

# COMPLAINTS PROCESS INFORMATION

This brochure outlines the procedure for making and determining complaints about solicitors, and has been prepared to assist complainants and solicitors.



The Law Society of New South Wales was established in 1884 and has, since that date, been responsible for the regulation of the solicitors' branch of the legal profession, initially as the sole regulator and, from 1994, as a co-regulator with the NSW Legal Services Commissioner.

From 1 July 2015, the procedure for making and determining complaints about solicitors is governed by the *Legal Profession Uniform Law (NSW)* (**Uniform Law**). If you need clarification of any of the points covered in this brochure or further information, please contact the Professional Standards Department investigator dealing with the matter.

## Making a complaint

All complaints about solicitors must be sent to the NSW Legal Services Commissioner, who may:

- investigate a complaint;
- mediate a complaint;
- refer a complaint to the Law Society; or
- close a complaint.

Any person or body may make a complaint about a solicitor. A complaint may relate to any dispute or issue about any conduct of a solicitor, a law practice or both.

A complaint must be made within three years of the date on which the conduct being complained about occurred, however the time requirement may be waived in certain circumstances. Cost disputes must be made within 60 days after legal costs become payable or, if an itemised bill is requested, 30 days after the request was complied with.

A complaint must be made or recorded in writing and must identify:

- the complainant;
- the solicitor or law practice about whom the complaint is made; and
- the alleged conduct that is the subject of the complaint.

The Law Society cannot investigate complaints about judges or magistrates.

## Facing a complaint

The Law Society of NSW's Professional Conduct Advisory Panel links solicitors facing a complaint with an experienced practitioner who can provide guidance and practical assistance. The Law Society also provides a range of services to support the health and wellbeing of practitioners.

Additional information about resources available for solicitors facing a complaint or otherwise experiencing difficulties may be found on the Law Society's website.

## Types of complaints

A complaint may be about a consumer matter, a disciplinary matter or both.

### Consumer matters and cost disputes

In general, consumer matters and cost disputes are dealt with by the Legal Services Commissioner. A consumer matter relates to the provision of legal services to the complainant by the solicitor or law practice, and includes disputes about legal costs between the solicitor or law practice, and the person charged with the legal costs (generally a client) or a third party payer.

For more information about how consumer matters and cost disputes are dealt with, consult the website of the NSW Legal Services Commissioner.

### Disciplinary matters

A disciplinary matter relates to conduct of a solicitor or law practice that would, if the conduct concerned was established, amount to unsatisfactory professional conduct or professional misconduct.

Unsatisfactory professional conduct includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

Professional misconduct includes:

- unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

Professional misconduct also includes conduct "which would be reasonably regarded as disgraceful or dishonourable by the person's professional brethren of good repute and competency."

Generally, the unsupported word of a complainant against the unsupported word of a solicitor is not sufficient to sustain a complaint.

A claim for negligence against a solicitor is more properly brought in proceedings commenced in the courts. Complainants should consider obtaining independent legal advice as to their rights, noting that limitation periods may apply. In the Law Society's experience, it is only in very limited circumstances that complaints of negligence against a solicitor amount to unsatisfactory professional conduct or professional misconduct.

## Complaints of bullying, discrimination and sexual harassment

The Law Society is committed to eliminating inappropriate behaviour in the profession. It fully supports the NSW Legal Services Commissioner's service dedicated to helping solicitors who are experiencing or witnessing such behaviour.

This service allows you to notify the Office of the Legal Services Commissioner (OLSC) of the inappropriate behaviour. You can choose whether you want to identify yourself to the OLSC or to be identified to other parties involved.

The OLSC staff are specially trained to talk to you about the situation and to help you with the notification. Full details are available at: <https://bit.ly/2x6aCYr>

The OLSC is encouraging you to notify them of discrimination, sexual harassment or workplace bullying in a law practice. This will enable them to take appropriate action.

## Investigation of complaints by the Law Society

Complaints referred by the Legal Services Commissioner to the Law Society may be investigated by an investigator in the Professional Standards Department. Investigations are fair and impartial, and complaints are dealt with as efficiently and expeditiously as possible.

Generally, the parties correspond with the Law Society in writing at all times concerning the complaint, unless the person is unable to do so. Please contact the Law Society by telephone if you need assistance with providing information in writing.

### Preliminary assessment

The Law Society will undertake a preliminary assessment of the complaint and may require further information to be provided by the complainant, the solicitor or a third party. After the preliminary assessment, the Law Society may determine to close part or all of the complaint or proceed to an investigation pursuant to the Uniform Law.

### Investigation of complaints

Those complaints that are not closed after preliminary assessment are investigated. The Law Society may investigate the whole or part of any complaint and may also appoint a suitably qualified person to conduct an investigation.

The investigation deals with matters the subject of the complaint, however it may be extended in scope if the Law Society considers it appropriate to do so.

Matters may also be referred to costs assessment.

