

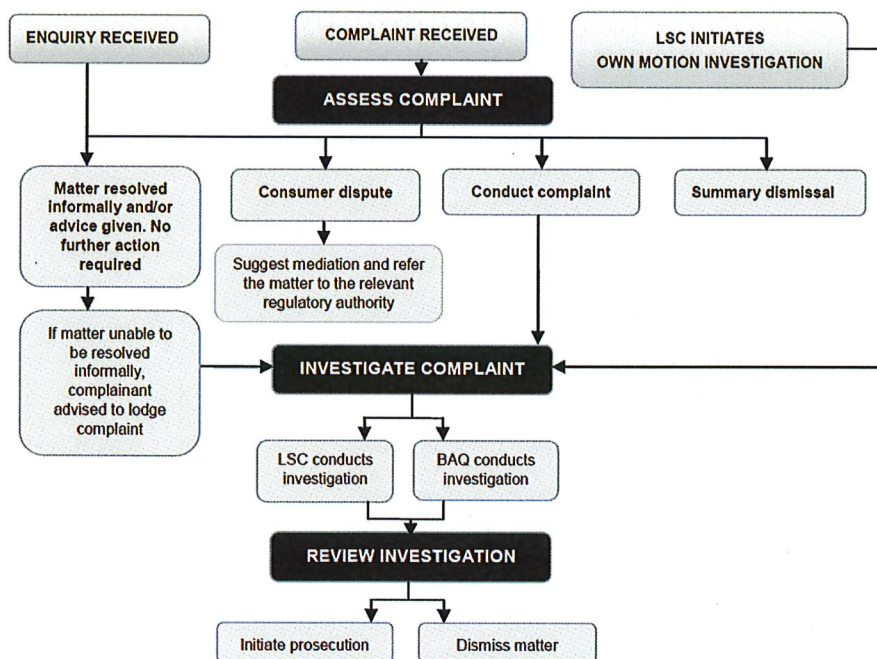
## The Complaint Process – Legal Services Commission

For practitioners, the thought of receiving a notice of complaint from the Legal Services Commission ('LSC') will fill you with dread. This is understandable, solicitors are human (though we are sometimes portrayed otherwise?!!).

It should be noted that under the *Legal Profession Act 2007*<sup>1</sup> ('the Act'), the Commissioner is **obliged** to conduct an investigation if a complaint is made and the Commissioner **believes** that the conduct is capable of amounting to unsatisfactory professional conduct<sup>2</sup> or professional misconduct.<sup>3</sup> The Commission may decline to investigate (or dismiss the complaint) if the complaint is "vexatious" or "frivolous"<sup>4</sup> or for other specified reasons noted in s 432 of the Act or in circumstances where the complaint is about conduct more than 3 years old.<sup>5</sup>

Enquiry and complaint handling process:<sup>6</sup>

### Complaint flowchart



A complaint can be about a legal practitioner,<sup>7</sup> government lawyer,<sup>8</sup> law practice employees,<sup>9</sup> unlawful operators,<sup>10</sup> or any person suspected of contravening PIPA regarding advertising and touting.<sup>11</sup>

<sup>1</sup> (Qld) s 436.

<sup>2</sup> Ibid s 418.

<sup>3</sup> Ibid s 419.

<sup>4</sup> Ibid s 432(1)(c).

<sup>5</sup> Ibid s 430.

<sup>6</sup> Thea Johnson, 'The Complaints Process and the Legal Services Commission' (Speech delivered at the QLS Senior Counsellors' Conference, Law Society House, 31 August 2018).

<sup>7</sup> *Legal Profession Act 2007* (Qld) s 6.

<sup>8</sup> Ibid s 12.

<sup>9</sup> Ibid s 425.

<sup>10</sup> Ibid ss 24, 25, 427.

<sup>11</sup> Thea Johnson, 'The Complaints Process and the Legal Services Commission' (Speech delivered at the QLS Senior Counsellors' Conference, Law Society House, 31 August 2018).

In 2018, the main areas of complaint were in family law and succession matters and the key complaint areas involved costs, communication, conflict and the quality of advice provided.<sup>12</sup> It should be noted that a failure to co-operate with the Commission may in itself amount to unsatisfactory professional conduct or professional misconduct.

Please note:

- Any written notice received from the Commission should not be viewed as an accusation but a request for your side of the story.<sup>13</sup>
- Do not ignore letters or phone calls from the Commission as this in itself may amount to a conduct issue.<sup>14</sup>
- For junior practitioners, consult with a senior colleague that you are comfortable with either within your firm / organisation or outside. The Queensland Law Society ('QLS') has a list of [QLS Senior Counsellors](#) who may be able to assist and do so in a confidential manner. You should also consider informing your principal as they may be able to assist in responding and may be able to identify any systemic issues within the practice that should be considered.<sup>15</sup>
- Reply with courtesy as it is unhelpful to respond in anger or defensively – be mindful that any response may be seen by QCAT or the Legal Practice Committee.
- As a QLS member, you are entitled to 6 hours of [free legal advice](#). You should contact one of these practitioners immediately as a prompt, well considered response may resolve the issue. The practitioners on the Free Legal Advice Panel are all highly experienced in disciplinary matters. Practitioners should be aware that the Commission have indicated that if the complaint is warranted, apologies and recompense may assist the practitioner's position.<sup>16</sup>
- If you receive communications from the Commission, you are obliged to be 'open and frank'<sup>17</sup> in your dealings with the authority subject to your right to invoke your entitlement to privilege against self-incrimination and the avoidance of civil penalties. You can also refuse to disclose information that would contradict or invalidate a professional indemnity insurance policy.<sup>18</sup>
- The standard timeframe allocated for a response is two to three weeks. Contact the investigator if you need additional time. There are no specified time limits when the Commission investigates a complaint but they may spend up to 6-9 months (or longer) investigating a complaint.<sup>19</sup>
- Once the investigation is completed, the Commissioner will either dismiss the complaint or may commence disciplinary proceedings. You should also be aware that the Commission does not represent either the complainant or the practitioner – all communications are impartial and are so reflected.

**Grace van Baarle**

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<sup>12</sup> Ibid.

<sup>13</sup> Legal Services Commission, *Information for Respondents* (2015) 3.

<sup>14</sup> Ibid; *Legal Profession Act 2007* (Qld) s 443; *Council of the Law Society of New South Wales v Autore* [2019] NSWCATOD 10; *Legal Services Commissioner v Warren* [2017] QCAT 158.

<sup>15</sup> Legal Services Commission, *Information for Respondents* (2015) 5.

<sup>16</sup> Thea Johnson, 'The Complaints Process and the Legal Services Commission' (Speech delivered at the QLS Senior Counsellors' Conference, Law Society House, 31 August 2018).

<sup>17</sup> *Australian Solicitor Conduct Rules 2012* (Qld) r 43; *Legal Profession Act 2007* (Qld) s 443

<sup>18</sup> Legal Services Commission, *Fact Sheet 8 Responding to a Complaint* (January 2016) 2.

<sup>19</sup> Legal Services Commission, *Information for Respondents* (2015) 5.