

# Legal Services COMMISSIONER

## Own Motion Investigations Policy<sup>1</sup>

### Policy Statement

The Legal Services Commissioner is committed to utilizing the functions and powers bestowed on her office for the benefit of consumers, the legal profession and the public generally.

### Background

Section 4.4.8 of the Act empowers the Legal Services Commissioner to initiate on her own motion an investigation into conduct of a legal practitioner.

Section 4.4.8 provides:

#### 4.4.8 Investigations without complaint

The Commissioner **may investigate** the conduct of an Australian legal practitioner if the Commissioner has **reason to believe** that the conduct **may amount to unsatisfactory professional conduct** or **professional misconduct**, even though no complaint has been made about the conduct or a complaint about the conduct has been withdrawn.

### Purpose

The purpose of this policy is to set out when the Legal Services Commissioner will commence an own motion investigation.

### Application

This policy applies when the Legal Services Commissioner is deciding whether to commence an own motion investigation.

### Policy Responsibility

The Legal Services Commissioner is responsible for authorising this policy.

The Director, Investigations is responsible for dealing with compliance issues in relation to this policy.

All complaints handling staff must comply with this policy.

### Definitions

**Act** means the *Legal Profession Act 2004*.

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<sup>1</sup> This policy was first endorsed on 21 August 2007.

**Own motion investigation** means an investigation pursuant to section 4.4.8 of the Act.

**Practitioner** means an Australian legal practitioner as defined by the Act.

**Prescribed investigatory body** means a prescribed investigatory body as defined by the Act.

## **Policy**

1. The Legal Services Commissioner may initiate an own motion investigation pursuant to section 4.4.8 of the Act.
2. The Legal Services Commissioner is to make a decision based on evidence as to whether the preconditions in section 4.4.8 of the Act are satisfied.
3. The Legal Services Commissioner will rely only on evidence brought to her attention when deciding whether the preconditions in section 4.4.8 of the Act are satisfied.
4. Where the preconditions in section 4.4.8 of the Act are satisfied, the Legal Services Commissioner may commence an own motion investigation.
5. The Legal Services Commissioner will undertake an own motion investigation in its entirety without referring any part to a prescribed investigatory body.
6. The Legal Services Commissioner is committed to the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

The Legal Services Commissioner is to consider the section 8 right to recognition and equality before the law; the section 13 right to privacy and reputation; the section 15 right to freedom of expression; and the section 20 property rights as relevant to the decision to commence an own motion investigation.

7. Subject to the above, the Legal Services Commissioner is not influenced by the following factors when deciding whether to initiate an own motion investigation:
  - a. the race, religion, sex or political association, activities or beliefs or any other personal characteristic of the practitioner or any other person who may be involved in the matter;
  - b. personal feelings about the alleged conduct, the practitioner or any other third party;
  - c. possible political advantage or disadvantage to the Government or any political group or party;

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- d. the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.<sup>2</sup>

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<sup>2</sup> This statement is taken from the Queensland LSC's Prosecution Guidelines , page 14.