

1 July 2015



Ms Ann Harkness  
A/g Director  
Migration Agents Policy Section  
Economic Mobility Branch  
Department of Immigration and Border Protection  
CANBERRA ACT 2600

By email: [ann.harkness@border.gov.au](mailto:ann.harkness@border.gov.au)

Dear Ms Harkness

### **Implementation of Kendall Report recommendations**

The Law Council of Australia is very pleased that the Australian Government has announced that it will adopt a majority of the 24 recommendations made in the 2014 Independent Review of the Office of the Migration Agents Registration Authority (OMARA).

I write to provide information about the complaints and discipline framework that currently protects consumers of migration law services across Australia, as requested at a meeting at the Law Council on 28 May 2015 (Attachment A).

I also provide information about the Law Council of Australia and its Constituent Bodies, and the Specialist Accreditation for migration lawyers offered by state and territory law societies. A profile of the Migration Law Committee (MLC) in the Law Council's Federal Litigation and Dispute Resolution Section and its program of Continuing Professional Development (CPD) events are also provided (Attachment B).

If you require further information about the MLC, please do not hesitate to contact the MLC Chair, Mr Erskine Rodan OAM, on 03 93298744 or [e.rodan@erskinerodan.com.au](mailto:e.rodan@erskinerodan.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "M Hagan".

MARTYN HAGAN  
SECRETARY-GENERAL

## Attachment A

# Overview of the Legal Profession complaints processes in the various Australian jurisdictions

### Introduction

Australian jurisdictions have implemented a complaints and discipline framework based on model legal profession legislation developed between 2004–06 for the Standing Committee of Attorneys-General (now known as the Standing Committee on Law and Justice). The complaints and discipline regimes are extensive (50+ pages of provisions) and are broadly similar, reflecting a shared desire for a nationally consistent approach to complaints and complaints-handling. There are however, some differences in the final form of the enacted legislation and available remedies across particular jurisdictions (see [Table 1](#)).

From 1 July 2015 a *Legal Profession Uniform Law* will come into operation across New South Wales and Victoria. This legislation contains some significant variations to the current *Legal Profession Acts*, especially a clearer distinction between handling complaints that are:

- “consumer complaints” – typically complaints about the timeliness, quality and cost of legal services; and
- “disciplinary complaints” – complaints where a legal practitioner’s conduct raises questions about unsatisfactory professional conduct or professional misconduct. These terms are defined below.

The current approach to complaints-handling in “non-uniform law jurisdictions” is essentially disciplinary-focussed – the entitlement to make a complaint is based on some aspect of the legal practitioner’s conduct – with additional provisions around dispute resolution to address complaints and disputes that do not meet the high thresholds of unsatisfactory professional conduct or professional misconduct.

### Section A *Legal Profession Uniform Law* approach

The *Legal Profession Uniform Law Framework* commences in Victoria and New South Wales from 1 July 2015, replacing the *Legal Profession Acts and Regulations* currently in place in those jurisdictions with a *Uniform Law and Uniform Rules*.

The responsibility for formally making *Rules* under the Uniform Law rests with an inter-jurisdictional Legal Services Council (although responsibility for developing professional conduct, legal practice and continuing professional development Rules rests with the Law Council and the Australian Bar Association).

In addition to the Legal Services Council there has been established a Commissioner for Uniform Legal Services Regulation, whose primary responsibility is to promote compliance with the Uniform Law and Rules and to ensure the consistent and effective implementation of the Complaints and Discipline provisions, through the development and making of appropriate guidelines”.

The key aspects of the Complaints and Discipline provisions<sup>1</sup> are as follows:

- Division of complaints into consumer matters and discipline matters
- A consumer matter relates to the provision of legal services (including complaints about legal costs – costs disputes)
- Complaints must be made within 3 years unless the regulatory authority decides it is just and fair to accept the complaint, or the complaint alleges professional misconduct and it is in the public interest to deal with it
- All complaints undergo a preliminary assessment and may be dismissed if, among other things:
  - the complaint is vexatious, misconceived, frivolous or lacking substance or made out of time
  - the complainant has not responded to a request for, or has not provided additional information
  - the subject matter of the complaint has been or is already being investigated;
  - the matter would be better dealt with by the police or another investigative or law enforcement body
  - the regulatory body decides the complaint needs no further examination, except so far as it is a consumer matter
  - it is otherwise in the public interest to close the complaint
- A practising certificate can be immediately suspended following lodgement of a complaint if warranted in the public interest because of the seriousness of the complaint
- In investigating a complaint, the regulatory body can extend the investigation to other matters
- Before the regulatory body attempts to resolve a consumer complaint, it must be satisfied there has been a reasonable attempt by at least one of the parties to resolve the dispute (unless it would be unreasonable to expect that)
- The regulatory body must attempt informal resolution of a consumer complaint.
- The regulatory body may order the parties to a consumer complaint attend mediation.
- A settlement agreement can be made between the parties to settle a consumer complaint, which can then be filed in a court
- The regulatory body may make a Determination to settle a consumer matter involving:
  - a caution or requirement for an apology
  - requiring the work to be redone at no cost or a reduced cost
  - requiring the respondent to undertake training, education, counselling or be supervised
  - a compensation order
  - a determination of the amount of costs to be payable in a dispute about legal costs (subject to the amounts involved other avenues of formal costs assessment)
- In relation to a conduct matter, the regulatory body may find that there has been unsatisfactory professional conduct and make orders in a Determination for:
  - a caution, reprimand or requirement for an apology
  - requiring the work to be redone at no cost or a reduced cost
  - requiring the respondent to undertake training, education, counselling or be supervised
  - payment of a fine up to \$25,000
  - imposing practising certificate conditions
  - a compensation order

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<sup>1</sup> *Legal Profession Uniform Law, Chapter 5*

- The regulatory body may refer a conduct matter to a disciplinary Tribunal, which can make orders that:
  - the lawyer do, or refrain from doing certain things in connection with the practice of law
  - the law practice be managed
  - the law practice be subject to periodic inspection
  - the lawyer seek management advice from a specified person
  - recommending the Supreme Court remove the lawyer's name from the roll
  - impose conditions of the lawyer's practising certificate
  - suspend the practising certificate
  - a practising certificate not be granted or renewed for a period of time
  - a practising certificate cannot be applied for, for a period of time
  - a compensation order be made
  - the lawyer pay a fine of up to \$100,000
  - the lawyer pay expenses

#### Complaints against registered migration agents RMAs employed in law firms

Solicitors are responsible for supervising registered migration agents ('RMAs') employed by a law firm. The current legal profession legislation and rules place great emphasis on a solicitor's responsibility to supervise and monitor the work of non-lawyer staff, which responsibility cannot be abrogated on the basis that the lawyer was not personally working on the particular matter. This vicarious liability on the part of lawyers for the actions of non-lawyer staff presents a sound structure for the discipline of lay RMAs engaged by law firms.

### **Section B    *Legal Profession Model Laws approach***

#### The objectives of the current approaches

The current approaches in all jurisdictions in Australia (other than NSW and Victoria from 1 July 2015) have the following objectives:

- to give every person the right to complain about the conduct of lawyers
- to ensure that information is readily available to lay persons about the means of redress that are available under the scheme
- to give clients of law practices access to sufficient advice and assistance in order to make complaints in accordance with their rights and responsibilities under this Chapter
- to provide an opportunity for mediation of consumer disputes relating to legal services
- to provide complainants with a reasonable opportunity to comment on statements of the lawyer against whom the complaint is made before the complaint is disposed of
- to ensure that complainants receive adequate notice of the commencement and status of the disciplinary process at relevant stages of the process (including notice of the dismissal of complaints and the reasons for the dismissal)
- to give complainants the right to seek an independent review of decisions of Councils to dismiss complaints or reprimand Australian legal practitioners

#### Processes and actions

The processes and actions available under the current approach are as follows:

- a complaint may be made about a legal practitioner's conduct

- a complaint may be made by a client, a professional association, an independent statutory regulator or any other person
- a complaint must be in writing, identifying the legal practitioner or law practice and describing the alleged conduct the subject of the complaint
- a complaint must be made to a nominated complaint-handling body:
  - in many jurisdictions this will be a statutorily independent office holder such as a Legal Services Commissioner, although in some smaller jurisdictions complaints are made to and handled by the Law Society or Bar Association
- a complaint-handling body is required to provide information and can assist a person formulate a complaint (including by the complaint-handling undertaking an investigation)
- there is a time period within which a complaint can be made and be dealt with:
  - usually within 3-years of the conduct complained of, unless it would be just and fair in the circumstances to deal with the complaint; or the complaint involves an allegation of professional misconduct and it would be in the public interest to deal with it
  - a shorter time period applies where the complaint is about legal costs
- the legal practitioner must be given a copy of the complaint and given an opportunity to respond, unless doing so would prejudice the investigation of the complaint, or place the complainant or another person at risk of intimidation or harassment, or to do so would prejudice pending court proceedings
- a preliminary assessment is made of the complaint, after which it may be decided that the complaint should be summarily dismissed on a one or more grounds which include
  - further information not being given by the complainant; the complaint being vexatious, misconceived, frivolous or lacking in substance, or
  - the conduct complained of was the subject of a previous complaint which was dismissed; or it is not in the public interest to pursue the complaint
- a complainant may withdraw his or her complaint and no further action will be taken unless the matter is already before a disciplinary tribunal, or the complaint-handling body considers matters of unsatisfactory professional conduct or professional misconduct are involved
- if the complaint involves a *consumer dispute* the complaint-handling body may suggest or compulsorily require the parties to engage in mediation:
  - a *consumer dispute* is a dispute about the conduct of a legal practitioner to the extent that the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct
  - no further action is taken on the consumer dispute aspects of a complaint that has been resolved through mediation
- the next step of the process involves a formal investigation of the complaint by the complaints-handling body:
  - if the complaints-handler is a statutorily independent body such as a Legal Services Commissioner, the complaint can be referred to a professional association for investigation and recommendations;
  - this typically happens where the complaint involves allegations of unsatisfactory conduct or professional misconduct
- it is to be noted that when a complaint is investigated, the investigation can extend to other matters not specified in the complaint

- it is also to be noted that a legal practitioner's practising certificate may be immediately suspended if it is considered necessary to do so, in the public interest, because of the seriousness of the complained conduct
- a number of powers are available to facilitate and assist in a complaint investigation. These include:
  - inter-jurisdictional cooperation and information sharing among complaints-handling bodies
  - appointment of specific independent investigators
  - referral of complaints about legal costs for formal costs assessment and recommendations
  - compulsory entry and search of premises, to the provision of information and documents relating to the affairs of the law practice, and power to seize documents
  - where a complaint relates to an incorporated legal practice, the investigative powers of the Australian Securities and Investments Commission are also available
- it is to be noted that in nearly all Australian jurisdictions a person who makes a complaint is taken to have waived client legal privilege, or the benefit of any duty of confidentiality, so as to enable the practitioner to disclose to the appropriate authorities any information necessary for investigating and dealing with the complaint

### Remedies and outcomes

The remedies and outcomes available are as follows:

- formal costs assessment where the complaint is about legal costs
- in some jurisdictions, a hearing by a complaints committee, which can impose appropriate remedies where it is found or considered reasonably likely there has been unsatisfactory professional conduct (but not professional misconduct-which must go to a Tribunal)
- where disciplinary proceedings before a Tribunal for unsatisfactory professional conduct or professional misconduct:
  - the most serious cases of professional misconduct may result in a legal practitioner having his or her name struck off the Supreme Court roll of Australian lawyers
- to dismiss the complaint in whole or in part if there is no reasonable likelihood that the practitioner will be found by the Tribunal to have engaged in either unsatisfactory professional conduct or professional misconduct
- to dismiss the complaint if it is in the public interest to do so if there is a reasonable likelihood that the practitioner would be found by a Tribunal of unsatisfactory professional conduct (but not professional misconduct), but the practitioner is generally competent and diligent and, if justified in the circumstances, the complaints-handling authority may deal with the matter summarily by:
  - issuing a caution
  - issuing a reprimand
  - making a compensation order if the complainant requested a compensation order
  - determining that a specified condition or conditions be imposed on the legal practitioner's practising certificate

- a compensation order against the legal practitioner
- a Disciplinary Tribunal may make orders, including:
  - to reprimand the legal practitioner
  - to suspend the practising certificate for a specified period
  - to cancel the practising certificate
  - imposing conditions on the practitioner's practising certificate
  - imposing a time period before another application for a practising certificate may be made
  - that the practitioner pay a fine
  - that the practitioner undertake further legal education
  - that the practitioner undertake a period of supervised legal practice
  - that the practitioner undergo counselling or medical treatment or act in accordance with medical advice given to the practitioner
  - a compensation order

### Rights and other matters

As mentioned above a legal practitioner who is the subject of a complaint is usually entitled to be given a copy of the complaint and an opportunity to respond. The following appeal, review and other rights are also available:

- the complainant and the practitioner are entitled to receive a statement of reasons in relation to a decision to dismiss the complaint, or to commence disciplinary proceedings in the Disciplinary Tribunal
- a complainant may apply to the complaints-handling authority for an internal review of the decision (apart from a decision to refer the matter to the Disciplinary Tribunal)
- a right of appeal against a decision to immediately suspend a practising certificate
- a right of appeal against a compensation order
- a right of appeal to the Supreme Court against a Tribunal finding of unsatisfactory professional conduct of professional misconduct

### Definitions

#### *unsatisfactory professional conduct*

includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner

#### *professional misconduct* includes:

- (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and
- (b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice

*Conduct capable of constituting unsatisfactory professional conduct or professional misconduct* includes:

- a contravention of the Act, the regulations or the legal profession rules
  - charging of excessive legal costs
  - a conviction for a serious offence, or a tax offence, or an offence involving dishonesty
  - becoming an insolvent under administration
  - becoming disqualified from managing or being involved in the management of a corporation
  - failure to comply with the requirements of a notice under the Act or the regulations
  - failure to comply with an order of the Disciplinary Tribunal
  - failing to comply with a compensation order
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**TABLE 1 COMPLAINTS AND DISCIPLINE ARRANGEMENTS**

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
Basis of complaint	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner or an employee	Conduct of an Australian legal practitioner or an employee	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner
Who may complain	Any person, including a client, Law Society, Bar Association, Legal Services Commissioner	A person who has a <i>civil complaint</i> i.e. a complaint about costs up to \$25,000, a loss or a service-related complaint.  Any person regarding a <i>disciplinary complaint</i> i.e. a conduct complaint.  Own motion investigation by Commissioner.	Anyone	Any entity, but limited if complaint is against government legal officer	Any person, including Legal Profession Board of Tasmania	Any person, including the Law Society and Statutory Supervisor	Attorney-General; Legal Practice Board; Law Society; legal practitioner; person with a direct personal interest in matters alleged	Attorney-General, Law Society, any other person
Applies to	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners and employees of a law practice.	Lawyers, former lawyers, legal practitioners, former legal practitioners and employees of a law practice.	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners	Legal practitioners and former legal practitioners.
Designated complaints-handler	Legal Services Commissioner.  Complaint can be referred to the Law Society or Bar Association to investigate.	Commissioner for Legal Services	Council of Law Society or Council of Bar Association	Legal Services Commissioner  Complaint can be referred to the Law Society or Bar Association to investigate and report.	Legal Profession Board of Tasmania	Law Society, unless Law Society is complainant, in which case it goes to Statutory Supervisor.	Complaints Committee of Legal Practice Board	Legal Profession Conduct Commissioner

	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>
Timing for dealing with a complaint	At any time, but within 3 years unless fair and reasonable to extend time, or complaint involves misconduct and is in public interest.	Within 60 days for a costs complaint.  Within 6 years for other complaints.	At any time, but within 3 years unless fair and reasonable to extend time, or complaint involves misconduct and is in public interest.	Within 3 years unless just and fair to allow longer, or if in public interest matter relates to professional misconduct.	Usually within 3 years unless fair and reasonable, or involves misconduct and is in public interest.	At any time, but within 3 years unless fair and reasonable to extend time, or complaint involves misconduct and is in public interest.	Usually within 6 years unless fair and reasonable, or involves misconduct and is in public interest.	Complaint must be lodged with Tribunal within 3 years unless Tribunal allows more time or complaint is lodged by Attorney-General.
Assistance to public by complaints-handler	Yes	Yes	Must advise members of public on complaints process.	Yes	Yes	Yes	Not stated	
Is practitioner notified	Yes but exceptions apply.	Yes	Yes	Yes but exceptions apply.	Yes, but exceptions apply	Yes, but exceptions apply	Yes, but exceptions apply	Yes, but exceptions apply
Complainant taken to have waived privilege or duty of confidentiality	Yes	Yes	Yes	No - person who's information is confidential or attracts privilege must consent.	Yes	Yes	Yes	
May practitioner make submissions	Yes	Not stated	Yes	Yes	Yes	Yes	Yes	Yes

