

Summary of the  
2010 Succession Law  
Round Table convened by the  
Legal Services Commissioner  
of Victoria



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# 1 ACKNOWLEDGMENTS

The Legal Services Commissioner of Victoria, Mr Michael McGarvie, would like to thank the representatives from participating organisations who generously gave up their time to participate in the Succession Law Round Table forum.

The Commissioner acknowledges the invaluable advice and input participants provided on the issue.

## 2 INTRODUCTION

### (a) About the Legal Services Commissioner

The Legal Services Commissioner (LSC) was established on 12 December 2005 to receive and handle all complaints about lawyers in the state of Victoria. Each year the LSC receives over 2,000 complaints about lawyers; the majority of complaints received relate to private domestic interests.

Under the *Legal Profession Act 2004* (the Act), the LSC is required to educate both the legal profession and consumers of legal services about relevant issues of concern. To help identify those issues, the LSC monitors complaints data, looking for emerging trends or changes in the profile of complaints.

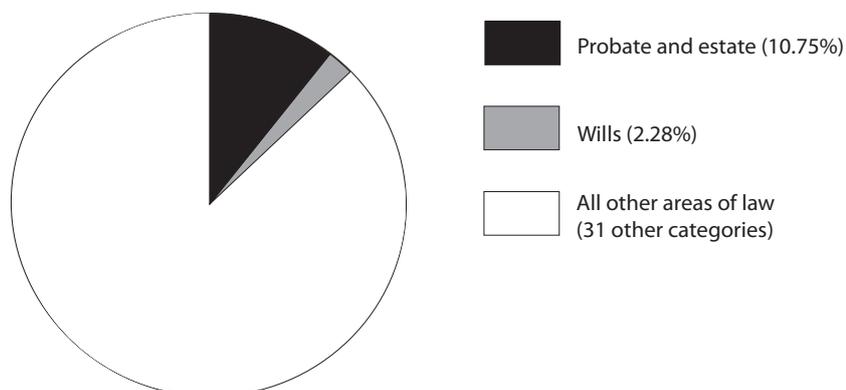
### (b) Probate and estate law generates a high level of complaints

Succession law, involving wills, probate and estate law, consistently attracts a high number of complaints each year. Since the LSC was established, this area of law has attracted high complaint numbers.

For the four year period from 1 January 2006 until 31 December 2009, a total of 919 complaints had been received about lawyers relating to probate and estate matters. These complaints contained 1411 separate allegations; some complaints contained more than one allegation.

The most common complaints made about lawyers in the area of probate and estate include:

- overcharging (for work done, not done or for a bill exceeding the quote)
- failure to communicate with the client or another solicitor
- negligent service (including bad case handling and bad advice)
- delays
- other professional conduct matters.



Average proportion of complaints received annually

### **(c) Findings of complaints**

The LSC assesses all complaints to determine whether the Commissioner has the power to handle them, and if so, how they will be processed. Some disputes involving money or conduct may be capable of resolution through conciliation. If so the LSC will work with the parties to attempt to resolve the complaint. The LSC may also move on to a fuller investigation of the complaint if it appears there is evidence of inappropriate conduct incapable of simple resolution by agreement.

If, after investigating a complaint, the LSC believes that the lawyer involved is likely to be found guilty of professional misconduct, the LSC must bring charges before the Victorian Civil and Administrative Tribunal (VCAT).

If however, the LSC forms the view that the lawyer is likely to be found guilty of unsatisfactory professional conduct, the LSC may either bring charges before VCAT or may take alternative disciplinary action against the lawyer, including reprimanding or cautioning the lawyer or requiring compensation to be paid to the complainant without prosecution. The LSC may also decide to take no further action if the lawyer is generally competent and diligent, and there has been no substantiated complaint against the lawyer in the preceding five years.

Of the 919 complaints received in the sample period, a total of 827 complaints (over 80%) had been finalised by May 2010. Of these, 68 (8%) resulted in negative findings being made against solicitors. No negative findings were made against barristers, which accounted for only nine complaints received.

