

Questions as to professional conduct

The Professional Conduct Department

The role and work of the department

Complaints and notifications

The department facilitates the investigation of and reporting to the Bar Council on conduct complaints against barristers referred to the council by the legal services commissioner or made by the council itself. The department performs the same role in respect of serious offences, tax offences and acts of bankruptcy (show cause events) required to be disclosed to the council under the *Legal Profession Act 2004*, and in respect of other notifiable events required to be disclosed to the council under the Act and the *Legal Profession Regulation 2005*.

The deputy directors of the department serve as secretary to four professional conduct committees which meet throughout the year to investigate conduct complaints and notification matters arising during the year and carried forward from previous years. The work of the committees is reported upon later in this report, and information about the number and type of complaints and notification matters investigated and dealt with during the year appears in the tables at the end of this report.

Statutory role of the Bar Council

The department provides advice and policy support to the council in respect of the administration and carrying out of the council's functions under the Act. The council has a statutory obligation to deal with all complaints regarding barristers referred to it for investigation, as well as all show cause events and other matters notified by barristers or of which the council becomes aware which may adversely affect a barrister's fitness to hold a practising certificate or to remain on the roll of persons admitted as lawyers. This statutory role is monitored by the commissioner, an independent statutory overseer of the council's statutory duties, and ultimately by the attorney general. The council and the commissioner work co-operatively in the referral, investigation and review of disciplinary matters.

Maintaining integrity of the profession

It is in members' interests to work with the department in the investigation of any complaint or professional conduct matter and to assist colleagues in practising as barristers in such a way as to maintain the integrity and reputation of the profession and the public's respect in the profession. One of the key objectives of the department is to promote a better understanding of good client service and communication on the part of the association's members. The department also facilitates the provision of guidance to members on ethical issues and responds, on a daily basis, to numerous enquiries from the public about the bar and the conduct of barristers.

Proceedings & protection of the public

A primary purpose of the *Legal Profession Act 2004* is to provide for the regulation of legal practice in New South Wales in the 'interests of the administration of justice and for the protection of clients ... and the public generally': s3. These twin concerns inform the decisions made by the courts and the tribunal in all disciplinary proceedings brought by the council.

The department is closely involved in working with external solicitors instructed by the council in proceedings brought by the council against barristers and lawyers in the Administrative Decisions Tribunal, the Supreme Court and Court of Appeal. Tables setting out the results of disciplinary proceedings in respect of which judgements have been delivered in the last two years appear at the end of this report. Links to these decisions can be found on the association's web site.

On 17 June 2008, in the most recent judgement delivered by the Court of Appeal in the reporting year, the court ordered that the name of Patrick Power be removed from the roll. On 21 May 2008, the Administrative Decisions Tribunal in its most recent judgement delivered during the reporting year, ordered that the name of John Punch be removed from the roll. The judgements consider the question of the duty of candour owed by legal practitioners to the court and, in the Court of Appeal proceedings, the privilege against self incrimination. In both cases, adverse inferences were drawn following a failure by each of Power and Punch in their respective proceedings to give evidence.

A brief case note on the judgement in the Punch matter appears at the end of this report.

Listing on the web site of recent Bar Council, tribunal and court decisions

Under s577 of the *Legal Profession Act 2004*, the legal services commissioner must keep a register of disciplinary action taken against Australian legal practitioners which is to be made available for public inspection on the Internet. Disciplinary action includes any decision to suspend, cancel or refuse to grant or renew a practising certificate, the removal of the name of a practitioner from an Australian roll, any orders made by a tribunal or court following a finding of unsatisfactory professional conduct or professional misconduct, and the reprimanding or making of a compensation order against a practitioner. The commissioner is required to identify the name of the person against whom disciplinary action was taken and to provide particulars of the action taken.

Pursuant to s578 of the *Legal Profession Act 2004*, the council may publicise disciplinary action taken against an Australian legal practitioner including the name and other identifying details of the person against whom the disciplinary action was taken. Disciplinary action taken against barristers is publicised by the council on the Bar Association's web site.

