



## Legal Practitioners

### Conduct Board

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## GENERAL INFORMATION

### ABOUT THE BOARD

#### What is the Board?

- The Board is a disciplinary body. It investigates whether lawyers conduct has fallen short of professional standards. The Board comprises seven members – four lawyers and three lay persons. The Board is independent of the Law Society.
- The Board employs solicitors who answer enquiries and investigate complaints and by consent of all involved can conciliate disputes.
- The Board can 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"** 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; or
- 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"** 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.

**The Board CANNOT do the following things:**

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

**What if I think the 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 claims are not dealt with by the Board (unless the negligence is gross or amounts to incompetence and amounts to misconduct). 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.
- Disciplinary action if taken by the Board will not obtain any compensation or action for the complaining person.

**What can the Board do if it decides there is evidence of unprofessional or unsatisfactory conduct on the part of the 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, and the lawyer consents, 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 or do or refrain from doing a specified act in connection with legal practice.

If not relatively minor, 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 a complaint form supplied to you by the Board or to put your allegations in writing. You must sign and date your complaint and enclose any relevant documents. Complaint forms can also be obtained from the Board's website [www.legalcomplaints.com.au](http://www.legalcomplaints.com.au).

- If you have difficulty reading or writing, a solicitor employed by the Board can 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 information sheet on conciliation at the Board).
- A solicitor employed by the Board ('the investigating solicitor') will send a copy of your complaint to the lawyer for his or her response, and comments.
- When the lawyer's response has been received, the investigating solicitor 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 investigating solicitor will ordinarily forward them to the lawyer to obtain her or his further response.
- As a result of this information, the investigating solicitor may want to speak to persons other than yourself and the lawyer whose conduct you have reported. If this is the case, the investigating solicitor will contact any other relevant person(s) and obtain any information which may assist in the investigation of the complaint.
- Sometimes, the investigating solicitor will ask for the lawyers file so 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 in meeting and make a decision about the complaint based on the investigation. The Board meets regularly every 5 weeks.
- The Board has delegated some of its functions and powers to the Director and the Deputy Director. Some complaints are considered by the Director pursuant to the delegated authority without having to go to a Board meeting.

#### **What can the Board do with respect to legal costs?**

- If you think you have been overcharged by your lawyer, you may make 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 lawyers bill to be conducted.
- If the assessment of the lawyers bill and of all the surrounding circumstances suggest that the client may have been overcharged the Board can:-
  - Arrange to conciliate between the lawyer and the client to see if agreement can be reached with respect to payment of the bill or a refund of an amount that has been paid. Both the lawyer and the client must consent to this or there can be no conciliation.

- The Board can recommend to the lawyer that the bill be reduced. The Board cannot order a lawyer or a firm to reduce a bill or refund an amount paid.
- If the Board is of the view that gross overcharging has occurred it may find that the lawyer has acted unprofessionally or unsatisfactorily.

### **What is conciliation?**

- Conciliation involves bringing the complainant and the lawyer together to discuss the issues informally with a trained conciliator. It provides an opportunity to resolve any problem by agreement. The process is voluntary. The Board cannot make any lawyer agree to participate in conciliation.
- The investigating solicitor will suggest conciliation if she or he considers it is appropriate in the context of the complaint and if there is an issue which may be resolved informally.
- A conciliation meeting is confidential and anything said at the conciliation 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 was 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 unsatisfactory or unprofessional conduct or overcharging, or insufficient evidence of it, the Board will advise the complainant and the lawyer, and will close its file.

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

- If you are not satisfied with a Board 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.
- You have the right to commence proceedings in the Legal Practitioners Disciplinary Tribunal yourself, even if the Board does not find that there has been unprofessional or unsatisfactory conduct. This would not be an appeal from a decision of the Board. It would be a new and separate action and there may be costs involved.
- You may complain to The State Ombudsman.

### **Where can I get advice about my complaint?**

- A solicitor employed by the Board can explain the complaints process to you. This is a free service.
- The Board cannot offer legal advice to a person making a complaint, or to a lawyer.

- Independent legal advice can be sought from the Legal Services Commission, a community legal centre or a private lawyer.
- The Law Society of South Australia can provide names of private lawyers.

#### **If I don't want the Board to start a formal investigation, what can the Board do?**

- A solicitor 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, this may assist you to talk to your lawyer about your concerns.
- Sometimes and only if appropriate, a solicitor from the Board can contact the lawyer concerned and talk to them.

#### **Contact Details for Further Assistance**

**Law Society of South Australia:** 8229 0222

[www.lawsocietysa.asn.au](http://www.lawsocietysa.asn.au)

#### **Legal Services Commission**

Telephone Advice Service: 1300 366 424

Appointments: 8463 3555

[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 [www.naclc.org.au](http://www.naclc.org.au) and click on 'CLC directory'.

Information Sheet 1

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