The LSC took two solicitors to VCAT, and in each case they were found guilty of professional misconduct. In the first instance the solicitor delayed obtaining probate for six years, and was found guilty of common law misconduct. The second solicitor was found guilty of statutory professional misconduct on two counts for failing to communicate with the client over a significant period of time without explanation and excessively delaying the distribution of estate funds.

In 65 other cases, the LSC formed the view that VCAT would find the solicitor guilty of unsatisfactory professional conduct. Instead of bringing charges against the solicitors, alternative disciplinary action was taken in each matter. The LSC is obliged by the Act to avoid litigation in all but the most serious examples of unsatisfactory professional conduct.

# 3 THE ROUND TABLE

## (a) The Round Table's objective

In June 2010, representatives from a range of interested organisations were invited to discuss their experiences of issues relating to probate and estate.

The objective of this Round Table discussion was to understand the concerns of consumers and the profession, determine if there were systemic issues in the handling of estates which needed to be addressed, and identify ways of improving problem practices for the benefit of both consumers and the legal profession as a whole.

The issues raised at the forum, and some potential means to address them are detailed in this document.

## (b) Participants

The following organisations were represented at the Round Table forum:

### Judiciary and the Courts

- County Court of Victoria
- Probate Office of the Supreme Court of Victoria

### Consumer advocates and service organisations

- Seniors Rights Victoria
- Office of the Public Advocate
- State Trustees

### Legal profession representatives

- Elder Law Committee of the Law Institute of Victoria
- Succession Law Committee of the Law Institute of Victoria
- Professional Development staff of the Law Institute of Victoria
- Professional Development staff of the Victorian Bar
- Law firm principal specialising in succession law

# 4 AREAS OF CONCERN IDENTIFIED

During the course of the Round Table, participants were asked to identify any areas of concern they may have had with probate and estate matters. The range of issues raised included the following:

- emotions and family disputes
- delay
- communication problems
- elder abuse
- legal costs
- the quality of wills
- problems with executors
- solicitor executors.

Each of these areas is described in detail below. The participants also discussed a range of potential initiatives about how to address several of these concerns.

## **(a) Emotions and family disputes**

Succession law can generate high emotions, given that generally families and fortunes are involved. Perhaps one of the most common and difficult aspects of any succession law matter is the emotional turmoil which bereaved relatives experience after the death of a loved-one. Lawyers acting for the estate of the deceased are often required to deal with distressed executors and beneficiaries, and these volatile emotions can often lead to problems between the lawyer and the executor.

While grief on its own will not necessarily present an insurmountable problem for lawyers dealing with an estate, the emotional distress experienced by family and friends of the deceased commonly feeds into and inflames other problems which may be experienced throughout the process, such as internal family conflicts. Conflict between the bereaved and the lawyer for the estate can also occur with little provocation.

Round Table participants observed that during the estate settlement process there was a strong tendency for existing conflicts to be exacerbated by grief and for disputes over entitlements to develop. This was especially so after the death of a parent.

When dealing with families in conflict, lawyers often find themselves needing to communicate with opposing interests, and this can give rise to complaints about lack of communication with the parties or preferential treatment to one group over another. Many problems causing complaints to the LSC stem from a lack of clear and continuous communication between the lawyer and the executor and beneficiaries.

## **(b) Communication problems**

Of the 175 allegations raised in complaints which involved communication issues, only 13 solicitors had negative findings made against them:

- one was issued with a caution for failing to provide information on legal costs
- six were reprimanded for unsatisfactory professional conduct – with one solicitor receiving two reprimands
- five were found to be otherwise competent and diligent and no further action was taken, and
- one was found guilty of professional misconduct by VCAT for failing to correspond with his client for a significant length of time.

Although no other complaints about communication problems resulted in negative findings against lawyers, the significant number of complaints made demonstrates that communication is an area of real concern for the legal profession.

The Round Table participants agreed that all lawyers need to be clear in their communications to all beneficiaries and executors. This includes establishing boundaries with a client – what the lawyer will and will not do.

