Legal Services Commission

2012 – 2013 Annual Report

Contents

Acronyms and abbreviations

BAQ:	**Bar Association of Queensland**
ILP:	**Incorporated legal practice**
LPA:	**Legal Profession Act 2007**
LPC:	**Legal Practice Committee**
LSC:	**Legal Services Commission**
MDP:	**Multi-disciplinary partnership**
PIPA:	**Personal Injuries Proceedings Act 2002**
QCAT:	**Queensland Civil and Administrative Tribunal**
QLS:	**Queensland Law Society**

31 October 2013

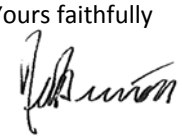
The Honourable Jarrod Bleijie
Attorney-General and Minister for Justice
State Law Building
Brisbane Qld 4000

Dear Attorney

I am pleased to give you the Legal Services Commission's annual report for the reporting year 2012-13, our ninth annual report since the Commission commenced on 1 July 2004.

The *Legal Profession Act 2007* (the LPA) requires that the report 'deals with the system established under the LPA for dealing with complaints'. It does that, and deals similarly with the Commission's performance of our other core functions and the work we are doing internally to better support us in our service delivery roles and to ensure that the Commission meets high standards of transparency and accountability.

Yours faithfully



John Briton
Legal Services Commissioner

Our purpose and values

Our purposes

The LSC has two fundamental and overlapping purposes:

- to give users of legal services an independent, timely, effective, fair and reasonable means of redress for complaints; and
- to promote, monitor and enforce appropriate standards of conduct in the provision of legal services.

These two purposes serve the even more fundamental purpose to help protect and promote public confidence in the legal system, the administration of justice and the rule of law.

We seek to achieve our purposes by:

- negotiating outcomes to consumer complaints which as far as possible 'put things right' between complainants and their lawyers;
- investigating complaints which involve a disciplinary issue or a contravention of relevant law;
- initiating 'own motion' investigations into conduct we have reasonable grounds to believe may involve a disciplinary issue or other significant wrongdoing;
- supporting and as appropriate auditing law firms to help them develop and maintain appropriate management and supervisory systems and an 'ethical infrastructure';
- initiating disciplinary or other enforcement action when it is warranted by the evidence after investigation and in the public interest;
- engaging with, and sharing knowledge and perspective with the profession, consumers and stakeholders to help improve standards of conduct in the provision of legal services; and
- creating and maintaining a productive, motivating and professional work environment.

Our values

We do our best not to impose any needless regulatory burden on lawyers and law firms but to direct our regulatory resource to where it is most needed and can have the most beneficial impact in the public interest. We will not be shy of taking disciplinary or other enforcement action but will take an educative and preventative approach wherever possible and appropriate.

We will work hard to give a voice to consumers, particularly those consumers who are least able to assert their legitimate interests themselves. We will value our independence but equally we will be responsive, open and consultative. We will be well-informed, focussed, determined, fair and accountable.

Commissioner's overview

The report that follows describes the work we do to achieve our purposes. It includes quite detailed quantitative data describing our throughputs in 2012-13, the outcomes we achieved, the timeliness with which we achieved them and other data which helps us and we hope will help you as a reader assess our performance. We have tried to put a human face to the data by including case studies and quoting some of the feedback we received from people we dealt with during the year.

Further it describes some legislative and procedural reforms we believe would enable us to achieve our purposes more effectively and efficiently and, given that this will be my last annual report, I will take the opportunity also to reflect upon some of the Commission's achievements since our inception on 1 July 2004.

The most pressing legislative reform is to remove the limitation on our powers which allows us to compel lawyers subject to investigation to answer questions and to produce information and documents notwithstanding any duty of confidentiality they may owe a client '*but only if the client is the complainant or consents to its disclosure*.'

This caveat on our powers of investigation can frustrate and even completely stymie any effective investigation of a complaint about a lawyer's conduct in the course of his or her dealings with a client whenever the complaint is made by someone other than the client and the client declines to consent to the lawyer disclosing relevant information.

We are dealing with a number of such complaints as we speak. One of them is a complaint by a Judge of the Family Court who came to believe based on documents produced by way of subpoena in the course of a matrimonial dispute that a lawyer acting for one of the parties had engaged with her client in a deliberate and fictitious strategy to deceive the other party to the proceedings and the court about her client's financial circumstances.

This is as serious and as prima facie credible a disciplinary complaint as it gets. The public interest demands that it be determined one way or the other and as soon as reasonably practicable. Yet we face real difficulties getting the evidence we require to put the matter before a tribunal for decision. We can't compel the lawyer without her client's consent to produce to us the documents that were produced to the court and her client has not consented. We reflect on this matter in more detail later in the report at pages 25-26.

The problem extends well beyond 'third party' complaints. It similarly compromises our ability to conduct 'own motion' investigations - investigations we commence on our own initiative when we have reasonable grounds in the absence of a complaint to believe that a lawyer may have acted improperly.

What if we have reasonable grounds to believe having investigated a complaint about a lawyer's conduct in his or her dealings with the complainant that the complaint identifies not just a one-off impropriety on the lawyer's part but systemic malpractice? What if we have reason to believe for example that the lawyer overcharged the complainant and further that the lawyer and the lawyer's law firm engaged in that particular billing practice as standard

practice? The law firm in that eventuality will very likely have overcharged other clients also, and potentially large numbers of other clients.

The complainant in these circumstances may well be entitled to a refund and, if so, will have a means of redress. The other and unsuspecting clients may similarly be entitled to refunds and the public interest demands we take a closer look, whether to put our concerns to rest or to ensure that these other clients, too, have a means of redress. Yet we face real difficulties. We don't know who these people are and can't easily find out unless the lawyer tells us. And if we don't know who they are we can't ask them to allow us to access to their files to check for irregularities. What if the lawyer won't tell us?

We are dealing with more than a few such matters as we speak. We are troubled by some of the apparently systemic billing malpractices we have uncovered which cause us to believe that potentially large numbers of unsuspecting consumers may have been short-changed in ways that could entitle them to refunds. These practices are troubling enough in themselves but all the more troubling because they appear to be relatively widespread. We discuss some of these practices later in the report, at pages 24-25.

We would have no such problems investigating third party complaints and conducting 'own motion' investigations if the LPA were to be amended to allow us like our counterpart regulators elsewhere in Australia to compel lawyers subject to investigation to answer questions and to produce information and documents notwithstanding any duty of confidentiality they may owe a client, full stop.

Clearly our coercive powers in this regard should be subject to the same strict rules that apply elsewhere - that a client's legal professional privilege is preserved and that we can use any information obtained through the use of these powers only for the purposes of investigating a lawyer's conduct and any subsequent disciplinary action against the lawyer and for no other purpose (see pages 31-32).

We have long urged other reforms which would similarly enable us to achieve our purposes more effectively and efficiently. They include amending the LPA:

- to break the nexus between compensation and a finding by a disciplinary body of unsatisfactory professional conduct, and to give us powers to provide complainants an effective means of redress including financial redress for consumer complaints that involve honest and minor mistakes, 'stuff-ups', poor quality of service and the like short of formally investigating them as complaints which involve a disciplinary issue.

  Reform to this effect would benefit complainants and lawyers alike by reducing the time it takes to bring consumer complaints to completion. It would benefit users of legal services by giving them the same rights of redress against lawyers who have let them down as users of financial, telecommunications and energy services have against the banks, financial planners, telephone and internet service providers, electricity, gas and water suppliers who have let them down. It would benefit lawyers by reducing the cost and anxiety inherent in having to respond to a formal investigation with a potential disciplinary outcome for what is only minor indiscretion at best (see pages 17-18).

- to define solicitor /client costs disputes to be a species of consumer complaint and to allow us to deal with them as such rather than having to refer them to the appropriate court under the Uniform Civil Procedure Rules.

  This reform would enable these matters to be resolved wholly or in part by mediation in preference to litigation; enable them to be resolved more quickly; and reduce the cost to solicitors and clients alike (see page 19).

- to allow us subject to appeal to make findings of unsatisfactory professional conduct (but not of professional misconduct) and to impose an appropriate disciplinary sanction.

  This reform would reduce the time it takes to bring minor disciplinary matters to conclusion (in current circumstances by a year and more); reduce the legal and other compliance costs and prevent needless reputational damage to the lawyers involved in these matters; and reduce both the disciplinary tribunal's costs and our costs as the prosecuting authority (see page 42); and

- to give us the power when we have reasonable grounds to do so to conduct compliance audits of not only incorporated legal practices but all law firms, whatever their business structure.

  This reform would modernise our antiquated schema for monitoring and enforcing appropriate standards of conduct in the provision of legal services. It would supplement the system for dealing with complaints with a regulatory tool which focuses on prevention more so than simply policing and punishing. It would factor in the contemporary reality that the majority of solicitors work in medium-sized and larger law firms by giving a regulatory window to their professional conduct also, and not just the conduct of the minority of lawyers who are so disproportionately over-represented in the complaints data but no less competent or ethical – lawyers who work as sole practitioners or in small law firms and who practice only certain 'retail' areas of law (family law, wills and estate planning, residential conveyances and the like).

  Importantly it would enable us to monitor the conduct not only of individual lawyers but also of the law firms which employ them and their 'ethical infrastructure'. Further and, crucially, it would give us a tool which would allow us to identify the lawyers and law firms most at risk of non-compliance with their professional obligations and to direct our regulatory resource there where it is most needed and can have the most beneficial impact in the public interest (see pages 36-38).

There is nothing novel about any of these reforms. Some of them were included in the National Model Law that was agreed by the Law Council of Australia and the then Standing Committee of Attorneys-General in 2004. They are all included in the draft *Legal Profession National Law* (the National Law) which emerged from extensive national consultation in 2009 and 2010 and was endorsed by the Law Council of Australia and agreed in principle by every state and territory government but for the governments of Western and South Australia.

The Queensland government subsequently withdrew its support for the National Law given its concerns about the additional national 'bureaucracy' established under the Law and the cost of

supporting that bureaucracy. It left the door open however to enacting reforms which 'mirror' the operational provisions included in the Law and hence all the reforms I have just described.

Notably Victoria and New South Wales have now committed to enacting and commencing an amended version of the National Law sometime time next year. The amendments leave the operational provisions untouched but vary the structural arrangements in ways that might alleviate Queensland's concerns. That would be a welcome development. It would give us renewed hope that Queensland consumers will get to have the same enhanced rights of redress and Queensland lawyers the same reduced compliance costs which will soon be available to their counterparts south of the border.

We have long urged a procedural reform also, and that is to enable us to cease to refer complaints to the QLS for investigation. This simple reform would reduce the waste and inefficiency inherent in the process of referral, reduce the time it takes to bring complaints to conclusion and save the public purse almost $740,000 each and every year or roughly 15% of our total annual budget. It would do all of this at the same time as preserving the QLS' capacity to monitor its members' professional standards in practice and to consider and recommend what action, if any, the Commissioner should take on complaints (page 27).

There is nothing novel about this reform either. The QLS agreed in 2011 not only to cease any role in investigating complaints on referral from the Commission but also to give over its responsibility for conducting trust account investigations and related external interventions.

Sadly the newly elected Council of the QLS which took office in 2012 reneged on that agreement and reneged also on its previous support for the proposed National Law. The President made a series of public statements to the effect that 'self-regulation is critical to a true profession' and that the National Law contains 'much that is unacceptable', not least the reforms I have just described. This year's Council has held to that line.

Regrettably the Attorney-General appears to have been persuaded to that same or a similar point of view. He told the audience at the recent QLS Annual Symposium that the reforms we have advocated are simply 'empire-building'. That is unfair and untrue. The reforms would give us more powers - that much is true - but more effective powers that would better protect consumers, reduce the regulatory burden on lawyers, reduce waste and inefficiency in the system for dealing with complaints, reduce the number of people required to administer the system and free up almost three-quarters of a million dollars annually that could be redirected to front-line legal aid and community legal services. The reforms should be argued on their merits.

It is well worth remembering in this context that we haven't had a system of self-regulation in Queensland since 2004. Self-regulation was abandoned following the loss of public confidence in the QLS' capacity to deal adequately with complaints about its members highlighted by the well-publicised and protracted 'Caesar judging Caesar' scandal that was so damaging to the reputation of the profession only a few years earlier.

Complainants and the public at large know full well that the QLS like any other membership body exists primarily to serve the interests of its members. They expect regulators on the other hand to serve the public interest. The conflict is easily overstated but is real, has real impacts

and should never be glossed over. Thus the Commission was established in 2004 precisely to decide complaints independently of the profession and its membership bodies.

The system for dealing with complaints has been totally transformed since that time. This and our previous reports are testament to how far we've come. We have restored public confidence in the system for dealing with complaints, given it renewed credibility and made it more efficient, effective, transparent and accountable. Thus:

- the then Legal Ombudsman to whom people turned to make complaints about the way the QLS dealt with complaints received 167 such complaints in 2003-04. The Queensland Ombudsman and the other independent bodies to whom people now turn to make complaints about us required us to respond to just 4 such complaints in 2012-13. There has been a similarly dramatic reduction in the number of 'Ministerials'.

- we inherited more than 1000 complaints when we started out in 2004, 938 of them from the QLS and 107 from the Legal Ombudsman, many of which had been in the system for years. We got the number down to 470 by mid-2006 and have kept it there or thereabouts ever since. We have reduced the time it takes to bring complaints to completion and done so notwithstanding that they are becoming increasingly sophisticated and several times more likely than used to be the case to lead to a disciplinary outcome.

- we have achieved these results at the same time as 'down-sizing' the system for dealing with complaints so that it requires fewer people to administer now than when we first commenced (see pages 55-56). We have achieved that 'down-sizing' notwithstanding that we have been given significant additional responsibilities along the way to monitor and enforce the restrictions on the advertising of personal injury services, to conduct compliance audits of incorporated legal practices and to take over the functions previously performed by the QLS' Client Relations Centre. The reforms we have advocated would enable us to improve our timeliness and reduce our costs even further.

- we have used our powers proactively and innovatively, including to identify and resolve apparently systemic malpractices including billing malpractices and thus to benefit not only individuals who happen to have made complaints but many hundreds of other and unsuspecting consumers also. Thus we identified early on in the piece and largely stamped out the practice of law firms making 'secret profits' by charging undisclosed mark-ups on outlays, and several years ago now persuaded 34 law firms to make refunds totalling $378,000 to 203 clients they had overcharged in speculative personal injury matters. We have since identified (as mentioned earlier) a series of other apparently systemic billing malpractices and we are making a deliberate and concerted effort to address these problems also.

- we have squeezed every bit of potential we can out of the LPA to allow us to achieve our purposes by adopting remedial and preventative approaches whenever we reasonably can in preference to a punitive or 'gotcha' approach. Thus we worked out very early in the piece and despite our 'clunky' and inadequate powers how we could resolve minor disciplinary matters without being unreasonably harsh on lawyers subject to complaint, simply by encouraging them to 'put things right' with complainants and in that way to position us to decide no public interest would be served by commencing disciplinary proceedings. This was a brave strategy at the time but a strategy that has been well

accepted by lawyers and highly successful in securing fair and reasonable redress for many hundreds of complainants who would otherwise have gone without. The data is all there in the report.

- we have published *Regulatory Guides* which set out the factors we take into account in exercising our regulatory responsibilities in grey areas where a lawyer's professional obligations are uncertain, and done so specifically to give lawyers the 'heads up' and to help them reduce their exposure to complaint. The guides to date have focussed on billing practices we see in complaints and that cause us concern.

- we have published *Information for Consumers* to give users of legal services the 'heads up' also, and to help them avoid or better navigate some of the common pitfalls we see in complaints. These publications, too, have focussed largely on billing issues and costs, including *Ten questions to ask your lawyer about costs* and *A guide to 'no win-no fee' costs agreements.*

- we have published a series of on-line *Ethics Checks* specifically to help lawyers and law firms to review their policies and practices and workplace cultures and to identify and remediate any gaps or weaknesses which might expose them to complaint. The ethics checks have been well received by law firms locally and have attracted favourable internationally, both in the US and the UK.

- we have actively engaged with lawyers, law students and legal academics to inform and educate them about our role and to promote discussion about issues of concern - via our *E-newsletters* which we send to targeted audiences of solicitors, barristers, legal academics and sometimes members of the judiciary; via the *Lawyers, Clients and the Business of Law* symposia we co-host with Griffith Law School; and via our participation in carefully targeted continuing legal education events of one kind or another.

- we have been active contributors to policy debate relevant to the regulation of the provision of legal services. We have made it a priority to give a voice to the interests of consumers, especially 'retail' consumers who go to lawyers in often very difficult personal circumstances in relation to family law, deceased estate or personal injury matters or to seek assistance to buy or sell their house and the like. Lawyers have their membership bodies to represent their interests in these debates but consumers are otherwise on their own.

- we have gone out of our way to document what we do, how we do it and where we are coming from and to put it out there for everyone to see. We publish comprehensive data including performance data and we publish not only information but perspective. We have made it a priority to document and publish the policies and procedures which guide us in our work and the factors we take into account in exercising our regulatory responsibilities. We use our website as our primary means to achieve these objectives but also speeches and publications not least of course our annual reports.

This all stands in stark contrast to the ways things were before we commenced. We can be proud of what we have achieved. I want to thank the many people who have contributed to those achievements including the many lawyers who have supported and encouraged us by giving us advice; contacting us with ideas; commenting on draft documents; participating in

on-line surveys, ethics checks, symposia and the like; or simply by responding to complaints in a timely and fulsome way and otherwise cooperating with an investigation.

I want to acknowledge and thank our colleagues at the QLS and the BAQ, not only the staff who deal hands-on with the complaints we refer there for investigation but also the members of their respective Professional Conduct Committees. I especially want to thank the members of the Commission's *Reference Group* for giving of their time so freely and their wise advice.

I want finally and above all to acknowledge the terrific team of people we have been able to assemble at the Commission and thank them yet again for their professionalism and good cheer. They continue as in years past to do good work in often thankless circumstances and to make the Commission a great place to come to work every day.

John Briton
Legal Services Commissioner

Giving consumers a means of redress

The LPA describes one of the main purposes of the system for dealing with complaints to be 'to provide a means of redress for complaints about lawyers'. That puts securing fair and reasonable redress for complainants when their lawyers have let them down at the very front and centre of what we do.

We describe the system for dealing with complaints in great detail at Appendix 1 and will not repeat that description here. Importantly, however, the LPA:

- requires complaints to be made in writing. We note however that there is nothing to be gained by asking people who ring or contact us on-line to 'complain' about a lawyer to go to the trouble of putting their concerns in writing if we believe we may be able to resolve them informally, perhaps with a few quick telephone calls. And so we don't: we make the calls, and we count these matters as 'enquiries' not as 'complaints'. It follows that many enquiries are 'complaints' by another name.
- requires us to assess all new complaints against a range of threshold criteria. There are only three possible outcomes on assessment: we either summarily dismiss a complaint (that is to say, take no further action on the complaint); assess it to be a consumer dispute (that is to say, a complaint that does not involve a disciplinary issue); or assess it to be a conduct complaint (that is to say, a complaint that involves a disciplinary issue).
- gives us no powers to resolve consumer disputes, merely a discretion to 'suggest to the parties that they enter into a process of mediation.' It requires us however to investigate conduct complaints and gives us significant powers of investigation.
- gives us only two options after investigating a conduct complaint - either to dismiss the complaint or, if we believe there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and that it is in the public interest to do so, to initiate disciplinary proceedings.

Thus we report our performance against six discrete kinds of matter or matter types: enquiries, summary dismissals, consumer disputes, conduct complaints, own motion investigations and prosecutions. All six matter types provide consumers a means of redress for complaints.

Some feedback from stakeholders

"Many thanks for all your advice and help. It was much appreciated in the stressful time I was in. I was very happy to have your help."

"I am extremely delighted and grateful for the help and kind consideration you gave to me. The people I spoke to on the phone were courteous, understanding listeners. I can assure you that there is no improvement necessary. Your people are outstanding… Thank you so much."

"Thank you for your prompt and most professional dealings in this matter."

We assess our performance in this respect against the timeliness with which we bring matters to conclusion; our clearance ratio (that is to say the number of matters we bring to conclusion in any given year compared to the number we receive); the outcomes we achieve (including in particular the nature and extent of the redress we secure for enquirers and complainants); the extent to which we identify and act upon any systemic issues that arise; and of course the feedback we receive from enquirers, complainants, the lawyers who are the subject of those enquiries and complaints and our stakeholders more generally.

Some key facts about enquiries and complaints

We have attached a wealth of statistical data at Appendix 4 and we include more detailed information about conduct complaints and prosecution matters later in the report (under the sub-headings *Investigating complaints which involve a disciplinary issue* and *Commencing disciplinary or other enforcement action* respectively).

We note firstly by way of general interest that:

- a total of 413 solicitors (or 4%) of all Queensland solicitors were subject to complaint in 2012-13. A total of 348 of those solicitors were subject to just 1 complaint, 33 to 2 complaints, 12 to 3 complaints, 9 to 4 complaints and 11 to 5 or more complaints.
- similarly 335 law firms (or 20%) of all Queensland law firms were subject to complaint. A total of 238 of those law firms were subject to just 1 complaint, 60 to 2 complaints, 20 to 3 complaints, 7 to 4 complaints and 10 to 5 or more complaints.
- just as in years past, women solicitors were less than a third as likely as men to be subject to complaint; the older a solicitor, the more likely he or she was to be subject to complaint; and the bigger the law firms they work for, the less likely solicitors were to be subject to complaint.

