Legal Services Commission

Annual Report 2006-07

Legal Services Commission

31 October 2007

The Honourable Kerry Shine MP
Attorney-General and Minister for Justice, and
Minister Assisting the Premier in Western Queensland
State Law Building
50 Ann Street
Brisbane Qld 4000

Dear Attorney

I am pleased to give you the Commission's third annual report, for the reporting year 2006-07.

The report describes the system established under the *Legal Profession Act 2007* for dealing with complaints (as the Act requires at section 490) and 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 (as the Act requires at section 489).

Yours faithfully

John Briton
Legal Services Commissioner

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Historically in Queensland as elsewhere complaints about lawyers have been dealt with by their professional associations, although in the case of barristers without any statutory basis. The *Legal Profession Act 2004* changed all that. It established a new system for dealing with complaints about lawyers and created the Legal Services Commission to oversee it. The new arrangements came into effect when the Act commenced on 1 July 2004 and so this is the Commission's third annual report and comes at a time when the new arrangements should be coming into their own.

One thing we can say for sure after three years is that the introduction of the new system has seen a striking reduction in the number of complaints. The number went down by more than a third over the Commission's first two years compared to the last two years that complaints were dealt with by the professional associations and seems now in our third year to have settled at that much reduced level. That is good news, all the more so given the steady increase over that same time in the number of lawyers potentially subject to complaint. It tells us there is less disgruntlement out there with lawyers or at the very least that more grievances now than in the past are being nipped in the bud before escalating into formal complaint. That is a welcome development on either score.

We should aspire to get the number down further. That is because we know, having assessed every consumer dispute, conduct complaint and investigation matter we brought to conclusion over the year, that three in four of them were avoidable and most of them if only the respondent practitioners had better management systems in place or better work practices or had taken the trouble to communicate more effectively and courteously with their clients.

Furthermore we have very good data which allows us to profile the solicitors most at risk of complaint and, putting that together with what we know about how complaints can be avoided, a good basis for crafting well-targeted educational and other preventative strategies.

There is other good news too. The Commission inherited a backlog of just short of a thousand complaints on its—our—inception in 2004 and we had all but resolved that backlog by the end of our second year and at the same time dealt with new, 'post-Act' complaints at the same rate or slightly better than the rate at which we received them. I noted in last year's report that those achievements marked the transition from the old system for dealing with complaints into the new and would give us the opportunity going forward to get out from under the weight of numbers and to be smarter and more proactive about what we do. I argued that the measure of our success over the year subject now to this report would be whether and how well we took those opportunities.

We had given ourselves the opportunity firstly to respond to complaints in a more timely way than previously and secondly to be much less confined simply to responding to complaints, after the event as it were—we had given ourselves room to identify conduct and patterns of conduct on the part of lawyers that give consumers less than a good or fair deal and to 'get in first' by making more and better use of our investigation matter power to investigate that conduct before it gives rise to complaint.

'be smarter and more proactive about what we do'

We've done well by those measures and can take considerable pride in what we have achieved. We can be especially pleased that we have influenced some systemic changes in the ways that many practitioners go about the business of law through persuasion, without having to resort to prosecution. The report describes those achievements in more detail over the pages that follow and describes our performance more generally, in a narrative form in the main body of the text and in full statistical detail in the appendices.

The year ahead will be a year of opportunity also. The *Legal Profession Act 2004* has been superseded by the *Legal Profession Act 2007* effective from 1 July and, while the new Act makes only minor adjustments to the system for dealing with complaints, it introduces some other reforms that position us to be more effective in what we do.

The new Act reassures complainants and other people who give information to the Commission about conduct to which the Act applies that they cannot be held civilly liable including in an action for defamation for making their complaint or giving the Commission the information. It clarifies our powers in relation to 'unlawful operators'—that is to say, people who represent themselves to be lawyers when in fact they are not—and introduces more stringent costs disclosure and costs assessment regimes. It obliges lawyers to better and more fully disclose their costs before commencing work on a client's behalf and to update that information as soon as reasonably practical after they become aware of any likely changes. It also caps 'uplift' fees at 25%, including in speculative (or 'no win-no fee') personal injuries matters, and closes a loophole that some lawyers regrettably have exploited in the rule that sought to cap their fees in those matters at 50% of the judgement or settlement amount less refunds and disbursements. We welcome these reforms.

The new Act also allows law firms to adopt business structures other than the traditional sole practitioner and partnership arrangements, and to incorporate (and so to commence practice as an 'incorporated legal practice' or ILP) or to take on partners who are not lawyers (and so to commence practice as a 'multi-disciplinary partnership' or MDP).

The regulatory regime that applies to ILPs in particular gives us opportunity to explore new ways of monitoring standards of conduct within those firms and of promoting improved standards of legal service delivery to consumers. It is premised on the idea that lawyers who work for ILPs have the same professional obligations as all other lawyers but imposes additional obligations on the legal practitioner directors of ILPs, not least to 'implement and keep appropriate management systems' calculated to ensure that the corporation and its lawyers deliver legal services to the same standards of professional practice that are expected of all other lawyers and law firms. That additional obligation, combined with our powers in relation to complaints and to initiate 'own motion' investigations in the absence of complaint, will allow us to move beyond the threat of sanction inherent in traditional approaches to the regulation of the profession and to engage with ILPs within an 'education towards compliance' approach.

The report addresses these issues, too, over the pages that follow.

In conclusion, I note the publication during the year in an international legal journal of an article by an American academic which critiques the Queensland system for dealing with complaints about lawyers. It suggests some improvements which I neither endorse nor otherwise but more to the point it concludes with the sentence 'if the progress and choices made to date are any indication, the signs are hopeful that these questions will be addressed soon and that Queensland's lawyer discipline system will come to be viewed as the model for best practices in Australia and throughout the world.'[1]

There are more brickbats than bouquets in this line of work and we can take some comfort in that.

That leads me, finally, to acknowledge and thank the very many people who have helped make the system work as well as it does. I especially want to acknowledge and thank the Attorney-General, the Hon Kerry Shine and his staff for their continued support, and also his predecessor, the Hon Linda Lavarch; the Director-General Jim McGowan and the many staff of the department of Justice and Attorney-General who work behind the scenes; the Presidents and staff of both Queensland Law Society and the Bar Association of Queensland who are our partners in this exercise and who make a major but largely unheralded contribution; our data systems consultant, Stephen Pickering; and obviously the staff of the Commission, all of them, for the support they've given me personally and for their hard work, enthusiasm, and continuing good cheer in often difficult circumstances.

[1] *Building a Better Lawyer Discipline System: the Queensland Experience, Leslie Levin, Legal Ethics, Volume 9, Part 2, Winter 2006*

Our role

Our core business

The *Legal Profession Act 2004* comprehensively reformed the regulation of the legal profession in Queensland including the system for dealing with complaints about lawyers. It took responsibility dealing with complaints away from their professional associations—the Queensland Law Society (which represents solicitors and had long-standing statutory powers) and the Bar Association of Queensland (which represents barristers but did not)—and gave it instead to the new and independent statutory office of Legal Services Commissioner supported by the Legal Services Commission.

The new system came into effect on 1 July 2004 but has now been replaced by the *Legal Profession Act 2007* which commenced exactly three years later, on 1 July 2007. The new Act consolidates and furthers the earlier reforms.

The Commission is the sole body authorised to receive complaints about lawyers in Queensland. Of course many people who want to complain about a lawyer find their way to the Law Society or to the Bar Association in the first instance and others take up their concerns directly with the lawyer concerned. Many 'complaints' are resolved informally in this way and that is all to the good. Not everyone feels comfortable doing that, however, and it's not always appropriate and doesn't always resolve things, and people are always entitled and they remain entitled in those circumstances to make a formal written complaint to the Commission.

We deal with complaints about solicitors and barristers as our core business and that includes, if the evidence when we've finalised our inquiries warrants it, initiating and prosecuting disciplinary proceedings in the disciplinary bodies.

We are not limited simply to responding to complaints. The Act also gives the Commissioner power to start an investigation into the conduct of a solicitor or barrister of his or her own motion, in the absence of a complaint, 'if the Commissioner believes that an investigation should be started.' These are called 'investigation matters'.

We will be able to deal with complaints about and initiate own motion investigations into the conduct of legal practitioner directors of incorporated legal practices from 1 July 2007, too—complaints not only that they have breached their professional obligations as legal practitioners but also complaints that they have breached their additional obligations as legal practitioner directors.

We describe the complaints we can and can't deal with over the pages that follow and how we go about dealing with them and also the broad approach we bring to our work but, notably, we don't only deal with complaints about lawyers.

We can also deal with complaints and initiate investigations into the conduct of:

- law practice employees;
- anyone a complainant suspects or we suspect may have committed an offence under the Act—people suspected of being 'unlawful operators', for example (that is to say, people who represent or hold themselves out to be lawyers when in fact they are not) and, from 1 July 2007, people suspected of unduly influencing or attempting to unduly influence a legal practitioner director or other lawyer employed by an incorporated legal practice to act contrary to their professional obligations as lawyers.

  We will also from 1 July be able to investigate the conduct not only of people who work for an incorporated legal practice but in certain circumstances the corporation itself—if we suspect it has employed or entered into a partnership with or shared receipts with a 'disqualified person', for example; and
- anyone a complainant suspects or we suspect of touting at the scene of an accident or otherwise 'claims-harvesting' for lawyers in relation to possible personal injuries claims or of breaching the restrictions on the advertising of personal injury services under the *Personal Injuries Proceedings Act 2003*.

Notably we will have a broader role from 1 July 2007 than dealing with complaints and investigation matters. Our core business will extend after that date to include auditing incorporated legal practices to monitor their compliance and their officers' and employees' compliance with their obligations under the Act and the management of their provision of legal services including their supervision of the lawyers who provide those services. We will expand on that role, too, over the pages that follow.

'the Commission is the sole body authorised to receive complaints about lawyers in Queensland'

Our approach

We have a big job to do and an important one. We try to go about our work in ways as best calculated as we can to achieve the main purposes of the Act—in this context, 'to promote and enforce the professional standards, competence and honesty of the profession' and 'to provide a means of redress for complaints about lawyers.' The Act envisages and no doubt consumers expect us to go about our work independently and without self-interest and, in dealing with any particular matters that come our way, as efficiently, fairly and quickly as possible, and we set ourselves those goals also.

We think we will best achieve those goals if we set out deliberately as part of what we do to try to reduce the incidence of the sorts of conduct that give cause for complaint before the event, as it were—before things go sour and give rise to complaint. We also therefore set ourselves the goals of:

- putting our investigation matter power to good use wherever possible and appropriate by looking out for and identifying conduct and patterns of conduct that appear to put consumers, especially vulnerable consumers at risk or that appears to be widespread and initiating investigations into that conduct; and
- learning whatever we can from our experience dealing with complaints and investigation matters and to making good use of that information and perspective by undertaking and partnering the professional bodies, the law schools and other legal services stakeholders in undertaking research and educational and law reform projects and activities that make a practical contribution to improving standards of conduct in the profession.

Even more fundamentally, we think we should be looking for every opportunity, when we are dealing with a complaint or investigation matter and believe there is something to it, to remedy whatever it is that went wrong and to prevent it from happening again.

Some complaints and investigation matters involve dishonesty and other wilful or reckless misconduct of a serious kind and clearly conduct at this end of the spectrum warrants a disciplinary response to protect the reputation of the profession or to 'send a message' to other practitioners by way of deterrence or both.

Most complaints however describe conduct of more prosaic kinds—they describe minor incompetence and mistakes and errors of judgment and delays and discourtesy and other poor standards of service that give consumers less than a good or a fair deal and so entitle them to a legitimate sense of grievance. Intuitively it seems harsh and clumsily inefficient to put practitioners who may be 'guilty' of minor misconduct of these kinds through the same disciplinary process as practitioners who may be guilty of more serious transgressions.

Intuitively at least it seems more appropriate simply to require them to apologise to the complainant or to re-do the work they were engaged to do in the first place or to waive some or all of their fee or otherwise to remedy the faults in the service they provided and to learn from their mistake by fixing their office systems or undertaking some further training and the like—wherever 'tailor-made' remedy and / or preventative measures that best fit the particular facts. It's a form of restorative justice.

‘The obvious question is just how unsatisfactory a practitioner’s conduct has to be to count as unsatisfactory professional conduct’

We use the leverage the statutory framework gives us to that end. Notably the Act gives us only two ways to deal with complaints over which we have jurisdiction—as consumer disputes, or as complaints (lets call them ‘conduct complaints’) that involve an issue of unsatisfactory professional conduct or, at the more serious end of the spectrum, professional misconduct.

The Act doesn’t define unsatisfactory professional conduct in any exhaustive way but (consistent with the uniform definition of the term nationally) says only that it ‘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.’

The obvious question is just how unsatisfactory a practitioner’s conduct has to be to count as unsatisfactory professional conduct. Arguably it is open to us to interpret and apply the concept narrowly so that it excludes the sorts of minor ‘misconduct’ we have in mind and so allows us to deal with complaints about conduct of this kind not as conduct complaints but consumer disputes. That would distinguish them from complaints that describe more serious misconduct of kinds which unambiguously warrant a disciplinary response if proved.

That approach has appeal, and it’s the approach our counterpart regulators take in some other jurisdictions including New South Wales, but it would come at a price in our jurisdiction—it would deal us out of the game by robbing us of any powers we might otherwise have to achieve our most fundamental purposes, to promote and enforce professional standards and to provide a means of redress for complaints.

That’s because our Act obliges us to investigate conduct complaints and gives us significant powers of investigation but gives us no such obligations or powers in relation to consumer disputes, only a discretion ‘to suggest to the parties that they enter into mediation’.

We have no powers to require the parties to complaints to negotiate a fair outcome and failing that to impose an appropriate outcome —we don’t have the powers our counterpart in New South Wales has, for example, to require respondent practitioners in these circumstances to enter into mediation or in certain circumstances and subject of course to review to caution or reprimand practitioners or to require them to pay compensation or to impose conditions on their practicing certificates.

Nor do we have the powers our counterpart in England and Wales now has following the recent reforms there to require practitioners to apologise to complainants or to redo the work or to reduce or waive their fees or ‘to take other steps in relation to the complainant as [our counterpart] considers just’ or ‘to order a payment for poor service, loss or distress, such an award to be enforceable as a debt.’[2]

[2] See ‹www.legalcomplaints.org.uk/how-we-handle-complaints/about-poor-service.page›

We think for these reasons that the Act obliges us to interpret and apply the concept of unsatisfactory professional conduct broadly, so that it includes conduct that gives complainants less than a good or a fair deal and that most people would regard as unsatisfactory in any ordinary sense of the word but mightn't ordinarily be seen to warrant a disciplinary response. We think the Act obliges us to deal with complaints about conduct of this kind not as consumer disputes but as conduct complaints.

We believe however that we can still deal with them in a way that distinguishes them from complaints that describe more serious misconduct of kinds that warrant a traditional disciplinary response and the naming and shaming that goes with it. The Act gives us only two options after we have investigated a conduct complaint—either to dismiss the complaint or to initiate disciplinary proceedings—but two grounds to dismiss a complaint. One is that there is no reasonable likelihood a disciplinary body will make a finding of unsatisfactory professional conduct or professional misconduct and the other—and here is our opportunity—is that there is no public interest in initiating disciplinary proceedings.

The public interest test gives us our opportunity because it is hard to see how it could possibly be in the public interest to initiate disciplinary proceedings for alleged unsatisfactory professional conduct at this minor end of the spectrum provided only that the practitioner has apologised to the complainant or re-done the work or waived some or all of their fee or fixed their office systems or undertaken some training and the like—that is to say, done what they reasonably can in all the circumstances of the complaint to make good their mistake or to prevent or at least reduce the risk of it happening again, or both.

So this is our approach to dealing with complaints at the minor end of the spectrum: we deal with them as conduct complaints, not as consumer disputes, and when after investigation the facts aren't in dispute and appear to give complainants legitimate grounds to feel aggrieved, we invite respondent practitioners to make submissions that seek to persuade us that no public interest would be served by initiating disciplinary proceedings. We invite them to persuade us that they have resolved the problem as best they can or fixed whatever it was that went wrong so that it's unlikely to happen again or both—and, if they succeed in persuading us, that's the end of it: complaint dismissed. If not, our options remain open, and we will look again at whether to commence disciplinary proceedings.

Our strategic goals

We conceptualise our mission accordingly. We see our most fundamental purpose to be to promote and protect the rights of legal consumers in their dealings with legal practitioners and law practice employees, and we use the following strategies to that end:

- promoting and delivering an efficient and effective system for dealing with complaints about the conduct of lawyers, law practice employees and other people over whom we have jurisdiction and, whenever we properly can, leveraging our powers under the Act to give complainants redress and to improve standards of conduct within the profession;
- proactively looking out for conduct on the part of lawyers and other people over whom we have jurisdiction that appears to fall short of appropriate professional standards and to put consumers at risk, and using our investigation matter power to investigate that conduct;
- prosecuting legal practitioners, law practice employees and other people over whom we have jurisdiction before the disciplinary bodies and courts for apparent unsatisfactory professional conduct, professional misconduct and related offences;
- learning from our experience dealing with complaints, investigation matters and incorporated legal practices and using that information and perspective ourselves and in partnership with other legal services stakeholders to help improve standards of conduct in the profession and so reduce cause for consumer dissatisfaction and complaint; and
- creating and maintaining a productive and motivating work environment.

Obviously we will add a further strategy given our additional responsibilities going into 2007-08:

- auditing incorporated legal practices to monitor their compliance with legislative requirements and whether they keep and implement appropriate management systems, and going about it so as to encourage, support and assist them to develop a culture of compliance.

We commit to implement these strategies in ways which are well informed, thorough and accessible and responsive to legal consumers and practitioners alike, and in ways which are independent, fair, transparent and accountable.

Our performance

Complaints

We have set ourselves the goal to promote and deliver an efficient and effective system for dealing with complaints about the conduct of legal practitioners, law practice employees, unlawful operators and other people over whom we have jurisdiction.

That involves informing members of the public generally but consumers and practitioners in particular about the system for dealing with complaints; responding promptly and helpfully to telephone and other inquiries; receiving, assessing and deciding how to deal with complaints; mediating consumer disputes; and investigating conduct complaints and deciding what further action to take, if any.

We will describe our performance under each of these headings but we will make some general observations first to set that discussion in context. We have mentioned the first of these already—that the number of complaints coming in our door seems to have stabilised over the last year but is down by more than 30% on the number that went in the Law Society's door over the last two years it administered the system for dealing with complaints at the same time as there has been an almost 40% increase in the number of practitioners subject to the system and hence potentially subject to complaint.