Round Table participants recommended that lawyers who found themselves dealing with emotional and distressed clients needed to be mindful of how and when they communicated with executors and beneficiaries. Ensuring that all parties involved were kept fully informed from the start of any probate and estate matter and throughout the duration of the legal process is essential. It could help prevent concerns over inadequate communication and delays encountered throughout the estate settlement process. These steps help to alleviate the level of distress experienced by bereaved people.

Improved communication could be easily achieved through regular letters or email bulletins sent to each person involved in the matter. It was noted however, that care needed to be taken to strike a balance between the increased time spent communicating and the costs that were incurred by the estate for the lawyer's time; while executors and beneficiaries may want more information, they may not necessarily want to pay for it. This was particularly important as complaints about legal costs incurred by estates were frequently made to the LSC. In these situations the Round Table participants agreed that over-communication was generally better than under-communication.

### **(c) Delay**

Delays in obtaining probate or finalising an estate can also create significant distress for family members. Often the beneficiaries see the finalisation of their loved-one's affairs as bringing a sense of closure to their family affairs and to the bereavement process. When matters are delayed, executors and beneficiaries tend to seek someone to blame for dragging the process out, or for failing to set realistic expectations about how long the process would take.

Complaints about delay constitute approximately 14% of all complaints received about probate and estate matters. Only a fraction however, resulted in negative findings against lawyers. Many of these complaints were resolved with the assistance of the LSC. Many complaints were made about the executor, not a legal practitioner. Those complaints were not within the jurisdiction of the LSC. Few complaints warranted disciplinary action being undertaken; a small number resulted in the LSC taking alternative disciplinary action against solicitors, while two solicitors were found guilty by VCAT of professional misconduct for causing delays.

Completing probate and estate matters often takes time. Delays perceived by executors and beneficiaries may not be unusual, and may be based on unrealistic expectations. Round Table participants agreed that executors and beneficiaries are often not adequately informed about the time that is required to administer an estate, nor are they informed about the processes involved.

Concerns were raised about executors and beneficiaries having a poor understanding of the role of the Office of the Registrar of Probates at the Supreme Court, and often mistakenly believing that delays were attributable to that Office. Also poorly understood was the time required to identify beneficiaries and to verify the estate's assets, with solicitors being required to liaise with banks, other financial institutions and financial advisers to confirm the extent of the estate.

Participants agreed that it was vitally important that sufficient time was spent in the administration of the estate as this would help to ensure that everything was done correctly and problems and legal challenges in the future would be prevented. Therefore to address the issue of delay, a higher standard of communication with executors and beneficiaries was recommended to ensure that all involved had realistic expectations about the time the process would take and the reasons for this.

The Law Institute of Victoria has published a brochure on wills and estates. The brochure was recommended by participants as a valuable tool for helping lawyers communicate with executors and beneficiaries and to explain to them the process involved in settling estates, thereby helping to manage expectations.

#### **(d) Elder abuse**

Of concern to many lawyers is the apparently growing reports of elder abuse. Although there is no detail in the LSC complaint statistics, Round Table participants flagged the manipulation and control of the finances of elderly people and the influence on will-making by family members as being of serious concern to the legal profession.

Participants reported that more enquiries were being made by the adult children of elderly parents on ways to secure control and management of their parents' finances and assets while the parents were still alive.

The issue of capacity for an elderly person to instruct in the drafting of a will or in amending a will was highlighted as one which required a great deal of care on the part of solicitors. When doubts as to the capacity of a testator were raised, either by a family member or by the solicitor's own intuition, medical evidence of capacity was strongly recommended.

The test for capacity applied in the United Kingdom was cited as a model for potential adoption in Australian practice. This issue had previously been brought to the attention of the State Government by the Law Institute of Victoria. The participants expressed interest in further pursuing such a model in Australia.

## (e) Legal costs

The LSC has a role in assisting lawyers and their clients to resolve disputes about legal costs. In succession law, although the estate is the actual client, both the executor and beneficiaries of a will are entitled to dispute legal costs charged to the estate. In costs disputes brought by beneficiaries, any negotiated reduction to the bill is in favour of the estate rather than the beneficiaries personally.

