



31 October 2006

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

Dear Attorney

I am very pleased to give you the Commission's second annual report, for the reporting year 2005–06.

The report describes the system established under the *Legal Profession Act 2004* for dealing with complaints (in accordance with section 311). It also includes the performance criteria I developed in conjunction with the staff of the Commission for dealing with complaints during the year and my assessment of our performance against those criteria (in accordance with section 310).

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Briton', is positioned above the printed name.

John Briton
Legal Services Commissioner

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Commissioner's overview



The *Legal Profession Act 2004* (the Act) established a new system for dealing with complaints about lawyers and law practice employees in Queensland and created the Legal Services Commission to oversee and to administer the system. The relevant sections of the Act came into effect on 1 July 2004. The 2005–06 reporting year was the system's and the Commission's second year.

It was a year of significant achievement and one that leaves us well placed going into 2006–07 and beyond to do what the Act expects us to do and to do it well.

Our most important achievements in 2005–06 were:

- to all but fully resolve the backlog of 938 'pre-Act' complaints the Commission inherited on its inception on 1 July 2004. We finalised 509 of them in 2004–05 and 400 in 2005–06, leaving only 29 still to be finalised at 30 June 2006. Several of those matters are large and complex but all of them well on the way to completion.
- to deal with new 'post-Act' complaints at the same rate or slightly better than the rate at which we received them—thus avoiding the trap of simply replacing one kind of backlog with another. We have opened 2632 new complaint files since our inception and finalised 2161 of them, leaving 471 of them still to be completed at 30 June 2006 but, crucially, we finalized more in 2005–06 than we opened—we opened 1147 new complaint files, but finalised 1179.

This is no small achievement. It completes the transition from the old system for dealing with complaints to the new, and will enable us as we go forward to get out from under the weight of numbers and to be smarter and more proactive about what we do. It gives us room to move, and in particular to:

- deal with complaints in a more timely way than we have been able to deal with them thus far. We have found ourselves too often having to ask parties to complaints to bear with us, most notably but not only the parties to complaints in the backlog. Many of those complaints had been in the system for a year or more and some for more than two years when the Commission inherited them on 1 July 2004. Complainants and respondents alike deserve better than that.
- be much less confined than we have been in the past simply to responding to complaints. We will have the opportunity as we go forward to identify conduct and patterns of conduct on the part of lawyers that give consumers less than a good or a fair deal and to take the initiative. We will have the opportunity in particular to make more and better use of our 'investigation matter' power to initiate investigations and deal with apparent misconduct, even in the absence of complaint.

The measure of our success next year and into the future will be whether and how well we take these opportunities. The early signs are good. We initiated 35 investigation matters in 2004–05, but that same number again in May and June of 2005–06 when the pressures of the backlog had begun to subside, and a total of 73 over the full year.

There are other good signs, too, not least that we:

- developed performance criteria including timeliness criteria for dealing with complaints going into 2006–07 and beyond, and a much enhanced capacity to measure and report our performance against those criteria for the different types of complaints and the different stages of the complaints-handling process.
- published a series of guidelines including:
 - prosecution guidelines (with a view to helping the staff of the Commission, legal practitioners and law practice employees, their advisors, legal consumers and members of the public alike to understand how the Commission comes to a decision to make a discipline application)
 - guidelines for charging outlays and disbursements (having become aware that some law firms are charging their clients undisclosed mark-ups or surcharges on the actual outlays they have paid out on behalf of their clients, and that others are charging their clients for various services provided to the firm by undisclosed related entities and describing those charges as outlays)
 - a guide to advertising personal injury services, and subsequently a guide to advertising personal injury services on the Internet (having assumed responsibility through amendments to the *Personal Injuries Proceedings Act 2002* that came into effect on 29 May 2006 for investigating and prosecuting apparent breaches of the prohibition of claims harvesting and the restrictions on the advertising personal injury services)
- consolidated our capacity to undertake projects and research activities both in-house and in partnership with the professional bodies, university law schools and other legal services stakeholders that are calculated to improve standards of conduct in the profession—and so to reduce the incidence of conduct that gives cause for complaint.

The report canvasses our achievements and aspirations over the pages that follow and describes the system's and the Commission's performance more generally, in a narrative form in the main body of the text, and in full statistical detail in the appendices.

The system established under the Act for dealing with complaints is still relatively new, however, and so it's appropriate that the report begins by describing what the system is and how it works, where the key decision points are, the concepts that underpin it and our broad philosophical approach.

The system established under the Act for dealing with complaints

The *Legal Profession Act 2004* comprehensively reformed the regulation of the legal profession in Queensland. Most of the Act, including the sections that establish the system for dealing with complaints, came into effect on 1 July 2004.

The system established under the Act for dealing with complaints is described in detail on the Commission's website (at www.lsc.qld.gov.au) and in diagrammatic (flow chart) form at Appendix 1. Its key features can be summarised as follows:

- The system creates the independent statutory office of Legal Services Commissioner, and establishes the Legal Services Commission as the sole body authorised to receive complaints about solicitors, barristers and law practice employees in Queensland.
- It gives the Commission power to start an investigation into the conduct of a solicitor, barrister or law practice employee in the absence of complaint 'if the Commissioner believes that an investigation should be started.' These are called 'investigation matters'.
- It requires the Commission to assess a complaint against several threshold criteria before deciding whether to deal with the complaint. The assessment process is sometimes relatively straightforward, but not always. The Commission has to check, for example, if the conduct that is the subject of the complaint:
 - was 'conduct happening in connection with the practice of law'—if the answer to this question is no, then the Commission can proceed to deal with the complaint only if the Commissioner is satisfied that the conduct 'would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice'.
 - happened less than three years before the complaint was received - if the answer to this question is no, then the Commission can proceed to deal with the complaint only if the Commissioner is satisfied that 'it is just and fair to deal with the complaint having regard to the extent of, and the reasons for, the delay' or that the conduct 'may be professional misconduct' and 'it is in the public interest to deal with the complaint'.
 - might amount to negligence—if the answer to this question is yes, then in most instances the Commission cannot deal with the complaint, at least in the first instance. As a general rule, only a court of competent jurisdiction can decide whether a practitioner's conduct (or for that matter the conduct of anyone else) amounts to negligence.
- The system requires the Commission to assess a complaint to decide not only whether but how to deal with the complaint. The Commissioner has to decide if

the conduct that is the subject of the complaint would amount, if established, to unsatisfactory professional conduct or professional misconduct, and:

- if the answer to this question is no, then the complaint is classed as what the Act calls a consumer dispute and the Commission's powers are limited to suggesting to the parties that they enter into mediation—and either to attempt to mediate the complaint itself or to refer it to the Law Society or Bar Association for mediation
 - if the answer to the question is yes, then the complaint is classed as what we call a conduct matter and the Act obliges us to see to it that the complaint is investigated—and either to investigate the complaint ourselves or to refer it to the Law Society or the Bar Association for investigation.
- The system requires the Law Society or the Bar Association, whenever the Commission refers a complaint or an investigation matter there for investigation, to undertake the investigation subject to the Commission's direction and control and to report their recommendations to the Commissioner for decision.
 - Finally, the system for dealing with complaints gives the Commission alone the power to decide whether the evidence after investigation is sufficient to warrant a disciplinary response and, if so, the power to initiate and prosecute disciplinary proceedings. The Commissioner has to decide whether 'there is a reasonable likelihood of a finding by a disciplinary body of either unsatisfactory professional conduct or professional misconduct' and whether 'it is in the public interest' to initiate disciplinary proceedings. These are sometimes quite difficult questions, but:
 - if the answer to both questions is yes, then the Act obliges the Commissioner to initiate disciplinary proceedings in either the Legal Practice Tribunal (in relation to more serious matters) or the Legal Practice Committee (in relation to less serious matters).
 - if the answer to either question is no, then the Act obliges the Commissioner to dismiss the complaint (or in other words, to take no further action on the complaint).

The two key concepts

The concepts of *unsatisfactory professional conduct* and *professional misconduct* are fundamental to the system established under the Act for dealing with complaints. They determine how we deal with a complaint both at the very beginning, when we are deciding whether the Act obliges us to investigate the complaint; and at the very end, after we have investigated a complaint, when we are deciding whether the Act obliges us to initiate disciplinary proceedings or alternatively to take no further action on the complaint.

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'
- *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' 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 obvious question is just how unsatisfactory a practitioner's conduct has to be to count as unsatisfactory professional conduct. There is little or no case law to help settle the issue but we think the concept of unsatisfactory professional conduct has a wider application than the concept of unprofessional conduct that underpinned the previous system for dealing with complaints. That concept meant in common law 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 definition of unsatisfactory professional conduct in the Act refers not to the standard that *members of the profession of good repute and competency* are entitled to expect of their fellow practitioners but to a different and potentially much tougher benchmark—the standard a *member of the public* is entitled to expect.
- The Act gives the Commissioner 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 for unsatisfactory professional conduct of kinds which would not previously have become subject to discipline applications but would have been dealt with administratively.

- While it enables the disciplinary bodies to make orders of a kind that are typically associated with discipline—orders to strike off or to suspend or to fine or to publicly reprimand a practitioner—the Act also enables them to make orders that are more in the nature of and which in any other context would be regarded as performance improvement plans more so than discipline as such. 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.

No doubt the disciplinary bodies and courts will tell us in due course but we think for these reasons that the concept of unsatisfactory professional conduct has broader application than the (now superseded) concept of unprofessional conduct. We think it extends to include a potentially wide variety of conduct that gives consumers less than a good or a fair deal and 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, for example, that the concept extends to include honest mistakes, errors of judgment and poor standards of service of kinds that cause consumers to feel a legitimate sense of grievance. We think conduct of that kind is typically best dealt with by requiring the practitioner to apologise to the complainant or to re-do the work they were engaged to do or otherwise to remedy the faults in the service provided to the complainant or to waive some or all of their fee or to fix their office systems or to undertake some further training and the like.

We think that the Act broadens the concept of professional misconduct similarly. It means at common law ‘conduct that would be reasonably regarded as disgraceful or dishonorable by *members of the profession* of good repute and competency’. The Act however simply defines it to include a ‘substantial’ or a ‘consistent’ failure to meet the standard a *member of the public* is entitled to expect.

Our approach

The Act says one of its main purposes is ‘to provide for the protection of consumers of legal services and the public more generally’ and it embeds the regulation of the legal profession firmly within a consumer protection context, not least the system for dealing with complaints.

It ‘puts consumers first’ (to borrow the words of the British Lord Chancellor¹) at its very core, in the definition of the two key concepts of unsatisfactory professional conduct and professional misconduct. It benchmarks them not against the standard of conduct that practitioners expect of each other but against the standard members of the public are entitled to expect.

We see our primary purpose accordingly to be to promote and protect the rights of legal consumers. The emphasis is perhaps new but there is a continuity with the past even so. One of the enduring legal principles that applies to our work, as the Court of Appeal put it recently, in December 2005, is that ‘the object of disciplinary action against legal practitioners is not to exact retribution: it is to protect the public and the reputation of the profession’.²

It seems to us that the best way to protect the public and the reputation of the profession is to improve standards of conduct within the profession so as to avoid complaints and the need for disciplinary action in the first place. There are a number of aspects to this approach:

- One is that we should learn whatever we can from our complaints-handling experience and deliberately and proactively use the intelligence we gather that way to try through educational programs and the like to improve standards of conduct within the profession. We want to reduce the incidence of the sorts of conduct that give cause for complaint before the event, as it were, before things go sour by giving rise to complaint.
- A second is that we should be watchful and attentive to what is going on around us and deliberately and pro-actively use the intelligence we gather that way to initiate investigations into suspected misconduct in the absence of complaint, and to target any misconduct we suspect to put vulnerable consumers at risk or that appears to be widespread. We want in other words to make effective use of our investigation matter power.

1. The Lord Chancellor presented a report to the British Parliament in October 2005 that describes the government’s proposals to reform the regulation of the legal profession there. He says, in his foreword, that ‘consumers need, and deserve, legal services that are efficient, effective and economic. They want to have choice, and they want to have confidence in a transparent and accountable industry... The proposed regulatory framework sets the framework within which firms can deliver consumer focussed legal services... Our vision is of a legal services market... that is responsive, flexible, and puts the consumer first.’ To underscore the point, the report is headed ‘The Future of Legal Services: Putting Consumers First’.

2. *Legal Services Commission v Baker* [2005] QCA 482 per Chesterman J at paragraph 18.

- A third, when we have received a complaint and have reason to believe there's something to it, is that we should be looking for any leverage our powers under the Act give us to remedy whatever it is that went wrong and prevent it from happening again. We should not assume that disciplinary action is the only or always the best way to achieve that goal.

We will talk more about the first two aspects later in the report but we note in relation to the third that the Act gives us considerable leverage. That's because we have to be satisfied, before initiating disciplinary proceedings, both that there is a reasonable likelihood that a disciplinary body will make a finding of unsatisfactory professional conduct or professional misconduct and that it is in the public interest to do so.

The public interest test clearly requires us to initiate disciplinary proceedings if we believe there is a reasonable likelihood of a finding of professional misconduct. Similarly, it will almost always require us to initiate disciplinary proceedings if we believe there is a reasonable likelihood of a finding of unsatisfactory professional conduct and that the unsatisfactory professional conduct is at the more serious end of the spectrum that fits that description. Conduct at this end of the spectrum warrants a disciplinary response as a measure of the community's disapproval, for example, or to 'send a message' to other practitioners by way of deterrence, or both.³

The public interest test gives us leverage, however, when the conduct is at the less serious end of the spectrum of unsatisfactory professional conduct—conduct that would not have counted as unprofessional under the previous system for dealing with complaints, for example, but that we think counts as unsatisfactory professional conduct under the extended definition.

That's because most complaints, including most substantiated complaints, describe conduct of just these kinds—conduct that in the context of an employment relationship would be seen in a performance management rather than a disciplinary context. Conduct of these kinds is often best dealt with by requiring practitioners to take some kind of restorative action. That might mean, for example, depending on the circumstances, requiring them to apologize to the complainant, to re-do the work, to waive some or all their fee, to fix their office systems and/or to undertake some further training.