Those facts aside, the key facts about the enquiries and complaints we dealt with during 2012-13 are these:

- we finalised 1,332 enquiries in a median-time frame of 2 days from receipt. This is a similar number to the 1,323 we dealt with last year but many fewer than the number we reported having dealt with previously. That is because we no longer count 'requests for information' as enquiries as we did then but only matters which require some active early intervention or follow up (including many matters we would have dealt with previously as complaints). That in turn is because more people are accessing the more and better information we provide on our website and in pre-recorded messages on our telephone system. That frees up our front counter staff to deal with the bulk of the remaining 'requests for information' and frees up our enquiries staff to deal with many more matters which require active intervention.

- we received 811 new complaints during the year and completed 840 giving us a pleasing clearance ratio of 104%. The number of new complaints is 10% more than the number of new complaints last year but still a significantly smaller number than we reported having received previously. The smaller numbers in the past two years reflect our deliberate efforts to deal with increasingly more 'complaints' informally, as enquiries. We have chosen this strategy for several reasons:

- to give 'complainants' more timely access to fair and reasonable redress as appropriate, without conducting a formal and inevitably more time consuming investigative process. The 'remedial outcomes' data set out at Table 1 is especially encouraging in this regard;
- because we are receiving increasingly more 'complaints' on-line, many of which provide insufficient details about the conduct complained of and require telephone follow-up to give us the further information we need to deal with the 'complaint'. Those telephone conversations give us an opportunity to explore the 'complainants'' concerns, not least whether they lend themselves to informal resolution not as formal written complaints but as enquiries. Thus we dealt with 281 or 58% of the 487 on-line 'complaints' we received during the year as enquiries.

Some case studies

- A doctor complained that a solicitor had not paid his invoice for the preparation of a medical report despite repeated requests. We contact the solicitor who told us his client was legally aided but that Legal Aid was not prepared to fund the report. He acknowledged on further questioning however that the doctor told him prior to writing the report how much the report would cost and that he had not told the doctor he might not be funded to meet that cost. Our Dispute Resolution Team negotiated an outcome under which the solicitor paid the doctor's fee for preparing the report.

- A consumer rang us to say he was unhappy with the way his solicitor was handling a contested family law matter on his behalf. He said he wanted to change to another law firm but his solicitor was exercising a lien over his file for outstanding costs to date and would not release the file. He added the matter was set down for hearing and his new solicitors required the file urgently. We negotiated a solution which resulted in the former solicitor transferring the file to the new solicitor on the basis of the new solicitor undertaking to meet the former solicitor's costs on the successful completion of the matter.

- A solicitor rang us to say he was acting for a client in a personal injury matter who was struggling financially. He explained that he wanted to release a small amount of money from his trust account to help her out but that the firm which had acted for her previously had not been paid its legal costs and would not agree. He added that there were sufficient funds in trust to pay an interim amount to the client and to cover both firms' legal costs but that they were yet to come to an agreement about their costs in the matter. Our Dispute Resolution Team facilitated the release of the funds pending the resolution of the costs issue.

- we assessed 803 new complaints. We summarily dismissed 288 (or 36%) of those complaints, much the same percentage as last year but again significantly fewer than we summarily dismissed previously, reflecting once again the larger proportion of 'complaints' we deal with as enquiries. We assessed 52 (or 6%) of the 803 new complaints to be consumer disputes and 456 (or 57%) to be conduct matters.

Some unsolicited feedback from a complainant and two respondents

"Really appreciated the effort and time taken to explain details to me and to achieve the desired result, many thanks."

From a lawyer subject to complaint*: "Thanks for your assistance in guiding us through to a sensible outcome. It is greatly appreciated."*

From a lawyer representing a lawyer subject to complaint: *"It is indeed the case that our client has used the complaint process as a catalyst for undertaking various reforms and improvements across the management of [his] practice with a view to addressing the areas of concern highlighted through the investigation."*

- we summarily dismissed a total of 317 complaints (including 29 complaints we received in 2011-12), 277 or 87% of them within one month of receipt in a median time-frame of 20 days. We finalised 52 consumer disputes, 49 or 96% of them within two months of receipt in a median time-frame of 23 days. We finalised 591 conduct matters (that is to say, 472 conduct complaints and 119 'own motion' investigations), 328 of them within 6 months of receipt in a median time-frame of 182 days.

  Every one of those figures is a significant improvement on the corresponding figures for last year. We have more to say about the timeliness of our dealings with conduct matters later in the report under the sub-heading *Investigating complaints which involve a disciplinary issue*.

Some case studies

- A client complained that he had received a larger than expected lump sum bill from the law firm acting for him in a commercial litigation matter. He said the managing partner was unable to tell him when he queried the bill exactly what work the firm had done to justify the bill. We contacted the managing partner who told us the employed solicitor who had done the work had since left the firm. He said the file did not reflect the work done, that he could get no assistance from his former employee and that he was simply unable to itemise the bill in the usual way. Our Dispute Resolution Team negotiated an agreement which both parties agreed to be a fair and reasonable compromise in all the circumstances of the complaint and under which the firm reduced the amount of its bill by $10,000.

- A consumer complained that his solicitor had overcharged him in a speculative ('no win-no fee') personal injury matter. We obtained his file from the solicitor and noted that the solicitor had made a mistake in the way he calculated the amount of his costs pursuant to the 50/50 rule. We drew his attention to the mistake and he adjusted the settlement proceeds accordingly. Further we secured his undertaking to review other files where he might have made the same mistake and he subsequently made refunds to three further clients in the order of several thousand dollars each.

- a quarter or thereabouts of all enquiries, summary dismissals and consumer disputes arose out of family law matters. A further quarter or thereabouts of all enquiries, summary dismissals and consumer disputes arose out of deceased estate matters or residential conveyances, and a further 15 % or thereabouts out of personal injury and other litigation matters. The same is true of conduct matters.
- a third or thereabouts of all enquiries, summary dismissals and consumer disputes involved issues as to costs; a quarter or thereabouts involved issues of quality of service; 15% or thereabouts involved issues of communication and a similar number raised ethical issues. The same is true once again of conduct matters.
- we secured some appropriate redress for 259 (or 19%) of the 1,333 enquirers we dealt with during the year (see Table 1, below). We referred 216 (or 16%) of enquirers for legal or other advice; helped 165 (or 12%) enquirers to make a formal written complaint; and recommended that 118 (or 9%) of enquirers try to resolve their concerns at least in the first instance by speaking directly with their lawyer or his or her supervisor.

Table 1: Remedial outcomes of enquiries and complaints in 2012-13

Remedial outcomes	Enquiries	Consumer disputes	Conduct matters	Total
Apology	12	2	56	70
Financial redress	104 - $127,500	12 - $23,290	46 - $242,977	162 - $393,767
Other redress	136	7	35	178
Improved business systems	6	-	61	67
Training / supervision	1	-	18	19
Total	259	21	216	496

- we were unable however to resolve 285 or 21% of enquiries. A large proportion of the 501 enquirers we either couldn't help or referred elsewhere contacted us with queries about their lawyer's costs. Regrettably we have no powers to resolve client/practitioner cost disputes. We have no choice absent some prima facie evidence of overcharging or failure to give proper costs disclosure but to refer these enquirers to the appropriate court to seek a costs assessment pursuant to the process established under the Uniform Civil Procedure Rules (the UCPR) and to invite them to get back to us if the assessment reveals evidence of over-charging. We say 'regrettably' because their enquiries could be dealt with far more quickly and with less angst and red-tape if the LSC were a 'one-stop shop' for 'complaints' about lawyers, including client / practitioner cost disputes. We return to this issue below.
- clearly by definition we were unable to assist the 317 complainants whose complaints we summarily dismissed. Many of their complaints involved costs issues also, many of them cost disputes.
- we negotiated some appropriate redress to resolve 21 of the 52 consumer disputes we completed during the year (see Table 1). We were unable to resolve 21 of the remaining 31 matters. Similarly we negotiated some appropriate redress for 216 complainants who made conduct complaints. We canvass conduct complaints in more detail later in the report under the sub-heading *Investigating complaints which involve a disciplinary issue*.

Table 2: Outcomes (including remedial outcomes) of prosecution matters in 2012-13

Fined by disciplinary body / court	5 - $19,400	Struck off	4
Ordered to pay compensation	3 - $17,700	Reprimanded	6
Volunteered financial redress *	3 - $23,139	Volunteered an apology *	5
Volunteered some other redress *	1	**Total**	27

* these 9 matters were all discontinued or withdrawn prior to determination by a disciplinary body because the respondent practitioners offered the complainants some appropriate compensation after we opened a prosecution file but before either the disciplinary body heard the matter or before we filed the discipline application . That is because, that offer having been made and accepted, there was no longer any public interest in the matter proceeding to hearing.

We are pleased to report that we provided a total of 526 people who made enquiries of us or complaints with some form of redress including for 169 enquirers and complainants financial redress totalling $435,245 (see Tables 1 and 2).

A case for legislative reform?

We noted at the very top of this section of the report that the LPA describes one of the main purposes of the system for dealing with complaints to be 'to provide a means of redress for complaints about lawyers'. We urge that consideration be given to three legislative reforms which would enable the LPA to achieve this most fundamental purpose far more effectively and efficiently:

- firstly, by breaking the nexus between compensation and a finding by a disciplinary body of unsatisfactory professional conduct;
- secondly, by giving us as the relevant regulatory authority not merely a discretion but an obligation to try to resolve consumer complaints informally, by negotiation between the parties and, if the parties can't come to an agreement, power to decide a fair and reasonable outcome in all the circumstances of a complaint and to bind the parties to that outcome; and
- thirdly, by defining lawyer/client costs disputes to be a species of consumer complaint and obliging us to deal with them accordingly.

The desirability of the first reform stems from the fact that only a minority of complaints involve a disciplinary issue. The large majority involve one-off mistakes and errors of judgement, stuff-ups, failures of communication, poor quality of service and the like, some of which cause the complainants real hurt or hardship and sometimes financial loss. They call out if they have substance for the lawyers involved to 'put things right' with the complainants and otherwise to fix whatever it was that went wrong but rarely a disciplinary response. That would be over the top in most cases and quite disproportionate.

Yet oddly the LPA while it requires us and gives us significant powers to investigate complaints which involve a disciplinary issue gives us no obligations and no powers to resolve consumer disputes, merely a discretion to 'suggest to the parties that they enter into a process of mediation'.

Thus the LPA gives us no option if we hope to achieve our fundamental purpose of ensuring consumers a means of redress for complaints but to conceptualise consumer complaints as essentially disciplinary in character and to deal with them accordingly, by conducting a formal investigation with a view if needs be to commencing disciplinary proceedings. Further it gives us no option having investigated a complaint other than to dismiss the complaint or commence disciplinary proceedings.

We have found a way through and mostly it works - we have just described our success in giving many hundreds of consumers some appropriate redress - but only as the result of our exercise of the public interest discretion after having completed a disciplinary investigation.

It would be far preferable to deal with consumer complaints with far less formality, far more quickly - we estimate many months more quickly - and without putting the respondent lawyers to the otherwise unnecessary cost and anxiety of responding to a process of investigation which by its very nature holds open the prospect of a disciplinary outcome.

This outcome could be achieved simply by giving consumers of legal services the same means of redress as consumers of financial, telecommunications and energy services. That in turn could be achieved by giving us as a legal services regulator the same powers in relation to lawyers that the Financial Ombudsman Service, the Telecommunications Industry Ombudsman, the Credit Ombudsman Service and other like bodies have in relation to the banks, managed funds, financial planners, insurance companies, stockbrokers, credit unions, telephone companies, internet service providers and electricity, gas and water suppliers over whom they have jurisdiction.

All these bodies have not merely the discretion but an obligation to help the parties to consumer complaints resolve them by 'a process of mediation' and, crucially, if the parties can't come to an agreement, the power to decide a fair and reasonable outcome and to bind the parties to that outcome.

The draft *Legal Profession National Law* (the National Law) contains just such a reform. It would oblige us to try to resolve consumer complaints informally, by negotiation between the parties, but would give us the power should the parties be unable to come to an agreement to make 'a binding determination that is fair and reasonable in all the circumstances of the complaint' - power to require lawyers as needs be to apologise, to do or redo the work subject to complaint or to do whatever else they reasonably can to 'put things right', not least when complainants have suffered a loss because of the lawyer's conduct to reduce or waive their fees or to pay compensation of up to $25,000.

We urge the Attorney-General to consider adopting this reform if not by enacting the National Law then by including 'mirror' provisions in an amended LPA.

We note to reassure any sceptics out there that any decisions we might make in the exercise of these additional powers (just like decisions we make under our existing powers) would be reviewable in the event that a party believes we exercised them unreasonably, whether by the Ombudsman or the courts by judicial review.

We reiterate in relation to the third reform we have proposed that we have no jurisdiction to deal with the most common of all consumer complaints, viz., lawyer/client cost disputes. We have no option as things stand but to turn away many hundreds of complainants in these circumstances every year and to refer them instead to the appropriate court under the process established by the UCPR.

Regrettably that process is entirely paper driven. It makes no provision for mediation or other conferencing to identify and potentially resolve some or all the issues in dispute before proceeding to arbitration. Furthermore it is costly, protracted, lacking in transparency and quite mysterious to all but legal insiders.

The National Law on the other hand defines lawyer/client cost disputes to be a species of consumer complaint wherever the total costs payable are less than $100,000 or the amount in dispute is less than $10,000. It would require us to deal with them accordingly, as just we have described. This would be a welcome reform also. It would make the process more user-friendly, more comprehensible, less protracted and less costly to complainants and lawyers alike.

Promoting, monitoring and enforcing standards of conduct

The LPA describes its main purposes to include 'to provide for the protection of consumers of the services of the legal profession and the public generally.' It describes the main purposes of the system for dealing with complaints to include 'to promote and enforce the professional standards, competence and honesty of the legal profession' and to 'provide for the discipline of the legal profession.' We achieve these purposes by investigating complaints which involve a disciplinary issue; initiating 'own motion' investigations; conducting compliance audits of incorporated legal practices; commencing disciplinary or other enforcement action; and engaging with stakeholders.

INVESTIGATING COMPLAINTS WHICH INVOLVE A DISCIPLINARY ISSUE

The LPA requires that complaints which involve an issue of unsatisfactory professional conduct or professional misconduct (complaints which involve a disciplinary issue, or conduct complaints) are fully and properly investigated. It allows us either to conduct the investigations ourselves or to refer complaints to the QLS and the BAQ for investigation but limits the role of the QLS and the BAQ in those circumstances to recommending what further action, if any, the Commissioner should take on those complaints.

The Commissioner has only two options having investigated a complaint or having received and considered a recommendation from the QLS or the BAQ – either to dismiss the complaint or, if the Commissioner decides there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and that it is in the public interest to do so, to initiate disciplinary proceedings.

There are various reasons why the Commissioner might decide there is no public interest in initiating disciplinary proceedings notwithstanding that an investigation finds evidence of misconduct. It may be for example that the misconduct is of a minor kind only, that the lawyer has acknowledged his or her error, that there is no need to send a message to the profession about the issue and that the lawyer has put things right with the complainant including by making appropriate redress.

We assess our performance having regard to our clearance ratio; our timeliness in bringing matters to conclusion; the frequency with which we disagree with the recommendations of the QLS and/or the BAQ and the nature of those disagreements, if any; the extent to which we identify systemic issues which put consumers at risk and then plan and implement appropriately targeted remedial strategies; and of course the feedback we get from parties to complaints.

Some key facts about complaints which involve a disciplinary issue

We have included more comprehensive statistical data at Appendix 4 but the key facts about the conduct complaints we dealt with in 2012-13 are that:

- we assessed 456 (or 57%) of the 796 new complaints we assessed during the year to be conduct complaints.
- we referred 211 (or 42%) of those complaints to the QLS for investigation, more than the 38% we referred on average over each of the previous two years, and 14 (or 3%) to the BAQ. We retained 280 (or 55%) investigation in-house, less than the 60% we retained on average over each of the previous two years.
- we finalised 472 conduct complaints of which 427 (or 90%) involved solicitors, 19 (or 4%) involved barristers and 9 (or 2%) involved alleged unlawful operators.
- we finalised 271 (or 57%) on the basis that the evidence after investigation did not support a reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct.
- we finalised 108 (23%) on the basis that, while the conduct subject to investigation might have amounted to unsatisfactory professional conduct, no public interest would be served by initiating disciplinary proceedings. This is a good result. It means that the conduct was at the lesser end of the spectrum of unsatisfactory professional conduct and that the practitioners satisfied us that they had done all they reasonably could to put things right with the complainant or otherwise to fix the problem. We canvassed these remedial outcomes in greater detail under the previous sub-heading.
- notably we finalised 63 (or 13%) by deciding to initiate disciplinary proceedings. This is almost double the percentage of conduct matters (8%) we finalised on this basis in 2011-12 and more than double the percentage (6%) in 2010-11.

  We have thought long and hard about these percentage increases and canvassed the issue with our counterpart investigators at the QLS. We do not believe it reflects any change of approach or hardening of attitudes on our part but simply that many more complaints than was the case previously have identified conduct issues that warrant a disciplinary response.

Some unsolicited feedback from complainants

"I believe that your investigation has been free from bias, prejudice or favouritism and that without your intervention… I would not have succeeded with achieving the legal services I was entitled to… The prompt action, follow ups and the quickly received information from you were excellent."

"I cannot thank you enough for all your help through this ugly situation. You have been so extremely helpful and obviously without 'taking sides'. I have seen you be so fair and understanding… I was sceptical thinking that it may all be more 'one-sided' but it certainly has not been. You are a credit to your occupation."

- 117 (or 25%) of the 472 conduct complaints we finalised during the year arose out of family law matters; 51 (or 11%) out of deceased estate matters; 49 (or 10%) out of conveyances; 49 (or 10%) out of personal injury matters; 42 (or 9%) litigation matters; and 34 (or 7%) criminal law matters. This breakdown is little different from the breakdown in years past and remains strikingly consistent from year to year.
- 132 (or 30%) involved quality of service issues including incompetence and unreasonable delay; 122 (or 26%) involved ethical issues including failure to follow instructions or acting contrary to instructions or with a conflict of interest; 78 (or 17%) costs issues including failure to give effective costs disclosure, charging costs which should not be charged and overcharging; 40 (or 8%) compliance issues including trust account irregularities; and 36 (or 8%) communication issues including discourtesy and failure to return phone calls and the like. This breakdown, too, remains strikingly consistent from year to year.

Some case studies

- A family member complained that a solicitor had taken instructions to prepare and witness an enduring power of attorney for her brother who was suffering from a terminal brain tumour and may have lacked capacity. We placed the investigation in abeyance until QCAT determined the issue but the man passed away before the matter could be heard. Our investigation disclosed however that the solicitor had scrupulously followed the relevant guidelines prepared by the Adult Guardian and carefully documented the steps he had taken to satisfy himself of his client's capacity before executing the documents. We closed the investigation on the basis that there was nothing in the solicitor's conduct that warranted a disciplinary response.

- The executor of a deceased estate complained abut the costs he was charged by the solicitor to the estate. He gave us a bundle of documents which showed he had entered into a costs agreement with the solicitor which purported to allow the solicitor to charge $350 per hour calculated in six minutes of time 'or part thereof' plus specific charges of $8 to send or receive an email and $5 to enter correspondence into his firm's electronic database. The documents included invoices which charged the estate two separate six minute units of time for perusing the deceased's pension and Medicare cards, and that he had charged $5 to record each of those 'perusals' on his database – or $85 for what was less than one minutes work.

  The documents showed further that the solicitor had emailed a copy of the will to a third party and requested a 'read receipt'. The email sending the will was recorded as having between sent and the first of two 'read receipts' was recorded as having been received within the same minute. A second 'read receipt' was recorded as having been received a minute later. The solicitor billed these three events as three discrete 6 minute units of time at $35 each plus three email charges of $8 each and 3 data entry charges of $5 each – a total of $144 for less that 2 minutes work at a rate equivalent to more than $4000 per hour. The documents included many such examples.

  We are investigating whether the solicitor charged the complainant excessive legal costs and hence whether the estate may be entitled to a refund. We have once again opened an own motion investigation to ascertain whether he engaged in these billing practices as standard practice and hence whether other estates and clients may also be entitled to refunds.

Furthermore:

- the QLS returned 215 conduct matters for review and decision (that is to say, both conduct complaints and 'own motion' investigations). We disagreed with its recommendations in 31 (or 14%) of the matters that were returned and decided by 30 June. The rate of disagreement should not be misconstrued. The vast majority of the 'disagreements' reflect no more than different 'judgment calls' in circumstances where reasonable minds might differ.
- the BAQ for its part returned 8 conduct matters for review and decision. We disagreed with its recommendations in none of the matters we decided by 30 June.