Conditions on practising certificates

In dealing with a complaint or show cause event, the Bar Council may attach conditions to practising certificates. The department monitors compliance by barristers with conditions attached to practising certificates and as at 30 June 2008, 20 barristers held practising certificates subject to financial and/or reporting conditions. Compliance with these conditions requires provision to the council of quarterly reports from approved accountants in whose hands barristers have placed control of their financial affairs and/or the provision of reports from medical practitioners.

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Ethical guidance for members

The council neither provides 'ethical rulings' nor advice to members. Rather, it assists members seeking guidance on ethical matters by referring the inquiring member to a silk on one of the professional conduct committees. Discussion with senior counsel is available to assist members in reaching a conclusion. Ultimately however the decision and responsibility must be that of the individual barrister. The department's staff is able to provide the names and telephone numbers of senior counsel on professional conduct committees who are able to give guidance on ethical matters. The names of senior counsel on committees are also available from the association's web site. A barrister wishing to have a record of his or her discussion with senior counsel should, as soon as practicable after speaking with senior counsel, send a letter to senior counsel recording the facts and guidance given. A copy of the letter may also be sent to the director, professional conduct. An article entitled *Urgent ethical guidance for members*, last published on 18 February 2008 in *In Brief*, is available on the association's web site.

Lay and academic members

Each of the investigating professional conduct committees has been privileged to have as participants both academic and lay members. Two new lay members were appointed at the start of 2008 to replace lay members whose terms of appointment expired at the end of 2007. One new academic member was appointed in May 2008.

On Professional Conduct Committee #1, Denise Aldous, John Freeman and Geraldine Walsh continued to serve as lay members and Dorne Boniface from the University of New South Wales continued as the academic member. Professor Peter McGovern of the University of Notre Dame joined the committee as an additional academic member in July 2007 and served until the end of that year.

Michelle Sanson, then of the Faculty of Law at the University of Technology, served as the academic member on the Professional Conduct Committee #2. Geoff Geraghty AM, Bronwyn Preston and Mary Werick continued to serve as lay members.

Rosemary Allsopp joined Professional Conduct Committee #3 as a lay member at the start of 2008. Peter Cassuben and Sandra Fleischmann OAM continued to serve as lay members. Maxine Evers of the Faculty of Law at the University of Technology served as the academic member.

John Girdwood served as a lay member on Professional Conduct Committee #4 from July 2007 until the end of that year. Lyndsay Connors and Judith Butlin continued to serve as the lay members. Andrew Buck of Macquarie University, Division of Law, continued as the academic member.

The Bar Council and the Bar Association express their gratitude to all lay and academic members. All have been enthusiastic participants in the deliberations of the professional conduct committees and their insight is greatly appreciated. The contribution they make is integral in maintaining the quality of the bar's complaint handling process.

Barrister members

The Bar Council again express its appreciation to all the barrister members of the professional conduct committees. All have devoted many hours of their time on a voluntary basis. Their service demonstrates the continued commitment of the profession to ensuring complaints regarding the conduct of barristers are fully investigated and appropriate disciplinary action taken in the interests of maintaining public confidence in the profession. The participation of the barrister members in this process is vital to setting and maintaining appropriate standards and the work of barrister members in this regard is highly valued by the council.

The work of the professional conduct committees

As provided for under the *Legal Profession Act 2004*, the council delegated to four professional conduct committees its investigative (but not its decision making) powers under the Act to investigate complaints, show cause events and other matters involving professional conduct issues.

Applications to the Legal Profession Admission Board

Professional Conduct Committee #2 alone reports to the Bar Council on applications made to the Legal Profession Admission Board for admission or re-admission as lawyers and applications for early declarations under s26 *Legal Profession Act 2004*. Under s26, a person may apply to the Admission Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the board as to whether the person is a fit and proper person to be admitted. The committee, having considered the application, makes a recommendation to the council to oppose or not oppose the application. The Admission Board is advised of the council's resolution and considers this prior to making its decision. During the year, PCC#2 reported to the council on one application for re-admission and three s26 early declaration applications.

