Queensland Legal Services Commission

2011 – 2012
Annual Report

31 October 2012

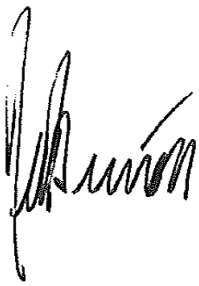
The Honourable Jarrod Bleijie
Attorney-General and Minister for Justice
State Law Building
Brisbane Qld 4000

Dear Attorney

I am pleased to give you the Legal Services Commission's annual report for the reporting year 2011-12, our eighth annual report since the Commission commenced on 1 July 2004.

The *Legal Profession Act 2007* (the LPA) requires that the report 'deals with the system established under the LPA for dealing with complaints'. It does that, and deals similarly with the Commission's performance of our other core functions and the work we are doing internally to better support us in our service delivery roles and to ensure that the Commission meets high standards of transparency and accountability.

Yours faithfully



John Briton
Legal Services Commissioner

Contents

Acronyms and abbreviations

BAQ:	Bar Association of Queensland
ILP:	Incorporated legal practice
LPA:	Legal Profession Act 2007
LPC:	Legal Practice Committee
LSC:	Legal Services Commission
MDP:	Multi-disciplinary partnership
PIPA:	Personal Injuries Proceedings Act 2002
QCAT:	Queensland Civil and Administrative Tribunal
QLS:	Queensland Law Society

Our purposes and values

The LSC has two fundamental and overlapping purposes:

- to give users of legal services an independent, timely, effective, fair and reasonable means of redress for complaints; and
- to promote, monitor and enforce appropriate standards of conduct in the provision of legal services.

These two purposes serve the even more fundamental purpose to help protect and promote public confidence in the legal system, the administration of justice and the rule of law.

We seek to achieve our purposes by:

- negotiating outcomes to consumer complaints which as far as possible 'put things right' between complainants and their lawyers;
- investigating complaints which involve a disciplinary issue or a contravention of relevant law;
- initiating 'own motion' investigations into conduct we have reasonable grounds to believe may involve a disciplinary issue or other significant wrongdoing;
- supporting and as appropriate auditing law firms to help them develop and maintain appropriate management and supervisory systems and an 'ethical infrastructure';
- initiating disciplinary or other enforcement action when it is warranted by the evidence after investigation and in the public interest;
- engaging with, and sharing knowledge and perspective with the profession, consumers and stakeholders to help improve standards of conduct in the provision of legal services; and
- creating and maintaining a productive, motivating and professional work environment.

We do our best not to impose any needless regulatory burden on lawyers and law firms but to direct our regulatory resource to where it is most needed and can have the most beneficial impact in the public interest. We will not be shy of taking disciplinary or other enforcement action but will take an educative and preventative approach wherever possible and appropriate.

We will work hard to give a voice to consumers, particularly those consumers who are least able to assert their legitimate interests themselves. We will value our independence but equally we will be responsive, open and consultative. We will be well-informed, focussed, determined, fair and accountable.

Commissioner's overview

The report that follows describes the work we do to achieve our purposes consistent with our values. It includes quite detailed quantitative data describing our throughputs in 2011-12, the outcomes we have achieved, the timeliness with which we've achieved them and other data that helps us and we hope will help readers assess our performance. We have tried to put a human face to that data by including brief case studies which illustrate our day to day work and feedback we have received unsolicited from people we have been able to assist.

We describe the criteria we use to asses our performance in our Business Plan 2011-13. The plan is published on the *About us* page of our website. We prepared the plan on two assumptions, both of which were well-justified at the time but both of which turned out to be premature. We had regard also to trends in the regulation of the provision of legal services both nationally and internationally. It will be useful to review our performance against that backdrop. It is big picture stuff, but it informs and shapes how we see our role, how we set our priorities, go about our work and gauge our performance.

The first of the assumptions was that Queensland had 'signed up' to the national legal profession reforms and draft *Legal Profession National Law* (the National Law) that were presented to the Council of Australian Governments (COAG) in December 2010 and agreed in principle in February 2011 by all the states and territories but for Western and South Australia. We assumed like most other observers that it was a question of when and not if the scheme would commence, with the best guess being 1 July 2013. Things have changed. The new state government has decided not to participate in the national scheme and in particular the architectural or structural reforms – the proposed establishment of a National Legal Services Board and Commissioner. It has left the door open however to amending the LPA to bring it into 'harmony' with, or to 'mirror' the National Law. It is by no means clear how these issues will play out.

I will not argue the merits or demerits of the structural reforms but it would be remiss of me not to express a view about the substantive reforms which would impact the day to day work of the LSC.

Lawyers have their membership bodies to represent their interests in relation to these matters but it falls to the LSC to represent the interests of consumers, and in particular those consumers who are least able to represent their legitimate interests themselves - the typically one-off users of legal services who go to lawyers to assist them to buy or sell their family home or to help resolve family law, deceased estate and personal injury matters very often at times of considerable personal difficulty. They have no consumer body to advocate on their behalves.

We reflect on these issues in greater detail throughout the report but I note for now only that the draft National Law includes a number of significant consumer protection reforms which have a lot to recommend them, not least:

- reforms which will give consumers of legal services the same rights of redress against lawyers who have let them down as consumers of financial, telecommunications and energy services have in these circumstances against banks, financial planners, stockbrokers, telephone and internet service providers, electricity, gas and water suppliers under their respective industry schemes.

  How? Simply by equipping us as regulators with powers that are sorely lacking under the LPA to help the parties to consumer complaints resolve their differences by negotiation and, if

they can't, power to decide the outcome. The power to decide the outcome includes when it is the fair and reasonable thing to do in all the circumstances of a complaint power to require lawyers to 'put things right' with the complainant including by paying compensation to make good a financial loss.

This reform will not only deliver better outcomes for consumers but reduce compliance costs for lawyers. It will enable us to bring many more complaints to completion many months more quickly than we can now, by informal negotiation rather than formal investigation.

- reforms which will provide a less costly, more timely and more user-friendly means of redress for the many hundreds of complainants we have no option currently but to turn away and to refer instead to the appropriate court to challenge their lawyer's costs.

  How? Simply by defining the vast majority of client/practitioner cost disputes to be consumer complaints and thus requiring us to help the parties to negotiate a mutually agreed outcome and if they can't agree to 'make a binding determination that is fair and reasonable in all the circumstances of the complaint.'

- reforms which will reduce the time it takes to finalise minor disciplinary matters by up to 12 months and more; reduce our costs as the prosecuting authority; reduce the tribunal's costs; and reduce the compliance costs, professional embarrassment and worry for respondent lawyers.

  How? Rather than confining us to commencing disciplinary proceedings before a disciplinary body, simply by authorising us subject to appeal to make findings of unsatisfactory professional conduct (but not of professional misconduct) and to impose an appropriate disciplinary penalty.

- reforms which will prevent lawyers hiding behind their clients' legal professional privilege to frustrate and even completely prevent any effective investigation of a lawyer's conduct no matter how suspicious it may be if our suspicions are aroused by information that has come into our possession through a complaint by someone who isn't a client of the lawyer - by a client 'on the other side', for example, or a judge or the police or some other 'third party' - or through the investigation of an entirely unrelated complaint, a trust account or compliance audit, a news report or anonymous tip-off.

  How? Simply by giving us a power that is sorely lacking under the LPA and a power that our counterpart regulators in every other state and territory have available to them already to compel lawyers subject to investigation to answer questions and to produce documents and information notwithstanding any duty of confidentiality they may owe a client, but on the strict proviso that their clients' legal professional privilege is preserved and that any information so obtained must remain confidential and can be used for the purposes of the investigation only and subsequent disciplinary proceedings and for no other purpose.

I am pleased that the Attorney-General has indicated his willingness if not to adopt the structural reforms inherent in the draft National Law at least to amend the LPA to harmonise with or mirror the National Law in key respects. The reforms I have mentioned are sensible and practical measures which warrant careful consideration in that context.

The second assumption we made when we prepared our Business Plan 2011-13 was that the QLS would honour its agreement to a package of complementary local reforms. It agreed in November 2011 subject to the negotiation of satisfactory transitional arrangements to cease any role in investigating complaints on referral from the LSC; to relinquish responsibility for conducting trust account investigations and any related external interventions; and thereby to

consolidate responsibility for complaint-handling, trust account investigations and compliance audits under the one management structure at the LSC. The newly elected Council which took office in 2012 reneged on the agreement. That is a pity. These reforms have a great deal to recommend them also, including that:

- they would halve the time it takes to finalise the many hundreds of matters we currently refer to the QLS for investigation. It took more than 5 months longer on average over each of the past three years to finalise the 652 matters we referred to the QLS for investigation than the 1196 matters we investigated in-house. That is hardly surprising. The process of referral necessarily involves significant double-handling at both the front and back-end of the process, and quite often during the course of an investigation also.
- they would achieve savings of more than $700,000 annually under the LPA as it stands and savings of more than $400,000 annually if the LPA is amended to mirror the consumer protection reforms that are included in the draft National Law, even after allowing us the additional funding we would require to service our additional responsibilities to resolve client/practitioner cost disputes. Again that is hardly surprising. Double-handling comes at a cost, not least (but not only) the cost inherent in keeping duplicate management structures.

We fully accept that the QLS should continue to have an active role in partnership with the LSC in monitoring professional standards and providing advice. That said, there are far more effective and efficient ways to achieve this purpose than an expensive and protracted process of referral that sees the QLS investigate substantially fewer than half the complaints against solicitors that involve a disciplinary issue and only a small minority of complaints overall.

There are two other features of the changing regulatory environment that have influenced our thinking and warrant mention - the trends both nationally and internationally towards principles-based and risk-based regulation:

- principles-based regulation is 'firm about outcomes, flexible about means'. It is a form of regulation in which legislators and regulators put a great deal more emphasis on articulating broadly stated principles which describe the policy outcomes they are hoping to achieve and far less on spelling out detailed prescriptive rules which describe exactly how lawyers should conduct themselves.

  Principles-based regulation achieves substantial de-regulation by gifting lawyers far greater flexibility than they have had in the past to decide how best to achieve any given broadly stated outcome in the many and varied circumstances of their own particular law practices. The draft National Law takes a big step in this direction (and thus extends to only 200 pages whilst the LPA extends to 600 pages of print).

  But principles-based regulation has a downside, not least that it isn't always obvious how a broadly stated principle applies in any given factual circumstance. Thus the greater flexibility it offers lawyers comes at the price of greater uncertainty, not least from a lawyer's point of view uncertainty whether we as regulators understand and apply a broadly stated principle in the same way they do. Thus transparent and accountable regulators will issue guidance which sets out for the benefit of lawyers and consumers alike the factors they propose to take into account in exercising their responsibilities in such circumstances.

  I am proud to say in this context that we have committed to consult widely and then to publish a series of regulatory guides which do just this. We have started this past year with several guides that describe our approach to various billing practices we see in complaints and that cause us concern. We reflect further on these matters later in the report.

- risk-based regulation envisages regulators doing more than simply 'policing and punishing' lawyers and 'retro-fixing' complaints. It envisages us getting in first wherever possible and having a leadership role geared to prevention. Furthermore it recognises that the conduct of individual lawyers is determined in large measure by their workplace cultures and so casts a regulatory gaze not only at lawyers but the law firms where they work and the adequacy or otherwise of their management and supervisory arrangements (or 'ethical infrastructure').

  The National Law reflects this approach by allowing consumers to make complaints not only about lawyers but about law firms. Further it would authorise us as regulators to conduct compliance audits of not only incorporated legal practices but all law firms and to issue 'management systems directions' as appropriate. These are welcome reforms which I urge the Attorney-General to enact locally to harmonise the LPA with the National Law.

  Risk-based regulation demands of us as regulators that we learn the skills and develop the tools we require to identify the lawyers and law firms most at risk of non-compliance with their professional obligations and to target our interventions accordingly. So it should: we should never impose any needless regulatory burden on lawyers and law firms but direct our energies to where they are most needed and can have the most beneficial impact in the public interest.

  Notably the Legal Services Board for England and Wales recently published research to precisely this end. The report describes the early work that has been done in Australia and in Queensland in particular as 'exceptional'. It describes at some length the work we have done at the LSC to develop, trial, 'put out there' and engage a large number of lawyers and law firms in undertaking a series of on-line ethics checks. The ethics checks give law firms a ready tool to test the strength of their ethical infrastructure. They have been a success by any measure and we have had great feedback from participating law firms. We reflect further on these issues also under the relevant sub-heading later in the report.

I reiterate in this context the desirability of consolidating responsibility for complaint-handling, trust account investigations and compliance audits within the LSC. That would enable us not only to coordinate the performance of these fundamentally complementary functions but to pool the intelligence and to collate and interrogate the hard data we collect along the way to better identify and target the lawyers and law practices most likely to put consumers and the public at risk. It would enable us to make increasingly more effective and efficient use of our inevitably scarce regulatory resource.

We have come a long way since our inception in 2004. It was commonplace then to conceive the primary purpose of the regulatory regime to be to enable the legal profession to rid itself of its 'bad eggs' or 'bad apples'. Those metaphors continue to colour the thinking of many lawyers but have never been helpful. We know that the regulatory regime is or ought to be as much about providing consumers an effective means of redress for commonplace complaints as it is about ridding the profession of the occasional rogue practitioner, as important as that is. We know to the extent that the metaphor has validity that we should be directing our energies to identifying and dealing with neglected nests and sour barrels as much as to identifying and dealing with bad eggs and bad apples.

We know above all that the greatest ethical challenge facing the profession, and the greatest challenge we face as regulators, is to remedy the damage being done to the reputation of the profession and ultimately to public confidence in our system of justice by grasping and rapacious billing practices that have spread well beyond the occasional rogue practitioner. We are giving

careful consideration to a number of such practices as we speak and will make it a priority over the year ahead to expose them to more public attention. We reflect further on this issue also later in the report.

Finally I want to thank the Attorneys-General, the Hon Paul Lucas and the Hon Jarrod Bleijie, for their consideration and support during the year; the Directors-General and the many staff of the Department of Justice and Attorney-General who have given us very practical behind the scenes support; and of course our colleagues and co-regulatory partners at the QLS and BAQ.

I particularly want to thank the members of the LSC's Reference Group for giving of their time so freely and their wise advice. I won't name them here but simply refer readers who are interested to the *About us* page of the LSC's website. I especially want to thank the staff of the LSC for their professional and personal support in difficult times. They continue to do good work and continue to make the LSC a great place to come to work every day.

John Briton
Legal Services Commissioner

Giving consumers a means of redress

The LPA describes one of the main purposes of the system for dealing with complaints to be 'to provide a means of redress for complaints about lawyers'. That puts securing fair and reasonable redress for complainants if and when their lawyers have let them down at the very front and centre of what we do.

We describe the system for dealing with complaints in great detail at Appendix 1 and will not repeat that description here. Importantly, however, the LPA:

- requires complaints to be made in writing. We note however that there is nothing to be gained by asking people who ring or contact us by email or on-line to 'complain' about a lawyer to go to the trouble of putting their concerns in writing if we believe we may be able to resolve them informally, perhaps with a few quick telephone calls. And so we don't: we make the calls, and we count these matters as 'enquiries' not as 'complaints'. It follows that many enquiries are 'complaints' by another name.
- requires us to assess all new complaints against a range of threshold criteria. There are only three possible outcomes on assessment: we either summarily dismiss a complaint (that is to say, take no further action on the complaint); assess it to be a consumer dispute (that is to say, a complaint that does not involve a disciplinary issue); or assess it to be a conduct complaint (that is to say, a complaint that involves a disciplinary issue).
- gives us no powers to resolve consumer disputes, merely a discretion to 'suggest to the parties that they enter into a process of mediation.' It requires us however to investigate conduct complaints and gives us significant powers of investigation.
- gives us only two options after investigating a conduct complaint - either to dismiss the complaint or, if we believe there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and that it is in the public interest to do so, to initiate disciplinary proceedings.

Thus we report our performance against five discrete kinds of matter or matter types: enquiries, summary dismissals, consumer disputes, conduct matters and prosecutions. All five matter types provide consumers a means of redress for complaints.

Some feedback from stakeholders

- '*Without your help and support I do believe that I would be still struggling to get any results let alone the result you got for me which I am very grateful to you for*.'
- '*I'd like to compliment one of your employees… Frankly, I am gobsmacked at her efficiency and diligence in assisting me. Her efforts and advice have gone a long way to restoring some faith in a legal system which has to date left me financially broken and in non-functional, shared custody situation*.'
- '*Thank you so much for your time and help. This is a most satisfactory outcome… Most of all I thank you for your consideration and acknowledgment of my problem. I was amazed at how fast you resolved this situation*.'

We assess our performance in this respect against the timeliness with which we bring matters to conclusion; our clearance ratio (that is to say the number of matters we bring to conclusion in any given year compared to the number we receive); the outcomes we achieve (including in particular the nature and extent of the redress we secure for enquirers and complainants); the extent to which we identify and act upon any systemic issues that arise; and of course the

feedback we receive from enquirers, complainants, the lawyers who are the subject of those enquiries and complaints and our stakeholders more generally.