This is good news, as we've said. It means that the number of complaints per practitioner potentially subject to complaint has more than halved over the period from 2002-03 to 2006-07, from about one in three to about one in six and a half, and we have no reason to believe that is because potential complainants are less aware of their entitlement to complain or have lost faith in the system and can't be bothered. We note for example that the number of telephone inquiries the Commission and the Law Society have received over this same period has stayed pretty much the same but if anything increased.

The relevant data is set out in detail at appendix 4 but is readily illustrated in trend charts 1, 2 and 3.

Chart 1
Number of inquiries by year

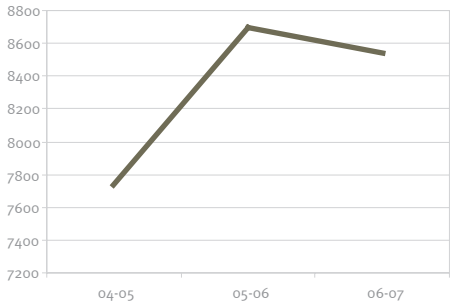


Chart 2
Number of new complaints by year

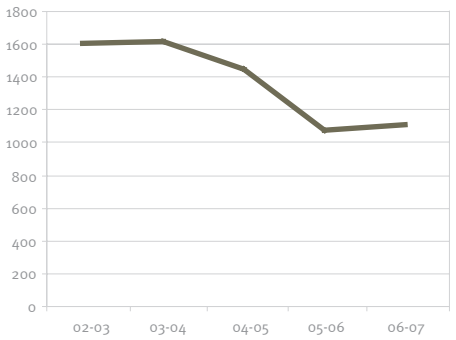
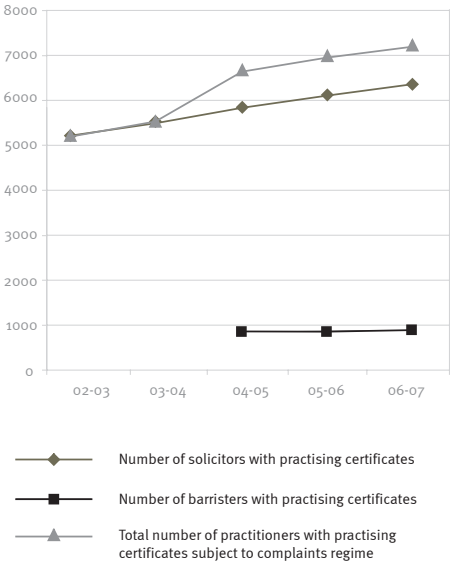


Chart 3
Number of practitioners by year



We believe one reason the number of complaints has gone down is that many more 'complaints' are being nipped in the bud by being dealt with informally as telephone inquiries and resolved to the callers' satisfaction in that way, expeditiously and efficiently and with the least possible fuss.

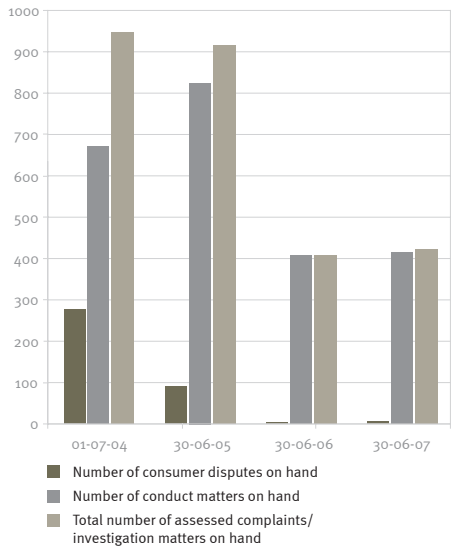
Our second general observation is that we responded to and dealt with complaints in a more timely way in 2006-07 than 2005-06 and this is good news too. We noted in last year's report that we had given ourselves the opportunity to improve our performance by this measure by finally resolving the backlog of complaints we inherited on our inception and that we would measure our performance this year in part at least by whether and how well we seized the opportunity.

We assessed 90% of all complaints that we summarily dismissed within a month of receiving the complaint, with a median of 14 days compared to 18 days last year; we finalised 94% of all consumer disputes within two months of receiving the complaint, with a median of 15 days compared to 26 days last year; and we finalised 74% of all conduct matters within seven months of receiving the complaint, with a median of 119 days compared to175 days last year.

Our third and final general observation before proceeding is that we have assessed significantly fewer complaints to be consumer disputes over the past two years and significantly more to be conduct complaints– that is to say, we have assessed significantly more complaints to be complaints which, if substantiated, would justify a finding of unsatisfactory professional conduct or professional misconduct. We assessed only 7.3% of the 1081 new complaints we assessed during the year to be consumer disputes, for example, compared to 17.1% of the 1054 new complaints we assessed last year and the profile of our complaints-handling workload has changed accordingly, and dramatically, as shown by chart 4.

Chart 4

Make-up of complaints workload by year



This does not mean that complaints are becoming more serious in nature, just that we have broadened our understanding of the concept of unsatisfactory professional conduct in the ways and for the reasons we described earlier in the report, under the heading *Our approach*. This is perhaps the single most significant difference between the system established under the *Legal Profession Acts 2004* and 2007 for dealing with complaints and the previous system that was administered by the Law Society. It means we are taking complaints at the less serious end of the spectrum more seriously and using our complaints-handling powers more proactively than used to be the case to provide consumers a means of redress when things go wrong.

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 website <www.lsc.qld.gov.au> soon after our inception that inform prospective complainants about how to make a complaint, answer the most frequently asked questions about the process for dealing with complaints 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 also made it a priority to get out and about among the profession and the law schools, talking to practitioners and students'

We have continually added to and updated our website and printed materials including over the past year with nine new 'plain-English' fact sheets, most of them directed primarily to consumers but some to practitioners—about how to respond to a complaint, for example. We also included information about the new costs disclosure and costs assessment regimes that will come into effect when the *Legal Profession Act 2007* commences on 1 July 2007 and about incorporated legal practices and how we propose to regulate them.

We hope over the year ahead to revise the complaints form to request information from complainants that will help us learn more about complainants to complement the very detailed information we have about the practitioners subject to complaint.

We have enhanced our data base to allow us to store and analyse that information so that we can monitor the accessibility of our services to all Queenslanders and to craft any targeted 'outreach' strategies that might be appropriate. We expect to have the new form available in hard copy over coming months and to make it (and our other forms) available on-line by mid-2008.

We have also made it a priority to get out and about among the profession and the law schools, talking to practitioners and students about the system for dealing with complaints, our approach, and the ethical issues we see arising in the everyday practice of law, and to publish the more important and relevant of those talks on our website. We report more on our performance in this regard later in the report under the heading *Projects and research*.

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 Act requires complaints to be made to the Commission and to be in writing, but many inquiries are complaints in all but name and many, indeed most inquirers find their way to the Law Society rather than to us. We are comfortable with that. No good purpose is served by the Society simply referring those people to us if the Society can resolve their concerns there and then. Similarly, we see little point in requiring inquirers to put their concerns in writing if they would rather their concerns be dealt with informally in the first instance or agree to give it a go, at least in the first instance—our only proviso is that it be clearly understood that they remain entitled to make a formal written complaint to the Commission if their concerns can't be resolved in that way.

We have attached more detailed statistical data at appendix 4, but we note that more than a quarter of the total number of inquiries comprised ethical inquiries by solicitors seeking the Law Society's advice and assistance to resolve some ethical or client management dilemma. This is an excellent membership service that pre-empts many complaints and we urge practitioners to make more and better use of it.

Most, about three quarters of the other people who made inquiries were clients or former clients of solicitors but about one in 10 were third parties inquiring about the conduct of a solicitor acting for someone else and another one in 10 were simply members of the public seeking advice about legal matters generally. Notably:

- more than one in five inquiries arose out of conveyancing matters and almost as many out of family law matters. About one in 10 concerned personal injuries matters and about one in 10 concerned deceased estate matters.
- almost a quarter of all inquirers were concerned about costs, and about one in five were concerned about quality of service issues and another one in five simply wanted advice.
- more than two in three inquiries were resolved either by giving information about the legal system or explaining an apparent anomaly or referring the inquirer for legal advice or recommending that he or she approach their practitioner or law firm directly or simply by listening to the inquirer's concerns, all in roughly equal numbers. Fewer than one in 10 were resolved by suggesting that an inquirer consider making a formal written complaint.

By way of illustration, inquiries about conveyancing matters typically involve a solicitors or their staff miscalculating rates and body corporate fees adjustments and stamp duties and the like, or failing to provide a settlement statement or causing settlement to be delayed resulting in a penalty fee or charging more for their services than the standard lump sum fee because, for example, further legal advice was necessary following a search that turned up something unexpected.

Often concerns like these can be resolved with a simple telephone call—to get and pass on the solicitor's explanation or to negotiate a reduction in the solicitor's fee. Sometimes they need to be put in writing, as a complaint —to get further particulars and documents from the complainant and to elicit a formal response from the solicitor so as to better assess what occurred.

Inquiries about family law matters often involve delays and poor communication. They often involve claims that the inquirer's solicitor gave poor advice or failed to follow instructions or made arrangements without first checking with the inquirer or kept them in the dark or didn't do what they were asked to do and the like—and they often involve claims about the solicitor for the 'other side': that they were rude and aggressive or that they made or encouraged the estranged partner to make false and insulting suggestions or to tell lies and the like.

These are difficult matters. Sometimes a phone call to the solicitor helps, to get some background or to learn the current status of the matter so as to help explain things to the inquirer. Often there is little that can be done other than to explain how the adversarial system works and the role that opposing solicitors play in that system or to explain that solicitors are not obliged to follow their client's instructions to the letter but are expected to exercise their own professional judgment to further their client's case.

Receiving, assessing and deciding how to deal with complaints

We have attached detailed statistical data at appendix 4 but the key facts are these:

- we received 1109 and assessed 1081 new complaints during the year. We assessed 401 or 37% of them to fall outside our jurisdiction and so 'summarily dismissed' them and took no further action but for advising the complainants accordingly and referring them elsewhere as appropriate. Many of those complaints were about conduct other than conduct in the practice of law—either because the person subject to complaint was not a lawyer or, if they were, because they weren't acting as a lawyer at the time they engaged in the conduct in question but as a migration agent or company liquidator or executor or judge or university law lecturer, for example.

  Sometimes it was because the conduct in question was simply none of our business —if the respondent practitioner was alleged to be sleeping with the complainant's former spouse, for example, or alleged to be homosexual.

  Sometimes it was because the complaint had been dealt with previously; sometimes because the complainant failed to comply with our request to provide us with further information; sometimes because the respondent practitioner had already been struck off for other reasons and dealing with the complaint would have served no useful purpose; and sometimes because the conduct subject to complaint took place more than three years before the complaint was made and it would either have been unfair to deal with it now having regard to the reasons for the delay or it would have amounted at best only to unsatisfactory professional conduct in any event, not professional misconduct.

Sometimes it was because the complaint described a dispute about costs that could only be or would be best settled by the separate process established under the Act for dealing with costs disputes, and sometimes because it alleged professional negligence of a kind that can only be determined by a court of competent jurisdiction.

- we assessed 79 or 7.3% of the new complaints to be consumer disputes, and dealt with the vast majority of them in-house—we referred only three consumer disputes to the Law Society for mediation and we retained the remainder ourselves.
- we assessed 601 or 55.6% of the new complaints to be conduct complaints. We referred 372 or 42% of all new conduct matters (that is to say, both conduct complaints and investigation matters) to the Society for investigation and another 18 or 2% to the Bar Association, and we retained 492 or 56% of them at the Commission (including most of the 199 new investigation matters).
- the Law Society returned 355 conduct matters to the Commission after investigation for review and we agreed with the Society's recommendations in 309 or 87% of those matters. The Bar Association returned 12 conduct matters for review and we agreed with the Association's recommendations in 11 or 92% of those matters.

Mediating consumer disputes

We finalised 83 consumer disputes during the year involving 70 respondent solicitors and one law practice employee from 66 different law practices, and:

- more than half of them had their origins in either conveyancing or family law matters—about one in three of them in conveyancing matters and about one in five in family law matters.
- three quarters of them were disputes about either costs or quality of service including communication—about two in five of them were about costs and more than one in three of them were about quality of service and communication.
- we resolved about a third of them to the complainant's satisfaction but we were unable to resolve about two in five of them and about one in seven were unfounded, in our opinion.

Consumer disputes are little different from inquiries—they involve the same sorts of concerns and are different only in that they come to our attention in writing, as complaints, rather than by phone. We respond to them in much the same way as inquiries but for the fact that our attempts to get an explanation or to negotiate a resolution are more likely to be conducted in writing.

Notably the respondent solicitors were overwhelmingly sole practitioners. Notably, too, women lawyers were three times less likely than their men counterparts to be respondents to a consumer dispute having regard to their representation in the profession overall; and older solicitors were more likely to be respondents to consumer disputes than younger solicitors having regard once again to their age group representation in the profession overall and, as a general rule, the older they were, the more likely.

Investigating conduct matters and deciding what further action to take

We finalised 786 conduct matters during the year, including 600 conduct complaints and 186 investigation matters. They involved 527 respondent solicitors and 10 law practice employees from 428 different law practices, 17 barristers and 28 other people over whom we have jurisdiction.

Notably, as with consumer disputes, the respondent solicitors in conduct matters were overwhelmingly sole practitioners. Women solicitors were once again much less likely to be respondents to conduct matters than their men counterparts having regard to their representation in the profession overall and older solicitors were once again more likely to be respondents to conduct matters than younger solicitors.

We will discuss the investigation matters later in the report but the key facts about the 600 conduct complaints we brought to conclusion during the year are these:

- about two in three of them were made by clients or former clients of the respondent lawyers and another one in 20 by solicitors acting on behalf of clients or former clients—but about one in 10 were made by other solicitors and one in 20 by third parties.
- half of them had their origins in either family law, conveyancing or personal injuries matters—about one in five of them in each of family law and conveyancing matters, about one in 10 in personal injuries matters, and fewer than that currently but we suspect a growing number in deceased estate matters.

  Most family law complaints involve allegations that the respondent solicitor failed to follow instructions or to attend at court hearings or lost documents or made misleading statements as to prospects or that the respondent solicitor, acting for the complainant's estranged partner, contacted the complainant directly although he or she was legally represented. Most conveyancing complaints involve allegations that the respondent solicitor failed to carry out searches or lost documents or missed relevant dates or failed to adequately supervise their paralegal staff or acted for both parties. Most personal injuries complaints involve allegations that the respondent solicitor caused undue delay or failed to follow instructions or failed to obtain proper instructions from a client with questionable capacity to give instructions or made misleading statements as to prospects and quantum.

Chart 5
Solicitors subject to conduct complaints
by gender relative to gender representation in the profession

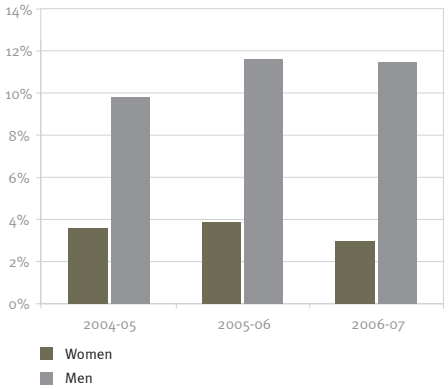
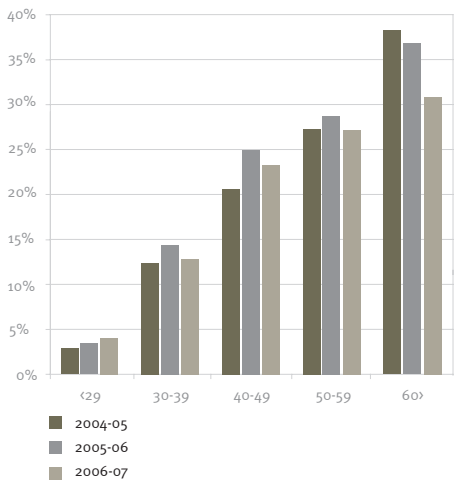


Chart 6
Solicitors subject to conduct complaints
by age group relative to age group representation in the profession



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

- more than a third of them alleged unethical conduct of one kind or another, more than one in five of them alleged seriously untoward quality of service, almost one in five alleged overcharging and almost one in 10 of them alleged seriously untoward communication.

  We dealt with a complaint, for example, that the complainant instructed his respondent solicitor to lodge a caveat and to commence proceedings to protect his interest in a land dispute, but that the solicitor failed to lodge the caveat and delayed progressing the action and, as it happened, that the land was sold and the vendor became bankrupt and the complainant was left with no viable remedy. We dealt with a complaint that a solicitor in the course of a family law matter made inappropriate comments to the complainant about her physical appearance and presentation, ostensibly to jolly her and encourage her to get her act together and to show her estranged partner that she had her act together.

  We dealt with a complaint that the respondent solicitor who acted for the two executors of a will in a deceased estate and continued to act for one of the executors despite the objections of the other after they fell into dispute about certain aspects of the administration of the estate

- we finalised just over two thirds of them on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct; almost one in five of them on that basis, while it was possible that a disciplinary body would make a finding of unsatisfactory professional conduct or professional misconduct there was no public interest in initiating disciplinary proceedings, and exactly seven in 100 of them by initiating disciplinary proceedings. About one in 20 were withdrawn.

  We note the many conduct complaints that were concluded on the basis not that there was no reasonable likelihood of an adverse finding by a disciplinary body but no public interest in initiating disciplinary proceedings. This is a good result and a measure in our opinion of the success of the strategy we described earlier in the report under the heading *Our approach*.

  Some of these matters were dismissed in the public interest because, for example, the practitioners had retired or otherwise ceased to practice. The vast majority however were dismissed because they were relatively minor matters and the practitioners had apologised to the complainant or waived some or all their fee or undertaken some training or improved their management and supervisory systems or the like—that is to say, either made good their mistake or taken steps to minimise the likelihood it would happen again or both.

Investigation matters

The Act authorises the Commissioner to start an investigation without having received a complaint 'if the Commissioner believes an investigation about a matter (an *investigation matter*) should be started into the conduct of an Australian legal practitioner, law practice employee or unlawful operator.'

It also authorises the Commissioner to start an investigation into the conduct of 'any person... suspected of contravening the *Personal Injuries Proceedings Act 2002,* chapter 3, part 1'—that is to say, the sections of the Act (lets call it PIPA) that prohibit touting at the scene of an accident and impose restrictions on how and where personal injury services can be advertised.

