



Legal Practitioners

Conduct Board

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FACT SHEET 1

GENERAL INFORMATION ABOUT THE BOARD

What is the Board?

- The Board is a disciplinary body. It investigates whether a lawyer's conduct has fallen short of professional standards. The Board comprises seven members – four lawyers and three non-lawyers. The Board is independent of the Law Society of South Australia.
- The Board employs investigators who answer enquiries and investigate complaints. With the consent of all parties involved, the Board can also conciliate some cost and service disputes.
- The Board can investigate and assess whether a lawyer's charges are reasonable.

What can the Board make decisions about?

The [Legal Practitioners Act, 1981](#) (the Act) gives the Board power to investigate lawyers in relation to suspected, or alleged, unprofessional or unsatisfactory conduct, to decide if they have substantially or repeatedly, fallen below professional standards. The Board **must** investigate a complaint unless the Board finds that it is frivolous or vexatious.

“Unprofessional conduct”, in relation to a legal practitioner, means:

- a) an offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law;
- b) any conduct in the course of, or in connection with, practice by the legal practitioner that involves substantial or recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute.

“Unsatisfactory conduct”, in relation to a legal practitioner, means conduct in the course of, or in connection with, practice by the legal practitioner that is less serious than unprofessional conduct but involves a failure to meet the standard of conduct observed by competent legal practitioners of good repute.

The Board is also required to investigate allegations of overcharging in relation to bills rendered by lawyers.

Information sheet uses the term "*lawyer*". "*Lawyer*" is a generic term which is inclusive of legal practitioners, barristers and solicitors".

The Board CANNOT do the following things:

- Order that your lawyer charges you less. If the Board finds evidence of overcharging, it only has the power to **recommend** a refund or reduction of an account.
- Order a lawyer to act for you.
- Order a lawyer to give you a file.
- Order a lawyer to pay you compensation for negligence.

What if I think my lawyer has made a mistake but the Board decides to take no disciplinary action?

- Not all dissatisfaction with, or mistakes made by, a lawyer will amount to unprofessional or unsatisfactory conduct.
- A mistake made by a lawyer may amount to negligence even if it is not unprofessional or unsatisfactory conduct. All practising lawyers have insurance to cover negligence claims.
- Negligence matters are not within the Board's jurisdiction. Incompetence, or gross negligence, however, may amount to misconduct which the Board can investigate. Advice about what to do if you think your lawyer has been negligent may be obtained from the [Legal Services Commission](#), a [Community Legal Service](#) or a private lawyer.
- A finding by the Board that there is evidence of misconduct will not give you a right to compensation.

What can the Board do if it decides there is evidence of unprofessional or unsatisfactory conduct on the part of my lawyer?

- If there is evidence of unsatisfactory or unprofessional conduct by a lawyer, the Board has a range of powers, depending upon the seriousness of the lawyer's conduct and can do any of the following things:

If relatively minor misconduct, with the lawyer's consent, the Board can:

- Reprimand the lawyer.
- Make an order imposing conditions on the lawyer's Practising Certificate.
- Make an order requiring the lawyer to make a specified payment.

- Make an order requiring the lawyer to do, or refrain from doing, a specified act in connection with legal practice.

If not relatively minor misconduct, or the lawyer does not consent, the Board can lay a charge of misconduct against the lawyer in the Legal Practitioners Disciplinary Tribunal.

What happens if I decide to make a formal complaint to the Board?

- You will be asked to complete the complaint form supplied to you by the Board and to put your allegations in writing. You must sign and date your complaint and enclose any relevant documents. Complaint forms can be downloaded from the Board's website www.legalcomplaints.com.au or you can complete the online complaint form.
- If you have difficulty reading or writing, an investigator employed by the Board may be able to help you fill out the form. The Board can also arrange an interpreter to be present. These services are free.
- Each complaint is different. There is no standard way of investigating alleged misconduct or allegations of overcharging.
- Consideration may be given at any time during the investigation as to whether the problem could be resolved by conciliation (refer to the separate Fact Sheet on conciliation at the Board).
- An investigator employed by the Board will send a copy of your complaint to the lawyer for his or her response.
- When the lawyer's response has been received, the Board's investigator will ordinarily send it to you so that you can comment on any matters raised by the lawyer.
- If you provide further comments in relation to the matter, the investigator will ordinarily forward them to the lawyer to obtain her or his further response.
- During the course of the investigation, the Board's investigator may want to speak to persons other than yourself and the lawyer whose conduct you have reported. If this is the case, the investigator will contact any other relevant person(s) and obtain any information which may assist in the investigation of the complaint.
- Sometimes, the investigator will ask for the lawyer's file so that it can be examined.

