



LEGAL SERVICES COMMISSION ANNUAL REPORT 2007-2008





31 October 2008

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

Dear Attorney

I am pleased to give you the commission's annual report for the reporting year 2007-08, our fourth year since we commenced on 1 July 2004.

The report describes the system established under the Legal Profession Act 2007 for dealing with complaints (as the Act requires at section 490). It also describes the performance criteria I have developed in conjunction with the staff of the commission for dealing with complaints and my assessment of our performance against those criteria (as the Act requires at section 489).

The report also describes the commission's other functions including our new function to conduct compliance audits of incorporated legal practices and my assessment of our performance in discharging those functions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Briton', is written over a light blue horizontal line.

John Briton
Legal Services Commissioner



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Commissioner's overview



JOHN BRITON – LEGAL SERVICES COMMISSIONER

The 2007-08 reporting year was the commission's fourth year since we started on 1 July 2004. I'm proud of what we achieved during the year and of how far we've come in such a short time.

The number of new complaints has settled over each of the past three years at about 1100, give or take a few. This is significantly less than the 1400 plus we received in our first year and the 1600 plus the professional bodies received over each of the two years before that. The number has reduced by more than 30% but the number of lawyers has increased over that same time by more than 20%, from 6646 to 8057. There was 1 new complaint for every 7 lawyers in 2007-08 but 1 for every 4 lawyers only four years ago. That is a clear sign that the community is less dissatisfied and has more confidence in the profession now than it used to, in the only recent past. That is encouraging.

We finalised more complaints during the year than we received, 47 or less than 4% of them by deciding to initiate disciplinary proceedings. Those 47 matters involved 29 lawyers or about a third of 1% of all Queensland lawyers. They will all come to attention one way or another, certainly among the profession and some of them more broadly.

‘ We’ve been able to drive significant systemic change. ’

More significantly perhaps we finalised 244 or five times as many or about 20% of all complaints by securing the complainants a means of redress for what were legitimate grievances – by getting the lawyers subject to complaint to apologise, to make good a mistake, to waive or reduce their fees or otherwise to put things right. We finalised with our partners at the Queensland Law Society’s Client Relations Centre several thousands of inquiries with similarly positive outcomes without those matters ever having to be formalised as complaints. These happier outcomes rarely if ever come to attention but are achieved quietly, behind the scenes.

We’re especially pleased that we’ve been able to use our complaint handling powers to drive some significant systemic change. Most notably, we sought and obtained a declaratory judgment in the Supreme Court and subsequently in the Court of Appeal to clarify the law that was introduced in 2003 to ‘cap’ the fees lawyers are entitled to charge in speculative or ‘no win, no fee’ personal injuries matters – the so called 50/50 rule. Having succeeded in that, we promptly published guidelines and distributed them to all personal injuries practitioners and conveyed our expectation that they should review their files, identify all the clients they had dealt with since 2003 and might have overcharged and refund them the amounts of any overcharge with interest. That process is ongoing.

We describe all these matters and more in the main body of the report.

A well administered system for dealing with complaints is an important and useful way to regulate professional standards and provide complainants a means of redress but it inevitably has the same limitations as all

other complaints-based systems. They’re all inherently reactive, for one. They limit the regulator to dealing with matters only after the horse has bolted – only after some conduct has occurred and given rise to complaint. And they direct the profession’s attention not to the standards lawyers should aspire to achieve but to the very merest of minimum standards – the point at which conduct becomes unsatisfactory or worse and warrants some disciplinary sanction.

Complaints-based systems are also highly selective. Lawyers who do residential conveyances and family law or personal injuries or deceased estates work are many times more likely to find themselves subject to complaint than lawyers who do commercial litigation or building and construction law. Similarly lawyers who work in sole practice or small law firms are many times more likely to find themselves subject to complaint than lawyers who work in medium-sized and large law firms – to the extent that lawyers who work in medium-sized and larger law firms are only nominally subject to any statutory oversight and in reality are almost entirely self-regulated, whether by their own consciences and character or their law firms’ systems and processes or both.

And while the complaints data is a good indicator of the extent of dissatisfaction with lawyers we shouldn’t for a moment assume that it’s a measure somehow of the prevalence or distribution of misconduct within the profession. We can’t take it to mean that lawyers who do commercial litigation work and the like or who work for medium-sized and large law firms are more ethical or have higher standards of conduct than lawyers who do conveyances or work in sole practice or small firms. There is no good reason to believe that.

Finally, traditional complaints-based systems for regulating professional standards give regulators powers to deal with the ways individual lawyers behave but no powers to deal with the ways law firms behave. And yet law firms like other commercial enterprises have organisational and workplace cultures – explicit and implicit systems and processes and management behaviours and incentives and disincentives and ways of doing things – that shape the behaviour of the people who work for them, for better or worse. So why then does the regulatory framework leave law firms off limits?

That's a good question and immediately relevant. The *Legal Profession Act 2007* allows law firms a wider choice of business structure than the traditional sole practice and partnership arrangements and in particular, since 1 July last year, to form companies and to trade as incorporated legal practices – and it puts the ways these law firms behave at the very front and centre of a new regulatory framework. It requires them to have 'appropriate management systems' that nurture and support ethical practice and it gives the commission powers 'whether or not a complaint has been made' to audit their systems for compliance.

There were almost 100 incorporated legal practices in Queensland by the end of the year, not far shy of 10% of all Queensland law firms, and the number is steadily growing. I expect them to be a substantial minority of law firms in the not too distant future and quite likely even the majority. It is as good as inevitable in this eventuality that the regulatory arrangements which now apply only to incorporated law firms will come to apply to all law firms whatever their business structure. We've begun a new era in the regulation of the legal profession and it presents us an exciting opportunity to explore new and better targeted regulatory approaches.

The report describes what we've done to date and our plans for the future.

Lastly but not least the report describes our efforts to communicate what we've learned as we go about our business to the profession and to the public at large, some innovative projects and research we've undertaken in partnership with the professional bodies and the law schools and our key internal systems and processes. It makes for interesting reading.

I should mention a number of other highlights, not least that we co-hosted with the Queensland Law Society (QLS) and the Bar Association of Queensland (BAQ) last November the annual Conference of Regulatory Officers (CORO). CORO brings together the multiplicity of bodies that regulate the legal profession in Australia and New Zealand including the society and the association and their counterparts in the other states and territories, this commission and its variously styled counterparts, the Legal Practice Boards, Admissions Boards and other like bodies. It provides participants an opportunity to share information and perspective to better 'harmonise' the regulation of the profession and to achieve a consistency of regulatory practice across borders.

We were privileged that the Hon. Margaret McMurdo AC, President of the Court of Appeal, accepted our invitation to give the opening address. Importantly she spoke among other things about the high incidence of depression and work-related stress among lawyers – about 15% of all lawyers experience moderate to severe symptoms of depression, more than in any other profession – and their reliance on alcohol and non-prescription drugs to cope. I don't doubt for a moment that depression is the 'elephant in the room' in a large proportion of the matters we deal with at the commission.

This is a significant problem and it demands a considered response – in the interests of the individuals concerned, their families, their law firms, the profession at large and of course their clients who rely on their good judgment and capacity to think clearly. I'm pleased to say that the QLS, the BAQ, Lexon Insurance (the professional indemnity insurer for Queensland law firms), the College of Law Queensland and the commission have since formed a working group to see what can be done, and to map out a strategy.

As it happens there was a second CORO during 2007-08, in Darwin in June. The participating bodies have expressed increasing frustration at recent conferences about the myriad variations between the Legal Profession Acts the states and territories have enacted in recent years by way of implementing the national model laws that were adopted by the Standing Committee of Attorneys-General in consultation with the Law Council of Australia in 2003. The frustration culminated in June in an overwhelming consensus that there should be a new round of legislative reforms to achieve if not uniformity then at least greater consistency. The prospect is daunting but may well gift us an opportunity to draw on our experience over the past four years and find ways to streamline and strengthen the model.

It remains to thank the many people who have contributed to the work of the commission during the past year. I am very grateful to the Attorney-General, the Hon Kerry Shine, for his continuing support and interest and to the Director-General of the Department of Justice and Attorney-General, Julie Grantham and the many staff of the department who provide us with financial management and systems support behind the scenes, and similarly our data systems consultant, Stephen Pickering.

We continue to have excellent working relationships with the professional bodies and in fact couldn't do our job effectively if we didn't. I especially want to thank the Presidents of the QLS and the BAQ, Megan Mahon and Michael Stewart SC, and their Chief Executive Officers, Peter Carne and Dan O'Connor. I want to acknowledge, too, the Professional Standards Unit of the QLS who are an integral part of the system for dealing with complaints but who get less than their fair share of the credit when credit is due.

Many other people have encouraged and given us the benefit of their good advice including the members of the commission's informal reference group – Margo Couldrey, Gary Crooke QC, Susan Francis, Julian Lamont, the Hon Michael Lavarch, Margaret Jones, Ross Perrett, Zoe Rathus and Mark Ryan; practitioners including Glen Cranny, Randall Dennings, Ian Hughes, Pat Mullins, and Jonathan Shaw and legal and other academics from universities both in Australia and North America – Francesca Bartlett, Susan Saab Fortney, Jeff Giddings, Leslie Levin, Christine Newman, Geoff Norton, Christine Parker, Reid Mortensen, and Mike Robertson. Every one of those people has made a real contribution and we're grateful.

Finally I would like to thank the staff of the commission for doing their job and doing it well in sometimes thankless circumstances and for making the commission such a good place to come to work every day.



Our core business

Our most fundamental purposes are to protect the rights of legal consumers and to promote high standards of conduct among lawyers and law firms. Our core business is to:

- deliver an efficient and effective system for dealing with complaints¹
- commence investigations on our own initiative (investigation matters) when we have reason to believe lawyers or law firms have acted inappropriately²
- audit incorporated legal practices to help them develop and maintain ethical workplace cultures³
- take fair and timely regulatory or disciplinary action when lawyers and law firms have acted inappropriately⁴

- communicate what we learn as we go about our work, contribute to related policy discussion, and undertake projects and research directed to helping lawyers and law firms deliver legal services to high ethical standards, and
- create a productive and motivating work environment.

We commit to being well informed, thorough, fair and accountable. We put a high value on being open, transparent, accessible and responsive. We value our independence but will be consultative in approach.

¹ see the *Legal Profession Act 2007*, Chapter 4, Complaints and Discipline. See also the *Personal Injuries Proceedings Act 2002*, Chapter 3, Part 1, Restriction on advertising of personal injury services and touting

² *Legal Profession Act 2007*, section 435(1)(c)

³ *Legal Profession Act 2007*, Chapter 2, Part 2.7, Incorporated Legal Practices and Multi-Disciplinary Partnerships

⁴ *Legal Profession Act 2007*, sections 447-448, section 446(2)(a) and Chapter 2, Part 2.7

Our performance criteria

We have published a comprehensive performance plan on the commission's website including the performance indicators, targets and standards we have set ourselves in each of our core business areas. In short, we will assess our performance having regard to:

- our clearance ratios – the number of complaints, investigation matters, compliance audits and prosecutions we complete compared to the number we commence. The clearance ratio is (the number completed divided by the number commenced) x 100. We aim to achieve a clearance ratio of 100% or better.
- our timeliness – we aim to respond to at least 80% of inquiries within 1 working day of receipt; to assess 90% of all new complaints within 1 month of receipt, in a median time frame of less than 2 weeks; to finalise 90% of consumer disputes within 2 months of receipt, in a median time frame of less than 1 month; and to finalise 75% of conduct complaints and investigation matters within 6 months of receipt, in a median time frame of less than 4 months. It is premature to set meaningful timeliness targets in relation to compliance audits and prosecution matters although we closely monitor how long it takes to bring those matters to completion and will set targets in due course.
- the outcomes we achieve – including for example the number and percentage of inquiries and consumer disputes we resolve to the inquirers' and complainants' satisfaction, the number of complaints we finalise on public interest grounds because the lawyers subject to complaint have 'put things right', and the number of disciplinary charges we prove in the disciplinary bodies compared to the number they dismiss.
- our pro-activity – including the number and nature of investigation matters compared to complaints, the number and nature of compliance audits, the extent to which we have used our complaints and compliance audit powers to drive systemic change by helping improve standards of conduct in the profession, and the number and nature of the projects we undertake and the number and range of our partners in those projects.
- stakeholder feedback – the level of satisfaction among people who make inquiries or complaints and lawyers who have been subject to complaints

‘ We have decided instead to conduct more detailed surveys of smaller samples ’

with our process, and among our stakeholders more generally with our performance.

We systematically capture information on all of our performance indicators and this is included under relevant subheadings later in the report. The one exception concerns stakeholder feedback. It's not easy for complaints agencies to collect meaningful stakeholder feedback when by the very nature of the exercise many of the people they – we – deal with will leave disappointed. Some agencies ask the parties to complete and return brief 'exit' questionnaires asking them to describe their satisfaction with both the complaint handling process and the outcome but the questions are necessarily limited in number and scope, relatively few people respond and those that do are not always a fair sample.

We have decided instead to conduct more detailed surveys of smaller samples, to use web based surveys (which can of course be downloaded and completed in hard copy) and to design them in close cooperation with our counterparts in New South Wales and Victoria with a view to comparing our results. We have designed three separate surveys – one for people who have made

inquiries or complaints, one for lawyers who have been subject to complaints and investigation matters and one for our other stakeholders – lawyers more generally, the professional bodies, legal academics and other people who have an interest in the commission and our performance. We will start using them early in 2008-09 and report the results on our website.

Our performance

Complaints

The *Legal Profession Act 2007* (the Act) establishes a system for dealing with complaints about lawyers and establishes the commission to receive and deal with those complaints. The Act describes the main purposes of the system to be:

- to provide for the discipline of the legal profession
- to promote and enforce the professional standards, competence and honesty of the legal profession
- to provide a means of redress for complainants about lawyers, and
- to otherwise protect members of the public from unlawful operators.

Just to be clear, lawyers are people who are appropriately qualified and who have been admitted to the legal profession in accordance with the Act; legal practitioners are lawyers (both solicitors and barristers) who hold a current practising certificate issued by their professional body in accordance with the Act; and unlawful operators are people (including lawyers) who engage in legal practice or represent

themselves to be entitled to engage in legal practice but who don't hold a current practising certificate.

The Act authorises the commission to receive and deal with complaints not only about lawyers but also law practice employees, and not only about unlawful operators but also anyone suspected of contravening the restriction on advertising personal injury services and the prohibition of touting under the *Personal Injuries Proceedings Act 2002*.

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', to 'give help to members of the public in making complaints', and to 'deal with complaints as efficiently and expeditiously as is practicable.'

We describe the system established under the Act for dealing with complaints in detail at Appendix 1. In summary, it involves us in five key processes:

- assessing each and every complaint to decide if it's appropriate to deal with the complaint

‘Almost three-quarters of the complaints we dealt with were avoidable’

- if it’s appropriate to deal with the complaint, assessing it to decide if the complaint is a consumer dispute or a conduct matter
- mediating the complaint if it’s a consumer dispute
- investigating the complaint if it’s a conduct matter
- if we investigated the complaint as a conduct matter, deciding after the investigation whether to dismiss the complaint or initiate disciplinary proceedings.

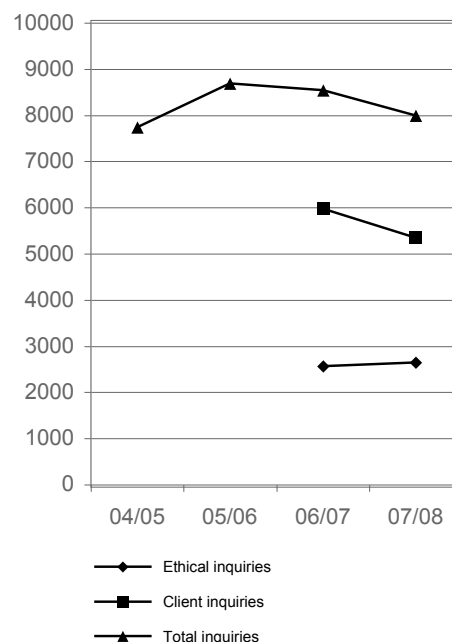
Some key facts about complaints

We’ve attached a wealth of statistical data about the complaints we dealt with over the past and recent years at Appendix 4. The key facts as we see them are these:

- we received 1123 new complaints (not counting investigation matters) during 2007-08, slightly more than in 2006-07, but still significantly fewer than the numbers over the years before the commission started on 1 July 2004, and that despite an almost equally significant increase in the number of lawyers potentially subject to complaint. We’ve made something of this fact already, in the commissioner’s overview earlier in the report and won’t add to those comments here. The number of consumers making telephone and other inquiries has been trending down, too, although less dramatically, at the same time as the number of practitioners making ethical inquiries of the professional body seems to be trending upwards – we add the caveat only because we have separated out the data only over the past two years. The longitudinal trends show up very clearly on Tables 1, 2 and 3.

- we finalised 1166 complaints (excluding investigation matters) – meaning that we finalised slightly more than we received, with a clearance ratio of 104%.
- more than half the complaints we dealt with last year as in previous years concerned the conduct of lawyers in the course of conveyances, family law, personal injury or deceased estate matters. More than half of them went to issues of quality of service, costs or poor communication, and about a third of them alleged unethical conduct of one kind or another. Almost three-quarters of them were avoidable in our view, more than half of them if only the practitioners had implemented better work systems and practices or had communicated more effectively with the complainants.

Table 1
Number of inquiries by year



Complaints continued

- women lawyers were 3 to 4 times less likely as men lawyers per head of population in the profession to be subject to complaint. Whatever their gender, lawyers become increasingly more likely to be subject to complaint the older they get and the longer they've been practising. Lawyers who have been practising for 15 years or longer are almost 3 times as likely to be subject to complaint as lawyers who've been practising for between 5 and 10 years and 5 times as likely as lawyers who've been practising for less than 5 years. Tables 4 and 5 paint the picture. The figures are remarkably consistent from year to year.
- lawyers become increasingly less likely to be subject to complaint the larger the law firm they work for. About 8% of Queensland lawyers work in 1 lawyer

only firms but they are subject between them to slightly more than a third of all complaints. About 20% of Queensland lawyers work in 1 to 3 lawyer firms but they are subject between them to almost two thirds of all complaints. Conversely, about 80% of all Queensland lawyers work in 4 or more lawyer firms but those lawyers are subject between them to only slightly more than a third of all complaints.

These are facts but no-one should over-interpret them for the reason we mentioned earlier, in the commissioner's overview. The data measures the prevalence of complaints against the different kinds of lawyers, not the prevalence of misconduct among the different kinds of lawyers.

