

THE ETHICS OF COMPLAINT HANDLING Michael McGarvie, Legal Services Commissioner, Victoria

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Much of the discussion tonight has concentrated on the Complaints Handling aspects of the proposals for a National Regulator. I would invite the audience to remember however, that investigations into complaints is but one of a number of the functions of the regulator. Other functions include the granting and removal of practising certificates, the management of a Fidelity Fund to compensate people for fraud or dishonesty, supervision of trust accounts, imposition of receivership arrangements for practitioners, education of the community and the legal profession, supervision of incorporated legal practices, and foreign lawyer licensing.

I absolutely support the National reforms being proposed but I would invite the audience not to assume that a brand new National Regulator will once and for all solve problems of representation, separation of powers, consumer issues, funding, and compliance. Any piece of legislation will carry gaps and ambiguities which must be brought to life as effectively as possible by the regulators themselves. This notion provides me with an opportunity to discuss the approach I intend to take to ethical complaint handling as Legal Services Commissioner in Victoria.

The first task for a regulator is to earn respect. The legislation might provide all sorts of penalties and powers but good regulation is about relationships. I will rely heavily on existing and the formation of new relationships with consumers and with practitioners in effectively dealing with legal practice complaints. One important way of earning respect is to communicate courteously in plain English with all who receive correspondence from me. This includes action as simple as modifying text of letters to suit each case and not place over reliance on templates and precedent letters. To this end, I have placed a very significant emphasis on the introduction of plain English language into all of my forms and documents, including correspondence.

Another way of earning respect is by the proper management of relationships. Part of the complaints process requires me and my staff to investigate cases by examining information. This must include phone and personal contact extending to visits to practitioners' premises and face-to-face interviews. As a solicitor I know how hard it is to understand the nuances attaching to evidence without having spoken to a complainant, interviewed a witness, or visited a practitioner. Personal contact by my staff will be given a very high priority.

Another aspect of good complaints investigation is constantly finding ways of reducing delay. From April 2010 the Legal Services Commissioner's office will introduce a system of triaging complaints with a view to resolving them rapidly. These complaints will be necessarily connected with less complex and less serious criticisms of practitioners. They often relate to the case handling style, "bedside manner", or timeliness and efficiency of the legal practitioner. They are also often associated with a primary costs complaint. We will endeavour to avoid investigating these cases as though they relate to acts of major misconduct if we believe this is appropriate in the circumstances. At the same time we will introduce a system of reviewing all existing files that might lend themselves to a similar approach towards resolution. It is expected that the efforts we put into resolving some cases rapidly will allow us to direct more of our resources towards those small number of major misconduct complaints that require careful attention, more time, and significant effort. They are the cases upon which the community interest most depends to put its confidence in the legal profession and in the regulator.

The final element of ethical complaint handling rests in the area of proper management of co-regulation and adequate information exchange between regulatory bodies. In Victoria I rely a lot on the quality of expertise and relationships that rest with the professional bodies that perform important delegated work for the Commissioner. Although the legislation and the delegations allow for several regulatory bodies to exist in Victoria and creates a separate institution in the Legal Services Board compared to the Legal Services Commissioner, the timely and adequate disclosure of information between bodies is vital to ensuring efficient and effective regulation of the profession.

I aim to improve and emphasise all of the activities discussed above whether it is for a State-based Commissioner or as a regulator forming part of a National scheme.