

Responding to a Complaint

Responding to the Board about a Complaint.

This provides information for lawyers when they are notified that the Legal Profession Board of Tasmania has received a complaint about them.

Introduction

This information is for lawyers who are the subject of a complaint made to the Legal Profession Board of Tasmania (the Board).

It will help lawyers understand:

- the complaint process
- the Board's role and obligations
- your obligations
- information privacy
- what you can do if you are not satisfied

This information should be read in conjunction with the Board's information sheet for lawyers about the investigation of complaints '[The investigation of complaints](#)'.

Our role

The Board was established under the *Legal Profession Act 2007* (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 Chapters 4, 5, 6 and 7 of the Act.

If you are a lawyer and you have been advised that we have received a complaint, it is

important to understand the complaint process so you:

- know what to do
- are aware of your responsibilities
- understand the potential ramifications of a complaint that has been notified to you.

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

The complaint process

What is a complaint?

A complaint is defined in sections 426 and 427 of the Act.

It must be made in writing to the Board and identify the person making the complaint. If possible, the complaint should identify the lawyer whose conduct is complained of or the law practice. It should describe the alleged conduct complained about.

The Board has a complaint form on its website which is available for complainant's use, and an online form, but not all of the complaints we receive will be on the standard form.

The Board may also make its own complaint.

Board's obligation to investigate

Section 440 of the Act obliges the Board to investigate a complaint unless it is taken over or referred to another regulatory authority, or summarily dismissed or withdrawn.

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When a complaint is received, the Board will undertake a preliminary assessment prior to the formal appointment of an investigator. This assessment may in some cases result in the Board summarily dismissing the complaint prior to it being provided to the practitioner the subject of the complaint.

Out of time complaints

The information set out in this document is relevant to complaints made within three years of the alleged conduct. The Board has produced a separate information sheet which explains the process for 'out of time' complaints in accordance with s 428.

The assessment of the complaint

The Board has an obligation to take all reasonable steps to make sure that a person who wants to make a complaint is given such assistance as is necessary to make the complaint and to prosecute the complaint. This means that we will often seek further information about the complaint, so we can understand the background and the allegations before it is notified to you. We will also provide the necessary assistance to the complainant to properly identify the conduct allegations.

During the assessment, a complainant may be required to provide further information in accordance with s 429 or asked to verify the complaint by statutory declaration.

When we tell you about the complaint

When a complaint sufficiently describes the allegations of conduct against you, we will give you a copy of the complaint and all associated documentation. We are required to provide you with written notice of the complaint, the nature of the complaint and identity of the complainant as soon as practicable after a complaint is made, subject to certain exceptions.

We do not have to tell you about a complaint until we think it is appropriate if:

- it will prejudice the Board's investigation

- it will prejudice an investigation by the police or another law enforcement body
- it will place the complainant or another person at risk of intimidation or harassment
- it will prejudice pending court proceedings.

We do not have to tell you about a complaint if the Board determines it should be summarily dismissed without submissions from you.

Who else we tell

The Act requires the Board to tell the Law Society about the complaint, because it is responsible for issuing practising certificates.

What we will ask you

When we tell you about the complaint we will invite you to make any submissions you would like to make about whether the Board should summarily dismiss the complaint in accordance with s 433 of the Act.

We will usually allow you 21 days to make your written submissions to us.

Your written submissions will generally be provided to the complainant for further 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.

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

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A lawyer's professional obligation to assist the Board

The disciplinary jurisdiction is protective in nature.

Rule 48 of the *Legal Profession (Solicitors' Conduct) Rules 2020*¹ specifically requires that 'Subject only to his or her duty to the client, a solicitor must be open and frank in his or her dealings with a regulatory authority'.

Rule 48 also state that a solicitor must respond within a reasonable time and in any event within **14 days**, or any extended time period, to any requirement of the regulatory authority for comments or information and must furnish in writing a full and accurate account of his or her conduct in relation to the matter.

Remember:

- your first written notice of the complaint is not an accusation, but a request for your side of the story
- do not ignore letters or phone calls from the Board. In itself, that failure to act may amount to a conduct issue.
- when we receive your response we can decide whether a complaint has merit
- respond as fully and frankly as possible. 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.

Requesting more time to respond

If you need more time to respond please contact the Board as soon as you realise you need more time.

We will allow reasonable requests for an extension of time, although a matter cannot be allowed to remain unanswered indefinitely.

A failure to seek an extension of time beyond 14 days, or any agreed extended timeframe may amount to a conduct issue.

Informing your Principal

If you are the subject of complaint we recommend you notify your principal. They may be able to assist you in responding to the complaint as well as take steps to identify if there are any systemic issues within the practice which they need to address.

Assistance to respond to a complaint

We can explain the Board's processes and procedures, but cannot give you advice about your response.

Importantly, you should seek assistance if necessary and consider contacting your professional body. If the complainant is seeking compensation, you may need to advise your professional indemnity insurer.

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.

Can the complaint be mediated?

Yes. If the complaint is capable of resolution by mediation, the Board can suggest to you and the complainant that you both enter into a process of mediation.

However mediation will not be available if the Board thinks you would be found guilty of professional misconduct if proceedings were commenced in the Disciplinary Tribunal.

For more information about mediation refer to our information sheet '[Mediation of complaints](#)'.

¹ Commenced 1 October 2020

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What happens next?

Once we have received your submissions and any further response from the complainant, a complete copy of the complainant's material and your submissions is considered by the Board at its next available Board meeting for a determination about summary dismissal in accordance with s 433.

If the matter is not summarily dismissed it will continue to be investigated in accordance with s 440.

If the complaint is summarily dismissed you and the complainant will receive a written determination with reasons.

If the investigation of the complaint continues, we will tell you and the complainant who the appointed investigator is.

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 complaint, we ask that you:

- comply with your obligations in accordance with Rule 48 of the Solicitor Conduct Rules
- 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

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, or the Solicitor Conduct Rules 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 you. Though we will always take your views into account, we do not take instruction or direction from you as to how the complaint is handled.

Protection of Information

Confidentiality

Please note that the Act makes it an offence for the Board to disclose information obtained in the course of dealing with a complaint 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. For example, during the course of the complaint your details will be provided to the Complainant and the Law Society.

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

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 officer you have been dealing with or the Manager Operations. If you remain dissatisfied with how we deal with your 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.

Further Information

Further information about the process of complaints can be found in the following articles, available on the website:

- M O'Farrell SC, ['Dealing with conduct complaints: Part 1 The Disciplinary Tribunal'](#), *Law Society of Tasmania Continuing Professional Development*
- C Gunson SC, ['How to deal with complaints about other lawyers and how to deal with professional conduct complaints against you'](#)

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

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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.

