



## Legal Practitioners

### Conduct Board

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## FACT SHEET 6

### COMPLAINTS ABOUT NEGLIGENCE OR MISTAKES

The Legal Practitioners Conduct Board is a disciplinary body and looks at whether there is evidence of **“misconduct”** on the part of the lawyer. If a complaint of overcharging is made, the Board can also look at whether the legal fees charged are reasonable.

The Board can assist parties to voluntarily conciliate matters if you have a dispute with your lawyer over something that is capable of resolution. The Board cannot order, or award, damages or compensation for negligence or poor service. Refer to the Board’s Fact Sheet on conciliation at the Board.

#### What is misconduct?

The Legal Practitioners Act, 1981 defines *“unprofessional conduct”* and *“unsatisfactory conduct”*.

**“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.

It is only when conduct falls within these definitions that the Board has power to take disciplinary action. In this information sheet **“misconduct”** is used to describe both *“unprofessional conduct”* and *“unsatisfactory conduct”*.

In determining whether there is misconduct, the Board looks at how individual lawyers conduct themselves in carrying out their professional duties.

The following provides some examples of the sorts of conduct which may amount to misconduct but is not a complete list.

- Failing to follow reasonable instructions.
- Unreasonable delay in progressing a matter or in complying with instructions.
- Repeated failure to return telephone calls or respond to letters or other communications when there is no reasonable excuse.
- Intimidation or bullying behaviour.
- Deliberately, or recklessly, misleading you or a Court.
- Mishandling money, especially trust money.

### **What is the Board?**

The Board is made up of seven members. Four members are lawyers and three are not lawyers.

The Board uses its collective experience and knowledge to decide whether the conduct of a lawyer amounts to misconduct and if so, what action should be taken. If the Board finds misconduct the matter can be referred to the Legal Practitioners Disciplinary Tribunal (LPDT) or the Supreme Court for more formal disciplinary proceedings.

### **If my lawyer has made a mistake, is that misconduct?**

Generally, no. A mistake or an error of judgement by a lawyer will not ordinarily amount to misconduct unless it amounts to **gross negligence** or **incompetence**.

The assessment of whether the misconduct amounts to gross negligence or incompetence is always a question of degree, and depends upon the circumstances of each individual case.

An example from another profession shows the distinction:

*If a dentist is careless, makes an error and accidentally breaks a tooth, she or he may be negligent. If the same dentist was drunk when the tooth was broken it may amount to misconduct, as it would be grossly negligent to practice dentistry whilst drunk.*

### **What if I think the legal advice is wrong?**

You may not be happy with the work performed by your lawyer, or the quality and content of the legal advice provided by your lawyer. It is only when the work performed, or advice provided, is so poor that it amounts to gross negligence or incompetence, that a finding of misconduct can be made by the Board.

### **What if I think my lawyer has been negligent?**

A mistake made by your lawyer may amount to negligence even if it does not amount to misconduct.

The Board cannot give you legal advice about whether your lawyer has been negligent or whether you have any remedy. It cannot be your legal adviser.

The Board cannot obtain compensation for you for any loss you may have suffered. You will need to look to other agencies for assistance in this regard, or obtain your own independent legal advice. The Board has no power to assist you in identifying or advancing your legal rights.

Contact Details for Further Assistance:

### **Law Society of South Australia**

Telephone: (08) 8229 0222  
Website: [www.lawsocietysa.asn.au](http://www.lawsocietysa.asn.au)

The Law Society can give you the names of private lawyers who may provide legal advice about potential negligence – be aware that costs may be involved in obtaining such advice.

### **Legal Services Commission of South Australia**

General enquiries: (08) 8463 3555  
Legal Help Line: 1300 366 424  
Website: [www.lsc.sa.gov.au](http://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](http://www.naclc.org.au) and click on “CLC directory”.

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**Information Sheets on other topics are available from the Board.**