



The information herein was last updated on  
Wednesday 8 March 2023..

Thank you for contacting the Legal Profession Conduct Commissioner. Before you complete the enclosed complaint form, please carefully read the enclosed Fact Sheet that explains important information about what the Legal Profession Conduct Commissioner does and doesn't do.

In order to make a complaint, the complainant will need to pay a fee of \$110 (including GST), or to have successfully applied to have the fee reduced or waived.

It is particularly important that you note the following:

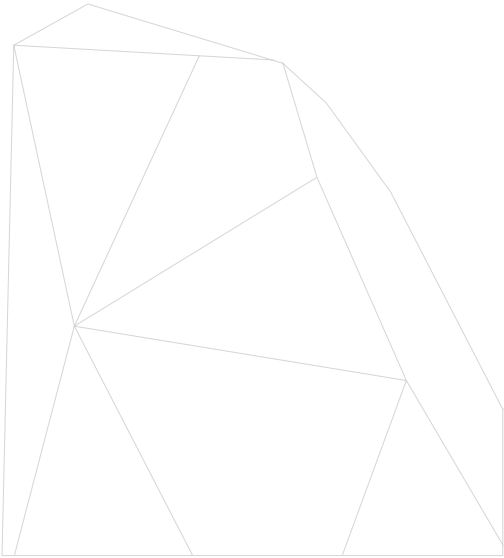
- You may be able to resolve your concerns directly with your lawyer. You should talk to your lawyer, or the firm's managing partner, about your concerns before making a complaint.
- The Commissioner cannot award you compensation. If you believe that your lawyer has been negligent and you wish to receive compensation, you should obtain independent legal advice. The Legal Services Commission has a free legal help line that can be contacted on 1300 366 424.
- The Commissioner cannot provide legal advice or representation.
- The Commissioner cannot intervene in court proceedings, or change an order that has already been made by a Court.
- The Commissioner cannot prevent your lawyer from suing you for their fees or from taking other court action against you.
- The Commissioner cannot refer you to a lawyer or make any recommendations as to who you should instruct.
- If you want to make a complaint to the Commissioner, you must do so in writing. A standard complaint form is attached.
- A complaint about a lawyer's conduct must be made to the Commissioner within 3 years of the conduct occurring. A complaint about overcharging must be made to the Commissioner within 2 years of the final bill to which the complaint relates. In either case, the Commissioner has a discretion to allow a longer period within which a complaint can be made.

Our Enquiry Line is only open during the following times:

Monday - 1pm to 4pm

Wednesday – 1pm to 4pm

Friday 1pm – 4pm



# Complaint form



## Complaint details

Please print and cross boxes clearly.



### 1. Complainant(s) (person making the complaint)

Title	<input type="checkbox"/> Mr	<input type="checkbox"/> Ms	<input type="checkbox"/> Mrs	<input type="checkbox"/> Dr	<input type="checkbox"/> Other
First name(s)					
Surname					
Residential address	Street				
	Suburb		State		Postcode
Postal address	PO Box				
	Suburb		State		Postcode
Telephone number (daytime)					
Telephone number (after hours)					
Mobile phone number					
Fax number					
Email address					

### 2. Are you making this complaint on behalf of another person?

<input type="checkbox"/> No, I am the person making the complaint
<input type="checkbox"/> Yes, I am complaining on behalf of a child under 18 years
<input type="checkbox"/> Yes, I am exercising a Power of Attorney
<input type="checkbox"/> Yes, I am complaining as a guardian and/or administrator
<input type="checkbox"/> Yes, I am a lawyer acting on behalf of my client
<input type="checkbox"/> Other

Please print and cross boxes clearly. 

