

Legal Services Commission



Annual Report 2010 – 11



31 October 2011

The Honourable Paul Lucas MP
Attorney-General, Minister for Local Government and Special Minister of State
State Law Building
Ann Street
Brisbane Qld 4000

Dear Attorney

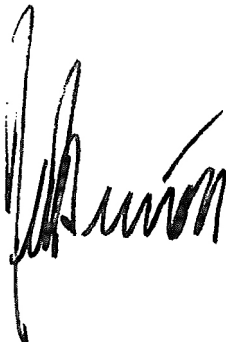
I am pleased to give you the Legal Services Commission's annual report for the reporting year 2010-11, our seventh annual report since the Commission commenced on 1 July 2004.

The *Legal Profession Act 2007* (the Act) requires that the report 'deals with the system established under the Act for dealing with complaints'. It also requires that the report sets out the performance criteria I have developed in conjunction with the staff of the Commission for dealing with complaints and my assessment of our performance against those criteria. I believe the report meets those requirements.

The Act doesn't require it, but the report also describes the Commission's performance of our other core business. That includes our roles in conducting compliance audits of incorporated legal practices and undertaking practical and relevant education, project and research activities which promote and support high standards of conduct in the provision of legal services.

I have taken the opportunity also to describe what 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

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Our core business and values

Our most fundamental purposes are to promote, monitor and enforce high standards of conduct in the provision of legal services, and ultimately to help protect and promote public confidence in the legal system, the administration of justice and the rule of law.

We will achieve our purposes by:

- giving users of legal services an independent, timely, fair and reasonable means of redress for complaints;
- investigating complaints which involve an issue of unsatisfactory professional conduct, professional misconduct or a contravention of relevant legislation;
- initiating ‘own motion’ investigations into conduct we have reasonable grounds to believe may involve an issue of professional misconduct or other significant wrongdoing;
- supporting and as appropriate auditing law practices to help them develop and maintain appropriate management and supervisory systems and an ‘ethical infrastructure’;
- initiating disciplinary and other enforcement action when it is justified by the evidence after investigation and in the public interest;
- communicating what we learn as we go about our work and undertaking projects and research relevant to our work; and
- creating and maintaining a productive, motivating and professional work environment.

We will be well-informed, focussed and determined. We will be fair and accountable. We will not impose any needless regulatory burden on lawyers and law practices but direct our regulatory resource to where it is most needed and can have the most beneficial impact in the public interest. We will give a voice to users of legal services, particularly the users who are least able to assert their

legitimate interests themselves. We will value our independence but equally we will be responsive, open and consultative.

Commissioner's Overview



We summarised the work we do and the values we bring to our work at the very front of the report, under the heading *Our core business and our values*. We describe throughout the main body of the report how we've performed over the past year, the factors we take into account in assessing our performance and our assessment of our performance against those criteria. We hope we've done so in a way that enables readers to come to informed but independent views of their own. We have taken the opportunity also to comment here and there about ways we believe the regulatory arrangements we administer could be amended and strengthened to achieve their purposes more effectively and efficiently. Those amendments may not be far off. We hope and expect them to come to fruition on the commencement of the proposed and (we hope imminent) national legal profession reforms.

The year in review

We are responsible primarily for administering the system established under the *Legal Profession Act 2007* (the Act) for dealing with complaints about the provision of legal services. The system for dealing with complaints has two overlapping purposes: to provide complainants a means of redress for

complaints and to promote, monitor and enforce appropriate standards of conduct in the provision of legal services, including by holding lawyers accountable when justified by the evidence after investigation by initiating disciplinary proceedings.

We should say at the outset we don't shy away from initiating disciplinary proceedings but we believe we best achieve our purposes by taking a preventative and ethical capacity building approach wherever possible and appropriate in preference to a punitive or 'gotcha' approach. We undertake our regulatory responsibilities accordingly. That is not always recognised by lawyers but as we illustrate throughout the report is readily apparent in the way we go about our work.

Notably the number of complaints we receive has flatlined over recent years at a number (1,100 give or take a few) only two thirds the number our predecessor received over the two years before the Legal Services Commission (LSC) commenced in 2004. The number of lawyers potentially subject to complaint has increased over that same time by roughly two thirds. This means that the complaint rate per practitioner has more than halved since our inception and that is good news by any measure. We unpack the raw data later in the report, in the chapters headed *Complaints*, *Own motion investigations* and *Discipline and enforcement* but in summary:

- we received and dealt with 2562 inquiries. We received 1041 formal written complaints from members of the public and initiated 100 own motion investigations. We finalised 1097 complaints and 97 own motion investigations, a clearance ratio overall of 105%;
- we took no further action on ('summarily dismissed') 507 (or 46%) of the 1097 complaints we finalised during the year; dealt with 51 (or 5%) as consumer disputes

(that is to say, complaints that did not involve an issue of unsatisfactory professional conduct or professional misconduct); and dealt with 539 (or 49%) as conduct complaints (that is to say, complaints that involved an issue of unsatisfactory professional conduct or professional misconduct). Hence we dealt with 636 conduct matters in total (539 conduct complaints and 97 own motion investigations);

- we finalised 368 conduct matters after investigation on the basis that there was no reasonable likelihood a disciplinary body would make a finding of unsatisfactory professional conduct or professional misconduct. We finalised 185 on the basis that, while they may have involved an issue of unsatisfactory professional conduct or professional misconduct, no public interest would be served by initiating disciplinary or other enforcement proceedings. That is because the misconduct was only of a minor kind and we secured the lawyer's agreement to do all they reasonably could to put things right with the complainant or otherwise to fix the problem. It means we achieved our purposes by persuasion, without having to exercise our option to initiate disciplinary proceedings. We achieved the same positive result in many hundreds of other matters we dealt with informally, as inquiries rather than complaints; and
- we finalised only 36 conduct matters by initiating disciplinary or other enforcement proceedings. Those 36 matters involved 19 lawyers (or less than one quarter of one per cent of all Queensland practitioners) and two people we believed to be 'unlawful operators' (that is to say people who engaged in legal practice when they were not entitled to do so because they did not have practicing certificates).

Notably we secured financial redress for 67 inquirers and complainants totalling \$269,225. We secured some other appropriate redress for 65 inquirers and complainants (including for example the waiver of a lien and the release of the client file) and formal written apologies for 21 inquirers and complainants. Further we secured agreements from 32 lawyers to make improvements to their practice management systems; from 27 lawyers to amend their advertising to bring it into conformity with the restrictions on the advertising of personal injury services under the *Personal Injuries Proceedings Act 2002* (PIPA); and from five lawyers to undertake some further training or to be supervised or mentored. That is all good news but equally the data suggests ways the system might be improved:

- it would have been preferable had we been able to deal with most if not all the 185 complaints we finalised on the basis that no public interest would be served by initiating disciplinary or other enforcement proceedings by dealing with them not as conduct complaints that alleged some minor misconduct but as consumer disputes. That would have enabled us to achieve the same and perhaps better outcomes more quickly and with less formality and less angst. We are effectively precluded from doing so now because we have no powers in relation to consumer disputes other than to 'suggest to the parties that they enter into a process of mediation' - and so no powers to ensure that complainants get the redress they may legitimately be owed. Our current arrangements make all but voluntary redress wholly contingent on a finding by a disciplinary body of unsatisfactory professional misconduct or professional misconduct. We have argued for some years now that we should have powers not merely to suggest but to require the parties to a consumer dispute to enter into negotiations to try to resolve the dispute informally and, if those efforts fail to

resolve the dispute, to determine the outcome by deciding what we believe to be a fair and reasonable outcome in all the circumstances of the complaint.

- similarly it would have been preferable had we been able to deal with the many inquiries and complaints we receive that describe solicitor client disputes. We have no jurisdiction to deal with, hence no option but to ‘summarily dismiss’ the 81 formal written complaints we received in 2010-11 which described a costs dispute and instead refer those 81 complainants to the appropriate court. Similarly we could do nothing but ‘refer on’ another 891 people who expressed their concerns about a lawyer’s costs informally, by way of telephone or other inquiry - almost one in three of the people who made inquiries of us during the year. It would be quicker, simpler and less confusing from a consumer’s point of view if the LSC was a ‘one stop shop’ for receiving and dealing with complaints about lawyers, including complaints disputing a lawyer’s costs.

The complaints data tells us a lot more, including that it focuses regulatory attention disproportionately on lawyers who work in sole practice and small law firms and who practice only certain areas of law, to the extent that lawyers who work in larger law firms and other areas of law are only nominally subject to regulatory scrutiny. The data tells us in other words that the system for dealing with complaints, while it gives users of legal services a means of redress for complaints, is an ineffective and inefficient means of promoting, monitoring and enforcing appropriate standards of conduct in the provision of legal services and protecting consumers more generally.

We reflect on these issues in the chapter headed *Compliance Audits*. We describe the regulatory arrangements that apply to incorporated legal practices and argue that they

should be extended to all law firms, incorporated or otherwise. We argue that would give us the regulatory tools we need to engage with all lawyers and law firms, not merely a subset of lawyers and law firms, and tools that serve to prevent and not merely respond to misconduct, that are directed to ethical capacity building not merely deterrence by threatening professional discipline, and that focus regulatory attention on the conduct not only of individual lawyers but of law firms and the adequacy of their management systems and governance arrangements – on their ‘ethical infrastructure’.

We complement that discussion in the chapter headed *Education, projects and research* by describing other work we’ve done to support budding lawyers, experienced lawyers and law firms to reflect upon ethical issues that arise in the everyday practice of law, not least by developing several innovative online tools specifically to that end and that have attracted favourable comment internationally. We also describe our commitment over the coming year and beyond to develop and publish a series of regulatory guides. The guides will be designed to help both lawyers and users of legal services better understand how a lawyer’s professional obligations apply in particular factual circumstances where their application may be uncertain and, in particular, the factors we will take in to account in exercising our responsibilities when we’re dealing with a lawyer’s conduct in those circumstances. We will start with a series of guides about various billing practices we see at the LSC and that cause us concern.

Finally we describe in the chapter headed *Our office* what we’ve done internally to better support us to do our work well and to achieve the standards of transparency and accountability to which we aspire.

The proposed and imminent national legal profession reforms

The Council Of Australian Governments (COAG) established a National Legal Profession Reform Taskforce in April 2009 to prepare nationally uniform legislation for the regulation of the legal profession and to recommend the regulatory architecture that will be required to implement that legislation. The Taskforce embarked upon a process of consultation and gave COAG in December 2010 a draft *Legal Profession National Law* (the draft Law). COAG considered the draft Law at its meeting in February 2011 and agreed in principle to settle the reforms by May 'with the exception of Western Australia and South Australia.' COAG next addressed the issue in August but the communiqué following the meeting made no mention of it. Several newspapers have subsequently reported however that Tasmania and the Australian Capital Territory had 'backed away'; that Victoria, New South Wales, Queensland and the Northern Territory had agreed to go it alone; and that the four participating jurisdictions would resolve any remaining issues by 1 October.

The delay and uncertainty has been frustrating not least because the draft Law includes significant and welcome consumer protection reforms that will add powerfully to our capacity to achieve our consumer protection purposes and to achieve them more efficiently and effectively. The draft Law fills the 'gaps' in our current regulatory arrangements that we described just a few paragraphs back. It will give us:

- the obligation and not merely the discretion we have now to try to settle consumer disputes as soon as practicable and informally, by helping the parties to negotiate an agreement and, crucially, power when the parties can't come to an agreement to resolve consumer disputes by

making 'binding determinations'. It will enable us to caution lawyers subject to complaint or order them to apologise, to redo the work, to reduce or waive their fees, to pay compensation of up to \$25,000, or to undertake training or be supervised – whatever we believe be to a fair and reasonable outcome in all the circumstances of the complaint. We have advocated reforms to this effect for several years now for the reasons I have already mentioned;

- the additional responsibility (currently vested in the courts) to resolve solicitor client costs disputes where the total costs payable are less than \$100,000 or the amount in dispute is less than \$10,000. The draft Law defines solicitor client cost disputes to be a species of consumer matter and will require us to deal with them accordingly (as just described). This is an important reform which will simplify the 'regulatory maze' for users of legal services by making the LSC a 'one stop shop' for complaints about lawyers, including complaints about a lawyer's costs; and
- a broader power to conduct compliance audits, by extending our current power to conduct a compliance audit of an incorporated legal practice to any law practice, whatever its business structure, provided we have reasonable grounds to do so. Further, it will give us the additional and entirely new power provided we have reasonable grounds to do so to give a law practice a management systems direction requiring it to implement appropriate management systems to ensure its compliance with its professional obligations. These are important reforms also and reforms we have long advocated, but reforms which for the reasons we describe under the heading Compliance Audits fall short of what we'd hoped; and

- the additional and entirely new power (subject to appeal) to make a finding that a lawyer has engaged in unsatisfactory professional conduct and to caution or reprimand the lawyer accordingly, or to impose conditions on his or her practicing certificate, to order him or her to redo the work subject to complaint, to reduce or waive the fee or to pay a fine of up to \$25,000. This will be helpful reform also. It will expedite the resolution of minor disciplinary matters and enable them to be dealt with at a greatly reduced cost, both to the respondent lawyers and to the LSC as the prosecuting authority. It is a power that will be rarely used in my view but for matters that are uncontroversial and in large measure uncontested.

Notably the draft Law that was published in December 2010 required that responsibility for dealing with complaints and for conducting compliance audits and trust account investigations (and related external interventions) be vested at the state and territory level in an independent statutory body or office holder. This requirement would have had the effect in Queensland of requiring responsibility for conducting trust account investigations to be transferred from the Queensland Law Society (QLS) to the LSC.

Notably (and regrettably) the more recent version of the draft Law which was published only in September (but is dated 31 May 2011) requires only that responsibility for dealing with complaints be vested in an independent statutory body or office holder. I am hopeful as I've advocated for some time now that the decision will be taken locally to transfer responsibility for trust account investigations as originally envisaged and to consolidate responsibility for dealing with complaints and conducting compliance audits and trust account investigations under the one management structure.

This would be another important reform (and a reform that is fully consistent with the QLS's decision in its Strategic Plan 2011-12 to focus on its membership service as opposed to its regulatory role). That is because, firstly, the three functions are all fundamental consumer protection functions – they are all investigative and intelligence gathering functions which are directed to the same ultimate purpose of promoting, monitoring and enforcing appropriate standards of conduct in the provision of legal services. They sit best with statutory bodies which exist to serve the public interest than professional associations which exist to serve the interests of their members.

Secondly the three functions are complementary. Consolidating responsibility for all three functions under one management structure would enable us to pool the resources, information and perspective at our disposal to better identify and target the lawyers and law firms most likely to put consumers and the public at risk and to design and implement appropriately targeted and coordinated and preventative responses. That is an important regulatory goal. We should always direct our scarce regulatory resource to where it is most needed and can have the most beneficial impact in the public interest.

Our key strategic challenge over the period ahead is to ready ourselves to exercise these additional powers and responsibilities immediately the National Law commences, and to exercise them fully and effectively from day one, consistent with our purposes and values. and values.

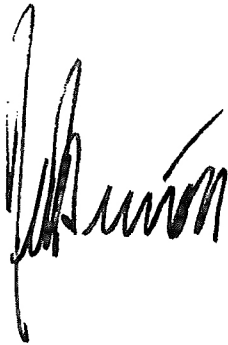
Acknowledgements

It remains to thank the many people who have contributed to the work of the LSC during the past year. I especially want to thank the Attorney-General, the Hon Paul Lucas and his predecessor as Attorney-General, the Hon Cameron Dick; the Director-General, Philip

Reed and the Acting Director-General prior to his appointment, Phil Clarke; the many staff of the Department of Justice and Attorney-General who provide us with financial management and systems support behind the scenes, and similarly our data systems consultant, Stephen Pickering of Genesys Software Solutions.

We have respectful and productive working relationships with the office bearers and staff of the (QLS) and the Bar Association of Queensland (BAQ) and I thank them for that. I especially want to thank the members of the LSC's Reference Group for making themselves available to meet with me both individually and as a group and giving me invaluable feedback and advice.

Finally I want to acknowledge and thank the staff of the LSC. They do demanding and often thankless work and they do it well. They have a lot to be proud of, not least for making the LSC such a good place to come to work every day.

A handwritten signature in black ink, appearing to read 'John Briton', with a stylized, cursive script.

John Briton
Legal Services Commissioner

Complaints

The Act describes the main purposes of the system for dealing with complaints to be ‘to provide for the discipline of the legal profession; to promote and enforce the professional standards, competence and honesty of the legal profession; to provide a means of redress for complainants about lawyers and to otherwise protect members of the public from unlawful operators.’

The Act establishes the LSC to receive and deal with complaints and authorises us to deal with complaints not only about lawyers (people who are appropriately legally qualified and who have been admitted to the legal profession in accordance with the Act) and 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) but also law practice employees and people we believe may have contravened the restrictions on the advertising of personal injury services and the prohibition of touting under chapter 3, part 1 of the PIPA.

We describe the system established under the Act for dealing with complaints in comprehensive detail at Appendix 1 and will not repeat ourselves here. We note however that the Act requires us to give help to members of the public in making complaints and that we do that primarily by responding to inquiries. Most inquiries are made by telephone but some are made by post; some electronically, either by email or on our online inquiry and complaint form; and some in person.

Similarly the Act requires us to assess a complaint before proceeding to deal with it. We describe the process at Appendix 1. We have to decide firstly if we have jurisdiction to deal with the complaint. We take no further action on (or ‘summarily dismiss’) complaints that fall outside our jurisdiction except to refer the complainants elsewhere as appropriate. We

have to decide secondly, if we do have jurisdiction to deal with a complaint, whether to deal with it as a consumer dispute or conduct complaint. Conduct complaints are complaints which involve a disciplinary issue or other contravention of the Act or PIPA; consumer disputes are disputes between a person and a law practice which do not involve a disciplinary issue or other contravention of the Act.

The assessment process results in one or other of three possible outcomes: we either summarily dismiss a complaint or, if we proceed to deal with the complaint, we deal with it as either a consumer dispute or a conduct matter. We report accordingly about four discrete kinds of matter: inquiries, summary dismissals, consumer disputes and conduct matters. We caution however about over interpreting the complaints data: the Act requires complaints to be made in writing and this means that many of the inquiries we receive are complaints by another name. That is because no useful purpose is served by asking people who ring us to ‘complain’ about a lawyer to come back to us in writing if we believe having listened to their concerns that there is a good chance we can resolve them with a few quick telephone calls. Of course those ‘inquirers’ remain fully entitled to make a formal written complaint if as it turns out we can’t resolve their concerns informally in that way.

Notably the Act requires us to deal with complaints ‘as efficiently and expeditiously as is practicable’ and we will report our performance against those among other measures. We have regard also to our ‘clearance ratio’ (the number of complaints we finalise compared to the number we receive during the year); the outcomes we achieve (including in particular the extent and kinds of redress we have secured for complainants); the extent to which we identify and act upon systemic issues; and of course the feedback we

receive from both complainants and respondents. We reflect over the pages that follow on our performance against these measures.

Some key facts about complaints

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

- we received 1041 complaints in 2010-11 (notably 260 or 25% of them online), much the same number as we have

received over each of the previous five years but significantly fewer than the 1450 complaints we received during the first year following our inception on 1 July 2004. That number was already significantly fewer than the number the QLS received over each of the two years immediately prior our inception (1621 and 1601 respectively).

Notably, while the number of complaints has fallen by 31% over those seven years, the number of lawyers potentially subject to complaint has risen by 65% - see tables 1 and 2. There was one complaint for every 3.4 practitioners in 2003-04 and one for every 8.7 in 2010-11 - see table 4. That is good news by any measure.