	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>	
Grounds for summary dismissal of a complaint	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Was the subject of a previous complaint which has been dismissed. Commissioner determines no further investigation required. More than 3 years ago unless discretion to extend exercised. Not in public interest.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Was the subject of a previous complaint which has been dismissed. Commissioner determines no further investigation required.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If more than 3 years ago unless determination made to accept. Was the subject of a previous complaint which has been dismissed or dealt with. Not in public interest because practitioner already struck off.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. Was the subject of a previous complaint which has been dismissed or dealt with. Not in public interest because practitioner already struck off.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Not in public interest because practitioner already struck off. No power to deal with complaint. Was the subject of a previously complaint which has been dismissed. If more than 6 years ago unless determination made to accept. Board determines no further investigation required. In the public interest to dismiss.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If more than 3 years ago unless determination made to accept. If matter is subject of another complaint. Not in public interest because practitioner already struck off. No power to deal with complaint. Was the subject of a previously complaint which has been dismissed.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Not in public interest because practitioner already struck off. No power to deal with complaint. Was the subject of a previously complaint which has been dismissed.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Not in public interest because practitioner already struck off. No power to deal with complaint.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. Was the subject of a previous complaint which has been dismissed or dealt with. If matter is subject of another complaint. Other civil proceedings underway. No power to deal with complaint. Not in public interest.
	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>	
Withdrawal of complaint	At any time unless already	Yes	Yes, but complaint-	Yes, but complaint-	At any time unless already	Yes unless already	At any time unless already referred to		

	referred to Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.		handler can continue to investigate a withdrawn complaint.	handler can continue to investigate a withdrawn complaint.	referred to Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.	referred to Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.	Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.	
Informal resolution	Yes, this is an administrative practice.	Commissioner to attempt informal resolution of civil dispute.	Yes, this is an administrative practice.			Yes, this is an administrative practice.		
Mediation	Yes, for consumer disputes i.e. disputes not involving unsatisfactory professional conduct or professional misconduct	Yes	Yes, unless Council considers practitioner may be found guilty of professional misconduct.	Yes, for consumer disputes i.e. disputes not involving unsatisfactory professional conduct or professional misconduct	Yes, unless professional misconduct likely to be found by Tribunal.	Yes, for consumer disputes i.e. disputes not involving unsatisfactory professional conduct or professional misconduct	Yes, unless professional misconduct likely to be found by Tribunal.	Conciliation
Consent orders to resolve complaint	Yes as alternative to Tribunal orders.	Settlement agreement for a civil dispute. Mediation agreement.		Not stated	Yes, to resolve complaint	Yes, in Tribunal matters and for compensation orders.	Yes, following mediation	Yes
Independent assessment of disputed legal costs	Yes	Yes	Yes	Yes	Yes, but Board may deal with it instead.	Yes	Yes	Yes unless application already made to Supreme Court to assess costs.

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
Grounds for dismissal of complaint	No reasonable likelihood practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood of being found guilty by Tribunal of unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood of being found guilty by Tribunal of unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct.  In the public interest.	Complaint is frivolous or vexatious.  No reasonable likelihood of Tribunal finding unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood of Tribunal finding guilt on unsatisfactory professional conduct or professional misconduct.  In the public interest.	
Ground for summary conclusion of complaint following investigation instead of referral to Tribunal	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, practitioner generally competent and summary conclusion reasonable in the circumstances.	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, Commissioner may take no further action if practitioner generally competent and diligent and no substantiated complaints with past 5 years.	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, practitioner generally competent and diligent and no other material complaints.	If satisfied practitioner has engaged in unsatisfactory professional conduct.	If Board is satisfied practitioner is guilty only of unsatisfactory professional conduct.  Complaint not sufficiently serious to warrant hearing.	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, practitioner is generally competent and diligent and no other material complaints have been made.	By consent of practitioner if unsatisfactory professional conduct, but otherwise generally competent and diligent practitioner and reasonable to do so.	Evidence of unsatisfactory professional conduct that can be dealt with without referral to Tribunal

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
Remedies available to complaints-handler on summary dismissal of a complaint	Reprimand or caution. Compensation order. Conditions on practising certificate.	Reprimand or caution with consent. Compensation. Apply to Tribunal for an order for a remedy the Tribunal could impose (see below).	Cautions or reprimand. Compensation order. Not to do particular kinds of work. Not to employ a stated person. Further education. obtain practice management advice. fine up to \$1500.		Cautions or reprimand. Apology. Undertaking to refrain from taking certain actions. Reparation order. Further education or counselling.	Reprimand Fine of up to 50 penalty units. Compensation orders	Reprimand Fine up to \$2500 Compensation order up to \$10,000 or higher with consent of parties. Change to management and conduct of practitioner's practice.	Varies depending on whether evidence of unsatisfactory professional conduct or professional misconduct: <ul style="list-style-type: none"> <li>• reprimand.</li> <li>• order an apology.</li> <li>• redo work at no fee or reduced fee.</li> <li>• pay cost of work being redone.</li> <li>• undertake training, education or supervision.</li> <li>• fine not exceeding \$5,000</li> <li>• conditions on practising certificate.</li> <li>• any other orders, with consent.</li> </ul> <p>If practitioner suffering illness or impairment then, with consent:</p> <ul style="list-style-type: none"> <li>• undertake medical treatment, receive counselling or participate in program of supervised treatment or rehabilitation.</li> <li>• enter into professional mentoring agreement.</li> <li>• Periodic inspection of law practice.</li> </ul>

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
								<ul style="list-style-type: none"> <li>• periodic examination of law practice;</li> <li>• fine not exceeding \$10,000</li> <li>• suspension of practising certificate;</li> <li>• make a payment</li> <li>• refrain from taking certain actions</li> </ul>
Costs of dealing with complaint	If Tribunal thinks fit to order.	If Tribunal thinks fit to order.	Yes	Practitioner may be order to pay.	Practitioner may be order to pay.	Orders can be made by Tribunal	Practitioner may be ordered to pay.	Practitioner may be ordered to make payments.
Review/appeal rights	Yes – to Commissioner, Tribunal or Supreme Court	Yes-to VCAT for a rehearing.	Yes to ACAT on summary dismissal.	Yes, to Court of Appeal	Yes – to Tribunal or Supreme Court.	Yes – to Supreme Court.	Yes - State Administrative Tribunal but with exceptions	Yes
Immediate suspension of practising certificate	Yes, if in public interest to do so.	General power exists	General power exists	General power exists	Yes, by Supreme Court	Yes	Yes, by Administrative Tribunal order.	Yes, by Supreme Court
Immediate imposition of conditions on practising certificate		General power exists	General power exists	General power exists	Yes, by Supreme Court	General power exists	Yes, by Administrative Tribunal order.	Yes, by Supreme Court

	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>
Remedies available to complaints-handler after hearing.	N/A – summary conclusion provisions available following investigation	Ex-gratia compensation payment.	N/A – summary conclusion provisions available following investigation	<p>Reprimand.</p> <p>Fine up to \$10,000.</p> <p>Compensation order.</p> <p>Refrain from taking certain actions</p> <p>Practice management.</p> <p>Periodic inspection of practice.</p> <p>Obtain management advice.</p>	<p>Practitioner may be admonished or reprimanded.</p> <p>Fine up to 50 penalty units.</p> <p>Referral to Tribunal for compensation order.</p> <p>Waiver of whole or part of fees charged.</p> <p>Repayment of fees.</p> <p>Carry out work at no charge or reduced charge.</p> <p>Waiver of lien.</p> <p>Further education or counselling.</p> <p>Periodic supervision or inspection of law practice.</p> <p>Obtain practice management advice</p> <p>Withdrawal of right to certain kinds of work.</p>	N/A – summary conclusion provisions available following investigation	N/A – summary conclusion provisions available following investigation	N/A – summary conclusion provisions available following investigation

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
					Practice only as an employee or under supervision. Payment of costs of investigation and hearings			
Remedies available to Tribunal	<p>Order removing name from roll.</p> <p>Suspension or cancellation of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine of up to \$10,000 for unsatisfactory professional conduct or \$75,000 for professional misconduct.</p> <p>Further education.</p> <p>Supervised practice.</p> <p>Refrain from taking certain actions.</p> <p>Conditions on conduct of</p>	<p>In a civil dispute:</p> <ul style="list-style-type: none"> <li>• compensation order up to \$25,000;</li> <li>• payment of costs in dispute, or a reduced payment and interest;</li> <li>• repayment of costs;</li> <li>• provision of services at no cost or reduced cost;</li> <li>• waiver of lien</li> </ul> <p>In a disciplinary matter:</p> <ul style="list-style-type: none"> <li>• fine of up to \$10,000 for unsatisfactory professional conduct or \$50,000 for professional misconduct;</li> <li>• undertake further education;</li> <li>• supervised practice;</li> <li>• refrain from taking certain actions;</li> <li>• conditions on conduct of</li> <li>• periodic reporting</li> </ul>	<p>Recommend removal from roll.</p> <p>Suspension of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine of up to \$10,000 for unsatisfactory professional conduct or \$75,000 for professional misconduct.</p> <p>Further education</p> <p>Practice under supervision.</p> <p>Refrain from taking certain actions</p> <p>Practice management</p>	<p>Order removing name from roll.</p> <p>Suspension or cancellation of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>5 year ban from practice, or only practice as an employee under conditions.</p> <p>Fine of up to \$100,000.</p> <p>Compensation order.</p> <p>Further education</p> <p>Refrain from taking certain actions</p> <p>Conditions on conduct of</p>	<p>Refer to Board to deal with if unsatisfactory professional conduct.</p> <p>Dismiss complaint if further information not provided.</p> <p>Dismiss complaint if frivolous, vexatious misconceived or lacking substance.</p> <p>Remedies as available to Board.</p> <p>Recommend removal from roll.</p> <p>Suspend or cancel practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Impose</p>	<p>Recommend removal from roll.</p> <p>Suspension or cancellation of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine of up to 100 penalty units for unsatisfactory professional conduct or 1000 penalty units for professional misconduct.</p> <p>Further education</p> <p>Supervised practice.</p> <p>Practice management</p>	<p>Finding of unsatisfactory professional conduct or professional misconduct.</p> <p>Report of findings to Supreme Court.</p> <p>Recommend removal from roll.</p> <p>Orders for suspension, cancellation or variation of conditions on practising certificate.</p> <p>Public reprimand.</p> <p>Fine not exceeding \$25,000.</p> <p>Further education</p> <p>Compensation order up to \$25,000 or higher with consent of parties.</p> <p>Determine amount of legal costs in dispute to be paid by complainant.</p> <p>Legal services to complainant free or at reduced charge.</p> <p>Supervised practice.</p> <p>Refrain from taking certain actions</p>	<p>Remedies are available to Tribunal or Supreme Court.</p> <p>Reprimand</p> <p>Periodic inspection of law practice.</p> <p>Fine up to \$50,000.</p> <p>Conditions on practising certificate.</p> <p>Undertake education, training or receive counselling.</p> <p>Suspension of practising certificate.</p> <p>Strike of roll</p> <p>Supreme Court may make any orders it considers just.</p>