### 3. About the lawyer(s)—the person(s) you are making the complaint about

#### Who is your complaint about?

First name(s)										
Surname										
Firm name										
Firm address	Street									
	Suburb				State			Postcode		
Postal address	PO Box									
	Suburb				State			Postcode		
Telephone number (daytime)										
Mobile phone number										
Fax number										
Email address										
Who was the lawyer acting for?	<input type="checkbox"/> Me		<input type="checkbox"/> Another person (please name)							

#### Use this section if you are complaining about more than one lawyer

#### Who is your complaint about?

First name(s)										
Surname										
Firm name										
Firm address	Street									
	Suburb				State			Postcode		
Postal address	PO Box									
	Suburb				State			Postcode		
Telephone number (daytime)										
Mobile telephone number										
Fax number										
Email address										
Who was the lawyer acting for?	<input type="checkbox"/> Me		<input type="checkbox"/> Another person (please name)							



Please print and cross boxes clearly.

#### 4. About the complaint

##### Area of law

What type of matter was the lawyer involved in?	<input type="checkbox"/>	Worker's compensation	<input type="checkbox"/>	Company law	<input type="checkbox"/>	Family law
	<input type="checkbox"/>	Wills and probate	<input type="checkbox"/>	Migration law	<input type="checkbox"/>	De facto law
	<input type="checkbox"/>	Criminal	<input type="checkbox"/>	Industrial	<input type="checkbox"/>	Real property
	<input type="checkbox"/>	Conveyancing	<input type="checkbox"/>	Medical negligence	<input type="checkbox"/>	Commercial law
	<input type="checkbox"/>	Building dispute	<input type="checkbox"/>	Personal injury	<input type="checkbox"/>	Criminal injuries compensation
	<input type="checkbox"/>	Other				
	<input type="checkbox"/>					

#### 5. Why are you making this complaint

<input type="checkbox"/>	To resolve my dispute with the lawyer
<input type="checkbox"/>	To improve communication with the lawyer
<input type="checkbox"/>	To have my documents/files transferred to another lawyer
<input type="checkbox"/>	To improve the service provided by the lawyer
<input type="checkbox"/>	To receive an apology
<input type="checkbox"/>	To get the work re-done properly
<input type="checkbox"/>	To have the lawyer disciplined
<input type="checkbox"/>	To resolve a costs dispute with the lawyer's firm
<input type="checkbox"/>	Other
Have you tried to resolve the complaint with the lawyer?	<input type="checkbox"/> No
	<input type="checkbox"/> Yes





## Overcharging

Please print and cross boxes clearly. 



If you believe that you have been overcharged by your lawyer, you can complain to the Commissioner by completing this section (Section B).

There are time limits in relation to a complaint of overcharging that you should be aware of. The Commissioner need only consider a complaint of overcharging if it is made within 2 years of you receiving the last bill that you are complaining about. Normally, the Commissioner will first try to see if, through a conciliation process, the bill (tax invoice) can be agreed

between the parties. If it can't then the Commissioner may recommend what he thinks is a fair and reasonable amount for the legal fees to have been. If that recommendation is not accepted by both you and your lawyer, and if the amount in dispute is \$50,000 or less, then the Commissioner may make a binding determination in relation to the amount in dispute. However, he can only do so if he first obtains a costs assessment. You may be asked to pay the reasonable costs of the Commissioner obtaining that costs assessment.

### 1. Overcharging details

On what date (if uncertain, please approximate) did you first engage your lawyer?	<input type="text"/> / <input type="text"/> / <input type="text"/>
Is your matter with your lawyer finished?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure
Do you have an agreement with your lawyer about costs?	<input type="checkbox"/> Yes <input type="checkbox"/> No
What was the date of the bill you are complaining about (or the last bill if there is more than one)?	<input type="text"/> / <input type="text"/> / <input type="text"/>
How much have you already paid to the lawyer for legal services? If you do not know the precise amount, please provide an estimate	\$ <input type="text"/> , <input type="text"/>
What is the amount in dispute between you and your lawyer?	\$ <input type="text"/> , <input type="text"/>
Have you requested an itemised account from your lawyer? If your lawyer has provided one to you please attach a copy	<input type="checkbox"/> Yes <input type="checkbox"/> No
You say the account is too high because:	<input type="checkbox"/> A lesser amount was estimated or quoted for legal fees
	<input type="checkbox"/> The account includes work that was not done
	<input type="checkbox"/> The account includes work that was not necessary
	<input type="checkbox"/> The legal work was done poorly
	<input type="checkbox"/> The account includes work you did not ask to be done
	<input type="checkbox"/> The charges for the work are not as agreed with your lawyer
Have you talked about the account with your lawyer or someone else at the firm and tried to resolve your concerns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the lawyer issued a summons against you for payment of the account?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are you willing to attend a conciliation conference (if the lawyer agrees) to try to resolve the cost dispute?	<input type="checkbox"/> Yes <input type="checkbox"/> No