Our approach, when the conduct is at the less serious end of the spectrum and when the facts of the matter are clear and give consumers legitimate cause to feel aggrieved, is to invite practitioners subject to complaint to deal with the issues of substance. We will use the leverage the Act gives us to seek to persuade them to do whatever they reasonably can to put things right, and to prevent similar mistakes in future.

It's hard to see how it could possibly be in the public interest to initiate disciplinary proceedings if they accept that invitation—no better result could be achieved—but the option remains open if they don't.

3. The Commission's prosecution guidelines describe how we apply the 'reasonable likelihood test' and the 'public interest test'. They are available on the Commission's web-site at <www.lsc.qld.gov.au>.

Our strategic framework

We can summarise the Commission's role in the system established under the Act for dealing with complaints in the form of a strategic framework, or plan, by spelling out our mission, the strategies we will use to achieve our mission and the values we will bring to implementing those strategies.

We see our mission or most fundamental purpose to be to promote and protect the rights of legal consumers in their dealings with legal practitioners and law practice employees.

We have adopted five strategies to help us achieve that purpose. We will:

- promote and deliver an efficient and effective system for dealing with complaints about the conduct of legal practitioners and law practice employees (and in certain limited circumstances others⁴)
- proactively initiate investigations into the conduct of legal practitioners and law practice employees (and in certain limited circumstances others⁵) when we have reason to suspect unsatisfactory professional conduct, professional misconduct or a related offence⁶
- prosecute legal practitioners and law practice employees (and in certain limited circumstances others⁷) before the disciplinary bodies and the courts for apparent unsatisfactory professional conduct, professional misconduct and related offences⁸
- learn from our complaints handling experience and to join with other legal services stakeholders to help improve standards of conduct in the profession so as to reduce cause for consumer dissatisfaction and complaint, and
- create and maintain a productive and motivating work environment.

We commit to implement these strategies in ways which are:

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

4. We will deal with complaints about the conduct of people other than lawyers and law practice employees only in relation to alleged offences under the *Legal Profession Act 2004* (LPA) or the *Personal Injuries Proceedings Act 2002* (PIPA).

5. Similarly, we will initiate investigations into the conduct of people other than lawyers and law practice employees only if we have reason to believe they may have committed an offence under the LPA or the PIPA.

6. For example, the offences under the LPA of engaging in legal practice when not entitled or representing or advertising to engage in legal practice when not entitled; or the offences under PIPA of breaching the restrictions on advertising personal injury services or touting for personal injury services.

7. See note 5, above.

8. See note 6, above.



Helen Johnson (Legal Services Commission), the Honourable Attorney-General and Minister for Justice Linda Lavarch MP and Legal Services Commissioner John Briton celebrating the end of the backlog.

Complaints 2005–06

The Commission's core business under the Act is dealing with complaints about lawyers and law practice employees but we also have a limited jurisdiction to deal with complaints about people who are neither.¹

Importantly, we assumed additional responsibilities during the year following amendments to the *Personal Injuries Proceedings Act 2002* (and corresponding amendments to the *Legal Profession Act 2004*). Those amendments came into effect on 29 May 2006 and gave us responsibility for dealing with complaints about alleged breaches of the restrictions on the advertising of personal injury services and the prohibition on touting for personal injury services, whether by lawyers, law practice employees or any other person.

Our objective

- To promote and deliver an efficient and effective system for dealing with complaints about the conduct of legal practitioners and law practice employees (and in certain limited circumstances others).

Our performance criteria for 2005–06

- To fully resolve the backlog of pre-Act complaints we inherited on our inception on 1 July 2004 and at the same time to finalise new, post-Act complaints at the same rate or better than the rate at which we receive them.
- To develop ongoing performance criteria for dealing with complaints for the year to 30 June 2007 and beyond including clearance ratios, timeliness and stakeholder satisfaction criteria.

Our performance in 2005–06

We have achieved the first of those objectives. We have mentioned already that we:

- Have all but fully resolved the backlog—we inherited 938 'pre-Act' complaints on our inception and finalised 509 of them in 2004–05 and another 400 in 2005–06, leaving only 29 still to be finalised at 30 June 2006. Several of those matters are large and complex but all of them well on the way to completion; and
- Finalised new 'post-Act' complaints during 2005–06 at the same rate or slightly better than the rate at which we received them—thus avoiding the trap of simply replacing one kind of backlog with another. We have received 2632 new complaints since our inception and completed 2161 of them, leaving 471 still to be finalised at 30 June 2006 but, crucially, we finalised more in 2005–06 than we received—we received 1147, but finalised 1179.

1. The *Legal Profession Act 2004* gives us jurisdiction over people other than lawyers and law practice employees only in relation to complaints about conduct that would, if substantiated, amount to an offence under the Act. Those offences include the offences under sections 24–25 of engaging in legal practice when not entitled or holding oneself out to be a legal practitioner when not entitled.

We have largely achieved the second objective also, for reasons we describe under each of the subheadings that follow. Those subheadings reflect the key tasks we face in promoting and delivering an efficient and effective system for dealing with complaints.

a) **Informing consumers and practitioners about the system for dealing with complaints**

The Act obliges us 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 published a range of materials on our web-site <www.lsc.qld.gov.au> soon after our inception. Those materials inform prospective complainants about how to make a complaint, answer the most frequently asked questions about our processes and what we can and cannot do, and invite anyone with further queries to contact us for personal assistance or advice. They include a complaint form that prompts complainants to describe their concerns in the detail that we need to properly assess their complaints and to deal with them expeditiously.

We have progressively added to those materials since, and in particular, in 2005–06:

- We have engaged and worked with communication consultants to review both the form and content of the existing materials on the web-site and to write new materials to 'fill the gaps'. The new and improved materials will go live later this calendar year, and we will produce most of them in hard copy form also, as fact sheets. We will then need to work out how best to make that information available to people in other languages.
- The Commissioner and staff of the Commission fulfilled 38 speaking engagements in Brisbane and various regional cities and towns, primarily about professional ethics and the system for dealing with complaints and related issues. They included 14 compulsory professional development workshops on ethics conducted by the Law Society or other providers; all 5 practice management courses conducted by the Law Society, 6 lectures to students at various law schools and 6 speeches at conferences organised by the professional bodies.

b) **Responding to inquiries**

The Act obliges us to give help to members of the public in making complaints and, apart from making information available in the ways we've described, we do that by responding to inquiries, primarily by telephone but also by writing, by email and in person. The Law Society also responds to inquiries from members of the public about how to make complaints and from practitioners about ethical or client management issues.

The Act requires complaints to be in writing, but many inquiries are complaints in all but name. 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 can't be resolved informally.

The number of inquiries has increased over the past two years, as follows:

Inquiries received:	by the LSC	by the QLS	Total	Variance
in 2004–05	1862	5872	7734	—
in 2005–06	1564	7132	8696	+12%

We have attached more detailed statistical data at Appendix 4, but we note that:

- Just more than 1 in 2 inquiries were made by clients or former clients, and just more than 1 in 4 were made by practitioners.
- About 1 in 3 concerned family law and conveyancing matters, in roughly equal numbers; and about 1 in 5 concerned personal injuries or deceased estate matters, again in roughly equal numbers.

There were more inquiries about conveyances in 2005–06 than in 2004–05, most of them about mistakes in calculating rates adjustments and stamp duties and the like. Most of them were dealt with informally to the inquirer's satisfaction and did not go on to become formal written complaints. On the other hand there were slightly fewer inquiries about family law matters. The inquirers were very angry people in the main, and most of their inquiries appear to have gone on to become formal written complaints.

- About 1 in 3 of all inquirers sought specific advice of some kind. About 1 in 5 were concerned about costs (about how their practitioner calculated their costs, for example, or why their bill exceeded their practitioner's estimate or how they could challenge their bill). About 1 in 7 concerned quality of service issues (about errors in calculating stamp duties, for example, or apparent delays in finalising personal injuries or deceased estate matters).
- About 1 in 5 were resolved by providing information about the legal system (about the process for challenging a bill, for example, or the possible reasons for some apparent delay) and about 1 in 10 by referring the inquirer for legal advice. Importantly, about 1 in 10 were resolved by recommending to the inquirer that they approach their practitioner or law firm directly, and only about 1 in 20 by forwarding a complaint form to enable them to make a formal written complaint.

c) Receiving, assessing and deciding how to deal with complaints

Interestingly, while the number of inquiries has gone up, the number of complaints has been trending down since the new system for dealing with complaints came into effect on 1 July 2004, as follows:

Trends in the numbers of:	Complaints to the QLS under the previous system		Complaints to the LSC under the new system for dealing with complaints	
	2002–03	2003–04	2004–05	2005–06
Number of complaints*	1602	1621	(1485–35)=1450	(1147–73)=1074
Variance	—	+1%	–11%	–26%

* This figure is the number of complaints received from members of the public—that is to say, the number of new matters opened less the number of investigation matters opened

The monthly data towards the end of the 2005–06 year suggests that the downward trend may have bottomed out, but that remains to be seen. In any event, we believe the explanation for the decrease in the numbers is twofold:

- Firstly, the number of complaints in 2002–03 and 2003–04 was artificially high by reason of the repeated front page news at the time about the alleged activities of the law firm Baker Johnson and the related criticism of the previous system for dealing with complaints. Publicity of that kind tends to suck in complaints in any complaints jurisdiction; and
- Secondly, the Commission and the Society have pre-empted an indeterminate but large number of complaints by dealing with them and resolving them informally, at the inquiry stage. This explanation fits with the increase in the number of inquiries in 2005–06. It fits with the fact, too, that the Inquiry Officers are now more experienced, and more skilled and more confident to respond proactively to inquiries in this way when the opportunity presents itself.

We have described how we go about assessing complaints and deciding how to deal with them elsewhere in this report, in narrative form in the section headed *The system established under the Act for dealing with complaints* and in a flow chart at Appendix 1.

We have attached detailed statistical data at Appendix 4 about how we assessed and dealt with complaints during the year. We note however that:

- We assessed 1054 of the 1074 new complaints we received during the year from members of the public. We assessed 333 or 32% of them to fall outside our jurisdiction and so took no further action but for advising the complainants accordingly and referring them elsewhere as appropriate. We assessed 180 or 17% of them to be consumer disputes (that is to say, complaints about conduct to which the Act applies but that would not, even if proved, amount to unsatisfactory professional conduct or professional misconduct). We assessed 541 or 51% of them to be conduct matters (that is to say, complaints about conduct that would, if proved, amount to unsatisfactory professional conduct or professional misconduct).
- We referred 7 or 3.4% of the total number of 205 complaints we assessed during the year to be consumer disputes to the Law Society for mediation, and retained 173 or 96.6% for mediation in-house.
- We referred 311 or 49% of the 635 complaints we assessed during the year to be conduct matters to the Law Society for investigation and 26 or 4% to the Bar Association, and retained 298 or 47% for investigation in-house.
- The Law Society returned 672 conduct matters to the Commission after investigation for review, and the Bar Association returned 29.

There are two other matters of particular interest. The first is the marked decrease in the number of consumer disputes we had on hand at the end of the year (3) compared to the number we had on hand at the end of last year (88) and on our inception (273). This reflects the wider application of the concept of unsatisfactory professional conduct compared to the concept of unprofessional conduct under the previous system for dealing with complaints (see the discussion under the headings *The two key concepts* and *Our approach*, above).

The second is that we finalised 80% of all the complaints we assessed to fall outside our jurisdiction within 1 month of receiving them, and 87% within 2 months. We will use that data as a base-line for our performance over the coming year: we have set ourselves the target of assessing 80% of all new complaints within 1 month and 100% within 2 months.

d) **Mediating consumer disputes**

We opened 180 and finalised 235 consumer disputes during the year. Notably we finalised 90% of them within 2 months of receiving them and 97% within 5 months. We set ourselves the target for next year, before this data became available, of finalising 80% of all consumer disputes within 2 months of receipt and 100% within 5 months. Timeliness aside:

- More than 3 in 4 of the 235 consumer disputes we finalised during the year were complaints against practitioners by clients or former clients.
- More than 19 in 20 were complaints about solicitors.
- Almost 1 in 5 had their origins in family law matters; almost 1 in 5 in conveyancing matters; just more than 1 in 10 in deceased estate matters and just fewer than 1 in 10 in personal injury matters.
- Exactly 4 in 10 were about costs; about 1 in 5 were about ethical matters (refusing to hand over a file, for example, or potential conflicts of interest); about 1 in 5 were about quality of service issues (delays, for example, or mistakes in calculating stamp duties or rates adjustments); and about 1 in 10 were about poor communication (failure to return phone calls, for example, or rudeness).
- They involved a total of 182 solicitors (or 3% of all solicitors in Queensland), 166 of whom were subject to 1 dispute only but 16 of whom were subject to 2 or more disputes.
- They involved 169 law firms (or 13% of all law firms in Queensland), 142 of which were involved in 1 dispute only but 20 of which were involved in 2 disputes and 7 of which were involved in 3 or more disputes. They were small firms in the main—90 were sole practitioner firms (1 in 10 of all sole practitioner firms); 31 were 2 partner firms (about 1 in 5 of all firms of that size); and 14 were 3 partner firms (almost 1 in 4 of all firms of that size).
- Almost 1 in 5 were resolved to the complainant's satisfaction but almost 1 in 3 were unable to be resolved. Almost 4 in 10 were unfounded, in our opinion.

e) **Investigating conduct matters and deciding what further action to take**

We opened 541 and finalised a total of 978 conduct matters during the year—398 of them pre-Act matters we inherited on our inception and 580 of them new complaints that were made after the new system for dealing with complaints came into effect on 1 July 2004.

We finalised 64% of those post-Act matters within 7 months of having received them, and 93% within fifteen months (including those that we referred to the professional bodies for investigation and that they returned to the Commission for review and decision). We have set ourselves the target next year of finalising 80% of conduct matters within 7 months of receipt and 100% within 15 months. By way of comparison, the 'median days open' figure for the post-Act conduct matters we finalised was 175, dramatically less than the median days open figure for the pre-Act matters, 815.

Timeliness aside:

- About 7 in 10 of the 978 conduct matters we finalised during the year were complaints against practitioners by clients or former clients (about 1 in 10 of them by solicitors on behalf of clients or former client of the practitioners subject to complaint), and about 1 in 10 by practitioners against other practitioners.