Table 1
Number of inquiries & complaints received

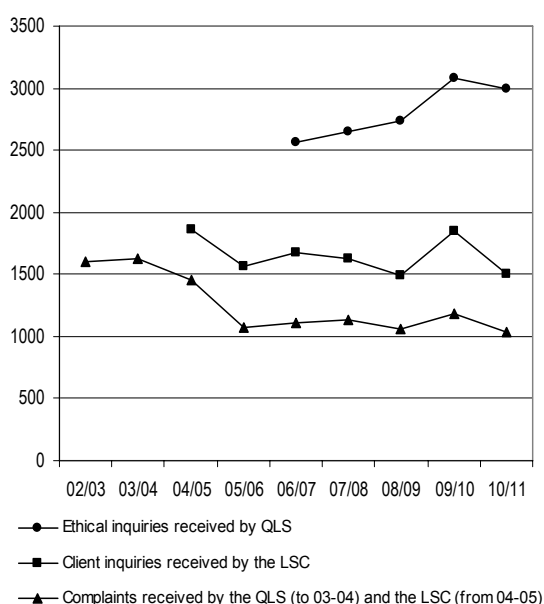


Table 2
Number of practitioners

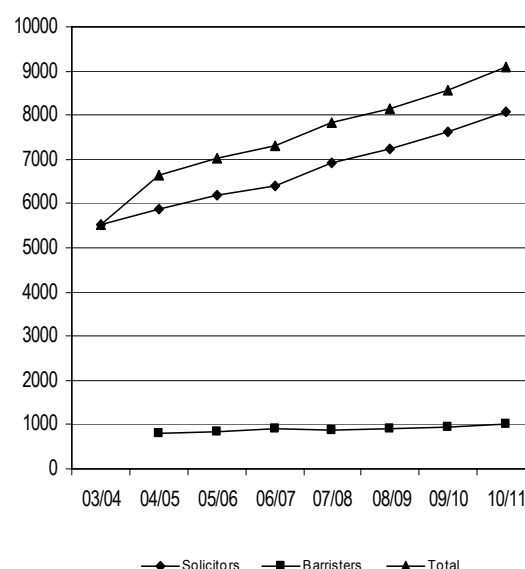
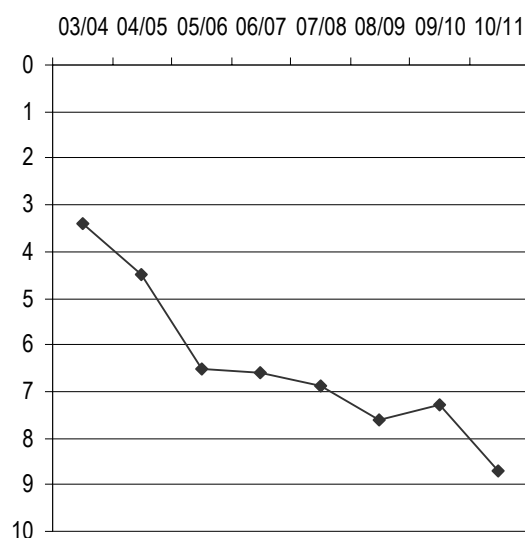


Table 3
Complaint rate per practitioner per year



- we finalised 1097 complaints in 2010-11. We achieved a clearance ratio of 105% compared to 93% in 2009-10, 97% in 2008-09 and 103% in 2007-08. This is good news also.
- there were 8066 Queensland solicitors at 1 July 2010 and 1020 barristers. We finalised 1059 complaints and own motion investigations against solicitors in 2010-11, or roughly one for every eight solicitors; and 59 against barristers, or roughly one for every 17 barristers.
- a small number of solicitors are subject to multiple complaints. We dealt with 42 different solicitors in relation to consumer disputes, 40 of them about one matter only and two about two matters. We dealt with 420 different solicitors about conduct matters, 386 of them about one matter only, 48 about two matters; 14 about three matters and 12 about four or more matters.

- a disproportionately large proportion of complaints against barristers are complaints against that unknown but small number of barristers who accept direct briefs. We were dealing with 28 matters against barristers at 24 November 2010, for example, and 9 of those complaints arose out of direct briefs.
- female lawyers this year as in years past were almost three times less likely than male lawyers per head of population in the profession to be subject to complaint - see table 4. Similarly lawyers remain increasingly more likely to be subject to complaint depending on age group and experience - see table 5.

These are facts but we should be careful not to jump to conclusions. It may be, for example, that the lower complaint rates against female than male lawyers is as much a function of their age and the size of the law firms they work for as their gender. Certainly they are younger than their male counterparts on average and concentrated in the larger law firms.

Table 4 - Solicitors subject to conduct complaints by gender

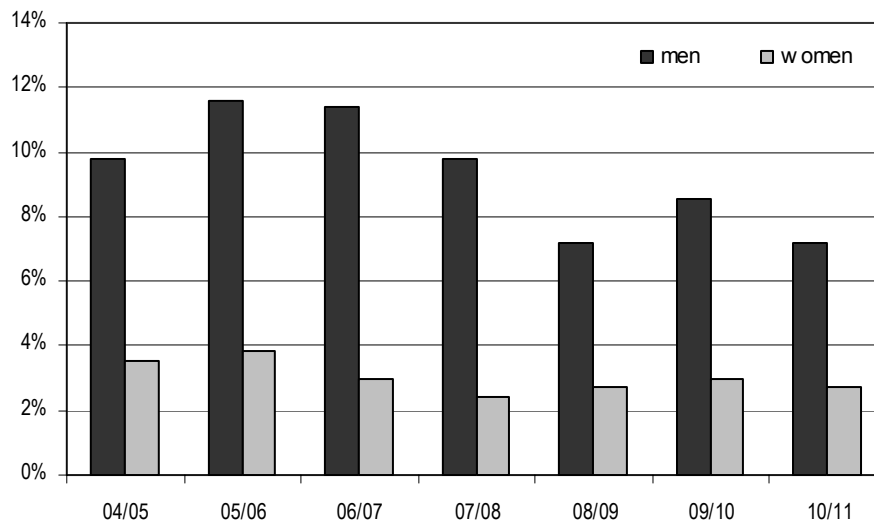


Table 5 - Solicitors subject to conduct complaints by age group

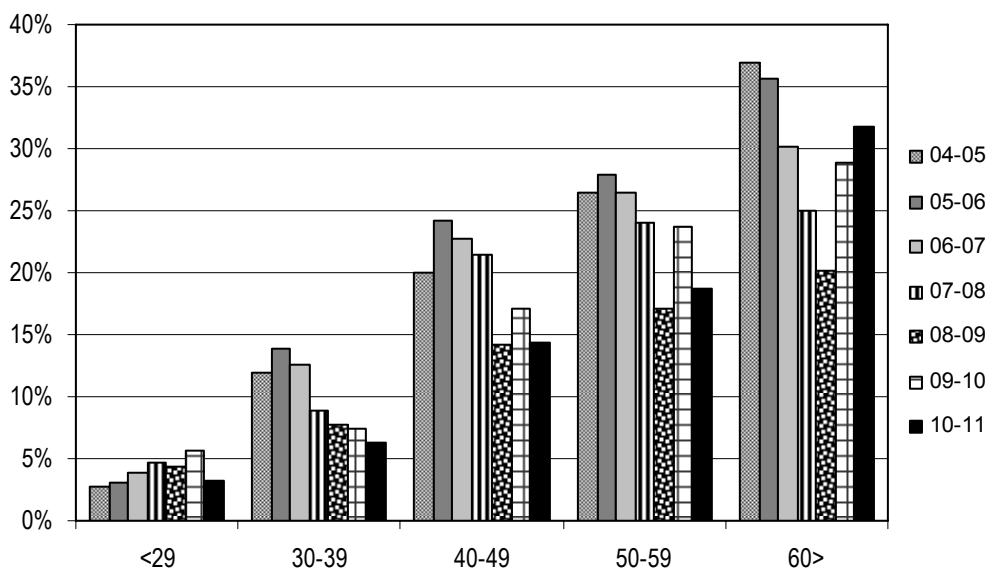


Table 6
Distribution of solicitors by law firm size

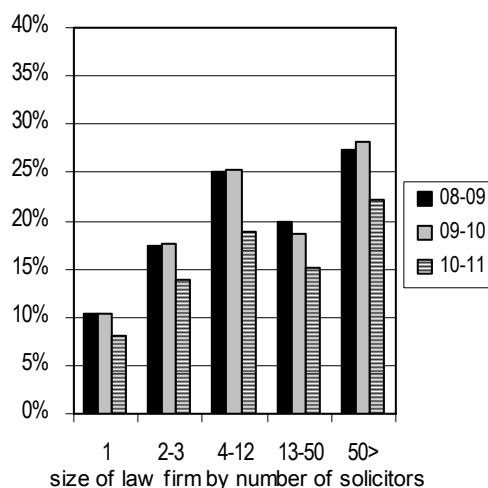
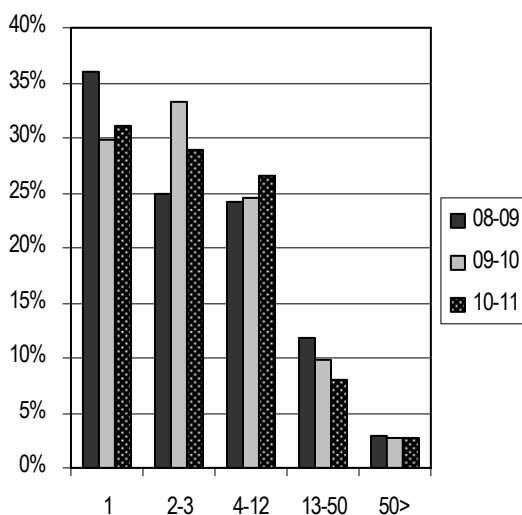


Table 7
Distribution of conduct matters by law firm size



- the larger their law firm, the less likely lawyers are to become subject to complaint. About 8% of Queensland solicitors work in sole practitioner firms and about 22% in 1-3 solicitor firms yet sole practitioner firms are subject to 31% of all complaints and 1-3 solicitor firms are subject to about 60% of all complaints.

Conversely 15% of Queensland solicitors work in 13-50 solicitor firms and 22% in 50+ solicitor firms yet these firms are subject to only 8% and 3% respectively of all complaints – see tables 6 and 7.

Again we should be careful not to jump to conclusions. The complaints data tells us year after year lawyers who work as sole practitioners or in small law practices are many times more likely to find themselves subject to complaint than lawyers who work in medium sized or large law firms. Similarly it tells us year after year that lawyers who do family law, residential conveyances, personal injuries and deceased estate work are many times more likely to find themselves subject to complaint than lawyers who do commercial litigation or banking or building and construction law. There is no reason however to believe that lawyers who do commercial litigation work or who work for medium sized and large law firms are more ethical or have higher standards of practice than lawyers who do family law work or work in sole practice or small law practices. The more likely explanation for the differential rates of complaint is that the typically one off users of legal services who go to sole practitioners and small law practices to help them with family law and like matters at often critical times in the lives are more likely to make a complaint to a statutory regulator than the typically corporate repeat users of legal services who use the services of medium sized and large law firms and can look after themselves in the event they have a grievance.

Inquiries

We received 1501 inquiries from members of the public in 2010-11, 157 (or 10%) of them online, compared to 1848 in 2009-10, 1488 in 2008-09 and 1632 in 2007-08 – see table 1. The QLS received a further 1061 inquiries until it chose to relinquish this function in March 2011 and it became the solely the LSC's responsibility. We dealt between us with all 2562 inquiries within a median time frame of one working day. That is a good result. Our target was respond to 80% of all inquiries within one working day and 100% within two working days and to achieve a clearance ratio of 100% or better. We note that:

- 541 (or 21%) of those 2562 inquiries concerned family law matters, 315 (or 12%) concerned deceased estate matters and 262 (or 10%) concerned conveyances, much as in years past.
- 891 (or 35%) concerned costs issues, 384 concerned quality of service issues, 258 (or 10%) ethical issues and 234 (or 9%) communication issues, again much as in years past. The large majority of the inquiries about costs – about three quarters of them by our reckoning – raised issues about costs disclosure, and whether lawyers had properly disclosed their costs both before starting work on a matter and as the work on a matter progressed.
- we dealt with 354 (or 14%) of those inquiries by providing advice about the legal system (including for example, advice about a lawyer's costs disclosure obligations and a client's entitlements to request an itemised bill and to challenge a lawyer's costs); 352 (or 14%) by referring the enquirer for legal or other advice relevant to their concerns; 348 (or also 14%) by recommending to the inquirers that they consider making a formal written

complaint and giving them some pointers about how best to go about it; and 253 (or 10%) by recommending that they discuss their concerns directly with their lawyer or law firm.

Many of these inquiries were 'complaints' and more particularly consumer disputes by another name. We negotiated appropriate remedial action in 69 such inquiries – 28 by securing a lawyer's agreement to communicate more regularly and effectively with the enquirer; 20 by securing a lawyer's agreement to waive a lien and to release a file, and 19 by securing a lawyer's agreement to reduce or waive his or her fees (in amounts totalling \$24,471).

Summary dismissals

We summarily dismissed 507 (or 46%) of the 1041 complaints we received from members of the public in 2010-11, up from 42% of in 2009-10 and 40% in 2008-09. We gave every complainant written reasons. We referred them to another regulatory body or agency as appropriate or suggested they consider taking legal advice about other possible remedies that might be open to them and the like.

- we assessed 84% of all new complaints within one month of receipt in a median time frame of 19 days (compared to 87% and 14 days in 2009-10 and 88% and 14 days in 2008-09). Our target was to assess 90% of all new complaints within one month of receipt in a median time frame of less than 14 days. We are pleased with these figures because (while we fell short of our targets) we are receiving increasing numbers of complaints online and have to get back to those complainants more frequently than complainants who make their complaint in writing to ask them to provide us with more information to enable us to properly assess their complaint.

- 119 (or 23%) of the 507 complaints we summarily dismissed had their origins this year as in years past in family law matters. Many of those complaints alleged misconduct by the lawyers for the ‘other side’ including allegations that they encouraged the estranged partner to make false or defamatory statements in correspondence or court documents. As a general rule we can deal with complaints about lawyers for ‘the other side’ only if the complainants give us some reason to believe that the lawyers acted without or contrary to their clients’ instructions, or that their estranged partner is willing to waive privilege to allow us to test the allegations. We do not summarily dismiss complaints of this kind, however, when we have prima facie grounds to believe that lawyers for the ‘other side’ have been over zealous or gone ‘over the top’.

Similarly many of these complaints allege bias or other impropriety on the part of court appointed lawyers acting as independent representatives for children. We take no further action on these complaints unless we have some evidence other than the complainant’s mere assertions that would justify us commencing an investigation.

- it is not readily apparent in the raw data but many of the 507 complaints we summarily dismissed - about one in four by our reckoning - effectively alleged professional negligence. We can and do investigate complaints which allege that a lawyer has failed to maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. The disciplinary bodies can make a finding to that effect and award compensation of up to \$7,500 (and more if both parties agree). We have no jurisdiction however, and nor

do the disciplinary bodies have jurisdiction to determine that a lawyer has been negligent and to award damages – that is the province of the civil courts. It can be a fine line, but we suggest to complainants whose complaints are best dealt with by bringing an action for negligence in the courts that they seek independent legal advice.

- notably 81 (or 16%) of the 507 complaints we summarily dismissed queried or disputed a lawyer’s costs but revealed no prima facie evidence of a failure to make proper costs disclosure or overcharging, and similarly many of the 118 and 73 complaints which involved quality of service and communication issues respectively. These complaints are in addition to the 891 inquiries about costs that we’ve mentioned already.

Regrettably we have no jurisdiction to deal with costs disputes in these circumstances and we refer these complainants to the appropriate court pursuant to the process established under the Uniform Civil Procedure Rules (which we describe in our fact sheet *Your Right to Challenge Legal Costs*). We say ‘regrettably’ because it would be quicker, simpler and less confusing from a consumer’s point of view if the LSC was a ‘one stop shop’ for complaints about lawyers, including complaints disputing a lawyer’s costs. The draft Law addresses this issue. It categorises solicitor client costs disputes where the total costs payable are less than \$100,000 or the amount in dispute is less than \$10,000 as a species of consumer dispute. It envisages the LSC having responsibility accordingly to help the parties to resolve these disputes informally, by agreement, and if that can’t be achieved, to resolve the dispute by making a binding determination that is’ fair and reasonable in all the circumstances

of the complaint'. This would be a welcome consumer protection reform.

Consumer disputes

We assessed 49 (or 5%) of the 974 new complaints we assessed during the year to be consumer disputes and we finalised 51 consumer disputes (several of them carried over from 2009-10). That is a clearance ratio of 104%. We note that:

- we finalised 44 (or 86%) of the 51 consumer disputes we closed during the year within two months of receipt, in a median time frame of 22 days (compared to 94% and 36 days in 2009-10 and 98% and 22 days in 2008-09). Our target was to finalise 90% of consumer disputes within two months of receipt in a median time frame of less than one month. That is a good result, especially the median time frame.

“Your prompt action on our complaint resulted in communication from [the lawyer] and for this we are most appreciative. From our perspective this matter is now resolved. Thank you again for your very helpful assistance.”
(from a complainant)

- 17 (or 33%) of those matters arose out of residential conveyances and six (or 11%) out of family law matters. Notably 21 (or 41%) involved costs disputes and another 18 (or 35%) quality of service issues. As with the inquiries in relation to costs issues, most of the consumer disputes in relation to costs involved an alleged or apparent failure to give adequate costs disclosure, both up front and ongoing.

“Thank you again for all your help in resolving the dispute that I had with [the lawyer]. I was quite anxious and concerned. I truly appreciate everything that you did for me and the eventual outcome that you achieved.” (from a complainant)

- we tried but were unable to resolve 20 (or 39%) of these disputes and determined that 12 (or 31%) were unfounded. We successfully negotiated appropriate remedial action in 16 (or 24%) matters however, including in 9 matters the reduction of waiver of fees totalling \$5,693 and in four matters the waiver of a lien and the release of a client file. These remedial outcomes come in addition to the remedial outcomes we achieved in the 69 matters we dealt with as inquiries (and mentioned earlier).

Conduct complaints

We assessed 469 (or 48%) of the 974 new complaints we assessed during the year to be conduct complaints and we finalised 539 conduct complaints. That is a clearance ratio of 115%. Notably:

- we retained 334 conduct complaints (and 70 own motion investigation) for investigation at the LSC. We referred 210 conduct complaints (and 18 investigation matters) to the QLS for investigation and eight (and four) to the BAQ. The QLS returned 237 conduct matters (conduct complaints and investigation matters) for review. We disagreed with its recommendations in 35 (or 15%) of the reviews we completed by 30 June. The BAQ returned 14 conduct matters and we disagreed with its recommendations in four (or 27%) of the reviews we completed

by 30 June. The rate of disagreement should not be misconstrued. There were no substantial disagreements but simply different 'judgment calls' in circumstances where reasonable minds might differ.

- we issued 43 section 443(1) notices during the year requiring respondent lawyers to give us a full explanation of or to produce documents in relation to matters under investigation. We issue section 443(1) notices only when lawyers fail to respond within a reasonable period of time to our earlier request(s) to give us an explanation or to produce documents. We issued 9 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 they fail to comply for a further 14 days after the notice is given. Notably the Queensland Civil and Administrative Tribunal (QCAT) found two practitioners guilty during the year of a total of 10 counts of failure to comply with section 443(3) notices without a reasonable excuse.

"Thank you so much for your professional support during the difficult time I had in dealing with [the lawyer] and his unruly, unjust, inappropriate behaviour against me over the past six months. You have been a wonderful benefit to me. You were impartial, you handled the matter very well. Citizens need government organisations like yours. We would be lost without you. Priceless." (from a complainant)

- we finalised 359 (or 56%) of the conduct

matters we finalised during the year within six months of receipt in a median time frame of 176 days (compared to 69% in a median time frame of 140 days in 2009-10 and 57% in a median time frame of 175 days in 2008-09). Our target was to finalise 75% of all new conduct complaints within six months of receipt in a median time frame of less than six months. That is a disappointing result that reflects the higher than usual staff turnover during the year. We will monitor the situation closely over coming months.

- we finalised 338 (or 63%) of the 539 conduct complaints we closed during the year on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct, or in other words that the investigation did not disclose sufficient evidence to substantiate the complaint to the requisite standard.
- we finalised 128 (or 24%) on the basis that, while the conduct subject to investigation might amount to unsatisfactory professional conduct, no public interest would be served by initiating disciplinary proceedings. This is a good result. It means in most cases, as we explained earlier, 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 to otherwise fix the problem – by acknowledging an error and apologising, by fixing their mistake; by reducing or waiving their fee or making some other financial redress; by improving their business systems; or by agreeing to be supervised or mentored or to undertake some further training - whatever was fair and reasonable in all the circumstances of the complaint.

Notably we secured a reduction or waiver of fees or other financial redress in 33 of these complaints in amounts totalling \$177,854. We secured improvements to the law firm's management systems and / or supervisory arrangements in 31 matters; changes to bring advertisements for personal injury services into line with legislative requirements in 27 matters; formal written apologies to complainants in 16 matters; and the release of the complainants' files in 10 matters. These are good outcomes.

We note finally that we finalised only 28 (or 5%) of the 539 conduct complaints we closed during the year, or 2.6% of the all up number of 1097 complaints we closed during the year, by deciding to initiate disciplinary or criminal proceedings - 20 in QCAT, one in the Legal Practice Committee (LPC) and seven in the Magistrates Court. We finalised a further 10 conduct complaints by deciding to commence civil litigation. We canvass these matters in more detail in a later chapter of the report headed *Discipline and enforcement*. We urge everyone who is interested in these matters and wants to understand why and how lawyers find themselves subject to disciplinary action to read the decisions of the disciplinary bodies, all of which are published on our website – some of them on the Discipline Register and all of them on the *Disciplinary and other relevant regulatory decisions* page.

Feedback from complainants and respondents

We routinely ask people who have made inquiries of us or complaints to give us their feedback by completing a *Your Feedback* survey, and similarly lawyers who have been subject to complaints and our stakeholders more generally. We invariably invite the parties to a complaint to complete a survey when we write to them to advise them of the outcome of the complaint. The survey forms

are readily accessible on our website in both online and downloadable versions and we provide hard copies on request. The take up rate is not great, despite our best efforts and we get almost as much feedback by way of unsolicited letters, cards and emails. We remain committed however to learn what we can from the feedback we get and to publish it in the interests of transparency. We publish and regularly update that information on the *Your Feedback* page of our website. Notably:

- 24 inquirers responded to the survey in 2010-11. The great majority told us that their inquiry was handled in a timely manner, that they were treated fairly, courteously and professionally and given helpful and useful information.