	<p>practice;</p> <p>Periodic inspection of practice.</p> <p>Counselling or medical treatment.</p> <p>Engage accountant or financial specialist</p> <p>Compensation order.</p>	<ul style="list-style-type: none"> <li>• or inspection of practice; obtain management advice;</li> <li>• not apply for a practising certificate for a specified period;</li> <li>• not to employ certain people.</li> </ul>	<p>order.</p> <p>Periodic inspection of practice.</p> <p>Obtain management advice.</p> <p>Dismiss complaint if not satisfied there has been unsatisfactory professional conduct or professional misconduct.</p> <p>Compensation order.</p>	<p>practice.</p> <p>Periodic reporting or inspection of practice.</p> <p>Obtain management advice.</p> <p>Not apply for a practising certificate for a specified period.</p>	<p>conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine</p> <p>Compensation order up to \$10,000 or above with consent.</p>	<p>order.</p> <p>Periodic inspection of practice.</p> <p>Obtain management advice.</p> <p>Compensation order.</p>	<p>Practice management order.</p> <p>Practice inspection order.</p> <p>Undertake counselling or medical treatment.</p> <p>Engage accountant or financial specialist.</p> <p>Obtain management advice</p> <p>Not to apply for a practising certificate for a specified period.</p>	
Publication of disciplinary action	Yes, with some exceptions	Yes	Yes	Yes	Yes	Yes, with some exceptions.	Yes, with some exceptions	Yes
Cooperation among jurisdictions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

## **Attachment B**

### **Profile of the Law Council of Australia and the Migration Law Committee**

The Law Council of Australia represents the legal profession at the national level, speaks on behalf of its Constituent Bodies on national issues, and promotes the administration of justice, access to justice and general improvement of the law. The Law Council, established in 1933, represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the Constituent Bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2015 Executive are:

- Mr Duncan McConnel, President
- Mr Stuart Clark, President-Elect
- Ms Fiona McLeod SC, Treasurer
- Dr Christopher Kendall, Executive Member (recently resigned following AAT appointment)
- Mr Morry Bailes, Executive Member
- Mr Ian Brown, Executive Member (recently resigned following QCAT appointment)

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community.

The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council promotes the activities of its Sections and Committees via [its website](#)

### **Migration Law and the Law Council's Constituent Bodies**

Several of the Law Council's Constituent Bodies have established, or are in the process of establishing, committees with an interest in migration law. These include the Bar Association of Victoria, the Law Institute of Victoria and the Law Society of New South Wales. Other Constituent Bodies may follow.

Constituent Bodies offer information to consumers about the legal services available in their jurisdiction and most if not all offer a "find a lawyer" online directory of lawyers. The Migration Law Committee is asking the Constituent Bodies to update their websites to include information about immigration lawyers and CPD for immigration lawyers.

## Specialist accreditation

The Queensland Law Society, the Law Institute of Victoria and the Law Society of New South Wales offer Specialist accreditation for migration lawyers. The following information is drawn from our Constituent Bodies' websites:

- The **Law Society of New South Wales' Specialist Accreditation Scheme** [for more information [click here](#)]

The NSW Specialist Accreditation Scheme was established in 1992, offering accreditation across 14 areas of law; generally on a biannual basis, including immigration law. Practitioners in the ACT may obtain specialist accreditation under this scheme. Specialist Accreditation is a structured peer assessment process which requires the practitioner to draw on their existing knowledge and skills to demonstrate their competency in their chosen area of law.

The objective of the Specialist Accreditation Scheme is to:

- Provide the profession and the public with a reliable means of identifying practitioners with proven expertise in their chosen area of law.
  - Contribute to and encourage the continued development and improvement of the standards, quality and delivery of legal services.
  - Promote the advancement of legal knowledge and skills.
  - Provide practitioners with the opportunity to demonstrate their expertise in their chosen area of law and to have this recognised.
- The **Law Institute of Victoria's Specialist Accreditation Scheme** [for more information [click here](#)]

The LIV's Accredited Specialisation program has operated for 25 years. The program has over 900 Accredited Specialist practitioners across 16 areas of Specialisation, including immigration law. Practitioners in Tasmania may obtain specialist accreditation under this scheme. Practitioners who are accredited as a specialist are recognised as having an enhanced skill level, as well as substantial involvement in established legal specialty areas. The LIV requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an Accredited Specialist is meaningful and reliable.

- The **Queensland Law Society Specialist Accreditation Scheme** [for more information [click here](#)]

The Queensland Law Society currently offers accreditation in 10 areas of specialty, including immigration law every two years. Further information on each area of accreditation can be found in the relevant [Assessment Criteria](#).

## The Migration Law Committee (MLC)

The MLC is one of the 14 Committees of the Federal Litigation and Dispute Resolution Section (FLDR Section) of the Law Council. The FLDR Section is a professional network for lawyers and advocacy. It has a strong focus on liaison with federal courts and tribunals, particularly in relation to effective case management, and the substantive legal issues arising within Section Committees' specialised areas of interest.

Each of the Law Council's five Sections contributes to achieving the 'strategic pillars' of the Law Council's Strategic Plan 2015–20 (legal leadership, rule of law, protecting the interests of the profession, and promoting the development of good laws and justice administration).

The MLC:

- provides specialist advice to government through the Law Council on substantive migration law issues
- attends stakeholder meetings with the Department of Immigration and Border Protection
- provides Continuing Professional Development (CPD) events, and
- provides network opportunities for Australian lawyers in the field of migration law.

The MLC also represents the Law Council as an observer at Australian Human Rights Council meetings discussing the current Australian policy of offshore processing in Nauru and Papua New Guinea.

The MLC is a successor body to the Immigration Lawyers Association of Australasia (ILAA) which was established in 2003. The ILAA joined the Law Council as part of the International Law Section (ILS) in 2005. In 2012, the ILAA changed its name to the Migration Law Committee.

The MLC Chair (2013–15, 2015–17) is Mr Erskine Rodan OAM

Erskine Rodan & Associates  
PO Box 41  
North Melbourne, VIC 3051  
T: +61 03 9329 8744

The Chair's annual report for 2014–15 is here:  [Migration Law Committee Chair's Report 2014–15](#)

The MLC Vice-Chair (2015–17) is Mrs Rita Chowdhury

Withers Australia  
Level 10, 67 Castlereagh Street  
SYDNEY NSW 2000  
T: 02 89988488

Other members of the MLC are listed here:  [Migration Law Committee](#)

## **The Migration Law Committee's CPD Program**

The FLDR Section offers CPD events to its members and various informative publications, and works in partnership with the Law Council's Constituent Bodies and firms to offer CPD events to members and non-members.

The Annual CPD Immigration Law Conference is the highlight of the MLC's annual CPD program. This year it was held at the Melbourne Park Hyatt on 20–21 March 2015. [The program is accessible here.](#) A short video of the highlights of the conference is accessible [here](#).

The Migration Law Committee is currently developing a program of CPD events to complement its annual Conference. A series of six seminars is planned for Sydney and Melbourne between July and December 2015. A webinar program is under consideration. Details are currently being confirmed.

### **John Gibson AM Award for the Australian young Migration Lawyer of the Year**

The MLC confers the John Gibson AM Award for the Australian young Migration Lawyer of the Year annually. The Award recognises excellence by young lawyers in the field of migration law in Australia or internationally. Ms Marina Brizar was the recipient of this award for 2015. Please see the Law Council [Media Release](#) for further information. Mr Besmellah Rezaee was the inaugural winner of the Award for 2014. Please see the Law Council [Media Release](#) for further information. The 2014 and 2015 awards were sponsored by LEAP Migration Manager.