Our impression is that some practitioners may be filing complaints against other practitioners as a means of bringing pressure to bear to resolve disputes between them, and some as an alternative means of discovery, in effect. They do themselves no favours by bringing other than genuine complaints.

- Just fewer than 9 in 10 were complaints about solicitors, and about 1 in 25 were about barristers (who make up about 1 in 10 of the profession).
- Almost 1 in 5 had their origins in family law matters; almost 1 in 6 in conveyancing matters; just more than 1 in 10 in deceased estate matters and just more than 1 in 10 in personal injury matters—much the same pattern as with consumer disputes.

It seems to us that very many of the complaints that arose out of both deceased estate and personal injury matters could have been avoided if only the practitioners had taken more care about how they communicated with their clients and interested parties. Many of the complainants in deceased estate matters, for example, were beneficiaries who didn't understand that the solicitor for the estate wasn't duty bound to take their instructions. Many of the complainants in personal injury matters complained about being bullied into accepting lesser amounts by way of settlement than they believed, or were led to believe they might achieve.

- More than 4 in 10 were about ethical matters (alleged breaches of undertakings, for example, or conflicts of interest); 1 in 5 were about quality of service (missing statutory time limits, for example, or failing to advise of the outcomes of hearings or the effect of orders); about 1 in 6 were about costs (alleged overcharging, for example, of sending a bill vastly in excess of estimates); and about 1 in 10 were about poor communication (failure to communicate offers of settlement, for example, or to reply to correspondence).
- They involved a total of 543 solicitors (or 9% of all solicitors in Queensland), 425 of whom were subject to one matter only; 75 of whom were subject to 2 matters; 21 to 3 matters; 9 to 4 matters and 13 to 5 or more matters.
- They involved 459 law firms (or 36% of all law firms in Queensland), 294 of which were involved in 1 matter only; 85 of which were involved in 2 matters; 43 in 3 matters; 14 in 4 matters and 23 in 5 or more matters. They were small firms in the main—258 were sole practitioner firms (just more than 1 in 5 of all sole practitioner firms); 76 were 2 partner firms (more than 4 in 10 of all firms of that size); and 20 were 3 partner firms (or 1 in 3 of all firms of that size).
- About 7 in 10 conduct matters were finalised after investigation on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct.
- About 1 in 7 were finalised on the basis that while it was possible that a disciplinary body might make a finding of unsatisfactory professional conduct or professional misconduct, no public interest would be served by initiating disciplinary proceedings.

This is a measure in our opinion of the success of the strategy we described earlier in this report under the heading *Our approach*. Some of these matters were dismissed in the public interest because, for example, the practitioners had ceased to practise. The vast majority of them however were dismissed because they were relatively minor matters and the practitioners had either made good their mistake and/or taken steps to ensure it wouldn't happen again.

- Notably we finalised 8 in 100 of the conduct matters we brought to completion in 2005–06 on the basis that we would open a prosecution file and initiate disciplinary proceedings. We closed about 6 in 10 complaints files having decided to initiate disciplinary proceedings in the Legal Practice Tribunal and about 2 in 100 having decided to initiate proceedings in the Legal Practice Committee.

Investigation matters 2005–06

We will be much less constrained by the weight of numbers now that we have all but resolved the backlog of complaints to reacting or responding to complaints. We will have the room now to identify conduct and patterns of conduct on the part of lawyers that give consumers less than a good or a fair deal and to take the initiative. We will have the opportunity to make more and better use of our ‘investigation matter’ power to initiate investigations and deal with apparent misconduct in the absence of complaint.

The power is an important one for the obvious reason that some consumers who may have good reason to complain about a lawyer’s conduct will lack the knowledge or experience or trust in the system to bring a complaint or perhaps fear reprisal if they do. Typically they will be occasional rather than repeat users of legal services. They of all consumers will be the least well equipped by knowledge and experience to represent their own interests in their dealings with lawyers, or even to recognise when they might be getting something less than a good or a fair deal in the first place.

Our most fundamental purpose is to promote and protect the rights of legal consumers and the investigation matter power is an important tool to that end, and to promote and protect the rights of these legal consumers in particular.

Our objective

- To proactively initiate investigations into the conduct of legal practitioners and law practice employees and in certain limited circumstances others² when we have reason to suspect unsatisfactory professional conduct, professional misconduct or a related offence.³

Our performance criteria in 2005–06

- To measure our proactivity by monitoring the number and percentage of investigation matters we initiate in comparison to the number of complaints we receive from members of the public.
- To develop ongoing performance criteria appropriate to the investigation matter power for the year to 30 June 2007 and beyond.

Our performance in 2005–06

We have decided to assess our performance over coming years by reference again to our proactivity but by reference also to:

- The prevalence and impact on consumers of the conduct we investigated compared to conduct that we might have chosen to investigate but did not.

2. We have jurisdiction over the conduct of people other than lawyers and law practice employees only if we have reason to believe they may have committed an offence under the *Legal Profession Act 2004* or the *Personal Injuries Proceedings Act 2002*.

3. For example, the offences of engaging in legal practice when not entitled or holding themselves out to be legal practitioners when not entitled, or breaching the restrictions on advertising personal injury services or touting for personal injury services.

- An assessment informed by feedback we obtain from stakeholders of our effectiveness in reducing or ameliorating the prevalence and impact of that conduct.

We note looking to the year just past that:

- We finalised 45 investigation matters during the year, most of them prompted by information which came to our attention only incidentally, in the course of investigating complaints by members of the public about other matters, and most of which addressed mainly one-off behaviours.
- We initiated 73 investigation matters during the year in addition to the 1074 complaints we received from members of the public, or 6.36% of the 1147 new matters we opened in total. By way of comparison, we initiated 35 investigation matters in 2004–05 in addition to 1450 complaints we received from members of the public, or 2.36% of the 1485 matters we opened in total. That is a significant increase and indicates that we have not only created the opportunity but used the opportunity to be more proactive now that the backlog is all but behind us.
- Many of the 73 investigation matters we initiated during the year, like the 35 matters we initiated last year, were prompted by information that came to our attention incidentally and that addressed mainly one-off behaviour. No doubt that will always be the case but we anticipate that the matters we initiate as we go forward will include a much higher proportion of matters we have initiated deliberately and proactively to address conduct that appears to be more prevalent.
- By way of illustration, we initiated 35 matters in the months of May and June alone, when the pressures of the backlog had begun to subside. All but 3 of those matters addressed an apparently widespread practice that first came to our attention only a month or so earlier, after the Law Society referred a matter to us that came to its attention during a routine trust account inspection. That matter was followed by others and alerted us to the fact that more than a few law firms, and in particular some law firms specialising in conveyancing, appeared as a matter of course to be charging their clients undisclosed mark-ups or surcharges on outlays. We believe that this conduct is misleading at best and arguably dishonest and that it breaches the *Trust Accounts Act 1973*.

We also became aware that some of those law firms and others were charging their clients for various services provided to the firm by undisclosed related entities and describing those charges as outlays. This practice is similarly misleading and in breach of the *Trust Accounts Act 1973*.

We adopted a two-pronged strategy to address the issue. We initiated a series of investigation matters to get to the bottom of each matter that came to our attention and consulted at the same time with the Law Society to develop and publish guidelines for charging outlays and disbursements.

We took pains to ensure that every law firm in Queensland was alerted to the guidelines, and to inform them we intended to initiate disciplinary proceedings against practitioners for failing to measure up to the standards set out in the guidelines after their publication. We informed them we would be disinclined to initiate disciplinary proceedings against practitioners for failing to measure up to the standards before the guidelines were published provided they amended their future billing practices and reimbursed their clients any undisclosed mark-ups or surcharges they had charged them since 1 July 2004.

We propose to take a similar approach to our new responsibilities under the recent amendments to the *Personal Injuries Proceedings Act 2002* (PIPA). We will review the Yellow Pages and other publications that carry advertisements for law firms, and we will maintain a watching brief over the web-sites of law firms that offer personal injury services and initiate investigations into any apparent breaches. We will also keep a lookout for claims-harvesters and educate advertising and marketing companies about their obligations under PIPA.

We took the trouble first, however, to publish and alert practitioners to our publication *A Guide to Advertising Personal Injury Services* and to our subsequent publication, *A Guide to Advertising Personal Injury Services* on the internet. We have made it clear that we will be disinclined to initiate disciplinary proceedings against practitioners for minor and technical breaches of the restrictions on advertising that were caused to be published before we published the guidelines. We have also made it clear, however, that we will have no such disinclination for breaches that are caused to be published after the publication of the guidelines.



Prosecutions 2005–06

The Commission is the sole body authorised under the Act to initiate and prosecute discipline applications, in one or other of the two new disciplinary bodies—the Legal Practice Tribunal and the Legal Practice Committee. We initiate discipline applications if we believe both that there is a reasonable likelihood of a finding by a disciplinary body of either unsatisfactory professional conduct or professional misconduct (or in the case of law practice employees, misconduct) and that it is in the public interest to do so.

We initiate discipline applications in the Legal Practice Tribunal if we believe there is a reasonable likelihood of a finding of professional misconduct, and in the Legal Practice Committee if we believe there is a reasonable likelihood of a finding of unsatisfactory professional conduct, but not of professional misconduct.

We are also responsible for prosecuting offences under the Act⁴ and certain offences under the *Personal Injuries Proceedings Act 2002*.⁵

Our objective

- To prosecute legal practitioners, law practice employees (and in certain limited circumstances others⁶) before the disciplinary bodies and where appropriate the courts for apparent unsatisfactory professional conduct, professional misconduct, misconduct and related offences.

Our performance criteria in 2005–06

- To develop, document and publish a comprehensive prosecution policy (to bring both consistency and transparency to our decision-making process).
- To develop ongoing performance criteria appropriate to the prosecution function (and to assess our performance against those criteria).

Our performance in 2005–06

We achieved our two primary objectives. We developed our *Prosecutions Policy* and published it on the policies and guidelines page of the Commission's website in March. We also developed on-going performance criteria.

4. For example, the offences under sections 24 and 25 of the Act of engaging in legal practice when not entitled or representing one's self to be a legal practitioner when not entitled.

5. We are responsible for prosecuting the offences under sections 66–67 of breaching the restrictions on advertising personal injury services and touting for personal injury services.

6. We will prosecute people other than lawyers and law practice employees only if we believe there is a reasonable likelihood they have committed an offence under the *Legal Profession Act 2004* or the *Personal Injuries Proceedings Act 2002* and that it is in the public interest to do so.

We will assess our performance over the coming year by reference to:

- The timeliness with which we initiate and bring prosecutions to completion, including whether we meet our targets to:
 - file 80% of discipline applications within 3 weeks of making the decision to initiate disciplinary proceedings, and 100% within 6 weeks;
 - serve 80% of discipline applications within 2 weeks of filing them, and 100% within 3 weeks; and (insofar as it is in within out control),
 - bring 80% of discipline applications to completion within 8 months of filing them, and 100% within 12 months.
- An assessment of the outcomes including the number and percentage of charges we fail to prove or have to amend or withdraw, together with an analysis of the reasons and the feedback we obtain about our performance by surveying key stakeholders.
- The number, cost and nature of the prosecutions we brief-out rather than handle in-house.

We note, looking to the year just past, that the disciplinary bodies finalised 21 discipline applications. That is a significant increase over the number in 2004–05 but nonetheless a decrease compared to the numbers over the three years immediately prior to that, before the new system came into effect, as the following table shows:

Prosecution files completed	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06
Solicitors Complaints Tribunal	10	23	26	25	3*	n/a
Legal Practice Committee	n/a	n/a	n/a	n/a	0	10
Legal Practice Tribunal	n/a	n/a	n/a	n/a	2	9
Court of Appeal	^	^	^	^	-	2 #
Total	10	23	26	25	5	21

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

^ The Court of Appeal figures for these years are included in the figures for the SCT.

1 of these 2 matters was an appeal from a decision of the LPT (in the *Legal Services Commission v Baker*) and the other an appeal from a decision of the SCT.

The reduction in the number of completed prosecutions should not be taken to mean that fewer practitioners will be prosecuted under the new system for dealing with complaints than were prosecuted previously, with whatever meanings might attach to that. That is because we opened roughly the same number of prosecution files in 2004–05 as were completed during each of the three years before the new system came into effect and significantly more than those in 2005–06, as the following table shows:

Prosecution files opened	2004–05	2005–06
Prosecution file opened but discipline application / summons not yet filed	9	10
Discipline application filed with the Legal Practice Committee	6	13
Discipline application filed with the Legal Practice Tribunal	11	24
Summons issued in the Magistrates Court (in relation to alleged offences)	0	0
Total	26	47

Equally, the increase in the number of prosecution files opened should not be taken to mean that more practitioners will be prosecuted under the new system for dealing with complaints than were prosecuted previously, with whatever meanings might attach to that.

The reality is that the reduction in the number of completed prosecutions over the first two years of the new system reflects no more than that the new system, being new, was still finding its way. The increase in the number of prosecution files being opened reflects for its part no more than our success in bringing more complaints to completion than usual—the large backlog of complaints we inherited on our inception plus new complaints in much the same numbers as we receive them.

Those two factors have combined to create a larger than usual number of prosecutions working their way through the system. The numbers tell the story: we inherited 5 prosecution files on our inception two years ago but we had 24 prosecution files on hand by the end of our first year and 42 by the end of our second. The numbers the disciplinary bodies have had on hand has increased similarly.

The backlog of prosecutions will be resolved, however, just like the backlog of complaints has been resolved, and we expect it will work its way through the system by the end of the 2006–07 reporting year.