Table 2
Number of new complaints by year

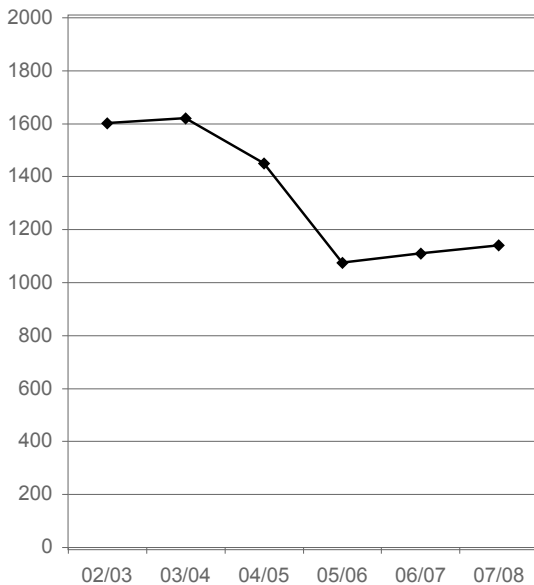
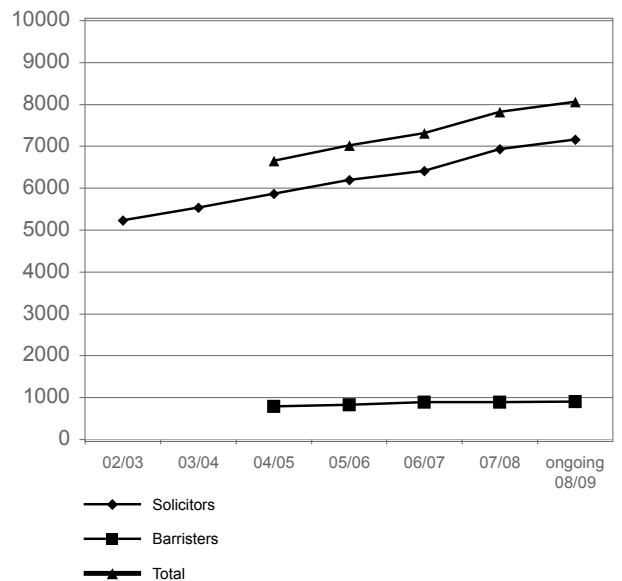


Table 3
Number of practitioners by year with practising certificates subject to complaints regime



Producing information about the making of complaints

We reviewed and updated the ‘plain English’ factsheets and other information we published over previous years. We prepared and published two new factsheets in close collaboration with staff of the QLS about the new costs disclosure and assessment regime that ‘transitioned’ into effect in several stages commencing from 1 July 2007 (and updated them in corresponding stages) – *Legal Costs: Your Right to Know* which describes the stricter obligations lawyers and law firms are now under to disclose their costs, and *Your Right to Challenge Legal Costs* which informs consumers how they can challenge their lawyer’s bill if they have a query or believe they’ve been overcharged. Those and the other factsheets are available both in hard copy on request and on our website.

We publish information about the making of complaints in new and innovative ways as well. We have developed a series of interactive scenarios, the most recent of which has been designed specifically to give complainants and potential complainants and lawyers subject to complaint an opportunity to interact with an imaginary complaint as it works its way through the complaint handling process – they can imagine themselves to be a party to the complaint and explore their options and watch what happens as events unfold. We discuss this and the earlier scenarios in a little more detail later in the report, under the heading *Projects and research* later in the report. They are all easily accessible on the commission’s website.

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

Table 4
Solicitors subject to conduct complaints – by gender relative to gender representation in the profession

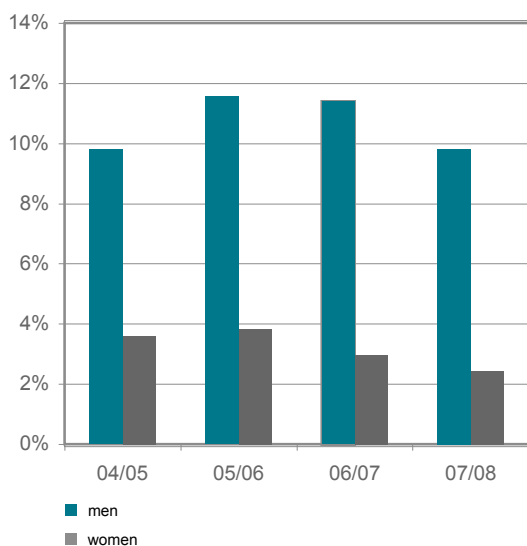
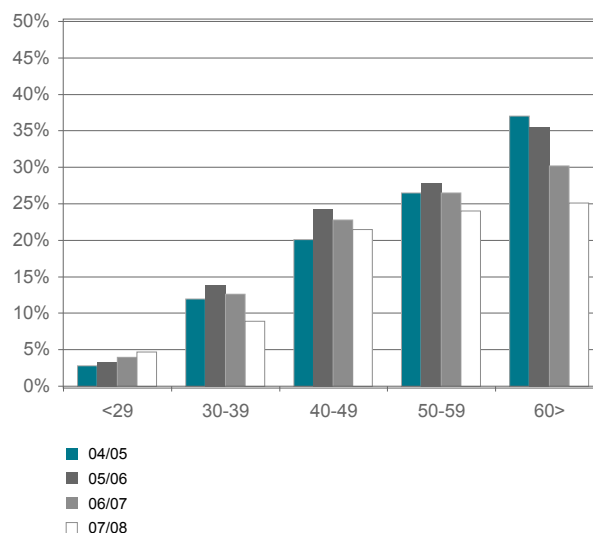


Table 5
Solicitors subject to conduct complaints - by age group relative to age group representation in the profession



we see arising in the everyday practice of law, and to publish the more important and relevant of those talks on our website. We fulfilled 64 speaking engagements during the year.

Giving help to members of the public in making complaints

The Act requires us to give help to members of the public in making complaints. We do that by publishing information in the ways we've described – specifically a complaint form that prompts complainants to give us the information we require to properly assess their concerns and to deal with them expeditiously. The complaint form is readily available on our website and in hard copy on request. We have an updated version ready for printing and will have an on-line version ready to go live by the time this report is published.

We help members of the public in making complaints primarily however through an inquiry service – by promptly responding to anyone who contacts us with an inquiry, most often by phone but also by email, in writing and in person.

The Act requires that complaints be made to the commission and in writing, but many inquiries are complaints in all but name and many, indeed most inquirers find their way to the QLS in the first instance not the commission. We're comfortable with that. No good purpose is served by the society simply referring those people to us if they believe they can deal with the inquirer's concerns there and then. Similarly no good purpose is served by requiring inquirers to put a 'complaint' in writing if their concerns lend themselves to an informal resolution. They need to know of course that they remain fully entitled to make a formal written

complaint to the commission if their concerns can't be resolved in those ways.

We dealt with 1,635 inquiries by members of the public during the year and the QLS dealt with 3,710 and a further 2,646 ethical inquiries by lawyers. More than half of them as in years past concerned conveyances, family law, personal injury or deceased estate matters and about two thirds of them as in years past concerned costs, quality of service and communication issues or were simply seeking some advice.

Some people who make inquiries have had a bruising encounter with the legal system – in a family law matter, for example, or some other hurtful dispute. There is little we can do in these circumstances other than listen empathetically and as appropriate explain how the adversarial system works and the role opposing solicitors play in the system, or a lawyer's obligation not simply to follow their client's instructions to the letter but to exercise their professional judgment.

Other inquiries are readily resolved by telephone tag – by ringing the lawyer concerned to get some background information or an explanation or to learn the current status of the matter and by passing it on. Many are resolved simply by giving the inquirer information about the legal system or an explanation of a technical term or an apparent anomaly in the advice or service their lawyer has given them or by referring them for legal advice or recommending they discuss their concerns directly with their lawyer.

Deciding whether to deal with a complaint

The Act gives the commissioner a 'summary dismissal' power to decide not to deal with a complaint – if it has been investigated previously and there is no good

‘many raised claims that a lawyer colluded with the estranged partner to tell lies’

reason to reconsider the matter; or if we don't have jurisdiction to deal with the complaint (because it's about conduct that happened more than three years before the making of the complaint, for example, and doesn't disclose an issue of professional misconduct and there are no good reasons for the delay); or if it doesn't disclose an issue of unsatisfactory professional conduct or professional misconduct; or 'if, having considered the matter, the commissioner forms the view that the complaint requires no further investigation'.

We finalised 1166 complaints (excluding investigation matters) in 2007-08, 444 or 38% of them by summary dismissal. We came to that decision in 93% of those matters in less than a month after receiving the complaint, in a median time frame of 11 days. We gave every complainant written reasons and referred them as appropriate to another regulatory body or complaints-handling agency or suggested they consider taking legal advice about other possible remedies that might be open to them.

Some of these complaints were about the 'system' rather than any particular lawyer or lawyers and some were about lawyers but not about conduct 'happening in connection with the practice of law' – lawyers who were acting as migration agents, for example, or who were acting in a private capacity as the executor of a deceased relative's estate. Many of them were

complaints about the conduct of lawyers happening in connection with the practice of law but alleged professional negligence and involved complex issues of fact and opinion that can only be decided by a court and, if the negligence was proved, could only be remedied by a court. Almost 20% of them were about costs and were more appropriately dealt through the costs assessment process established under the Uniform Civil Procedure Rules (and that is described in our fact sheet *Your Right to Challenge Legal Costs*).

Notably 20% of the complaints we summarily dismissed arose out of obviously hurtful family law matters. Many of them raised issues of delay and poor communication or claims that a lawyer gave poor advice or failed to follow instructions, and many of them raised issues about the lawyers for the 'other side' or the independent and court-appointed lawyers for children – that they made or encouraged or colluded with the estranged partner to make false and insulting suggestions or to tell lies.

Here are some examples of complaints we decided not to deal with using our summary dismissal power:

- a complaint about a 'patronising, intimidating letter not based in fact' the complainant received from the lawyer representing his neighbours in the unit block where they all lived and with whom he was in bitter dispute. The letter read as follows: 'we are instructed by our clients that on [date deleted] you without our client's authority entered our clients' exclusive use area and refused to leave when requested. This letter is to give you formal notice that no further occasions of trespass will be tolerated by our clients. Kindly make no further direct contact with our clients. We suggest that you

put any issues in writing and forward that letter to the Secretary of the Body Corporate.’

We dismissed the complaint on the basis that the complaint disclosed no evidence that the lawyer had acted contrary to instructions and the letter itself was measured and matter of fact. The complaint did not disclose any conduct that might amount to unsatisfactory professional conduct.

- a complaint about the lawyer who acted for the complainant in a commercial dispute. The complainant didn’t pay the lawyer’s bill and the lawyer sued for his fees. The complainant alleged that the lawyer breached his duty of confidentiality by instituting proceedings and filing an affidavit in those proceedings which outlined the nature of the legal work he’d done and the fees he charged for that work. We dismissed the complaint on the basis that the lawyer was perfectly entitled to sue the complainant to recover his fees and to file evidence in support of his claim, and that it is entirely inappropriate for the commission to intervene in matters that are before a court.
- a complaint by one of the parents that the independent children’s lawyer in a bitterly disputed custody matter in the court had corruptly failed to follow the child’s instructions. The child was 10 years old and, according to the complainant, wanted to live with him. We dismissed the complaint on the basis that the complaint did not disclose any evidence of corruption, merely that the child’s representative had expressed a view; that the child’s representative was under no obligation to follow the child’s instructions even if the complainant was correct about where the child wanted to live; and that the issue was one for the Court.

Deciding whether complaints are consumer disputes or conduct complaints

The Act gives us only two ways to deal with a complaint – as a consumer dispute or as a conduct complaint. A consumer dispute is a complaint that involves no issue of unsatisfactory professional conduct or professional misconduct and a conduct complaint is a complaint that does. The meaning of the terms *unsatisfactory professional conduct* and *professional conduct* is therefore crucial.

The Act says nothing more about unsatisfactory professional conduct other than that it ‘includes conduct 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’. It says professional misconduct includes ‘substantial’ or ‘consistent’ unsatisfactory professional conduct and ‘conduct happening otherwise than in connection with the practice of law that would, if established, justify a finding that the person is not a fit and proper person to engage in legal practice.’

The Act imposes no obligations on the commissioner in relation to a consumer dispute, merely a discretion to ‘suggest to the complainant and the respondent that they enter into a process of mediation’ or to refer the matter to the QLS or BAQ ‘to see if [they] may help in the mediation or otherwise in the resolution of the dispute’. The Act does however impose obligations in relation to a conduct complaint – it obliges the commissioner to investigate a conduct complaint and gives the commissioner only two options after the investigation – to dismiss the complaint or to initiate formal disciplinary proceedings.



It goes without saying that we should assess complaints that involve dishonesty or gross incompetence to be conduct complaints and, if they're substantiated, initiate disciplinary proceedings. But how should we assess the majority of complaints that describe no more than honest mistakes and poor standards of service and the like?

It's not uncommon for solicitors to miscalculate the settlement amount in a conveyance, for example, with the result that their purchaser clients complain to us when they start getting letters of demand from councils and bodies corporate. Clearly those complainants have a legitimate grievance and are entitled to some appropriate redress. Should we assess their complaints to be consumer disputes and suggest they enter into a process of mediation? Or should we assess their complaints to be conduct matters and commence an investigation and, if the complaints are substantiated, initiate disciplinary proceedings?

It's a fundamental question. We'll come back to it, but let's digress momentarily. There have been numerous inquiries over the years in this country and overseas about the effectiveness and efficiency of the systems that were in place at the time for dealing with complaints about lawyers – systems that have traditionally been administered by the professional bodies. The one recurring theme in the reports of these inquiries is that the systems were 'too narrowly focussed on violations of professional ethics' and failed to respond appropriately to 'the overwhelming majority' of complaints that describe only relatively minor misconduct but nonetheless legitimate consumer grievances.

The New South Wales Law Reform Commission reported to that effect as long ago as 1979⁵ and so too the white paper tabled in the British parliament in 2005 following a major review of the arrangements for the

regulation of the legal profession there.⁶ The American Bar Association came to the same conclusion in 1992. It noted that 'cases of minor misconduct seldom justify the resources needed to conduct formal disciplinary proceedings' and that 'in most case the [lawyer's] conduct does not justify imposing a disciplinary sanction... What most of these cases call for is a remedy for the client and a way to improve the lawyers' skills... They should be removed from the disciplinary system and handled administratively'.⁷

That is exactly what has happened in England and Wales following the recent reforms there. Our counterpart regulator receives and assesses all complaints about lawyers and refers complaints about unethical or other serious misconduct to the professional bodies for investigation and disciplinary action as appropriate but deals in-house with complaints about poor standards of service. It has powers to require lawyers subject to complaint to remedy their mistake or to reduce or waive their fees or to provide complainants with some other fair and reasonable redress, including power to order 'a payment for poor service, loss or distress, such an award to be enforceable as a debt.'⁸

Our system has taken a different direction. It doesn't allow us to remove complaints about honest mistakes and poor standards of service from the disciplinary system and deal with them administratively, separately

⁵ *Complaints, Discipline and Professional Standards*, Legal Profession Discussion Paper No 2, 1979

⁶ *The Future of Legal Services: Putting Consumers First*, Department for Constitutional Affairs, 2005.

⁷ *Lawyer Regulation for the New Century*, Report of the Commission on Evaluation of Disciplinary Enforcement, American Bar Association Center for Professional Responsibility, 1992.

⁸ see <http://www.legalcomplaints.org.uk/how-we-handle-complaints/about-poor-service.page>

Complaints continued

from complaints about unethical and other serious misconduct, but rather it broadens the reach of the disciplinary system itself.

That's reflected in the meaning the Act gives unsatisfactory professional conduct – that whatever it might have meant in an earlier era when systems for dealing with complaints were 'too narrowly focussed on violations of professional ethics', it now specifically 'includes conduct that falls short of *the standard of competence and diligence a member of the public is entitled to expect* of a reasonably competent Australian legal practitioner' (emphasis added).

It's reflected also in the fact that the Act gives us no powers to require, only to 'suggest' to the parties that they enter into a process of mediation, and none of the powers our counterpart regulator in England and Wales has to provide complainants with redress when redress is appropriate in all the circumstances of a complaint. We don't have those powers but, notably, the disciplinary bodies do. They have powers of exactly these kinds in addition to their more familiar disciplinary powers to reprimand or impose a financial penalty or to suspend or remove a lawyer's entitlement to practice, but only if the disciplinary body makes a finding of unsatisfactory professional conduct or professional misconduct. Our system makes all but wholly voluntary redress entirely contingent on an adverse finding by a disciplinary body.

It follows, returning to the question we posed earlier, and given that the Act's most fundamental purposes include providing complainants with a means of redress, that we should assess complaints involving honest mistakes and poor standards of service to be conduct complaints, not consumer disputes, whenever the

complaints if substantiated would establish a legitimate grievance and entitle the complainant to a remedy.

Mediating consumer disputes

We assessed 96 complaints to be consumer disputes during 2007-08, or 9% of all the complaints we assessed, and we referred 4 or 4% of those complaints to the QLS for mediation. We finalised 102 consumer disputes, 98 or 96% of them in less than 2 months after we first received the complaint, in a median time frame of 17 days.

The vast majority, about three quarters of them were disputes about costs, quality of service and communication. The Act says that we 'may' suggest to the parties that they enter into a process of mediation and we always do. We dealt with the vast majority of them in-house – we referred only 4 consumer disputes to the QLS for mediation and none to the BAQ. We were unable to resolve only just more than a quarter of them and formed the view that 17% were unfounded, but happily we resolved just short of half of them to the complainants' satisfaction.

We got the impression during the year that we were seeing an increase in the number of complaints arising from deceased estates work and that is reflected in the complaints statistics overall but especially the statistics in relation to consumer disputes – disputes about deceased estate matters represented almost 20% of all the disputes we dealt with during the year, second only to conveyances, and a big increase over the 5% figure in 2006-07. Many of these disputes involve issues about the capacity of older people who may have some cognitive impairment to give instructions to execute enduring powers of attorney. This is an issue which can have profound consequences for the rights and well being of

sometimes very vulnerable people and lawyers who do work of this kind are well advised to know and follow the guidelines the QLS has published in this regard.

Here are some examples of the consumer disputes we finalised during the year:

- a complaint about a lawyer who took over the complainant's matter from another lawyer when that lawyer sold his practice but failed within a reasonable period of time to inform the complainant about how the matter was progressing. The complaint was resolved to the complainant's satisfaction after we spoke with the practitioner and he apologised to the complainant and updated him and undertook to contact all his other new clients also and similarly update them.
- a complaint about a lawyer who was handling the complainant's deceased mother's estate and refused to give the relevant documents and bank account details to the complainant who wanted to handle her mother's estate herself as joint executor with her sister. The complainant had disputed and not paid the lawyer's fees, and the lawyer for his part wanted his fees paid and a signed authority from the co-executor. We negotiated a compromise in which the complainant gave the lawyer the signed authority and agreed to pay a reduced fee and the lawyer handed over the documents and bank account details.
- a complaint by a complainant who purchased a residential property but only after requiring an extension to settle when his cheque failed to clear in time and so owing the vendor \$499 in default interest. The complainant claimed that his lawyer gave him inadequate notice of when the cheque was required but the lawyer gave us a different

version of events. He said he gave 2 days and hence sufficient notice and that the problem was that his client provided a personal rather than a bank cheque. We negotiated a mutually acceptable outcome in which the lawyer agreed to 'split the difference as a 'gesture of good will' by paying \$250 towards the default interest.

