Annual Report 2004–2005

Legal Services Commission

31 October 2005

The Honourable Linda Lavarch MP
Attorney-General and Minister for Justice
State Law Building
Ann Street
Brisbane Qld 4000

Dear Attorney

The *Legal Profession Act 2004* significantly reformed the regulation of the legal profession in Queensland. One of the most significant reforms was the creation of the Legal Services Commission to receive and deal with complaints about solicitors, barristers and law practice employees including, in appropriate circumstances, by initiating and prosecuting disciplinary proceedings. The relevant provisions of the Act came into effect on 1 July 2004.

I am very pleased to give you the Commission's first annual report, for the year to 30 June 2005. It describes the system established under the Act for dealing with complaints (in accordance with section 311) and includes (in accordance with section 639) a report about the discharge of the Legal Ombudsman's functions during the year to 30 June 2004.

Yours faithfully

John Briton

Legal Services Commissioner

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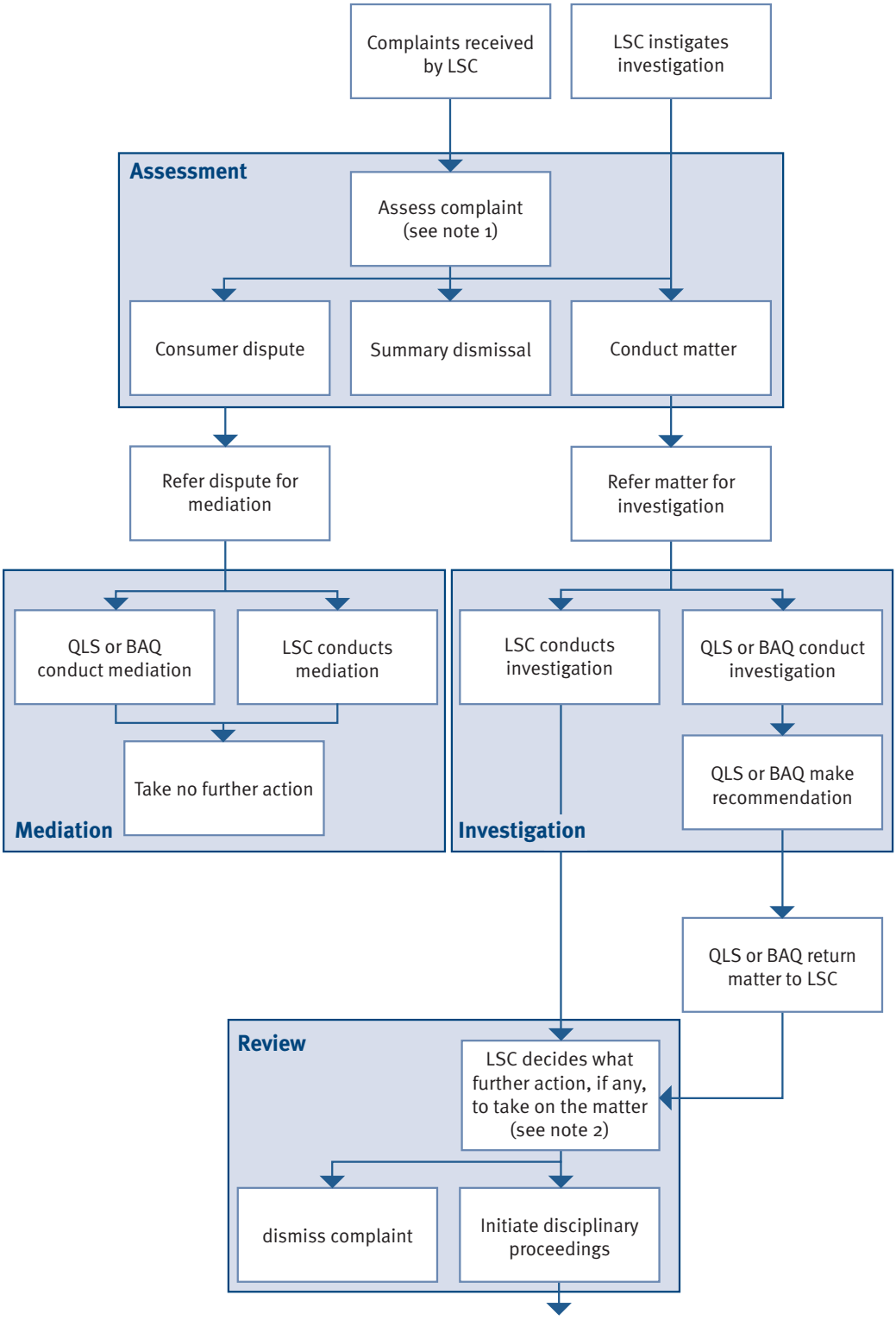

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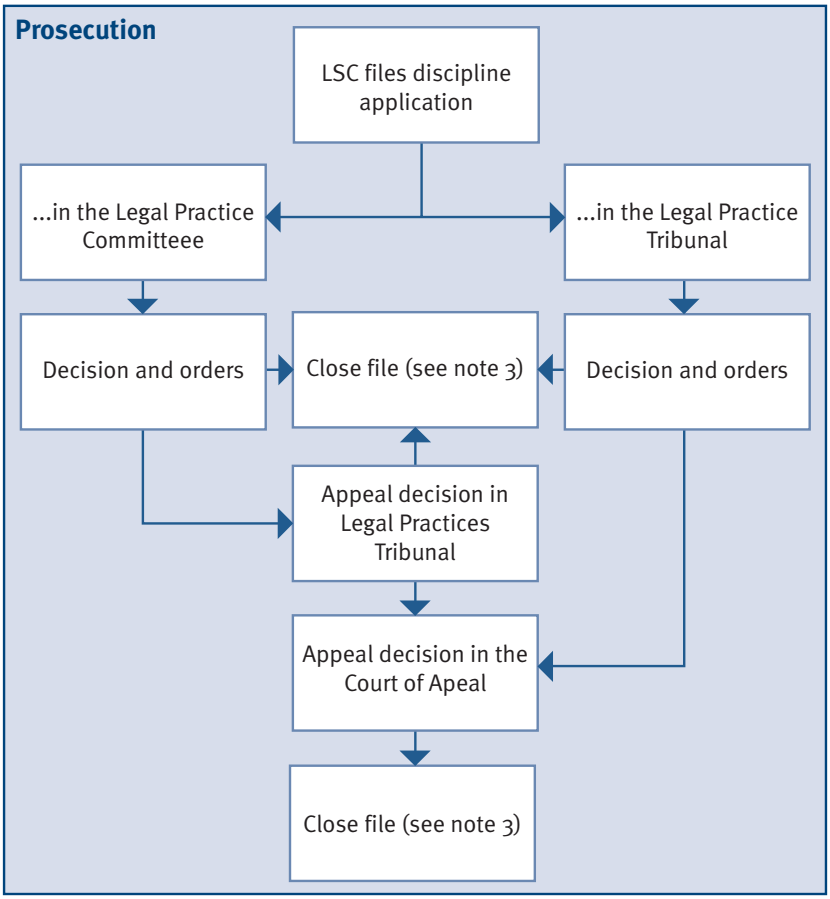


1. The Commission is the sole body authorised under the Legal Profession Act 2004 to receive complaints about the conduct of legal practitioners and law practice employees. We assess complaints against a series of criteria set out in the Act. The assessment leads to one of 3 possible outcomes:

- the complaint is classified as a conduct matter if the conduct complained of would, if established, fall short of the standard of competence and diligence a member of the public is entitled to expect of a reasonably competent Australian legal practitioner or would justify a finding that the practitioner is not a fit and proper person to engage in legal practice;
- the complaint is assessed as a consumer dispute if the conduct complained of does not meet those criteria but is nonetheless conduct to which the Act applies;
- the complaint is summarily dismissed if the conduct complained of is not conduct to which the Act applies (see sections 248-259 of the Act and the discussion later in this report at pages 21-22).

The Act gives us the option to try to mediate consumer disputes or to refer them to the Law Society or Bar Association for mediation. It requires us to investigate conduct matters or alternatively to refer them to the Law Society or Bar Association for investigation – in which case the investigation remains subject to the Commission's direction and control and the Society and the Association are obliged after the investigation to report their recommendations to the Commission.

2. The Commission is the sole body authorised to decide what action, if any, to take on a conduct matter after investigation. The Act requires us to assess whether the evidence establishes a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and whether it is in the public interest to initiate disciplinary proceedings. We initiate disciplinary proceedings if the answer to both questions is 'yes' – in the Legal Practice Tribunal in relation to more serious matters or in the Legal Practice Committee in relation to less serious matters. We dismiss complaints if the answer to either question is 'no'.

3. The Commission is obliged to keep a discipline register of all disciplinary action taken under the Act (see section 296 of the Act and the further discussion later in this report at pages 24-25).

Our strategic framework

Our mission is to promote and protect the rights of legal services consumers in their dealings with legal practitioners and law practice employees in Queensland.

We will pursue our mission by:

- establishing and delivering effective and efficient processes for resolving consumer complaints about the conduct of legal practitioners and law practice employees;
- investigating legal practitioners and law practice employees in the absence of complaint when there is reason to suspect misconduct;
- initiating discipline applications and prosecuting legal practitioners and law practice employees when there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and it is in the public interest to do so;
- collaborating with the professional bodies, law schools and other legal services stakeholders to reduce cause for consumer complaints about the conduct of legal practitioners and law practice employees; and
- creating and maintaining a productive and motivating work environment.

We will be:

- well informed and thorough;
- accessible and responsive to legal consumers and practitioners; and
- independent, fair and accountable.

Commissioner's overview

The *Legal Profession Act 2004* (the Act) requires the Legal Services Commission to produce an annual report that deals with the system established under the Act for dealing with complaints. It also requires the Commission to develop performance criteria relating to the handling of complaints and to assess the Commission's performance against those criteria in the annual report.

The development of performance criteria requires a focus on exactly what purposes the system for dealing with complaints is intended to achieve. The Act gives some guidance. It says one of its main purposes is 'to provide for the protection of consumers of legal services and the public more generally'. It says the purposes of the system for dealing with complaints are 'to provide for the discipline of the legal profession; to promote and enforce the professional standards, competence and honesty of the legal profession; and to provide a means of redress for complaints by consumers.'

This report describes how the Commission has gone about achieving those purposes. It will be helpful, however, particularly given that this is the Commission's very first annual report, to paint the bigger picture by reflecting on how I as Commissioner see the Act's purposes being achieved and the Commission's role more broadly.

The Commission's role

The Act created the Commission as part of a comprehensive package of reforms to the regulation of the legal profession in Queensland. The reforms were driven by two quite separate considerations. One was that the federal and state and territory governments had come to an agreement to modernise and 'harmonise' the regulation of the profession across the various states and territories so as to facilitate cross-border practice and the development of a national profession. That consensus resulted in April 2004 in national model laws to serve as a template for reforms at the state and territory level. The model laws provide among other things for multidisciplinary and incorporated legal practices but more relevantly in this context introduce for the first time uniform national standards in relation to admission to legal practice, rights of practice, professional conduct rules, and arrangements for dealing with complaints and discipline.

Perhaps not surprisingly in our federal system, the model laws contain both mandatory and optional provisions and even some of the mandatory provisions allow local variation by permitting forms of words to differ from state to state provided the content remains substantively the same. Some of the mandatory provisions however are sufficiently 'core' to require even the exact same words and they include the provisions that go to the very heart of and that underpin the complaints and disciplinary regime. These are the provisions that introduce and define the concepts of 'unsatisfactory professional conduct' and 'professional misconduct' and so set the minimum standards expected of Australian legal practitioners in their dealings with their clients, their colleagues, the courts and members of the public more generally. These concepts are discussed at some length later in the report.

The reforms were also driven by strictly local circumstances that as it happens resulted in Queensland becoming the first state to enact legislation based on the national model laws. The previous legislative arrangements in Queensland for dealing with complaints about lawyers had come under intense and very public and adverse scrutiny in 2002 and 2003 and were seen as flawed, in the public eye certainly but among many practitioners also. Those arrangements required complainants to take their complaints to the professional bodies – the Law Society in relation to complaints about solicitors and law practice employees and, though it had no statutory powers, the Bar Association in relation to complaints about barristers. The problem in the public view was that the process was insufficiently independent of the profession to give the community confidence that complaints about members of the profession would be dealt with thoroughly and impartially – the media characterised the process as 'Caesar judging Caesar'. The publicity gave the impression not only that the profession 'looked after its own' as it were but that malpractice was commonplace.

Not surprisingly in these circumstances the government took the opportunity the national model laws gave it to establish a new system in Queensland for dealing with complaints – thus the creation of an independent Legal Services Commission to bring a greater transparency and accountability to the process. These are significant reforms. It is hard in a democracy subject to the rule of law to overstate the importance of citizens having confidence that members of the legal profession conduct themselves properly and that there are mechanisms in place to deal with practitioners whose conduct has been called into question.

The flow charts on pages 3 and 4 of this report summarise the new process established under the Act for dealing with complaints. It establishes the Commission as the sole body authorised to receive complaints about solicitors, barristers and law practice employees in Queensland. It gives the Commission power to deal with complaints itself or alternatively to refer them to the professional bodies for mediation

and/or investigation. In the latter case – whenever the Commission refers complaints to the professional bodies for investigation – the Act obliges those bodies to report their recommendations to the Commission for decision. It gives the Commission and the Commission alone the power to decide whether complaints should be dismissed or alternatively whether the evidence after investigation is sufficient to warrant a disciplinary response and, if so, the power to initiate and prosecute disciplinary proceedings.

These are significant powers. My view is that the Commission ought try to use them to do something more than simply what the professional bodies always did, but doing it better if indeed we can, or being seen to be doing it better, however important and useful that might be. I think the Commission can add value beyond that, and I want to explain how.

It seems to me that the professional bodies in the past conceived and many practitioners even today still conceive the system for dealing with complaints primarily if not exclusively in terms of upholding high ethical standards within the profession. The purpose of the exercise on such a view is to 'get rid of the bad apples' amongst the profession – the small number of practitioners who willfully or recklessly flout the ethical rules and accepted standards of professional conduct and practice. I use the phrase 'bad apples' advisedly. I have heard it used and have even been stopped in the street and asked in precisely these terms just what progress we're making.

I don't want to understate the importance of getting rid of the bad apples - that is an essential ingredient of any effective regulatory regime - but it seems to me that the system for dealing with complaints has to be conceived much more broadly than that. That is because, firstly, very few complaints describe breaches of high ethical standards of a kind that might warrant practitioners being struck off or suspended. I note for example that the Law Society received just over 1600 complaints in 2002–03 and slightly more again in 2003–04 but that the profession shed itself of only 27 bad apples over those same two years, 15 of them struck off and 12 suspended – fewer than 1 bad apple for every 100 complaints. I do not believe that low ratio reflects a want of trying. The professional bodies have always had a vested interest in ensuring that practitioners who bring the profession into disrepute in these ways get their just desserts, and it seems to me they have always pursued them vigorously, the rhetoric about Caesar judging Caesar notwithstanding.

In any event, there is little if any evidence that getting rid of the bad apples deters other potential bad apples, much less has any significant impact by way of improving the overall standards of legal practice and service delivery to consumers. It certainly doesn't seem to have had any marked deterrent effect. The number of practitioners who have been struck off or suspended has been growing over recent years, not shrinking, and there are more than a few recidivists among the practitioners who have been disciplined short of being struck off or suspended.

The fact is that most complaints describe conduct of more prosaic kinds than would justify the practitioners being struck off or suspended or even fined, and very often conduct of a kind that in the context of an employment relationship would be seen as a performance management rather than a disciplinary issue. Some complaints are completely without substance, of course, and others whatever their merits can't be proved, but most complaints, even most substantiated complaints, describe honest mistakes and errors of judgment and poor standards of service rather than misconduct as that term is commonly understood, much less a failure to uphold high ethical standards.

The bad apples are in a small minority, even among the practitioners subject to legitimate complaints, and if that is all we are looking out for as regulators then we're likely to overlook more minor infractions and move on the next big issue, sparing a thought perhaps for the practitioners subject to complaint that 'there but for the grace of God go I'. What happens only too easily in these circumstances is that the underlying problems are left unresolved and complainants left nursing their sense of grievance. This seems to have happened more often in the past than perhaps it ought to have, and this is where the Caesar judging Caesar rhetoric gets its traction.

