The Queensland legal profession is subject to a system of ‘self-regulation’ by the Queensland Law Society and the Bar Association. Following recent publicity concerning the conduct of a prominent Brisbane law firm and apparent frustration with the Queensland Law Society’s handling of complaints against the firm, the Attorney-General has flagged the introduction of new legislation to implement reforms to the legal profession’s disciplinary procedures. The future role for the Queensland Law Society in managing and investigating complaints is yet to be determined.
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1 BACKGROUND

Over the past decade, a number of jurisdictions have moved away from the concept of self-regulation of the legal profession. Self-regulation is where investigation of complaints and disciplinary action are undertaken by professional bodies which both represent and regulate their members. For the legal profession, the professional bodies are usually law societies for solicitors and bar associations for barristers.

The disciplinary regimes now vary between jurisdictions, although, in each, the Supreme Court retains its inherent jurisdiction to supervise the profession, including the power to strike practitioners off from the roll of barristers or roll of solicitors. In Queensland, the Queensland Law Society regulates the conduct of solicitors. The Bar Association of Queensland is the professional body for barristers, membership of which is voluntary. Members of the Association are bound by its Rules of Conduct and can be subject to disciplinary proceedings regarding unprofessional conduct and related matters.

The shift to a more independent regulatory approach in a number of states responds to consumer and professional concerns that self-regulation is a case of ‘Caesar judging Caesar’ and that it lacks the transparency and accountability of oversight by a more separate body. However, those who support a self-regulatory regime for lawyers argue that intervention by a statutory body (established by the legislative arm of government) in the affairs of the legal profession undermines the concept of separation of powers because of the legal practitioner’s duty to the court (the judicial arm of government). There is also the belief that the profession itself is best placed to set and enforce standards because of its inbuilt expertise and that having such a role engenders a sense of collective responsibility within the profession.1

In 1994, a Trade Practices Commission Study of the Legal Profession commented that –

Measures should be introduced to improve the effectiveness and public accountability of the discipline and complaint handling systems in each jurisdiction, including the provision of redress where consumers have suffered harm in their dealings with legal practitioners.2

It appears that national standards for the regulation of the legal profession will take effect in the near future but the complaints and disciplinary processes in each jurisdiction will

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1 See, for example, discussion in the New South Wales Department of Attorney-General, A Further Review of Complaints Against Lawyers: Issues Paper, November 2001, Section 9.4.

remain.³ The **Law Council of Australia** has developed **Model Rules of Professional Conduct and Practice** for barristers and solicitors aimed at achieving greater uniformity in the regulation of the legal profession throughout Australia. While the aim is to harmonise regulatory requirements between states and territories, the extent of disparity between the complaints and disciplinary regimes means that national consistency will be some way off.

### 2 OVERVIEW OF DISCIPLINARY REGIMES IN AUSTRALIA⁴

The regulatory process comprises investigation of complaints and disciplinary action for unsatisfactory professional conduct (as defined in the legislation of each state and territory). Most jurisdictions have an independent body to oversee and monitor the investigations of complaints by the professional associations or to handle such complaints at first instance.

**Investigations**

In the Australian Capital Territory, the Northern Territory and Tasmania, complaints are received and investigated by law societies or bar associations, although in New South Wales, complaints are all channelled through a Legal Services Commissioner who can either refer them to the relevant professional body or handle the investigation in-house. In Victoria, a complaint can be made to either the Legal Ombudsman or to the relevant professional organisations.

Two states have an independent complaints body. In South Australia, complaints are initiated through an independent Legal Practitioners Conduct Board. In Western Australia, the Legal Practitioners Complaints Committee undertakes the investigative role.

**Disciplinary Proceedings**

The main disciplinary body in most jurisdictions (except the ACT) is separate from the relevant law society or bar association. In the ACT, the Law Society Professional Conduct Board and the Bar Association Disciplinary Tribunal conduct proceedings internally but they can apply to the Supreme Court to have the practitioner struck off.

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Only the Tribunals in NSW, Queensland, Tasmania, and Victoria have power (with right of appeal) to revoke a practitioner’s right to practise although, in Queensland, the Supreme Court deals with barristers. In other jurisdictions, it is for the Supreme Court to do so.

Independent Bodies

Apart from WA and SA, where an independent body handles the initial complaint, each jurisdiction has an independent body to supervise and monitor the discipline and complaints process. NSW has a Legal Services Commissioner to perform that task while Tasmania, Queensland, and Victoria have an independent Legal Ombudsman. The Tasmanian and Queensland Ombudsmen perform a monitoring and supervisory role only and cannot investigate initial complaints.

3 DISCIPLINARY ACTION IN QUEENSLAND

A legal practitioner or a practitioner’s clerk or employee can face disciplinary action under the *Queensland Law Society Act 1952* (Qld). Barristers are not covered by the Act but members who join the Bar Association can be disciplined by that body (pursuant to the Articles of Association) and all barristers are amenable to the Supreme Court’s inherent jurisdiction.

Solicitors may face disciplinary action for the following conduct –

- For a practitioner:
  - malpractice;
  - professional misconduct;
  - unprofessional conduct or practice which includes serious neglect or undue delay; or the charging of excessive fees or costs; or failure to maintain reasonable standards of competence or diligence.

- For a practitioner’s clerk or employee:
  - misconduct or default in relation to the practitioner’s practice.

5 In this Brief, clerks and employees will be included within the term ‘practitioners’ or ‘solicitors’.

6 Bar Association of Queensland, *Queensland Barristers’ Rules* and the *Articles of Association of Bar Association of Queensland*. 
In this Brief, the above conduct will be covered by the term unsatisfactory professional conduct.

The current Queensland Law Society President has stated that over the last two years, 17 solicitors have been struck off the roll of solicitors and 37 have been prosecuted for unsatisfactory professional conduct.\(^7\) It has been reported that the regulatory system costs the QLS $3m each year to administer.\(^8\) The costs are met out of solicitors’ practising certificate fees and solicitors’ trust account interest.

### 3.1 THE QUEENSLAND LAW SOCIETY\(^9\)

The Queensland Law Society Act 1952 (Qld) gives the power to investigate complaints of unsatisfactory professional conduct to the Queensland Law Society (QLS) Council.\(^10\) The complaint must be in writing.

Even where there is no complaint, the conduct of a practitioner or their clerks or employees must be investigated if it is considered that it amounts to unsatisfactory professional conduct.

If a complainant claims to have suffered a monetary loss because of the practitioner’s conduct, notice of a claim for compensation against the practitioner can be lodged at the same time or up to the time before the complaint is finally dealt with. However, as noted later, the Solicitors’ Complaints Tribunal’s power to provide compensation is limited to awards of $7000. If a complainant has suffered loss or damage, a civil action in damages against the solicitor is the better course of action.

The QLS received 456 new written complaints against solicitors during the 2001-2002 financial year. That number was less than the 529 complaints received in the previous year.\(^11\)

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\(^7\) Tess Livingstone, ‘Perspectives piece by the QLS President Tom Sullivan’, *Courier Mail*, 30 August 2002.


\(^10\) The *Queensland Law Society Legislation Amendment Act 1997* amended the *Queensland Law Society Act* to provide for the current complaint handling process and for the powers of the Legal Ombudsman.

It has been observed that the reduction in initial complaint numbers might be due to the creation, in December 2000, of a Client Relations Centre (CRC) to mediate disputes and grievances that are not likely to result in disciplinary action against the practitioner. Up to June 2002, the CRC successfully resolved 695 of the 734 written concerns before it (ie 95%).\(^\text{12}\) Mediation can be useful in ‘dispute’ type of matters where the complaint may be triggered by actions of the solicitor that do not amount to unsatisfactory professional conduct or give rise to disciplinary action. Such behaviour includes delay, lack of communication, negligence not amounting to misconduct.

### 3.2 INVESTIGATIVE PROCESS

The Professional Standards Department (PSD) of the QLS handles complaints. It will firstly send a copy of the complaint to the practitioner concerned in order to obtain an explanation and refer the response to the complainant. This action is necessary to afford procedural fairness to the solicitor. It also then enables the complainant to assess the solicitor’s version of events and to respond. As noted earlier, mediation may be effective if it does not appear that unsatisfactory professional conduct was involved or that the solicitor will be subject to disciplinary proceedings. However, mediation may not always be appropriate and/or the parties may not agree to it.

The PSD may require a formal written or personal explanation from the practitioner or require the practitioner to provide further information or documentation. If the PSD does not believe, after consideration of all of the evidence, that the practitioner has a satisfactory explanation, it will consider whether there is a sufficient case for the matter to go before the Professional Standards Committee for determination. On the other hand, if the PSD believes that complaint is not sustainable, it advises the complainant that there is not enough evidence to proceed.

Note that if the QLS comes across any information or documents that indicate any person may have committed an offence, the QLS must report its suspicion to the Commissioner of Police or other appropriate authority.

### 3.3 PROFESSIONAL STANDARDS COMMITTEE

The Professional Standards Committee is a committee of the QLS Council.

