted by university law schools. We have published the most significant of those speeches on the Commission's website.
- the staff of the Commission and our academic collaborators have written several papers that have been published during the year in academic journals. The Commission's Manager-Practice Compliance, Scott McLean wrote an article canvassing evidentiary issues in disciplinary proceedings including the onus of proof that was published under the title *Evidence in legal profession disciplinary hearings: changing the lawyers' paradigm* in the University of Queensland Law Journal, Volume 28, (2), February 2010. The Commission's Project and Research Coordinator, Dr Lyn Aitken, and Dr Francesca Bartlett of the University of Queensland Law School continued the research project they commenced last year prompted by our complaints data which shows consistently year after year that women lawyers are several times less likely than men lawyers to become subject to complaint and disciplinary action. Dr Bartlett published a paper titled *Professional discipline against female lawyers in Queensland – a gendered analysis* in the Griffith Law Review, Volume 17, (1), July 2009, and co-authored a paper with Dr Aitken headed *Competence in caring in legal practise* which was published in the International Journal of the Legal Profession, Volume 16, (3), 2009. Dr Bartlett will also deliver a paper relevant to that research at the Working Group on Comparative Sociology of Legal Professions in France in July 2010.
- we conducted the sixth and seventh symposia in the highly successful *Lawyers, clients and the business of law* symposia series we have co-hosted with Griffith Law School since 2005-06, on *Shouldering the supervision load* and *Educating lawyers for the ethical challenges of practice* respectively. The symposia are designed to bring practising lawyers together with legal academics and regulators to stimulate thought and discussion about issues of shared concern. Both symposia were well attended and attracted positive feedback from participants.

- we noted in last year's report that we had developed what we hope will become a varied and growing suite of short, sharp on-line surveys or 'ethics checks' we can offer to law firms as an ethical capacity-building tool and that we can use also as a form of compliance audit. We developed three such surveys last year - a workplace culture check, a complaints management systems check and a billing practices check for medium to large law practices – and we've refined them over the past year and are working on a fourth, on supervision practices. They are all readily accessible on our website.

“We designed them to encourage not only a law firm's leaders but its entire people to engage with and reflect on ethical issues that arise in their everyday practice of law.”

We designed them to encourage not only a law firm's leaders but all its people to engage with and reflect on ethical issues that arise in their everyday practice of law, to prompt both spontaneous and organized discussion within the firm about those issues and to enable the firm to 'take its ethical pulse' by identifying both the strengths and weaknesses in 'the ways we do things around here'. Individuals are most welcome to complete the surveys but they work best when everyone at a law practice takes part, or in larger practices at least a good sample of each of the different levels and classifications of their people, and people from its different branch offices, if it has them. That gives the firm a window on the ways its policies and systems are perceived and implemented 'down the line' by the different levels and locations of its people, whether they're followed though in practice and the values and attitudes its people bring to their work. That is a handy indicator of the strength and the consistency of its ethical culture and which of its management systems if any might need improvement.

We noted last year that we had invited 15 law firms to complete the workplace culture check on a purely voluntary basis and that all 15 firms accepted. We noted that a total of 502 people from those 15 firms completed the survey, 294 lawyers and 208 support staff, and we note that another 17 firms and 116 of their people have completed the survey since, entirely at their own initiative. This year we invited all 172 Queensland law firms that employ 7 or more practising certificate holders to complete the billing practices survey, on a purely voluntary basis once again, and 40 of those firms and 517 of their people took part, 371 lawyers and 146 support staff. Those are hugely encouraging take-up rates for entirely voluntary surveys.

We noted last year also that we had asked 37 incorporated legal practices to run the complaints management systems check as a form of compliance audit, and we mentioned earlier in this report that we asked another 25 incorporated legal practices to run the survey this year. A total of 670 people from those 62 incorporated legal practices have now completed the survey.

We've posted both the aggregated results and the de-identified, firm by firm results of all three surveys on our website and they make interesting reading indeed. We have also posted a number of cross-tabulation reports which compare the results by the gender and seniority of the individuals who completed the surveys and their firms' business structures. We asked every individual who completed a survey and the principals of each participating law firm to give us feedback following the survey and we have published what they told us on the website also, entirely in their own words.

We won't repeat that feedback here but it tells us, cutting a longer story short, that the ethics checks served exactly the ethical capacity-building purposes we hoped they might. It tells us that participating in a survey prompted the individuals who took part to think about the ethical issues inherent in the survey questions and generated both spontaneous and organized discussion within their law firms that resulted in changes to 'the ways we do things around here.' The response has been profoundly encouraging.

We note before moving on that the ethics checks have attracted considerable national and international interest. We note for example that the Commission's Dr Lyn Aitken and Dr Christine Parker of the Melbourne University Law School presented the initial findings of a more detailed statistical analysis of the results of the workplace culture check survey at an ethics colloquium hosted by the University of Southern Queensland Law School under the title *Corporatizing legal practice: ethics, culture and structure* in October. They have subsequently written a research paper headed *The Queensland workplace culture check: learning from reflection on ethics* and submitted it for publication in a respected academic journal. The paper is available on request from the authors. Dr Parker will speak to that paper at the Working Group on Comparative Sociology of Legal Professions in France in July and the Fourth International Legal Ethics Conference at Stanford University also in July.

Similarly Dr Parker and her colleague at the Melbourne University Law School, Dr Linda Haller, have analysed the results of the complaints management systems check and written a research paper headed *Inside running: internal complaints management practice and regulation in the legal profession*. That paper has also been submitted for publication and is also available on request.

We are especially pleased that Professor Susan Saab Fortney of the Texas Tech University Law School has agreed to collaborate with Dr Parker and the Commissioner and staff of the Commission to undertake a detailed analysis of the results of the billing practices check and to present the findings at an ethics conference at the University of St Thomas Minnesota School of Law in November. The billing practices survey drew heavily on empirical research Professor Fortney conducted about billing practices in North American law firms some years ago and it is much a better survey for her helpful comments about earlier versions.

We note finally before moving on that we are collaborating with Professor Jeff Giddings of the Griffith University Law School to develop a fourth ethics check survey, on supervision practices in law firms, drawing in part on the discussion at the *Lawyers, clients and the business of law* symposium we co-hosted recently about supervision. We hope to run that survey with volunteer law firms or as a form of compliance audit of incorporated legal practices or both during the year ahead.

- we have made a significant contribution to the debate about national legal profession reform. The Commonwealth Attorney-General appointed the Commissioner to the Consultative Group to the National Legal Profession Reform Taskforce and he has participated actively in that forum and made 4 submissions addressing the proposed regulatory architecture, the proposed reforms to the system for dealing with complaints and the proposed extension of the compliance audit power to all law firms. Those submissions are all publicly available both on our website and the website of the national legal profession reform, www.ag.gov.au/legalprofession. We have also made detailed submissions to the Taskforce, the Law Council of Australia and the Queensland Law Society (QLS) about the draft national Conduct Rules and spoken about these issues at various professional conferences and other public forums including the QLS Annual Symposium (and published those speeches on our website).

Our people and our systems

Performance, accountable, sustainable, productive, transparent, motivating.

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, motivating and collegiate work environment. We measure our success by reference to our overall performance, obviously, but also of course the feedback our people give us, their take up of professional development opportunities, the effectiveness and efficiency of our case management system in supporting us in what we do, and the number and nature of the changes we identify and make to our processes, management systems and supervisory arrangements. We have reason to feel encouraged.

Our people

The Commission sits at its centre but the system established under the Act for dealing with complaints includes 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. There has been some redistribution but the total number of full-time equivalent staff has settled in recent years at a number (31.2) 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 over that time (for enforcing the restrictions on the advertising of personal injury services and for conducting compliance audits of incorporated legal practices) and added value by developing a capacity that was previously lacking to undertake projects and research. We have included at Appendix 3 for completeness a table describing what the system costs.

We are a small organisation of only 19.2 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 and achieved a good fit between the demand for our services and our capacity to deliver. We note, because we are sometimes accused of 'being out of touch with life at the coal face', that 12 of our 19 people are lawyers and that they bring to the Commission between them more than 150 years of post-admission experience, the bulk of it in private legal practice. We set out deliberately on our inception to stick with a flat structure we inherited and to establish a workplace culture characterised by open communication and knowledge sharing of both formal and informal kinds. We achieved that collegiality early in the piece and have maintained it since and we have a happy and productive workplace because of it. We note that:

- the Commissioner or the Manager-Complaints as the Commissioner's delegate in many day to day matters make and take accountability for the decisions that need to be made. We make as many as possible of those decisions including every decision to initiate disciplinary proceedings or other enforcement action or to take no further action when that might be a line ball decision only after a team discussion at which the staff member who has carriage of the matter makes a case and all our professional staff have the opportunity to have their say. That is an important and useful decision-making process in circumstances where we are called upon so often to make judgement calls where reasonable minds can differ but even more so because it becomes a team-

building, culture-setting and professional development exercise also, and supports 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 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.
- we encourage every one of us to undertake the equivalent of at least two days of professional development activity a year and we've not quite achieved that goal this past year but come close. We participated between us in 23 training courses, seminars, professional conferences and the like hosted both by professional bodies and private providers. We are especially grateful to the QLS for allowing us to attend various 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 an informal sounding board, to give him advice about the big picture 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 an experienced and broadly representative group of lawyers (Dr Geoffrey Airo-Farulla, Margaret Jones, Professor the Hon. Michael Lavarch, the Hon. Martin Moynihan QC AO, Ross Perrett, Zoe Rathus and Mark Ryan) and several lay people who have significant experience dealing with complaints and consumer protection issues (Margo Couldrey and Dr Julian Lamont). They participate on an entirely voluntary basis and have each provided invaluable advice and wisdom. We owe them a great debt.

Our systems

We noted in last year's report that we had established an in-house 'continual improvements project team' in June to review the way we process inquiries and complaints from receipt to closure. The project team was briefed to consult widely with their colleagues and, having particular regard to our values and performance criteria (as set out in our Strategic and Performance Planning Framework 2008-10) and the results of the Your Feedback surveys we conducted during the year, to identify and recommend improvements.

The project team reported back in October. We have made more than a few improvements since and are working our way through the remainder. We have for example purchased a new telephone system which features an 'automated receptionist' facility that provides callers with information about the Commission and what we can and can't do (and which re-direct callers who have confused us with Legal Aid, for example), that prompts callers to listen to recorded messages which provide basic information about the most common queries (about the process for querying a lawyer's costs, for example) and of course allows callers to connect to one of our client service officers. That one improvement alone has relieved the pressure on inquiries officers and made it much easier for genuine callers to get through. We have also revised the scripts we give our inquiries officers to assist them to respond to the most frequently asked questions and to better deal with serial and vexatious complainants.