“The insights gained from these complaints have driven a review of our management processes. We have implemented changes to assist in the detection and management of the type of behaviours revealed by the complaints.”

(from a law firm that was subject to several complaints)

- 27 complainants responded to the survey. Again the majority told us that they were treated courteously and professionally, that the correspondence they had received was written clearly and that we helped them by giving them relevant information and advice that improved their understanding of the legal system and processes. Notably the majority told us that they complained hoping to get an apology or a reduction in the fees their lawyer had charged them, that their complaint has been dismissed and that they were dissatisfied with that outcome.

- 13 lawyers who were subject to complaint responded to the survey. The great majority told us that they were treated fairly, that the correspondence they had received was written clearly, that they were given sufficient time to respond to the complaint and that it was handled in a timely manner. Notably they all told us that the process of responding to the complaint led them to make changes to the way they go about their practice, including by giving their clients ‘a more frank assessment sooner.’

We have scattered highlighted excerpts from some of the unsolicited feedback we got during the year throughout the report. We should add in fairness that not all the unsolicited feedback we get is positive and that some of it is bitter indeed. We are occasionally accused of corruption, of colluding with our ‘insider crowd of lawyer mates’ and acting contrary to the Constitution, and asked how we sleep at night.

We note in this regard that people who are aggrieved by the way we’ve dealt with a complaint are entitled to complain about us to the Ombudsman about any alleged deficiencies in our administrative processes and to the Crime and Misconduct Commission (CMC) about any alleged official misconduct. Similarly they are entitled to seek judicial review of our decisions and to make applications under right to information and privacy legislation. We learn from the feedback those external agencies give us in response to those complaints. We have an in-house complaints about us policy also. We invite people who are dissatisfied with a decision we have made to ask us to reconsider the decision and people who are dissatisfied with our standards of service, policies or practices to complain to us directly so that we review and as needs be improve the ways we go about our work. We have included data about all these complaints about us later in the

report, in the last chapter of the report headed *Our office*.

Lessons from complaints

We ask our complaint handlers to review every complaint file on closure to record their opinion, whatever the merits of the complaint, whether the lawyer could have done something to avoid it. They tell us consistently that more than two in three complaints could have been avoided. We asked them this year to tell us what advice they would give lawyers who want to avoid complaints. This is an edited account of what they had to say:

- understand that clients generally want to deal with a person, not a law firm, and they want to develop a relationship of trust and understanding with that person;
- be clear about who in the firm will do what work, and who the client can contact if they have a concern or complaint;
- treat your clients professionally, courteously and with respect. Ensure your employees do the same. Be reasonable, and meet commonly accepted standards of fairness and decency. Treat your clients as you expect to be treated;
- learn what upsets your clients and within reason stop doing those things – things like not returning phone calls; not replying to emails; allowing long periods of apparent inactivity on a matter; not delivering on promises; having a secretary ask them their name when they ring and then not put them through; and sending bills without a warning or explanation;
- do not assume your client knows what is happening;
- don’t over identify with your clients. Keep your objectivity. Maintain your

independent judgment. You are not just a mouthpiece for your clients. Don't write angry and accusatory letters to the other side because your client is angry and making accusations. You're writing the letter, not your client;

- remember that you're a lawyer, not a social worker, a marriage guidance or some other kind of counselor;
- think carefully before you take on legal work for family members, friends and lovers. Don't do pro bono work without telling your boss;
- don't make promises you can't keep. Don't make undertakings in the name of clients or without instructions. Understand what an undertaking is – and don't forget your implied undertaking restricting your use of documents you obtain on discovery;
- never witness a document unless you're confident that the person who is signing the document is the person who should be signing the document. Never witness a signature unless the signature is applied in your presence;
- keep good file notes of your clients' instructions and the advice you give your clients, both for your own future reference and in case of dispute. Keep even better notes if it's a significant issue or alarm bells are going off. Type them up – but also keep your original hand written notes;
- follow the capacity guidelines for witnessing enduring powers of attorney. Make reasonable inquiries to satisfy yourself that your client has capacity, especially if they're old and living in a nursing home, or have had a stroke, or can't independently communicate and are brought to see you by a major beneficiary. Use your common sense, and if in doubt, don't. And again: keep good notes;
- have a signed costs agreement before you start work, and take the time to make sure your client has read and understood it. Keep it as simple and as 'plain English' as you can. Don't bury details in the fine print. Don't write it so that your client has to flick from page to page and back again to figure out what it means, and especially how much they're likely to have to pay. Don't spring any surprises and don't charge for work that isn't in the agreement;
- keep updating your fee estimates as the work progresses. Break it into components of work and update the cost of each component as you go. Revise your overall estimate if you have to, and the sooner the better; and
- in summary: communicate clearly with your clients in language your client understands, both when you enter into the retainer and regularly along the way. Keep it at front of mind that clients want answers to five key questions and will want to be kept updated: what are my options; what's the process; what are my chances; how long will it take; and how much will it cost?

Two final words of advice: firstly, if you make a mistake, acknowledge it, apologise and fix it, sooner rather than later - and at your expense, not your client's. Secondly, if you do happen to find yourself subject to complaint, deal with it. Consider taking advice but whatever you do, cooperate with the investigation. That is both your professional obligation and the smart way to go. Do not delay or obfuscate. If you have anything to confess, confess early. Remember that the courts have said over and over again that the purpose of professional discipline is not to punish errant practitioners, but to protect the public and the reputation of the profession – hence the system tends to be merciful to lawyers who accept culpability but unforgiving to those of them who hide or deny their culpability and who just don't get it.

Own motion investigations

The Act authorises the Commissioner to start an investigation on his or her own initiative - an own motion investigation, or investigation matter - 'if the Commissioner believes an investigation about a matter should be started into the conduct of an Australian legal practitioner, law practice employee or unlawful operator.' The Act authorises us also to investigate anyone the Commissioner suspects may have contravened the 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.

Importantly, the Act requires that the Commissioner must believe that an investigation about a matter should be started or suspect someone to have contravened PIPA 'on grounds that are reasonable in the circumstances.' We have published an *Own motion Investigations* policy on our website which sets out the factors the Commissioner will take into account in deciding whether to start an own motion investigation. It is an important power that gives us a measure of proactivity we would be denied if we were confined simply to responding to complaints.

We initiated 100 own motion investigations in 2010-11, or 9% of all 'new' complaints and investigation matters. We finalised 97, making for a clearance ratio of 97%. We initiated 174 (or 13%) in 2009-10; 78 (or 7%) in 2008-09 and 119 (or 9%) in 2007-08.

We distinguish two kinds of own motion investigation - investigations into apparent breaches of the restrictions on the advertising of personal injury services (PIPA investigation matters) and all other own motion investigations (investigation matters other than PIPA). We report on them separately because they have quite different characteristics.

Investigation matters other than PIPA

We initiate investigation matters in a variety of different circumstances that give us reasonable grounds to believe that an investigation should be started into the conduct of a lawyer, law practice employee or unlawful operator. Sometimes we receive anonymous, but sufficiently credible information to form a reasonable belief that an investigation should be started; sometimes the professional bodies bring information to our attention; sometimes judges or magistrates or investigative agencies such as the CMC bring information to our attention; and sometimes we read reports in the media.

We also keep an eye out when we're dealing with a complaint about a lawyer's conduct for other conduct on the part of the lawyer that might be inappropriate and broaden our inquiries as appropriate. It is not uncommon for us to be dealing with a complaint about alleged delay or discourtesy or failure to communicate, for example, only to discover evidence of possible overcharging of which the complainant is totally unaware.

Similarly, we routinely ask ourselves when we're investigating a complaint and identified some conduct that falls short of expectation whether it could reasonably have been prevented or at least detected and dealt with earlier in the piece if only the law firm's principal(s) had kept and implemented appropriate management systems and supervisory arrangements and, if so, whether we should start an own motion investigation into the principal(s)' apparent 'failure to supervise'. We have used the strategy to powerful 'capacity building' effect in the past and we will continue to do so into the future, always with a view to encouraging the principals(s) to take appropriate remedial action and so to position ourselves to be able to

finalise the investigation on the basis that no public interest would be served and no better outcome would be achieved by initiating disciplinary proceedings.

We note that:

- we closed 34 (or 51%) of the 67 matters we finalised during the year on the basis that the conduct might have amounted to unsatisfactory professional conduct or professional misconduct but no public interest would be served by initiating disciplinary proceedings; 19 (or 28%) on the basis that there was no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and three (or 5%) by deciding to initiate disciplinary proceedings. That latter figure is almost three times greater than the comparable figure in relation to complaints we receive from members of the public, as we would hope and expect when we have initiated the investigations ourselves.

We are pleased by the relatively high percentage that we were able to finalise this year as in years past on 'no public interest' grounds. It means 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.

- 19 (or 28%) involved apparent failures in relation to properly managing trust accounts; 14 (or 21%) of the 67 matters we finalised during the year involved apparent non-compliance with the Act, most commonly a failure to provide ongoing costs disclosure and again this year the 'unlawful operator' provisions; 12 (or 18%) involved ethical issues including acting without or contrary to instructions and three (or 5%) personal conduct happening 'other than in connection with

the practice of law' that 'might justify a finding that the practitioner is not a fit and proper person to engage in legal practice' - conduct including dishonesty and sexual offences.

PIPA investigation matters

The PIPA responded to community concerns that some personal injury lawyers were 'ambulance chasing' by imposing restrictions on the advertising of personal injury services and on touting. The Legal Profession Act and PIPA were both amended with effect from May 2006 to give the LSC responsibility for enforcing the restrictions by extending the reach of our complaints and own motion investigation powers to include non-compliance with PIPA.

We sometimes get complaints alleging that law firms have contravened the restrictions on the advertising of personal injury services - typically by competitor law firms who have themselves complied and are rightly annoyed that a competitor's non-compliance gives them a commercial advantage - but we believe we have a broader and more proactive role to ensure compliance. Accordingly we monitor the places personal injury advertisements most commonly appear - in the Yellow Pages and local newspapers and on radio, television and law firm websites - and use our own motion investigation power to commence investigations into advertisements we believe may be non-compliant. We concentrated on print advertisements in 2007-08 and 2008-09 and since then on advertisements on law firm websites in the main but also advertisements that appear on television.

We published *A Guide to Advertising Personal Injury Services* soon after we were given responsibility for enforcing the restrictions and subsequently *A Guide to Advertising Personal Injury Services on the Internet* and, when we

discovered that advertisements for personal injury services appear on the results pages of search engines on websites like Google, an *Advice about Personal Injury Advertising on Internet Search Engines and Non-Lawyer Websites*. We have also published an interactive 'website comparer' on the LSC's website. 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, and comes complete with pop up boxes that highlight and explain the distinctions.

The Guides set out how we understand the restrictions and propose to enforce them. They make it clear that we want to achieve a much greater measure of compliance but by persuasion and not prosecution. We would much rather persuade law practices to review their advertising and to remedy or withdraw any advertisements that fall short of the mark than prosecute their principals.

We note that:

- we started 22 PIPA investigation matters last year, significantly fewer than the 122 we started in 2009-10. We made it a priority in 2009-10 to systematically monitor law firm websites for compliance with a view to 'sending a message', we believe with some success, but a turnover of key staff and the pressure of other work forced us to give this issue a lesser priority in 2010-11.
- we finalised 30 PIPA investigations, 23 (Or 77%) of them on the basis that no public interest would be served by initiating disciplinary proceedings because the law firms had remedied or withdrawn their 'offending' advertisements. We finalised six (or 20%) on the basis that there was no reasonable likelihood a disciplinary body would find the advertisements to be non-compliant. We are pleased to report once

again this year that we finalised none of them by deciding to initiate disciplinary proceedings.

That is a good result. We set out deliberately to secure compliance through persuasion, not prosecution. Most law firms have willingly cooperated with us and we thank them for that. It is an especially good result given that we interpret the restrictions strictly to leave the least possible room for slippage and the 'thin end of the wedge' arguments that would inevitably accompany any broader interpretation. This seems to us to be the best and probably the only practical way to achieve some certainty and to keep a level playing field - and in particular to look after the majority of lawyers and law firms who do the right thing and who are rightly annoyed by and stand to be disadvantaged by the minority of their colleagues who push the boundaries. They deserve our support.

Compliance audits

The Act like its counterpart legislation in the other Australian states and territories allows lawyers to provide legal services not only as sole practitioners or in partnership with other lawyers as in the past but also in partnership with members of other professions, as ‘multi disciplinary partnerships’ (or MDPs), and it allows law firms to adopt a company structure and to provide legal services as incorporated legal practices (or ILPs).

The Act requires us to regulate the provision of legal services by incorporated legal practices 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 incorporated legal practices 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.

Putting it another way, the Act holds legal practitioner directors responsible for ensuring that their firms have what some commentators call an ‘ethical infrastructure’ – policies, procedures, governance arrangements, work practices and a workplace culture more generally which enable them to deliver competent and ethical legal services. It

supplements the traditional regulatory arrangements which focus on the conduct of individual lawyers with a form of entity based regulation which focuses on the conduct of their firm.

Importantly, the Act authorises us to conduct an audit (a ‘compliance audit’) of an incorporated legal practice about ‘the compliance of the practice and of its officers and employees’ with their obligations under the Act and ‘the management of [its] provision of legal services... including the supervision of the officers and employees providing the services’ – and it authorises us to conduct an audit ‘whether or not a complaint has been made.’

Some key facts about incorporated legal practices

The number of incorporated legal practices engaged in legal practice in Queensland has grown steadily since they were first allowed on 1 July 2007 and continues to grow – see Table 9, below. There were 281 incorporated legal practices in Queensland at 1 July 2010 or almost one in five of all Queensland law firms, and between them they employed 1,107 or almost one in five of all the Queensland solicitors who work in private practice. We do not have exact figures at the time of writing but estimate the number to be 359 at 1 July 2011, give or take a few, or almost one in four of all Queensland law firms.

Table 8 - Incorporated legal practices as a proportion of all Queensland law firms

	30 June '07	1 July '08	1 July '09	1 July '10	1 July '11
Total number of law firms	1308	1328	1417	1458	1540
Total number of MDPs	0	1	2	2	6
Total number of ILPs	0	117	188	281	358
ILPs as % of all law firms	n/a	8.81%	13.27%	19.27%	23.35%

We have included more comprehensive data at Appendix 4 but the key facts about incorporated legal practices three years year down the track include the following:

- 133 new 'start up' law firms commenced engaging in legal practice in Queensland during 2010-11, 73 (or 55%) of them as incorporated legal practices, and 34 existing firms (in addition to the 161 firms that had done so previously) restructured to become incorporated legal practices. It is likely that more firms would have restructured but for the stamp duty impost inherent in the changeover.
- the 281 incorporated legal practices that were engaged in legal practice in Queensland at 1 July 2010 had a very similar profile to the 1175 unincorporated practices. They are mostly small firms - 101 or 36% of them were single practitioner firms compared to 47% of unincorporated firms; 200 or 71% of them employed fewer than four solicitors compared to 78% of unincorporated firms; 15 or 5.3% of them employed more than 12 solicitors compared to 5.6% of unincorporated firms; and only two or 0.7% of them employed more than 50 solicitors compared to 1.5% of unincorporated firms.

Compliance audits

The Act gives us wide discretion to conduct an audit of an incorporated legal practice but gives us little if any guidance about how we should go about it. It does however give us if

we need them all the same powers and more that we have in relation to complaints and investigation matters and they are significant powers.

Table 9 - Number of compliance audits by year

Audit type	07-08	08-09	09-10	10-11	Total
Self assessment audit	61	90	105	108	364
Web based survey	-	37	25	37	99
On site review	-	1	2	2	5
Total	61	128	132	147	468

We conduct three kinds of audit: pro forma self assessment audits which we expect all incorporated legal practices to complete shortly after they start engaging in legal practice; selected web based surveys or ethics checks which we expect all incorporated legal practices to complete periodically; and targeted and tailor made on site reviews which we conduct only of those incorporated legal practices we have identified to be non-compliant or at risk of non-compliance with their obligations under the Act.

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 are confident that the regulatory regime which authorises us to conduct compliance audits is a powerful force for good and that the manner in which we've gone about the task illustrates its effectiveness.

Self assessment audits

We contact the legal practitioner directors of every incorporated legal practice shortly after its commencement to ask them to complete a pro forma self assessment audit form. The form requires them to assess and rate their management systems and supervisory arrangements against 10 performance criteria which are fundamental prerequisites of sound legal practice management. We ask them to rate their systems against each of the 10 criteria on a sliding scale ranging from one (the firm has not addressed this objective) to five (the firm has a documented management system which meets this objective and reviews it regularly).

The form is readily accessible on the LSC's website and we will not elaborate further here except to note that incorporated legal practices now routinely complete and lodge the form online, at www.lpportal.org.au (which we describe in more detail later in the report under the headings *Our people, Our systems; Our compliance*). The portal enables them to access their firm's complaints history and hence to complete their self assessment audit having regard to that risk information.

We expect incorporated legal practices to lodge their completed form within three months. We then evaluate the information they give us; engage in a conversation with them as appropriate about what further steps they might take, if any, to improve their systems; and we ask them periodically to conduct follow up audits to document their progress. Self assessment audits, in other words, are 'gap analyses' or 'risk assessments' or 'management reviews' that are designed to be a baseline for future improvements to a practice's management systems and supervisory arrangements.

A total of 108 incorporated legal practices completed a self assessment audit during the year, and 364 in all since the program first commenced in 2007 - see Table 10. This is good news. We know that requiring incorporated legal practices to undertake self assessment audits dramatically improves their standards of service delivery and conduct. Comprehensive empirical research undertaken several years ago in New South Wales (which allowed law practices to incorporate in 2001) demonstrated both that the complaint rate per practitioner per year for incorporated legal practices was one third the complaint rate for unincorporated legal practices and that the complaint rate per practitioner per year for incorporated legal practices after their self assessment audit was one third their complaint rate before the audit. The multivariate analysis of the data provided 'compelling evidence' that the reduction in the rate of complaints was attributable not to other factors such as the size, location or areas of practice but to having conducted a self assessment audit.¹

¹ See C. Parker, T. Gordon and S. Mark, *Research Report: Assessing the Impact of Management-Based Regulation on NSW Incorporated Legal Practices*. The report is accessible on both our website and the website of our counterpart Commission in New South Wales and has also been published under the title *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, *Journal of Law and Society* 37, no.3 (2010): 466-500.

Web based surveys

The message we hear as regulators in the feedback we're getting from incorporated legal practices about self assessment audits and the research is that the simple act of requiring a law firm's principals to take time out to stocktake just how well their management systems and supervisory arrangements support their firm and its people to deliver competent and ethical legal services - the simple act of prompting them to reflect on the adequacy of their ethical infrastructure - significantly improves standards of conduct within their practice.

We've set out in Queensland to build on that insight by asking incorporated legal practices every 18 months or so to complete a short, sharp web based survey or Ethics Check as a form of compliance audit. We describe the Ethics Checks later in the report, under the heading Education, Projects and Research, and in detail on our website. We will not repeat ourselves here except to reaffirm our belief that they have an important regulatory application in addition to their usefulness to law firms as a voluntary ethical capacity building tool. They, too, like self assessment audits, are a form of 'gap analysis', 'risk assessment' or 'management review' which enable law practices to identify the strengths and weakness of their management systems and supervisory arrangements and to plan any necessary remedial action.

We asked 37 incorporated legal practices to complete the Complaints Management Systems Check this past year, and have asked 99 in all since the first batch of surveys in 2008-09. A total of 1002 of their people have completed the survey, not only their directors and lawyers but their paralegals and other non-legal support staff. We have published the aggregated and de-identified results on our website (on the Ethics Checks page) both to enable the participating law firms to compare

their results with other firms' results and to serve a broader public interest also by exposing this aspect of law firm culture to public scrutiny. Notably in this regard Dr Parker and her colleague at the Melbourne University Law School, Dr Linda Haller, have published their analysis of the results of the surveys we conducted in previous years in the Monash University Law Review 2011.

On site reviews

On site reviews comprise tailor made combinations of some or all the following kinds of activities - further web based surveys of the kind we've already described; traditional policy and procedure reviews; detailed analyses of the firms' complaints history and investigation files held by the LSC; interviews with their principals, supervisors and employees 'down the line'; reviews of selected or randomly selected client files and bills, in-house complaints registers and the like; and possibly (although we have not used this technique as yet) 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 onsite reviews by their very nature are a more resource intensive exercise both from our point of view and the point of view of the law practices subject to audit, and it follows that we envisage conducting audits of this more intensive kind significantly less frequently than web based surveys and only on an 'as needs' basis - on the basis of a risk assessment that tells us that a firm or some aspects of its practice are or are highly likely to need improvement.