I want to be very clear what I'm saying. I am not saying that the Law Society or the people who administered the previous arrangements on its behalf were careless in any way or insufficiently motivated by the public interest much less lacking integrity. In fact I've been privileged on a number of occasions now to attend meetings of the Society's Professional Standards Committee. I've come away on each occasion full of admiration for their considered judgment and for the many hours of work they've done and continue to do on behalf of the profession and indeed on behalf of the public – all of it free of charge and with very little acknowledgment.

What I am talking about is the power of ideas. We will inevitably focus our attention on the bad apples, if that's how we frame the problem, but we need to frame the problem more broadly. We need to focus our attention not only on the bad apples but also on the many more practitioners who are not and whose conduct is less serious and may even be inadvertent but yet is unsatisfactory in any ordinary sense of the word and gives consumers legitimate cause for grievance.

This is where the Commission can add value, by conceiving the system for dealing with complaints in terms of upholding high ethical standards certainly, but more broadly in terms of promoting and protecting the rights of consumers and in that sense of improving standards of everyday practice more generally. We will add value by establishing a complaints-handling culture that listens more actively to what complaints are telling us and that recognises that everyday

mistakes and errors of judgment and poor standards of service are at least as damaging to the reputation of the profession as the occasional bad apple.

That means, since complaints inevitably come to attention only after the event, not confining ourselves to looking backwards to judge their merits but also, if they appear to have merit, to looking forward to what might be done in the future. We will best protect consumers and practitioners alike by encouraging practitioners subject to complaint to explore ways and means to reduce the risk to other consumers of similar poor standards of service down the track.

In fact we will best protect consumers and practitioners alike by lifting our gaze beyond the individual dealings between practitioners and their clients that come to us as complaints and turning our attention also to how we might lead the way by getting in first, before things turn sour. In my view we should be subjecting our complaints data to careful analysis, both by ourselves and in partnership with others, and be undertaking and supporting other research relevant to the work of the Commission. We should be identifying the practitioners and consumers who are most at risk and crafting targeted and evidence-based educational and other preventative strategies calculated to reduce cause for consumer dissatisfaction and complaint.

So: that's how the Commission understands its role – to promote and protect the rights of consumers of legal services. It's worth adding, because that sort of talk makes some practitioners anxious, that this does not mean we see ourselves as consumer advocates or partisan. We don't. Consumers are entitled to a fair go and a fair go means just that – a fair go, and by definition that means fair from a practitioner's perspective also. We recognise that complaints have to be supported by evidence, that some complaints are completely without substance and others are simply misconceived, and that some complainants will never be satisfied.

Performance criteria for dealing with complaints

What kinds of criteria might the Commission develop to report and assess its performance in achieving these purposes? This is no easy question. The difficulty is that the data that most readily lends itself to measurement is not necessarily very helpful. There are a range of possibilities, however:

- One traditional kind of criteria takes the form of questions that invite a yes / no response: has the Commission fulfilled the various specific duties required of it by the Act? Has it produced information about the making of complaints and the procedure for dealing with complaints, for example, and has it kept a discipline register of disciplinary action taken under the Act? Criteria like these are not very helpful, however, in the absence of some commentary about how the duties have been fulfilled. Producing information is one thing, but producing information that gets to the people who most need it and that they understand and find useful is another thing altogether.
- Another traditional kind of criteria takes the form of counting the number and throughputs of complaints of various kinds and the number of successful discipline applications and the like. They include 'clearance ratio' criteria which compare the number of complaints that were finalised over a given period with the number of complaints that were received, and which might indicate that the Commission has either to deal with complaints more efficiently or employ more complaints-handlers to get the job done. They also include 'timeliness' criteria – criteria along the lines 'finalise 80% of complaints within 6 months of receipt', for example – which might indicate whether the Commission is dealing with complaints expeditiously in the way the Act envisages.

  Criteria of this kind are useful and important. They describe what the Commission does and serve obvious management purposes. They become even more useful in the medium to longer term by suggesting potentially fruitful questions: why is it that we finalised more complaints or dealt with them more quickly the year before last than we are now, for example.

  They can be misleading, however. An increase in the number of complaints or successful discipline applications might indicate that consumers have more confidence in the system for dealing with complaints than they had previously and that the Commission is getting better at prosecuting miscreant practitioners, and hence might indicate success – or perhaps that standards of practice have declined and hence might indicate failure. Conversely, a decrease in the number of complaints or successful discipline applications might be construed as a positive or a negative measure of effectiveness.

  Criteria of this kind are useful and important even so, especially in combination. The Commission would be entitled to claim standards of practice have improved given a decrease in the numbers of complaints over time, for example, provided it could demonstrate also that consumers were aware of their entitlement to complain and had confidence in the system for dealing with complaints.

  They would be even more useful if, consistent with moves to 'harmonise' the regulation of the profession across state boundaries, the various state and territory authorities agreed to develop and compare their performance against the same or similar criteria. Cross-jurisdictional differences would invite potentially fruitful questions about what the different state and territory authorities were doing differently that might explain the differences in their performance and in that way help identify what approaches work best and why. Criteria that compare the number of complaint

handlers, the number of complaints and the number of successful discipline applications over a given period with the number of practitioners who worked in the jurisdiction over that period might be especially useful in this context.

This kind of criteria will be even more useful and important if they can be cross-referenced with other regulatory data – for example, with data about the age and gender and length of experience and qualifications of the solicitors who have been admitted to practice or issued practicing certificates. Cross-referenced information of this sort would assist in identifying which practitioners are most at risk of complaint and in that way would help craft informed and appropriately targeted remedial and preventative strategies.

- The inherent potential of that sort of information suggests another kind of criteria, along the following lines: does the Commission have strategies in place to analyse the potentially rich information it collects about complaints on its database, and the even richer information it would have at its fingertips if that data were cross-referenced with the broader regulatory database? Does it have strategies in place to subject the data to careful analysis, whether itself or in partnership with others, and otherwise to learn whatever lessons the complaints-handling experience can tell us about standards of practice? Does it undertake and/or support research calculated to help craft preventative strategies? How many research projects and preventative strategies has it undertaken or supported or helped to craft, with whom and to what effect?
- Another kind of criteria derives from a familiar evaluative form: does the Commission routinely survey consumers, practitioners and other legal services stakeholders to learn how they perceive its performance and whether it treated them fairly and how it might have done better? This might be achieved by asking the Commission's clients to complete routine exit surveys, or alternatively by undertaking or outsourcing periodic but more comprehensive surveys and conducting focus groups of random samples of clients.
- A fifth and final kind of criteria might canvass just how proactively the Commission explores the potential inherent in the system for dealing with complaints to improve standards of practice. Does the Commission have strategies in place which encourage practitioners to improve standards other than simply initiating discipline applications and relying on the uncertain deterrent effects of findings by the disciplinary bodies of unsatisfactory professional conduct or professional misconduct? Does it have strategies in place to engage practitioners subject to complaint in learning from the experience to reduce the likelihood they will be subject to similar complaints again in future?

This approach might pay off, particularly in relation to conduct at the margins – the honest mistakes and errors of judgment and poor standards of service that have been spoken of already. It might offer hope of improving standards of practice without having to let the conduct pass by essentially un-remarked on the one hand or resorting to discipline applications on the other. The Commission might be able to develop a number of criteria to measure its performance in this respect. They might include, for example, counting the number of complaints dismissed after investigation on the grounds that the practitioners subject to complaint have done what they reasonably can to ensure they won't conduct themselves similarly in future – hence that there is no public interest in taking the matter any further.

Performance criteria for 2004–05

The Commission might usefully develop performance criteria of the kinds we have just canvassed in years to come, as stand-alone criteria and in combination, and some of them are relevant to 2004–05 also. Clearly however the criteria the Commission adopts to assess its performance in the first year of its operations, while they should lay the foundations to adopt criteria of that kind in due course, should at the same time be realistic and achievable in the circumstances at hand. These circumstances included the following:

- The Commission inherited a large number of complaints on its inception – 938 in all. They included 784 complaints that were made to the Law Society but not finally dealt with before the new system commenced on 1 July 2004, 107 complaints that were made to the Legal Ombudsman but not finally dealt with when that office ceased to exist on 31 May 2004, and 47 complaints that were made directly to the Commission in June in anticipation of the Act commencing. The 938 complaints comprised 273 consumer disputes and 665 conduct matters (that is to say, complaints that alleged unprofessional conduct or professional misconduct).

  The Law Society's annual report for 2002–03 shows that it received 1602 complaints that year and finalised 1279, and its report for 2003–04 shows that it received 1621 complaints and finalised 1368, a negative clearance ratio over those two years of almost 20%. It comes as no surprise then that Commission inherited a large number of 'old' complaints by any reasonable timeliness criteria. More than three-quarters of the consumer disputes were less than 6 months old but more than one in ten were between 6 and 12 months old and another one in ten were more than 12 months old. About a third of the conduct matters were less than 6 months old but about a quarter were between 6 and 12 months old, about a third were between 12 and 24 months old, and the rest – 49 in all – were more than 24 months old.

  It was not clear when the Commission commenced whether the new system for dealing with complaints would continue to attract complaints in those numbers, or perhaps even greater numbers. There was reason to believe that the public had lost confidence in the previous system for dealing with complaints and accordingly that some potential complainants might have held off, thus reducing the number of complaints that might otherwise be expected. There was also reason to believe that the large numbers of complaints in 2002–03 and 2003–04 represented only a temporary spike encouraged by the intense and adverse publicity about a prominent Brisbane legal firm in the latter half of 2002 and 2003. Notably the Law Society had only 1190 complaints in 2001–02, significantly fewer than the 1602 it received in 2002–03.

  Nor was it clear when the Commission commenced what impact the new system might have on complaint numbers given that it gave consumers a right to complain not only about solicitors and law practice employees but barristers also.

- The system established under the Act for dealing with complaints is peopled not only by the staff of the Commission but also the staff of the Client Relations Centre and the Investigations Unit of the Professional Standards arm of the Law Society and, while it had (and has) no staff, members of the Professional Conduct Committee of the Bar Association.

  I was appointed Commissioner effective from 24 May 2004 and was joined in June by the rest of the team: 5 complaints-handlers and 2 administrative support staff, a total staff complement for the year ahead of 8 people. The Law Society meanwhile was funded to continue to employ 13.75 full-time equivalent complaints-handlers, 3 of them contracted only until 31 December,

and 4 administrative support staff – a total staff complement of 17.75 people. That meant that the Commission and the Society had a combined resource of 18.75 equivalent full time complaints-handlers, 5 more or a 36% greater capacity than the Society drew on previously.

There was a real question, the additional resource notwithstanding, whether the system was sufficiently well resourced to deal with new complaints at the same rate at which they would arrive, that is to say, to reverse the trend of the previous two years which saw the Society receive 20% more complaints that it was able to finalise, let alone make any significant inroads into the backlog of old complaints.

That was in part because the independence and heightened accountability the creation of the Commission brings to the new system for dealing with complaints comes at the cost of some double handling, notably in reviewing the Society's (and the Bar Association's) findings and recommendations following their investigation of complaints that the Commission referred to them for investigation and that they subsequently returned to the Commission for decision. Not only that, the Commission becomes responsible under the new system for dealing with complaints for prosecuting discipline applications, a function the Society performed previously but largely briefed out, and at a cost to its budget in 2003–04 of $747,000.

My estimate was that these two functions alone would fully occupy the equivalent of at least 3 full-time complaints-handlers, leaving little resource available for the Commission's other core functions – assessing, mediating and investigating complaints. Not only that, but the Commission's complaints-handlers would inevitably have to dedicate a significant portion of their time in the first year of the Commission's operation and maybe longer to developmental work of one kind or another – to developing the policies, systems and intellectual resources we need to do our job. We were starting from scratch. Nor did the initial staff complement give the Commission any capacity short of diverting even more of the complaints-handlers' time to learning what complaints have to tell us by analysing the complaints data and positioning the Commission to engage usefully with other legal services stakeholders to help craft evidence-based ways to reduce cause for consumer complaint by improving standards of practice.

There was a real question, too, about whether the Commission had not only sufficient staff but the right structure. Clearly a significant proportion of the Commissioner's time was inevitably going to be dedicated to managing the external environment and the strategic bigger picture and would therefore be unavailable for day-to-day workload allocation and oversight of the large numbers of complaint files and the like.

- The Commission had a legislative framework to work with but was otherwise very much a blank page when I started as Commissioner less than 6 weeks before the Act commenced. There was an urgent need accordingly to develop policies and procedures and precedent letters and the like to enable the Commission to deal with complaints and to develop at least basic office systems to track the large numbers of documents that were clearly going to cross the counter every day, in both directions.

  There was an urgent need also to have a computerised case management system (CMS) up and running by 1 July 2004. The decision was taken just before I started as Commissioner to connect to and adapt the CMS already being used by the Law Society. It was seen to be the most cost-effective option but to have other advantages also, not least that it already stored complaints data going back 11 years and lent itself readily to further enhancement. The system was adapted to reflect the new arrangements established under the Act for dealing with complaints (so that only the Commission could 'open' new complaints, for example, and 'close' complaints after investigation) and to allow the Commission to connect to the Society's database at the same time as protecting data from view that was properly confidential to either party.

  The adapted CMS and associated network infrastructure was operational by 1 July and enabled the Commission to record, store and retrieve data on electronic complaint files and to generate lists of complaint files. It gave only a very limited capacity however to generate even the most basic management or performance reports. I was unable for example to generate reports describing how many complaints were received and finalised over a given period, what stage complaints were at in the complaint-handling process, and how many were referred to the professional bodies for mediation or investigation or they returned after investigation for review. It gave the Commission's complaints-handlers no capacity to generate correspondence and other documents about complaints on the relevant case file or to access the Society's investigation reports online. It required substantial further enhancement.

  I took a deliberate decision to make haste slowly – to buy time while living with the system's inadequacies to better understand exactly what we wanted the system to deliver before committing ourselves to further and costly enhancements. We took the same approach and for the same reasons to developing complaints-handling policies and procedures – to get the basics in place to enable us to do our job but to avoid committing too much time and energy before we fully understood all our requirements.

In the circumstances, the challenges we faced – and the criteria we set ourselves to assess our performance in the year to 30 June 2005 – were to:

- fulfill the specific duties imposed on us under the Act 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 keep a discipline register about disciplinary action taken under the Act or a corresponding law;
- reverse the trend of recent years to a growing backlog and to at least hold our own: that is to say, to finalise complaints at the same rate or better than the rate at which new complaints arrive to ensure no increase in the number of complaints on hand over the course of the year to 30 June 2005, and at the same time to finalise all 107 complaints the Commission inherited on its inception from the Legal Ombudsman;
- work out the number of staff and the organisational structure the Commission would require going into 2005–06 to keep pace with new complaints and at the same time to finalise the backlog of pre-Act complaints by 30 June 2006; to secure the necessary funds through the budget process; and to have the people and structure in place by or as soon as possible after 1 July 2005;
- secure agreement that the Commission should develop a capacity to harness what it learns from handling complaints and to undertake, broker and collaborate with research efforts directed to reduce the numbers of complaints by improving standards of legal service delivery; and to secure the funds to employ and to have a policy and research officer in place by or as soon as possible after 1 July 2005;
- develop a systems specification for further enhancements to the CMS to enable the Commission to access the full functionality of the system and to interrogate the complaints database to generate appropriate management and performance reports; and to adapt the CMS to those specifications by 1 July 2005; and
- develop basic policies and procedures and systems to enable the Commission to get on with the job of handling complaints and to lay the foundations to systematise the storage and retrieval of precedent documents and to fully articulate, document and publish relevant policies and procedures by 30 June 2006.