We have attached detailed data at Appendix 4 about the 21 prosecutions we brought to completion during the year, but not about the 21 respondent practitioners. We will include data of that kind as we go forward but decided against it this year, because like last year they were too few in number to make a meaningful sample. We note however that:

- We prosecuted 4 practitioners in relation to their conduct arising in litigation, 4 in relation to conduct arising in conveyances and 3 in relation to conduct arising in personal injuries matters. We prosecuted 1 practitioner in relation to his or her conduct arising in a family law matter, 1 in a criminal law matter and 1 in an administrative law matter.
- We prosecuted 7 practitioners for breaching their trust account obligations; 6 for unethical conduct (dishonesty, for example, and witnessing a document other than in the presence of the signatory); and 3 for poor quality of service (serious neglect and delay in bringing a damages claim, for example). We prosecuted 2 practitioners for poor communication (rude and threatening written and spoken communication); 1 practitioner for conduct other than in the practice of law (fraud); 1 for non-compliance (failure to comply with a direction from a regulator to produce information); and 1 for gross overcharging).
- Of the 21 respondents, 20 were solicitors and 1 was a barrister.
- The disciplinary bodies made findings of either unsatisfactory professional conduct or professional misconduct (or both) against all 21 of them, as follows:
 - the Legal Practice Tribunal heard and decided 10 discipline applications during the year. It found 17 charges of professional misconduct and 17 charges of unsatisfactory professional conduct to be proved against those 10 practitioners. It found 6 charges not to be proved and the Commission withdrew 6 charges.

The Tribunal ordered that 4 practitioners be struck off. One of those practitioners, Michael Vincent Baker, appealed the Tribunal's decision to find him guilty of 5 charges of professional misconduct and 3 charges of unsatisfactory professional conduct and its order that he be struck off. The Court Appeal upheld the Tribunal's decision in relation to all 5 charges of

professional misconduct and 2 of the 3 charges of unsatisfactory professional conduct. It upheld the Tribunal's decision that he be struck off.

The Tribunal also ordered 4 practitioners to pay financial penalties totaling \$17000 and reprimanded all 4 of them in addition to imposing a financial penalty. It reprimanded 2 practitioners without imposing any further penalty.

- the Legal Practice Committee heard and decided 10 discipline applications during the year, and found all 13 charges of unsatisfactory professional conduct brought against those 10 practitioners to be proved.

It ordered 9 practitioners to pay financial penalties totaling \$16000 and reprimanded 4 of them in addition to imposing a financial penalty. It ordered the other practitioner to refrain from any conduct which would bring the legal profession into disrepute.

We have added the names of all 21 practitioners to the discipline register on the Commission's website and also a link to the judgments of the disciplinary bodies that found against them including any judgments on appeal. The judgments give full particulars of the allegations against the practitioners together with the disciplinary body's findings, reasons for decision and orders.

Projects and research 2005–06

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. We believe we should turn our attention also to how we might get in before the event, as it were, by reducing the incidence of the sorts of conduct that give cause for consumer dissatisfaction and complaint in the first place. Prevention is almost always better than cure.

Our objective

- To learn from our complaints-handling experience and to join with other legal services stakeholders to help improve standards of conduct in the profession so as to reduce cause for consumer dissatisfaction and complaint.

Our performance criteria for 2005–06

- To assess the number, type and outcomes of the projects and research activities we have undertaken over the year both in-house and in partnership with the professional bodies, law schools, and other legal services stakeholders;
- To develop appropriate ongoing performance criteria for dealing with complaints which, as far as is possible, assess our performance in reducing consumer dissatisfaction by improving standards of legal practice and which enable us to compare our performance with the performance of some or all our counterpart bodies in other states and territories.

Our performance in 2005–06

We reported last year that we had secured funding to employ a policy and research officer during 2005–06 to give us some dedicated capacity to deliver on our projects and research objective and we are pleased to report this year that the Attorney-General has now approved the funding becoming recurrent.

We are pleased to report also that we have:

- Collected and analysed our complaints data and cross-referenced it with data about the characteristics of the practitioners subject to complaint including their age, gender, post-admission experience, type of practising certificate, and the whereabouts and size of the law firms in which they practice.

We have included that information in this report at Appendix 4. It is important and useful 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.

The data invites some obvious questions. Why is it, for example, that women lawyers continue this year like last year to be considerably less than half as likely as their male counterparts to be subject to complaint? And why is it that lawyers aged in their 30s continue this year like last year to be only a little more than half as likely as lawyers aged in their 40s to be subject to complaint?

- Made a detailed submission to the Attorney-General by way of comment on the draft Legal Profession (Solicitors) Rule 2006.
- Devised a means of collecting and reporting for every consumer dispute and conduct matter that we bring to conclusion the complaint-handler's professional opinion about whether the practitioner subject to complaint could have avoided the complaint and if so how, and if not, why not. We will report this data in next year's annual report.
- Collaborated with the Socio-Legal Research Centre at Griffith University (the SLRC) to survey how groups of lawyers, law students and members of the public apply the concept of unsatisfactory professional conduct to a range of fact situations that are typical of the complaints the Commission receives everyday. We wanted to discover and compare their opinions, and we wanted at the same time to engage them in some critical reflection about the sorts of conduct we routinely see described in complaints.

The results show that there can be differences of opinion amongst lawyers, amongst law students and amongst members of the public about whether some particular conduct amounts to unsatisfactory professional conduct but, interestingly, that lawyers, law students and members of the public are generally similarly divided. The survey can be completed on-line, and the results to date are available on-line also, on the projects and research page of the Commission's website <www.lsc.qld.au>.

- Co-sponsored a workshop with the SLRC on 11 November 2005 called Lawyer's Work, Lawyer's Conduct. The workshop was carefully structured to bring practising lawyers together with legal academics and regulators to identify problem areas that warrant research with a view to improving standards of conduct in the profession and potential collaborations in furthering that research.

We jointly prepared a report summarising the discussion and that report is also available on the projects and research page of the Commission's website. We have since agreed to co-sponsor a series of workshops in 2006–07 on one of the themes that emerged from the November discussions, Lawyers, Clients and the Business of Law. The first workshop is planned for September 2006 and will be called Creative Practice or Profiteering.

- Collaborated with the Centre for Biological Information Technology at the University of Queensland (CBIT) and the Queensland University of Technology Faculty of Law (QUT) to load a 'real life' ethical problem confronting lawyers on to an interactive problem-based learning software platform developed by CBIT. We wanted to explore the software's potential to sensitise lawyers and law students to the sorts of ethical questions they inevitably have to deal with and to engage them both cognitively and affectively in attempting to resolve them. The problem can be 'played' on-line, on the Commission's website.

We are currently collaborating with the CBIT, the Elder Law sub-committee of the Law Society, the Guardianship and Administration Tribunal and a technical writer to develop and load a second problem, and it should be available on-line before the end of the 2006 calendar year.

- Developed an options paper and initiated a collaboration with the Law Society to come up with arrangements including a revamped Senior Counsellor program which will position the disciplinary bodies to make disciplinary orders of a 'performance management' kind when they make a finding of unsatisfactory professional conduct—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.
- Initiated a collaboration with the Law Society to develop a Client Service Charter (along the lines of the Client Charter published by the Law Society of England and Wales) for adoption by law firms including best practice in-house policies and procedures for minimising the risk of complaints and dealing with them if and when complaints are received.
- Initiated a collaboration with the Legal Services Commission of New South Wales to enhance and adapt a client and stakeholder satisfaction survey instrument that has previously been used there for both our use, to enable us to gauge our respective performance with comparable data.

We have also (as flagged earlier in the report) developed and published three documents which set out guidelines with a view to helping improve standards of conduct in the profession in areas which seem to be presenting some problems. We published the guidelines simultaneously in the Law Society's monthly journal, *Proctor*, and on the policies and guidelines page of Commission's website. They are:

- guidelines for charging outlays and disbursements
- a guide to advertising personal injury services, followed soon afterwards by a guide to advertising personal injury services on the internet.



Associate Professor Mike Robertson of Griffith Law School speaking at the first workshop jointly hosted by the Legal Services Commission and Griffith Law School.



Sarah Lane (Legal Services Commission), Francesca Bartlett (University of Queensland) and Lillian Corbin (Griffith University) at the workshop.

Organisational support 2005–06

We have described as best we can how we have dealt with complaints, investigation matters, prosecutions and projects during the year and have attempted to assess our performance against the criteria we set ourselves but ultimately that's for others to judge. What we can say, however, is that it is difficult, demanding and often thankless work that calls for qualities of perseverance and judgment in addition to technical skills. Our performance in dealing with the world external to the office in these circumstances is inevitably a function of our performance inside the office. It will be shaped in large measure by our success or otherwise in getting the right people in the right jobs in the right numbers with the right values, beliefs, skills and support systems to inform and sustain them in what they do.

Our objective

- to create and maintain a productive and satisfying work environment.

Our performance criteria for 2005–06

- to develop and document comprehensive policies and procedures for dealing with complaints including policies in relation to the initial assessment of complaints and their referral to the professional bodies for mediation and/or investigation;
- to continue to refine the complaint-handling codes on the case management system to maximise the relevance and utility of our performance and management reports;
- to review our current precedent documents and put in place a comprehensively indexed system for storage and retrieval of precedent documents;
- to develop and implement a performance management framework and agreed individual learning plans with all the staff of the Commission.

Our performance in 2005–06

We set ourselves the goal in 2004–05 to work out the number of staff that the system for dealing with complaints as a whole required to eliminate the backlog of complaints by the end of the 2005–06 year and at the same time to keep pace with new complaints. We set ourselves also to work out the organisational structure that the Commission required to achieve that objective; to secure the necessary funding; and to get the people and the structure in place by the start of the year or as soon as possible thereafter.

We reported last year that we believed we had achieved those objectives—we did the calculations, designed a structure, secured with the Attorney-General's support the additional funds we calculated we would need, and recruited the additional staff to

start in July. It remained to be seen of course whether we got our calculations right. We flagged the likelihood, if we did, that the investment of additional funds in 2005–06 would be compensated in 2006–07 by room for downsizing.

We have reported already our success in all but resolving the backlog by 30 June 2006 and at the same time keeping up with new complaints—so we believe we got the calculations right. We note that:

- The Commission used the additional funds we were provided in the 2005–06 budget to restructure the office by upgrading a legal officer position to create the position of Manager-Complaints (and effectively the deputy to the Commissioner) and to engage an additional two legal officers and, later in the year, by reconfiguring the existing staffing arrangements including holiday relief arrangements, to engage an additional three part-time legal officers equivalent to 1.8 full-time (FTE) people.
- The Commission was funded later in the year to employ a further two legal officers again, but only to service the Commission's additional workload under the amendments to the *Personal Injuries Proceedings Act 2002* that came into effect on 29 May 2006.
- The Law Society meanwhile continued to employ the same number of staff it employed on the Commission's inception on 1 July 2004 including 2.6 FTE contract investigators to help deal with the backlog.
- The Commission and the Society jointly negotiated arrangements with the department of Justice and Attorney-General for the 2006–07 year and beyond to the effect, contrary to the previous arrangements in which the Commission and the Society each submitted and negotiated discrete budget proposals, that:
 - the Commission will submit and negotiate a budget proposal on behalf of the system for dealing with complaints as a whole, and the Commission will receive the funding to administer the system; and
 - the Commission and the Society (and potentially also the Bar Association) will negotiate and agree a service level agreement by which the Commission funds the Society to deal with the kinds and numbers of complaints the Commission and the Society agree that the Commission will refer to it for mediation and/or investigation.

These new arrangements conceive and fund the system for dealing with complaints holistically. They better reflect the legislative schema in which the Commission is the sole body authorised to receive complaints and exercises a discretion whether to, and how many complaints to refer to the professional bodies for mediation and/or investigation (as described in the flow chart at Appendix 1).

- Within that framework, and given the significant reduction of the workload now that the backlog is all but resolved, the Commission and the Society agreed that the Society would downsize accordingly. The Society agreed not to renew the contracts of the 2.6 FTE investigators previously referred to and also to effectively transfer funding equivalent to the cost of employing 3 FTE investigators from the Society's budget allocation to the Commission's.

We agreed, in other words, to redistribute significant funding and staff numbers within the system for dealing with complaints from the Society to the Commission. That is because the staff of the Commission would otherwise have continued to be all but fully occupied with the assessment, review and prosecution functions

for which the Commission alone has responsibilities, and would have had limited spare capacity to put to the investigation function. That distribution of resource would have continued to force the Commission's hand, in effect, to refer the vast bulk of complaints that the Commission assesses to require investigation to the Society.

We opted instead to distribute the investigation workload more evenly, in a way that preserves a substantial role for the Law Society in investigating alleged misconduct by solicitors but at the same time:

- pre-empts criticism that the Commission is simply a 'post box' and that the changes to the system for dealing with complaints were little more than window dressing.
- reduces the double-handling inherent in a process in which the Commission refers complaints to the Society for investigation only to review the investigation on its completion.
- gives the staff of the Commission a more varied, interesting and satisfying mix of complaint-handling work than their workload hitherto which was heavily weighted in favour of the assessment and review functions.

Our challenge as we go forward, having got the staff numbers right, is to build-in ways to better support them in their jobs. We are pleased to report that we have:

- Moved to a team-based structure to encourage lateral rather than hierarchical conversation about professional issues in the first instance and to better capitalise on the strengths of the more experienced staff by encouraging mentoring relationships.
- Reviewed and updated the Commission's initial strategic plan including by agreeing upon performance criteria, including timeliness criteria for each of our main areas of activity, and published the revised plan on the publications page of the Commission's website <www.lsc.qld.gov.au>.
- Developed an individual professional development planning process and, having agreed upon performance criteria for the Commission as a whole, begun all the Commission's staff on an annual cycle which will see them meet with their supervisors at least twice each year to review both the Commission's and their own performance and be asked to commit to undertake at least two days of professional development activities each year.

We have attached a chart at Appendix 2 that describes staffing numbers within the system for dealing with complaints since its inception. We have included charts setting out the Commission's organisational structure during 2005–06 and the enhanced structure we propose to implement during 2006–07. We have also 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 2005–06.

We noted in last year's report that the decision was taken before the Commission commenced to give the Commission remote access to the case management system (CMS) that the Law Society was using and to adapt it to meet the requirements of the new system for dealing with complaints. We invested considerable energy on that task last year and again this year to further adapt and enhance the CMS to our needs, and

in particular to give us an enhanced capacity to measure and routinely report our performance. We have now incorporated:

- More complete data about how we assess and assign complaints.
- Data about the time it has taken for us to complete the different types of complaints and the different stages of the complaints handling process.
- Data about the discharge of our additional responsibilities under the recent amendments to the Personal Injuries Proceedings Act 2002, and
- Data capturing the complaint-handler's professional opinion for each completed consumer dispute and conduct matter as to whether the practitioner subject to complaint could have avoided becoming subject to the complaint and if so how, and if not, why not.