We conducted two onsite reviews during the past year. We have conducted only five onsite reviews over the four years we've had a compliance audit power, all five of them of

incorporated legal practices we had good reason to believe could improve their management systems and supervisory arrangements to reduce their exposure to complaint. The low numbers are explained in part, but only in part, by our commitment to conduct onsite reviews only on an 'as needs' basis. We would like to have done more but have had limited staff resource to put to the task. We have made it a priority to do more of this work over the year ahead and will reallocate resource accordingly.

Reflections on compliance audits

We have long argued that the system for dealing with complaints is a fundamentally important regulatory tool which provides aggrieved consumers a means of redress but an ineffective and inefficient means of achieving our broader regulatory purposes of monitoring and enforcing appropriate standards of conduct in the delivery of legal services and protecting consumers more generally. The system for dealing with complaints is essentially reactive. It does little by way of prevention. It is geared to police minimum standards not to promote best practice. It directs regulatory attention disproportionately to sole practitioners and small law practices and lawyers who practice in only certain areas of law, to the extent that the conduct of lawyers who work in medium sized and larger law practices and other areas of law is only nominally subject to regulatory scrutiny. Importantly, the system for dealing with complaints gives us little if any 'regulatory grip' on the underlying causes of complaints. It ignores the reality that most complaints are attributable not to the shortcomings of individual lawyers subject to complaint but to shortcomings of the law practices which employ them - to sloppy business practices and inadequate management systems and supervisory arrangements.

Thus we have 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 engage all lawyers not merely a subset of lawyers and that put the focus on not only on lawyers but on law practices and their management systems and supervisory arrangements – their 'ethical infrastructure'. The regulatory regime that applies to incorporate legal practice ticks all the boxes and we have argued accordingly that it should be extended to all law practices, whatever their business structure. The draft Law in our view takes us one step forward and one step backward.

It takes a step forward by giving us an entirely new power, if we have conducted an investigation and 'it is reasonable to do so', to give a law practice a management systems direction requiring it to implement appropriate management systems to ensure its compliance with its professional obligations. It takes a step backward because, while it extends our compliance audit power to all law practices, it authorises us to conduct a compliance audit of a law practice only if we believe we have 'reasonable grounds to do so based on the conduct of... or a complaint about the law practice or one or more of its associates.'

The power to give management systems directions will be used only rarely in our view and only as a last resort. It is entirely appropriate that we should exercise the power only if it's reasonable to do so, and we can demonstrate that it's reasonable to do so. We should never as regulators exercise our powers in ways that are unduly intrusive or that impose unjustifiable compliance costs or needless regulatory burden.

The compliance audit power should be similarly constrained. We should always have reasonable grounds before conducting a compliance audit but it will be a backwards step, however, to constrain the power by reference to reasonable grounds 'based on the

conduct of... or a complaint about the law practice or one or more of its associates.’

We have conducted 468 compliance audits since we were first authorised to do so in 2007 and on that basis we had reasonable grounds to conduct only five of them - the five onsite reviews. We conducted 364 self assessment audits and 99 web based surveys, none of which imposed any great compliance cost or could properly be characterised as intrusive but none of which were justified on those grounds.

We had reasonable grounds nonetheless. Self assessment audits and web based surveys are regulatory tools which enable law practices to identify the strengths and weakness of their management systems and supervisory arrangements and to make any necessary improvements. They do not impose any significant compliance costs but have demonstrable benefits. All the research, the feedback we have received from the law practices that have completed the audits and our own anecdotal evidence tells us that they help law practices identify potential problems in advance, prevent things going awry and reduce the incidence of complaints, and they have been positively received almost without exception.

Furthermore they give us two useful tools which add powerfully to the risk data we already have at our disposal, including complaints and trust account audit data, and help us direct our scarce regulatory resource to where it is most needed and can have the most beneficial impact in the public interest. It will be peculiarly self defeating to try to ensure that we conduct compliance audits only of those law practices most likely to benefit from management systems improvements by constraining our power to conduct compliance audits in such a way as to compromise our ability to identify the law practices most likely to benefit from management systems improvements.

We agree absolutely that the compliance audit power should be constrained. It should not however be constrained by permitting its exercise only we have ‘reasonable grounds based on the conduct of... or a complaint about [a] law practice or one or more of its associates’. It should be constrained (consistent with the best practice principle enunciated by the Administrative Review Council in its recent report on *Government Agency Coercive Information Gathering Powers*) by requiring it to be exercised in ways that are accountable, consistent, transparent and targeted to risk, and in particular in ways that are proportionate to the value of the information that is sought to be obtained.

Discipline and enforcement

The Act gives the Commissioner sole authority to decide what action, if any, to take on a conduct matter after investigation and wide discretion in the exercise of that authority. It authorises the Commissioner to dismiss or take no further action on a matter if ‘there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct [or] it is in the public interest to do so’, or alternatively to make a discipline application to a disciplinary body ‘as the Commissioner considers appropriate.’ We have published guidelines which describe how the Commissioner exercises those discretions on the LSC’s website for the information of the profession, users of legal services and the public more generally.

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

We are not confined to a prosecutorial role. The Act authorises the Commissioner to apply to the Supreme Court to grant an injunction restraining a person from contravening the Act, or aiding, abetting, inducing or attempting to induce a person to contravene the Act. 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 Act.

“Thanks for your efforts over the past few weeks. It’s nice it is finally over and an outcome has been reached. Whilst we are disappointed we got less than we wanted, I think we extracted as much as we were ever going to get from this particular hearing. Additionally, our main motivation was one of principle and not monetary. When the guilty verdict was confirmed we thought that was a win irrespective of what compensation came from it.”
(from a complainant)

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.

Disciplinary action

We have attached detailed statistical data at Appendix 4 but have set out the key facts at Tables 10 and 11 (below). We note that the number of prosecution files we’ve opened in recent years - hence the number of practitioners we’ve decided to prosecute - has settled at a number much less than the numbers we opened previously. That reflects the reduction in the numbers of conduct complaints we’ve dealt with in recent years following the resolution of the backlog we inherited on our inception in 2004. We expect the numbers to remain relatively stable over the years ahead.

Table 10 - Prosecution matters commenced since 2004-05

	04-05	05-06	06-07	07-08	08-09	09-10	10-11
Prosecution files on hand: 1 July	3	24	42	34	44	31	28
Prosecution files opened	26	43	33	29	21	20	21
Files opened but prosecution not commenced at 30 June	9	15	10	12	6	8	7
Discipline applications to LPC	6	13	11	8	6	4	3
Discipline applications to QCAT (and/or its predecessor, the LPT)	11	24	25	20	16	10	14
Summons in Magistrates Court	0	0	0	0	2 *	3 *	2 *
Prosecution files closed (Table 12)	5	25	41	19	35	23	24
Prosecution files on hand: 30 June	24	42	34	44	31	28	25

* These matters all involve allegations that a person has engaged in legal practice when not entitled (because the person is not an Australian legal practitioner).

The disciplinary bodies and courts heard and finally decided 15 discipline applications during the year. The 15 respondents included 12 solicitors (or one in every 672 of the state's solicitors) and three barristers (or one in every 340 of the state's barristers). All 15 respondents were subject to one or more findings of unsatisfactory professional conduct and/or professional misconduct.

Table 11 - Prosecution matters heard and finally decided since 2003-04

	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11
Solicitors Complaints Tribunal (ceased in 2004)	25	3 *	n/a	n/a	n/a	n/a	n/a	n/a
LPC	n/a	-	10	8	5	6	2	5
QCAT (and/or its predecessor, the LPT)	n/a	2	9	18	5	21	11	9
Court of Appeal	-	-	2	-	-	3	-	1
Magistrates (or other) court	-	-	-	-	-	-	1	2
Total heard and decided	25	5	21	26	10	30	14	17
<i>plus</i> withdrawn / discontinued	u/a	-	4	15	9	5	9	7
Prosecution files closed	25	5	25	41	19	35	23	24

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

We note that:

- the Court of Appeal heard and decided one discipline application, an appeal by a solicitor of the decision of the then Legal Practice Tribunal (the, LPT, the predecessor tribunal to QCAT). The LPT made four findings against him of professional misconduct and two of unsatisfactory professional conduct in 2009 and ordered that he be struck off. The charges involved misuse of trust account moneys, charging excessive legal costs and misleading the investigation of his conduct by producing false invoices. The Court of Appeal dismissed his appeal in 2010. The solicitor sought special leave to appeal to the High Court. The High Court refused his application with costs.
- QCAT heard and decided nine discipline applications involving nine practitioners. It made one or more findings of professional

misconduct or unsatisfactory professional conduct against all nine practitioners, and a total of 21 findings of professional misconduct and eight of unsatisfactory professional conduct. The findings of professional misconduct involved dishonesty (creating and disseminating a false document; swearing a false affidavit; making false and/or misleading statements to investigators); recklessly misleading a client; taxation offences (including failure to lodge BAS statements); a failure to comply with a statutory obligation to make superannuation payments; a failure to maintain a reasonable standard of competence and diligence; and a failure to provide an itemised bill. Notably two practitioners were subject between them to 10 findings of professional misconduct for failing to comply with written notices

issued to them during the course of the investigation of other conduct requiring them to provide an explanation or to produce documents in relation to that conduct.

The findings of unsatisfactory professional conduct involved carelessly making a misleading statement to a court; neglect and delay in the administration of an estate; failing to provide a client with a receipt for moneys received on account of costs and outlays; and sending discourteous and offensive correspondence.

- the LPC heard and decided five discipline applications involving five practitioners. It made one or more findings of unsatisfactory professional conduct against all five practitioners, and seven in all. Those findings involved a failure to maintain reasonable standards of competence and diligence in the conduct of a conveyance; acting on behalf of both vendor and purchaser in a conveyance when their interests were in conflict, and failing to advise them in writing that he was acting for both parties and obtaining their written consent; acting as a general agent on behalf of a client and sending contentious correspondence on behalf of the client in the practitioner's own name; and failing to comply with a barrister's obligations in relation to accepting a direct brief.

The disciplinary bodies and the courts between them ordered that two practitioners be struck off; that five practitioners to pay financial penalties totalling \$15,510; that nine practitioners be publicly reprimanded and that one practitioner be privately reprimanded; and that one practitioner apologise to a complainant. Significantly, they ordered six practitioners to pay compensation to complainants totalling \$60,207. Additionally

the Magistrates Court heard and decided two matters involving two alleged 'unlawful operators' (people we alleged to have breached the prohibition on engaging in legal practice when not entitled). The Court found both the accused guilty and ordered them to pay fines of \$750 and \$5,000 respectively, and in the latter case further ordered the guilty party to pay compensation to a complainant of \$1,040.

Other enforcement action

We finalised four civil litigation matters during the year, all of them successfully from our point of view, most notably:

- an application to the Supreme Court seeking a declaration that a complainant who was not a client of a solicitor but was nonetheless legally obliged to pay the solicitor's fees was a 'third party payer' under section 301 of the Act and therefore entitled to have her costs assessed. We were unsuccessful in the first instance but successful on appeal: *LSC v Wright* [2010] QSC 168 and [2010] QCA 321;
- an application to the Supreme Court seeking an injunction restraining David John Walter from continuing to engage in legal practice when not entitled. We sought the injunction in the Supreme Court rather than prosecute Mr Walter in the Magistrates Court for two reasons. We had no wish to see him punished, firstly, simply to prevent him continuing upon the course of conduct he had been engaged in for some time, and secondly because we hoped to persuade the court to make some authoritative statements in law about the kinds of conduct that can constitute 'engaging in legal practice'. We succeeded on both counts. The court granted the injunction and made it clear in its reasoning that there is no necessary requirement that a person's conduct be remunerated to constitute engaging in legal

practice: *LSC v Walter* [2011] QSC 132.

We have one civil litigation matter on hand at the end of the year, a joint application with the

QLS to the Court of Appeal opposing an application for readmission by a solicitor (Wendy Ann Wright) who was struck off by the then Solicitors Complaints Tribunal in 1999.

Table 12 - Civil litigation matters since 2008-09

	on hand 1 July	files opened	files closed	on hand 30 June
2008-09	1	1	0	2
2009-10	2	0	0	2
2010-11	2	3	4	1

Publicising disciplinary and other enforcement action

The Act requires the Commissioner to keep a discipline register on the LSC's website of disciplinary action taken under the Act. 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. It is important that this information is published and readily accessible to practitioners, users of legal services and the public more generally. It ensures the openness and transparency of the disciplinary process; it alerts practitioners and users of legal services to conduct that fall short of the ethical standards and the standards of competence and diligence members of the public are entitled to expect; and it acts as a deterrent .

The same arguments apply to findings by the disciplinary bodies and the courts of unsatisfactory professional conduct, and hence we made it our practice from our inception in 2004 to include findings of unsatisfactory professional conduct on the discipline register also. We ceased that practice in October 2009 for the reasons we canvassed in detail in last year's report and need not repeat here 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 judgements in recent years have made findings of unsatisfactory professional conduct but not professional misconduct, including a number of significant decisions in relation to a lawyer's obligations in relation to preparing enduring powers of attorney for older people who may have diminished capacity.

The problem would be easily fixed by a simple legislative amendment – by broadening the definition of 'disciplinary action' to include findings by a disciplinary body or a court of not only professional misconduct but also

unsatisfactory professional misconduct (and in so doing to bring Queensland into line with both New South Wales and Victoria).

Of course the courts routinely publish their judgments in disciplinary as in all other matters on the Queensland Courts website, whatever their findings, and QCAT similarly, and we filled the gap as best we can by creating a page on our website, separate to the discipline register, which includes links to the disciplinary judgments published on those other websites. The page is headed *Disciplinary and other relevant regulatory decisions* and includes links to other selected judgments relevant to the regulation of the provision of legal services, including for example the judgments in the civil litigation matters we described under the previous subheading.

There is one gap remaining that we haven't been able to fill. The LPC established a website in late 2009 to enable its decisions to be published - www.lpcommittee.qld.gov.au – and, while it has decided to publish its decisions only 'on a case by case basis [determined] at the time of hearing the matter', it has in fact published all seven of its judgments since that time. We have included links to those judgments on our *Disciplinary and other relevant regulatory decisions* page. It has not however published the 29 judgments it made from its inception in 2004 until it created its website in 2009 which made findings of unsatisfactory professional conduct, all of which we published on the discipline register and have since removed.

Those 29 decisions remain accessible only with some difficulty, in hard copy at the Supreme Court Registry (where the LSC is obliged to file the orders of the LPC once the appeal period expires).

Education, projects and research

The Act puts us under no obligation but we see it as consistent with our fundamental purposes and part of our core business to do whatever we reasonably can to get in first, before things go sour by giving rise to complaint or non-compliance. We have set ourselves accordingly to:

- learn from what we see and do as we go about our work and to communicate what we learn to users of legal services, lawyers and the public at large, including by contributing to undergraduate, post graduate and continuing legal education programs and publishing regulatory guides and the like;
- facilitate and partner the professional bodies, university law schools and other legal services stakeholders in undertaking projects and research that will better inform our work and help promote high standards of conduct in the provision of legal services; and
- contribute to the development of legislative, regulatory and policy reforms and debate relevant to our work.

We gauge our performance accordingly, having regard to the number and range of publications we produce during the year, the number and range of education, project and research activities or events we undertake, the number and range of our collaborations with other legal services stakeholders in undertaking those activities and 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:

Communicating what we learn

- we have collected and analysed our
- we conducted the eighth symposium in the

complaints and compliance audit data as in previous years and cross referenced it with data describing the characteristics of the lawyers subject to complaint including their age, gender, post admission experience and the geographic location, size and business structures of the law firms in which they practice. We have included the de-identified and aggregated data at Appendix 4 and cherry picked it for inclusion under the relevant subheadings throughout the main body of the report. We are pleased to report that we've made steady progress towards having a capacity to give lawyers, law firms, legal academics and members of the public online access to that data and to interrogate the data, at www.lpportal.org.au. We discuss the portal in more detail later in the report under the heading *Our office*.

- the Commissioner and/or staff of the LSC completed 41 speaking engagements during the year - at 14 professional conferences, including the annual QLS Symposium; at seven compulsory professional development seminars and other continuing legal education events including in-house events at law firms; at all seven practice management courses conducted by the QLS for solicitors who are wanting to upgrade their practising certificates to qualify them to practise as law firm principals or sole practitioners; and to 11 classes of law students undertaking professional responsibility studies as part of their undergraduate degree or practical legal training prior to admission. The Commissioner also addressed the Legal Services Board of England and Wales and was interviewed on the Law Report on Radio National. We have published the more significant speeches on the LSC's website.

highly successful *Lawyers, Clients and the Business of Law* series of symposia we have co-hosted with Griffith Law School since 2005-06. The symposia are designed to bring practising lawyers together with legal academics and regulators to stimulate thought and discussion about issues of shared concern. We have published a report of the symposium (and of each of the previous symposia) on the LSC's website. This symposium went under the title *On Costs* and gave us the opportunity to announce our intention to publish Regulatory Guides and to 'road test' consultation drafts of two of the first cabs off the rank (see below). We are grateful to the Hon Paul Lucas MP, the Deputy Premier, Attorney-General, Minister for Local Government and Special Minister of State for opening the symposium and setting the scene.

- we will make it a priority over the year ahead to develop and publish a series of regulatory guides to help both lawyers and users of legal services better understand how a lawyer's professional obligations apply in circumstances where their application is uncertain and, in particular, the factors we will take in to account in exercising our responsibilities in dealing with a lawyer's conduct in those circumstances. We hope and intend them to be persuasive but they will not be binding, nor could they be. We are responsible for promoting, monitoring and enforcing appropriate standards of conduct in the provision of legal services, not for setting them.

We will start with a series of guides about some billing practices we see at the LSC and that cause us concern. We 'road tested' early consultation drafts of three proposed guides at the *On Costs* symposium - one describing the key statutory and common law principles that govern how lawyers can properly charge

for their services; one about the provision of itemised bills and one about charging cancellation fees. We have two other guides in various stages of preparation - one about the application of the Australian Consumer law to the provision of legal services and another about charging for services provided by 'paralegals' - and have several others in mind.

We will finalise the guides in close consultation with the professional bodies and in direct consultation with the lawyers whose conduct we seek to influence. Similarly we will consult wherever possible and appropriate with users of legal services and will do our very best to write the guides in plain English, with as little technicality as possible, so they can be readily understood by lawyers and users of legal services alike.

The rationale is simple. The regulation of the provision of legal services is becoming increasingly 'firm about outcomes, flexible about means'. It is putting greater weight on the high level, broadly stated principles which spell out the policy outcomes it is trying to achieve and less on detailed prescriptive rules of conduct governing how they should be achieved.

Principles based (or performance or outcomes based) regulation gives lawyers and law firms greater flexibility to decide how best to achieve a given regulatory objective in the circumstances of their particular practice but lesser certainty. It is not always certain how a broadly stated principle applies in any given fact situation, not least for example the principle that a lawyer's costs must be fair and reasonable. Lawyers and users of legal services alike are entitled to know whether we as regulators understand and apply the principles in 'grey' areas in the same ways they do - hence the regulatory guides.

We have published further and more detailed information on the LSC's website, including the consultation documents and finalised guides. They are a new idea in the legal services context but our counterpart regulators in other industry sectors have been doing it for years.

Projects and research

- we invited all 172 Queensland law firms which employ seven or more practising certificate holders to complete the fourth of our online Ethics Checks, this one (developed in collaboration with Professor Jeff Giddings of Griffith Law School) on supervision practices. A total of 16 law firms and 434 of the employees participated in the survey. We have posted both the aggregated and de-identified firm by firm results on the LSC's website and have commenced with our partners at Griffith Law School a more detailed statistical analysis for publication in due course.

Similarly we asked 37 incorporated legal practices to complete one of the our earlier Ethics Checks, the Complaints Management Systems Check, as a form of compliance audit and will soon post the results of this survey on our website also. A total of 99 incorporated legal practices and 1002 of their employees have completed the Complaints Management Systems Check over the past three years.

We have designed the Ethic Checks to be ethical capacity building tools. We have designed them to enable not only a law firm's leaders but all its people to engage with and reflect on 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 gauge the strengths and consistency of the firm's ethical

infrastructure and identify any gaps which may need attention. The feedback we have received from lawyers including the managing partners of the participating law firms has been profoundly encouraging. It tells us the Ethics Checks have achieved exactly what we wanted them to achieve. We have published what they had to say on the LSC's website but they told us the survey results prompted them to amend their induction training programs, for example, to better document their policies and procedures and the like.

We design the Ethics Checks to serve our regulatory purposes but publishing the results serves a broader public interest also by exposing hitherto hidden aspects of law firm culture to public scrutiny. The results are a rich source of empirical data about lawyer and law firm values, attitudes and behaviours and have attracted both local and international attention.

The Commissioner was invited to deliver a paper he co-authored with the LSC's Scott McLean which outlined their rationale and methodology at the Fourth International Legal Ethics Conference (ILEC-4) at Stanford University in July. Dr Christine Parker of Melbourne University Law School delivered at the same conference a paper she co-authored with the LSC's Dr Lyn Aitken that presented the results of the first Ethics Check survey in 2009, the Workplace Culture Check. That paper has since been published in a refereed journal, the *Georgetown Journal of Legal Ethics*, Volume 24, Issue 2. Notably a leading international legal academic, Professor Elizabeth Chambliss of New York Law School, reviewed both papers on 24 January 2011 in the journal *Jotwell*. Professor Chambliss described the papers as 'among the best works of recent scholarship in the legal profession' and urged the American Bar Association to

follow the Australian, and in particular the Queensland lead in focusing regulatory attention on the behaviours of not only individual lawyers but of law firms.