We finalised 591 conduct matters during the year - the 472 conduct complaints we have just discussed and 119 own motion investigations which we discuss in more detail in the pages that follow. We note that:

- we finalised these 591 matters in a median time- frame overall of 182 days or 6 months from receipt - 328 (or 55%) of them within 6 months of receipt; 176 (or 30%) in more than 6 but less than 18 months of receipt and 87 (or 15%) after 18 months or longer.

  This is a significant improvement on 2011-12 when we finalised 557 conduct matters in a median time-frame overall of 219 days or 7 months from receipt and only partially achieved our target of finalising 75% of all new conduct matters within 6 months of receipt in a median time-frame overall of 6 months or less.
- but here's the thing: we investigated 379 of those 591 matters in-house at the Commission in a median-time frame overall of 156 days or roughly 5 months, well within our target. The QLS investigated 204 of them in a median time-frame of 240 days or roughly 8 months and the BAQ investigated 8 of them in a median-time frame of 664 days or almost 2 years.

  These figures come as no great surprise. The data for each of the preceding three years shows that the conduct matters we referred to the QLS for investigation took twice as long or longer to bring to completion than matters we retained for investigation in-house.

  It is not as if the conduct matters we refer to the QLS are inherently more complex or require more detailed or time-consuming investigation. They take longer to bring to completion for process reasons. The process of referral necessarily involves significant double-handling both at the front and more particularly the back end of the process and so necessarily adds significantly to the time it takes to bring those matters to completion.

Some unsolicited feedback from respondents

"Overall my dealings with the Commission have been as pleasant as they can be and the Commission have treated me fairly, with respect and have been willing to allow me to be heard."

"The matter was dealt with in an extremely timely fashion and I was provided with clear guidance in relation to what was required and how I should respond."

- we issued 63 section 443(1) notices during the year requiring lawyers to respond to the complaints against them. We issue section 443(1) notices when lawyers fail to respond within a reasonable period of time or provide an incomplete response to an earlier and informal request.

  We issued 19 section 443(3) notices after lawyers failed to comply with a section 443(1) notice. Section 443(3) notices give lawyers written notice that they may be dealt with for professional misconduct if their failure to respond persists for a further 14 days or more after the notice is given.

A headline issue

We get more complaints about lawyer's billing practices than any other single issue. We have identified a number of suspect billing practices in the course of investigating those complaints which we expect will see the lawyers subject to complaint being disciplined for charging legal costs to which they are not entitled and/or for charging excessive legal costs. We expect also that they will be required to pay the complainants compensation either by waiving, reducing or reimbursing some or all their legal costs. The practices include:

- billing in six minute units of time 'or part thereof' and proceeding to bill clients for many such units of time over the life of a file for work that took much less than six minutes, and perhaps no more than 30 seconds, thereby significantly inflating the lawyers' stated hourly rate;
- charging the maximum 25% uplift fee allowed under the LPA to compensate lawyers for accepting the risk that can be inherent in speculative or 'no win, no fee' matters in matters which expose the lawyer or law firm to little if any risk;
- entering into costs agreements with clients that purport to give law firms a discretion to charge care and consideration on top of the legal costs otherwise agreed without disclosing the circumstances that will trigger the exercise of that discretion and the basis on those additional costs will be calculated;
- charging a 'care and consideration' component (often of 20-30% and sometimes more, even 100%) on top of a standard hourly rate for 'run of the mill' work that involves no particular novelty or complexity; and worse still
- charging both an uplift fee and a 'care and consideration' component on top of a standard hourly rate in 'run of the mill' speculative matters involving no particular risk, novelty or complexity.

We are dealing with complaints which highlight not only those, but other troubling practices also. They include the practices of:

- substituting an itemised bill in a higher amount for an earlier lump sum bill when clients have exercised their statutory and common law entitlement to request that the bill be itemised;
- charging out 'paralegals' at rates which approximate the charge out rate for lawyers; and
- charging clients 'cancellation fees' for time set aside in matters that settle early and 'double-dipping' by substituting other paid work for the work that was 'cancelled'.

A case study

- The son of a woman who died intestate complained about the costs his solicitor had charged him to make an application for family provision, that is to say, an application to be provided more from his mother's estate than the share he would receive under the usual intestacy rules. He gave us documents which showed that he had entered into a speculative or 'no win-no fee' costs agreement with his solicitor which provided for the solicitor to charge $450 per hour, a speculative uplift fee of 25% and at his discretion a fee for care and consideration calculated at 30% of the total legal costs otherwise payable – effectively to charge $731 per hour.

  The documents showed further that the solicitor had first estimated his costs to be $30,000 but that the subsequently and shortly before mediation revised the estimate to $60,000.

  We investigated the solicitor's conduct in charging the maximum uplift fee allowable under the LPA in 'no win-no fee' matters in circumstances where it is arguable his client couldn't 'lose' and in charging 40% 'care and consideration' when the matter involved no particular novelty, complexity or urgency – and hence whether the complainant may be entitled to a refund.

  We have also commenced an own motion investigation to ascertain whether the solicitor engages in this conduct as standard practice in his dealings with clients more generally – and hence whether he has other, unsuspecting clients who may be entitled to a refund also.

All these practices are all the more troubling because the law firms subject to complaint appear to engage in this conduct as standard practice - and if we are right about this, there will be more, and potentially large numbers of these firm's other and unsuspecting clients who may have been short-changed in addition to the client or clients who complained.

We have initiated a series of 'own motion' investigations and compliance audits to put our suspicions to the test. Regrettably however for the reasons we elaborate under the relevant sub-headings later in the report the LPA give us a limited capacity at best to discover the truth of the matter, and hence a limited capacity at best to ensure that the potentially large numbers of unsuspecting consumers who may have been short-changed receive the redress they may be owed.

A case for legislative reform?

We noted at the beginning of this section of the report that the LPA describes the main purposes of the system for dealing with complaints to include 'to promote and enforce the professional standards, competence and honesty of the legal profession' and to 'provide for the discipline of the legal profession.'

Regrettably however the LPA as it stands compromises the achievement of these fundamental purposes by allowing lawyers subject to a 'third party complaint' and who may have done the wrong thing to hide behind their duties of confidentiality and their clients' legal professional privilege to frustrate and even completely stymie any effective investigation of their conduct.

The problem is that the LPA gives us power to compel lawyers to answer questions and produce otherwise confidential documents and information in the course of investigating a complaint '*but only if the client is the complainant or consents to its disclosure*.' Thus we have very limited powers to investigate a lawyer's conduct no matter how suspicious it may be if the conduct subject to investigation comes to our attention by way of a complaint by anyone other than the lawyer's client – by a client or lawyer 'on the other side', for example, or by the police or other investigative agency, a judge or any other 'third party'. Notably 141 (or 30%) of the 472 conduct complaints we completed in 2012-12 were third party complaints.

This is not just a theoretical problem. We are facing very real, perhaps insurmountable difficulties in investigating several such matters as we speak, not least a complaint by a Judge of the Family Court. The essential facts are set out in detail in reported judgments (*Lambert and Jackson*, 2010, FAMCA 375 and *Lambert and Jackson and Anor*, 2011, FAMCA 275).

His Honour suspected on the basis of documents produced by way of subpoena that a lawyer acting for one of the parties had embarked on a deliberate and fictitious strategy to deceive the other party to the proceedings and the court about her client's financial circumstances. He advised the parties accordingly, flagged his intention to make a complaint to the LSC and gave the lawyer the opportunity to make submissions before coming to a decision. He proceeded having considered her submissions to make the complaint.

This is as serious and as prima facie credible a disciplinary complaint as it gets. Our problem is that we don't have access to the documents produced to the court by way of subpoena and we couldn't use them for disciplinary purposes even if we did. Nor can we compel the lawyer to produce them to us without her client's consent and he has not consented. Thus we don't have and can't access the evidence the judge had available to him that caused him to find she had acted contrary to her most fundamental professional obligations as an officer of the court. We simply can't adequately investigate his complaint notwithstanding that the circumstances of the making of the complaint give it significant prima facie credibility.

This is a sorry state of affairs. We urge the Attorney-General to consider amending the LPA to give us the power to compel lawyers subject to investigation to answer questions and to produce information notwithstanding any duty of confidentiality they may owe a client, but on the strict proviso that the client's legal professional privilege is preserved and that any information so obtained must remain confidential and can be used only for the purposes of the investigation and any subsequent disciplinary action against the lawyer and for no other purpose.

The draft National Law and the counterpart statutes to our LPA in every other Australian state and territory contain just such provisions. The LPA should be amended to similar effect, if not by enacting the National Law then by including mirror provisions in an amended LPA. This would equip us far better to achieve its fundamental purposes 'to promote and enforce the professional standards, competence and honesty of the legal profession' and to 'provide for the discipline of the legal profession.'

A case for procedural reform?

We have long argued and the QLS agreed with us in 2011 that the system for dealing with complaints would function more efficiently and effectively if we ceased to refer complaints about solicitors to the QLS for investigation and retained them for investigation in-house. The newly elected Council which took office in 2012 reneged on that agreement. We have urged the current Council to reconsider that decision but to no avail. That is a great pity because this procedural reform has a great deal to recommend it. Consider this:

- we have consistently over recent years referred only a minority of complaints about solicitors to the QLS - roughly 40% of complaints that involve a disciplinary issue and less than 20% of 'own motion' investigations.
- the complaints we refer to the QLS for investigation consistently take many months longer, and on average over the past four years twice as long to bring to completion than the complaints we retain for investigation in-house. That is hardly surprising, because as we have noted already the process of referral necessarily involves significant double-handling at both the front but more particularly the back end of the process, and quite often during the course of an investigation also.
- the double-handling came at a cost to the Legal Practitioner Interest on Trust Accounts Fund of $722,000 in 2011-12 and $738,000 this current financial year, or roughly 15% of the total annual cost of administering the system for dealing with complaints (see Appendix 3). That is money that could otherwise be redirected to fund frontline legal aid and/or community legal services.
- furthermore there is absolutely no need for us to refer complaints to the QLS for investigation for the QLS to preserve and even expand its capacity to consider and recommend what action we should take on complaints, to inform itself about the issues that arise in complaints and to inform and educate its members about those issues.

  That is because the members of its Professional Standards Committee who deal with the matter at the QLS do not themselves investigate complaints but base their recommendations on investigation reports prepared for their consideration by paid employees. They could just as well base their recommendations on investigation reports prepared for their consideration by investigators employed by the Commission.

Thus ceasing to refer complaints to the QLS for investigation would reduce the time it takes to bring complaints to completion, lessen the frustration and anxiety the delay cause complainants and practitioners alike and help us to better comply with our obligation under the LPA to deal with complaints 'as efficiently and expeditiously as is practicable'. It would eliminate the inherent waste and inefficiency in the current arrangements and free up almost three quarters of a million dollars each and every year to be redirected if the Attorney so chooses to frontline legal aid and community legal services.

The reform we are proposing would achieve all this while at the same time preserving and even expanding the QLS' capacity to monitor its members' professional standards in practice and to consider and recommend what action, if any should be taken on complaints.

INITIATING 'OWN MOTION' INVESTIGATIONS

The LPA authorises us to commence an investigation into the conduct of a lawyer, law practice employee or unlawful operator without having received a complaint - an 'investigation matter' or 'own motion' investigation – 'if the Commissioner believes an investigation about a matter should be started' and the Commissioner has come to that belief 'on grounds that are reasonable in the circumstances.'

Similarly the LPA authorises us to start an investigation into the conduct of a lawyer or for that matter anyone else the Commissioner reasonably suspects may have contravened the *Personal Injuries Proceedings Act 2002* (PIPA) by touting at the scene of an accident or advertising personal injury services contrary to the restrictions set out in chapter 3, part 1 of that Act.

We have published our *Own Motion Investigations* policy on the *Policies* page of our website which sets out the factors the Commissioner takes into account in deciding whether to commence an own motion investigation. We assess our performance having regard among other things to our clearance ratio; our pro-activity as assessed by the number of own motion investigations we commence expressed as a percentage of the number of conduct matters overall; the reliability of the risk assessments that underpin our decisions to commence own motion investigations as assessed by the outcomes of our investigations; the extent to which we identify systemic issues which put consumers at risk and plan and implement appropriately targeted remedial strategies; and of course the feedback we get from parties to complaints.

We report 'PIPA investigation matters' separately from 'investigation matters other than PIPA' because they have quite different characteristics and outcomes.

PIPA investigation matters

PIPA imposes strict limits on where and how lawyers can lawfully advertise personal injury services. The restrictions came into effect on PIPA's commencement in 2002 in response to concerns both in the profession and the community about 'ambulance chasing'. We inherited responsibility for dealing with contraventions by amendments to both PIPA and the LPA in May 2006 when non-compliance was commonplace.

We have exercised our powers by dealing with complaints when we get them – as we sometimes do, in the main complaints by lawyers whose advertising complies with the restrictions and who are understandably aggrieved that a rival lawyer's non-compliance might give them a commercial advantage - but we have always believed we have a broader and more pro-active responsibility than merely responding to complaints.

A case study

A trust account audit conducted by the QLS revealed that a solicitor who was the executor of a deceased estate had entered into a 'time-costed' costs agreement with himself to be the solicitor to the estate. The costs agreement provided for him to charge at his discretion an additional 'care and consideration' fee calculated at 15% of his 'time-costed' fees, an uplift fee of 25% of the total legal costs including care and consideration and 'sundries' calculated at 15% of the total legal costs. The audit further revealed the solicitor calculated his costs twice - once when probate was granted and again when the matter was concluded - and that on the second occasion he double-dipped by adding the care and consideration, uplift and sundries charges to the total legal costs he calculated on the first occasion which already included those charges. The various 'uplifts' totalled 30% of the final bill.

The solicitor told us when asked him to explain the apparent double-dipping that he had made a mistake and undertook to refund the amount he had counted twice to the estate. We are continuing to investigate his conduct in charging an uplift fee in what was not a conditional costs agreement, charging 'care and consideration' in what appeared to be a run of the mill matter and charging sundries in the manner that he did – and hence whether the estate may be entitled to having these amounts refunded.

We are also investigating whether there was an inherent conflict of interest in the solicitor entering into a costs-agreement with himself as executor, and an apparently unusually generous costs agreement at that.

Further and importantly we have commenced a separate own motion investigation to ascertain whether the solicitor's conduct in this particular matter is or was his standard practice in estate matters and in his dealings with clients more generally – and hence whether other estates and/or other clients may also be entitled to refunds.

Thus we began to systematically monitor and review the places personal injury advertisements most commonly appear and commenced 'own motion' investigations into advertisements we believed may be non-compliant. We concentrated on print advertisements in the Yellow Pages and local newspapers in the first instance and in 2009-10 and beyond on advertisements that appeared on law firm websites and free to air television. The advertising in those media is now largely if not always compliant and our challenge has become the advertising we are beginning to see on the results pages of internet search engines such as Google and on Facebook, You-tube and other social media.

We note that:

- we commenced 23 PIPA investigation matters during the year, significantly more than in 2011-12 but significantly less than the 119 we commenced in 2009-10 when we focussed on law firm websites and advertisements on free to air television.
- we completed 21 PIPA investigation matters. We completed 4 (or 19%) of those 21 matters on the basis that there was no reasonable likelihood that a disciplinary body or court would find that the advertisements to be unlawful. We completed 17 (or 81%) of them on the basis that the advertisements subject to investigation might have contravened PIPA but no public interest would be served by initiating disciplinary proceedings because the

respondent law firms agreed either to fix or withdraw the offending advertisements.

Notably we have completed well over 200 PIPA investigation matters since we inherited the jurisdiction late in the 2005-06 reporting year, more than three-quarters of them on the basis that no public interest would be served by initiating disciplinary proceedings and the remainder on the basis that there was no reasonable likelihood a disciplinary body or court would find the advertisements to be unlawful.

We have yet to complete a PIPA investigation matter by deciding to initiate disciplinary proceedings. That is a good result. We have set out deliberately to secure compliance through persuasion in preference to prosecution and we have achieved that goal.

We have taken a deliberately proactive approach to our responsibilities in this area, not only by seeking wherever possible and appropriate to secure compliance by persuasion in preference to prosecution but by getting in first to ensure a level playing field and help prevent non-compliance before it happens. Thus we have published a series of Regulatory Guides which let personal injury lawyers and law firms know exactly how we interpret and apply the legislative requirements and propose to enforce them.

We published *A Guide to Advertising Personal Injury Services* on the *Regulatory Guides* page of our website soon after we were given responsibility for enforcing the restrictions in 2006 and subsequently *A Guide to Advertising Personal Injury Services on the Internet*. Later, when we began to come across advertisements for personal injury services on the results pages of search engines on websites like Google, we added a further guide to *Advertising Personal Injury Services on Internet Search Engines and Non-Lawyer Websites.*

We have also published an interactive *website comparer*. The 'comparer' enables personal injury lawyers and law firms to view and compare two fictional law firm websites, one of them PIPA-compliant and the other not. It comes complete with pop-up boxes that highlight and explain the distinctions.

Investigation matters other than PIPA

We commence 'own motion' investigations in a variety of different circumstances. Sometimes we receive anonymous, but sufficiently credible information to give us reasonable grounds to believe that an investigation should be started; sometimes the professional bodies bring information to our attention following a show cause event or trust account investigation; sometimes judges, police or other investigative agencies bring information to our attention; and sometimes we are alerted to issues which warrant a closer look by reports in the media.

Not only that but we are routinely on the look-out when we are dealing with a complaint about a lawyer's conduct for other conduct on the part of the lawyer that might be inappropriate and if our suspicions are aroused will broaden our enquiries into the lawyer's conduct accordingly. It is not uncommon for us to be dealing with a complaint about alleged delay or discourtesy or failure to communicate, for example, and to come across evidence that the lawyer failed to comply with his or her costs disclosure obligations or charged costs to which he or she was not entitled. Complainants are very often unaware of a lawyer's professional obligations in relation to such matters.

Similarly we routinely ask ourselves when we are investigating a complaint and have identified some misconduct whether it could reasonably have been prevented or at least detected and remedied earlier in the piece if only the law firm's principals had implemented appropriate management systems and supervisory arrangements and, if so, whether we should start an 'own motion' investigation into their apparent 'failure to supervise'.

Importantly we routinely ask ourselves when we are investigating a complaint about a lawyer's costs and have identified some billing malpractice - the lawyer claiming costs to which he or she is not entitled, for example - whether the investigation of that particular complaint gives us reasonable grounds to believe that the lawyer engaged in that conduct as standard practice and billed other clients, and potentially many other clients costs to which the lawyer was not entitled and which should be returned to them.

Notably:

- we commenced 108 own motion investigations (other than PIPA) during the year, or 11.5% of the 940 complaints and investigations matters we commenced in total, significantly more than the 72 we commenced on average over each of the previous three years.
- we referred 19 (or 18%) of those matters to the QLS for investigation and 2 to the BAQ and retained the remainder for investigation in-house.
- we completed 98 own motion investigations (other than PIPA), and of them 33 (or 34%) involved suspected non-compliance with the LPA, most commonly a failure to give proper costs disclosure; 18 (or18%) suspected failures to properly manage trust accounts; 13 (or 13%) suspected unethical conduct such as acting with a conflict of interest or without or contrary to instructions; and 9 (or 9%) suspected billing malpractice.
  notably we completed 31 (or 32%) of those 98 matters on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and 43 (or 44%) on the basis that the conduct subject to investigation might have amounted to unsatisfactory professional conduct or professional misconduct but that no public interest would be served by initiating disciplinary proceedings. We completed 19 (or 19%) by deciding to initiate disciplinary proceedings, significantly more than in years past.

  These are good figures. The LPA envisages that we will commence own motion investigations only when we have reasonable grounds to do so in the public interest and the data tells us we are far more often 'on the money' than not. We are particularly pleased with the relatively high percentage that we were able to finalise this year as in years past on 'no public interest' grounds. This means that the evidence after investigation justified our suspicions that all was not as it should be but that we managed to negotiate an outcome with the lawyers subject to investigation which saw them put things right.

A case for legislative reform?

The power to start 'own motion' investigations is an important and useful power which greatly helps us to monitor and enforce appropriate standards of conduct in the provision of legal services and to protect consumers. Regrettably however it is a power that is and will remain fundamentally compromised in the absence of a power to compel lawyers and law firms to

produce documents and information relevant to an investigation notwithstanding any duty of confidentiality they may owe their clients.

The Commissioner highlighted the problem in his *Overview* at the very beginning of the report. We reflected on the problem in more detail only a few pages back when we described how it allows lawyers and law firms who may have done the wrong thing to hide behind their clients' legal professional privilege and their duties of confidentiality to their clients to frustrate and even completely stymie any effective investigation of third party complaints.

It similarly frustrates our ability to conduct own motion investigations, not least investigations of suspected systemic billing malpractice within law firms which might entitle large numbers of unsuspecting clients to financial redress. We urge the Attorney-General to remedy this defect by amending the LPA in the ways we have previously suggested.