### **Liaison Meetings**

The Migration Law Committee continues to participate in various national and state liaison meetings with the Department of Immigration and Border Protection; the MRT/RRT; and the OMARA.

### **Submissions**

To access the submissions drafted by the Migration Law Committee for the Law Council please visit the Law Council's submissions page [here](#).

## Attachment A

# Overview of the Legal Profession complaints processes in the various Australian jurisdictions

## Introduction

Australian jurisdictions have implemented a complaints and discipline framework based on model legal profession legislation developed between 2004–06 for the Standing Committee of Attorneys-General (now known as the Standing Committee on Law and Justice). The complaints and discipline regimes are extensive (50+ pages of provisions) and are broadly similar, reflecting a shared desire for a nationally consistent approach to complaints and complaints-handling. There are however, some differences in the final form of the enacted legislation and available remedies across particular jurisdictions (see [Table 1](#)).

From 1 July 2015 a *Legal Profession Uniform Law* will come into operation across New South Wales and Victoria. This legislation contains some significant variations to the current *Legal Profession Acts*, especially a clearer distinction between handling complaints that are:

- “consumer complaints” – typically complaints about the timeliness, quality and cost of legal services; and
- “disciplinary complaints” – complaints where a legal practitioner’s conduct raises questions about unsatisfactory professional conduct or professional misconduct. These terms are defined below.

The current approach to complaints-handling in “non-uniform law jurisdictions” is essentially disciplinary-focussed – the entitlement to make a complaint is based on some aspect of the legal practitioner’s conduct – with additional provisions around dispute resolution to address complaints and disputes that do not meet the high thresholds of unsatisfactory professional conduct or professional misconduct.

## Section A *Legal Profession Uniform Law* approach

The *Legal Profession Uniform Law Framework* commences in Victoria and New South Wales from 1 July 2015, replacing the *Legal Profession Acts and Regulations* currently in place in those jurisdictions with a *Uniform Law and Uniform Rules*.

The responsibility for formally making *Rules* under the Uniform Law rests with an inter-jurisdictional Legal Services Council (although responsibility for developing professional conduct, legal practice and continuing professional development Rules rests with the Law Council and the Australian Bar Association).

In addition to the Legal Services Council there has been established a Commissioner for Uniform Legal Services Regulation, whose primary responsibility is to promote compliance with the Uniform Law and Rules and to ensure the consistent and effective implementation of the Complaints and Discipline provisions, through the development and making of appropriate guidelines”.

The key aspects of the Complaints and Discipline provisions<sup>1</sup> are as follows:

- Division of complaints into consumer matters and discipline matters
- A consumer matter relates to the provision of legal services (including complaints about legal costs – costs disputes)
- Complaints must be made within 3 years unless the regulatory authority decides it is just and fair to accept the complaint, or the complaint alleges professional misconduct and it is in the public interest to deal with it
- All complaints undergo a preliminary assessment and may be dismissed if, among other things:
  - the complaint is vexatious, misconceived, frivolous or lacking substance or made out of time
  - the complainant has not responded to a request for, or has not provided additional information
  - the subject matter of the complaint has been or is already being investigated;
  - the matter would be better dealt with by the police or another investigative or law enforcement body
  - the regulatory body decides the complaint needs no further examination, except so far as it is a consumer matter
  - it is otherwise in the public interest to close the complaint
- A practising certificate can be immediately suspended following lodgement of a complaint if warranted in the public interest because of the seriousness of the complaint
- In investigating a complaint, the regulatory body can extend the investigation to other matters
- Before the regulatory body attempts to resolve a consumer complaint, it must be satisfied there has been a reasonable attempt by at least one of the parties to resolve the dispute (unless it would be unreasonable to expect that)
- The regulatory body must attempt informal resolution of a consumer complaint.
- The regulatory body may order the parties to a consumer complaint attend mediation.
- A settlement agreement can be made between the parties to settle a consumer complaint, which can then be filed in a court
- The regulatory body may make a Determination to settle a consumer matter involving:
  - a caution or requirement for an apology
  - requiring the work to be redone at no cost or a reduced cost
  - requiring the respondent to undertake training, education, counselling or be supervised
  - a compensation order
  - a determination of the amount of costs to be payable in a dispute about legal costs (subject to the amounts involved other avenues of formal costs assessment)
- In relation to a conduct matter, the regulatory body may find that there has been unsatisfactory professional conduct and make orders in a Determination for:
  - a caution, reprimand or requirement for an apology
  - requiring the work to be redone at no cost or a reduced cost
  - requiring the respondent to undertake training, education, counselling or be supervised
  - payment of a fine up to \$25,000
  - imposing practising certificate conditions
  - a compensation order

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<sup>1</sup> *Legal Profession Uniform Law, Chapter 5*

- The regulatory body may refer a conduct matter to a disciplinary Tribunal, which can make orders that:
  - the lawyer do, or refrain from doing certain things in connection with the practice of law
  - the law practice be managed
  - the law practice be subject to periodic inspection
  - the lawyer seek management advice from a specified person
  - recommending the Supreme Court remove the lawyer's name from the roll
  - impose conditions of the lawyer's practising certificate
  - suspend the practising certificate
  - a practising certificate not be granted or renewed for a period of time
  - a practising certificate cannot be applied for, for a period of time
  - a compensation order be made
  - the lawyer pay a fine of up to \$100,000
  - the lawyer pay expenses

### Complaints against registered migration agents RMAs employed in law firms

Solicitors are responsible for supervising registered migration agents ('RMAs') employed by a law firm. The current legal profession legislation and rules place great emphasis on a solicitor's responsibility to supervise and monitor the work of non-lawyer staff, which responsibility cannot be abrogated on the basis that the lawyer was not personally working on the particular matter. This vicarious liability on the part of lawyers for the actions of non-lawyer staff presents a sound structure for the discipline of lay RMAs engaged by law firms.

### **Section B    *Legal Profession Model Laws approach***

#### The objectives of the current approaches

The current approaches in all jurisdictions in Australia (other than NSW and Victoria from 1 July 2015) have the following objectives:

- to give every person the right to complain about the conduct of lawyers
- to ensure that information is readily available to lay persons about the means of redress that are available under the scheme
- to give clients of law practices access to sufficient advice and assistance in order to make complaints in accordance with their rights and responsibilities under this Chapter
- to provide an opportunity for mediation of consumer disputes relating to legal services
- to provide complainants with a reasonable opportunity to comment on statements of the lawyer against whom the complaint is made before the complaint is disposed of
- to ensure that complainants receive adequate notice of the commencement and status of the disciplinary process at relevant stages of the process (including notice of the dismissal of complaints and the reasons for the dismissal)
- to give complainants the right to seek an independent review of decisions of Councils to dismiss complaints or reprimand Australian legal practitioners

#### Processes and actions

The processes and actions available under the current approach are as follows:

- a complaint may be made about a legal practitioner's conduct

- a complaint may be made by a client, a professional association, an independent statutory regulator or any other person
- a complaint must be in writing, identifying the legal practitioner or law practice and describing the alleged conduct the subject of the complaint
- a complaint must be made to a nominated complaint-handling body:
  - in many jurisdictions this will be a statutorily independent office holder such as a Legal Services Commissioner, although in some smaller jurisdictions complaints are made to and handled by the Law Society or Bar Association
- a complaint-handling body is required to provide information and can assist a person formulate a complaint (including by the complaint-handling undertaking an investigation)
- there is a time period within which a complaint can be made and be dealt with:
  - usually within 3-years of the conduct complained of, unless it would be just and fair in the circumstances to deal with the complaint; or the complaint involves an allegation of professional misconduct and it would be in the public interest to deal with it
  - a shorter time period applies where the complaint is about legal costs
- the legal practitioner must be given a copy of the complaint and given an opportunity to respond, unless doing so would prejudice the investigation of the complaint, or place the complainant or another person at risk of intimidation or harassment, or to do so would prejudice pending court proceedings
- a preliminary assessment is made of the complaint, after which it may be decided that the complaint should be summarily dismissed on a one or more grounds which include
  - further information not being given by the complainant; the complaint being vexatious, misconceived, frivolous or lacking in substance, or
  - the conduct complained of was the subject of a previous complaint which was dismissed; or it is not in the public interest to pursue the complaint
- a complainant may withdraw his or her complaint and no further action will be taken unless the matter is already before a disciplinary tribunal, or the complaint-handling body considers matters of unsatisfactory professional conduct or professional misconduct are involved
- if the complaint involves a *consumer dispute* the complaint-handling body may suggest or compulsorily require the parties to engage in mediation:
  - a *consumer dispute* is a dispute about the conduct of a legal practitioner to the extent that the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct
  - no further action is taken on the consumer dispute aspects of a complaint that has been resolved through mediation
- the next step of the process involves a formal investigation of the complaint by the complaints-handling body:
  - if the complaints-handler is a statutorily independent body such as a Legal Services Commissioner, the complaint can be referred to a professional association for investigation and recommendations;
  - this typically happens where the complaint involves allegations of unsatisfactory conduct or professional misconduct
- it is to be noted that when a complaint is investigated, the investigation can extend to other matters not specified in the complaint