"The LPPortal is a work in progress, but already marks a major milestone in the regulation of the Queensland legal profession."

We have also developed more comprehensive file opening and file closure checklists for insertion in every hard copy file; identified a range of improvements to our complaints managements database (see below); produced a comprehensive revised draft Complaints Management Policy and Procedure for further consultation and refinement; developed pro-forma documents to better record

interim decisions (including decisions made at Case Evaluation Meetings); identified and commenced drafting a series of policies and procedures in relation to such matters as dealing with complaints about us (complaints made to us about our service, policies or procedures), dealing with grievances (complaints made to or about us asking that a decision

be reconsidered or reviewed, for example, or alleging some misconduct on our part), initiating 'own motion' investigations, responding to 'out of time' complaints, and enforcing costs orders - some of which we have now finalized and published on our website and others of which are works in progress; initiated the construction of a local intranet as an in-house vehicle to publish our internal policy and procedure documents and related resource materials; commenced reviewing our precedent documents and clause bank for completeness and accuracy, applying a 'plain English' test; arranged external auditors to test our compliance with the *Information Privacy Act 2009* (see below); and arranged external speakers to conduct a series of in-house continuing legal education workshops on topics including privacy, statutory interpretation and advanced government decision-making.

We have also consolidated our Knowledge Manager and Practice Compliance Manager functions within the one position of Practice Compliance Manager – hence our Practice Compliance Manager will now have in-house leadership responsibilities in addition to conducting compliance audits of law firms, and responsibility effectively to ensure that the 'continual improvements project' becomes an on-going and routine part of the way we do business. That is a positive development. We note also that:

- we retained the law firm Dibbs Barker to audit our compliance with the *Information Privacy Act 2009* (the Act). The auditors identified a number of improvements we could make to our systems and processes and we will make those improvements over the coming year. Notably however they reported that 'the results of the audit are overwhelmingly positive: in no situation can the [Commission] be said to do an act or engage in a practice that contravenes or is otherwise inconsistent with the requirements of the Act, nor can any omission be said to result in such an inconsistency. In short, we have found that the [Commission] is fully compliant with its obligations under the Information Privacy Principles contained in the Act. In our opinion, the [Commission] should be congratulated for its processes and procedures which we believe represent, and in some cases exceed, best practice information privacy standards. This congratulation is further deserved considering these processes and procedures were in place well before the commencement of the Act.'
- our most fundamental system – the system we rely on in almost everything we do – is our regulatory database and case management system, LPCentral. We continued over the past year the program of continual improvements we began very soon after we first commenced on 1 July 2004 and have continued ever since and will continue again over the year ahead. We have now reached the point where LPCentral is on the cusp of becoming the first consolidated and fully integrated data warehouse for keeping the complete data required to be kept in connection with the regulation of the legal profession in any Australian jurisdiction.

It is important and useful to understand how we've got to where we are. The key decision was made by departmental officers even before the Commission commenced in 2004 and took over responsibility for dealing with complaints from the Queensland Law Society (the QLS) - the decision to provide us as a brand new body with a database not by buying or building a new and standalone case management system but by giving us remote access to the database the QLS was using at the time and adapting that database to the requirements of the new regulatory regime. The decision was taken for reasons of expedience at the time but gifted us a unique opportunity.

It has meant for the reasons we've described in previous reports that we've been able to arrive at a situation where we keep the data we're required to keep in relation to complaints, investigation matters, compliance audits and discipline and other enforcement action on the same database that the QLS uses to keep the data it is required to keep in relation to the complaints and investigation matters we refer there for investigation, and the same database it uses to keep the data it is required to keep in relation to trust account investigations and related matters – and on a database that includes an automated data feed from the separate database the QLS uses in connection with its other regulatory responsibilities, most notably issuing practising certificates. That meant in turn we can not only electronically track the complaints and

investigation matters that move backwards and forwards between the two of us but have the opportunity by entering into an Information Sharing Agreement (pursuant to section 704 of the *Legal Profession Act 2007*) to give each other electronic access to all or an agreed subset of the data we each keep in connection with our other regulatory responsibilities. We've done just that, as we've reported previously, and agreed to give each other the fullest possible access to the data we each keep in order to facilitate the effective and efficient discharge of our respective regulatory responsibilities – and this means in turn that we have a uniquely powerful capacity to generate and report comprehensive, cross-referenced regulatory data including risk data relevant to the regulation of solicitors. The multiple regulators in each of the other states and territories all remain reliant on their own standalone databases, and none of them have a similar reporting capacity.

We reported last year that we had strengthened the LPCentral hardware to enable us to 'remote in' to our own independent server at QLS and provided for the two way replication of the agreed data between the QLS server and ours. We have further strengthened the hardware this past year: the two way replication between our two servers continues, but we both now access LPCentral by fibre-optic links to servers located at and hosted by the Department of Justice and Attorney-General (JAG) but on independent domains.

That setup has a number of advantages, not least that it establishes a platform for making further improvements over the year ahead, most notably by enabling the Bar Association of Queensland (the BAQ) to 'remote in' and to access LPCentral also, on our server at JAG. That will enable the BAQ like the QLS to keep the information we require it to keep in relation to the complaints about barristers and to electronically track those complaints as they move backwards and forwards between us on what by then will have become a single consolidated database underpinning the system established under the Act for dealing with complaints in its entirety, whether they be complaints about solicitors or barristers. We hope to have the BAQ on-board by the end of the calendar year.

We have agreed with the BAQ that, like the QLS, it will 'feed' LPCentral with agreed data from the separate database it uses in connection with its regulatory responsibility to issue practising certificates, and so enable that data to be cross-referenced also. We have entered into an Information Sharing Agreement accordingly.¹⁴

We note in passing that LPCentral lends itself to use by the admitting authorities also - the Supreme Court assisted by the Legal Practitioner's Admissions Board – and that we have had preliminary discussions with both bodies to explore that possibility which, if realized, would enable LPCentral to track a lawyer's progress in Queensland from the moment of his or her admission. We note also that we are having continuing discussions with our counterpart regulators in several other states about whether and how they might access or otherwise use LPCentral for their local purposes, and finally that the National Legal Profession Reform Taskforce has flagged an interest also. LPCentral is a potential precursor to the national database which will inevitably have to accompany national legal profession reform.

We continued over the past year to make improvements not only to the LPCentral hardware but the software also, and will make further improvements over the year ahead, most of them prompted by the continual improvements project we described a few pages back. They include building in a capacity to record and report the number of statutory notices we issue pursuant to section 443 of the Act (requiring practitioners to explain their conduct subject to investigation or to produce documents relevant to the investigation); to record and report prosecution outcomes by reference to the number of disciplinary or other charges that are made out or dismissed rather by reference simply to whether the respondent practitioner (or other person) was found guilty of one or more charges or acquitted; and to record and report several new matter types altogether

¹⁴ Notably the Information Sharing Agreements we have entered into with the QLS and the BAQ are bi-lateral and not multi-lateral agreements. The QLS and the BAQ have each agreed pursuant to those agreements to share certain information with us, but not with each other.

– privacy and right to information applications; complaints about us (complaints about our service, policies or procedures); and grievances (requests that we reconsider a decision; applications for judicial review of a decision; and complaints to the Ombudsman, the Crime and Misconduct Commission or other such agency). We have modified our monthly performance report accordingly.

- we noted in last year’s report that we were ‘well on the way to building LPPortal, an on-line point of entry to the 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 are pleased to report that LPPortal is now live, at www.lpportal.org.au. It includes a demonstration video which shows new users how to access and navigate the site.

The Attorney-General, the Hon Cameron Dick MP, kindly launched the portal on 31 March, accompanied by the Chief Justice, the Hon Paul de Jersey, and both of them spoke enthusiastically about its potential. This is an edited version of what the Attorney had to say: ‘the Legal Services Commission is to be congratulated on this significant initiative, which sets a new benchmark for the regulation of the Australian legal profession. Last year, the Queensland Government enacted right to information laws greatly increasing the community’s access to information held by state agencies. Those laws put us at the forefront of open and accountable government in Australia. The LPPortal is a further demonstration of that commitment at work and an excellent example of how regulators can give effect to fundamental policy objectives. It also embodies the smart use of technology to keep pace with modern business practice and maximise the efficiency with which we deliver public services.’

The Attorney continued as follows: ‘the LPPortal will pull in regulatory data. Among other things, this will be achieved by enabling incorporated legal practices to complete and lodge the results of the self-assessed adequacy of their management systems and supervisory arrangements online. For the Commission, that will dispense with the data entry work it would otherwise have to do and release resources for more productive activities and services. It will also enable those law firms to manage their interactions with the Commission online – and to view and update their data from time to time as appropriate. That will save them the time and money they would otherwise have to invest in developing their own systems. Should the Law Society choose to opt in, it will also enable law firm auditors, for example, to complete and lodge their external examination reports online. That too would deliver significant savings and is but one of many potential applications.

“These are significant measures that will bring unprecedented transparency and accountability to the Commission’s work.”

The LPPortal will not only pull in information, but just as importantly, push it out. In the first

instance, that will include giving law firms access to de-identified complaints data in relation to their practices. Law firms have never previously had access to that information. The Commission is also planning to capitalise on the unique capacity of the back office data warehouse to cross-reference complaints data with trust account, compliance audit and other data to develop ‘risk alerts’. These alerts will identify lawyers and law firms most at risk of falling short of their professional obligations. That will then enable the Commission to direct more of its regulatory resources to where they are most needed and most likely to deliver the greatest benefit in the public interest. It will also give ‘at risk’ firms an opportunity to review their management systems and make any adjustments that might be required before the Commission is obliged to intervene. This will be a huge step forward, with regulators able to pay much more attention to prevention in future than they do now.

The LPPortal will become a key driver in the regulatory tool box. It will also be used to push out de-identified and aggregated complaints and other regulatory and professional analysis to legal academics and the community at large. In due course, that function

will be supported by an ad hoc inquiry facility which will allow them to interrogate the data. These are significant measures that will bring unprecedented transparency and accountability to the Commission's work.'

"The [Commission] should be congratulated for its processes and procedures which we believe represent, and in some cases exceed, best practice information privacy standards."

The Attorney concluded by noting that 'the LPPortal is a work in progress, but already marks a major milestone in the regulation of the Queensland

legal profession.' We are grateful to the Attorney for his kind remarks. We note that incorporated legal practices have been completing and lodging self-assessment audits and annual surveys on-line since May and have been able to access their firm's complaints history, but LPPortal is indeed a work in progress. We are working towards adding further functionalities over the year ahead, most notably by enabling all law firms to access their firm's complaints history and building the 'risk alerts' and ad hoc inquiry facilities the Attorney mentioned in his speech. This is a truly exciting exercise.