Performance criteria for 2005–06

The Commission's performance has been assessed against the criteria developed for 2004–05 under the appropriate headings later in this report. We are pleased to say here however that the Commission has in each case either met the criteria or made substantial progress and accordingly we propose the following criteria for the year to 30 June 2006, to:

- fully resolve the backlog of pre-Act complaints by 30 June 2006 and at the same time finalise post-Act complaints at the same rate or better than the rate at which new complaints arrive (and accordingly to enable the system for dealing with complaints to downsize after 1 July 2006);
- assess the number, type and outcomes of research activities that have been undertaken in-house and in partnership with the law schools, the professional bodies and other legal services stakeholders;
- develop appropriate ongoing performance criteria for dealing with complaints for the year to 30 June 2007 and beyond including clearance ratio, timeliness and stakeholder satisfaction criteria and, if possible, criteria which assess the Commission's performance in reducing consumer dissatisfaction by improving standards of legal practice and which enable the Commission to compare its performance with the performance of some or all its counterpart authorities in other states and territories;
- continue to refine the complaint-handling codes on the CMS to maximise the relevance and utility of performance and management reports;
- develop and document and where appropriate publish comprehensive policies and procedures for dealing with complaints including in particular a prosecutions policy and policies in relation to the initial assessment of complaints and their referral to the professional bodies for mediation and/or investigation;
- review current precedent documents and put in place a comprehensively indexed system for the storage and retrieval of precedent documents; and
- develop and implement a performance management framework and agreed individual learning plans with all the staff of the Commission.

The fundamental concepts: *unsatisfactory professional conduct* and *professional misconduct*

The concepts of unsatisfactory professional conduct and professional misconduct are fundamental to the new system established under the Act for dealing with complaints because they determine how complaints are dealt with. The Commission's first judgment call, once we decide a complaint meets a number of threshold criteria, is to decide if the complaint alleges conduct on the part of the practitioner that amounts to either unsatisfactory professional conduct or professional misconduct. If we say it does, then the Act obliges us and gives us significant powers to investigate the complaint. If we say it doesn't, hence that the complaint describes what the Act calls a consumer dispute, then we have the option either to suggest to the parties that they enter into mediation or even to take no further action at all.

The Act obliges us to make a similar judgment call after we've completed an investigation. It give us the option to dismiss a complaint after investigation if we say either that there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct or that it's in the public interest to dismiss the complaint.

So how do we decide? The Act doesn't define either term exhaustively but says only that:

- unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner; and
- professional misconduct includes unsatisfactory professional conduct... if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence and conduct... whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that a person is not a fit and proper person to engage in legal practice.'

The question in relation to professional misconduct is the easier of the two. There is case law, for a start, and in any event professional misconduct tends to announce itself because of its gravity. The question in relation to unsatisfactory professional conduct is more problematic. It reduces to this: just how unsatisfactory does a practitioner's conduct in connection with the practice of law have to be to amount to unsatisfactory professional conduct?

The answer is by no means clear but what does seem to be clear is that it no longer has to be quite so unsatisfactory as it used to have to be to require investigation and potentially a discipline application. There is a strong argument that the concept of unsatisfactory professional conduct applies to a broader range of unsatisfactory conduct than the concept of unprofessional conduct that underpinned the previous system for dealing with complaints.

The concept of unprofessional conduct is defined in the common law to mean 'conduct that may reasonably be held to violate, or to fall short of, to a substantial degree, the standard of professional conduct observed or approved of by members of the profession of good repute and competency.' Notably, however:

- the Act's definition of unsatisfactory professional conduct refers not to the standard 'members of the profession of good repute and competency' are entitled to expect of their fellow practitioners but to the standard 'a member of the public is entitled to expect';
- not only that, but the Act's definition of unsatisfactory professional conduct omits the words 'falls short of the standard to a substantial degree';
- the Act gives the Commission no summary reprimand or other like powers – powers of a kind the Law Society had under the previous system for

dealing with complaints. It follows that the Act contemplates the Commission bringing discipline applications in the Legal Practice Committee for unsatisfactory professional conduct of kinds which would not previously have become subject to discipline applications but would have been dealt with administratively; and

- while it enables the Committee to make orders of a kind that are typically associated with discipline and punishment – orders that impose fines and publicly reprimand practitioners – the Act also enables the Committee to make orders that are more in the nature of and which in any other context would be regarded as performance improvement plans rather than punishment per se. They include orders that a practitioner 'do or refrain from doing something' in connection with his or her legal practice or engage in practice only 'in a stated way' or 'subject to stated conditions' or that he or she 'seeks advice' from someone nominated by their professional body.

Furthermore the Act does not define unsatisfactory professional conduct exhaustively but says only that it 'includes' conduct that falls short of the standard of competence and diligence a member of the public is entitled to expect of a reasonably competent practitioner. The question arises, then, as to just what else it might include.

The Commission believes the term applies to a range of conduct that most people, practitioners included, would regard as unsatisfactory in any ordinary sense of the word but which would not previously have been regarded as 'unprofessional'. We think it extends, depending on the circumstances, to include the sorts of honest mistakes and errors of judgment and poor standards of service that give rise to legitimate consumer grievance.

This is no bad thing, certainly from a consumer point of view. Nor (possible appearances aside) is it necessarily punitive from a practitioner point of view, in either intent or effect – far from it. Rather, it creates an opportunity if only we grasp it to improve standards of legal service delivery in the interests of consumers and practitioners alike, and in the most practical of ways and proactively. That is because it is hard to see how it could possibly be in the public interest to prosecute practitioners for alleged unsatisfactory professional conduct of these kinds provided they can show they've done what they reasonably can to put things right or taken steps to prevent or reduce the risk they'll conduct themselves similarly in future.

Story 1, of Ms Brown and Mr Smith, on page 18 is an example of a good outcome in our view and we propose to use the same methodology in other like cases in future, certainly when the facts aren't in dispute and appear to give complainants legitimate grounds to feel aggrieved. We propose to keep our options open. We will invite practitioners in these circumstances to make – and of course we will listen to – any submissions they might care to make to us about the definitional issue, given their particular circumstances.

More fundamentally, however, we will invite them to deal with the issues of substance. We will invite them to make submissions that seek to persuade us that no public interest would be served by initiating disciplinary proceedings because, whatever the definitional issue, they have resolved the problem as best they can or fixed whatever it was that went wrong so it doesn't happen again.

The strategy has wide application. We often hear from consumers that a practitioner has sent them a bill that far exceeds the practitioner's original estimate of their costs, for example, but at no stage told them of the likely increase. Consumers are reasonably entitled to expect they will be told if their costs are blowing out, in our opinion, even if the bill at the end of the day fairly reflects the work the practitioner undertook on their behalf. They are entitled to expect their lawyers to talk with them before running up bills on their behalf no less than they're entitled to expect other service providers to talk with them in the same or similar circumstances – be they their dentist or motor mechanic or anyone else. We would welcome submissions from practitioners in these circumstances that demonstrate how they have improved their business systems so as to ensure they keep their clients informed in future about any significant increases in their estimated costs.

Numerous other examples come readily to mind including complaints that describe undue delays by practitioners in attending to matters on their clients' behalves which might or might not have been beyond their control but which in any event they failed to communicate to their clients. Story 2 of Mr Black and Mr White on page 19 is a complaint of this kind.

The strategy we adopted in respect of Mr Smith's complaint about Ms Brown and Mr Black's complaint about Mr White seems to us to be a useful and important way to respond to the Act's apparently broader definition than previously of the sorts of conduct that can properly be subject to investigation and potentially to disciplinary proceedings. It gives us leverage we wouldn't otherwise have to improve standards in response to common complaints of a kind that have previously gone largely unheeded – complaints about conduct that in the context of an employment relationship, for example, would warrant a performance management rather than a disciplinary response. It gives us both a stick and a carrot to put before practitioners subject to these kinds of complaints to encourage them to take constructive remedial action appropriate to their circumstances.

No doubt some practitioners' instincts will cause them to equate making a submission that describes how they have addressed whatever it might have been that went wrong as a self-incriminating admission of some kind, and to shrink from it in favour of a not guilty plea, as it were. That is unhelpful. Indeed it would be a good thing, at least in respect of unsatisfactory professional conduct if not of more egregious misconduct, to rid the disciplinary regime altogether of any of the language

and imagery that tend to portray unsatisfactory professional conduct as somehow akin to crime – the language and imagery of 'charging' practitioners with disciplinary 'offences' and 'prosecuting' them in the expectation they will be found 'guilty' and be 'punished' accordingly. The main game is not one of prosecuting and punishing practitioners for minor infractions but promoting and protecting the rights of legal consumers by improving standards of legal service delivery.

Story 1

Consider the following true story. It has been changed only to disguise the practitioner's and the complainant's identities:

- Ms Brown, a sole practitioner, accepted Mr Smith's retainer to act in a family law dispute about the custody of Mr Smith's son. Ms Brown asked Mr Smith to pay several thousand dollars into her trust account by way of retainer but commenced drafting proceedings prior to payment. Mr Smith duly paid over the money and some time afterwards arrived at Ms Brown's office without an appointment. Ms Brown had a series of appointments with other clients and was unable to see him. Mr Smith left some papers which Ms Brown asked her secretary to put on the file. Ms Brown went home that afternoon with the intention of reading the documents the following morning but became sick overnight and didn't return to the office for several days, and only after appearing in the Family Court that morning in relation to another matter. She promptly read Mr Smith's file to discover that the documents he had left the best part of a week earlier included an application for residence by his estranged wife that was returnable in the Court that very morning.
- Mr Smith was aggrieved by Ms Brown's failure to appear, ended the retainer and engaged another solicitor. He believed, in all likelihood falsely, that her failure to appear had cost him any chance of obtaining a residence order in his favour. Ms Brown refunded the money he had paid into her trust account but even so Mr Smith lodged a complaint with the Commission.
- The Commission referred the complaint to the Law Society for investigation and the Society put it to Ms Brown for her response. She responded defensively – she pleaded her illness, the high cost of and in any event the nigh impossibility of engaging a locum and, more generally, the travails of suburban sole practice. The Society returned the file to the Commission with the recommendation that we dismiss Mr Smith's complaint on the ground that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct.

The question of course was whether in all the circumstances Ms Brown's conduct in failing to appear 'falls short of the standard of competence and diligence a member of the public' – in this case Mr Smith – 'is entitled to expect of a reasonably competent Australian legal practitioner'. The Law Society said no but we weren't so sure. It seemed to us that the issue was not so much what Ms Brown failed to do when (and because) she was sick but what arguably she had failed to do when she was well – to have put systems in place to prevent such incidents. This is what the Commission did:

- We rang Ms Brown to discuss the matter further. She became distressed at the prospect we might initiate disciplinary proceedings but the complaint-handler had the presence of mind to suggest she consider exercising her entitlement as a member of the Law Society subject to complaint to three free hours of legal advice. Subsequently we asked her in writing to make submissions to us as to why we shouldn't regard her conduct in failing to appear to be unsatisfactory professional conduct.
- Ms Brown duly exercised her entitlement to legal advice and her solicitor in due course made representations on her behalf to the effect that the conduct in question fell short of the requisite threshold and that in all the circumstances it would be inappropriate to file a discipline application. We said that was an open question, in our view, but in any event that we could see no public interest in going down that track if only she could persuade us she had learned from the experience and that it wouldn't happen again.
- Ms Brown subsequently wrote to us. She apologised to Mr Smith for her failure to attend at Court and described what she'd done to ensure it wouldn't happen again. It included arranging for a senior practitioner to review her systems and committing to implement any recommendations, arranging for her secretary to undertake training provided by the Law Society and entering into a reciprocal arrangement with a fellow local sole practitioner 'whereby if either practitioner is away the other practitioner will monitor and look after the other's office for a period of one hour per day whilst they are away.'
- The Commission promptly dismissed Mr Smith's complaint on the ground that there was now no public interest in taking it any further. Ms Brown had effectively pre-empted in a 'self-help' way any orders of a 'performance improvement' kind that might have been open to the Legal Practice Committee had we filed and succeeded in a discipline application.

Story 2

Consider another true story, once again changed only to disguise the practitioner's and the complainant's identities:

- Mr Black, a self-employed business man who required a driver's license for business purposes but who had accrued excessive demerit points, faced having his licence cancelled. He consulted a sole practitioner, Mr White, and paid $600.00 into his trust account by way of retainer to lodge an appeal in the Magistrate's Court on his behalf and subsequently to represent him when the appeal was heard. He had 28 days to lodge the appeal.
- Mr Black became increasingly concerned that Mr White hadn't got back to him with the relevant documents for his signature and finally rang his office in some frustration 27 days later, both during the morning and several times again during the day. Mr White wasn't available to take his calls. Mr Black left messages and called again the following morning, the final day the documents could be lodged with the Court.
- Mr White returned Mr Black's call at 3 o'clock that afternoon and asked him to meet him at the Magistrate's Court to sign the requisite documents. Mr Black had to cancel appointments and to travel to the city as a matter of urgency. The documents were duly signed and lodged but Mr Black remained disgruntled, terminated his retainer with Mr White and complained to the Commission.
- The Commission referred the complaint to the Law Society which put it to Mr White for his response. He replied to the effect that the appeal was lodged in time and that Mr Black hadn't suffered any great inconvenience. The Society returned the complaint to the Commission with the recommendation that there was a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct but that we should dismiss the complaint nonetheless on the basis there was no public interest in taking it any further.
- The Commission disagreed. It seemed to us in all the circumstances that Mr Black was reasonably entitled to expect Mr White to prepare his appeal documents in a timely fashion and not to have to cancel appointments to make a last minute dash to the city to ensure they were lodged on time. We wrote to Mr White in these terms and invited him to make submissions as to how the public interest would be served were we to dismiss the complaint.
- Mr White rang us the very next day and admitted his conduct of the matter was unsatisfactory. He said he intended to contact Mr Black forthwith and to apologise personally and in writing. He also offered to refund the entirety of his fee and any additional sum Mr Black might wish by way of compensation for his inconvenience. We said this was a matter for himself. He explained that his office systems at the time were chaotic but had since been reorganised under a new office manager. We told him that his conduct might well amount to unsatisfactory professional conduct but we could see no public interest being served by initiating disciplinary proceedings provided only that he did what he'd told us he intended to do.

Shortly afterwards Mr Black rang the Commission to say that Mr White had contacted him and apologised and that they had agreed Mr White would repay his fees plus GST. Mr White subsequently wrote to us to confirm that he had done what he said he would and we promptly dismissed Mr Black's complaint on the ground there was now no public interest in taking it any further. Again, he had effectively pre-empted in a self-help way any orders of a performance improvement kind that might have been open to the Legal Practice Committee had we filed and succeeded in a discipline application.

Our performance in 2004–05

1. Establishing and delivering effective and efficient processes for resolving consumer complaints

There are a number of elements to establishing and delivering effective and efficient processes for resolving consumer complaints. Not least among these is meeting our obligations under the Act to produce information about the making of complaints and the procedure for dealing with complaints and to ensure that information is available to members of the public on request. We achieved that much in July 2004 by producing information and putting it on the Commission's website and progressively adding to it over the remainder of the year. The information informs prospective complainants how to make a complaint and answers the most frequently asked questions about our processes and what we can and cannot do. It includes a complaint form that prompts complainants to describe their concerns in relevant detail and to include the information we need to assess and deal with them promptly. We regularly print off that information and forward it to people who are unable to access the web.

It is relatively easy to inform lawyers. The Commissioner addressed 20 district law association and other professional gatherings of lawyers during the year. We need, however, to work out other and more proactive ways to inform members of the general public, and especially members of the public who have dealings with lawyers about the system for dealing with complaints.

Inquiries

The Act obliges us to give help to members of the public in making complaints and we do that beyond producing and distributing relevant information by responding to inquiries, by telephone in the main but also by writing, by email and in person. The Law Society also receives inquiries from the public about how to make complaints and it receives inquiries from practitioners, too, who are looking to complain about other practitioners or for advice about ethical or client management issues.

We count informal 'complaints' as inquiries also, that is to say, 'complaints' about the conduct of legal practitioners and/or law practice employees that are made by phone or in person but not in writing. We see little point in requiring inquirers to put their concerns in writing if they would rather their concerns be dealt with informally or agree they might best be tackled that way at least in the first instance. We do so only on the understanding however that they remain entitled to make a formal written complaint if their concerns aren't resolved informally.

The Commission responded to 1862 inquiries during the year to 30 June 2005 and the Law Society responded to another 5872, a total between us of 7734. Just under half the inquiries were made by clients or former clients of legal practitioners. More than a quarter of the total inquiries concerned costs – the inquirers typically wanted to understand how their practitioner calculated their costs or whether they could ask for an itemised account or why their bill exceeded the practitioner's estimates or how they could challenge their account. More than a tenth concerned quality of service issues including apparent errors in the calculation of stamp duties in conveyances, for example, and what the inquirers perceived to be unreasonable delays in finalising typically personal injury and deceased estate matters. Quality of service issues were resolved in the main simply by providing the inquirers with information about the legal process or their entitlements or explanations of apparent delays, assisted perhaps by some 'shuttle diplomacy' to reopen the lines of communication between the inquirer and their legal practitioner. Just over a tenth of all inquiries were resolved by recommending that inquirers approach and speak directly with their practitioners; just over a tenth by recommending they take legal advice; and just over a tenth by forwarding a complaint form.