The QLS President has stated that he briefed the Attorney-General, some time ago, on the plans the QLS had for initiatives to address the public perception that the disciplinary

process lacked independence. Those plans included the appointment of an independent Chair of the Professional Standards Committee. The Attorney-General is understood to have welcomed the proposal and the QLS has recently appointed retired Chief Judge of the District Court of Queensland, Mr Pat Shanahan, to chair the Committee and has appointed another lay member. Thus, whereas the Committee previously comprised two QLS Council members and two lay members, it now has three lay members, a representative of the Attorney-General, and three QLS Council members. The Legal Ombudsman attends each meeting.\footnote{Tess Livingstone, ‘Perspectives piece by the QLS President Tom Sullivan’.}

The Committee can, if a matter is referred to it –

- censure or admonish the practitioner;
- obtain undertakings from the practitioner;
- if the complaint is about overcharging, reduce the bill of costs or refund money to the complainant, including any reimbursement for the cost assessor’s fee;
- recommend to the QLS Council that charges be brought against the practitioner in the Legal Practitioners Tribunal; or
- dismiss the complaint.

At present the Committee can only recommend to the QLS Council that charges be brought against a solicitor before the Solicitors’ Complaints Tribunal and the final decision about laying charges is for the Council. It is understood that the QLS will seek amendments to the \textit{Queensland Law Society Act} to give the Committee the same power as the Legal Ombudsman to bring charges against a solicitor before the Tribunal. It also believes that the Chair should be empowered to bring such charges independently if he or she disagrees with the Committee’s determination that no charges be brought.\footnote{Queensland Law Society, ‘QLS to make public professional standards review findings’, \textit{QLS Media Releases}, 16 August 2002.}

\section*{3.4 The Solicitors’ Complaints Tribunal}

The Tribunal is established under Part 2A of the \textit{Queensland Law Society Act}. It consists of 12 members comprising nine practitioners drawn from a panel and three lay members appointed by the Government. Its function is to hear and decide charges of unsatisfactory professional conduct brought against a practitioner by the QLS Council or
the Legal Ombudsman. The Legal Ombudsman may attend any hearing of the Tribunal to observe proceedings.

A three member Tribunal (including one lay member) hears the charges. The Act sets out procedural fairness requirements that the Tribunal must observe.

The range of orders that can be made against a practitioner include –

- striking off from the roll of solicitors;
- suspending from practice for a time;
- censuring;
- imposing a fine of up to $100,000;
- requiring the practitioner to do some stated work for free for a stated person; or
- dismissing the charges, whether or not the practitioner is found to be guilty.

The Tribunal can also make a compensation order but only up to a maximum amount of $7000 and only if an application for compensation has been made. The order can be made only if the Tribunal is satisfied that the complainant has suffered a financial loss through the unsatisfactory professional conduct of the practitioner. Such orders are rare.

A party dissatisfied with the Tribunal’s decision can appeal to the Queensland Court of Appeal.

During 2001-2002, 18 solicitors appeared before the Tribunal, resulting in 11 being struck off from the roll of solicitors, four being suspended for various periods, one receiving a fine and it was ordered that one clerk was not to be re-employed in the future. In addition, one charge was not proved and was, therefore, dismissed.\(^\text{15}\)

### 3.5 Legal Ombudsman

If a complainant is not happy with the way in which the QLS deals with their complaint – they may have been told that there is not enough evidence to proceed or they are not satisfied it has been adequately investigated – there is recourse to the Legal Ombudsman (created in 1997 to replace the Lay Observer).\(^\text{16}\) However, the Ombudsman does not have power to independently investigate an original complaint. The consumer must first

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\(^{16}\) See Part 2B of the *Queensland Law Society Act 1952*. 
have complained to the QLS and had the matter investigated or dismissed as not a valid complaint.

Note that the Ombudsman’s jurisdiction is limited to solicitors and their clerks or employees and does not extend to barristers or to a number of other persons and bodies.

The Legal Ombudsman is an independent person appointed by the Governor in Council. The person must not be entitled to practise as a lawyer, be qualified in law, or be a public servant. The Legal Ombudsman—

- monitors investigations by the QLS of alleged unsatisfactory professional conduct by practitioners;

- investigates complaints of alleged improper conduct or neglect of duty by the QLS about the way in which a complaint or charge is dealt with; and

- monitors Tribunal hearings.

Thus, the Legal Ombudsman will review the way in which a complaint has been dealt with by the QLS to determine if it has been handled thoroughly and impartially and, if necessary, direct a reinvestigation. The Ombudsman can also, in appropriate circumstances, independently investigate a complaint, provided it has first been considered by the QLS. Note that the Legal Ombudsman cannot award compensation or damages.

Other steps that the Legal Ombudsman can take include (but are not limited to) directing additional investigations to be undertaken; bringing a charge before the Tribunal that he or she considers should have been brought by the QLS Council; or appealing a Tribunal decision. The Ombudsman may require QLS to provide him or her with information in its possession or control. The QLS must comply with the Legal Ombudsman’s directions and requirements.

The Legal Ombudsman may attend QLS Council or Committee meetings regarding the consideration of complaints (which he currently does). The Legal Ombudsman also makes reports and recommendations to the Attorney-General and the QLS about the manner in which complaints and charges are dealt with.

It has recently been reported that, since the incidents involving the conduct of Baker Johnson Lawyers and the growing dissatisfaction with the manner in which complaints against the firm were dealt with by the QLS (discussed below), the current Legal Ombudsman, Mr Jack Nimmo, has been swamped with hundreds of complaints.17 This presented some difficulty for his Office because the Legal Ombudsman is a part time

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position (two days a week), there are no investigators and just one part-time assistant. Mr Nimmo is reported to have indicated that the Victorian Legal Ombudsman has approximately seven investigators (although they handle complaints about both solicitors and barristers).

While the Attorney-General has mentioned increasing the resources of the Office, the Ombudsman is reported as saying that he needed some immediate relief to get on top of the increased number of complaints, given that he was also investigating the QLS’ investigations of the Baker Johnson matter. The Attorney-General has responded by enabling the Legal Ombudsman to work full-time to overcome the backlog.

The Legal Ombudsman’s Annual Report 2000-2001 indicates that the total number of new written complaints received by the Office during that period was 220, continuing the upward trend.

In his Annual Report, the Ombudsman commented that any reforms to the regulatory system must be with the object of achieving high professional and ethical standards which protect the interests of consumers and the legal profession. It has been reported that Mr Nimmo has suggested that his Office directly take on the conduct of investigations of solicitors’ alleged unsatisfactory professional conduct, leaving the QLS to handle complaints regarding overcharging and quality of work. He has argued that the public perceives the current situation of QLS initiating the investigation as lacking in independence.

3.6 **FIDELITY GUARANTEE FUND**

While an extended discussion of the Legal Practitioners’ Fidelity Guarantee Fund is beyond the scope of this Brief, a few comments will be made about it. It is established under Part 3 of the *Queensland Law Society Act* and is vested in the QLS. A large source of income of the Fund is a share in the interest earned on solicitors’ trust accounts. It was created for the purpose of reimbursing persons who may suffer pecuniary loss.

18 Chris Griffith, ‘Complaints swamp legal watchdog’.


through stealing or fraudulent misappropriation committed by a practitioner or their employee of money or property that has been entrusted to the practitioner or employee.

Financial and time limitations apply in relation to claims against the Fund and certain transactions are excluded under the *Queensland Law Society Act*. The amount which can be paid to all persons who suffer loss though the conduct of the same practitioner is limited to $60,000. Pecuniary loss arising from stealing or fraudulent misappropriation in connection with an ‘excluded mortgage’ since 16 May 1999 is not claimable against the Fund. An ‘excluded mortgage’ is a mortgage other than a direct mortgage ie where the lender is a financial institution or is specified by the borrower. Clients must be informed that there is no claim against the Fund in relation to excluded mortgages. In December 1999, amendments were made to remove the Fund’s liability in relation to moneys placed with a solicitor on trust for investment.

Difficulty in meeting claims against the Fund has required the QLS to charge solicitors a levy over recent years. In 2003, the levy will be $200 per practitioner.²³

4 LEGAL PROFESSION REFORM IN QUEENSLAND

There have been a number of Government papers concerning reform of the legal profession in general, including disciplinary and complaints procedures. Legal profession reform was an election commitment made by the previous Queensland Labor Government.²⁴ In December 1998, the Queensland Government issued a Discussion Paper entitled *Legal Profession Reform* followed by a Green Paper – *Legal Profession Reform* in June 1999. Responses to the Green Paper were made by the QLS; judges of the Supreme Court; and six national law firms.

4.1 GOVERNMENT REVIEWS

The 1998 *Legal Profession Reform Discussion Paper* noted the Government’s announced intention of increasing the effectiveness and accountability of the regulatory process and of empowering the Legal Ombudsman to conduct independent investigations where he or she is not satisfied with the Law Society’s or Bar Association’s investigation. It invited comment on such proposals as well as on whether or not the Legal Ombudsman

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should have legal training and experience; and whether the Solicitors’ Complaints Tribunal should be replaced with a completely separate body.\textsuperscript{25}

The June 1999 \textit{Green Paper} outlined the Government’s proposals further to the review of the public submissions to the Discussion Paper.