- a complaint by a complainant who was injured in a motor vehicle accident and complained that 'it has been 3 years since accident and I've been to a lawyer who says I've got a case but I don't know what's happening – he never tells me what's going on.' We spoke to the lawyer who agreed to get in touch with the complainant immediately but said he'd communicated with him regularly and that he had 'unrealistic expectations'. We got back to the complainant who told us his lawyer had rung him in the interim and that he was satisfied his case was progressing.

Investigating conduct matters

The Act requires the commissioner to investigate conduct complaints or to refer them to the QLS or to the BAQ for investigation. The society and the association have no authority however after they've completed an investigation to decide what further action should be taken on a complaint but must report their findings and recommendations to the commissioner. The commissioner alone has authority to make that decision and as noted already has only two options – to dismiss the complaint or to initiate formal disciplinary proceedings. Importantly, the commissioner can dismiss a conduct complaint for either of two reasons – because there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct

Complaints continued

or professional misconduct or because there is no public interest in initiating disciplinary proceedings.

We assessed 568 complaints to be conduct complaints during 2007-08 and finalised 620, 422 or 68% 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. We finalised 41 or 6.6% of them by deciding to initiate disciplinary proceedings. We canvass those matters in more detail under the heading *Discipline* later in the report.

Significantly, we finalised 104 or 17% of all conduct complaints on the basis that while the conduct subject to complaint might have amounted to unsatisfactory professional conduct no public interest would be served by initiating disciplinary proceedings. That was because the conduct was at the minor end of the spectrum that might amount to unsatisfactory professional conduct – it was neither grossly incompetent nor unethical but an honest mistake or poor client service or the like – and the lawyers subject to complaint accepted our invitation to do all they reasonably could to put things right with the complainant or to prevent or reduce the risk of a similar mistake in future, by apologising to the complainant or remedying the fault in the service they provided or reducing or waiving their fee or fixing their office systems or undertaking some further training, whatever was fair and reasonable in all the circumstances of the complaint. It's hard to see what public interest would be served in those circumstances by initiating disciplinary proceedings.

Here is an example of a complaint we assessed during the year to involve 'substantial' unsatisfactory professional conduct:

- a complaint about a lawyer who represented a client in a long-running personal injury matter that he allowed to drift for long periods and that came to a head only after he failed to lodge a statement of Loss and Damage by the required date and the defendant applied to the court to force some action. The lawyer agreed to resolve the application by filing a Statement within 7 days and to pay the defendant's costs, but without getting his client's instructions or even informing him an application had been made, and proceeded to pay the costs from funds he held in his trust account on his client's behalf, again without getting instructions.

That set of facts describes a regrettably familiar and cautionary tale. We get complaints time and time again about lawyers who've tried to conceal a delay or mistake from their clients rather than acknowledge and deal with it for what is, and who've proceeded to dig a deeper and deeper hole for themselves by acting without instructions or misrepresenting the true facts to their clients or a court or preferring their own interests over those of their clients in some other way.

Here are some examples of complaints we assessed to be conduct complaints because the conduct in question entitled the complainants to some appropriate redress but complaints we ultimately dismissed on 'no public interest' grounds because the lawyers subject to complaint were able to persuade that the conduct was no more than an isolated and 'one-off' mistake and that they had taken reasonable steps to put things right:

- a complaint about a lawyer who acted for the complainant purchasers in a residential conveyance but forgot for five months despite reminders to send the complainants a copy of the contract and

‘ We are seeing an increasing number of complaints about lawyers who’ve forwarded threatening letters of demand ’

settlement details – preventing them from applying for a first home owner’s grant;

- a complaint about a lawyer who acted for the complainant purchaser in a residential conveyance but failed before the contract became unconditional to send the complainant the results of a search that revealed a building defect – leaving the buyer to pay the cost of the repairs;
- a complaint about a lawyer who acted for the complainant vendors in a residential conveyance and who deposited the settlement proceeds into the complainants’ Australian account in Australian dollars rather than, as instructed in writing, into a British account in pounds sterling – given fluctuations in the exchange rates, costing the complainants several thousand dollars;
- a complaint by the executors of a deceased estate about a lawyer who handled the estate on their behalf and held the money in his law firm’s trust account pending resolution of the estate’s taxation liabilities rather than, as instructed, investing the money in an interest bearing account – costing the estate the interest;

- a complaint by the husband about the lawyer who acted for his former wife in a property settlement following divorce and who, after the matter settled and her client expressed some anxiety about doing so herself, volunteered to go to the complainant’s home to collect some of her clients personal belongings – where she got into a heated argument with him during which she said ‘you are a grotesquely ugly man. I can’t believe she [her client] was with some one as ugly as you for as long as she was.’

We add by way of another cautionary note that we are seeing an increasing number of complaints about lawyers, both solicitors and barristers, who’ve forwarded unduly aggressive and threatening ‘letters of demand’ or otherwise gone ‘over the top’ in the course of representing spouses or other family members in disputes of one kind or another. Similarly we note as we have in years past, while the numbers are small, the disproportionate number of the barristers subject to complaint who find themselves in that situation having accepted a direct brief.

Here are some further relevant facts about the conduct complaints we dealt with during 2007-08:

- we referred 297 or 44.3% of the complaints we assessed to be conduct complaints to the QLS for investigation and 13 or 1.9% to the BAQ.
- the QLS returned 359 complaints for review and we disagreed with its recommendations in 27 or 8% of the reviews we completed by 30 June. None of those 27 ‘disagreements’ went to issues of substance – there was no particular pattern to them and they were all ‘line ball’ decisions in any event.

- the BAQ returned 16 complaints for review and we disagreed with its recommendations in 2 or 12.5% of the reviews we completed by 30 June. One of them was a 'line ball' decision but the other raised an interesting matter of principle. It involved a barrister who'd been found to have acted dishonestly and was dealt severely and fined by a court in the course of civil litigation and the question was whether it was fair and appropriate in all the circumstances to make a discipline application arising from the same set of facts. The BAQ said 'no' on balance, and we said 'yes'. That matter will be heard by the Legal Practice Tribunal later this calendar year.
- we finalised 521 or 70% Of the 620 conduct complaints we finalised during the year, we finalised 521 or 70% in less than 7 months after we first received the complaint – short of our target of 75% but reassuringly in a median time frame of 131 days. We can do better. Some of the matters we finalised during the year were large and complex investigations we'd been struggling with for some time, including the very last of the backlog of complaints we inherited on our inception four years ago, and they distort the averages (but not the medians). Those matters are now behind us. Furthermore the BAQ has taken substantially longer to return the matters we've referred there for investigation than the QLS and while the numbers are small that doesn't help the average. No doubt that is because the BAQ has relied until recently on the services of the members of its Professional Conduct Committee, all of whom have acted in an entirely voluntary capacity. The good news is that the BAQ has now appointed a Manager, Professional Conduct and we expect the turn-around time to improve significantly.

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.'

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 that they'll always make a complaint if they do. It gives us a measure of pro-activity we would be denied if we were confined simply to responding to complaints.

The Act also authorises us to investigate lawyers or anyone else the commissioner suspects may have contravened the sections of the *Personal Injuries Proceedings Act 2002* (PIPA) that prohibit touting at the scene of an accident and restrict the advertising of personal injury services. We sometimes get complaints about suspected contraventions of the advertising restrictions, mainly from rival lawyers and law firms, but we don't think it's appropriate to confine ourselves to responding to complaints. We believe we have a broader and more pro-active role to ensure compliance and so we systematically monitor the places personal injury advertisements most commonly appear – in the Yellow Pages, local newspapers and on lawyer's websites – and use our investigation matter power to commence investigations into the advertisements we suspect are non-compliant.

We initiated a total of 135 investigation matters in 2007-08, or 10.7% % of all new complaints and investigation matters compared to 199 or 15.2% of all new complaints and investigation matters in 2006-07,

73 or 6.4% in 2005-06 and 35 or 2.4% in our first year, 2004-05. We finalised a total of 120 investigation matters, 15 fewer than we initiated. That is a clearance ratio of 88.9.8%.

We report on the two categories of investigation matter separately – investigation matters about advertisements for personal injury services (PIPA investigation matters) and other investigation matters (investigation matters other than PIPA) – because they have quite different characteristics.

Investigation matters other than PIPA

We initiate investigation matters other than PIPA in a variety of different circumstances that cause us to suspect a lawyer has engaged in conduct capable of amounting to unsatisfactory professional conduct or professional misconduct – sometimes (rarely) after we receive information anonymously, but sufficient information to justify a reasonable suspicion; sometimes after a report in the media about a lawyer being convicted of an offence of dishonesty or a taxation or some other serious offence; and sometimes after a court or the QLS or an investigative agency such as the Crime and Misconduct Commission brings information to our attention. Notably the Act requires solicitors to give the QLS notice of ‘show cause’ events – if the solicitor is convicted of an offence, for example – and in turn obliges the QLS to notify the commissioner.

We initiate the majority of investigation matters other than PIPA, however, when we are already dealing with a complaint about a lawyer’s conduct and become aware during the course of the investigation of some other conduct on that lawyer’s or some other lawyer’s part that might amount to unsatisfactory professional conduct or professional misconduct. It is not

uncommon for us to receive a complaint about delay or discourtesy or failure to communicate, for example, only to discover evidence of possible overcharging of which the complainant was totally unaware.

One of the more interesting examples this year is an investigation matter we initiated (but have not yet finalised) into the conduct of the several partners of a small law firm after we received and partly completed investigations involving a number of serious complaints about an employee lawyer of the firm. On the face of it at least, there were any number of ‘warning bells’ that should have alerted the partners to the difficulties their employee was getting himself into and we initiated an investigation accordingly of their apparent failure to adequately supervise their practice.

In summary:

- we initiated 68 investigation matters other than PIPA in 2007-08 (including some investigations involving conduct in the course of personal injury practice more generally) compared to 101 in 2006-07, 73 in 2005-06 and 35 in 2004-05. The number has gone down, but we initiated several ‘big’ and multi-faceted investigations this year about apparent overcharging in speculative personal injury matters. We return to that matter shortly.
- we finalised 63 other than PIPA investigation matters. 17 or 27% of them involved ethical matters, 16 or 25% of them trust account matters, and 14 or 22% of them costs.
- we finalised 6 or 10% of those 63 matters by deciding to initiate disciplinary proceedings; 19 or 30% on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional

Investigation matters continued

misconduct; and, significantly, 37 or 60% on the basis that the conduct might have amounted to unsatisfactory professional conduct or professional misconduct but no public interest would be served by initiating disciplinary proceedings.

Notably the 17 ethical matters we finalised during the year included a higher than usual number of matters involving some personal rather than professional conduct that might justify a finding that the lawyer is not a fit and proper person to engage in legal practice. The conduct included failing to lodge tax returns and conduct that had already resulted in convictions for taxation offences, offences under company law and offences for possessing child pornography. We finalised each of those matters by deciding to initiate disciplinary proceedings.

We are pleased at the relatively low percentage of matters we finalised on 'no reasonable likelihood grounds'. It suggests we're getting it pretty right when we initiate investigation matters and not being overzealous. It would be worrying if the number was high.

We are particularly pleased at the high percentage of matters yet again this year that we were able to finalise on 'no public interest' grounds. Many of those matters involved the practices we mentioned in last year's and the previous year's reports that were apparently widespread at the time in which lawyers charged their clients undisclosed mark-ups or surcharges on their outlays in residential conveyances. We have always regarded that practice as best misleading and we published guidelines in May 2006 setting out the principles involved in charging outlays and disbursements and how we proposed to deal with lawyers who breach those principles. We said we would be disinclined to initiate disciplinary proceedings provided they reviewed their files going back to 1 July 2004 and put things right

by refunding their clients the amounts they were billed as outlays in excess of the actual amount the law firm paid out as outlays on their behalf.

We were pleased last year and we are pleased again this year that we have managed to resolve all the matters of this kind that have come to our attention by persuasion, without having to resort to prosecution. We are especially pleased that the numbers are down this year – the reduced number suggests the practice is not as widespread as it was, and that we have achieved some fair measure of systemic change.

We have taken the same approach in relation to another matter we raised in last year's report and that has since begun to unfold. The issue concerned the proper application of the so-called 50/50 rule in speculative or 'no win-no fee' personal injury matters – matters in which lawyers carry their clients' costs and get paid a fee and reimbursed the costs out of the compensation only if and when they 'win' the case.

The rule first came into effect in 2003 by way of amendment to the then *Queensland Law Society Act 1952*. It responded to a public perception, regrettably not entirely unwarranted, that people who suffered an injury could 'win' compensation only to win very little at all – because their lawyers could take the bulk of their compensation in fees and costs. The rule capped the fees lawyers were entitled to charge at '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.'

We learned however about a lawyer who had contrived to get around the rule, unlawfully in our view, by arranging loans for his clients so they could pay their

‘ The problem remained about the proper application of the 50/50 rule ’

disbursements up front, using his trust account as the conduit. He treated both the capital and interest components of the repayments not as money ‘the client must pay, or reimburse, to the practitioner or firm’ but as money the client must pay or reimburse to the third party lender, albeit it through his trust account. He capped his fees at half the judgment or settlement amount less refunds and less only those disbursements he paid himself, not at half the judgment or settlement amount less refunds and less the total disbursements – and so he made his ‘half’ bigger than it otherwise would have been. That contravened the rule, in our opinion. Not only that, but he treated the GST component of his fees as a disbursement his clients had to pay him and so deducted it from his clients’ ‘share’ of the proceeds, as if the maximum fee he was entitled to charge excluded GST. That contravened the rule also, in our opinion.

The *Legal Profession Act 2007* resolves the issue by capping a lawyers’ fees at half the amount to which the client is entitled under a judgment or settlement 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.’

The problem remained however about the proper application of the rule under its original formulation and whether the practices we have just described were lawful – hence whether that particular lawyer and any other lawyers who applied the rule similarly had overcharged their clients. We brought proceedings in the Supreme Court for declarations as to the

proper interpretation of the rule and the court gave its judgment in September 2007.⁹ We were largely successful. The lawyer appealed and the Court of Appeal gave its judgment in May 2008.¹⁰ It found that the 50/50 rule entitled lawyers to charge no more than half the judgment or settlement amount less any refunds the client is required to pay and less the total amount of the disbursements for which the client is liable. It found that disbursements include all outlays paid from funds held in the lawyer’s trust account, irrespective of whether the client or a lender paid those funds into the trust account, but excluded any interest charged by a lender. It found also that the maximum fee a lawyer was entitled to charge under the rule includes GST.

We promptly prepared *Guidelines for Billing Fees in Speculative Personal Injury Matters* and took some pains to bring them to the profession’s attention. We published them on the commission’s website and in QLS publications and forwarded them in June 2008 to 239 lawyers who the society informed us had done personal injury work since 2003. We asked them to review their files and, if they had applied the rule incorrectly, to refund any clients they overcharged the amount of the overcharge together with interest (at the rate prescribed on default judgments, currently 10%). We said we could see no public interest in initiating disciplinary proceedings for overcharging if they did as we suggested, but that we would be less lenient with lawyers who overcharge their clients in these ways now that the law was settled.

⁹ *Legal Services Commissioner v Dempsey* [2007] QSC 270

¹⁰ *Legal Services Commissioner v Dempsey* [2008] QCA 122

We asked these lawyers to get back to us by 30 September 2008 with a report of their review including the number and amounts of any refunds. That process is ongoing, but the early signs are the practices were not widespread but on the other hand not confined to the one lawyer only. We will have achieved a significant systemic outcome if the guidelines do the job we hope and expect they will.

PIPA investigation matters

The *Personal Injuries Proceedings Act 2002* (PIPA) imposed restrictions on the advertising of personal injury services in response to a public perception that some personal injury lawyers were ‘ambulance chasing’. PIPA failed to provide any effective enforcement regime, however, and the restrictions were widely flouted. It was amended with effect from May 2006 and the *Legal Profession Act* was amended at the same time to make the commission responsible for their enforcement through a simple extension to our complaints and investigation matter powers.

We promptly published *A Guide to Advertising Personal Injury Services* and shortly thereafter *A Guide to Advertising Personal Injury Services* on the internet setting out how we understood the restrictions and how we proposed to enforce them. We made it clear we wanted to achieve a much greater measure of compliance but by persuasion, not prosecution, and that remains our approach – we don’t want to pounce on and prosecute lawyers for non-compliance but we do want them to review their advertising and to remedy or withdraw any advertisements that fall short of the mark.

In summary, PIPA says firstly that a lawyer or anyone else *advertises personal injury services* if they publish or cause to be published ‘a statement that may

‘ We have achieved our goal of securing compliance through persuasion, not prosecution ’

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 [lawyer’s] services... in connection with the making of a claim.*’ We’ve added the emphasis because some lawyers seem not to have noticed that an advertisement doesn’t have to be intended or likely to cause or induce a person to make a claim for compensation or damages in order to count as a personal injury advertisement, only to use the services of a particular lawyer or law firm to make a claim. That’s a much broader notion.

PIPA goes on secondly to prohibit lawyers or anyone else from advertising personal injury services ‘except by the publication of a statement that states only 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 specialty of the practitioner or law practice and is published by an allowable publication method.’ That clearly excludes photographs, slogans and sales pitches and the like.

It says the ‘allowable publication methods’ include advertisements on lawyers’ websites and in printed publications such as newspapers, the Yellow Pages and also handbills and signage provided they are not left

or erected in the vicinity of a hospital. They exclude advertisements on radio and television and ‘the public exhibition’ of photographs and images or their exhibition ‘to persons attending a place for the purpose of receiving professional advice, treatment or assistance.’

The restrictions allow some exceptions, however, including advertising directed to a law firm’s existing clients or people who are making a ‘genuine inquiry’ of a law firm about a personal injury. They also exempt advertisements on a lawyer’s or a law firm’s website provided the advertisement ‘is limited to a statement about the operation of the law of negligence and a person’s rights under that law and the conditions under which the practitioner or law firm is prepared to provide personal injury services.’

The 2007-08 reporting year was the second year we’ve been responsible for enforcing the restrictions on the advertising of personal injury services and we note that:

- we initiated 67 investigation matters into apparent contraventions compared to 98 in 2006-07.
- we finalised 57 investigations compared to 95 in 2006-07 – none by deciding to initiate disciplinary proceedings and only 2 of them on the basis that there was no reasonable likelihood that a disciplinary body would find that the advertisement contravened the restrictions. We finalised 55 or 96% of them on the basis that the advertisements might have contravened the restrictions but that no public interest would be served by initiating disciplinary proceedings. We dismissed a similarly high percentage on ‘public interest’ grounds last year.

That is a good result once again. It means that we have achieved our goal of securing compliance through persuasion, not prosecution.

It is an especially good result given that we interpret the restrictions strictly to leave the least possible room for slippage and the thin ‘end of the wedge’ arguments that would inevitably accompany any broader interpretation. This seems to us to be the best and probably the only practical way to achieve some certainty and to keep a level playing field – and in particular to look after the majority of lawyers and law firms who do the right thing and who are rightly annoyed by and stand to be disadvantaged by the minority of their colleagues who push the boundaries.