## Declaration

This section must be completed.

- Please read through this form to check all questions have been answered.  
Please attach all necessary documents and sign the declaration below.

### Declaration by the complainant

I have read through this completed complaint form and believe, to the best of my knowledge, that all of the information provided is true, correct and not misleading.

I authorise the Legal Profession Conduct Commissioner to forward a copy of this complaint to the lawyer named in this complaint.

Signature

Date   /   /

I agree to the terms of this declaration.

### PRIVACY STATEMENT

Personal information you provide on this form is used by the Commissioner for the purposes of carrying out his functions under the *Legal Practitioners Act 1981*. Those functions include assessing, conciliating, investigating and prosecuting complaints about lawyers. To do that, the Commissioner will usually disclose your personal information to the lawyer you are complaining about and to his or her lawyer (if represented).

If a complaint proceeds to a disciplinary hearing, your personal information may be disclosed to the Legal Practitioners Disciplinary Tribunal or the Supreme Court. Disciplinary hearings are open to the public. The Commissioner will not use or disclose your personal information for any purpose not connected with his role under the *Legal Practitioners Act 1981* without your consent, unless such use or disclosure is required or authorised by law.

If printed, please send this form and photocopied attachments to:

#### Legal Profession Conduct Commissioner

GPO Box 230  
Adelaide SA 5001



Level 10, 30 Currie Street  
Adelaide SA 5000

GPO Box 230  
Adelaide SA 5001

**T** (08) 8212 7924 or 1800 337 570

**F** (08) 8231 0794

**E** [lpcc@lpcc.sa.gov.au](mailto:lpcc@lpcc.sa.gov.au)

[www.lpcc.sa.gov.au](http://www.lpcc.sa.gov.au)







This information was last updated on  
Tuesday 7 March 2023

## Fee to Lodge a Complaint

In most cases, you will need to pay a fee when you make a complaint to the Commissioner.

Section 72(2) of the Act provides as follows:

*The Commissioner may—*

- (a) with the approval of the Attorney-General, fix, and require the payment of, fees in connection with the performance of functions of the Commissioner under this Act; and*
- (b) waive the payment of, or refund, the whole or part of a fee fixed under paragraph (a).*

The Attorney-General has approved the Commissioner fixing a fee of up to \$110 (including GST) for the making of a complaint, and requiring the payment of any fee before he considers that complaint.

If a complainant complains about more than one practitioner, then the fee will be payable in relation to each practitioner unless the Commissioner decides otherwise.

In some circumstances, the Commissioner may decide to reduce or waive the payment of any such fee.

### Reduced fee

The Commissioner has a discretion to reduce the fee payable in a particular case.

On application, the Commissioner may reduce the fee to be paid to \$55 (including GST) if the complainant provides:

- one of the following valid concession cards:
  - Pensioner Concession Card;
  - Health Care Card;
  - Commonwealth Seniors Health Card;
  - Department of Veterans Affairs Gold Card;
  - Student identification card (full-time students only);
- evidence that they:
  - have been granted legal aid within the last 3 months and were not required to make more than the minimum contribution of \$30.