We are now well pleased with the modified CMS and see little need in the foreseeable future for any further enhancements. We have complimented the CMS by installing two additional software packages, namely:

- A document management component which has allowed us to load our precedent letters and standard clauses and to automatically generate and store correspondence within the relevant case file on the CMS, and
- A local area network-based process-mapping software which will allow us to replicate the various stages of the complaints-handling process that are built in to the CMS, and then to document for each stage and in multiple levels of complexity and detail all the relevant policies, procedures and intellectual resources (including, for example, any relevant legislation, rules, precedents, selected texts, and our own and other commentary). The software will become the Commission's 'how to' manual, in effect, and not only in relation to dealing with complaints but our office and administrative processes also.

We face the challenge over the coming year of relocating the CMS server so that it resides with the Department of Justice and Attorney-General rather than the Law Society and to give Law Society users remote access to it there. The current arrangement creates unnecessary layers of complexity. It requires the Law Society to support and maintain our user profiles and security settings and makes our access to the CMS dependent on circumstances beyond our control or the control of the department's information technology support staff. It is hardly surprising in the circumstances that some and sometimes all the staff of the Commission have been unable to access the CMS for days at a time.

The problem is in hand, however, and plans are well under way that should see the CMS relocated to the department by the end of the calendar year. That in turn will create an opportunity to give the Bar Association remote access to the CMS, and thus to have the whole system for dealing with complaints using the one integrated case management system.

Acknowledgements

The past year has been one of significant achievement and those achievements reflect the efforts of very many people.

The Attorney-General, Linda Lavarch, has been consistently supportive and encouraging in the most practical of ways and I am very grateful for that. The Commission also relies heavily on the goodwill, advice and assistance of numerous staff within the Department of Justice and Attorney-General and I especially want to acknowledge and thank the Director-General, Rachel Hunter, and also Anne Biddulph, Imelda Bradley, Donna McMahon, Pat Morgan, Traven Searle, Linda Skopp and Andy Williams.

My counterpart in New South Wales, Steve Mark, remains a constant source of food for thought and good advice. Stephen Pickering of Genesys Software Solutions and Kent Maddock both made invaluable contributions as consultants once again and so, too, have the members of the reference group which met several times during the year in an informal and entirely voluntary advisory capacity—Margo Couldrey, Gary Crooke QC, Susan Francis, Dr Julian Lamont, Professor Michael Lavarch, Ross Perrett, Zoe Rathus and Mark Ryan.

The system for dealing with complaints works only if its various component parts all pull their weight and they have. I am grateful for the contribution the Bar Association made during the year and thank its President Peter Lyons QC, the chairperson, Martin Daubney QC and the other members of its Professional Conduct Committee, and its Chief Executive Officer Dan O'Connor.

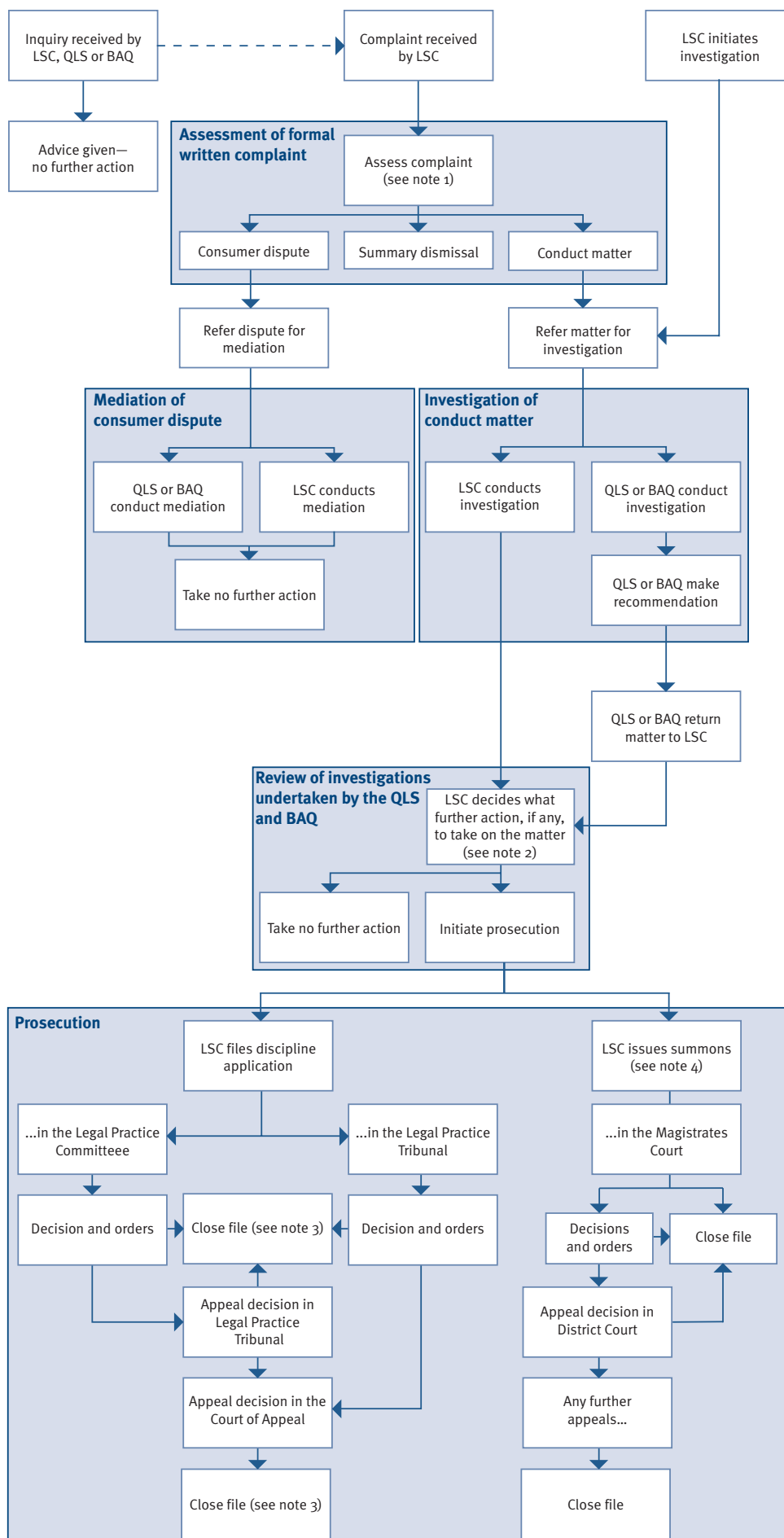
I especially want to acknowledge the contribution of the Queensland Law Society and to thank its President, Rob Davis, its Chief Executive Officer Peter Carne, the Chairperson Michael Meadows and the other members of its Professional Standards Committee, and the staff of its Professional Standards Unit including in particular the Director-Professional Standards David Franklin and Manager—Investigations, Craig Smiley. Our achievement in all but ending the backlog is their achievement too.

Above all I want to acknowledge and thank the staff of the Commission during 2005–06: the Manager—Complaints Robert Brittan and Dr Lynette Aitken, Darielle Campbell, David Edwards, Helen Johnson, Kathy Keogh, Elizabeth Kenny, Sarah Lane, Leanne Long, Scott McLean, Kirsty McLeod, Terri Newman, Lisa Nicotra, Michael Roessler, Rhonda Rouaen, Greg Senior and Felicity Walsh.

John Briton
Legal Services Commissioner



Appendix 1: The process established under the *Legal Profession Act 2004* for dealing with complaints



Notes:

1. The Commission is the sole body authorised under the *Legal Profession Act 2004* (the Act) 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 three 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 (see sections 244 and 245 of the Act)
 - 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 (see section 262 of the Act)
 - 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).

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' (see sections 273 and 274 of the Act).
3. The Commission is obliged to keep a discipline register of all disciplinary action taken under the Act (see section 296 of the Act).
4. The Commission is responsible for prosecuting alleged offences under the Act—for example, the offences pursuant to sections 24 and 25 of engaging in legal practice or holding oneself out to engage in legal practice when not entitled. The Commission is also responsible for prosecuting alleged offences under the *Personal Injuries Proceedings Act 2002*—for example, the offence of breaching the restrictions on the advertising of personal injury services pursuant to section 66.

Appendix 2: Staffing the system for dealing with complaints

The system established under the *Legal Profession Act 2004* for dealing with complaints comprises the Legal Services Commission together with the professional standards section of the Queensland Law Society (less the Audit and Receiverships areas) and the professional conduct area of the Bar Association of Queensland. Table 2.1 sets out how the system has been staffed since its inception on 1 July 2004 and going into 2006–07.

Table 2.1 Numbers of full-time equivalent (FTE) staff by agency and by year

	1 July 2004	At 30 June 2005	At 30 June 2006	Going into 2006–07
LSC	8	10.7	17.5 ¹	18.2 ²
QLS	19.95	19.95	19.95 ³	12.72 ⁴
BAQ	0	0	—	—
Total	27.95	30.65	37.45	30.92 ⁵

The single most interesting fact about the staff arrangements is the significant reduction in the number of staff employed in the system for dealing with complaints going from the 2005–06 year into 2006–07—a reduction of 6.5 FTE staff. The reduction is explained almost entirely by the reduced complaints driven workload now that the backlog of complaints that the new system inherited on its inception on 1 July 2004 is all but resolved.

Tables 2.2 and 2.3 describe the Commission's organisational structure during the latter part of 2005–06 and going into 2006–07, respectively. Tables 2.4 and 2.5 describe the Bar Association's and the Law Society's organisational structures respectively and highlight in grey shading those areas of the organisations that form part of the system established under the Act for dealing with complaints.

1. This figure includes the new position of Policy and Research Coordinator; 2 additional legal officer positions to help deal with the complaints backlog; and, later in the year, a further 2 legal officer positions (1 of which has proved unnecessary to date and remains vacant) to service the additional responsibilities the LSC was given under amendments to the *Personal Injuries Proceedings Act 2002* (PIPA) in May 2006—to investigate and prosecute apparent breaches of the restrictions on advertising personal injury services and touting.
2. This figure does not include the additional staff the Commission will require to service the additional responsibilities it will assume when the incorporated legal practice provisions of the *Legal Profession Act 2004* are proclaimed, on current indications later this calendar year or early in 2007.
3. This figure (and the figures on the same row to its left) includes 2.6 x FTE contract investigators to help deal with the complaints backlog.
4. This reduction in staff numbers at the QLS results from the reduced workload now that the complaints backlog has been all but resolved and a planned redistribution in 2006–07 of some of the investigation workload from the QLS to the LSC.
5. This figure is an increase of just short of 3 x FTE staff over the staff numbers when the new system for dealing with complaints commenced on 1 July 2004. The increase is fully explained by the additional 2 positions that were created to service the Commission's additional responsibilities under the amendments to PIPA (1 of which remains vacant) and the new position of Policy and Research Coordinator. Indeed the true comparison, given that the Law Society briefed out much of prosecution work when it had responsibility under the previous arrangements (at a cost in 2003–04 of almost \$750,000), is that the new system employs fewer staff than previously—the Commission has absorbed the vast bulk of the prosecutions work and spent less than \$130,000 on brief out work in 2005–06.

Table 2.2 LSC staff structure in the latter part of 2005–06 (total of 17.5 FTE staff)

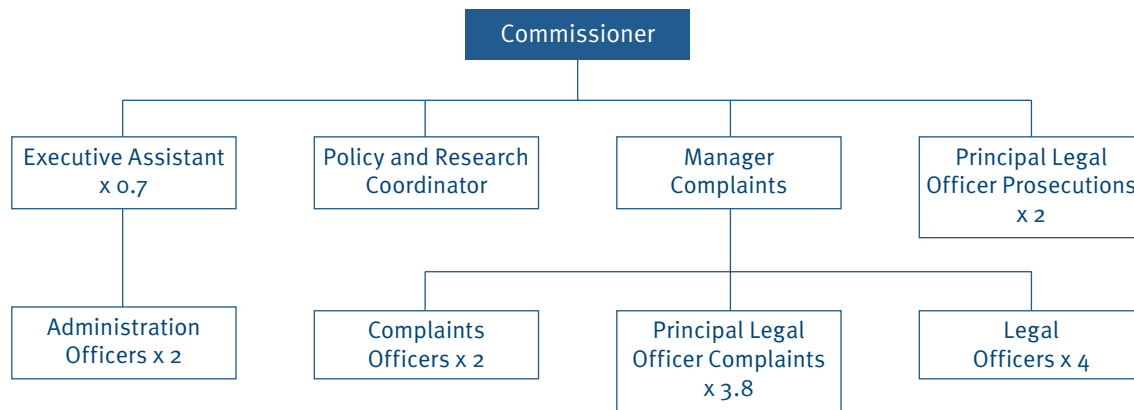


Table 2.3 LSC staff structure going into 2006–07 (total of 18.2 FTE staff)