Complaints

The Commission is the sole body authorised under the Act to receive complaints about lawyers and law practice employees. Our first task, once we have received a complaint, is to decide if it complains about 'conduct to which the Act applies'. We can't and don't deal with complaints about decisions of courts, for example – we are not a court of appeal. Nor can we intervene in legal proceedings or accept complaints about the conduct of judges or the legal system generally. We deal with complaints about the conduct of solicitors and barristers and law practice employees.

We have to assess whether the conduct subject to complaint is 'conduct in connection with the practice of law' and, if not, whether it is 'conduct that would [if established] justify a finding that the practitioner is not a fit and proper person to engage in legal practice'. If the answers to those questions are 'no' then we can't deal with the complaint, will advise the complainant accordingly, and will take no further action. Similarly, we have to assess whether the conduct subject to complaint happened more than 3 years ago and, if it did, whether it is conduct that would, if established, amount to professional misconduct and if 'it is just and fair to deal with [it] having regard to the extent of, and the reasons for, the delay'. If the answers to those questions are 'no', then again we can't deal with the complaint and will take no further action.

Similarly, we have to assess whether the complaint alleges, in effect, that the practitioners subject to complaint were negligent. If the answer to that question is 'yes', then it may well be that the complaint can only be resolved by a court of law. There may be exceptions, if the negligence is plain and the disciplinary process can provide effective redress, but we will very likely suggest to complainants in these circumstances that they seek legal advice about their prospects of success in an action for negligence and take no further action ourselves.

Our next task, once we've decided these threshold questions, is to decide if the complaint alleges conduct on the part of the practitioner that would, if established, amount to either unsatisfactory professional conduct or professional misconduct. If the answer to that question is 'no', then we classify the complaint as a consumer dispute and the Act gives us the option to suggest to the parties that they enter into mediation or alternatively (although as a matter of practice we never do) simply to take no further action at all. If the answer to the question is 'yes', then we classify the complaint as a conduct matter and the Act obliges us to investigate the complaint and gives us significant powers of investigation.

Detailed statistical data about the complaints we dealt with during the year to 30 June 2005 have been included at Appendix 4. We note however that:

- We inherited 938 ('pre-Act') complaints on our inception on 1 July 2004 and finalised 510 of those complaints including 103 of the 107 complaints we inherited from the Legal Ombudsman (the remaining 4 are subject to further and ongoing investigation);
- We received 1485 new ('post-Act') complaints over the course of the year and finalised 1007 of those complaints; and
- Hence we had 932 complaints on hand at 30 June 2005 including 428 of the 938 pre-Act complaints we inherited on our inception and 504 post-Act complaints.

That means that we did what we set out to do, albeit just – to reverse the trend of recent years to a growing backlog and to at least to hold our own. Our task this year is to finalise the remainder of pre-Act complaints in their entirety and at the same time to keep pace with complaints received post-Act.

a) Consumer disputes

We invariably suggest to the parties to consumer disputes that they enter into mediation. We referred 143 or 17% of the post-Act complaints we assessed during the year to be consumer disputes to the Law Society for mediation but mostly we try to mediate them ourselves.

The Commission and the Society between us finalised 733 consumer disputes during the year to 30 June, including 254 pre-Act and 479 post-Act disputes. The pre-Act disputes had been open 6 months and more on average on their closure but – this is a positive sign – the post-Act disputes were finalised within an average of less than 6 weeks. Almost all involved solicitors; only 15 or 2% involved barristers and only 3 or less than 0.5% involved law practice employees.

Notably the 733 consumer disputes involved 501 or 9% of all Queensland solicitors and 409 or 33% of all Queensland law firms, and 100 or almost 2% of all Queensland solicitors and 150 or more than 12% of all Queensland Law firms found themselves respondents to 2 or more disputes. The numbers look large at first but should be seen in context. The fact is that the 401 solicitors who found themselves respondent to only 1 consumer dispute during the year will very likely have dealt with many hundreds of clients and client files and had many hundreds and probably thousands of interactions with clients.

Almost 20% of consumer disputes arose out of family law work; almost 20% out of conveyance work; just over 10% out of personal injury work; and just under 10% out of deceased estates and trusts work. More than 30% involved disputes about costs; almost 30% involved disputes about quality of service and poor communication; and just over 20% involved disputes about perceived ethical matters including, for example, disputes about whether a solicitor acted without or contrary to instruction or applied pressure to settle or acted despite a conflict of interest.

Notably 211 or almost 30% were resolved to the complainant's satisfaction. That sometimes involved practitioners agreeing to make good a mistake and

sometimes simply involved the mediator relaying a practitioner's explanation about how the practitioner calculated their fee or about the circumstances surrounding an apparent delay. It sometimes involved clients agreeing to pay their outstanding fees by installment and practitioners agreeing not to seek to recover them by litigation. It sometimes involved practitioners agreeing to waive or reduce or refund some or all their fees, most often in disputes arising out of conveyances and typically only relatively small sums – $450, say, that was owing because of a miscalculated rates adjustment or body corporate fee or the like. The sums were larger on occasion, however, and one practitioner refunded $12,000 to his clients following the Commission's intervention on their behalf in relation to a disputed lien.

Notably 181 consumer disputes or almost 25% were unable to be satisfactorily resolved by mediation and 154 or slightly more than 20% were assessed after further inquiry to be unfounded.

b) Conduct matters

The Act obliges the Commission to investigate complaints that allege unsatisfactory professional conduct or professional misconduct or to refer them to the Law Society or Bar Association for investigation subject to the Commission's direction and control. Neither the Society nor the Association has authority to decide what action, if any, should be taken on the complaint, only the duty to forward their recommendations to the Commission for review. The Act gives the Commission alone power to decide what action if any should be taken.

We referred 451 or 73% of the post-Act complaints we assessed to be conduct matters to the Law Society and 14 or 2% to the Bar Association for investigation. The Society returned 559 matters (both pre-Act and post-Act) to the Commission after investigation for review, and the Association returned 3. We finalised 758 conduct matters during the year, including 256 pre-Act and 502 post-Act matters. The pre-Act matters had been open 18 months and more on average on their closure but – again this is a positive sign although it may be misleading because they are very likely not a representative sample --the post-Act matters were finalised within an average of less than 3 months.

Almost 20% of conduct matters arose out of family law work; almost 14% out of personal injury work; and almost 13% out of conveyances. More than 36% alleged unethical conduct of one kind or another, including failure to honour undertakings or acting contrary to instruction or with a conflict of interest; almost 15% alleged gross overcharging or other unsatisfactory conduct in relation to costs and almost 15% alleged poor standards of service of kinds we say would, if established, amount to unsatisfactory professional conduct.

They almost all involved solicitors. Only 27 or less than 3% of conduct matters involved barristers and only 7 or less than 1% involved law practice employees. They involved 450 or 8% of all Queensland solicitors and 384 or 31% of all Queensland law firms and in fact 85 or almost 1.5% of all Queensland solicitors and 114 or more than 9% of all Queensland Law firms found themselves respondents to 2 or more conduct matters. We note once again that the 450 solicitors who found themselves respondent to only 1 conduct matter over the year will have dealt with many hundreds of clients and client files and in that context the number is encouraging.

Notably in this context we finalised 427 or almost 60% of the conduct matters we dealt with during the year on the basis that the evidence after investigation failed to establish a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct. Some of them were completely without substance. The evidence in others, while it was insufficient to show the matters had no substance, was at the same time insufficient to establish a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct. We take no further action in these circumstances because it would be unfair to respondents and wasteful of scarce resources to file a discipline application in circumstances in which we believe there is no reasonable prospect of a successful prosecution. The evidence after investigation was sufficient to cause us to file discipline applications in only 25 or 3.3% of the 758 conduct matters we finalised during the year.

Another notable outcome was that 107 or 15% of conduct matters were finalised on the basis that, while the evidence after investigation established a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct, there was nonetheless no public interest in taking the matter any further. Sometimes this was because the practitioners had ceased to practice or already been struck off or suspended in relation to other matters and there was simply no point.

More significantly however sometimes it was because the unsatisfactory conduct was at the minor end of the spectrum and the practitioners had acknowledged their error and either made good their mistake or taken appropriate steps to reduce the risk it might happen again or both. This is the scenario we described earlier in the report and illustrated with several case studies and is an outcome that we hope to encourage.

2. Investigating apparent misconduct in the absence of complaint

The Act authorises the Commissioner to instigate an investigation on his or her own initiative if 'the Commissioner believes an investigation about a matter (an investigation matter) should be started into the conduct of an Australian legal practitioner or a law practice employee'. It enables us, in effect, to start and deal with investigation matters as if they were complaints. The power is an important one for the obvious reason that some people who may have good reason to complain about a practitioner's conduct will lack the knowledge or confidence or trust in the system to bring a complaint or perhaps fear reprisal if they do. There are circumstances, too, in which a practitioner's conduct has no 'victim' as such but falls short even so of the standard of competence and diligence a member of the public is entitled to expect of a reasonably competent practitioner. The power means that we are not reliant on a complaint to trigger an investigation in circumstances like these but that we can be proactive.

We started 35 investigation matters during the year to 30 June 2005. The conduct subject to those investigations came to attention in various ways not least through media reports. We started an investigation into the conduct of a barrister, for example, having read in a local newspaper that the person concerned had been convicted of fraud and that matter is now before the Legal Practice Tribunal on the grounds that the conviction might justify a finding that the barrister is not a fit and proper person to engage in legal practice. We have since agreed with the Director of Public Prosecutions that the Director will advise the Commission whenever a legal practitioner is convicted of any indictable offence. We have come to a similar arrangement with the Office of Fair Trading in which that office advises us whenever a legal practitioner is found to have breached any laws it administers – the *Property Agents and Motor Dealers Act 2000*, for example.

We have also started investigations following referrals from a number of statutory and government agencies including the Crime and Misconduct Commission, the Law Society, and the Courts. The Law Society has on a number of occasions now drawn our attention to solicitors who have failed to comply without any apparent reason or excuse with their obligations to have their trust accounts audited and to submit audit reports. Judges and registrars on behalf of judges have several times now drawn our attention to the conduct of practitioners who have appeared before them in both civil and criminal proceedings.

We have also started a number of investigations following complaints by anonymous complainants that appear to be credible complaints and that make specific allegations capable of being tested. One such complaint alleges that senior staff of a middle-sized firm subject junior employees to systematic bullying and harassment.

We might add that we see it being no easy task to investigate many investigation matters, and 'third party' complaints more generally – complaints about practitioners by people other than their clients. They pose a particular problem. The Act gives the Commission significant powers of investigation including the power to require practitioners subject to investigation to answer questions and to produce information and documents, but not if they can claim legal professional privilege or the duty of confidentiality. Practitioners can't claim privilege or the duty of confidentiality when we are investigating complaints by their clients but otherwise they can, and hence they can in any investigation matters and investigations of third party complaints – unless the person to whom the information relates waives privilege or consents to its disclosure. That can't be assumed and indeed in many cases will be unlikely, and that may well frustrate or even preclude effective investigation.

These are complex issues which give rise to competing public policy considerations. We will monitor any difficulties we encounter but fully recognise the need to strike the right balance between having effective powers of investigation on the one hand and preserving the confidentiality of the solicitor / client relationship on the other.

3. Initiating and prosecuting discipline applications when there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and it is in the public interest

The Commission is the sole body in the new system established under the Act for dealing with complaints authorised to initiate and prosecute discipline applications in one or other of the two new disciplinary bodies – the Legal Practice Tribunal in relation to more serious matters and the Legal Practice Committee in relation to less serious matters. The Act give us a wide discretion as to what matters to put before a disciplinary body and the option to take no further action on a complaint or investigation matter if we believe either that there is no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct or that it is in the public interest to take no further action.

The disciplinary bodies

The Legal Practice Tribunal (the Tribunal) is chaired by the Chief Justice and comprises a judge of the Supreme Court helped by either a solicitor or a barrister (depending on whether the discipline application concerns a solicitor or a barrister) and a lay person. The practitioner and the lay person are chosen from panels of practitioners and lay people who have been appointed for the purpose. The Tribunal hears discipline applications that allege professional misconduct or unsatisfactory professional conduct by practitioners and has power to make orders including among others that:

- the practitioner's name be removed from the roll (that is to say, that the practitioner be 'struck off');
- the practitioner be suspended from practice or be allowed to practice only subject to certain conditions (that the practitioner be supervised by another practitioner, for example, or undertake specified further legal education);
- the practitioner pay a penalty of up to $100,000;
- the practitioner's practice pay a complainant compensation of up to $7,500 if the practitioner's unsatisfactory professional conduct or professional misconduct has caused a complainant to suffer pecuniary loss; and
- the practitioner be publicly (or in special circumstances, privately) reprimanded.

The Legal Practice Committee (the Committee) comprises a Chairperson who may or may not be a lawyer but who has 'high level experience and knowledge of the legal system and legal practice'; two solicitors; two barristers; and two lay people. It has both an advisory and a disciplinary function and comprises for the purpose of hearing and deciding discipline applications the Chairperson, a solicitor or a barrister member (depending on whether the discipline application concerns a solicitor or a barrister) and a lay member. The Committee hears discipline applications that allege unsatisfactory professional conduct by practitioners or misconduct by law practice employees and has power to make orders that:

- the practitioner pay a penalty of up to $10,000;
- the practitioner be publicly (or in special circumstances, privately) reprimanded;
- the practitioner's practice pay a complainant compensation of up to $7,500 if the practitioner's unsatisfactory professional conduct has caused the complainant to suffer pecuniary loss;
- the practitioner do or refrain from doing something in connection with his or her legal practice or be managed in a stated way for a stated period or be subject to inspection for a stated period by someone nominated by his or her professional body; and
- the law practice concerned or no law practice may continue to employ or employ the law practice employee, or employ him or her only subject to stated conditions.

Hearings before either disciplinary body are open to the public, unless the Tribunal or Committee decides otherwise, and both bodies are obliged to proceed as quickly and with as little formality and technicality as is consistent with a fair hearing of the issues before them. They both decide discipline applications on the balance of probabilities, and the Commissioner, the Attorney-General and any parties who are dissatisfied with their decisions are entitled to appeal – in the case of decisions of the Committee, to the Tribunal; and in the case of the Tribunal, to the Court of Appeal.

The Attorney-General announced the appointments of people to the lay and practitioner panels for helping the Tribunal and to the Committee on 18 November 2004 enabling the disciplinary bodies to be open for business, as it were. We had previously prepared draft practice directions and discipline application forms for consideration by the Rules Committee of the Supreme Court which approved a Discipline Application and the Tribunal's Practice Direction No. 1 of 2004 effective from 18 October. The Committee approved its Discipline Application and Practice Direction No.1 of 2005 on 10 January 2005.

The Commission's website includes full details of the membership of the lay and practitioner panels for helping the Tribunal and of the Committee, and both the Tribunal's and the Committee's Practice Directions No.1 and Discipline Application forms.

The discipline register

The Act requires the Commissioner to maintain a discipline register of any disciplinary action taken under the Act or taken under a corresponding law elsewhere against practitioners who are or were admitted in Queensland or who were practising here when the conduct occurred. It says the register must appear on the Commission's website (or on a website identified on the Commission's website) and must include the name of the person against whom the disciplinary action was taken, the name of the law

practice that employs or employed them and a range of other information including the particulars of the disciplinary action.

The Act defines 'disciplinary action' to include orders of a court or the Tribunal that find legal practitioners guilty of professional misconduct and that strike them off or suspend them but to exclude orders of the Tribunal or the Committee that impose lesser penalties or find practitioners guilty of unsatisfactory professional conduct. It says that the requirement to keep the discipline register applies only to disciplinary action taken after the Act came into effect but that the register may include disciplinary action taken under previous legislation.

We have decided to go beyond the mandatory requirements of the Act in order to better inform both practitioners and the public about the standard of competence and diligence that members of the public are entitled to expect of a reasonably competent legal practitioner.