Appendix 1

The system 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) and in various fact sheets that are also available on the website and that we are happy to make information available in hard copy on request.

The system can be readily summarized both in words and diagrammatically in the form of a flow chart. We note, using the word form first, that the Commission is the sole body authorized 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, and it isn't always appropriate and doesn't always work, and 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) or the Bar Association of Queensland (BAQ) in the first instance. The QLS and the BAQ 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.

Our first task, when we receive a complaint, is to assess the complaint 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 the answer to this question is no, then 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 the answer to this question is no, then 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 the answer to this question is yes, then 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 \$7,500 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.

The Commissioner has to decide, in other words, applying the statutory definitions, 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' and:

- if the answer to both questions is no, then 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 – and either to attempt to mediate the complaint itself or to refer it to the QLS or BAQ for mediation, and that's the end of the matter;
- if the answer to either question is yes, then the complaint is classed as what we call a conduct complaint and the Act obliges us to see to it that the complaint is investigated – and either to investigate the complaint ourselves or to refer it to the QLS or the BAQ for investigation.

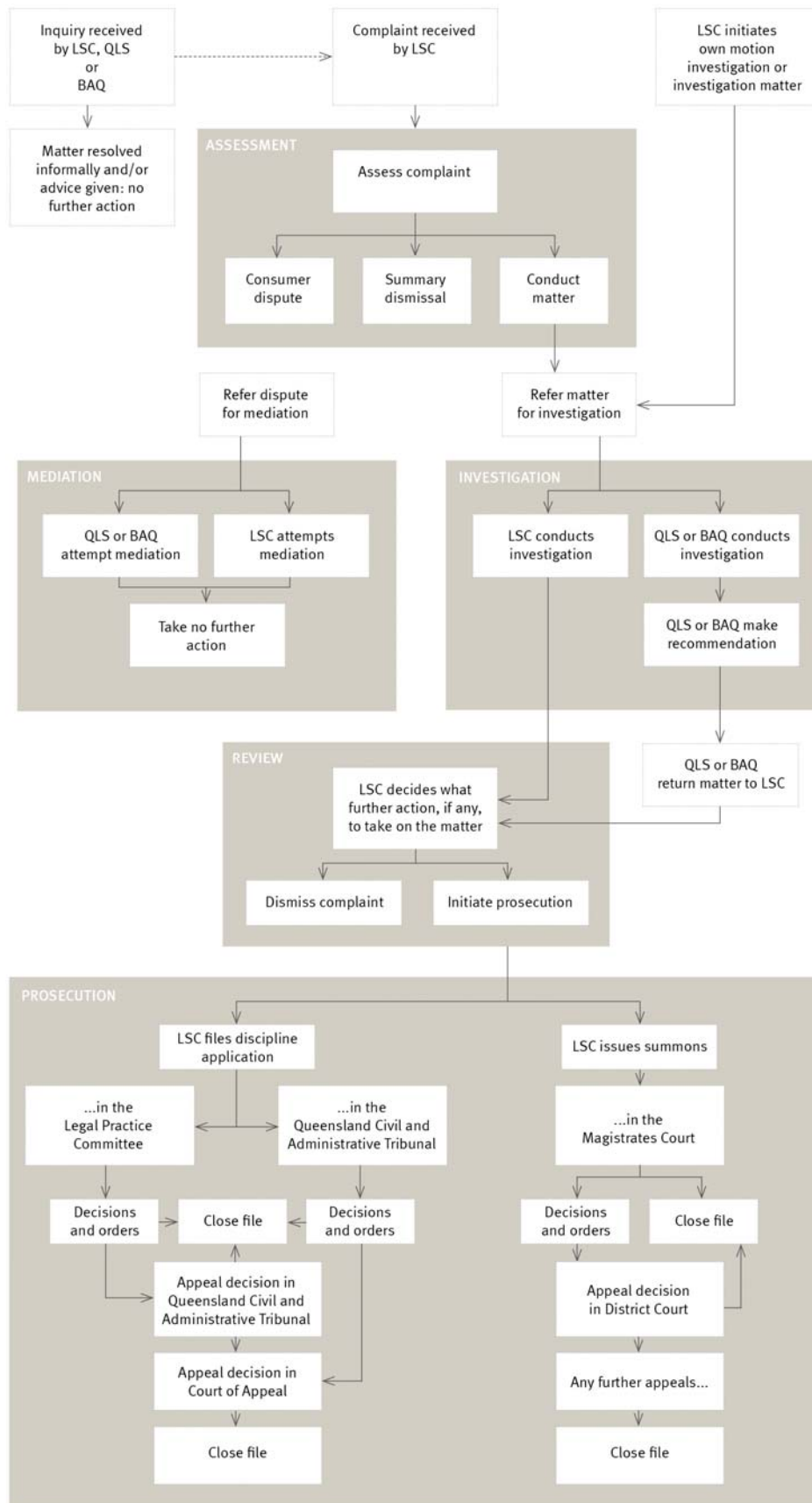
Importantly, if the Commissioner decides to refer a conduct complaint or investigation matter to one of the professional bodies for investigation, the investigation remains subject to our direction and control and they have no authority to decide how those matters should be resolved, only to report their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

The Commissioner and the Commissioner alone has 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 has to 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's 'in the public interest' to initiate disciplinary proceedings. These are sometimes quite difficult questions, but:

- if the answer to both questions is yes, then the Act obliges the Commissioner to initiate disciplinary proceedings in either the Queensland Civil and Administrative Tribunal (after one December 2009) or its predecessor body, the Legal Practice Tribunal (before 30 November 2009) in relation to more serious disciplinary matters or the Legal Practice Committee in relation to less serious disciplinary matters; and
- if the answer to either question is no, then the Act obliges the Commissioner to dismiss the complaint or investigation matter, or in other words to take no further action in the matter.

Complaint handling flowchart



Appendix 2

Staffing the system for dealing with complaints

We have described the system established under the *Legal Profession Act 2007* (the Act) for dealing with complaints elsewhere in this report (including in particular at Appendix 1). It is a co-regulatory system which comprises both the Legal Services Commission (LSC) and the professional bodies – the Queensland Law Society (QLS) and the Bar Association of Queensland (BAQ) – and is best conceived holistically.

The LSC is funded by grants from the Legal Practitioner Interest on Trust Accounts Fund (see Appendix 3) and employs a range of staff within the organisational structure which is described at Table 5. Similarly the QLS is funded for these (and some other) regulatory purposes by grants from the Legal Practitioner Interest on Trust Accounts Fund and employs a range of staff within its Professional Standards Department who deal with the complaints that the LSC refers to the QLS for mediation and / or investigation. The staff of the Professional Standards Department support and are answerable to the Society's Professional Standards Committee. The BAQ draws on funds of its own to employ a part-time Manager, Professional Standards who supports and is answerable to the Association's Professional Conduct Committee and who may well be full-time commencing mid- 2010. Table 2.1 sets out how the system established under the Act for dealing with complaints has been staffed since its inception on 1 July 2004 through to 30 June 2010 and beyond.

Table 5 Numbers of full-time equivalent staff by agency and year

	start up:2004	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
LSC	8	10.7	17.5	18.2	18.2	18.2	19.2 ¹⁵	19.2 (20.2) ¹⁶
QLS	19.95	19.95	19.95	12.72	13.72	14	13	12
BAQ	-	-	-	-	-	.5	.5	1
Total	27.95	30.65	37.45	30.92	31.92	32.7	32.7	32.2(33.2)

The figures tell an interesting story. Notably, while the system needed to be supplemented with additional staff initially, primarily to deal with the large backlog of complaints that the Commission inherited in its inception, the total number of staff fell once the backlog was resolved going into 2006-07. Some functions and hence staff numbers have transferred from the QLS to the LSC since that time but the total number of staff in the system as a

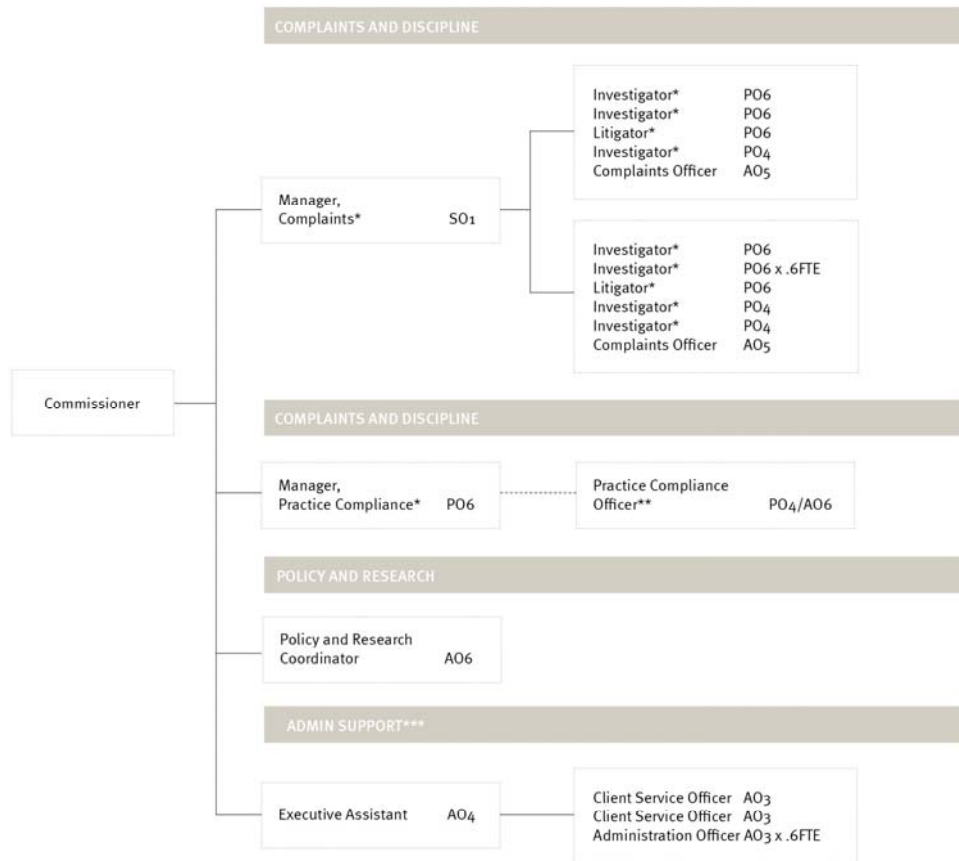
¹⁵ Law firms were permitted to incorporate effective from 1 July 2007 and the LSC and the QLS were both funded to employ an additional staff member each to perform the additional regulatory functions the Legal Profession Act 2007 required of the 'relevant regulatory authorities' in relation to incorporated legal practices. The LSC and the QLS agreed effective 1 July 2009 that these functions best belonged to the LSC and accordingly the funding and the position that went previously to the QLS transferred to the LSC.