The Commissioner may also consider other applications by a complainant to reduce or waive the fee payable due to financial hardship or special circumstances. To consider an application as to financial hardship, the complainant will need to provide at least one (and ideally more) of the following supporting information and documentation as relevant:

- information and evidence of assets and liabilities;
- the last four weeks of bank statements, either hard copy or electronic, relating to all of the complainant's bank accounts in sole or joint names;
- for individuals receiving Centrelink benefits – Centrelink income and assets statement;
- payslips for the last four weeks (if the complainant is employed);
- tax return for the previous financial year;
- any other financial information that the complainant considers relevant, such as outstanding bills.

To consider an application as to special circumstances, the complainant will need to explain briefly what those circumstances are and if necessary provide evidence in support. Particular examples of special circumstances may include that the complainant is under 18 years of age or is in prison or detention.

If the Commissioner does not approve a reduction in or waiver of the fee, the complainant must pay the fee in full before the Commissioner will consider the complaint.

### **Fee refund**

The Commissioner will refund any fee that a complainant has paid if:

- in the case of a complaint about a practitioner's conduct, he ultimately finds that the practitioner complained about has engaged in misconduct; and
- in the case of a complaint of overcharging, he ultimately finds that there has been overcharging, or if there is a recommendation, order or agreement that the practitioner reduces a charge or refunds an amount.

The Commissioner also has a complete discretion to refund any fee that has been paid in any other circumstances.



legal profession  
**conduct**  
**commissioner**

## Fee Reduction or Waiver Application

### Personal Details

Full name:

Email address:

Phone Number:

### Application

Reduction  Waiver

On what basis are you applying to reduce or waive the fee to lodge a complaint?

Pensioner Concession Card

Health Care Card

Commonwealth Senior Health Card

Department of Veteran Affairs Gold Card

Student Identification Card (Full-time students only)

**\*Note:** in relation to the above, we ask that you provide a photocopy of the valid concession card.

Under 18 years of age

In prison or detention

Have been granted legal aid within the last 3 months and was not required to make more than the minimum contribution of \$30.00

Special circumstances

**\*Note:** in relation to the above, we ask that you provide evidence to support your application.

**\*Note:** in relation to special circumstances, please provide a brief explanation as to what those circumstances are (by attaching a separate document), and provide evidence to support your application.

Financial hardship

**\*Note:** In relation to financial hardship, we ask that you provide at least one (and ideally more) of the following supporting information and documentation:

- information and evidence of assets and liabilities;
- the last four weeks of bank statements, either hard copy or electronic, relating to all of the complainant's bank accounts in sole or joint names;
- for individuals receiving Centrelink benefits – Centrelink income and assets statement;
- payslips for the last four weeks (if the complainant is employed);
- tax return for the previous financial year;
- any other financial information that the complainant considers relevant, such as outstanding bills.

**Signature:**

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



The information contained in this fact sheet was last updated on 18 October 2022.

## Who We Are

The Legal Profession Conduct Commissioner is established by the *Legal Practitioners Act 1981 (SA)* (**Act**) to regulate the conduct of all lawyers in South Australia (from both the private and public sectors), as well as interstate lawyers who practise in South Australia. The Commissioner is an independent statutory agency of the Crown.

## What We Do

The Commissioner investigates complaints about a lawyer's conduct or about overcharging. Sometimes the Commissioner will conciliate a complaint to try to resolve it.

If, after conducting an investigation, the Commissioner determines that the lawyer is guilty of misconduct, the Commissioner can discipline a lawyer using powers under the Act. The Commissioner may also institute disciplinary proceedings against a lawyer in either the Legal Practitioners Disciplinary Tribunal (**Tribunal**) or the Supreme Court. The Commissioner maintains a Register of Disciplinary Action which can be accessed on [www.lpcc.sa.gov.au](http://www.lpcc.sa.gov.au).

## What We Don't Do

The Commissioner cannot award you compensation. If you believe that your lawyer has been negligent and you wish to receive compensation, you should obtain independent legal advice.