In the 919 complaints received by the LSC during the sample period, over one third (a total of 339) included a costs dispute. Complaints were made about overcharging, charging for work that was not undertaken, charging for work done wrongly, failing to provide adequate detail in the bill and for doing work unnecessarily. Sometimes there was a related professional conduct matter, such as a failure to make a costs disclosure or failure to give updated costs disclosure where costs were likely to be higher than the original estimate.

Most of these complaints were settled with the assistance of the LSC's staff to the satisfaction of both parties. Where an investigation accompanied a costs dispute, there were a total of 12 negative findings made against solicitors. In all cases, the LSC formed the view that the problems were of a relatively minor nature and did not make out professional misconduct, therefore the LSC did not to take the solicitors to VCAT. Instead the LSC:

- found six solicitors were otherwise competent and diligent and took no further action
- reprimanded four solicitors
- cautioned one, and
- asked one to pay compensation to the complainant.

The Round Table participants noted that it was important for there to be clear communication with executors and beneficiaries, especially in relation to costs being charged to the estate. This was an important step to help limit costs complaints being made after the final bill was rendered to the estate. It was agreed that lawyers should be particularly transparent about how costs increase due to delays caused by family disputes.

## **(f) The quality of wills**

The LSC receives around 40 complaints each year relating to the will-drafting process. Because these complaints are made by or on behalf of a testator while they are still alive, and there are few complaints in this area, they were not included in the original scope of the Round Table.

The Round Table participants felt however, that improperly prepared wills, having the potential to create problems for probate and estate matters, warranted further discussion. Several issues of concern to the legal profession were discussed, including:

- the quality and validity of a will, especially where they were incorrectly witnessed or insufficient instructions were recorded
- the capacity of clients to make a will and the legality of the will as a consequence
- the currency of a will, especially where the will is not updated as the testator's circumstances change, and
- the lack of a will where the person has died intestate.

Many of these issues were thought to stem from wills which the testators had prepared without assistance and guidance from solicitors.

### **Home made wills**

Home made wills and commercially available will kits were considered by participants to offer the testator insufficient information and guidance for avoiding many problems to do with the quality, validity and currency of the will. These issues frequently lead to problems with probate including delay, confusion and distress among beneficiaries and executors, further legal argument and often significant additional costs borne by the estate.

It was suggested that the number of wills made in Victoria were made using will kits had increased sharply in recent years. The Round Table participants believed that home made wills offered a false economy to the testator: although they were significantly cheaper than a solicitor prepared will, they may end up costing considerably more due to the work that would be required to properly administer the estate, which executors and beneficiaries were often not prepared for.

Suburban and regional law associations currently provide information to consumers on how to correctly prepare wills. Round Table participants recommended further education for testators be provided, focussing on what needs to be considered before using will kits.

### **Ongoing training in succession law for solicitors preparing wills**

Not all wills are straightforward to prepare. Mistakes can occur if the solicitor is not adequately trained or experienced, or sometimes where the drafting of wills is delegated to non-lawyer staff in the firm. Continual professional development is an important way of ensuring solicitors maintain their currency of knowledge in succession law. This is especially so if the solicitor has not undertaken basic succession law studies at university, where the subject is often an elective unit, not a core area of study.

Most complaints about succession law are made against sole practitioners and practitioners from small law firms. This demonstrates the need for solicitors working in smaller practices to maintain the currency of their skills, and to keep informed about emerging issues in the field to help them avoid mistakes. Participants noted that there were difficulties in convincing some solicitors to undertake ongoing training in this area of law. Regional and suburban law associations are in a strong position to assist in communicating the importance of ongoing training in will-drafting to their members, and to promote suitable continuing professional development training programs.

### **Wills prepared by non-solicitors**

Financial planning was noted to be a growing area of concern among the Round Table participants, with the emergence of financial planners in the will-preparation market. It was claimed that financial planners were often promoting testamentary trusts which were not always in the best interests of the client.

Testamentary trusts were seen as costly to establish and maintain, when often they were unnecessary. The adviser would benefit from the extra billable work as well as through commissions, giving rise to a potential conflict of interest. Many clients did not understand how their financial matters were set up and therefore may be unable to see where they were incurring unnecessary costs.