¹⁶ The QLS decided not to replace the manager of its Client Relations Centre who resigned on 5 March 2010, hence the further reduction in the number of its staff. That has resulted in the LSC having to absorb additional work and we have since requested that the funds that went with the position and that the QLS relinquished be allocated to the LSC to enable us to employ an additional staff member to undertake that work. That request is likely to be approved but has not yet been approved at the time of writing – hence the bracketed number.

whole has 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 and initially also the QLS (see footnote 15 below) were given significant additional responsibilities effective from 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.

Legal Services Commission - Organisational chart 2009-10



Total full time equivalent staff = 19.2

* These positions require legal qualifications

** This position will remain vacant until 2011-2012

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

Appendix 3

Funding the system for dealing with complaints

Table 6 sets out the costs in 2009-10 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 the members of the Professional Conduct Committee of the Bar Association of Queensland (BAQ) who deal with complaints on referral from the Commission. It also includes for these purposes the disciplinary bodies – the Queensland Civil and Administrative Tribunal (QCAT), which commenced on 1 December 2009; its predecessor body, the Legal Practice Tribunal (LPT), which ceased on 30 November 2009; 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). The 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 QLS pursuant to a Service Level Agreement with the Commission. The 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.

Table 6 The cost of the system for dealing with complaints and discipline in 2009-10

	Employee related expenses	All other costs	09-10 Total	08-09 Total for comparison	10-11 Budget for comparison
LSC	\$1,918,881	\$1,152,089 ¹⁷	\$3,070,970	\$3,072,574	\$3,640,767 ¹⁸
QLS	n/a	n/a	\$1,725,214 ¹⁹	\$1,756,638	\$1,664,431
BAQ	-	-	-	-	-
QCAT / LPT	\$41,493	\$8,747	\$50,240	\$92,580	-
LPC	\$28,482	\$3,661	\$32,143	\$36,990	\$47,864
Total	n/a	n/a	\$4,878,567	\$4,958,782	\$5,353,062

¹⁷ This figure includes brief-out costs of \$163,555 (see Table 7).

¹⁸ This figure includes budget of \$500,000 for brief-out costs which will drawn upon only as needed.

¹⁹ This figure is the amount that transferred from the LSC to the QLS to enable it to deal with the complaints that the LSC referred to the QLS for investigation pursuant to a Service Level Agreement.

Table 7 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 representing the Commission in complex matters before the disciplinary bodies, and Table 8 sets out the monies that have been returned to, or are due to return to LPITAF as a consequence of disciplinary action initiated by the Commission in the disciplinary bodies.

Table 7 Brief out costs

04-05	05-06	06-07	07-08	08-09	09-10
u/a	\$128,477	\$127,701	\$290,172	\$455,453	\$163,555

Table 8 Monies returned or due to return to LPITAF in 2009-10

	QCAT	LPT	LPC	Total
financial penalties ordered in 2009/10	-	\$12,000	-	\$12,000
penalty payments received in 2009/10	-	\$44,000	\$2,750	\$46,750
costs ordered, agreed or assessed in 2009/10	\$1000	\$111,500	\$2,500	\$115,000
costs payments received in 2009/10	\$1000	\$104,000	\$4,500	\$109,500
costs written off in 2009/10	-	\$5,000	-	\$5,000
costs payments pending	-	\$70,900	-	\$70,900

Appendix 4

Performance data

Overview

Purpose

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

Scope

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

Acronyms, and abbreviations

Term	Description
BAQ	Bar Association of Queensland
CMS	Case Management System
ILP	Incorporated Legal Practice
LPC	Legal Practice Committee
LPT	Legal Practice Tribunal
LSC	Legal Services Commission
MDP	Multi-disciplinary Partnership
PC	Practising Certificate
PIPA	Personal Injuries Proceedings Act 2002
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society

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:

Inquiries comprise inquiries that are made typically by telephone but sometimes in writing, by email or in person including, for example:

- 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, and so on. Inquiries might be made of either the 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 the

Commission 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 the LSC, to the QLS or to the BAQ and are typically dealt with as if they were consumer disputes (see below); and

- ethical inquiries - inquiries by solicitors or barristers of the QLS or BAQ respectively as their professional body about their ethical obligations as legal practitioners.

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 the LSC (and only to the 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 accordingly - as summary dismissals, consumer disputes, and conduct matters, as follows:

- **summary dismissals** - complaints that are beyond the Commission'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 the LSC may try to mediate consumer disputes or alternatively refer them to the QLS or BAQ for mediation (and does not require the QLS or BAQ to report the outcome to the LSC); and
- **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 the 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 the 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; and

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

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. The LSC requires ILPs to undertake self-assessment audits immediately or shortly after they notify the 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 the 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 the LSC or by the QLS on referral from the LSC in which case the QLS reports its findings and recommendations to the LSC for its consideration as to what further action, if any, is appropriate.

Prosecutions comprise conduct matters (including ILP and PIPA related conduct matters) that the 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.

Reporting Framework

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.

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.

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
- complaints summarily dismissed 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.

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.

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.

Profession analysis

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 2009 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 2009-10 will be profiled against the solicitor's attributes as they were recorded at 1 July 2009.

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.

Table 9 Solicitors by type of practising certificate at 1 July each year

Year	Principal	Employee	Conditional	Limited Principal	Restricted Principal	Un-restricted Volunteer	Restricted Volunteer	Total
2010	2,523	3,851	1,559	20	4	17	37	8,011
2009	2,432	3,603	1,536	20	4	12	23	7,630
2008	2,341	3,277	1,568	19	4	6	8	7,239
2007	2,302	3,010	1,584	19	4	4	3	6,926
2006	2,297	2,932	1,185	n/a	n/a	n/a	n/a	6,414
2005	2,317	3,074	801	n/a	n/a	n/a	n/a	6,192
2004	2,290	3,049	520	n/a	n/a	n/a	n/a	5,859
2003	2,261	2,846	422	n/a	n/a	n/a	n/a	5,522

Table 10 Law firms by business structure

	Partnership	ILP	MDP	Total
active as at 1/7/2009	1,227	188	2	1,417
no. commenced during year (new firms)	78	70	-	148
no. commenced during year (re-structure)	15	48	-	63
number ceased during year	121	12	-	133
active as at 1/7/2010	1,199	294	2	1,495
	% of total	80.20	19.67	0.13

Table 11 Law firms by business structure and size of firm 1 July 2010

	Partnership	% of Total	ILP	% of Total	MDP	Other	Total
1	545	46.50	104	37.68	-	-	649
2 - 3	373	31.83	95	34.42	-	-	468
4 - 6	123	10.49	41	14.86	1	-	165
7-12	62	5.29	25	9.06	-	-	87
13-24	37	3.16	11	3.99	-	-	48
25-50	12	1.02	-	-	-	-	12
51-100	16	1.37	-	-	-	-	16
101-200	4	0.34	-	-	-	-	4
unknown	-	-	-	-	-	46	46
total	1,172		276		1	46	1,495

Table 12 Practising certificate holders by size of law firm 1 July 2010

	Partnership	ILP	MDP	Other	Total
1	545	104	-	-	649
2 - 3	886	221	-	-	1,107
4 - 6	643	197	5	-	845
7-12	512	231	-	-	743
13-24	614	186	-	-	800
25-50	380	-	-	-	380
51-100	1,038	148	-	-	1,186
101-200	428	-	167	-	595
unknown	56	-	-	1,650	1,706
total	5,102	1,087	172	1,650	8,011

Table 13 Law firm structures by practising certificate type 1 July 2010

	Principal	Employee	Conditional	Limited principal	Restricted principal	On-restricted volunteer	Restricted volunteer	Total
Law firms								
partnership	2,028	2,095	976	-	3	-	-	5,102
ILP	429	449	208	-	1	-	-	1,087
MDP	47	82	43	-	-	-	-	172
Other								
community legal	-	128	41	19	-	15	34	237
government/other	19	1,097	291	1	-	2	3	1,413
total	2,523	3,851	1,559	20	4	17	37	8,011

Table 14 ILP summary by gross fee income

Gross Fee Income	No. of Firms 09-10	% of total	No. of Firms 08-09	% of total
under \$25,000	7	9.21	3	5.08
\$25,000 to \$49,999	4	5.26	2	3.39
\$50,000 to \$499,999	29	38.16	20	33.90
\$500,000 to \$999,999	11	14.47	11	18.64
\$1,000,000 to \$2,499,999	14	18.42	6	10.17
\$2,500,000 to \$4,999,999	8	10.53	4	6.78
\$5,000,000 to \$9,999,999	1	1.32	2	3.39
over \$10,000,000	2	2.63	1	1.69
not specified	-	-	10	16.95
total	76	-	59	-

Table 15 ILP summary by number of practising certificate holders

Gross Fee Income	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	5	2	-	-	-	-	-	-	-	7
\$25,000 to \$49,999	4	-	-	-	-	-	-	-	-	4
\$50,000 to \$499,999	16	11	2	-	-	-	-	-	-	29
\$500,000 to \$999,999	3	7	1	-	-	-	-	-	-	11
\$1,000,000 to \$2,499,999	-	4	5	4	1	-	-	-	-	14
\$2,500,000 to \$4,999,999	-	1	-	5	2	-	-	-	-	8
\$5,000,000 to \$9,999,999	-	-	-	-	-	1	-	-	-	1
over \$10,000,000	-	-	-	-	-	-	2	-	-	2
not specified	-	-	-	-	-	-	-	-	-	-
total	28	25	8	9	3	1	2	-	-	76

Table 16 Barristers by locally issued practising certificate - 1 July each year

	Total
2010	1,020
2009	948
2008	901
2007	891
2006	892
2005	825
2004	789

Inquiries

Table 17 Inquiries by agency and year

	LSC	QLS	09-10	08-09	07-08	06-07
client inquiries from public received during year	1,851	2,151	4,002	4,368	5,345	5,980
ethical inquiries from practitioners during year	n/a	3,075	3,075	2,737	2,646	2,561
total inquiries received during year	1,851	5,226	7,077	7,105	7,991	8,541

