

## **8 NATIONAL UNIFORMITY AS AN OBJECTIVE OF REFORM**

- 8.1 Australia maintains a State and Territory based system for the regulation of the legal profession. Work has been carried out recently to facilitate national regulation of the legal profession. Over the past decade, the implementation of the national practising certificate scheme in most jurisdictions has facilitated mobility among practitioners. This scheme provides for interstate practitioners to practise in jurisdictions having corresponding laws offering the same rights<sup>1</sup>. Regulators have developed protocols for the sharing of information about complaints and discipline, to support interstate practice. The Law Council of Australia has also carried out considerable work on developing proposals for a national regulatory scheme<sup>2</sup>. Nevertheless, substantial differences between State laws remain.
- 8.2 Increasingly, the legal profession is working across State and Territory boundaries. State based regulation can pose problems for national firms or practitioners who practise in more than one jurisdiction.
- 8.3 The Standing Committee of Attorneys General has recognised the need for State based schemes to have regard to the national interest in promoting a uniform regulatory approach, and has recently resolved to begin work on developing such a scheme, in consultation with stakeholders. Meanwhile the New South Wales Government strongly endorses the need to promote uniformity where possible.
- 8.4 As noted above, the Victorian Government is reviewing its scheme for the regulation of the legal profession. It is anticipated that the report of the review will be available shortly. The findings of the Victorian review will be taken

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<sup>1</sup> See eg Part 3B of the *Legal Profession Act 1987 (NSW)* and Part 2 Division 6 of the *Legal Practice Act 1996 (Vic)*.

<sup>2</sup> See *Blueprint for the Structure of the Legal Profession, A National Market for Legal Services*, Law Council of Australia, July 1994.

into account in developing any proposals for the reform of the New South Wales scheme which may flow from this review<sup>3</sup>.

## Question

- 2. Should there be a nationally uniform scheme for regulating complaints against, and discipline of, the legal profession?**

## **9 ISSUES FOR CONSIDERATION: HOW SHOULD COMPLAINTS BE HANDLED?**

9.1 A fundamental issue which arises from consideration of the scheme is whether complaints should be exclusively handled by an independent regulator, or the Councils and the Department of Fair Trading, or whether a co-regulatory approach should be maintained. The following is a discussion of the theoretical considerations arising the respective roles of the LSC and the Councils. The discussion refers to arguments that might be made about features of regulatory systems.

9.2 It is important to note the limitations of a review of this nature. A major historical and academic review of the operation of the systems regulating the legal profession in Canada, England and Wales was recently completed. The review summarised the difficulties in assessing the strengths and weaknesses of the different approaches available of regulating the practitioners:

*Any assessment of the effectiveness of [regulation] will depend on impressionistic arguments and views upon inference and deduction. It is difficult to organise the considerations of the various factors in any intelligible way. So perhaps the best that can be done is to consider the positive benefits and positive detriments that appear to flow from [the system]*

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<sup>3</sup> For further discussion regarding the review of the *Legal Practice Act 1996 (VIC)* see Peter Sallmann and Richard Wright *Legal Practice Act Review: Issues Paper* Victorian Government

*of regulation] and speculate as to whether the result is superior to those that might be expected to flow from non-regulation or some other form of regulation that might be expected to be devised to fill a regulatory vacuum<sup>4</sup>.*

### **9.3 Independent regulation**

- 9.3.1 An independent investigative and decision making body may be perceived as bringing greater objectivity and fairness to the investigative process and enhance public confidence in the integrity of the investigative and decision making process than a scheme which allows for complaints handling by professional bodies. Such an independent body may be perceived as being more readily accessible by consumers who are aggrieved by a legal practitioner, than a body which is perceived to be associated with the profession.
- 9.3.2 An independent body can also involve non-lawyers in the complaints handling process and may be perceived as better placed to ensure procedural fairness for both complainants and practitioners. Public debate about the manner in which complaints are handled and the conduct of practitioners may also be enhanced by the involvement of an independent decision making body in the scheme.
- 9.3.3 However, these benefits can be undermined if all investigations and decisions are the prerogative of a single body, especially if there are few accountability mechanisms, or if the body is perceived as being impervious to alternative views or inflexible in its approach. To counter this possibility, both the Law Society and the Bar Association have lay or consumer representatives who sit and advise on matters before their professional conduct committees as a means of including consumer input in the disciplinary process.