Some key facts about enquiries and complaints

We have attached a wealth of statistical data at Appendix 4 and we include more detailed information about conduct complaints and prosecution matters later in the report (under the sub-headings *Investigating complaints which involve a disciplinary issue* and *Commencing disciplinary or other enforcement action* respectively). The key facts for present purposes about the enquiries and complaints we dealt with during 2011-12 are these:

- we finalised 1,323 enquiries in a median-time frame of 2 days from receipt. This is fewer than the 1,612 enquiries we dealt with on average over each of the previous three years. That is because we rarely now include 'requests for information' as enquiries as in years past but in the main matters which require some active early intervention or follow up (including many matters we would have dealt with previously as complaints). That in turn is because more people are accessing the more and better information we provide on our website and in pre-recorded messages on our telephone system. That frees up our front counter staff to deal with the bulk of the remaining 'requests for information' and frees up our enquiries staff to deal with many more matters which require active intervention.

Some case studies

- An executor of a deceased estate rang to say that he had taken some initial advice from a solicitor. He said he was considering whether to sign the costs agreement the solicitor had given him and to confirm his instructions when he got a bill from the solicitor for work performed on behalf of the estate. We rang the solicitor who conceded that there had been a genuine misunderstanding and agreed to waive his fees.
- A consumer rang to say that he and his sister were ready to move in to their new house only to discover that their solicitor had given them an incorrect settlement date causing them to have to rent alternative accommodation until settlement. We rang the solicitor who confirmed his mistake and agreed to pay his clients' reasonable additional costs of $6,000.
- A consumer wrote to complain that she had recently bought her first home and that her solicitor had given her incorrect advice about how renting the property out after settlement would impact the stamp duty. Our investigation confirmed that her solicitor had given her incorrect advice and we negotiated his agreement to pay the additional, unpaid duty and the interest on that unpaid duty.
- A consumer wrote to complain that she had given her solicitor's law clerk specific written instructions about the division of the proceeds of the sale of her former matrimonial home between her and her former husband. She complained that the clerk miscalculated the figures with the result that she received $5,000 less than she should have. The documentation she gave us bore out her complaint. The solicitor initially denied any responsibility but we were able to negotiate his agreement to make good the firm's mistake rather than put her in the position of having to sue the firm to recover her loss - or put us in the position of having to consider commencing disciplinary proceedings to enable her to seek a compensation order from QCAT.

- we received 736 new complaints during the year and completed 791 giving us a pleasing clearance ratio of 107%. We received significantly fewer complaints than the 1,098 we received on average over each of the previous three years but the figures should not be misinterpreted, and in particular should not be misinterpreted to indicate reduced levels of consumer dissatisfaction with lawyers. They reflect instead our deliberate efforts to deal with increasingly more 'complaints' informally, as enquiries. We have chosen this strategy for several reasons:

- to give 'complainants' more timely access to fair and reasonable redress as appropriate, without conducting a formal and inevitably more time consuming investigative process. The 'remedial outcomes' data set out at Table 1 is especially encouraging in this regard;
- because we are receiving increasingly more 'complaints' on-line, many of which provide insufficient details about the conduct complained of and require telephone follow-up to give us the further information we need to deal with the 'complaint'. Those telephone conversations give us an opportunity to explore the 'complainants'' concerns, not least whether they lend themselves to informal resolution not as formal written complaints but as enquiries. Thus we dealt with 266 or almost 60% of the 451 on-line 'complaints' we received during the year as enquiries compared to 157 or 38% of the 417 on-line 'complaints' we received in 2010-11; and
- to anticipate as far as possible the proposed national legal profession reforms (or local reforms which mirror those reforms) which will enable us to deal with most complaints informally, as consumer matters rather than conduct complaints.

- we assessed 681 new complaints in 2011-12. We summarily dismissed 206 or 30% of those complaints, significantly fewer than the 43% we summarily dismissed on average over each of the previous three years. The reduction reflects the increased number of 'complaints' we dealt with as enquiries. We assessed 51 or 8% of the 681 new complaints to be consumer disputes and 424 or 62% to be conduct matters.

Some feedback from stakeholders

- '*Your communication with the solicitor in question must have been very effective as he reacted promptly replying to me swiftly with the required information after ignoring my contact for weeks*.'
- '*I got the cheque today. Thank you, thank you. I'm over the moon. I can keep my daughter at the same school next year now, for year 12. I am so happy*.'

- we summarily dismissed a total of 250 complaints (including 44 complaints we received in 2010-11), 195 or 78% of them within one month of receipt in a median time-frame of 24 days. We finalised 49 consumer disputes, 42 or 86% of them within two months of receipt in a median time-frame of 34 days. We finalised 557 conduct matters (that is to say, 492 conduct complaints and 65 'own motion' investigations), 269 of them within 6 months of receipt in a median time-frame of 219 days. We have more to say about the timeliness of our dealings with conduct matters later in the report under the sub-heading *Investigating complaints which involve a disciplinary issue*.
- a quarter or thereabouts of all enquiries, summary dismissals and consumer disputes arose out of family law matters. A further quarter or thereabouts of all enquiries, summary dismissals and consumer disputes arose out of deceased estate matters or residential conveyances, and a further 15 % or thereabouts out of personal injury and other litigation matters. The same is true of conduct matters.
- a third or thereabouts of all enquiries, summary dismissals and consumer disputes involved issues as to costs; a quarter or thereabouts involved issues of quality of service; 15% or thereabouts involved issues of communication and a similar number raised ethical issues. The same is true once again of conduct matters.
- we secured some appropriate redress for 224 or 16% of the 1,323 enquirers we dealt with during the year (see Table 1, below). We referred 246 of 19% of enquirers for legal or other advice; helped 191 or 14% enquirers to make a formal written complaint; and recommended

that 162 or 12% of enquirers try to resolve their concerns at least in the first instance by speaking directly with their lawyer or his or her supervisor.

Table 1: Remedial outcomes of enquiries and complaints in 2011-12

Remedial outcomes	Enquiries	Consumer disputes	Conduct matters	Total
Apology	10	5	38	53
Financial redress	97 – $135,241	9 - $8,027	54 - $426,127	160 - $569,395
Other redress	126	10	33	169
Improved business systems	4	-	47	51
Training / supervision	-	-	8	8
Total	237	24	180	441

- we were unable however to resolve 223 or 17% of enquiries. A large proportion of the 469 enquirers we either couldn't help or referred elsewhere contacted us with queries about their lawyer's costs. Regrettably we have no powers to resolve client/practitioner cost disputes. We have no choice absent some prima facie evidence of overcharging or failure to give proper costs disclosure but to refer these enquirers to the appropriate court to seek a costs assessment pursuant to the process established under the Uniform Civil Procedure Rules (the UCPR) and to invite them to get back to us if the assessment reveals evidence of over-charging. We say 'regrettably' because their enquiries could be dealt with far more quickly and with less angst and red-tape if the LSC were a 'one-stop shop' for 'complaints' about lawyers, including client / practitioner cost disputes. We return to this issue below.

Table 2: Outcomes (including remedial outcomes) of prosecution matters in 2011-12

Fined by disciplinary body	7 - $27,500	**Reprimanded**	9
Ordered to pay compensation	3 - $90,000	**Struck off**	1
Ordered to do training	3	**TOTAL**	23

- clearly by definition we were unable to assist the 250 complainants whose complaints we summarily dismissed. Many of their complaints involved costs issues also, many of them cost disputes.
- we negotiated some appropriate redress to resolve 22 of the 49 consumer disputes we completed during the year (see Table 1). We were unable to resolve 21 of the remaining 27 matters. Similarly we negotiated some appropriate redress for 180 complainants who made conduct complaints. We canvass conduct complaints in more detail later in the report under the sub-heading *Investigating complaints which involve a disciplinary issue*.
- happily however we provided a total of 464 complainants with some form of redress for their enquiries or complaints including for 163 enquirers and complainants financial redress totalling $659,395 (see Tables 1 and 2).

The proposed national legal profession reforms

The draft National Law envisages the relevant regulatory authorities having greatly strengthened powers to provide consumers a more timely, effective, fair and reasonable means of redress for complaints. We urge that these reforms be adopted in Queensland, if not by enacting the draft National Law then by amending the LPA to include 'mirror' provisions in our local legislation. We note in particular that:

- the LPA as it stands gives us no powers to resolve consumer disputes, merely a discretion to 'suggest to the parties that they enter into a process of mediation.' The draft National Law on the other hand would oblige the relevant regulatory authorities to help the parties resolve consumer complaints informally, by mediating or otherwise negotiating an agreement. Crucially, if the parties can't reach agreement, it will empower us to make 'a binding determination that is fair and reasonable in all the circumstances of the complaint' - including by requiring respondent lawyers to apologise, to do or redo the work subject to complaint or to do whatever else they reasonably can to 'put things right', not least when complainants have a suffered a loss because of the lawyer's conduct by requiring them to reduce or waive their fees or to pay compensation of up to $25,000.

  These are powers the LPA gives solely to the disciplinary bodies and to the courts, and only in response to complaints which involve a disciplinary issue and only after finding the respondent lawyers guilty of a disciplinary offence. The National Law on the other hand will enable complainants who have a legitimate grievance to get appropriate redress and to get it whether or not their complaint involves a disciplinary issue.

  This will be a welcome reform. It will belatedly give consumers of legal services the same rights of redress that are available to consumers of financial, telecommunications and energy services. How? By giving legal services regulators the same powers in relation to lawyers that the Financial Ombudsman Service, the Credit Ombudsman Service, the Telecommunications Industry Ombudsman and the Queensland Energy and Water Ombudsman have in relation to the banks, managed funds, financial planners, insurance companies, stockbrokers, credit unions, telephone companies, internet service providers and electricity, gas and water suppliers over whom they have jurisdiction.

  Importantly the reform will deliver better regulatory outcomes not only for complainants but equally for lawyers subject to complaint.

  It will mean that we no longer have to deal with consumer matters as if they are essentially disciplinary in character and to put respondents to otherwise unnecessary work and worry by requiring them to respond accordingly. It will enable us to deal with them less formally and far more quickly, indeed many months more quickly. It will allow consumer matters to be dealt with for what they are – typically one-off mistakes and errors of judgement, failures of communication and poor quality of service and the like that can and should be fully and satisfactorily resolved simply by respondent lawyers who have let clients down in these and like ways 'putting things right'.

- the LPA as it stands gives us as the relevant regulatory authority in Queensland no jurisdiction to deal with client/practitioner cost disputes. We have no option as noted above but to turn away many hundreds of complainants in these circumstances every year and to refer them instead to the appropriate court under the process established by the UCPR – a process that is entirely paper driven; that makes no provision for mediation or other conferencing to identify and potentially resolve some or all the issues in dispute before

proceeding to arbitration; and that is costly, protracted, lacking in transparency and quite mysterious to all but legal insiders.

The National Law on the other hand defines client/practitioner cost disputes to be consumer matters wherever the total costs payable are less than $100,000 or the amount in dispute is less than $10,000. It will require us to deal with them accordingly, by helping the parties to come to an agreement or, failing that, by making a binding determination that is fair and reasonable in all the circumstances. The process will be more user-friendly, more comprehensible, less protracted and less costly to complainants and lawyers alike. This will be a welcome reform also.

Promoting, monitoring and enforcing standards of conduct

The LPA describes its main purposes to include 'to provide for the protection of consumers of the services of the legal profession and the public generally.' It describes the main purposes of the system for dealing with complaints to include 'to promote and enforce the professional standards, competence and honesty of the legal profession' and to 'provide for the discipline of the legal profession.' We achieve these purposes by investigating complaints which involve a disciplinary issue; initiating 'own motion' investigations; conducting compliance audits of incorporated legal practices; commencing disciplinary or other enforcement action; and engaging with stakeholders.

INVESTIGATING COMPLAINTS WHICH INVOLVE A DISCIPLINARY ISSUE

The LPA requires that complaints which involve an issue of unsatisfactory professional conduct or professional misconduct (complaints which involve a disciplinary issue, or conduct complaints) are fully and properly investigated. It allows us either to conduct the investigations ourselves or to refer complaints to the QLS and the BAQ for investigation as appropriate but limits the role of the QLS and the BAQ in those circumstances to recommending what further action, if any, the Commissioner should take on those complaints.

The Commissioner has only two options having investigated a complaint or having received and considered a recommendation from the QLS or the BAQ – either to dismiss the complaint or, if the Commissioner decides there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and that it is in the public interest to do so, to initiate disciplinary proceedings.

There are various reasons why the Commissioner might decide there is no public interest in initiating disciplinary proceedings notwithstanding that an investigation substantiates that a complaint may involve a disciplinary issue. It may be for example that the disciplinary issue is of a minor kind only, that there is no need to 'send a message' to the profession about the issue and that the lawyer has 'put things right', including (as described under the previous sub-heading) by making appropriate redress.

We assess our performance having regard to our clearance ratio; our timeliness in bringing matters to conclusion; the frequency with which we disagree with the recommendations of the QLS and/or the BAQ and the nature of those disagreements, if any; the extent to which we identify systemic issues which put consumers at risk and then plan and implement appropriately targeted remedial strategies; and of course the feedback we get from parties to complaints.

Some key facts about complaints which involve a disciplinary issue

We have included more comprehensive statistical data at Appendix 4 but the key facts about the conduct complaints we dealt with in 2011-12 are these:

- we assessed 424 or 62% of the 681 new complaints we assessed during the year to be conduct complaints. We referred 181 conduct complaints to the QLS for investigation and 12 to the BAQ. We retained 285 conduct complaints for investigation in-house.

- we finalised 492 conduct complaints of which 440 or 89% involved solicitors; 19 or 4% involved barristers; 12 or 2.4% involved alleged unlawful operators; and 7 or 1.4% involved law practice employees.
- 103 or 21% of those 492 complaints arose out of family law matters; 52 or 11% out of deceased estate matters (a big increase on previous years); 49 or 10% out of personal injury matters; 48 or 10% other litigation matters ; 43 or 9% criminal law matters and 41 or 8% conveyances.

Some unsolicited feedback from stakeholders

- '*The people I spoke to on the phone were courteous, understanding listeners. Your people are outstanding*.'
- '*Your response was the most prompt I have ever received from the public service, and as well your response indicated that you read and analysed my letter thoroughly*.'

- 134 or 27% of the 492 complaints raised quality of service issues; 122 or 25% raised ethical issues; 106 or 22% raised costs issues; and 41 or 8% raised communication issues.
- we finalised 304 or 62% of the 492 complaints on the basis that the evidence after investigation did not support a reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct.

Some case studies

- a consumer complained that his solicitor charged him much more than he had been led to expect. The investigation revealed that the solicitor had failed to give the complainant the ongoing costs disclosure required by the LPA, but no evidence that the failure was other than a one-off mistake. The solicitor agreed to withdraw his bill and to reduce his costs to scale. We dismissed the complaint on the basis that no public interest would be served by initiating disciplinary proceedings but put the solicitor on notice that we might well take a take a different view if it happened again.
- a consumer complained that he had been 'forced' to sign a family law consent order by both his own solicitor and the solicitor for the other side. The investigation revealed that the negotiations were conducted in circumstances of some urgency and had been 'high octane' and stressful for all concerned. It was clear that the complainant's solicitor had given him some frank advice about the likely consequences were he not to sign the proposed orders and that the complainant felt under pressure, but there was no evidence that the solicitor overstepped the mark. The solicitor for the other side owed the complainant no duty beyond professional courtesy and there was no evidence that she had crossed the line either. We dismissed the complaint against both solicitors on the basis that there was no reasonable likelihood of a finding of unsatisfactory professional conduct.
- a complainant alleged that the respondent solicitor had visited the complainant's elderly father in his nursing home at the urging of his granddaughter and taken instructions to change his existing will and enduring power of attorney when he clearly lacked the capacity because of dementia to give those instructions. The new will favoured the granddaughter over the previous beneficiaries. QCAT subsequently found that the elderly gentleman lacked capacity at the time and revoked the new enduring document. It was apparent from the evidence before QCAT that the solicitor had taken no notes of the steps she claimed to have taken by talking to the man to satisfy herself that he knew the nature and effect of what he was doing and had made no enquiries of either the staff of the nursing home nor his treating medical practitioners as to his capacity. We are actively considering commencing disciplinary proceedings and have put draft charges to the solicitor for her response.

- we finalised 132 or 27% on the basis that, while the conduct subject to investigation might have amounted to unsatisfactory professional conduct, no public interest would be served by

initiating disciplinary proceedings. This is a good result. It means that the conduct was at the lesser end of the spectrum of unsatisfactory professional conduct and that the practitioners satisfied us that they had done all they reasonably could to put things right with the complainant or otherwise to fix the problem. We canvassed these remedial outcomes in greater detail under the previous sub-heading.

- we finalised 29 or 6% by initiating disciplinary proceedings; 7 by referring them to the police or other investigative body; and 2 by filing a summons in the Magistrates Court.

Furthermore:

- the QLS returned 213 conduct matters for decision (that is to say, both conduct complaints and 'own motion' investigations). We disagreed with its recommendations in 29 or 13% of the matters we decided by 30 June. The rate of disagreement should not be misconstrued. The vast majority of the 'disagreements' reflect no more than different 'judgment calls' in circumstances where reasonable minds might differ.
- the BAQ returned 14 conduct matters for decision. We disagreed with its recommendations in none of the matters we decided by 30 June.