We made it our priority in 2006-07 to systematically review the Yellow Pages directories for the Brisbane and every other telephone district in Queensland. We initiated just short of 100 investigations and persuaded every lawyer we believed had breached the restrictions to bring their advertisements into line in future editions, albeit some of them reluctantly. We expressed confidence that the 2008 Yellow Pages would contain many fewer non-compliant advertisements than previous editions.

We said we would check and we did. And we were right – we had cause to initiate many fewer, about 50 investigations in 2007-08 into apparently non-compliant Yellow Pages advertisements and only 6 of them involved ‘repeat offenders’. We will check again next year and expect to find even less non-compliance.

That task largely behind us, we intend now to begin systematically reviewing lawyer and law firm websites to ensure their compliance also. That will be a difficult and ongoing exercise given that websites by their very nature are ever changing.

We intend also to review the current guidelines in the light of our experience to date and to draw the

profession's attention to most common contraventions. We've mentioned one already – that many lawyers publish photographs or slogans or sales pitches because it's escaped their attention that the restrictions apply not only to advertisements that are intended or likely to cause a person to make a claim for compensation or damages but equally to advertisements that are intended or likely to cause a person who has already decided to make a claim to use their services and not a competitor's for that purpose.

Another not uncommon problem occurs when a lawyer or law firm publishes a compliant personal injury advertisement in close proximity on the page to an advertisement that is not a personal injury advertisement but contains material that would be prohibited if it were – with the effect that the two ostensibly separate advertisements are in reality just one non-compliant personal injury advertisement. The analogous problem easily occurs on websites when a compliant page links to a non-compliant page. And websites throw up some other challenges: how does a law firm ensure that the general public can't, but a genuine inquirer can access information about the conditions under which the law firm will provide personal injury services?

We will publish the revised guidelines and circulate them widely – on the commission's website, in QLS publications, and by writing directly to every lawyer and law firm we identify with the society's assistance to have a personal injury practice.

Incorporated legal practices

The *Legal Profession Act 2007* like its counterpart legislation in the other Australian states and territories allows law firms a wider choice of business structures

than the traditional sole practitioner and partnership arrangements. It allowed law firms from 1 July 2007 to form multi-disciplinary partnerships or to adopt a company structure and so to trade as incorporated legal practices, and it established a new framework for regulating their delivery of legal services. The relevant sections of the Act implement national model laws and are all but identical with the arrangements that either have or soon will come into effect in the other states and territories.

Some key facts

New South Wales has allowed law firms to incorporate since 2001. There are more than 800 incorporated legal practices there, or about 20% of all that state's law firms, and the number is steadily growing. We expect to see incorporated legal practices in those same proportions here, and on current trends before the decade is out.

We've included more comprehensive data at appendix 4, but here are the key facts about incorporated legal practices and multi-disciplinary partnerships in Queensland, one year down the road:

- 102 incorporated legal practices started in Queensland in 2007-08, or 54.55% of the 187 new law firms overall, and 2 multi-disciplinary partnerships.
- 62 of those 102 firms were existing law firms that restructured by incorporating and 40 were 'brand new' firms.
- 5 of those 102 firms and 1 of the 2 multi-disciplinary partnerships had stopped practising by the year's end or stopped practising under that business structure – there were 97 incorporated legal



practices at 30 June or 7.26% of the 1,336 law firms overall, and 1 multi-disciplinary partnership.

- 91 of those 97 incorporated legal practices were local firms and 6 were interstate firms with a local office, and between them they employed 324 or 5.70% of the 5,682 employed solicitors and law firm principals overall.

They are mostly small firms. We know that:

- 19 or 38.78% of the 49 incorporated legal practices that had provided us with the relevant information at 30 June employed only 1 legal practitioner; 33 or 67.35% of them employed fewer than 4 practitioners; and only 2 of them employed more than 12 practitioners.
- 21 or 42.85% of those 49 firms anticipated a gross fee income for the year of less than \$500,000; 31 or 63.27% of them anticipated an income of less than \$1,000,000 and only 3 or 6.12% an income of more than \$5,000,000.
- 57 or 93% of the 61 firms that had provided us with the relevant information by 30 June provided legal services only and 4 or 7% of them other professional services in addition to legal services.

We also know, although the numbers are too small and it's much too early to make anything of it, that the incorporated legal practices were less likely than their traditionally structured counterparts to be subject to complaint. We know that:

- incorporated legal practices made up 7.26% of all Queensland law firms at 30 June but were subject to only 1.6% of the complaints we received during the year.

- 1 in 10 incorporated legal practices were subject to a consumer dispute or conduct matter during the year compared to 4 in 10 of traditionally structured firms.

We will track this data very carefully over coming years. The evidence from New South Wales is that incorporated legal practices are at least 50% less likely than traditionally structured firms to be subject to complaint – and why: because the regulatory framework that applies to incorporated legal practices serves a preventative purpose.

The regulatory framework

We will regulate the provision of legal services by incorporated legal practices in part at least in exactly the same way we regulate the provision of legal services by any other law firm – by responding to complaints and, if we suspect all is not as it should be, by initiating 'own motion' investigations.

Notably, however, the Act requires incorporated legal practices to have at least one legal practitioner director and imposes obligations on legal practitioner directors over and above their ordinary professional obligations as lawyers. There are others, but their key additional obligation is to 'keep and implement appropriate management systems to enable the provision of legal services by the practice under the professional obligations of Australian legal practitioners and other obligations imposed under the Act'.

The word 'enable' is important – it means that management systems count as appropriate in this context only if they support and encourage a firm's employees to do the right thing and discourage and deter them from doing the wrong thing and, allowing for the fact that even the best systems might be less

than completely successful in that regard, only if they maximise the likelihood any wrongdoing will be detected and dealt with, including with appropriate remedial action.

The obligation to keep and implement appropriate management systems is in effect an obligation to build and maintain an ‘ethical infrastructure’ and it is no small matter. Legal practitioner directors who fail to take ‘all reasonable steps’ to honour their obligations in this regard can be found guilty of unsatisfactory professional conduct or professional misconduct for that reason and that reason alone.

Importantly, the Act empowers us to conduct an audit (a ‘compliance audit’) of an incorporated legal practice – and to conduct an audit ‘whether or not a complaint has been made’ – about:

- ‘the compliance of the practice, and of its officers and employees, with the requirements of [the Act] or a regulation, the legal profession rules or the administration rules so far as they apply to incorporated legal practices’; and
- ‘the management of the provision of legal services by the incorporated legal practice, including the supervision of the officers and employees providing the services.’

The Act says nothing about how we should go about a compliance audit but gives us if we need them all the same and more powers than we have in relation to complaints and investigation matters – powers to require reasonable help and cooperation in conducting an audit, to require the production of documents and information, to enter places including if needs be by warrant, to examine books, to seize evidence, to examine persons and to hold hearings. These are significant powers.

Compliance audits

We have committed with our counterpart regulators in New South Wales and Victoria to achieve a consistency of regulatory practice and we’ve agreed to that end to adopt the ‘education towards compliance’ approach that has been pioneered over recent years in New South Wales. We want to encourage the highest possible level of voluntary compliance, and to engage legal practitioner directors with problem-solving how they might best develop and continually improve their management systems and processes and workplace cultures to better support and sustain high standards of conduct – and we want to engage them in a continuing conversation with us about their progress in that regard.

We envisage conducting two types of audit – internal or self-assessment audits that we require incorporated legal practices to undertake themselves, through their legal practitioner directors, and external audits that we undertake, looking in from the outside.

a) self assessment audits

We have adopted the self-assessment audit process that has been used for some time now in New South Wales. We require legal practitioner director(s) to audit their firm’s management systems and supervisory arrangements shortly after they give the required notice of the firm’s intention to start engaging in legal practice as an incorporated legal practice and to assess how effectively their systems achieve:

- competent work practices to avoid negligence
- effective, timely and courteous communication
- timely delivery, review and follow up of legal services to avoid delay

- acceptable processes for liens and file transfers
- shared understandings and appropriate documentation covering cost disclosure, billing practices and termination of retainer
- timely identification and resolution of conflicts of interests
- appropriate records management
- well understood procedures for authorising and monitoring compliance with undertakings
- effective supervision of the practice and its staff, and
- compliance with trust account regulations and accounting procedures.

We expect legal practitioner directors to engage positively with the exercise and to candidly identify any aspects of their practice's management systems that might require or benefit from improvement. We require them to return the completed self-assessment form to us within a designated period and we evaluate the information and begin a conversation about what further steps they might take, if any, to fix any perceived weaknesses. We will also require them to give us annual updates.

We've published the self-assessment form on the commission's website. It is an only slightly revised version of the form that has been used in New South Wales for some years now but includes an entirely new section which requires legal practitioner directors to provide us with information about the firm's non-legal directors and their occupations, its shareholders and their relationship to the law practice, the number of lawyers it employs, its gross fee income and the

nature of the services it provides other than legal services, if any.

b) external audits

Clearly we need to implement a program of external audits to test whether the self-assessment audits legal practitioner directors undertake at our request are giving us a fair and reasonable and for that matter an honest appraisal of the actual state of play. We can't simply take their word for it.

So what might it look like? There is no established practice as yet, unlike with self-assessment audits, but it seems to us it should meet at least four fundamental criteria:

- it should be and be seen by incorporated legal practices and all our other stakeholders to be credible and robust, and sufficiently credible and robust to justify public confidence in the provision of legal services by incorporated legal practices and that we're on the job, as it were.
- it should be fully consistent with and complement the 'education towards compliance' thrust of the initial self-assessment audits. It should make a difference and a difference for the better. It should add value in ways we can point to and defend.
- it should allow for the fact that we will inevitably have limited resources to put to the task.
- it should not add any unjustifiable regulatory burden but keep the compliance costs to incorporated legal practices proportionate to the potential significance of the information we're seeking to obtain.

It follows immediately that we envisage ourselves conducting comprehensive external audits only

occasionally, and only of those incorporated legal practices we believe are most at risk of non-compliance. We will need to rapidly acquire the data and the skills and the analytical capacity we need to make evidence based risk assessments of those kinds.

We envisage conducting two types of external audit – web-based surveys and comprehensive on-site reviews.

We will design an ever expanding series of short, sharp web-based surveys which test discrete aspects of a law firm's ethical infrastructure. We will design them specifically to minimise the compliance costs to the law firms subject to audit and to maximise the value of the information they elicit and we are confident they can tell us a great deal.

The surveys will be directed not just to a firm's legal practitioner director(s) but to all its employees, or in larger firms at least good-sized samples of the different levels and classifications of their employees – directors, senior lawyers, junior lawyers, paralegals and other support staff. We want them to give us, and give their firm, a window on how the firm's policies and procedures and systems are understood and implemented 'down the line'. Their answers and in particular the patterns of their answers across the different levels and classifications of a firm's employees will be a handy indicator of which of its management systems if any might need improvement.

The surveys will be purpose-built to take no more than and preferably less than 30 minutes to complete and to be equally resource-friendly from our point of view – we will build them using 'off the shelf' software that automatically calculates the results.

The surveys have potential to add value beyond the window they give us and they give the firms subject

to audit on their ethical infrastructure. We envisage publishing the aggregated and de-identified results on the commission's website both to enable law firms to compare their performance with the de facto industry standard and to serve a broader public interest by exposing law firm culture to public scrutiny.

On-site reviews by their very nature will be a more resource intensive exercise both from our point of view and the point of view of the law firms subject to audit, and it follows that we envisage conducting audits of this more intensive kind very much less frequently than web-based surveys and only on an 'as needs' basis – on the basis of a risk assessment that tells us that a firm or some aspects of its practice are or are highly likely to be non-compliant.

We envisage on-site reviews comprising tailor-made combinations of some or all the following kinds of activities:

- further web based surveys of the kinds we have already described
- traditional desk-top policy and procedure reviews
- detailed analyses of the firms' complaints history, including detailed analyses of the investigation files held by the commission
- interviews with legal practitioner directors, supervisors and managers
- interviews with and / or focus groups of individual employees 'down the line'
- interviews with and / or focus groups of clients, including but not only clients who have lodged complaints with the commission
- interviews with third parties including, for example,

practitioners from other law firms that have regular dealings with the law firm subject to audit

- reviews of selected or randomly selected client files and bills, in-house complaints registers and the like
- client satisfaction surveys, and
- mystery or ‘shadow’ shopping – having real or pretend consumers deal with the firm and behave exactly as a genuine client might behave and asking them to report their experience.

Our performance to date

It’s early days, but:

- we adapted our case management system to record information and documents about incorporated legal practices, to support the compliance audit program we have just described and to generate relevantly modified profession analyses and performance reports. We consulted closely with our New South Wales and Victorian counterparts to ensure a consistency of regulatory practice, and with leading academic researchers in the area to ensure we capture and report appropriately comprehensive data. We discuss how we’ve adapted the case management system in more detail later in the report under the heading *Our people and our systems*.
- we initiated self-assessment audits of all 102 incorporated legal practices that gave notice of their intention to start engaging in legal practice during the year and we completed 61 of them. They most commonly identified their systems in relation to communication, delay, negligence, and supervision as needing improvement and least commonly identified their systems in relation to their trust accounts.

- we haven’t yet initiated any web-based surveys but we’ve designed and road-tested three surveys and published them on the commission’s website – an audit of workplace culture, an audit of billing practices in medium to large law firms, and an audit of complaints management systems. The initial response has been over-whelmingly positive. The managing partner of the Brisbane office of one large law firm told us that the billing practices survey ‘was a very useful reminder of the issues that arise in best billing practice. It has prompted us to review our own management systems to see how effectively they deliver best billing practice and given us some very good ideas as to how to improve our systems.’
- we initiated 2 on-site reviews and have almost finalised the audit plans but have not yet conducted them. We are taking the opportunity these early on-site reviews give us to develop precedent documents and the like.

“ The de-identified results have potential to serve a broader public interest by exposing law firm culture to public scrutiny ”

Compliance audits: a model for all law firms?

The law is not only a profession but a business. Lawyers sell legal services for profit within commercial enterprises and law firms like other commercial enterprises have workplace cultures that shape the ethical standards of the people who work for them, for better or worse. It follows, if we're genuine about promoting high standards of conduct within the profession, that we should pay serious attention to helping law firms develop and maintain workplace cultures or 'ethical infrastructures' that enable them to deliver legal services to those high standards.

It follows in turn that the regulatory framework that applies to incorporated legal practices should apply equally to all law firms. That is in part because the complaints-based framework for regulating the provision of legal services has the significant limitations we described earlier in the report and in part because we're beginning to see evidence that the regulatory framework that applies to incorporated legal practices has a positive impact on law firm culture by lifting professional standards.

More fundamentally, however, it's because there is no good 'in principle' reason why sole practitioners and partners within traditionally structured law firms shouldn't be under exactly the same obligations as legal practitioner directors to keep and implement appropriate management systems which enable their firm to deliver legal services 'under the professional obligations of Australian legal practitioners'. Indeed it's hard to imagine anyone trying seriously to argue that they're under any lesser obligation as it is, albeit not an obligation set out in statute or the legal profession rules.

The objection is more likely to be to the prospect of the added regulatory burden. We should take that

concern seriously, and we are – we have designed the audit program we described over previous pages deliberately and specifically not to impose any significant compliance costs on law firms in the absence of an evidence based risk assessment that justifies it. The objection will have no merit if we can deliver on that promise.

Discipline

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 authorises the commissioner to make a discipline application to a disciplinary body following a complaint or investigation matter 'as the commissioner considers appropriate' and to dismiss a complaint or investigation matter if 'there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct... or it is in the public interest to do so.'

We make a discipline application to the Legal Practice Tribunal if we believe there's a reasonable likelihood of a finding of professional misconduct and to the Legal Practice Committee if we believe there's a reasonable likelihood of a finding of unsatisfactory professional conduct but not of professional misconduct. We've developed guidelines which describe how the commissioner exercises those discretions and have published them on the commission's website for the information of the profession, legal consumers and members of the public.

We are also responsible for commencing criminal prosecutions for certain offences under both the *Legal Profession Act 2007* (engaging in legal practice without

having a practising certificate, for example, or causing or inducing or attempting to cause or induce a legal practitioner director of an incorporated legal practice to contravene his or her professional obligations) and the *Personal Injuries Proceedings Act 2002* (touting at the scene of an accident or breaching the restrictions on the advertising of personal injury services).

Disciplinary action in 2007-08

We've attached more detailed statistical data at Appendix 4 but set out the key facts in Tables 6 and 7.

Table 6: prosecution matters commenced since 2004/05

	04-05	05-06	06-07	07-08
Prosecution file opened but discipline application / summons not yet filed as at 30 June	9	15	10	12
Discipline application filed with the Legal Practice Committee	6	13	11	8
Discipline application filed with the Legal Practice Tribunal	11	24	25	20
Summons issued in the Magistrates Court (in relation to alleged offences)	0	0	0	0
Number of prosecution files opened	26	43	33	29
Number of prosecution files on hand at 30 June	24	42	34	44

Table 7: prosecution matters heard and finally decided since 2000/01

	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08
Solicitors Complaints Tribunal	10	23	26	25	3 *	n/a	n/a	n/a
Legal Practice Committee	n/a	n/a	n/a	n/a	0	10	8	5
Legal Practice Tribunal	n/a	n/a	n/a	n/a	2	9	18	5 #
Court of Appeal	^	^	^	^	-	2	0	0 ^^
Magistrates (or other) court	0	0	0	0	0	0	0	0
Discontinued	-	-	-	-	0	0	15	9
Total	10	23	26	25	5	21	41	19

* 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.

The Tribunal heard a further 2 matters in June but neither matter was finally decided at 30 June 2008 – one of which had been heard but not decided and the other of which had been heard and decided but not finally decided because the parties remained entitled to appeal.

^^ There were 2 matters under appeal in the Court of Appeal at 30 June, one of which had been heard but not decided and the other of which remained to be heard.

We note the following:

- we initiated 29 discipline applications in 2007-08 arising from 47 separate complaints and investigation matters. The number is slightly down on 2006-07 but significantly down on 2005-06 when we initiated 43 discipline applications. The comparison is misleading, however – we finalised half as many complaints again in 2005-06 when we were still dealing with the large backlog of complaints we inherited on our inception.
- we discontinued an apparently large proportion of the prosecution matters we closed during the year – 9 out of 19. We reviewed our decision to initiate disciplinary proceedings in each of those matters after new information came to light either before or after we filed the discipline application. We discontinued 6 after we received further submissions from or on behalf of the respondent practitioners which persuaded us there was no public interest in taking the matter further. Those matters involved only relatively minor misconduct and the respondent lawyers acknowledged their error and apologised or took some other appropriate action. We discontinued 2 on the basis that there was no reasonable likelihood of an adverse finding. Both those matters involved unprofessional correspondence and we discontinued them in the

light of the Legal Practice Tribunal's decision in the matter of LSC v Sing. The ninth matter was opened in error.