Notification matters

In the financial year to 30 June 2008, six of the 15 notifications concerned tax offences and acts of bankruptcy. As these are show cause events under the Act, the council was required to make a determination in respect of them under s68(3) of the *Legal Profession Act 2004*. Such determinations must be made by the council within three months of the date on which notification is given to the council. An extension of one month can be sought from the legal services commissioner.

Conduct complaints

Of the 52 new complaints, 41 were referred by the commissioner to the council for investigation and 11 were made by the council. In respect of two complaints made out of time, there was no jurisdiction to investigate these as the commissioner in one matter, and the council in the other, resolved not to make a determination under s506 of the Act to deal with the complaints out of time. During the year, the committees investigated and reported to the council in respect of nine of the new conduct complaints, in addition to completing investigations and reporting on a further 38 complaints carried forward from previous

years. Of the total of 47 complaints dealt with by the council during the year, 33 complaints were dismissed, seven complaints were withdrawn and seven complaints were referred to the tribunal for hearing and determination.

Information regarding the number and type of complaints referred to, investigated and dealt with by the council during the year, as well as proceedings commenced in the tribunal and the results of proceedings completed during the year, is set out in the tables at the end of this report. This information is provided in compliance with s700 of the *Legal Profession Act 2004*.

Performance criteria

Section 597 of the *Legal Profession Act 2004* requires the Bar Council and the legal services commissioner to jointly develop performance criteria relating to the handling of complaints under Chapter 4 of the Act and to provide an assessment on their performance against the criteria in their annual reports.

Pursuant to a similar (although not identical) provision in the *Legal Profession Act 1987*, the council and the commissioner previously developed performance criteria for the handling of complaints by the council. These criteria have continued to apply since the commencement of operation of the new Act and tables have been published each year in the association's annual report recording the information relating to the criteria developed with the commissioner. In light of the council's experience under the new Act, at the time of publication, the council is reviewing the criteria with the commissioner. Statistical information concerning the handling of complaints by the council appears in the tables at the end of this report.

Two criteria by which the council assesses the effectiveness of its complaints handling process are the results of reviews conducted by the commissioner of decisions made by the council, and the results of proceedings instituted by the council in the Administrative Decisions Tribunal.

Requests for review by the commissioner

As at 30 June 2008, of the 33 complaints dismissed by the Bar Council during the year, eight were the subject of an application for review by the legal services commissioner. Five of these decisions have been upheld by the commissioner. The remaining three, in which the request for review was made by the council itself as well as the complainant, remain under partial review. Early in the reporting year, three applications for review were made in relation to decisions made by the council to dismiss complaints in the year ending 30 June 2007. All three decisions have been upheld by the commissioner.

Accordingly, in the eight reviews completed by the commissioner (of the 11 requests for review made during the year), the commissioner has upheld the decision of the council. The results of these reviews show that the investigative processes followed by the council are effective.

Results of proceedings instituted by the Bar Council in the Administrative Decisions Tribunal

Six decisions were delivered by the tribunal during the year. In five of these, the tribunal made the findings against the barrister sought by the council.

Responding to complaints

Members who are the subject of a complaint are urged to obtain independent advice before responding to any complaint or correspondence from the department and/or the legal services commissioner. Advice may be available through a professional indemnity insurer's solicitors but, if not, then a silk (who is not a member of a professional conduct committee or council) should be approached for advice. Most professional indemnity policies require a barrister to notify his or her insurer on receipt of a complaint.

The policy of the council is to require a barrister to personally sign any correspondence responding to enquiries from the department. Extensions of time will be granted for replies to complaints if such a need is established but the council expects barristers to give priority to responding to conduct complaints.