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Department of Justice and Peter Sallmann and Richard Wright *Legal Practice Act Review: Discussion Paper* Victorian Government Department of Justice, March 2001.

<sup>4</sup> William Hurlburt, *The Self-Regulation of the Legal Profession in Canada and in England and Wales*, Law Society of Alberta, Alberta Law Reform Institute 2000 at 21.

## 9.4 The role of the profession (through the Councils)

9.4.1 Requiring the legal profession, through its governing bodies, to take responsibility for dealing with complaints and disciplining its members is promotes a sense of collective responsibility for the conduct of practitioners within the profession. In particular, the profession may be best placed to set and enforce professional standards because of its expertise, and the promotion of professional standards from within the profession can enhance the effectiveness of the scheme, and reduce complaints. External scrutiny of complaints handling, through monitoring by an external body and public reporting on the outcome of complaints, can address concerns about accountability or fairness and improve the quality of decisions.

9.4.2 One goal of regulation is to reinforce the norms of professional behaviour within the a legal community. It has been noted that a profession which handles its own complaints may:

*more successfully engender compliance and changes in ... cultures, policies and processes to produce more justice than formal remedies imposed from above<sup>5</sup>.*

The role of the Councils in regulating conduct also engender a greater commitment to ethical practice by the profession.

9.4.3 The Councils have the formal power to make rules which regulate professional conduct and it might be considered that the corollary of such a function is the ability to investigate complaints about conduct. The Councils have commented that their removal from the investigative process in disciplinary matters will result in a loss of experience, expertise and volunteer labour through the involvement of senior practitioners and community representatives. Support

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<sup>5</sup> Christine Parker, *Just Lawyers: Regulation and Access to Justice* Oxford University Press, Oxford 1999 at 188.

for this reasoning can also be found in a recent academic work which notes that:

*[g]iving professional associations formal self regulatory powers has some efficiency advantages; the association internalises regulatory costs and mutual trust and greater expertise can make it easier for them to formulate, monitor and enforce standards<sup>6</sup>.*

9.4.4 It is also arguable that the maintenance of a role for the legal profession in handling complaints is an important means of ensuring the independence of the profession. The independence of investigative and disciplinary process was an issue raised in a number of submissions to the LRC with regard to Report 99<sup>7</sup>. The legal profession holds a unique position (in terms of the duty legal practitioners have to the court) in relation to the judicial arm of government, and the control of disciplinary matters by a statutory office holder might be seen as undermining this relationship.

9.4.5 However, as it currently operates, the system of investigation engenders perceptions of bias among some consumers. While on the one hand, the Councils bring considerable expertise to investigations and decision making, on the other, the Councils may tend to adopt and reinforce the profession's standard of acceptable conduct, rather than the standards of the community as a whole.

9.4.6 Confining the role of the Councils in investigative and decision making process would enable an independent regulator to obtain access to the expertise of the profession while ensuring that decisions are made at arm's length. The Councils could be restricted to the conduct of investigations, but

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<sup>6</sup> Christine Parker, *Just Lawyers: Regulation and Access to Justice* Oxford University Press, Oxford 1999 at 196.

<sup>7</sup> See the following submissions made to the LRC with regard to Report 99: Peter Breen *Final Submissions* at 1; Morris *Oral Submission* at 1; Berkemeier *Submission* at 1; Cowdery *Submission* at 1; Coombe *Submission* at 3; For Legally Abused Citizens *Submission* at 2; New South Wales Law Reform Group *Submission* at 3; O'Donnell *Submission* at 3; Victorian Ombudsman *Submission* at 13.

removed from a determinative role at the conclusion of an investigation, or confined to the provision of advice to an independent complaints handling body.

