

## FAQ'S



This fact sheet includes some frequently asked questions.

### Can I make a complaint about someone else's lawyer?

Yes. Any person can make a complaint against a lawyer. It does not have to be only about a lawyer who has acted for you.

### I have made a complaint to another agency. Can I still complain to the Legal Profession Board?

Yes. You can still complain to the Board even if you have made a complaint about the same conduct to another agency. However the Board may not deal with your complaint if it is more appropriately dealt with by that agency. For example if you have made a complaint to Tasmania Police it may be more appropriate for the Board to await the outcome of the police prosecution before it determines what disciplinary action it should take.

### I have changed my mind about the complaint. Can I withdraw?

Yes. You can withdraw your complaint. You can withdraw your complaint by telling us or writing to us that you don't wish to continue. You can withdraw your complaint even if we have started to investigate it. However if proceedings have been instituted in the Tribunal it cannot be withdrawn unless you apply to the Tribunal for leave to withdraw.

It is important to understand that after a complaint has been withdrawn you cannot make a further complaint about the subject of a withdrawn complaint unless the Board is satisfied that it is appropriate in the circumstances.

The Board will take no further action in relation to a complaint after it has been withdrawn unless it is satisfied that an investigation is justified in the particular circumstances. If you withdraw a complaint it does not prevent the Board making its own complaint.

### Can I make an appointment to come and talk to someone about my concerns?

We are able to discuss your concerns over the phone, but in general we do not hold face to face discussions with people considering making a complaint. This is because we are a very small Board and must use our time as effectively as possible. In any event our Act requires that all complaints must be in writing. We can make arrangements for those who have trouble completing the forms for reasons of disability. If you need this kind of assistance please contact us by telephone first.

### Do I have to fill out the complaint form?

No. However the Act requires complaints to be in writing. There is certain minimal information that must be included in a complaint. For example it must identify you and if possible identify the lawyer you are complaining about. The complaint must also describe the alleged conduct. Our complaint form is online and we can post it to you. Visit [www.lpbt.com.au](http://www.lpbt.com.au) for more information.

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### Can I get compensation if my complaint is justified?

We have developed a fact sheet which provides information for complainants who are seeking financial compensation as part of their complaint about the conduct of their lawyer. The fact sheet will help you understand orders for compensation, how to make a request for compensation, and our role in a compensation claim. While the Board does not have the power to make orders for compensation, if a lawyer's conduct at the end of an investigation is found to be either unsatisfactory professional conduct or professional misconduct and you have suffered a financial loss as a result of that lawyer's conduct and it is in the interest of justice that the order be made, the Tribunal or the Supreme Court can make a compensation order for you. Our fact sheet can be found [here](#).

### Will you tell the lawyer about my complaint?

The Board is required to ensure that the lawyer is told about your complaint as soon as practicable after it has been received by us. However there are occasions when we do not have to tell a lawyer about a complaint. In particular if we think that telling the lawyer will prejudice the investigation or prejudice an investigation by another regulatory authority such as the Police, or it will put you or another person at risk of intimidation or harassment or prejudice pending court proceedings. If that is the case we can postpone telling the lawyer about the complaint until we think it is appropriate to do so.

In ordinary circumstances it is important that the lawyer understands your complaint and is given an opportunity to make submissions.

### What standard of proof is applied to investigations?

The standard of proof used by the Board when making factual findings is a civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters.

### Who else will find out about my complaint?

The Board must tell the Law Society about the complaint and the details of it. That is because the Law Society is responsible for issuing practicing certificates for lawyers in Tasmania.

If you have not named the lawyer in your complaint but you have named the law firm we will tell the most senior lawyer at the law firm about your complaint.

After an investigation has commenced and we think on reasonable grounds that there has been an offence committed, we are required by the Act to refer the suspected offence to the relevant law enforcement agency. This could include Tasmania Police or the Commissioner of Taxation or ASIC or Federal Police.

People employed by the Board, including our contractors, are subject to very strict obligations in relation to the confidentiality of personal information. If you are concerned about disclosure of information you should contact us to discuss your concerns.

### Can I make my complaint anonymously?

We must receive complaints in writing and the Act requires that a complaint identifies who the complainant is. If you are concerned about revealing your identity because you think that you might be at risk of intimidation or other harassment, the Board has some discretion in relation to notifying the practitioner.

### What if the issue happened many years ago?

There are limitations on whether the Board will be able to deal with your complaint if you make it more than three (3) years after the conduct is alleged to have occurred. The Board can only deal with a complaint more than three (3) years old if certain conditions are satisfied. Information about '[out of time complaints](#)' can be found on our website. If you think your complaint might be out of time, we encourage you to contact the Board to discuss your potential complaint first.

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### What rights do I have if you decide not to proceed with my complaint?

The Board is required to investigate each complaint for which it is responsible. However we are not required to investigate if it has been taken over or referred to another regulatory authority or if it has been dismissed or withdrawn by you. If we dismiss your complaint before investigation it is called a summary dismissal. You will be served with a determination about the dismissal of your complaint. The Act gives you rights within 21 days after the date of the determination to apply to the Tribunal or Supreme Court to have your complaint determined by that body. You also have rights to make an application to the Tribunal or Supreme Court to stay our determination pending the finalisation of your application.