Members served with notices pursuant to s660 of the *Legal Profession Act 2004* requiring the provision of information and production of documents necessary for the investigation of a conduct complaint made against them should respond to such notices promptly. A barrister who fails to comply with a s660 notice, without reasonable excuse, is guilty of professional misconduct: s676 *Legal Profession Act 2004*. Such failure can lead to the council making a further complaint against the barrister which may ultimately be referred to the Administrative Decisions Tribunal. Decisions of the tribunal regarding the failure to respond to notices issued pursuant to s152 of the *Legal Profession Act 1987* (the equivalent of s660 notices under the *Legal Profession Act 2004*) are available on the Bar Association's web site.

Further, under s672(5) of the *Legal Profession Act 2004*, the council may on its own initiative, or must, if directed to do so by the commissioner, suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with a requirement in a notice issued under the Act continues.

Recommended reading for any barrister against whom a complaint is made is listed on the association's web site.

Issues arising from conduct complaints

Direct access matters

Direct access matters demand direct, effective and timely communication with clients about the nature of the work the barrister is able to perform, and what work might be better performed by a solicitor in light of the client's expectations. The council recommends that barristers undertaking direct access work confirm in writing all telephone conversations with the client and all matters which are discussed in conference. Discussions with opponents should also be communicated to the client. Communication (whether oral or written) needs to be clear and expressed in plain language to avoid the possibility of misunderstandings arising.

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Rules 74, 75, 76, 77 and 80 of the *New South Wales Barristers' Rules* are particularly relevant in direct access brief matters. The *New South Wales Barristers' Rules* are on the association's web site. The absence of a solicitor to file and serve documents necessitates more vigilance on the part of the barrister to ensure that the client or some other person files and serves court documents. Barristers must also comply with the requirements under the *Legal Profession Act 2004* regarding costs disclosure to clients in direct access matters. Barristers should also be aware of clause 106A of the 2005 Regulation and its application to monies received on account of legal costs in advance of the provision of legal services in direct access matters.

Communication with clients

As always, clear communication and provision of quality service in all matters (whether instructed by a solicitor or acting directly) is likely to lead to fewer misunderstandings and, ultimately, to fewer complaints.

Fees recovery assistance

During the year the Bar Association received 17 requests to assist barristers in the recovery from solicitors of unpaid fees totalling \$88,517. As at 30 June 2008, \$84,681 was recovered on behalf of members. The association was able to recover fees in 15 of the 17 matters finalised. One request for assistance made during the year remains open.

The basis upon which the association can assist in members' fee recovery is set out in an article entitled *Fee Recovery Assistance* which was last published in *In Brief* on 20 May 2008 and which is available on the association's web site. Where members were first instructed in a matter on or after 1 October 2005 (when the *Legal Profession Act 2004* commenced operation), the provisions of Part 3.2 of the *Legal Profession Act 2004* apply. Where members were first instructed in a matter before 1 October 2005, the provisions of Part 11 of the *Legal Profession Act 1987* apply. Familiarity with the costs disclosure provisions is essential.

The association has a panel of solicitors to which members can be referred should the association's efforts be unsuccessful in recovering fees from solicitors. The panel undertakes fee recovery work for barristers at reduced rates. Enquiries about the rates charged and all enquiries about fee recovery assistance should be directed to the department.

Case note

***New South Wales Bar Association v Punch* [2008] NSWADT 78 - 12 March 2008 (Judgement on findings)**

***New South Wales Bar Association v Punch* (No. 3) [2008] NSWADT 146 - 21 May 2008 (Judgement on penalty)**

In its judgement in *New South Wales Bar Association v Punch* [2008] NSWADT 78, the tribunal found that John Patrick Punch had led alibi evidence from an accused (his client) and four supporting witnesses knowing that evidence to be untrue.

The Bar Council submitted that Punch knew his client had been present when an assault and robbery occurred at a house in Roselands because, in a conversation Punch had with his client and a co-accused in the cells of Bankstown Police Station, following service of the brief of evidence,

the client told Punch he had been present. Unbeknown to Punch, police investigating a different crime had obtained an order under the *Listening Devices Act 1984* (NSW), permitting a listening device to be placed in the cell in which Punch's client and his co-accused were placed.

