

# Own Motion Investigations

## Policy

February 2012

Version 2

## Acknowledgements

This policy has been adapted from the Legal Services Commission (Victoria) Own Motion Investigations Policy and prepared with reference to the Australian Law Reform Commission Discussion Paper 65: *Securing Compliance: Civil and Administrative Penalties in Australian Federal Regulation*; Australian Law Reform Commission Report No. 82, *Integrity: But Not By Trust Alone: AFP & NCA Complaint and Disciplinary Systems* and the loose-leaf edition of ASIC Corporate Investigations and Hearings.

## Information about this policy

<b>Policy Statement</b>	The Legal Services Commissioner is committed to utilising the functions and powers bestowed on his/her office for the benefit of users of legal services, the legal profession and the public generally. Section s 421(d) and 435(1)(c) of the Act empowers the Legal Services Commissioner to initiate on his/her own motion an investigation into conduct of a lawyer, law practice employee or unlawful operator.
<b>Purpose</b>	The purpose of this policy is to set out the factors which the Legal Services Commissioner will take into account when deciding whether to commence an own motion investigation.
<b>Direct queries to?</b>	Director of Investigations Manager - Practice Compliance
<b>Date Issued</b>	1 February 2012
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## 1. Definitions

**Act** means the *Legal Profession Act 2007*.

**Commissioner** means the Legal Services Commissioner.

**Lawyer** means an Australian Lawyer as defined by the Act.

**Own motion investigation** means an investigation pursuant to [section 435\(1\)\(c\)](#) of the Act.

## 2. Policy

The large majority of the Commission's investigations arise from complaints made under the Act and are mostly non-discretionary. The Commissioner does have a discretion to commence an own motion investigation and must necessarily be selective in the matters which he/she chooses to pursue given resource constraints. When deciding whether or not to commence an own motion investigation, the Commissioner will take into account a number of factors including:

- (i) whether the Commissioner has jurisdiction
- (ii) whether the pre-conditions in [section 19](#) of the Act are satisfied
- (iii) the seriousness of the suspected conduct (eg professional misconduct or unsatisfactory professional conduct)
- (iv) whether another investigating body is the appropriate authority to conduct an investigation into the suspected conduct
- (v) the means by which the Commissioner becomes aware of the suspected conduct including the source of the information. For example, the Commissioner may investigate a matter as a result of anonymous information where that information is capable of productive investigation and the other factors listed in this policy support the decision
- (vi) whether the public interest in commencing an investigation satisfies the Commissioner's regulatory priorities
- (vii) whether any investigative and subsequent proceedings will have a regulatory impact (such as sending a compliance message through both personal and general deterrence or educative effect)
- (viii) whether any investigative and subsequent proceedings will promote public confidence in the regulatory system, the reputation of the legal profession or the administration of justice
- (ix) the nature of the suspected conduct including whether or not such conduct is widespread in the legal profession
- (x) whether the respondent has an existing disciplinary or complaint history

- (xi) whether the matter concerns untested issues regarding the interpretation of the Act or regulation of the legal profession generally
- (xii) the likely outcome of any proceedings which may follow from an investigation.

Subject to the above, the Legal Services Commissioner is not influenced by the following factors when deciding whether or not to initiate an own motion investigation:

- (a) the race, religion, sex or political association, activities or beliefs or any other personal characteristic of the lawyer or any other person who may be involved in the matter
- (b) possible political advantage or disadvantage to the Government or any political group or party
- (c) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.