## **(g) Problems with executors**

The LSC receives many complaints relating to the executors of estates. While the action or inaction of non-solicitor executors is outside the jurisdiction of the LSC<sup>1</sup>, the Round Table participants noted that delinquent executors and executors who will not listen to legal advice were a serious problem for probate and estate lawyers.

Testators and their nominated executors were often unaware of what was required of someone in the role of an executor. Round Table participants noted that both testators and executors needed to be made aware of the executors' responsibilities to help eliminate problems that arise from people being unprepared to carry out their roles. Such community education on responsibilities was an important step towards minimising difficulties in the settlement of estates, and reducing the number of complaints being made.

The potential of developing an online video to inform executors of their roles and responsibilities was discussed. The LSC would support this initiative. It could be used by lawyers to help educate executors and beneficiaries about the probate process and the responsibilities of each party in the process.

It was also noted that there is existing material available to solicitors produced by the Law Institute of Victoria to help inform people about the duties of executors. These resources could be more widely promoted and utilised as an important step towards helping to improve the probate and estate process.

The Law Week program coordinated by the Victoria Law Foundation also presents a valuable opportunity to deliver information sessions to the community on how to nominate a suitable executor, and what an executor needs to do in an estate. It was suggested that suburban and regional law associations would be perfectly placed to help identify presenters, promote and run such sessions on a regular basis each year.

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<sup>1</sup> The Supreme Court of Victoria has jurisdiction to deal with matters relating to executors for an estate. Beneficiaries and executors should seek legal advice before applying to the Supreme Court to address problems with other executors.

## (h) Solicitor executors

A number of complaints received by the LSC relate to solicitors acting as executors of an estate. Because many of these complaints relate to conduct as an executor (not the conduct as a solicitor) and because there is a distinction between the work of a solicitor and that of an executor, many such complaints are effectively outside the jurisdiction of the LSC.

Notwithstanding this jurisdictional limitation, the LSC does attempt to resolve some disputes involving executors. An example of such a complaint would involve the timing of the sale of assets. Unless the conduct is sufficiently bad to amount to misconduct outside the practice of law, such as involving dishonesty or a serious conflict of interest, the LSC would generally not be able to investigate it but would try to help resolve any issue. If resolution fails the LSC would recommend complainants seek further legal advice.

It was noted that with solicitors occupying both roles, there is an inherent risk of conflict of interest when the solicitor instructs him or herself to carry out the legal work for the estate. In many complaints about executors there was an evident lack of transparency and accountability to beneficiaries. An example arises with costs disclosure. There is no obligation to make full costs disclosure to *beneficiaries* as the estate is the client.

Full costs disclosure to all *executors* is required under the *Legal Profession Act 2004*. It is however, acknowledged that costs disclosure for beneficiaries is sensible as well. It actually prevents complaints, particularly as beneficiaries have the right to raise a costs dispute with the LSC. Similarly, regular reports and accounts to all parties works to minimise the risk of complaints arising.

It was broadly agreed by the Round Table participants that it was not advisable for solicitors to act as executors of their clients' wills unless the solicitor was appropriately specialised, and this was an option of last resort. However the distinction between the two roles, and lack of clarity that arises when the lines are blurred, was a particular area of concern for Round Table participants. This role distinction is especially important in clarifying whether work should be covered by fees or commission.

### **Double dipping: charging fees and commission**

It emerged that there was generally a poor understanding among solicitors as to what costs they can legitimately charge if they are acting as executors. There was further confusion about whether commissions could be charged. In recent times the LSC has noted a number of complaints about solicitor executors charging both legal fees and a commission. These have given rise to a number of successful misconduct prosecutions in VCAT, (for example see the recent case of *LSC v Hession [2010] VCAT*).

It was discussed that some solicitors failed to appreciate that they cannot charge twice for the same work. An executor is required to justify the amount of commission charged with reference to the 'pains and trouble' he or she had taken in the role as executor. It is also important to note that a charging clause will not give an automatic right to take a set percentage of the estate on top of fees, even if that is what it says. A commission must be justified.