Table 18 Inquiries by area of law

	No. of Inquiries	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
family law	803	20.06	20.19	20.11	19.26
conveyancing	522	13.04	12.11	18.24	21.72
deceased estates or trusts	479	11.97	13.48	11.54	9.18
personal injuries /WorkCover litigation	350	8.75	8.70	8.66	10.30
litigation	262	6.55	5.68	5.33	6.19
commercial /company law	193	4.82	5.91	5.59	5.02
criminal law	170	4.25	4.60	4.53	3.65
property law	133	3.32	4.12	2.96	2.22
all other 'areas of law' combined	1,090	27.24	25.18	23.03	22.46
total	4,002				

Table 19 Inquiries by nature of the inquiry

	No. of Inquiries	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
costs	1,244	31.08	31.48	24.64	24.40
quality of service	708	17.69	20.05	21.59	21.52
ethical matters	426	10.64	9.52	8.91	10.18
advice	308	7.70	9.36	13.53	21.35
communication	368	9.20	7.81	7.60	5.85
documents	99	2.47	2.88	3.26	2.88
trust funds	82	2.05	1.88	2.08	2.51
all other 'natures of inquiry' combined	767	19.17	17.01	18.41	11.31
total	4,002				

Table 20 Inquiries by outcome

	No. of Inquiries	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
provided referral for legal advice or other assist	569	14.22	16.00	14.09	14.60
provided complaint form	546	13.64	15.77	13.66	8.29
inquirer satisfied	538	13.44	11.86	17.06	15.69
listened to callers concerns	532	13.29	11.65	8.91	8.86
recommended direct approach to firm about concerns	523	13.07	13.90	14.35	12.39
provided information about the legal system	466	11.64	12.89	14.87	15.82
lost contact with complainant/inquirer	231	5.77	5.59	5.20	5.48
mediation attempted	173	4.32	4.03	n/a	n/a
referred to LSC	121	3.02	1.69	2.75	10.95
provided information about LSC to a legal practitioner	27	0.67	0.73	0.95	0.38
all other 'outcomes' combined	276	6.90	4.01	8.16	7.54
total	4,002				

Table 21 Inquiries by inquirer type

	No. of Inquiries	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
client/former client	2883	72.04	68.29	70.40	70.90
non client	549	13.72	11.65	11.88	10.80
third party	236	5.90	8.24	9.24	10.20
solicitor	130	3.25	5.68	3.44	3.68
all other 'inquirer types' combined	204	5.10	6.14	5.03	4.42
total	4,002				

Complaints

Table 22 On hand summary – total

Complaint type	30 June 10	30 June 09	30 June 08	30 June 07	1 July 06	1 July 05	1 July 04
consumer dispute	4	5	4	8	3	88	273
conduct matters	454	404	391	409	401	818	665
under assessment	100	49	58	60	96	26	N/A
total	558	458	449	477	500	932	938

Table 23 On hand summary by matter type

Complaints/investigation matters	09-10	08-09	07-08	06-07	05-06
under assessment/awaiting assessment	65	22	39	41	64
under assessment/awaiting further information	35	27	19	19	32
consumer disputes	4	5	4	8	3
conduct complaints	396	363	326	344	320
investigation matters	58	41	57	65	52
total conduct matters as at 30 June	454	404	383	409	372
total complaints as at 30 June	558	458	449	477	471

Table 24 Throughput summary

Complaints/investigation matters	09-10	08-09	07-08	06-07
matters on hand at 1 July	458	449	477	471
plus matters opened during the year	1,359	1,145	1,258	1,308
includes complaints received from public	1,182	1,066	1,139	1,109
includes investigation matters opened (ILP)	1	-	-	-
includes investigation matters opened (PIPA)	122	17	59	98
includes investigation matters opened (all other)	54	62	60	101
less summary dismissals	500	443	444	433
less consumer disputes closed	71	88	102	83
less conduct matters closed	688	605	740	786
includes complaints received from public	540	514	620	600
includes investigation matters (ILP)	1	-	-	-
includes investigation matters (PIPA)	111	7	58	95
includes investigation matters (all other)	36	84	62	91
total complaints/investigation matters closed	1,259	1,136	1,286	1,302
complaints/investigation matters on hand at 30 June	558	458	449	477

Table 25 Throughput summary - non (PIPA & ILP) investigation matters

	09-10	08-09	07-08
on hand at start of year	30	58	66
opened during year	38	56	54
% of new complaints/investigation matters opened	2.80	4.89	4.29
closed during year	36	84	62
on hand at end of year	32	30	58

Table 26 Throughput summary – PIPA investigation matters

	09-10	08-09	07-08
on hand at start of year	12	4	3
opened during year	119	15	59
% of new complaints/investigation matters opened	8.76	1.31	4.69
closed during year	111	7	58
on hand at end of year	20	12	4

Table 27 Assessment summary

	Total	09-10	08-09	07-08	06-07
new complaints/investigation matters allocated for assessment during the year	1,182				
of these:					
currently under assessment as at 30 June	95	8.04	3.38	4.81	1.64
number of new matters assessed this year	1,087	91.96	96.62	95.19	98.36
of these:					
number summarily dismissed	455	42.13	39.81	37.51	37.10
number assessed to be consumer disputes	66	6.11	8.74	8.98	7.31
number assessed to be conduct matters	559	51.76	51.46	53.13	55.60

Table 28 Complaints/investigation matters by area of law

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
administrative law	1	6	12	19	1.51
bankruptcy and Insolvency	-	8	3	11	0.87
building /construction Law	-	17	8	25	1.99
commercial law	4	39	35	78	6.20
conduct not in the practice of law	-	2	10	12	0.95
conveyancing	21	75	39	135	10.72
criminal law	2	39	44	85	6.75
deceased estates or trusts	6	32	43	81	6.43
family law	11	103	117	231	18.35
immigration	-	1	4	5	0.40
industrial law	-	1	2	3	0.24
leases/mortgages	1	13	13	27	2.14
litigation	2	41	32	75	5.96
personal injuries /workcover litigation	7	168	30	205	16.28
property law	5	46	36	87	6.91
trust account breaches	-	15	7	22	1.75
all other 'areas of law' combined	11	82	65	158	12.55
total	71	688	500	1,259	

Table 29 Complaints/investigation matters by nature of matter

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
communication	7	59	53	119	9.45
compliance	1	52	28	81	6.43
costs	32	105	85	222	17.63
documents	4	12	6	22	1.75
ethical matters	-	124	161	285	22.64
ILP	-	1	-	-	0.08
personal conduct	1	17	5	23	1.83
PIPA	-	125	6	131	10.41
quality of service	23	146	118	287	22.80
trust funds	1	33	19	53	4.21
all other 'natures of matter' combined	2	14	19	35	2.78
total	71	688	500	1,259	

Table 30 Complaints/investigation matters by respondent type

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
barrister	-	21	27	48	3.81
corporation		3	4	7	0.56
law practice employee	2	4	5	11	0.87
legal practitioner	-	3	3	6	0.48
other	-	8	13	21	1.67
solicitor	69	638	447	1,154	91.66
unlawful operator	-	11	1	12	0.95
total	71	688	500	1,259	

Table 31 Complaints/investigation matters by law firm business structure – solicitors only

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
partnerships	49	470	301	820	80.00
ILPs	6	33	14	53	4.59
MDPs					
all other 'business types'	14	136	132	282	24.41
total	69	639	447	1,155	

Table 32 Complaints/investigation matters by law firm business structure – solicitors only

	Consumer Disputes	Conduct Matters	Respondent Law Firms	Total law firms as at 30/6/10	% rep.
partnerships	42	319	342	1,213	28.19
ILPs	3	18	18	166	10.84
MDPs	-	-	-	2	-
all other 'business types'	11	60	-		-
total	56	397		1,441	

Table 33 Timeliness

Complaint type	Matters Completed	Time Band	Actual %	Cumulative%	Target %	Median days open (09-10)
conduct matters	474	<= 6 months	68.9	68.9	75	140
	143	7 - 18 months	20.78	89.68	100	
	71	> 18 months	10.32	100	0	
consumer disputes	67	<= 2 months	94.37	94.37	90	36
	4	2 - 5 months	5.63	100	100	
	0	> 5 months	0	100	0	
summary dismissals	433	<= 1 month	86.6	86.6	90	14
	48	1 - 2 months	9.6	96.2	100	
	19	> 2 months	3.8	100	0	

Table 34 Online complaints and inquiries summary

	Total 09-10	Average/month	Total 08-09	Average/month
complaints received this year	266	22.17	44*	8.8
inquiries received this year	99	8.25	41*	8.2
total	265		85*	

the capture of online complaints and inquiries commenced in February 2009

Avoidability of 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.

Of the number of complaint/investigation matters closed since 1 July, excluding summary dismissals:	Number 09-10	%	Number 08-09	%
number assessed to be unavoidable	214	28.27	218	31.64
number assessed to be avoidable	543	71.73	471	68.36
total	757		689	

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	% 09-10	% 08-09
a) the complainant had ulterior motives	10.86	10.86
b) the complainant wouldn't take advice	3.17	2.71
c) the complainant had unrealistic expectations and/or made unreasonable demands	25.79	24.43
d) the complainant misunderstood the obligations of practitioners acting for the other side	12.22	18.55
e) the 'problem' is inherent in the adversarial system of justice	6.33	3.17
f) the complaint was baseless and could not have been avoided (e.g. by better communication)	22.17	19.46
g) of some reason other than the above	19.46	21.72

Avoidable 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 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	% 09-10	% 08-09	% 07-08	% 06-07
work practices	44.74	28.88	29.08	31.82
communication	24.04	25.74	27.65	28.36
costs	15.26	18.66	14.47	17.71
timeliness	4.91	6.09	6.16	5.33
trust accounts	4.74	10.41	6.59	6.39
conflict of interest	2.98	4.13	4.01	3.86
supervision	1.40	2.16	7.31	2.53
liens and transfers	0.88	2.75	1.72	1.46
undertakings	0.70	-	1.86	1.73
record keeping	0.35	1.18	1.15	0.8

Table 35 Summary dismissals by area of law

	Total (09-10)	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
family law	117	23.40	20.54	20.05	23.56
criminal law	44	8.80	8.58	8.11	9.01
deceased estates or trusts	43	8.60	8.58	9.91	11.55
conveyancing	39	7.80	6.77	9.23	7.85
property law	36	7.20	5.42	6.53	5.31
commercial law	35	7.00	6.77	4.50	-
litigation	32	6.40	7.00	6.76	14.32
personal injuries /workcover litigation	30	6.00	10.16	8.33	7.62
all other 'areas of law' combined	124	24.80	26.19	26.56	20.79
total	500				