9.4.7 Conversely, it might be argued that the profession has a special interest in the conduct aspect of the disciplinary process, because of its vested interest and expertise in the maintenance of its reputation, and that this consideration warrants its continued involvement. An independent investigation structure could place far greater focus on consumer driven discipline, at the expense of consideration of professional standards and conduct complaints. Such an outcome would undermine the effectiveness of the system as a whole and would not protect the public.

9.4.8 Finally, the exclusion of the profession from investigative and decision making processes would engender a more adversarial complaints system. The Councils, confined to representative roles, could pursue their goals vigorously without a formal mandate to protect the public interest.

#### **Question**

**3. Should the investigation of complaints be the responsibility of an independent regulator, or the Councils, or should a co-regulatory scheme be retained? What should the respective roles of these bodies be?**

## **10 STRENGTHS AND WEAKNESSES OF EXISTING SYSTEM**

10.1 It is important to consider the strengths and weaknesses of the system, based on the available evidence, in the light of the theoretical considerations and the submissions to the LRC, outlined above. It should be noted that the analysis below is more specifically directed to the handling of complaints about solicitors, because solicitors are the subject of most complaints and comprise the majority of practitioners who deal with the public.

## 10.2 Strengths of the existing regulatory system

10.2.1 The LSC acts as the single point of intake for all complaints made under Part 10 of the Act. There is general agreement amongst stake holders and interested parties that having one point of entry for complaints is essential. The American Bar Association has previously commented that:

*The availability of more than one mechanism to resolve disputes can backfire and result in increased public dissatisfaction unless a simple and direct procedure exists for making a complaint ... [complainants] ... need a central intake office - one clearly designated agency to which to take any type of complaint*<sup>8</sup>.

10.2.2 Similar remarks were made in a submission in relation to the review of the Victorian scheme:

*there is virtually unanimous agreement that there should be a single entry point for the complaints system rather than the current confusing array of options*<sup>9</sup>.

10.2.3 The existing co-regulatory system may be seen as ensuring that the legal profession is engaged in the regulation of the profession while allowing for access by, and accountability to, the wider community. The involvement of the profession in disciplining itself can promote a collegiate approach to professional standards, rather than the adversarial approach which might be expected if the role of the Councils were confined to advocating on behalf of their members in disciplinary proceedings. Further, the Councils provide expert input to complaints handling, through the involvement of senior

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<sup>8</sup> New South Wales Law Reform Commission *Scrutiny of the Legal Profession Complaints Against Lawyers* Report 70, February 1993 at 75.

<sup>9</sup> Peter Sallmann and Richard T Wright *Legal Practice Act Review: Discussion Paper* Victorian Government Department of Justice March 2001 at 3.

lawyers who contribute by serving on committees which examine complaints, on a voluntary basis.

10.2.4 The monitoring of complaints handling by the LSC, the requirement for the Councils to report to Parliament, and avenues for review of complaints by the LSC at the request of complainants or by its own motion, ensure the accountability of the Councils.

10.2.5 The establishment of the LSC has given consumers an avenue for quick and cheap resolution of complaints. The LSC deals with most complaints by telephone and/or mediation and these strategies can avoid the escalation of disputes. The LSC has provided the legal profession with feedback on the types of complaints received and the risk factors that can generate complaints, for example, through conducting regular seminars and the production of a newsletter. It is noted that the Councils also provide feedback to the profession.

10.2.6 There appears to be some evidence of a marked decline in the number of conduct complaints about solicitors in recent years, from 1505 in 1996/97 to 786 in 1999/2000<sup>10</sup>, although this may be due in part to changes in the categorisation of 'conduct' complaints by the LSC, and/or the greater use of mediation by the LSC. This decline has occurred at a time when the number of solicitors continues to rise: 8% of the profession was the subject of a complaint in 1996/97 but only 3.6% in 1999/00<sup>11</sup>. The number of such complaints against barristers does not appear to have fallen in recent years, although it is noted that the number of complaints are very low. The Bar Council received and investigated 72 complaints about barristers for the year ending 30 June 1999 compared to 68 for the year ending 30 June 2000. While it is difficult to be certain of the reasons for any decline, it may be attributable to a greater awareness among practitioners of the types of conduct that can

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<sup>10</sup> *Law Society of NSW Professional Standards Annual Report, 1999-2000*, Law Society of NSW at 9.

