

# 'Murray's case' letter

## A FACT SHEET FOR LAWYERS

### The decision to refer a matter to a disciplinary proceeding or not?

If you have not already done so, it is recommended that you seek assistance, advice and support about the enclosed letter.

#### What is a Murray's case letter (MCL)?

The enclosed letter is known as a Murray's case letter. The Murray's case letter is sent:

- when the investigation is almost complete;
- because the Board considers that there is a matter, or matters, raised by the complaint that is/are capable of amounting to either unsatisfactory professional conduct or professional misconduct ("subject matter"); and,
- as a preliminary step before consideration is given to whether the subject matter should be referred to a disciplinary process or otherwise.

'Murray's case' refers to *Murray v Legal Services Commissioner* (1999) 46 NSW 224. This case concerned a lawyer who was not given a copy of the complaint and an opportunity to respond to it before the Commission instituted disciplinary proceedings against the lawyer. Responding to the lesson to regulators provided by Murray's case, the Murray's case letter therefore includes:

- particulars of the subject matter; and
- the evidence relevant to the subject matter(s) that the Board will consider.

#### Do I have to respond to the MCL?

It is not mandatory for lawyers to respond to the Murray's case letter.

However, it is advisable to respond. The Murray's case letter is prepared by Board staff on behalf of the Board. The subject matter in it can look very different to what a complainant wrote in his or her complaint. For example: relevant legislative provisions or rules of practice (which complainants are unlikely to know about); and/or, information that was not available to the complainant, may also be referred to.

The Murray's case letter is an important opportunity to:

- respond to the particulars of the subject matter(s) including correcting the same, or, identifying any disputed or agreed facts;
- respond to any of the relevant evidentiary material the Board will consider, including providing additional material you consider is relevant;
- provide any necessary submissions about how the subject matter(s) should be characterised; and
- provide any necessary submissions about which type of disciplinary proceeding, if any, should ensue (section 456 process, Board hearing, Tribunal hearing, Supreme Court hearing) and the reasons why.

For example:

- you may be able to explain circumstances or events that have been misunderstood, missed, or which have not previously been revealed in the investigation;
- you may identify a reason why a rule it is alleged you have breached did not apply in the circumstances;
- you may be able to provide reasons or case examples where similar conduct was found not to amount to either unsatisfactory professional conduct, or professional misconduct, or where the conduct amounted to unsatisfactory professional conduct but not professional misconduct.

The sending of a Murray's case letter does not mean the Board has already decided to refer the subject matter(s) for disciplinary proceedings. The Board may and does decide to dismiss subject matter(s) after a Murray's case letter has been sent.

### Concerns in the complaint that are not in the MCL.

There may be matters that were raised in the complaint which are not mentioned in the Murray's case letter. This may be because the Board considers that:

- there is no likelihood that the absent matters will amount to unsatisfactory professional conduct or professional misconduct; or
- there is no public interest in pursuing the absent matters; or,
- the absent matters have been withdrawn or there is other legislative basis for their dismissal.

In cases other than withdrawal, reasons for dismissal of a complaint are provided when the complaint is finalised in totality by the Board, unless matters of complaint are referred to the Tribunal or Supreme Court for hearing and determination.

### Assistance and advice

Seeking assistance and advice from other lawyers is very important when responding to a Murray's case letter because, no matter how experienced a lawyer you may be, it can be difficult to make considered decisions about a situation when you are involved personally. Support is very important to help you put the complaint in its proper perspective.

Assistance and advice about complaints can be sought from:

- senior professional staff in the law practice where you work;
- the Law Society advice service (which provides for 2 hours of free advice); or,
- by engaging a lawyer to act on your behalf.

Support can be sought from:

- the Law Society counselling service;
- colleagues;
- friends, and family