

Investigation of Complaints



What does investigating a complaint mean for me?

This fact sheet provides information for lawyers who are the subject of a complaint to the Legal Profession Board of Tasmania.

Introduction

This information is for lawyers who are the subject of a complaint and investigation by the Legal Profession Board of Tasmania (Board).

It will help lawyers understand:

- the investigation process
- the Board's role and obligations
- your obligations

This information should be read in conjunction with the Board's information sheet about the complaint assessment stage '*Responding to a complaint*'.

Our role

The Board was established under the Act and is the sole body responsible for receiving and investigating complaints about the conduct of lawyers.

The functions and work of the Board are set out in Chapter 4, 5, 6 and 7 of the Act. These include the obligation to investigate complaints of professional misconduct or unsatisfactory professional conduct.

It is important to understand the investigation process so you:

- know what to do
- are aware of your responsibilities
- understand the potential ramifications of an investigation.

The Investigator

Correspondence will provide the name and contact details for the person appointed to investigate the complaint. That person will have the conduct of your matter and will carry out most of the work on behalf of the Board although from time to time it may be necessary to involve other employees and or contractors of the Board as well.

You can find further information about the Board, including our role and responsibilities on our website at www.lpbt.com.au

The Investigation process

Board's obligation to investigate

Section 440 of the Act obliges the Board to conduct an investigation unless the complaint is taken over or referred to another regulatory authority, or is dismissed or withdrawn.

Before commencing the investigation, the Board has already undertaken a preliminary assessment of the complaint and decided that the complaint cannot be summarily dismissed. In the absence of a determination to dismiss, the Board is required to investigate and you will be given formal written notice of the appointment of the investigator.

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How long does an investigation take?

The Act requires the Board ensure that the investigation is conducted as efficiently and expeditiously as possible. While there are no set time limits, the Board may spend a number of months investigating a complaint.

Where the allegations are serious or complex, then the time for finalising the investigation may be longer than normal. The Board has finite resources available to it and an investigation may take longer where there are a number of investigations under way.

In conducting an investigation, the Board will decide the scope and the extent of the investigation.

A lawyer's professional obligation to assist the Board

The disciplinary jurisdiction is protective in nature.

A failure by a lawyer to comply with a formal notice from the Board may amount to unsatisfactory professional conduct or professional misconduct.

Remember:

- do not ignore letters or phone calls from the Board. In itself, that failure to act may amount to a conduct issue.
- respond as fully and frankly as possible to the Board during the investigation. It is rarely constructive or helpful to respond in anger, particularly as any letter may be seen not only by the complainant but by the Disciplinary Tribunal or Supreme Court. The Board expects courteous communications from lawyers.

Be frank and honest with the Board

Lawyers should be frank and honest in all dealings with the Board.

In the matter of *Legal Profession Board of Tasmania v Haque* [2015] TASSC 5 a practitioner who made misleading statements to the Law Society concerning his residence within the State was given a 2 year suspension.

Providing incomplete responses

You should take the opportunity to provide a full and frank response to the conduct subject to investigation. Failure to do so may lead to unnecessary costs being incurred by you.

You should be aware that in the event proceedings are instituted in the Disciplinary Tribunal because of a failure by the lawyer to cooperate with the Board, the Board may seek an order for costs against you pursuant to section 481(2)(a) of the Act.

Requesting more time to respond

The standard timeframe allocated for a response is two to three weeks.

If you feel inadequate time has been given for you to respond, or that you need additional time, please contact the investigator.

The investigator will allow reasonable requests for an extension of time, although a matter cannot be allowed to remain unanswered indefinitely as the Board is required to ensure that an investigation is conducted efficiently and expeditiously.

Transparency of investigation

Please be aware that a copy of your response and any additional correspondence may be provided to the complainant for comment. The Board will give consideration to a request for non-disclosure from either you or the complainant, however a valid reason is required for non-disclosure to occur. The Board's investigation must not lack procedural fairness.

It is preferable for all concerned if correspondence is in a form which can be shown to the other party to allow appropriate comment on the material.

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The Board's compulsory powers

The Board's investigators generally adopt a non-adversarial and consultative approach to investigations. As a result, we strive to make requests for information in a courteous and respectful manner.

However, if a lawyer does not cooperate with the investigation, the Board has a number of coercive powers including requiring an explanation and documentation from a lawyer who is the subject of investigation – see for example sections 443 and 572 of the Act.

There are also other coercive powers such as power of entry to premises or to require attendance for an examination. These powers will generally be used as a last resort by the Board and usually after attempts to secure a response, or the production of documents, have failed.

Lawyers the subject of investigation should note that the Act does not abrogate the privilege in relation to self-incrimination or legal professional privilege – see for example sections 517, 518 and 648.

You should seek your own independent legal advice about your rights and obligations.

Assistance to respond to a complaint or investigation matter

The investigator can explain the Board's processes and procedures, but cannot give you advice.

Importantly, you should seek assistance if necessary and consider contacting your professional body. The Law Society of Tasmania maintains a list of Member's Advisors to assist lawyers who are the subject of a complaint, with 3 hours of free legal advice

Law Care is also available on a strictly confidential basis, for solicitors who may be experiencing emotional or stress-related problems. The Tasmanian Bar also offers similar services to its members.

Referrals during investigation

During an investigation the Board has certain obligations to refer a suspected offence to Tasmania Police, ATO, ASIC or Federal Police.

Where a part of a complaint relates to a bill of costs, the Board may refer the bill to a costs assessor for assessment, even if the 60 day period for an assessment has passed.

What happens once the investigation is complete?