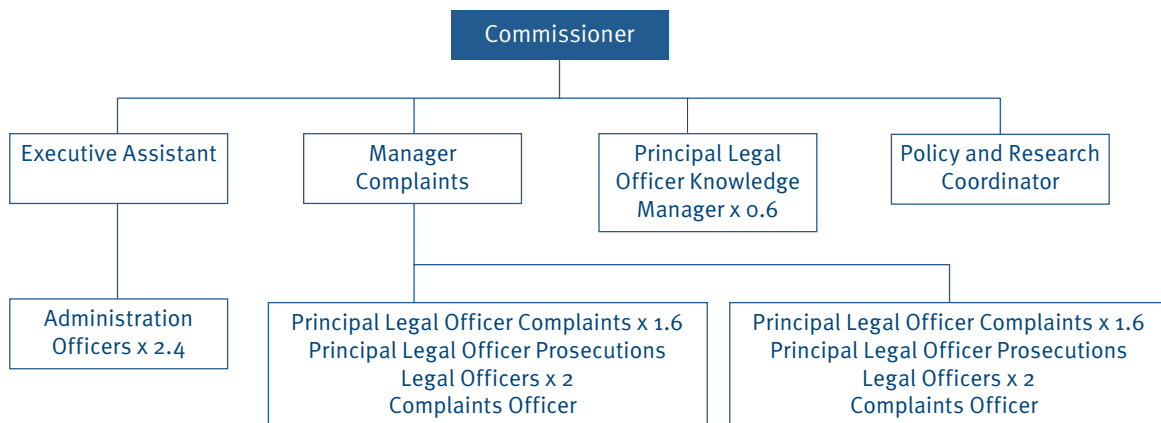


Table 2.4 Bar Association of Queensland as at 30 June 2006

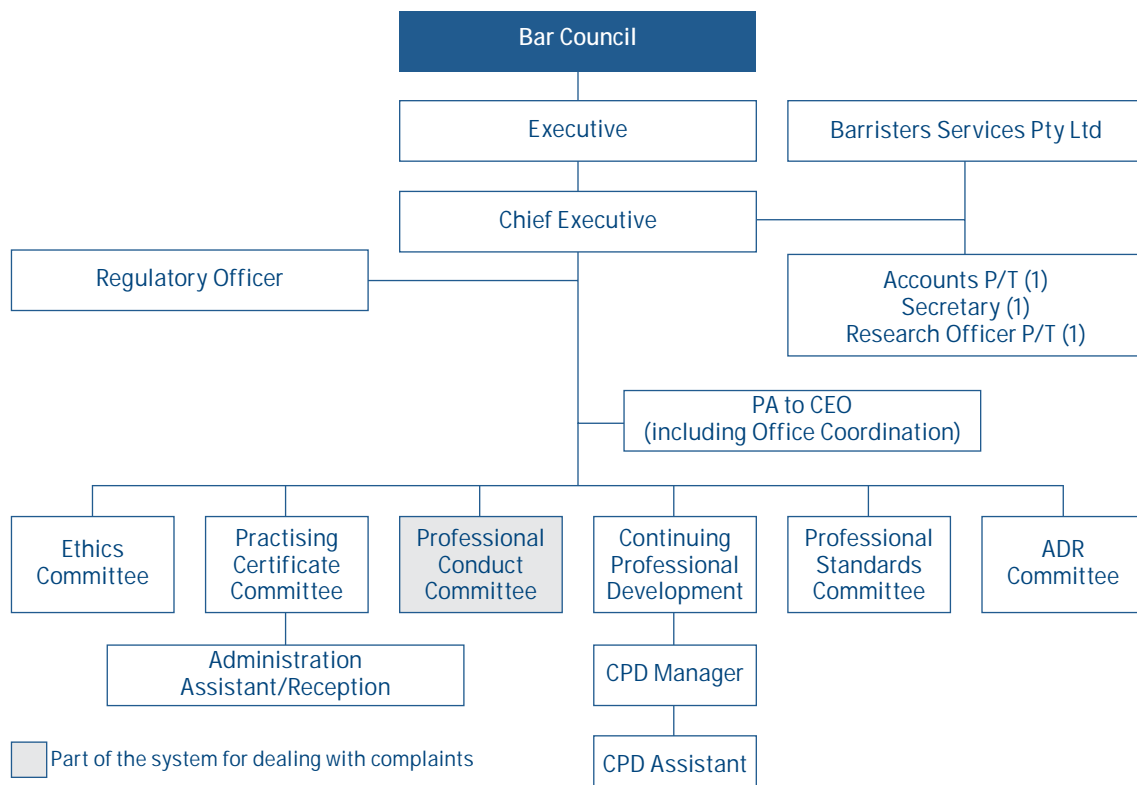
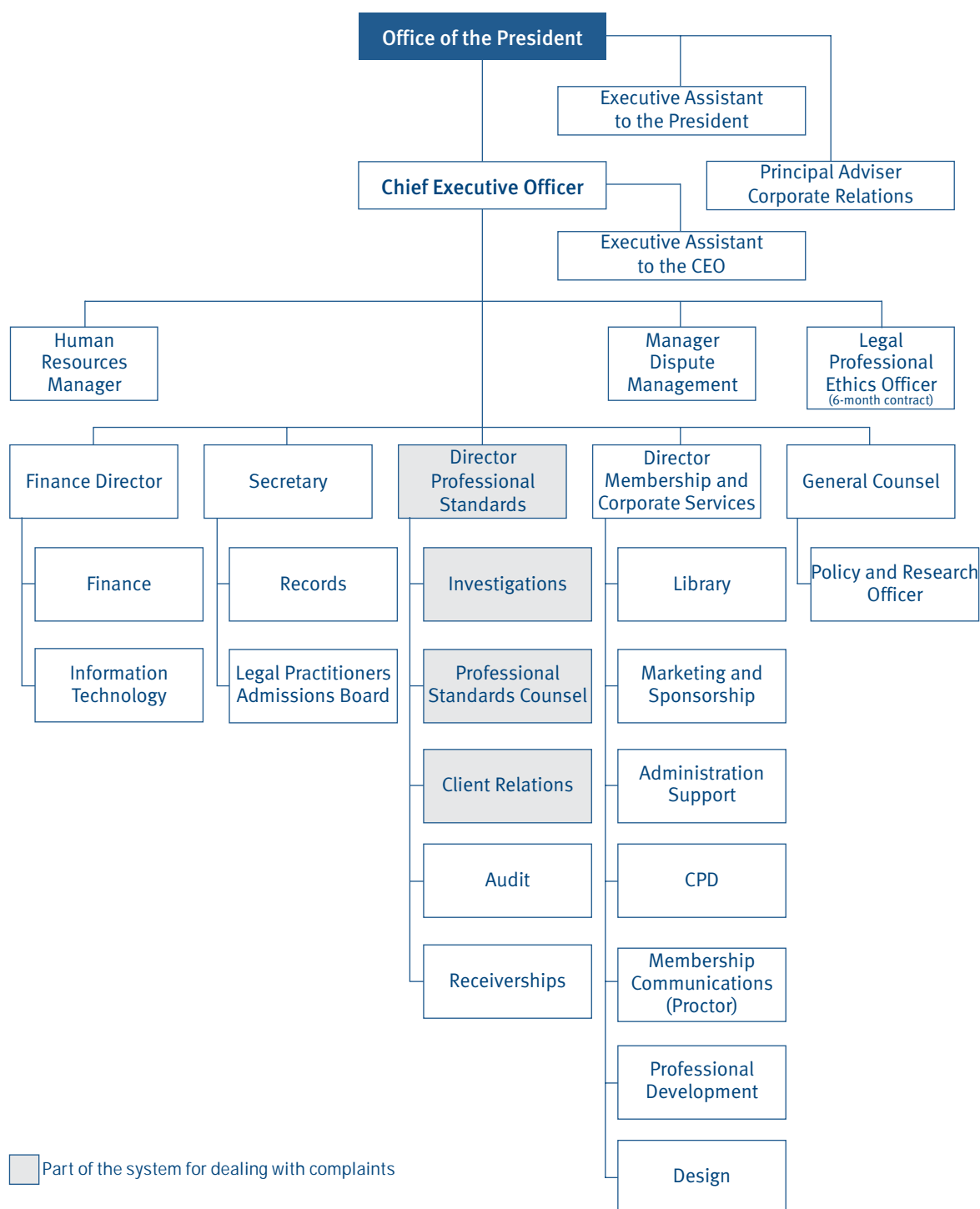


Table 2.5 Queensland Law Society as at 30 June 2006





Appendix 3: Funding the system for dealing with complaints

Table 3.1 sets out the costs in 2005–06 of administering the system established under the *Legal Profession Act 2004* (the Act) for dealing with complaints. That system comprises the Legal Services Commission (LSC), those parts of the Law Society (QLS) and the Bar Association (BAQ) that deal with complaints on referral from the Commission (the parts that are highlighted on the organisational charts in 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.

Table 3.1 Costs of administering the complaints system 2005–06

	Employee-related expenses	All other costs	Total
Legal Services Commission	\$1 266 655	\$572 715 ¹	\$1 839 370
Queensland Law Society ²	\$1 634 635	\$413 952	\$2 048 587
Bar Association of Queensland ³	—	—	—
Legal Practice Tribunal	\$75 185	\$8 591	\$83 776
Legal Practice Committee	\$17 490	\$11 147	\$28 637
Total	\$2 993 965	\$1 006 405	\$4 000 370

1. This includes 'brief out' costs (including costs assessors' costs) of \$128 477.

2. The QLS received a grant under LPITAF for its various regulatory purposes of \$2 601 692 (and also received some additional project funding on a one-off basis).

3. The BAQ received a grant under LPITAF for its various regulatory purposes of \$119 583. The Association advises that it did not apply any of these funds to its functions in relation to complaints but relied instead on services provided free of charge by members of its Professional Conduct Committee.

Table 3.2 Moneys returned or due to return to LPITAF 2005–06

	Legal Practice Tribunal ⁴	Legal Practice Committee	Total
finest ordered to be paid	\$17 000	\$16 000	\$33 000
payments received by 30 June 2006	\$10 000	\$9 900	\$19 900
costs ordered to be paid, agreed or assessed ⁵	\$114 300 ⁶	\$8 500	\$122 800
payments received by 30 June 2006	\$2 000	\$6 000	\$8 000

4. The figures in this column include for these purposes the costs associated with the one matter that was first heard and decided in the LPT but appealed in the Court of Appeal.

5. The Act says at section 286 that 'a disciplinary body must make an order requiring a person who it has found guilty to pay costs, including costs of the Commissioner and the complainant, unless it is satisfied exceptional circumstances exist... An order for costs may be for a stated amount or may be for an un-stated amount but must specify the basis on which the amount must be decided.'

In practice the costs orders rarely state an amount to be paid and are more often to the effect that the amount is to be agreed between the parties or otherwise to be assessed. It follows that the total amounts given across this row of the table include both actual and estimated costs—and so the figures under each column including the total are estimates only.

6. This figure includes estimated costs in one matter alone (the matter that was appealed to the Court of Appeal) of \$99 000.

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1. Introduction

1.1 Purpose

This report provides a statistical analysis of the complaints-handling work undertaken by the Legal Services Commission (the Commission) during the reporting year 2005–06.

1.2 Scope

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

1.3 Acronyms and abbreviations

BAQ	Bar Association of Queensland
LSC	Legal Services Commission
Pre-Act	Complaints lodged prior to the Commission's inception on 1 July 2004
Post-Act	Complaints lodged after the Commission's inception on 1 July 2004
QLS	Queensland Law Society

1.4 Definition of key terms

The Commission's data base distinguishes three types of matters—inquiries, complaints and prosecutions—that are defined as follows:

- a) **Inquiries** can be made either to the LSC or directly to the QLS or BAQ. They comprise:
 - inquiries (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)
- b) **Complaints** must be made in writing and can be made only to the LSC. They are first logged on the database ('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:** complaints that are summarily dismissed pursuant to s.259 of the Act;
 - **Consumer disputes:** complaints that describe disputes between consumers and legal practitioners and/or law practice employees but make no allegation of either unsatisfactory professional conduct or professional misconduct by practitioners or misconduct by employees.

The LSC may choose to mediate consumer disputes or alternatively to refer them to the QLS or BAQ for mediation. The QLS and BAQ are under no obligation to report the outcome of their mediation of consumer disputes to the LSC.

- **Conduct matters:** conduct complaints and investigation matters, as follows:
 - **conduct complaints:** complaints (whether or not they also describe consumer disputes) that allege unsatisfactory professional conduct or professional misconduct by practitioners or misconduct by employees; and
 - **investigation matters:** matters that come to the Commission's attention in the absence of complaint and that appear to involve unsatisfactory professional conduct or professional misconduct by practitioners or misconduct by employees that the Commissioner believes warrants investigation. Investigation matters are logged on the database as if they were conduct complaints brought by Commissioner as complainant.

The LSC must investigate conduct matters or alternatively refer them to the QLS or BAQ for investigation in which case the QLS and BAQ must report their recommendations to the LSC for review and decision as to what further action, if any should be taken.

c) **Prosecutions comprise:**

- **conduct matters** subject to discipline applications to the Legal Practice Committee or the Legal Practice Tribunal (on the basis that the Commissioner believes 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), and
- **alleged offences** subject to prosecution by the Commissioner in the Magistrates or other courts (offences under the *Legal Profession Act 2004* or the *Personal Injuries Proceedings Act 2002*, for example).

2. Reporting framework

2.1 Inquiries

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

2.2 Complaints

We have decided to measure our performance in relation to this category of work by counting the number of:

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

The number of complaints on-hand at the end of the year clearly should reconcile with the number generated by adding the number of new complaints to the number on-hand at the beginning of the year and subtracting the numbers of complaints of different kinds that were closed during the year.

We have decided to use the point at which complaints of various kinds were closed as the key measure of our performance in relation to this category of work since it is the only point within the complaint-handling process that yields definitive and accurate information about the complaint (because the information about a complaint is only fully determined at this stage in the process).

Importantly, we have decided to count consumer disputes separately from conduct matters in our 'closed complaints' reporting. That is because consumer disputes and conduct matters are processed quite differently (consumer disputes by voluntary mediation and conduct matters by mandatory investigation) and can be expected to have very different characteristics—by a 'length of time open' measure, for example. It would be misleading to report our performance in dealing with complaints by using only the one consolidated category 'complaints'.

2.3 Prosecutions

We have decided to measure our performance in relation to this category of work by counting the number of:

- prosecutions on-hand at the start of year
- prosecutions opened during the year
- prosecutions filed with each of the two disciplinary bodies and the Magistrates Court
- prosecutions closed during the year (that is to say, heard and finally decided by each of the two disciplinary bodies and the various courts)
- prosecutions on-hand at the end of the year.

The number of prosecutions on-hand at the end of the year clearly should reconcile with the number generated by adding the number of prosecutions opened during the year to the number on-hand at the beginning of the year and subtracting the numbers of prosecutions that were closed during the year in each of the various forums.

3. Profession analysis

The following section provides an analysis of the make-up of the profession for each respondent type—solicitor, barrister, law practice employee and other.

3.1 Profession analysis—Solicitors

We have used 1 July 2005 as the reference point for the analysis because that is the renewal date for practising certificates for solicitors in Queensland—hence complaints about solicitors during 2005–06 will be profiled against the solicitor's attributes as they were recorded at 1 July 2005.