The investigation matter power is an important power for the obvious reason that we can never assume that everyone who might have cause for complaint knows they have cause for complaint or, if they do, that they know how to or have sufficient confidence in the system to go ahead and do it. Nor can we assume that no-one is ever put off making a complaint for fear of reprisal. It is an especially important power the more we can use it to achieve systemic rather than one-off outcomes.

We have set ourselves the goal accordingly of looking out for conduct and patterns of conduct on the part of lawyers and other people over whom we have jurisdiction that appears to fall short of appropriate professional standards and to put consumers at risk, and proactively using our investigation matter power to investigate that conduct.

We noted in last year's annual report that we had created the opportunity by all but resolving the backlog of complaints we inherited on our inception to make more and better use of the investigation matter power and that we would measure our success in 2006 and beyond, in part at least, by whether and how well we seized that opportunity.

We are pleased to report that we have sustained the momentum we began to generate in the latter part of 2005-06. Charts 7 and 8 show the trend in the number of new investigation matters we initiated during 2006-07 both in absolute terms (chart 7) and as a percentage of the total number of new complaints and investigation matters (chart 8).

Chart 7
Number of new investigation matters by year

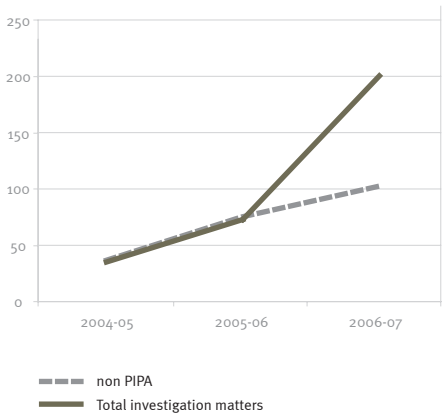
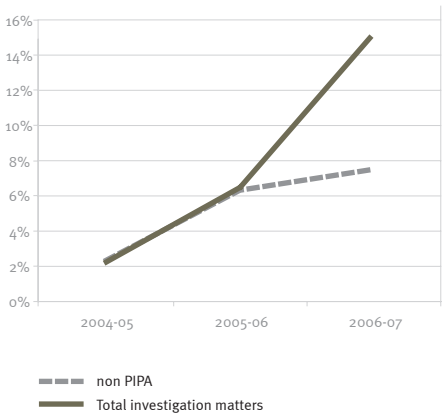


Chart 8
Number of investigation matters as a % of all new matters



In summary, we initiated 199 investigation matters in 2006-07 or 15.21% of all new complaints and investigation matters compared to 73 or 6.36% in 2005-06 and 35 or 2.36% in our first year, 2004-05.

Just under half, 98 or 7.49% of all the new complaints and investigation matters we opened during the year arose specifically out of our extended jurisdiction under PIPA and slightly more than half, 101 or 7.72% arose out of other non-PIPA matters (although they include matters arising out of personal injury claims). We mark the distinction between the two types of matter and report on them separately because they have quite different characteristics and it would muddy the water otherwise.

PIPA investigation matters

PIPA restricts both the content of advertisements for personal injury services and how they can be published. PIPA in its 2002 version left a number of loopholes, notably that the restrictions applied only to lawyers and were unaccompanied by any effective enforcement regime.

It comes as no surprise then that the restrictions were as honoured in the breach as the observance, as any cursory glance at the phone books of the time will tell you, and whatever else might be said about this sorry state of affairs it was very unfair to and indeed must have been galling for the majority of lawyers who tried to do and who did the right thing.

The legislation was amended to fix both loopholes with effect from 29 May 2006. The restrictions on advertising now apply to lawyers and non-lawyers alike and the Commission now has responsibility for their enforcement through a simple extension to our existing complaints and investigation matter powers.

We published guidelines in June 2006 to assist practitioners to understand and comply with their obligations and took pains to ensure that the guidelines were widely published, including on the Commission's website where of course they remain.

PIPA says, in summary, that a lawyer or any other person 'advertises personal injury services if the practitioner or person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person [either] to make a claim for compensation or damages under any act or law for a personal injury [or] to use the services of the practitioner, or a named law practice, in connection with the making of a claim.'

It restricts where and how advertisements fitting that description can be published. They can be published in printed publications including newspapers and the Yellow Pages, for example, although with some exceptions, and with some important qualifications on practitioners' websites and in the Yellow Pages and other on-line directories. They are not allowed to be broadcast on radio or television.

Finally, PIPA prohibits personal injury advertisements from saying anything other than 'the name and contact details of the practitioner or a law practice of which the practitioner is a member, together with information as to any area of practice or speciality of the practitioner or law practice.'

We spell out in some detail what those words mean in the guidelines we have published on our website but it's fair to say that we interpret them strictly, and deliberately so to leave the least possible room for slippage and the inevitable 'thin edge of the wedge' type arguments any slippage would almost certainly bring with it. That seems to us to be the best and probably the only practical way to achieve some certainty, and to keep a level playing field—to look after those practitioners who are doing and trying to do the right thing rather than test the boundaries.

We have received several complaints about the ways some lawyers have chosen to advertise their personal injury services, not surprisingly by other lawyers, and we have initiated several investigations into advertisements that appeared on radio and television and on billboards and websites. The vast majority of the 98 PIPA investigation matters arose however because we systematically reviewed the 2007 Yellow Pages directories for the Brisbane and every other telephone district in Queensland and identified the advertisements we believed breached the restrictions and we initiated investigations accordingly.

Some of them were more flamboyant than others, but most of them fell foul of the restrictions only in minor and technical ways—by including photographs of the practitioner named in the advertisement, for example, or slogans such as 'tough case—we are tougher' or 'compensation doesn't happen by accident' or 'established over 80 years —professional service at an affordable rate'.

We finalised 95 PIPA investigation matters during the year and, notably, resolved 6 of them on the basis that there was no reasonable likelihood of a finding of unsatisfactory professional conduct—those practitioners persuaded us, in other words, that the advertisements in those six matters complied with the Act.

We resolved the remaining 89 on the basis that there was no public interest in initiating disciplinary proceedings—in other words we persuaded all 89 of those practitioners to bring their advertisements into line in future, albeit some of them reluctantly.

Our success in enforcing the restrictions might not yet be readily apparent—the Yellow Pages are published only annually, and at different times of the year for different telephone districts—but we are confident that the 2008 Yellow Pages will contain many fewer non-compliant advertisements than previous editions. We will check, of course, and we also plan to systematically review law practice websites to ensure their compliance also, but we hope we're right and that this is good news for those lawyers who have always tried to do and done the right thing. We are especially pleased to report that we have achieved that good result through persuasion, without having to resort to prosecution.

Non-PIPA investigation matters

We initiated 101 non-PIPA investigation matters during the year, some of them after we received information anonymously, but sufficient information to justify a reasonable suspicion, and some of them after a court or other investigative agency such as the Crime and Misconduct Commission but more commonly the Law Society brought information to our attention—in the latter case mainly following trust account inspections which revealed breaches of the *Trust Account Acts 1973* and related regulations.

We initiated the majority of non-PIPA investigation matters, however, when we were already dealing with a complaint about a lawyer's conduct and become aware during the course of investigating the complaint of other conduct on the part of the practitioner that might amount to unsatisfactory professional conduct or professional misconduct. It is not uncommon for us to receive a complaint about delay or discourtesy, for example, only to discover evidence of overcharging or other dubious billing practices of which the complainant was totally unaware. Notably more than half the 91 non-PIPA investigation matters we finalised during the year involved costs.

We finalised about a third of them on the basis that we found no evidence sufficient to establish a reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct, and more than half of them on the basis that no public interest would be served by initiating disciplinary proceedings—in other words, that the evidence after investigation may well have supported a finding of unsatisfactory

‘we have managed to resolve all those matters thus far by persuasion’

professional conduct or professional misconduct but the practitioners concerned had either made good their mistake or fixed their office processes or done something else to persuade us they were unlikely to make that mistake again.

Many of the matters we finalised on public interest grounds involved an apparently widespread practice, particularly in cottage conveyances, of charging clients undisclosed mark-ups or surcharges on their outlays, and charging clients for services provided to the law firm by undisclosed related entities and billing those services as outlays.

We noted in last year’s annual report that those practices were misleading at best and arguably dishonest and in breach of the *Trust Account Act 1973* and that we had developed and published guidelines setting out what we believe to be acceptable and unacceptable practice and how we proposed to deal with breaches of those guidelines. The Law Society routinely reports matters to us following trust account inspections where those guidelines have been, or appear to have been breached and many, indeed most of the non-PIPA investigations we dealt with during the year involved matters of these kinds.

We are pleased to be able to report once again that we have managed to resolve all those matters thus far by persuasion, and that we have been able to finalise every one of those investigations on public interest grounds without having to resort to prosecution.

By way of example, we initiated one of these matters after a client complained about the fees he had been charged in a speculative personal injuries matter and we discovered in the course of investigating the complaint that the practitioner appeared to have breached the so-called 50/50 rule which caps the fees solicitors are allowed to charge in these matters at half the judgement or settlement amount less refunds and disbursements.

Consistent with our usual practice in circumstances like these, we asked the firm to provide us a list of all the speculative personal injury matters the firm had concluded since the 50/50 rule came into effect in 2003 and we randomly selected 25 of these files for audit.

Significantly, the firm conducted its own audit of all the speculative personal injury matters it had brought to conclusion and identified a problem with the billing practices of one particular employed solicitor. The firm reviewed all the practitioner’s files, made refunds to 19 of his clients and ‘vigorously counselled’ the lawyer in question. It also changed its procedures to require that all future bills in speculative personal injury matters would be signed off by one of the firm’s partners and would include an explicit calculation setting out how the 50/50 rule applied.

That is a good story, but not the only matter involving apparent breaches of the 50/50 rule. Indeed we are concerned by the way some practitioners appear to be interpreting the rule to their advantage, not as it was intended to their clients’ advantage. It will be helpful in describing our concerns to recount some recent history.

The traditional speculative personal injury claim or ‘no win-no fee’ retainer is simple in concept and driven by circumstances in which a person has suffered an injury and is seeking compensation but can’t afford the legal and other costs they will have to incur to make their case. The deal is that solicitors agree to represent the injured person but to forgo their fees for the time being and to carry the other costs themselves and to take the risk that their client’s claim will ultimately prove successful—in which case the client pays them their fees and reimburses them their expenses from the amount they receive in compensation.

The practice has attracted controversy but has some obvious merits—it gives people who have been injured access to justice that they might not otherwise have, and of course, if their claim succeeds, it gives their solicitors a fee they wouldn't otherwise get, typically their usual fee plus an 'uplift fee' by reason of the risk they carry should the case be lost.

These arrangements were always ripe for rorting. Some clients found themselves winning their case only to win very little or even nothing at all. In one spectacular matter that was brought to finality by the Court of Appeal in early 2006, a solicitor Michael Baker 'won' compensation for a client of $10,000 (rounding out the figures) and then promptly sent her a bill for $10,000 on top of that to cover his fees and costs. That was found to be professional misconduct and was one of the reasons he was struck off.

The 50/50 rule was introduced to protect clients in these circumstances and came into effect in 2003. It consists of a simple formula solicitors must use to calculate the maximum fee they are entitled to charge in speculative personal injury claims—'no more than half the amount to which the client is entitled under a judgement or settlement less any refunds the client is required to pay and the total amount of disbursements the client must pay, or reimburse, to the practitioner or firm.'

Regrettably however, some practitioners appear to be bending the rule and others to be trying to circumvent it altogether. We have come across, for example:

- practitioners who appear to regard the rule not as capping their fees at half the nett proceeds but as entitling them to half the nett proceeds. We have seen, for example, a client agreement that provided for a time-costed charge-out fee within the usual range but that added a speculative uplift on top of that of 40% and a further 20% uplift on top of that again for care and consideration.
- a multiplicity of timesheets which have been used for billing purposes and which at first blush at any rate appear to include units of time for all manner of activities which have little if anything to do with advancing the clients' case but a lot to do with padding the bill—activities including, for example, numerous and seemingly unproductive 'file reviews', 'collating' that seems to have consisted merely in placing a copy of a letter on file, and preparing the solicitor's own bill.
- a matter which settled for less than expected and in which it appears, after the client reimbursed the solicitor for his disbursements, that the solicitor suggested to the barrister and the barrister agreed to reduce his fee. That might have been a perfectly acceptable commercial arrangement but the problem is that the solicitor kept the difference.
- a practitioner who told a client about the 50/50 rule but proceeded to ask—indeed to require—the client to sign what purported to be a 'waiver' exempting him from the rule, and another practitioner who billed a client considerably more than half the nett proceeds and simply failed to mention the rule.
- a number of itemised bills which have treated the GST component of the solicitors' fees as if it were a disbursement that the client should pay, or reimburse, to the solicitor, and hence subtracted it from the gross amount rather than taken it from the solicitors fair share of the nett proceeds.

These are matters of real concern but, reassuringly, we have no reason to believe they are in any way representative.

There is a new and it seems increasingly common variant of the traditional no win—no fee retainer and it is a matter of concern too. It's a version in which solicitors either enter into loan agreements with their clients or arrange loans with a lender—sometimes an entity in which the solicitor or one or more of the partners of the firm has an interest,

sometimes another and wealthier client of the firm. The loans enable the clients to pay their disbursements themselves, as it were, and up-front. The deal is that they repay the loans with interest and pay their solicitors' professional fees if and when their claims succeed.

The newer version is just as effective in giving injured workers and others access to justice they mightn't otherwise have but it is equally ripe for rorting. That's because some solicitors structure the loan arrangements so that the loan repayments and interest count not as disbursements that 'the client must pay, or reimburse, to the practitioner or firm' but simply as money the client owes to a third party. They then subtract that amount from the client's minimum half-share of the nett proceeds after refunds and disbursements, not from the gross proceeds, and in that way claw back for themselves more than the maximum amount to which they would otherwise be entitled under the 50/50 rule.

It's a neat trick, and arguably little more than a contrivance. It's an especially neat trick when the lender is a related entity so that the solicitor or firm pockets the interest component of the repayments to boot.

The *Legal Profession Act 2007* resolves some of these questions. It amends the 50/50 rule so that practitioners' fees are capped no longer at half the amount to which the client is entitled under a judgement or settlement less refunds and less 'the total amount of disbursements the client must pay, or reimburse, to the practitioner or firm' but from 1 July 2007 at half the amount to which the client is entitled less refunds and less 'the total amount of disbursements or expenses for which the client is liable if that liability is incurred by or on behalf of the client either by the law practice or on the advice or recommendation of the law practice... regardless of how or by whom those disbursements or expenses are paid, but does not include interest on the disbursements or expenses '.

We urged the government to make that amendment, and we are very pleased that it did, but we believe the amendments simply clarify what was always the case—that disbursements properly incurred and paid directly to providers by clients themselves always were disbursements for purposes of the 50/50 rule and that it was always unlawful to treat them as if they were not.

Similarly—and this goes further than the amended rule—we believe that the interest component of the repayments clients have made of loans they obtained to fund their disbursements are themselves disbursements for purposes of the 50/50 rule under its original formulation, and that it was always unlawful to treat them as if they were not.

We also believe, leaving aside the proper construction of the 50/50 rule, that it is and always has been unlawful for practitioners to treat the GST component of their professional fees as if it's a disbursement that can be subtracted from the amounts their clients are entitled to receive. Practitioners are responsible for meeting their GST obligations out of their own funds, not their clients' funds.

We note that we have applied to the Supreme Court for declarations in respect of all three matters in response to a particular set of facts that has come to our attention and that our application is listed for hearing in September. The application is of course premised on that particular set of facts but we expect that the Court's decision will have a more general application.

Clearly, if we are right and our application is successful, even in part, the particular practitioner concerned and any other practitioners who may have acted similarly will be obliged to make good their error and to reimburse their clients the money that is, and always was rightfully theirs. We will take an active interest to make sure that happens and of course we will also need to consider the disciplinary ramifications, but we will cross those bridges if and when we get there.

Prosecutions

The Act gives the Commissioner sole authority to decide what action, if any, to take on a complaint or investigation matter after it has been investigated and it gives the Commissioner wide discretion in the exercise of that authority. It says the Commissioner 'may start a proceeding before a disciplinary body' in relation to a complaint or investigation matter that has been or continues to be investigated 'as the Commissioner considers appropriate'. It says also that the Commissioner 'may dismiss a complaint or investigation matter if satisfied that there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct [or, in the case of law practice employees] misconduct or it is in the public interest to do so.'

We initiate disciplinary proceedings 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 have developed guidelines which describe how the Commissioner exercises those discretions and we have published the guidelines on the Commission's website for the information of the profession, legal consumers and members of the public.

We are also responsible, 'as the Commissioner considers it appropriate', for starting proceedings to prosecute unlawful operators and anyone who touts at the scene of an accident or breaches the restrictions on the advertising of personal injury services under the *Personal Injuries Proceedings Act 2002*.

Prosecutions in 2006–07

We opened 46 prosecution files during the year (that is to say, we decided to initiate and prosecute disciplinary proceedings in relation to 46 practitioners or other people over whom we have jurisdiction) and we closed 41 prosecution files, 26 of them after discipline applications were heard and finally decided by the disciplinary bodies. We can break that information down and add longitudinal comparisons as follows:

Chart 9: Prosecution files opened/prosecutions commenced since 2004–05

	04-05	05-06	06-07
Prosecution file opened but discipline application / summons not yet filed as at 30 June	9	15	10
Discipline application filed with the Legal Practice Committee	6	9	11
Discipline application filed with the Legal Practice Tribunal	11	18	25
Summons issued in the Magistrates Court (in relation to alleged offences)	0	0	0
Number of prosecution files opened	26	47	46
Number of prosecution files on hand at 30 June	24	42	34

Chart 10: prosecution files closed/matters heard and decided since 2000–01

	00-01	01-02	02-03	03-04	04-05	05-06	06-07
Solicitors Complaints Tribunal	10	23	26	25	3*	n/a	n/a
Legal Practice Committee	n/a	n/a	n/a	n/a	0	10	8
Legal Practice Tribunal	n/a	n/a	n/a	n/a	2	9	18
Court of Appeal	^	^	^	^	-	2	0
Magistrates (or other) court	0	0	0	0	0	0	0
Withdrawn / discontinued	-	-	-	-	0	0	15
Total	10	23	26	25	5	21	41

* 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.