In response to the request by the QLS to be relieved of its responsibility for regulating the profession, the \textit{Green Paper} proposed a new complaints and discipline structure. Under that proposal, the investigation of complaints would be undertaken by an independent Legal Practice Authority headed by a person familiar with the legal system and practice, but not necessarily a lawyer (as is the case with the Legal Services Commissioner in NSW). Disciplinary charges brought by the Authority against both barristers and solicitors would be heard by an independent Board (comprising a lay member and two representatives from the profession) under the supervision of the Court. The Court’s supervisory role would be enhanced and it would supervise the profession through two committees, one focusing on conduct issues and one on cost related issues. Minimum standards of professional conduct would also apply.\textsuperscript{26}

In a written response to the \textit{Green Paper}, the Supreme Court justices endorsed the direction of the paper regarding independence of the disciplinary processes but they believed that the increased supervisory role of the Court might expose it to undue criticism. Their Honours did not believe the Court should take on cost assessments functions and supervision of administrative type matters and expressed concern about resources.\textsuperscript{27} One consumer representative criticised the proposed structure of the Legal Practice Board that would have a two to one majority in favour of the legal profession as opposed to the Victorian Tribunal which had equal representation.\textsuperscript{28}

The QLS also criticised aspects of the Paper, arguing that the proposed disciplinary process removed lay participation in the investigative process, abolished the role of the Legal Ombudsman, and gave an inappropriate role to the Court contrary to the doctrine


of separation of powers. It also considered that the proposals would be costly and could increase the price of legal services to consumers.  

4.2 December 2000 Reform Proposals

In December 2000, the then Attorney-General, the Hon Matt Foley MP, announced a package of reforms. In terms of complaints and discipline, it was proposed that the QLS retain its investigative role but that there be recourse to a Legal Practice Tribunal, headed by a Supreme Court judge with a consumer representative and a lawyer as other members, to hear disciplinary charges against barristers and solicitors. Enhanced powers and resources for the Legal Ombudsman were also canvassed, including power to investigate initial complaints himself or herself. The then QLS chief executive considered that the proposals were sensible.

4.3 NCP Review - Regulation of the Legal Profession Issues Paper

In a media interview in November 2001, the present Attorney-General, the Hon Rod Welford MP, said that he did not propose to remove the QLS entirely from the management of complaints as there was a role for the profession to play in regulating its own performance. The Attorney-General again, as he had done when taking office in March 2001, flagged an enhanced role for the Legal Ombudsman with more powers and resources to manage the complaints process. The Legal Ombudsman would be able to intervene and take over an investigation at any point. Mr Welford also stated that he was considering a statutory code of ethical standards for legal practitioners, with penalties for breaches.

In November 2001, the Government released the Regulation of the Legal Profession Issues Paper, which forms part of the National Competition Policy (NCP) review

33 Marcus Priest, ‘Law Society may lose power on ethics’.
process. The Issues Paper outlined a range of alternatives for a complaints and discipline process.

5 RECENT DEVELOPMENTS

The QLS President, Mr Tom Sullivan has noted that detractors have criticised the QLS of failing to protect consumers and argued that self-regulation was akin to ‘Caesar judging Caesar’. Mr Sullivan claims, however, that the legal profession’s interest in self-regulation is to maintain high standards for Queensland solicitors by getting ‘rid of bad apples’. Mr Sullivan commented that it is essential to the success of any disciplinary system that the public has confidence in it and it is critical to maintaining that confidence for the system to be rigorous and impartial.34 In a recent media interview, he claimed that of the 37 prosecutions before the Solicitors’ Complaints Tribunal over the past two years, only two solicitors were acquitted.35

5.1 WRONGDOING BY SOLICITORS

Public confidence in the legal profession and the ability of the QLS to adequately deal with miscreants has been tested over the past few years.

5.1.1 Mortgage Schemes

During 2001, the Australian Securities and Investment Commission began investigating allegations of fraud in solicitors’ mortgage schemes. One solicitor, who operated on the Queensland/New South Wales border, lost $6m in investors’ funds before he was imprisoned for 10 years. His Queensland victims received only a small amount of compensation because of the limits on the QLS’ Fidelity Fund.36

Recent amendments to professional conduct rules forced solicitors to notify the professional indemnity insurer of any suspect loan before 30 June 2002. That was because the insurance policy covering solicitors’ mortgage practices would only cover claims if the practitioner notified the circumstances giving rise to the claim to the insurer before that date. Notification will thus ensure that consumers with negligence claims

34 Tess Livingstone, ‘Perspectives piece by the QLS President Tom Sullivan’.
against solicitors who managed the investment badly would be protected. Audits are being undertaken and any solicitor who has not notified the insurer will face charges of professional misconduct.\textsuperscript{37}

A consumer advocate from Western Australia is reported to have said that the QLS has received hundreds of complaints over the past decade but has not investigated them. The QLS has denied that claim, stating that it would never cover up for solicitors’ misconduct and that, since 1998, it had brought charges against eight solicitors concerning registered mortgage schemes.\textsuperscript{38} The QLS has argued that most of the problems were due to the high risk/high return nature of the schemes, which investors should have appreciated. Some had indeed failed, causing investors to lose. There were also situations in which valuers involved in some of the schemes had overvalued properties and lawyers were bearing the blame for that.\textsuperscript{39}

Queensland’s Minister for Fair Trading, the Hon Merri Rose MP, is reported as having criticised solicitors involved in fraudulent property schemes and called on the QLS to take greater action against them.\textsuperscript{40}

### 5.1.2 Baker Johnson Lawyers

In August 2002, it was reported that a prominent Brisbane law firm, Baker Johnson Lawyers, was under investigation by the QLS. It was reported that the firm had, on a number of occasions, pursued financially impoverished clients for legal fees greater than the amount they had received in settlement of law suits. A couple (Mr and Mrs Smith), who were clients of the firm under an apparent ‘no-win-no-fee’ arrangement, told the \textit{Courier Mail} that they had received a bill for $22,500. Another Brisbane law firm filed a counter-claim on behalf of the Smiths accusing Baker Johnson of fraud (billing for work not done) and other offences. In particular, it is alleged that the firm held out a clerk, Dean Bax, who had no legal qualifications, as a solicitor and charged clients at a solicitor’s charge-out rate (over $300 an hour which was included in the bill sent to the Smiths).\textsuperscript{41}


\textsuperscript{38} Marcus Priest, ‘Law Society may lose power on ethics’.

\textsuperscript{39} Marcus Priest, ‘Law Society may lose power on ethics’.

\textsuperscript{40} Hedley Thomas, ‘Minister hits lawyers over property scams’, \textit{Courier Mail}, 8 March 2002, p 10.

The *Courier Mail* reported that one client received a personal injury settlement amount of $5000, which Baker Johnson took to cover its fees and then sent her a bill for a further $7000. Unable to pay, that client entered into bankruptcy for three years and listed Baker Johnson as her sole creditor.42

Baker Johnson is reported to have defended its action in pursuing clients for fees under ‘no-win-no-fee’ arrangements, sometimes a large proportion of, or even more than a settlement payout. It argues that the firm often expended additional resources to conduct matters for clients and when clients were successful, they should pay more to cover legal fees. However, it is also reported that a Magistrate and a District Court judge believed the firm’s action to be misleading and deceptive. Those comments were made in the course of findings in relation to a former client who had faced losing her home to the firm after it claimed her damages payout to cover its fees then sought further sums from her.43

The QLS President said that, prior to the client succeeding in the court, she had lodged a complaint with the QLS about the fees but was told that there was insufficient evidence to support her claim and it would not be investigated.44 The President stated that the QLS would support a limit on the amount of professional fees that firms can charge.

The media recently focused on a case where a man was defrauded by his accountant, and to make out a case for compensation to be paid by the Government, went to Baker Johnson Lawyers. His matter was handled by Dean Bax, who the man was led to believe was a solicitor of the firm. The man became concerned about delays and the manner in which his case was being conducted. He said that he complained to the QLS in 1998 and showed it a document from the firm that indicated that Mr Bax was a lawyer. However, nothing eventuated because the QLS accepted Baker Johnson’s explanation that the inference created by the document was caused by a typing error.45

### 5.2 Attorney-General’s Response

The Attorney-General, concerned about the adequacy of the QLS’ monitoring of lawyers in relation to complaints of overcharging and fraud, requested the Legal Ombudsman to commence a comprehensive inquiry and audit of the QLS’ handling of all complaints, past and recent, it had received about the Baker Johnson Lawyers. The Legal Ombudsman has since been reported as being critical of the QLS’ investigative process, alleging its

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42 Hedley Thomas, ‘Charge! Law of the jungle’.


44 Hedley Thomas, ‘Watchdog may limit charges’.

45 ‘Queensland Government to investigate growing legal complaints’, *Transcript, 7.30 Report.*
culture and inherent conflict of interest in investigating members as the reason. He is reported to have said that the QLS often refers the complaint to the solicitor concerned then refers the response back to the complainant and takes the matter no further. In addition, he is reported as saying that he has shared the frustration of many complainants regarding the inadequacy of the system.46

Mr Welford has warned the QLS that its response to the concerns regarding the conduct of Baker Johnson would determine whether or not it keeps its regulatory powers over solicitors and that he will await the report of the Legal Ombudsman before deciding what, if any, changes must be made. He again indicated the intention of establishing a Legal Practice Tribunal to oversee the conduct of solicitors and barristers.47 The Attorney-General has indicated that the cost of a new system is an issue. However, he has noted that the costs of regulation have always been met out of practising certificate fees for solicitors and solicitors’ trust account interest.

