

Board initiated complaints

In what circumstances will the Board initiate its own complaint?

This fact sheet provides information about when the Legal Profession Board of Tasmania may make its own complaint.

Introduction

The *Legal Profession Act 2007* ('the Act') enables the Board to make its own complaint about the conduct of an Australian Legal Practitioner even where no complaint has been made previously or if a complaint has been withdrawn.

Further, section 588 of the Act also provides that if an investigator becomes aware of any matter during the course of an investigation, which the investigator thinks may constitute unsatisfactory professional conduct or professional misconduct on the part of a lawyer, the investigator must refer that matter to the Board to consider whether disciplinary action should be taken if the conduct is not already the subject of a complaint.

These are important powers as they enable the Board to investigate conduct that is improper or unsatisfactory where clients and/or witnesses may not be sufficiently aware of proper legal practices to raise a complaint. Conduct of a lawyer which is outside of legal practice may also be deemed inappropriate. The purpose of these powers is the protection of the public.

Types of Board own motion complaints

Although the Act is silent as to when the Board may initiate its own complaint, the Board considers they may be undertaken in any number of circumstances, including but not limited to the following:

- Following a receipt of a notification or referral by a Judge or Magistrate about a lawyer's conduct in Court
- Following identification of improper conduct of a lawyer in the media
- Following identification of improper conduct in an investigation by the Board's investigator as to some other conduct in accordance with section 588 of the Act
- Following receipt of a report from another agency about a criminal prosecution of a lawyer
- Following receipt of a report from an external intervener, section 567 of the Act
- A failure of an Australian lawyer to comply with a requirement imposed by an investigator of the Board pursuant to section 572 of the Act
- Where a complaint is withdrawn, the Board may make a complaint or further complaint about the matter; section 434(7) of the Act

There may be other occasions where the Board thinks it is appropriate to initiate its own complaint.

The processes following the commencement of a Board initiated complaint are the same processes from the lawyer's perspective as those with respect to any other complaint received by the Board.

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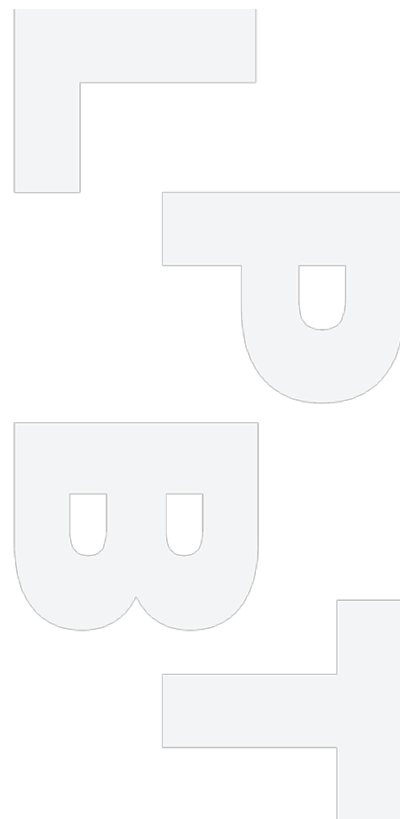
The Board's ability to initiate its own complaint is separate to its powers with respect to the range of options available for intervention in the business and professional affairs of law practices, for example, by the appointment of a manager for the law practice or an application to the Supreme Court to appoint a receiver for the law practice.

Board initiated complaints and investigations

The following are examples of conduct that have been the subject of investigation following a complaint initiated by the Board:

- Dealings in connection with real estate
- Following a criminal conviction for stealing
- Failure to comply with a notice issued by the Board
- Substantial failure to disclose costs
- If a matter is referred to the Board by the appointed investigator pursuant to section 588 of the Act

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.

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