

Fact sheet

General information

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 South Australian Civil and Administrative (**Tribunal**) or the Supreme Court. The Commissioner maintains a Register of Disciplinary Action which can be accessed on 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. It **must** contain sufficient detail to enable an investigator to identify and properly pursue the matters said to warrant investigation. It **must** also have adequate detail to permit the practitioner concerned to understand the case to be met and to provide a meaningful response to the allegations.

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.

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.
- 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, the Supreme Court or the previous Legal Practitioners Disciplinary Tribunal, 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

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Office hours

Monday to Friday: 9am - 5pm

Enquiry Line hours

Monday: 10am – 2pm

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Friday: 10am – 2pm