In a recent Ministerial Statement to the Queensland Parliament, the Attorney-General commented that it was a concern that only after the media raised the Baker Johnson allegations did the QLS initiate more serious attention to the investigation and said that –

> I intend to ensure that there is a system of regulation of the legal profession that builds confidence amongst ordinary Queenslanders about the actions and standards of lawyers. I will introduce into the House later this year, a package of legal profession reforms that will deal with all of these issues.

> These reforms will enhance the role and powers of the independent Legal Ombudsman. That role, the role of the Law Society and the disciplinary process generally will now be reviewed in light of outcomes of the current investigations and the report of the Legal Ombudsman.48

The Attorney-General does, however, believe that there is a role for professional organisations, on behalf of their profession, to take some collective responsibility for resolving disputes between professionals and their clients. However, while the client relations unit of QLS plays such a role, it is yet to be determined whether the QLS will retain the complaints management role for serious allegations of misconduct.49

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47 ‘Queensland Government to investigate growing legal complaints’, *Transcript, 7.30 Report*; Stefanie Balogh, ‘We win and you pay’.
5.3 QUEENSLAND LAW SOCIETY’S RESPONSE

The QLS has reformed the QLS’ Professional Standards Committee to comprise more lay members. The QLS President has acknowledged the need to be seen to have a professional standards process and has commenced a thorough investigation of Baker Johnson. On 13 August 2002, retired District Court chief judge, Pat Shanahan, was asked to oversee the QLS’ investigation of the complaints against Baker Johnson and was appointed as chair of the Professional Standards Committee. Mr Shanahan will review the complaint handling procedures and lead the investigation into the conduct of Baker Johnson. This is separate to the Legal Ombudsman’s current investigation. This came after it was reported that a number of people had contacted the Courier Mail alleging instances of misconduct by the firm and stating that they had not received any satisfaction from complaining to the QLS.

It has been reported that Mr Bax has been charged by the QLS with falsely claiming to be a qualified solicitor. He will appear before the Solicitors’ Complaints Tribunal on 25 November 2002 charged with having falsely represented himself as a solicitor to at least 16 clients of Baker Johnson Lawyers.

In addition, on 23 August, the QLS introduced ‘fee-capping’ rules to prevent solicitors from recovering more than half of a client’s settlement or payout amounts to cover professional fees, even if those fees are much higher.

5.4 OTHER REACTIONS

It has also been reported that some solicitors are unhappy with the QLS, commenting that when they have complained about other solicitors, they too have been given the ‘run around’. Many, it was claimed, would prefer the QLS to have a guild type of role rather than being a professional representative as well as a regulator/disciplinary body.


53 Chris Griffith, “‘Lawyer’ clerk faces barrage of charges’.


The call for separation of QLS’ functions has been reiterated by Opposition justice spokesman, Mr Lawrence Springborg MP, and Liberal Party leader, Mr Bob Quinn MP. Mr Springborg and Mr Quinn suggested that a parliamentary committee be established to consider reform of the regulatory and disciplinary process. It was considered that the appointment of Judge Shanahan to oversee the QLS’ investigation was still no real answer to the problem of the QLS being seen as ‘Caesar judging Caesar’. The joint call is reported to have noted that the Government has produced papers and discussion on reform but that nothing has come of them in the three years since.56

Members of the senior judiciary have also expressed concern about the conduct of Baker Johnson and the investigation of that firm by the QLS. Justice Carter QC urged the Attorney-General to develop a strategy to protect the public from unprofessional lawyers and to restore public confidence in the solicitors, most of whom act with integrity and professionalism.57 The Chief Justice of the Queensland Supreme Court, Paul de Jersey, has suggested that the Government establish a totally independent body with adequate resources to conduct investigations into solicitors’ conduct even before the matter gets to the Solicitors’ Complaints Tribunal.58

It has been reported that, in at least two recent Court of Appeal matters, the solicitors may be ordered to reduce their fees or pay the court costs themselves if the court considers that the action was of no benefit to the client.59

5.5 UPDATE

The reports of both the Legal Ombudsman and Mr Shanahan are now imminent. A recent newspaper article reports that legal sources have indicated that both reports were liable to be scathing of the QLS’ ability to investigate complaints in a timely and thorough manner.60 It is reported that the Legal Ombudsman is expected to urge the Attorney-General to remove the QLS’ regulatory powers and give them to an independent body while Mr Shanahan is likely to recommend that the Solicitors’ Complaints Tribunal be

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replaced by a body headed by a retired judge with a minority of QLS representatives among its members.\textsuperscript{61}

6 COMPLAINTS AND DISCIPLINARY BODIES IN OTHER JURISDICTIONS

There is considerable variation in the types of bodies that undertake investigation of complaints and disciplining of legal practitioners in other states and territories. Three examples of different approaches are provided below. It appears that jurisdictions, such as Tasmania, which have self-regulatory systems similar to those in Queensland, are considering reform.

6.1 NEW SOUTH WALES

\textbf{New South Wales} moved to a co-regulatory system in 1994 following findings by the NSW Law Reform Commission that there was a lack of public confidence in the self-regulatory regime.\textsuperscript{62} The \textit{Legal Profession Act 1987} introduced a comprehensive system for regulation of the legal profession in NSW.\textsuperscript{63}

The NSW Law Society and the Bar Association have both regulatory and representative roles for solicitors and barristers, respectively. Their practice rules bind the profession and a breach may incur disciplinary action against the practitioner responsible. A Legal Profession Advisory Council has some oversight functions and can review the structure and function of the profession.

All complaints initially go to the \textbf{Legal Services Commissioner} who acts as a common entry point. The Commissioner deals with consumer dispute matters (consumer cost and loss type issues)\textsuperscript{64} and minor conduct issues but more serious conduct complaints are referred to the Law Society and Bar Association for investigation. The Commissioner monitors all investigations and has power to investigate such matters himself or herself or

\textsuperscript{61}\textsuperscript{61} Chris Griffith, ‘Law society power to be downgraded’.


\textsuperscript{63}\textsuperscript{63} The information in this section is taken from the Office of the Legal Services Commissioner’s website at \url{http://www.lawlink.nsw.gov.au/olsc1.nsf/}

\textsuperscript{64}\textsuperscript{64} These are similar to what is handled by the client relations unit of the QLS. Only conduct and discipline issues are dealt with in this Brief, not consumer dispute issues.
can take over a matter being handled by either professional body. If a complainant is dissatisfied with an investigation, the Commissioner can review the matter.

The lawyer’s conduct is thus investigated by the Law Society (for solicitors) or Bar Association (for barristers), or by the Commissioner. The outcome of the investigation may be dismissal of the practitioner, a reprimand, or referral to the Legal Services Division of the Administrative Decisions Tribunal. If the matter is one where it appears, from the investigation, that there is a reasonable likelihood that the practitioner would be found guilty of professional misconduct, proceedings must be brought before the Tribunal. The Supreme Court also has inherent jurisdiction over legal practitioners.

The Tribunal hearings are conducted by three members – a judicial member, a legal member, and a lay member. The Tribunal can make any of a number of orders including striking off the lawyer from the roll of practitioners, a fine, public reprimand, restrictions on or cancellation of a practising certificate. It can also order the payment of compensation up to $10,000 where the complainant has suffered pecuniary loss and is not entitled to compensation from the Fidelity Fund by bringing a separate civil action against the practitioner. Awards of compensation are rare.

### 6.1.1 A Further Review of Complaints Against Lawyers

During 2001, the NSW Law Reform Commission (LRC) published an *Interim Report 99 Complaints Against Lawyers* and made some recommendations. The LRC considered that review of matters such as the roles of the various regulatory bodies were outside its terms of reference. It stated –

> However, several submissions to this review raised concerns about aspects of the co-regulatory model of investigating complaints. These concerns principally related to the categories of misconduct (including negligence), the objectivity and independence of the investigative procedures and the role of the Law Society and Bar Association in them.

> The Commission has made no recommendations in relation to these fundamental issues. However, taking account of the submissions received and recent announcements by the Attorney-General relating to amendments to the disciplinary system, the Commission considers there is merit in a more wide ranging inquiry being undertaken.

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65 If the complaint is against a licensed conveyancer, the NSW Department of Fair Trading.

Rather than expand the LRC’s reference, the Attorney-General decided to drive the reform process through the Attorney-General’s Department. The aim of any reforms would be to ensure that the interests of the public continue to be served and that the system measures up against principles such as transparency, fairness, efficiency and effectiveness, proper funding and resources, and accessibility.