Dr Parker and Dr Linda Haller analysed the results of the Complaints Management Systems survey we conducted in 2010 and published their findings in the Monash University Law Review 2011, and Dr Parker and David Ruschena analysed the results of the Billing Practices Check for Medium to Large Law Firms we conducted in 2010 and their findings have been accepted for publication in the St Thomas Law Review (forthcoming).

Everyone was enthralled with them. We decided to support Australia and all went to see Thunder Down Under which was showing in Las Vegas while we were there.'

Policy reform

- we continued to make an active contribution to national legal profession reform by making further and detailed comments on the draft *Legal Profession National Law* which was released for consultation in May 2010 and given to the COAG in December, and similarly on the draft *National Conduct Rules* being drafted by the Law Council of Australia and its constituent bodies including the QLS. The Commissioner has debated the reforms at numerous professional forums including the QLS Annual Symposium (and published those speeches on the LSC's website).

We note last but not least that we were approached during the year by a New York lawyer who sought our permission to use our series of interactive scenarios dealing with issues that arise in elder law in a continuing legal education conference on ethics he was presenting in Las Vegas in May. We were only too pleased to agree. The conference by all accounts was a great success. We were told 'the scenarios worked extremely well.

Our Office

Our performance in dealing with the world beyond our office is in large measure a function of our 'internal' performance and the strength of our workplace culture. We make a deliberate effort to nurture a motivating, productive, collegiate and professional work environment. We gauge our success by reference not only to our operational performance (as described earlier in this report) but also to the feedback our people give us, their take up of professional development opportunities and the number and nature of the changes we have made to continually improve our management and business systems, processes and practices to better support us in what we do and to enable us to be the transparent and accountable organisation we aspire to be. It has been a busy and fruitful year.

Our people

The LSC sits at its centre but the system established under the Act for dealing with complaints includes the people at the professional bodies who deal with the complaints we refer to the QLS and/or BAQ for investigation. The system is best conceived holistically, and we especially want to acknowledge the Manager, Professional Standards and the Manager, investigations at the QLS and their teams and thank them for their hard work and fulsome cooperation. We similarly want to acknowledge and thank the members of the Professional Conduct Committee and the officers of the BAQ.

We have attached a table at Appendix 2 that describes how the system as a whole has been staffed since its inception on 1 July 2004 (and for completeness included a table describing the costs). Notably the total number of full time equivalent staff has settled in recent years at a number (31.2) only slightly greater than the number (28) when the system first

commenced. That is a good outcome given that the LSC has taken on significant additional responsibilities over that time (for monitoring and enforcing the restrictions on the advertising of personal injury services and for conducting compliance audits of incorporated legal practices) and added value by developing a capacity that was previously lacking to undertake projects and research.

The LSC for its part is a small organisation of 20.2 full time equivalent people. Notably 11.6 of those people are lawyers and they brought to the LSC between them 166 years of post admission experience – 109 as solicitors or barristers in private legal practice; 46 as government legal officers and 11 as in-house counsel. We have included a chart at Appendix 2 describing our organisational structure. We note that:

- we strengthened our management arrangements by adopting the organisational structure set out at Appendix 2. We gave the Manager-Complaints a more targeted role and the new title Director-Investigations and created the new position of Manager-Dispute Resolution to manage our inquiries and dispute resolution functions. The Manager-Dispute resolution will also plan for and in due course oversight the significant additional work that will come our way under the imminent national legal profession reforms to negotiate or otherwise resolve consumer (as opposed to disciplinary) complaints, including solicitor client costs disputes. We gave the Manager-Compliance specific additional responsibilities to monitor and drive continual improvements to our knowledge and business management systems, processes and practices.

We established a Leadership Team comprising the Commissioner, the Commissioners' Executive Assistant, the

Director-Investigations, the Manager-Compliance and the Manager-Dispute Resolution to direct and oversight our work. That said, we will 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 will continue to make and take accountability for the decisions that need to be made but will 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, culture setting and professional development exercise also, and supports consistency of approach. It works well on all counts.

- the Commissioner and the relevant line managers continued to meet individually with every member of staff twice a year to review both their and the LSC's performance, their professional development and how we might do things better and smarter both individually and as a team. The meetings have been valuable but informal. We will adapt the process over the year ahead to develop and document more formalised individual Performance Effectiveness Plans in accordance with departmental policy.
- we developed and documented a Knowledge Plan which spelt out among other things our commitment to ensure that all the LSC's lawyers undertake at least 10

hours of continuing legal education each year, the equivalent to the compulsory professional development requirement of lawyers in private practice, and we achieved that goal. Similarly we expect our non-legal staff to complete at least 10 hours of education or training relevant to their work and we achieved that goal also. We attended between us a total of 41 different training events, including four workshops on Investigation Fundamentals and a workshop on Information Privacy conducted in-house by external providers and a range of other seminars, conferences and courses hosted by law schools, the professional bodies, the department of Justice and Attorney-General and others.

We include the reference group among 'our people'. The Commissioner established the group in May 2005 to act as an informal sounding board, to give him advice about the big picture and strategic issues confronting the LSC and feedback about the LSC's performance and how the profession perceives its performance. It comprises an experienced and broadly representative group of lawyers (Dr Geoffrey Airo-Farulla, Simon Cleary, Professor the Hon. Michael Lavarch, Simon Morrison, the Hon. Martin Moynihan QC AO, Olivia Perkiss, Ross Perrett, Zoe Rathus and Mark Ryan) and non-lawyers with significant regulatory and consumer protection experience (Margo Couldrey, Fiona Guthrie and Dr Julian Lamont). We are indebted to them for giving of their time so freely and their wise advice.

Our systems

We reviewed and updated our strategic plan. We engaged an external consultant who conducted preliminary interviews with a representative cross section of staff, prepared an issues paper and facilitated two half day workshops attended by the staff as a whole. Happily the feedback at the workshops confirmed that we continue to have the

respectful, happy, open and collegiate workplace culture we set out to achieve on our inception and have valued and worked self-consciously to preserve ever since.

The process resulted in the revised statement of *Our Core Business and Our Values* which is included at the very front of this report and available also on the LSC's website, and a more detailed statement outlining *Our Strategic and Performance Plan 2011-13* (the Plan). The Plan anticipates that the COAG will soon approve the proposed national legal profession reforms with little if any significant amendment to the proposals that have been made publicly available. We will publish the Plan on the website very soon thereafter. Further:

- we commenced discussions with the Migration Agents Registration Authority jointly with our counterparts in New South Wales, Victoria and Western Australia with a view to developing a uniform protocol in relation to our overlapping responsibilities for dealing with complaints about lawyer migration agents. We have commenced discussions locally with Legal Aid Queensland to develop protocols in relation to complaints about lawyers who provide legally aided services, whether those complaints are made to Legal Aid or to us, and similarly with the Commissioner for Fair Trading in relation to complaints about lawyers under the *Australian Consumer Law*.
- we developed a first draft Communications Plan and established a Communications Committee to implement, review and continually renew the plan into the future. We identified the need last year in response to complaints the need to improve access to the LSC by telephone and we improved our system accordingly. We will need to keep the current arrangements under constant review.

Similarly we identified the need to review, rationalise and supplement our precedent documents and clause bank. That process continues.

We communicate with users of legal services, lawyers and our other stakeholders by telephone, by hard copy and emailed correspondence and by a wide range of forms, fact sheets, policies and guidelines, project and research reports, business plans, power point presentations, speeches and the like some of which we publish in hard copy and all of them on the LSC's website. Those documents developed in response to circumstance, are not always easy to find and could do with rationalisation and review.

The Communications Plan will facilitate a more coordinated, proactive and strategic approach. We have identified the need to modernise our corporate image and 'branding' and to apply it consistently across our various publications, both hard copy and electronic. We have engaged an external consultant to design revised letterhead and related template documents. We are working with the department's communications branch to modernise our website, not only to incorporate the new corporate 'look' but to upgrade the web content management system to enable us to better manage the website and in particular to restructure its format and lay out to make it easier for users to find the information they are looking for among a large and growing range and volume of information.

Last but not least we have contracted with an external service provider to give us an e-newsletter facility which will enable us to communicate directly with lawyers, law practices and our other stakeholders in whatever permutations and combinations are relevant to the particular subject matter. This is the crucial missing link in

our communications capabilities currently, and filling the gap will enable us not only to 'push out' information we believe needs to be brought to attention but give us the vehicle we need to develop the regulatory guides we have spoken about earlier in the report in close and direct consultation with the lawyers and law practices we are hoping to influence. The Communications Plan addresses these issues and will shortly bear fruit.

- similarly (as we've noted already) we developed and documented a Knowledge Plan and established a Knowledge Committee to implement, review and continually renew the plan into the future. The plan has a three fold purpose: to ensure we have the tools we need to go about our work professionally and consistent with the values we have committed to in the statement of *Our Core Business and Our Values*; to ensure that we capture, store and share what we learn as we go about our work; and to ensure that we keep up to date with developments in professional responsibility and other law relevant to our work and in the regulation of the provision of legal services and in regulation more broadly.

The plan documents our commitment to ensuring that all our people complete annually at least 10 hours of education or training relevant to their work and maps out a forward program of in-house continuing legal education. It commits us to review and revise our in-house manuals, policies and procedures and guidelines and to identify and fill any gaps. We documented an Induction Manual this past year; revised and updated our Investigations and LPCentral User Manuals; commenced a review of our Prosecutions and Administration Manuals; and published Own Motion Investigations and Out of Time Complaints policies and a

Complaints About Us Policy and Procedure.

Importantly we underpinned the plan by creating and regularly updating the LSC Intranet. The Intranet includes links to our in-house manuals, flowcharts, checklists, policies and guidelines and the like; links to best practice guides that are published by external agencies and relevant to our work; links to ethical resources including the Code of Conduct and Right to Information, Information Privacy and Public Interest Disclosure Guidelines; a research library with links to relevant case law, resource materials, search engines and the like; a training calendar with links both to our in-house training program, continuing legal education programs hosted by the professional bodies, the departmental training calendar and the like; and a facility for our people to post good ideas and letters, investigation reports, discipline applications the like they believe have a broader application and should be shared.

- we continued the program of rolling improvements to our database and case management system (LPCentral) that we have described in previous annual reports, most notably this past year by building in the capacity to record and generate lists of 'bring ups', to create 'last interaction' reports for all open matters which count the number of days since work was last performed on those matters; to record and report any undertakings given by lawyers in the course of our dealings with them in relation to complaints or other matters; and to better record and report any remedial action lawyers have taken in response to complaints (by acknowledging an error and apologising, for example, or by making good a mistake or reducing or waiving their fee or undertaking some training or improving their management

systems).

We have also given ourselves the capacity to record and report new matter types including civil litigation matters (that is to say, matters which involve the Commissioner as applicant or respondent in civil proceedings); privacy and right to information applications; complaints about us (complaints about our service, policies or procedures); and grievances (requests that we reconsider a decision, applications for judicial review of a decision and complaints about us to the Queensland Ombudsman, the CMC or other like agency). We have included the relevant data at Appendix 4 and elsewhere in the report.

We have given ourselves the capacity also to interrogate our database and cross reference the complaints, compliance audit and trust account investigation data at our disposal to identify systemic problems in the provision of legal services and to generate evidence based 'risk alerts' which identify the lawyers and law firms most likely to be non-compliant with their professional and service obligations. It is an important capacity to have and a capacity that will become increasingly important with the commencement of the national legal profession reforms. We should never impose any needless regulatory burden on low risk firms but direct our regulatory resource to where it is most needed and can have the most beneficial impact in the public interest.

Last but not least we have managed albeit after a lengthy delay to give the BAQ remote access to LPCentral also, enabling the BAQ like the QLS to track and process the complaints we refer there for investigation on what is now a single consolidated database underpinning the system for dealing with complaints, and the same database we use to track and

process compliance audits and that the QLS uses to track and process trust account investigations. We have agreed with the BAQ that, like the QLS, it will 'feed' LPCentral with agreed data from the separate database it uses in connection with its responsibility to issue practising certificates and we have entered into an Information Sharing Agreement accordingly.

This is a significant achievement and unique in Australia - the multiple regulators in the other states and territories all remain reliant on the own standalone databases - and it means that LPCentral is on the cusp of becoming the first consolidated and fully integrated data warehouse for keeping the data required to be kept in connection with the regulation of the legal profession in any Australian jurisdiction. It lends itself to use by the admitting authorities also - the Supreme Court assisted by the Legal Practitioner's Admissions Board - and in that eventuality will then be complete.

- regrettably we have made little progress in realising the truly exciting potential of the online gateway to LPCentral, www.lpportal.org.au, or LPPortal. It is serving an important and useful purpose by giving incorporated legal practices confidential access to their firm's complaints history and allowing them to complete and lodge their self assessment audits electronically. We can't yet push that same information out to law firms more generally, however, much less the more detailed and cross referenced information we hold about their firms that would give them the same access we have to their 'risk profile'.

Nor have we been able to give legal academics and the public more generally access to the de-identified and aggregated complaints and other regulatory and

profession analysis data we hold and that we believe should be available in the public interest, much less a search engine that would enable them to interrogate the data. We will soon complete the software upgrade the portal requires to be accessible to more users but we have limited resources at this point in time to develop the software further. We remain committed however to doing what we can, when we can.

Our compliance

Our statement of *Our Core Business and Our Values* commits us to being fair, responsive, open and accountable. We have (as we've noted previously) published a Complaints About Us policy and procedure to help give effect to those values and we've enhanced our database to allow us to monitor and report the numbers of complaints we receive under that policy. Table 13 tells the story.

Table 13 - Complaints about us



	on hand 1 July 2010	opened	closed	on hand 30 June 2011
Complaints About Us (from April 2011)	n/a	1	1	0
Reconsiderations (from January 2011)	n/a	9	6	3
Applications for Judicial Review	0	1	0	1
Complaints to Ombudsman	2	5	6	1
Complaints to CMC	0	1	1	0
Privacy / RTI applications	4	13	14	3

We are accountable for our conduct under not only the *Legal Profession Act 2007* but the *Public Sector Ethics Act 1994* (the PSEA) and the now repealed *Whistleblower Protection Act 1994* (the WPA) and its successor legislation, the *Public Interest Disclosure Act 2010* (the PIDA). We took a range of measures during the year to ensure our compliance with the PSEA including:

- in the period to 31 December 2010, under section 10 of the PSEA as it then was, designating the Manager-Compliance to be responsible for implementing and driving the LSC's compliance obligations under

the Act and including the principles set out in the PSEA in our revised policies and procedures, including our Complaints about Us policy and procedure; and

- in the period from 1 January to 30 June 2011, under the amended requirements of the PSEA, committing ourselves publicly on our website and in our written publications to the principles set out in the PSEA; adopting the single Code of Conduct for the Queensland Public Service; publishing the Code of Conduct



and related documents and legislation on our intranet; implementing an induction program for new employees which specifically includes information about the Code of Conduct and related policies and procedures; and requiring all new employees as part of their induction program to undertake ethics training provided by the department's Ethical Standards Unit.

The WPA was repealed upon the commencement of the PIDA on 1 January 2011 and we are no longer required to report public interest disclosures in our annual report. We are required instead to report public interest disclosures to the Public Service Commission (the PSC). The PSC is responsible under section 61 of the PIDA for overseeing public interest disclosures and preparing an annual report on the operation of the PIDA. We have no public interest disclosures to report under the WPA for the period to 31 December 2010, and none to report to the PSC under the PIDA in the six months to 30 June 2011.

Appendix 1 – The system for dealing with complaints

The *Legal Profession Act 2007* (the Act) establishes the LSC 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 PIPA.

We have described the system for dealing with complaints on the LSC'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, describe simply but in relevant detail a lawyer's obligations 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 also includes an interactive online 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 online. 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 LSC. 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 overcharging, and hence potentially of unsatisfactory professional conduct. 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'. And then:

- if the answer to both questions is no, we assess the complaint to be a consumer dispute. 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 they 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 apologise, 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 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 QCAT

in relation to more serious disciplinary matters or the Legal Practice Committee in relation to less serious disciplinary matters; and

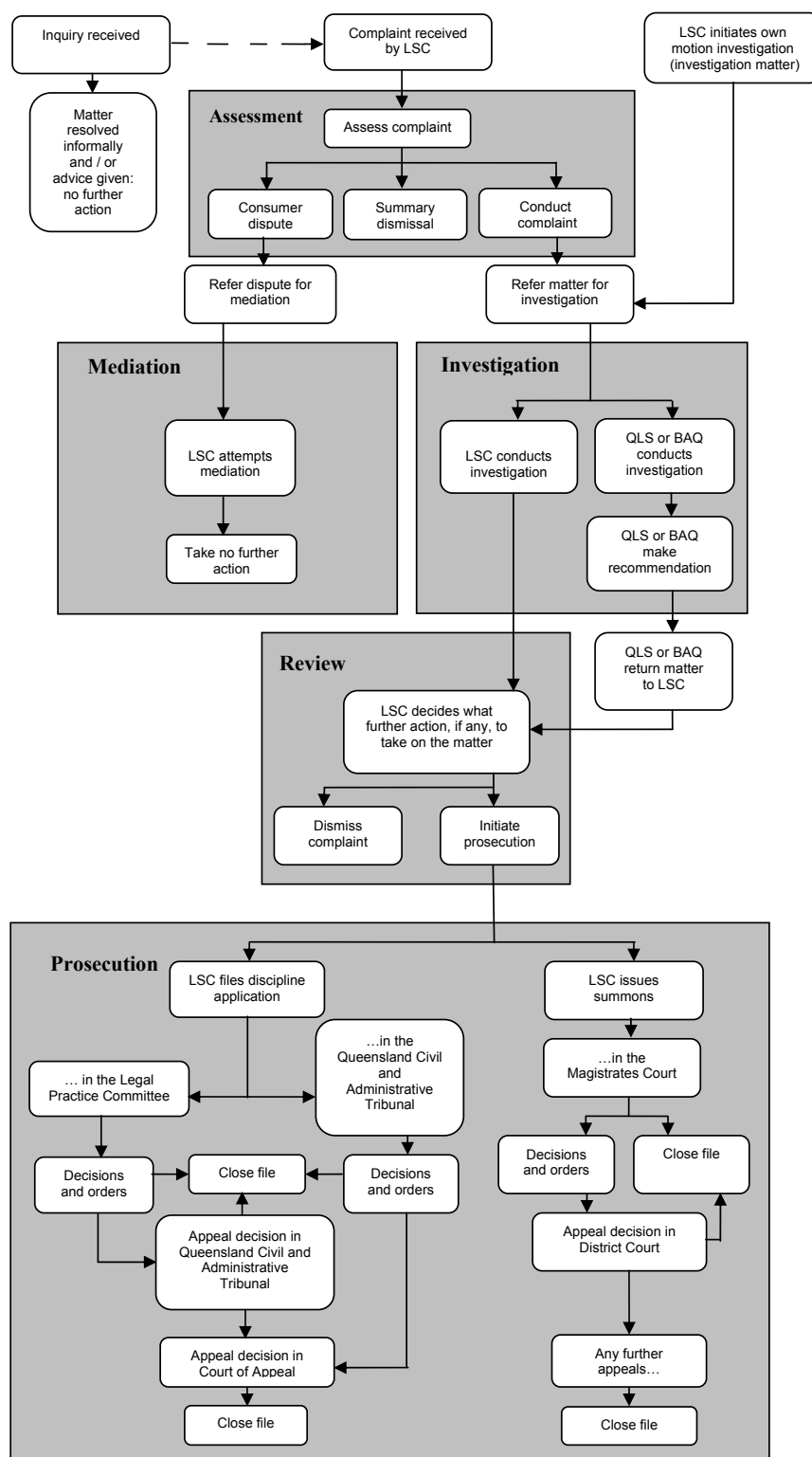
- if the answer to either question is no, the Act obliges us to dismiss the complaint, or in other words to take no further action in the matter.

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

We have described the system established under the Act for dealing with complaints at Appendix 1. It is a co-regulatory system which comprises the LSC and both professional bodies, the QLS and the BAQ. It is best conceived holistically.

The LSC is funded by grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) and employs a range of staff within the organisational structure described at table 2.2. Similarly the QLS is funded for these (and some other) regulatory purposes by grants from LPITAF. It employs people within its Professional Standards Department to investigate complaints that the LSC refers to

the QLS for investigation and within its Ethics Centre to assist practitioner who seek ethical advice. The BAQ is not funded through LPITAF but draws on funds of its own to employ a part-time Manager, Professional Standards who supports its Professional Conduct Committee in performing these same functions.

Table 2.1 sets out how the system established under the Act for dealing with complaints has been staffed since its inception on 1 July 2004 through to 30 June 2011 and beyond.