We have attached more detailed statistical data about these matters at appendix 4 but we note that:

- 24 of the 26 respondents to the discipline applications that were decided during the year were solicitors and 2 were barristers.
- 6 of the 26 discipline applications involved charges relating to multiple complaints—the 26 discipline applications arose out of 36 separate complaints and/or investigation matters.
- the disciplinary bodies made findings of unsatisfactory professional conduct or professional misconduct in 24 of the 26 matters—1 was dismissed by the Legal Practice Tribunal (LSC v. Sing, which we discuss briefly below) and 1 by the Legal Practice Committee (where we alleged a minor breach of the practitioner's obligations in relation to his trust account). We have added the names of those 24 practitioners to the discipline register on the Commission's website and included a link in each case to the judgments of the disciplinary body which found against them. The judgments set out the charges and the disciplinary body's findings, reasons for decision and orders. We discuss several of these matters below.

- we finalised 15 prosecution files without the matter being heard by a disciplinary body or court. We decided to initiate disciplinary proceedings in each of these matters but subsequently reviewed our decision after new information came to light either before or after we filed the discipline application. In most cases we received further submissions from or on behalf of the respondent practitioner that persuaded us either that there was no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct or that there was no public interest in the matter proceeding to hearing. We decided not to proceed in three matters after we received information that the respondent had either voluntarily relinquished his or her practising certificate or died.
- the numbers are small but the prosecutions data suggests, consistent with the data in relation to complaints, that women solicitors are several times less likely than men solicitors to be charged with disciplinary offences having regard to their representation in the profession overall, and also that the older a solicitor is, the more likely it is the solicitor will be charged with a disciplinary offence.

We include a detailed breakdown at appendix 4 of the prosecution files we finalised during the year at appendix 4, including by the area of law and the nature of the conduct but we note the following two matters in particular:

- *LSC v. Sing*[3] concerned Mr Sing's conduct in sending a letter to a tenant on behalf of his wife threatening, if the tenant didn't immediately pay his wife the rent he owed her, to refer to the police the fact that the tenant had previously sought to do so by means of cheques that had been dishonoured. Mr Sing's conduct preceded the commencement of the *Legal Profession (Solicitors) Rule 2007* and occurred at that time when there was no professional rule in Queensland dealing with the issue.

  The Tribunal considered that Mr Sing's letter 'stopped short at foreshadowing inviting the police service to investigate the possible commission of an offence. He did not go on actually to threaten to launch a prosecution.'[4] Nevertheless, the decision warns that 'practitioners must be extremely careful before resorting to an even arguably threatening conduct.'[5]

  The Tribunal dismissed the Commission's application because it was not satisfied that the pressure Mr Sing brought to bear on his wife's tenant was improper or unfair, even allowing for the fact that he had written the letter in his professional capacity as a solicitor.

  The decision does however provide important guidance for practitioners on where the 'line in the sand' might be drawn. Rule 28.3 of the *Legal Profession (Solicitors) Rule* will further remedy the absence of any statutory guidance on the issue.
- *LSC v. Mullins*[6] concerned Mr Mullins' failure to disclose during mediation information that had come to his attention that was inconsistent with reports he had already given the other side about his client's life expectancy and the future economic loss component of his client's personal injuries claim. There was a significant public interest in prosecuting the matter because it related to conduct which in our view was quite clearly professional misconduct but on the part of a barrister who has an excellent reputation and who is held in high standing by his peers. The focus of the hearing was on the seriousness of the conduct rather than the good character of the respondent.

[3] Legal Services Commissioner v Sing [2007]LPT 004.

[4] Legal Services Commissioner v Sing [2007]LPT 004 per de Jersey CJ at paragraph 24.

[5] Legal Services Commissioner v Sing [2007]LPT 004 per de Jersey CJ at paragraph 30.

The Tribunal found, despite accepting that Mr Mullin's conduct was not calculated to derive any personal benefit for himself but to advance his client's interests, that it amounted to 'fraudulent deception' and it 'involved such a substantial departure from the standard of conduct to be expected of legal practitioners of good repute and competency as to constitute professional misconduct.'[7]

We note, to illustrate the diversity of the conduct that becomes subject to disciplinary proceedings, that the 34 prosecution files on hand at 30 June 2007 involve charges in relation to:

- undue delay—including, for example, in finalising an estate;
- failure to communicate;
- unauthorised dealings with trust monies
- overcharging, and charging on a time-cost basis when there was no client agreement;
- obtaining a personal benefit while acting for a client in a conveyance;
- failure to declare income consistent with taxation law;
- sending a threatening letter to a complainant demanding that the complainant withdraw the complaint;
- failure to honour an undertaking;
- failure to comply with the investigating bodies' directions during the course of an investigation;
- practising contrary to conditions imposed on a practicing certificate by the QLS;
- misrepresentations by one practitioner to another; and
- two-tier marketing—failure to disclose information to the detriment of clients.

We note finally that our current prosecution files include a matter which involves consistent conduct of kinds we believe amount to unsatisfactory professional conduct. The respondent practitioner has been subject to numerous complaints, many of which are relatively minor in nature and some of which we have previously dismissed on public interest grounds, but he continues to be subject to similar kinds of complaints. His clients and the public deserve better, in our view, and so we have reviewed all the current and past complaints with a view to initiating disciplinary proceedings on the grounds that there is a reasonable likelihood of a finding of professional misconduct based on the practitioner's consistent unsatisfactory professional conduct. This will be the first prosecution of its kind.

[7] Legal Services Commissioner v Mullins [2006]LPT 012 per de Jersey CJ at paragraph 31.

Getting ready for ILPs

The *Legal Profession Act 2007* allows law firms in Queensland for the first time to adopt business structures other than the traditional sole practitioner and partnership arrangements, and in particular to practice law as companies or corporations within the meaning of the *Corporations Act*—that is to say, as incorporated legal practices (or ILPs). The Act allows ILPs as a matter of right to provide other services in addition to legal services.

The Act imposes obligations on ILPs and the people who work for ILPs that include but add to the obligations it imposes on all other law firms and the people who work for them and introduces an entirely new regulatory framework for monitoring their performance. The new framework goes beyond the framework for regulating the provision of legal services by traditionally structured practices by empowering the Commission and / or the Law Society to audit ILPs to check their compliance with their obligations. That will allow us to move beyond a regulatory approach premised on the threat of sanction and to explore new and innovative ways to monitor the provision of legal services and to promote and enforce appropriate standards of service delivery.

The Queensland legislation is based on national model laws that have been agreed by the governments of all the states and territories and its provisions in relation to ILPs are all but identical with the like provisions in its counterpart legislation in those other jurisdictions. This gives us an exciting opportunity as regulators and an opportunity we haven't had in the exercise of our longer standing responsibilities in relation to complaints and discipline to ensure a consistency of regulatory practice across state borders.

The regulatory schema

We describe the regulatory schema in detail on our website but, in summary, the Act:

- requires that a corporation intending to engage in legal practice in Queensland must give written notice in the approved form to the Law Society of its intention before commencing legal practice in Queensland;
- requires that an ILP must not conduct a managed investment scheme or any other business or service prohibited by regulation;
- requires that an ILP must have at least one legal practitioner director and must not continue to provide legal services if it does not have a legal practitioner director for a period longer than seven days. Each legal practitioner director is responsible for the management of the legal services provided by the practice;
- makes it plain that legal practitioner directors of ILPs and any lawyers who provide legal services for ILPs share the same professional obligations as all other lawyers and are subject to the same complaints and disciplinary regime as all other lawyers;
- imposes additional obligations on legal practitioner directors of ILPs including obligations:
    - to ensure that the ILP keeps and implements appropriate management systems so as to enable the ILP to provide legal services consistent with the professional obligations of lawyers and other obligations under the Act and to prevent those obligations being affected by other officers and employees of the practice; and

- if it ought reasonably be apparent that the practice's provision of legal services will breach those obligations, to take all reasonable action to ensure that they are not breached and, if they are, to take appropriate remedial action.

- makes it an offence for a person to cause or induce, or attempt to cause or induce a legal practitioner director or any other lawyer who provides legal services for an ILP to act contrary to their professional obligations; and
- empowers the Commission or the Law Society to audit an ILP for compliance with its obligations under the Act and any related regulations and the legal profession rules, and to audit the management of the provision of legal services by an ILP including the supervision of the lawyers and other people who provide those services. The Act calls them 'compliance audits'.

'the Commission will take lead regulatory responsibility for monitoring and enforcing compliance'

The nuts and bolts

We have agreed with the Law Society that, in practice, the Commission will take lead regulatory responsibility for monitoring and enforcing compliance and that the Society will take lead responsibility for supporting and assisting ILPs and the people who work for them to comply with their obligations by providing advisory and other membership services.

We have also agreed with the Law Society and with our counterpart regulators in both New South Wales and Victoria to adopt the 'education towards compliance' model that has been pioneered over recent years in New South Wales. The model is premised on moving beyond the 'catch them out' auditing strategies that have often been relied on in the past. We want instead to use our powers in such a way as to allow us to engage with ILPs from and even before their inception and to work with them and proactively encourage and assist them to continually review and improve their management and supervisory systems and their workplace cultures more generally.

We have agreed with our counterparts in New South Wales and Victoria, where there is a similar division of responsibilities with their local Law Societies, to go about our regulatory work in the same or as similar a way as possible, and to aspire to not merely a notional consistency of approach but a thorough going consistency which goes to the very nuts and bolts.

We will undertake our regulatory role primarily by means of two types of compliance audit—internal (or self-assessment) audits and external (or review) audits.

We will require the legal practitioner directors of every ILP to undertake an initial self-assessment audit of its management systems and supervisory arrangements as soon as reasonably practical after the ILP has notified the Law Society of its intention to commence legal practice. The self-assessment audit will have two parts. It will require the legal practitioner directors to provide us with further information about the ILP including information about its non-legal directors and their occupations, its shareholders and their relationship to the law practice, how many lawyers it employs, its gross fee income and the services it provides other than legal services, if any. We will use that information to check whether the ILP is complying with its obligations in relation to disqualified persons, for example, but also and more fundamentally to develop a capacity over time to identify those ILPs most at risk of failing to comply with their obligations.

The self-assessment audit will also require legal practitioner directors to rate their management systems against ten criteria we believe their systems must satisfy to be appropriate management systems—viz., how effectively they address or mitigate problems that can arise in relation to:

- negligence
- communication
- delay
- liens and file transfers
- cost disclosure, billing practices and termination of retainer
- conflict of interests
- records management
- undertakings
- supervision of the practice and its staff
- trust account regulations and accounting procedures.

We will require legal practitioner directors to complete a self-assessment audit form (which is available on the Commission's website at <www.lsc.qld.gov.au> accompanied by explanatory notes). We want, and we hope and expect that the directors will engage positively with the exercise and candidly identify any aspects of the ILP's management systems that might require or benefit from improvement. We will require them to return the form to us within the designated period whereupon we will evaluate the information and canvass with them what further steps, if any, might be required to fix any perceived weaknesses. We will work with them or refer them to the Law Society or other advisors to get any assistance and support they require to develop an action plan to achieve that goal.

We will subsequently undertake a program of external or review audits designed to check the veracity of the information we receive through self-assessment audits. Review audits might be comprehensive and audit every aspect of an ILP's management systems and supervisory arrangements or might be more narrowly focused on particular aspects of its systems and supervisory arrangements we believe are most at risk of being non-compliant.

We will undertake review audits both on a random basis and in response to triggers of one kind or another including complaints or other information that comes to our attention and, increasingly over time, on the basis of what we envisage being increasingly sophisticated risk analysis and profiling techniques.

Getting ready

We have had and continue to have regular discussions with our counterpart regulators in New South Wales and Victoria to further our commitment to ensure a consistency of approach across state borders.

We have agreed, for example, to use the same self-assessment audit forms and we have reviewed and enhanced the form that has been used for some time now in New South Wales. We encourage not only ILPs and aspiring ILPs but all law practices to undertake the exercise with a view to testing their systems.

We have agreed to develop and have started detailed discussions directed to developing our respective databases to achieve identical functionalities—to enable us to capture, store, and report comparable data and analyses for benchmarking and other purposes. That will be a first, if we can achieve it, and will stand in marked contrast to our databases in relation to our longer standing jurisdictions over complaints.

It all makes for an exciting opportunity, and it is an important one. There may be local factors that make Queensland different, including the requirement here that has been waived in some other states that law practices which opt to incorporate must pay the requisite stamp duty, but we expect if the New South Wales experience is replicated locally that there will be more incorporated law practices than partnerships by 2010.

We note, finally, that the regulatory framework that applies to ILPs might usefully be extended to all law practices, whatever their business structure. We can see no 'in principle' reason why traditionally structured law practices should be subject to less rigorous regulatory supervision than ILPs. Lawyers have always sold legal services for profit within a business enterprise, whatever its structure, and have always had to balance their commercial obligations to their business enterprise with their professional obligations to their clients and to the courts. There is no particular reason to think that lawyers who practice in ILPs will find it harder to balance their responsibilities than lawyers who practice within a traditional partnership arrangement.

On the other hand we can see good practical reasons why traditionally structured practices might usefully be subject to the more rigorous regulatory supervision that will apply to ILPs. We often find ourselves dealing with complaints and investigation matters which see consumers get less than a good or a fair deal not because the lawyers concerned are less than competent or diligent in their practice of law as such but because their law practice doesn't keep and implement appropriate management systems which support and assist them to deliver legal services to expectation. The current disciplinary framework makes it difficult to give consumers redress in those circumstances or to promote and enforce better standards of service delivery. We have no capacity to deal with law practices as such, only individual lawyers, and our only avenue is to explore whether the managing or supervising partner can be held to account for a 'failure to supervise'. That is a notoriously hard charge to make stick.

Projects and research

We have argued that we will best promote and protect the rights of legal consumers by lifting our gaze beyond the individual dealings between practitioners and their clients that come to us as complaints and turning our attention also to how we might 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.

We have set ourselves the goal accordingly of learning from our experience dealing with complaints, investigation matters and incorporated legal practices and using that information and perspective ourselves and in partnership with other legal services stakeholders to help improve standards of conduct in the profession—and so we:

- analyse and continually improve our data base to identify the practitioners and law practices most at risk of complaint;

and, drawing on our day to day experience supplemented by the empirical data, we:

- actively participate in and otherwise support undergraduate and continuing legal education programs directed to improve standards of conduct in the profession;
- facilitate, broker, undertake and partner the professional bodies, university law schools and other legal services stakeholders in practical research directed to improve standards of conduct in the profession; and
- propose and comment on proposed legislative and policy reforms that better promote and protect the rights of legal consumers.

We are pleased to report 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. The case management system gives us a powerful reporting tool for both day to day management and longer term planning purposes and we are making some fundamental enhancements by way of getting ready for ILPs that will make it all the more powerful and enable us increasingly to use our audit power to better effect through evidence-based risk analysis.

  We have 'cherry-picked' the data for inclusion in the main body of the text and included the full information at appendix 4. It is important and useful data that enables us to respond readily to inquiries from legal academics and other researchers and that with further analysis will help identify the practitioners and law practices most at risk of complaint and help craft carefully targeted and evidence-based educational and other preventative strategies. We note, for example, the data which shows that about three in every four complaints were avoidable had only the respondent practitioners taken more care, and how in our opinion they might have done that (tables 5.12- 5.14).

The data invites some obvious questions. We noted earlier, when we were describing our performance in relation to complaints, that solicitors become increasingly likely to be subject to complaint as they get older. Solicitors aged in their 30s continue this year just like they were last year and the year before to be only a little more than half as likely as lawyers in their 40s to be subject to complaint relative to their overall number in the profession and three times less likely than solicitors in their 50s. Why is that, and what does it tell us?

We noted also that the data over the past year continues to demonstrate as it has in the past women solicitors are three times less likely than their male counterparts relative to their overall number in the profession to be subject to complaints alleging misconduct. Why is that?

We are pleased to say that we have commenced a collaborative research project with a researcher from the University of Queensland Law School that might give us some answers to that question. The project should be completed during 2007-08.

‘women solicitors are three times less likely than their male counterparts to be subject to complaints alleging misconduct’

- we completed 35 speaking engagements during the year including at all 9 practice management courses provided by the Law Society (for solicitors who want to upgrade their practising certificates to enable them to practise as sole practitioners or partners); 10 at compulsory professional development workshops on ethic conducted by both the Law Society and private providers; 6 to law students as part of the professional responsibility studies; and 8 on various topics at conferences, mainly conferences organised by the professional bodies including the annual Law Society Symposium and Bar Association Annual Conference.
- we made detailed submissions to the Attorney-General in response to both the *Legal Profession Bill 2007* and the draft *Legal Profession (Solicitors) Rule 2007*. We are particularly pleased for the reasons we have described elsewhere in the report, when we were describing our exercise of our investigation matter power, that the Attorney-General accepted our recommendation that the so called ‘50/50 rule’ that caps solicitors’ fees in speculative (no-win-no-fee) personal injuries claims at half the settlement amount after refunds and disbursements be amended to include all disbursements properly incurred in support of a claim, not simply the disbursements a person ‘must pay, or reimburse to the practitioner or [their] firm.’ .

  We are also pleased that the Attorney-General has agreed to give further consideration to our submissions in relation to two other matters in particular. One of them is that the definition of ‘disciplinary action’ be amended to include findings of unsatisfactory professional conduct in addition to findings of professional misconduct, but that our obligation to publish such findings on the discipline register be amended to include a time limit.

The second is that the Act be amended to strengthen the Commission's powers to investigate suspected professional misconduct by removing a practitioner's current entitlement to refuse to comply with a direction of the Commissioner to answer a question or to produce information in relation to a complaint or investigation matter by reason of legal professional privilege or a duty of confidentiality, provided of course that any information obtained in that way can be used for disciplinary purposes only and, specifically, not to the detriment of the practitioner's client. We have suggested amendments to that effect that would achieve that outcome, and that would preclude a lawyer using his or her client's right to privilege and confidentiality to frustrate investigations into the lawyer's conduct. The amendments we have suggested would give us the same or similar powers in this regard currently enjoyed by our counterpart regulators elsewhere in Australia.

- we initiated a project in 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. We expect that the Law Society will formally approve the draft charter over coming months and make it available to law firms for publication to their clients.
- we continued our collaboration with the Griffith Law School to co-sponsor two workshops in our seminar series under the title *Lawyers, Clients and the Business of Law* which provides a forum to reflect upon and debate issues that have emerged in complaints and investigation matters and that we believe warrant airing in public.

  Both workshops addressed practices that have come to our attention and that we find troubling from a consumer protection perspective—one went under the title *Creative Practice or Profiteering?* and explored the way apparently large numbers of law firms are billing their clients for outlays and the ways some practitioners appear to be interpreting and applying the 50/50 rule in speculative personal injuries matters; and the other under the self-explanatory title *Conflicts of Interest: Perspectives from Diverse Legal Settings*. We have published reports of both workshops on the Commission's website.