Some unsolicited feedback from a stakeholder

- '*I would like to extend my sincerest thanks for the professional and prompt way you have assisted us with this stressful matter. Your speedy response, professional advice and sympathy made this stressful situation manageable. I have nothing but praise for your conduct and the great service you provided*.'

- we finalised a total of 557 conduct matters during the year - 492 conduct complaints and 65 'own motion' investigations. We completed 269 or 48% of those 557 matters within 6 months of receipt; 186 or 34% between 7 and 18 months of receipt; and 102 or 18% after 18 months or more, in a median time-frame overall of 219 days or just over 7 months. Our target was to finalise 75% of all new conduct complaints within 6 months of receipt in a median time-frame of 6 months or less. That is a disappointing result.
- notably, however, we investigated 346 of those 557 matters in-house in a median-time frame of 165 days or just under 5 months. The QLS investigated 202 of them in a median time-frame of 332 days or 11 months. The BAQ investigated 9 of them in a median-time frame of 330 days. The figures largely replicate the corresponding figures for reporting years 2010-11 and 2009-10 and come as no great surprise.

  The process of referring complaints to the QLS and the BAQ for investigation necessarily involves significant double-handling and accordingly adds significantly to the time it takes to bring matters to completion. Indeed while different considerations apply (the QLS employs paid investigators, for example, while the BAQ relies on the pro bono efforts of members of its Professional Conduct Committee), the figures suggest that the referral process more than doubles the time it takes to bring matters to completion.
- we issued 63 section 443(1) notices during the year requiring lawyers to respond to the complaints against them. We issue section 443(1) notices when lawyers fail to respond within a reasonable period of time or provide an incomplete response to an earlier and informal request. We issued 18 section 443(3) notices after lawyers failed to comply with a section 443(1) notice. Section 443(3) notices give lawyers written notice that they may be dealt with for professional misconduct if their failure to respond persists for a further 14 days or more after the notice is given. Sadly this is not uncommon.

We have identified a number of billing practices in the course of investigating conduct complaints which cause us concern, not least because they appear to be commonplace. They include the practice of substituting an itemised bill in a higher amount for an earlier lump sum bill when clients have exercised their entitlement under the LPA to request that the lump sum bill be itemised; the practice of billing clients in six minute units of time 'or part thereof' and proceeding to bill for many such units of time over the life of a file for work that took much less than six minutes, and perhaps no more than 30 seconds, thereby significantly inflating the lawyers' stated hourly rate; the practice of charging a 'care and consideration' component at the lawyers' 'absolute discretion' on top of their standard hourly rate; the practice of charging out 'paralegals' at rates which approximate the charge out rate for lawyers; and – this example applies to barristers – the practice of charging clients 'cancellation fees' for time set aside in matters that settle early and arguably 'double-dipping' by charging other clients for work that is performed in the time that was previously set aside but subsequently freed up.

There are real questions to be asked in our view as to when and in what circumstances if at all these practices are fair and reasonable and consistent with a lawyer's professional obligations. We have initiated a number of 'own motion' investigations and compliance audits on point and are giving these questions careful consideration in that context with a view depending on where our investigations take us to initiating test cases in the disciplinary bodies and/or the courts.

The proposed national legal profession reforms

The draft National Law envisages the relevant regulatory authorities in each of the participating jurisdictions having powers to deal with many more complaints as consumer matters and many fewer as disciplinary matters, simply because it would give us vastly more and better powers than we have now to bring consumer matters to a satisfactory conclusion. It would enable us to deal not only with those matters far more quickly but a sizeable proportion of the remaining disciplinary matters also. We urge that these reforms, too, be adopted in Queensland, if not by enacting the National Law then by amending the LPA to include 'mirror' provisions in our local legislation. They are reforms which if enacted will:

- give us as the relevant regulatory authority in Queensland an entirely new power (subject to appeal) to make a finding against a lawyer of unsatisfactory professional conduct (but not of professional misconduct) - and to caution or reprimand the lawyer accordingly; to impose conditions on his or her practising certificate; to order him or her to do or redo the work subject to complaint; to reduce or waive his or her fees; or to pay a financial penalty of up to $25,000.

  This reform will expedite the resolution of minor disciplinary matters by up to 12 months and more and will enable them to be dealt with at a much reduced cost to respondent lawyers, to the LSC and to QCAT. Notably about a third of the disciplinary matters we prosecute before QCAT proceed unopposed, often even as to penalty, and yet the process invariably takes upwards of 6 months (and currently much longer) and often sees respondent lawyers having to pay legal costs many times in excess of the financial penalty (if any) ultimately imposed by the tribunal.
- give us as the relevant regulatory authority in Queensland the same power our counterpart regulators in every other Australian state and territory have available to them already to compel lawyers subject to investigation to answer questions and to produce information notwithstanding any duty of confidentiality they may owe a client - but on the strict proviso that the client's legal professional privilege is preserved and that any information so obtained

must remain confidential and can be used only for the purposes of the investigation and any subsequent disciplinary proceedings against the lawyer and for no other purpose. This will be another significant and welcome reform.

The LPA as it stands gives us power to compel lawyers to answer questions and produce otherwise confidential documents and information 'but only if the client is the complainant or consents to its disclosure.' This is an entirely unsatisfactory state of affairs. It means that we have very limited powers to investigate a lawyer's conduct no matter how suspicious it may be if our suspicions are aroused by a complaint by someone other than the lawyer's client – by a client 'on the other side', for example, or by an opposing lawyer or a judge or other 'third party'. It means we have similarly limited powers to investigate a lawyer's conduct during an 'own motion' investigation - when we have reasonable grounds to suspect a lawyer of professional wrongdoing on the basis of information that has into our possession through the investigation of an entirely unrelated complaint or a trust account audit, for example, or via the police or other regulatory authority, a news report or anonymous tip-off.

INITIATING 'OWN MOTION' INVESTIGATIONS

The LPA authorises us to initiate an investigation without having received a complaint – to start 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' and the Commissioner has come to that belief 'on grounds that are reasonable in the circumstances.' We have published an *Own Motion Investigations* policy on the *Policies* page of our website which sets out the factors the Commissioner takes into account in deciding whether to start an own motion investigation.

Similarly the LPA authorises us to start an investigation into the conduct of a lawyer or for that matter anyone else the Commissioner reasonably 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 power to start 'own motion' investigations is an important and useful power but as we noted under the previous sub-heading a power which as currently formulated under the LPA allows lawyers subject to investigation to hide behind their clients' legal professional privilege and refuse to produce documents and information relevant to the investigation. The proposed national reforms or local reforms which mirror those reforms will remedy this defect by giving us the same powers our counterpart regulators in the other states and territories already have available to them under their current legislation to compel respondent lawyers to cooperate. That will be a welcome and overdue reform.

That said, we note that we initiated a total of 90 own motion investigations in 2011-12, or 11% of all 'new' complaints and investigation matters. We retained 58 (or 71%) of those 90 matters for investigation in-house and referred 24 (or 29%) to the QLS. We note by way of comparison that we initiated 100 own motion investigations (or 9% of all new complaints and investigation matters) in 2010-11; 174 (or 13%) in 2009-10; and 78 (or 7%) in 2008-09.

We report separately on own motion investigations into suspected contraventions of PIPA (PIPA investigation matters) and all other own motion investigations (investigation matters other than PIPA) because they have quite different characteristics and outcomes.

Investigation matters other than PIPA

We start 'own motion' investigations in a variety of different circumstances. Sometimes we receive anonymous, but sufficiently credible information to form a reasonable belief that an investigation should be started; sometimes the professional bodies bring information to our attention following a show cause event or trust account investigation, for example; sometimes judges, police or other investigative agencies bring information to our attention; and sometimes we read reports in the media.

Importantly we are routinely on the look-out when we're dealing with a complaint about a lawyer's conduct for other conduct on the part of the lawyer that might be inappropriate and if our suspicions are aroused will broaden our enquiries accordingly. It is not uncommon for us to be dealing with a complaint about alleged delay or discourtesy or failure to communicate, for example, and to come across evidence of possible overcharging of which the complainant is totally unaware.

Similarly, we routinely ask ourselves when we're investigating a complaint and have identified some misconduct whether it could reasonably have been prevented or at least detected and remedied earlier in the piece if only the law firm's principals had implemented appropriate management systems and supervisory arrangements and, if so, whether we should start an 'own motion' investigation into their apparent 'failure to supervise'. We are on the look-out in particular for evidence of potentially systemic malpractice, especially billing malpractice.

Some case studies

- we came to work one morning to discover an envelope addressed to the Commissioner had been pushed under the door. We have no idea who put it there or 'sent' it. It contained what appeared to be genuine copies of a costs agreement, various tax invoices and correspondence which gave us reasonable grounds to believe that the costs agreement may have been misleading and deceptive and that the firm may have charged excessive legal costs. We commenced an 'own motion' investigation accordingly.
- we received several complaints about an employed solicitor who had missed statutory time limits in personal injury matters. We commenced an 'own motion investigation' into the managing partner's apparent failure to supervise the solicitor's conduct of those and perhaps other matters.

We note that:

- we finalised 22 (or 40%) of the 55 matters we completed 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; 16 (or 29%) on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct; 7 (or 13%) by deciding to initiate disciplinary proceedings; and 7 (or 13%) by referring them to the police for further investigation and possible prosecution for criminal offences. We are pleased by the relatively high percentage that we were able to finalise this year as in years past on 'no public interest' grounds. It means the evidence after investigation justified our suspicions that all was not as it should be but that we managed to negotiate an outcome with the lawyers subject to investigation which saw them put things right.

- 15 (or 27%) of the 55 matters we finalised during the year involved apparent failures to properly manage trust accounts; 11 (or 20%) involved ethical issues including acting without or contrary to instructions; 8 (or 15%) involved apparent non-compliance with the LPA, most commonly a failure to provide ongoing costs disclosure; 7 (or 13%) 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'; and 5 (or 9%) quality of service issues.

PIPA investigation matters

PIPA imposes strict limits on where and how lawyers can lawfully advertise personal injury services. The restrictions came into effect on PIPA's commencement in 2002 in response to concerns both in the profession and the community about 'ambulance chasing'. We inherited responsibility for dealing with contraventions by amendments to both PIPA and the LPA in May 2006 when non-compliance was commonplace.

We have exercised our powers by dealing with complaints when we get them – and sometimes we do, almost invariably made by law firms which have complied with their obligations and which are aggrieved and understandably so that a competitor's non-compliance stands to give them a commercial advantage - but we have always believed we have a broader and more pro-active responsibility than merely responding to complaints.

Thus we began to systematically monitor and review the places personal injury advertisements most commonly appear and commenced 'own motion' investigations into advertisements we believed may be non-compliant. We concentrated on print advertisements in the Yellow Pages and local newspapers in the first instance and in 2009-10 and beyond on advertisements that appeared on law firm websites and free to air television.

The advertising in those media is now largely if not always compliant and our challenge has become the advertising we are beginning to see on the results pages of internet search engines such as Google and on Facebook, You-tube and other social media. We simply do not have the capacity to monitor and review this kind of advertising and are therefore increasingly reliant on complaints to prompt our interest. Thus:

- we started 5 'own motion' PIPA investigations during the year and finalised 10. This is many fewer than the 23 we started in 2010-11 and 119 in 2009-10, partly for the reasons just outlined and partly because a turnover of key staff and the pressure of other work forced us to give this issue lesser priority than previously.
- we finalised 10 'own motion' PIPA investigations, all 10 of them on the basis that no public interest would be served by initiating disciplinary proceedings because the law firms subject to investigation agreed either to fix or withdraw their offending advertisements. We note that we have finalised 216 PIPA investigation matters since we inherited the jurisdiction late in the 2005-06 reporting year and more than three-quarters of them on that same basis. We finalised just less than a quarter on the basis that there was no reasonable likelihood a disciplinary body or court would find the advertisements to be unlawful and none of them by deciding to initiate disciplinary proceedings. That is a good result. We set out deliberately to secure compliance through persuasion in preference to prosecution and we have achieved that goal.

We have demonstrated our commitment to take a proactive approach to our responsibilities in this area and to secure compliance by persuasion in preference to prosecution by publishing a series of Regulatory Guides which set out how we interpret and apply the advertising restrictions and propose to enforce them.

We published *A Guide to Advertising Personal Injury Services* on the *Compliance* page of our website soon after we were given responsibility for enforcing the restrictions and subsequently *A Guide to Advertising Personal Injury Services on the Internet*. Later, when we began to come across advertisements for personal injury services on the results pages of search engines on websites like Google, we published an *Advice about Personal Injury Advertising on Internet Search Engines and Non-Lawyer Websites*. 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.

CONDUCTING COMPLIANCE AUDITS OF INCORPORATED LEGAL PRACTICES

The LPA allows lawyers to practice as sole practitioners and in partnerships with other lawyers and, since 1 July 2007, in partnership with members of other professions, as 'multi-disciplinary partnerships' (or MDPs), and under a company structure, as incorporated legal practices (or ILPs).

There were 454 incorporated legal practices in Queensland at 1 July 2012, or just shy of 30% of all Queensland law firms – see Table 3. We are unable this year for reasons mentioned earlier in the report to produce detailed statistical information profiling incorporated legal practices but it is unlikely that the patterns over previous years will have changed - that incorporation is the business structure of choice for start-up law firms, and that incorporated legal practices have a very similar profile to unincorporated practices in terms of size, areas of practice and the like. We hope to publish detailed data on our website later in the year.

Table 3: Incorporated legal practices as a proportion of all Queensland law firms

	June 2007	1 July '08	1 July '09	1 July '10	1 July '11	1 July '12
Number of law firms	1308	1328	1417	1458	1540	1599
number of MDPs	0	1	2	2	6	7
Number of ILPs	0	117	188	281	358	454
ILPs as % of all law firms	-	8.81%	13.27%	19.27%	23.25%	28.39%

The LPA requires us to regulate the provision of legal services by incorporated legal practices in the same way we regulate the provision of legal services by any other law firm - by responding to complaints and, if we suspect all is not as it should be, by initiating 'own motion' investigations. Notably, however, it requires incorporated legal practices to have at least one legal practitioner director and imposes obligations on legal practitioner directors over and above their usual professional obligations as lawyers. Crucially, it requires them:

- 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';
- 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 fail to comply with their professional obligations.

Thus the LPA holds legal practitioner directors responsible for ensuring that their firms have the 'ethical infrastructure' they require in the circumstances of their own particular practice - the supervisory arrangements, policies both spoken and unspoken, work practices, incentives and disincentives they require - to provide competent and ethical legal services. It supplements the traditional forms of regulation which focus on the conduct of individual lawyers with a form of entity-based regulation which focuses on the conduct of their firm.

Crucially, the LPA authorises us 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 obligations under the LPA and 'the management of [its] provision of legal services including the supervision of the officers and employees providing the services.' It authorises us to conduct an audit 'whether or not a complaint has been made' and gives us if needs be all the same powers and more that it gives us to investigate complaints.

Some key facts about compliance audits

We conduct three kinds of compliance audit:

- **self-assessment audits:** we require the legal practitioner directors of every incorporated legal practice shortly after its commencement to complete a pro forma self-assessment audit form which asks them to rate their management systems and supervisory arrangements against 10 performance criteria. The form is readily accessible for viewing on our website but can be and is almost invariably completed and lodged electronically (at www.lpportal.org.au). The portal enables legal practitioner directors to access their firm's complaints history and hence to complete their self-assessment audit having regard to that risk information.

  We evaluate the information we are given; engage in conversations with legal practitioner directors as appropriate about any apparent gaps in their systems and processes; and we ask them periodically to conduct follow-up audits to document their progress. Self-assessment audits, in other words, are 'gap analyses' or 'management reviews' that serve as a baseline for future improvements to the firm's management systems and supervisory arrangements.

- **web-based surveys:** we know from the feedback we get from incorporated legal practices which have completed a self-assessment audit and from refereed research (which we have published on the *Compliance* page on our website) that the simple act of requiring legal practitioner directors 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 have built on that insight by asking incorporated legal practices periodically to complete a short, sharp web-based survey or 'ethics check'. We briefly describe the ethics checks later in the report, under the heading *Engaging with stakeholders*, and in greater detail on the *Ethics checks* page on our website. They, too, are a form of 'gap analysis' or risk assessment that

enable law firms to identify the strengths and weakness of their ethical infrastructure and if needs be to plan appropriate remedial action.

- **on-site reviews:** on-site reviews comprise tailor-made combinations of traditional 'desk top' policy and procedure reviews; web-based surveys; analyses of the firms' complaints history; interviews with their principals, supervisors and employees 'down the line'; reviews of selected or randomly selected client files, in-house complaints registers and the like; and potentially mystery or 'shadow' shopping - having 'pretend' consumers deal with the firm and behave exactly as a genuine client might behave and report their experience.

  Clearly on-site reviews by their very nature are a resource intensive exercise both from the law firm's point of view and ours. It follows that we conduct audits of this more intensive kind much less frequently than web-based surveys and only on an 'as needs' basis - on the basis of a risk assessment that gives us reasonable grounds to believe that a firm or some aspects of its practice are or are likely to be non-compliant with its professional obligations.