- not every charge we alleged was proved, but the disciplinary bodies made findings of unsatisfactory professional conduct or professional misconduct in all 10 matters that were heard and finally decided. The Legal Practice Tribunal found 5 practitioners guilty of 14 charges of professional misconduct and 2 charges of unsatisfactory professional conduct. 3 of those practitioners were struck off, 1 was reprimanded and fined and 1 was reprimanded only.

Notably 1 of those matters was the first discipline application brought in Queensland arising from a practitioner's failure to lodge personal tax returns. The Tribunal found consistent with a body of New South Wales case law that the practitioner's failure to meet his civic obligations in this way rendered him unfit to practice and ordered that he be struck off.

The Legal Practice Committee found 4 practitioners guilty of 6 charges of unsatisfactory professional conduct. 3 of those practitioners were reprimanded and fined and 1 was reprimanded only.

We have added the names of the 10 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.

- the 10 matters that were heard and finally decided all involved solicitors. The Legal Practice Tribunal heard 2 matters involving barristers in June but neither matter was finally decided at 30 June. It

dismissed one of them (but the matter won't count as finally decided until the appeal period expires in July) and was yet to decide the other. 6 of the 44 prosecution matters on hand at 30 June involve barristers (including the 2 matters just mentioned).

- the Legal Practice Tribunal heard and decided a further 2 matters which have been appealed – 1 by the respondent practitioner and 1 by the commissioner. The Court of Appeal had heard but not decided the first of those matters at 30 June and was yet to hear the second. It is scheduled for hearing in August. Both matters raise important issues relating to the respondent's fitness to remain in practice following a finding of professional misconduct.
- the numbers are small but the 2007-08 prosecutions data in relation to age and gender like the same data in previous years is fully consistent with the complaints data. Women lawyers are several times less likely than men lawyers per head of population in the profession to become subject to a discipline application, and similarly lawyers under 40 years of age and lawyers who have practised for fewer than 10 years are significantly less likely than lawyers over 40 years of age and lawyers who have practised for more than 10 years to become subject to a discipline application.

We note finally the reduction in the number of matters that were heard and finally decided during the year compared to 2006-07 and the consequent 'bank up' of matters waiting finalisation, particularly in the Legal Practice Tribunal. The numbers waiting to be heard increased worryingly over the commission's first two years but the problem seemed to be resolving itself in 2006-07 only to resurface in 2007-08.

The bank-up came about in part because the tribunal sat for only a week in the second half of 2007 and was able to dispose of fewer matters than might otherwise have been expected because the list included several complex and contested matters. It was due in part also to the difficulties we experienced, in the absence of set hearing dates, getting respondent practitioners to respond to discipline applications in a timely way and in particular to identify the allegations they intended to concede or dispute.

The Chief Justice and the Senior Judge Administrator acted promptly to resolve the problem when it was brought to their attention and we expect to have largely put it behind us by the end of the calendar year. The Senior Judge Administrator has scheduled the Legal Practice Tribunal to sit at regular intervals well in advance and the tribunal now conducts a callover of outstanding matters at the commencement of each sitting week.

Furthermore the Chief Justice issued a practice direction in March (Legal Practice Tribunal Practice Direction 1 of 2008) which sets out new rules designed to streamline the procedure and has since been replicated by the Legal Practice Committee (with the necessary changes only). The practice directions require respondent practitioners among other things to file a reply to a discipline application within 28 days specifically to narrow and isolate the issues in dispute.

These steps between them have given the disciplinary bodies much greater ability to 'keep things moving' and have served in our brief experience to date to very considerably expedite matters both getting to hearing and at the hearing itself.

Projects and research

We have no specific obligation under the *Legal Profession Act 2007* but we see it as part of our core business to communicate what we learn as we go about the work we have described earlier in the report and to contribute to related policy discussion. We also see it as part of our core business to support and undertake projects and research directed to helping lawyers and law firms deliver legal services to high ethical standards. We want as far as we reasonably can to get in first, before things go sour by giving rise to complaint or non-compliance. Prevention is better than cure.

We set out accordingly to:

- publish and disseminate information describing our experience to date and future plans for dealing with complaints and conducting compliance audits
- analyse our experience and data base to identify the lawyers, law firms and aspects of legal practice most at risk of complaint or non-compliance and to publish and disseminate our findings
- contribute speakers to and otherwise support undergraduate and continuing legal education programs directed to helping lawyers and law firms to deliver legal services to high ethical standards
- undertake, facilitate, broker and partner the professional bodies, university law schools and other legal services stakeholders in undertaking practical projects and research directed to helping lawyers and law firms to deliver legal services to high ethical standards, and to
- contribute to the development of legislative and regulatory reforms and policy directed to helping

lawyers and law firms to deliver legal services to high ethical standards.

It's been a busy and successful year. We are pleased to report that:

- we jointly developed with staff of the QLS a Client Service Charter which sets out what clients are entitled to expect of a law firm they engage to do legal work for them and what law firms are in turn entitled to expect of their clients. The charter encourages clients who become concerned about the standard of service they're receiving to approach their lawyer directly in the first instance and encourages law firms to have systems in place which enable them to respond appropriately in that eventuality. The council of the QLS has endorsed the charter and we understand will soon publish it as part of a larger *Client Care Guide*. We hope and expect that law firms make a point of giving their clients a copy at their first interview as a matter of course.
- we have begun revamping our website to make it easier to navigate; to make more and better information and resources available to consumers, the profession and the public, including information about our performance; and to enable complainants to make complaints on-line and law firms to complete self-assessment compliance audits on-

line. Our home page will take on a whole new look over coming months; the on-line complaint form will go live soon thereafter; and the self-assessment form by the end of the year.

- we finalised three web-based surveys which we will start using over coming months to collect feedback about our performance from people who have made an inquiry and/or a complaint, from practitioners who have been subject to complaint and from stakeholders more generally. We want to measure how people we deal with directly experience our processes and the outcomes we deliver them but at the same time to go beyond traditional exit or satisfaction surveys by measuring how people we impact less directly perceive us, our approach and our effectiveness in giving consumers a means of redress and helping improve standards of conduct in the profession.

We plan to publish the results on a dedicated 'your feedback' page on the new look website. We have made the survey instruments available to our counterparts in New South Wales and Victoria with a view to all of us capturing comparable data for benchmarking purposes.

- we collected and analysed our complaints data as in previous years and cross-referenced it with data about the characteristics of the practitioners subject to complaint including their age, gender, post-admission experience and the whereabouts and size of the law firms in which they practice, and this year, now that law firms are allowed to structure themselves as companies, with data about their law firm's business structure. Of course we have also collected and are devising ways to analyse data about compliance audits. We want to be able to identify the categories of lawyers and law firms and

‘ We have begun revamping our website ’

the aspects of legal practice most at risk of complaint or non-compliance so as to better position ourselves and others to craft preventative strategies.

We have ‘cherry-picked’ the data for inclusion in the main body of this report and included the full information at Appendix 4. It is important and useful information and invites some obvious questions. We’ve noted already for example that women lawyers this year as in years past are significantly less likely per capita than their male counterparts, indeed almost four times less likely to find themselves subject to complaint. Why is that?

- we have sought to answer that question through a research project we’ve jointly undertaken with a researcher from University of Queensland’s TC Bierne School of Law. The project involved a literature review; a more detailed analysis of the complaints data; a web-based survey of over 400 women lawyers from around the state that gathered information about the sorts of legal work women lawyers are doing, the size of the law firms they’re working for, and whether they’ve had career breaks and why; and finally follow up focus groups of women lawyers and telephone interviews. The findings will be published in an article in the July edition of the Griffith Law Review and in a paper to be delivered at the Third International Legal Ethics Conference, also in July, and subsequently published in the conference proceedings. We will publish both papers on our website in due course.
- we are one of several co-sponsors of that international legal ethics conference and will deliver two papers and participate in a panel discussion about the regulation of legal ethics.

- we completed 64 speaking engagements during the year including at all 12 practice management courses conducted by the QLS for solicitors who are seeking to upgrade their practising certificates to enable them to practise as sole practitioners or partners; 26 at compulsory professional development workshops on ethics conducted by both the QLS and private providers; 13 to law students as part of the professional responsibility studies or practical legal training; and 7 on various topics at conferences including the Conference of Regulatory Officers, the BAQ Annual Conference and an international conference at the Legal Services Research Centre in Greenwich, London.
- we trialled an on-line ‘ethical culture check’ for law firms – a simple, easy to use and entirely confidential survey instrument designed to help law firms review the ethical health of their workplace culture and hence potentially to identify ways it might be strengthened and improved. We got some very helpful feedback from a number of Brisbane based law firms and were encouraged sufficiently to commit to develop further like surveys and to use them in the ways we discussed earlier in the report as one key means of conducting compliance audits of incorporated legal practices. We have published both the original and the subsequent surveys on our website and there will be more to come.

We encourage not only incorporated legal practices but all law firms to undertake the surveys, both because it’s a worthwhile exercise in itself and as a basis for comparing the ethical performance of incorporated legal practices with that of otherwise comparable but traditionally structured law firms. The results for any particular law firm will be strictly confidential but we

Projects and research continued

plan to publish the de-identified and aggregated results on our website and to update them at regular intervals.

- we co-hosted two more seminars with Griffith Law School in our joint seminar series under the title *Lawyers, Clients and the Business of Law* – one lunchtime seminar exploring the concept of unsatisfactory professional conduct and an early evening seminar exploring billing practices and ethical issues related to costs. Both seminars involved about fifty practitioners, legal academics and regulators listening to short ‘discussion-starter’ presentations and then workshopping the subject in small groups and a subsequent plenary session. The feedback continues to be overwhelmingly positive and, encouragingly, includes comments to the effect that the seminars are particularly valuable to young lawyers who rarely get opportunities to debate with and hear senior practitioners debate such topics. We have published reports of both seminars on our website.
- we finalised a fourth interactive scenario in collaboration with the University of Queensland’s Centre for Biological Information Technology – the third and final scenario in the elder law series we designed to give lawyers and law students an opportunity to engage on-line and try to resolve some ethical dilemmas that arise in dealing with older people and people with potentially contested capacity to give instructions.

This particular scenario has a wider purpose – it picks up where the previous two scenarios left off, but also stands alone by giving complainants and respondents to complaints an opportunity to ‘track’ an imaginary complaint and see how we deal with the complaint and the parties to the complaint as events unfold. All four

scenarios are available on the commission’s website. We understand that they’ve attracted an average of 46 visitors a month from all over the world including on average 34 new visitors, and that those visitors make an average of 2,800 hits a month, or 51 per visitor.

- we committed along with our New South Wales and Victorian counterparts to be industry partners with a consortium of legal academics from Melbourne, Monash and Adelaide Universities and the University of Queensland in a research proposal they submitted to the Australian Research Council for funding to study large corporate law firms to identify the ways in which they can best support and encourage ethical behaviour among their partners and employees in the interests of the fair, just and certain operation of the law. The proposal was unsuccessful, regrettably, but the consortium has refined and will resubmit the proposal later this year, including this time parallel projects in both the UK and the USA.
- we made submissions to the Attorney-General suggesting some ways in which the *Legal Profession Act 2007* might be amended to strengthen our capacity to give complainants redress as appropriate and to promote and enforce high standards of conduct among lawyers and law firms. Discussion is continuing. We also made written and in person submissions to the Independent Expert Panel on the Implementation of an Amalgamated Civil and Administrative Tribunal about the futures of the Legal Practice Tribunal and the Legal Practice Committee and we are grateful to the Panel for the opportunity.

- we have formed a working group with the QLS, the BAQ, Lexon Insurance (the professional indemnity insurer to Queensland law firms), the College of Law and others to see what can be done about the unacceptably high incidence of stress and depression among lawyers. The evidence in Australia as elsewhere tells us that lawyers are stressed and depressed in greater numbers than in any other profession – about one in seven of all lawyers experience moderate to severe symptoms of stress and depression and many of them ‘self-medicate’ with non-prescription drugs and alcohol.

It is important that we learn what it is about doing law that contributes to the high incidence of stress and depression among lawyers, and what can be done to reduce it and to help lawyers who are stressed and depressed to acknowledge the fact and get help. These are important issues – their lethargy and impaired judgment puts these lawyers at ethical risk and can come at a high cost to them and their families if their symptoms are left untreated, and at a high cost to their law firms and of course their clients.

‘ It is important that we learn what can be done to help lawyers who are depressed ’

Our people and our systems

We have described as best we can what we've done over the past year and how we've gone about it but ultimately it's for others to judge our performance. What we can say for sure however is that our performance in dealing with the world external to our office is inevitably a function of our performance inside the office – hence we make a deliberate effort to keep a productive and motivating work environment.

Our people

We may be the centrepiece but the system established under the Act for dealing with complaints extends beyond the commission to include the people at the QLS and the BAQ who deal with and investigate complaints on our behalf. For most purposes, the system is best conceived holistically.

We've attached a chart at Appendix 2 that describes how the system as a whole has been staffed since its inception and note that total number of staff has settled in recent years at a number only slightly greater than when the system first commenced in 2004. That's a measure of the system's efficiency, all the more so given that the commission has taken on additional

responsibilities in the interim – for enforcing the restrictions on advertising personal injury services and conducting compliance audits of incorporated legal practices – and at the same time has added value to the system by developing a capacity that was previously lacking to undertake projects and research. We have included for completeness at Attachment 3 a table describing what it all costs.

The commission for its part is only a small organisation of 18.2 full-time equivalent people. We set out on our inception to get the right people with the right values in the right jobs in the right numbers and, having achieved that goal during our first two years have since managed to keep them. We have set out to get the best possible advantage from our small size by creating a collegiate workplace culture characterised by 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 and they do. We note also that:

- the commissioner or the Manager-Complaints as the commissioner's delegate in most day to day matters are formally responsible for making the key decisions that need to be made but we make

‘ We set out to get the right people with the right values in the right jobs ’

as many as possible of those decisions including every decision to initiate disciplinary or other regulatory action or to take no further action when that might be a line ball decision only after a team discussion where the staff member who has carriage of the matter presents the arguments and all staff have an opportunity to and are expected to have their say. It's a useful process especially in matters of often fine judgement, where many heads are wiser than one, but has the added advantages of turning routine decision-making into a professional development opportunity and ensuring a consistency of approach. It works on all counts.

- those collegiate processes aside, the commissioner and the Manager-Complaints meet individually with every member of staff at least twice a year to review the commission's and their own performance, how they're travelling and what they might do by way of professional development. The feedback we get is all positive.
- every member of the commission's staff is expected to undertake at least two days of professional development activities a year and we've achieved that goal. Our staff attended a total of 67 varied training events between them over the course of the year, many but not all of them directly relevant

to the work of the commission. Some were chosen for other reasons – with a view to planning a life after the commission, for example, or simply for intellectual refreshment. It all counts.

Our systems

Our most fundamental system – the system we rely on in almost everything that we do – is our case management system (CMS). The decision was taken before we commenced to give the commission remote access to the case management system the QLS used when it was responsible for dealing with complaints and to adapt it to suit our requirements. That arrangement has caused us grief from time to time but has had and continues to have a great advantage over the 'stand alone' alternatives.

It means that we record and store the information and documents we're required to keep about complaints and disciplinary matters, and more recently about the restrictions on advertising personal injury services and compliance audits of incorporated legal practices and related disciplinary or other regulatory matters, in the same data 'warehouse' the QLS uses to record and store the information and documents it's required to keep about lawyers and law firms – and in the same data warehouse as the society recorded and stored

Our people and our systems continued

the information and documents it was required to keep about lawyers and law firms and complaints and disciplinary matters before the commission commenced. We can each secure and deny the other access to the data that's rightfully ours, but it's all recorded and stored in the one place.

That arrangement presented and continues to present us two challenges – to adapt the CMS to suit our continually evolving requirements and to come to an agreement with the QLS about the access we're each prepared to give the other to the information we're each required to keep – but we've met and continue to meet them. We've invested quite some time and energy since we commenced defining our evolving requirements and happily the CMS has proved more than up to the task. We've also agreed with the QLS and happily so subject to confidentiality agreements to facilitate the effective and efficient discharge of our respective responsibilities by giving each other the fullest possible access to the information we're each required to keep.

And the outcome: we have an almost uniquely powerful capacity to measure and report how the regulatory regime works. We can cross-reference the data we're required to keep about complaints, compliance audits and disciplinary matters with the data the QLS is required to keep about lawyers and law firms and so generate the wealth of information we've illustrated at Appendix 4 and cherry picked throughout the main body of the report.

It's an ongoing process and we continued to make gains during 2007-08 including the following:

- we adapted the CMS to record and store information and documents about compliance audits of incorporated legal practices, and to automatically notify us whenever a corporation notifies the QLS and the society records its intention to start or to stop engaging in legal practice.
- we designed and implemented a framework for reporting compliance audits of incorporated legal practices for inclusion in our monthly performance reports and redesigned the profession analysis for annual reporting purposes to include key data about incorporated legal practices and points of comparison with traditionally structured law firms.
- we all but completed the project we commenced several years ago now to relocate our CMS server from the QLS to the department of Justice and Attorney-General (JAG) and to implement the information sharing agreement with the QLS by providing for a two-way replication of the agreed data between our server and theirs. The project should be completed by September and will overcome the downside to the current arrangement – the fact that it requires the QLS to support and maintain our user profiles and security settings and so makes our access to the CMS dependent on circumstances beyond our control and beyond the control also of JAG's (and hence our) information technology support staff. This has sometimes been problematic. It will have the added benefit of giving us an all but guaranteed disaster recovery capacity, should either server fail.

We hope and expect when the replication project is completed to give the BAQ remote access to the CMS and to come to an information sharing agreement with them similar to our agreement with the QLS. That will enable designated people at the association to view and record information and documents about the complaints about barristers that we refer to the

association for investigation and give us the same or similar reporting capacity in relation to complaints about barristers that we have in relation to solicitors. It will mean that all three agencies with co-regulatory responsibilities in this area will share the one consolidated case management system.

- we developed an on-line complaint form which will enable complainants to make and lodge complaints electronically in a way that is fully integrated with the CMS. The form is ready to go live the moment the replication project is completed. We envisage enabling incorporated legal practices to complete and submit their self-assessment audits on line by early 2009 and that process being fully integrated with the CMS also.
- we created a jurisdictionally neutral web address – lpcentral.org.au – to enable those of our counterparts in the other states and territories who choose to do so to access their own stand alone instances of our CMS as it applies to incorporated legal practices and to record and store their local data. We're ahead of them in this regard, as luck would have it, and we're happy to share our good fortune if it suits their purposes in either the short or longer term. What goes round comes around.
- last but not least, we continued to add to and improve the precedent letter and clause banks that are so integral to our CMS to allow us to generate letters and other documents more efficiently and consistently. That involved the tedious exercise of 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.

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 factsheets that are also available on the website and that we are happy to make available on request.

The system can be readily summarized 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 authorized to receive formal written complaints about lawyers and law practice employees under the *Legal Profession Act 2007* and has been since the *Legal Profession Act 2004* first commenced on 1 July 2004.

