



Understanding the Complaints Process – Who's at risk and pitfalls to avoid

Michael McGarvie

Legal Services Commissioner + CEO Legal Services Board

Cara O'Shanassy

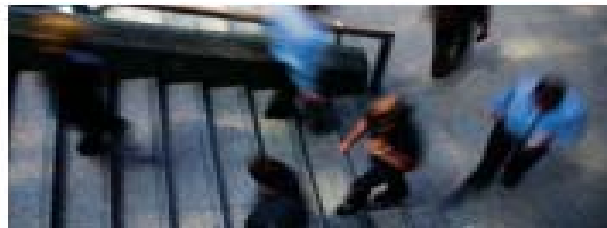
Team Leader, Complaints and Investigations



Legal Services Board

Level 10, 330 Collins - 25 people + 7 members

- Registry
- Trust accounts (+LIV + Bar)
- Fidelity Fund
- Invested funds
- Receiverships (+LIV + Bar)
- Certificates (+LIV + Bar)
- Suitability (+LIV + Bar)
- Foreign licences
- CPD (+LIV + Bar)
- ILP's



Legal Services Commissioner

Level 9, 330 Collins - 35 people

- Complaints 2000 pa
- Family
- Probate + estates
- Property
- Small commercial
- Personal Injuries
- Costs v. conduct
- ADR – rapid solve
- Communicate
- Meet and visit



National Legal Profession Reform

- National Board, national Commissioner, state Commissioners
- Transfer of LSB functions to LSC
- Residual functions in Victoria
- 1 July 2013



Complaint statistics

- 2000 complaints each year (average)
- 8 per day – 7 of which are soluble
- 2010-11 closed 2,609 complaints
- Top areas of law: family / de facto, conveyancing, probate and estate, commercial, criminal
- Top issues: costs, negligence, trust money handling, dishonesty, document retention, communication



Customer relations

- Big firms manage complaints meticulously
- Eliminate risk of an emotional response
- Remember the power of sorry and fees review
- Prepare your staff for the inevitability of complaints
- Teach lawyers habits that involve seeking their own trusted advice
- Use the power of communication to manage expectations
- Use the regulator to help solve some complaints



Tips to prevent disputes

- Actively communicate with clients about costs
- Use various means of communication
- Never assume clients understand costs
- Actively manage clients expectations
- Keep detailed file notes



Case 1 – allegations (Keough VCAT J115/2009)

- plagiarism

- Practitioner completing his Masters degree
- Practitioner submitted a plagiarised research paper towards his degree and for inclusion in *Journal of Law and Medicine*
- Complaint to LSC by Dr Ian Freckleton, JLM editor
- Practitioner claimed no intention to plagiarise



Case 1 – outcome (Keough VCAT J115/2009)

- plagiarism

- Practitioner did not set out to plagiarise
- However, left insufficient time to prepare paper
- Consciously submitted a plagiarised paper
- Practising certificate cancelled 6 months, costs order
- Conduct doesn't need to be connected to legal practice to amount to professional misconduct



Case 2 – allegations (Johal VCAT J88/2010)

- forged medical certificate

- Practitioner provided a forged medical certificate to her employer.



Case 2 – outcome (Johal VCAT J88/2010)

- forged medical certificate

- Found guilty of professional misconduct.
- VCAT noted that “Integrity is of the first and most indispensable necessity for a legal practitioner. The forgery of any document clearly is a grave offence against that obligation of integrity and honesty.”
- VCAT took into account that the practitioner did not have an unblemished record. The practitioner had failed to disclose to the Board of Examiners her plagiarism while at the College of Law but had been admitted to practise after a number of hearings.



Debt recovery matters

- Are you familiar with the relevant Rules, the Act and your other obligations?
- Common problem - Who is the client? Have you got proper instructions?
- What to do if you feel under pressure to act contrary to the Rules or the Act?