The tribunal ruled that the *Listening Devices Act 1984* (NSW) did not prohibit the use of the evidence of the conversation in the proceedings before it: *New South Wales Bar Association v Punch* [2006] NSWADT 191. That decision was upheld in the Court of Appeal: *Punch v New South Wales Bar Association* [2007] NSWCA 93.

The tribunal drew the inference, from the terms of the conversation in the cells and the circumstances in which it took place, that Punch held the belief that his client was present at the Roselands property when the assault and robbery took place.

The tribunal adopted the opinions expressed by the Court of Appeal in *New South Wales Bar Association v Meakes* [2006] NSWCA 324. Punch was present throughout the hearing of the disciplinary proceedings and chose not to go into the witness box to give sworn evidence. The tribunal drew an inference that Punch's sworn testimony would not have assisted his case in resisting a finding of professional misconduct and that the state of Punch's knowledge did not change between the conversation in the police cells and the date of trial, an inference that Punch's counsel had argued should be drawn.

In its judgement on penalty (*New South Wales Bar Association v Punch* (No. 3) [2008] NSWADT 146), the tribunal held that misconduct of such gravity inevitably leads to a finding of professional misconduct, and noted at [19] of its judgement:

The respondent has not placed before the tribunal any evidence as to the circumstances, which motivated him to lead the evidence in 1995. He has not acknowledged that he acted improperly. He has not shown any contrition. He has not led any evidence of rehabilitation. Evidence on each of these matters would to a greater or lesser extent, be relevant to the question of the respondent's fitness to practise at the present time (cf *A Solicitor v The Law Society of New South Wales* (2003) 216 CLR 253 at [37]).

When considering whether to remove Punch's name from the roll, the tribunal found at [20] that:

The respondent's misconduct in 1995 shows that at that time he lacked the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner (cf *In re A Practitioner* [1984] 36 SASR 590 at 593 per King CJ).

and noted there is no evidence before the tribunal that there had been a change of character or trustworthiness.

Having regard to the need for the protection of the public, the public confidence in the integrity of the disciplinary process itself and the reputation of the profession, the tribunal held that its orders that Punch's practising certificate be cancelled and Punch's name be removed from the roll take effect immediately.

Professional conduct statistics

Results of disciplinary cases in the New South Wales Supreme Court & Court of Appeal

Financial Year	Proceedings	Orders
2008		
17.06.08	Power, Patrick John Piers	Guilty of professional misconduct. Not a fit and proper person to remain on the roll. Order that name be removed from the roll.
29.08.07	Davison, William Roy	Davison's appeal against ADT order that his name be removed from the roll dismissed.
2007		
19.06.07	Sahade, Marcel V	Bar Council's appeal against ADT decision & Sahade's cross-appeal dismissed.
30.04.07	Perry, Mark Andre	Guilty of professional misconduct. Not a fit and proper person to remain on the roll. Order that name be removed from the roll. Order restraining Perry from practising as a barrister in contravention of s14(1) LPA 2004.
06.12.06	Meakes, Timothy	Appeal by Bar Council allowed. Orders of ADT of 08.03.06 set aside. Guilty of professional misconduct & unsatisfactory professional conduct. Public reprimand.

Notifications made to the Bar Council during the year of offences & acts of bankruptcy required to be notified under the Legal Profession Act 2004

	Notifications by barristers	Notifications by applicants for pc
Tax offences	2*	2^
Acts of bankruptcy	2≈	-
Serious offences	2~	-
Prescribed concentration of alcohol	3	2
Traffic offences	1	-
Other	-	1
Sub-totals	10	5
Total number of notifications made		15

* One barrister notified two tax offences, the other barrister notified three tax offences.

≈ One barrister notified two acts of bankruptcy being the service of a creditor's petition & the making of a sequestration order. The other barrister notified one act of bankruptcy.

~ Two barristers, pursuant to s55 LPA 2004, notified being charged with three offences each. In respect of one barrister, all three charges have been dismissed. In respect of the other barrister, proceedings are not yet concluded.

^ One applicant notified two tax offences, the other notified three tax offences.