<sup>11</sup> *Law Society of NSW Professional Standards Annual Report, 1999-2000*, Law Society of NSW at 9



generate serious complaints and/or to the ability of the LSC to resolve complaints at an early stage, before serious problems occur or an improvement in professional standards.

10.2.7 On the available evidence, it is difficult to assess whether the obligation of the LSC to monitor investigations, and report separately, has contributed to improved performance by the Law Society Council in complaints handling, because the statistical data produced prior to 1996 did not indicate, for example, the length of time taken to investigate matters<sup>12</sup>. In fact, there is some evidence of a small increase in the time by the Law Society Council taken to deal with complaints in recent years<sup>13</sup>. There are no directly comparable statistics for the average turnaround time for the Bar Council in relation to investigation of complaints. However, for all investigations commenced during 1 July 1998 to 30 June 2000, 10.29% were completed within 6 months, 14.71% were completed within 6 to 9 months and 2.94% were completed within 9 to 12 months<sup>14</sup> (similar statistical information does not seem to be available prior to this period<sup>15</sup>). It is noted that following recent decisions of the NSW Court of Appeal and the High Court, which have highlighted the need for compliance with procedural requirements, the complaints handling process has become more complex and this may contribute to increased delays<sup>16</sup>. While the length of time taken to investigate complaints is only one indicator of performance, and investigations may be delayed for many legitimate reasons nevertheless, a lengthy investigative

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<sup>12</sup> Prior to 1996, the Professional Standards Division of the NSW Law Society produced six monthly reports (the Six Monthly Reports) which presented statistical information detailing trends and developments in the legal profession disciplinary process. The statistical data contained in the Six Monthly Reports is not directly comparable to the data contained in the Annual Reports produced by the Professional Standards Division from 1996 onwards.

<sup>13</sup> At page 12 of the *Professional Standards Annual Report 1997 to 1998* produced by the Law Society of New South Wales average turnaround time for complaint investigation is 9 months compared with the figure of 11 months at page 9 of the *Professional Standards Annual Report 1999 to 2000*. It is understood that the turnaround time has now fallen to 10 months.

<sup>14</sup> *The New South Wales Bar Association Sixty Fourth Annual Report 2000*, New South Wales Bar Association at 29.

<sup>15</sup> Prior to the NSW Bar Association *Annual Report 2000*, figures for investigation times do not appear to be available.

<sup>16</sup> One such reason is the effect of the decision of the NSW Court of Appeal in *Murray v Legal Services Commissioner* which imposes the need to afford procedural fairness and in complaints where the relevant body investigating the complaint is to make a finding which is adverse to the legal practitioner.

process may contribute to a poor perception by consumers of the performance of the system.

10.2.8 The existing system has been criticised for allowing the Councils to maintain a pivotal role in the investigation of conduct related matters. As with self-regulatory systems, the criticism is that the Councils cannot be seen to be impartial if they have an investigatory role to play in disciplinary matters.

10.2.9 Nevertheless, it is rare for LSC to review the investigation and decisions of the Councils and reach a different conclusion<sup>17</sup>. Further, the number of reviews being requested by complainants after a complaint has been dealt with by the Councils are declining<sup>18</sup>. This suggests that the complaints handling skills of the Law Society and the Bar Association are improving, and that complainants are more satisfied with the process.

### **10.3 Weaknesses of the existing regulatory system**

10.3.1 The public perceptions of bias and conflict of interest which arise with respect to self-regulatory systems continue to be issues of contention with some consumers when considering the operation of the existing co-regulatory system. Some submissions to the LRC with respect to Report 99<sup>19</sup> raised arguments centring around the issue of impartiality. Despite the establishment of the LSC, a perception that the operation of the scheme favours legal

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<sup>17</sup> See the Office of the Legal Services Commissioner *Annual Report 1996 - 1996* at page 21 and the Office of the Legal Services Commissioner *Annual Report 1996 - 1997* at 25 which shows 47 out of 58 complaints against barristers and 300 of 408 against solicitors were upheld on review by the LSC. Another 2 of the Bar Council's decisions and 53 of the Law Society Council's were upheld after consultation with the Councils. The Office of the Legal Services Commissioner *Annual Report 1999 - 2000* notes that of 130 completed reviews, 113 upheld the decisions of the Councils.