We assess our performance having regard to the number, timeliness and outcomes of the audits we conduct, including their longitudinal effectiveness in improving standards of conduct, and of course the feedback we receive from incorporated legal practices. We note that:

- 104 incorporated legal practices completed self-assessment audits in 2011-12, making a total of 468 since the program first commenced in 2007 – see Table 4.

- we finalised only 1 web-based survey during the year, making a total of 100 since the program first started in 2007 – see Table 4. We commenced 35 web-based surveys, however, all of which will be completed by early 2012-13 and all of them as in years past Complaints Management Systems checks. We will publish the de-identified results of those surveys on the *Ethics checks* page of our website in due course, together with the results of the previous surveys, both to enable participating firms to compare and contrast their results and to expose this aspect of law firm culture to public scrutiny. Drs Christine Parker and Linda Haller of the Melbourne University Law School analysed the results of the earlier surveys and published their analysis in the Monash University Law Review 2011. It makes interesting reading. We have included a link to that research on our website also.

Table 4: Number of compliance audits by year

Audit type	07-08	08-09	09-10	10-11	11-12	Total
Self-assessment audit	61	90	105	108	104	468
Web-based survey	-	37	25	37	1	100
On-site review	-	1	2	2	0	5
Total	61	128	132	147	105	573

- we had limited people resource to apply to the task so completed no on-site reviews during the year, and we have completed only 5 since the program started in 2007. We did however commence 1 review late in the reporting year following a series of enquiries and complaints over a relatively short period of time which raised concerns about apparently systemic shortcomings in the firm's billing practices, most notably its costs estimates and disclosure. We will make it a priority consistent with our increasingly risk-based approach to our work to initiate more on-site reviews in like circumstances in 2012-13, and we will re-allocate resource as needs be to enable us to achieve that goal.

The proposed national legal profession reforms

The draft National Law envisages the relevant regulatory authorities in each participating jurisdiction having broader powers to conduct compliance audits and in particular:

- the power to conduct a compliance audit of any law firm, whatever its business structure, provided we have 'reasonable grounds to do so based on the conduct of the law practice or one or more of its associates or a complaint against the law practice or one or more of its associates'; and
- the entirely new power provided we have reasonable grounds to do to so to give a law firm a 'management systems direction' requiring it to implement appropriate management systems to ensure that it complies with its professional obligations.

These are significant reforms we have been urging for some years now. We urge once again that these reforms be adopted in Queensland, if not by enacting the draft National law then by including 'mirror' provisions in an amended LPA.

That is because the system for dealing with complaints is a fundamentally important regulatory tool which gives consumers a means of redress for complaints but it is an ineffective and inefficient means of achieving our broader regulatory purposes of monitoring and enforcing appropriate standards of conduct in the provision of legal services and protecting consumers more generally.

A cautionary tale

We received a number of phone calls from clients in personal injury matters complaining that a young lawyer in a several partner firm wasn't returning their phone calls or keeping them up to date about the progress of their matters. We spoke to the lawyer who told us he was thrown in the deep end when he started with the firm and had too many files and no effective supervision. We soon discovered that he had missed statutory time frames in several of these matters and that they'd been struck out.

We spoke to his supervising partner who denied that the young lawyer had too many files and denied that he wasn't well supervised – indeed he told us proudly that the firm had an excellent supervision policy called an 'open door'. He told us when we pressed him further that not only did he have an open door but that he had asked the young man in. He said he'd asked him if he needed any help and was told 'no' – and that he now knew the young man had lied to him, and what's more the young man hadn't met his billing targets since he started with the firm and had proved to be a great disappointment. We asked him whether he had ever reviewed any of the young man's files. He said 'no'.

We made further enquiries and soon discovered that 'the girls on the front desk' at the firm had been getting calls from clients well before we started getting them. The clients complained that he wasn't returning their calls and keeping them up to date with progress in their matters. We asked them if they'd reported the calls 'up the line'. They said 'no' – that the young lawyer was under a lot of pressure and wasn't very well, that their boss was quick to anger and that they 'didn't want to get him into trouble'.

The upshot of all this: several client's rights compromised, claims against the firm's professional indemnity insurance totalling several million dollars; and a young man we believe has suffered a breakdown and is nowhere to be found. Why? It is because, ultimately, the firm had completely inadequate governance and supervisory arrangements and no effective policies and procedures for dealing with client complaints.

The system for dealing with complaints is fundamentally reactive. It does little by way of prevention. It is geared to policing minimum standards not to promoting best practice. It directs regulatory attention disproportionately to sole practitioners and small law firms and lawyers who practice in 'retail' areas of law, so much so that the conduct of lawyers who work in medium

sized and larger law firms and other, more 'commercial' areas of law is only nominally subject to regulatory scrutiny. Further it gives us little if any 'regulatory grip' on the underlying causes of complaints. The reality well known to those of us who deal with complaints about lawyers is that the conduct of lawyers is in large measure a function of the workplace cultures of the law firms where they work, and that most complaints are attributable ultimately not to the frailties of individual lawyers but to the frailties of their workplace cultures – to sloppy business practices, inadequate management systems and supervisory arrangements and distorted values. We know putting it another way that our challenge is not only to identify and deal with the 'bad eggs' in the profession but the bad nests.

This obvious fact of human behaviour has consequences, not least for lawyers' billing practices, for example. We need only to remind ourselves that law firms like other commercial enterprises exist to make a profit and that their workplace cultures invariably reflect their commercial among other motivations. Think of what can go wrong: think of the potential impacts on individual lawyers of unreasonable pressure to meet unrealistic billing targets, for example, or other like risk factors including performance against billing targets being, or even just being perceived to be the 'all important' performance measure for promotion and remuneration purposes.

Thus we have long argued 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 policing and punishing; that engage all lawyers not merely a sub-set of lawyers and that put the spotlight not only on lawyers but their law firms and workplace culture. The regulatory regime that applies to incorporated legal practice ticks all the boxes and should be extended to all law firms, whatever their business structure.

It goes without saying that we should exercise our power to conduct compliance audits responsibly and reasonably, just as we should exercise our other powers of investigation responsibly and reasonably, and in ways that are accountable, consistent, proportionate and targeted to risk. And similarly our power to give management systems directions: we should exercise that power only when it is reasonable to do, and we can demonstrate that it is reasonable to do so. We should never as regulators exercise any of our powers in ways that are unduly intrusive or that impose unjustifiable compliance costs or needless regulatory burden.

COMMENCING DISCIPLINARY AND OTHER ENFORCEMENT ACTION

The LPA gives the Commissioner sole authority to decide what action, if any, to take on a conduct complaint or own motion investigation after the matter has been investigated and wide discretion in the exercise of that authority. It authorises the Commissioner to dismiss or take no further action on a complaint or own motion investigation 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', or alternatively to make a discipline application to a disciplinary body 'as the Commissioner considers appropriate.' We have published *Discipline Application Guidelines* on the *Policies* page of our website which describe the factors we take into account in exercising those discretions.

Similarly the Commissioner is the sole prosecuting authority under the LPA. We prosecute discipline applications in the QCAT in relation to more serious matters and in the Legal Practice Committee (LPC) in relation to less serious matters. We are also responsible for prosecuting

offences under the LPA (including for example the offence of engaging in legal practice when not entitled) and certain offences under PIPA (including for example touting at the scene of an accident).

We are not confined to a prosecutorial role. The LPA authorises the Commissioner to apply to the Supreme Court to grant an injunction restraining a person from contravening the LPA, or aiding, abetting, inducing or attempting to induce a person to contravene the LPA. Further, the Commissioner is free to initiate civil litigation in the public interest including for example by applying to the Supreme Court for a declaration which clarifies the proper meaning of a term or terms in the LPA.

Table 5: Prosecution matters commenced since 2004-05

	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
On hand at 1 July	3	24	42	34	44	31	28	25
Opened	26	43	33	29	21	20	21	32
Files opened but prosecution not commenced at 30 June	9	15	10	12	6	8	7	13
Discipline applications - LPC	6	13	11	8	6	4	3	0
Discipline applications – QCAT #	11	24	25	20	16	10	14	22
Summons - Magistrates Court *	0	0	0	0	2 *	3 *	2 *	1 *
Closed (Table 6)	5	25	41	19	35	23	24	16
On hand at 30 June	24	42	34	44	31	28	25	41

The figures for 2004-05 through 2008-09 include discipline applications made to the Legal Practice Tribunal.

* 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).

Table 6: Prosecution matters heard and decided since 2004-05

	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
Solicitors Complaints Tribunal (ceased in 2004)	3 #	n/a	n/a	n/a	n/a	n/a	n/a	n/a
LPC	-	10	8	5	6	2	5	0
QCAT *	2	9	18	5	21	11	9	11
Court of Appeal	-	2	-	-	3	-	1	1
Magistrates (or other) court	-	-	-	-	-	1	2	0
Total heard and decided	**5**	**21**	**26**	**10**	**30**	**14**	**17**	**12**
plus withdrawn / discontinued	-	4	15	9	5	9	7	4
Prosecution files closed	**5**	**25**	**41**	**19**	**35**	**23**	**24**	**16**

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

* The figures for 2004-05 through 2008-09 include discipline applications decided by the Legal Practice Tribunal.

We assess our performance of our prosecutorial and other enforcement functions having regard primarily to the findings of the disciplinary bodies and the courts and in particular to the number and proportion of matters in which we succeed. We have once again done well by this measure.

Some key facts about disciplinary and other enforcement action

We note that**:**

- we opened 32 new prosecution files during the year, a significant increase on the number opened in recent years, and closed 16 (4 of which were either withdrawn or discontinued), significantly fewer than in recent years - (see Tables 5 and 6). The poor clearance ratio in large measure reflects a growing backlog of disciplinary matters at QCAT (see below).
- the Court of Appeal heard and decided 1 appeal from a QCAT decision of first instance and QCAT heard and finally decided 11 discipline applications. The respondents in those 12 matters comprised 11 solicitors and 1 barrister, all of whom were found guilty of one or more charges of unsatisfactory professional conduct or professional misconduct.
- we filed 37 charges against those 12 respondents. We proved 34 of those charges including 22 charges of professional misconduct and 12 of unsatisfactory professional conduct. We withdrew 1 charge prior to hearing and 2 charges were dismissed.
- the 22 findings of professional misconduct involve conduct including dishonesty; making misleading representations to opposing solicitors; falsely witnessing documents; repeated failure to lodge tax returns; gross delay in progressing legal work on behalf of clients; acting for private clients when entitled to practise only as in-house counsel; and, regrettably, many instances of failure to respond to written notices we issued during the course of our investigations to produce documents and information relevant to the investigation.
- the 12 findings of unsatisfactory professional conduct involved conduct including lack of competence and diligence, and in particular and regrettably, in several instances by taking instructions to prepare enduring powers of attorney in circumstances in which a reasonably competent and diligent practitioner would have anticipated the likelihood that the donor lacked capacity; failure to deliver a client file to a client on request; failure to pay a medical practitioner who had been engaged to provide medical reports on behalf of a client; acting for more than one party in connection with a loan; and taking money from a trust account without authorisation.
- 1 solicitor who had been convicted and jailed for fraud and forgery offences was struck off; 7 solicitors were fined a total of $27,500; 8 solicitors and the barrister were reprimanded; 3 solicitors were ordered to undertake further training or to practice only under supervision; and 3 solicitors were ordered to pay compensation to former clients totalling $90,000 (1 of whom consented to pay compensation totalling $75,000).
- we initiated 1 civil litigation matter during the year – an application to the Supreme Court seeking an injunction to restrain Douglas Macleod Beames from continuing to hold himself out as entitled to engage in legal practice when he does not hold a practising certificate. We had 2 matters on hand at year's end (see Table7) - that matter and a joint application with the QLS to the Court of Appeal opposing an application for re-admission by a solicitor (Wendy Ann Wright) who was struck off by the then Solicitors Complaints Tribunal in 1999. This has proved to be a very protracted matter.

The LPA requires the Commissioner to keep a discipline register on the LSC's website of disciplinary action taken under the LPA. It requires that the register includes the names of the practitioners against whom the disciplinary action was taken, the names of their law firms and the particulars of the disciplinary action. It defines 'disciplinary action' to mean findings of a disciplinary body or a court of professional misconduct. We keep the register as required, keep it up to date, and in every case include a link to the disciplinary body's or the court's written judgment and reasons.

Table 7: Civil litigation matters since 2008-09

Year	On hand 1 July	Opened	Closed	On hand 30 June
2008-09	1	1	0	2
2009-10	2	0	0	2
2010-11	2	3	4	1
2011-12	1	1	0	2

We made it our practice from our inception in 2004 to include findings of unsatisfactory professional conduct on the discipline register also. We ceased to do so from October 2009 on the recommendation of the Ombudsman and reluctantly removed from the register any information that identified practitioners subject to findings of unsatisfactory professional conduct but not of professional misconduct. This is a pity, not least because some of the most instructive disciplinary decisions in recent years have made findings of unsatisfactory professional conduct but not professional misconduct, including as noted above a number of significant decisions about a lawyer's professional obligations in relation to preparing enduring powers of attorney for older people who may have diminished capacity.

We have filled the gap as best we can by creating a page on our website, entirely separate to the discipline register, which includes links to decisions of the disciplinary bodies and the courts which make findings of unsatisfactory professional conduct but not of professional misconduct. The page is headed *Disciplinary and other relevant regulatory decisions* and also includes links to other selected decisions relevant to the regulation of the provision of legal services, including for example decisions in civil litigation matters.

Last but not least we note that there is a growing backlog of disciplinary matters in QCAT. We had 25 prosecution matters on-hand at 30 June 2011 including 17 discipline applications on-hand in QCAT and 3 more being prepared for filing. We had 41 prosecution matters on hand at 30 June 2012 including 26 discipline applications on-hand in QCAT and 2 more being prepared for filing. This worrying trend has continued thus far into 2012-13.

ENGAGING WITH STAKEHOLDERS

The LPA requires us not only to monitor and enforce but to promote appropriate standards of conduct in the provision of legal services. We make it a priority accordingly to engage with the profession, consumers and stakeholders more generally to better inform our understanding and perspective of the job in front of us; to share what we learn as we go about our work; and to do whatever we reasonably can to prevent complaints and non-compliance.

We gauge our performance having regard to the nature and extent of our engagement with the profession, consumers and stakeholders; the number and range of publications, education, project and research activities and events we produce or undertake; the number and nature of the partnerships we have entered into with other legal services stakeholders in undertaking those activities; and of course 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 completed 36 speaking engagements during the year – 10 of them at university law schools, including 7 presentations to final year students; at all 7 practice management courses conducted by the QLS for lawyers applying to be granted principal level practising certificates; and the remainder at various conferences and continuing legal education events conducted by the professional bodies, private legal education providers and by law firms in-house.
- we conducted the eighth symposium in the *Lawyers, Clients and the Business of Law* series of symposia we have co-hosted with Griffith Law School since 2005-06, but on this occasion co-hosted also by the University of Southern Queensland Law School and the Downs and South-West Queensland District Law Association. The symposium went under the heading *Counting the legal costs: principles and practice in billing* and engaged participants in discussing some common but problematic billing practices and served also as a forum for consultation on our draft Regulatory Guide on *Billing Practices: Key Principles* (see below). We have published a report of the symposium (and of all previous symposia) on the *Projects* page of our website.

Some unsolicited feedback about the Counting the Legal Costs Symposium

- *'…there was a diversity of opinion about what charges were 'reasonable and proportionate' in different circumstances, It strikes me that a practitioner's ethics depend to a significant extent on the culture they have 'grown up with' or are immersed in. As with ethics, a little exposure to different view points goes a long way, which is why sessions like yesterday's are invaluable to practitioners'* - an excerpt from an email forwarded by a participant the following day.

- we developed the capacity to publish e-newsletters to all or selected sub-sets of the 8,300 plus solicitors and 1,000 plus barristers on our database and also members of the judiciary, government legal officers, legal academics and other legal services stakeholders. We circulated 6 e-newsletters during the year, the first of them in October 2011 and the sixth in June 2012. We have used them to seek feedback from every practising solicitor and barrister on the consultation drafts of 3 proposed new regulatory guides, and subsequently to publish 2 finalised guides (see below); to survey sole practitioners and law firm principals about the role paralegals play in their law practices; to invite individual solicitors but more particularly their law firms as a whole to complete one or other of two Ethics Checks (see below); and to canvass topical issues including the proposed national legal profession reforms. We have published all 6 e-newsletters on the *Publications* page of our website.

- we renewed our commitment to publish regulatory guides which set out the factors we will take into account in exercising our regulatory responsibilities in grey areas where it is uncertain how a lawyer's professional obligations apply and there is little if any clear authority one way or the other. We believe that this is no more than lawyers and users of legal services alike are entitled to expect of a transparent and accountable regulator.

  We have published occasional guides in the past – about charging outlays and disbursements and (as mentioned earlier in the report) the restrictions on the advertising of personal injury services – but we have made it a priority now and an integral part of what we do. We have started with a series of guides about commonplace billing practices we see in complaints and that causes us concern.

Thus we published consultation drafts and subsequently finalised guides about the provision of itemised bills and the application of the Australian Consumer Law to lawyers, and the consultation draft of a proposed guide with the self-explanatory title *Billing Practices: Key Principles*. We have various other consultation drafts under consideration including guides addressing fixed fee cost agreements and charging-out 'paraprofessionals' (see below).