Table 2.1 - Numbers of fulltime equivalent staff by agency and year

	start up: 2004	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
LSC	8	10.7	17.5	18.2	18.2	18.2	19.2*	20.2#	20.2
QLS	19.95	19.95	19.95	12.72	13.72	14	12	11	11
BAQ	-	-	-	-	-	-	-	-	-
Total	27.95	30.65	37.45	30.92	31.92	32.2	31.2	31.2	31.2

* The LSC and the QLS were both funded to employ an additional staff member to perform the additional regulatory functions the *Legal Profession Act 2007* required of us as ‘relevant regulatory authorities’ in relation to incorporated legal practices. However the LSC and the QLS agreed effective from July 2009 that this work belongs best with the LSC and accordingly the position at the QLS (and the funding) transferred to the LSC.

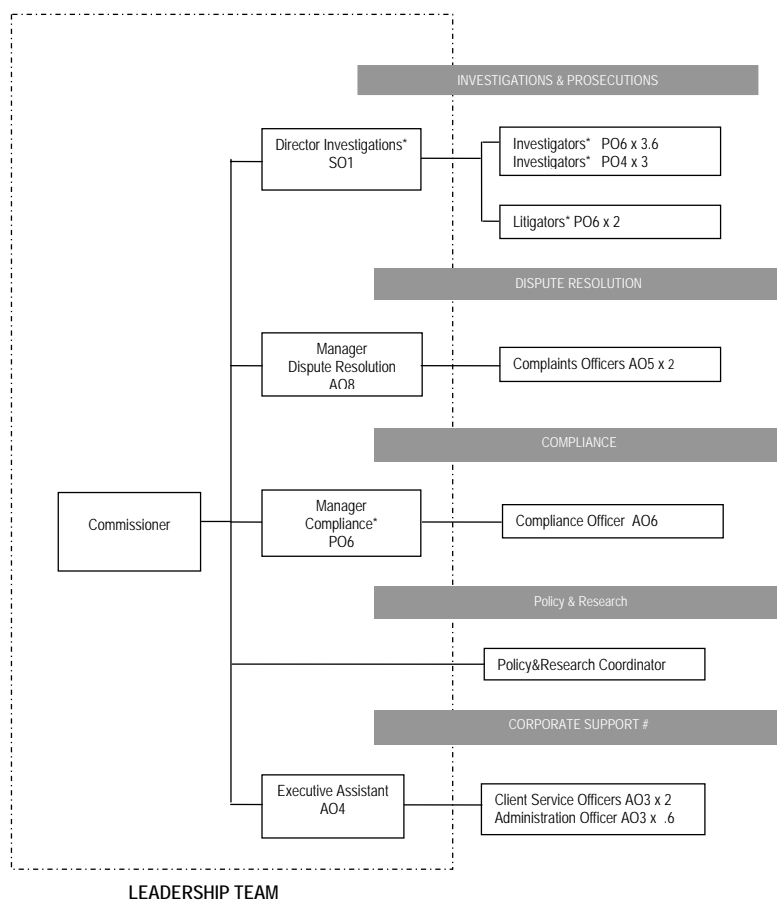
The QLS decided not to replace the manager of its Client Relations Centre (CRC) who resigned in March 2010 and to close the CRC when the final member of staff resigned in December 2010. The QLS relinquished funding for both positions when they fell vacant but, while the work transferred to the LSC, funding for only one (the second) and not the other of those positions transferred with the work.

The figures tell an interesting story. Notably, while the system needed to be supplemented with additional staff initially, primarily to deal with the large backlog of complaints that the LSC inherited in its inception, fewer staff were required once the backlog was resolved going into 2006-07 and 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 only slightly greater

than the number when the system first commenced.

This is no small achievement and reflects significant efficiencies. It comes despite the fact that we took on additional responsibilities in May 2006 under amendments to the PIPA to investigate and prosecute apparent breaches of the restrictions on advertising personal injury services and touting; that we took on additional responsibilities again in July 2007 to conduct compliance audits of incorporated legal practices; and that we have managed over that same time to add value to the system by developing a capacity that was previously lacking to undertake projects and research.

Table 2.2 - Organisation chart going into 2011-2012



Total full time equivalent staff: 20.2

* These positions require legal qualifications

The corporate support team also provides secretariat support to the Legal Practice Committee

Appendix 3 – Funding the system

Table 3.1 sets out the costs in 2010-11 of administering the system established under the Act for dealing with complaints. The system comprises the LSC together with the relevant staff of the Professional Standards Unit of the QLS and the staff and the members of the Professional Conduct Committee of the BAQ who deal with complaints on referral from the LSC. It also includes for these purposes the Legal Practice Committee (LPC).

The LSC and the LPC are funded by grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF). The QLS is funded for these regulatory purposes by means of a

grant from LPITAF which is made to the LSC in the first instance and then transferred to the QLS pursuant to a Service Level Agreement with the LSC. The BAQ does not receive any funding from LPITAF for these purposes but rather draws on its own funds and the members of its Professional Conduct Committee who give of their time pro bono.

Grants from LPITAF are made at the discretion of the Attorney-General on the recommendation of the Director-General of the Department of Justice and Attorney-General in accordance with sections 289-290 of the Act.

Table 3.1 - The cost of administering the system for dealing with complaints in 2010-11

	employee related expenses	all other costs	2010-11 total	2009-10 total for comparison	2010-11 budget for comparison
LSC	\$2,023,332	\$1,117,829 *	\$3,141,161	\$3,070,970	\$3,706,902#
QLS	n/a	n/a	\$1,613,031+	\$1,725,214	\$1,611,917
BAQ	-	-	-	-	-
LPC	\$27,557	\$12,096	\$39,653	\$32,143	\$34,779
Total	n/a	n/a	\$4,793,845	\$4,828,327	\$5,353,598

* This figure includes brief out costs of \$281,330 (see table 3.2).

This figure includes as in previous years a budget of \$500,000 for brief out costs which will be drawn upon only as needed – see table 3.2 for expenditure against this budget in years past.

+ this figure is the amount that transferred from the LSC to the QLS to enable it to deal with the complaints that the LSC referred to the QLS for investigation pursuant to a Service Level Agreement.

Table 3.2 sets out the monies we have expended to meet brief out costs incurred in obtaining legal advice in relation to complaints and disciplinary matters and/or representing the LSC in complex matters before the disciplinary bodies.

Table 3.2 - Brief out costs

04-05	05-06	06-07	07-08	08-09	09-10	10-11
u/a	\$128,477	\$127,701	\$290,172	\$455,453	\$163,555	\$281,330

Table 3.3 sets out the monies that have been returned to, or are due to return to LPITAF as a consequence of disciplinary action initiated by the LSC in the disciplinary bodies.

Table 3.3 - Monies returned or due to return to LPITAF in 2010-11

	QCAT	LPC	Total
financial penalties ordered in 2010-11	\$14,000	\$2,500	\$16,500
penalty payments received in 2010-11	\$7,000	\$2,500	\$9,500
costs ordered, agreed or assessed in 2010-11	\$13,250	\$3,750	\$17,000
costs payments received in 2010-11	\$46,750	\$3,750	\$50,500
costs written off in 2010-11	\$31,900	-	\$31,900
costs payments pending	\$5,500	-	\$5,500

Appendix 4 – Performance Data

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1 Table of contents

2 Introduction

2.1 Purpose

This report provides a statistical analysis of the complaints handling and compliance audit work undertaken by the Legal Services Commission (LSC) during the reporting year 2010-11.

2.2 Scope

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

2.3 Acronyms and abbreviations

Term	Description
BAQ	Bar Association of Queensland
ILP	Incorporated Legal Practice
Law Firm	Solicitor sole practitioner, partnership, ILP or MDP
LPC	Legal Practice Committee
LPT	Legal Practice Tribunal
LSC	Legal Services Commission
MDP	Multi disciplinary Partnership
PC	Practising Certificate
PIPA	Personal Injuries Proceedings Act 2002
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society

2.4 Definition of key terms

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

Inquiries comprise inquiries that made typically by telephone but sometimes in writing, by email or in person including, for example:

- inquiries by legal consumers, other members of the public and sometimes legal practitioners about how to make a complaint or seeking help to make a complaint about a legal practitioner

or law practice employee, or queries about how the complaints and disciplinary process works or whether something a legal practitioner has said or done is proper or what it means, and so on. Inquiries might be made of either the LSC, QLS or BAQ;

- **informal complaints:** concerns or ‘complaints’ made by legal consumers, other members of the public and sometimes legal practitioners about the conduct of a legal practitioner or law practice employee or some other person over whom the LSC may have jurisdiction that are made other than in writing and which the ‘complainant’ requests or agrees be dealt with informally, at least in the first instance (on the understanding that the ‘complainant’ remains entitled to make a formal written complaint if his or her concerns can’t be resolved informally). Informal complaints might be made to the LSC, to the QLS or to the BAQ and are typically dealt with as if they were consumer disputes (see below); and
- **ethical inquiries:** inquiries by solicitors or barristers of the QLS or BAQ respectively as their professional body about their ethical obligations as legal practitioners.

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

- **summary dismissals:** complaints that are beyond the LSC’s jurisdiction or out of time or that are otherwise dismissed pursuant to section 448;
- **consumer disputes:** complaints that describe disputes between consumers and legal practitioners and / or law practice employees but do not raise an issue of unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or misconduct on the part of a law practice employee. The Act provides that the LSC may try to mediate consumer disputes or alternatively refer them to the QLS or BAQ for mediation (and does not require the QLS or BAQ to report the outcome to the LSC); and
- **conduct matters:** conduct complaints, ILP conduct complaints, investigation matters, PIPA investigation matters and ILP investigation matters, as follows:
 - **conduct complaints:*** complaints (whether or not they also describe consumer disputes) which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct by a legal practitioner (in their capacity as a legal practitioner, but not as a legal practitioner director of an ILP) or misconduct by a law practice employee or that the person subject to complaint is guilty of an offence (other than an offence in relation to ILPs);
 - **ILP conduct complaints:*** complaints about the conduct of legal practitioner directors of ILPs (in their capacity as legal practitioner directors of ILPs) which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the Act or that a legal practitioner director or other director, officer, employee or agent of an ILP has committed an offence pursuant to those or other ILP specific sections of the Act;

- **investigation matters:*** matters other than PIPA and ILP related matters (see below) that the LSC decides to investigate of its own motion because it suspects a legal practitioner (in his or her capacity as a legal practitioner, but not as a legal practitioner director of an ILP) has engaged in conduct in which, if the suspicions are proved, would justify a finding of unsatisfactory professional conduct or professional misconduct or that some other person over whom it has jurisdiction is guilty of an offence (other than offences in relation to PIPA or ILPs). Investigation matters are logged on the CMS as if the Commissioner had made a conduct complaint;
- **PIPA investigation matters:** matters that the LSC decides to investigate of its own motion because it suspects a legal practitioner or other person has breached the restrictions on the advertising of personal injury services or touted for personal injury services in contravention of the PIPA; and
- **ILP investigation matters:*** matters that the LSC decides to investigate of its own motion because it suspects a legal practitioner director of an ILP has engaged in conduct which, if proved, would justify a finding of either unsatisfactory professional conduct or professional misconduct pursuant to the provisions of chapter 2 part 2.7 of the Act or that a legal practitioner director or other director, officer, employee or agent of an ILP has committed an offence pursuant to those or other ILP specific sections of the Act.

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

ILP compliance audits comprise audits of incorporated legal practices undertaken pursuant to section 130 of the Act. They comprise both internal and external audits, as follows:

- ILP self assessment audits: internal audits undertaken by or on behalf of legal practitioner directors of ILPs to assess their compliance with their obligation under section 117(3) of the Act to ensure that the ILP keeps and implements appropriate management systems. The LSC requires ILPs to undertake self assessment audits immediately or shortly after they notify the QLS (under section 114 of the Act) of their intention to engage in legal practice and periodically thereafter to assess their continuing compliance;
- ILP web based surveys: external audits in which the LSC requires all or representative samples of the different levels and classifications of an ILP's employees to complete a short online survey which reviews aspects of the firm's 'ethical infrastructure';
- ILP onsite reviews: more comprehensive external audits undertaken onsite at an ILP's offices which review the firm's and its employees' compliance with their statutory and ethical obligations. Onsite reviews are undertaken by the LSC or by the QLS on referral from the LSC in which case the QLS reports its findings and recommendations to the LSC for its consideration as to what further action, if any, is appropriate.

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

- that there is a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct by a legal practitioner or misconduct by a law practice employee or a court that an ILP should be banned, that a person should be disqualified from managing an ILP or that a person is guilty of an offence under the Act; and
- that it is in the public interest that the matter be determined by a disciplinary body or court, and hence initiates proceedings in the appropriate disciplinary body or court.

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

3 Reporting Framework

3.1 Law Firms

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

- partnership
- ILP
- MDP

This excludes business structures such as the following.

- community legal centres
- government/other

We have also decided to distinguish local law firms from interstate law firms with a local office.

3.2 Inquiries

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

3.3 Complaints

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

- complaints on hand at the start of the year
- complaints opened during the year
- 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 handling process that yields definitive and accurate information about the complaint (because the information about a complaint is only fully determined at this stage of the process).

Importantly, we count complaints under the consolidated category 'complaints' only until such time as complaints have been assessed and either summarily dismissed or assessed to be consumer disputes or

conduct complaints, and count them subsequently under those categories. That is because the three types of complaints can be expected to have quite different characteristics by a 'length of time opened' measure, for example, and it would be misleading to report our performance using only the one consolidated category 'complaints'.

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

3.4 ILP compliance audits

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

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

3.5 Prosecutions

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

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

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

4 Certificate Holder analysis

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

We have used 1 July 2010 as the reference point for the analysis because that is the renewal date for practising certificates for solicitors in Queensland – hence complaints about solicitors during 2010-11 will be profiled against the solicitor's attributes as they were recorded at 1 July 2010.

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.

4.1 Solicitors

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

Year	Principal	Employee	Restricted Employee	Limited Principal	Restricted Principal	Un-restricted Volunteer	Restricted Volunteer	Foreign	Total
2010	2,537	3,882	1,568	20	4	17	37	1	8,066
2009	2,432	3,603	1,536	20	4	12	23	n/a	7,630
2008	2,341	3,277	1,568	19	4	6	8	n/a	7,239
2007	2,302	3,010	1,584	19	4	4	3	n/a	6,926
2006	2,297	2,932	1,185	n/a	n/a	n/a	n/a	n/a	6,414
2005	2,317	3,074	801	n/a	n/a	n/a	n/a	n/a	6,192
2004	2,290	3,049	520	n/a	n/a	n/a	n/a	n/a	5,859
2003	2,261	2,846	422	n/a	n/a	n/a	n/a	n/a	5,522

4.1.2 Solicitors by gender as at 1 July 2010

	Total	%
female	3,481	43.16
male	4,585	56.84
total	8,066	

4.1.3 Solicitors by age group as at 1 July 2010

	Total	%
< 24	283	3.51
25 - 29	1,645	20.39
30 - 34	1,236	15.32
35 - 39	1,207	14.96
40 - 44	937	11.62
45 - 49	783	9.71
50 - 54	797	9.88
55 - 59	571	7.08
60 - 64	388	4.81
65 - 69	149	1.85
70 >	70	0.87
total	8,066	

4.1.4 Solicitors by years admitted as at 1 July 2010

	Total	%
< 5	2,642	32.75
5 - 9	1,726	21.40
10 - 14	995	12.34
15 - 19	814	10.09
20 - 24	627	7.77
25 - 29	558	6.92
30 - 34	364	4.51
35 - 39	202	2.50
40 >	138	1.71
total	8,066	

4.2 Law Firms/Employers

4.2.1 Law firms by business structure and size as at 1 July 2010

	Partnership	% of total	ILP	% of total	MDP	% of total	Total
1	550	46.81	101	35.94	-	-	651
2 - 3	374	31.83	99	35.23	-	-	473
4 - 6	123	10.47	44	15.66	1	50.00	168
7-12	62	5.28	22	7.83	-	-	84
13-24	37	3.15	13	4.63	-	-	50
25-50	12	1.02	-	-	-	-	12
51-100	14	1.19	2	0.71	-	-	16
101-200	3	0.26	-	-	1	50.00	4
total law firms	1,175		281		2		1,458
total offices	1,254		334		2		1,590

4.2.2 Employer business structures by practising certificate type as at 1 July 2010

	Principal	Employee	Restricted Employee	Limited Principal	Restricted Principal	Un-restricted Volunteer	Restricted Volunteer	Foreign	Total
partnership	2,029	2,034	951	-	3	-	-	1	5,018
ILP	433	455	218	-	1	-	-	-	1,107
MDP	46	82	43	-	-	-	-	-	171
Sub-total	2,508	2,571	1,212	-	4	-	-	1	6,296
community legal	-	129	42	19	-	14	34	-	238
government/other	29	1,182	314	1	-	3	3	-	1,532
total	2,537	3,882	1,568	20	4	17	37	1	8,066

4.2.3 Law firms by size as at 1 July 2010

No. of PC Holders	No. of Law Firms	%
1	651	44.65
2 - 3	473	32.44
4 - 6	168	11.52
7 - 12	84	5.76
13 - 24	50	3.43
25 - 50	12	0.82
51 - 100	16	1.10
101 - 200	4	0.27
total	1,458	

4.2.4 Location of law firm offices as at 1 July 2010

	No. of Law Firms	%
Brisbane city	280	17.61
Brisbane north suburbs	250	15.72
Brisbane south suburbs	245	15.41
Gold Coast	274	17.23
Ipswich region	55	3.46
Toowoomba region	66	4.15
Western Queensland	8	0.50
Sunshine Coast	163	10.25
Hervey Bay to Gladstone	44	2.77
Rockhampton region	34	2.14
Mackay region	26	1.64
Cairns region	94	5.91
Townsville region	51	3.21
total	1,590	

4.2.5 Solicitors employed by size of law firm as at 1 July 2010

Law Firm Size	No. of PC Holders	%
1	651	8.07
2 – 3	1,118	13.86
4 – 6	807	10.00
7 – 12	717	8.89
13 – 24	842	10.44
25 – 50	379	4.70
51 – 100	1,188	14.73
101 – 200	594	7.36
sub-total	6,296	78.06
all other employers	1,770	21.94
total	8,066	

4.3 Barristers

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

	Total
2010	1,020
2009	948
2008	901
2007	891
2006	892
2005	825
2004	789

5 Inquiries

5.1 Inquiries by agency and year

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07
client inquiries from public received during year by LSC	1,501	1,848	1,488	1,632	1,671
client inquiries from public received during year by QLS *	1,061	2,151	2,880	3,713	4,309
total client inquiries from public	2,562	3,999	4,368	5,345	5,980
ethical inquiries from practitioners during year by QLS	2,992	3,075	2,737	2,646	2,561

* The QLS ceased this function in March 2011

5.2 Inquiries by area of law

	No. of Inquiries	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
family law	541	21.12	20.06	20.19	20.11
deceased estates or trusts	315	12.30	11.97	13.48	11.54
conveyancing	262	10.23	13.04	12.11	18.24
personal injuries /workcover litigation	231	9.02	8.75	8.70	8.66
litigation	155	6.05	6.55	5.68	5.33
criminal law	121	4.72	4.25	4.60	4.53
commercial /company law	108	4.22	4.82	5.91	5.59
property law	65	2.54	3.32	4.12	2.96
all other 'areas of law' combined	764	29.82	27.24	25.18	23.03
total	2,562				

5.3 Inquiries by nature of the inquiry

	No. of Inquiries	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
costs	891	34.78	31.08	31.48	24.64
quality of service	384	14.99	17.69	20.05	21.59
ethical matters	258	10.07	10.64	9.52	8.91
communication	234	9.13	9.20	7.81	7.60
advice	105	4.10	7.70	9.36	13.53
documents	105	4.10	2.47	2.88	3.26
trust funds	48	1.87	2.05	1.88	2.08
all other 'natures of inquiry' combined	537	20.96	19.17	17.01	18.41
total	2,562				

5.4 Inquiries by outcome

	No. of Inquiries	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
provided information about the legal system	354	13.82	11.64	12.89	14.87
provided referral for legal advice or other assist	352	13.74	14.22	16.00	14.09
provided complaint form	348	13.58	13.64	15.77	13.66
inquirer satisfied	330	12.88	13.44	11.86	17.06
listened to callers concerns	294	11.48	13.29	11.65	8.91
recommended direct approach to firm about concerns	253	9.88	13.07	13.90	14.35
lost contact with complainant/inquirer	203	7.92	5.77	5.59	5.20
mediation attempted	164	6.40	4.32	4.03	n/a
explained concerns are outside jurisdiction	69	2.69	-	-	-
all other 'outcomes' combined	195	7.61	10.59	6.40	11.86
total	2,562				

5.5 Inquiries by remedy

	No. of remedies 2010-11	Amount 2010-11	No. of remedies 2009-10	Amount 2009-10
apology	1	-	-	-
financial redress/compensation	19	24,471	8	7,180
management system improvements	1	-	-	-
redress – improved communication	28	-	7	-
redress – other (including waive lien/release file)	20	-	6	-
total	69	\$24,471	21	\$7,180