We propose to include in the discipline register on the website, unless a court or the Tribunal or Committee make orders prohibiting publication of the relevant information, the names and details of any legal practitioners whose conduct is found to be either professional misconduct or unsatisfactory professional conduct. That information is publicly available in any event since hearings before the disciplinary bodies must be open to the public (unless ordered otherwise) and can be reported.

We have also included disciplinary action taken before 1 July 2004 including all disciplinary action against solicitors and law practice employees by the Solicitors Complaints Tribunal from when that body first came into existence in 1998 and some earlier disciplinary action taken by its predecesor tribunal, the Statutory Committee, going back to 1996. We have included, too, the names and relevant details of barristers who have been struck off by the Court of Appeal since 1996 following applications by the Barrister's Board and of barristers who have been suspended from membership of the Bar Association following published findings of the Bar Council that they were guilty of unprofessional conduct.

We have included a direct link for every person whose name appears on the discipline register to the judgments (disciplinary reports) of the disciplinary bodies that found against them including any judgments on appeal. The disciplinary reports provide full particulars of the allegations against the practitioners together with the disciplinary body's findings, reasons for decision and orders.

Discipline applications and outcomes in 2004–05

There were 8 discipline applications unfinalised in the previous disciplinary body, the Solicitors Complaints Tribunal, when the Act commenced on 1 July 2004. Of those, 3 were part-heard and, under the Act's transitional provisions, those matters remained matters for the Law Society to prosecute in the 'old' tribunal. The 5 other matters reverted to the Commission to consider whether to file fresh discipline applications in one or other of the new disciplinary bodies.

- **Matters remaining with the Solicitors Complaints Tribunal in 2004–05**

  The Solicitors Complaints Tribunal heard and decided during 2004–05 all 3 matters that were part-heard at 30 June 2004. One of those matters was procedural in nature but the practitioners in both other matters were struck off – John Thomas Tunn on 1 July 2004 (Mr Tunn appealed but the Court of Appeal dismissed his appeal on 5 November 2004) and Trevor John Brown on 12 May 2005. Mr Tunn was found to have seriously neglected and delayed attending to 10 conveyancing matters and to have breached an undertaking. Mr Brown was found to have practiced without a practicing certificate and to have made false representations about witnessing loan documents. The Tribunal's (and the Court of Appeal's) judgments are included in full on the discipline register on the Commission's website.

- **Discipline applications to the new disciplinary bodies in 2004–05**

  The Commission filed 17 discipline applications in the year to 30 June 2004 – 16 of them in relation to solicitors and 1 in relation to a barrister – 11 with the Legal Practice Tribunal and 6 with the Legal Practice Committee. The Tribunal heard and decided 2 of those applications during the course of the year with the result that one practitioner – Stephen John Hockey – was struck off on 13 December 2004 and another was fined $5,000 on 15 June 2005. Mr Hockey was found to have fraudulently misappropriated trust funds totaling over $400,000. The practitioner who was fined was found to have breached his obligations in relation to the management of his trust account. We note that the file in relation to this latter case remained open at 30 June 2005 because the practitioner had 28 days from the date of the Tribunal's decision to exercise his entitlement to appeal and that period had not yet expired. The Tribunal's judgments in both matters are included in full on the discipline register on the Commission's website.

  The Tribunal heard a third application in April, in relation to Michael Vincent Baker, but the decision in that matter remains pending. The other 8 applications to the Tribunal were still to be heard at 30 June 2005 and so were all 6 applications to the Committee. We expect most if not all those matters to be finalised by the end of the 2005 calendar year.

  We opened a further 8 'prosecution' files during the year, making a total of 25 in all, and will lodge discipline applications in relation to those 8 matters over coming weeks and months. We expect to file 5 of them with the Tribunal and 3 with the Committee.

This means that the disciplinary bodies old and new heard and decided only 5 matters between them in 2004–05, significantly fewer than in previous years. The Solicitors Complaints Tribunal heard and decided 23 matters in 2001–02, 26 matters in 2002–03 and 25 matters in 2003–04 (see the table in the report about the discharge of the Legal Ombudsman's functions in 2003–04 at Appendix 1 to this report). The reduced numbers indicate nothing more than that the transition to the new system for dealing with discipline applications resulted in some temporary processing delay. They do not indicate a lack of will. We can say with some confidence but no joy that the numbers will bounce back over the year ahead.

4. Collaborating with the professional bodies, law schools and other legal services stakeholders to reduce cause for consumer complaints

We have argued that we will best promote and protect the rights of legal consumers by lifting our gaze beyond the individual dealings between practitioners and their clients that come to us as complaints and turning our attention also to how we might be proactive in reducing the cause for consumer complaints in the first instance. Prevention is always better than cure. We have said we should be trying to learn whatever lessons the complaints-handling experience can teach us about standards of practice and how they might be improved. We have said we should be subjecting our complaints data to careful analysis and be undertaking, brokering, partnering and supporting research calculated to find ways to reduce cause for consumer dissatisfaction and complaint.

We set ourselves a performance target accordingly: to secure agreement that the Commission should develop such a capacity; to secure the funds through the budget process to employ a policy and research officer during 2005–06; and to have recruited to that position by 1 July 2005. We are pleased to say that we have achieved that objective.

It would be wrong to pre-empt the sorts of research and research partnerships we might embark upon but it might be useful even so to reflect on some possibilities. The first and most obvious comes about purely by serendipity. One unintended but happy consequence of the decision to connect the Commission to the case management system (CMS) that was already being used by the Law Society is that we find ourselves connected to a database that includes a rich array of other regulatory data. We have the opportunity therefore to cross-reference the complaints data with data about the practitioners subject to complaint including their age, gender, how long they have been admitted, what type of practicing certificates they have, whereabouts in Queensland they work and in what size firms.

We have laid the foundations for some potentially fruitful further analysis and research by including cross-referenced data of that kind in the statistical data we generated for this report and have attached as Appendix 4. It is the sort of information that with further analysis should help identify the practitioners who are most at risk of complaint and help craft carefully targeted and evidence-based educational and other preventative strategies. It invites some obvious questions including, for example, why is it that women lawyers are less than half as likely as their male counterparts to be subject to complaint? Or why is it that lawyers aged in their 30s are only half as likely as lawyers aged in their 40s to be subject to complaint? Or why is it that lawyers who work in law offices in some parts of Queensland are only half as likely as lawyers who work in law offices elsewhere in Queensland to be subject to complaint? We don't know the answers – and we should be cautious about jumping to conclusions – but they are good questions.

There is other research we might want to encourage and support beyond statistical analysis of the complaints data. We are struck, for example, by the fact that the disciplinary framework that applies to ethical misconduct by lawyers, and for that matter most talk about legal ethics, makes misconduct an almost exclusively personal responsibility of individual lawyers. It's as if they exist in a social vacuum. It seems to us that it might be useful and important to study legal workplaces to try to find out, for example, what business systems and management and supervision practices small, medium sized and large legal firms might usefully employ to support lawyers in conducting themselves ethically and reduce the risk of unethical conduct.

5. Creating and maintaining a productive and motivating work environment

The Commission faced some very basic challenges in creating and maintaining a happy and productive work environment in 2004–05, the very first year of its existence. The first of them was to ensure we had the right number of people in the right structure to do the job expected of us, and that was at the very least to reverse the trend over recent years to an increasing backlog of complaints. That meant, because the Commission is just one part of the system for dealing with complaints, ensuring that the system as a whole had the right number of people.

Our people

The Commission started the year with a staff complement of 5 complaints-handlers and 2 full-time equivalent administrative support staff. The Law Society started the year with 13.75 full-time equivalent complaints-handlers, 3 of them contracted only until 31 December 2004, and 4 administrative support staff. It became apparent very early in the piece that the Commission and the system as a whole were significantly under-resourced. We are pleased to say that the Attorney responded promptly by approving additional funding enabling the Commission to put on 2 additional complaints-handlers and an executive assistant – all three people were on board by October 2004 – and enabling the Society to extend the 3 contracted positions until 30 June 2005.

That staff complement enabled us to achieve the bottom line goal for 2004–05 of reversing the trend to an increasing backlog – the number of complaints on hand at 30 June 2005 was less than the number of complaints on hand at 1 July 2004. We set ourselves the goal, however, of working out the number of staff and the organisational structure the Commission required going into 2005–06 not only to keep the complaint numbers from increasing but also to eliminate the backlog of pre-Act complaints by 30 June 2006. We set ourselves the goal to secure the necessary funds through the budget process and to have the people and structure in place by or as soon as possible after 1 July 2005.

We believe we have met those objectives. We are pleased to say that the Attorney-General approved our budget proposal that sought additional funding again to enable the Commission to upgrade one of the existing complaints-handlers' positions to create the position of Manager – Complaints to manage workflow and to better support the complaints-handlers and also to appoint:

- an additional 2 complaints-handlers to give us an in-house capacity to prepare and prosecute discipline applications – this is work the Law Society briefed out in recent years at a significant cost to its budget; and
- a policy and research coordinator to give us some capacity to analyse the database and otherwise to undertake, encourage and broker research activities in partnership with the professional bodies, the university law schools and other legal services stakeholders to find ways to reduce cause for consumer complaint.

People have been recruited to all these positions and will commence in July and August 2005. We are pleased to say also that the Attorney-General approved as part of the package the further extension of the 3 contracted complaints-handler positions at the Law Society until 30 June 2006. This means that the Commission goes into 2005–06 with a staff complement of 14.67 equivalent full-time people and the system for dealing with complaints as a whole with a total staff complement of 32.42. We are confident this resource level will be sufficient to enable us to meet our goal of eliminating the backlog of complaints by 30 June 2006 at the same time as keeping pace with new complaints and hence enable some downsizing of the system going into 2006–07.

Having got the right number of people in place for 2005–06, our challenge, clearly, is to build-in ways to better support them in their jobs. We intend accordingly to develop and implement a performance management framework and to agree individual learning plans to support the staff in their work and future careers.

Organisational charts setting out the Commission's staff structure during 2004–05 and its enhanced structure going into 2005–06 are given at Attachment 2. We have included organisational charts highlighting those parts of the Law Society and the Bar Association that, together with the Commission, go to make up the system established under the Act for dealing with complaints. We have included for completeness at Attachment 3 a table setting out the cost of the system for dealing with complaints in 2004–05.

Our policies, procedures and systems

Our second very basic challenge in creating a happy and productive work environment in 2004–05 was to develop the tools we needed to get on with our job of dealing with complaints. We needed basic policies, procedures, precedent letters and office systems at the very least, to allow us to operate efficiently and with consistency, and to further enhance the case management system (CMS) and its associated network infrastructure once we had better determined our full requirements.

We had been connected to the CMS already being used by the Law Society and it had been adapted before the Act commenced on 1 July to reflect the new system established under the Act for dealing with complaints. It allowed us to become operational but had significant limitations. It allowed us to record, store and retrieve data on electronic case files and to generate lists of complaint files but it gave us no capacity to generate correspondence and other documents about complaints on the relevant case file or access the Society's investigation reports and other documentation

online. Nor did it give us any independent capacity to interrogate the database to generate even the most basic management and performance reports and, even if we had that capacity, the CMS would have had significant limitations even so. It was not set up to capture even the most basic data about the various stages complaints had reached in the complaints-handling process. It was unable, for example, to identify how many or even which complaints the Commission had referred to the professional bodies for investigation and which and how many they had returned after investigation for review. These limitations resulted in needless and time-consuming inefficiency.

We made a conscious decision for the time being however to live with the system's inadequacies, in order to give ourselves time to better understand exactly what we wanted the system to deliver before committing to particular enhancements. We set ourselves the goal to develop a systems specification for the further enhancements we required and to have adapted the CMS to those specifications by 30 June 2005, and have largely achieved that goal.

We began to review the system early in 2005 by first defining the different types of 'cases' we wanted to be able to distinguish. We went from there to develop flowcharts for each type of case which described the different stages they go through on their journey from receipt to closure and to assign target timeliness standards for completion of each of the various stages. We then developed pro forma monthly and annual performance reports (with the flexibility to accommodate any 'from' and 'to' dates) and were ready to capture and report data in the new formats from 1 July 2005. We remain unable to interrogate the database without third party assistance but have identified and ordered the hardware that is required to give us that ability and it will be installed early in 2005–06. That same hardware will also give us access to the system's document generation facility and so overcome that limitation also.

We took the same approach to developing complaints-handling policies and procedures and precedent documents. We initially adapted policies and procedures and precedents that the Law Society and our counterpart bodies in New South Wales and Victoria were using, and chose not to divert time and energy from complaints handling to document procedures and precedents any more than we absolutely had to. We opted instead to get by with the basics until we had sufficient experience to be confident we would get it right the first time round.

We set ourselves the goal, however, to lay the foundations to systematise the storage and retrieval of precedent documents and to fully articulate, document and publish relevant policies and procedures by 30 June 2006, and we expect to make rapid progress over coming months. We have invested in two software packages to help us.

One is a flowcharting package that will enable us to chart the key decision points in the complaints-handling process (along the lines of the flow charts on page 3 and 4) and to go behind each decision point to document the criteria, policies and procedures in multiple levels of complexity and detail. The other is a document management package that will enable us to electronically organise and store precedent documents and standard clauses and the like and to retrieve them for inclusion in correspondence and other documents. Both packages will operate on a local area network and will integrate with the CMS to allow documents to be generated within the relevant electronic case files.

Acknowledgments

The Act requires me to assess the Commission's performance but ultimately it is for others to judge. What I can say is that any progress we may have made is attributable to the efforts of very many people and that their efforts should not go unnoticed.

I especially want to acknowledge and thank the former Attorney-General, Rod Welford, for his generous support in seeing the reforms he introduced into the parliament through to fruition. I would also like to acknowledge and thank the Director-General, Rachel Hunter, for her encouragement and thoughtful advice and a large number of departmental staff for giving us the most practical of assistance. They include Helen Batchelor, Anne Biddulph, Deborah Bloxham, Imelda Bradley, John Geles, Roger Johnson, Ian McGoldrick, Donna McMahon, Pat Morgan, Ray Millman, Lynette Parker, Margaret Poulter, David Schulz, Traven Searle, Linda Skopp and Andy Williams.

The system established under the Act for dealing with complaints will only work, or only work at its best if all its component parts pull together. I want to acknowledge and thank the Chief Justice, Paul de Jersey for his kind and considered advice and similarly the Chairperson of the Legal Practice Committee, Peter Cooper. I want to thank the President of the Bar Association, Glenn Martin QC, the chairperson of its Professional Conduct Committee, Peter Lyons QC, and its Chief Executive Officer, Dan O'Connor. I especially want to thank the President of the Law Society, Glenn Ferguson, for embracing the legislative reforms, and Michael Meadows, the chairperson of the Society's Professional Standards Committee and the other members of the committee. The Society's staff have been unstintingly helpful, too, including among others Sharon Burke, Murray Fox, David Franklin, Malcolm Hinton, and all the staff of the Client Relations Centre and the Investigations unit, not least Leane Bigg, Ian Foote and Craig Smiley.

My counterpart in New South Wales, Steve Mark, has been a constant source of good advice and I am very grateful for that. Stephen Pickering of Genesys Software Solutions and Kent Maddock both made invaluable contributions as consultants. Geoffrey Airo-Farulla, Trudy Aurisch, Brian Bartley, Ian Hughes, Jenny Mead, and David Searles all offered generously of their time in essentially volunteer capacities. So, too, the members of the reference group which has met several times now in an informal advisory capacity – Margo Couldrey, Gary Crooke QC, Susan Francis, Elizabeth Jameson, Dr Julian Lamont, Professor Michael Lavarch, Ross Perrett, Zoe Rathus, and Mark Ryan.

Above all I want to acknowledge and thank the staff of the Commission during 2004–05: David Barakin, Bob Brittan, Darielle Campbell, Petra Faas, Michelle Harland, Helen Johnson, Kathy Keogh, Leanne Long, Scott McLean, Terri Newman, Lisa Nicotra and Rhonda Rouaen. They do important but demanding and sometimes thankless work and they deserve our gratitude for a job well done.

John Briton
Legal Services Commissioner

Appendix 1: Report about the discharge of the Legal Ombudsman's functions in 2003–04

The Legal Profession Act 2004 (the Act) requires the Commissioner (at section 639) to report to the Attorney-General about the discharge of the Legal Ombudsman's functions during the financial year ending on 30 June 2004. This is that report.