We have published an overview of what we are trying to achieve and the methodology we will use to develop the guides on the *Regulatory guides* page of our website, and similarly the finalised guides. We have published the consultation drafts and the submissions we received in response on the *Consultations* page. We hope and intend the guides will be persuasive but they will not be binding, nor could they be. We are responsible for promoting, monitoring and enforcing appropriate standards of conduct in the provision of legal services, not for setting them. That said, we hope and intend they will promote adherence to high standards of conduct and help prevent non-compliance, especially inadvertent non-compliance by that vast majority of lawyers who want to do the right thing.

Some unsolicited feedback about the Regulatory Guides

- '*I applaud the Commission's initiative in reaching out to its constituency… It is unique in my experience that a regulatory body seeks to have those it regulates understand how and why it works the way in which it does. This transparency is extremely welcome*' - an excerpt from a response to the consultation draft of our regulatory guide to itemised bills.
- Stephen Warne, Victorian barrister and author of the Australian Professional Liability Blog, lamenting that overcharging is rife in the legal profession but not widely discussed nor recognised as the greatest ethical issue facing the profession: '*there are some* [however] *causes for optimism… Most importantly, the Queensland Legal Services Commissioner has published a draft guideline on time-based costing. It provides the missing guidance that the Australian Law Reform Commission recommended be given in 1999… It is a punchy document, atypical of bureaucracies*' - an excerpt from an article under the title *On Rapacity* in the May/June 2012 edition of the Australian Lawyers Alliance journal, *Precedent.*

- we collaborated with researchers from Griffith University Law School to invite the principals of all Queensland law firms through our second e-newsletter in November 2011 to complete an on-line survey to gather information about the roles paraprofessionals play in their law firm - how they are designated (as legal secretaries, for example, or 'paralegals'); what kinds of work they perform; how they are supervised; and whether they are 'charged-out' to clients and if so the charge-out rate. We initiated the survey following concerns expressed by the Chief Justice among others that the term 'paralegal' can refer to staff as diverse as junior secretaries straight out of school and experienced law clerks of long standing, and is potentially misleading and deceptive; that '*secretaries should be a practice overhead and not a profit-centre*'; and that '*mundane work is being billed out at $300 an hour despite the worker's salaries being $20 an hour*.' We will publish the survey results in due course on the *Occasional surveys* page of our website and use them to help prepare a consultation draft of a regulatory guide addressing these issues. We note that we have a number of other projects under way with, and that we have had a long and productive partnership with Griffith Law School, including the Commissioner's continuing membership of its Visiting Committee.
- we added a Billing Practices Check for Small Law Firms to our suite of on-line Ethics Checks, to complement the Billing Practices Check for Medium-sized and Large Law Firms, and invited all Queensland law firms through our fifth e-newsletter in may 2012 to complete the relevant

survey. The Ethic Checks - there are five of them now - are ethical capacity building tools. We designed them to enable 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 organised discussion within the firm about those issues and to gauge the strengths and consistency of the firm's ethical infrastructure and identify any gaps which may need attention. The feedback we have received from lawyers including the managing partners of the participating law firms has been profoundly encouraging.

All five surveys are accessible on the *Ethics checks* page of our website, and so too both the aggregated and de-identified results for each of the participating law firms in each of the surveys and the feedback we have received from participating lawyers and law firms. We designed the surveys to serve our regulatory purposes but publishing the results serves a broader public interest also by exposing hitherto hidden aspects of law firm culture to public scrutiny. The results are a rich source of empirical data about lawyer and law firm values, attitudes and behaviours and have attracted both local and international attention. Detailed analyses of the results of three of the surveys have now been published in local and international academic journals and we have included links to those papers on our website also.

Some unsolicited feedback about the Ethics Checks

- '*We reviewed the approach of a wide range of professional regulators both domestically and internationally… Overall, the emerging picture was that regulators relied on regulating ethics through training and complaints monitoring. Very few regulatory bodies took monitoring further than that… In the context of legal professions, Australia proved a somewhat exceptional case. Here regulatory bodies have been more active… The Queensland Legal Services Commission provides access to a series of ethics checks on its website which can be used anonymously to assess supervision practices; workplace culture; complaints management systems and billing practices. It also has a link to interactive ethical case studies as well as collaborative surveys on topical issues. [It] has invited academic input to help analyse the data yielded by its website 'tools' and to begin an understanding of their efficacy*' - an excerpt from *Designing Ethics Indicators for Legal Services Provision*, September 2012, a research report commissioned by the Legal Services Board of England and Wales to identify tools which can enable regulators to better understand ethical risk; better target regulation; and better support ethical environments and cultures within legal services providers.
- notably researchers have now published three articles in respected academic journals analysing the results of our ethics checks and two of those articles have had honourable reviews in the US legal journal *Jotwell* describing them as being '*among the best works of recent scholarship in the legal profession.*' We have published the three articles and both reviews on the *Ethics checks* page of our website.

- we circulated a draft; consulted widely with stakeholders; settled the final document; issued a press release to alert the media, workplace health and safety networks, insurers and unions; and published a plain English consumer guide to *No win-no fee costs agreements* on the *Information for consumers* page of our website.
- we negotiated memoranda of understanding (MOU) with the Commissioner for Fair Trading and the Migration Agents Regulation Authority (MARA) rationalising our shared responsibilities for monitoring and enforcing the application of the Australian Consumer Law to lawyers and dealing with complaints about the conduct of lawyer migration agents respectively. We have published both MOU on the *About us* page of our website. We started discussions with Legal Aid Queensland to develop a similar MOU in relation to our mutual obligations to monitor and enforce appropriate standards of conduct by lawyers who act for legally aided clients.

- we continued to actively seek out and review the feedback we receive from enquirers, complainants and the lawyers who are respondents to those enquiries and complaints and to publish that information and analysis on the *Your feedback* page of our website. We take this feedback very seriously with an eye to learning how we can improve the ways we go about our work. Table 8 describes the complaints about us we dealt with in 2011-12.

  We receive feedback about our performance in three main ways: through the unsolicited feedback we receive unprompted from people we have dealt with, usually by mail or email; through their responses to the anonymous on-line feedback surveys we advertise prominently on our website and in the letters we send to complainants and respondents informing them of the outcome of the complaints they made to us or responded to; and through the formal processes they have available to them if they are dissatisfied to make 'complaints about us'.

Table 8: Complaints about us 2011-12

	on hand 1 July	opened	closed	on hand 30 June
Complaints about us (about our service)	0	3	3	0
Reconsiderations (of our decisions)	0	3	3	0
Applications for Judicial Review	1	1	1	1
Complaints to Ombudsman	1	10	8	3
Complaints to CMC	1	0	1	0
Privacy / RTI applications	3	10	11	2

- we began what will become a routine process of routinely interrogating our data base and otherwise monitoring trends in the enquiries and complaints we receive to identify the lawyer and law firms have been subject to multiple enquiries and complaints over previous months; forwarding them 'risk alerts' alerting them to the fact, advising them of the nature of the enquiries and complaints; and inviting them to review their management and supervisory arrangements to remedy any shortcomings and reduce their future exposure to complaints, both in their interests and their clients'. The 'risk alerts' not only give lawyers and law firms a 'heads up' but position us on an 'as required' basis to plan and implement appropriately targeted interventions including 'own motion' investigations, trust account investigations and compliance audits.
- we continued the staged process of giving law firms other than incorporated legal practices hitherto unprecedented 27/7 on-line access to this same risk data via www.lpportal.org.au, without us having to post them 'risk alerts'. We hope and intend that law firms will use the portal to review the data and to identify any patterns or trends that might warrant remedial action. We hope and intend, resources permitting, that we will be able in the medium to long term to further strengthen the portal's capabilities to give them not only access to, but the capacity to interrogate significantly more comprehensive and integrated risk data including not only the complaints and compliance audit data we already have at our disposal but the

trust account and related external intervention data kept currently by the QLS. That will of course require those functions be transferred from the QLS consistent with the arguments the Commissioner outlined in his *Commissioner's overview*, above.

We hope and intend also that we will be able to give consumers, legal academics and members of the public more generally the capacity to access and interrogate our data base, consistent with right to information and privacy principles. We hope and intend not only to 'push' more and better information out via the portal but also to 'pull' more and better information in, by enhancing its interactive capabilities to enable us to increasingly manage and process complaints and compliance audits on-line.

Some unsolicited feedback about our commitment to transparency

- '*The Legal Services Commission offered examples of good practice in other classes such as 'Our priorities' and 'Our lists'. Under 'Our priorities', the LSC included documents such as monthly performance reports in relation to complaints, compliance audits, research and community legal education activities. The LSC also published the Queensland Discipline Register in the 'Our lists' class. OIC considers these to be excellent examples of the push model and ones that could be applied generally by registration boards to professional disciplinary matters*' – an excerpt from the report of the Information Commissioner's *Review of Publication Schemes, Disclosure Logs and Information Privacy Awareness in Departments, Local Governments, Statutory Authorities and Universities*, 11 September 2012.

- we redesigned the look and feel of our website to make it easier on the eye, easier to navigate, more informative and more helpful to lawyers and users of legal services alike. The website had just shy of 150,000 'page views' in 2011-12 with big spikes in the numbers of page views following publication of our e-newsletters and is central to our efforts to connect and engage with lawyers, consumers and members of the public more generally. We hope and intend it reflects the commitment we make in our statement of purposes and values to be responsive, open and accountable. We have some way to go yet to get it to where we want it to be but we are proud of what we have achieved thus far.

Maintaining a productive and motivating work environment

Our performance of our statutory functions inevitably reflects our 'internal' performance and the strength of our workplace culture. We work hard to maintain a motivating, productive, collegiate and professional work environment, and we gauge our success by reference not only to our operational performance (as described earlier in the report) but also to the feedback our people give us, their commitment to their continuing professional development and our commitment to continually improve our management and business systems, processes and practices to better support us in what we do. It has once again been a busy and fruitful year.

We make it a priority to preserve the collegiate workplace culture we nurtured very deliberately as a smaller organisation early in the piece and have sustained ever since. The Commissioner and line managers continue to make and take accountability for the decisions that need to be made but make as many as possible of those decisions including every decision to initiate disciplinary 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 in which we are called upon so often to make judgement calls where reasonable minds can differ but even more so because it is a team-building and culture-setting opportunity also, and supports our professional development and consistency of approach. It continues to work well on all counts.

We note that in particular that:

- we revised our statement of *Our purposes and values* (which is reproduced at the very front of this report), finalised our *Business Plan 2011-13* and published both documents on the *About us* page of our website. The Business Plan is premised on two assumptions which were reasonable at the time but which as it turned out were premature.

  The first assumption was that Queensland had 'signed up' to the national legal profession reforms that were agreed in principle by all the states and territories but for Western and South Australia at the Council of Australian Governments meeting in February 2011. The new state government has since decided not to participate in the proposed national scheme but, as mentioned earlier, has left the door open to enact local legislation based on national model laws.

  The second assumption was that the QLS would cease to have any responsibility for dealing with complaints and relinquish its responsibility for conducting trust account investigation and related external interventions. The then Council agreed to those reforms in late 2011 but the newly elected Council reversed that decision in May 2012. We will continue to press the issue, however, for the reasons outlined in the *Commissioner's overview* earlier in the report, and do not accept that it has been finally decided.

  We will review and adjust the Business Plan in due course, when the dust finally settles on both issues. These matters aside, it remains an important, living document which articulates in clear operational terms how we see our role and the criteria we bring to bear to assess our performance.

- we progressively implemented the Communications Plan we developed in 2010-11 including by developing the capacity to and publishing occasional e-newsletters (as described under the previous sub-heading; consulting widely with stakeholders and in the interests of transparency and accountability publishing plain English regulatory guides which set out for the benefit of lawyers and consumers alike the factors we take into account in exercising our responsibilities in grey areas where it is unclear exactly what a lawyer's professional obligations require of them in practice (as also described under the previous sub-heading); and investigating the feasibility of digitally recording our telephone conversations with enquirers, complainants, respondents and witnesses and storing those recordings in the relevant electronic file on our database and case management system.
- we reviewed and progressively implemented our Knowledge Plan to further improve the way we update, share and apply our collective skills, knowledge and experience. We continued our systematic, rolling program of reviews of our in-house policies, procedures and guidelines (including our Investigations and Induction Manuals and Own Motion Investigations and Discipline Application policies); we continued our in-house continuing legal education program (which this year involved guest presenters conducting workshops dealing with investigation fundamentals, costs and costs assessment issues, the Australian Solicitors Conduct Rules and the departmental Code of Conduct and public sector ethics framework); we continued reviewing and updating our precedent documents, standards letters and clause bank; and we continued to monitor and ensured that our legal staff met or exceeded the continuing professional development requirements expected of lawyers in private practice.

  Importantly we underpinned the plan by regularly updating our LSC Intranet and central Knowledge file in our G-drive with links to relevant recent case law and disciplinary decisions, articles and other resource materials, and with internally generated letters, investigation reports, discipline applications and the like that our frontline staff believe have broader application as precedents and should be shared with their colleagues.
- we continued the program of rolling improvements to our database and case management system (LPCentral) to better capture and report data about the consumer redress we achieve by dealing with complaints and prosecution matters; including by reviewing and updating the closure and other codes and to include an Undertakings Register to record undertakings given to us by respondent lawyers in the course of our dealing with complaints (undertakings which often give us the confidence to dismiss a complaint that involves a minor disciplinary issue on the basis that no public interest would be served by commencing disciplinary proceedings).

Lastly but not least the Commissioner and line managers continued our practice of meeting individually with every member of staff twice a year to review both their and the LSC's performance, their professional development and how we might do things better and smarter both individually and as a team.

Appendix 1: The system for dealing with complaints

The LPA establishes the LSC to receive and deal with complaints under the LPA. It authorises us to deal with complaints about lawyers (people who are appropriately legally qualified and who have been admitted to the legal profession in accordance with the LPA), 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), 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 PIPA.

We have described the system for dealing with complaints on the LSC's website in great detail and we are happy to make that information available in hard copy on request.

The LPA 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'. The system can be summarised diagrammatically, as a flow chart (see below) and in words, as follows:

Producing information about the making of complaints

We have written a series of 'plain English' fact sheets which describe how we deal with complaints and how to make and (for lawyers) how to respond to a complaint. They include answers to 'frequently asked questions' and, for example, describe simply but in relevant detail a lawyer's obligations to disclose his or her costs and the process for challenging a lawyer's costs. The fact sheets are readily available both in hard copy and on our website. The website includes a wide range of other relevant information also, including the policies and procedures we bring to our complaint-handling work and an innovative, interactive on-line scenario which enables 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 not only by publishing information but also 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 can be downloaded from our website or alternatively can be filled out and lodged on-line. It is available in hard copy on request.

We help members of the public primarily however by means of our enquiry service – by giving information and advice to people who contact us with an enquiry, most commonly by phone but also by email, by letter and in person. The LPA requires that complaints be made in writing but many enquiries are complaints in all but name. No good purpose would be served however by requiring enquirers to put their 'complaint' in writing if it lends itself to resolution quickly and informally, typically by a few telephone calls, and we try that approach whenever it seems up to the task. People who make enquiries need to know, however, that they remain fully entitled to make a formal written complaint if their concerns can't be resolved informally.

Similarly we encourage people who have a complaint to consider discussing and attempting to resolve their concerns directly with the lawyer subject to complaint 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 LSC. Indeed we encourage people in these circumstances to make a complaint so that their concerns can be addressed.

Deciding whether to deal with (or to 'summarily dismiss') a complaint

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 the complaint. We do not deal for example with complaints we believe to be 'vexatious, misconceived, frivolous or lacking in substance', and there are other tests, too. The LPA requires that we ask a series of questions before we decide to deal with a complaint, including most relevantly the following:

- is the conduct subject to complaint conduct to which the LPA applies? If the answer is no, we can do no more than refer the complaint to the relevant investigatory body, if any. Typically, because the vast majority of complaints are complaints about lawyers, the question reduces to this: was the lawyer's conduct subject to complaint conduct 'happening in connection with the practice of law'? If the answer is no, we will 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';
- did the conduct subject to complaint happen more than three years before we received the complaint? If the answer is yes, we will 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', that the conduct 'may be professional misconduct' and that it is 'in the public interest to deal with the complaint';
- does the complaint describe a costs dispute between the complainant and a lawyer? If the answer is yes, we will deal with the complaint only if it goes beyond a dispute about the lawyer's costs and involves an issue of non-disclosure or overcharging, and hence potentially of unsatisfactory professional conduct or professional misconduct. We have no jurisdiction to deal with costs disputes per se. We refer these complainants to the appropriate court in accordance with the process established under the Uniform Civil Procedure Rules (which we describe in our fact sheet *Your Right to Challenge Legal Costs*);
- does the complaint essentially allege professional negligence? If the answer is yes, we will deal with the complaint only if the conduct in question involves an issue of unsatisfactory professional conduct and we will hesitate even then. That is because we have no powers to award compensation and, while a disciplinary body can make a compensation order to compensate complainants for pecuniary loss suffered as a consequence of conduct it has found to be unsatisfactory professional conduct, compensation orders are 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.