Accordingly, in November 2001, the Attorney-General’s Department published an Issues Paper, *A Further Review of Complaints Against Lawyers* to determine whether the complaints and discipline procedures need to be simplified and improved.67 One of the issues raised is whether the investigation of complaints should be the responsibility of an independent regulator or of the professional bodies or whether the co-regulatory scheme should be retained. In each case, there is the question of what their roles should be.68

The Issues Paper noted that accountability of the professional bodies was ensured by a number of factors. Those were: the establishment of the Legal Services Commissioner in an oversight/monitoring type of role; the requirement for the professional bodies to report to Parliament; and avenues for review of complaints by the Commissioner. Also, as the Commissioner deals with most complaints by telephone and/or mediation, there is an avenue for quick and cheap complaints resolution for consumers and regular feedback to the profession.69

However, the Paper commented that there is a level of dissatisfaction with the role of both the Commissioner as well as the professional bodies, with a Commissioner Satisfaction Survey indicating that consumers were unhappy with the outcome of their complaints and did not believe that there was sufficient consumer focus. The Issues Paper commented that greater accountability for the Commissioner might be needed, perhaps through the establishment of a consumer group to carry out initial review of the investigative work of the professional bodies or advising the Commissioner about difficult decisions.70

A number of submissions to the LRC in relation to *Interim Report 99* expressed concern about the potential for conflict of interest that still arises because of continued involvement of professional bodies in the co-regulatory system.

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67 Hon R Debus MP, NSW Attorney-General, ‘Have your say on legal profession complaints system,’ Media Release, 9 November 2001.
69 *A Further Review of Complaints Against Lawyers*, Section 10.2.
70 *A Further Review of Complaints Against Lawyers*, Section 10.3.
6.2 VICTORIA

The co-regulatory system, introduced by the Legal Practice Act 1996 (Vic), was intended to reduce the role of the professional bodies which previously had the entire control over investigations and prosecutions of solicitors and barristers. The Victorian legal profession is governed by the following –

- two Recognised Professional Associations (RPAs) (Victorian Lawyers RPA Ltd for solicitors or the Victorian Bar Inc for barristers);
- a Legal Practice Board (which has a number of functions, including accreditation of RPAs and overseeing the issue of practising certificates);
- the Legal Ombudsman (an independent statutory officer who must not have practised law in the past seven years); and
- the Legal Profession Tribunal.

A complainant has two avenues of recourse. He or she can lodge a complaint with the relevant RPA or with the Legal Ombudsman. The RPAs and the Legal Ombudsman can refer a complaint to each other.

The Victorian Legal Ombudsman has power to investigate allegations of misconduct and unsatisfactory conduct but not ‘dispute’ matters (consumer cost and loss type issues). RPAs also have the ability to investigate complaints of improper conduct. The Legal Ombudsman has the power to monitor those investigations and to issue directions about them. The Ombudsman can take over investigations if the directions are not followed.

If a complaint is relatively minor and the solicitor corrects it, they will usually be reprimanded. If more serious (eg unsatisfactory conduct or more), the Legal Ombudsman or the RPA will prosecute the practitioner before the Legal Profession Tribunal.

The Tribunal is an independent body which hears and determines disciplinary charges against lawyers. It comprises a retired judge, a lawyer and a lay member for hearing serious charges. A registrar can hear less serious matters. The Tribunal has powers to fine or reprimand practitioners. There is an avenue of appeal to the Supreme Court.

The Legal Ombudsman’s Annual Report 2000-2001 shows that complaints to the Legal Ombudsman increased by 25% in the reporting year, whereas complaints to the Lawyers RPA Ltd and the Bar Inc fell by 4% and 15% respectively. The Legal Ombudsman, Mrs

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71 RPAs can attempt to resolve dispute matters but if no solution is reached, they can be taken to the Legal Profession Tribunal.
Kate Hamond, has stated that the trend in the past year for clients to bring their complaints directly to the Legal Ombudsman demonstrated the public preference for an independent regulator.\textsuperscript{72}

Mrs Hamond has indicated that any complaint handling body has to be adequately resourced to perform its role effectively and that her office, in contrast to the Queensland Legal Ombudsman, who was operating with just one administrative assistant, had a staff of 17 people (13 effective full-time employees) and that half of those were investigative lawyers with expertise to recommend to the Ombudsman what action to take.\textsuperscript{73}

\subsection*{6.2.1 Regulation of the Victorian Legal Profession Review}

In a recent \textit{Review} of the legal profession, commissioned by the Victorian Government, it was found that the current system was fragmented, costly (around \$12m a year, almost double that of the previous system) and complex. Many submissions to the Review argued that it was also insufficiently protective of consumer interests and two points of ‘entry’ were confusing. Both the Reviewers and submissions revealed a concern about the continuing involvement of the legal professional bodies as primary regulators. This was despite the fact that the 1996 reforms were intended to achieve a balance between independent regulatory components and a continuing role for the legal profession.\textsuperscript{74}

The Review considered that the structure it proposed would provide an independent ‘one-stop’ regulatory shop with greater efficiency and effectiveness than exist at present and should result in significant cost savings flowing from greater centralisation and reduction of duplication between processes.\textsuperscript{75}

It was recommended that an Office of the Legal Services Commissioner be established to provide a single entry point for receiving complaints, headed by a Legal Services Commissioner who would be accountable to an independent Legal Services Board. The Commissioner would replace the Legal Ombudsman and have broader powers.

The complaints handling process would be similar to that existing in New South Wales. Once received, the complaint would be referred to either the Law Institute or the Bar


\textsuperscript{73} Chris Griffith, ‘Funding helps watchdog to lay down the law’, \textit{Courier Mail}, 15 August 2002, p 15.


\textsuperscript{75} \textit{Report of the Review of the Legal Practice Act 1996}, Ch 6; Executive Summary.
Council for investigation. The Commissioner would be able to take over an investigation being carried out by the professional bodies and there would be an ability to seek review of investigations. The Commissioner would retain and handle consumer/practitioner dispute matters. Prosecutions would be brought before a separate Legal Profession Tribunal which could be chaired by a retired judge.\(^\text{76}\)

The Legal Services Board would have a policy-making and governance role and would comprise seven persons, three of whom would be drawn from the legal profession, two from consumer type bodies, and one who is experienced in commercial matters.

The Legal Ombudsman is critical of the Review, stating that its proposed new system would ‘silence’ the Legal Ombudsman as an independent critic and leave lawyers in control, particularly as there was potential for the new Commissioner to be appointed and reappointed by a possibly lawyer-dominated Legal Services Board.\(^\text{77}\)

### 6.3 Western Australia

In Western Australia, the *Legal Practitioners Act 1893* (WA) Part 4 establishes a complaints and disciplinary regime where the professional organisations have a quite limited investigative role, although they can reprimand or fine practitioners. The conduct that can be subjected to disciplinary action includes illegal conduct, unprofessional conduct, neglect in the course of practice of the law, and undue delay. The separation of the disciplinary and regulatory roles was a consequence of recommendations of the 1993 *Report of the Committee of Inquiry into the Future Organisation of the Legal Profession*.

The Law Society of WA does not have any power to investigate complaints against solicitors and acts as a professional association for lawyers. While it can attempt to facilitate resolution of problems between solicitors and clients, any allegations of misconduct have to be referred to the Office of the Legal Practitioners Complaints Committee.

The independent Office of the Legal Practitioners Complaints Committee investigates all complaints against solicitors and barristers. It does not generally deal with costs disputes and those matters are referred to the taxation process of the Supreme Court. The Committee is part of the Legal Practice Board and consists of the chairperson and at least six other practitioners and not less than two other non-practitioners appointed by the

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Government as community representatives. A quorum is three members, two of which must be practitioners and one a community representative. It has power to impose disciplinary sanctions including fines up to $500, a reprimand, or to have the practitioner reduce or refund fees.

In the more serious cases, the Committee can bring charges before the Legal Practitioners Disciplinary Tribunal which has power to make a range of disciplinary orders, including fines of up to $10,000, suspensions up to two years, and referring matters to the Supreme Court for striking off the practitioner. The Tribunal consists of members of the Board (other than those on the Committee) and a representative of the community appointed by the Government. The Chairperson must be a judge or retired judge or a practitioner of at least eight years standing.

The Victorian Legal Ombudsman considers that the WA model should be adopted nationally.  

6.3.1 National Competition Policy Legislation Review (Draft Report)

However, despite the independence of the Committee from the professional associations, it has been noted that both the Committee and the Tribunal are dominated by members of the legal profession and may still be seen as having a conflict of interest in performing their disciplinary functions. There have been suggestions that lay persons should have equal representation in a disciplinary and complaints handling regime to ensure fairness and remove perceptions of bias. It has also been canvassed that there must be an independent avenue of appeal, public accountability and public awareness of complaint avenues and redress.  

The recent Department of Justice National Competition Policy Legislation Review (Draft Report) found that the disciplinary mechanisms provided a net public benefit but that the minimal powers given to lay members on the Tribunal regarding voting on the imposition of penalties should be extended to enhance public accountability and confidence. It was also suggested that consideration be given to whether there would be any net public benefit in requiring the Tribunal to publish findings, evidence and penalties and reasons and the Committee to publish its conclusions of investigations and penalties imposed.