### What does mediation involve?

If we think that a complaint is capable of resolution by mediation we can suggest to you and the lawyer you are complaining about that you enter in to a process of mediation. This can happen before and during an investigation. If both parties agree to enter into a mediation we will facilitate the mediation to the extent we consider it appropriate. A mediation could be by telephone between the parties or it could be face to face. It might be conducted by an employee of the Board or we might ask an independent mediator to help facilitate.

We will provide you with further information about mediation if we think it is appropriate for your matter to be mediated.

Please note that we cannot recommend mediation to the parties if we think the lawyer is likely to be found guilty of professional misconduct in relation to your complaint.

### Do I have to wait until my matter is finalised before I make a complaint?

You do not have to wait until your legal matter is finalised before you make a complaint. There are time limits for when a complaint can be made so if you have a matter that you want to complain about, you should contact an employee of the Board to discuss making a complaint. The Board's role is about disciplinary action, it is not the Board's role to interfere with legal proceedings that have already been commenced.

### Does it cost me anything to make a complaint?

It does not cost you anything to make a complaint.

### I want my file from my lawyer. Can I get it?

A lawyer has a right to keep your property until you have paid their fees and disbursements. This is called a lien. Unless you have entered in to some other agreement with your lawyer, a lien can be exercised at any time if your lawyer's bill has not been paid. Your lawyer's lien can extend to all of the papers, files, documents and deeds that belong to you and that they received while they were representing you. The Board may waive a lien over documents if it has held a hearing and is satisfied that the lawyer is guilty of unsatisfactory professional conduct and makes a determination to waive the lien.

### Can I complain about the staff at a law firm even if they are not a lawyer?

If you do not know the name of the lawyer, but you do know the name of the law firm, you can complain and nominate the law firm. However the Board can only investigate complaints about lawyers. If you have a complaint about staff at the law firm you should contact the most senior lawyer at the law firm to discuss your concerns.

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### Can I be found guilty of misconduct if a lawyer in my Incorporated Legal Practice is found guilty of *Unsatisfactory Professional Conduct* or *Professional Misconduct*?

The Act provides that an incorporated legal practice is required to have at least one legal practitioner director. Section 119 of the Act sets out the separate obligations of a legal practitioner director relating to misconduct, whether that is unsatisfactory professional conduct or professional misconduct. For example unsatisfactory professional conduct or professional misconduct of a legal practitioner employed by an incorporated legal practice is capable of constituting unsatisfactory professional conduct or professional misconduct by the legal practitioner director. There are other circumstances set out in that section in relation to what might constitute misconduct.

However the legal practitioner director is not guilty of misconduct if they establish that they took all reasonable steps to ensure, for example that lawyers employed by the incorporated legal practice did not engage in conduct or misconduct. Accordingly a legal practitioner director of an incorporated legal practice must ensure that all reasonable action available to them is taken to deal with any unsatisfactory professional conduct or professional misconduct of a lawyer employed by the practice.

### If my client makes a complaint about me, do they waive privilege?

Yes. Section 518 of the Act provides that a client of a lawyer who makes a complaint is taken to have waived legal professional privilege or the benefit of the duty of confidentiality. This means that the lawyer can disclose information necessary to deal with the complaint. Information which is disclosed can be used in connection with any proceedings relating to the complaint.

### I withdrew my complaint but I am still having issues with my lawyer. Can I make my complaint again?

You can only make another complaint about the same conduct after it has been withdrawn if the Board is satisfied that it is appropriate to do so in the circumstances. You will need to set out reasons why you withdrew the complaint in the first place and why you say it is now appropriate for a further complaint to be made.

### What is the relationship between the Board and the Law Society?

The Board is the independent statutory body responsible for receiving and investigating complaints about the conduct of lawyers. The Law Society of Tasmania provides professional services, resources, support and benefits to its members and the legal profession in general. It is also a regulatory authority pursuant to the Act. The Board has delegated some aspects of its functions to the Law Society. Delegated functions are carried out in accordance with applicable policies and delegations.

For further information, see the 'About Us' page.

### Can the Board give me any legal advice?

No. The Board and its employees cannot give legal advice to members of the public.

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### How can I find out details about a particular lawyer?

The Law Society maintains a register of current legal practitioners and law practices, pursuant to its delegated authority from the Board. The register provides details of current local legal practitioners, current locally registered foreign lawyers, and law practices that engage in legal practice in Tasmania. You can access the register from our website at the Resources page or through the Law Society at [lst.org.au](http://lst.org.au).

### How can I check whether a particular lawyer has been involved in a disciplinary matter?

The Board is responsible for maintaining a register of disciplinary action taken against lawyers. Information can be accessed from our website at [www.lpbt.com.au](http://www.lpbt.com.au)

### Can the outcome of my legal proceedings be changed as a result of a complaint, or will the Board intervene in my legal proceedings?

No. The Board is unable to intervene in current legal proceedings, nor will the final proceedings be changed as a result of a complaint. Even if a lawyer is found guilty of unsatisfactory professional conduct or professional misconduct, that will not invalidate the outcome of legal proceedings. If your complaint involves allegations concerning the conduct of your legal matter, and it has not finalised, you should seek independent legal advice as to whether there is action you can take within the proceedings, for example where the other party may not be complying with orders, that issue should be raised with the court.

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