The Commissioner cannot provide legal advice or representation. If you require legal advice you should obtain independent legal advice. The Legal Services Commission has a free legal help line that can be contacted on 1300 366 424.

The Commissioner cannot intervene in court proceedings, or change an order that has already been made by a Court.

The Commissioner cannot prevent your lawyer from suing you for their fees or from taking other court action against you.

The Commissioner cannot refer you to a lawyer or make any recommendations as to who you should instruct.

## Who Can Complain?

Anyone can make a complaint to the Commissioner about a lawyer practising in South Australia. **You do not need to be a client of the lawyer to make a complaint to the Commissioner. However, if you have concerns about your own lawyer, you may be able to address those concerns directly with your lawyer. You should talk to your lawyer, or the firm's managing partner, about your concerns before making a complaint.**

## How do I Make a Complaint?

A complaint to the Commissioner must be received in writing. Please use the Commissioner's complaint form to ensure that you provide sufficient information for your complaint to be processed. The Complaint form can be accessed on [www.lpcc.sa.gov.au](http://www.lpcc.sa.gov.au).

## When May I complain?

Complaints about a lawyer's conduct must be made to the Commissioner within 3 years of the conduct occurring.

Complaints about overcharging must be made to the Commissioner within 2 year of the final bill to which the complaint relates.

In either case, the Commissioner has a discretion to allow a longer period within which a complaint can be made. Accordingly, if you are making a complaint to the Commissioner outside these timeframes, please explain why you did not make it within time.

## What Happens When I Complain?

After receiving your complaint, the Commissioner's office will write to you to acknowledge having received it.

The Commissioner may decide, at any time after receiving a complaint, not to investigate it. Those circumstances are:

- your complaint is vexatious, misconceived, frivolous or lacking in substance;
- you do not respond, or you respond inadequately, to a request for further information;
- you unreasonably fail to cooperate in the investigation or conciliation of the complaint;
- the subject-matter of the Complaint has been or is already being investigated, whether by the Commissioner or another authority;
- the subject-matter of the Complaint would be better investigated or dealt with by police or another investigatory or law enforcement body;
- the subject-matter of the Complaint is the subject of civil proceedings, and there is no aspect of it that gives rise to a disciplinary matter;
- the Complaint is not one that the Commissioner has power to deal with;
- the Commissioner is satisfied that it is otherwise in the public interest to close the Complaint.

If the Commissioner's office decides to investigate your complaint, the following steps can be taken:

- Further information may be sought from you to assist the investigation.
- The Commissioner may notify the lawyer that they are being investigated and provide them with a copy of your complaint. The lawyer has a right to respond to your complaint.

- Usually the lawyer's response will be provided to you so that you can comment on what the lawyer has said about your complaint. That process of providing a response to the other party for comment may be repeated on a number of occasions.
- If you have complained about your own lawyer, the Commissioner may also ask them to provide your client file to the Commissioner's office to assist the investigation.
- If the Commissioner determines that the lawyer has been guilty of misconduct at the conclusion of the investigation, disciplinary action will be taken against the lawyer.

There is no standard way of investigating a complaint, and no standard time frame that it will take. Each investigation must comply with the rules of natural justice and procedural fairness, and that means it may on occasions take some time to complete an investigation.

If, after receiving your complaint, or during the course of an investigation, the Commissioner decides to conciliate your complaint (which will be most common in the case of an overcharging complaint), the following steps can be taken:

- Your complaint will be referred to the Commissioner's in-house conciliator.
- The Conciliator will contact you to explain the Commissioner's voluntary conciliation process and to explain why your complaint may benefit from conciliation.
- The Conciliator will try to assist you and the lawyer reach a resolution to your complaint or/a part of your complaint as appropriate.
- If you reach a resolution, the Conciliator will assist you and the lawyer record the resolution reached in a written Agreement, which is signed by both parties and the Conciliator on behalf of the Commissioner. Any such Agreement is binding on the parties. If the lawyer breaches the Agreement, that is misconduct.