The Act established the new system for dealing with complaints about solicitors, barristers and law practice employees that is described elsewhere in the main body of this report. The new system replaced the previous system established under the Queensland Law Society Act 1952 (the QLS Act). The Queensland Law Society was responsible under that system for receiving and dealing with complaints about solicitors and law practice employees and in particular for investigating complaints alleging unprofessional conduct or professional misconduct by solicitors and misconduct by their employees and initiating disciplinary proceedings as appropriate in the (then) Solicitors Complaints Tribunal. There was no statutory system for dealing with complaints about barristers.

The QLS Act entitled complainants who were dissatisfied with the way the Law Society handled their complaints to complain to the Legal Ombudsman (the Ombudsman) to seek to have it reviewed. The Ombudsman was employed only on a part-time basis and had no investigatory staff and no power to investigate original complaints. The Legal Ombudsman did have powers and duties, among others, however, to:

- monitor investigations undertaken by the Law Society;
- investigate complaints about the way the Society dealt with complaints;
- direct the Society to take further steps in the investigation of complaints;
- require the Society to produce information in its possession or control to enable the ombudsman to discharge his or her functions;
- monitor hearings before the Solicitors Complaints Tribunal
- initiate disciplinary proceedings, or appoint a lawyer to initiate disciplinary proceedings in the Tribunal if he or she believed the Society should have done so but did not;
- appeal decisions of, or appoint a lawyer to appeal a decision of the Tribunal; and
- attend all meetings of the Council of the Law Society.

The office of Legal Ombudsman ceased to exist upon my appointment to the office of Legal Services Commissioner on 24 May 2004 and the Act obliged the Ombudsman to transfer all documents held by his office to me as Commissioner. I am pleased to say that Jack Nimmo, who had held the position of Legal Ombudsman since October 2001, was subsequently engaged by my office as a consultant for a further month, from 31 May to 30 June, to evaluate and report to me on the status of the complaints that had been made to his office but not finally dealt with when the office ceased to exist. The Act provided for a series of transitional arrangements under which those complaints and any further complaints that might be made to the Ombudsman after that time but before the new system for dealing with complaints commenced on 1 July 2004 became, in effect, complaints made to me as Commissioner as if they were made under the new system.

My advice is that the Ombudsman handled 324 complaints in the period from 1 July 2003 to 24 May 2004 and finalised 226 of them. The 324 complaints included 166 complaints that were carried over from 2002–03, 117 new complaints and 41 complaints that had previously been closed but which were re-opened after new information was received. I note from the annual report for 2002–03 that the Ombudsman handled 597 complaints that year — 122 complaints that were carried forward from 2001–02, 427 new complaints and 48 reopened complaints – and finalised 416 of them.

I have no information about the outcomes of the 226 complaints the Ombudsman finalised in 2003–04 or how they were resolved. I can say with certainty however that the 98 complaints that had not been finally dealt with when the office ceased to exist on 24 May 2004 transferred to me as Commissioner pursuant to the transitional arrangements along with a further 9 complaints that were made to the Ombudsman after 24 May but before the new system for dealing with complaints commenced on 1 July.

I note finally that the annual report of the Legal Ombudsman in years past has included, consistent with the Ombudsman's role to monitor hearings before the Solicitors Complaints Tribunal, not only statistical details of the numbers of matters that were heard and decided by the Tribunal during the year but also its reasons for decision in each of those matters. The following table (Table 1.1) updates the statistical data to include the data for 2003–04:

The full details including the Tribunal's reasons for decision in each of the matters it heard and decided

	1997 –98	1998 –99	1999 –00	2000 –01	2001 –02	2002 –03	2003 –04
Struck off	6	1	6	3	12	8	6
Suspended	3	1	3	2	3	8	5*
Fined	7	3	11	5	5	7	13
Other	-	-	-	-	3^	3^	1^
Total	16	5	20	10	23	26	25

* This figure includes 1 solicitor who was suspended by the Tribunal but subsequently struck off when the Tribunal's decision was appealed in the Court of Appeal

^ These figures include law practice employees: 1 in 2001–02; 2 in 2002–03; and 1 in 2003–04

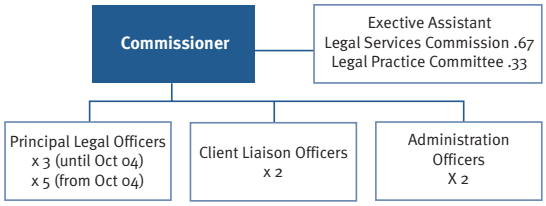
in 2003–04 are included on the Commission's website on the discipline register. The register also includes the reasons for decision of the Court of Appeal in relation to any decisions of the Tribunal that were appealed.

John Briton
Legal Services Commissioner
31 October 2005

Appendix 2: Organisational charts

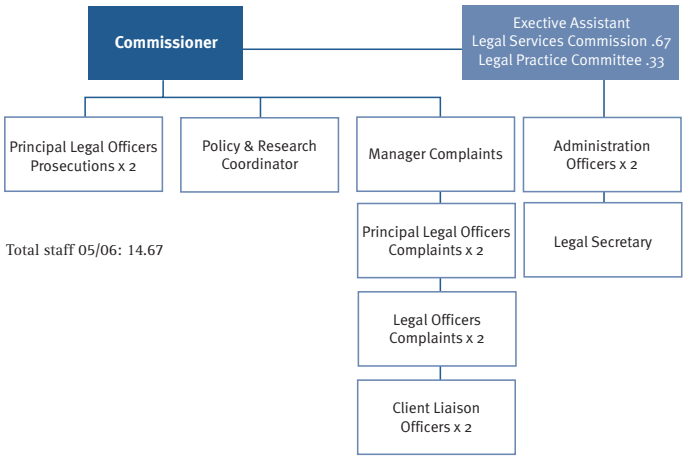
The system established unde the Act for dealing with complaints includes comprises not only the Legal Services Commission but parts of the Law Society and the Bar Association also - the parts that are highlighted grey in the following organisational charts.

Staff Structure 2004-2005



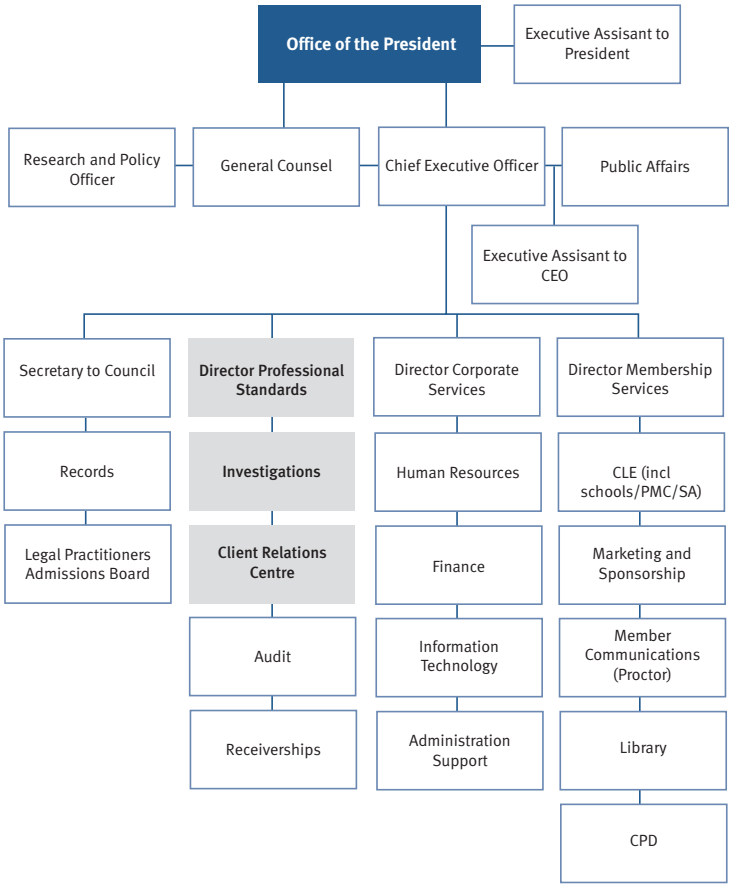
Total staff 04/05: 11.67

Staff Structure 2005-2006

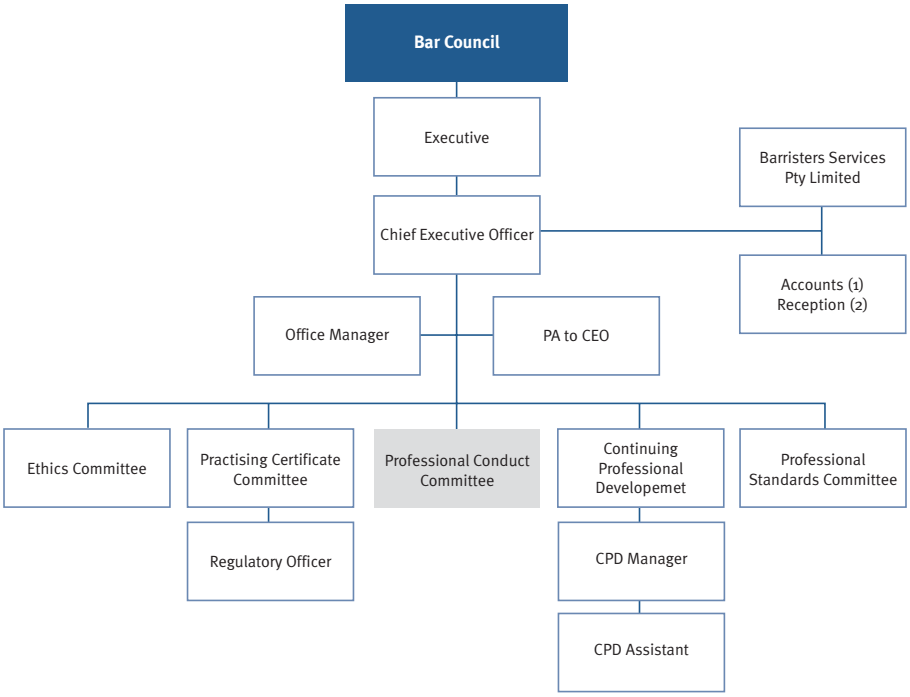


Total staff 05/06: 14.67

Queensland Law Society - as at 30 June 2005



Bar Association of Queensland – as at 30 June 2005



Appendix 3: Financial data for 2004–05

Table 3.1 (below) sets out the costs in 2004–05 of administering the system established under the *Legal Profession Act 2004* (the Act) for dealing with complaints. That system comprises the Legal Services Commission, those parts of the Law Society and Bar Association that deal with complaints on referral from the Commission (the parts that are highlighted on the organisational charts attached at Appendix 2), and the two disciplinary bodies – the Legal Practice Tribunal and the Legal Practice Committee. The Commission, the professional bodies and the disciplinary bodies are funded for this purpose by grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) in accordance with sections 209–210 of the Act. Grants are also made from LPITAF to fund (or part-fund) other regulatory functions under the Act including, for example, the administration of the practicing certificate regimes. Grants from LPITAF are made at the discretion of the Attorney-General on the recommendation of the Director-General of the Department of Justice and Attorney-General.

	Total Employee-related expenses	All other costs	Total
Legal Services Commission	$882 794	$879 594	$1 762 388
Queensland Law Society	$1 356 328	$360 689	$1 717 017
Bar Association of Queensland	$0	$0	$0
Legal Practice Tribunal	$48 682	$7 633	$56 315
Legal Practice Committee	$14 436	$6 248	$20 684
Total	$2 302 240	$1 254 164	$3 556 404

Appendix 4: Statistics

1 Introduction

1.1 Purpose

This report provides a statistical analysis of the complaints handling for the 2004/2005 year by the Legal Services Commission.

1.2 Scope

This report applies to the processing on inquiries, complaints, including investigation matters as well as discipline applications regarding the legal profession in Queensland.

1.3 Acronyms, and abbreviations

Term	Description
BAQ	Bar Association of Queensland
LSC	Legal Services Commission
Pre-Act	Complaints/Discipline applications before 1/7/2004
Post-Act	Complaints/Discipline Applications on or after 1/7/2004
QLS	Queensland Law Society

1.4 Definition of terms

The complaints database used by the LSC distinguishes three types of matters - inquiries; complaints; and discipline applications - as follows:

a) Inquiries can be made either to the LSC or directly to the QLS or BAQ and comprise:

- inquiries by legal consumers (typically but not exclusively by telephone) about how to make complaints about legal practitioners or law practice employees; and
- informal 'complaints'– viz. 'complaints' about the conduct of legal practitioners and/or law practice employees that are made by phone or in person but not in writing and which the 'complainants' request or agree be dealt with informally, at least in the first instance (on the understanding they remain entitled to make a formal written complaint if their 'complaint' isn't resolved informally). Informal complaints of this kind are dealt with as if they were consumer disputes (see below); and
- inquiries by practitioners (typically but not exclusively by telephone) about how to make complaints about other practitioners or seeking advice about ethical or client management issues

b) Complaints must be in writing and can be made only to the LSC and in the fist instance are logged on the data base ('opened') simply as complaints. They are then assessed as falling into one of three mutually exclusive categories and logged accordingly - as summary dismissals, consumer disputes or conduct matters, as follows:

- summary dismissals, viz. complaints that are summarily dismissed pursuant to s.259 of the Act;
- consumer disputes, viz. complaints that describe disputes between consumers and legal practitioners and/or law practice employees but as making no allegation of either unsatisfactory professional conduct or professional misconduct by practitioners or misconduct by employees. The LSC may seek to mediate consumer disputes or alternatively refer them to the QLS or BAQ for mediation but there is no requirement that the QLS or BAQ report the outcome to the LSC;
- Conduct matters, viz. conduct complaints and investigation matters, as follows:
  - conduct complaints, viz. complaints (whether or not they also they describe consumer disputes) that allege unsatisfactory professional conduct or professional misconduct by practitioners or misconduct by employees; and
  - investigation matters, viz. matters that come to the Commission's attention in the absence of complaint (or through an anonymous complaint or 'tip-off') that appear to involve unsatisfactory professional conduct or professional misconduct by practitioners or misconduct by employees and that the Commissioner believes warrant investigation. Investigation matters are logged on the data base as conduct complaints brought by Commissioner as complainant.

The LSC must investigate conduct matters or alternatively must refer them to the QLS or BAQ for investigation in which case the QLS and BAQ must report their findings and recommendations to the LSC for review and decision.

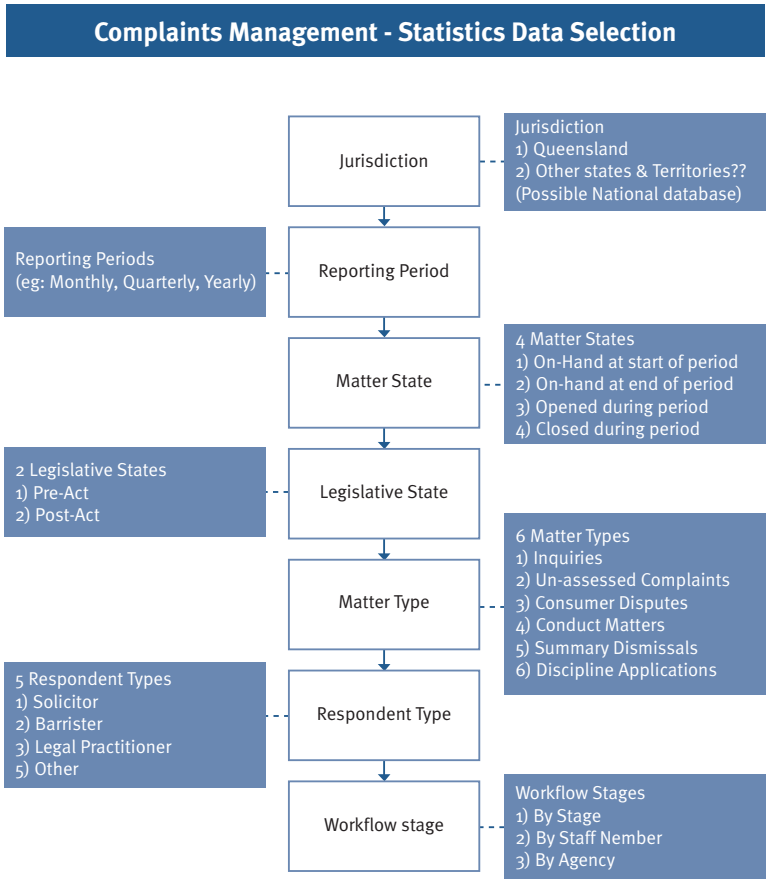
c) Discipline applications comprise matters subject to discipline applications to the Legal Practice Tribunal or the Legal Practice Committee (on the basis that the Commissioner is persuaded after investigation both that there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct by a legal practitioner or misconduct by a law practice employee and that it is in the public interest to initiate disciplinary proceedings.