Table 36 Summary dismissals by nature of matter

	Total (09-10)	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
ethical matters	161	32.20	30.25	31.98	43.65
quality of service	118	23.60	26.19	28.83	21.71
costs	85	17.00	16.25	17.79	18.01
communication	53	10.60	14.00	7.43	8.08
compliance	28	5.60	-	-	-
trust funds	19	3.80	2.93	n/a	n/a
PIPA	6	1.20	1.35	2.70	0.69
documents	6	1.20	0.90	2.48	2.08
all other 'natures of matter' combined	9	1.80	8.13	8.78	5.77
total	500				

Table 37 Summary dismissals by respondent type

	Total (09-10)	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
solicitor	447	89.40	89.84	93.02	89.61
barrister	27	5.40	5.42	4.05	6.70
other	13	2.60	2.03	0.68	2.08
law practice employee	5	1.00	0.90	1.13	1.39
corporation	4	0.80	0.90	0.68	-
legal practitioner	3	0.60	0.45	0.23	0.23
unlawful operator	1	0.20	0.45	0.23	-
total	500				

Table 38 Consumer disputes referred to the professional bodies

	Total 09-10	%	Total 08-09	%	Total 07-08	%	Total 06-07	%
referred to QLS	0	0.00	6	6.00	4	3.88	3	3.00
referred to BAQ	0	0.00	-	-	-	-	-	-
total	0		6	6.00	4	3.88	3	3.00
retained at LSC	77	100.00	94	94.00	99	96.12	93	97.00

Table 39 Conduct matters referred to the professional bodies

	Total 09-10	%	Total 08-09	%	Total 07-08	%	Total 06-07	%
referred to QLS	236	39.07	287	44.84	309	39.22	372	42.00
referred to BAQ	16	2.65	18	2.81	15	1.90	18	2.00
total	252	41.72	305	47.66	324	41.12	390	44.00
retained at LSC	352	58.28	335	52.34	264	58.88	492	56.00

Table 40 Conduct matters returned by the professional bodies for review

	Total 09-10	Total 08-09	Total 07-08	Total 06-07
returned from QLS	244	285	359	355
returned from BAQ	15	12	16	12
total	259	310	375	367

Table 41 Recommendations and closure comparisons for conduct matters - professional bodies

	Total 09-10	%	Total 08-09	%	Total 07-08	%	Total 06-07	%
returned from QLS	25	9.54	30	10.52	27	8.31	46	12.96
returned from BAQ	2	16.67	5	41.67	7	33.33	1	8.50
total	27		35		34		47	

Table 42 Complaint summary – barristers only

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06	Total 04-05
complaints	21	40	30	17	41	41
summary dismissals	27	24	18	29	28	0
total	48	64	48	46	69	41

Table 43 Complaints (excluding summary dismissals) by area of law – barristers only

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06	Total 04-05
criminal law	6	8	5	4	9	9
litigation	2	8	5	4	9	9
family law	1	12	6	2	8	8
PI/ Workcover	1	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	1	-	2	-	-	-
commercial/company law	-	-	1	1	-	-
industrial law	-	-	1	-	3	3
leases/mortgages	1	-	-	1	2	2
immigration	-	-	-	1	1	1
trust a/c breaches	-	-	-	-	1	1
all other 'areas of law'	9	-	-	-	1	1
total	21	40	30	17	41	41

Table 44 Complaints (excluding summary dismissals) by nature of matter – barristers only

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06	Total 04-05
quality of service	7	10	4	3	4	1
ethical matters	5	12	16	6	26	25
costs	3	6	4	3	5	3
compliance	2	5	2	2	-	1
communication	2	4	2	1	2	4
personal conduct	2	2	1	1	1	-
PIPA	-	-	1	-	-	-
documents	-	-	-	1	1	-
trust funds	-	-	-	-	1	1
all other 'natures of matter'	-	1	-	-	1	6
total	21	40	30	17	41	41

Table 45 Complaints (excluding summary dismissals) by outcome – barristers only

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06	Total 04-05
no reasonable likelihood	12	22	21	10	26	8
no public interest	8	4	3	2	8	5
referred LPT/QCAT	1	5	4	1	2	2
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	21	40	30	17	41	41

Consumer disputes

Table 46 Consumer disputes by area of law

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
conveyancing	21	29.58	17.05	26.47	34.94
family law	11	15.49	22.73	13.73	20.48
personal injuries /workcover litigation	7	9.86	10.23	5.88	4.82
deceased estates or trusts	6	8.45	10.23	18.63	4.82
property law	5	7.04	7.95	7.84	3.61
commercial /company law	4	5.63	3.41	3.92	6.02
criminal law	2	2.82	4.55	6.86	8.43
litigation	2	2.82	3.41	5.88	7.23
leases /mortgages	1	1.41	3.41	1.96	6.02
all other 'areas of law' combined	12	16.90	17.05	8.82	3.61
total	71				

Table 47 Consumer disputes by nature of matter

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
costs	32	45.07	27.27	31.37	40.96
quality of service	23	32.39	30.68	31.37	24.10
communication	7	9.86	14.77	10.78	12.05
documents	4	5.63	3.41	11.76	9.64
ethical matters	-	-	15.91	11.76	13.25
all other 'natures of matter' combined	5	7.04	7.95	2.94	-
total	71				

Table 48 Consumer disputes by type of complainant

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
client/former client	65	91.55	82.95	81.37	81.93
non client	3	4.23	3.41	4.90	7.23
solicitor	1	1.41	11.36	4.90	2.41
third party	1	1.41	1.14	2.94	2.41
solicitor for client	1	1.41	-	4.90	3.61
all other 'types of complainant' combined	-	-	1.14	0.98	2.40
total	71				

Table 49 Consumer disputes by outcome

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
resolved - consumer satisfied	27	38.03	26.14	47.06	30.12
matter unable to be resolved	25	35.21	38.64	28.43	42.17
complaint unfounded	12	16.90	26.14	16.67	14.46
recommended direct approach to firm about concerns	3	4.23	5.68	1.96	6.02
withdrawn	1	1.41	2.27	1.96	6.02
outside of jurisdiction	1	1.41	1.14	1.96	1.20
all other 'outcomes' combined	2	2.82	-	1.96	-
total	71				

Table 50 Consumer disputes by respondent type

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
solicitor	69	97.18	97.73	97.06	98.78
law practice employee	2	2.82	1.13	0.98	1.22
barrister	-	-	1.13	0.98	-
other	-	-	-	0.98	-
total	71				

Consumer disputes by respondent type: solicitor

Table 51 Consumer disputes regarding solicitors as a proportion of the profession

	PC Holders	Law Firms	Law Offices
size of profession as at 1/7/2009	7,630	1,417	1,584
no of solicitors/law firms as respondents 2009-10	56	45	45
percentage	0.73	2.62	2.84
no of solicitors/law firms as respondents 2008-09	66	60	61
percentage	0.91	4.24	4.21
no of solicitors/law firms as respondents 2007-08	77	81	83
percentage	1.11	6.13	5.64
no of solicitors/law firms as respondents 2006-07	70	66	66
percentage	1.10	5.10	4.71

Table 52 Solicitors subject to one or more consumer disputes

	No. of solicitors 09-10	No. of solicitors 08-09	No. of solicitors 07-08	No. of solicitors 06-07
1 matter	51	63	75	65
2 matters	4	3	1	4
3 matters	-	-	1	1
4 matters	1	-	-	-
5 matters	-	-	-	-
between 6 and 9	-	-	-	-
between 10 and 14	-	-	-	-
15 and > matters	-	-	-	-
total	56	66	77	70

Table 53 Number of law firms subject to one or more consumer disputes

	No. of law firms 09-10	No. of law firms 08-09	No. of law firms 07-08	No. of law firms 06-07
1 matter	37	54	73	57
2 matters	7	6	7	7
3 matters	-	-	1	2
4 matters	1	-	-	-
5 matters	-	-	-	-
between 6 and 9	-	-	-	-
between 10 and 14	-	-	-	-
15 and > matters	-	-	-	-
total	45	60	81	66

Table 54 Solicitors subject to one or more consumer disputes by gender

Gender	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 09-10	***% of profession representation 08-09	***% of profession representation 07-08
male	4,434	41.82	43	76.79	0.97	1.19	1.50
female	3,196	58.18	13	22.21	0.41	0.51	0.51

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

Table 55 Solicitors subject to one or more consumer disputes by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 09-10	% of profession representation 08-09	% of profession representation 07-08
< 25	308	4.04	-	-	-	0.98	0.70
25 - 29	1,499	19.65	5	8.93	0.33	0.58	0.38
30 - 34	1,173	15.37	6	10.71	0.51	0.62	0.64
35 - 39	1,185	15.53	9	16.07	0.76	0.08	0.69
40 - 44	831	10.89	6	10.71	0.72	0.74	1.63
45 - 49	802	10.51	2	3.57	0.25	1.62	2.29
50 - 54	756	9.91	8	14.29	1.06	1.43	2.13
55 - 59	540	7.08	11	19.64	2.04	1.15	1.62
60 - 64	349	4.57	6	10.71	1.72	0.65	0.36
65 - 69	132	1.73	2	3.57	1.52	1.74	0.88
70 & >	55	0.72	1	1.79	1.82	-	0.00

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

Table 56 Solicitors subject to one or more consumer disputes by 'years admitted'

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 09-10	% of profession representation 08-09	% of profession representation 07-08
< 5	2,506	32.84	8	14.29	0.32	0.68	0.66
5 - 9	1,614	21.15	13	23.21	0.81	0.42	1.13
10 - 14	965	12.65	7	12.5	0.73	1.08	0.98
15 - 19	784	10.28	5	8.93	0.64	1.82	1.46
20 - 24	584	7.65	1	1.79	0.17	0.88	1.82
25 - 29	547	7.17	7	12.5	1.28	1.53	2.29
30 - 34	322	4.22	8	14.29	2.48	1.43	1.17
35 - 39	180	2.36	5	8.93	2.78	-	1.36
40 and >	128	1.68	2	3.57	1.56	1.80	0.00

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

Table 57 Solicitors subject to one or more consumer disputes by practising certificate type

	Size of profession	% of total	No. of respondent solicitors	% of total	% of profession representation 09-10	% of profession representation 08-09	% of profession representation 07-08
principal	2,432	31.87	36	64.29	1.48	1.71	2.56
employee	3,603	47.22	14	25.00	0.39	0.52	0.23
conditional	1,536	20.13	4	7.14	0.26	0.19	0.44
limited principal	20	0.26	-	-	-	-	-
restricted principal	4	0.05	-	-	-	-	-
unrestricted volunteer	12	0.16	-	-	-	-	-
restricted volunteer	23	0.30	-	-	-	-	-
not practising at start of year	-	-	2	3.57	-	-	-