CONDUCTING COMPLIANCE AUDITS OF INCORPORATED LEGAL PRACTICES

The LPA allows lawyers to practice as sole practitioners and in partnerships with other lawyers and, since 1 July 2007, also under a company structure, as incorporated legal practices (or ILPs), and in partnership with members of other professions, as 'multi-disciplinary partnerships' (or MDPs). Six years on and there were 506 ILPs in Queensland at 1 July 2013, or just more than 30% of all Queensland law firms - see Table 3. Incorporation has very quickly become the business structure of choice for start-up law firms.

Table 3: Incorporated legal practices as a proportion of all Queensland law firms

	30 June 2007	1 July 2008	1 July 2009	1 July 2010	1 July 2011	1 July 2012	1 July 2013
Number of law firms	1308	1328	1417	1458	1540	1599	1653
Number of MDPs	0	1	2	2	6	7	10
Number of ILPs	0	117	188	281	358	454	506
ILPs as % of all law firms	-	8.81%	13.27%	19.27%	23.25%	28.39%	30.62%

The LPA requires us to regulate the provision of legal services by ILPs in 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, it requires ILPs to have at least one legal practitioner director and imposes obligations on legal practitioner directors over and above their usual professional obligations as lawyers. Crucially, it requires them:

- 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';

- to take 'all reasonable action' to ensure that lawyers who work for the firm comply with their professional obligations; and
- to take 'appropriate remedial action' should lawyers who work for the firm fail to comply with their professional obligations.

Thus the LPA holds legal practitioner directors responsible for ensuring that their firms have the 'ethical infrastructure' they require in the circumstances of their own particular practice to provide competent and ethical legal services - the governance and supervisory arrangements, the policies both spoken and unspoken, the work practices and workplace culture more generally. It supplements the traditional forms of regulation which focus on the conduct of individual lawyers with a form of entity-based regulation which focuses on the conduct of their firm.

Crucially, the LPA authorises us to conduct an audit (a 'compliance audit') of an ILP about 'the compliance of the practice and of its officers and employees' with their obligations under the LPA and 'the management of [its] provision of legal services including the supervision of the officers and employees providing the services.' It authorises us to conduct an audit 'whether or not a complaint has been made' and gives us if needs be all the same powers and more that it gives us to investigate complaints.

We conduct three kinds of compliance audit:

- **self-assessment audits:** we require the legal practitioner directors of every incorporated legal practice shortly after its commencement to complete a pro forma self-assessment audit form which asks them to rate their management systems and supervisory arrangements against 10 performance criteria. The form is readily accessible for viewing on our website but can be and is almost invariably completed and lodged electronically (at *www.lpportal.org.au*). The portal enables legal practitioner directors to access their firm's complaints history and hence to complete their self-assessment audit having regard to that risk information.

  We evaluate the information we are given; engage in conversations with legal practitioner directors as appropriate about any apparent gaps in their systems and processes; and we ask them periodically to conduct follow-up audits to document their progress. Self-assessment audits, in other words, are 'gap analyses' or 'management reviews' that serve as a baseline for future improvements to the firm's management systems and supervisory arrangements.

- **web-based surveys:** we have built on the insights we have learned from conducting self-assessment audits by developing what we hope will become a varied and growing suite of short, sharp web-based surveys or ethics checks which enable law firms to audit or review not only their formal policies and procedures and management arrangements but also and in particular the unwritten rules and 'the ways we do things around here' that shape what actually happens in practice. They are designed to give law firm leaders a window on the ways the firm's policies and systems are perceived and implemented 'down the line' by the different levels and locations of its people, whether they're followed through in practice and the values and attitudes its people bring to their work.

  We invite law firms generally from time to time to participate in an ethics check but equally require ILPs to participate as a form of compliance audit. We describe them in greater

detail later in the report and on the *Ethics checks* page of our website but they too are a form of 'gap analysis' or risk assessment that enable law firms to identify the strengths and weakness of their ethical infrastructure and to plan remedial action as appropriate.

- **on-site reviews:** on-site reviews comprise tailor-made combinations of traditional 'desk top' policy and procedure reviews; web-based surveys; analyses of the firms' complaints history; interviews with their principals, supervisors and employees 'down the line'; reviews of selected or randomly selected client files, in-house complaints registers and the like; and potentially mystery or 'shadow' shopping - having 'pretend' consumers deal with the firm and behave exactly as a genuine client might behave and report their experience.

  Clearly on-site reviews by their very nature are a resource intensive exercise both from the law firm's point of view and ours. It follows that we conduct audits of this more intensive kind much less frequently than web-based surveys and only on an 'as needs' basis - on the basis of a risk assessment that gives us reasonable grounds to believe that a firm or some aspects of its practice are or are likely to be non-compliant with its professional obligations.

Some key facts about compliance audits

We assess our performance having regard to the number, timeliness and outcomes of the audits we conduct, including their longitudinal effectiveness in improving standards of conduct, and of course the feedback we receive from incorporated legal practices.

We note firstly that a detailed empirical study conducted several years ago in New South Wales found that ILPs which had completed a self-assessment audit were significantly less likely to find themselves subject to complaint than unincorporated firms and ILPs which had yet to complete their self-assessment. Follow-up research only last year found that a significant majority of ILPs revise their policies and procedures following their self-assessment audit, that almost half adopt entirely new policies and procedures and that a sizeable majority of their legal practitioner directors saw the process as a valuable learning experience that enabled them to improve their client service.

Some unsolicited feedback about our web-based surveys

"Thank you. The survey was a great reminder of things I can do to improve my business and legal practice generally."

"As a partner of the firm I found this very useful. The time it took to complete was minimal and the questions were precise and made me think of ways to improve our complaint handling procedures."

"It provoked me into greater thought about my billing practices and demonstrated how a lack of proactive management could lead to problems. It also made me realise that time billing may not be the way to bill a client."

The earlier research findings have been published and the more recent research findings have been accepted for publication in respected academic journals and we have included links to those publications on the *Compliance* page of our website. We note with interest that author of the most recent study has expressed interest in replicating the study in Queensland over the coming year.

We note also that:

- 129 ILPs completed a self-assessment audit in 2012-13, and thus 597 since the program first commenced in 2007 (see Table 4).
- 34 ILPs completed a web-based survey during the year, and thus 134 since the program first started in 2008 (see Table 4). We asked them as in years past to complete the Complaints Management Systems Check to prompt them to review the adequacy of their systems and processes for dealing with client complaints. We describe that and our other ethics check surveys in more detail on the *Ethics checks* page of our website, and similarly analyses of the survey results.

Table 4: Number and type of compliance audit by year

Audit type	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
Self-assessment audit	61	90	105	108	104	129	597
Web-based survey	-	37	25	37	1	34	134
On-site review	-	1	2	2	0	1	6
Total	61	128	132	147	105	164	737

- we completed just 1 on-site review during the year, and have completed only 6 since the program started in 2008. Notably however we commenced on-site reviews of 18 ILPs in the latter part of the year, all of them because we have reason to believe, based on a complaint or complaints about bills the firm sent the complainant or complainants, that the firm may have charged excessive legal costs and/or costs to which it is not entitled and may have done so not as a one-off mistake in the particular matter(s) subject to complaint but as standard practice. The Commissioner gave examples of some of these billing practices in his *Overview* earlier in the report.

  These are serious matters. Clearly, if an on-site review confirms our suspicions, the legal practitioner director(s) of that firm may be exposed to disciplinary action for breaching their obligations as legal practitioner directors in addition to any other professional obligations they may have breached, and potentially large numbers of the firm's clients other than the complainant or complainants may be entitled to compensation in the form of a reduction or reimbursement of some or all of their costs.

A case for legislative reform?

The system for dealing with complaints is a fundamentally important regulatory tool which gives consumers a means of redress for complaints but it is an ineffective and inefficient means of achieving our broader regulatory purposes of monitoring and enforcing appropriate standards of conduct in the provision of legal services and protecting consumers more generally.

That is because systems for dealing with complaints are fundamentally reactive. They do little by way of prevention. They are geared to policing minimum standards not to promoting best practice. Crucially they direct our regulatory attention disproportionately to sole practitioners and small law firms and lawyers who practice in certain 'retail' areas of law - family law, deceased estates, residential conveyances, personal injuries and the like - so much so that the conduct of lawyers who work in medium-sized and larger law firms and other, more 'commercial' areas of law is only nominally subject to regulatory scrutiny.

Notably the 27% of all Queensland solicitors who work in the 76% of all Queensland law firms which employ between 1 and 3 solicitors attracted 61.33% of the complaints about solicitors we dealt with last year. The 29% who work in the 1.2% of law firms which employ 51 or more solicitors were 17 times less likely per capita to become subject to complaint – they attracted just 3.52% of all complaints about solicitors. Yet there is no compelling reason to believe that solicitors who work in medium-sized and larger law firms are any more competent or ethical than their small firm peers, much less by a factor of 17 times. It is just that they only very rarely become subject to complaint. The system for dealing with complaints directs our energies elsewhere.

Furthermore systems for dealing with complaints give us little if any 'regulatory grip' on the underlying causes of complaints. Complaints typically describe an individual consumer's grievance(s) about the conduct of an individual lawyer in his or her dealings with their particular matter, and almost never about the lawyer's conduct more generally or systemic practices within his or her law firm.

Yet the reality is that a lawyer's conduct is a function not only of their competence and character but also of the 'ethical infrastructure' of the law firms which employ them – their governance arrangements, their policies and procedures both spoken and unspoken, their corporate values and 'the ways we do things around here'. Most complaints are attributable to sloppy business practices, inadequate management systems, poor supervision, a poor service culture and a corporate ethos that is poorly aligned with the fundamental professional obligations of their lawyer employees.

This obvious fact of human behaviour has consequences, not least for lawyers' billing practices, for example. We need only to remind ourselves that law firms like other commercial enterprises exist to make a profit and that their workplace cultures invariably reflect their commercial among other motivations. Think of what can go wrong: think of the potential impacts on individual lawyers of unreasonable pressure to meet unrealistic billing targets, for example, or other like risk factors including performance against billing targets being, or even just being perceived to be the 'all important' performance measure for promotion and remuneration purposes.

Our regulatory arrangements for monitoring and enforcing appropriate standards of conduct in the provision of legal services are hopelessly antiquated in this respect. They date from an era when the vast majority of lawyers worked as sole practitioners or in only very small law firms. That may have been true 40 to 50 years ago but it is certainly is not true now. Only 11% of solicitors work in single practitioner firms and, as noted already, only 27% in firms which employ between 1 and 3 solicitors. On the other hand 29% work in firms which employ 51 or more solicitors and 60% in firms which employ 7 or more solicitors.

A cautionary tale

Several years ago now we invited all of the then 172 Queensland law firms which employed 7 or more practising certificate holders to complete one of our web-based ethics checks, the billing practices check for medium-sized and larger law firms. A total of 325 people from 25 firms completed the survey. We gave the results to Professor Christine Parker and David Ruschena of Melbourne University Law School for detailed statistical analysis and they published their findings under the title *The Pressures of Billable Hours: Lessons from a Survey of Billing Practices Inside Law Firms* in the prestigious University of St Thomas Law Journal, 2011 9(2), 618-663.

They found among other things that 'employed lawyers are much more likely to believe that performance measurement and management is solely determined by the amount earned, while partners see performance assessment as based on a range of factors including the amount earned, competence, efficiency and ethics.'

They found more disturbingly that 'more than half the lawyer respondents in 11 of the 25 firms reported that they had had concerns about the billing practices of others within the firm', and that 'in 11 of the 25 firm, more than 20% of the lawyers reported that they had actually observed instances of bill padding. This includes 5 firms where more than 40% of the lawyers said they had observed bill padding.'

But here's the thing: the survey was entirely voluntary in the absence of a compliance audit power in relation to firms other than ILPs. We could do no more than invite unincorporated law firms to participate on the condition of anonymity, and thus we have no means of identifying the 5 firms more than 40% of whose people report having actually observed other people in their firm pad their bills.

That leaves us in the unhappy situation of knowing there are a number of medium-sized or larger law firms out there that we can reasonably assume to be at ethical risk. We know we should be making further inquiries of those firms to gauge the extent of the risk and, depending on what we discover, working collaboratively with them to craft some appropriate remedial action.

But we can't, because we can't identify the firms. We have what has proved to be a highly effective risk assessment tool at our disposal - a tool that could hardly be described as 'unnecessary' or 'intrusive' and that potentially adds greatly to the risk data we have available to us, all the more so in relation to medium-sized and larger law firms that are so disproportionately under-represented in our complaints data - but no power to use the tool with firms other than ILPs except on an entirely voluntary basis. More is the pity.

Thus we have long argued that the system for dealing with complaints should be supplemented with regulatory tools that are genuinely preventative in character; that are directed to ethical capacity building more so than policing and punishing; that put the spotlight not only on particular acts of individual lawyers but on their law firms and workplace cultures and practices; and that engage all lawyers and law firms, not merely a sub-set of lawyers and law firms who practice in only certain areas of law. The regulatory regime that applies to incorporated legal practice ticks all the boxes and should be extended to all law firms, whatever their business structure.

Interestingly the proposed National Legal Profession Law that emerged from an exhaustive process of nation wide consultation in 2011 and 2012 and that was widely endorsed including by the QLS at the time and its peak body, the Law Council of Australia, envisages just this. It envisages the relevant regulatory authority in each participating state and territory having:

- the power to conduct a compliance audit of any law firm, whatever the firm's business structure, provided the regulator has 'reasonable grounds to do so based on the conduct of the law practice or one or more of its associates or a complaint against the law practice or one or more of its associates'; and, further,
- the entirely new power provided the regulator has 'reasonable grounds to do to so' to give a law firm a 'management systems direction' requiring it to implement appropriate management systems to ensure that the firm complies with its professional obligations.

We urge once again that these reforms be adopted in Queensland, if not by enacting the proposed National Law in its entirety then by including 'mirror' provisions in an amended LPA.

It goes without saying that we should exercise any such powers responsibly and reasonably, just as we should exercise our other powers of investigation responsibly and reasonably, and in ways that are accountable, consistent, proportionate and targeted to risk. We should never as regulators exercise any of our powers in ways that are unduly intrusive or that impose unjustifiable compliance costs or needless regulatory burden.

One last point: the power to conduct compliance audits, like the power to investigate 'third party' complaints and to commence own motion investigations, is and will remain fundamentally compromised in the absence of a power to compel lawyers and law firms to produce documents and information relevant to the investigation or audit notwithstanding any duty of confidentiality they may owe their clients.

We have reflected on this issue in more detail in several places earlier in the report. We reiterate in this context also that the failure to adopt the model law enacted in every other state with respect to legal professional privilege and client confidentiality continues to frustrate and completely stymie any effective investigation of suspected mismanagement or systemic malpractice within law firms. We urge the Attorney-General once again to remedy this defect by amending the LPA in the ways we have suggested.

COMMENCING DISCIPLINARY AND OTHER ENFORCEMENT ACTION

The LPA gives the Commissioner sole authority to decide what action, if any, to take on a conduct complaint or own motion investigation after the matter has been investigated and wide discretion in the exercise of that authority. It authorises the Commissioner to dismiss or take no further action on a complaint or own motion investigation 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', or alternatively to make a discipline application to a disciplinary body 'as the Commissioner considers appropriate.' We

have published *Discipline Application Guidelines* on the *Policies* page of our website which describes the factors we take into account in exercising those discretions.

Similarly the Commissioner is the sole prosecuting authority under the LPA. We prosecute discipline applications in the QCAT in relation to more serious matters and in the Legal Practice Committee (LPC) in relation to less serious matters. We are also responsible for prosecuting offences under the LPA (including for example the offence of engaging in legal practice when not entitled) and certain offences under PIPA (including for example touting at the scene of an accident). We prosecute these matters in the Magistrates Court.

We are not confined to a prosecutorial role. The LPA authorises the Commissioner to apply to the Supreme Court to grant an injunction restraining a person from contravening the LPA, or aiding, abetting, inducing or attempting to induce a person to contravene the LPA. Further, the Commissioner is free to initiate civil litigation in the public interest including for example by applying to the Supreme Court for a declaration which clarifies the proper meaning of a term or terms in the LPA.

We assess our performance of our prosecutorial and other enforcement functions having regard primarily to the findings of the disciplinary bodies and the courts and in particular to the number and proportion of matters in which we succeed. We have once again done well by this measure.

Some key facts about our disciplinary and other enforcement action

We note that:

- we opened 50 new prosecution files during the year (see table 5), a significant increase on the number opened in recent years for reasons explained earlier in the report when we noted the marked increase in the number of conduct matters which were finalised by a decision to commence disciplinary or other enforcement action.

Table 5: Prosecution matters commenced since 2004-05

	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
On hand at 1 July	3	24	42	34	44	31	28	25	41
Opened	26	43	33	29	21	20	21	32	50
Opened but not filed	9	15	10	12	6	8	7	13	21
Filed in LPC	6	13	11	8	6	4	3	0	0
Filed in QCAT #	11	24	25	20	16	10	14	22	33
Filed in Magistrates Court	0	0	0	0	2 *	3 *	2 *	1 *	1*
Closed (see Table 6)	5	25	41	19	35	23	24	16	26
On hand at 30 June	24	42	34	44	31	28	25	41	65

The figures for 2004-05 through 2008-09 include discipline applications made to the Legal Practice Tribunal.
*These matters all involved alleged unlawful operators (ie., people who engaged in legal practice when not entitled).

- we closed 26 prosecution files during the year leaving us with 65 matters on hand at 30 June including 33 matters filed in QCAT and 21 in various stages of preparation waiting to be filed (see table 5).
- that is a worryingly large number and significantly greater than the 41 matters we had on hand at 30 June 2012 (including 22 matters filed in QCAT and 13 which were open but not yet filed). That number was itself significantly greater than the 25 we had on hand at 30 June 2011 (including 14 matters filed in QCAT and 3 open but not yet filed). The poor clearance ratios reflect both the increasing number of investigations we are finalising by deciding to commence disciplinary or other enforcement action and the growing backlog of disciplinary matters at QCAT which has been unable to keep pace.

Table 6: Prosecution matters heard and decided since 2004-05

	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
SCT ^	3 #	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
LPC	-	10	8	5	6	2	5	0	0
LPT / QCAT *	2	9	18	5	21	11	9	11	9
Court of Appeal	-	2	-	-	3	-	1	1	1
Magistrates Court	-	-	-	-	-	1	2	0	1
Total heard and decided	5	21	26	10	30	14	17	12	11
Withdrawn / discontinued	-	4	15	9	5	9	7	4	15
Prosecution files closed	5	25	41	19	35	23	24	16	26

^ The former Solicitors Complaints Tribunal, which ceased in 2004.
# These 3 matters were part-heard in the SCT when the LPA commenced on 1 July 2004.
* The figures for 2004-05 through 2008-09 include matters heard and decided by the then Legal Practice Tribunal.

- the Court of Appeal heard and decided 1 appeal from a QCAT decision of first instance and QCAT heard and finally decided 9 discipline applications (see table 6). The respondents in those 10 matters were all solicitors, all of whom were found guilty of one or more charges of unsatisfactory professional conduct or professional misconduct.
- they were found guilty between them of 11 charges of professional misconduct and 5 of unsatisfactory professional conduct. We withdrew 3 charges prior to hearing and 1 charge was dismissed.
- 4 of the 9 solicitors were struck off; 4 were fined a total between them of $18,000; 6 were publicly reprimanded; and 2 were ordered to pay compensation to former clients totalling $7,700.
- the 11 findings of professional misconduct involved conduct including misappropriating funds from a firm's trust or general account; creating a false invoice; otherwise dishonestly obtaining money from a client in purported payment of professional fees and outlays; making dishonest representations to a client; misleading a court; failure to be frank and candid before a court; failure to disclose relevant information in the course of applying for a practising certificate; failure to notify the QLS of a 'show cause' event; and failure to progress a client's matter.
- the 5 findings of unsatisfactory professional conduct involved conduct including sending threatening correspondence on behalf of a client; publishing correspondence on behalf of a client concerning proceedings before QCAT which may have prejudiced a fair hearing of the

matter; ceasing work on a client's matter without informing the client; failure to progress a client's claim and failure to give correct advice to a client.

- interestingly, and while the numbers are too small to draw firm conclusions, the data in relation to prosecution matters indicates, like the data in relation to complaints, that older lawyers are significantly more likely to be subject to disciplinary action than younger lawyers. Lawyers who are 40 years of age or younger comprise 52% of the profession but just 20% of the lawyers subject to disciplinary action over the past four years, and lawyers who are 50 years of age or older comprise just 24% of the profession but 53% of the lawyers subject to disciplinary action over the past four years.
- the Magistrates Court heard and decided 1 matter during the year (see table 6) in which we alleged that a person had both held himself out to be entitled to engage in legal practice and had in fact engaged in legal practice when he was not entitled to do so. He was found guilty on both counts, fined $1,400 and ordered to pay compensation to his 'client' of $10,000.
- notably we closed 15 prosecution matters either by withdrawing discipline applications we had already filed with the disciplinary bodies or by reconsidering our decision to commence disciplinary proceedings before filing (see table 6). We closed 8 of them on the basis that there was no longer any public interest in continuing because the respondent practitioners finally recognised their error and apologised, offered to compensate the complainants or made some other appropriate redress; 2 because we no longer believed after further review that the evidence was sufficient to establish a reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct; 4 because we integrated several different discipline applications about the same practitioner arising out of multiple complaints; and 1 which was simply opened in error.
- we had 2 civil litigation matters on hand at the beginning of the year and closed 1 (see table 7), a matter in which we sought and were granted an injunction to prevent a solicitor who was struck off in 2003 from holding himself out to be entitled to engage in legal practice when clearly he was not. We had 1 matter on hand at the end of the year, an application we made jointly with the QLS to the Court of Appeal in 2007 opposing an application for re-admission by a former solicitor (Wendy Ann Wright) who was struck off by the then Solicitors Complaints Tribunal in 1999. This has proved to be a very protracted matter.