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

Table 3.1.1 Solicitors—Employment status by type of practising certificate

Employee position	Practising certificate type			Total 2005–06	Total 2004–05
	Conditional	Employee	Principal		
Academic	3	16	—	19	12
Community legal	26	51	18	95	88
Consultant	4	225	5	234	223
Corporate	65	364	7	436	368
Cost assessor	—	2	5	7	8
Employee	618	2088	3	2709	2567
Government	19	79	—	98	66
Government agency	3	8	—	11	10
Law administrator	—	1	—	1	—
Legal Aid	28	86	1	115	111
Local government	10	30	1	41	37
Locum Tenens	—	21	—	21	19
Managing partner	—	—	333	333	323
Not practising	15	57	2	74	77
Partner	—	22	991	1013	1016
Sole practitioner	1	3	941	945	925
Total	792	3053	2307	6152	5850

Table 3.1.2 Solicitors—Type of firm by type of practising certificate

Type of firm	Practising certificate type			Total 2005–06	Total 2004–05
	Conditional	Employee	Principal		
Community legal centre	26	51	18	95	88
Educational	—	2	—	1	—
Government agency	3	8	—	11	10
Interstate in Queensland	—	2	—	2	—
Law Society	4	8	—	12	10
Legal firm—non-Queensland	8	66	55	129	187
Legal firm—Queensland	643	2357	2219	5219	4867
Non-firm	15	77	2	94	96
Non-legal firm	93	483	13	589	591
Solicitors with RP and PI	—	—	—	—	1
Total	792	3053	2307	6152	5850

3.2 Profession analysis—Queensland law firms

There were 1269 Queensland legal firms at 1 July 2005 (compared to 1238 at 1 July 2004) and these accounted for 1386 of the law offices in Queensland (compared to 1332 at 1 July 2004).

3.3 Profession analysis—Barristers

The regulatory database has the capacity to profile barristers but the Commission does not have the relevant information at this point in time to enable it to do so.

3.4 Profession analysis—Legal practitioners

The regulatory database has the capacity to profile legal practitioners as a whole but the Commission does not have the relevant information at this point in time to enable it to do so.

3.6 Profession analysis –law practice employees and others

It is highly unlikely the Commission will ever have enough information to allow it to accurately profile these respondent types, by their very nature.

4. **Inquiries**Table 4.1 **Inquiries—Summary by agency and year**

	LSC	QLS	Total 2005–06	Total 2004–05
Inquiries received during year	1564	7132	8696	7734
Average no. of inquiries per month	130	594	725	645
Average no. of inquiries per day	7	30	36	32

Table 4.2 **Inquiries by area of law**

Area of law	No. of inquiries	% of total 2005–06	% of total 2004–05
Conveyancing	1351	15.50	14.34
Family law	1335	15.32	16.03
Personal injuries/WorkCover litigation	868	9.96	12.37
Deceased estates or trusts	644	7.39	6.99
Litigation	505	5.79	5.05
Criminal law	282	3.24	3.40
Commercial/company law	239	2.74	2.39
Property law	207	2.37	3.48
All other 'areas of law' combined	3285	37.69	35.96
Total	8696	100.00	100.00

Table 4.3 **Inquiries by nature of the inquiry**

Nature of inquiry	No. of inquiries	% of total 2005–06	% of total 2004–05
Advice	2797	32.16	—
Costs	1735	19.95	26.57
Quality of service	1261	14.50	11.75
Ethical matters	731	8.41	11.33
Communication	413	4.75	5.44
Documents	202	2.32	2.64
Trust funds	194	2.23	1.91
All other 'natures of inquiry' combined	1363	15.67	39.33
Total	8696	100.00	100.00

Table 4.4 Inquiries by outcome

Outcome of inquiry	No. of inquiries	% of total 2005–06	% of total 2004–05
Provided information/advice to practitioner	1808	20.79	—
Provided information about the legal system	1581	18.18	27.93
Enquirer satisfied	901	10.36	14.35
Provided referral for legal advice or other assistance	897	10.32	11.64
Recommended direct approach to firm about concerns	801	9.21	10.24
Provided complaint form	507	5.83	11.52
Referred to LSC	497	5.72	—
Listened to callers concerns	475	5.46	5.72
Lost contact with complainant/enquirer	454	5.22	6.09
All other 'outcomes' combined	775	8.91	12.52
Total	8696	100.00	100.00

Table 4.5 Inquiries by inquirer type

Inquirer type	No. of inquiries	% of total 2005–06	% of total 2004–05
Client/former client	4358	50.11	42.84
Solicitor	2350	27.02	6.50
Non client	721	8.29	16.97
Third party	716	8.23	—
All other 'inquirer types' combined	1363	15.67	33.64
Total	8696	100.00	100.00

5. Complaints

Table 5.1 Complaints—Summary by agency and year

Complaint type	As at 01.07.04	As at 01.07.05	As at 30.06.06	Difference
Consumer dispute	273	88	3	–270.00
Conduct matter	665	818	401	–264.00
Under assessment	N/A	26	96	96.00
Total	938	932	500	–438.00

Table 5.2 Complaints—Summary for 2005–06

Complaints/investigation matters	Post Act	Pre Act	Total
Complaints/investigation matters on hand at 1 July 2005	503	429	932
Plus matters opened during the year	1147	—	1147
less summary dismissals	365	1	366
less consumer disputes closed	234	1	235
less conduct matters closed	580	398	978
Total complaints/investigation matters closed	1179	400	1579
Complaints/investigation matters on hand at 30 June 2006	471	29	500

Table 5.3 Complaints—Breakdown of complaints on-hand at 30 June 2006

Complaints/investigation matters	Post Act	Pre Act	Total
Under assessment/awaiting assessment	64	n/a	64
Under assessment/awaiting further information	32	n/a	32
Consumer disputes	3	0	3
Conduct complaints	320	29	349
Investigation matters	52	0	52
Total conduct matters as at 30 June 2006	372	29	401
Total complaints as at 30 June 2006	471	29	500

Table 5.4 Complaints—Timeliness

Complaint type	Matters completed	Time band	Actual %	Cumulative %	Target %	Median days open (post Act)	Median days open (pre Act)
Conduct matters	371	<= 7 months	63.97	63.97	80	174.50	815
	166	7–15 months	28.62	92.59	100		
	43	> 15 months	7.41	100.00	n/a		
Consumer disputes	210	<= 2 months	89.74	89.74	80	26.00	n/a
	18	2–5 months	7.69	97.44	100		
	6	> 5 months	2.56	100.00	n/a		
Summary dismissals	295	<= 1 month	80.82	80.82	80	18.00	n/a
	21	1–2 months	5.75	86.58	100		
	49	> 2 months	13.42	100.00	n/a		

Table 5.5 Complaints—Assessment summary

	Total	Percentage
New complaints/investigation matters allocated for assessment during the year of these:	1147	
Currently under assessment as at 01 July 2006*	96	8.11
Number of new matters assessed this year	1054	91.89
Of these:		
Number summarily dismissed	333	31.59
Number assessed to be consumer disputes	180	17.08
Number assessed to be conduct matters	541	51.33

* Three matters opened before 01 July 2005 were still awaiting further assessment information.

Table 5.6 Complaints—Consumer disputes referred to the professional bodies

Consumer disputes	Total 2005–06	Total 2004–05
Referred to QLS	7	143
Referred to BAQ	0	0
Total	7	143

Table 5.7 Complaints—Conduct matters referred to the professional bodies

Conduct matters	Total 2005–06	Total 2004–05
Referred to QLS	311	451
Referred to BAQ	26	14
Total	337	465

Table 5.8 Complaints—Conduct matters returned by the professional bodies for review

Conduct matters	Total 2005–06	Total 2004–05
Returned from QLS	672	559
Returned from BAQ	29	3
Total	701	562

Table 5.9 Complaints—Investigation matters opened and closed

Investigation matters	Total 2005–06	Total 2004–05
On-hand start of year	24	0
Opened during year	73	35
% of new complaints/investigation matters opened	6.36%	2.36%
Closed during year	45	11
On-hand at end of year	52	24

6. Consumer disputes finalised in 2005–06

6.1 Consumer disputes by area of law

Area of law	No. of matters	% of total 2005–06	% of total 2004–05
Family law	44	18.72	18.69
Conveyancing	42	17.87	17.87
Deceased estates or trusts	30	12.77	8.87
Personal injuries/work-cover litigation	23	9.79	11.87
Litigation	18	7.66	7.37
Property law	17	7.23	—
Commercial/company law	15	6.38	4.91
Criminal law	13	5.53	7.23
All other 'areas of law' combined	46	19.57	15.42
Total	235	100.00	100.00

Table 6.2 Consumer disputes by nature of matter

Nature of matter	No. of matters	% of total 2005–06	% of total 2004–05
Costs	94	40.00	31.38
Ethical matters	48	20.43	21.83
Quality of service	46	19.57	15.83
Communication	25	10.64	13.10
Documents	11	4.68	6.14
Trust funds	6	2.55	2.18
All other 'natures of matter' combined	5	2.13	8.74
Total	235	100.00	100.00

Table 6.3 Consumer disputes by type of complainant

Type of complainant	No. of matters	% of total 2005–06	% of total 2004–05
Client/former client	179	76.17	83.36
Non client	19	8.09	5.32
Third party	19	8.09	—
Solicitor	8	3.40	5.18
Solicitor for client	5	2.13	3.27
All other 'types of complainant' combined	5	2.13	2.86
Total	235	100.00	100.00

Table 6.4 Consumer disputes by outcome

Outcome of matter	No. of matters	% of total 2005–06	% of total 2004–05
Complaint unfounded	87	37.02	21.01
Matter unable to be resolved	75	31.91	24.69
Resolved—Consumer satisfied	43	18.30	28.79
Withdrawn	16	6.81	4.37
Recommended direct approach to firm about concerns	5	2.13	—
Outside of jurisdiction	5	2.13	4.64
Provided information about the legal system	2	0.85	4.09
All other 'types of complainant' combined	2	0.85	6.82
Total	235	100.00	100.00

Table 6.5 Consumer disputes by respondent type

Type of respondent	No. of matters	% of total 2005–06	% of total 2004–05
Solicitor	226	96.17	96.32
Law practice employee	3	1.28	0.41
Other	4	1.70	1.09
Barrister	2	0.85	2.05
Total	235	100.00	100.00

6.6 Consumer disputes by respondent type: Solicitor

Table 6.6.1 Consumer disputes regarding solicitors as a proportion of the profession

	Solicitors	Law firms	Law offices
Size of profession as at 01 July 2005	6152	1268	1385
Number of solicitors/law firms as respondents 2005–06:	182	169	174
Percentage	2.96	13.33	
Number of solicitors/law firms as respondents 2004–05	501	409	432
Percentage	8.56	33.04	12.56

Table 6.6.2 Solicitors subject to one or more consumer disputes

No. of consumer disputes	No. of solicitors 2005–06	No. of solicitors 2004–05
1 matter	166	401
2 matters	14	80
3 matters	1	14
4 matters	1	4
5 matters	0	1
Between 6 and 9	0	1
Between 10 and 14	0	0
15 and > matters	0	0

Table 6.6.3 Number of law firms subject to one or more consumer disputes

No. of consumer disputes	No. of law firms 2005–06	No. of law firms 2004–05
1 matter	142	259
2 matters	20	102
3 matters	5	21
4 matters	1	14
5 matters	1	7
Between 6 and 9	0	3
Between 10 and 14	0	3
15 and > matters	0	0

Table 6.6.4 Solicitors subject to one or more consumer disputes by gender

Gender	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
Male	3975	64.61	155	85.16	3.90	10.73
Female	2177	35.39	27	14.84	1.24	4.28

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

Table 6.6.5 Solicitors subject to one or more consumer disputes by age

Age group	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
< 25	208	3.38	1	0.55	0.48	2.42
25–29	1024	16.64	10	5.49	0.98	2.80
30–34	1085	17.64	25	13.74	2.30	5.59
35–39	831	13.51	20	10.99	2.41	8.53
40–44	770	12.52	27	14.84	3.51	10.88
45–49	813	13.22	29	15.93	3.57	11.10
50–54	635	10.32	32	17.58	5.04	15.25
55–59	452	7.35	19	10.44	4.20	12.56
60–64	209	3.40	10	5.49	4.78	11.05
65–69	88	1.43	6	3.30	6.82	10.00
70 and >	37	0.60	3	1.65	8.11	7.32

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

Table 6.6.6 Solicitors subject to one or more consumer disputes by 'years admitted'

Years admitted	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
< 5	2115	34.38	32	17.58	1.51	3.65
5–9	1028	16.71	23	12.64	2.24	8.43
10–14	876	14.24	41	22.53	4.68	9.49
15–19	657	10.68	23	12.64	3.50	13.03
20–24	617	10.03	24	13.19	3.89	12.11
25–29	412	6.70	17	9.34	4.13	17.60
30–34	236	3.84	11	6.04	4.66	12.17
35–39	129	2.10	3	1.65	2.33	8.94
40 and >	82	1.33	8	4.40	9.76	8.70

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

Table 6.6.7 Solicitors subject to one or more consumer disputes by practising certificate type

Practising certificate type	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
Principal	2307	37.50	131	71.98	5.68	15.27
Employee	3053	49.63	33	18.13	1.08	3.87
Conditional	792	12.87	3	1.65	0.38	2.50
Not practising at start of year•	0	—	15	8.24	—	—

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

• This refers to those solicitors who were subject to a consumer dispute that was finalised during the year but who did not hold a practising certificate as at 01 July 2005.