Even if you reach an agreement in conciliation to your complaint or a part of the complaint, the Commissioner may still investigate your complaint and take disciplinary action against the lawyer.

### What is Misconduct?

There are two types of misconduct that the Commissioner can investigate:

#### **Unsatisfactory Professional Conduct (UPC)**

This type of misconduct relates only to the conduct of a lawyer when he or she is practising law. It occurs when a lawyer 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 (PM)**

This is the more serious of the two types of misconduct. There are two categories of Professional Misconduct, which are:

- where a lawyer engages in UPC on a substantial or consistent basis;
- where the lawyer's conduct, either professionally or outside of the practice of the law, would justify a finding that the lawyer is not a fit and proper person to practise law.

### Disciplinary Action

If the Commissioner determines that a lawyer has been guilty of misconduct, he can deal with the conduct in a number of ways, including:

- reprimanding the lawyer

- ordering the lawyer to apologise
- ordering that the lawyer redo the work or pay for the work to be redone by another lawyer
- ordering that the lawyer be supervised
- ordering the lawyer undertake training, education or counselling
- ordering the lawyer to pay a fine (up to a certain level)
- suspending, or placing conditions on, the lawyer's practising certificate
- ordering that the lawyer to make a specified payment to a person
- ordering that the lawyer to receive medical treatment
- ordering the lawyer to enter into a professional mentoring agreement
- examining the lawyer's files and records.

More serious matters are dealt with in either the Tribunal or the Supreme Court. The Tribunal can take similar disciplinary action to the action the Commissioner can take, but in some cases it can be more severe (for example, the Tribunal can impose higher fines).

The Supreme Court can take any disciplinary action it sees fit, including striking off or removing a lawyer's name from the roll of legal practitioners in South Australia.

Findings of Professional Misconduct, whether made by the Commissioner, the Tribunal or the Supreme Court, must be published on the Register of Disciplinary Action. Less serious findings of Unsatisfactory Professional Conduct may be published on the register, at the discretion of the Commissioner.

### Contact Details

#### Location address:

Level 10, 30 Currie Street  
Adelaide SA 5000

#### Mailing address:

GPO Box 230  
Adelaide SA 5001

**Ph:** (08) 8212 7924 or 1800 337 570 (free call)

**Fax:** (08) 8231 0747

**Email:** [lpcc@lpcc.sa.gov.au](mailto:lpcc@lpcc.sa.gov.au)

**Website:** <http://www.lpcc.sa.gov.au/>

### Office hours

Monday to Friday: 9am - 5pm

### Enquiry Line hours

Monday: 1pm – 4pm

Wednesday: 1pm – 4pm

Friday: 1pm – 4pm



The information contained in this fact sheet was last updated on 9 March 2023

## Fact Sheet – Legal Costs and Court Proceedings

The Legal Profession Conduct Commissioner is established by the *Legal Practitioners Act, 1981 (SA) (Act)* to regulate the conduct of all lawyers in South Australia (from both the private and public sectors), as well as interstate lawyers who practise in South Australia. The Commissioner is an independent statutory agency of the Crown.

The Commissioner has the power to investigate complaints about overcharging by lawyers. The Commissioner's powers in relation to legal costs are limited, and there is some overlap between the role of the Commissioner and the role of the Courts.

This Fact Sheet is designed to explain the role and powers of the Commissioner in relation to legal costs, and how the Commissioner's role interacts with that of the Courts. References in this Fact Sheet to sections or Schedules are references to section or Schedules in the Act.

### Court Proceedings about Legal Costs

There are two types of Court proceedings that may be issued where there is a dispute between a lawyer and a client about legal costs.