What happens when the Board has obtained all relevant information?

- The Board must make a decision about every complaint it receives, including those that are conciliated.
- The Board may consider the complaint at a formal meeting of the Board and make a decision about the complaint based on the investigation. The Board meets every five weeks.

- The Board has delegated some of its functions and powers to the Director and the Principal Legal Officer. Some complaints are considered by the Director and the Principal Legal Officer pursuant to the delegated authority without having to go to a meeting of the Board.

What can the Board do with respect to legal costs?

- If you think you have been overcharged by your lawyer, you may make a complaint to the Board about costs.
- If the Board finds evidence of overcharging it may make a **recommendation** to the lawyer to provide a refund or to reduce the bill. The lawyer **does not** have to follow the Board's recommendation but many lawyers do.
- The Board can arrange for an assessment of the lawyer's bill to be undertaken.
- If the assessment of the lawyer's bill, in conjunction with the surrounding evidence, suggests that you may have been overcharged, the Board can:
 - Arrange conciliation between your lawyer and yourself to see if an agreement can be reached with respect to the account.
 - If the Board is of the view that *gross overcharging* has occurred, it may find that the lawyer has acted unprofessionally or unsatisfactorily. Refer to the Board's Fact Sheet in relation to costs.

What is Conciliation?

- Conciliation involves bringing you and your lawyer together to discuss the complaint issues informally with a qualified and experienced Conciliator. It provides an opportunity to resolve any problem by facilitated agreement. The process is voluntary. The Board cannot compel any party to participate in conciliation.
- The Board's investigator may suggest conciliation if she or he considers it appropriate in the context of the complaint and if there are issues which may be resolved informally.
- A Conciliation Conference is confidential and anything said at the Conference cannot be used as evidence in court proceedings (other than in relation to a criminal offence).
- An agreement reached at conciliation does not remove the Board's duty to take action if the conduct of the lawyer is unprofessional or unsatisfactory.

What does the Board do if it decides there is no evidence of unprofessional or unsatisfactory conduct or overcharging on the part of the lawyer?

- If the Board finds that there is no, or insufficient, evidence of unsatisfactory or unprofessional conduct or overcharging, the Board will advise the complainant and the lawyer, and it will close the file.

What if I am not happy with the decision of the Board?

- If you are not satisfied with the Board's decision you can ask the Lay Observer to look at what the Board has done. The Lay Observer can then make recommendations to the Board. The Lay Observer is not a lawyer. She or he observes the work of the Board and ultimately reports to the Attorney-General.
- Any person has the right to commence proceedings in the Legal Practitioners Disciplinary Tribunal (LPDT). This right exists even if the Board has made a decision that there is no, or insufficient, evidence of unprofessional or unsatisfactory conduct.
- If you commence proceedings in the LPDT it is a new and separate action and not an appeal from a decision of the Board. You may be liable for the lawyer's costs if you lose.
- You may also complain to the [State Ombudsman](#).

Where can I get advice about my complaint?

- An investigator employed by the Board can explain the complaint process to you and explain how the Board operates. This is a free service. The Board's Enquiry and Information Solicitor can be contacted on (08) 8212 7924 between the hours of 9.00am and 5.00pm, Monday to Friday, or via email lpcb@lpcb.com.au.
- The Board cannot offer legal advice to either a complainant or a lawyer.
- Independent legal advice can be sought from the [Legal Services Commission](#), a [community legal service](#) or a private lawyer.
- [The Law Society of South Australia](#) can provide names of private lawyers.

If I do not want the Board to start a formal investigation, what can the Board do?

- An investigator employed by the Board can talk to you about concerns you have in relation to the lawyer. If the complaint you are making is about your own lawyer, the investigator may be able to suggest ways that you can talk to your lawyer to address your concerns.
- Sometimes, and only if appropriate, an investigator from the Board can contact the lawyer concerned and talk to them.

Contact details for further assistance**Law Society of South Australia**

Telephone: (08) 8229 0222
Website: www.lawsocietysa.asn.au

Legal Services Commission of South Australia

General enquiries: (08) 8463 3555
Legal Help Line: 1300 366 424
Website: www.lsc.sa.gov.au

Community Legal Centres

Telephone the Legal Services Commission and ask for the contact details of your nearest community legal centre. Or go to the website for the National Association of Community Legal Centres www.naclc.org.au and click on “CLC directory”.

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Information Sheets on other topics are available from the Board.