You will be provided with an opportunity to respond to the complaint during the investigation as contemplated by 'Murray's Case'¹. On completion of an investigation, the investigator will provide advice to the Board. The investigator's advice to the Board is privileged.

If the Board is satisfied that there is no reasonable likelihood that the practitioner will be found guilty of either unsatisfactory professional conduct or professional misconduct, or if it is in the public interest to do so, it may dismiss the complaint in accordance with section 451.

If the complaint has not been dismissed, the Board may decide to take one of the courses prescribed in section 450 by;

- dealing with the complaint as a less serious complaint (section 456)
- deciding to conduct a hearing (section 453)
- making an application to the Disciplinary Tribunal or the Supreme Court to hear and determine the complaint.

Who we tell about the decision

The Board must advise the Law Society of its decision once the investigation is complete.

We will tell you and the complainant if we decide to prosecute the complaint.

If the complaint is dismissed, the Board will prepare reasons for its decision and provide a copy of the reasons to you and to the complainant. A decision to dismiss a complaint after an investigation is a determination which is capable of being re-heard by the

¹ *Murray v Legal Services Commissioner* (1999) 46 NSWLR 224

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Disciplinary Tribunal or Supreme Court on application by the complainant.

What can you expect from us?

We will:

- treat you with courtesy, consideration and respect
- be fair
- behave with integrity and honesty
- act impartially
- collect, store, use and disclose your personal information in accordance with relevant law
- inform you about (and explain) decisions that affect you.

How can you help us?

To help us deal with the investigation, we ask that you:

- treat our staff with courtesy and respect
- provide us with all information we request within the specified timeframe
- give us the details of any change in your contact details as soon as possible
- tell us if you have special requirements, such as needing interpreter assistance or if you require large print on letters or documents
- ask us if you are not sure about anything
- keep in regular contact – don't feel afraid to contact us if you are worried about anything.

We ask that you treat us with the same courtesy, consideration and respect we are expected to give you.

Inappropriate responses

If we are subjected to rude or abusive behaviour, we may end an interview or phone call or we may choose to deal with you by written correspondence only. It is important to understand that communicating with the Board in a way that breaches the Act may result in disciplinary action.

You should also appreciate that we act impartially in dealing with complaints. This means that we do not represent either the complainant or the lawyer. Though we will always take your views into account, we do not take instruction or direction from you as to how the investigation is handled.

Protection of Information

Confidentiality

Please note that the Act makes it an offence for a person to disclose information obtained in the course of dealing with the investigation except in very limited circumstances.

We also ask you to respect the confidentiality of the process and in that way help ensure that it is fair and seen to be fair to everyone concerned.

Privacy

We are committed to protecting your privacy and keeping your information confidential in accordance with the *Personal Information Protection Act 2004*.

In administering the Act, we collect information about you. We may get this information from you or from other parties.

In some circumstances, the Act allows us to disclose your information to others for specific purposes.

Your personal information will not otherwise be disclosed unless you consent or the disclosure is required or authorised by law.

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If you think that your privacy or the confidentiality has been breached because of our actions, your first step should be to try to resolve it with the investigator you have been dealing with or the Manager Operations. If you remain dissatisfied with how we deal with you concerns about privacy, then you may make a formal complaint to the Ombudsman.

Our privacy statement can also be viewed on our website at www.lpbt.com.au

Feedback and Complaints

Feedback

You can give us feedback at any time – whether positive or negative - by contacting the officer you were dealing with or by emailing enquiry@lpbt.com.au

Complaints

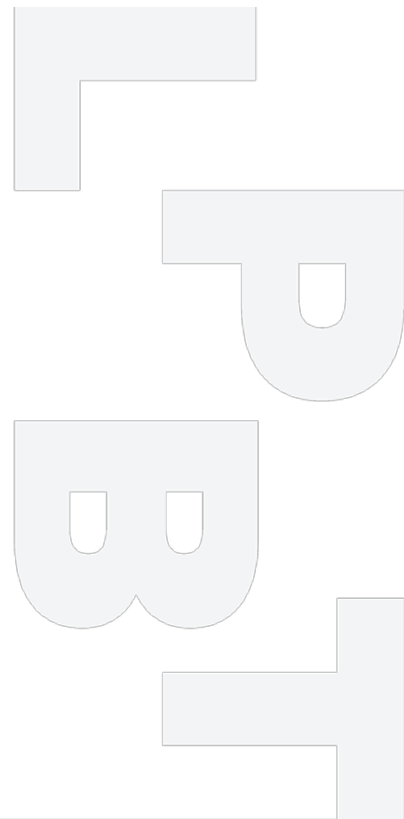
We aim to provide a courteous and efficient service in all respects. If, however, you have any queries or concerns about our work, please raise them in the first instance with the officer you were dealing with. If you feel that they are not able to resolve the problem then you should contact the Manager Operations. If that does not resolve the problem to your satisfaction then please put your concerns in writing and a formal complaints process may be undertaken.

Final comments

This statement seeks to address any immediate questions about the day-to-day handling of the investigation.

If you still have any questions, please do not hesitate to get in touch with the investigator assigned to your matter.

The information contained in this fact sheet does not constitute legal advice.



Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

We are located at Level 3,
147 Macquarie Street
Hobart Tasmania.

Website:
www.lpbt.com.au

Postal address:
GPO Box 2335,
Hobart 7001

Telephone:
(03) 6226 3000

Email:
enquiry@lpbt.com.au

Fax:
(03) 6223 6055

The normal hours of opening
at our office are between
9:00am and 5:00pm on
weekdays.