- it is also to be noted that a legal practitioner's practising certificate may be immediately suspended if it is considered necessary to do so, in the public interest, because of the seriousness of the complained conduct
- a number of powers are available to facilitate and assist in a complaint investigation. These include:
  - inter-jurisdictional cooperation and information sharing among complaints-handling bodies
  - appointment of specific independent investigators
  - referral of complaints about legal costs for formal costs assessment and recommendations
  - compulsory entry and search of premises, to the provision of information and documents relating to the affairs of the law practice, and power to seize documents
  - where a complaint relates to an incorporated legal practice, the investigative powers of the Australian Securities and Investments Commission are also available
- it is to be noted that in nearly all Australian jurisdictions a person who makes a complaint is taken to have waived client legal privilege, or the benefit of any duty of confidentiality, so as to enable the practitioner to disclose to the appropriate authorities any information necessary for investigating and dealing with the complaint

### Remedies and outcomes

The remedies and outcomes available are as follows:

- formal costs assessment where the complaint is about legal costs
- in some jurisdictions, a hearing by a complaints committee, which can impose appropriate remedies where it is found or considered reasonably likely there has been unsatisfactory professional conduct (but not professional misconduct-which must go to a Tribunal)
- where disciplinary proceedings before a Tribunal for unsatisfactory professional conduct or professional misconduct:
  - the most serious cases of professional misconduct may result in a legal practitioner having his or her name struck off the Supreme Court roll of Australian lawyers
- to dismiss the complaint in whole or in part if there is no reasonable likelihood that the practitioner will be found by the Tribunal to have engaged in either unsatisfactory professional conduct or professional misconduct
- to dismiss the complaint if it is in the public interest to do so if there is a reasonable likelihood that the practitioner would be found by a Tribunal of unsatisfactory professional conduct (but not professional misconduct), but the practitioner is generally competent and diligent and, if justified in the circumstances, the complaints-handling authority may deal with the matter summarily by:
  - issuing a caution
  - issuing a reprimand
  - making a compensation order if the complainant requested a compensation order
  - determining that a specified condition or conditions be imposed on the legal practitioner's practising certificate

- a compensation order against the legal practitioner
- a Disciplinary Tribunal may make orders, including:
  - to reprimand the legal practitioner
  - to suspend the practising certificate for a specified period
  - to cancel the practising certificate
  - imposing conditions on the practitioner's practising certificate
  - imposing a time period before another application for a practising certificate may be made
  - that the practitioner pay a fine
  - that the practitioner undertake further legal education
  - that the practitioner undertake a period of supervised legal practice
  - that the practitioner undergo counselling or medical treatment or act in accordance with medical advice given to the practitioner
  - a compensation order

### Rights and other matters

As mentioned above a legal practitioner who is the subject of a complaint is usually entitled to be given a copy of the complaint and an opportunity to respond. The following appeal, review and other rights are also available:

- the complainant and the practitioner are entitled to receive a statement of reasons in relation to a decision to dismiss the complaint, or to commence disciplinary proceedings in the Disciplinary Tribunal
- a complainant may apply to the complaints-handling authority for an internal review of the decision (apart from a decision to refer the matter to the Disciplinary Tribunal)
- a right of appeal against a decision to immediately suspend a practising certificate
- a right of appeal against a compensation order
- a right of appeal to the Supreme Court against a Tribunal finding of unsatisfactory professional conduct of professional misconduct

### Definitions

#### *unsatisfactory professional conduct*

includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner

#### *professional misconduct* includes:

- (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and
- (b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice

*Conduct capable of constituting unsatisfactory professional conduct or professional misconduct* includes:

- a contravention of the Act, the regulations or the legal profession rules
  - charging of excessive legal costs
  - a conviction for a serious offence, or a tax offence, or an offence involving dishonesty
  - becoming an insolvent under administration
  - becoming disqualified from managing or being involved in the management of a corporation
  - failure to comply with the requirements of a notice under the Act or the regulations
  - failure to comply with an order of the Disciplinary Tribunal
  - failing to comply with a compensation order
-

**TABLE 1 COMPLAINTS AND DISCIPLINE ARRANGEMENTS**

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
Basis of complaint	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner or an employee	Conduct of an Australian legal practitioner or an employee	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner	Conduct of an Australian legal practitioner
Who may complain	Any person, including a client, Law Society, Bar Association, Legal Services Commissioner	A person who has a <i>civil complaint</i> i.e. a complaint about costs up to \$25,000, a loss or a service-related complaint.  Any person regarding a <i>disciplinary complaint</i> i.e. a conduct complaint.  Own motion investigation by Commissioner.	Anyone	Any entity, but limited if complaint is against government legal officer	Any person, including Legal Profession Board of Tasmania	Any person, including the Law Society and Statutory Supervisor	Attorney-General; Legal Practice Board; Law Society; legal practitioner; person with a direct personal interest in matters alleged	Attorney-General, Law Society, any other person
Applies to	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners and employees of a law practice.	Lawyers, former lawyers, legal practitioners, former legal practitioners and employees of a law practice.	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners	Lawyers, former lawyers, legal practitioners, former legal practitioners	Legal practitioners and former legal practitioners.
Designated complaints-handler	Legal Services Commissioner.  Complaint can be referred to the Law Society or Bar Association to investigate.	Commissioner for Legal Services	Council of Law Society or Council of Bar Association	Legal Services Commissioner  Complaint can be referred to the Law Society or Bar Association to investigate and report.	Legal Profession Board of Tasmania	Law Society, unless Law Society is complainant, in which case it goes to Statutory Supervisor.	Complaints Committee of Legal Practice Board	Legal Profession Conduct Commissioner

	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>
Timing for dealing with a complaint	At any time, but within 3 years unless fair and reasonable to extend time, or complaint involves misconduct and is in public interest.	Within 60 days for a costs complaint. Within 6 years for other complaints.	At any time, but within 3 years unless fair and reasonable to extend time, or complaint involves misconduct and is in public interest.	Within 3 years unless just and fair to allow longer, or if in public interest matter relates to professional misconduct.	Usually within 3 years unless fair and reasonable, or involves misconduct and is in public interest.	At any time, but within 3 years unless fair and reasonable to extend time, or complaint involves misconduct and is in public interest.	Usually within 6 years unless fair and reasonable, or involves misconduct and is in public interest.	Complaint must be lodged with Tribunal within 3 years unless Tribunal allows more time or complaint is lodged by Attorney-General.
Assistance to public by complaints-handler	Yes	Yes	Must advise members of public on complaints process.	Yes	Yes	Yes	Not stated	
Is practitioner notified	Yes but exceptions apply.	Yes	Yes	Yes but exceptions apply.	Yes, but exceptions apply	Yes, but exceptions apply	Yes, but exceptions apply	Yes, but exceptions apply
Complainant taken to have waived privilege or duty of confidentiality	Yes	Yes	Yes	No - person who's information is confidential or attracts privilege must consent.	Yes	Yes	Yes	
May practitioner make submissions	Yes	Not stated	Yes	Yes	Yes	Yes	Yes	Yes

	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>
Grounds for summary dismissal of a complaint	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Was the subject of a previous complaint which has been dismissed. Commissioner determines no further investigation required. More than 3 years ago unless discretion to extend exercised. Not in public interest.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Was the subject of a previous complaint which has been dismissed. Commissioner determines no further investigation required.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If more than 3 years ago unless determination made to accept. Was the subject of a previous complaint which has been dismissed or dealt with. Not in public interest because practitioner already struck off.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. Was the subject of a previous complaint which has been dismissed or dealt with. Not in public interest because practitioner already struck off.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Not in public interest because practitioner already struck off. No power to deal with complaint. Was the subject of a previously complaint which has been dismissed. If more than 6 years ago unless determination made to accept. Board determines no further investigation required. In the public interest to dismiss.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If more than 3 years ago unless determination made to accept. If matter is subject of another complaint. Not in public interest because practitioner already struck off. No power to deal with complaint. Was the subject of a previously complaint which has been dismissed.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. If matter is subject of another complaint. Not in public interest because practitioner already struck off. No power to deal with complaint. Was the subject of a previously complaint which has been dismissed.	Information is not given or verified. If vexatious, misconceived, frivolous or lacking substance. Was the subject of a previous complaint which has been dismissed or dealt with. If matter is subject of another complaint. Other civil proceedings underway. No power to deal with complaint. Not in public interest.
	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>
Withdrawal of complaint	At any time unless already	Yes	Yes, but complaint-	Yes, but complaint-	At any time unless already	Yes unless already	At any time unless already referred to	

	referred to Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.		handler can continue to investigate a withdrawn complaint.	handler can continue to investigate a withdrawn complaint.	referred to Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.	referred to Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.	Tribunal. Complaint-handler can continue to investigate a withdrawn complaint.	
Informal resolution	Yes, this is an administrative practice.	Commissioner to attempt informal resolution of civil dispute.	Yes, this is an administrative practice.			Yes, this is an administrative practice.		
Mediation	Yes, for consumer disputes i.e. disputes not involving unsatisfactory professional conduct or professional misconduct	Yes	Yes, unless Council considers practitioner may be found guilty of professional misconduct.	Yes, for consumer disputes i.e. disputes not involving unsatisfactory professional conduct or professional misconduct	Yes, unless professional misconduct likely to be found by Tribunal.	Yes, for consumer disputes i.e. disputes not involving unsatisfactory professional conduct or professional misconduct	Yes, unless professional misconduct likely to be found by Tribunal.	Conciliation
Consent orders to resolve complaint	Yes as alternative to Tribunal orders.	Settlement agreement for a civil dispute. Mediation agreement.		Not stated	Yes, to resolve complaint	Yes, in Tribunal matters and for compensation orders.	Yes, following mediation	Yes
Independent assessment of disputed legal costs	Yes	Yes	Yes	Yes	Yes, but Board may deal with it instead.	Yes	Yes	Yes unless application already made to Supreme Court to assess costs.