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78 Chris Griffith, ‘Funding helps watchdog to lay down the law’.
79 WA Department of Justice, National Competition Policy Legislation Review (Draft Report), April 2002, p 218 citing submission by the ACCC.
7 CONCLUSION

It is clear that determining the nature of a new disciplinary regime for Queensland practitioners will not be unproblematic, with experience in other jurisdictions revealing that it is difficult to find a system to adequately satisfy all stakeholders.
APPENDIX A – NEWSPAPER ARTICLES

Title ‘Lawyer’ clerk faces barrage of charges
Author Chris Griffith
Source The Courier-Mail
Date Issue 31 October 2002
Page 1

The Queensland Law Society has doubled the number of charges that Baker Johnson Lawyers clerk Dean Bax will face for allegedly falsely holding himself out as a solicitor.

Baker Johnson Lawyers, a "no-win no-fee" firm that ruthlessly pursued clients unable to pay its exorbitant fees, charged $308 per hour for Mr Bax’s services even though he did not have a law degree, was not admitted to practise as a solicitor and was qualified as a clerk only.

The allegations against Baker Johnson also include claims the Law Society dealt ineptly with dozens of clients’ complaints about the firm.

This led Attorney-General Rod Welford to asking Legal Ombudsman Jack Nimmo to report on the future of the QLS handling solicitors’ complaints and to the society engaging retired chief judge Pat Shanahan to review its complaints’ procedures.

With both reports imminent, the QLS has upped the ante against Mr Bax by doubling the number of cases it will pursue when he appears before the Solicitors’ Complaints Tribunal on November 25.

The original QLS case was that Mr Bax had falsely held himself out as a solicitor to eight people: Wendy Smith, Bruce John Smith, Gavin John Handran, Emma Wilson, Bernard Morris Kiely, Sallyanne Daphney Nelson, Raymond Kenneth Rycroft and Stephen Wray.

It now has been alleged he was similarly represented to another eight clients of the law firm.

‘Solicitor’ charge list increases They were: Derek Shaun Brady, Diane Rose Fitzpatrick, Tracy Warren, Mark Zago, Mohamed Yaman Arafeh, Jane Marie Fennell, Gregory Robert French, and Michael Kayrouz.

It is understood the tribunal case against Mr Bax was adjourned from this week to next month to give him time to prepare responses to these fresh counts.

And sources have told The Courier-Mail more cases could follow.
One of the eight new cases, Mr Brady, received Baker Johnson Lawyers’ bills totalling $29,303.84 on September 24 - six weeks after The Courier-Mail’s Hedley Thomas reported that Mr Bax had been representing himself as a solicitor.

Documents filed in the Supreme Court claim all work was charged at $308 per hour and Mr Brady, in an accompanying court affidavit, says the legal work was performed mostly by Bax, whom he thought was a solicitor.

"He was dressed appropriately, wearing suspenders, had his own office and spoke confidently about the case and his ability to commit Baker Johnson’s money to the action," Mr Brady said.

"I even remember during the initial interview that Mr Bax's personal secretary came in and offered tea or coffee.”

The court documents include a Baker Johnson client agreement that Mr Brady signed in August 1998 upon which Mr Bax was listed as a "solicitor”.

They allege Mr Brady signed a second client agreement in November last year which increased the hourly rate from $288 to $308 and no longer referred to Mr Bax, although Mr Brady says he still performed most of the work.

It is understood Baker Johnson this week agreed to charge Mr Brady less than half what it originally sought.
Queenslanders’s lawyers face an unprecedented shake up of their regulatory system with two reports expected to urge that the Queensland Law Society be stripped of its role in disciplining solicitors.

The reports by independent Legal Ombudsman Jack Nimmo and retired District Court chief judge Pat Shanahan are due in days.

Neither Mr Nimmo nor Mr Shanahan would comment yesterday, but legal sources said both reports were liable to be scathing of the society's ability to investigate quickly and thoroughly clients' complaints about solicitors.

The sources said both reports were expected to call for an immediate shake-up of the system where complaints against solicitors are investigated by the society - the professional body that represents solicitors.

Mr Nimmo, who has blasted the society for being inept when confronted by legitimate complaints about lawyers, is expected to urge Attorney-General Rod Welford to stop it regulating solicitors altogether.

That role would be performed by an independent authority which would receive and investigating complaints against solicitors and barristers similar to the ombudsman’s office in Victoria.

Legal sources said Mr Nimmo was likely to outline two less desirable options: that an independent body receive the complaints and supervise a Queensland Law Society investigation, and the status quo.

Legal consumers for years have classed the society's disciplining its members as "Caesar judging Caesar".

That criticism intensified after The Courier-Mail reported society inaction when faced with dozens of consumer complaints against "no-win no-fee" firm Baker Johnson Lawyers.

It is understood Mr Nimmo is expected to say the society would not have initiated a thorough investigation into Baker Johnson without The Courier-Mail's stories.
In a second report commissioned by the society internally, sources say Mr Shanahan is likely to recommend that the Solicitors' Complaints Tribunal be replaced by a body headed by a retired judge with a minority of society representatives among its members.

Legal sources said Mr Shanahan still envisaged a role for the society investigating public complaints but there was concern about cases where the society dropped a complaint simply because the accused solicitor denied it.

The society wants to retain its role investigating complaints and says an independent body would cost taxpayers at least $3 million.

Alternatively, practitioners would be slugged a regulation fee of $1000 a year.

Despite the furore, the society is optimistic about the legal reforms Mr Welford may unveil, according to its 2001-2002 annual report.

"At the start of the year under review there were bleak signs for Queensland solicitors on reform," immediate past president Joe Tooma wrote in the report.

"Thanks to the work of your council, QLS staff, and the many members who give time pro bono to QLS committees, the worst-case scenarios have been averted and we now anticipate an acceptable reform package."

A spokesperson for Attorney-General Rod Welford said no deals had been done with the society on reform.
Queenslanders who were ripped off by crooked solicitors received $1.1 million in compensation last year from the once debt-laden Legal Practitioners’ Fidelity Guarantee Fund.

Figures tabled in State Parliament last night showed the compensation paid through the fund in the year to April increased by almost $250,000 - or 29 per cent - on the previous year’s payouts.

But the fund appears to be in solid financial shape, with $1.3 million remaining in its kitty, allowing the Queensland Law Society to this year reduce the levy charged to solicitors across Queensland by $100 to $200.

The fund was set up to compensate clients of dishonest or incompetent solicitors.

A funding crisis three years ago, when it had only $641,721 in cash and was facing more than $9 million in potential claims, forced the Law Society to increase the annual levy on solicitors to $650 - up from $335 in the 1997-98 financial year.

Solicitors were charged a levy of $600 in 2000-01 and of $300 last year.

Two months ago the State Government said that the full-time appointment of the Legal Ombudsman to investigate complaints of misconduct by lawyers would be paid for out of the fund.

Attorney-General Rod Welford said there were sufficient reserves to cover Ombudsman Jack Nimmo’s full-time appointment, a claim seemingly substantiated by the figures tabled in the Law Society’s Annual Report.

Mr Welford announced the Ombudsman’s full-time appointment when foreshadowing an overhaul of the system of handling complaints against lawyers.

Under the shake-up, the Queensland Law Society might be removed from regulating and disciplining lawyers and the Legal Ombudsman given stronger powers and resources.
The Law Society, which has lost the confidence of some senior legal figures and the public, is being investigated by Mr Nimmo over its handling of complaints against Baker Johnson Lawyers.

The firm, which denies any wrongdoing, was the focus of a series of articles in The Courier-Mail accusing it of fraud, deceit and fee-gouging.

Law Society president Joe Tooma did not mention the Baker Johnson controversy in the annual report.

He said that at the start of the year there were bleak signs for Queensland solicitors in the legal reform package proposed by Mr Welford.

But he said the worst-case scenario had been averted and the society now anticipated an acceptable package.

The report showed the Law Society’s Professional Standards Unit initiated 18 prosecutions through the Solicitors Complaints Tribunal last year, resulting in 11 solicitors being struck off, one being fined and four suspended.

Just over 450 written complaints about unsatisfactory professional conduct were received by the Law Society, down from 529 the previous year and 751 the year before.

The society’s new client relations centre received a further 734 written concerns and more than 10,000 phone inquiries on matters ranging from a lack of communication and high costs to inquiries from solicitors about ethics.
Title: Fee cap to rein in solicitors
Author: Hedley Thomas
Source: The Courier-Mail
Date Issue: 24 August 2002
Page: 3

Lawyers taking the lion’s share of client payouts in "no-win no-fee" cases have been ordered to settle for less or face disciplinary action.

The new rules are a bonus for Queenslanders involved in such cases because it means they will not lose more than half of their payout to their solicitors.

The Queensland Law Society’s tough stance comes in the wake of scathing criticism of Baker Johnson Lawyers, a prominent Brisbane "no-win no-fee" firm.

Baker Johnson Lawyers had taken all the payout of clients in "no win no fee" cases and then sued or threatened to sue for extra fees.

This was described as unconscionable, misleading and deceptive by District Court Judge John McGill, QC, while Baker Johnson Lawyers had been separately accused of fraud and deceit by rival Brisbane firm McInnes Wilson.