We encourage people who have a complaint to consider discussing and attempting to resolve their concerns directly with the lawyer or law practice employee concerned and / or his or her supervisor. Sometimes that's all it takes. Not everyone wants to do that, however, and it isn't always appropriate and doesn't always work, and people in those circumstances remain fully entitled to make a formal written complaint to the commission. Indeed we encourage people in these circumstances to make a complaint so that their concerns can be addressed.

Similarly many people who have complaints about lawyers or law practice employees find their way to the Law Society or the Bar Association in the first instance. The society and the Association can often help them resolve their concerns informally. They remain fully entitled to make a complaint to the commission.

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 negligence is obvious on its face or the lawyer admits being negligent and the negligence amounts to unsatisfactory professional conduct, 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.

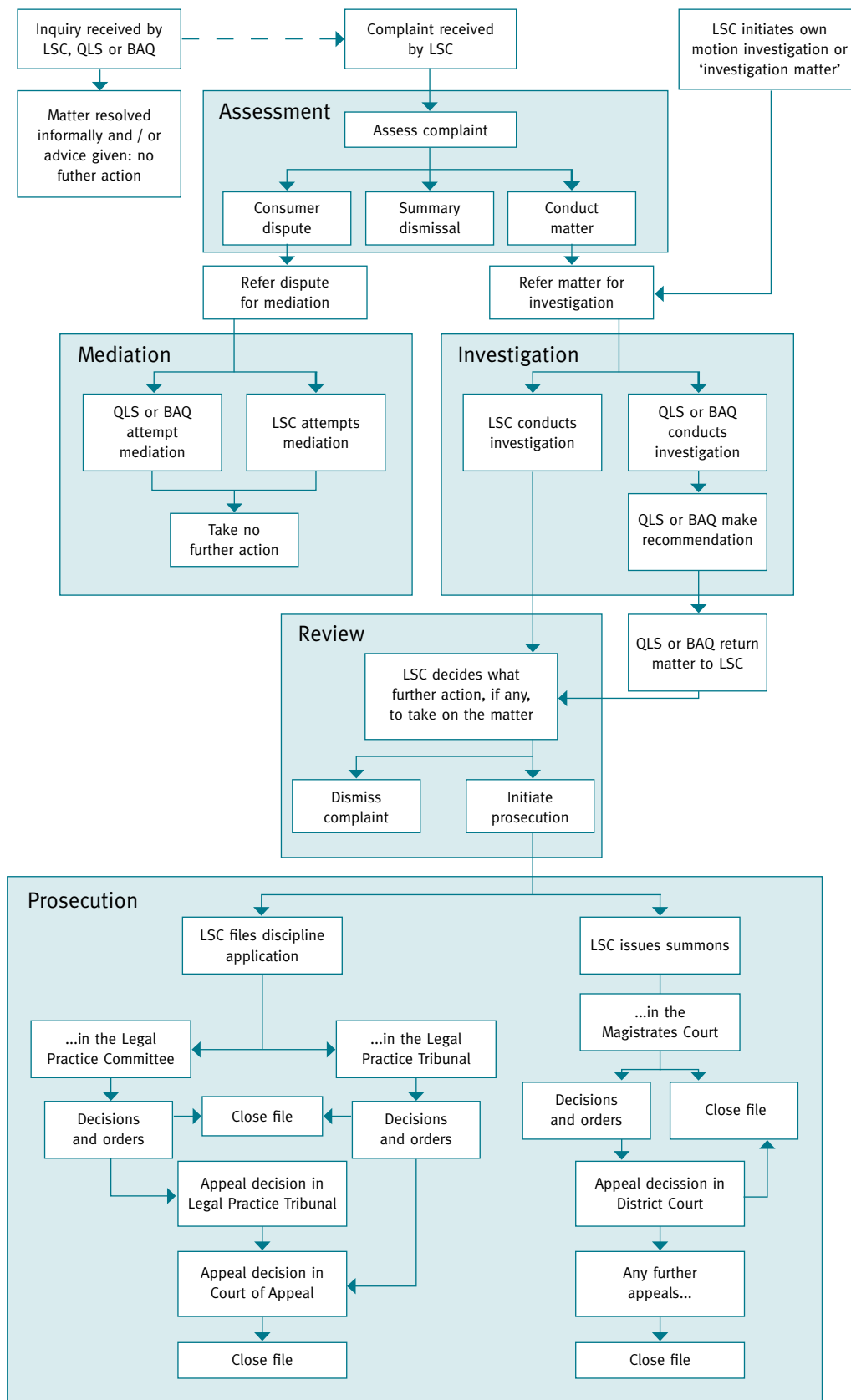
Importantly, if the commissioner decides to refer a conduct complaint or investigation matter to one of the professional bodies for investigation, the investigation remains subject to our direction and control and they have no authority to decide how those matters should be resolved, only to report their 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’ and, even if there is, whether it’s ‘in the public interest’ to initiate disciplinary proceedings. These are sometimes quite difficult questions, but:

- if the answer to both questions is yes, then the Act obliges the commissioner to initiate disciplinary proceedings in either the Legal Practice Tribunal (in relation to more serious 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.

Appendix 1: continued



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 Professional Standards Unit of the Queensland Law Society (the QLS) and the staff 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 2008-09.

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 going into 2006-07 and has now stabilised at a number only slightly greater than the number when the system first commenced.

That is 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 society were given significant additional responsibilities from July 2007 to monitor and regulate the provision of legal services by incorporated legal practices.

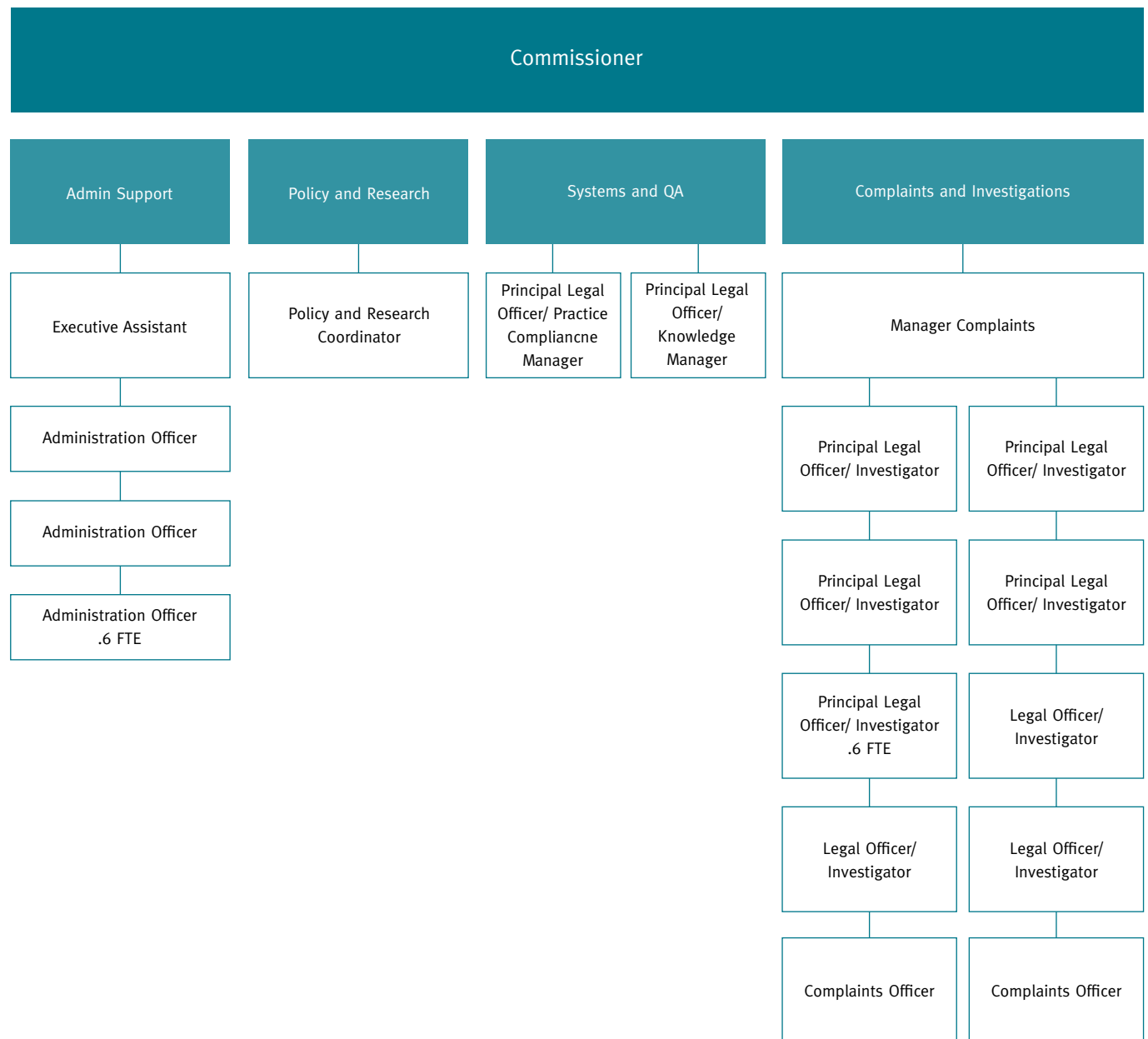
The commission has managed over that same time to add value to the system by developing a capacity that was previously lacking to undertake projects and research.

Table 2.1: numbers of full-time equivalent staff by agency and year

	start up: 01/07/04	at 30/06/05	at 30/06/06	at 30/06/07	at 30/06/08	going into 2008-09
LSC	8	10.7	17.5	18.2	18.2	18.2
QLS	19.95	19.95	19.95	12.72	13.72	13.72
BAQ	-	-	-	-	-	(.5) *
Total	27.95	30.65	37.45	30.92	31.92	31.92 (32.42) *

* The costs of this half-time position of Manager, Professional Standards, unlike all the other positions that together go to make up the system for dealing with complaints, are met by the BAQ through its own funds not through Legal Practitioner Interest on Trust Accounts Fund (see Appendix 3). The work was previously undertaken by members of the Association's Professional Conduct Committee on a pro bono basis.

Table 2.2: LSC organisational structure going into 2008-09



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, those sections of the Law Society and the Bar Association of Queensland 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 purposes¹ 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	2007-08 total	by comparison, 2006-07 total	by comparison, 2008-09 budget
LSC	\$1,808,945	\$1,071,001 ²	\$2,879,946	\$2,491,538	\$3,119,900 ³
QLS ⁴	n/a	n/a	\$1,670,909	\$1,504,835	\$1,756,638
BAQ ⁵	-	-	-	-	-
LPT	\$95,926	\$8,036	\$103,962	\$86,532	\$110,461
LPC	\$25,819	\$5,219	\$31,038	\$31,446	\$45,740
Total	n/a	n/a	\$4,685,855	\$4,114,351	\$5,032,739

Appendix 3: continued

For completeness, table 3.2 sets out the monies that have been returned to, or are due to return to LPITAF in 2007-08 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 2007-08

	LPT	LPC	Total
financial penalties ordered in 2007-08	\$21,500	\$1,500	\$23,000
penalty payments received in 2007-08	\$21,500	\$1,500	\$23,000
costs ordered, agreed or assessed in 2007-08	\$10,000	\$5,250	\$15,250
costs payments received in 2007-08	\$6,000	\$5,250	\$11,250

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 \$290,172 which obviously can vary significantly from year to year. It also includes increased rental costs and expenditure of \$109,447 to enhance our case management system. 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 iv, below).

³ This figure includes a draw down budget for 'brief-out' costs of \$500,000. The actual costs are impossible to predict in advance but will very likely be much less than that just as it was in 2007-08 and in years past – see note ii, above.

⁴ 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 \$1,164,404 direct from LPITAF of to enable it to fulfil its other regulatory functions under the Act.

⁵ The BAQ received a grant of \$126,865 from LPITAF to enable it to fulfil its various other regulatory functions under the Act. It did not request a grant to enable it to fulfil its functions in relation to complaints and discipline but either relied on the members of its Professional Conduct Committee who gave of their time pro bono or met the costs from its own funds.

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1 Introduction

1.1 Purpose

This report provides a statistical analysis of the complaints handling and compliance audit work undertaken by the Legal Services Commission (the commission) during the reporting year 2007-08.

1.2 Scope

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

1.3 Acronyms, and abbreviations

Term	Description
BAQ	Bar Association of Queensland
ILP	Incorporated Legal Practice
LSC	Legal Services Commission
MDP	Multi-disciplinary Partnership
PC	Practising Certificate
PIPA	Personal Injuries Proceedings Act 2002
Pre-Act	Complaints lodged prior to the commission's inception on 1 July 2004
Post-Act	Complaints lodged after the commission's inception on 1 July 2004
QLS	Queensland Law Society

1.4 Definition of key terms

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

- 1. Inquiries** comprise inquiries 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.

Appendix 4: Performance statistics continued

- 2. 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 on 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.

3. ILP compliance audits comprise audits of incorporated legal practices undertaken pursuant to section 130 of the Act. They comprise both internal and external 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 web-based surveys:** external audits in which the LSC requires all or representative samples of the different levels and classifications of an ILP's employees to complete a short on-line survey which reviews aspects of the firm's 'ethical infrastructure'
- **ILP on-site reviews:** more comprehensive external audits undertaken on-site at an ILP's offices which review the firm's and its employees' compliance with their statutory and ethical obligations. On-site reviews 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.

4. 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.

* 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 counts 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 Law Firms

We have decided, for the purpose of the profession analysis, to define a law firm to include only those law practices that have one of the following business structures:

- partnership
- ILP
- MDP

This excludes business structures including government law practices, community legal centres and legal aid.

The one law firm may have more than one law office and we count law offices separately as appropriate. We have also decided to distinguish local law firms from interstate law firms with a local office.

2.2 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.

2.3 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 be 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.

2.4 ILP compliance audits

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

- self assessment audits, web based surveys and on-site reviews on-hand at the start of the year
- self assessment audits, web based surveys and on-site reviews opened during the year
- self assessment audits, web based surveys and on-site reviews closed during the year
- self assessment audits, web based surveys and on-site reviews on-hand at the end of the year

The number of compliance audits of each kind on-hand at the end of the year clearly should reconcile with the number generated by adding the number opened during the year to the number on-hand at the beginning of the year and subtracting the number that were closed during the year.

2.5 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 forums.

3 Profession analysis

The following section provides an analysis of the make-up of the profession for the respondent types of solicitor and barrister.

3.1 Profession analysis – Queensland solicitors

We have used 1 July 2007 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 2007-08 will be profiled against the solicitor’s attributes as they were recorded at 1 July 2007.

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

Appendix 4: Performance statistics continued

3.1.1 Solicitors – by type of locally issued practising certificate as at 1 July each year

Year	Practicing Certificate Type							Total
	Principal	Employee	Conditional	Limited Principal	Restricted Principal	Un-restricted Volunteer	Restricted Volunteer	
2008	2,298	3,253	1,568	19	4	6	8	7,156
2007	2,302	3,010	1,584	19	4	4	3	6,926
2006	2,297	2,932	1,185	n/a	n/a	n/a	n/a	6,414
2005	2,317	3,074	801	n/a	n/a	n/a	n/a	6,192
2004	2,290	3,049	520	n/a	n/a	n/a	n/a	5,859

3.1.2 Law Firms – by business structure

	Partnership (local)	Partnership (interstate with local office)	ILP (local)	ILP (interstate with local office)	MDP (local)	Total
active as at 1/7/2006	1,297	19	0	0	0	1,316
number commenced during year	105	7	0	0	0	112
number ceased during year	118	2	0	0	0	120
active as at 30/6/2007	1,284	24	0	0	0	1,308
active as at 1/7/2007	(1,307)	(24)	(14)	0	0	(1,345)
no. commenced during year (new firms)	63	4	35	5	1	108
no. commenced during year (re-structure)	16		61	1	1	79
number ceased during year	145	8	5	0	1	159
active as at 30/6/2008	1,218	20	91	6	1	1,336
% of total	91.17	1.50	6.81	0.45	0.07	

3.1.3 Law Firm Business Structures – by practising certificate type as at 1 July 2007

	Practising Certificate Type							Total
	Principal	Employee	Con- ditional	Limited Principal	Restricted Principal	Un- restricted Volunteer	Restricted V'teer	
law firms – local								
partnership	2,257	2,001	1,250		3			5,511
ILP	20	31	30		1			82 *
MDP								0
law firms – interstate								
partnership	1	10	7					18
ILP		1						1
other								
community legal		72	39	18		2	3	134
government/ other	24	895	258	1		2		1,180
total	2,302	3,010	1,584	19	4	4	3	6,926

* note: this was the first day that corporations could lawfully engage in legal practice in QLD

3.1.4 Law Firm Business Structures – by practising certificate type as at 1 July 2008

	Practising Certificate Type							Total
	Principal	Employee	Con- ditional	Limited Principal	Restricted Principal	Un- restrict'd Volunteer	Restricted V'teer	
law firms – local								
partnership	2,149	2,038	1,144		4			5,335
ILP	127	110	85					322
MDP								0
law firms – interstate								
ILP		2						2
partnership	2	13	8					23
other								
community legal		87	36	18		4	8	153
government/ other	20	1,003	295	1		2		1,321
total	2,298	3,253	1,568	19	4	6	8	7,156

Appendix 4: Performance statistics continued

3.1.5 Solicitor Practising Certificate Holders by Business Structure

	July 2007	% of total	July 2006	% of total
law firms – local	5,593	80.75	5273	99.79
law firms – interstate	19	0.27	11	0.21
law firm total	5,612	81.02	5,284	82.38
community legal centres	134	1.93	121	1.89
other	1,180	17.04	1,009	15.73
total	6,926		6,414	

3.1.6 Law Firm Summary

	July 2007	% of total	July 2006	% of total
local – with PC holders as at 1/7	1,294	96.21	1,266	96.20
local – with no PC holders as at 1/7	27	2.01	31	2.36
local firm total	1,321	98.22	1,297	98.56
interstate	24	1.78	19	1.44
total	1,345		1,316	

3.1.7 Law Office Summary

	July 2007	% of total	July 2006	% of total
local – with PC holders as at 1/7	1,408	94.12	1,415	95.67
local – with no PC holders as at 1/7	63	4.21	64	4.33
local firm total	1,471	98.33	1,479	100.00
interstate	25	1.67	0	0.00
total	1,496		1,479	

3.1.8 ILP Summary by Gross Fee Income

Gross Fee Income (07-08)	No. of Firms	% of total
under \$25,000	2	4.08
\$25,000 to \$49,999	3	6.12
\$50,000 to \$499,999	16	32.65
\$500,000 to \$999,999	10	20.41
\$1,000,000 to \$2,499,999	10	20.41
\$2,500,000 to \$4,999,999	5	10.20
\$5,000,000 to \$9,999,999	1	2.04
over \$10,000,000	2	4.08
total	49 *	

Note: We have obtained this information from completed self assessment audits – refer to table 8.1. Note that not every ILP was able to provide this information.