Table 7: Civil litigation matters since 2008-09

	08-09	09-10	10-11	11-12	12-13
On hand 1 July	1	2	2	1	2
Opened	1	0	3	1	0
Closed	0	0	4	0	1
On hand 30 June	2	2	1	2	1

Importantly the LPA requires the Commissioner to keep a *Discipline register* on the LSC website of disciplinary action taken under the LPA. It requires that the register includes the names of the practitioners against whom the disciplinary action was taken, the names of their law firms and the particulars of the disciplinary action. It defines 'disciplinary action' to mean findings of a disciplinary body or a court of professional misconduct. We keep the register as required,

keep it up to date, and in every case include a link to the disciplinary body's or the court's written judgment and reasons.

We made it our practice from our inception in 2004 to include findings of unsatisfactory professional conduct on the discipline register also. We ceased to do so from October 2009 on the recommendation of the Ombudsman and reluctantly removed from the register any information that identified practitioners subject to findings of unsatisfactory professional conduct but not of professional misconduct. This is a pity, not least because some of the most instructive disciplinary decisions in recent years have made findings of unsatisfactory professional conduct but not professional misconduct, including several significant decisions about a lawyer's failure to maintain reasonable standards of competence and diligence in preparing and executing enduring powers of attorney for older people who they should reasonably have suspected may lack capacity.

We have filled the gap by creating a *Disciplinary and other relevant regulatory decisions* page on our website entirely separate to the discipline register which includes links to decisions of the disciplinary bodies and the courts which make findings of unsatisfactory professional conduct but not of professional misconduct. It includes links also to selected other decisions relevant to the regulation of the provision of legal services including decisions in our civil litigation matters.

A case for legislative reform?

The proposed National Law envisages us as the relevant regulatory authority in Queensland having the power subject to appeal to decide minor disciplinary matters – to make a finding against a lawyer of unsatisfactory professional conduct (but not of professional misconduct). It would authorise us in these circumstances to caution or reprimand the lawyer, to impose conditions on his or her practising certificate, to order him or her to do or re-do the work subject to complaint, to reduce or waive his or her fees or to pay a financial penalty of up to $25,000.

We urge the Attorney-General to consider adopting this reform also, if not by enacting the National Law then by amending the LPA to 'mirror' the National Law in this respect. It would be a sensible and practical reform which would expedite the resolution of minor disciplinary matters by up to a year and more, and at a much reduced cost both to respondent lawyers and the public purse (both the disciplinary bodies and the Commission). Notably about a third of all discipline applications proceed unopposed, often even as to penalty, and not uncommonly see respondent lawyers facing legal costs many times greater than the financial penalty (if any) imposed by the tribunal. There is not a lot of sense in that.

ENGAGING WITH STAKEHOLDERS

The LPA requires us not only to monitor and enforce but to promote appropriate standards of conduct in the provision of legal services. We make it a priority accordingly to engage with the profession, consumers and stakeholders more generally to better inform our understanding

and perspective of the job in front of us; to share what we learn as we go about our work; and to do whatever we reasonably can to prevent complaints and non-compliance.

We gauge our performance having regard to the nature and extent of our engagement with the profession, consumers and stakeholders; the number and range of publications, education, project and research activities and events we produce or undertake; the number and nature of the partnerships we have entered into with other legal services stakeholders in undertaking those activities; and of course our stakeholder feedback.

We have limited resources to put to the task but believe we have used them to good effect. We are pleased to report that:

- we completed 35 speaking engagements during the year - at all 7 practice management courses conducted by the QLS for lawyers applying to be granted principal level practising certificates; 9 at university law schools; and the remainder at various conferences and continuing legal education events conducted by the professional bodies, private legal education providers and by law firms in-house.
- we co-hosted with the QLS and the BAQ the annual, national Conference of Regulatory Officers (CORO) which involves legal profession regulators from every state and territory and New Zealand. It was a highly successful conference which attracted a great deal of positive feedback.

Some unsolicited feedback about our approach

"The subject matter and speaker choices were relevant and engaging… It was a wonderful few days and I have heard nothing but compliments and congratulations from people who attended…"

"Thank you very much for your proactive engagement with the legal community, with legal academics and law students, and with the public on our profession's behalf."

- we conducted the ninth symposium in the *Lawyers, Clients and the Business of Law* series of symposia we have co-hosted with Griffith Law School since 2005-06, but on this occasion co-hosted also by the Gold Coast District Law Association. The symposium went under the heading *Counting the legal costs: principles and practice in billing* and engaged participants in discussing some common but problematic billing practices and served also as a forum for consultation on our draft Regulatory Guide on *Billing Practices: Key Principles* (see below).

  We have published a report of the symposium (and of all previous symposia) on the *Projects* page of our website.
- we continued our commitment to publish regulatory guides which we hope will help lawyers and users of legal services alike better understand a lawyer's professional obligations in circumstances where it is not always clear how they apply and which set out

the factors we take into account in dealing with related complaints. We think this is no more than they are entitled to expect of a transparent and accountable regulator.

We have published an overview of what we are trying to achieve, our methodology, the guides we have published to date and the consultation drafts of proposed new guides on the *Regulatory guides* page of our website.

This year we prepared a consultation draft of a proposed new guide about lump sum (or fixed fee) costs agreements and published it via an e-newsletter to 10,925 people including every Queensland solicitor and barrister, legal academics and other stakeholders. The newsletter had a total of 3,870 unique opens (that is to say, 3,870 recipients opened the newsletter at least once) and 10,243 opens in total within the first week of its publication.

We expect to publish the finalised guide early in 2013-14, and similarly a finalised guide having regard to the feedback we received in response to the consultation draft we published last year of a proposed guide under the heading *Billing Practices: Key Principles*. We are preparing consultation drafts of several further proposed guides in relation to particular billing practices we see in complaints and that cause us concern.

- we wrote to the managing partners, directors and sole principals of all 1,715 Queensland law firms and followed up with an e-newsletter inviting them to participate in one or other of two on-line ethics checks, both of them billing practices checks, one geared to medium-sized and larger law firms which employ 7 or more practising certificate holders and the other to smaller law firms which employ 6 or fewer practising certificate holders.

  A total of 273 people responded to the survey directed to smaller law firms and 60 to the survey for medium-sized and larger law firms. We have since invited the managing partners and directors of the medium-sized and larger firms to engage their staff in completing the survey also.

  The ethic checks surveys – we have developed and run five of them now, including the two billing practices checks - are ethical capacity building tools. We have designed them specifically to prompt not only a law firm's leaders but all its people to engage with and reflect on key ethical issues that arise in their everyday practice of law, to prompt both spontaneous and organised discussion within the firm about those issues and to enable the firms to gauge the adequacy of its ethical infrastructure in relation to these issues and to identify and remediate any gaps or weakness that may need attention.

  A snippet from the results of a recent ethics check

  18% of the 177 lawyers who answered this particular question in the billing practices check we ran for small law firms during the year said their firms' bills exceeded the initial costs estimates they gave their clients by more than 50% to at least some degree of frequency. Of these people, 16% said their firms never gave their clients revised estimates of their likely total legal costs and 61% said their firms only sometimes gave their clients revised estimates.

  They work best when everyone at a law firm takes part, or in larger firms at least a good sample of each of the different levels and classifications of their people and people from its different branch offices if it has them. That gives the firm a window on the ways its policies and systems are perceived and implemented 'down the line' by the different levels and

locations of its people, whether they're followed through in practice and the values and attitudes its people bring to their work.

All five surveys are accessible on the *Ethics checks* page of our website, and so too both the aggregated and de-identified results for each of the participating law firms in each of the surveys and the feedback we have received from participating lawyers and law firms. The results are a rich source of empirical data about lawyer and law firm values, attitudes and behaviours and have attracted considerable attention. Detailed analyses of the results of three of the surveys have now been published in respected local and international academic journals and we have included links to those papers on our website also.

Some unsolicited feedback about the Ethics Checks

The authors of a recent research report commissioned by the Legal Services Board in the UK to identify tools which can enable regulators to better understand ethical risk, better target regulation and better support law firms to develop and maintain ethical workplace cultures conclude after reviewing the approaches of legal profession regulators internationally that few regulatory bodies do anything more by way of monitoring lawyers' ethical behaviour than training and complaints monitoring. They note, however, that "*Australia proved a somewhat exceptional case. Here regulatory bodies have been more active in applying various methods to testing ethics. The Queensland Legal Services Commission provides access to a series of ethics checks which can be used anonymously to assess supervision practices; Australia workplace culture; complaints management systems and billing practices. It also has a link to interactive case studies, as well as collaborative surveys on topical issues. The Commission has invited academic input to help analyse the data yielded by its website 'tools' and to begin an understanding of their efficacy*"- Richard Moorhead, Victoria Hinchly, Christine Parker, David Kershaw and Stephen Holmfrom, *Designing Ethical Indicators for Legal Services Provision,* at pages 13-14).

- we circulated a draft; consulted widely with stakeholders; settled the final document; issued a press release to alert the media and published on the *Information for consumers* page of our website a plain English guide for consumers with the self-explanatory title *Ten Questions to Ask Your Lawyer about Costs*. The guide will assist consumers and lawyers alike to communicate more effectively about costs, to reduce the risk of surprise when consumers get their lawyer's bill and reduce this most common of all complaints.

  We published a revised version of a guide we published last year under the heading *No win-no fee costs agreements: information for consumers* to reflect a submission we received from the QLS and similarly re-published the *Client Service Charter* we developed jointly with the QLS several years ago now as a basis for discussion between lawyers and their clients at their first meeting.

  Further, we reviewed and updated our series of fact sheets which are directed to consumers and lawyers alike – fact sheets dealing with topics ranging from *Communication with your lawyer* and *Communicating with your client* through *Legal costs – your right to know* to *Avoiding complaints* and *Responding to a complaint*. The fact sheets are all published on the *Publications* page of our website.
- we continued to actively seek out feedback and to review the feedback we receive from enquirers, complainants and the lawyers who are respondents to those enquiries and complaints and to publish that information and analysis on the *Your feedback* page of our

website. We take this feedback very seriously with an eye to learning how we can improve the way we go about our work.

We receive feedback about our performance in three main ways: through the unsolicited feedback we receive unprompted from people we have dealt with, usually by mail or email; through the responses to the anonymous on-line feedback surveys we advertise prominently on our website, in the letters we send to complainants and respondents informing them of the outcome of the complaints they made to us or responded to and in the personal invitations we send once a year by email to everyone of them who has given us their email address; and through the formal processes they have available to them if they are dissatisfied to make 'complaints about us'. Table 8 describes the complaints about us we dealt with in 2012-13.

Table 8: Complaints about us 2012-13

	2011-12	2012-13
Complaints about us (about our service):		
on hand 1 July	0	0
opened	3	2
closed	3	2
on hand 30 June	0	0
Reconsiderations (of our decisions):		
on hand 1 July	0	1
opened	4	11
closed	3	12
on hand 30 June	1	0
Applications for Judicial Review:		
on hand 1 July	1	1
opened	1	0
closed	1	1
on hand 30 June	1	0
Complaints to Ombudsman:		
on hand 1 July	1	3
opened	10	3
closed	8	4
on hand 30 June	3	2
Complaints to CMC:		
on hand 1 July	1	0
opened	0	0
closed	1	0
on hand 30 June	0	0
Privacy / RTI applications:		
on hand 1 July	4	3
opened	10	14
closed	11	14
on hand 30 June	3	3

- we continued the process we commenced last year of routinely interrogating our data base and otherwise monitoring trends in the enquiries and complaints we receive to identify the lawyers and law firms that have been subject to multiple enquiries and/or complaints over previous months; forwarding them 'risk alerts' alerting them to the fact, advising them of the nature of the enquiries and complaints; and inviting them to review their management

and supervisory arrangements to remedy any shortcomings and reduce their future exposure to complaints. The 'risk alerts' not only give lawyers and law firms a 'heads up' but position us on an 'as required' basis to plan and implement appropriately targeted interventions including 'own motion' investigations, compliance audits and, with the cooperation of the QLS, trust account investigations.

- we continued the staged process of giving law firms other than incorporated legal practices hitherto unprecedented 27/7 on-line access to this same risk data at *www.lpportal.org.au* without us having to post them 'risk alerts'. We hope and intend that law firms will use the portal to review the data and to identify any patterns or trends that might warrant remedial action.

  We hope and intend also in due course to be able to give consumers, legal academics and members of the public more generally the capacity to access and interrogate our data base, consistent with right to information and privacy principles. We hope and intend not only to 'push' more and better information out via the portal but also to 'pull' more and better information in, by enhancing its interactive capabilities to enable us to increasingly manage and process complaints and compliance audits on-line.

- we continued the process of 'refurbishing' the look and feel of our website to make it easier on the eye, easier to navigate, more informative and more helpful to lawyers and users of legal services alike. A total of 22,469 people including 1,463 from the UK and 848 from north America visited the website in 2012-13 on a total of 121,270 separate occasions including big spikes following the publication of an e-newsletter.

  Our website is central to our efforts to connect and engage with lawyers, legal academics, consumers and members of the public more generally. We want it to reflect the commitment we make in our statement of purposes and values to be responsive, open and accountable. We have some way to go yet to get it to where we want it to be but we are proud of what we have achieved thus far.

Maintaining a productive and motivating work environment

Our performance of our statutory functions inevitably reflects our 'internal' performance and the strength of our workplace culture. We work hard to maintain a motivating, productive, collegiate and professional work environment, and we gauge our success by reference not only to our operational performance (as described earlier in the report) but also to the feedback our people give us, their commitment to their continuing professional development and our commitment to continually improve our management and business systems, processes and practices to better support us in what we do. It has once again been a busy and fruitful year.

We make it a priority to preserve the collegiate workplace culture we nurtured very deliberately as a smaller organisation early in the piece and have sustained ever since. The Commissioner and line managers continue to make and take accountability for the decisions that need to be made. We make as many as possible of those decisions including every decision to initiate disciplinary or other enforcement action or to take no further action when that might be a line ball decision only after a team discussion at which the staff member who has carriage of the matter makes a case and all our professional staff have the opportunity to have their say. That is an important and useful decision-making process in circumstances in which we are called upon so often to make judgement calls where reasonable minds can differ but even more so because it is a team-building and culture-setting opportunity also, and supports our professional development and consistency of approach. It continues to work well on all counts.

We note in particular that:

- we have a staff team of 20.4 full-time equivalent (FTE) people (see Appendix 2) 13 of whom are lawyers. It is sometimes said that we have little understanding of the demands upon lawyers in private legal practice and the difficulties they experience in their everyday practice of law but that is simply untrue – our 13 lawyers between them bring to the Commission over 150 years of experience in private legal practice primarily as solicitors working in small to medium-sized law firms but also as barristers, and experience in the areas of law we deal with most commonly in our day to day work dealing with complaints.

  That is no accident. We go looking for applicants who have significant and recent experience in private legal practice when we are recruiting to positions that require legal qualifications and we make it very plain in the recruitment process that applicants who meet this criterion will have a distinct advantage over applicants who do not.

  Furthermore we expect our lawyers to meet the same continuing professional development requirements that solicitors and barristers are required to meet to maintain their practising certificates;
- the Commissioner and line managers continued our practice of meeting individually with every member of staff twice a year to review their performance and how they are travelling more generally, their professional development and how we might do things better and smarter both individually and as a team. The feedback our people have given us has been profoundly encouraging;

- we continued our in-house continuing legal education program (which this year involved presentations and workshops dealing with investigative interviewing, the use of coercive investigative powers, administrative decision writing and forensic technology). Our staff attended between them 51 training seminars or workshops conducted by 14 different continuing legal (and other) education providers at a modest cost to our budget of $8,598;
- we continued to regularly update our LSC Intranet and knowledge file in our G-drive by adding links to relevant recent case law and disciplinary decisions, articles and other resource materials , and to regularly review and update our precedent documents, standard letters and clause bank including by adding letters, investigation reports and discipline applications that were prepared in response to particular fact situations but which we believe have a broader application as precedents;
- we continued our systematic, rolling program of reviews of our in-house policies, procedures and guidelines (including this year by updating our investigation, report writing and case evaluation procedures); and
- we continued to identify and make continual improvements to our database and case management system, LPCentral (including this year by commencing implementation of a program of improvements which will enable us to capture and report data in relation to administration files in addition to case files, to add an archiving function which will allow us to generate lists of archived files which can be destroyed, to add a mandatory file closure checklist for all complaint files, to tighten the requirements for identifying the last interaction on a file, to amend the closure codes for inquiry matters, to add a capacity to capture more and better data about our use of our coercive powers and to add a capacity to generate 'risk alerts' which alert managing partners and legal practitioner directors of law firms as appropriate to the fact that their firms have been subject to multiple complaints).

Appendix 1: The system for dealing with complaints

The *Legal Profession Act 2007* (the Act) establishes the Legal Services Commission (the LSC, or the Commission) primarily to receive and deal with complaints under the Act. It authorises us to deal with complaints about lawyers (people who are appropriately legally qualified and who have been admitted to the legal profession in accordance with the Act), unlawful operators (people 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), law practice employees and anyone who is suspected of contravening the restrictions on the advertising of personal injury services and the prohibition of touting under chapter 3, part 1 of the *Personal Injuries Proceedings Act 2002.*

We have described the system for dealing with complaints on the Commission's website in great detail and we are happy to make that information available in hard copy on request.

The Act requires us to produce information about the making of complaints and the procedure for dealing with complaints; 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'. The system can be summarised diagrammatically, as a flow chart (see below), and in words, as follows:

Producing information about the making of complaints

We have written a series of 'plain English' fact sheets which describe how we deal with complaints and how to make and (for lawyers) how to respond to a complaint. They include answers to 'frequently asked questions' and, for example, they describe simply but in relevant detail a lawyer's obligation to disclose his or her costs and the process for challenging a lawyer's costs. The fact sheets are readily available both in hard copy and on our website. The website includes a wide range of other relevant information also, including the policies and procedures we bring to our complaint-handling work and an innovative, interactive on-line scenario which enables complainants and lawyers alike to track an imaginary complaint through the system to see how it works.

Giving help to members of the public in making complaints

We give help to members of the public in making complaints not only by publishing information but also a complaint form which prompts prospective complainants to give us the information we require to properly assess their concerns and to deal with them expeditiously. The complaint form can be downloaded from our website or alternatively can be filled out and lodged on-line. It is available in hard copy on request.

We help members of the public primarily however by means of our inquiry service – by giving information and advice to people who contact us with an inquiry, most commonly by phone but also by email, by letter and in person. The Act requires that complaints be made in writing but many inquiries are complaints in all but name. No good purpose would be served however by requiring inquirers to put their 'complaint' in writing if it lends itself to resolution quickly and informally, typically by a few telephone calls, and we try that approach whenever it seems

up to the task. People who make inquiries need to know, however, that they remain fully entitled to make a formal written complaint if their concerns can't be resolved informally.

Similarly we encourage people who have a complaint to consider discussing and attempting to resolve their concerns directly with the lawyer subject to complaint 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.

Deciding whether to deal with (or to 'summarily dismiss') a complaint

Our first task, when we receive a complaint, is to assess the complaint against a series of threshold criteria to decide whether we have jurisdiction to deal with the complaint. We do not deal for example with complaints we believe to be 'vexatious, misconceived, frivolous or lacking in substance', and there are other tests, too. The Act requires that we ask a series of questions before we decide to deal with a complaint, including most relevantly (and commonly) the following:

- is the conduct subject to complaint conduct to which the Act applies? If the answer is no, we can do no more than refer the complaint to the relevant investigatory body, if any. Typically, because the vast majority of complaints are complaints about lawyers, the question reduces to this: was the lawyer's conduct subject to complaint conduct 'happening in connection with the practice of law'? If the answer is no, we will 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';
- did the conduct subject to complaint happen more than three years before we received the complaint? If the answer is yes, we will 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', that the conduct 'may be professional misconduct' and that it is 'in the public interest to deal with the complaint';
- does the complaint describe a costs dispute between the complainant and a lawyer? If the answer is yes, we will deal with the complaint only if it goes beyond a dispute about the lawyer's costs and involves an issue of non-disclosure or overcharging, and hence potentially of unsatisfactory professional conduct or professional misconduct. We have no jurisdiction to deal with costs disputes per se. We refer these complainants to the appropriate court in accordance with the process established under the Uniform Civil Procedure Rules (which we describe in our fact sheet *Your Right to Challenge Legal Costs*);
- does the complaint essentially allege professional negligence? If the answer is yes, we will deal with the complaint only if the conduct in question involves an issue of unsatisfactory professional conduct and we will hesitate even then. That is because we have no powers to award or enforce compensation and, while a disciplinary body can make a compensation order in relation to conduct it has found to be unsatisfactory professional conduct, compensation orders are capped at $7,500 unless both parties agree. As a general rule, only a court of competent jurisdiction can decide if a practitioner has been negligent and award compensation.