Assessing complaints to be consumer disputes or conduct complaints

The LPA divides complaints into two kinds and gives us very different powers and responsibilities in relation to the two kinds of complaint: consumer disputes and conduct complaints. It defines consumer disputes to be complaints which do not involve an issue of unsatisfactory professional conduct or professional misconduct, and conduct complaints to be complaints which do.

The Commissioner has to decide, applying the statutory definitions of the terms *unsatisfactory professional conduct* and *professional misconduct*, whether the conduct subject to complaint would, if 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 then:

- if the answer to both questions is no, we assess the complaint to be a consumer dispute. The LPA gives us no powers in relation to consumer disputes, merely the option to suggest to the parties that they enter into a process of mediation. We invariably do, and we take on the role ourselves, but that's the end of the matter whether the mediation resolves the dispute or otherwise;
- if the answer to either question is yes, we assess the complaint to be a conduct complaint. The LPA obliges us to investigate conduct complaints, either by conducting the investigation ourselves or by referring the complaint to the QLS or the BAQ for investigation. We refer about half the conduct complaints we receive about solicitors to the QLS for investigation, and the majority of complaints about barristers to the BAQ (but they can only recommend, not decide what further action, if any, should be taken on those complaints – see below).

These are not always easy questions to answer. Obviously we assess complaints that allege dishonesty and other significant departures from a lawyer's professional obligations to be conduct complaints, and similarly complaints that allege substantial and/or consistent incompetence or delay. The great majority of complaints however involve only one-off and minor incompetence and delay, careless but honest mistakes, poor standards of service and the like. The question is whether we should assess complaints about conduct of these kinds to be conduct complaints or consumer disputes.

The question goes to the heart of the system for dealing with complaints, and turns on the meaning of the term *unsatisfactory professional conduct*. We interpret and apply the term broadly. We assess complaints which involve careless but honest mistakes and poor standards of service and the like to be conduct complaints whenever it would be fair and reasonable in all the circumstances of the complaint for the lawyers subject to complaint to acknowledge having made an error and to apologise, for example, or to make good a mistake at no cost to the complainant or to reduce or waive their fee or to do what they reasonably can to reduce the risk they will make the same mistake again – by fixing their office systems, for example, or undertaking some further training or supervision and the like.

That is because the LPA describes the main purposes of the system for dealing with complaints to include providing a means of redress for complaints yet gives us no powers to ensure complainants get the redress that is due to them when that is a fair and reasonable outcome in all the circumstances of their complaint. The LPA makes all but wholly voluntary redress entirely contingent on a disciplinary body making a finding of unsatisfactory professional misconduct or worse, professional misconduct.

It follows in our view that we should assess any complaint which, if established, would entitle the complainant to appropriate redress or justify the lawyer taking some other remedial action to be a conduct complaint. That means that we assess the great majority of complaints to be conduct complaints and commence investigations accordingly.

Mediating consumer disputes

We repeat: the LPA gives us no powers or responsibilities 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 – beyond an option to suggest to the parties that they enter

into a process of mediation. The LPA allows us to mediate consumer disputes ourselves or to refer them to the QLS or the BAQ for mediation there. In practice, however, and by agreement with the QLS and the BAQ, we mediate consumer disputes ourselves, in-house.

Investigating conduct matters

The LPA requires us to investigate conduct complaints or to refer them to the QLS or to the BAQ for investigation. Importantly, the investigation of the complaints we refer to QLS and the BAQ remains subject to our direction and control. The QLS and the BAQ have no authority to decide what further action should be taken on those complaints, if any, 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 questions the Commissioner has to decide are whether there is a 'reasonable likelihood' of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and, if so, whether it is in the 'public interest' to initiate disciplinary proceedings. These are sometimes difficult questions, but:

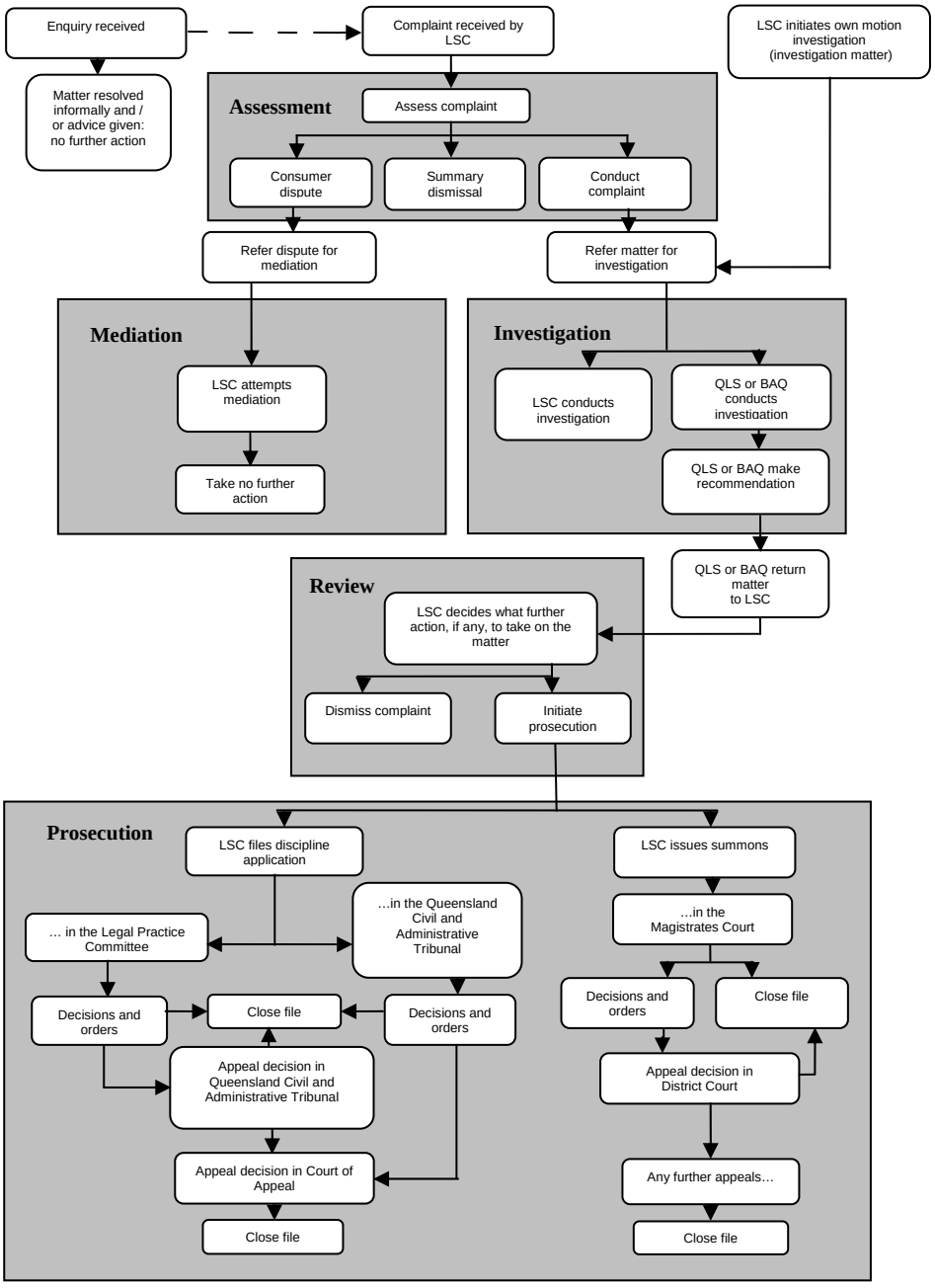
- if the answer to both questions is yes, the LPA obliges us to initiate disciplinary proceedings in either the QCAT in relation to more serious disciplinary matters or the LPC in relation to less serious disciplinary matters; and
- if the answer to either question is no, the LPA obliges us to dismiss the complaint, or in other words to take no further action in the matter.

The 'reasonable likelihood' test is an evidentiary test and clearly fundamental to any fair disciplinary regime. The 'public interest' test is less obvious but equally fundamental. That is because our broad interpretation of the term *unsatisfactory professional conduct* exposes generally competent and diligent lawyers who happened to have made a one-off and minor mistake to being held to account publicly in disciplinary proceedings much better suited for dealing with lawyers who are accused of more serious misconduct. That seems to us to be harsh and unreasonable.

The 'public interest' test gives us an out. 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 if lawyers subject to complaint have done all they reasonably can to put things right with the complainant and/or taken other appropriate remedial action to prevent making the same mistake again.

Accordingly, we invite lawyers in those circumstances to do just that, and to seek to persuade us by so doing that no public interest would be served by initiating disciplinary proceedings. This is why (as shown by the performance data in Appendix 4) we dismiss many more complaints on the basis that there is no public interest in taking the matter further than that there is no reasonable likelihood of a disciplinary body making a finding of unsatisfactory professional conduct or professional misconduct.

Complaint handling flowchart



Appendix 2: Staffing the system

The LSC consists of the Commissioner and a staff of 19.2 full-time equivalent (FTE) people. It receives and deals with complaints about lawyers and performs a range of other regulatory functions as described elsewhere in the report and is funded for the purpose by annual grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF).

The LSC refers some complaints about solicitors to the QLS for investigation (see Appendix 1) and the QLS for its part employs a further 7 x FTE people within its Professional Standards Unit to deal with those complaints.[1] The QLS is funded for these purposes by the LPITAF also, but under a Service Level Agreement (SLA) with the LSC (see Appendix 3).

The LSC likewise refers complaints about barristers to the BAQ. The BAQ employs a part-time Manager, Professional Standards to support its Professional Conduct Committee to deal with those complaints but the position is funded from revenue the BAQ collects in practising certificate fees and not by LPITAF.

Table 2.1 sets out how the LSC and the broader system established under the LPA for dealing with complaints has been staffed since its inception on 1 July 2004 through 30 June 2012. Table 2.2 sets out the organisational arrangements under which the LSC goes about its work.

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

	2004	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
LSC	8	10.7	17.5	18.2	18.2	18.2	19.2	20.2	20.2
QLS	18.95	18.95	18.95	11.72	12.72	13	11	7 [2]	7
BAQ	-	-	-	-	-	-	-	-	-
Total	**26.95**	**29.65**	**36.45**	**29.92**	**30.92**	**31.2**	**30.2**	**27.2**	**27.2**

Table 2.1 tells an interesting story. The system for dealing with complaints needed to be supplemented with additional staff in the early years to deal with the large backlog of complaints the LSC inherited in its inception but fewer staff were required once the backlog was resolved

[1] These 7 x FTE people comprise 5 investigators and their administrative assistant who are all fully occupied with complaint-handling functions and 'half' each of the Manager Professional Standards and an administrative assistant who spread their time roughly equally between complaint-handling and trust account investigation functions. The figure excludes the 2 x FTE Ethics officers and their administrative assistant who are also funded under the Service Level Agreement (SLA) (see Appendix 3). These 3 people do not perform a regulatory function but provide membership services.

[2] See note 1, above. The QLS closed its Client Relations Centre (CRC) in 2010 and established its Ethics Centre. The Service Level Agreement (SLA) funded 5 x CRC positions (4 x FTE Client Relations Officers and 1 x FTE administrative assistant). The funding for 3 of the 5 x FTE positions at the CRC was redirected to fund the Ethics Centre (the 2 x Ethics Officers and 1 x administrative assistant). Funding for 1 of the remaining 2 x FTE positions at the CRC was transferred to the LSC and the funding for other position was relinquished. Thus the downsizing at the QLS from 11 x FTE regulatory positions to 7 in 2010-11 and the upsizing at the LSC from19.2 x FTE positions to 20.2.

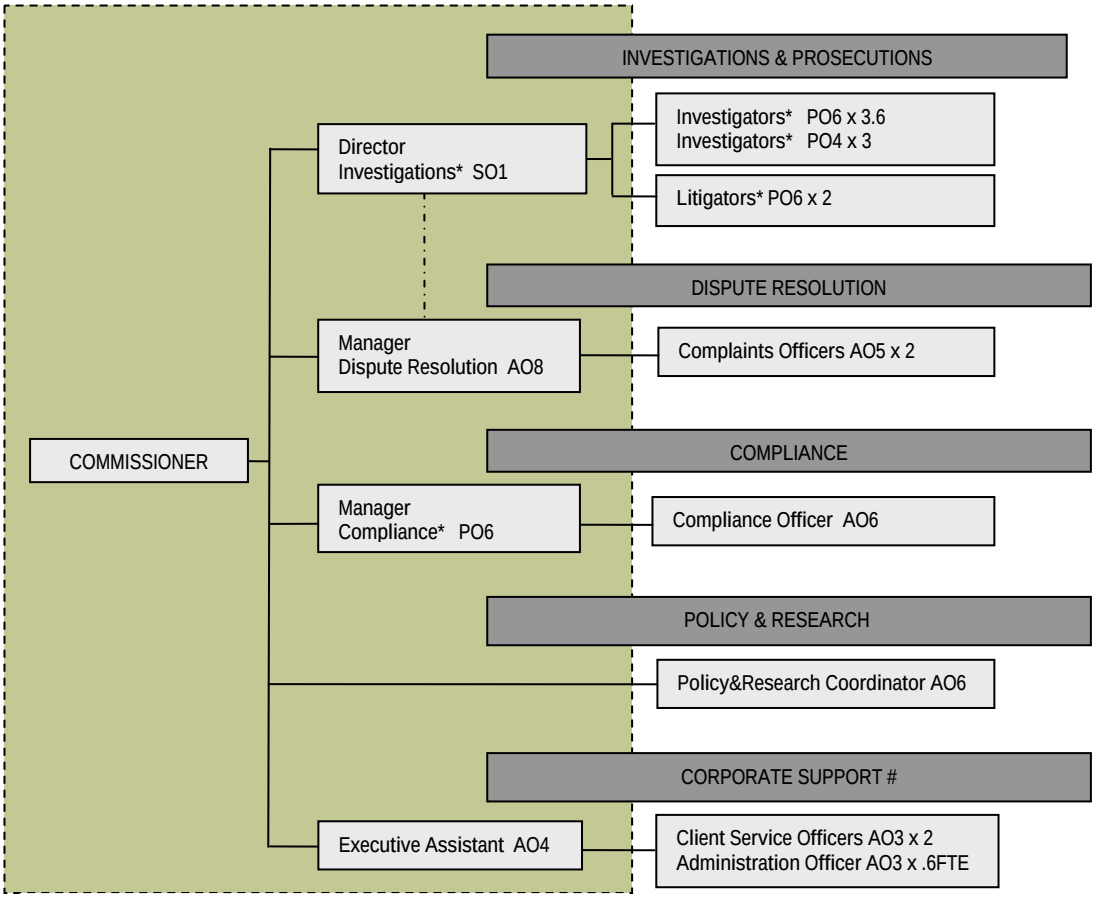
going into 2006-07. The number of staff dropped accordingly, most notably at the QLS. Some functions and hence staff numbers have since transferred from the QLS to the LSC but the total number of staff in the system as a whole has stabilised at a number all but the same as the number when the system first commenced.

This is no small achievement. It comes despite the fact that the LSC was given additional responsibilities in May 2006 under amendments to the PIPA to investigate and prosecute apparent breaches of the restrictions on advertising personal injury services and touting, and that it was given additional responsibilities again in July 2007 on commencement of the LPA to conduct compliance audits of incorporated legal practices. Not only that but the LSC has at the same time been able to add value to the system by developing a capacity that was previously lacking to undertake projects and research related to its work.

Furthermore the staffing numbers by themselves fail to tell the whole story. The QLS out-sourced much of its prosecution and enforcement work in the years immediately prior to 2004-05, and much more than the LSC has out-sourced in subsequent years and at a much greater cost - a cost equivalent to the employment costs of at least several additional FTE in-house litigators.

Thus the LSC has achieved significant efficiencies, and is doing more than was ever the case previously, and with less.

Table 2.2: Organisational chart 2011-12



Total full time equivalent staff: 20.2

* These positions require legal qualifications

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

Appendix 3: Funding the system

The LSC is funded by an annual grant from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF). Grants from LPITAF are approved by the Attorney-General on the recommendation of the Director-General of the Department of Justice and Attorney-General under sections 289-90 of the LPA.

The annual grant includes a discretionary 'draw-down' budget of $500,000 to meet brief-out costs incurred on an 'as needs' basis to obtain legal advice in relation to complaints and/or disciplinary and related matters and representing the LSC in complex matters before the disciplinary bodies and the Courts. The grant includes also an amount that transfers to the QLS under a SLA with the LSC.

The SLA funds the employment costs of the investigators and relevant support staff who deal with the complaints the LSC refers to the QLS for investigation and (for largely historical reasons) the staff of its Ethics Centre. The Ethics Centre does not however serve a regulatory function but provides membership services (see Appendix 2) and thus the true cost to LPITAF of funding the regulatory regime the LSC was established to serve is the SLA amount less the amount that funds the Ethics Centre. The figures should be adjusted accordingly.