3.1.9 ILP Summary by No. of Practising Certificate Holders

Gross Fee Income (07 -08)	Number of Practising Certificate Holders									Total
	1	2-3	4-6	7-12	13-24	25-50	51-100	101-200	200 +	
under \$25,000	1	1								2
\$25,000 to \$49,999	3									3
\$50,000 to \$499,999	14	2								16
\$500,000 to \$999,999	1	8	1							10
\$1,000,000 to \$2,499,999		2	4	4						10
\$2,500,000 to \$4,999,999		1	1	3						5
\$5,000,000 to \$9,999,999				1						1
over \$10,000,000					1			1		2
total	19	14	6	8	1			1		49

3.1.10 Barristers – by locally issued practising certificate as at 1 July each year

	Total
2008	901
2007	891
2006	892
2005	825
2004	789

4 Inquiries

4.1 Inquiries by agency and year

	LSC	QLS	Total 2007-08	Total 2006-07	Total 2005-06
client inquiries from public received during year	1,635	3,710	5,345	5,980	8,696
ethical inquiries from practitioners during year	N/A	2,646	2,646	2,561	N/A
total inquiries received during year	1,635	6,356	7,991	8,541	8,696

** We started to count client and ethical inquiries separately only in 2006-07. Previously they were included under the one category of inquiries. See also table 4.5 below.

Appendix 4: Performance statistics continued

4.2 Inquiries by area of law

	No. of Inquiries	% of total 2007-08	% of total 2006-07	% of total 2005-06
family law	1,075	20.11	19.26	15.32
conveyancing	975	18.24	21.72	15.50
deceased estates or trusts	617	11.54	9.18	7.39
personal injuries /workcover litigation	463	8.66	10.30	9.96
commercial /company law	299	5.59	5.02	2.74
litigation	285	5.33	6.19	5.79
criminal law	242	4.53	3.65	3.24
property law	158	2.96	2.22	2.37
all other 'areas of law' combined	1,231	23.03	22.46	37.69
total	5,345			

4.3 Inquiries by nature of the inquiry

	No. of Inquiries	% of total 2007-08	% of total 2006-07	% of total 2005-06
costs	1,317	24.64	24.40	19.95
quality of service	1,154	21.59	21.52	14.50
advice	723	13.53	21.35	32.16
ethical matters	476	8.91	10.18	8.41
communication	406	7.60	5.85	4.75
documents	174	3.26	2.88	2.32
trust funds	111	2.08	2.51	2.23
all other 'natures of inquiry' combined	984	18.41	11.31	15.67
total	5,345			

4.4 Inquiries by outcome

	No. of Inquiries	% of total 2007-08	% of total 2006-07	% of total 2005-06
enquirer satisfied	912	17.06	15.69	10.36
provided information about the legal system	795	14.87	15.82	18.18
recommended direct approach to firm about concerns	767	14.35	12.39	9.21
provided referral for legal advice or other assist	753	14.09	14.60	10.32
provided complaint form	730	13.66	8.29	5.83
listened to callers concerns	476	8.91	8.86	5.46
lost contact with complainant/inquirer	278	5.20	5.48	5.22
referred to LSC	147	2.75	10.95	5.72
provided information about LSC to a legal practitioner	51	0.95	0.38	20.79
all other 'outcomes' combined	436	8.16	7.54	8.91
total	5,345			

4.5 Inquiries by inquirer type

	No. of Inquiries	% of total 2007-08	% of total 2006-07	% of total 2005-06
client/former client	3,763	70.40	70.90	50.11
non client	635	11.88	10.80	8.29
third party	494	9.24	10.20	8.23
solicitor	184	3.44	3.68	27.02
all other 'inquirer types' combined	269	5.03	4.42	6.35
total	5,345			

5 Complaints

5.1 On hand Summary - total

Complaint type	As at 30 June 08	As at 30 June 07	As at 1 July 06	As at 1 July 05	As at 1 July 04
consumer dispute	4	8	3	88	273
conduct matters	391	409	401	818	665
under assessment	58	60	96	26	n/a
total	449	477	500	932	938

5.2 On hand Summary – by matter type

Complaints/investigation matters	2007-08	2006-07	2005-06
under assessment/awaiting assessment	39	41	64
under assessment/awaiting further information	19	19	32
consumer disputes	4	8	3
conduct complaints	326	344	320
investigation matters	57	65	52
total conduct matters as at 30 June	383	409	372
total complaints as at 30 June	449	477	471

Appendix 4: Performance statistics continued

5.3 Throughput Summary

Complaints/investigation matters	2007-08	2006-07	2005-06	2004-05
matters on hand at 1 July	477	471	503	0
plus matters opened during the year	1,258	1,308	1,147	1,485
includes complaints received from public	1,123	1,109	1,074	1,450
includes investigation matters opened (non-PIPA)	68	101	73	35
includes investigation matters opened (PIPA)	67	98	n/a	n/a
less summary dismissals	444	433	365	
less consumer disputes closed	102	83	234	479
less conduct matters closed	740	786	580	502
includes complaints received from public	620	600		
includes investigation matters (non-PIPA)	62	91		
includes investigation matters (PIPA)	58	95		
total complaints/investigation matters closed	1,286	1,302	1,179	981
complaints/investigation matters on hand at 30 June	449	477	471	504

5.4 Throughput Summary - non (PIPA & ILP) investigation matters

	Total 2007-08	Total 2006-07	Total 2005-06	Total 2004-05
on hand at start of year	62	52	24	0
opened during year	60	101	73	35
% of new complaints/investigation matters opened	4.77	7.72	6.36	2.36
closed during year	62	91	45	11
on hand at end of year	60	62	52	24

5.5 Throughput Summary – PIPA investigation matters

	Total 2007-08	Total 2006-07
on hand at start of year	3	0
opened during year	59	98
% of new complaints/investigation matters opened	4.69	7.49
closed during year	58	95
on hand at end of year	4	3

5.6 Assessment Summary

	Total	% (2007-08)	% (2006-07)	% (2005-06)
new complaints/investigation matters allocated for assessment during the year	1,123			
of these:				
currently under assessment as at 30 June	54	4.81	1.64	8.11
number of new matters assessed this year	1,069	95.19	98.36	91.89
of these:				
number summarily dismissed	401	37.51	37.10	31.59
number assessed to be consumer disputes	96	8.98	7.31	17.08
number assessed to be conduct matters	568	53.13	55.60	51.33

5.7 Complaints by area of law

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
administrative law		3	5	8	0.62
bankruptcy and Insolvency	1	3		4	0.31
building /construction Law	2	12	7	21	1.63
commercial law	4	38	20	62	4.82
conveyancing	27	141	41	209	16.25
criminal law	7	44	36	87	6.77
deceased estates or trusts	19	44	44	107	8.32
immigration		3	4	7	0.54
industrial law	1	4	5	10	0.78
family law	14	112	89	215	16.72
leases/mortgages	2	15	10	27	2.10
litigation	6	54	30	90	7.00
personal injuries /workcover litigation	6	111	37	154	11.98
property law	8	48	29	85	6.61
trust account breaches		20	1	21	1.63
all other 'areas of law' combined	5	88	86	179	13.92
total	102	740	444	1,286	

Appendix 4: Performance statistics continued

5.8 Complaints by nature of matter

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
communication	11	67	33	111	8.63
compliance	1	29	7	37	2.88
costs	32	118	79	229	17.81
documents	12	10	11	33	2.57
ethical matters	12	210	142	364	28.30
personal conduct		13	2	15	1.17
PIPA		64	12	76	5.91
quality of service	32	182	128	342	26.59
trust funds	2	43	8	53	4.12
all other 'natures of matter' combined		4	22	26	2.02
total	102	740	444	1,286	

5.9 Complaints by respondent type

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
barrister	1	29	18	48	3.73
corporation		4	3	7	0.54
law practice employee	1	13	5	19	1.48
legal practitioner		2	1	3	0.23
other	1	11	3	15	1.17
solicitor	99	677	413	1,129	92.46
unlawful operator		4	1	5	0.39
total	102	740	444	1,286	

5.10 Complaints by law firm business structure – solicitors only

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
partnerships – local	87	624	343	1,054	88.65
partnerships – interstate		4		4	0.34
ILPs – local	3	8	8	19	1.60
ILPs - interstate					
MDPs – local					
all other 'business types'	9	41	62	112	9.42
total	99	677	413	1,189	

5.11 Consumer disputes/conduct matters - respondent law firms as a proportion of the profession – solicitors only

	Consumer Disputes	Conduct Matters	Total (July 2008)	Total Law Firms	% of profession representation *
partnerships – local	78	376	454	1,218	37.27
partnerships – interstate		3	3	20	15.00
ILPs – local	3	6	9	91	9.89
ILPs – interstate				6	
MDPs – local				1	
total	81	385	466	1,336	

* 10% means that 1 in every 10 solicitors within this grouping were subject to a consumer dispute and/or a conduct matter

5.12 Timeliness

Complaint type	Matters Completed	Time Band	Actual %	Cumulative %	Target %	Median days open (2007-08)	Median days open (2006-07)
conduct matters	521	<= 7 months	70.41	70.41	80	131.00	119.00
	146	7 – 15 months	19.73	90.14	100		
	73	> 15 months	9.86	100	0		
consumer disputes	98	<= 2 months	96.08	96.06	80	17.50	15.00
	2	2 – 5 months	1.96	98.04	100		
	2	> 5 months	1.96	100	0		
summary dismissals	411	<= 1 month	92.57	92.57	80	11.00	14.00
	24	1 – 2 months	5.41	97.97	100		
	9	< 2 months	2.03	100	0		

5.13 Avoidable complaints summary

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 2007-08	%	Number 2006-07	%
number assessed to be unavoidable	239	28.52	221	25.49
number assessed to be avoidable	599	71.48	646	74.51
(Total)	838		867	

Appendix 4: Performance statistics continued

5.14 Unavoidable complaints summary

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	% 2007-08	% 2006-07
a) the complainant had ulterior motives	16.27	17.90
b) the complainant wouldn't take advice	5.56	3.11
c) the complainant had unrealistic expectations and/or made unreasonable demands	32.14	22.96
d) the complainant misunderstood the obligations of practitioners acting for the other side	13.49	17.51
e) the 'problem' is inherent in the adversarial system of justice	5.16	5.06
f) the complaint was baseless and could not have been avoided (eg: by better communication)	14.29	14.40
g) of some reason other than the above	13.10	20.62

5.15 Avoidable complaints summary

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	Percentage 2007-08	Percentage 2006-07
work practices	29.08	31.82
communication	27.65	28.36
costs	14.47	17.71
supervision	7.31	2.53
trust accounts	6.59	6.39
timeliness	6.16	5.33
conflict of interest	4.01	3.86
undertakings	1.86	1.73
liens and transfers	1.72	1.46
record keeping	1.15	0.8

5.16 Summary Dismissals by area of law

	Total (2007-08)	% of total 2007-08	% of total 2006-07	% of total 2005-06
family law	89	20.05	23.56	25.14
deceased estates or trusts	44	9.91	11.55	7.38
conveyancing	41	9.23	7.85	7.10
personal injuries /workcover litigation	37	8.33	7.62	7.10
criminal law	36	8.11	9.01	8.20
litigation	30	6.76	14.32	10.38
property law	29	6.53	5.31	6.56
commercial law	20	4.50	-	-
all other 'areas of law' combined	118	26.56	20.79	28.14
total	444			

5.17 Summary Dismissals by nature of matter

	Total (2007-08)	% of total 2007-08	% of total 2006-07	% of total 2005-06
ethical matters	142	31.98	43.65	52.88
quality of service	128	28.83	21.71	13.70
costs	79	17.79	18.01	11.78
communication	33	7.43	8.08	11.51
PIPA	12	2.70	0.69	0.27
documents	11	2.48	2.08	0.82
all other 'natures of matter' combined	39	8.78	5.77	5.68
total	444			

5.18 Summary Dismissals by respondent type

	Total (2007-08)	% of total 2007-08	% of total 2006-07	% of total 2005-06
solicitor	413	93.02	89.61	85.48
barrister	18	4.05	6.70	7.67
law practice employee	5	1.13	1.39	0.82
other	3	0.68	2.08	6.03
corporation	3	0.68		
legal practitioner	1	0.23	0.23	
unlawful operator	1	0.23		
total	444			

Appendix 4: Performance statistics continued

5.19 Consumer disputes referred to the professional bodies

	Total 2007-08	%	Total 2006-07	%	Total 2005-06	%
referred to QLS	4	3.88	3	3.00	7	3.00
referred to BAQ	0		0		0	
total	4	3.88	3	3.00	7	3.00
retained at LSC	99	96.12	93	97.00	198	97.00

5.20 Conduct matters referred to the professional bodies

	Total 2007-08	%	Total 2006-07	%	Total 2005-06	%
referred to QLS	309	39.22	372	42.00	311	48.00
referred to BAQ	15	1.90	18	2.00	26	4.00
total	324	41.12	390	44.00	337	52.00
retained at LSC	464	58.88	492	56.00	314	48.00

5.21 Conduct matters returned by the professional bodies for review **

	Total 2007-08	Total 2006-07	Total 2005-06	Total 2004-05
returned from QLS	359	355	672	559
returned from BAQ	16	12	29	3
total	375	367	701	562

** Note: The 2006-07 and 2007-08 figures only include post-Act complaints. The other years include both pre-Act and post-Act complaints.

5.22 Differences between recommendations and closure for conduct matters returned by the professional bodies

	Total 2007-08	% of Returns	Total 2006-07	% of Returns
returned from QLS	27	8.31	46	12.96
returned from BAQ	2	12.5	1	8.50
total	34		47	

6 Consumer disputes

6.1 Consumer disputes by area of law

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
conveyancing	27	26.47	34.94	17.87
deceased estates or trusts	19	18.63	4.82	12.77
family law	14	13.73	20.48	18.72
property law	8	7.84	3.61	7.23
criminal law	7	6.86	8.43	5.53
personal injuries /workcover litigation	6	5.88	4.82	9.79
litigation	6	5.88	7.23	7.66
commercial /company law	4	3.92	6.02	6.38
leases /mortgages	2	1.96	6.02	-
all other 'areas of law' combined	9	8.82	3.61	19.57
total	102			

6.2 Consumer disputes by nature of matter

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
costs	32	31.37	40.96	40.00
quality of service	32	31.37	24.10	19.57
ethical matters	12	11.76	13.25	20.43
documents	12	11.76	9.64	4.68
communication	11	10.78	12.05	10.64
all other 'natures of matter' combined	3	2.94		4.68
total	102			

6.3 Consumer disputes by type of complainant

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
client/former client	83	81.37	81.93	76.17
non client	5	4.90	7.23	8.09
solicitor for client	5	4.90	3.61	2.13
solicitor	5	4.90	2.41	3.40
third party	3	2.94	2.41	8.09
all other 'types of complainant' combined	1	0.98	2.40	2.13
total	102			

Appendix 4: Performance statistics continued

6.4 Consumer disputes by outcome

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
resolved – consumer satisfied	48	47.06	30.12	18.30
matter unable to be resolved	29	28.43	42.17	31.91
complaint unfounded	17	16.67	14.46	37.02
recommended direct approach to firm about concerns	2	1.96	6.02	2.13
withdrawn	2	1.96	6.02	6.81
outside of jurisdiction	2	1.96	1.20	2.13
all other 'outcomes' combined	2	1.96		1.70
total	102			

6.5 Consumer disputes by respondent type

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
solicitor	99	97.06	98.78	96.17
law practice employee	1	0.98	1.22	1.28
barrister	1	0.98		0.85
other	1	0.98		1.70
total	102			

6.6 Consumer disputes by respondent type: solicitor

6.6.1 Consumer disputes regarding solicitors as a proportion of the profession

	PC Holders	Law Firms	Law Offices
size of profession as at 1/7/2007	6,926	1,321	1,471
no of solicitors/law firms as respondents 2007-08	77	81	83
percentage	1.11	6.13	5.64
no of solicitors/law firms as respondents 2006-07	70	66	66
percentage	1.10	5.10	4.71
no of solicitors/law firms as respondents 2005-06	182	169	174
percentage	2.96	13.33	
no of solicitors/law firms as respondents 2004-05	501	409	432
percentage	8.56	33.04	12.56

6.6.2 Solicitors subject to one or more consumer disputes

	No. of solicitors 2007-08	No. of solicitors 2006-07	No. of solicitors 2005-06	No. of solicitors 2004-05
1 matter	75	65	166	401
2 matters	1	4	14	80
3 matters	1	1	1	14
4 matters	0	0	1	4
5 matters	0	0	0	1
between 6 and 9	0	0	0	1
between 10 and 14	0	0	0	0
15 and > matters	0	0	0	0

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

	No. of law firms-08	No. of law firms-07	No. of law firms 2005-06	No. of law firms 2004-05
1 matter	73	57	142	259
2 matters	7	7	20	102
3 matters	1	2	5	21
4 matters	0	0	1	14
5 matters	0	0	1	7
between 6 and 9	0	0	0	3
between 10 and 14	0	0	0	3
15 and > matters	0	0	0	0

6.6.4 Solicitors subject to one or more consumer disputes by gender

Gender	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *	% of profession representation 2005-06 *
male	4,193	60.54	63	81.82	1.50	1.30	3.90
female	2,733	39.46	14	18.18	0.51	0.76	1.24

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

Appendix 4: Performance statistics continued

6.6.5 Solicitors subject to one or more consumer disputes by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *	% of profession representation 2005-06 *
< 25	287	4.14	2	2.60	0.70	0.47	0.48
25 - 29	1,310	18.91	5	6.49	0.38	0.73	0.98
30 - 34	1,096	15.82	7	9.09	0.64	0.56	2.30
35 - 39	1,014	14.64	7	9.09	0.69	0.97	2.41
40 - 44	798	11.52	13	16.88	1.63	1.44	3.51
45 - 49	786	11.35	18	23.38	2.29	1.51	3.57
50 - 54	703	10.15	15	19.48	2.13	1.22	5.04
55 - 59	495	7.15	8	10.39	1.62	2.24	4.20
60 - 64	280	4.04	1	1.30	0.36	1.73	4.78
65 - 69	114	1.65	1	2.60	0.88	0.00	6.82
70 & >	43	0.62	0		0.00	0.00	8.11

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

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

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *	% of profession representation 2005-06 *
< 5	2,434	35.14	16	20.78	0.66	0.65	1.51
5 - 9	1,237	17.86	14	18.18	1.13	0.62	2.24
10 - 14	916	13.23	9	11.69	0.98	1.57	4.68
15 - 19	752	10.86	11	14.29	1.46	1.57	3.50
20 - 24	548	7.91	10	12.99	1.82	1.28	3.89
25 - 29	525	7.58	12	15.58	2.29	1.41	4.13
30 - 34	256	3.70	3	3.90	1.17	3.04	4.66
35 - 39	147	2.12	2	2.60	1.36	1.42	2.33
40 and >	111	1.60	0	0.00	0.00	1.04	9.76

