

Responding to complaints and conduct enquiries

The Legal Practitioner Complaints Committee has prepared a brochure to assist practitioners in responding to complaints. The substance of the brochure is published below at the request of the Law Complaints Officer, Ms Diane Howell.

The functions of the Committee

Pursuant to s164 of the *Legal Practice Act 2003* (the Act) the functions of the Legal Practitioners Complaints Committee (the Committee) are:

- To supervise the conduct of legal practitioners and the practice of law.
- To receive complaints under s175.

To inquire into such complaints and, where the Committee so determines whether for cause or not and whether the Committee has received a complaint or not, any:

- Conduct on the part of a legal practitioner; or
- Matters relating to legal practice, for the purpose of determining whether it may constitute unsatisfactory conduct (see the *Legal Practitioners Act 1893* for conduct prior to 1 January 2004).

The Committee consists of 10 lawyers appointed from members of the Legal Practice Board (the Board). There are also four community representatives on the Committee appointed by the Attorney General. None of the community representatives can be lawyers. Although the legal members of the Committee are appointed by the Board, the Committee is an independent body established under the Act, having statutory functions which are independent of the Board.

The Law Complaints Officer

The Law Complaints Officer is a lawyer appointed by the Board to assist the Committee and may, subject to the directions of the Committee, exercise the functions of the Committee other than the exercise of its primary professional disciplinary jurisdiction. The Law Complaints Officer is a statutory office and, as a statutory officer, powers and acts under the general direction of the Committee, not the Board.

Obligation to respond

Legal practitioners have a professional responsibility to respond fully and frankly and in a timely manner to requests for information from the Committee, the Law Complaints Officer and their legal officers. Pursuant to s198 of the Act, the Law Complaints Officer or the Committee can issue a summons requiring the practitioner to produce documents or provide information as set out in the summons or to attend to give evidence on oath. Failure to comply with such a summons is an offence (s198(6)).

A practitioner who feels that he/she needs more time to respond should contact the investigating officer at the Committee's office as soon as possible. The Law Complaints Officer will accede to reasonable requests for an extension of time in appropriate circumstances. Practitioners who find it difficult to respond are urged to seek the assistance of a professional colleague in answering a complaint, for example, a member of the Senior Advisers Panel of the Law Society or another legal professional association. It is important that practitioners not fail to respond to a complaint because this will invariably make matters worse and may result in a separate issue of unsatisfactory conduct.

In these circumstances, the Committee may have little option but to commence disciplinary proceedings against the practitioner out of the Legal Practitioners Disciplinary Tribunal as, from 1 January 2005, the State Administration Tribunal. A failure to respond may amount to unsatisfactory conduct: "The Tribunal takes the view that if a practitioner fails to respond to enquiries from the Legal Practitioners Complaints Committee it is a serious matter".

Forwarding the practitioner's response to the complainant

The Committee's view is that a fair and proper airing of a complaint usually requires that

correspondence to the Committee from either party to a complaint be published to the other party. For this reason, it reserves the right to forward a copy of the practitioner's response to the complaint to the complainant. If there are exceptional reasons why this should not occur, the Committee will consider the reasons given and then determine whether or not it is appropriate to forward the response to the complainant.

Review of firm procedures

A complaint can often assist the practitioner if approached in a positive way — the practitioner might review communications with the aggrieved client to see how they might have been improved, or costs practices, or how file management systems might be improved. The Committee's legal officers are happy to discuss with practitioners how the firm's policies and procedures might be improved to avoid future similar complaints. Practitioners should have in place procedures so that:

- There are clear retainer agreements with clients.
- There is clear costs disclosure to clients.
- There is effective file tracking and checklists to ensure client matters are progressed in a timely way and clients are kept informed of progress.
- Client oral and written communications are promptly and adequately addressed.
- Client complaints are appropriately dealt with in a timely manner.

It is suggested that practitioners establish a system for dealing with complaints and conduct enquiries referred by the Committee's office. For sole practitioners, this might involve requesting that a fellow practitioner from another legal practice assist with such matters.

In general, the Committee's legal officers are able to discuss aspects of the complaint but are not able to give legal advice.

1. Report of proceedings by the Legal Practitioners Disciplinary Tribunal dated 14 July 2004.