  The workshops both brought together 50 participants or thereabouts from private practice, community legal services, university law schools, the professional bodies and the Commission and both were well received. Pleasingly, one participant volunteered after one of the workshops that it had given him a rare opportunity as a junior practitioner to witness senior practitioners reflect upon and debate some practical ethical dilemmas that arise in the everyday practice of law and to participate in that debate.

‘We want to be able to monitor the accessibility of our services to all Queenslanders’

- we commissioned and received a report from a researcher at Griffith Law School about how we might go about collecting information that will enable us to know more about complainants to complement the very detailed information we have about respondents. We want among other things to be able to monitor the accessibility of our services to all Queenslanders and to craft any targeted ‘outreach’ strategies that might be appropriate. The research report made a series of recommendations and we have redesigned our complaint form accordingly and enhanced our data base to store, analyse and report the additional information. We expect to have the new form available in hard copy over coming months and to make it (and our other forms) available on-line by mid-2008.
- we commenced writing an article with legal academics from Griffith Law School about the findings and implications of the survey we conducted last year to test how lawyers, law students and members of the public interpret the concept of unsatisfactory professional conduct and apply it to a sample of 16 fact situations of kinds that come to the Commission’s attention everyday in the from of complaints. We have published both the survey and the results on the Projects and Research page of the Commission’s website.
- continued our collaboration with the Centre for Biological Information Technology (CBIT) at the University of Queensland to explore and demonstrate how the interactive problem-based learning software (PBLi) it has developed might apply to sensitising lawyers to and helping them resolve ethical dilemmas that arise in their everyday practice of law. We invited an expert panel comprising representatives of the Guardianship and Administration Tribunal and the Law Society’s elder law sub-committee to help us design three scenarios highlighting some typical (but as the scenarios develop, increasingly nuanced) ethical dilemmas that arise in dealing with older people and people with potentially contested capacity to give instructions. We finalised two scenarios—both of them creating a ‘virtual day at the office’—and both of them are available on the projects and research page of the Commission’s website. We expect that the third scenario will go live later this year. CBIT tell us that the scenarios have attracted an average of seven ‘hits’ a day from all over the world.

  We demonstrated the scenarios at the Elder Law Conference and they attracted considerable interest—including from academics at the Bond University Law School who plan to use them for teaching purposes in a tutorial environment and also for assessment purposes and service providers including the Adult Guardian who flagged their intention to use them for in-house staff training purposes.

- we have committed along with our counterpart commissions in New South Wales and Victoria to be industry partners in a significant national research project about the ethical policies, management practices, structures, attitudes and behaviours of the large law firms currently being prepared by a consortium of legal academics from Melbourne and Monash Universities and the University of Queensland by way of funding application to the Australian Research Council.

‘we have commenced planning for a survey instrument which will allow law firms to test their workplace culture for ethical health’

- we have commenced detailed planning for a project we plan to undertake in-house with a view to designing a survey instrument which will allow law firms to test their workplace culture for ethical health. We plan to test-run an early version of the survey with some volunteer firms over coming months and then to improve it and make it available on-line by early 2008. The survey instrument will be designed, obviously, to guarantee the confidentiality both of the individuals who complete the survey and their firm, but we envisage being able to give them de-identified results which will give firms useful feedback not only about key elements of their ethical culture but information comparing their results with other firms and in particular other like-sized firms.

We note finally that we flagged in last year’s report our intention in collaboration with our counterpart commission in 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. That exercise has been put on hold, but will proceed over coming months, this time including also our counterpart commission in Victoria.

Our people and our systems

We have described as best we can how we have gone about our work during the year and how we view our performance 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—hence we set out deliberately to create and maintain a productive and satisfying work environment. That depends in turn on 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.

'getting the right people in the right jobs in the right numbers with the right values, beliefs, skills and support systems'

Our people

We set ourselves the goal on our inception 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 say 'the system for dealing with complaints as a whole' because, while the Commission is the sole body authorised to receive complaints and to initiate and prosecute disciplinary proceedings, we can and do refer complaints to the professional bodies for investigation and their recommendation as to what action we should take on those complaints, if any.

The question in these circumstances was not simply what resources the Commission required to do its job, but what resources the system as a whole required to do its job and how those resources would best be distributed to its various component parts.

The Law Society dedicated significant resources to dealing with complaints before the Commission came on the scene and that continued under the new regime albeit now funded by a grant administered by the Department of Justice and Attorney-General. Our task at the Commission, initially at least, was to take that resource as a given and work out what additional resources we needed at our end to enable us to resolve the backlog within two years and what organisational structure we needed to achieve that objective—and to secure the necessary funding and get the people and structure in place as soon as possible.

We flagged the likelihood if we resolved the backlog that the investment of those additional funds would be compensated in 2006-07 by room for the system as a whole to downsize. That is exactly what happened. We secured additional funding during 2004-05 and again during 2005-06 and that enabled us going into 2006-07 not only to take on the additional responsibilities we assumed along the way—for enforcing the advertising restrictions under PIPA, for example—but to refer fewer complaints to the Society for mediation and/or investigation and to take on a more equal and more appropriate share of that responsibility ourselves. The Law Society downsized accordingly.

Table 2.2 in appendix 2 describes how the system established under the Act for dealing with complaints has been staffed since its inception, and an organisational chart that describes how the Commission deploys its staff. We are pleased to report that the number of staff who make up the system has now stabilised at a number only slightly greater than the number when the system first commenced in 2004-05 despite the fact that the Commission was given additional responsibilities in May 2006 under amendments to the *Personal Injuries Proceedings Act 2002* and that the Commission and the Law Society have additional responsibilities again going into 2007-08 and beyond to regulate the provision of legal services by incorporated legal practices (ILPs). It comes despite the fact also that the Commission has added value to the system by developing a capacity that was previously lacking to undertake projects and research. We have included for completeness table 3.1 in appendix 3 setting out the cost of the system for dealing with complaints in 2006–07.

We think we have got the numbers and the structure right and, that being the case, our challenge going forward is to build in ways to better support them in their jobs. We note that:

- more than a few of the staff who work with the Commission were appointed in the first instance only to temporary positions and others only on a temporary basis to recurrently funded positions —that was inevitable whilst we were discovering our way and working out how many people we needed and in what positions but meant that we were unable to offer job security to everyone. We set out to rationalise that situation once our staffing needs settled and we have done that. The normal contingencies aside (the need to appoint someone on a temporary basis to cover for someone on maternity leave, for example), 19 of the 20 people who work at the Commission (in 18.2 full-time equivalent positions) now have security of tenure and the wheels are turning in relation to the one exception.
- we designed and commenced an individual professional development planning process last year and began all the staff of the Commission staff on an annual cycle which will see them meet with their supervisors at last twice to review both the Commission's and their own performance and to commit to undertake at least two days of professional development activities each year. The 20 staff of the Commission attended a total of 48 training events over the course of the year. Many of those training events were directly relevant to the work of the Commission but not all of them—some were chosen more with a view to planning future careers and others simply for intellectual refreshment. It all counts.

- we have set out to get the best possible advantage out of being only a small organisation by developing a workplace culture based on open communication and knowledge sharing both of formal and informal kinds. We encourage staff to seek and take and give advice to each other as a routine part of the way they go about their work. The Commissioner or the Manager-Complaints as the Commissioner's delegate are formally responsible for making the key decisions that need to be made but we make as many as possible of those decisions including every decision to initiate disciplinary proceedings or to dismiss a complaint where that might be a line ball decision only after a team discussion where the staff member who has been dealing with the complaint presents the arguments and all staff have an opportunity to and are expected to contribute. The process capitalises on many heads being wiser than one, particularly in matters of often fine judgement, and turns routine decision-making into a professional development opportunity and helps us ensure a consistency of approach.

Our systems

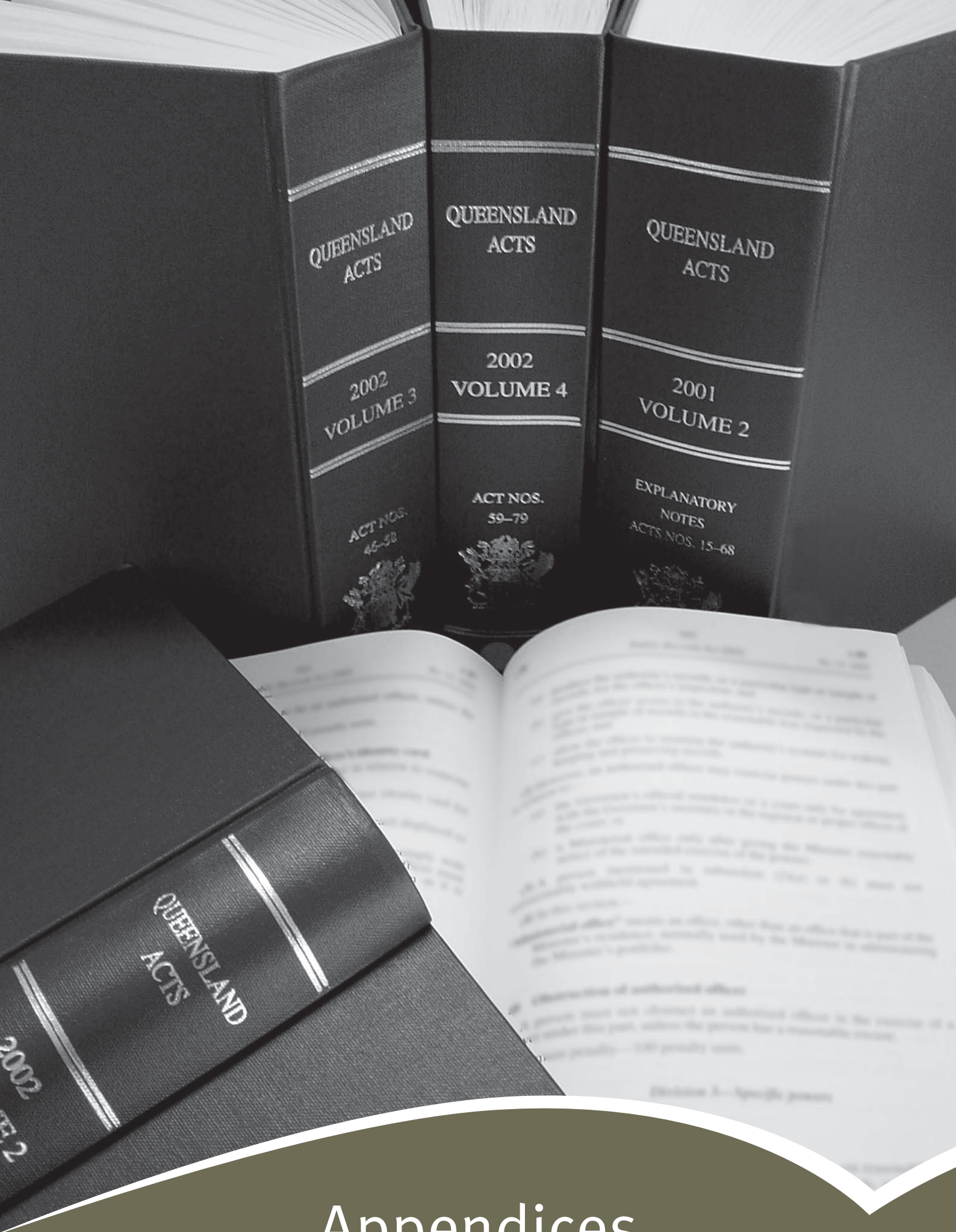
We have noted in previous annual reports that the decision was taken before we commenced to give the Commission remote access to the case management system (CMS) the Law Society was using and to adapt it to meet the requirements of the new system for dealing with complaints. We invested considerable energy over our first two years to adapt the CMS to our needs, including our additional responsibilities as they have come our way, and to give us an enhanced capacity to measure and routinely report our performance. That process continues. We note that:

- we have made slower progress than we hoped, but are near to finally relocating the CMS server so that it resides with the Department of Justice and Attorney-General (JAG) rather than the Law Society and to giving Law Society users remote access to it there. It is a complicated exercise that involves a two way replication of data so that Law Society data is replicated to the Commission's data base at JAG and our data is replicated to the Law Society. It is a necessary exercise however because the current arrangement 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 and beyond the control of the department's (hence our) information technology support staff. It is not surprising in these circumstances that the staff of the Commission have sometimes been unable to access the CMS for days at a time.

- we plan once we have achieved that goal to offer the Bar Association remote access to the CMS so that the various component parts of the system established under the Act for dealing with complaints are all using the one integrated case management system. We hope the Association will agree to allow us as part of that exercise to access the relevant data it keeps about barristers in the same way the Law Society allows us access to relevant data about solicitors.

‘we plan to develop an on-line facility that will allow the public to lodge complaints electronically’

- we have extended and are continuing in close discussion with our counterpart regulators in New South Wales and Victoria to extend the data base to cater for our new role in relation to ILPs including by allowing for new matter types—ILP self assessment audits and ILP review audits—and to enhance its capacity to capture and analyse and report nationally consistent data about law practices. Our systems have concentrated to date on capturing data, including complaints data about practitioners but we want now to capture data about law practices including their corporate structures, size, complaints histories, gross fee incomes, directors and shareholders, the business services they provide other than legal services and the like. We are committed in collaboration with our counterparts interstate to develop systems that will allow us to develop a capacity to undertake increasingly well informed risk assessments and so to use our limited regulatory resources to better effect.
- we have continued to add to and improve our precedent letter and clause bank to allow more efficient document generation and a smoother flow of correspondence generally. That involved updating the precedent documents to accommodate the commencement of the *Legal Profession Act 2007* and the re-numbering of the sections of the Act that govern our work.
- finally, we plan to develop an on-line facility this reporting year that will allow members of the public to make and lodge complaints electronically and allow ILPs to complete and submit their self assessment audit forms electronically.


QUEENSLAND ACTS
2002 VOLUME 3
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Appendices

Appendix 1 The system established under the *Legal Profession Act 2007* for dealing with complaints

We have described the system for dealing with complaints in considerable detail on the Commission's website <www.lsc.qld.gov.au> and in various fact sheets that we are more than happy to make available on request, but it can be readily summarised both in words and diagrammatically in the form of a flow chart.

We note, using the word form first, that the Commission is the sole body authorised to receive formal written complaints under the *Legal Profession Act 2007* and has been since the *Legal Profession Act 2004* commenced on 1 July 2004.

Of course people who have concerns about the conduct of a lawyer or law practice employee often find their way to the Law Society or the Bar Association in the first instance or take their concerns directly to the lawyer or his or her employer and their concerns are resolved informally in this way without ever becoming formal written complaints. Not everyone feels comfortable doing that, however, and it's not always appropriate and doesn't always resolve things. People are always entitled and they remain entitled in those circumstances to make a formal written complaint to the Commission.

'the Commission is the sole body authorised to receive formal written complaints under the *Legal Profession Act 2007*'

Our first task, when we receive a complaint, is to assess it against a series of threshold criteria to decide whether we have jurisdiction to deal with it. The assessment process is sometimes straightforward, but not always. The Act obliges us, for example, to check whether 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 we 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 we 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 we can proceed to deal with the complaint only if the lawyer admits being negligent or the negligence is obvious on its face, and even then any compensation order will be capped at $7,500 unless both parties agree. As a general rule, only a court of competent jurisdiction can decide if a practitioner (or anyone else) has been negligent and to award compensation.

Importantly, we have to assess complaints to decide not only whether we can proceed to deal with them but, if we can, how. The Act gives us different powers and obligations to deal with a complaint depending on whether the conduct complained of, if the complaint were to be proved, would amount to unsatisfactory professional conduct or professional misconduct.

The Commissioner has to decide, in other words, applying the statutory definitions, whether the conduct complained of would if the complaint were proved 'fall short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner' or 'justify a finding that the practitioner is not a fit and proper person to engage in legal practice' and:

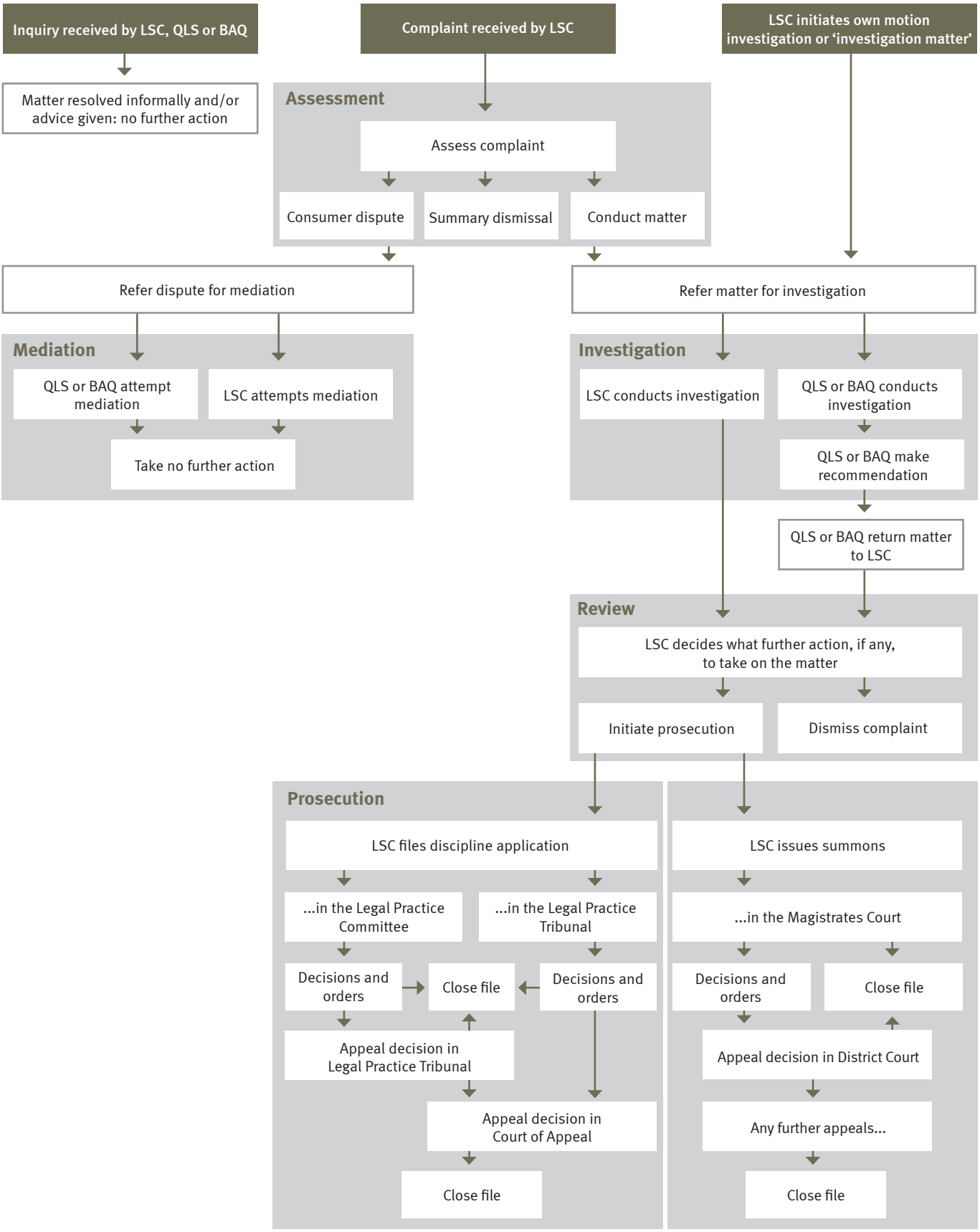
- if the answer to both questions is 'no', then the complaint is assessed to be what the Act calls a consumer dispute and the Commission's powers are limited to suggesting to the parties that they enter into mediation—and either to attempt to mediate the complaint itself or to refer it to the Law Society or Bar Association for mediation, and that's the end of the matter;
- if the answer to either question is 'yes', then the complaint is classed as what we call a conduct complaint 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.