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

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

	Size of profession	% of total	No. of respondent solicitors	% of total	% Representation 2007-08 *	% Representation 2006-07 *	% Representation 2005-06 *
principal	2,302	33.24	59	76.62	2.56	0.31	5.68
employee	3,010	43.46	7	9.09	0.23	0.48	1.08
conditional	1,584	22.87	7	9.09	0.44	3.83	0.38
limited principal	19	0.27				3.83	0.38
restricted principal	4	0.06				3.83	0.38
unrestricted volunteer	4	0.06				3.83	0.38
restricted volunteer	3	0.04				3.83	0.38
not practising at start of year	0		4	5.19			

* 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 2007

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

	Size of profession law offices	% of total	No. of respondent law offices	% of total respondent law offices	% of profession representation (2007-08)	% (2006-07)	% (2005-06)
Brisbane city	262	17.81	21	25.30	8.02	4.98	16.86
Brisbane north suburbs	220	14.96	11	13.25	5.00	5.02	10.91
Brisbane south suburbs	224	15.23	12	14.46	5.36	6.45	11.37
Gold Coast	226	15.36	18	21.69	7.96	3.51	13.90
Ipswich region	50	3.40	1	1.20	2.00	3.85	8.00
Toowoomba region	56	3.81	1	1.20	1.79	0.00	10.53
western Queensland	9	0.61	0	0.00	0.00	0.00	0.00
Sunshine Coast	144	9.79	8	9.64	5.56	5.67	12.86
Hervey Bay to Gladstone	41	2.79	3	3.61	7.32	9.52	20.45
Rockhampton region	31	2.11	3	3.61	9.68	0.00	7.14
Mackay region	23	1.56	0	0.00	0.00	4.17	8.00
Cairns region	73	4.96	2	2.41	2.74	2.63	10.87
Townsville region	48	3.26	3	3.61	6.25	6.82	7.14
Norfolk Island	1	0.07	0	0.00	0.00	0.00	0.00
no PC holders at 1/7	63	4.28					

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

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

Appendix 4: Performance statistics continued

6.6.9 Solicitors subject to one or more consumer disputes by size of their law firm

No. of PC holders	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	% of profession representation (2007-08)	% (2006-07)	% (2005-06)
1	567	42.92	24	29.63	4.23	2.94	6.77
2 - 3	405	30.66	26	32.10	6.42	5.01	13.04
4 - 6	170	12.87	12	14.81	7.06	7.91	26.63
7 - 12	78	5.90	6	7.41	7.69	12.86	22.37
13 - 24	41	3.10	6	7.41	14.63	7.50	25.64
25 - 50	20	1.51	3	3.70	15.00	18.75	40.00
51 - 100	9	0.68	3	3.70	33.33	0.00	12.50
101 - 200	4	0.30	1	1.23	25.00	0.00	33.33
over 200	0	0.00	0	0.00	0.00	0.00	0.00
no PC holder at 1 July	27	2.04					

* This table counts law firms only once even if they have more than one office

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

7 Conduct matters

7.1 Conduct complaints by area of law

	No. of matters	% of total 2007-08	% of total 2006-07
conveyancing	129	20.81	19.83
family law	109	17.58	20.67
personal injuries /workcover litigation	54	8.71	9.67
property law	48	7.74	8.00
litigation	45	7.26	9.50
deceased estates or trusts	44	7.10	6.67
criminal law	39	6.29	4.83
commercial /company law	38	6.13	6.83
leases /mortgages	14	2.26	3.83
building /construction law	12	1.94	1.00
industrial law	4	0.65	0.67
bankruptcy and insolvency	3	0.48	1.67
all other 'areas of law' combined	81	13.06	6.84
total	620		

7.2 Non-PIPA investigation matters by area of law

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
trust account breaches	19	30.65	17.58	20.00
conveyancing	12	19.35	27.47	8.89
litigation	9	14.52	5.49	8.89
criminal law	5	8.06	1.10	11.11
family law	3	4.84	1.10	2.22
administrative law	1	1.61	4.40	8.89
personal injuries /workcover litigation	1	1.61	7.69	4.44
leases /mortgages	1	1.61	2.20	4.44
conduct not in the practice of law	-	-	3.30	8.89
commercial /company law	-	-	2.20	
bankruptcy and insolvency	-	-	1.10	
deceased estates or trusts	-	-	1.10	8.89
immigration	-	-	1.10	
all other 'areas of law' combined	11	17.74	24.18	13.34
total	62			

7.3 Conduct complaints by nature of matter

	No. of matters	% of total 2007-08	% of total 2006-07
ethical matters	193	31.13	37.50
quality of service	178	28.71	22.17
costs	104	16.77	17.83
communication	67	10.81	9.17
trust funds	27	4.35	3.67
compliance	23	3.71	3.50
personal conduct	10	1.61	1.00
documents	9	1.45	2.83
PIPA	6	0.97	1.17
all other 'natures of matter' combined	3	0.48	1.16
total	620		

Appendix 4: Performance statistics continued

7.4 Non-PIPA investigation matters by nature of matter

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
ethical matters	17	27.42	16.48	26.67
trust funds	16	25.81	9.89	26.67
costs	14	22.58	57.14	8.89
compliance	6	9.68	8.79	24.55
quality of service	4	6.45	2.20	4.44
personal conduct	3	4.84	3.30	6.67
communication	-	-	1.10	
all other 'natures of matter' combined	2	3.22	1.10	2.22
total	62			

7.5 Conduct complaints by type of complainant

	No. of matters	% of total 2007-08	% of total 2006-07
client/former client	427	68.87	66.50
non client	79	12.74	9.50
solicitor	48	7.74	10.17
solicitor for client	32	5.16	5.83
third party	13	2.10	3.83
government	5	0.81	1.50
barrister	5	0.81	0.83
Q.L.S.	4	0.65	1.17
all other 'types of complainant' combined	7	1.13	0.68
total	620		

7.6 Conduct complaints by outcome

	No. of matters	% of total 2007-08	% of total 2006-07
no reasonable likelihood	422	68.06	67.50
no public interest	104	16.77	19.00
referred to LPT	34	5.48	6.17
withdrawn	40	6.45	4.83
referred to LPC	7	1.13	0.83
referred to other investigative process	6	0.97	0.67
all other 'outcomes' combined	7	1.13	1.00
total	620		

7.7 Non-PIPA investigation matters by outcome

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
no public interest	37	59.68	51.65	16.28
no reasonable likelihood	19	30.65	34.07	39.53
referred to LPT	5	8.06	2.20	18.60
referred to LPC	-	-	2.20	20.93
referred to other investigative process	-	-	1.10	-
withdrawn	-	-	1.10	2.33
all other 'outcomes' combined	1	1.61	7.69	2.33
total	62			

7.8 PIPA investigation matters by outcome

	No. of matters	% of total 2007-08	% of total 2006-07
no public interest	55	94.83	93.68
no reasonable likelihood	1	1.72	6.32
referred to LPT	1	1.72	-
withdrawn	1	1.72	-
total	58		

7.9 Conduct matters by respondent type

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
solicitor	677	91.49	93.00	88.85
barrister	29	3.92	2.16	3.99
law practice employee	13	1.76	1.27	1.33
other	11	1.49	3.56	5.73
corporation	4	0.54	-	-
unlawful operation	4	0.54	-	-
legal practitioner	2	0.27	-	-
total	740			

Appendix 4: Performance statistics continued

7.10 Conduct matters by respondent type: solicitor

7.10.1 Conduct matters regarding solicitors as a proportion of the profession

	Solicitors	Law Firms	Law Offices
size of profession as at 1/7/2007	6,926	1,321	1,471
no. of solicitors/law firms as respondents 2007-08	477	385	401
percentage	6.89	29.14	27.26
no. of solicitors/law firms as respondents 2006-07	527	428	442
percentage	8.26	33.08	31.57
no. of solicitors/law firms as respondents 2005-06	543	459	470
percentage	8.83	36.20	33.94
no. of solicitors/law firms as respondents 2004-05	450	384	397
percentage	7.69	31.02	29.80

7.10.2 Solicitors subject to one or more conduct matters

	No. of solicitors 2007-08	No. of solicitors 2006-07	No. of solicitors 2005-06	No. of solicitors 2004-05
1 matter	380	423	425	365
2 matters	68	73	75	64
3 matters	15	15	21	17
4 matters	9	8	9	2
5 matters	1	5	7	0
between 6 and 9	3	2	3	1
between 10 and 14	0	1	3	0
15 and more matters	1	0	0	1

7.10.3 Number of law firms subject to one or more conduct matters

	No. of law firms 2007-08	No. of law firms 2006-07	No. of law firms 2005-06	No. of law firms 2004-05
1 matter	263	283	294	270
2 matters	70	86	85	70
3 matters	26	29	43	26
4 matters	13	14	14	10
5 matters	4	9	10	2
between 6 and 9	7	6	10	5
between 10 and 14	1	1	2	0
15 and more matters	1	0	1	1

7.10.4 Solicitors subject to one or more conduct matters by gender

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *	% of profession representation 2005-06 *
male	4,193	60.54	411	86.16	9.80	11.39	11.57
female	2,733	39.46	66	13.84	2.41	2.96	3.81

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

7.10.5 Solicitors subject to one or more conduct matters by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *	% of profession representation 2005-06 *
< 25	287	4.14	10	2.10	3.48	0.93	0.96
25 - 29	1,310	18.91	15	3.14	1.15	3.01	2.34
30 - 34	1,096	15.82	29	6.08	2.65	4.47	5.71
35 - 39	1,014	14.64	63	13.21	6.21	8.12	8.18
40 - 44	798	11.52	88	18.45	11.03	10.50	10.39
45 - 49	786	11.35	82	17.19	10.43	12.22	13.78
50 - 54	703	10.15	99	20.75	14.08	12.20	14.80
55 - 59	495	7.15	49	10.27	9.90	14.26	13.05
60 - 64	280	4.04	31	6.50	11.07	12.99	13.40
65 - 69	114	1.65	8	1.68	7.02	9.28	11.36
70 & >	43	0.62	3	0.63	6.98	7.89	10.81

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

7.10.6 Solicitors subject to one or more conduct matters by 'years admitted'

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *	% of profession representation 2005-06 *
< 5	35.14	35.14	60	12.58	2.47	3.52	3.12
5 - 9	17.86	17.86	59	12.37	4.77	6.32	9.24
10 - 14	13.23	13.23	73	15.30	7.97	11.36	9.93
15 - 19	10.86	10.86	92	19.29	12.23	11.57	12.18
20 - 24	7.91	7.91	71	14.88	12.96	14.29	14.10
25 - 29	7.58	7.58	68	14.26	12.95	12.73	16.75
30 - 34	3.70	3.70	36	7.55	14.06	17.39	15.25
35 - 39	2.12	2.12	13	2.73	8.84	8.51	9.30
40 and >	1.60	1.60	5	1.05	4.50	5.21	13.41

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

Appendix 4: Performance statistics continued

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

	Size of profession	% of total	No. of respondent solicitors	% of total	% Representation 2007-08 *	% Representation 2006-07 *	% Representation 2005-06 *
principal	2,302	33.24	360	75.47	15.63	16.80	16.04
employee	3,010	43.46	73	15.30	2.43	3.09	3.77
conditional	1,584	22.87	19	3.98	1.20	1.62	1.26
limited principal	19	0.27					
restricted principal	4	0.06					
unrestricted volunteer	4	0.06				3.83	0.38
restricted volunteer	3	0.04					
not practising at start of year			25	5.24			

* 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 2007

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

	Size of profession law offices	% of total	No. of respondent law offices	% of total respondent law offices	% of profession representation (2007-08)	% (2006-07)	% (2005-06)
Brisbane city	262	17.81	93	23.19	35.50	39.46	39.85
Brisbane north suburbs	220	14.96	56	13.97	25.45	25.11	26.36
Brisbane south suburbs	224	15.23	55	13.72	24.55	32.72	33.65
Gold Coast	226	15.36	76	18.95	33.63	33.77	40.81
Ipswich region	50	3.40	9	2.24	18.00	21.15	24.00
Toowoomba region	56	3.81	15	3.74	26.79	25.00	24.56
western Queensland	9	0.61	1	0.25	11.11	28.57	11.11
Sunshine Coast	144	9.79	43	10.72	29.86	30.50	37.14
Hervey Bay to Gladstone region	41	2.79	13	3.24	31.71	52.38	34.09
Rockhampton region	31	2.11	4	1.00	12.90	22.58	17.86
Mackay region	23	1.56	5	1.25	21.74	33.33	32.00
Cairns region	73	4.96	17	4.24	23.29	17.11	30.00
Townsville Region	48	3.26	14	3.49	29.17	36.36	39.13
Norfolk Island	1	0.07	0	0.00	0.00	0.00	0.00
no PC holders at 1/7	63	4.28					

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

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

7.10.9 Solicitors subject to one or more conduct matters by size of their law firm

No. of PC holders	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	% of profession representation (2007-08)	% (2006-07)	% (2005-06)
1	567	42.92	133	34.55	23.46	25.09	16.76
2 - 3	405	30.66	110	28.57	27.16	32.58	24.55
4 - 6	170	12.87	58	15.06	34.12	41.24	36.69
7 - 12	78	5.90	40	10.39	51.28	52.86	40.79
13 - 24	41	3.10	24	6.23	58.54	67.50	51.28
25 - 50	20	1.51	15	3.90	75.00	68.75	53.33
51 - 100	9	0.68	4	1.04	44.44	50.00	37.50
101 - 200	4	0.30	1	0.26	25.00	66.67	66.67
over 200	0	0.00	0	0.00	0.00	0.00	0.00
no PC holder at 1/7	27	2.04					

* This table counts law firms only once even if they have more than one office

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

7.11 Conduct matters by respondent type: barrister

7.11.1 Conduct matters regarding barristers as a proportion of the profession

	Barristers
size of profession as at 1/7/2007	891
number of barristers as respondents 2007-08	18
percentage	2.02%
number of barristers as respondents 2006-07	17
percentage	1.91%

8 ILP Compliance Audits

8.1 Summary

	No. of matters
matters on hand at start of year	
self assessment audits	0
web-based surveys	0
on-site reviews	0
total	0
plus matters opened	
self assessment audits	102
web-based surveys	0
on-site reviews	2
total	104
less matters closed	
self assessment audits	61
web-based surveys	0
on-site reviews	0
total	61
matters on hand at end of period	
self assessment audits	41
web-based surveys	0
on-site reviews	2
total	43

9 Prosecutions

9.1 Summary

	Total 2007-08	Total 2006-07	Total 2005-06	Total 2004-05
on hand at start of year	34	42	24	3
opened during year	29	33	43	26
closed during year	19	41	25	5
on hand at end of year	44	34	42	24

9.2 Breakdown of prosecutions on hand at 30 June

	Total 2007-08	Total 2006-07	Total 2005-06
assigned for prosecution	8	7	10
Legal Practice Tribunal			
waiting to file	4	3	4
waiting to serve	0	1	6
waiting directions hearing	12	8	0
waiting hearing/decision	12	8	12
total	28	20	22
Legal Practice Committee			
waiting to file	0	0	1
waiting to serve	1	0	1
waiting directions hearing	4	2	2
waiting hearing/decision	1	5	6
total	6	7	10
Magistrates Court			
waiting to file	0	0	0
waiting hearing/decision	0	0	0
total	0	0	0
Under Appeal			
decisions under appeal	2	0	0
total	44	34	42

9.3 Prosecutions - filed

	Total 2007-07	Total 2006-07	Total 2005-06	Total 2004-05
in Legal Practice Tribunal	20	25	24	11
in Legal Practice Committee	8	11	13	6
in the Magistrates Court	0	0	0	0
total	28	36	37	17

9.4 Prosecutions – heard and decided

	Total 2007-08	Total 2006-07	Total 2005-06	Total 2004-05
by the Legal Practice Tribunal	5	18	9	2
by the Legal Practice Committee	5	8	10	0
by the Solicitors Complaints Tribunal	0	0	0	3
by the Magistrates Court	0	0	0	0
by the Court of Appeal	0	0	2	0
withdrawn/discontinued	9	15	0	0
total	19	41	21	5

Appendix 4: Performance statistics continued

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

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
family law	3	30.00	7.69	4.76
litigation	2	20.00	19.23	19.05
criminal law	1	10.00	-	-
trust account breaches	1	10.00	3.85	-
conduct not in the practice of law	1	10.00	-	-
deceased estates or trusts			11.54	-
conveyancing			3.85	-
property law			11.54	-
commercial /company law			3.85	-
personal injuries /workcover litigation			3.85	14.29
all other 'areas of law' combined	2	20.00	34.62	42.85
total	10			

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

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
ethical matters	5	50.00	38.46	28.57
trust funds	2	20.00	46.15	33.33
costs	2	20.00	3.85	4.76
quality of service	1	10.00	-	-
personal conduct			3.85	4.76
communication			3.85	9.52
all other 'natures of matter' combined			3.85	19.06
total	10			

9.7 Prosecutions by outcome (excluding matters withdrawn/discontinued)

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06
fined	4	40.00	73.08	66.67
struck off	3	30.00	11.54	19.05
suspended			3.85	
reprimanded	3	30.00	3.85	9.52
dismissed			7.69	-
other				4.56
total	10			

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

	No. of matters	% of total 2007-08	% of total 2006-07	% of total 2005-06	% of respondent type 2007-08 **
solicitor	10	100.00	92.31	95.24	0.38
barrister	0	0.00	6.69	4.76	0.23
total	10				

** Note: The number of respondents for each respondent type for the year 2007-08 is the same value as the matters by respondent type (ie: each respondent had only one prosecution)

9.9 Prosecutions regarding solicitors as a proportion of the profession

9.9.1 Solicitors subject to one or more prosecutions by gender

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *
male	4,192	60.53	10	100	0.24	0.85
female	2,733	39.47	-	-	-	0.21

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

9.9.2 Solicitors subject to one or more prosecutions by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *
< 25	287	4.14		0.00	0.00	0.00
25 - 29	1,309	18.90	1	10.00	0.08	0.09
30 - 34	1,096	15.83		0.00	0.00	0.37
35 - 39	1,014	14.64	1	10.00	0.10	0.54
40 - 44	798	11.52	2	20.00	0.25	0.79
45 - 49	786	11.35	2	20.00	0.25	0.88
50 - 54	703	10.15	1	10.00	0.14	1.22
55 - 59	495	7.15	1	10.00	0.20	1.43
60 - 64	280	4.04	1	10.00	0.36	0.43
65 - 69	114	1.65	1	10.00	0.88	0.00
70 & >	43	0.62			0.00	0.00

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

Appendix 4: Performance statistics continued

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

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2007-08 *	% of profession representation 2006-07 *
< 5	2,433	35.13	1	10.00	0.04	0.05
5 - 9	1,237	17.86	1	10.00	0.08	0.71
10 - 14	916	13.23	3	30.00	0.33	0.79
15 - 19	752	10.86	1	10.00	0.13	1.00
20 - 24	548	7.91	1	10.00	0.18	1.47
25 - 29	525	7.58	1	10.00	0.19	0.40
30 - 34	256	3.70	1	10.00	0.39	2.61
35 - 39	147	2.12		10.00	0.00	0.00
40 and >	111	1.60	1	10.00	0.90	0.00

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