* 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 2009

Table 58 Solicitors subject to one or more consumer disputes by location of their law office

	Size of profession law offices	% of total	No. of respondent law offices	% of total respondent law offices	% of profession representation 09-10	% 08-09	% 07-08
Brisbane city	269	16.98	9	20.00	3.35	5.30	8.02
Brisbane north suburbs	230	14.52	4	8.89	1.74	3.91	5.00
Brisbane south suburbs	242	15.28	6	13.33	2.48	3.54	5.36
Gold Coast	255	16.10	11	24.44	4.31	4.60	7.96
Ipswich region	54	3.41	2	4.44	3.70	4.00	2.00
Toowoomba region	62	3.91	1	2.22	1.61	3.28	1.79
Western Queensland	10	0.63	-	-	-	-	0.00
Sunshine Coast	154	9.72	5	11.11	3.47	3.38	5.56
Hervey Bay to Gladstone	42	2.65	3	6.67	7.14	4.65	7.32
Rockhampton region	32	2.02	-	-	-	3.33	9.68
Mackay region	24	1.52	-	-	-	-	0.00
Cairns region	78	4.92	2	4.44	2.56	2.74	2.74
Townsville region	50	3.16	2	4.44	4.00	10.00	6.25
Norfolk Island	-	-	-	-	-	-	0.00
no pc holders at 1/7	82	5.18	-	-	-	-	-

* 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

Table 59 Solicitors subject to one or more consumer disputes by size of their law firm

No. of PC holders	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	% of profession representation 09-10	% 08-09	% 07-08
1	606	42.77	12	26.67	1.98	2.13	4.23
2 - 3	444	31.33	14	31.11	3.15	4.61	6.42
4 - 6	160	11.29	10	22.22	6.25	7.53	7.06
7 - 12	91	6.42	7	15.56	7.69	3.57	7.69
13 - 24	42	2.96	2	2.22	4.76	12.76	14.63
25 - 50	13	0.92	-	-	-	30.77	15.00
51 - 100	14	0.99	-	-	-	33.33	33.33
101 - 200	4	0.28	-	-	-	-	25.00
no firm at 1/7	43	3.03	-	-	-	-	-

* 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

Conduct matters

Table 60 Conduct complaints by area of law

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
family law	103	19.07	19.65	17.58	20.67
conveyancing	73	13.52	12.84	20.81	19.83
personal injuries /workcover litigation	55	10.19	10.70	8.71	9.67
property law	45	8.33	6.23	7.74	8.00
litigation	40	7.41	8.95	7.26	9.50
criminal law	39	7.22	7.98	6.29	4.83
commercial /company law	38	7.04	4.67	6.13	6.83
deceased estates or trusts	30	5.56	6.81	7.10	6.67
building /construction law	17	3.15	1.56	1.94	1.00
leases /mortgages	13	2.41	2.33	2.26	3.83
bankruptcy and insolvency	8	1.48	0.78	0.48	1.67
administrative law	5	0.93	2.33	n/a	n/a
industrial law	1	0.19	0.97	0.65	0.67
all other 'areas of law' combined	73	13.52	14.20	13.06	6.84
Total	540				

Table 61 Non-PIPA investigation matters by area of law

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
trust account breaches	13	35.14	26.19	30.65	17.58
conveyancing	2	5.41	11.90	19.35	27.47
personal injuries / workcover litigation	2	5.41	5.95	1.61	7.69
deceased estates or trusts	2	5.41	4.76	-	1.10
administrative law	1	2.70	1.19	1.61	4.40
litigation	1	2.70	9.52	14.52	5.49
commercial /company law	1	2.70	2.38	-	2.20
criminal law	-	-	10.71	8.06	1.10
family law	-	-	4.76	4.84	1.10
conduct not in the practice of law	-	-	3.57	-	3.30
all other 'areas of law' combined	15	40.54	19.05	19.35	28.58
total	37				

Table 62 Conduct complaints by nature of matter

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
quality of service	145	26.85	29.18	28.71	22.17
ethical matters	119	22.04	30.16	31.13	37.50
costs	100	18.52	15.18	16.77	17.83
communication	59	10.93	10.51	10.81	9.17
compliance	40	7.41	5.64	3.71	3.50
trust funds	27	5.00	4.67	4.35	3.67
PIPA	14	2.59	0.78	0.97	1.17
personal conduct	14	2.59	1.36	1.61	1.00
documents	11	2.04	1.17	1.45	2.83
all other 'natures of matter' combined	11	2.04	1.36	0.48	1.16
total	540				

Table 63 Non-PIPA investigation matters by nature of matter

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
compliance	12	32.43	10.71	9.68	8.79
trust funds	6	16.22	17.86	25.81	9.89
ethical matters	5	13.51	26.19	27.42	16.48
costs	5	13.51	21.43	22.58	57.14
personal conduct	3	8.11	10.71	4.84	3.30
quality of service	1	2.70	7.14	6.45	2.20
communication	-	-	1.19	-	1.10
all other 'natures of matter' combined	5	13.51	4.76	3.22	1.10
total	37				

Table 64 Conduct complaints by type of complainant

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
client/former client	387	71.67	63.81	68.87	66.50
non client	53	9.81	14.98	12.74	9.50
solicitor	52	9.63	10.12	7.74	10.17
solicitor for client	21	3.89	5.64	5.16	5.83
third party	12	2.22	2.92	2.10	3.83
barrister	6	1.11	0.78	0.81	0.83
Q.L.S.	2	0.37	0.58	0.65	1.17
court registrar	1	0.19	0.39	n/a	n/a
government	1	0.19	0.19	0.81	1.50
all other 'types of complainant' combined	5	0.93	0.58	1.13	0.68
total	540				

Table 65 Conduct complaints by outcome

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
no reasonable likelihood	338	62.59	65.37	68.06	67.50
no public interest	131	24.26	18.29	16.77	19.00
withdrawn	25	4.63	5.64	6.45	4.83
referred to other investigative process	15	2.78	2.33	0.97	0.67
referred to tribunal	14	2.59	4.47	5.48	6.17
referred to external agency	4	0.74	0.78	n/a	n/a
referred to LPC	4	0.74	0.58	1.13	0.83
referred to QCAT	3	0.56	-	-	-
closed – pending criminal proceedings	-	-	1.17	n/a	n/a
all other 'outcomes' combined	6	1.11	1.36	1.13	1.00
total	540				

Table 66 Non-PIPA investigation matters by outcome

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
no public interest	14	37.84	47.62	59.68	51.65
no reasonable likelihood	14	37.84	28.57	30.65	34.07
referred to LPT	5	13.51	10.71	8.06	2.20
referred to QCAT	1	2.70	-	-	-
referred to LPC	1	2.70	-	-	-
all other 'outcomes' combined	2	5.40	13.09	1.61	12.09
total	37				

Table 67 PIPA investigation matters by outcome

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
no public interest	69	62.16	71.43	94.83	93.68
no reasonable likelihood	22	19.82	28.57	1.72	6.32
referred to LPT	-	-	-	1.72	-
withdrawn	20	18.02	-	1.72	-
total	111				

Table 68 Conduct matters by respondent type

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
solicitor	638	92.73	87.93	91.49	93.00
barrister	21	3.05	6.45	3.92	2.16
unlawful operator	11	1.60	2.15	0.54	-
other	8	1.16	1.49	1.49	3.56
law practice employee	4	0.58	0.99	1.76	1.27
corporation	3	0.44	0.83	0.54	-
legal practitioner	3	0.44	0.17	0.27	-
total	688				

Conduct matters by respondent type: solicitor

Table 69 Conduct matters regarding solicitors as a proportion of the profession

	Solicitors	Law Firms	Law Offices
size of profession as at 1/7/2009	7,630	1,417	1,584
no. of solicitors/law firms as respondents 2009-10	474	337	345
percentage	6.21	23.78	21.78
no. of solicitors/law firms as respondents 2008-09	387	272	284
percentage	5.35	19.21	19.61
no. of solicitors/law firms as respondents 2007-08	477	385	401
percentage	6.89	29.14	27.26
no. of solicitors/law firms as respondents 2006-07	527	428	442
percentage	8.26	33.08	31.57

Table 70 Solicitors subject to one or more conduct matters

	No. of solicitors 09-10	No. of solicitors 08-09	No. of solicitors 07-08	No. of solicitors 06-07
1 matter	388	317	380	423
2 matters	63	50	68	73
3 matters	13	16	15	15
4 matters	3	1	9	8
5 matters	4	0	1	5
between 6 and 9	2	1	3	2
between 10 and 14	1	2	0	1
15 and > matters	-	0	1	0
total	474	387	477	527

Table 71 Number of law firms subject to one or more conduct matters

	No. of law firms 09-10	No. of law firms 08-09	No. of law firms 07-08	No. of law firms 06-07
1 matter	236	175	263	283
2 matters	64	61	70	86
3 matters	21	27	26	29
4 matters	8	6	13	14
5 matters	5	2	4	9
between 6 and 9	3	0	7	6
between 10 and 14	-	1	1	1
15 and > matters	-	0	1	0
total	337	272	385	428

Table 72 Solicitors subject to one or more conduct matters by gender

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 09-10	% of profession representation 08-09	% of profession representation 07-08
male	4,434	41.82	378	79.75	8.53	7.17	9.80
female	3,196	58.18	96	20.25	3.00	2.71	2.41

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

Table 73 Solicitors subject to one or more conduct matters by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 09-10	% of profession representation 08-09	% of profession representation 07-08
< 25	308	4.04	12	2.53	3.90	2.61	3.48
25 -29	1,499	19.65	27	5.70	1.80	1.82	1.15
30 - 34	1,173	15.37	27	5.70	2.30	3.44	2.65
35 - 39	1,185	15.53	60	12.66	5.06	4.24	6.21
40 - 44	831	10.89	71	14.98	8.54	6.01	11.03
45 - 49	802	10.51	68	14.35	8.48	8.21	10.43
50 - 54	756	9.91	87	18.35	11.51	10.43	14.08
55 - 59	540	7.08	66	13.92	12.22	6.70	9.90
60 - 64	349	4.57	40	8.44	11.46	12.66	11.07
65 - 69	132	1.73	11	2.32	8.33	3.48	7.02
70 & >	55	0.72	5	1.05	9.09	4.08	6.98

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

Table 74 Solicitors subject to one or more conduct matters by 'years admitted'