Information obtained by the Law Society, a complainant or a solicitor as part of an investigation of a complaint is confidential and should not be disclosed.

### Obligations of complainant

The complainant must assist in the investigation by providing evidence or information if required by the investigator. Failure by the complainant to assist in the investigation may result in the closure of the complaint.

### Obligations of solicitor

The solicitor must assist in the investigation by providing evidence or information if required by the investigator. A solicitor must not obstruct or mislead an investigator. Failure by the solicitor to assist in the investigation may amount to unsatisfactory professional conduct or professional misconduct or render the solicitor liable to civil penalties.

### Report

After completion of the investigation, the investigator reports to the Professional Conduct Committee of the Law Society (**the Committee**). The report is confidential and is not provided to the complainant or the solicitor.

## Determination of complaints

Complaints are considered by the Committee who may:

- close the complaint; or
- find that the solicitor has engaged in unsatisfactory professional conduct and order that the solicitor:
  - be cautioned;
  - be reprimanded;
  - apologise to the complainant;
  - re-do the work the subject of the complaint at no cost or waive or reduce the fees for the work;
  - undertake education, training, counselling or be supervised;

- pay a fine of a specified amount not exceeding \$25,000 to the Public Purpose Fund; or
- recommend a specified condition be imposed on the solicitor's practising certificate; or
- initiate proceedings in the NSW Civil and Administrative Tribunal against the solicitor for either professional misconduct or unsatisfactory professional conduct.

A written notice of the Committee's decision is generally provided to the complainant and solicitor pursuant to the Uniform Law.

### Proceedings in the NSW Civil and Administrative Tribunal (NCAT)

The Law Society may file an application in the Occupational Division of NCAT, seeking disciplinary findings and orders against a solicitor if it is of the opinion that:

- the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by NCAT; or
- the alleged conduct may amount to professional misconduct.

If NCAT finds the solicitor guilty of unsatisfactory professional conduct or professional misconduct, it may make any order it thinks fit, including orders:

- recommending the removal of the solicitor's name from the Roll of lawyers kept by the Supreme Court of NSW;
- suspending for a period or cancelling the solicitor's practising certificate;
- directing that a specified condition be imposed on the solicitor's practising certificate;
- cautioning or reprimanding the solicitor; or
- imposing a fine on the solicitor.

## Compensation orders

A complainant may request NCAT (in disciplinary proceedings commenced by the Law Society in NCAT) to make a compensation order in favour of the complainant or a third party, if NCAT gives the complainant leave to make the request. A request for compensation must describe the loss suffered by the complainant or third party and the relevant circumstances. Compensation is only awarded in limited circumstances in disciplinary matters.

Unless the complainant and solicitor agree, NCAT must not make a compensation order unless it is satisfied that the loss was suffered because of the solicitor's conduct and it is in the interests of justice that a compensation order be made. A compensation order will not be made where the complainant or client has received or is entitled to receive compensation under a court order or compensation from a fidelity fund (where the claim for payment from the fund has been made or determined).

An order for compensation made by NCAT cannot exceed \$25,000, unless a greater amount is agreed to by both the complainant and the solicitor.

A compensation order may be filed in the Local Court of New South Wales and enforced as if it were an order of the court.

## Review

In most cases, a decision by the Law Society in relation to a complaint is final.

The Legal Services Commissioner however may, at his absolute discretion, conduct a review of a decision made to close a complaint if the Legal Services Commissioner considers it appropriate to do so. An application for review must be made within 30 days of the date of notice of the decision.

In addition, a solicitor may apply to NCAT to seek a review of a determination under section 299 of the Uniform Law, in relation to a finding of unsatisfactory professional conduct. A solicitor may also seek a review in the Supreme Court of a decision to refer a complaint to NCAT.

## Register of Disciplinary Action

The Legal Services Commissioner maintains a Register of Disciplinary Action which includes particulars of the disciplinary action taken against a solicitor. The Register of Disciplinary Action is available for inspection on the website of the Office of the Legal Services Commissioner.

## Other matters

- The making of a complaint does not operate as a stay or bar to any other legal proceedings between or involving the complainant and solicitor.
- The making of a complaint does not prevent ongoing communication between the solicitor and the complainant on other matters, or for the purposes of dealing with the subject matter of the complaint.
- The making of a complaint does not terminate a solicitor/client relationship between the solicitor and complainant, if there is one. A complaint may, however, indicate a loss of confidence or trust in a solicitor which may make it appropriate for a solicitor to cease to act for a complainant.
- The making of a complaint cannot bring about a review or reconsideration of a decision made by a court, Tribunal or other authority.
- Solicitors should not make complaints about other solicitors without first exploring every avenue of resolution.
- Unfounded allegations by a solicitor about another solicitor may be a breach of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.



**For further assistance or information please contact:**

**Professional Standards Department**  
The Law Society of New South Wales  
Telephone: +61 2 9926 0110