Assessing complaints to be consumer disputes or conduct complaints

The Act divides complaints into two kinds and gives us very different powers and responsibilities in relation to the two kinds of complaint: consumer disputes and conduct complaints. It defines consumer disputes to be complaints which do not involve an issue of unsatisfactory professional conduct or professional misconduct, and conduct complaints to be complaints which do.

The Commissioner has to decide, applying the statutory definitions of the terms *unsatisfactory professional conduct* and *professional misconduct*, whether the conduct subject to complaint would, if 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'. Then:

- if the answer to both questions is no, we assess the complaint to be a consumer dispute. Notably the Act gives us no powers in relation to consumer disputes, merely the option to suggest to the parties that they enter into a process of mediation. We invariably do, and we take on the role ourselves, but that's the end of the matter whether the mediation resolves the dispute or otherwise;
- if the answer to either question is yes, we assess the complaint to be a conduct complaint. The Act obliges us to investigate conduct complaints, either by conducting the investigation ourselves or by referring the complaint to the QLS or the BAQ for investigation. We refer about half the conduct complaints we receive about solicitors to the QLS for investigation, and the majority of complaints about barristers to the BAQ (but the QLS and the BAQ can only recommend, not decide what further action, if any, should be taken on those complaints – see below).

These are not always easy questions to answer. Obviously we assess complaints that allege dishonesty and other significant departures from a lawyer's professional obligations to be conduct complaints, and similarly complaints that allege substantial and/or consistent incompetence or delay. The great majority of complaints however involve only one-off and minor incompetence and delay, careless but honest mistakes, poor standards of service and the like. The question is whether we should assess complaints about conduct of these kinds to be conduct complaints or consumer disputes.

The question goes to the heart of the system for dealing with complaints, and turns on the meaning of the term *unsatisfactory professional conduct*. We interpret and apply the term broadly. We assess complaints which involve careless but honest mistakes and poor standards of service and the like to be conduct complaints whenever it would be fair and reasonable in all the circumstances of the complaint for the lawyers subject to complaint to acknowledge having made an error and to apologize, for example, or to make good a mistake at no cost to the complainant or to reduce or waive their fee or to do what they reasonably can to reduce the risk they will make the same mistake again – by fixing their office systems, for example, or undertaking some further training or supervision and the like. That is because the Act describes the main purposes of the system for dealing with complaints to include providing a means of redress for complaints yet gives us no powers to ensure complainants get the redress that is due to them when that is a fair and reasonable outcome in all the circumstances of their complaint. The Act makes all but wholly voluntary redress entirely contingent on a disciplinary body making a finding of unsatisfactory professional misconduct or worse, professional misconduct.

It follows in our view that we should assess any complaint which, if established, would entitle the complainant to appropriate redress or justify the lawyer taking some other remedial action to be a conduct complaint. That means that we assess the great majority of complaints to be conduct complaints and commence investigations accordingly.

Mediating consumer disputes

We repeat: the Act gives us no powers or responsibilities in relation to the complaints we assess to be consumer disputes - complaints that do not involve an issue of unsatisfactory professional conduct or professional misconduct - beyond a discretion to suggest to the parties that they enter into a process of mediation. The Act allows us to mediate consumer disputes ourselves or to refer them to the QLS or the BAQ for mediation there. In practice, however, and by agreement with the QLS and the BAQ, we mediate consumer disputes ourselves, in-house.

Investigating conduct matters

The Act requires us to investigate conduct complaints or to refer them to the QLS or to the BAQ for investigation. Importantly, the investigation of the complaints we refer to the QLS and the BAQ remains subject to our direction and control. The QLS and the BAQ have no authority to decide what further action should be taken on those complaints, if any, 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 questions the Commissioner has to decide are whether there is a 'reasonable likelihood' of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and, if so, whether it is in the 'public interest' to initiate disciplinary proceedings. These are sometimes difficult questions, but:

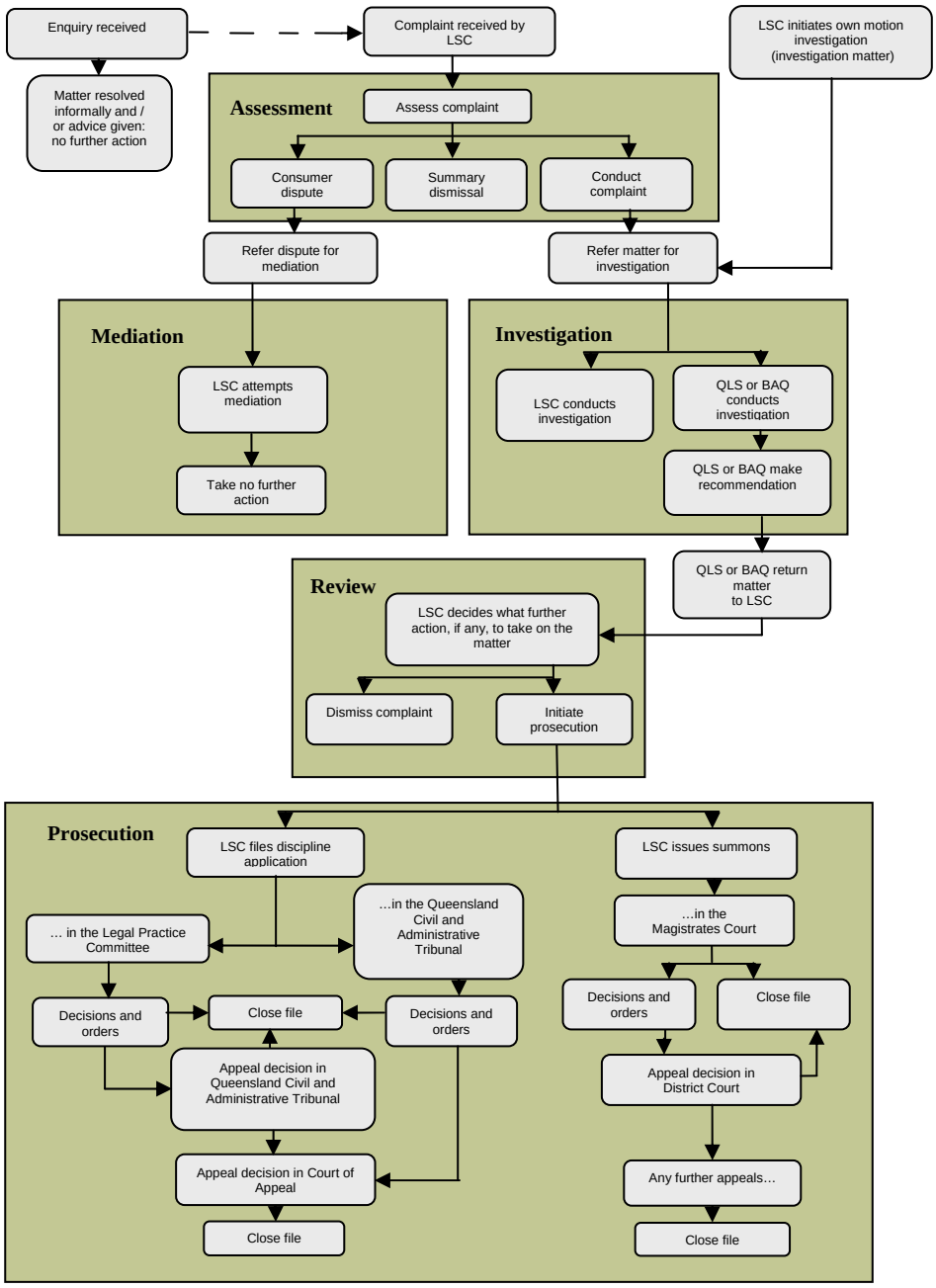
- if the answer to both questions is yes, the Act obliges us to initiate disciplinary proceedings in either the Queensland Civil and Administrative Tribunal in relation to more serious disciplinary matters or the Legal Practice Committee in relation to less serious disciplinary matters; and
- if the answer to either question is no, the Act obliges us to dismiss the complaint, or in other words to take no further action in the matter.

The 'reasonable likelihood' test is an evidentiary test and clearly fundamental to any fair disciplinary regime. The 'public interest' test is less obvious but equally fundamental. That is because our broad interpretation of the term *unsatisfactory professional conduct* exposes generally competent and diligent lawyers who happened to have made a one-off and minor mistake to being held to account publicly in disciplinary proceedings much better suited for dealing with lawyers who are accused of more serious misconduct. That seems to us to be harsh and unreasonable.

The 'public interest' test gives us an out. Clearly the public interest will rarely if ever be served by initiating disciplinary proceedings in relation to careless but honest mistakes and poor standards of service and the like if lawyers subject to complaint have done all they reasonably can to put things right with the complainant and / or taken other appropriate remedial action to prevent making the same mistake again.

Accordingly, we invite lawyers in those circumstances to do just that, and to seek to persuade us by so doing that no public interest would be served by initiating disciplinary proceedings. This is why (as shown by the performance data in Appendix 4) we dismiss many more complaints on the basis that there is no public interest in taking the matter further than that there is no reasonable likelihood of a disciplinary body making a finding of unsatisfactory professional conduct or professional misconduct.

Complaint handling flowchart



Appendix 2: Staffing the system

The LSC consists of the Commissioner and a staff of 19.4 full-time equivalent (FTE) people. We receive and deal with complaints about lawyers and perform a range of related regulatory functions as described elsewhere in the report and are funded for the purpose by annual grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) – see Appendix 3.

We refer some complaints about solicitors to the QLS for investigation (see Appendix 1) and the QLS for its part employs a further 7 x FTE people within its Professional Standards Unit to deal with those complaints. The QLS is funded for these purposes by the LPITAF also, but under a Service Level Agreement (SLA) with the LSC. [1]

We likewise refer complaints about barristers to the BAQ. The BAQ employs 1.25 x FTE people to support its Professional Conduct Committee to deal with those complaints. The BAQ is funded for the purpose by LPITAF but by way of a direct grant rather than pursuant to a SLA with the LSC.

Table 2.1 sets out how the LSC and the broader system established under the Act for dealing with complaints has been staffed since its inception on 1 July 2004 through 30 June 2013. Table 2.2 sets out the organisational arrangements under which the LSC goes about its work.

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

	2004	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
LSC	8	10.7	17.5	18.2	18.2	18.2	19.2	20.2	20.2	20.4 [2]
QLS	18.95	18.95	18.95	11.72	12.72	13	11	7 [3]	7	7
BAQ	-	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Total	**26.95**	**30.9**	**37.7**	**31.17**	**32.17**	**32.45**	**31.45**	**28.45**	**28.45**	**28.65**

[1] These 7 x FTE people comprise 5 investigators and their administrative assistant who are all fully occupied with complaint-handling functions and 'half' each of the Manager Professional Standards and an administrative assistant who spread their time roughly equally between complaint-handling and trust account investigation functions. The figure excludes the 2 x FTE Ethics Officers and their administrative assistant who are also funded under the SLA (see Appendix 3). These 3 people do not perform a regulatory function but provide membership services.

[2] The .2 x FTE increase is a response to the increasing workload demand upon the corporate support team (see Table 2.2). It has been funded without any increase to our base funding (see Appendix 3).

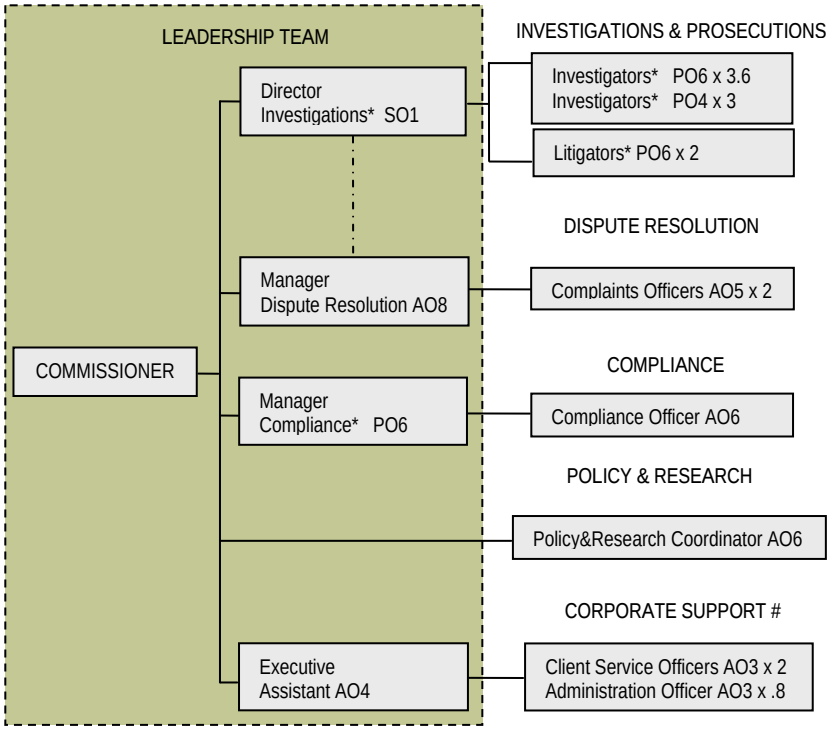
[3] See note 1, above. The QLS closed its Client Relations Centre (CRC) in 2010 and established its Ethics Centre. The SLA funded 5 CRC positions (4 x FTE Client Relations Officers and 1 x FTE administrative assistant). The funding for 3 of the 5 x FTE positions at the CRC was redirected to fund the Ethics Centre (the 2 x Ethics Officers and 1 x administrative assistant). Funding for 1 of the remaining 2 x FTE positions at the CRC was transferred to the LSC and the funding for other position was relinquished. Thus the downsizing at the QLS from 11 x FTE regulatory positions to 7 in 2010-11 and the upsizing at the LSC from 19.2 x FTE positions to 20.2.

Table 2.1 tells an interesting story. The system for dealing with complaints needed to be supplemented with additional staff in the early years to deal with the large backlog of complaints the LSC inherited on its inception but fewer staff were required once the backlog was resolved going into 2006-07. The number of staff dropped accordingly, most notably at the QLS. Some functions and hence staff numbers have since transferred from the QLS to the LSC but the total number of staff in the system as a whole has stabilised at a number more than 2 x FTE fewer than the number when the system first commenced.

This is no small achievement. It comes despite the fact that the LSC 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 that it was given additional responsibilities again in July 2007 on commencement of the *Legal Profession Act 2007* to conduct compliance audits of incorporated legal practices. Not only that but the LSC has at the same time been able to add value to the system by developing a capacity that was previously lacking to undertake projects and research related to its work.

Furthermore the staffing numbers by themselves fail to tell the whole story. The QLS out-sourced much of its prosecution and enforcement work in the years immediately prior to 2004-05, and much more than the LSC has out-sourced in subsequent years and at a much greater cost - a cost equivalent to the employment costs of at least several additional FTE in-house litigators. Thus the LSC has achieved significant efficiencies since its inception in 2004 and is doing more than was done previously and with less.

Table 2.2: Organisational chart 2012-13



Total full time equivalent staff: 20.4
* These positions require legal qualifications
# The corporate support team also provides secretariat support to the Legal Practice Committee

Appendix 3: Funding the system

The LSC is funded by an annual grant from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF). Grants from LPITAF are approved by the Attorney-General on the recommendation of the Director-General of the Department of Justice and Attorney-General under sections 289-90 of the *Legal Profession Act 2007* (the Act).

The grant to the LSC includes an amount to enable us to meet our responsibilities under the Act to provide administrative support to the Legal Practice Committee (the LPC) and a discretionary 'draw-down' budget of $500,000 to meet brief-out costs incurred on an 'as needs' basis to obtain legal advice in relation to complaints and/or disciplinary and related matters and representing the LSC in complex matters before the disciplinary bodies and the Courts.

The grant also includes an amount that transfers to the QLS under a Service Level Agreement (SLA) with the LSC. The SLA funds the employment costs of the investigators and relevant support staff who deal with the complaints the LSC refers to the QLS for investigation and (for largely historical reasons) the staff of its Ethics Centre. The Ethics Centre does not however serve a regulatory function but provides membership services (see Appendix 2). It follows then that the true cost to LPITAF of funding the system for dealing with complaints excludes the amount that transfers to the QLS under the SLA to fund the Ethics Centre and that the figures should be adjusted accordingly.

The LSC does not have a SLA with the BAQ in relation to the complaints that the LSC refers there for investigation. Rather, the staff of the BAQ who deal with complaints on referral from the LSC (see Appendix 2) are funded by a grant from LPITAF made directly to the BAQ. Thus the true cost to LPITAF of funding the system for dealing with complaints should include that grant.

Table 3.1: Funding the system for dealing with complaints in 2012-13

	2012-13 employment costs	2012-13 all other costs	2012-13 total actual costs	2012-13 Approved grant	2013-14 approved grant
LSC	$2,248,161	$1,219,623 [4]	$3,467,784	$3,748,591	$3,819,407
QLS (total) [5]	*n/a*	*n/a*	*$1,632,872*	*$1,632,872*	*$1,669,448*
QLS (adjusted) [6]	n/a	n/a	$1,293,781	$1,293,781	$1,322,897
LPC	n/a	n/a	$34,779	$49,231	$50,006
BAQ	n/a	n/a	$147,323	$147,323	$150,564
Total (adjusted)	n/a	n/a	$4,943,667	$5,238,926	$5,342,874

[4] This figure includes brief-out costs of $373,404 (see Table 3.2).

[5] These figures are the total amounts that transfer from the LSC to the QLS under the SLA.

[6] These figures are the total amounts of the SLA adjusted to exclude the employment costs of the staff of the Ethics Centre who do not perform a regulatory function but provide a membership service. These costs have been calculated to be $334,684 in 11-12; $339,091 in 12-13; and $346,551 in 13-14.

Importantly the amount of the approved grant that turns out to be surplus to requirement (including for example the amount of the discretionary 'brief-out' budget that remains unspent) is returned to LPITAF. Our total actual costs in 2012-13 came to $4,943,667 with the result that $295,259 returned to LPITAF.

Table 3.2: Brief out costs by year 2005-06 through 2012-13

05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
$128,477	$127,701	$290,172	$455,453	$163,555	$281,330	$273,220	$373,404

The amounts that the LSC recovers from respondent practitioners in costs following disciplinary or other enforcement action is similarly returned to LPITAF together with the amounts received in payment of financial penalties.

Table 3.3: Monies returned or due to return to LPITAF as a result of the disciplinary process

	2012-13 QCAT	2012-13 LPC	2012-13 total	2011-12 total	2010-11 total	2009-10 total
Financial penalties ordered	$20,500	-	$20,500	$27,500	$16,500	$12,000
Penalty payments received	$20,200	-	$20,200	$12,000	$9,500	$46,000
Costs ordered, agreed or assessed	$24,000	-	$24,000	$16,000	$17,000	$115,000
Costs payments received	$12,950	-	$12,950	$6,750	$50,500	$109,000
Costs written off	-	-	-	-	$31,900	$5,000
Costs payments pending (at 30 June)	$25,800	-	$25,800	$5,500	$70,900	$70,900

Appendix 4: Performance data

This appendix provides a statistical analysis of the complaints-handling and compliance audit work undertaken by the LSC during the reporting year 2012-13. It also includes selected 'profession analysis' data which enables us to cross-reference the complaints data with key characteristics of the lawyers and law firms subject to complaint including the gender and age of the lawyers and the sixe, location and business structure of the law firms where they work.

Definition of key terms

The LSC database (or case management system, or CMS) distinguishes and counts various discrete matter types (enquiries, complaints, compliance audits, prosecutions, civil litigation matters, privacy and right to information applications, complaints about us and grievances), some of them including discrete sub-types, as follows:

Enquiries

Enquiries are queries or enquiries in the ordinary sense of the word. They are made by telephone in the main but sometimes in writing, by email or in person. They include:

- queries by legal consumers, other members of the public and sometimes legal practitioners about how to make a complaint about, 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.
- informal complaints are concerns or informal 'complaints' made by users of legal services, 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. They are informal 'complaints' that are made by telephone or in person but not in writing (as the Act requires of a formal complaint) and that the 'complainant' requests or agrees be dealt with informally, at least in the first instance (on the understanding that he or she remains entitled to make a formal written complaint if his or her concerns can't be resolved informally). Informal complaints can 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 enquiries are enquiries by solicitors or barristers of their professional bodies – the QLS or BAQ respectively - about their ethical obligations as legal practitioners.

Complaints

Complaints comprise formal written complaints that are made pursuant to Chapter 4 of the *Legal Profession Act 2007* (the Act). Complaints specifically include investigation matters (or 'own motion' investigations) commenced pursuant to section 451(1)(c) of the Act.

