

Disciplinary matters

One of the services the Law Society provides for its member is the self-regulatory complaints handling process. It is a major priority for the Society and to this end the Society engaged a part-time investigator some 2 years ago. Given the emphasis the community now places on the consumer aspects of legal services and the on-going debate by the profession of professional standards legislation the Society is committed to ensuring the self-regulatory process is effective, balanced and transparent.

For those who have had the misfortune to be the subject of a complaints investigation over the last few years you will note the Society's more detailed approach to these matters, not only in terms of the information required from practitioners but the Society's expression of its reasons and the process itself.

This article will summarise the complaints handling process. Over the next few editions of Balance there will be other articles detailing some of the many types of complaints lodged by both consumers and fellow practitioners, as well as common ethical problems and benchmarking issues.

The power to investigate the professional conduct of a practitioner is conferred by s47 of the Legal Practitioners Act. Under the Complaints Handling By-Laws, effective from 3/9/03, the Society is required to investigate every complaint. An investigation is to be conducted in whatever manner the Society considers appropriate and can include inspecting the files of the practitioner, referring the matter for conciliation and seeking expert evidence.

Once the investigation is completed the matter is referred to a delegated Council Member (a "DCM") for determination. There are currently 4 DCM's delegated by the Council to make a determination. These are Merran Short, Duncan Maclean, Glen Dooley and Michael Grove. The DCM can dismiss the complaint or parts thereof, find the complaint proved but take no further action, or refer the complaint to the Council with a recommendation that the practitioner be admonished, fined or that charges be laid before the Legal Practitioners Complaints Committee (LPCC).

If the complainant is dissatisfied with the determination to dismiss, he or she can request that the determination be

reviewed by the Lay Observer. The Lay Observer has power to affirm the decision of the DCM, direct that further investigations be undertaken or otherwise make recommendations to the Council in relation to any matter arising from the referral.

The Council meets once per month. Upon receipt of the DCM's recommendations, and those of the Lay Observer if applicable, the Council makes a final determination. The Council has power to:

- * Dismiss the complaint;
- * Find the complaint proved but take no further action; or
- * Admonish or fine the practitioner or lay charges before the LPCC.

If the practitioner is dissatisfied with the Council's determination he or she may appeal to the LPCC pursuant to s47 of the Legal Practitioners Act. If the complainant is dissatisfied, he or she has the right pursuant to s50 of the Act to lay charges of professional misconduct against the practitioner before the LPCC.

The LPCC may:

- * Confirm or quash the finding, admonishment or fine imposed by the Society;
- * Order the practitioner to pay a fine up to 100 penalty units;
- * Suspend the practitioner's right to practise;
- * Impose conditions on the practitioner's right to practice;
- * Recommend disciplinary action be taken in the Supreme Court; or
- * Refer its findings to the Supreme Court.

The powers and functions of the LPCC may be found in Division 4 of the Act.

In addition to the above mentioned powers the Supreme Court can of course order that the practitioner's name be struck from the Roll of Legal

Practitioners. This has happened several times over the last five years.

Unhappily, there are still many practitioners who do not seem to take the complaint process seriously, preferring to criticise the Society for investigating the complaint rather than summarily dismissing it.

Practitioners are reminded of By-Law 5.1 which requires that every complaint be referred for investigation. Complainants, be they a client or fellow practitioner, have a statutory right to complain and the profession has determined that the appropriate body to investigate such complaints is its own professional body, the Law Society. The alternative is to follow the other jurisdictions which now have external bodies, such as a Legal Ombudsman or Complaints Tribunal, which investigate and determine complaints.

Whilst the organisational structure of any regulatory body is important to the process, of greater significance are attitude, experience and commitment. This is true for all the participants. The Society's complaints handling process does have punitive force but that is because both the profession and the community require it. It also has a palliative force in the sense that assistance is available to practitioners if they ask for it (and even if they do not!).

The provision of legal services, whether they involve professional standards or consumer benchmarks, has never been under closer scrutiny than in these times. To ignore that fact is to ignore the obvious and perhaps face the experience of our Queensland and Tasmanian counterparts where the governments of the day, driven by adverse consumer experiences, have led to an emasculation of the profession's capacity for self-regulation.①