5.6 Inquiries by inquirer type

	No. of Inquiries	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
client/former client	1,884	73.54	72.04	68.29	70.40
non-client	343	13.39	13.72	11.65	11.88
third party	149	5.82	5.90	8.24	9.24
solicitor	62	2.42	3.25	5.68	3.44
beneficiary	52	2.03	-	-	-
executor	44	1.72	-	-	-
all other 'inquirer types' combined	28	1.09	5.10	6.14	5.03
total	2,562				

6 Complaints

6.1 On hand summary - total

Complaint type	As at 30 June 11	As at 30 June 10	As at 30 June 09	As at 30 June 08	As at 1 July 07	As at 1 July 06	As at 1 July 05
consumer dispute	3	4	5	4	8	3	88
conduct matters	427	454	404	391	409	401	818
under assessment	75	100	49	58	60	96	26
total	505	558	458	449	477	500	932

6.2 On hand summary by matter type

Complaints/investigation matters	2010-11	2009-10	2008-09	2007-08	2006-07
under assessment/awaiting assessment	47	65	22	39	41
under assessment/awaiting further information	28	35	27	19	19
consumer disputes	3	4	5	4	8
conduct complaints	377	396	363	326	344
investigation matters	50	58	41	57	65
total conduct matters as at 30 June	427	454	404	383	409
total complaints as at 30 June	505	558	458	449	477

6.3 Throughput summary

Complaints/investigation matters	2010-11	2009-10	2008-09	2007-08
matters on hand at 1 July	558	458	449	477
plus matters opened during the year	1,141	1,359	1,145	1,258
includes complaints received from public	1,041	1,185	1,067	1,139
includes investigation matters opened (ILP)	-	1	-	-
includes investigation matters opened (PIPA)	23	119	15	59
includes investigation matters opened (all other)	77	54	63	60
less summary dismissals	507	500	443	444
less consumer disputes closed	51	71	88	102
less conduct matters closed	636	688	605	740
includes complaints received from public	539	528	509	620
includes Investigation matters (ILP)	-	1	-	-
includes Investigation matters (PIPA)	30	111	7	58
includes Investigation matters (all other)	67	48	89	62
total complaints/investigation matters closed	1,194	1,259	1,136	1,286
complaints/investigation matters on hand at 30 June	505	558	458	449

6.4 Online complaints and inquiries summary

	Total 2010-11	Avg/ mth	Total 2009-10	Avg/ mth	Total 2008-09	Avg/ mth
complaints received this year	260	21.67	266	22.17	44*	8.8
inquiries received this year	157	13.08	99	8.25	41*	8.2
total	417		265		85*	

** the capture of online complaints and inquiries commenced in February 2009

6.5 Assessment summary

	Total	% 2010-11	% 2009-10	% 2008-09	% 2007-08
new complaints/investigation matters allocated for assessment during the year	1,041				
of these:					
currently under assessment as at 30 June	67	6.44	8.04	3.38	4.81
number of new matters assessed this year	974	93.56	91.96	96.62	95.19
of these:					
number summarily dismissed	451	46.30	42.13	39.81	37.51
number assessed to be consumer disputes	49	5.03	6.11	8.74	8.98
number assessed to be conduct matters	469	48.15	51.76	51.46	53.13

6.6 Timeliness

Complaint type	Matters Completed	Time Band	Actual %	Cumulative%	Target %	Median days open 2010-11
conduct matters	359	<= 6 months	56.45	56.45	75	176
	203	7 - 18 months	31.92	88.36	100	
	74	> 18 months	11.64	100.00	0	
consumer disputes	44	<= 2 months	86.27	86.27	90	22
	7	2 - 5 months	13.73	100.00	100	
	0	> 5 months	0	100.00	0	
summary dismissals	426	<= 1 month	84.02	84.02	90	19
	36	1 - 2 months	91.12	91.12	100	
	45	> 2 months	100.00	100.00	0	

6.7 Complaints/investigation matters

6.7.1 Complaints/investigation matters by area of law

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
administrative law	-	8	9	17	1.42
bankruptcy and Insolvency	-	7	4	11	0.92
building /construction Law	-	8	7	15	1.26
commercial law	6	33	33	72	6.03
conduct not in the practice of law	-	10	9	19	1.59
conveyancing	17	56	33	106	8.88
criminal law	2	34	33	69	5.78
deceased estates or trusts	2	40	49	91	7.62
family law	6	112	119	237	19.85
immigration	1	2	2	5	0.42
industrial law	-	4	1	5	0.42
leases/mortgages	1	11	6	18	1.51
litigation	5	63	50	118	9.88
personal injuries /workcover litigation	3	74	31	108	9.04
property law	3	34	21	58	4.86
trust account breaches	-	33	3	36	3.01
all other 'areas of law' combined	5	107	97	209	17.50
total	51	636	507	1,194	

6.7.2 Complaints/investigation matters by nature of matter

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
communication	3	51	73	127	10.64
compliance	-	62	14	76	6.37
costs	21	121	81	223	18.68
documents	3	7	10	20	1.68
ethical matters	5	149	166	320	26.80
personal conduct	-	11	6	17	1.42
PIPA	-	37	-	37	3.10
quality of service	18	155	118	291	24.37
trust funds	1	37	15	53	4.44
all other 'natures of matter' combined	-	6	24	30	2.51
Total	51	636	507	1,194	

6.7.3 Complaints/investigation matters by respondent type

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
barrister	3	27	29	59	4.94
corporation	-	5	-	5	0.42
law practice employee	-	1	8	9	0.75
legal practitioner	-	2	-	2	0.17
non-legal director	-	-	1	1	0.08
other	-	15	15	30	2.51
solicitor	48	561	450	1,059	88.69
unlawful operator	-	25	4	29	2.43
Total	51	636	507	1,194	

6.7.4 Complaints/investigation matters by law firm business structure – solicitors only

	Consumer Disputes	Conduct Matters	Summary Dismissals	Total	% of total
partnerships	33	385	318	736	69.50
ILPs	13	120	66	199	18.79
MDPs	-	1	5	6	0.57
all other 'business types'	2	55	61	118	11.14
total	48	561	450	1,059	

6.8 Complaint Avoidance

6.8.1 Avoidability of complaints summary

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

Of the number of complaint/investigation matters closed since 1 July, excluding summary dismissals:	Number 2010-11	%	Number 2009-10	%
number assessed to be unavoidable	221	32.22	214	28.27
number assessed to be avoidable	465	67.78	543	71.73
(Total)	686		757	

6.8.2 Unavoidable complaints summary

The following table records for every consumer dispute and conduct matter that the LSC 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	% 2010-11	% 2009-10
a) the complainant had ulterior motives	9.42	10.86
b) the complainant wouldn't take advice	4.48	3.17
c) the complainant had unrealistic expectations and/or made unreasonable demands	22.42	25.79
d) the complainant misunderstood the obligations of practitioners acting for the other side	7.62	12.22
e) the 'problem' is inherent in the adversarial system of justice	7.62	6.33
f) the complaint was baseless and could not have been avoided (eg: by better communication)	14.35	22.17
g) of some reason other than the above	34.08	19.46

6.8.3 Avoidable complaints summary

The following table records for every consumer dispute and conduct matter that the LSC 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	% 2010-11	% 2009-10	% 2008-09	% 2007-08
work practices	36.29	44.74	28.88	29.08
communication	23.09	24.04	25.74	27.65
costs	22.06	15.26	18.66	14.47
timeliness	7.01	4.91	6.09	6.16
trust accounts	2.68	4.74	10.41	6.59
conflict of interest	2.47	2.98	4.13	4.01
supervision	2.06	1.40	2.16	7.31
liens and transfers	1.65	0.88	2.75	1.72
undertakings	1.44	0.70	-	1.86
record keeping	1.24	0.35	1.18	1.15

6.9 Conduct matters referred/returned

6.9.1 Conduct matters referred to the professional bodies

	Total 2010-11	%	Total 2009-10	%	Total 2008-09	%	Total 2007-08	%
referred to QLS	210	38.04	236	39.07	287	44.84	309	39.22
referred to BAQ	8	1.45	16	2.65	18	2.81	15	1.90
total	218	39.49	252	41.72	305	47.66	324	41.12
retained at LSC	334	60.51	352	58.28	335	52.34	264	58.88

6.9.2 Conduct matters returned by the professional bodies for review

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08
returned from QLS	237	244	285	359
returned from BAQ	14	15	12	16
total	251	259	310	375

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

	Total 2010-11	%	Total 2009-10	%	Total 2008-09	%	Total 2007-08	%
returned from QLS	35	14.70	25	9.54	30	10.52	27	8.31
returned from BAQ	4	28.57	2	16.67	5	41.67	7	33.33
total	39		27		35		34	

6.10 Investigation matters

6.10.1 Throughput summary - non (PIPA & ILP) investigation matters

	Total 2010-11	Total 2009-10	Total 2008-09
on hand at start of year	40	34	60
opened during year	77	55	63
% of new complaints/investigation matters opened	6.75	4.05	5.50
closed during year (summary dismissal)	7	-	-
closed during year (conduct matter)	67	49	89
closed during year (total)	74	49	89
on-hand at end of year (under assessment)	6	-	-
on-hand at end of year (conduct matter)	37	40	34
on hand at end of year (total)	43	40	34

6.10.2 Throughput summary – PIPA investigation matters

	Total 2010-11	Total 2009-10	Total 2008-09
on hand at start of year	20	12	4
opened during year	23	119	15
% of new			
complaints/investigation matters opened	2.02	8.76	1.31
closed during year (conduct matter)	30	111	7
on hand at end of year (conduct matter)	13	20	12

6.11 Barristers

6.11.1 Complaint/investigation matter summary

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07	Total 2005-06
complaints	30	21	40	30	17	41
summary dismissals	29	27	24	18	29	28
total	59	48	64	48	46	69

6.11.2 Complaints/investigation matters (excluding summary dismissals) by area of law

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07	Total 2005-06
administration law	2	-	1	-	1	-
building/construction-	-	-	1	-	-	-
commercial/company law	1	-	-	1	1	-
conduct not in practice of the law	-	-	3	1	-	3
criminal law	11	6	8	5	4	9
family law	4	1	12	6	2	8
immigration	1	-	-	-	1	1
industrial law	-	-	-	1	-	3
leases/mortgages	-	1	-	-	1	2
litigation	3	2	8	5	4	9
PI/ Workcover	1	1	7	9	6	6
property law	1	1	-	2	-	-
trust a/c breaches	-	-	-	-	-	1
all other 'areas of law'	6	9	-	-	-	1
total	30	21	40	30	17	41

6.11.3 Complaints/investigation matters (excluding summary dismissals) by nature of matter

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07	Total 2005-06
ethical matters	11	5	12	16	6	26
quality of service	8	7	10	4	3	4
costs	7	3	6	4	3	5
compliance	2	2	5	2	2	-
communication	1	2	4	2	1	2
personal conduct	-	2	2	1	1	1
PIPA	-	-	-	1	-	-
documents	-	-	-	-	1	1
trust funds	-	-	-	-	-	1
all other 'natures of matter'	1	-	1	-	-	1
total	30	21	40	30	17	41

6.11.4 Complaints/investigation matters (excluding summary dismissals) by outcome

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07	Total 2005-06
no reasonable likelihood	12	12	22	21	10	26
no public interest	7	8	4	3	2	8
withdrawn	3	-	2	-	3	2
referred for civil litigation	3	-	-	-	-	-
referred to LPC	1	-	2	-	-	1
referred to Magistrates Court	1	-	-	-	-	-
referred to tribunal	-	1	5	4	1	2
refer- other investigative process	-	-	3	-	-	-
outside jurisdiction		-	1	1	1	-
all other 'outcomes'	3	-	1	1	-	2
total	30	21	40	30	17	41

7 Summary Dismissals

7.1 Summary Dismissals by area of law

	Total 2010-11	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
family law	119	23.47	23.40	20.54	20.05
litigation	50	9.86	6.40	7.00	6.76
deceased estates or trusts	49	9.66	8.60	8.58	9.91
criminal law	33	6.51	8.80	8.58	8.11
conveyancing	33	6.51	7.80	6.77	9.23
commercial law	33	6.51	7.00	6.77	4.50
personal injuries /workcover litigation	31	6.11	6.00	10.16	8.33
property law	21	4.14	7.20	5.42	6.53
all other 'areas of law' combined	138	27.22	24.80	26.19	26.56
total	507				

7.2 Summary dismissals by nature of matter

	Total 2010-11	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
ethical matters	166	32.74	32.20	30.25	31.98
quality of service	118	23.27	23.60	26.19	28.83
costs	81	15.98	17.00	16.25	17.79
communication	73	14.40	10.60	14.00	7.43
trust funds	15	2.96	3.80	2.93	n/a
compliance	14	2.76	5.60	-	-
documents	10	1.97	1.20	0.90	2.48
all other 'natures of matter' combined	30	5.92	3.00	9.48	1.48
total	507				

7.3 Summary dismissals by respondent type

	Total 2010-11	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
solicitor	450	88.76	89.40	89.84	93.02
barrister	29	5.72	5.40	5.42	4.05
other	15	2.96	2.60	2.03	0.68
law practice employee	8	1.58	1.00	0.90	1.13
unlawful operator	4	0.79	0.20	0.45	0.23
non-legal director	1	0.20	-	-	-
corporation	-	-	0.80	0.90	0.68
legal practitioner	-	-	0.60	0.45	0.23
total	507				

8 Consumer disputes

8.1 Consumer disputes by area of law

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
conveyancing	17	33.33	29.58	17.05	26.47
commercial /company law	6	11.76	5.63	3.41	3.92
family law	6	11.76	15.49	22.73	13.73
litigation	5	9.80	2.82	3.41	5.88
personal injuries /workcover litigation	3	5.88	9.86	10.23	5.88
property law	3	5.88	7.04	7.95	7.84
deceased estates or trusts	2	3.92	8.45	10.23	18.63
criminal law	2	3.92	2.82	4.55	6.86
leases /mortgages	1	1.96	1.41	3.41	1.96
all other 'areas of law' combined	6	11.76	16.90	17.05	8.82
total	51				

8.2 Consumer disputes by nature of matter

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2006-07
costs	21	41.18	45.07	27.27	31.37
quality of service	18	35.29	32.39	30.68	31.37
ethical matters	5	9.80	-	15.91	11.76
communication	3	5.88	9.86	14.77	10.78
documents	3	5.88	5.63	3.41	11.76
all other 'natures of matter' combined	1	1.96	7.04	7.95	2.94
total	51				

8.3 Consumer disputes by type of complainant

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
client/former client	44	86.27	91.55	82.95	81.37
solicitor for client	4	7.84	1.41	-	4.90
non-client	1	1.96	4.23	3.41	4.90
solicitor	1	1.96	1.41	11.36	4.90
third party	-	0.00	1.41	1.14	2.94
all other 'types of complainant' combined	1	1.96	-	1.14	0.98
total	51				

8.4 Consumer disputes by outcome

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
matter unable to be resolved	20	39.22	35.21	38.64	28.43
negotiated remedial action	16	31.37	38.03	26.14	47.06
complaint unfounded	12	23.53	16.90	26.14	16.67
withdrawn	2	3.92	1.41	2.27	1.96
recommended direct approach to firm about concerns	1	1.96	4.23	5.68	1.96
outside of jurisdiction	-	-	1.41	1.14	1.96
all other 'outcomes' combined	-	-	2.82	-	1.96
total	51				

8.5 Consumer disputes by remedy

	No. of remedies 2010-11	Amount 2010-11	No. of remedies 2009-10	Amount 2009-10
apology	3	-	2	-
financial redress/compensation	9	5,693	15	12,272
redress – improved communications	-	-	6	-
redress – other (including waive lien/release file)	4	-	6	-
total	16	\$5,693	29	\$12,272

8.6 Consumer disputes by respondent type

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
solicitor	48	94.12	97.18	97.73	97.06
barrister	3	5.88		1.13	0.98
law practice employee	-	-	2.82	1.13	0.98
other	-	-	-	-	0.98
total	51				

8.7 Consumer disputes by respondent type: solicitor

8.7.1 Consumer disputes regarding solicitors as a proportion of the profession

	PC Holders	Law Firms	Law Offices
size of profession as at 31/12/2010	8,066	1,458	1,590
no of solicitors/law firms as respondents 2010-11	42	40	42
Percentage	0.52	2.74	2.64
no of solicitors/law firms as respondents 2009-10	56	45	45
Percentage	0.73	2.62	2.84
no of solicitors/law firms as respondents 2008-09	66	60	61
percentage	0.91	4.24	4.21
no of solicitors/law firms as respondents 2007-08	77	81	83
percentage	1.11	6.13	5.64
no of solicitors/law firms as respondents 2006-07	70	66	66
percentage	1.10	5.10	4.71

8.7.1.1 Solicitors subject to one or more consumer disputes

	No. of solicitors 2010-11	No. of solicitors 2009-10	No. of solicitors 2008-09	No. of solicitors 2007-08
1 matter	40	51	63	75
2 matters	2	4	3	1
3 matters	-	-	-	1
4 matters	-	1	-	-
5 matters	-	-	-	-
between 6 and 9	-	-	-	-
between 10 and 14	-	-	-	-
15 and > matters	-	-	-	-
total	42	56	66	77

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

	No. of law firms 2010-11	No. of law firms 2009-10	No. of law firms 2008-09	No. of law firms 2007-08
1 matter	36	37	54	73
2 matters	3	7	6	7
3 matters	-	-	-	1
4 matters	1	1	-	-
5 matters	-	-	-	-
between 6 and 9	-	-	-	-
between 10 and 14	-	-	-	-
15 and > matters	-	-	-	-
total	40	45	60	81

8.7.1.3 Solicitors subject to one or more consumer disputes by gender

Gender	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11	% of profession representation 2009-10 *	% of profession representation 2008-09 *
male	4,585	56.84	36	85.71	0.79	0.97	1.19
female	3,481	43.16	6	14.29	0.17	0.41	0.51

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

8.7.1.4 Solicitors subject to one or more consumer disputes by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% of profession representation 2009-10 *	% of profession representation 2008-09 *
< 25	283	3.51	-	-	-	-	0.98
25 - 29	1,645	20.39	2	4.76	0.12	0.33	0.58
30 - 34	1,236	15.32	6	14.29	0.49	0.51	0.62
35 - 39	1,207	14.96	3	7.14	0.25	0.76	0.08
40 - 44	937	11.62	5	11.90	0.53	0.72	0.74
45 - 49	783	9.71	3	7.14	0.38	0.25	1.62
50 - 54	797	9.88	9	21.43	1.13	1.06	1.43
55 - 59	571	7.08	4	9.52	0.70	2.04	1.15
60 - 64	388	4.81	8	19.05	2.06	1.72	0.65
65 - 69	149	1.85	2	4.76	1.34	1.52	1.74
70 & >	70	0.87	-	-	-	1.82	-

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

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

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% of profession representation 2009-10 *	% of profession representation 2008-09 *
< 5	2,642	32.75	5	11.90	0.19	0.32	0.68
5 - 9	1,726	21.40	8	19.05	0.46	0.81	0.42
10 - 14	995	12.34	3	7.14	0.30	0.73	1.08
15 - 19	814	10.09	5	11.90	0.61	0.64	1.82
20 - 24	627	7.77	3	7.14	0.48	0.17	0.88
25 - 29	558	6.92	5	11.90	0.90	1.28	1.53
30 - 34	364	4.51	6	14.29	1.65	2.48	1.43
35 - 39	202	2.50	5	11.90	2.48	2.78	-
40 and >	138	1.71	2	4.76	1.45	1.56	1.80

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

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

	Size of profession	% of total	No. of respondent solicitors	% of total	% Representation 2010-11 *	% Representation 2009-10 *	% Representation 2008-09 *
principal	2,537	31.45	28	66.67	1.10	1.48	1.71
employee	3,882	48.13	12	28.57	0.31	0.39	0.52
restricted employee	1,568	19.44	1	2.38	0.06	0.26	0.19
limited principal	20	0.25	-	-	-	-	-
restricted principal	4	0.05	-	-	-	-	-
unrestricted volunteer	17	0.21	-	-	-	-	-
restricted volunteer	37	0.46	-	-	-	-	-
foreign	1	0.01	-	-	-	-	-
not practising at start of year*			1		-	-	-

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

* This refers to those solicitors who were subject to a consumer dispute that was finalised during the year but who did not hold a practising certificate as at July 2010

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

	Size of profession law offices	% of total	No. of respondent law offices	% of total respondent law offices	% of profession representation 2010-11	% 2009-10	% 2008-09
Brisbane city	280	17.61	6	14.29	2.14	3.35	5.30
Brisbane north suburbs	250	15.72	6	14.29	2.40	1.74	3.91
Brisbane south suburbs	245	15.41	9	21.43	3.67	2.48	3.54
Gold Coast	274	17.23	9	21.43	3.28	4.31	4.60
Ipswich region	55	3.46	-	-	-	3.70	4.00
Toowoomba region	66	4.15	1	2.38	1.52	1.61	3.28
Western Queensland	8	0.50	-	-	-	-	-
Sunshine Coast	163	10.25	5	11.90	3.07	3.47	3.38
Hervey Bay to Gladstone	44	2.77	1	2.38	2.27	7.14	4.65
Rockhampton region	34	2.14	2	4.76	5.88	-	3.33
Mackay region	26	1.64	1	2.38	3.85	-	-
Cairns region	94	5.91	-	-	-	2.56	2.74
Townsville region	51	3.21	2	4.76	3.92	4.00	10.00