Professional conduct statistics

Number & type of complaints made to the Bar Council during the year

Figures comprise complaints referred by the LSC to the Bar Council for investigation and complaints made by the Bar Council.

Type of complaint	Number
Acting contrary to/failure to carry out instructions	4
Acting without instructions	1
Breach costs disclosure provisions/failure to account	2
Breach of <i>Barristers' Rule 35</i>	1
Breach of <i>Barristers' Rule 80</i>	2
Breach of <i>Barristers' Rule</i> (Other)	3*
Breach of confidentiality	1
Breach of <i>LPA 2004</i> provisions	1
Conflict of interest	6
Delay/failure to provide chamber work	1
Failure to adduce available evidence	1
Failure to advise properly or at all	1
Incompetence in court	3
Incompetence in & out of court	4
Misleading conduct/dishonesty	5
Other unethical conduct	8
Overcharging and/or over servicing	3
Personal conduct	1
Practising without a practising certificate	3*
Rudeness/discourtesy	1
Sub-total	52
Less complaints made but no s506 determination/no jurisdiction	2
Total number of complaints	50

*Two complaints, one from each type, were made out of time. No determination under s506 *LPA 2004* made. No jurisdiction to investigate the complaints.

Source of complaints made to the Bar Council during the year

Complainant	Number
Bar Council	11*
Barrister	3
Client/Former Client	19
Instructing Solicitor	3
Legal Services Commissioner	2^
Opposing Client	10*
Opposing Solicitor	1
Other	3
Sub-total	52
Less complaints made but no s506 determination/no jurisdiction	2
Total number of complaints	50

* Two complaints, one from each source were made out of time. No determination under s506 *LPA 2004* made. No jurisdiction to investigate the complaints.

^ The LSC was the complainant. This is distinct from complaints made by others referred by the LSC to the Bar Council for investigation.

Number of consumer disputes referred to mediation during the year & the results of mediation

Number	Outcome
Nil	

Number & type of complaints *investigated* during the year by the Bar Council

Note: All complaints were investigated by the Bar Council. None were investigated by an independent investigator under s532 LPA 2004. Figures include complaints remaining under investigation as at 30.06.08, all complaints in respect of which the Bar Council made a decision & complaints that were withdrawn during the year.

Complaint type	Complaints investigated that were made during the year	Complaints investigated that were made in previous years
Acting contrary to/failure to carry out instructions	4	2
Acting without instructions	1	4
Breach costs disclosure provisions & failure to account	2	2
Breach of <i>Barristers' Rule 35</i>	1	1
Breach of <i>Barristers' Rule 80</i>	2	-
Breach of <i>Barristers' Rule (Other)</i>	2*	4
Breach of confidentiality	1	-
Breach of <i>LPA 2004</i> provisions	1	-
Breach of undertaking	-	3
Conflict of interest	6	3
Delay/failure to provide chamber work	1	3
Failure to adduce available evidence	1	-
Failure to advise properly or at all	1	-
Failure to appear	-	1
Failure to communicate	-	1
Incompetence in court	3	2
Incompetence in & out of court	4	7
Misleading conduct/dishonesty	5	4
Other unethical conduct	8	8
Overcharging and/or over servicing	3	4
Personal conduct	1	1
Practising without a practising certificate	2*	2
Rudeness/discourtesy	1	-
Sub-totals	50	52
Less complaints made but no s506 determination/no jurisdiction	2	
Total number of complaints investigated:		100

Complaints where no s506 determination made: 2

* Two complaints, one from each type, were made out of time. No determination under s506 LPA 2004 made. No jurisdiction to investigate the complaints.