Importantly, if the Commissioner decides to refer a conduct complaint or investigation matter to one of the professional bodies for investigation, the investigation remains subject to our direction and control and they have no authority to decide how those matters should be resolved, only to report their findings and recommendations to the Commissioner for decision.

The Commissioner and the Commissioner alone has power to decide whether the evidence after investigation is sufficient to warrant a disciplinary response and, if so, the power to initiate and prosecute disciplinary proceedings.

The 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' or, in relation to offences, whether there is a reasonable likelihood a court will find an offence to be proved. The Commissioner also has to decide whether 'it is in the public interest' to initiate disciplinary or court 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 disciplinary matters) or the Legal Practice Committee (in relation to less serious disciplinary matters) or a court (in relation to offences); and
- if the answer to either question is 'no', then the Act obliges the Commissioner to dismiss the complaint or investigation matter or in other words, to take no further action in the matter.


Inquiry received by LSC, QLS or BAQ
Matter resolved informally and/or advice given: no further action
Complaint received by LSC
LSC initiates own motion investigation or 'investigation matter'
Assessment
Assess complaint
Consumer dispute
Summary dismissal
Conduct matter
Refer dispute for mediation
Refer matter for investigation
Mediation
QLS or BAQ attempt mediation
LSC attempts mediation
Take no further action
Investigation
LSC conducts investigation
QLS or BAQ conducts investigation
QLS or BAQ make recommendation
QLS or BAQ return matter to LSC
Review
LSC decides what further action, if any, to take on the matter
Initiate prosecution
Dismiss complaint
Prosecution
LSC files discipline application
...in the Legal Practice Committee
...in the Legal Practice Tribunal
Decisions and orders
Close file
Decisions and orders
Appeal decision in Legal Practice Tribunal
Appeal decision in Court of Appeal
Close file
LSC issues summons
...in the Magistrates Court
Decisions and orders
Close file
Appeal decision in District Court
Any further appeals...
Close file

Appendix 2 Staffing the system for dealing with complaints

We have described the system established under the *Legal Profession Act 2007* for dealing with complaints and how it works elsewhere in this report. It comprises not only the Legal Services Commission (the LSC) but also the Client Relations Centre and Investigations Unit of the Professional Standards Unit of the Queensland Law Society (the QLS) and the professional conduct committee of the Bar Association of Queensland (the BAQ). It is best conceived holistically.

Table 2.1 sets out how the system has been staffed since its inception on 1 July 2004 and going into 2007–08.

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

	at 1 July 2004	at 30 June 2005	at 30 June 2006	at 30 June 2007	approved in 2007-08
LSC	8	10.7	17.5	18.2	18.2
QLS	19.95	19.95	19.95	12.72	13.72
BAQ	-	-	-	-	-
Total	27.95	30.65	37.45	30.92	31.92

The figures tell an interesting story. Notably, while the system needed to be supplemented with additional staff initially, primarily to deal with the large backlog of complaints that the Commission inherited in its inception, the total number of staff fell once the backlog was resolved and has now stabilised at a number only slightly greater than the number when the system first commenced.

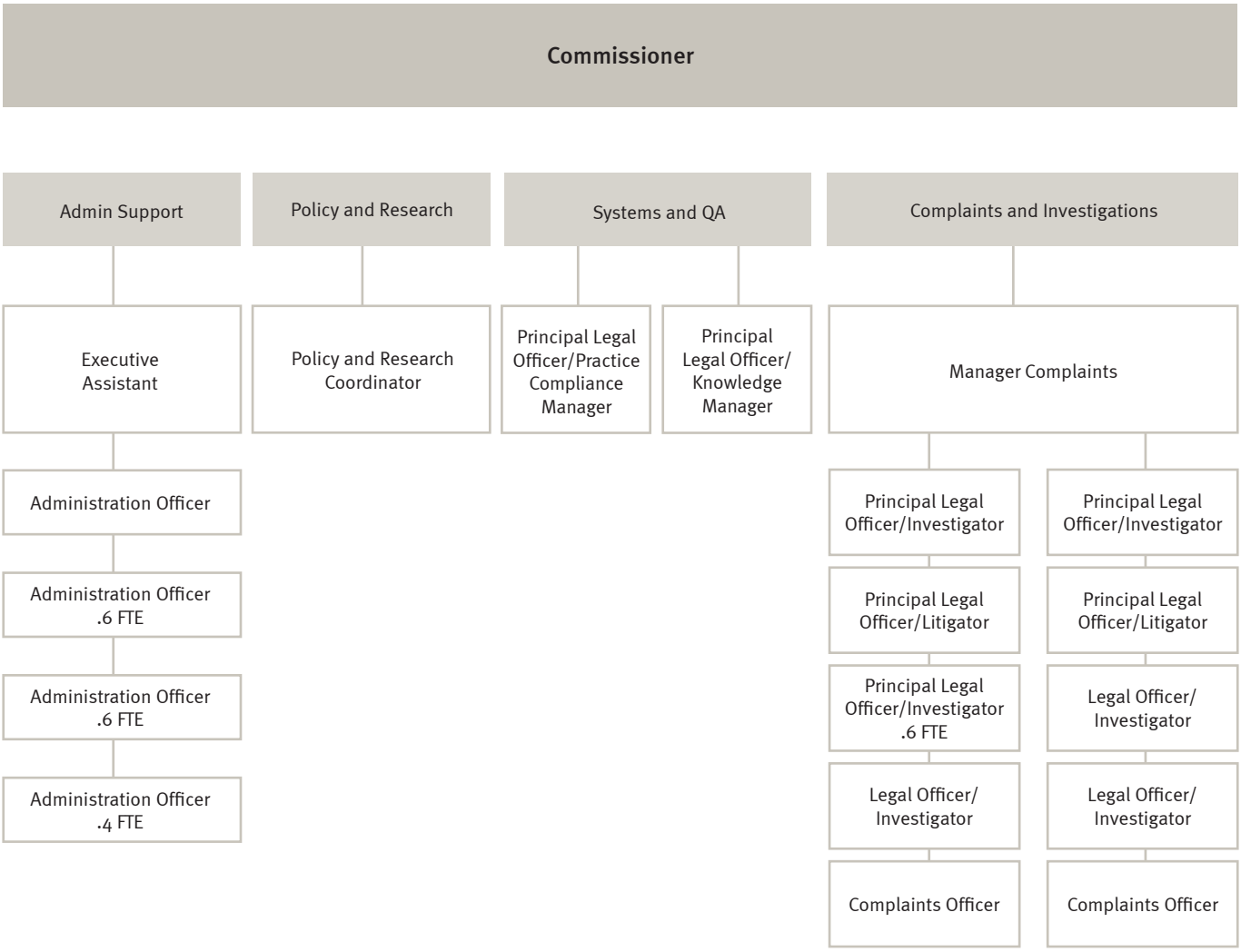
That is good news and comes despite the fact that the Commission was given additional responsibilities in May 2006 under amendments to the *Personal Injuries Proceedings Act 2002* to investigate and prosecute apparent breaches of the restrictions on advertising personal injury services and touting, and despite the fact that the Commission and the Law Society have significant additional responsibilities going into 2007–08 and beyond to monitor and regulate the provision of legal services by incorporated legal practices. It comes despite the fact also that the Commission has added value to the system by developing a capacity that was previously lacking to undertake projects and research.

Notably, too, the reduction in the overall number of staff that came about with the resolution of the backlog during 2005–06 was achieved exclusively by reducing the number of staff at the Law Society and in that way enabled the Commission to take on a greater and more balanced, approximately 50/50 share of the day-to-day work of investigating complaints, in addition to its assessment and review functions.

Notably, finally, the Bar Association continues to deal with the complaints that the Commission refers to it for investigation—by agreement between us, all complaints about barristers, unless there is a good reason why not—entirely on a pro bono basis.

Table 2.2 sets out the Commission's organisational structure going into 2007–08.

Table 2.2
LSC organisational structure going into 2007–08



Appendix 3 Funding the system for dealing with complaints

Table 3.1 sets out the costs in 2006–07 of administering the system established under the *Legal Profession Act 2007* (the Act) for dealing with complaints and discipline.

The system comprises the Legal Services Commission (LSC), those sections of the Queensland Law Society and the Bar Association of Queensland (BAQ) that deal with complaints on referral from the Commission and, for these purposes, the two disciplinary bodies—the Legal Practice Tribunal and the Legal Practice Committee.

The Commission and the disciplinary bodies are funded by direct grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF). The QLS is funded for these regulatory purposes[1] by means of a grant from LPITAF made to the Commission in the first instance and then transferred to the Society pursuant to a Service Level Agreement with the Commission.

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 in accordance with sections 289–290 of the Act.

Table 3.1
The cost of administering the system for dealing with complaints and discipline in 2006–07

	Employee related expenses	All other costs	2006-07 total	By comparison 2005-06 total
LSC	$1,555,397	$936,141 [2]	$2,491,538	$1,839,370
QLS	n/a	n/a	$1,504,835 [3]	$2,048,587
BAQ [4]	-	-	-	-
LPT	$75,798	$10,734	$86,532	$83,776
LPC	$25,312	$6,134	$31,446	$28,637
Total	n/a	n/a	$4,114,351	$4,000,370

1 The QLS is funded by direct grants from LPITAF for purposes of its other regulatory functions including administering the practising certificate regime and conducting trust account investigations.

2 This figure includes 'brief-out' costs (including costs-assessors costs) of $127,701 which obviously can vary significantly from year to year and also one-off fit-out costs this year of $240,427. The figure does not include the monies that were transferred from the LSC to the QLS under the Service Level Agreement (see the main body of the text above, and note iii, below).

3 This figure is the amount that was transferred from the LSC to the QLS in 2006-07 to enable it to meet its obligations under the Service Level Agreement between the LSC and the QLS (see the main body of the text, above). The QLS received $1,039,509 direct from LPITAF of to enable it to fulfil its other regulatory functions under the Act.

4 The BAQ received a grant of $128,170 from LPITAF to enable it to fulfil its various regulatory functions under the Act. The Association advises that it did not apply any of these funds to its functions in relation to complaints and discipline and that those services were provided by members of its Professional Conduct Committee entirely on a pro bono basis.

For completeness, table 3.2 sets out the monies that have been returned to, or are due to return to LPITAF in 2006–07 as a consequence of disciplinary action initiated by the Commission in the disciplinary bodies.

Table 3.2
Monies returned or due to return to LPITAF in 2006–07

	LPT	LPC	Total
Financial penalties ordered	$52,500	$10,600	$63,100
Penalty payments received	$52,000	$5,500	$57,500
Costs ordered, agreed or assessed	$61,370	$5,500	$66,870
Costs payments received	$161,770	$5,250	$167,020

Appendix 4 Statistics

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 2006–07.

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
PIPA	Personal Injuries Proceedings Act 2002
Pre-Act	Complaints lodged prior to the Commission's inception on 1July 2004
Post-Act	Complaints lodged after the Commission's inception on 1July 2004
QLS	Queensland Law Society

1.4 Definition of key terms

The LSC database distinguishes four discrete types of matter—inquiries, complaints, ILP compliance audits and prosecutions, each with various sub-types—as follows:

a) **Inquiries** comprise inquires that made typically by telephone but sometimes in writing, by email or in person including, for example:

- inquiries by legal consumers, other members of the public and sometimes legal practitioners about how to make a complaint or seeking help to make a complaint about a legal practitioner or law practice employee, or queries about how the complaints and disciplinary process works or whether something a legal practitioner has said or done is proper or what it means, and so on. Inquiries might be made of either the LSC, QLS or BAQ;
- informal complaints: concerns or 'complaints' made by legal consumers, other members of the public and sometimes legal practitioners about the conduct of a legal practitioner or law practice employee or some other person over whom the Commission may have jurisdiction that are made other than in writing and which the 'complainant' requests or agrees be dealt with informally, at least in the first instance (on the understanding that the 'complainant' remains entitled to make a formal written complaint if his or her concerns can't be resolved informally). Informal complaints might be made to the LSC, to the QLS or to the BAQ and are typically dealt with as if they were consumer disputes (see below); and
- ethical inquiries: inquiries by solicitors or barristers of the QLS or BAQ respectively as their professional body about their ethical obligations as legal practitioners.

b) **Complaints** comprise formal written complaints that are made and dealt with pursuant to Chapter 4 of the *Legal Profession Act 2007* (the Act) including investigation matters pursuant to section 451(1)(c). The Act requires that complainants make their complaints in writing and to the LSC (and only to the LSC). Complaints are logged on the CMS in the first instance simply as complaints. They are then assessed as falling into one of three mutually exclusive categories and logged accordingly—as summary dismissals, consumer disputes, and conduct matters, as follows:

- **summary dismissals**: complaints that are beyond the Commission's jurisdiction or out of time or that are otherwise dismissed pursuant to section 448;
- **consumer disputes**: complaints that describe disputes between consumers and legal practitioners and / or law practice employees but do not raise an issue of unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or misconduct or the part of a law practice employee. The Act provides that the LSC may try to mediate consumer disputes or alternatively refer them to the QLS or BAQ for mediation (and does not require the QLS or BAQ to report the outcome to the LSC); and
- **conduct matters**: conduct complaints, ILP conduct complaints, investigation matters, PIPA investigation matters and ILP investigation matters, as follows:
  - **conduct complaints**:* complaints (whether or not they also describe consumer disputes) which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct by a legal practitioner (in their capacity as a legal practitioner, but not as a legal practitioner director of an ILP) or misconduct by a law practice employee or that the person subject to complaint is guilty of an offence (other than an offence in relation to ILPs);
  - **ILP conduct complaints**:* complaints about the conduct of legal practitioner directors of ILPs (in their capacity as legal practitioner directors of ILPs) which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the Act or that a legal practitioner director or other director, officer, employee or agent of an ILP has committed an offence pursuant to those or other ILP specific sections of the Act;
  - **investigation matters**:* matters other than PIPA and ILP related matters (see below) that the LSC decides to investigate of its own motion because it suspects a legal practitioner (in his or her capacity as a legal practitioner, but not as a legal practitioner director of an ILP) has engaged in conduct in which, if the suspicions are proved, would justify a finding of unsatisfactory professional conduct or professional misconduct or that some other person over whom it has jurisdiction is guilty of an offence (other than offences in relation to PIPA or ILPs). Investigation matters are logged on the CMS as if the Commissioner had made a conduct complaint;
  - **PIPA investigation matters**: matters that the LSC decides to investigate of its own motion because it suspects a legal practitioner or other person has breached the restrictions on the advertising of personal injury services or touted for personal injury services in contravention of the Personal Injuries Proceedings Act 2002; and
  - **ILP investigation matters**:* matters that the LSC decides to investigate of its own motion because it suspects a legal practitioner director of an ILP has engaged in conduct which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the Act or that a legal practitioner director or other director, officer, employee or agent of an ILP has committed an offence pursuant to those or other ILP specific sections of the Act.

  The Act requires the LSC to investigate conduct matters or alternatively to refer them to the QLS or BAQ for investigation in which case it requires the QLS and BAQ to report their findings and recommendations to the LSC for review and decision as to what further action is appropriate, if any.

c) **ILP compliance audits** comprise internal (self assessment) and external (review) audits, as follows:

- **ILP self-assessment audits**: internal audits undertaken by or on behalf of legal practitioner directors of ILPs to assess their compliance with their obligation under section 117(3) of the Act to ensure that the ILP keeps and implements appropriate management systems. The LSC requires ILPs to undertake self-assessment audits immediately or shortly after they notify the QLS (under section 114 of the Act) of their intention to engage in legal practice and periodically thereafter to assess their continuing compliance;
- **ILP review audits**: external audits undertaken by regulatory authorities to assess the validity of self-assessment audits undertaken by the legal practitioner directors of ILPs. Review audits are undertaken by the LSC or by the QLS on referral from the LSC in which case the QLS reports its findings and recommendations to the LSC for its consideration as to what further action, if any, is appropriate; and

d) **Prosecutions** comprise conduct matters (including ILP and PIPA related conduct matters) that the LSC finalises after investigation on the basis that the Commissioner believes the evidence satisfies two criteria, viz.:

- 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 or a court that an ILP should be banned, that a person should be disqualified from managing an ILP or that a person is guilty of an offence under the Act; and
- that it is in the public interest that the matter be determined by a disciplinary body or court, and hence initiates proceedings in the appropriate disciplinary body or court.

* *Note that the terms 'conduct complaint' and 'investigation matter', and 'ILP conduct complaint' and 'ILP investigation matter', are defined such that a conduct complaint or investigation matter about the conduct of a legal practitioner who happens to be a legal practitioner director of an ILP may or may not count as an ILP conduct complaint or ILP investigation matter. It will count as an ILP conduct complaint or ILP investigation matter if and only if the conduct subject to investigation is conduct in the legal practitioner's capacity as a legal practitioner director of an ILP – that is to say, conduct that would, if proved, fall foul not of his or her obligations as a legal practitioner per se, but of his or her obligations under chapter 2, part 2.7 or other ILP specific provisions of the Act.*

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 the overwhelming majority of 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.

2.1.1 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-handing process that yields definitive and accurate information about the complaint (because the information about a complaint is only fully determined at this stage of the process).