2 Statistics reporting framework

2.1 Explanation

The following diagram outlines the framework used for determining the selection criteria for compiling the annual statistics reports.

The selection criteria for any of the reports can be constructed from combinations of the above attributes for a complaint. For each of the selection boxes, single or multiple attributes can be selected as well as the ability to select 'ALL'. The only exception is the matter state selection as it can only ever be a single value.



The workflow options are not fully available for this annual report as these enhancements were only installed in June 2005 and therefore the data does not exist for reporting.

This report only looks at dissections of complaints by single attributes (eg Area of Law, Nature of Matter). The database used by the LSC provides the ability to overlay these attributes across multiple levels to provide a highly focussed analysis (eg Conduct Matters by Nature of Matter by Age Group). This type of information will be analysed by the LSC as part of its research programs.

2.2 Units of measure

2.2.1 Inquiries

We have adopted to measure the number of inquiries opened as the measure for this category. It is assumed that an inquiry is generally closed within a day. For the purposes of statistics, we will conclude that inquiries opened will in effect be the same as inquiries closed for the same period. We do not consider inquiries to have any 'on-hand' values.

2.2.2 Complaints

The following outlines the units of measure we have adopted for measuring complaints for last year. The primarily consist of the following:

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

This effectively provides us with the complaints on-hand at the end of the year which will reconcile with the additions and subtractions of the above categories.

We have adopted the closing of a complaint as the key measure as this is the only processing point of the complaint that provides definitive and accurate information regarding the complaint (ie it cannot change after this point). This is not the case if the opening of the complaint is measured as information may change as a result of the subsequent assessments, mediations and/or investigations.

Another standard we have adopted is to separate the consumer disputes from the conduct matters as part of the 'closed complaints' reporting. We have chosen this approach as the nature of each one of these categories is substantially different and consolidating the numbers would only give misleading information in relation to 'length of time open' and throughputs.

2.2.3 Discipline applications

The following outlines the units of measure we have adopted for measuring discipline applications. The primarily consist of the following:

- applications on-hand at start of year
- applications opened during the year
- applications closed during the year

This effectively provides us with the applications s on-hand at the end of the year which will reconcile with the additions and subtractions of the above categories.

We will report on both the applications opened and closed as the nature of the application is unlikely to change between being opened and being closed.

3 Annual statistics reports

3.1 Profession analysis for respondents

The following section provides an analysis of the professions for each respondent type. The purpose of this analysis is to provide details of the composition of the legal profession in each case.

3.1.1 Profession analysis – Queensland solicitors

The date of 1/7/2004 has been used at the reference point for the profession. As well as being the start date for the year, it is also the renewal date for practising certificates for Queensland solicitors. This implies that any complaints regarding the respondent during the 2004/2005 year will be profiled with the attributes of the respondent as at 1/7/2004.

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

3.1.2 Solicitors – employee positions by practising certificate type

	Practising Certified Type			
Employee Position	Conditional	Employee	Principal	Total
Academic	1	11		12
Community legal	21	51	16	88
Consultant	3	216	4	223
Corporate	37	321	10	368
Cost assessor		3	5	8
Employee	391	2175	1	2567
Government	12	54		66
Government agency	4	6		10
Legal aid	26	84	1	111
Local government	6	30	1	37
Locum tenens		19		19
Managing partner			323	323
Not practising	18	57	2	77
Partner		16	1000	1016
Sole practitioner		3	922	925
Total	519	3046	2285	5850

3.1.3 Solicitors – employee positions by type of firm

This table identifies 4,867 solicitors that are employed by Queensland Legal firms and a total of 983 solicitors (16.8%) that are employed by other types of firms.

	Practising Certified Type			
Type of Firm	Conditional	Employee	Principal	Total
Community legal centre	21	51	16	88
Government agency	4	6		10
Law Society	3	7		10
Legal firm - non-Queensland	6	96	85	187
Legal firm - Queensland	388	2315	2164	4867
Non-firm	18	76	2	96
Non-legal firm	79	495	17	591
Solicitors with R.P.& P.I			1	1
Total	519	3046	2285	5850

3.1.4 Profession analysis – Queensland legal firms

There were 1,238 Queensland legal firms as at 1/7/2004 and these accounted for 1,332 of the law offices in Queensland.

3.1.5 Profession analysis – Queensland barristers

While provision can exist within the current regulatory database to profile these respondents, we currently do not have enough of this information to provide accurate profiling.

3.1.6 Profession analysis – Queensland legal practitioners

While provision can exist within the current regulatory database to profile these respondents, we currently do not have enough of this information to provide accurate profiling.

3.1.7 Profession analysis – Queensland law practice employees/others

Because of the nature of these respondent types, it is highly unlikely we will ever have enough information to allow accurate profiling

3.2 Inquiries

3.2.1 Summary of inquiries received

The following is a brief summary of the number of inquiries received during the year at both the LSC and QLS.

	LSC	QLS	Total
Inquiries received during year	1862	5872	7734
Average number of inquiries per month	155	489	645
Average number of inquiries per day	8	24	32

3.2.2 Inquiries by outcome

The following table displays only the outcomes recorded for the inquiries received during the year including the relative percentage of total calls.

Outcome of Inquiry	No. of Inquiries	% of Total
Provided information about the legal system	2160	27.93
Enquirer satisfied	1110	14.35
Provided referral for legal advice or other assistance	900	11.64
Provided complaint form	891	11.52
Recommended direct approach to firm about concerns	792	10.24
Lost contact with complainant/enquirer	471	6.09
Listened to callers concerns	442	5.72
Closed await advice	257	3.32
Explained concerns are outside jurisdiction	228	2.95
All other 'outcomes' combined	483	6.25
Total	7734	

3.2.3 Inquiries by nature

The following table displays only the nature of inquiry recorded for the inquiries received during the year including the relative percentage of total calls.

It should be noted that the high number of calls codes as 'other' was identified and has been addressed with revised codes and procedures.

Nature of Inquiry	No. of Inquiries	% of Total
Costs	2055	26.57
Quality of service	909	11.75
Ethical matters	876	11.33
Communication	421	5.44
Documents	204	2.64
Trust funds	148	1.91
Compliance	78	1.01
Personal conduct	10	.13
All other 'natures of inquiry' combined	3033	39.20
Total	7734	

3.2.4 Inquiries by inquirer type

The following table displays only the type of inquirer recorded for the inquiries received during the year including the relative percentage of total calls.

It should be noted that the high number of calls codes as 'other' was identified and has been addressed with revised codes and procedures.

Inquirer Type	No. of Inquiries	% of Total
Client/former client	3313	42.84
Non client	1312	16.97
Solicitor	503	6.50
Solicitor for client	98	1.27
Beneficiary	52	0.67
Executor	22	0.28
All other 'inquirer types' combined	2434	31.47
Total	7734	

3.3 Complaints summary

3.3.1 Complaints on-hand (summary)

The following is a brief summary of the number of complaints on-hand as at the start of the year and the number on-hand at the end of the year.

Complaint Type	1/7/2004	30/6/2005	Movement
Consumer dispute	273	88	-185
Conduct matter	665	818	+153
Under assessment	N/A	26	+26
Total	938	932	-6

3.3.2 Consumer disputes on-hand (by time open)

The following table displays the consumer disputes that were on hand as at the 30/6/2004 and the comparative number open at 30/6/2005. The percentages show the proportion of each timeframe to the total number for that year.

Length of Time	Open as at 1/7/2004	% of Total	Open as at 30/6/2005	% of Total
Under 1 month old	35	12.82	33	37.50
Between 1 & 2 months	55	20.15	19	21.59
Between 2 & 3 months	35	12.82	5	5.68
Between 3 & 4 months	42	15.38	11	12.50
Between 4 & 5 months	26	9.52	5	5.68
Between 5 & 6 months	16	5.86	3	3.41
Between 6 & 9 months	21	7.69	5	5.68
Between 9 & 12 months	12	4.40	4	4.55
Between 12 & 18 months	12	4.40	0	0.00
Between 18 & 24 months	8	2.93	0	0.00
> 2 years old	11	4.03	3	3.41
Total	273		88	

3.3.3 Conduct matters on-hand (by time open)

The following table displays the conduct matters that were on hand as at the 30/6/2004 and the comparative number open at 30/6/2005. The percentages show the proportion of each timeframe to the total number for that year.

Length of Time	Open as at 1/7/2004	% of Total	Open as at 30/6/2005	% of Total
Under 1 month old	50	7.52	36	4.40
Between 1 & 2 months	39	5.86	31	3.79
Between 2 & 3 months	40	6.02	27	3.30
Between 3 & 4 months	50	7.52	36	4.40
Between 4 & 5 months	37	5.56	46	5.62
Between 5 & 6 months	27	4.06	27	3.30
Between 6 & 9 months	92	13.83	101	12.35
Between 9 & 12 months	66	9.92	89	10.88
Between 12 & 18 months	144	21.65	165	20.17
Between 18 & 24 months	71	10.68	94	11.49
> 2 years old	49	7.37	166	20.29
Total	665		818	

3.3.4 Complaints on-hand summary (by agency)

The following table displays the complaints on-hand as at 30/6/2005 at each agency.

Agency	Consumer Disputes	Conduct Matters	Under Assessment	Total
LSC	80	287	26	393
QLS	8	522		530
BAQ	0	9		9
Total	88	818	26	932

3.3.5 Complaints on-hand summary (pre-Act only)

The following table displays only the 'pre-Act' component of the on-hand summary.

Length of Time	Consumer Disputes Open as at 30/6/2005	% of Total	Conduct Matters Open as at 30/6/2005	% of Total
Between 12 & 18 months	0	0	165	38.82
Between 18 & 24 months	0	0	94	22.12
> 2 years old	3	100	166	39.06
Total	3		425	

3.3.6 Complaints on-hand summary (post-Act only)

The following table displays only the 'post-Act' component of the on-hand summary.

Length of Time	Consumer Disputes Open as at 30/6/2005	% of Total	Conduct Matters Open as at 30/6/2005	% of Total
Under 1 month old	33	38.82	36	9.16
Between 1 & 2 months	19	22.35	31	7.89
Between 2 & 3 months	5	5.88	27	6.87
Between 3 & 4 months	11	12.94	36	9.16
Between 4 & 5 months	5	5.88	46	11.70
Between 5 & 6 months	3	3.53	27	6.87
Between 6 & 9 months	4	5.88	101	25.70
Between 9 & 12 months	5	4.71	89	22.65
Total	85		393	

3.3.7 Complaints opened and closed during the year

The following table displays the number of complaints that were opened during the year as well as the number of complaints that were closed during the year (split into the relevant categories). The averages show the average number per month (based on a 20 day working month) and the average number per day for both opened and closed matters.

Complaints	Number of Complaints	Avg/Mth	Avg/Day
Complaints opened during year	1485	124	6.18
Number of consumer disputes closed	733	61	3.05
Number of conduct matters closed	758	63	3.16
Total complaints closed	1491	124	6.21

3.3.8 Investigation matters opened and closed during the year

The following table displays the number of investigation matters that were handled during the year. These numbers will be included in the conduct matter statistics referenced throughout this report.

Investigation Matters	Number
On-hand as at 1/7/2004	0
Opened during year	35
Closed during year	11
On-hand as at 30/6/2005	24

3.3.9 Consumer disputes referred to agencies

This table lists the number of complaints referred to each agency during the year as well as the complaints that were returned for review.

Consumer Disputes	Total Number	QLS	BAQ
Referred during year	143	143	0

3.3.10 Conduct matters referred to/returned from agencies

This table lists the number of complaints referred to each agency during the year as well as the complaints that were returned for review.

Conduct Matters	Total Number	QLS	BAQ
Referred during year	465	451	14
Returned for review	562	559	3

3.4 Consumer disputes finalised

3.4.1 Notes

It should be noted that the nature of a consumer disputes is that the respondent is not always able to be identified. The firm the respondent works for is always identified. As a result, the profiling information can be considered more accurate if the profile of the firm is referred to instead of the respondent in certain cases.

3.4.2 Summary

The following table displays a summary of the total number of consumer disputes finalised for the year. The totals are split between pre-act matters and post-act matters. The averages show the average days and months the matters were open for all categories.

Consumer Disputes	Total	Pre-Act	Post-Act
Total number finalised for year	733	254	479
Average number of days open	93	198	37
Average number of months open	3.10	6.60	1.23

3.4.3 By area of law

The following table displays break-up of consumer disputes finalised by the area of law. The percentage of the overall total is also shown.

Area of Law	No. of Matters	% of Total
Family Law	137	18.69
Conveyancing	131	17.87
Personal Injuries/Workcover litigation	87	11.87
Deceased Estates or Trusts	65	8.87
Property Law	57	7.78
Litigation	54	7.37
Criminal Law	53	7.23
Commercial /Company Law	36	4.91
All other 'areas of law' combined	113	15.42
Total	733	

3.4.4 By nature of matter

The following table displays break-up of consumer disputes finalised by the nature of the matter. The percentage of the overall total is also shown.

Nature of Matter	No. of Matters	% of Total
Costs	230	31.38
Ethical matters	160	21.83
Quality of service	116	15.83
Communication	96	13.10
Documents	45	6.14
Trust Funds	16	2.18
Compliance	6	0.82
All other 'nature of matters' combined	64	8.74
Total	733	

3.4.5 By type of complainant

The following table displays break-up of consumer disputes finalised by the type of complainant. The percentage of the overall total is also shown.

Type of Complaint	No. of Matters	% of Total
Client/former client	611	83.36
Solicitor	38	5.18
Non client	39	5.32
Solicitor for client	24	3.27
All other 'types of complainant' combined	21	2.86
Total	733	

3.4.6 By outcome

The following table displays break-up of consumer disputes finalised by the outcome of the matter. The percentage of the overall total is also shown.

Outcome of Matter	No. of Matters	% of Total
Resolved - consumer satisfied	211	28.79
Matter unable to be resolved	181	24.69
Complaint unfounded	154	21.01
Due process observed	41	5.59
Outside of jurisdiction	34	4.64
Withdrawn	32	4.37
Provided information about the legal system	30	4.09
All other 'outcomes' combined	50	6.82
Total	733	

3.4.7 By respondent type

The following table displays break-up of consumer disputes finalised by the type of respondent. The percentage of the overall total is also shown.

Type of Respondent	No. of Matters	% of Total
Solicitor	706	96.32
Barrister	15	2.05
Other	8	1.09
Law practice employee	3	0.41
Legal practitioner	1	0.14
Total	733	

3.4.8 By respondent type - solicitor

3.4.8.1 Consumer disputes regarding solicitors as a proportion of the profession

The following table shows the number of solicitors and law firms that have been linked to a consumer dispute last year, as a proportion of the total profession.

	Solicitors	Queensland Legal Firms	Queensland Legal Firms Offices
Size of profession as at 1/7/2004	5850	1238	1332
Number of solicitors/law firms as respondents	501	409	432
Percentage	8.56	33.04	

3.4.8.2 Number of solicitors with multiple consumer disputes

The following table shows the number of solicitors that have had either single or multiple consumer disputes recorded against them for the year.

No. of Consumer Disputes	No. of Solicitors
1 matter	401
2 matter	80
3 matter	14
4 matter	4
5 matter	1
Between 6 and 9	1
Between 10 and 14	0
15 and > matters	0

3.4.8.3 Number of Queensland legal firms with multiple consumer disputes

The following table shows the number of firms that have had either single or multiple consumer disputes recorded against them for the year.

No. of Consumer Disputes	No. of Queensland Legal Firms
1 matter	259
2 matter	102
3 matter	21
4 matter	14
5 matter	7
Between 6 and 9	3
Between 10 and 14	3
15 and > matters	0

3.4.8.4 By gender

The following table shows the number of solicitors by gender that have consumer disputes recorded against them for the year as a proportion of their representation within the profession.