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
Grounds for dismissal of complaint	No reasonable likelihood practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood of being found guilty by Tribunal of unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood of being found guilty by Tribunal of unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct.  In the public interest.	Complaint is frivolous or vexatious.  No reasonable likelihood of Tribunal finding unsatisfactory professional conduct or professional misconduct.  In the public interest.	No reasonable likelihood of Tribunal finding guilt on unsatisfactory professional conduct or professional misconduct.  In the public interest.	
Ground for summary conclusion of complaint following investigation instead of referral to Tribunal	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, practitioner generally competent and summary conclusion reasonable in the circumstances.	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, Commissioner may take no further action if practitioner generally competent and diligent and no substantiated complaints with past 5 years.	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, practitioner generally competent and diligent and no other material complaints.	If satisfied practitioner has engaged in unsatisfactory professional conduct.	If Board is satisfied practitioner is guilty only of unsatisfactory professional conduct.  Complaint not sufficiently serious to warrant hearing.	If a reasonable likelihood practitioner would be found guilty only of unsatisfactory professional conduct, practitioner is generally competent and diligent and no other material complaints have been made.	By consent of practitioner if unsatisfactory professional conduct, but otherwise generally competent and diligent practitioner and reasonable to do so.	Evidence of unsatisfactory professional conduct that can be dealt with without referral to Tribunal

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
Remedies available to complaints-handler on summary dismissal of a complaint	Reprimand or caution. Compensation order. Conditions on practising certificate.	Reprimand or caution with consent. Compensation. Apply to Tribunal for an order for a remedy the Tribunal could impose (see below).	Cautions or reprimand. Compensation order. Not to do particular kinds of work. Not to employ a stated person. Further education. obtain practice management advice. fine up to \$1500.		Cautions or reprimand. Apology. Undertaking to refrain from taking certain actions. Reparation order. Further education or counselling.	Reprimand Fine of up to 50 penalty units. Compensation orders	Reprimand Fine up to \$2500 Compensation order up to \$10,000 or higher with consent of parties. Change to management and conduct of practitioner's practice.	Varies depending on whether evidence of unsatisfactory professional conduct or professional misconduct: <ul style="list-style-type: none"> <li>• reprimand.</li> <li>• order an apology.</li> <li>• redo work at no fee or reduced fee.</li> <li>• pay cost of work being redone.</li> <li>• undertake training, education or supervision.</li> <li>• fine not exceeding \$5,000</li> <li>• conditions on practising certificate.</li> <li>• any other orders, with consent.</li> </ul> <p>If practitioner suffering illness or impairment then, with consent:</p> <ul style="list-style-type: none"> <li>• undertake medical treatment, receive counselling or participate in program of supervised treatment or rehabilitation.</li> <li>• enter into professional mentoring agreement.</li> <li>• Periodic inspection of law practice.</li> </ul>

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
								<ul style="list-style-type: none"> <li>• periodic examination of law practice;</li> <li>• fine not exceeding \$10,000</li> <li>• suspension of practising certificate;</li> <li>• make a payment</li> <li>• refrain from taking certain actions</li> </ul>
Costs of dealing with complaint	If Tribunal thinks fit to order.	If Tribunal thinks fit to order.	Yes	Practitioner may be order to pay.	Practitioner may be order to pay.	Orders can be made by Tribunal	Practitioner may be ordered to pay.	Practitioner may be ordered to make payments.
Review/appeal rights	Yes – to Commissioner, Tribunal or Supreme Court	Yes-to VCAT for a rehearing.	Yes to ACAT on summary dismissal.	Yes, to Court of Appeal	Yes – to Tribunal or Supreme Court.	Yes – to Supreme Court.	Yes - State Administrative Tribunal but with exceptions	Yes
Immediate suspension of practising certificate	Yes, if in public interest to do so.	General power exists	General power exists	General power exists	Yes, by Supreme Court	Yes	Yes, by Administrative Tribunal order.	Yes, by Supreme Court
Immediate imposition of conditions on practising certificate		General power exists	General power exists	General power exists	Yes, by Supreme Court	General power exists	Yes, by Administrative Tribunal order.	Yes, by Supreme Court

	<b>NSW</b>	<b>VIC</b>	<b>ACT</b>	<b>QLD</b>	<b>TAS</b>	<b>NT</b>	<b>WA</b>	<b>SA</b>
Remedies available to complaints-handler after hearing.	N/A – summary conclusion provisions available following investigation	Ex-gratia compensation payment.	N/A – summary conclusion provisions available following investigation	<p>Reprimand.</p> <p>Fine up to \$10,000.</p> <p>Compensation order.</p> <p>Refrain from taking certain actions</p> <p>Practice management.</p> <p>Periodic inspection of practice.</p> <p>Obtain management advice.</p>	<p>Practitioner may be admonished or reprimanded.</p> <p>Fine up to 50 penalty units.</p> <p>Referral to Tribunal for compensation order.</p> <p>Waiver of whole or part of fees charged.</p> <p>Repayment of fees.</p> <p>Carry out work at no charge or reduced charge.</p> <p>Waiver of lien.</p> <p>Further education or counselling.</p> <p>Periodic supervision or inspection of law practice.</p> <p>Obtain practice management advice</p> <p>Withdrawal of right to certain kinds of work.</p>	N/A – summary conclusion provisions available following investigation	N/A – summary conclusion provisions available following investigation	N/A – summary conclusion provisions available following investigation

	NSW	VIC	ACT	QLD	TAS	NT	WA	SA
					Practice only as an employee or under supervision. Payment of costs of investigation and hearings			
Remedies available to Tribunal	<p>Order removing name from roll.</p> <p>Suspension or cancellation of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine of up to \$10,000 for unsatisfactory professional conduct or \$75,000 for professional misconduct.</p> <p>Further education.</p> <p>Supervised practice.</p> <p>Refrain from taking certain actions.</p> <p>Conditions on conduct of</p>	<p>In a civil dispute:</p> <ul style="list-style-type: none"> <li>compensation order up to \$25,000;</li> <li>payment of costs in dispute, or a reduced payment and interest;</li> <li>repayment of costs;</li> <li>provision of services at no cost or reduced cost;</li> <li>waiver of lien</li> </ul> <p>In a disciplinary matter:</p> <ul style="list-style-type: none"> <li>fine of up to \$10,000 for unsatisfactory professional conduct or \$50,000 for professional misconduct;</li> <li>undertake further education;</li> <li>supervised practice;</li> <li>refrain from taking certain actions;</li> <li>conditions on conduct of</li> <li>periodic reporting</li> </ul>	<p>Recommend removal from roll.</p> <p>Suspension of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine of up to \$10,000 for unsatisfactory professional conduct or \$75,000 for professional misconduct.</p> <p>Further education</p> <p>Practice under supervision.</p> <p>Refrain from taking certain actions</p> <p>Practice management</p>	<p>Order removing name from roll.</p> <p>Suspension or cancellation of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>5 year ban from practice, or only practice as an employee under conditions.</p> <p>Fine of up to \$100,000.</p> <p>Compensation order.</p> <p>Further education</p> <p>Refrain from taking certain actions</p> <p>Conditions on conduct of</p>	<p>Refer to Board to deal with if unsatisfactory professional conduct.</p> <p>Dismiss complaint if further information not provided.</p> <p>Dismiss complaint if frivolous, vexatious misconceived or lacking substance.</p> <p>Remedies as available to Board.</p> <p>Recommend removal from roll.</p> <p>Suspend or cancel practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Impose</p>	<p>Recommend removal from roll.</p> <p>Suspension or cancellation of practising certificate.</p> <p>Not apply for a practising certificate for a specified period.</p> <p>Conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine of up to 100 penalty units for unsatisfactory professional conduct or 1000 penalty units for professional misconduct.</p> <p>Further education</p> <p>Supervised practice.</p> <p>Practice management</p>	<p>Finding of unsatisfactory professional conduct or professional misconduct.</p> <p>Report of findings to Supreme Court.</p> <p>Recommend removal from roll.</p> <p>Orders for suspension, cancellation or variation of conditions on practising certificate.</p> <p>Public reprimand.</p> <p>Fine not exceeding \$25,000.</p> <p>Further education</p> <p>Compensation order up to \$25,000 or higher with consent of parties.</p> <p>Determine amount of legal costs in dispute to be paid by complainant.</p> <p>Legal services to complainant free or at reduced charge.</p> <p>Supervised practice.</p> <p>Refrain from taking certain actions</p>	<p>Remedies are available to Tribunal or Supreme Court.</p> <p>Reprimand</p> <p>Periodic inspection of law practice.</p> <p>Fine up to \$50,000.</p> <p>Conditions on practising certificate.</p> <p>Undertake education, training or receive counselling.</p> <p>Suspension of practising certificate.</p> <p>Strike of roll</p> <p>Supreme Court may make any orders it considers just.</p>