Baker Johnson, which denied wrongdoing and said it had been viciously attacked in articles in The Courier-Mail, is being investigated by a retired District Court judge appointed by the Law Society.

The capping of fees will provide clear guidelines for the first time and rein in the conduct of an unknown number of law firms which have left injured clients with very little in the bank or, in some cases, with debts after "winning".

The lack of regulation of the "no-win no-fee" industry has been exploited by some firms and contributed to soaring insurance premiums.

Law Society President Tom Sullivan said yesterday that under the new rules solicitors cannot claim more than the clients take home, even if the legal fees are much higher.

"Most solicitors already adhere to this principle, but to the few who have a different approach I have this message - those days are over," Mr Sullivan said.
"Injury victims have already suffered a trauma and solicitors are there to help them get compensation from the person or party responsible for the injury.

"Every solicitor involved in such a case must have a signed client agreement before they can act, and the agreement must include a fair and reasonable fee."

Brisbane woman Kerry Jackson said the fee-capping should have been introduced years ago when it was clear a number of solicitors were running "no-win no-fee" cases for their benefit rather than to help clients.

Mrs Jackson, a disability pensioner and former factory hand, went bankrupt after the $5000 settlement she got for a back injury was taken by Baker Johnson Lawyers, which then sent her another bill for more than $7000.

"People like me saw this big carrot dangled in front of them and were told it would solve all of their problems, but instead it created more," she said.

"(These) 'no win no fee' cases can give justice to people who cannot afford it, but it can also be a big trick."

Attorney-General Rod Welford, who has expressed disgust at fee-gouging in "no-win no-fee" cases and deep concern over the Law Society's handling of complaints against solicitor members, welcomed the fee capping.

The Law Society is facing the removal of its self-regulatory and investigative powers because Mr Welford fears it has lost the confidence of solicitors, senior legal figures and the public to properly investigate other lawyers.
Title  Imposter ‘lawyer’ faces ban
Author  Stefanie Balogh
Source  The Australian
Date Issue  24 August 2002
Page  9

A law clerk accused of duping clients into believing he was a solicitor at a "no win, no fee" Brisbane law firm will be charged and faces a ban from working in any legal office.

Dean Bax, 34, will be charged next week with falsely claiming to be a qualified solicitor at Baker Johnson Lawyers in a professional conduct action brought by the Queensland Law Society.

The charge against Mr Bax came as the society announced a clampdown on charges by no-win, no-fee law firms.

The society has introduced the nation's first guidelines to stop these firms - often attacked as ambulance chasers - from taking any more than half of a client's compensation payout in fees.

"The effect of the new rules means that if a client had $20,000 remaining...the solicitor could not charge more than $10,000 in professional fees," society president Tom Sullivan said.

"The vast majority of law firms involved in personal injury work, including those offering no win, no fee services, take a responsible and client-focused approach to such cases.

However, we need clear cost guidelines to deal with this issue."

The conduct of these firms is central to a political battle over the society's self-regulatory powers.

The society rejects accusations it ignored complaints from clients of Baker Johnson who have accused the firm of overcharging, deceit and fraud.

Baker Johnson denies the allegations, and describes Mr Bax as the firm's managing law clerk.

He did not return calls yesterday.

The action against Mr Bax is being initiated after the society investigated a number of complaints from Baker Johnson clients.
"The society has taken prompt action upon investigating the complaints and it showed the QLS was efficient in its regulatory role despite unfounded public perceptions about the way the society dealt with complaints," Mr Sullivan said.

Queensland Attorney-General Rod Welford has threatened to strip the society of its self-regulatory powers if it fails to adequately investigate the Baker Johnson allegation.

Victoria's Legal Ombudsman Kate Hamond said she was "terribly wary of caps" when asked if her state would consider limiting the fees of no win, no fee lawyers.

NSW Law Society secretary Charles Cawley said he believed tort law reforms in his state meant such operations "might clearly be wound back now, particularly with the limits on electronic advertising".

But Australian Plaintiff Lawyers Association president Rob Davis defended plaintiff lawyers and said few "ever got rich" from no win, no fee work.
The Queensland Law Society faces being removed from regulating and disciplining lawyers, with the independent Legal Ombudsman given stronger powers and resources for investigation.

An overhaul of the system of handling consumer complaints of misconduct against lawyers was foreshadowed yesterday by Attorney-General Rod Welford.

The society, which has lost the confidence of senior legal figures and the public, is being investigated by Legal Ombudsman Jack Nimmo over its handling of complaints against Baker Johnson Lawyers.

The firm, which strenuously denies any wrongdoing, has been the focus of a series of The Courier-Mail articles accusing it of fraud, deceit and unlawful fee-gouging.

Mr Welford said he would ensure a "system of regulation of the legal profession that builds confidence amongst ordinary Queenslanders about the actions and standards of lawyers".

Mr Nimmo, whose office has been deluged with pleas from people complaining the Law Society had fobbed them off, was told by the Attorney-General yesterday that his part-time job should immediately become full-time.

This is the first step in a reform expected to result in Mr Nimmo gaining the power and resources to take over the Law Society's role.

He has a backlog of more than 200 matters concerning the society's handling of consumer complaints.

He said the perception of the Law Society being biased in favour of its members was "so entrenched that I don't think the society can be rid of that perception".

Mr Welford told State Parliament yesterday that he was particularly disturbed by reports in The Courier-Mail about the conduct of Baker Johnson Lawyers pursuing its own clients "relentlessly for over-the-top legal fees".
He welcomed the Law Society's appointment of retired chief District Court Judge Pat Shanahan to investigate the matters, but "it is also of concern that it was only after the media raised the Baker Johnson allegations that the Law Society initiated this more serious attention to the investigation".

"I want to stress to the Parliament my very deep concern, not only over the allegations against Baker Johnson, but the Queensland Law Society's past management of complaints against its members," Mr Welford said.

"There are many first-rate law firms and lawyers in Queensland who share my view that public confidence in their profession is paramount - and who will support any steps I take in the future to enhance that confidence."

Law Society president Tom Sullivan yesterday pledged that all of Judge Shanahan's findings from his review of the society's investigative roles would be made public and "at this stage I expect we would implement his recommendations in full".

Mr Sullivan said he did not believe the society would be asked to give up its self-regulatory roles, "but if he (Judge Shanahan) says things we don't like, we'll just have to cop it".

"If he does come out and say that the way we are running things is abysmal and we should change the set-up, it would be difficult for us to argue," he said.

"I want a system that is fair, impartial and works well.

We have no hidden agenda."
The Legal Ombudsman’s office is in crisis, with hundreds of complaints piling up due to a chronic staff shortage and a crisis of confidence in the Queensland Law Society’s investigation of solicitors.

Legal Ombudsman Jack Nimmo yesterday said legal consumers had lodged complaints in vastly increased numbers since the revelations in The Courier-Mail about "no-win no-fee" firm Baker Johnson Lawyers.

Apart from facing a complaints log jam, Attorney-General Rod Welford has instructed Mr Nimmo to conduct an independent inquiry and report to him on the society’s handling of an avalanche of complaints against Baker Johnson.

But as the State’s Legal Ombudsman, Mr Nimmo is paid to work just two days a week.

He typically spends Tuesday as the lay observer on the Solicitors Complaints Tribunal, which leaves only Thursday to handle complaints.

He has no investigators, just one part-time secretary, a position shared by two people.

The office usually is closed on Fridays and calls go to an answering machine.

He said in contrast, the Victorian Ombudsman’s office, which handled complaints about both solicitors and barristers, employed about seven investigators.

Mr Nimmo said Mr Welford had mentioned boosting his resources as part of foreshadowed reforms to lawyers’ disciplinary procedures, but there was the immediate issue of keeping his head above water.

He said he would like to work full-time.

"The more time you spend at it, the more chance you have of getting on top of complaints," Mr Nimmo said.

Mr Welford said yesterday he had no plan to immediately boost Mr Nimmo’s hours of work and Mr Nimmo had not approached him about it.
But he would be "sympathetic" and "open to any request" to extend his hours.

Mr Nimmo said the Baker Johnson investigation alone would require him to read the file of every complaint, many of which could contain hundreds of pages in bound volumes of complex legal material.

He then would read the Queensland Law Society's responses to each to assess whether it had conducted an adequate investigation.

The same review process applied to hundreds of other complaints, he said.

Mr Nimmo, a former NSW police stock squad investigator who also investigated medical fraud, said he worked regularly at home in an attempt to clear the complaints backlog.

"I take a lot of it home.

The number of complaints there does require more than two days per week."

He said the upsurge in complaints to his office was partly because the Law Society this year had written to all complainants saying they had the avenue of the Legal Ombudsman if they were dissatisfied with QLS investigations - and many had taken this up.

Mr Nimmo said his office already had recorded 100 complaints about Baker Johnson since The Courier-Mail’s reports.
EXCLUSIVE: The no-fee lawyers who sue their clients.

A prominent Queensland law firm renowned for handling "no-win, no-fee" personal injury cases is accused of fraud and other serious offences relating to dealings with its own battling clients.