Importantly, we count complaints under the consolidated category 'complaints' only until such time as complaints have been assessed and either summarily dismissed or assessed to be consumer disputes or conduct complaints, and count them subsequently under those categories. That is because the three types of complaints can be expected to have quite different characteristics by a 'length of time opened' measure, for example, and it would misleading to report our performance using only the one consolidated category 'complaints'.

Similarly, we count investigation matters separately from conduct complaints for most, although not all, purposes rather than counting both types of conduct matter under that one consolidated category. That is because those matters can be expected to have quite different characteristics by an 'outcome' measure.

2.1.2 ILP compliance audits

The Act gives law practices in Queensland a wider range of options for structuring their business and in particular the option to provide legal services as incorporated legal practices (ILPs) and multi-disciplinary partnerships (MDPs). The Act came into effect on 1 July 2007 and we look forward to reporting our performance in relation to regulating the provision of legal services by ILPs and MDPs in our next annual report, for reporting year 2007–08.

We can say at this stage however that we have done a lot of work both in-house and in close cooperation with our counterpart regulators New South Wales and Victoria to develop not only a consistency of approach to the exercise of our regulatory responsibilities but a consistency of approach also to the way we capture and report data about the provision of legal services by ILPs and MDPs and the ways we regulate it. We have outlined the key concepts that will underpin that reporting framework in the previous section, at 1.4: Definition of key terms.

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

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

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 Profession analysis

3.1 Profession analysis—Queensland solicitors

We have used 1 July 2006 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 2006-07 will be profiled against the solicitor's attributes as they were recorded at 1 July 2006.

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

Solicitors—Employment status by practising certificate type

	Practising certificate type					
Employee position	Conditional	Employee	Principal	Total 2006–07	Total 2005–06	Total 2004–05
Academic	3	23	-	26	19	12
Community Legal	40	63	19	122	95	88
Consultant	7	232	5	244	234	223
Corporate	78	404	5	487	436	368
Cost Assessor	-	3	4	7	7	8
Employee	942	1893	2	2,837	2,309	2,567
Government	35	83	1	119	98	66
Government Agency	2	10	-	12	11	10
Law Administrator	-	-	-	-	1	-
Legal Aid	23	92	1	116	115	111
Local Government	13	31	1	45	41	37
Locum Tenens	-	19	-	19	21	19
Managing Partner	-	-	324	324	333	323
Not Practising	30	48	-	78	74	77
Partner	1	9	967	977	1,013	1,016
Sole Practitioner	1	2	963	966	945	925
Total	1,175	2,912	2,292	6,379	6,152	5,850

Solicitors—Type of law practice by type of practising certificate

	Practising certificate type					
Employee position	Conditional	Employee	Principal	Total 2006–07	Total 2005–06	Total 2004–05
Community legal centre	40	62	19	121	95	88
Educational	-	1	-	1	1	0
Government agency	3	9	-	12	11	10
Interstate in Queensland	2	6	3	11	2	0
Law Society	3	11	-	14	12	10
Legal firm—non-Queensland	10	48	9	67	129	187
Legal firm—other Queensland	23	92	1	116	-	-
Legal firm—Queensland	939	2,083	2,247	5,269	5,219	4,867
Non-firm	30	67	-	97	94	96
Non-legal firm	125	533	11	669	589	591
Solicitors with RP and PI	-	-	2	2	0	1
Total	1,175	2,912	2,292	6,379	6,152	5,850

3.2 Profession analysis—Queensland Law practices

There were 1,294 Queensland law practices as at 1 July 2006 with practising certificate holders (compared to 1269 at 1 July 2005) and these accounted for 1,400 of the law offices in Queensland (compared to 1386 at 1 July 1005).

3.3 Profession Analysis—Queensland Barristers

We have used 1 July 2006 as the reference point for the analysis because that is the renewal date for practising certificates for barristers in Queensland—hence complaints about barristers during 2006–07 will be profiled against the barrister's attributes as they were recorded at 1 July 2006.

There were 853 barristers with a practising certificate as at 1 July 2006.

3.4 Profession Analysis—Queensland Legal Practitioners

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

3.5 Profession Analysis—Queensland Law Practice Employees/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

4.1 Summary by agency and year

	LSC	QLS	Total 2006–07	Total 2005–06	Total 2004–05
Client inquiries from public received during year	1,671	4,309	5,980	8,696	7,734
Ethical inquiries from practitioners during year	N/A	2,561	2,561	N/A	N/A
Total inquiries received during year	1,671	6,870	8,541	8,696	7,734

4.2 Inquiries by area of law

	No. of Inquiries	% of total 2006–07	% of total 2005–06	% of total 2004–05
Conveyancing	1,299	21.72	15.50	14.34
Family Law	1,152	19.26	15.32	16.03
Personal injuries /Workcover litigation	616	10.30	9.96	12.37
Deceased estates or trusts	549	9.18	7.39	6.99
Litigation	370	6.19	5.79	5.05
Commercial /Company Law	300	5.02	2.74	2.39
Criminal Law	218	3.65	3.24	3.40
Property Law	133	2.22	2.37	3.48
All Other 'areas of law' combined	1343	22.46	37.69	35.95
Total	5,980			

4.3 Inquiries by nature of the inquiry

Nature of inquiry	No. of inquiries	% of total 2006-07	% of total 2005-06	% of total 2004-05
Costs	1,459	24.40	19.95	26.57
Quality of service	1,287	21.52	14.50	11.75
Advice	1,277	21.35	32.16	-
Ethical matters	609	10.18	8.41	11.33
Communication	350	5.85	4.75	5.44
Documents	172	2.88	2.32	2.64
Trust funds	150	2.51	2.23	1.91
All other 'natures of inquiry' combined	676	11.31	15.67	39.33
Total	5,980			

4.4 Inquiries by outcome

Outcome	No. of inquiries	% of total 2006-07	% of total 2005-06	% of total 2004-05
Provided information about the legal system	946	15.82	18.18	27.93
Enquirer satisfied	938	15.69	10.36	14.35
Provided referral for legal advice or other assist	873	14.60	10.32	11.64
Recommended direct approach to firm about concerns	741	12.39	9.21	10.24
Referred to LSC	655	10.95	5.72	-
Listened to callers concerns	530	8.86	5.46	5.72
Provided complaint form	496	8.29	5.83	11.52
Lost contact with complainant/enquirer	328	5.48	5.22	6.09
Provided information about LSC to a legal practitioner	23	0.38	20.79	-
All other 'outcomes' combined	450	7.54	8.91	12.52
Total	5,980			

4.5 Inquiries by inquirer type

Inquirer type	No. of inquiries	% of total 2006-07	% of total 2005-06	% of total 2004-05
Client/former client	4,240	70.90	50.11	42.84
Non client	646	10.80	8.29	16.97
Third party	610	10.20	8.23	-
Solicitor	220	3.68	27.02	6.50
All other 'inquirer types' combined	264	4.42	6.35	33.64
Total	5,980			

5. Complaints

5.1 Complaints—On hand summary

Complaint type	As at 1 July 04	As at 1 July 05	As at 1 July 06	As at 30 June 07
Consumer dispute	273	88	3	8
Conduct matter	665	818	401	409
Under assessment	N/A	26	96	60
Total	938	932	500	477
Pre-Act component	938	428	29	4
Post-Act component	0	504	471	473

5.2 Complaints—Summary (post-Act only)

Complaints/investigation matters	2006-07	2005-06	2004-05
Matters on hand at 1 July	471	503	0
Plus matters opened during the year	1,308	1,147	1,485
Includes Complaints Received from Public	1,109	1,074	1,450
Includes Investigation matters opened (non-PIPA)	101	73	35
Includes Investigation matters opened (PIPA)	98	n/a	n/a
Less summary dismissals	433	365	-
Less consumer disputes closed	83	234	479
Less conduct matters closed	786	580	502
Includes Complaints Received from Public	600	-	-
Includes Investigation matters (non-PIPA)	91	-	-
Includes Investigation matters (PIPA)	95	-	-
Total complaints/investigation matters closed	1,302	1,179	981
Complaints/investigation matters on hand at 30 June	477	471	504

5.3 Complaints—Breakdown of complaints on-hand at 30 June (post-Act only)

Complaints/investigation matters	2006-07	2005-06
Under assessment/awaiting assessment	41	64
Under assessment/awaiting further information	19	32
Consumer disputes	8	3
Conduct complaints	344	320
Investigation matters	65	52
Total conduct matters as at 30 June	409	372
Total complaints as at 30 June	477	471

5.4 Complaints—Timeliness (post-Act only)

Complaint type	Matters completed	Time band	Actual %	Cumulative %	Target %	Median days open (2006-07)	Median days open (2005-06)
Conduct matters	578	‹ 7 months	73.54	73.54	80	119	175
	107	7–15 months	13.61	87.15	100	-	-
	101	› 15 months	12.85	100	0	-	-
Consumer disputes	78	‹ 2 months	93.98	93.98	80	15	26
	2	2–5 months	2.41	96.39	100	-	-
	3	› 5 months	3.61	100	0	-	-
Summary dismissals	390	‹ 1 month	90.07	90.07	80	14	18
	16	1–2 months	3.7	93.76	100	-	-
	27	› 2 months	6.24	100	0	-	-

5.5 Complaints—Assessment summary

	Total	Percentage (2006-07)	Percentage (2005-06)
New complaints/investigation matters allocated for assessment during the year	1,099	-	-
Of these:			
Currently under assessment as at 30 June 2007	18	1.64	8.11
Number of new matters assessed this year	1,081	98.36	91.89
Of these:			
Number summarily dismissed	401	37.10	31.59
Number assessed to be consumer disputes	79	7.31	17.08
Number assessed to be conduct matters	601	55.60	51.33

5.6 Complaints—Consumer disputes referred to the professional bodies (post-Act only)

Consumer disputes	Total 2006-07		Total 2005-06		Total 2004-05
Referred to QLS	3	3%	7	3%	143
Referred to BAQ	0	0	0	-	-
Total	3	3%	7	3%	143
Retained at LSC	93	97%	198	97%	-

5.7 Complaints—Conduct matters referred to the professional bodies (post-Act only)

Conduct matters	Total 2006-07		Total 2005-06		Total 2004-05
Referred to QLS	372	42%	311	48%	451
Referred to BAQ	18	2%	26	4%	14
Total	390	44%	337	52%	465
Retained at LSC	492	56%	314	48%	-

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

Conduct matters	Total 2006-07	Total 2005-06	Total 2004-05
Returned from QLS	355	672	559
Returned from BAQ	12	29	3
Total	367	701	562

** Note: The 2006-07 figures only include post-Act complaints.
The other years include both pre-Act and post-Act complaints.

5.9 Complaints—Differences between recommendations and closure for conduct matters returned by the professional bodies for review (Post-Act only)

Conduct matters	Total 2006-07	% of returns
Returned from QLS	46	12.96
Returned from BAQ	1	8.50
Total	47	

5.10 Complaints—Non-PIPA Investigation matters opened and closed

Investigation matters	Total 2006-07	Total 2005-06	Total 2004-05
On hand at start of year	52	24	0
Opened during year	101	73	35
% of new complaints/investigation matters opened	7.72	6.36	2.36
Closed during year	91	45	11
On hand at end of year	62	52	24

5.11 Complaints—PIPA Investigation matters opened and closed

Investigation matters	Total 2006-07
On hand at start of year	0
Opened during year	98
% of new complaints/investigation matters opened	7.49
Closed during year	95
On hand at end of year	3

5.12 Complaints–Avoidable complaints summary (Post-Act only)

The following table records for every consumer dispute and conduct matter that the Commission has closed over the year to date, whatever its merits, whether in the complaint-handler's opinion the respondent could have done something to pre-empt or avoid the consumer dispute or conduct matter arising in the first place. Note that the table does not count complaints that were summarily dismissed.

Of the number of complaint/investigation matters closed since 1 July, excluding summary dismissals:	Number	%
Number assessed to be Unavoidable	221	25.49
Number assessed to be Avoidable	646	74.51
Total	867	

5.13 Complaints—Unavoidable complaints summary (Post-Act only)

The following table records for every consumer dispute and conduct matter that the Commission has closed over the year, and that in the complaint-handler's opinion was unavoidable, the reason why the complaint was considered unavoidable:

The consumer dispute/conduct matter was unavoidable because	%
a) the complainant had ulterior motives	17.9
b) the complainant wouldn't take advice	3.11
c) the complainant had unrealistic expectations and/or made unreasonable demands	22.96
d) the complainant misunderstood the obligations of practitioners acting for the other side	17.51
e) the 'problem' is inherent in the adversarial system of justice	5.06
f) the complaint was baseless and could not have been avoided (eg: by better communication)	14.4
g) of some reason other than the above	20.62

5.14 Complaints—Avoidable complaints summary (Post-Act only)

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

Category	%
Work Practices	31.82
Communication	28.36
Costs	17.71
Trust Accounts	6.39
Timeliness	5.33
Conflict of interest	3.86
Supervision	2.53
Undertakings	1.73
Liens and transfers	1.46
Record keeping	0.8

6. Consumer disputes finalised in 2006-07

Note: These figures do not include data in relation to any pre-act (backlog) complaints (complaints that were opened on or before 30/6/2005).

6.1 Consumer disputes by area of law

Area of law	No. of matters	% of total 2006-07	% of total 2005-06	% of total 2004-05
Conveyancing	29	34.94	17.87	17.87
Family Law	17	20.48	18.72	18.69
Criminal Law	7	8.43	5.53	7.23
Litigation	6	7.23	7.66	7.37
Commercial /Company Law	5	6.02	6.38	4.91
Leases /Mortgages	5	6.02	-	-
Deceased estates or trusts	4	4.82	12.77	8.87
Personal injuries /Workcover litigation	4	4.82	9.79	11.87
Property Law	3	3.61	7.23	-
All other 'areas of law' combined	3	3.61	19.57	15.42
Total	83			

6.2 Consumer disputes by nature of matter

Nature of matter	No. of matters	% of total 2006-07	% of total 2005-06	% of total 2004-05
Costs	34	40.96	40.00	31.38
Quality of service	20	24.10	19.57	15.83
Ethical matters	11	13.25	20.43	21.83
Communication	10	12.05	10.64	13.10
Documents	8	9.64	4.68	6.14
All other 'natures of matter' combined	0	-	4.68	10.92
Total	83			

6.3 Consumer disputes by type of complainant

Type of complainant	No. of matters	% of total 2006-07	% of total 2005-06	% of total 2004-05
Client/Former client	68	81.93	76.17	83.36
Non client	6	7.23	8.09	5.32
Solicitor for client	3	3.61	2.13	3.27
Third party	2	2.41	8.09	-
Solicitor	2	2.41	3.40	5.18
All other 'types of complainant' combined	2	2.40	2.13	2.86
Total	83			

6.4 Consumer disputes by outcome

Outcome	No. of matters	% of total 2006-07	% of total 2005-06	% of total 2004-05
Matter unable to be resolved	35	42.17	31.91	24.69
Resolved - consumer satisfied	25	30.12	18.30	28.79
Complaint unfounded	12	14.46	37.02	21.01
Recommended direct approach to firm about concerns	5	6.02	2.13	-
Withdrawn	5	6.02	6.81	4.37
Outside of jurisdiction	1	1.20	2.13	4.64
All other 'outcomes' combined	-	-	1.70	10.91
Total	83			

6.5 Consumer disputes by respondent type

Type of respondent	No. of matters	% of total 2006-07	% of total 2005-06	% of total 2004-05
Solicitor	82	98.78	96.17	96.32
Law practice employee	1	1.22	1.28	0.41
Barrister	0	-	0.85	2.05
Other	0	-	1.70	1.09
Total	83			

6.6 Consumer disputes regarding solicitors as a proportion of the profession

	Solicitors	Law practices	Law offices
Size of profession as at 1/7/2006	6,379	1,294	1,400
Number of solicitors/law practices as respondents 2006-07	70	66	66.
Percentage	1.10	5.10	4.71
Number of solicitors/law practices as respondents 2005-06	182	169	174
Percentage	2.96	13.33	-
Number of solicitors/law practices as respondents 2004-05	501	409	432
Percentage	8.56	33.04	12.56

6.7 Solicitors subject to one or more consumer disputes

Number of consumer disputes	No of solicitors 2006-07	No of solicitors 2005-06	No of solicitors 2004-05
1 matter	65	166	401
2 matters	4	14	80
3 matters	1	1	14
4 matters	0	1	4
5 matters	0	0	1
Between 6 and 9	0	0	1
Between 10 and 14	0	0	0
15 and › matters	0	0	0

6.8 Number of law practices subject to one or more consumer disputes

Number of consumer disputes	No of law practices 2006-07	No of law practices 2005-06	No of law practices 2004-05
1 matter	57	142	259
2 matters	7	20	102
3 matters	2	5	21
4 matters	0	1	14
5 matters	0	1	7
Between 6 and 9	0	0	3
Between 10 and 14	0	0	3
15 and › matters	0	0	0

6.9 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 (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
Male	4011	62.88	52	74.29	1.30	3.90	10.73
Female	2368	37.12	18	25.71	0.76	1.24	4.28

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

6.10 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 (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
‹ 25	214	3.35	1	1.43	0.47	0.48	2.42
25 -29	1,097	17.17	8	11.43	0.73	0.98	2.80
30 - 34	1,075	16.84	6	8.57	0.56	2.30	5.59
35 - 39	924	14.49	9	12.86	0.97	2.41	8.53
40 - 44	762	11.96	11	15.71	1.44	3.51	10.88
45 - 49	794	12.46	12	17.14	1.51	3.57	11.10
50 - 54	656	10.32	8	11.43	1.22	5.04	15.25
55 - 59	491	7.68	11	15.71	2.24	4.20	12.56
60 - 64	231	3.62	4	5.71	1.73	4.78	11.05
65 - 69	97	1.52	0	0.00	0.00	6.82	10.00
70 & ›	38	0.58	0	0.00	0.00	8.11	7.32

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

6.11 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 (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
‹5	2,159	33.85	14	20.00	0.65	1.51	3.65
5 - 9	1,123	17.60	7	10.00	0.62	2.24	8.43
10 - 14	889	13.94	14	20.00	1.57	4.68	9.49
15 - 19	700	10.97	11	15.71	1.57	3.50	13.03
20 -24	546	8.56	7	10.00	1.28	3.89	12.11
25 - 29	495	7.76	7	10.00	1.41	4.13	17.60
30 -34	230	3.61	7	10.00	3.04	4.66	12.17
35 - 39	141	2.21	2	2.86	1.42	2.33	8.94
40 and ›	96	1.50	1	1.43	1.04	9.76	8.70