	<p>practice;</p> <p>Periodic inspection of practice.</p> <p>Counselling or medical treatment.</p> <p>Engage accountant or financial specialist</p> <p>Compensation order.</p>	<ul style="list-style-type: none"> <li>• or inspection of practice; obtain management advice;</li> <li>• not apply for a practising certificate for a specified period;</li> <li>• not to employ certain people.</li> </ul>	<p>order.</p> <p>Periodic inspection of practice.</p> <p>Obtain management advice.</p> <p>Dismiss complaint if not satisfied there has been unsatisfactory professional conduct or professional misconduct.</p> <p>Compensation order.</p>	<p>practice.</p> <p>Periodic reporting or inspection of practice.</p> <p>Obtain management advice.</p> <p>Not apply for a practising certificate for a specified period.</p>	<p>conditions on practising certificate.</p> <p>Reprimand.</p> <p>Fine</p> <p>Compensation order up to \$10,000 or above with consent.</p>	<p>order.</p> <p>Periodic inspection of practice.</p> <p>Obtain management advice.</p> <p>Compensation order.</p>	<p>Practice management order.</p> <p>Practice inspection order.</p> <p>Undertake counselling or medical treatment.</p> <p>Engage accountant or financial specialist.</p> <p>Obtain management advice</p> <p>Not to apply for a practising certificate for a specified period.</p>	
Publication of disciplinary action	Yes, with some exceptions	Yes	Yes	Yes	Yes	Yes, with some exceptions.	Yes, with some exceptions	Yes
Cooperation among jurisdictions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

## **Attachment B**

### **Profile of the Law Council of Australia and the Migration Law Committee**

The Law Council of Australia represents the legal profession at the national level, speaks on behalf of its Constituent Bodies on national issues, and promotes the administration of justice, access to justice and general improvement of the law. The Law Council, established in 1933, represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the Constituent Bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2015 Executive are:

- Mr Duncan McConnel, President
- Mr Stuart Clark, President-Elect
- Ms Fiona McLeod SC, Treasurer
- Dr Christopher Kendall, Executive Member (recently resigned following AAT appointment)
- Mr Morry Bailes, Executive Member
- Mr Ian Brown, Executive Member (recently resigned following QCAT appointment)

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community.

The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council promotes the activities of its Sections and Committees via [its website](#)

### **Migration Law and the Law Council's Constituent Bodies**

Several of the Law Council's Constituent Bodies have established, or are in the process of establishing, committees with an interest in migration law. These include the Bar Association of Victoria, the Law Institute of Victoria and the Law Society of New South Wales. Other Constituent Bodies may follow.

Constituent Bodies offer information to consumers about the legal services available in their jurisdiction and most if not all offer a "find a lawyer" online directory of lawyers. The Migration Law Committee is asking the Constituent Bodies to update their websites to include information about immigration lawyers and CPD for immigration lawyers.

## Specialist accreditation

The Queensland Law Society, the Law Institute of Victoria and the Law Society of New South Wales offer Specialist accreditation for migration lawyers. The following information is drawn from our Constituent Bodies' websites:

- The **Law Society of New South Wales' Specialist Accreditation Scheme** [for more information [click here](#)]

The NSW Specialist Accreditation Scheme was established in 1992, offering accreditation across 14 areas of law; generally on a biannual basis, including immigration law. Practitioners in the ACT may obtain specialist accreditation under this scheme. Specialist Accreditation is a structured peer assessment process which requires the practitioner to draw on their existing knowledge and skills to demonstrate their competency in their chosen area of law.

The objective of the Specialist Accreditation Scheme is to:

- Provide the profession and the public with a reliable means of identifying practitioners with proven expertise in their chosen area of law.
  - Contribute to and encourage the continued development and improvement of the standards, quality and delivery of legal services.
  - Promote the advancement of legal knowledge and skills.
  - Provide practitioners with the opportunity to demonstrate their expertise in their chosen area of law and to have this recognised.
- The **Law Institute of Victoria's Specialist Accreditation Scheme** [for more information [click here](#)]

The LIV's Accredited Specialisation program has operated for 25 years. The program has over 900 Accredited Specialist practitioners across 16 areas of Specialisation, including immigration law. Practitioners in Tasmania may obtain specialist accreditation under this scheme. Practitioners who are accredited as a specialist are recognised as having an enhanced skill level, as well as substantial involvement in established legal specialty areas. The LIV requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an Accredited Specialist is meaningful and reliable.

- The **Queensland Law Society Specialist Accreditation Scheme** [for more information [click here](#)]

The Queensland Law Society currently offers accreditation in 10 areas of specialty, including immigration law every two years. Further information on each area of accreditation can be found in the relevant [Assessment Criteria](#).

## The Migration Law Committee (MLC)

The MLC is one of the 14 Committees of the Federal Litigation and Dispute Resolution Section (FLDR Section) of the Law Council. The FLDR Section is a professional network for lawyers and advocacy. It has a strong focus on liaison with federal courts and tribunals, particularly in relation to effective case management, and the substantive legal issues arising within Section Committees' specialised areas of interest.

Each of the Law Council's five Sections contributes to achieving the 'strategic pillars' of the Law Council's Strategic Plan 2015–20 (legal leadership, rule of law, protecting the interests of the profession, and promoting the development of good laws and justice administration).

The MLC:

- provides specialist advice to government through the Law Council on substantive migration law issues
- attends stakeholder meetings with the Department of Immigration and Border Protection
- provides Continuing Professional Development (CPD) events, and
- provides network opportunities for Australian lawyers in the field of migration law.

The MLC also represents the Law Council as an observer at Australian Human Rights Council meetings discussing the current Australian policy of offshore processing in Nauru and Papua New Guinea.

The MLC is a successor body to the Immigration Lawyers Association of Australasia (ILAA) which was established in 2003. The ILAA joined the Law Council as part of the International Law Section (ILS) in 2005. In 2012, the ILAA changed its name to the Migration Law Committee.

The MLC Chair (2013–15, 2015–17) is Mr Erskine Rodan OAM

Erskine Rodan & Associates  
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North Melbourne, VIC 3051  
T: +61 03 9329 8744

The Chair's annual report for 2014–15 is here:  [Migration Law Committee Chair's Report 2014–15](#)

The MLC Vice-Chair (2015–17) is Mrs Rita Chowdhury

Withers Australia  
Level 10, 67 Castlereagh Street  
SYDNEY NSW 2000  
T: 02 89988488

Other members of the MLC are listed here:  [Migration Law Committee](#)

## **The Migration Law Committee's CPD Program**

The FLDR Section offers CPD events to its members and various informative publications, and works in partnership with the Law Council's Constituent Bodies and firms to offer CPD events to members and non-members.

The Annual CPD Immigration Law Conference is the highlight of the MLC's annual CPD program. This year it was held at the Melbourne Park Hyatt on 20–21 March 2015. [The program is accessible here.](#) A short video of the highlights of the conference is accessible [here](#).

The Migration Law Committee is currently developing a program of CPD events to complement its annual Conference. A series of six seminars is planned for Sydney and Melbourne between July and December 2015. A webinar program is under consideration. Details are currently being confirmed.

## **John Gibson AM Award for the Australian young Migration Lawyer of the Year**

The MLC confers the John Gibson AM Award for the Australian young Migration Lawyer of the Year annually. The Award recognises excellence by young lawyers in the field of migration law in Australia or internationally. Ms Marina Brizar was the recipient of this award for 2015. Please see the Law Council [Media Release](#) for further information. Mr Besmellah Rezaee was the inaugural winner of the Award for 2014. Please see the Law Council [Media Release](#) for further information. The 2014 and 2015 awards were sponsored by LEAP Migration Manager.

## **Liaison Meetings**

The Migration Law Committee continues to participate in various national and state liaison meetings with the Department of Immigration and Border Protection; the MRT/RRT; and the OMARA.

## **Submissions**

To access the submissions drafted by the Migration Law Committee for the Law Council please visit the Law Council's submissions page [here](#).