

Information for Respondents

July 2021

Version 5

Introduction

This document is for lawyers and law practice employees the subject of complaint¹ and investigation by the Legal Services Commission.

It will help you understand:

- Our role
- Our obligations
- The investigation process
- Your obligations
- Information privacy
- What you can do if you are not satisfied.

Please make sure you read it carefully.

Our role

The Commission was established under the *Legal Profession Act 2007* ("Act") and is responsible for receiving and managing complaints about the conduct of lawyers, law practice employees and unlawful operators.

The functions and work of the Commission are set out in Chapter 4 and 6 of the Act. These include the obligation to investigate allegations of professional misconduct or unsatisfactory professional conduct.

It is important to understand the investigation process so you:

- know what to do
- are aware of your responsibilities
- understand the potential ramifications of an investigation.

Our business details

The Commission's office is at Level 30, 400 George Street, Brisbane.

Email: lsc@lsc.qld.gov.au

Website: www.lsc.qld.gov.au

Telephone: 1300 655 754
or
(07) 3564 7726

The normal hours of opening at our office are between 9:00am and 5:00pm on weekdays.

If you're seeking information about your investigation, please email our office and include your reference number (located at the top left-hand side of the letter accompanying this material) in the subject line. One of our officers will get back to you as soon as possible

¹ A complaint for the purposes of this document includes a complaint as defined in section 429 of the Act as well as an investigation commenced on the Commissioner's own motion pursuant to section 435(1)(c) of the Act.

Further information about the Commission, including our role, responsibilities, frequently asked questions and support resources for responding to a complaint, can be located on our website at www.lsc.qld.gov.au.

The investigation process

Commissioner's obligation to investigate

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 (section 418) or professional misconduct (section 419).

Before commencing the investigation, the Commission has already undertaken a thorough assessment of the complaint. The Commission may decline to investigate where the complaint is "frivolous" or "vexatious" or in circumstances where the complaint is about conduct more than three years old.

A lawyer's professional obligation to assist the investigation

As the investigations undertaken by the Commission are protective in nature, a failure by a lawyer to co-operate may amount to unsatisfactory professional conduct or professional misconduct.

Remember:

- Your first written notice of the complaint is not an accusation, but a request for your side of the story.
- Do not ignore letters or phone calls from the Commission. In itself, that failure to act may amount to a conduct issue.
- When we receive your response we can decide whether a complaint has merit.
- Respond as fully and frankly as possible. It is rarely constructive or helpful to respond in anger, particularly as any letter may be seen not only by the complainant but by QCAT or the Legal Practice Committee. The Commissioner expects courteous communications from lawyers.

Be frank and honest with the Commission

Lawyers should be frank and completely honest in all dealings with the Commission.

The Solicitors Complaints Tribunal commented in the matter of Whitman in 2003 that:

"a solicitor has a duty to be truthful even to his own detriment, and not just a duty to be truthful but a positive duty to be full and frank and for his answers to be candid as well as truthful".

Providing incomplete responses

You should take the opportunity to provide a full and frank response to the conduct subject to investigation. Failure to do so may lead to unnecessary costs being incurred by you.

In the Court of Appeal case *LSC v Bone* [2014] QCA 179 the Court was critical of a respondent practitioner for failing to provide sufficient information prior to a discipline application being filed.

In the case of *LSC v Bone*, despite some charges being withdrawn and others dismissed, the Court of Appeal found that the Commission was not responsible for the costs incurred by the respondent practitioner in responding to the discipline application. This was due to the respondent's failure to provide a full response prior to the commencement of proceedings.

You should be aware that in the event a disciplinary application is filed but which is subsequently withdrawn or dismissed as a result of evidence or submissions which you did not provide in response to the investigation, the Commissioner will seek an order for costs against you pursuant to section 462(2) of the Act.

Requesting more time to respond

The standard timeframe allocated for a response is two to three weeks.

If you feel inadequate time has been given for you to respond, or that you need additional time, please contact the investigator.

The investigator will allow reasonable requests for an extension of time, although a matter cannot be allowed to remain unanswered indefinitely.

Transparency of investigation

It is standard practice for a copy of your response and any additional correspondence to be provided to the complainant for comment. The Commission will give consideration to a request for non-disclosure from either you or the complainant, however good reason is required for nondisclosure to occur. The Commission's investigation must not lack procedural fairness.

It is preferable for all concerned if correspondence is in a form which can be shown to the other party to allow appropriate comment on the material.

The Commission's compulsory powers

The Commission's investigators generally adopt a non-adversarial and consultative approach to investigations. As a result, we strive to make requests for information in a courteous and respectful manner.

However, if a lawyer does not cooperate with the investigation, the Commission has a number of coercive powers including requiring an explanation and documentation from a lawyer who is the subject of investigation – see for example section 443 and 543 of the Act.