#### Supreme Court – Taxation (Adjudication) Proceedings

An application for taxation (or adjudication) of costs may be made to the Supreme Court by a law practice<sup>1</sup>, a client (or third party payer)<sup>2</sup> or the Commissioner.<sup>3</sup>

Such an application must be made by a client within 6 months of a bill being given, a request for payment being made or the costs being paid, although an extension of time can be sought.<sup>4</sup>

<sup>1</sup> Schedule 3, Part 7, clause 39

<sup>2</sup> Schedule 3, Part 7, clause 37

<sup>3</sup> Schedule 3, Part 7, clause 42

<sup>4</sup> Schedule 3, Part 7, clause 37(4) and (5)



The Supreme Court has power to determine:

- the basis on which the costs should be calculated – that is, either:
  - pursuant to a valid and enforceable costs agreement;<sup>5</sup>
  - pursuant to the Higher Courts costs scale;<sup>6</sup> or
  - according to the fair and reasonable value of the legal services provided;<sup>7</sup> and
- the quantum or amount of the costs.

### Magistrates Court – Debt Recovery Proceedings

If a law practice has issued a bill to a client which has not been paid, the law practice can issue debt recovery proceedings in the Magistrates Court.<sup>8</sup>

The Magistrates Court can determine contractual and liability issues. Those issues include whether or not the law practice was engaged or retained, the identity of the parties to the costs agreement or retainer, and whether and when the costs agreement or retainer was terminated.

The Magistrates Court cannot determine the quantum or amount of disputed legal costs.<sup>9</sup>

### The Commissioner's Powers in relation to Legal Costs

The Commissioner must investigate complaints of overcharging which are received within 2 years of the law practice having provided the final bill to which the complaint relates.<sup>10</sup> The Commissioner has a discretion to extend that period of time.

At the conclusion of an investigation into a complaint of overcharging, the Commissioner will prepare a report on the results of the investigation<sup>11</sup> and may make recommend a reduction or refund of some or all of the costs.<sup>12</sup>

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<sup>5</sup> Schedule 3, Part 4, clause 21(a). A costs agreement is one made in accordance with Schedule 3, Part 5. The costs disclosure requirements are contained in Schedule 3, Part 3.

<sup>6</sup> Schedule 3, Part 4, clause 21(b). The Higher Courts costs scale is the default basis on which a lawyer's costs are calculable in South Australia, in the absence of a valid and enforceable costs agreement.

<sup>7</sup> Schedule 3, Part 4, clause 21(c)

<sup>8</sup> Under Schedule 3, Part 6, clause 31(1) debt recovery proceedings cannot be issued until 30 days after a bill has been provided to the client. Pursuant to Schedule 3, Part 3, clause 18(2) if the disclosure required by Schedule 3, Part 3 has not been made, a law practice may not maintain debt recovery proceedings against a client unless the costs have been adjudicated.

<sup>9</sup> *Cavallaro v FNE Lawyers* [2012] SASC 189 per Lunn J:

*"By virtue of the relevant legislation, recovery of lawyers' costs from clients can require separate proceedings in two different courts. It is for the Magistrates Court to determine the retainer and the contractual liability of the client to the lawyer and it is for this Court [the Supreme Court] to determine the proper quantum of the costs which are payable."*

<sup>10</sup> Section 77N(1) – subject to section 77C which enables the Commissioner to close a complaint (or part of a complaint) without further considerations of its merits, for the reasons set out in section 77C(a)-(g).

<sup>11</sup> Section 77N(6)(a)

<sup>12</sup> Section 77N(6)(b)

A recommendation by the Commissioner is not binding, but if the Supreme Court conducts a taxation (or adjudication) of the costs it must have regard to a recommendation of the Commissioner.<sup>13</sup>

If the costs dispute remains unresolved, the Commissioner may arrange for the costs to be assessed by a suitably qualified costs assessor, and he must do so before making a binding determination as to whether there has been overcharging and if so the amount that has been overcharged.<sup>14</sup>

The Commissioner can, and ordinarily will, require the complainant to pay the reasonable cost of obtaining a costs assessment upfront (**Costs Assessment Fee**)<sup>15</sup>. The Costs Assessment Fee varies depending on the size of the practitioner's file which is to be assessed. If the complaint is upheld, then the Costs Assessment Fee may be refunded to the complainant<sup>16</sup> and recovered from the Practitioner.<sup>17</sup>