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

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

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

No. of PC holders	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	% of profession representation 2010-11	% 2009-10	% 2008-09
1	651	44.65	8	20.00	1.23	1.98	2.13
2 - 3	473	32.44	12	30.00	2.54	3.15	4.61
4 - 6	168	11.52	10	25.00	5.95	6.25	7.53
7 - 12	84	5.76	5	12.50	5.95	7.69	3.57
13 - 24	50	3.43	4	10.00	8.00	4.76	12.76
25 - 50	12	0.82	-	-	-	-	30.77
51 - 100	16	1.10	1	2.50	6.25	-	33.33
101 - 200	4	0.27	-	-	-	-	-

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

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

9 Conduct matters

9.1 Conduct complaints

9.1.1 Conduct complaints by area of law

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
family law	110	20.41	19.07	19.65	17.58
litigation	61	11.32	7.41	8.95	7.26
conveyancing	52	9.65	13.52	12.84	20.81
personal injuries /workcover litigation	42	7.79	10.19	10.70	8.71
deceased estates or trusts	37	6.86	5.56	6.81	7.10
property law	33	6.12	8.33	6.23	7.74
commercial /company law	31	5.75	7.04	4.67	6.13
criminal law	28	5.19	7.22	7.98	6.29
leases /mortgages	11	2.04	2.41	2.33	2.26
Conduct not in the practice of law	9	1.67	-	-	-
trust account breaches	9	1.67	-	-	-
building /construction law	8	1.48	3.15	1.56	1.94
administrative law	8	1.48	0.93	2.33	n/a
bankruptcy and insolvency	6	1.11	1.48	0.78	0.48
industrial law	4	0.74	0.19	0.97	0.65
all other 'areas of law' combined	90	16.70	13.52	14.20	13.06
Total	539				

9.1.2 Conduct complaints by nature of matter

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
quality of service	152	28.20	26.85	29.18	28.71
ethical matters	137	25.42	22.04	30.16	31.13
costs	108	20.04	18.52	15.18	16.77
communication	49	9.09	10.93	10.51	10.81
compliance	48	8.91	7.41	5.64	3.71
trust funds	18	3.34	5.00	4.67	4.35
personal conduct	8	1.48	2.59	1.36	1.61
PIPA	7	1.30	2.59	0.78	0.97
documents	7	1.30	2.04	1.17	1.45
all other 'natures of matter' combined	5	0.93	2.04	1.36	0.48
total	539				

9.1.3 Conduct complaints by outcome

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
no reasonable likelihood	338	62.71	62.59	65.37	68.06
no public interest	128	23.75	24.26	18.29	16.77
withdrawn	31	5.75	4.63	5.64	6.45
referred to tribunal	20	3.71	3.15	4.47	5.48
referred for civil litigation	10	1.86	-	-	-
referred to Magistrates Court	7	1.30	-	-	-
referred to LPC	1	0.19	0.74	0.58	1.13
referred to other investigative process	-	-	2.78	2.33	0.97
referred to external agency	-	-	0.74	0.78	n/a
closed – pending criminal proceedings	-	-	-	1.17	n/a
all other ‘outcomes’ combined	4	0.74	1.11	1.36	1.13
total	539				

9.1.4 Conduct complaints/investigation matters by remedy

	No. of remedies 2010-11	Amount \$ 2010-11	No. of remedies 2009-10	Amount \$ 2009-10
apology	16	-	14	-
financial redress/compensation	33	177,854	20	65,401
make PI add compliant with PIPA	27	-	77	-
management system improvements	31	-	16	-
redress – improved communications	3	-	1	-
redress – other (including waive lien/release file)	10	-	22	-
training/supervision	5	-	6	-
total	125	177,854	156	65,401

9.1.5 Conduct complaints by type of complainant

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
client/former client	388	71.99	71.67	63.81	68.87
non-client	66	12.24	9.81	14.98	12.74
solicitor	38	7.05	9.63	10.12	7.74
solicitor for client	22	4.08	3.89	5.64	5.16
third party	9	1.67	2.22	2.92	2.10
government	5	0.93	0.19	0.19	0.81
barrister	3	0.56	1.11	0.78	0.81
beneficiary	3	0.56	-	-	-
Law Society.	2	0.37	0.37	0.58	0.65
all other 'types of complainant' combined	3	0.56	1.12	0.97	1.13
total	539				

9.2 Investigation Matters

9.2.1 Non-PIPA investigation matters by area of law

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
trust account breaches	24	35.82	35.14	26.19	30.65
criminal law	6	8.96	-	10.71	8.06
conveyancing	3	4.48	5.41	11.90	19.35
personal injuries /workcover litigation	3	4.48	5.41	5.95	1.61
deceased estates or trusts	3	4.48	5.41	4.76	-
litigation	2	2.99	2.70	9.52	14.52
commercial /company law	2	2.99	2.70	2.38	-
family law	2	2.99	-	4.76	4.84
conduct not in the practice of law	1	1.49	-	3.57	-
administrative law	-	-	2.70	1.19	1.61
all other 'areas of law' combined	21	31.34	40.54	19.05	19.35
total	67				

9.2.2 Non-PIPA investigation matters by nature of matter

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
trust funds	19	28.36	16.22	17.86	25.81
compliance	14	20.90	32.43	10.71	9.68
costs	13	19.40	13.51	21.43	22.58
ethical matters	12	17.91	13.51	26.19	27.42
personal conduct	3	4.48	8.11	10.71	4.84
quality of service	3	4.48	2.70	7.14	6.45
communication	2	2.99	-	1.19	-
all other 'natures of matter' combined	1	1.49	13.51	4.76	3.22
total	67				

9.2.3 Non-PIPA investigation matters by outcome

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
no public interest	34	50.75	37.84	47.62	59.68
no reasonable likelihood	24	35.82	37.84	28.57	30.65
referred to tribunal	6	8.96	16.21	10.71	8.06
withdrawn	1	1.49	2.70	1.19	-
referred to Magistrates Court	2	2.99	-	-	-
referred to LPC	-	-	2.70	-	-
referred to other investigative process	-	-	-	4.76	-
opened in error	--	-	-	7.14	1.61
all other 'outcomes' combined	-	-	2.70	7.14	1.61
total	67				

9.2.4 PIPA investigation matters by outcome

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
no public interest	23	76.67	62.16	71.43	94.83
no reasonable likelihood	6	20.00	19.82	28.57	1.72
withdrawn	1	3.33	18.02	-	1.72
referred to tribunal	-	-	-	-	1.72
total	30				

9.3 Conduct matters

9.3.1 Conduct matters by respondent type

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
solicitor	561	88.21	92.73	87.93	91.49
barrister	27	4.25	3.05	6.45	3.92
unlawful operator	25	3.93	1.60	2.15	0.54
other	15	2.36	1.16	1.49	1.49
law practice employee	1	0.16	0.58	0.99	1.76
corporation	5	0.79	0.44	0.83	0.54
legal practitioner	2	0.31	0.44	0.17	0.27
total	636				

9.3.2 Conduct matters by respondent type: solicitor

9.3.2.1 Conduct matters regarding solicitors as a proportion of the profession

	Solicitors	Law Firms	Law Offices
size of profession as at 31/12/2010	8,066	1,458	1,590
no. of solicitors/law firms as respondents 2010-11	420	328	341
Percentage	5.21	22.50	21.45
no. of solicitors/law firms as respondents 2009-10	474	337	345
percentage	6.21	23.78	21.78
no. of solicitors/law firms as respondents 2008-09	387	272	284
percentage	5.35	19.21	19.61
no. of solicitors/law firms as respondents 2007-08	477	385	401
percentage	6.89	29.14	27.26
no. of solicitors/law firms as respondents 2006-07	527	428	442
percentage	8.26	33.08	31.57

9.3.2.2 Solicitors subject to one or more conduct matters

	No. of solicitors 2010-11	No. of solicitors 2009-10	No. of solicitors 2008-09	No. of solicitors 2007-08
1 matter	346	388	317	380
2 matters	48	63	50	68
3 matters	14	13	16	15
4 matters	7	3	1	9
5 matters	1	4	-	1
between 6 and 9	4	2	1	3
between 10 and 14	-	1	2	-
15 and > matters	-	-	-	1
total	420	474	387	477

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

	No. of law firms 2010-11	No. of law firms 2009-10	No. of law firms 2008-09	No. of law firms 2007-08
1 matter	233	236	175	263
2 matters	52	64	61	70
3 matters	22	21	27	26
4 matters	12	8	6	13
5 matters	4	5	2	4
between 6 and 9	5	3	-	7
between 10 and 14	-	-	1	1
15 and > matters	-	-	-	1
total	328	337	272	385

9.3.2.4 Solicitors subject to one or more conduct matters by gender

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% of profession representation 2009-10 *	% of profession representation 2008-09 *
male	4,585	56.84	345	82.14	7.52	8.53	7.17
female	3,481	43.16	75	17.86	2.15	3.00	2.71

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

9.3.2.5 Solicitors subject to one or more conduct matters by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% of profession representation 2009-10 *	% of profession representation 2008-09 *
< 25	283	3.51	5	1.19	1.77	3.90	2.61
25 -29	1,645	20.39	25	5.95	1.52	1.80	1.82
30 - 34	1,236	15.32	29	6.90	2.35	2.30	3.44
35 - 39	1,207	14.96	48	11.43	3.98	5.06	4.24
40 - 44	937	11.62	62	14.76	6.62	8.54	6.01
45 - 49	783	9.71	61	14.52	7.79	8.48	8.21
50 - 54	797	9.88	69	16.43	8.66	11.51	10.43
55 - 59	571	7.08	57	13.57	9.98	12.22	6.70
60 - 64	388	4.81	38	9.05	9.79	11.46	12.66
65 - 69	149	1.85	20	4.76	13.42	8.33	3.48
70 & >	70	0.87	6	1.43	8.57	9.09	4.08

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

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

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% of profession representation 2009-10 *	% of profession representation 2008-09 *
<5	2,642	32.75	48	11.43	1.82	2.35	2.58
5 – 9	1,726	21.40	83	19.76	4.81	4.65	4.85
10 – 14	995	12.34	54	12.86	5.43	7.05	5.10
15 – 19	814	10.09	49	11.67	6.02	9.57	8.31
20 - 24	627	7.77	58	13.81	9.25	8.90	8.06
25 – 29	558	6.92	48	11.43	8.60	12.98	8.97
30 - 34	364	4.51	47	11.19	12.91	11.18	10.00
35 – 39	202	2.50	21	5.00	10.40	14.44	10.13
40 and >	138	1.71	12	2.86	8.70	9.38	5.41

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

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

	Size of profession	% of total	No. of respondent solicitors	% of total	% Representation 2010-11 *	% Representation 2009-0109 *	% Representation 2008-09 *
principal	2,537	31.45	292	69.52	11.51	13.32	10.14
employee	3,882	48.13	78	18.57	2.01	2.05	2.31
restricted employee	1,568	19.44	15	3.57	0.96	1.24	1.40
limited principal	20	0.25	-	-	-	5.00	-
restricted principal	4	0.05	-	-	-	25.00	-
unrestricted volunteer	17	0.21	-	-	-	-	-
restricted volunteer	37	0.46	-	-	-	-	-
foreign	1	0.01	-	-	-	-	-
not practising at start of year *	-	-	35	-	-	-	-

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

* This refers to those solicitors who were subject to a conduct matter that was finalised during the year but who did not hold a practising certificate as at 1 July 2010

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

	Size of profession law offices	% of total	No. of respondent law offices	% of total respondent law offices	% of profession representation 2010-11 *	% 2009-10*	% 2008-09*
Brisbane city	280	17.61	81	23.75	28.93	37.92	27.27
Brisbane north suburbs	250	15.72	54	15.84	21.60	21.74	13.48
Brisbane south suburbs	245	15.41	55	16.13	22.45	22.31	21.68
Gold Coast	274	17.23	69	20.23	25.18	18.82	19.25
Ipswich region	55	3.46	13	3.81	23.64	14.81	6.00
Toowoomba region	66	4.15	7	2.05	10.61	14.52	16.39
Western Queensland	8	0.50	2	0.59	25.00	10.00	11.11
Sunshine Coast	163	10.25	18	5.28	11.04	18.83	18.92
Hervey Bay to Gladstone region	44	2.77	6	1.76	13.64	21.43	13.95
Rockhampton region	34	2.14	7	2.05	20.59	21.88	23.33
Mackay region	26	1.64	3	0.88	11.54	16.67	25.00
Cairns region	94	5.91	16	4.69	17.02	10.26	19.18
Townsville Region	51	3.21	10	2.93	19.61	32.00	22.00

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

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

No. of PC holders	Size of profession law firms	% of total	No. of respondent law firms	% of total respondent law firms	% of profession representation 2010-11*	% 2009-10*	% 2008-09*
1	651	44.65	104	31.71	15.98	16.67	16.07
2 - 3	473	32.44	95	28.96	20.08	25.45	16.50
4 - 6	168	11.52	54	16.46	32.14	30.63	26.71
7 - 12	84	5.76	33	10.06	39.29	37.36	32.14
13 - 24	50	3.43	25	7.62	50.00	57.14	55.32
25 - 50	12	0.82	8	2.44	66.67	69.23	46.15
51 - 100	16	1.10	8	2.44	50.00	50.00	41.67
101 - 200	4	0.27	1	0.30	25.00	50.00	75.00

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

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

Note: a law firm may appear in more than one category if the size of the firm changed during the year and they had multiple conduct matters closed during the year.

9.3.3 Conduct matters by respondent type: barrister

9.3.3.1 Conduct matters regarding barristers as a proportion of the profession

Barristers	
size of profession as at 1/7/2010	1,020
number of barristers as respondents 2010-11	27
percentage	2.65
number of barristers as respondents 2009-10	21
percentage	2.22
number of barristers as respondents 2008-09	15
percentage	1.66
number of barristers as respondents 2007-08	18
percentage	2.02
number of barristers as respondents 2006-07	17
percentage	1.91

10 ILP Compliance Audits

10.1 Summary

	No. of matters 2010-11	No. of matters 2009-10	No. of matters 2008-09)
matters on hand at start of year			
self assessment audits	38	39	54
web based surveys	0	7	
onsite reviews	0	1	2
total	38	47	56
plus matters opened			
self assessment audits	111	104	74
web based surveys	37	38	50
onsite reviews	2	1	-
total	150	143	124
less matters closed			
self assessment audits	108	105	90
web based surveys	37	45	43
onsite reviews	2	2	1
total	147	152	134
matters on hand at end of period			
self assessment audits	41	38	39
web based surveys	0	0	7
onsite reviews	0	0	1
total	41	38	47

11 Prosecutions

11.1 Summary

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2005-07
on hand at start of year	28	31	44	34	42
opened during year	21	20	21	29	33
closed during year	24	23	34	19	41
on hand at end of year	25	28	31	44	34

11.2 Breakdown of prosecutions on hand at 30 June

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07
assigned for prosecution	4	4	5	8	7
Tribunal					
waiting to file	3	3	1	4	3
waiting to serve	1	3	4	-	1
waiting directions hearing	4	3	4	12	8
waiting compulsory conference	1				
waiting hearing/decision	11	6	10	12	8
total	20	15	19	28	20
Committee					
waiting to file	-	1	-	-	-
waiting to serve	-	1	3	1	-
waiting directions hearing	-	1	1	4	2
waiting hearing/decision	-	3	1	1	5
total	0	6	5	6	7
Magistrates Court					
waiting to file	-	-	1	-	-
waiting hearing/decision	1	2	1	-	-
total	1	2	2	0	0
Under Appeal					
decisions under appeal	-	1	-	2	-
total	25	28	31	44	34

11.3 Prosecutions commenced before the courts and/or disciplinary bodies

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07	Total 2005-06
in Tribunal	14	10	16	20	25	24
in Committee	3	4	6	8	11	13
in the Magistrates Court	2	3	2	-	-	-
total	19	17	24	28	36	37

11.4 Prosecutions – heard and decided

	Total 2010-11	Total 2009-10	Total 2008-09	Total 2007-08	Total 2006-07	Total 2005-06
by Tribunal	9	11	21	5	18	9
by the Committee	5	2	6	6	8	10
by the Magistrates Court	2	1	-	-	-	-
by the Court of Appeal	1	-	3	-	-	2
by High Court	-	-	-	-	-	-
withdrawn/discontinued	7	9	5	8	15	-
total	24	23	35	19	41	21

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

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-06
conveyancing	3	17.65	21.43	10.00	-
family law	2	11.76	21.43	10.00	27.27
litigation	2	11.76	7.14	10.00	18.18
personal injuries /workcover litigation	1	5.88	14.29	3.33	-
criminal law	1	5.88		20.00	9.09
property law	1	5.88		6.67	-
deceased estates or trusts	-	-	7.14	16.67	-
conduct not in the practice of law	-	-		6.67	9.09
leases/mortgages	-	-		6.67	n/a
trust account breaches	-	-		3.33	9.09
commercial /company law	1	5.88		3.33	-
all other 'areas of law' combined	6	35.29	28.57	3.33	27.27
total	17				

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

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08
ethical matters	7	41.18	42.86	46.67	54.55
compliance	4	23.53	21.43	3.33	n/a
communication	1	5.88	14.29	3.33	-
personal conduct	1	5.88	14.29	13.33	-
quality of service	1	5.88	7.14	20.00	9.09
trust funds	-	-	-	3.33	18.18
costs	-	-	-	6.67	18.18
all other 'natures of matter' combined	3	17.65	-	3.33	-
total	17				

11.7 Prosecutions by charge outcome

	2010-11
proved – professional misconduct	21
proved – unsatisfactory professional conduct	15
withdrawn prior to hearing	13
dismissed at hearing	-
total	49

11.8 Prosecutions by remedy (excluding matters withdrawn/discontinued)

	No. 2010-11	Amount 2010-11	No. 2009-10	Amount 2009-10
reprimanded	10	-	9	-
ordered to pay compensation	6	60,207	6	48,312
fined (disciplinary body – USP / PMC)	5	15,510	3	9,600
fined (Magistrates Court – LPA offence)	2	5,750	1	600
struck off	2	-	2	-
ordered to apologise	1	-	-	-
suspended	-	-	1	-
removed from roll	-	-	2	-
undertake training or be supervised	-	-	6	-
other (condition on practising certificate)	-	-	1	-
total	26	\$81,467.00	31	\$58,512

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

	No. of matters	% of total 2010-11	% of total 2009-10	% of total 2008-09	% of total 2007-08	% of total 2006-07
solicitor	12	70.59	78.57	80.00	100.00	92.31
barrister	3	17.65	14.29	20.00	-	6.69
all other respondent types	2	11.76	7.14	20.00	-	6.69
total	17					

11.10 Prosecutions by respondent type: solicitor

11.10.1 Solicitors subject to one or more prosecutions by gender

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% 2009-10	% 2008-09*
male	3,481	43.16	10	83.33	0.29	0.23	0.49
female	4,585	56.84	2	6.67	0.04	0.03	0.10

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

11.10.2 Solicitors subject to one or more prosecutions by age

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% 2009-10*	% 2008-09*
< 25	283	3.51	-	-	-	-	-
25 -29	1,645	20.39	2	16.67	0.12	-	-
30 - 34	1,236	15.32	-	-	-	-	0.26
35 - 39	1,207	14.96	-	-	-	0.08	0.18
40 - 44	937	11.62	3	25.00	0.32	-	0.37
45 - 49	783	9.71	1	8.33	0.13	0.25	0.25
50 - 54	797	9.88	2	16.67	0.25	0.26	0.86
55 - 59	571	7.08	-	-	-	0.74	1.15
60 - 64	388	4.81	4	33.33	1.03	0.57	0.65
65 - 69	149	1.85	-	-	-	-	-
70 & >	70	0.87	-	-	-	-	-

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

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

	Size of profession	% of total	No. of respondent solicitors	% of total respondent solicitors	% of profession representation 2010-11 *	% 2009-10*	% 2008-09*
< 5	2,642	32.75	2	16.67	0.08	-	0.04
5 - 9	1,726	21.40	-	-	-	0.12	0.21
10 - 14	995	12.34	1	8.33	0.10	0.31	0.87
15 - 19	814	10.09	2	16.67	0.25	-	0.52
20 -24	627	7.77	1	8.33	0.16	0.17	0.70
25 - 29	558	6.92	2	16.67	0.36	0.73	0.38
30 -34	364	4.51	3	25.00	0.82	0.31	0.36
35 - 39	202	2.50	-	-	-	-	0.63
40 and >	138	1.71	1	8.33	0.72	-	-

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

11.10.4 Prosecutions regarding barristers as a proportion of the profession

Barristers	
size of profession as at 1/7/2010	1,020
number of barristers as respondents 2010-11	3
percentage	0.29
number of barristers as respondents 2009-10	2
percentage	0.21
number of barristers as respondents 2008-09	2
percentage	0.22