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 09-10	% of profession representation 08-09	% of profession representation 07-08
<5	2,506	32.84	59	12.45	2.35	2.58	2.47
5 – 9	1,614	21.15	75	15.82	4.65	4.85	4.77
10 – 14	965	12.65	68	14.35	7.05	5.10	7.97
15 – 19	784	10.28	75	15.82	9.57	8.31	12.23
20 - 24	584	7.65	52	10.97	8.90	8.06	12.96
25 – 29	547	7.17	71	14.98	12.98	8.97	12.95
30 - 34	322	4.22	36	7.59	11.18	10.00	14.06
35 – 39	180	2.36	26	5.49	14.44	10.13	8.84
40 and >	128	1.68	12	2.53	9.38	5.41	4.50

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

Table 75 Solicitors subject to one or more conduct matters by practising certificate type

	Size of profession	% of total	No. of respondent solicitors	% of total	*% Representation 09-10	*% Representation 08-09	*% Representation 07-08
principal	2,432	31.87	324	68.35	13.32	10.14	15.63
employee	3,603	47.22	74	15.61	2.05	2.31	2.43
conditional	1,536	20.13	19	4.01	1.24	1.40	1.20
limited principal	20	0.26	1	0.21	5.00	-	-
restricted principal	4	0.05	1	0.21	25.00	-	-
unrestricted volunteer	12	0.16	-	-	-	-	-
restricted volunteer	23	0.30	-	-	-	-	-
not practising at start of year	-	-	55	11.60	-	-	-

* 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 2009

Table 76 Solicitors subject to one or more conduct matters by location of their law office

	Size of profession law offices	% of total	No. of respondent law offices	% of total respondent law offices	*% of profession representation 09-10	*% 08-09	*% 07-08
Brisbane city	269	16.98	102	29.57	37.92	27.27	35.50
Brisbane north suburbs	230	14.52	50	14.49	21.74	13.48	25.45
Brisbane south suburbs	242	15.28	54	15.65	22.31	21.68	24.55
Gold Coast	255	16.10	48	13.91	18.82	19.25	33.63
Ipswich region	54	3.41	8	2.32	14.81	6.00	18.00
Toowoomba region	62	3.91	9	2.61	14.52	16.39	26.79
Western Queensland	10	0.63	1	0.29	10.00	11.11	11.11
Sunshine Coast	154	9.72	29	8.41	18.83	18.92	29.86
Hervey Bay to Gladstone region	42	2.65	9	2.61	21.43	13.95	31.71
Rockhampton region	32	2.02	7	2.03	21.88	23.33	12.90
Mackay region	24	1.52	4	1.16	16.67	25.00	21.74
Cairns region	78	4.92	8	2.32	10.26	19.18	23.29
Townsville Region	50	3.16	16	4.64	32.00	22.00	29.17
Norfolk Island	-	-	-	-	-	-	0.00
no pc holders at 1/7	82	5.18	-	-	-	-	-

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

Table 77 Solicitors subject to one or more conduct matters by size of their law firm

No. of PC holders	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	*% of profession representation 09-10	*% 08-09	*% 07-08
1	606	42.77	101	29.79	16.67	16.07	23.46
2 - 3	444	31.33	113	33.33	25.45	16.50	27.16
4 - 6	160	11.29	49	14.45	30.63	26.71	34.12
7 - 12	91	6.42	34	10.03	37.36	32.14	51.28
13 - 24	42	2.96	24	7.08	57.14	55.32	58.54
25 - 50	13	0.92	9	2.65	69.23	46.15	75.00
51 - 100	14	0.99	7	2.06	50.00	41.67	44.44
101 - 200	4	0.28	2	0.59	50.00	75.00	25.00
no firm at 1/7	43	3.03	-	-	-	-	-

* 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

Note: a law firm may appear in more than one category if the size of the firm changed during the year and they had multiple conduct matters closed during the year.

Conduct matters by respondent type: barrister

Table 78 Conduct matters regarding barristers as a proportion of the profession

	Barristers
size of profession as at 1/7/2009	948
number of barristers as respondents 2009-10	21
percentage	2.22
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

Compliance Audits

Table 79 Summary – compliance audits

	No. of matters 09-10	No. of matters 08-09	No. of matters 07-08
matters on hand at start of year			
self assessment audits	39	54	-
web-based surveys	7		-
on-site reviews	1	2	-
total	47	56	-
plus matters opened			
self assessment audits	104	74	102
web-based surveys	38	50	-
on-site reviews	1	-	2
total	143	124	104
less matters closed			
self assessment audits	105	90	61
web-based surveys	45	43	-
on-site reviews	2	1	-
total	152	134	61
matters on hand at end of period			
self assessment audits	38	39	41
web-based surveys	0	7	-
on-site reviews	0	1	2
total	38	47	43

Prosecutions

Table 80 Summary - prosecutions

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06
on hand at start of year	31	44	34	42	24
opened during year	20	21	29	33	43
closed during year	23	34	19	41	25
on hand at end of year	28	31	44	34	42

Table 81 Breakdown of prosecutions on hand at 30 June

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06
assigned for prosecution	4	5	8	7	10
Tribunal					
waiting to file	3	1	4	3	4
waiting to serve	3	4	-	1	6
waiting directions hearing	3	4	12	8	-
waiting hearing/decision	6	10	12	8	12
total	15	19	28	20	22
Committee					
waiting to file	1	-	-	-	1
waiting to serve	1	3	1	-	1
waiting directions hearing	13	1	4	2	2
waiting hearing/decision		1	1	5	6
total	6	5	6	7	10
Magistrates Court					
waiting to file	-	1	-	-	-
waiting hearing/decision	2	1	-	-	-
total	2	2	0	0	0
Under Appeal					
decisions under appeal	1	-	2	-	-
total	28	31	44	34	42

Table 82 Prosecutions commenced before the courts and/or disciplinary bodies

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06	Total 04-05
in Legal Practice Tribunal	3	16	20	25	24	11
in QCAT	7	-	-	-	-	-
in Committee	4	6	8	11	13	6
in the Magistrates Court	3	2	-	-	-	-
total	17	24	28	36	37	17

Table 83 Prosecutions – heard and decided

	Total 09-10	Total 08-09	Total 07-08	Total 06-07	Total 05-06	Total 04-05
by the Legal Practice Tribunal	9	21	5	18	9	2
by QCAT	2	-	-	-	-	-
by the Committee	2	6	6	8	10	-
by the Solicitors Complaints Tribunal	-	-	-	-	-	3
by the Magistrates Court	1	-	-	-	-	-
by the Court of Appeal	-	3	-	-	2	-
withdrawn/discontinued	9	5	8	15	-	-
total	23	35	19	41	21	5

Table 84 Prosecutions by area of law (excluding matters withdrawn/discontinued)

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
conveyancing	3	21.43	10.00	-	3.85
family law	3	21.43	10.00	27.27	7.69
personal injuries /workcover litigation	2	14.29	3.33	-	3.85
litigation	1	7.14	10.00	18.18	19.23
deceased estates or trusts	1	7.14	16.67	-	11.54
criminal law			20.00	9.09	-
conduct not in the practice of law			6.67	9.09	-
property law			6.67	-	11.54
leases/mortgages			6.67	n/a	n/a
trust account breaches			3.33	9.09	3.85
commercial /company law			3.33	-	3.85
all other 'areas of law' combined	4	28.57	3.33	27.27	34.62
total	14				

Table 85 Prosecutions by nature of matter (excluding matters withdrawn/discontinued)

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
ethical matters	6	42.86	46.67	54.55	38.46
compliance	3	21.43	3.33	n/a	n/a
personal conduct	2	14.29	13.33	-	3.85
communication	2	14.29	3.33	-	3.85
quality of service	1	7.14	20.00	9.09	-
trust funds	-	-	3.33	18.18	46.15
costs	-	-	6.67	18.18	3.85
all other 'natures of matter' combined	-	-	3.33	-	3.85
total	14				

Table 86 Prosecutions by outcome (excluding matters withdrawn/discontinued)

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07
reprimanded	7	50.00	33.33	18.18	-
fined	4	28.57	36.67	27.27	26.92
removed from roll	2	14.29	20.00	18.18	7.69
dismissed after hearing	-	-	3.33	-	7.69
finding of LPA offence	-	-	-	18.18	57.69
all other 'outcomes' combined	1	7.14	6.67	18.18	-
total	14				

Table 87 Prosecutions by respondent type (excluding matters withdrawn/discontinued)

	No. of matters 09-10	% of total 09-10	% of total 08-09	% of total 07-08	% of total 06-07	% of total 05-06
solicitor	11	78.57	80.00	100.00	92.31	95.24
barrister	2	14.29	20.00	-	6.69	4.76
all other respondent types	1	7.14	20.00	-	6.69	4.76
total	14					

Prosecutions by respondent type: solicitor

Table 88 Solicitors subject to one or more prosecutions by gender

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	*% of profession representation 09-10	*% 08-09	*% 07-08
male	4,434	41.82	10	90.91	0.23	0.49	0.24
female	3,196	58.18	1	9.09	0.03	0.10	0.04

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

Table 89 Solicitors subject to one or more prosecutions by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	*% of profession representation 09-10	*% 08-09	*% 07-08
< 25	308	4.04	-	-	-	-	0.00
25 -29	1,499	19.65	-	-	-	-	0.08
30 - 34	1,173	15.37	-	-	-	0.26	0.00
35 - 39	1,185	15.53	1	9.09	0.08	0.18	0.10
40 - 44	831	10.89	-	-	-	0.37	0.38
45 - 49	802	10.51	2	18.18	0.25	0.25	0.25
50 - 54	756	9.91	2	18.18	0.26	0.86	0.14
55 - 59	540	7.08	4	36.36	0.74	1.15	0.20
60 - 64	349	4.57	2	18.18	0.57	0.65	0.36
65 - 69	132	1.73	-	-	-	-	0.88
70 & >	55	0.72	-	-	-	-	0.00

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

Table 90 Solicitors subject to one or more prosecutions by 'years admitted'

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	*% of profession representation 09-10	*% 08-09	*% 07-08
< 5	2,506	32.84	-	-	-	0.04	0.04
5 - 9	1,614	21.15	2	18.18	0.12	0.21	0.08
10 - 14	965	12.65	3	27.27	0.31	0.87	0.33
15 - 19	784	10.28	-	-	-	0.52	0.27
20 -24	584	7.65	1	9.09	0.17	0.70	0.18
25 - 29	547	7.17	4	36.36	0.73	0.38	0.19
30 -34	322	4.22	1	9.09	0.31	0.36	0.39
35 - 39	180	2.36	-	-	-	0.63	0.00
40 and >	128	1.68	-	-	-	-	0.90

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

Table 91 Prosecutions regarding barristers as a proportion of the profession

	Barristers
size of profession as at 1/7/2009	948
number of barristers as respondents 2009-10	2
percentage	0.21
number of barristers as respondents 2008-09	2
percentage	0.22



2009
-2010