The Commissioner can make a binding determination in relation to costs, but only where the costs have been assessed by a costs assessor and the amount in dispute does not exceed \$50,000.<sup>18</sup>

## Interaction between an Overcharging Complaint to the Commissioner and Court Proceedings

### Supreme Court – Adjudication Proceedings

If an application for the taxation (or adjudication) of costs is issued in the Supreme Court, the Commissioner cannot proceed to investigate a complaint of overcharging regarding the costs the subject of the application.<sup>19</sup>

In these circumstances the Commissioner would ordinarily close the complaint or the part of the complaint about overcharging.<sup>20</sup>

### Magistrates Court – Debt Recovery Proceeding

If the law practice issues debt recovery proceedings in the Magistrates Court, and a complaint of overcharging either has been or is made to the Commissioner, what happens depends on the amount of the costs the subject of the proceedings and complaint.

For these purposes, in this Fact Sheet:

- **Small Recovery Proceedings** means recovery proceedings in the Magistrates Court where the amount in dispute is \$50,000 or less;

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<sup>13</sup> Schedule 3, Part 7, clause 46(2)

<sup>14</sup> Section 77N(4)(b)

<sup>15</sup> Section 77N(4a)(a)

<sup>16</sup> Section 77N(4a)(b)

<sup>17</sup> Section 77N(10)(c). The Commissioner has regard to Schedule 3, Part 7, clause 49(2)(a) which applies to the costs of taxation/adjudication and will ordinarily refund the Costs Assessment Fee to the complainant and recover the same from the practitioner if the costs are assessed in an amount that is 15% less than the amount charged or the amount of any final offer made by the practitioner to resolve the disputed costs.

<sup>18</sup> Section 77N(7). For a complaint that was made before 1 December 2019, the relevant amount was \$10,000 or less.

<sup>19</sup> Section 77N(3)

<sup>20</sup> Pursuant to section 77C(1)(e) on the basis that its subject matter is the subject of civil proceedings.

- **Large Recovery Proceedings** means recovery proceedings in the Magistrates Court where the amount in dispute is more than \$50,000.

If Small Recovery Proceedings have been issued and a complaint of overcharging is or has been made to the Commissioner, the Commissioner will suspend the investigation of the complaint until the Magistrates Court has considered and determined any contractual and liability issues.

Once that has occurred, the Commissioner's investigation of the complaint will resume. The costs dispute may be referred to conciliation.<sup>21</sup> If the costs dispute is not resolved, the Commissioner will proceed to make a report and may make a binding determination (see above section on Commissioner's Powers in relation to Legal Costs).

If Large Recovery Proceedings have been issued and a complaint of overcharging is or has been made to the Commissioner, the Commissioner will usually close the investigation of the complaint (or the part of the complaint about overcharging).<sup>22</sup>

### What you need to know about the Commissioner's role if Court Proceedings are issued

- The Commissioner's office cannot provide legal advice, representation or advocacy in relation to Court proceedings or any other matter.
- If you require legal advice, you may approach a solicitor of your choosing, the Legal Services Commission of South Australia on 1300 366 424 or your nearest Community Legal Centre at [www.saccls.org.au](http://www.saccls.org.au)
- Making a complaint to the Commissioner does not prevent a law practice from issuing or pursuing proceedings or a Court from dealing with those proceedings.
- The Commissioner has no power to vary, suspend or set aside an Order or Judgment of a Court.
- If Court proceedings are issued and you intend to defend or participate in the same, it is important that you take steps to do so yourself by contacting the Court Registry.

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<sup>21</sup> The Commissioner may arrange for conciliation of a matter before him (including a costs dispute) – section 770(1).

<sup>22</sup> Pursuant to section 77C(1)(e) on the basis that its subject matter is the subject of civil proceedings.