It is extremely common for beneficiaries to view the charging of legal fees and commission as double dipping. A detailed bill describing the nature and level of an executor's commission as well as legal costs provide a level of transparency that might avoid complaints being made.

# 5 CONCLUSION

Throughout the forum, the Round Table participants discussed numerous and varied examples of problems occurring within probate and estate matters. It is evident that many of these problems have common roots. Perhaps the greatest issue at the heart of complaints about lawyers could be addressed by the provision of improved education. Executors and beneficiaries could benefit from being better informed about the probate processes and what their responsibilities are as part of that process, and testators should be made aware of the importance of properly drafting wills. Solicitors also need to be adequately trained and need to keep their skills updated to avoid making mistakes.

In addition, improved communications from lawyers to beneficiaries are essential to ensure everyone understands what is happening. It is also vital to manage expectations for both executors and beneficiaries.

## **(a) Follow-up actions**

The following major actions have been identified from comments and suggestions made by the Round Table participants. The LSC has committed to the following activities raised at the succession law round table:

- educate the profession on some of the issues which commonly arise in succession law matters that can have an impact on the lawyer-client relationship, for example client emotions, family disputes, client expectations and delays;
- educate practitioners on the importance of providing clear and detailed information about legal costs;
- work with relevant agencies to educate the community on the importance of seeking independent legal advice when preparing or altering wills;
- educate the profession on avoiding potential problem areas when drafting wills, and work with the professional associations to encourage lawyers that may often be involved in will-drafting to attend regular training in the area of succession law;
- work with interested organisations to educate the community about the probate processes and in particular, the role of the executor in the probate process; and
- raise awareness among the profession of some of the problems and complexities involved in solicitors acting as executors in a will and the rules and obligations for charging executor fees and commission.



# APPENDIX 1

## Statistics on probate and estate complaints

This fact sheet provides an overview of complaints received by the Legal Services Commissioner (LSC) between 1 January 2006 and 31 December 2009 which involved probate and estate matters.

### How many complaints does the LSC receive about probate and estate?

- In the four-year period from 1 January 2006 and 31 December 2009 the LSC received **8416** complaints about lawyers. Each complaint may include numerous allegations.
- Of the total number of complaints received in the four-year period, **910** were made about solicitors in relation to probate and estate matters. Only **9** complaints were made against barristers.
- The high proportion of complaints made against solicitors as opposed to barristers relates to the far greater level of involvement solicitors have with succession law.

### What allegations do people make in complaints?

In the 919 complaints received, the top five allegations made were:

| Allegation made   | No. times allegation featured in complaints* | % complaints featuring the allegation |
|---|--|---------------------------------------|
| Overcharging (for work done, not done or bill exceeding quote)  | 338  | 36.8%                                 |
| Failure to communicate with the client or an opposing solicitor | 175  | 19.2%                                 |
| Negligent service (including bad case handling and bad advice)  | 160  | 17.4%                                 |
| Delay   | 155  | 16.9%                                 |
| Retention of documents  | 58   | 6.3%                                  |

\*A complaint will often include a number of different allegations.

### What did people complain about?

- There were unreasonable delays in handling the matter
- Practitioner did not correspond with the client
- The matter was handled negligently
- Work was carried out incorrectly
- The estate was overcharged for work undertaken
- The bill exceeded the quote provided
- Detailed bills were not provided
- The estate suffered a financial loss as a result of the solicitor's action or inaction.