Baker Johnson Lawyers face the allegations in an extraordinary counter-claim filed in the Brisbane Magistrate’s Court by another law firm, McInnes Wilson.

The counter-claim, uncovered by The Courier-Mail during an investigation into Baker Johnson’s conduct with clients who say they have been misled and deceived, makes some of the most serious claims that can be levelled against a law firm.

The revelations come amid the discovery by The Courier-Mail of a longtime pattern of questionable conduct by the controversial firm, with seven offices in southeast Queensland which have attracted thousands of clients.

Baker Johnson Lawyers partners, Michael Baker and Steven Johnson, and the firm’s clerk, Dean Bax, are accused of fraud for trying to charge an Upper Caboolture couple for work not performed.

Mr Bax is accused of pretending to be a solicitor to the client, Bruce Smith, a labourer, and his wife Wendy, despite Mr Bax having no professional qualifications.

Mr Johnson and Mr Baker are alleged to be "liable for the fraud, deceit, fraudulent misrepresentation and negligent misrepresentation” of Mr Bax, who has been a clerk at the firm for more than a decade.

The Queensland Law Society said yesterday to falsely claim to be a solicitor "is misrepresentation and illegal”.

Baker Johnson is being investigated by the Law Society over a number of complaints, including recent judicial findings that it had subjected a client to economic duress to push her into running a legal action against her former boss for a back injury.
The Courier-Mail’s investigations have uncovered more than 200 cases in the Brisbane Magistrate’s Court since 1993 in which Baker Johnson Lawyers launched a legal attack on its clients for allegedly unpaid fees of thousands of dollars.

In a number of those cases the clients, most of whom understand little of the law or of their legal rights, say they were promised "no-win no-fee" services by the firm and deny owing it any money.

A Brisbane meat packer went bankrupt for three years and listed Baker Johnson Lawyers as her only creditor when it pursued her for more than $7000 in legal fees after swallowing up the $5000 she received in settlement for a back injury.

"I felt they had ripped me off, had not represented my interests and had lined their own pockets," said Kerry Jackson, a pensioner and mother of three.

A legal file note shows that another client who was billed for twice the amount of the Workcover settlement she got was told by a solicitor from the firm "that there was various ways we could get blood out of a stone by way of either bankruptcy, warrants of execution or warrants to take possession of motor vehicles or houses".

The McInnes Wilson counter-claim alleging fraud against Baker Johnson is significant because a solicitor ethically cannot plead such serious allegations unless he or she forms the view that there is a factual basis.

McInnes Wilson partner Grant Dearlove, who filed the counter-claim in the Magistrate’s Court on July 24 on behalf of the Smith couple, declined to comment.

Sources said Mr Dearlove understood the seriousness of the claims and was satisfied he had evidence to establish the truth.

Baker Johnson Lawyers told The Courier-Mail "we are unable to comment as the matter is presently before the courts, apart from saying that the allegations referred to in your facsimile transmission are simply that - allegations which are untested and unproven".

"We are very proud of the fact that we have a proven history of battling hard for our clients and spending our resources to achieve that result," the firm said.

Baker Johnson Lawyers denied that it permits Mr Bax to pretend to be a lawyer, asking: "What evidence do you present that Mr Bax is presently holding himself out as a solicitor?".

The counter-claim includes a reference to Baker Johnson’s client agreement for the Smiths which reads: "Solicitors - your matter is being handled by Dean Bax...a Solicitor of this firm".
The bill subsequently sent to the Smiths was for work said to have been done by professional staff of Baker Johnson, who charge more than $300 an hour.

The Smiths say that Mr Bax lied about his professionalism and had been negligent and reckless in circumstances where the firm’s partners knew of their employee’s conduct.

Wendy Smith, a housewife and mother of four, told The Courier-Mail yesterday that she and her husband Bruce, a building site labourer, left Baker Johnson and were hit with a $22,500 bill despite being led to believe they had a "no-win no-fee" arrangement.

"I was disgusted with them," Mrs Smith said.

"There is so much that the little people don’t know.

"We think the lawyers are doing the right thing and all the time we are being done in like idiots.

"It would be laughable if it were not so serious."
Title: Law society may lose power on ethics  
Author: Marcus Priest  
Source: The Australian - Financial Review  
Date Issue: 9 November 2001  
Page: 50

The Queensland Law Society's role in regulating the conduct of the State's solicitors is set to be significantly reduced under reform proposals favoured by the Attorney-General, Mr Rod Welford.

As part of a long-awaited regulatory shake-up, Mr Welford is considering increasing the powers and resources of the State's Legal Ombudsman and limiting the Law Society's involvement in regulating the profession.

The proposal is broadly in line with regulatory changes being considered in NSW, where the State Government will today float the idea of reducing the regulatory powers of the Law Society and the Bar Association.

Change is also afoot in Victoria, where the Attorney-General, Mr Rob Hulls, will soon release a report on whether the power-sharing arrangement between the Legal Ombudsman and the professional bodies should be retained.

In Queensland, the Government is considering going further and is examining whether it should introduce a statutory code of legal professional ethics and penalties for misconduct.

In an interview with The Australian Financial Review, Mr Welford said the reform package had not been finalised, but he confirmed he was considering a statutory code of ethics.

He said reform was being driven by the controversy over a number of solicitors' mortgage runout schemes.

On taking office in March, Mr Welford indicated he believed a package of reforms that had already been agreed to by his predecessor, Mr Matt Foley, and the Law Society did not go far enough.

At the time, he said ethical standards in the State's legal profession had fallen over the past 10 years.

"When I was a lawyer some years ago, it was only lawyers who properly understood about conflicts of interest; politicians did not," Mr Welford said.

"That situation has now been reversed."
The reform package agreed to by Mr Foley included incorporation and multidisciplinary practice provisions, the establishment of a Legal Practice Tribunal to hear complaints against barristers and solicitors and a new Legal Practice Board chaired by a Supreme Court judge.

Mr Welford indicated to the AFR that while he would adopt these reforms, he wanted to go further and had asked the new Legal Ombudsman, Mr Jack Nimmo, to report back to him with proposals.

"I want to satisfy myself as to whether the Law Society's current arrangements for dealing with disciplinary matters are adequate or whether an alternate mechanism should be preferred," he said.

"It is not my proposal to remove the society entirely from the management of complaints.

There is a role for the profession to play in addressing its own performance, but there will be some adjustment at the least and there will be some enhancement of the powers of the Legal Ombudsman".

Mr Welford said he saw "no reason" why there should not be legislated ethical standards and penalties for breaches.

He stressed that "all good lawyers" were behind him.

Mr Welford’s comments have been supported by the new ombudsman, Mr Nimmo, who believes his office needs greater independence and increased powers to investigate complaints against solicitors.

Mr Welford’s comments - and the time taken to come up with new proposals for reform - are unlikely to help a strained relationship with the beleaguered Queensland Law Society.

The society has recently borne the brunt of attacks from a number of consumer pressure groups and Mr Welford over cases of fraud in solicitors’ mortgage schemes, which are being investigated by the Australian Securities and Investments Commission.

A West Australian consumer advocate, Ms Denise Brailey, who rose to prominence in WA over the finance brokers’ scandal, has turned her attention to the Queensland Law Society as part of her push to take on a national role on the issue of mortgage runout schemes.

Ms Brailey said the Law Society had received hundreds of complaints during the past decade that it had not investigated - an assertion rejected by the society.

"The Law Society has not and would never involve itself in a so-called whitewash to cover up for misconduct by solicitors," said the society’s president, Mr Joe Tooma.

"We take our regulatory functions seriously," he said.
Since 1998 the Queensland Law Society has brought charges against eight solicitors for registered mortgage practice-related breaches.

The vast majority of solicitors’ mortgages in Queensland operated satisfactorily.

Some have failed, and it is the investors in these mortgages who now seem to expect the Law Society to wave a magic wand to retrieve their lost funds.

"People who invested at higher than average interest rates should have appreciated there would be a higher than average degree of risk with their investment."

Those close to the Law Society say some lawyers are shouldering the blame for the actions of valuers involved in the mortgage schemes, who sometimes valued properties beyond their market worth.

Mr Welford’s comments on lawyers’ ethics are likely to increase tensions in his relationship with the profession.

He has previously accused lawyers of operating outside their field of expertise.

"Lawyers have gone into marketing finance packages and made a mess of it. Many of the arrangements are riddled with conflicts of interest," Mr Welford said earlier.

"Some seem to think it is OK to deal with both sides of a commercial transaction."

Mr Tooma rejected Mr Welford’s assertion that ethical standards had lapsed and said there was no reason for the society to be stripped of its power to investigate breaches of professional ethics.

"The majority of diligent solicitors are suffering from the bad image that a very small proportion of the profession have caused," Mr Tooma said.

The Law Society has also questioned why it has taken nearly a year to come up with a new reform package after the agreement between the society and Mr Foley.

In the society’s annual report, tabled in the Queensland Parliament last week, outgoing president Mr Raoul Giudes said the reforms agreed with Mr Foley were fair and struck a balance between the interests of the society and its members on the one hand and consumers on the other.

Mr Welford is expected to take his package of legal reforms to Cabinet before the end of the year.
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