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

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

Practicing certificate type	Size of profession	% of total	No of respondent solicitors	% of total respondent solicitors	% of profession representation (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
Principal	2,292	35.93	7	10.00	0.31	5.68	15.27
Employee	2,912	45.65	14	20.00	0.48	1.08	3.87
Conditional	1,175	18.42	45	64.29	3.83	0.38	2.50
Not practising at start of year	0	-	4	5.71	-	-	-

* 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 2006

6.13 Solicitors subject to one or more consumer disputes by location of their law practice

Office location	Size of profession law practices	% of total	No of respondent law practices	% of total respondent law practices	% of profession representation (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
Brisbane City	261	18.64	13	19.70	4.98	16.86	35.46
Brisbane North Suburbs	219	15.64	11	16.67	5.02	10.91	29.44
Brisbane South Suburbs	217	15.50	14	21.21	6.45	11.37	32.84
Gold Coast	229	16.36	8	12.12	3.51	13.90	31.13
Ipswich Region	52	3.71	2	3.03	3.85	8.00	29.37
Toowoomba Region	56	4.00	0	0.00	0.00	10.53	27.59
Western Queensland	7	0.50	0	0.00	0.00	0.00	28.57
Sunshine Coast	141	10.07	8	12.12	5.67	12.86	36.03
Hervey Bay to Gladstone Region	42	3.00	4	6.06	9.52	20.45	47.37
Rockhampton Region	31	2.21	0.00	0.00	7.14	27.59	-
Mackay Region	24	1.71	1	1.52	4.17	8.00	23.08
Cairns Region	76	5.43	2	3.03	2.63	10.87	34.09
Townsville Region	44	3.14	3	4.55	6.82	7.14	29.85
Norfolk Island	1	0.07	0	0.00	0.00	0.08	-

* This table counts, when law practices 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

6.14 Solicitors subject to one or more consumer disputes by size of their law practice (number of partners)

Size of law practice	Size of profession law practice	% of total	No of respondent law practices	% of total respondent law practices	% of profession representation (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
No primary partner	9	0.70	2	3.03	22.22	142.86	142.86
Sole practitioner	970	74.96	43	65.15	4.43	9.61	9.62
2 partners	163	12.60	8	12.12	4.91	18.02	17.92
3 partners	60	4.64	5	7.58	8.33	23.33	23.73
4 partners	26	2.01	2	3.03	7.69	32.00	32.00
5 partners	10	0.77	0	0.00	0.00	30.00	30.00
6 – 9 partners	36	2.78	5	7.58	13.89	20.51	20.51
10 – 14 partners	7	0.54	1	1.52	14.29	42.86	42.86
15 and ›	13	1.00	0	0.00	0.00	16.67	16.67
Not Practising as at 1/7/2006						-	-

* This table counts law practices only once even if they have more than one office
* 10% means that 1 in every 10 law offices within this grouping were subject to a consumer dispute

7. Conduct matters finalised in 2006-07

Note: These figures do not include data in relation to any pre-act (backlog) complaints (complaints that were opened on or before 30/6/2005). The Commission inherited 983 such complaints on its inception on 1 July 2004. It finalised 509 of them in 2004-05, a further 400 in 2005-06, a further 25 in 2006-07, leaving 4 still to be resolved at 1 July 2007.

7.1 Conduct complaints by area of law

Area of law	No. of matters	% of total 2006-07
Family Law	124	20.67
Conveyancing	119	19.83
Personal injuries /Workcover litigation	58	9.67
Litigation	57	9.50
Property Law	48	8.00
Commercial /Company Law	41	6.83
Deceased estates or trusts	40	6.67
Criminal Law	29	4.83
Leases /Mortgages	23	3.83
Bankruptcy and insolvency	10	1.67
Building /Construction Law	6	1.00
Industrial Law	4	0.67
All other 'areas of law' combined	41	6.84
Total	600	

7.2 Non-PIPA investigation matters by area of law

Area of law	No. of matters	% of total 2006-07	% of total 2005-06
Conveyancing	25	27.47	8.89
Trust account breaches	16	17.58	20.00
Personal injuries /Workcover litigation	7	7.69	4.44
Litigation	5	5.49	8.89
Administrative Law	4	4.40	8.89
Conduct not in the practice of law	3	3.30	8.89
Commercial /Company Law	2	2.20	-
Leases /Mortgages	2	2.20	4.44
Bankruptcy and insolvency	1	1.10	-
Criminal Law	1	1.10	11.11
Deceased estates or trusts	1	1.10	8.89
Family Law	1	1.10	2.22
Immigration	1	1.10	-
All other 'areas of law' combined	22	24.18	13.34
Total	91		

7.3 Conduct complaints by nature of matter

Nature of matter	No. of matters	% of total 2006-07
Ethical matters	225	37.50
Quality of service	133	22.17
Costs	107	17.83
Communication	55	9.17
Trust funds	22	3.67
Compliance	21	3.50
Documents	17	2.83
PIPA	7	1.17
Personal conduct	6	1.00
All other 'natures of matter' combined	7	1.16
Total	600	

7.4 Non-PIPA investigation matters by nature of matter

Nature of matter	No. of matters	% of total 2006-07	% of total 2005-06
Costs	52	57.14	8.89
Ethical matters	15	16.48	26.67
Trust funds	9	9.89	26.67
Compliance	8	8.79	24.55
Personal conduct	3	3.30	6.67
Quality of service	2	2.20	4.44
Communication	1	1.10	-
All other 'natures of matter' combined	1	1.10	2.22
Total	91		

7.5 Conduct complaints by type of complainant

Nature of complaintant	No. of matters	% of total 2006-07
Client/Former client	399	66.50
Solicitor	61	10.17
Non client	57	9.50
Solicitor for client	35	5.83
Third Party	23	3.83
Government	9	1.50
QLS	7	1.17
Barrister	5	0.83
All other 'types of complainant' combined	4	0.68
Total	600	

7.6 Conduct complaints by outcome

Outcome	No. of matters	% of total 2006-07
No reasonable likelihood (274(1)(a))	405	67.50
No public interest (274(1)(b))	114	19.00
Referred to LPT (276)	37	6.17
Withdrawn (s260)	29	4.83
Referred to LPC (276)	5	0.83
Referred to other investigative process	4	0.67
All other 'outcomes' combined	6	1.00
Total	600	

7.7 Non-PIPA investigation matters by outcome

Outcome	No. of matters	% of total 2006-07	% of total 2005-06
No public interest (274(1)(b))	47	51.65	16.28
No reasonable likelihood (274(1)(a))	31	34.07	39.53
Referred to LPC (276)	2	2.20	20.93
Referred to LPT (276)	2	2.20	18.60
Referred to other investigative process	1	1.10	-
Withdrawn (s260)	1	1.10	2.33
All other 'outcomes' combined	7	7.69	2.33
Total	91		

7.8 PIPA investigation matters by outcome

Outcome	No. of matters	% of total 2006-07
No public interest (274(1)(b))	89	93.68
No reasonable likelihood (274(1)(a))	6	6.32
Total	95	

7.9 Conduct matters by respondent type

Type of respondent	No. of matters	% of total 2006-07	% of total 2005-06	% of total 2004-05
Solicitor	731	93.00	88.85	92.63
Other	28	3.56	5.73	3.68
Barrister	17	2.16	3.99	6.14
Law practice employee	10	1.27	1.33	0.95
Total	786			

7.10 Conduct matters regarding solicitors as a proportion of the profession

	Solicitors	Law Practices	Law Offices
Size of profession as at 1/7/2006	6,379	1,294	1,400
Number of solicitors/law practices as respondents 2006-07	527	428	442
Percentage	8.26	33.08	31.57
Number of solicitors/law practices as respondents 2005-06	543	459	470
Percentage	8.83	36.20	33.94
Number of solicitors/law practices as respondents 2004-05	450	384	397
Percentage	7.69	31.02	29.80

7.11 Solicitors subject to one or more conduct matters

Number of conduct matters	No of solicitors 2006-07	No of solicitors 2005-06	No of solicitors 2004-05
1 matter	423	425	365
2 matters	73	75	64
3 matters	15	21	17
4 matters	8	9	2
5 matters	5	7	0
Between 6 and 9	2	3	1
Between 10 and 14	1	3	0
15 and › matters	0	0	1

7.12 Number of law practices subject to one or more conduct matters

Number of conduct matters	No of law practices 2006-07	No of law practices 2005-06	No of law practices 2004-05
1 matter	283	294	270
2 matters	86	85	70
3 matters	29	43	26
4 matters	14	14	10
5 matters	9	10	2
Between 6 and 9	6	10	5
Between 10 and 14	1	2	0
15 and › matters	0	1	1

7.13 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 (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
Male	4011	62.88	457	86.72	11.39	11.57	9.78
Female	2368	37.12	70	13.28	2.96	3.81	3.57

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

7.14 Solicitors subject to one or more conduct matters by age

Age group	Size of profession	% of total	No of respondent solicitors	% of total respondent solicitors	% of profession representation (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
‹ 25	214	3.35	2	0.38	0.93	0.96	0.97
25 -29	1,097	17.17	33	6.26	3.01	2.34	1.77
30 - 34	1,075	16.84	48	9.11	4.47	5.71	5.11
35 - 39	924	14.49	75	14.23	8.12	8.18	6.82
40 - 44	762	11.96	80	15.18	10.50	10.39	9.20
45 - 49	794	12.46	97	18.41	12.22	13.78	10.84
50 - 54	656	10.32	80	15.18	12.20	14.80	13.44
55 - 59	491	7.68	70	13.28	14.26	13.05	13.04
60 - 64	231	3.62	30	5.69	12.99	13.40	11.58
65 - 69	97	1.52	9	1.71	9.28	11.36	8.33
70 & ›	38	0.58	3	0.57	7.89	10.81	17.07

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

7.15 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 (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
‹5	2,159	33.85	76	14.42	3.52	3.12	2.79
5 - 9	1,123	17.60	71	13.47	6.32	9.24	6.69
10 - 14	889	13.94	101	19.17	11.36	9.93	9.02
15 - 19	700	10.97	81	15.37	11.57	12.18	11.24
20 -24	546	8.56	78	14.80	14.29	14.10	11.13
25 - 29	495	7.76	63	11.95	12.73	16.75	14.25
30 -34	230	3.61	40	7.59	17.39	15.25	14.78
35 - 39	141	2.21	12	2.28	8.51	9.30	17.07
40 and ›	96	1.50	5	0.95	5.21	13.41	10.14

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

7.16 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 (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
Principal	2,292	35.93	385	73.06	16.80	16.04	13.04
Employee	2,912	45.65	90	17.08	3.09	3.77	2.99
Conditional	1,175	18.42	19	3.60	1.62	1.26	1.73
Not practising at start of year	0	-	33	6.26	-	-	-

* 10% means that 1 in every 10 solicitors within this grouping were subject to a conduct matter
* 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 2006

7.17 Solicitors subject to one or more conduct matters by location of their law practice

Office location	Size of profession law practices	% of total	No of respondent law practices	% of total respondent law practices	% of profession representation (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
Brisbane City	261	18.64	103	23.30	39.46	39.85	42.33
Brisbane North Suburbs	219	15.64	55	12.44	25.11	26.36	21.50
Brisbane South Suburbs	217	15.50	71	16.06	32.72	33.65	28.36
Gold Coast	229	16.36	77	17.42	33.77	40.81	32.08
Ipswich Region	52	3.71	11	2.49	21.15	24.00	20.83
Toowoomba Region	56	4.00	14	3.17	25.00	24.56	22.41
Western Queensland	7	0.50	2	0.45	28.57	11.11	28.57
Sunshine Coast	141	10.07	43	9.73	30.50	37.14	30.88
Hervey Bay to Gladstone Region	42	3.00	22	4.98	52.38	34.09	39.47
Rockhampton Region	31	2.21	7	1.58	22.58	17.86	13.79
Mackay Region	24	1.71	8	1.81	33.33	32.00	23.08
Cairns Region	76	5.43	13	2.94	17.11	30.00	22.39
Townsville Region	44	3.14	16	3.62	36.36	39.13	29.55
Norfolk Island	1	0.07	-	0.00	0.00	0.00	0.08

* This table counts, when law practices 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 conduct matter

7.18 Solicitors subject to one or more conduct matters by size of their law practice (number of partners)

Size of law practice	Size of profession law practices	% of total	No of respondent law practices	% of total respondent law practices	% of profession representation (2006-07)*	% of profession representation (2005-06)*	% of profession representation (2004-05)*
No primary partner	9	0.70	0.00	0.00	0.00	-	-
Sole practitioner	970	74.96	273	61.76	28.14	27.56	22.03
2 partners	163	12.60	49	11.09	30.06	43.93	33.72
3 partners	60	4.64	28	6.33	46.67	33.90	47.17
4 partners	26	2.01	17	3.85	65.38	52.00	35.71
5 partners	10	0.77	3	0.68	30.00	90.00	77.78
6 – 9 partners	36	2.78	20	4.52	55.56	53.85	60.53
10 – 14 partners	7	0.54	6	1.36	85.71	57.14	57.14
15 and ›	13	1.00	7	1.58	53.85	66.67	91.67
Not Practising as at 1/7/2006	-	-	39	8.82	-	-	-

* This table counts law practices only once even if they have more than one office
* 10% means that 1 in every 10 law offices within this grouping were subject to a conduct matter

7.19 Conduct matters regarding barristers as a proportion of the profession

	Barristers
Size of profession as at 1/7/2006	853
Number of barristers as respondents 2006-07	17
Percentage	1.99

8. Prosecutions

8.1 Prosecutions—Summary

Prosecutions	Total 2006-07	Total 2005-06	Total 2004-05
On hand at start of year	42	24	3
Opened during year	33	43	26
Closed during year	41	25	5
On hand at end of year	34	42	24

8.2 Prosecutions—Breakdown of prosecutions on hand at 30 June

Prosecutions	Total 2006-07	Total 2005-06
Assigned for prosecution	7	10
Legal Practice Tribunal		
waiting to file	3	4
waiting to serve	1	6
waiting directions hearing	8	0
waiting hearing/decision	8	12
Total as at 30 June	20	22
Legal Practice Committee		
waiting to file	0	1
waiting to serve	0	1
waiting directions hearing	2	2
waiting hearing/decision	5	6
Total as at 30 June	7	10
Magistrates Court		
waiting to file	0	0
waiting hearing/decision	0	0
Total as at 30 June	0	0
Under Appeal		
Prosecutions under appeal	0	0
Total as at 30 June	34	42

8.3 Prosecutions—Filed

Prosecutions filed	Total 2006-07	Total 2005-06	Total 2004-05
in Legal Practice Tribunal	25	24	11
in Legal Practice Committee	11	13	6
in the Magistrates Court	-	0	0
Total as at 30 June	36	37	17

8.4 Prosecutions—Heard and decided

Prosecutions heard and finally decided (including on appeal)	Total 2006-07	Total 2005-06	Total 2004-05
by the Legal Practice Tribunal	18	9	2
by the Legal Practice Committee	8	10	0
by the Solicitors Complaints Tribunal	0	0	3
by the Magistrates Court	0	0	0
by the Appeals Court	0	2	0
withdrawn/discontinued	15	0	0
Total as at 30 June	41	21	5

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

Area of law	No. of matters	% of total 2006-07	% of total 2005-06
Litigation	5	19.23	19.05
Property Law	3	11.54	-
Deceased estates or trusts	3	11.54	-
Family Law	2	7.69	4.76
Commercial /Company Law	1	3.85	-
Conveyancing	1	3.85	-
Trust Account Breaches	1	3.85	-
Personal injuries /Workcover litigation	1	3.85	14.29
All other 'areas of law' combined	9	34.62	42.85
Total	26		

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

Nature of matter	No. of matters	% of total 2006-07	% of total 2005-06
Trust funds	12	46.15	33.33
Ethical matters	10	38.46	28.57
Personal conduct	1	3.85	4.76
Communication	1	3.85	9.52
Costs	1	3.85	4.76
All other 'natures of matter' combined	1	3.85	19.06
Total	26		

8.7 Prosecutions by outcome (excluding matters withdrawn/discontinued)

Outcome	No. of matters	% of total 2006-07	% of total 2005-06
Convicted of LPA offence	15	57.69	-
Fined	7	26.92	66.67
Struck off	2	7.69	19.05
Dismissed after hearing	2	7.69	-
Total	26		

8.8 Prosecutions by respondent type (excluding matters withdrawn/discontinued)

Type of respondent	No. of matters	% of total 2006-07	% of total 2005-06	% of respondent type 2006-07**
Solicitor	24	92.31	95.24	0.38
Barrister	2	6.69	4.76	0.23
Total	26			

** Note: The number of respondents for each respondent type for the year 2006-07 is the same value as the matters by respondent type (ie: each respondent had only one prosecution)

8.9 Solicitors subject to one or more prosecutions by gender

Gender	Size of profession	% of total	No of respondent solicitors	% of total respondent solicitors	% of profession representation (2006-07)*
Male	4011	62.88	21	87.50	0.85
Female	2368	37.12	3	12.50	0.21

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

8.10 Solicitors subject to one or more prosecutions by age

Age group	Size of profession	% of total	No of respondent solicitors	% of total respondent solicitors	% of profession representation (2006-07)*
‹ 25	214	3.35	0	0.00	0.00
25 -29	1,097	17.17	1	4.17	0.09
30 - 34	1,075	16.84	4	16.67	0.37
35 - 39	924	14.49	3	12.50	0.54
40 - 44	762	11.96	2	8.33	0.79
45 - 49	794	12.46	6	25.00	0.88
50 - 54	656	10.32	5	20.83	1.22
55 - 59	491	7.68	3	12.50	1.43
60 - 64	231	3.62	0	0.00	0.43
65 - 69	97	1.52	0	0.00	0.00
70 & ›	38	0.58	0	0.00	0.00

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

8.11 Solicitors subject to one or more prosecutions by 'years admitted'

Years admitted	Size of profession	% of total	No of respondent solicitors	% of total respondent solicitors	% of profession representation (2006-07)*
‹5	2,159	33.85	1	4.17	0.05
5 - 9	1,123	17.60	7	29.17	0.71
10 - 14	889	13.94	4	16.67	0.79
15 - 19	700	10.97	4	16.67	1.00
20 -24	546	8.56	4	16.67	1.47
25 - 29	495	7.76	1	4.17	0.40
30 -34	230	3.61	3	12.50	2.61
35 - 39	141	2.21	0	0.00	0.00
40 and ›	96	1.50	0	0.00	0.00

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