There are also other coercive powers such as power of entry into a law practice or to require attendance for an examination. These powers will generally be used as a last resort by the Commission and usually after attempts to secure a response, or the production of documents, have failed.

Lawyers the subject of investigation should note that the Act does not abrogate the privilege in relation to self-incrimination or legal professional privilege.

Informing your principal

If you are the subject of complaint you should notify your principal. They may be able to assist you in responding to the complaint as well as take steps to identify if there are any systemic issues within the practice which they need to address. The investigator may also inform the principal about the complaint.

Assistance to respond to a complaint or investigation matter

The investigator can explain the Commission's processes and procedures, but cannot give you advice about your response. Importantly, you should seek assistance if necessary and consider contacting your professional body. The Queensland Law Society maintains lists of senior counsellors who can provide members with free ethical advice.

LawCare offers up to six hours complimentary professional counselling for members of the Queensland Law Society. LawCare services are provided on a strictly confidential basis for solicitors who may be experiencing emotional or stress-related problems.

The Bar Association of Queensland offers similar services to its members.

How long does an investigation take?

While there are no set time limits, the Legal Services Commissioner may spend up to 6-9 months investigating a complaint. Where the allegations are serious or complex, then the time for finalising the investigation may be longer than this. In conducting an investigation, the Commissioner will decide the scope and the extent of the investigation.

What happens once the investigation is complete?

On completion of an investigation, the investigator will prepare a report to the Commissioner. The Commissioner will either dismiss the complaint or may decide to commence disciplinary proceedings in either QCAT or the Legal Practice Committee. To see the factors which are relevant to the Commissioner's discretion on whether or not to commence disciplinary proceedings, please see the Commissioner's *Discipline Application Guidelines* which is available on our website.

What can you expect from us?

We will:

- treat you with courtesy, consideration and respect
- be fair
- behave with integrity and honesty
- act impartially
- collect, store, use and disclose your personal information in accordance with relevant law
- inform you about (and explain) decisions that affect you.

How can you help us?

To help us deal with the investigation, we ask that you:

- treat our staff with courtesy and respect
- provide us with all information we request within the specified timeframe
- provide the reference number of the investigation if you are contacting us regarding your matter
- give us the details of any change in your contact details as soon as possible
- tell us if you have special requirements, such as needing interpreter assistance or if you require large print on letters or documents
- ask us if you are not sure about anything
- keep in regular contact – don't feel afraid to ask for a progress report if you are worried about anything.

We ask that you treat us with the same courtesy, consideration and respect we are expected to give you.

Inappropriate responses

If we are subjected to rude or abusive behaviour, we may end an interview or phone call or we may choose to deal with you by written correspondence only. It is important to understand that communicating with the Commission in a way that breaches the professional rules may result in disciplinary action (See *LSC v Thomas (2009) LPT 13*).

You should also appreciate that we act impartially in dealing with complaints. This means that we do not represent either the complainant or the lawyer. Though we will always take your views into account, we do not take instruction or direction from you as to how the investigation is handled.

Protection of information

Confidentiality

Please note the Act makes it an offence for a person to disclose information obtained in the course of dealing with the investigation except in very limited circumstances.

We also ask you to respect the confidentiality of the process and in that way help ensure that it is fair and seen to be fair to everyone concerned.

Privacy

We are committed to protecting your privacy and keeping your information confidential in accordance with the *Information Privacy Act 2009*.

In administering the Act, we collect information about you. We may get this information from you or from other parties.

In some circumstances, the Act allows us to disclose your information to others for specific purposes. For example, during the course of an investigation your details will be provided to the complainant and potentially third parties if that is necessary to undertake the investigation.

Your personal information will not otherwise be disclosed unless you consent or the disclosure is required or authorized by law.

If you think that your privacy or the confidentiality has been breached because of our actions, your first step should be to try to resolve it with the officer you have been dealing with or the Deputy Commissioner. If you remain dissatisfied with how we deal with your concerns about privacy, then you may make a privacy complaint to the Office of the Information Commissioner.

Our full privacy statement can also be viewed on our website at www.lsc.qld.gov.au.

Feedback and complaints

Feedback

You can give us feedback at any time – whether positive or negative - by contacting the officer you were dealing with or by emailing lsc@lsc.qld.gov.au.

Complaints

We aim to provide a courteous and efficient service in all respects. If, however, you have any queries or concerns about our work, please raise them in the first instance with the officer you were dealing with. If you feel that they are not able to resolve the problem then you should contact the Director of Investigations. If that does not resolve the problem to your satisfaction then please put your concerns in writing and a formal complaints process may be undertaken. For more information on how to raise concerns about our conduct, please see the Commission's website at www.lsc.qld.gov.au

If you still have any questions, please do not hesitate to get in touch with the lawyer assigned to your matter.

You will also find further information on our website at www.lsc.qld.gov.au.