Table 3.1: Expenditure on regulatory purposes against grants under LPITAF

	employee related expenses	all other costs	2011-12 total actual costs	2010-11 total actual costs	2012-13 approved grant
LSC	$2,128,200	$1,123,149 [3]	$3,251,349	$3,141,161	$3,748,591 [4]
QLS (total) [5]	*n/a*	*n/a*	*$1,611,917*	*$1,613,031*	*$1,632,872*
QLS (adjusted) [6]	n/a	n/a	$1,277,233	$1,287,383	$1,293,781
LPC	n/a	n/a	$34,415	$39,653	$49,231
Total	*n/a*	*n/a*	*$4,897,681*	*$4,793,845*	*$5,430,694*
Total (adjusted) [7]	n/a	n/a	$4,562,997	$4,468,197	$5,091,603

The BAQ for its part does not receive any funding from LPITAF for the purposes of dealing with the complaints that the LSC refers for investigation but rather draws on the monies paid to it by barristers in annual practising certificate fees.

[3] This figure includes brief-out costs of $273,220 (see table 3.2).

[4] This figure includes as in previous years an amount of $500,000 for brief-out costs which will be drawn down only as needed. See table 3.2 for expenditure against this budget in years past.

[5] This figure is the total amount that transfers from the LSC to the QLS under the SLA.

[6] This figure is the total amount of the SLA adjusted to exclude the employment costs of the staff of the Ethics Centre who do not perform a regulatory function but provide a membership service. These costs have been calculated to be $325,648 in 10-11; $334,684 in 11-12; and $339,091 in 12-13.

[7] This figure is the total grant adjusted to exclude the employment costs of the staff of the Ethics Centre.

The LSC receives a further annual grant from LPITAF to enable it to meet its responsibilities under the LPA to provide administrative support to the LPC. The LPC hears and decides discipline applications made by the LSC in relation to minor disciplinary matters (discipline applications which allege unsatisfactory professional conduct but not professional misconduct).

Table 3.2: Brief out costs by year

04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
u/a	$128,477	$127,701	$290,172	$455,453	$163,555	$281,330	$273,220

Importantly the amount of an approved grant that proves to be surplus to requirement (including for example the amount of the discretionary 'brief-out' budget that remains unspent) is returned to LPITAF. The amounts that the LSC recovers from respondent practitioners in costs following disciplinary or other enforcement action is similarly returned to LPITAF together with the amounts received in payment of financial penalties.

Table 3.3: Monies returned or due to return to LPITAF

	QCAT	LPC	2011-12 total	2010-11 total	2009-10 total
financial penalties ordered	$27,500 [8]	-	$27,500	$16,500	$12,000
penalty payments received	$12,000	-	$12,000	$9,500	$46,000
costs ordered, agreed or assessed	$16,000	-	$16,000	$17,000	$115,000
costs payments received	$6,750	-	$6,750	$50,500	$109,500
costs written off	-	-	-	$31,900	$5,000
costs payments pending at 30 June	$14,750	-	$14,750	$5,500	$70,900

[8] This figure includes two decisions not receipted into the financial system until August 2012.

Appendix 4: Performance data

This report provides a statistical analysis of the complaints handling and compliance audit work undertaken by the LSC during the reporting year 2011-12. Unlike the corresponding reports in previous years it does not include analyses which cross-reference the complaints and compliance audit data with key characteristics of the lawyers and law firms subject to complaint and audit – the gender, age, years of post-admission experience and the like of the lawyers, for example, and the size, geographic location and business structure of the law firms. We will publish those useful and important analyses on the *About us* page of our website in due course.

Definition of key terms

The LSC's database (or case management system, or CMS) distinguishes and counts various discrete matter types - Enquiries, Complaints, Compliance Audits, Prosecutions, Civil Litigation Matters, Privacy and Right to Information Applications, Complaints About Us and Grievances – some of them including discrete sub-types, as follows:

Enquiries

Enquiries are queries or enquiries in the ordinary sense of the word. They are made by telephone in the main but sometimes in writing, by email or in person. They include:

- queries by legal consumers, other members of the public and sometimes legal practitioners about how to make a complaint about, 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.
- informal complaints are concerns or informal 'complaints' made by users of legal services, 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 LSC may have jurisdiction. They are informal 'complaints' that are made by telephone or in person but not in writing (as the LPA requires of a formal complaint) and that the 'complainant' requests or agrees be dealt with informally, at least in the first instance (on the understanding that he or she remains entitled to make a formal written complaint if his or her concerns can't be resolved informally). Informal complaints can 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 enquiries are enquiries by solicitors or barristers of their professional bodies – the QLS or BAQ respectively - about their ethical obligations as legal practitioners.

Complaints

Complaints comprise formal written complaints that are made pursuant to Chapter 4 of the LPA. Complaints specifically include investigation matters (or 'own motion' investigations) commenced pursuant to section 451(1)(c) of the LPA.

The LPA requires complaints to be made in writing and made 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** comprise complaints that the LSC assesses to be 'out of time' or 'out of jurisdiction' or that it otherwise summarily dismisses pursuant to section 448 of the LPA;

- **consumer disputes** comprise complaints that the LSC assesses to describe disputes between consumers and legal practitioners and/or law practice employees but not to involve an issue of unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or misconduct or the part of a law practice employee. The LPA 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** comprise conduct complaints, ILP conduct complaints, investigation matters, PIPA investigation matters and ILP investigation matters, as follows:
    - **conduct complaints** are complaints (whether or not they also describe a consumer dispute) that the LSC assesses to involve an issue of 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 other unlawful conduct that constitutes an offence under the LPA (other than an offence in relation to ILPs);
    - **ILP conduct complaints** are complaints about the conduct of legal practitioner directors of ILPs (in their capacity as legal practitioner directors of ILPs) that the LSC assesses to involve an issue of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the LPA or other unlawful conduct by a legal practitioner director or other director, officer, employee or agent of an ILP that constitutes an offence under those or other ILP specific sections of the LPA;
    - **investigation matters** are investigations other than PIPA and ILP related investigations (see below) that the LSC commences 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 which might amount to unsatisfactory professional conduct or professional misconduct or that some other person over whom it has jurisdiction might have committed an offence under the LPA (other than an offence 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** are investigations that the LSC commences of its own motion because it suspects a legal practitioner or other person might have breached the restrictions on the advertising of personal injury services or touted for personal injury services in contravention of PIPA; and
    - **ILP investigation matters** are investigations 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 might amount to unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the LPA or that a legal practitioner director or other director, officer, employee or agent of an ILP might has committed an offence under those or other ILP specific sections of the LPA.

      Note that 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 LPA.

The LPA 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.

Compliance audits

Compliance audits comprise audits of incorporated legal practices undertaken pursuant to section 130 of the LPA. They comprise both internal and external audits, as follows:

- **self-assessment audits** are internal audits or 'management reviews' undertaken by or on behalf of legal practitioner directors of ILPs to assess their compliance with their obligation under section 117(3) of the LPA to keep and implement 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 LPA) of their intention to engage in legal practice and periodically thereafter to assess their continuing compliance;
- **web-based surveys** are periodic audits in which the LSC requires all or representative samples of the different levels and classifications of an ILP's employees to complete an on-line survey which reviews aspects of the firm's 'ethical infrastructure';
- **on-site reviews** are tailor-made but typically more comprehensive audits conducted by the LSC following a risk-assessment which assesses the ILP to be at particular risk of non-compliance with its obligations under the LPA or the Legal Profession Rules .

Prosecutions

Prosecutions comprise conduct matters (including unlawful operator and ILP or PIPA related conduct matters) that the LSC finalises by deciding to initiate proceedings in a disciplinary body or a court.

Civil litigation matters

Civil litigation matters comprise matters opened by the LSC when it becomes involved in civil proceedings, whether on the Commissioner's initiative or otherwise, e.g., when the Commissioner is the applicant or respondent to an originating application under the LPA (such as an injunction under section 703), when the Commissioner seeks a declaration as to the proper meaning of a term or terms in the LPA or when the Commissioner is responding to subpoenas or applications for third party discovery.

Privacy and Right to Information applications

Privacy and Right to Information applications comprise applications made to the LSC under the *Information Privacy Act* and the *Right to Information Act* respectively.

Complaints about us

Complaints about us comprise written complaints that are made to the LSC (and that have been unable to be resolved informally at the point of service) about its service, policies or procedures. They include:

- service complaints, or complaints about the quality of service the LSC has provided the complainant or the performance of the LSC staff, including complaints about delay and the diligence, professionalism or courtesy of the staff who interacted with the complainant;
- process complaints, or complaints about the LSC's policies, procedures or practices; and

- privacy complaints, or complaints made under the *Information Privacy Act* which allege that the LSC has contravened its obligations under that Act to respect the complainants' personal information.

Grievances

Grievances comprise written complaints that are made either to the LSC or to external bodies about a decision of, or the conduct of the LSC and/or its staff. They include:

- **reconsiderations** are matters the LSC opens when the Commissioner and/or his or her delegates are asked to reconsider or review a decision made under the LPA including decisions to summarily dismiss a complaint, to dismiss a complaint after investigation or to commence disciplinary proceedings;
- **applications for Judicial Review** are matters the LSC opens when a person has filed an application with the Supreme Court seeking a judicial review of a decision of the Commissioner and/or his or her delegates pursuant to the *Judicial Review Act* ;
- **Ombudsman complaints** are matters the LSC opens when the Queensland Ombudsman has accepted a complaint under the *Ombudsman Act* about a decision or action of the Commissioner or member of staff of the LSC;
- **CMC complaints** are matters the LSC opens when the CMC has commenced an investigation under the *Crime and Misconduct Act* into the conduct of the Commissioner or a member of staff of the LSC. Note that CMC complaints are recorded manually and not on the CMS;
- **grievances – other** are matters the LSC opens when some other relevant agency (such as the Anti-Discrimination Commission) accepts a complaint and/or commences an investigation involving the conduct of the Commissioner or a member of staff of the LSC.

Reporting Framework

Enquiries

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

Civil litigation

We have decided to measure our performance in relation to this category of work similarly to compliance audits and prosecutions.

THROUGHPUT SUMMARY

Enquiries by agency and year

	11-12	10-11	07-08	08-09	07-08
client enquiries from public received during year by LSC	1,323	1,501	1,848	1,488	1,632
client enquiries from public received during year by QLS *	-	1,061	2,151	2,880	3,713
total client enquiries from public	**1,323**	**2,562**	**3,999**	**4,368**	**5,345**
ethical enquiries from practitioners during year by QLS	2,848	2,992	3,075	2,737	2,646

The QLS ceased this function in March 2011

Complaints/investigation matters

Complaints/investigation matters	11-12	10-11	09-10	08-09
matters on hand at 1 July	505	558	458	449
plus matters opened during the year	826	1,141	1,359	1,145
includes complaints received from public	736	1,041	1,185	1,067
includes investigation matters opened (PIPA)	5	23	119	15
includes investigation matters opened (all other)	85	77	55	63
less summary dismissals	250	507	500	443
less consumer disputes closed	49	51	71	88
less conduct matters closed	557	636	688	605
includes complaints received from public	492	539	528	509
includes Investigation matters (PIPA)	10	30	111	7
includes Investigation matters (all other)	55	67	49	89
total complaints/investigation matters closed	**856**	**1,194**	**1,259**	**1,136**
complaints/investigation matters on hand at 30 June	**475**	**505**	**558**	**458**

Online complaints and enquiries

	11-12	Avg/ mth	10-11	Avg/ mth	09-10	Avg/ mth
complaints received this year	185	15.42	260	21.67	266	22.17
enquiries received this year	266	22.17	157	13.08	99	8.25
total	**451**		**417**		**365**	

** the capture of online complaints and enquiries commenced in February 2009

Compliance audits

	11-12	10-11	09-10	08-09
matters on hand at start of year				
self assessment audits	41	38	39	54
web-based surveys	-	0	7	
on-site reviews	-	0	1	2
total	**41**	**38**	**47**	**56**
plus matters opened				
self assessment audits	116	111	104	74
web-based surveys	35	37	38	50
on-site reviews	1	2	1	-
total	**152**	**150**	**143**	**124**
less matters closed				
self assessment audits	104	108	105	90
web-based surveys	1	37	45	43
on-site reviews	-	2	2	1
total	**105**	**147**	**152**	**134**
matters on hand at end of period				
self assessment audits	53	41	38	39
web-based surveys	34	0	0	7
on-site reviews	1	0	0	1
total	**88**	**41**	**38**	**47**

Prosecutions

	11-12	10-11	09-10	08-09	07-08
on hand at start of year	25	28	31	44	34
opened during year	32	21	20	21	29
closed during year	16	24	23	34	19
on hand at end of year	41	25	28	31	44

Civil Litigation

	11-12	10-11	09-10	08-09
on hand at start of year	1	2	2	1
opened during year	1	3	-	1
closed during year	-	4	-	-
on hand at end of year	2	1	2	2

Complaints about us

	11-12
on hand at start of year	-
opened during year	3
closed during year	3
on hand at end of year	-

Grievances - Reconsiderations

	11-12
on hand at start of year	-
opened during year	3
closed during year	3
on hand at end of year	-

Grievances – Judicial review

	11-12
on hand at start of year	1
opened during year	1
closed during year	1
on hand at end of year	1

Grievances - Ombudsman

	11-12
on hand at start of year	1
opened during year	10
closed during year	8
on hand at end of year	3

Grievances - CMC

	11-12
on hand at start of year	1
opened during year	-
closed during year	1
on hand at end of year	-

ASSESSMENT AND REFERRAL

Assessment summary

	11-12	% 11-12	% 10-11	% 09-10	% 08-09
new complaints/investigation matters allocated for assessment during the year	737				
of these:					
currently under assessment as at 30 June	54	7.33	6.44	8.04	3.38
number of new matters assessed this year	681		93.56	91.96	96.62
of these:					
number summarily dismissed	206	30.25	46.30	42.13	39.81
number assessed to be consumer disputes	51	7.49	5.03	6.11	8.74
number assessed to be conduct matters	424	62.26	48.15	51.76	51.46

Timeliness

Complaint type	Matters Completed	Time Band	Actual %	Cumulative%	Target %	Median days open (11-12)
conduct matters	269	<= 6 months	48.29	48.29	75	219
	186	7 - 18 months	33.39	81.69	100	
	102	> 18 months	18.31	100	-	
consumer disputes	42	<= 2 months	85.71	85.71	90	34
	7	2 - 5 months	14.29	100	100	
	-	> 5 months	-	100	-	
summary dismissals	195	<= 1 month	78	78	90	24
	21	1 - 2 months	8.4	86.4	100	
	34	> 2 months	13.6	100	-	

Conduct complaints referred to the professional bodies

	11-12	%	10-11	%	09-10	%
referred to QLS	181	37.87	210	38.04	236	39.07
referred to BAQ	12	2.51	8	1.45	16	2.65
total	**193**	**40.38**	**218**	**39.49**	**252**	**41.72**
retained at LSC	285	59.62	334	60.51	357	58.28

Investigation matters referred to the professional bodies

	11-12	%	10-11	%	09-10	%
referred to QLS	24	29.27	18	19.57	11	6.47
referred to BAQ	-	-	4	4.95	1	0.59
total	**24**	**29.27**	**22**	**24.52**	**22**	**7.06**
retained at LSC	58	70.73	70	76.09	158	92.94

Conduct matters returned by the professional bodies for review

	11-12	10-11	09-10	08-09
returned from QLS	213	237	244	285
returned from BAQ	14	14	15	12
total	**227**	**251**	**259**	**310**

CLOSURE SUMMARY

Enquiries

Enquiries by enquirer type

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
client/former client	873	65.99	73.54	72.04	68.29
non client	273	20.63	13.39	13.72	11.65
third party	39	2.95	5.82	5.90	8.24
beneficiary	32	2.42	2.03	-	-
solicitor	41	1.13	2.42	3.25	5.68
executor	12	0.91	1.72	-	-
all other 'enquirer types' combined	53	4.01	1.09	5.10	6.14
total	**1,323**				

Enquiries by outcome

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
provided referral for legal advice or other assist	246	18.59	13.74	14.22	16.00
negotiated remedial action	224	16.93	-	-	-
matter unable to be resolved	223	16.86	-	-	-
provided advice/help re making a complaint	191	14.44	13.58	13.64	15.77
recommended direct approach to firm about concerns	162	12.24	9.88	13.07	13.90
explained concerns are outside jurisdiction	76	5.74	2.69	-	-
provided information about the legal system	73	5.52	13.82	11.64	12.89
lost contact with complainant/inquirer	62	4.69	7.92	5.77	5.59
inquirer satisfied	7	0.53	12.88	13.44	11.86
listened to callers concerns	7	0.53	11.48	13.29	11.65
mediation attempted	5	0.38	6.40	4.32	4.03
all other 'outcomes' combined	47	3.55	7.61	10.59	6.40
total	**1,323**				

Enquiries by area of law

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
family law	296	22.37	21.12	20.06	20.19
conveyancing	167	12.62	10.23	13.04	12.11
deceased estates or trusts	161	12.17	12.30	11.97	13.48
personal injuries /workcover litigation	124	9.37	9.02	8.75	8.70
litigation	83	6.27	6.05	6.55	5.68
commercial /company law	52	3.93	4.22	4.82	5.91
property law	48	3.63	2.54	3.32	4.12
criminal law	46	3.48	4.72	4.25	4.60
all other 'areas of law' combined	346	26.15	29.82	27.24	25.18
total	**1,323**				