Table 6.6.8 Solicitors subject to one or more consumer disputes by location of their law office

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 2005–06*	% of profession representation 2004–05*
Brisbane City	261	18.84	44	25.29	16.86	35.46
Bne North Suburbs	220	15.88	24	13.79	10.91	29.44
Bne South Suburbs	211	15.23	24	13.79	11.37	32.84
Gold Coast	223	16.10	31	17.82	13.90	31.13
Ipswich Region	50	3.61	4	2.30	8.00	29.17
Toowoomba Region	57	4.12	6	3.45	10.53	27.59
Western Queensland	9	0.65	0	0.00	0.00	28.57
Sunshine Coast	140	10.11	18	10.34	12.86	36.03
Hervey Bay to Gladstone Region	44	3.18	9	5.17	20.45	47.37
Rockhampton Region	28	2.02	2	1.15	7.14	27.59
Mackay Region	25	1.81	2	1.15	8.00	23.08
Townsville Region	46	3.32	5	2.87	10.87	34.09
Cairns Region	70	5.05	5	2.87	7.14	29.85
Norfolk Island	1	0.07	—	—	0.00	0.08

• The table counts, when law firms have more than one office, the location of the particular office where the conduct subject to complaint occurred.

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

Table 6.6.9 Solicitors subject to one or more consumer disputes by size of their law firm (number of partners)

Size of firm•	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	% of profession representation 2005–06*	% of profession representation 2004–05*
No primary partner	7	0.55	10	5.92	142.86	142.86
Sole practitioner	936	73.82	90	53.25	9.61	9.62
2 partners	173	13.64	31	18.34	18.02	17.92
3 partners	59	4.65	14	8.28	23.33	23.73
4 partners	25	1.97	8	4.73	32.00	32.00
5 partners	10	0.79	3	1.78	30.00	30.00
6–9 partners	39	3.08	8	4.73	20.51	20.51
10–14 partners	7	0.55	3	1.78	42.86	42.86
15 and >	12	0.95	2	1.18	16.67	16.67
Not practising at start of year	—	—	0	0.00	—	—

* 10% means that 1 in every 10 law firms within this size grouping were subject to a consumer dispute.

• The table counts firms only once even if they have more than one office.

7 Conduct matters finalised in 2005–06

Table 7.1 Conduct matters (complaints plus investigation matters) by area of law

Area of law	No. of matters	% of total 2005–06	% of total 2004–05
Family law	172	17.59	18.28
Conveyancing	147	15.03	12.96
Personal injuries/WorkCover litigation	100	10.22	13.23
Litigation	98	10.02	9.00
Commercial/company law	84	8.59	7.37
Deceased estates or trusts	64	6.54	6.41
Property law	55	5.62	5.59
Criminal law	52	5.32	5.87
All other 'areas of law' combined	206	21.06	23.88
Total	978	100.00	100.00

Table 7.2 Conduct matters (investigation matters only) by area of law

Area of law	No. of matters	% of total 2005–06
Trust account breaches	9	20.00
Criminal law	5	11.11
Administrative law	4	8.89
Deceased estates or trusts	4	8.89
Litigation	4	8.89
Conveyancing	4	8.89
Conduct not in the practice of law	4	8.89
Personal injuries /work-cover litigation	2	4.44
Leases/mortgages	2	4.44
Industrial law	1	2.22
Property law	1	2.22
Family law	1	2.22
All other 'areas of law' combined	4	8.90
Total	45	100.00

Table 7.3 Conduct matters (complaints plus investigation matters) by nature of matter

Nature of matter	No. of matters	% of total 2005–06	% of total 2004–05
Ethical matters	403	41.21	37.79
Quality of service	191	19.53	14.46
Costs	151	15.44	14.87
Communication	90	9.20	5.87
Trust funds	45	4.60	2.46
Compliance	40	4.09	3.27
Documents	16	1.64	1.77
All other 'natures of matter' combined	42	4.16	19.51
Total	978	100.00	100.00

Table 7.4 Conduct matters (investigation matters only) by nature of matter

Nature of matter	No. of matters	% of total 2005–06
Trust funds	12	26.67
Ethical matters	12	26.67
Compliance	11	24.44
Costs	4	8.89
Personal conduct	3	6.67
Quality of service	2	4.44
PIPA	1	2.22
Total	45	100.00

Table 7.5 Conduct matters by type of complainant

Type of complainant	No. of matters	% of total 2005–06	% of total 2004–05
Client/former client	592	60.53	74.62
Solicitor	98	10.02	9.82
Solicitor for client	82	8.38	4.23
Non client	70	7.16	6.68
Third party	45	4.60	1.64
Legal Services Commission	43	4.40	1.50
Queensland Law Society	19	1.94	2.32
Barrister	8	0.82	0.41
Government	8	0.82	0.41
All other 'types of complainant' combined	13	1.33	1.72
Total	978	100.00	100.00

7.6 Conduct matters by outcome

Outcome of matter	No. of matters	% of total 2005–06	% of total 2004–05
No reasonable likelihood—s. 274(1)(a)	693	70.86	58.25
No public interest—s. 274(1)(b)	149	15.24	14.60
Referred to LPT—s. 276	59	6.03	2.11
Withdrawn—s. 260	39	3.99	4.23
Referred to LPC—s. 276	22	2.25	1.19
All other 'outcomes' combined	16	1.64	8.58
Total	978	100.00	100.00

Table 7.7 Conduct matters by respondent type

Type of respondent	No. of matters	% of total 2005–06	% of total 2004–05
Solicitor	869	88.85	92.63
Other	56	5.73	3.68
Barrister	39	3.99	6.14
Law practice employee	13	1.33	0.95
Legal practitioner	1	0.10	0.00
Total	978	100.00	100.00

7.8 Conduct matters by respondent type: Solicitor

Table 7.8.1 Conduct matters regarding solicitors as a proportion of the profession

	Solicitors	Law firms	Law offices
Size of profession as at 01 July 2005	6152	1268	1385
Number of solicitors/law firms as respondents 2005–06:	543	459	470
Percentage	8.83	36.20	33.94
Number of solicitors/law firms as respondents 2004–05:	450	384	397
Percentage	7.69	31.02	29.80

Table 7.8.2 Solicitors subject to one or more conduct matters

No. of conduct matters	No. of solicitors 2005–06	No. of solicitors 2004–05
1 matter	425	365
2 matters	75	64
3 matters	21	17
4 matters	9	2
5 matters	7	0
Between 6 and 9	3	1
Between 10 and 14	3	0
15 and > matters	0	1

Table 7.8.3 Number of law firms subject to one or more conduct matters

No. of conduct matters	No. of law firms 2005–06	No. of law firms 2004–05
1 matter	294	270
2 matters	85	70
3 matters	43	26
4 matters	14	10
5 matters	10	2
Between 6 and 9	10	5
Between 10 and 14	2	0
15 and > matters	1	1

Table 7.8.4 Solicitors subject to one or more conduct matters by gender

Gender	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
Male	3975	64.61	460	84.71	11.57	9.78
Female	2177	35.39	83	15.29	3.81	3.57

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

Table 7.8.5 Solicitors subject to one or more conduct matters by age group

Age group	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
< 25	208	3.38	2	0.37	0.96	0.97
25–29	1024	16.64	24	4.42	2.34	1.77
30–34	1085	17.64	62	11.42	5.71	5.11
35–39	831	13.51	68	12.52	8.18	6.82
40–44	770	12.52	80	14.73	10.39	9.20
45–49	813	13.22	112	20.63	13.78	10.84
50–54	635	10.32	94	17.31	14.80	13.44
55–59	452	7.35	59	10.87	13.05	13.04
60–64	209	3.40	28	5.16	13.40	11.58
65–69	88	1.43	10	1.84	11.36	8.33
70 and >	37	0.60	4	0.74	10.81	17.07

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

Table 7.8.6 Solicitors subject to one or more conduct matters by ‘years admitted’

Years admitted	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
< 5	2115	34.38	66	12.15	3.12	2.79
5 to 9	1028	16.71	95	17.50	9.24	6.69
10 to 14	876	14.24	87	16.02	9.93	9.02
15 to 19	657	10.68	80	14.73	12.18	11.24
20 to 24	617	10.03	87	16.02	14.10	11.13
25 to 29	412	6.70	69	12.71	16.75	14.25
30 to 34	236	3.84	36	6.63	15.25	14.78
35 to 39	129	2.10	12	2.21	9.30	17.07
40 and >	82	1.33	11	2.03	13.41	10.14

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

Table 7.8.7 Solicitors subject to one or more conduct matters by practising certificate type

Practising certificate type•	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2005–06*	% of profession representation 2004–05*
principal	2307	37.50	370	68.14	16.04	13.04
employee	3053	49.63	115	21.18	3.77	2.99
conditional	792	12.87	10	1.84	1.26	1.73
not practising at start of year	0	—	48	8.84	—	—

• This refers to those solicitors who were subject to a conduct matter that was finalised during the year but who did not hold a practising certificate as at 01 July 2005.

* 10% means that 1 in every 10 solicitors within this grouping had a conduct matter recorded against them.

Table 7.8.8 Solicitors subject to one or more conduct matters by location of their law office

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 2005–06*	% of profession representation 2004–05*
Brisbane City	261	18.84	104	22.13	39.85	42.23
Bne North Suburbs	220	15.88	58	12.34	26.36	21.50
Bne South Suburbs	211	15.23	71	15.11	33.65	28.36
Gold Coast	223	16.10	91	19.36	40.81	32.08
Ipswich Region	50	3.61	12	2.55	24.00	20.83
Toowoomba Region	57	4.12	14	2.98	24.56	22.41
Western Queensland	9	0.65	1	0.21	11.11	28.57
Sunshine Coast	140	10.11	52	11.06	37.14	30.88
Hervey Bay to Gladstone Region	44	3.18	15	3.19	34.09	39.47
Rockhampton Region	28	2.02	5	1.06	17.86	13.79
Mackay Region	25	1.81	8	1.70	32.00	23.08
Townsville Region	46	3.32	18	3.83	39.13	29.55
Cairns Region	70	5.05	21	4.47	30.00	22.39
Norfolk Island	1	0.07	—	—	0.00	.08

• This table counts, when law firms have more than one office, the location of the particular office where the conduct subject to complaint occurred.

* 10% means that 1 in every 10 law offices within this grouping had a conduct matter recorded against them.

Table 7.8.9 Solicitors subject to one or more conduct matters by size of their law firm (number of partners)

Size of firm•	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	% of profession representation 2005–06*	% of profession representation 2004–05*
No primary partner	7	0.55		0.00	0.00	0.00
Sole practitioner	936	73.82	258	56.21	27.56	22.03
2 partners	173	13.64	76	16.56	43.93	33.72
3 partners	59	4.65	20	4.36	33.90	47.17
4 partners	25	1.97	13	2.83	52.00	35.71
5 partners	10	0.79	9	1.96	90.00	77.78
6–9 partners	39	3.08	21	4.58	53.85	60.53
10–14 partners	7	0.55	4	0.87	57.14	57.14
15 and >	12	0.95	8	1.74	66.67	91.67
Not practising at start of year	—	—	50	10.89	—	—

• The table counts firms only once even if they have more than one office.

* 10% means that 1 in every 10 law firms within this grouping had a conduct matter recorded against them.

8. Prosecutions

Table 8.1 Prosecutions—Summary

Prosecutions	Total 2005–06	Total 2004–05
Prosecutions on hand at start of year	24	3*
Plus matters opened during the year	43•	26
Less matters closed	25	5
Prosecutions on hand at end of year	42	24

- * These 3 matters were part-heard in the now superseded Solicitors Complaints Tribunal.
- There were 81 complaints finalised with the outcomes 'refer to LPC' or 'refer to LPT' (see table 7.6). There is no discrepancy. The difference in numbers comes about because there were only 43 respondent practitioners to those 81 complaints—in other words some practitioners were subject to multiple complaints.

Table 8.2 Prosecutions—Breakdown of prosecutions on hand at 30 June 2006

Prosecutions	Total
Assigned for prosecution	10
Legal Practice Tribunal	
waiting to file	4
waiting to serve	6
waiting directions hearing	0
waiting hearing/decision	12
Total as at 30 June 2006	22
Legal Practice Committee	
waiting to file	1
waiting to serve	1
waiting directions hearing	2
waiting hearing/decision	6
Total as at 30 June 2006	10
Magistrates Court	
waiting to file	0
waiting hearing/decision	0
Total as at 30 June 2006	0
Under appeal	
Prosecutions under appeal	0
Total as at 30 June 2006	42

Table 8.3 Prosecutions—Filed

Prosecutions filed:	Total 2005–06	Total 2004–05
in the Legal Practice Tribunal	24	11
in the Legal Practice Committee	13	6
in the Magistrates Court	0	0
Total as at 30 June 2006	37	17

Table 8.4 Prosecutions—Heard and decided

Prosecutions heard and finally decided (including on appeal):	Total 2005–06	Total 2004–05
by the Legal Practice Tribunal	9	2
by the Legal Practice Committee	10	0
by the Solicitors Complaints Tribunal	0	3
by the Magistrates Court	0	0
by the Court of Appeal	2	0
Total as at 30 June 2006	21	5

Table 8.5 Prosecutions by area of law

Area of law	No. of matters	% of total 2005–06
Litigation	4	19.05
Conveyancing	4	19.05
Personal injuries/WorkCover litigation	3	14.29
Family law	1	4.76
Administrative law	1	4.76
Criminal law	1	4.76
All other 'areas of law' combined	7	33.33
Total	21	100.00

Note: The percentage break down for the 2004–05 year has not been included because of the small sample size of that year's prosecutions.

Table 8.6 Prosecutions by nature of matter

Nature of matter	No. of matters	% of total 2005–06
Trust funds	7	33.33
Ethical matters	6	28.57
Quality of service	3	14.29
Communication	2	9.52
Personal conduct	1	4.76
Compliance	1	4.76
Costs	1	4.76
Total	21	100.00

Note: The percentage break down for the 2004–05 year has not been included because of the small sample size of that year's prosecutions.

Table 8.7 Prosecutions by outcome

Outcome	No. of matters	% of total 2005–06
Fined	14	66.67
Removed from roll ('struck off')	4	19.05
Reprimanded	2	9.52
All other 'outcomes' combined	1	4.76
Total	21	100.00

Note: The percentage break down for the 2004–05 year has not been included because of the small sample size of that year's prosecutions.

Table 8.8 Prosecutions by respondent type

Respondent type	No. of matters	% of total 2005–06
Solicitor	20	95.24
Barrister	1	4.76
Law practice employee	0	0
Other	0	0
Total	21	100.00

Note: The percentage break down for the 2004–05 year has not been included because of the small sample size of that year's prosecutions.