Professional conduct statistics

Number & type of complaints dismissed during the year by the Bar Council

Complaint type	Complaints made during the year	Complaints made in previous years
Acting contrary to/failure to carry out instructions	1	2
Breach of <i>Barristers' Rule 35</i>	-	1
Breach of <i>Barristers' Rule</i> (other)	-	2
Breach of undertaking	-	2
Conflict of interest	3	1
Failure to adduce available evidence	1	-
Incompetence in court	1	2
Incompetence in & out of court	-	3
Misleading conduct/dishonesty	2	2
Other unethical conduct	-	6
Overcharging and/or over servicing	-	2
Practising without a practising certificate	-	2
Sub-totals	8	25
Total number of complaints dismissed:		33

Number & type of complaints in respect of which an Australian lawyer was reprimanded or cautioned during the year by the Bar Council

Complaint Type	Complaints made during the year	Complaints made in previous years
Nil	0	0

Number & type of complaints withdrawn during the year

Complaint Type	Complaints made during the year	Complaints made in previous years
Breach costs disclosure provisions & failure to account	-	1
Conflict of interest	-	1
Delay/failure to provide chamber work	1	2
Incompetence in & out of court	-	1
Other unethical conduct	-	1
Sub-totals	1	6
Total number of complaints withdrawn:		7

Number & type of complaints referred by the Bar Council to the Administrative Decisions Tribunal during the year

Complaint type	Complaints made during the year	Complaints made in previous years
Acting without instructions	-	2
Conflict of interest	-	1
Incompetence in & out of court	-	1
Misleading conduct/dishonesty	-	2
Personal conduct	-	1
Sub-totals	0	7
Total number of complaints referred to ADT:		7

Number & type of complaints in respect of which proceedings were instituted in the Administrative Decisions Tribunal during the year by the Bar Council

Complaint type	Proceedings instituted in ADT
Acting without instructions	1
Conflict of interest	1
Incompetence in and/or out of court	1
Overcharging and/or over servicing	1
Personal conduct	1
Total number of proceedings instituted in the ADT	5

Number of matters referred to mediation under section 336 or Division 5 of Part 4.3 during the year & the outcome of those matters

Number	Outcome
Nil	

Number of compensation orders made under section 540(2)(c)

Number
Nil

Professional conduct statistics

Summary of the results of proceedings in the Administrative Decisions Tribunal completed during the year

Note: This includes proceedings in respect of which findings were delivered but penalty orders not made during the year

Proceedings	Findings	Penalty
Howen	22.05.08 Professional misconduct x 2 Unsatisfactory professional conduct x 2	As at 30.06.08 Awaiting penalty orders.
Caffrey	18.03.08 Unsatisfactory professional conduct	As at 30.06.08 Awaiting penalty orders.
Punch	12.03.08 Professional misconduct	22.05.08 Name removed from the roll. Practising certificate cancelled.
Cairns	21.01.08 Unsatisfactory professional conduct	21.01.08 Public reprimand. Complainant's claim for compensation referred to LSC for s573(1)(b) determination.
Howen	5.09.07 Application alleging unsatisfactory professional conduct dismissed	22.05.08 One third of Howen's costs to be paid by the Public Purpose Fund.
Raphael	5.09.07 Unsatisfactory professional conduct	8.01.08 Public reprimand.

Number of complaints not finally dealt with at the end of the year

Age of complaints not finally dealt with at the end of the year

Note: All complaints are at the stage where they remain under investigation

Age of complaints not finally dealt with at the end of the year	Number	Percentage of total number	Complaints made in year ending 30 June
Up to six months	22	40%	2008
Between seven & twelve months	19	34%	2008
Between thirteen & eighteen months	7	13%	2007
Between nineteen & twenty four months	3	5%	2007
Up to three years	2	4%	2006
Up to four years	1	2%	2005
Up to five years	1	2%	2004
Total	55		

Time intervals involved in the complaint process, including the time between receipt of a complaint and the decision of the Bar Council under Part 4.5 in respect of the complaint

Note: Figures relate to complaints in respect of which a decision was made by the Bar Council during the year

Time intervals between receipt of complaint and decision of the Bar Council	Number	Percentage of total number
Up to six months	9	19%
Between seven & twelve months	13	28%
Between thirteen & eighteen months	15	32%
Between nineteen & twenty four months	5	11%
Up to three years	4	8%
Up to four years	1	2%
Total	47	