## What were the outcomes of the complaints?

**827 (90%)** of the 919 complaints received for probate and estate had been finalised at the time of the Round Table. Included among these are the following outcomes for the allegations raised:

- **92** cost disputes (of a total of **323** cost complaints made) were successfully settled with the assistance of the Commissioner's staff.
- **65** allegations resulted in the Commissioner being satisfied that there was a reasonable likelihood the Tribunal would find the solicitor guilty of unsatisfactory professional conduct. In these types of matters the Commissioner has a discretion not to prosecute the lawyer at VCAT, but to deal with them in a summary way, including:
  - reprimanding the solicitor (**25**)
  - issuing a caution to the solicitor (**5**)
  - ordering compensation to be paid without laying charges (**3**)
  - taking no further action as the solicitor was otherwise competent and clear of earlier complaints (**32**).
- In **3** instances the Commissioner believed there was a reasonable likelihood the Tribunal would find the solicitor guilty of professional misconduct, and the matters were taken before the Tribunal. In these instances:
  - a solicitor delayed obtaining probate for six years, and was found guilty of common law misconduct
  - a solicitor failed to communicate with the client over a significant period of time without explanation and was found guilty of statutory professional misconduct
  - a solicitor excessively delayed the distribution of estate funds, and was found guilty of statutory professional misconduct.
- **289** allegations were investigated and did not warrant disciplinary action.
- **172** allegations were not pursued by the complainants.
- **468** allegations were finalised for reasons including lack of jurisdiction, the complaint being made out of time, failure of the complainant to provide sufficient information, or, in a costs dispute, failure by the complainant to lodge disputed funds with the Commissioner.

# APPENDIX 2

## Key Definitions

This information explains terminology featured in the summary document.

**Caution:** following an investigation, where the Commissioner forms the view that there is a reasonable likelihood that the Tribunal would find the lawyer guilty of unsatisfactory professional conduct the Commissioner may, with the consent of the lawyer, caution the lawyer. This is one form of dealing with a disciplinary complaint.

**Civil dispute:** means a costs dispute (dispute about legal costs not exceeding \$25,000), a pecuniary loss claim or any other genuine dispute.

**Commissioner:** means the Legal Services Commissioner.

**Complainant:** means a person who makes a complaint to the Commissioner.

**Disciplinary complaint:** means a complaint about the conduct of a lawyer to the extent that the conduct may amount to unsatisfactory professional conduct or professional misconduct.

**Mixed complaint:** means a complaint involving both a disciplinary complaint and a civil dispute.

**No charges laid but compensation paid:** following an investigation, where the Commissioner forms the view that there is a reasonable likelihood that the Tribunal would find the lawyer guilty of unsatisfactory professional conduct, the Commissioner may decide not to make an application to the Tribunal and may require the lawyer to pay compensation as a condition of not so applying to the tribunal.

**No further action:** following an investigation, where the Commissioner forms the view that there is a reasonable likelihood that the Tribunal would find the lawyer guilty of unsatisfactory professional conduct the Commissioner may take no further action against the lawyer if satisfied that the lawyer is generally competent and diligent and there has been no substantiated complaint about the conduct of the lawyer within the last five years. This is one form of dealing with a disciplinary complaint.

**Professional misconduct:** includes:

- unsatisfactory professional conduct where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence
- conduct of a lawyer, whether occurring in connection with the practice of law or otherwise, that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice
- common law misconduct behaviour that would be seen as disgraceful and dishonourable conduct by fellow lawyers of good repute and competency.

**Reprimand:** following an investigation, where the Commissioner forms the view that there is a reasonable likelihood that the Tribunal would find the lawyer guilty of unsatisfactory professional conduct, the Commissioner may, with the consent of the lawyer, reprimand the lawyer. This is one form of dealing with a disciplinary complaint.

**Summary disciplinary action:** action taken by the Commissioner under the *Legal Profession Act 2004* to discipline a lawyer for unsatisfactory professional conduct. This includes issuing a reprimand, issuing a caution, ordering compensation to be paid, or taking no further action.

**Summary dismissal:** the *Legal Profession Act 2004* provides that the Commissioner may dismiss a complaint in certain circumstances. This includes where the complaint is vexatious, misconceived or lacking in substance. However while summary dismissal may be the formal outcome this is often accompanied by some form of resolution or explanation that effectively resolves the dispute.

**Unsatisfactory professional conduct:** includes conduct of a lawyer 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 lawyer.

**Victorian Civil and Administrative Tribunal (VCAT or the Tribunal):** is the judicial body that hears and determines applications from the Legal Services Commissioner for a disciplinary order and applications from the parties to a civil dispute.