The Act requires complaints to be made in writing and made 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** comprise complaints that the LSC assesses to be 'out of time' or 'out of jurisdiction' or that it otherwise summarily dismisses pursuant to section 448 of the Act;
- **consumer disputes** comprise complaints that the LSC assesses to describe disputes between consumers and legal practitioners and / or law practice employees but not to involve an issue of unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or misconduct or the part of a law practice employee. The Act provides that the LSC may try to mediate consumer disputes or alternatively refer them to the QLS or BAQ for mediation (and does not require the QLS or BAQ to report the outcome to the LSC); and
- **conduct matters** comprise conduct complaints, ILP conduct complaints, investigation matters, PIPA investigation matters and ILP investigation matters, as follows:
    - **conduct complaints** are complaints (whether or not they also describe a consumer dispute) that the LSC assesses to involve an issue of 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 other unlawful conduct that constitutes an offence under the Act (other than an offence in relation to ILPs);
    - **ILP conduct complaints** are complaints about the conduct of legal practitioner directors of ILPs (in their capacity as legal practitioner directors of ILPs) that the LSC assesses to involve an issue of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the Act or other unlawful conduct by a legal practitioner director or other director, officer, employee or agent of an ILP that constitutes an offence under those or other ILP specific sections of the Act;
    - **investigation matters** are investigations other than PIPA and ILP related investigations (see below) that the LSC commences 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 which might amount to unsatisfactory professional conduct or professional misconduct or that some other person over whom it has jurisdiction might have committed an offence under the Act (other than an offence 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** are investigations that the LSC commences of its own motion because it suspects a legal practitioner or other person might have 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** are investigations 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 might amount to 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 might have committed an offence under those or other ILP specific sections of the Act.

Note that the terms 'conduct complaint' and 'investigation matter', and 'ILP conduct complaint' and 'ILP investigation matter', are defined such that a conduct complaint or investigation matter about the conduct of a legal practitioner who happens to be a legal practitioner director of an ILP 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. 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.

Compliance audits

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:

- **self-assessment audits** are internal audits or 'management reviews' 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 keep and implement 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;
- **web-based surveys** are periodic audits in which the LSC requires all or representative samples of the different levels and classifications of an ILP's employees to complete an on-line survey which reviews aspects of the firm's 'ethical infrastructure';
- **on-site reviews** are tailor-made but typically more comprehensive audits conducted by the LSC following a risk-assessment which assesses the ILP to be at particular risk of non-compliance with its obligations under the Act or the Legal Profession Rules .

Prosecutions

Prosecutions comprise conduct matters (including unlawful operator and ILP or PIPA related conduct matters) that the LSC finalises by deciding to initiate proceedings in a disciplinary body or a court.

Civil litigation matters

Civil litigation matters comprise matters opened by the LSC when it becomes involved in civil 4 proceedings, whether on the Commissioner's initiative or otherwise, e.g., when the Commissioner is the applicant or respondent to an originating application under *the Legal Profession Act 2007* (such as an injunction under section 703), when the Commissioner seeks a declaration as to the proper meaning of a term or terms in the Act or when the Commissioner is responding to subpoenas or applications for third party discovery.

Privacy and Right to Information applications

Privacy and Right to Information Applications comprise applications made to the LSC under the *Information Privacy Act* and the *Right to Information Act* respectively.

Complaints about us

Complaints about us comprise written complaints that are made to the LSC (and that have been unable to be resolved informally at the point of service) about its service, policies or procedures. They include:

- service complaints, or complaints about the quality of service the LSC has provided the complainant or the performance of the LSC staff, including complaints about delay and the diligence, professionalism or courtesy of the staff who interacted with the complainant;
- process complaints, or complaints about the LSC's policies, procedures or practices; and
- privacy complaints, or complaints made under the Information Privacy Act which allege that the LSC has contravened its obligations under that Act to respect the complainants' personal information.

Grievances

Grievances comprise written complaints that are made either to the LSC or to external bodies about a decision of, or the conduct of the LSC and / or its staff. They include:

- **reconsiderations** are matters the LSC opens when the Commissioner and/or his or her delegates are asked to reconsider or review a decision made under the *Legal Profession Act* including decisions to summarily dismiss a complaint, to dismiss a complaint after investigation or to commence disciplinary proceedings;
- **applications for Judicial Review** are matters the LSC opens when a person has filed an application with the Supreme Court seeking a judicial review of a decision of the Commissioner and/or his or her delegates pursuant to the *Judicial Review Act* ;
- **Ombudsman complaints** are matters the LSC opens when the Queensland Ombudsman has accepted a complaint under the *Ombudsman Act* about a decision or action of the Commissioner or member of staff of the LSC;
- **CMC complaints** are matters the LSC opens when the Crime and Misconduct Commission (CMC) has commenced an investigation under the *Crime and Misconduct Act* into the conduct of the Commissioner or a member of staff of the LSC (we note that CMC complaints are recorded manually, not on the CMS);
- **grievances – other** are matters the LSC opens when some other relevant agency (such as the Anti-Discrimination Commission) accepts a complaint and/or commences an investigation involving the conduct of the Commissioner or a member of staff of the LSC.

Reporting Framework

Enquiries

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

Complaints

We 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
- complaints summarily dismissed during the year
- consumer disputes closed during the year
- conduct matters closed during the year
- complaints on-hand at the end of the year

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

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

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

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

Compliance audits

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

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

Prosecutions

We 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.

Civil litigation

We measure our performance in relation to this category of work by counting the number of matters on-hand at the end of the year.

List of tables

1. Profession analysis as at 30 June 2013

The following data provides an analysis of the make-up of the profession for the respondent types of solicitor and barrister (i.e., lawyers who have been issued practising certificates by their professional body – the QLS or the BAQ respectively). The analysis has been performed on data extracts provided by the QLS and BAQ from their respective regulatory databases. We have chosen 30 June 2013 as the reference date – hence complaints about solicitors during 2012-13 will be profiled against the solicitor's attributes as recorded on the QLS database at 30 June 2013. 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.

1.1 Solicitors by type of locally issued practising certificate

	Total	%
Employee	4,789	48.28
Principal	2,829	28.52
Restricted employee	2,181	21.99
Restricted volunteer	56	0.56
Unrestricted volunteer	26	0.26
Limited principal	22	0.22
Foreign	16	0.16
Restricted principal	1	0.01
Total	**9,920**	

1.2 Solicitors by gender

	Total	%
Male	5,277	53.20
Female	4,643	46.80
Total	**9,920**	

1.3 Solicitors by age group

	Total	%
24 & under	378	3.81
25 - 29	1,871	18.86
30 - 34	1,676	16.90
35 - 39	1,331	13.42
40 - 44	1,295	13.05
45 - 49	930	9.38
50 – 54	855	8.62
55 - 59	724	7.30
60 - 64	490	4.94
65 - 69	266	2.68
70 & over	104	1.05
Total	**9,920**	

1.4 Solicitors by gender by age group

	Male	Female
24 & under	34.13	65.87
25 - 29	33.62	66.38
30 - 34	38.72	61.28
35 - 39	46.81	53.19
40 - 44	57.45	42.55
45 - 49	64.30	35.70
50 – 54	69.12	30.88
55 - 59	77.49	22.51
60 - 64	84.90	15.10
65 - 69	89.85	10.15
70 and over	94.23	5.77

1.5 Law firms by size

Note: this table counts law firms only once even if they have more than one office. It includes interstate law firms that have a local office.

Note also that there were 9,920 solicitors in Queensland at 30 June 2013, 7,135 of whom were employed by law firms and 2,785 of whom practised in various other capacities as government lawyers, in-house counsel, etc.

Firm Size by band – No. of PC holders	No. of law firms	%	No. of PC holders	%
1	756	45.74	756	10.60
2 - 3	497	30.07	1,140	15.98
4 - 6	221	13.37	1,007	14.11
7 - 12	95	5.75	813	11.39
13 - 24	46	2.78	769	10.78
25 - 50	18	1.09	592	8.30
51 - 100	10	0.60	742	10.40
101 - 200	10	0.60	1,316	18.44
Total law firms / PC holders employed by law firms	**1,653**	-	**7,135**	-

1.6 Law firms by business structure

Note: this table counts law firms only once even if they have more than one office. It includes interstate law firms that have a local office.

Firm Type	No. of law firms	%
Partnerships / single practitioner firms	1,137	68.78
ILP	506	30.62
MDP	10	0.60
Total	**1,653**	

1.7 Location of law firm offices

Note: this table counts each office for a law firm. It include interstate law firms that have a local office.

	No. of law offices	%
Brisbane city	331	18.96
Brisbane north suburbs	280	16.04
Brisbane south suburbs	280	16.04
Gold Coast	303	17.35
Ipswich region	52	2.98
Toowoomba region	60	3.44
Western Queensland	10	0.57
Sunshine Coast	165	9.45
Hervey Bay to Gladstone	44	2.52
Rockhampton region	32	1.83
Mackay region	29	1.66
Cairns region	104	5.96
Townsville region	56	3.21
Total	**1,746**	

1.8 Barristers by gender

	Total	%
Male	861	78.92
Female	230	21.08
Total	**1,091**	

1.9 Barristers by age group

	Total	%
24 & under	7	0.64
25 - 29	32	2.93
30 - 34	99	9.07
35 - 39	111	10.17
40 - 44	164	15.03
45 - 49	168	15.40
50 – 54	168	15.40
55 - 59	149	13.66
60 - 64	109	9.99
65 - 69	59	5.41
70 and over	25	2.29
Total	**1,091**	

2. Throughput Summary

2.1 Enquiries by agency and year

Note: the QLS ceased dealing with enquiries in March 2011.

	12-13	11-12	10-11	09-10	08-09
Client enquiries from public received during year by LSC	1,287	1,323	1,501	1,848	1,488
PIPA enquiries from public received during year by LSC	45	-	-	-	-
Client enquiries from public received during year by QLS **	-	-	1,061	2,151	2,880
Total client enquiries from public	1,332	1,323	2,562	3,999	4,368
Ethical enquiries from practitioners during year by QLS	2,757	2,848	2,992	3,075	2,737

2.2 Complaints/investigation matters

Complaints/investigation matters	12-13	11-12	10-11	09-10
Matters on hand at 1 July	474	504	557	457
plus matters opened during the year	940	826	1,141	1,359
includes complaints received from public	811	737	1,041	1,185
includes investigation matters opened (PIPA)	23	5	23	119
includes investigation matters opened (all other)	108	85	77	55
less summary dismissals	317	250	507	500
less consumer disputes closed	51	49	51	71
less conduct matters closed	591	557	636	688
includes complaints received from public	472	492	539	528
includes investigation matters (PIPA)	21	10	30	111
includes investigation matters (all other)	98	55	67	49
Total complaints/investigation matters closed	**959**	**856**	**1,194**	**1,259**
Complaints/investigation matters on hand at 30 June	**455**	**474**	**504**	**557**

2.3 Online complaints and enquiries

Note: we commenced capturing online complaints and enquiries data in February 2009.

	12-13	Avg/ mth	11-12	Avg/ mth	10-11	Avg/ mth
Complaints received this year	206	17.17	185	15.42	260	21.67
Enquiries received this year	281	23.42	266	22.17	157	13.08
Total	**487**		**451**		**417**	

2.4 Timeliness in finalising complaints/investigation matters

Complaint type	Matters Completed	Time Band	Actual %	Cumulative%	Target %	Median days open (12-13)
Conduct matters	328	<= 6 months	55.50	55.50	75	182
	176	7 - 18 months	29.78	85.28	100	
	87	> 18 months	14.72	100	-	
Consumer disputes	49	<= 2 months	96.08	96.08	90	23
	1	2 - 5 months	1.96	98.04	100	
	1	> 5 months	1.96	100	-	
Summary dismissals	277	<= 1 month	87.38	87.38	90	20
	18	1 - 2 months	5.68	93.06	100	
	22	> 2 months	6.94	100	-	

2.5 Compliance audits

	12-13	11-12	10-11	09-10
Matters on hand at start of year				
self assessment audits	53	41	38	39
web-based surveys	34	-	0	7
on-site reviews	1	-	0	1
Total	**88**	**41**	**38**	**47**
Plus matters opened				
self assessment audits	117	116	111	104
web-based surveys	-	35	37	38
on-site reviews	18	1	2	1
Total	**135**	**152**	**150**	**143**
Less matters closed				
self assessment audits	129	104	108	105
web-based surveys	34	1	37	45
on-site reviews	1	-	2	2
Total	**164**	**105**	**147**	**152**
Matters on hand at end of period				
self assessment audits	41	53	41	38
web-based surveys	-	34	0	0
on-site reviews	18	1	0	0
Total	**59**	**88**	**41**	**38**

2.6 Prosecutions

	12-13	11-12	10-11	09-10	08-09
On hand at start of year	41	25	28	31	44
Opened during year	50	32	21	20	21
Closed during year	26	16	24	23	34
On hand at end of year	65	41	25	28	31

2.7 Civil litigation matters

	12-13	11-12	10-11	09-10	08-09
On hand at start of year	2	1	2	2	1
Opened during year	-	1	3	-	1
Closed during year	1	-	4	-	-
On hand at end of year	1	2	1	2	2

2.8 Complaints about us

	12-13	11-12
On hand at start of year	-	-
Opened during year	2	3
Closed during year	2	3
On hand at end of year	-	-

2.9 Grievances - Reconsiderations

	12-13	11-12
On hand at start of year	1	3
Opened during year	11	9
Closed during year	12	11
On hand at end of year	-	1

2.10 Grievances - Judicial review

	12-13	11-12
On hand at start of year	1	1
Opened during year	-	1
Closed during year	1	1
On hand at end of year	-	1

2.11 Grievances - Ombudsman

	12-13	11-12
On hand at start of year	3	1
Opened during year	3	10
Closed during year	4	8
On hand at end of year	2	3

2.12 Grievances - CMC

	12-13	11-12
On hand at start of year	-	1
Opened during year	-	-
Closed during year	-	1
On hand at end of year	-	-

2.13 Privacy and RTI applications

	12-13	11-12
On hand at start of year	3	4
Opened during year	14	10
Closed during year	14	11
On hand at end of year	3	3

3. Assessment and referral

3.1 Assessment summary

	12-13	% 12-13	% 11-12	% 10-11	% 09-10
New complaints/investigation matters allocated for assessment during the year	811				
Of these:					
currently under assessment as at 30 June	8	0.99	7.33	6.44	8.04
number of new matters assessed this year	803	99.01	92.67	93.56	91.96
Of these:					
number summarily dismissed	288	35.87	30.25	46.30	42.13
number assessed to be consumer disputes	52	6.48	7.49	5.03	6.11
number assessed to be conduct matters	456	56.79	62.26	48.15	51.76

3.2 Conduct complaints referred to the professional bodies

	12-13	% 12-13	11-12	% 11-12	10-11	% 10-11
Referred to QLS	211	41.78	181	37.87	210	38.04
Referred to BAQ	14	2.77	12	2.51	8	1.45
Total	**225**	**44.55**	**193**	**40.38**	**218**	**39.49**
Retained at LSC	280	55.45	285	59.62	334	60.51

3.3 Investigation matters referred to the professional bodies for investigation

	12-13	% 12-13	11-12	% 11-12	10-11	% 10-11
Referred to QLS	19	15.97	24	29.27	18	19.57
Referred to BAQ	2	1.68	-	-	4	4.95
Total	**21**	**17.65**	**24**	**29.27**	**22**	**24.52**
Retained at LSC	98	82.35	58	70.73	70	76.09

4. Closure Summary

4.1 Enquiries

4.1.1 Enquiries by enquirer type

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Client/former client	912	68.42	67.65	73.54	72.04
Non client	278	20.86	20.86	13.39	13.72
Solicitor	70	5.25	3.17	2.42	3.25
Third party	24	1.80	3.25	5.82	5.90
Solicitor for client	13	0.98	1.13	-	-
Beneficiary	11	0.83	2.49	2.03	-
Executor	1	0.08	0.91	1.72	-
All other 'enquirer types' combined	24	1.80	0.54	1.09	5.10
Total	**1,333**				

4.1.2 Enquiries by outcome

Note: we introduced two new closure codes (matter unable to be resolved and negotiated remedial action) in 2011-12 and replaced three codes we used previously (enquirer satisfied, listened to callers concerns and mediation attempted).

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Matter unable to be resolved	285	21.38	16.86	-	-
Negotiated remedial action	231	17.33	16.93	-	-
Provided referral for legal advice or other assist	216	16.20	18.59	13.74	14.22
Provided advice/help re making a complaint	165	12.38	14.44	13.58	13.64
Recommended direct approach to firm about concerns	118	8.85	12.24	9.88	13.07
Lost contact with complainant/enquirer	94	7.05	4.69	7.92	5.77
Provided information	78	5.85	5.52	13.82	11.64
Provided information about LSC to lawyer	57	4.28	-	-	-
Explained concerns are outside jurisdiction	53	3.98	5.74	2.69	-
Enquirer satisfied	-	-	-	12.88	13.44
Listened to callers concerns	-	-	-	11.48	13.29
Mediation attempted	-	-	-	6.40	4.32
All other 'outcomes' combined	36	2.70	4.99	7.61	10.59
Total	**1,333**				

4.1.3 Enquiries by area of law

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Family law	282	21.16	22.37	21.12	20.06
Conveyancing	199	14.93	12.62	10.23	13.04
Deceased estates or trusts	141	10.58	12.17	12.30	11.97
Personal injuries /Workcover litigation	137	10.28	9.37	9.02	8.75
Litigation	77	5.78	6.27	6.05	6.55
Commercial /company law	52	3.90	3.93	4.22	4.82
Criminal law	50	3.75	3.48	4.72	4.25
Property law	34	2.55	3.63	2.54	3.32
Administrative law	25	1.88	-	-	-
Leases/mortgages	17	1.28	-	-	-
Bankruptcy and insolvency	12	0.90	-	-	-
Immigration	11	0.83	-	-	-
Building/construction law	11	0.83	-	-	-
All other 'areas of law' combined	285	21.38	26.15	29.82	27.24
Total	**1,333**				

4.1.4 Enquiries by nature of the enquiry

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Costs	418	31.36	35.45	34.78	31.11
Quality of service	214	16.05	17.23	14.99	17.74
Communication	176	13.20	13.15	9.13	9.25
Ethical matters	135	10.13	12.85	10.07	10.62
Documents	56	4.20	5.14	4.10	2.50
PIPA	45	3.38	0.60	0.08	0.12
Trust funds	32	2.40	1.81	1.87	2.05
Compliance	28	2.10	1.36	0.94	1.20
Personal conduct	8	0.60	0.53	0.43	0.37
Advice	1	0.08	0.38	4.10	7.72
All other 'natures of enquiry' combined	220	16.50	11.50	19.51	17.32
Total	**1,333**				

4.2 Summary dismissals

4.2.1 Summary dismissals by area of law

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Family law	70	22.08	26.80	23.47	23.40
Deceased estates or trusts	42	13.25	10.40	9.66	8.60
Litigation	29	9.15	9.20	9.86	6.40
Commercial law	25	7.89	4.40	6.51	7.00
Conveyancing	19	5.99	9.60	6.51	7.80
Personal injuries /Workcover litigation	17	5.36	6.80	6.11	6.00
Criminal law	12	3.79	6.00	6.51	8.80
Building/construction law	8	2.52	0.40	1.38	1.60
Administrative law	7	2.21	0.80	1.78	2.40
Property law	7	2.21	4.00	4.14	7.20
All other 'areas of law' combined	81	25.55	21.60	24.07	20.08
Total	**317**				

4.2.2 Summary dismissals by nature of matter

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Ethical matters	96	30.28	29.20	32.74	32.20
Quality of service	72	22.71	26.00	23.27	23.60
Costs	46	14.51	16.00	15.98	17.00
Communication	42	13.25	12.80	14.40	10.60
Trust funds	14	4.42	3.20	2.96	3.80
Compliance	13	4.10	2.80	2.76	5.60
Documents	7	2.21	1.60	1.97	1.20
All other 'natures of matter' combined	27	8.52	8.40	5.92	6.00
Total	**317**				

4.3 Consumer disputes

4.3.1 Consumer disputes by complainant type

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Client/former client	41	80.39	85.71	86.27	91.55
Non client	7	13.73	4.08	1.96	4.23
Third party	1	1.96	6.12	-	1.41
Solicitor	1	1.96	2.04	1.96	1.41
Solicitor for client	1	1.96	-	7.84	1.41
All other 'complainant types' combined	-	-	2.04	1.96	-
Total	**51**				

4.3.2 Consumer disputes by respondent type

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Solicitor	51	100	97.96	94.12	97.18
Barrister	-	-	-	5.88	
Law practice employee	-	-	2.04	-	2.82
Other	-	-	-	-	-
Total	**51**				

4.3.3 Consumer disputes by outcome

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Negotiated remedial action	23	45.10	44.90	31.37	38.03
Matter unable to be resolved	18	35.29	42.86	39.22	35.21
Complaint unfounded	6	11.76	8.16	23.53	16.90
Withdrawn	4	7.84	2.04	3.92	1.41
Recommended direct approach to firm about concerns	-	-	-	1.96	4.23
Outside of jurisdiction	-	-	-	-	1.41
All other 'outcomes' combined	-	-	2.04	-	2.82
Total	**51**				