Note: (10% means that 1in every 10 solicitors within this grouping had a consumer dispute recorded against them last year).

Gender	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
Male	3887	66.44	417	83.23	10.73
Female	1963	33.56	84	16.77	4.28

3.4.8.5 By age group

The following table shows the number of solicitors by age group that have consumer disputes recorded against them for the year as a proportion of their representation within the profession.

Note: (10% means that 1 in every 10 solicitors within this grouping had a consumer dispute recorded against them last year).

Age Group	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
<25	207	3.54	5	1.00	2.42
25-29	963	16.46	27	5.39	2.80
30-34	1056	18.05	59	11.78	5.59
35-39	762	13.03	65	12.97	8.53
40-44	772	13.20	84	16.77	10.88
45-49	775	13.25	86	17.17	11.10
50-54	610	10.43	93	18.56	15.25
55-59	414	7.08	52	10.38	12.56
60-64	190	3.25	21	4.19	11.05
65-69	60	1.03	6	1.20	10.00
70 & >	41	0.70	3	0.60	7.32

3.4.8.6 By 'years admitted'

The following table shows the number of solicitors grouped by the number of years they have been admitted, that have consumer disputes recorded against them for the year, as a proportion of their representation within the profession.

Note: (10% means that 1 in every 10 solicitors within this grouping had a consumer dispute recorded against them last year).

Years Admitted	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
<5	1970	33.68	72	14.37	3.65
5-9	1032	17.64	87	17.37	8.43
10-14	843	14.41	80	15.97	9.49
15-19	614	10.50	80	15.97	13.03
20-24	611	10.44	74	14.77	12.11
25-29	358	6.12	63	12.57	17.60
30-34	230	3.93	28	5.59	12.17
35-39	123	2.10	11	2.20	8.94
40 & >	69	1.18	6	1.20	8.70

3.4.8.7 By practising certificate type

The following table shows the number of solicitors by their practising certificate type, that have consumer disputes recorded against them for the year as a proportion of their representation within the profession.

The 'Not practising at start of year' indicates those solicitors who were respondents for a consumer dispute that was finalised last year, but they were no longer holding a practising certificate as at 1/7/2004.

Note: (10% means that 1 in every 10 solicitors within this grouping had a consumer dispute recorded against them last year).

Practising Certificate Type	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
Principal	2285	39.06	349	69.66	15.27
Employee	3046	52.07	118	23.55	3.87
Conditional	519	8.87	13	2.59	2.50
Not Practising at start of year	0		21	4.19	

3.4.8.8 By location of Queensland legal law offices

The following table shows the number of solicitors by the location of their primary firm (as at 1/7/2004), that have consumer disputes recorded against them for the year as a proportion of their representation within the profession.

It should be noted that we are counting law offices for Queensland legal firms only for this analysis. This means that if a Queensland law firm has multiple offices, the offices are linked to their location and not that of the head office.

Note: (10% means that 1 in every 10 law offices within this grouping had a consumer dispute recorded against them last year).

Office Location	Size of Profession Law Firm Offices	% of Total	No. of Respondent Law Firm Offices	% of Total Respondent Law Firm Offices	% of Profession Representation (see note)
Brisbane City	251	18.84	89	20.60	35.46
Brisbane North Suburbs	214	16.07	63	14.58	29.44
Brisbane South Suburbs	201	15.09	66	15.28	32.84
Gold Coast	212	15.92	66	15.28	31.13
Ipswich Region	48	3.60	14	3.24	29.17
Toowoomba Region	58	4.35	16	3.70	27.59
Western Queensland	7	0.53	2	0.46	28.57
Sunshine Coast	136	10.21	49	11.34	36.03
Hervey Bay to Gladstone Region	38	2.85	18	4.17	47.37
Rockhampton Region	29	2.18	8	1.85	27.59
Mackay Region	26	1.95	6	1.34	23.08
Townsville Region	44	3.30	15	3.47	34.09
Cairns Region	67	5.43	20	4.13	29.85
Norfolk Island	1	0.08	0		

3.4.8.9 By size of Queensland legal firm (number of partners)

The following table shows the number of solicitors by the size of their primary firm (as at 1/7/2004), that have consumer disputes recorded against them for the year as a proportion of their representation within the profession.

It should be noted that we are counting Queensland legal firm head offices only for this analysis. This means that the size of the firm will be a consolidation of partners for both head and branch offices. It also means that the firm will only be counted once, even though it may have multiple offices.

Note: (10% means that 1 in every 10 law firms within this grouping had a consumer dispute recorded against them last year).

Size of Firm	Size of Profession Law Firms	% of Total	No. of Respondent Law Firms	% of Total Respondent Law Firms	% of Profession Representation (see note)
No primary partner	11	0.89		0.00	0.00
Sole practitioner	908	73.34	223	54.52	24.56
2 partners	172	13.89	79	19.32	45.93
3 partners	53	4.28	23	5.62	43.40
4 partners	28	2.26	9	2.20	32.14
5 partners	9	0.73	4	0.98	44.44
6 - 9 partners	38	3.07	16	3.91	42.11
10 - 14 partners	7	0.57	4	0.98	57.14
15 & >	12	0.97	6	1.47	50.00
Not practising as at 1/7/2004			45	11.00	

3.5 Conduct matters finalised

3.5.1 Summary

The following table displays a summary of the total number of consumer disputes finalised for the year. The totals are split between pre-Act matters and post-Act matters. The averages show the average days and months the matters were open for all categories.

Consumer Disputes	Total	Pre-Act	Post-Act
Total number finalised for year	758	256	502
Average number of days open	242	568	77
Average number of months open	8.07	18.93	2.57

3.5.2 By area of law

The following table displays break-up of conduct matters finalised by the area of law. The percentage of the overall total is also shown.

Area of Law	No. of Matters	% of Total
Family Law	134	18.28
Conveyancing	95	12.96
Personal Injuries/Workcover litigation	97	13.23
Deceased Estates or Trusts	47	6.41
Property Law	41	5.59
Litigation	66	9.00
Criminal Law	43	5.87
Commercial /Company Law	54	7.37
All other 'areas of law' combined	181	23.88
Total	758	

3.5.3 By nature of matter

The following table displays break-up of conduct matters finalised by the nature of the matter. The percentage of the overall total is also shown.

Nature of Matter	No. of Matters	% of Total
Costs	109	14.87
Ethical matters	277	37.79
Quality of service	106	14.46
Communication	43	5.87
Documents	13	1.77
Trust Funds	18	2.46
Compliance	24	3.27
All other 'nature of matters' combined	168	22.16
Total	758	

3.5.4 By type of complainant

The following table displays break-up of conduct matters finalised by the type of complainant. The percentage of the overall total is also shown.

Type of Complaint	No. of Matters	% of Total
Client/former client	547	74.62
Solicitor	72	9.82
Non client	49	6.68
Solicitor for client	31	4.23
QLS	17	2.32
Third Party	12	1.64
LSC	11	1.50
Barrister	3	0.41
Government	3	0.41
All other 'types of complainant' combined	13	1.72
Total	758	

3.5.5 By outcome

The following table displays break-up of conduct matters finalised by the outcome of the matter. The percentage of the overall total is also shown.

Outcome of Matter	No. of Matters	% of Total
No reasonable likelihood (274(1)(a))	427	58.25
Public interest (274(1)(b))	107	14.60
Outside of jurisdiction	48	6.55
Frivolous/vexatious/lacking in substance (259(1)(c))	42	5.73
Withdrawn (s260)	31	4.23
Referred to LPT (276)	16	2.11
Out of time (s258)	13	1.77
Referred to LPC (276)	9	1.19
All other 'outcomes' combined	65	8.58
Total	758	

3.5.6 By respondent type

The following table displays break-up of conduct matters finalised by the type of respondent. The percentage of the overall total is also shown.

Type of Respondent	No. of Matters	% of Total
Solicitor	679	92.63
Barrister	45	6.14
Other	27	3.68
Law practice employee	7	0.95
Total	758	

3.5.7 By respondent type - solicitor

3.5.7.1 Conduct matters regarding solicitors as a proportion of the profession

The following table shows the number of solicitors and law firms that have been linked to a conduct matter last year, as a proportion of the total profession.

	Solicitors	Queensland Legal Firms	Queensland Legal Firms Offices
Size of profession as at 1/7/2004	5850	1238	1332
Number of solicitors/law firms as respondents	450	384	397
Percentage	7.69	31.02	29.80

3.5.7.2 Number of solicitors with multiple conduct matters

The following table shows the number of solicitors that have had either single or multiple conduct matters recorded against them for the year.

No. of Conduct Matters	No. of Solicitors
1 matter	365
2 matter	64
3 matter	17
4 matter	2
5 matter	0
Between 6 and 9	1
Between 10 and 14	0
15 and > matters	1

3.5.7.3 Number of Queensland legal firms with multiple conduct matters

The following table shows the number of firms that have had either single or multiple conduct matters recorded against them for the year.

No. of Consumer Disputes	No. of Queensland Legal Firms
1 matter	270
2 matter	70
3 matter	26
4 matter	10
5 matter	2
Between 6 and 9	5
Between 10 and 14	0
15 and > matters	1

3.5.7.4 By gender

The following table shows the number of solicitors by gender that have conduct matters recorded against them for the year as a proportion of their representation within the profession (eg 10% = I in every 10 solicitors had a conduct matters recorded against them last year).

Note: (10% means that 1 in every 10 solicitors within this grouping had a conduct matter recorded against them last year).

Gender	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
Male	3887	66.44	380	84.44	9.78
Female	1963	33.56	70	15.56	3.57

3.5.7.5 By age group

The following table shows the number of solicitors by age group that have conduct matters recorded against them for the year as a proportion of their representation within the profession.

Note: (10% means that 1 in every 10 solicitors within this grouping had a conduct matter recorded against them last year).

Age Group	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
<25	207	3.54	2	0.44	0.97
25-29	963	16.46	17	3.78	1.77
30-34	1056	18.05	54	12.00	5.11
35-39	762	13.03	52	11.56	6.82
40-44	772	13.20	71	15.78	9.20
45-49	775	13.25	84	18.67	10.84
50-54	610	10.43	82	18.22	13.44
55-59	414	7.08	54	12.00	13.04
60-64	190	3.25	22	4.89	11.58
65-69	60	1.03	5	1.11	8.33
70 & >	41	0.70	7	1.56	17.07

3.5.7.6 By 'years admitted'

The following table shows the number of solicitors by the number of years they have been admitted, that have conduct matters recorded against them for the year as a proportion of their representation within the profession.

Note: (10% means that 1 in every 10 solicitors within this grouping had a conduct matter recorded against them last year).

Years Admitted	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
<5	1970	33.68	55	12.22	2.79
5-9	1032	17.64	69	15.33	6.69
10-14	843	14.41	76	16.89	9.02
15-19	614	10.50	69	15.33	11.24
20-24	611	10.44	68	15.11	11.13
25-29	358	6.12	51	11.33	14.25
30-34	230	3.93	34	7.56	14.78
35-39	123	2.10	21	4.67	17.07
40 & >	69	1.18	7	1.56	10.14

3.5.7.7 By practising certificate type

The following table shows the number of solicitors by their practising certificate type, that have conduct matters recorded against them for the year as a proportion of their representation within the profession.

The 'Not practising at start of year' indicates those solicitors who were respondents for a conduct matter that was finalised last year, but they were no longer holding a practising certificate at the start of last year.

Note: (10% means that 1 in every 10 solicitors within this grouping had a conduct matter recorded against them last year).

Practising Certificate Type	Size of Profession	% of Total	No. of Respondent Solicitors	% of Total Respondent Solicitors	% of Profession Representation (see note)
Principal	2285	39.06	298	66.22	13.04
Employee	3046	52.07	91	20.22	2.99
Conditional	519	8.87	9	2.00	1.73
Not Practising at start of year	0		52	11.56	

3.5.7.8 By location of Queensland legal law offices

The following table shows the number of solicitors by the location of their primary firm (as at 1/7/2004), that have conduct matters recorded against them for the year as a proportion of their representation within the profession.

It should be noted that we are counting law offices for Queensland legal firms only for this analysis. This means that if a Queensland law firm has multiple offices, the offices are linked to their location and not that of the head office.

Note: (10% means that 1 in every 10 law offices within this grouping had a conduct matter recorded against them last year).

Office Location	Size of Profession Law Firm Offices	% of Total	No. of Respondent Law Firm Offices	% of Total Respondent Law Firm Offices	% of Profession Representation (see note)
Brisbane City	251	18.84	106	26.70	42.23
Brisbane North Suburbs	214	16.07	46	11.59	21.50
Brisbane South Suburbs	201	15.09	57	14.36	28.36
Gold Coast	212	15.92	68	17.13	32.08
Ipswich Region	48	3.60	10	2.52	20.83
Toowoomba Region	58	4.35	13	3.27	22.41
Western Queensland	7	0.53	2	0.50	28.57
Sunshine Coast	136	10.21	42	10.58	30.88
Hervey Bay to Gladstone Region	38	2.85	15	3.78	39.47
Rockhampton Region	29	2.18	4	1.01	13.79
Mackay Region	26	1.95	6	1.51	23.08
Townsville Region	44	3.30	13	3.27	29.55
Cairns Region	67	5.43	15	3.78	22.39
Norfolk Island	1	0.08	0		

3.5.7.9 By size of Queensland legal firm (number of partners)

The following table shows the number of solicitors by the size of their primary firm (as at 1/7/2004), that have conduct matters recorded against them for the year as a proportion of their representation within the profession.

It should be noted that we are counting Queensland legal firm head offices only for this analysis. This means that the size of the firm will be a consolidation of partners for both head and branch offices. It also means that the firm will only be counted once, even though it may have multiple offices.

Note: (10% means that 1 in every 10 law firms within this grouping had a conduct matter recorded against them last year).

Size of Firm	Size of Profession Law Firms	% of Total	No. of Respondent Law Firms	% of Total Respondent Law Firms	% of Profession Representation (see note)
No primary partner	11	0.89			
Sole practitioner	908	73.34	200	52.08	22.03
2 partners	172	13.89	58	15.10	33.72
3 partners	53	4.28	25	6.51	47.17
4 partners	28	2.26	10	2.60	35.71
5 partners	9	0.73	7	1.82	77.78
6 - 9 partners	38	3.07	23	5.99	60.53
10 - 14 partners	7	0.57	4	1.04	57.14
15 & >	12	0.97	11	2.86	91.67
Not practising as at 1/7/2004			46	11.98	

3.6 Discipline applications

3.6.1 Summary

The following table displays a summary of the total number of discipline applications for the year.

Discipline Applications	Total	LSC	QLS (see note)
Number on-hand as at 1/7/2004	3	0	3
Number opened during year	25	25	N/A
Number closed during year	4	1	3
Number on-hand as at 30/6/2005	24	24	0

Note: These are 3 matters that were part heard in the Solicitor's Complaints Tribunal. The QLS had filed a further 5 discipline applications to the Solicitor's Complaints Tribunal but these had not been part heard and reverted under the transitional arrangements to the LSC to review and file new discipline applications in the Legal Practice Tribunal/ Committee if appropriate.

3.6.2 On-hand summary (Tribunal and Committee)

Discipline Applications on-hand as at 30/6/2005	Total
Waiting to be filed	8
Tribunal	10
Committee	6

3.6.3 Discipline applications opened

3.6.3.1 By respondent type

The following table displays break-up of discipline applications opened by the type of respondent. The percentage of the overall total is also shown.

Type of Respondent	No. of Matters	% of Total
Solicitor	24	96.00
Barrister	1	4.00
Law practice employee	0	0.00
Total	25	

3.6.4 Discipline applications finalised

3.6.4.1 By respondent type

The following table displays break-up of discipline applications finalised by the type of respondent. The percentage of the overall total is also shown.

Type of Respondent	No. of Matters	% of Total
Solicitor	3	75.00
Barrister	0	0.00
Law practice employee	1	25.00
Total	4	

3.6.4.2 By outcome

The following table displays break-up of discipline applications finalised by outcome. The percentage of the overall total is also shown.

Outcome	No. of Matters	% of Total
Struck-off	3	75.00
Suspended	0	0.00
Fined	0	0.00
Other order	1	25.00
dismissed	0	0.00
Total	4	