Enquiries by nature of the enquiry

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
costs	470	35.53	34.78	31.08	31.48
quality of service	228	17.23	14.99	17.69	20.05
ethical matters	168	12.70	10.07	10.64	9.52
communication	172	13.00	9.13	9.20	7.81
documents	66	4.99	4.10	2.47	2.88
trust funds	24	1.81	1.87	2.05	1.88
advice	5	0.38	4.10	7.70	9.36
all other 'natures of enquiry' combined	190	14.36	20.96	19.17	17.01
total	**1,323**				

Summary dismissals

Summary dismissals by area of law

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
family law	67	26.80	23.47	23.40	20.54
litigation	23	9.20	9.86	6.40	7.00
deceased estates or trusts	26	10.40	9.66	8.60	8.58
criminal law	15	6.00	6.51	8.80	8.58
conveyancing	24	9.60	6.51	7.80	6.77
commercial law	11	4.40	6.51	7.00	6.77
personal injuries /workcover litigation	17	6.80	6.11	6.00	10.16
property law	10	4.00	4.14	7.20	5.42
all other 'areas of law' combined	57	22.8	27.22	24.80	26.19
total	**250**				

Summary dismissals by nature of matter

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
ethical matters	73	29.20	32.74	32.20	30.25
quality of service	65	26.00	23.27	23.60	26.19
costs	40	16.00	15.98	17.00	16.25
communication	32	12.80	14.40	10.60	14.00
trust funds	8	3.20	2.96	3.80	2.93
compliance	7	2.80	2.76	5.60	-
documents	4	1.60	1.97	1.20	0.90
all other 'natures of matter' combined	21	8.40	5.92	3.00	9.48
total	**250**				

Consumer Disputes

Consumer disputes by complainant type

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
client/former client	42	85.71	86.27	91.55	82.95
third party	3	6.12	-	1.41	1.14
non client	2	4.08	1.96	4.23	3.41
solicitor	1	2.04	1.96	1.41	11.36
solicitor for client	-	-	7.84	1.41	-
all other 'complainant types' combined	1	2.04	1.96	-	1.14
total	**49**				

Consumer disputes by respondent type

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
solicitor	48	97.96	94.12	97.18	97.73
barrister	-	-	5.88		1.13
law practice employee	1	2.04	-	2.82	1.13
other	-	-	-	-	-
total	**49**				

Consumer disputes by outcome

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
negotiated remedial action	22	44.90	31.37	38.03	26.14
matter unable to be resolved	21	42.86	39.22	35.21	38.64
complaint unfounded	4	8.16	23.53	16.90	26.14
withdrawn	1	2.04	3.92	1.41	2.27
recommended direct approach to firm about concerns	-	-	1.96	4.23	5.68
outside of jurisdiction	-	-	-	1.41	1.14
all other 'outcomes' combined	1	2.04	-	2.82	-
total	**49**				

Consumer disputes by area of law

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
conveyancing	11	22.45	33.33	29.58	17.05
family law	11	22.45	11.76	15.49	22.73
deceased estates or trusts	9	18.37	3.92	8.45	10.23
criminal law	3	6.12	3.92	2.82	4.55
commercial /company law	2	4.08	11.76	5.63	3.41
leases /mortgages	2	4.08	1.96	1.41	3.41
litigation	1	2.04	9.80	2.82	3.41
property law	1	2.04	5.88	7.04	7.95
personal injuries /workcover litigation	-	-	5.88	9.86	10.23
all other 'areas of law' combined	9	18.37	11.76	16.90	17.05
total	**49**				

Consumer disputes by nature of matter

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
costs	21	42.86	41.18	45.07	27.27
quality of service	13	26.53	35.29	32.39	30.68
communication	7	14.29	5.88	9.86	14.77
ethical matters	6	12.24	9.80	-	15.91
documents	1	2.04	5.88	5.63	3.41
all other 'natures of matter' combined	1	2.04	1.96	7.04	7.95
total	**49**				

Conduct complaints

Conduct complaints by complainant type

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
client/former client	333	67.68	71.99	71.67	63.81
non client	65	13.21	12.24	9.81	14.98
solicitor	44	8.94	7.05	9.63	10.12
solicitor for client	22	4.47	4.08	3.89	5.64
third party	8	1.63	1.67	2.22	2.92
beneficiary	8	1.63	0.56	-	-
barrister	4	0.81	0.56	1.11	0.78
government	2	0.41	0.93	0.19	0.19
QLS	1	0.20	0.37	0.37	0.58
all other 'complainant types' combined	5	1.02	0.56	1.12	0.97
total	**492**				

Conduct complaints by respondent type

	11-12	% of total 11-12
solicitor	440	89.43
barrister	19	3.86
unlawful operator	12	2.44
other	9	1.83
law practice employee	7	1.42
corporation	3	0.61
legal practitioner	2	0.41
total	**492**	

Conduct complaints by outcome

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
no reasonable likelihood	304	61.79	62.71	62.59	65.37
no public interest	132	26.83	23.75	24.26	18.29
referred to tribunal	29	5.89	3.71	3.15	4.47
withdrawn	8	1.63	5.75	4.63	5.64
referred for civil litigation	8	1.63	1.86	-	-
referred to other investigative process	5	1.02	-	2.78	2.33
referred to Magistrates Court	2	0.41	1.30	-	-
referred for criminal litigation	2	0.41	-	-	-
referred to LPC	-	-	0.19	0.74	0.58
referred to external agency	-	-	-	0.74	0.78
closed – pending criminal proceedings	-	-	-	-	1.17
all other 'outcomes' combined	2	0.41	0.74	1.11	1.36
total	**492**				

Conduct complaints by area of law

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
family law	103	20.93	20.41	19.07	19.65
deceased estates or trusts	52	10.57	6.86	5.56	6.81
personal injuries /workcover litigation	49	9.96	7.79	10.19	10.70
litigation	48	9.76	11.32	7.41	8.95
criminal law	43	8.74	5.19	7.22	7.98
conveyancing	41	8.33	9.65	13.52	12.84
commercial /company law	23	4.67	5.75	7.04	4.67
property law	17	3.46	6.12	8.33	6.23
leases /mortgages	10	2.03	2.04	2.41	2.33
conduct not in the practice of law	9	1.83	1.67	-	-
building /construction law	9	1.83	1.48	3.15	1.56
industrial law	6	1.22	0.74	0.19	0.97
administrative law	5	1.02	1.48	0.93	2.33
bankruptcy and insolvency	4	0.81	1.11	1.48	0.78
trust account breaches	3	0.61	1.67	-	-
all other 'areas of law' combined	70	14.23	16.70	13.52	14.20
Total	**492**	20.93			

Conduct complaints by nature of matter

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
quality of service	134	27.24	28.20	26.85	29.18
ethical matters	122	24.80	25.42	22.04	30.16
costs	106	21.54	20.04	18.52	15.18
communication	41	8.33	9.09	10.93	10.51
compliance	38	7.72	8.91	7.41	5.64
trust funds	29	5.89	3.34	5.00	4.67
documents	7	1.42	1.30	2.04	1.17
personal conduct	6	1.22	1.48	2.59	1.36
PIPA	2	0.41	1.30	2.59	0.78
all other 'natures of matter' combined	7	1.42	0.93	2.04	1.36
total	**492**				

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

	11-12	%	10-11	%	09-10	%	08-09	%
returned from QLS	29	13.18	35	14.70	25	9.54	30	10.52
returned from BAQ	-	-	4	28.57	2	16.67	5	41.67
total	**29**		**39**		**27**		**35**	

Investigation matters

PIPA investigation matters by respondent type

	11-12	% of total 11-12
solicitor	10	100
total	**10**	

PIPA investigation matters by outcome

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
no public interest	10	100	76.67	62.16	71.43
no reasonable likelihood	-	-	20.00	19.82	28.57
withdrawn	-	-	3.33	18.02	-
referred to tribunal	-	-	-	-	-
total	**10**				

Non-PIPA investigation matters by outcome

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
no public interest	22	40.00	50.75	37.84	47.62
no reasonable likelihood	16	29.09	35.82	37.84	28.57
referred to tribunal	7	12.73	8.96	16.21	10.71
referred for criminal litigation	7	12.73	-	-	-
referred to other investigative process	2	3.64	-	-	4.76
opened in error	1	1.82	-	-	7.14
withdrawn	-	-	1.49	2.70	1.19
referred to Magistrates Court	-	-	2.99	-	-
referred to LPC	-	-	-	2.70	-
all other 'outcomes' combined	-	-	-	2.70	7.14
total	**55**				

Non-PIPA investigation matters by area of law

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
trust account breaches	16	29.09	35.82	35.14	26.19
conduct not in the practice of law	8	14.55	1.49	-	3.57
conveyancing	4	7.27	4.48	5.41	11.90
criminal law	3	5.45	8.96	-	10.71
deceased estates or trusts	3	5.45	4.48	5.41	4.76
litigation	2	3.64	2.99	2.70	9.52
family law	2	3.64	2.99	-	4.76
personal injuries /workcover litigation	1	1.82	4.48	5.41	5.95
administrative law	-	-	-	2.70	1.19
commercial /company law	-	-	2.99	2.70	2.38
all other 'areas of law' combined	16	29.09	31.34	40.54	19.05
total	**55**				

Non-PIPA investigation matters by nature of matter

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
trust funds	15	27.27	28.36	16.22	17.86
ethical matters	11	20.00	17.91	13.51	26.19
compliance	8	14.55	20.90	32.43	10.71
costs	7	12.73	19.40	13.51	21.43
personal conduct	7	12.73	4.48	8.11	10.71
quality of service	5	9.09	4.48	2.70	7.14
communication	1	1.82	2.99	-	1.19
all other 'natures of matter' combined	1	1.82	1.49	13.51	4.76
total	**55**				

Prosecution Matters

Prosecutions by respondent type (excluding matters withdrawn/discontinued)

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09	% of total 07-08
solicitor	11	91.66	70.59	78.57	80.00	100.00
barrister	1	8.33	17.65	14.29	20.00	-
all other respondent types	0	-	11.76	7.14	20.00	-
total	**12**					

Prosecutions – heard and decided

	11-12	10-11	09-10	08-09	07-08	06-07
by Tribunal	11	9	11	21	5	18
by the Committee	-	5	2	6	6	8
by the Magistrates Court	-	2	1	-	-	-
by the Court of Appeal	1	1	-	3	-	-
by High Court	-	-	-	-	-	-
withdrawn/discontinued/other	4	7	9	5	8	15
total	**16**	**24**	**23**	**35**	**19**	**41**

Prosecutions by charge outcome

	2011-12	2010-11
professional misconduct	22	21
unsatisfactory professional conduct	12	15
dismissed	2	-
withdrawn prior to hearing	1	13
total	**37**	**49**

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

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
litigation	2	16.67	11.76	7.14	10.00
conduct not in the practice of law	2	16.67	-		6.67
family law	1	4.33	11.76	21.43	10.00
property law	1	4.33	5.88		6.67
trust account breaches	1	4.33	-		3.33
personal injuries /workcover litigation	1	4.33	5.88	14.29	3.33
commercial /company law	1	4.33	5.88		3.33
criminal law	-	-	5.88		20.00
deceased estates or trusts	-	-	-	7.14	16.67
leases/mortgages	-	-	-		6.67
conveyancing	-	-	17.65	21.43	10.00
all other 'areas of law' combined	3	25.00	35.29	28.57	3.33
total	**12**				

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

	11-12	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
ethical matters	4	33.33	41.18	42.86	46.67
personal conduct	2	16.67	5.88	14.29	13.33
quality of service	2	16.67	5.88	7.14	20.00
compliance	1	4.33	23.53	21.43	3.33
communication	1	4.33	5.88	14.29	3.33
trust funds	-	-	-	-	3.33
costs	-	-	-	-	6.67
all other 'natures of matter' combined	2	16.67	17.65	-	3.33
total	**12**				

Consumer Redress

Enquiries

	11-12	$ 11-12	10-11	$ 10-11
apology	10	-	1	-
financial redress/compensation	97	135,241	19	24,471
redress - improved communications	75	-	29	-
redress - other	51	-	20	-
management system improvements	4	-	1	-
total	**237**	**135,241**	**70**	**24,471**

Consumer disputes

	11-12	$ 11-12	10-11	$ 10-11
apology	5	-	3	-
financial redress/compensation	9	8,027	9	5,693
redress - improved communications	5	-	-	-
redress - other	5	-	4	-
management system improvements	-	-	-	-
total	**24**	**8,027**	**16**	**5,693**

Conduct matters

	11-12	$ 11-12	10-11	$ 10-11
apology	38		16	-
financial redress/compensation	54	426,127	33	177,854
redress - improved communications	9		3	-
redress - other	24		10	-
management system improvements	35		31	-
training/mentoring/ supervision	8		5	-
made advert PIPA compliant	12		27	-
total	**180**	**426,127**	**125**	**177,854**

Disciplinary orders

	11-12	$ 11-12	10-11	$ 10-11
employee not to be employed	-	-	-	-
fined (disciplinary body – USP / PMC)	7	27,500	5	15,510
fined (Magistrates Court – LPA offence)	-	-	2	5,750
ordered to apologise	-	-	1	-
ordered to pay compensation	3	90,000	6	60,207
ordered to make other redress	-	-	-	-
ordered to undertake training or be supervised	3	-	-	-
reprimanded	9	-	10	-
struck off	1	-	2	-
suspended	-	-	-	-
total	**23**	**117,500**	**26**	**81,467**

Complaint Avoidance

Avoidability of complaints summary

The following table records for every consumer dispute and conduct matter that the LSC 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. The table does not count summary dismissals.

Of the number of complaint/investigation matters closed since 1 July, excluding summary dismissals:

	11-12	%	10-11	%	09-10	%
number assessed to be unavoidable	183	30.2	221	32.22	214	28.27
number assessed to be avoidable	423	69.8	465	67.78	543	71.73
(Total)	**606**		**686**		**757**	

Unavoidable complaints summary

The following table records for every consumer dispute and conduct matter that the LSC 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:

	% 11-12	% 10-11	% 09-10
a) the complainant had ulterior motives	10.7	9.42	10.86
b) the complainant wouldn't take advice	2.67	4.48	3.17
c) the complainant had unrealistic expectations and/or made unreasonable demands	26.20	22.42	25.79
d) the complainant misunderstood the obligations of practitioners acting for the other side	12.83	7.62	12.22
e) the 'problem' is inherent in the adversarial system of justice	4.81	7.62	6.33
f) the complaint was baseless and could not have been avoided (eg: by better communication)	9.63	14.35	22.17
g) of some reason other than the above	33.16	34.08	19.46

Avoidable complaints summary

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

Category	% 11-12	% 10-11	% 09-10	% 08-09
communication	27.05	23.09	24.04	25.74
costs	26.61	22.06	15.26	18.66
work practices	24.39	36.29	44.74	28.88
trust accounts	7.10	2.68	4.74	10.41
timeliness	5.32	7.01	4.91	6.09
conflict of interest	3.33	2.47	2.98	4.13
supervision	2.00	2.06	1.40	2.16
liens and transfers	2.00	1.65	0.88	2.75
undertakings	1.11	1.44	0.70	-
record keeping	1.11	1.24	0.35	1.18

ON HAND SUMMARY AS AT 30 JUNE

Complaints/investigation matters

	11-12	10-11
under assessment – awaiting assessment	30	47
under assessment – awaiting further information	44	28
total under assessment	**74**	**75**
consumer disputes	4	3
conduct complaints	335	378
investigation matters – PIPA	6	12
investigation matters – all other	56	37
total conduct matters	**397**	**427**
total complaints/investigation matters	**475**	**505**

Consumer disputes

	11-12	10-11
mediation in progress	3	3
under review/awaiting decision	1	0
total	**4**	**3**

Conduct matters

	11-12	10-11
investigation in progress	275	290
under review	47	57
awaiting decision	39	25
pre-prosecution preparation	17	21
on hold/abeyance	19	34
total	**397**	**427**

Compliance audits

	11-12	10-11
self assessment audits	53	41
web-based surveys	34	-
on-site reviews	1	-
total	**88**	**41**

Prosecutions

	11-12	10-11	09-10	08-09	07-08
assigned for prosecution	**11**	**4**	**4**	**5**	**8**
Tribunal					
waiting to file	2	3	3	1	4
waiting to serve	4	1	3	4	-
waiting directions hearing	7	4	3	4	12
waiting compulsory conference	5	1			
waiting hearing/decision	10	11	6	10	12
total	**28**	**20**	**15**	**19**	**28**
Committee					
waiting to file	-	-	1	-	-
waiting to serve	-	-	1	3	1
waiting directions hearing	-	-	1	1	4
waiting hearing/decision	-	-	3	1	1
total	**-**	**-**	**6**	**5**	**6**
Magistrates Court					
waiting to file	-	-	-	1	-
waiting hearing/decision	1	1	2	1	-
total	**1**	**1**	**2**	**2**	**-**
Under Appeal					
decisions under appeal	1	-	1	-	2
total	**41**	**25**	**28**	**31**	**44**

By agency

LSC	11-12	10-11
complaints under assessment	74	75
consumer disputes	4	3
conduct matters	252	280
self assessment audits	53	41
web-based surveys	34	-
on-site reviews	1	-
sub-total	418	399
QLS		
conduct matters	140	138
BAQ		
conduct matters	5	9
total	**563**	**546**


Legal
Services
Commission