4.3.4 Consumer disputes by area of law

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Conveyancing	16	31.37	22.45	33.33	29.58
Family law	9	17.65	22.45	11.76	15.49
Deceased estates or trusts	6	11.76	18.37	3.92	8.45
Leases /mortgages	4	7.84	4.08	1.96	1.41
Commercial /company law	3	5.88	4.08	11.76	5.63
Personal injuries /Workcover litigation	3	5.88	-	5.88	9.86
Litigation	2	3.92	2.04	9.80	2.82
Criminal law	1	1.96	6.12	3.92	2.82
Property law	-	-	2.04	5.88	7.04
All other 'areas of law' combined	7	13.73	18.37	11.76	16.90
Total	**51**				

4.3.5 Consumer disputes by nature of matter

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Costs	18	35.29	42.86	41.18	45.07
Quality of service	15	29.41	26.53	35.29	32.39
Ethical matters	8	15.69	12.24	9.80	-
Communication	5	9.80	14.29	5.88	9.86
Documents	1	1.96	2.04	5.88	5.63
All other 'natures of matter' combined	4	7.84	2.04	1.96	7.04
Total	**51**				

4.4 Conduct complaints

4.4.1 Conduct complaints by complainant type

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Client/former client	311	65.89	67.68	71.99	71.67
Non client	83	17.58	13.21	12.24	9.81
Solicitor	34	7.20	8.94	7.05	9.63
Solicitor for client	18	3.81	4.47	4.08	3.89
Third party	13	2.75	1.63	1.67	2.22
Beneficiary	5	1.06	1.63	0.56	-
Executor	4	0.85	-	-	-
Barrister	2	0.42	0.81	0.56	1.11
Government	-	-	0.41	0.93	0.19
QLS	-	-	0.20	0.37	0.37
All other 'complainant types' combined	2	0.46	1.02	0.56	1.12
Total	**472**				

4.4.2 Conduct complaints by respondent type

	12-13	% of total 12-13	% of total 11-12
Solicitor	427	90.47	89.43
Barrister	19	4.03	3.86
Other	13	2.75	1.83
Unlawful operator	9	1.91	2.44
Legal practitioner	3	0.64	0.41
Law practice employee	1	0.21	1.42
Corporation	-	-	0.61
Total	**472**		

4.4.3 Conduct complaints by outcome

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
No reasonable likelihood	271	57.42	61.79	62.71	62.59
No public interest	108	22.88	26.83	23.75	24.26
Referred to tribunal	58	12.29	5.89	3.71	3.15
Withdrawn/discontinued	20	4.24	1.63	5.75	4.63
Referred to other investigative process	8	1.69	1.02	-	2.78
Referred for civil litigation	3	0.64	1.63	1.86	-
Referred to LPC	2	0.42	-	0.19	0.74
Referred to Magistrates Court	-	-	0.41	1.30	-
Referred for criminal litigation	-	-	0.41	-	-
Referred to external agency	-	-	-	-	0.74
Closed – pending criminal proceedings	-	-	-	-	-
All other 'outcomes' combined	2	0.42	0.41	0.74	1.11
Total	**472**				

4.4.4 Conduct complaints by area of law

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Family law	117	24.79	20.93	20.41	19.07
Deceased estates or trusts	51	10.81	10.57	6.86	5.56
Conveyancing	49	10.38	8.33	9.65	13.52
Litigation	42	8.90	9.76	11.32	7.41
Criminal law	34	7.20	8.74	5.19	7.22
Commercial /company law	30	6.36	4.67	5.75	7.04
Personal injuries /Workcover litigation	30	6.36	9.96	7.79	10.19
Administrative law	16	3.39	1.02	1.48	0.93
Property law	15	3.18	3.46	6.12	8.33
Conduct not in the practice of law	8	1.69	1.83	1.67	-
Leases /mortgages	8	1.69	2.03	2.04	2.41
Trust account breaches	7	1.48	0.61	1.67	-
Immigration	5	1.06	-	-	-
Building /construction law	4	0.85	1.83	1.48	3.15
Bankruptcy and insolvency	3	0.64	0.81	1.11	1.48
Industrial law	1	0.21	1.22	0.74	0.19
All other 'areas of law' combined	52	11.02	14.23	16.70	13.52
Total	**472**				

4.4.5 Conduct complaints by nature of matter

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Quality of service	132	27.97	27.24	28.20	26.85
Ethical matters	122	25.85	24.80	25.42	22.04
Costs	78	16.53	21.54	20.04	18.52
Compliance	40	8.47	7.72	8.91	7.41
Communication	36	7.63	8.33	9.09	10.93
Trust funds	34	7.20	5.89	3.34	5.00
Documents	8	1.69	1.42	1.30	2.04
PIPA	7	1.48	0.41	1.30	2.59
Personal conduct	3	0.64	1.22	1.48	2.59
All other 'natures of matter' combined	12	2.54	1.42	0.93	2.04
Total	**472**				

4.5 Investigation matters

4.5.1 PIPA investigation matters by outcome

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
No public interest	17	80.95	100	76.67	62.16
No reasonable likelihood	4	19.05	-	20.00	19.82
Withdrawn	-	-	-	3.33	18.02
Referred to Tribunal	-	-	-	-	-
Total	**21**				

4.5.2 Non-PIPA investigation matters by outcome

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
No public interest	43	43.88	40.00	50.75	37.84
No reasonable likelihood	31	31.63	29.09	35.82	37.84
Referred to tribunal	18	18.37	12.73	8.96	16.21
Referred to other investigative process	4	4.08	3.64	-	-
Referred to LPC	1	1.02	-	-	2.70
Referred for criminal litigation	1	1.02	12.73	-	-
Opened in error	-	-	1.82	-	-
Withdrawn	-	-	-	1.49	2.70
Referred to Magistrates Court	-	-	-	2.99	-
All other 'outcomes' combined	-	-	-	-	2.70
Total	**98**				

4.5.3 Non-PIPA investigation matters by area of law

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Trust account breaches	27	27.55	29.09	35.82	35.14
Family law	5	5.10	3.64	2.99	-
Criminal law	5	5.10	5.45	8.96	-
Conduct not in the practice of law	4	4.08	14.55	1.49	-
Personal injuries /Workcover litigation	4	4.08	1.82	4.48	5.41
Litigation	3	3.06	3.64	2.99	2.70
Deceased estates or trusts	3	3.06	5.45	4.48	5.41
Conveyancing	2	2.04	7.27	4.48	5.41
Property law	2	2.04	-	-	-
Building/construction law	2	2.04	-	-	-
Immigration	1	1.02	-	-	-
Commercial /company law	1	1.02	-	2.99	2.70
Administrative law	-	0.00	-	-	2.70
All other 'areas of law' combined	39	39.80	29.09	31.34	40.54
Total	**98**				

4.5.4 Non-PIPA investigation matters by nature of matter

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Compliance	33	33.67	14.55	20.90	32.43
Trust funds	18	18.37	27.27	28.36	16.22
Ethical matters	13	13.27	20.00	17.91	13.51
Costs	9	9.18	12.73	19.40	13.51
Quality of service	9	9.18	9.09	4.48	2.70
Personal conduct	7	7.14	12.73	4.48	8.11
Communication	2	2.04	1.82	2.99	-
All other 'natures of matter' combined	7	7.14	1.82	1.49	13.51
Total	**98**				

4.6 Conduct matters returned by the professional bodies

4.6.1 Conduct matters returned by the professional bodies for review

	12-13	11-12	10-11	09-10
Returned from QLS	215	213	237	244
Returned from BAQ	6	14	14	15
Total	**221**	**227**	**251**	**259**

4.6.2 Conduct matters closed following return from the professional bodies for review

	12-13	% 12-13	11-12	% 11-12	10-11	% 10-11	09-10	% 9-10
Returned from QLS	204	34.5	202	36.3	214	33.6	236	34.3
Returned from BAQ	8	1.4	9	1.6	13	2	10	1.4
Investigated by LSC	379	64.1	346	62.1	409	64.4	442	64.3
Total	**591**		**557**		**636**		**688**	

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

	12-13	% 12-13	11-12	% 11-12	10-11	% 10-11	09-10	% 9-10
Returned from QLS	31	14.03	29	13.18	35	14.70	25	9.54
Returned from BAQ	-		-	-	4	28.57	2	16.67
Total	**31**		**29**		**39**		**27**	

4.6.4 Timeliness of finalisation of conduct matters by agency

Note: this table cross-references the median days conduct matters remained open from the date they were first opened as a conduct matter to the date they were closed and the agencies which conducted the investigations.

	12-13	11-12	10-11	09-10
Returned from QLS	240	332	309	252
Returned from BAQ	664	330	282	217
Investigated by LSC	156	165	133	90
Overall	182	219	176	140

4.7 Prosecution matters

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

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10	% of total 08-09
Solicitor	10	90.91	91.66	70.59	78.57	80.00
Barrister	-	-	8.34	17.65	14.29	20.00
All other respondent types	1	9.09	-	11.76	7.14	20.00
Total	**11**					

4.7.2 Prosecutions – heard and decided

	12-13	11-12	10-11	09-10	08-09	07-08
By Tribunal	9	11	9	11	21	5
By the Committee	-	-	5	2	6	6
By the Magistrates Court	1	-	2	1	-	-
By the Court of Appeal	1	1	1	-	3	-
By High Court	-	-	-	-	-	-
Withdrawn/discontinued/other	15	4	7	9	5	8
Total	**26**	**16**	**24**	**23**	**35**	**19**

4.7.3 Prosecutions by charge outcome

	12-13	11-12	10-11
Proved - professional misconduct	11	22	21
Proved - unsatisfactory professional conduct	5	12	15
Proved - LPA/PIPA offence	2	-	-
Dismissed after hearing	1	2	-
Withdrawn	3	1	13
Total	**22**	**37**	**49**

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

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Litigation	2	18.18	16.67	11.76	7.14
Trust account breaches	2	18.18	8.33	-	-
Conveyancing	1	9.09	-	17.65	21.43
Criminal law	1	9.09	-	5.88	-
Property law	1	9.09	8.33	5.88	-
Deceased estates or trusts	1	9.09	-	-	7.14
Immigration	-	-	-	-	-
Family law	-	-	8.33	11.76	21.43
Leases/mortgages	-	-	-	-	-
Commercial /company law	-	-	8.33	5.88	-
Personal injuries /Workcover litigation	-	-	8.33	5.88	14.29
Conduct not in the practice of law	-	-	16.67	-	-
All other 'areas of law' combined	3	27.27	25.01	35.31	28.57
Total	**11**				

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

	12-13	% of total 12-13	% of total 11-12	% of total 10-11	% of total 09-10
Ethical matters	3	27.27	33.33	41.18	42.86
Quality of service	3	27.27	16.67	5.88	7.14
Trust funds	2	18.18	-	-	-
Communication	1	9.09	8.33	5.88	14.29
Personal conduct	1	9.09	16.67	5.88	14.29
Compliance	-	-	8.33	23.53	21.43
Costs	-	-	-	-	-
All other 'natures of matter' combined	1	9.09	16.67	17.65	-
Total	**11**				

4.7.6 Prosecutions – Solicitors/Barristers by age group

	12-13	11-12	10-11	09-10	Total
24 & under	-	1	2	2	5
25 - 29	-	-	2	-	2
30 - 34	1	-	-	-	1
35 - 39	1	1	-	1	3
40 - 44	-	1	3	-	4
45 - 49	1	2	1	2	6
50 – 54	1	4	-	2	7
55 - 59	2	1	2	4	9
60 - 64	3	1	4	2	10
65 - 69	1	-	-	-	1
70 and over	-	-	1	-	1
Total	**10**	**11**	**15**	**13**	**49**

5 On hand summary as at 30 June

5.1 Complaints/Investigation matters

	12-13	11-12	10-11
Under assessment – awaiting assessment	25	30	47
Under assessment – awaiting further information	29	44	28
Total under assessment	**54**	**74**	**75**
Consumer disputes	7	4	3
Conduct complaints	333	335	378
Investigation matters – PIPA	7	6	12
Investigation matters – all other	54	56	37
Total conduct matters	**394**	**397**	**427**
Total complaints/investigation matters	**455**	**475**	**505**

5.2 Consumer disputes

	12-13	11-12	10-11
Mediation in progress	5	3	3
Under review/awaiting decision	2	1	0
Total	**7**	**4**	**3**

5.3 Conduct matters

	12-13	11-12	10-11
Investigation in progress	293	275	290
Under review	34	47	57
Awaiting decision	36	39	25
Pre-prosecution preparation	6	17	21
On hold/abeyance	25	19	34
Total	**394**	**397**	**427**

5.4 Compliance audits

	12-13	11-12	10-11
Self assessment audits	41	53	41
Web-based surveys	-	34	-
On-site reviews	18	1	-
Total	**59**	**88**	**41**

5.5 Prosecutions

	12-13	11-12	10-11	09-10	08-09
Assigned for prosecution	**19**	**11**	**4**	**4**	**5**
Tribunal					
Waiting to file	2	2	3	3	1
Waiting to serve	3	4	1	3	4
Waiting directions hearing	8	7	4	3	4
Waiting compulsory conference	10	5	1		
Waiting hearing/decision	22	10	11	6	10
Total	**45**	**28**	**20**	**15**	**19**
Committee					
Waiting to file	-	-	-	1	-
Waiting to serve	-	-	-	1	3
Waiting directions hearing	-	-	-	1	1
Waiting hearing/decision	-	-	-	3	1
Total	**-**	**-**	**-**	**6**	**5**
Magistrates Court					
Waiting to file	-	-	-	-	1
Waiting hearing/decision	-	1	1	2	1
Total	**-**	**1**	**1**	**2**	**2**
Under Appeal					
Decisions under appeal	1	1	-	1	-
Total	**65**	**41**	**25**	**28**	**31**

5.6 By agency

	12-13	11-12	10-11
LSC			
Complaints under assessment	54	74	75
Consumer disputes	7	4	3
Conduct matters	219	252	280
Self assessment audits	41	53	41
Web-based surveys	-	34	-
On-site reviews	18	1	-
Sub-total	339	418	399
QLS			
Conduct matters	160	140	138
BAQ			
Conduct matters	15	5	9
Total	**514**	**563**	**546**

6 Complaints by solicitor/law firm

Note: the term 'complaints' in the tables 6.1 - 6.8 includes consumer disputes, conduct complaints and investigation matters but excludes summary dismissals.

6.1 Complaints regarding solicitors as a proportion of the profession

	PC holders	law firms	law offices
Size of profession as at 30 June 2013	9,920	1,653	1,746
No of respondents for 2012-13 year	413	335	344
Percentage	**4.16**	**20.27**	**19.70**

6.2 Solicitors subject to complaint

	2012-13
1 complaint	348
2 complaints	33
3 complaints	12
4 complaints	9
5 complaints	2
between 6 and 9	8
between 10 and 14	1
15 and > complaints	-
Total	**413**

6.3 Law firms subject to complaint

	2012-13
1 complaint	238
2 complaints	60
3 complaints	20
4 complaints	7
5 complaints	4
between 6 and 9	5
between 10 and 14	1
15 and > complaints	-
Total	**335**

6.4 Solicitors subject to complaint by gender

Gender	No. of respondents	% of group total
Male	323	6.12
Female	90	1.94
Total	**413**	

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

6.5 Solicitors subject to complaint by age group

	No. of respondents	% of group total
24 & under	10	2.65
25 - 29	18	0.96
30 - 34	44	2.63
35 - 39	34	2.55
40 - 44	71	5.48
45 - 49	61	6.56
50 - 54	63	7.37
55 - 59	52	7.18
60 - 64	36	7.35
65 - 69	15	5.64
70 & >	9	8.65
Total	**413**	

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

6.6 Solicitors subject to complaint by law firm business type

	No. of respondent law firms	% of group total
Partnership/ sole practitioners	238	20.93
ILP	95	18.77
MDP	2	20.00
Total	**335**	

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

6.7 Solicitors subject to complaint by law firm size

No of PC holders	No. of respondent law firms	% of group total	Total complaints	% of total
1	116	15.34	165	32.23
2 - 3	97	19.52	149	29.10
4 - 6	53	23.98	84	16.41
7 - 12	31	32.63	44	8.59
13 - 24	22	47.83	39	7.62
25 - 50	5	27.78	13	2.54
51 - 100	7	70.00	13	2.54
101 - 200	4	40.00	5	0.98
Total	**335**		**512**	

* 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 complaint.

6.8 Solicitors subject to complaint by law office location

	No. of respondent law offices	% of group total
Brisbane city	70	21.15
Brisbane north suburbs	49	17.50
Brisbane south suburbs	51	18.21
Gold Coast	73	24.09
Ipswich region	10	19.23
Toowoomba region	8	13.33
Western Queensland	-	-
Sunshine Coast	35	21.21
Hervey Bay to Gladstone	11	25.00
Rockhampton region	6	18.75
Mackay region	6	20.69
Cairns region	13	12.50
Townsville region	11	19.64
Unclassified	1	-
Total	**344**	

* This table counts 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 complaint

7 Consumer Redress

Note: It is possible to have multiple remedies for a matter. The number of remedies may be greater than the number of matters within each of the following categories.

7.1 Enquiries

	12-13	$ 12-13	11-12	$ 11-12	10-11	$ 10-11
Apology	12	-	10	-	1	-
Financial redress/compensation	105	128,139	97	135,241	19	24,471
Redress - improved communications	84	-	75	-	29	-
Redress - other	54	-	51	-	20	-
Management system improvements	5	-	4	-	1	-
Training/mentoring/supervision	1	-	-	-	-	-
Made advertisement PIPA compliant	1	-	-	-	-	-
Total	**262**	**128,139**	**237**	**135,241**	**70**	**24,471**

7.2 Consumer disputes

	12-13	$ 12-13	11-12	$ 11-12	10-11	$ 10-11
Apology	2	-	5	-	3	-
Financial redress/compensation	12	23,290	9	8,027	9	5,693
Redress - improved communications	5	-	5	-	-	-
Redress - other	2	-	5	-	4	-
Total	**21**	**23,290**	**24**	**8,027**	**16**	**5,693**

7.3 Conduct matters

	12-13	$ 12-13	11-12	$ 11-12	10-11	$ 10-11
Apology	56	-	38	-	16	-
Financial redress/compensation	46	242,977	54	426,127	33	177,854
Redress - improved communications	6	-	9	-	3	-
Redress - other	29	-	24	-	10	-
Management system improvements	39	-	35	-	31	-
Training/mentoring/ supervision	18	-	8	-	5	-
Made advertisement PIPA compliant	22	-	12	-	27	-
Total	**216**	**242,977**	**180**	**426,127**	**125**	**177,854**

7.4 Prosecutions

	12-13	$ 12-13	11-12	$ 11-12	10-11	$ 10-11
Employee not to be employed	-	-	-	-	-	-
Fined (disciplinary body – USP / PMC)	4	18,000	7	27,500	5	15,510
Fined (Magistrates Court – LPA offence)	1	1,400	-	-	2	5,750
Ordered to apologise	-	-	-	-	1	-
Ordered to pay compensation	3	17,700	3	90,000	6	60,207
Ordered to make other redress	-	-	-	-	-	-
Ordered to undertake training or be supervised	-	-	3	-	-	-
Reprimanded	6	-	9	-	10	-
Struck off	4	-	1	-	2	-
Suspended	-	-	-	-	-	-
Withdrawn/reconsidered – apology	5	-	-	-	-	-
Withdrawn/reconsidered – financial redress	3	23,139	-	-	-	-
Withdrawn/reconsidered – other redress	1	-	-	-	-	-
Total	**27**	**60,239**	**23**	**117,500**	**26**	**81,467**

8 Complaint Avoidance

8.1 Avoidability of 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	12-13	% 12-13	11-12	% 11-12	10-11	% 10-11
Number assessed to be unavoidable	183	28.50	183	30.20	221	32.22
Number assessed to be avoidable	459	71.50	423	69.80	465	67.78
Total	**642**		**606**		**686**	

8.2 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:	% 12-13	% 11-12	% 10-11
a) the complainant had ulterior motives	5.95	10.7	9.42
b) the complainant wouldn't take advice	-	2.67	4.48
c) the complainant had unrealistic expectations and/or made unreasonable demands	17.84	26.20	22.42
d) the complainant misunderstood the obligations of practitioners acting for the other side	5.41	12.83	7.62
e) the 'problem' is inherent in the adversarial system of justice	5.41	4.81	7.62
f) the complaint was baseless and could not have been avoided (eg: by better communication)	15.68	9.63	14.35
g) of some reason other than the above	49.73	33.16	34.08

8.3 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	% 12-13	% 11-12	% 10-11	% 09-10	% 08-09
Work practices	33.40	24.39	36.29	44.74	28.88
Communication	24.47	27.05	23.09	24.04	25.74
Costs	21.70	26.61	22.06	15.26	18.66
Trust accounts	8.09	7.10	2.68	4.74	10.41
Conflict of interest	4.47	3.33	2.47	2.98	4.13
Timeliness	3.40	5.32	7.01	4.91	6.09
Supervision	1.49	2.00	2.06	1.40	2.16
Record keeping	1.49	1.11	1.24	0.35	1.18
Liens and transfers	0.85	2.00	1.65	0.88	2.75
Undertakings	0.64	1.11	1.44	0.70	-