<sup>18</sup> *Law Society of NSW Professional Standards Annual Report, 1999-2000*, Law Society of NSW at 18. Also see Table R1 in *The Office of the Legal Services Commissioner Annual Report 1999-2000*.

<sup>19</sup> See the following submissions made to the LRC with regard to Report 99: Peter Breen *Final Submissions* at 1; Morris *Oral Submission* at 1; Berkemeier *Submission* at 1; Cowdery *Submission* at 1; Coombe *Submission* at 3; For Legally Abused Citizens *Submission* at 2; New South Wales Law Reform Group *Submission* at 3; O'Donnell *Submission* at 3; Victorian Ombudsman *Submission* at 13.

practitioners and therefore falls short of the expectations of consumers appears to continue.

10.3.2 While the LSC has introduced a consumer focus into the management and resolution of complaints which he deals with, it is not clear whether such a focus applies to matters managed by the Councils.

10.3.3 It might be argued that the Councils should focus their efforts on professional conduct, rather than the rights of individual complainants, and that this is their proper role in the system. However, this focus contributes to a perception that the Councils are not sufficiently concerned with the rights of complainants, and are acting to protect practitioners.

10.3.4 It appears that an analysis of the nature and type of complaint being made could be more usefully applied as an educative tool for the profession to counter trends in disciplinary matters. This concern arises in relation to the Law Society in particular, where the volume of complaints is more likely to produce consistent trends. The 1999/2000 report of the Law Society's Professional Standards Department notes that sole practitioners are responsible for 38% of complaints, although they represent only 14% of practitioners. Given that the Professional Standards Department primarily investigates conduct complaints referred by the LSC, this statistic appears to demonstrate problems for consumers of legal services who engage solicitors who are sole practitioners. The report notes that traditionally sole practitioners have attracted large number of complaints and that this highlights the problems faced by sole practitioners, including specialisation, time pressures, changes to the law, and changes to technology in the workplace<sup>20</sup>. The report shows that fewer complaints are made in relation to commercial business transactions. Many larger firms have complaints management systems in place, obviating the need for clients to make formal complaints to the LSC, and have a client base comprising other businesses, rather than consumers. This suggests that

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<sup>20</sup> *Law Society of NSW Professional Standards Annual Report, 1999-2000*, Law Society of NSW at 11.

the apparent rate of complaints attracted by sole practitioners may be due to the nature of their clients, and their limited ability to resolve complaints through informal means.

10.3.5 While complaints are not always an indication that the practitioner is at fault, the pattern of complaints against solicitors who are sole practitioners appears to have ramifications for consumers. The report does not indicate how these ramifications are being addressed. The most recent annual report of the LSC, on the other hand, discusses the need for additional training to enable practitioners to improve their communication skills, practice management and understanding of their ethical commitments in order to improve client service<sup>21</sup>.

10.3.6 The introduction of voluntary membership of the Law Society and the Bar Association (as recommended by the Attorney General's Department in its National Competition Policy Review of the Act<sup>22</sup>) may have important ramifications, because not all practitioners will be members of the professional associations.

10.3.7 There is some indication of a level of dissatisfaction with the role of the LSC and the Council from complainants. The LSC Satisfaction Survey<sup>23</sup> (the Survey) contains data which suggests that many consumers who made complaints to the LSC were unhappy with the outcome of their complaint<sup>24</sup>. The Survey questioned both complainants and legal practitioners with regard to consumer disputes and investigations handled or conducted by the LSC and the Councils<sup>25</sup>.

10.3.8 Comments in the Survey indicate a perception on the part of complainants that the process for dealing with consumer complaints by the Councils or the LSC

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<sup>21</sup> The Office of the Legal Services Commissioner, *Annual Report 1999/2000* at 13. .

<sup>22</sup> New South Wales Attorney General's Department *National Competition Policy Review of the Legal Profession Act 1987 Report* November 1998.

<sup>23</sup> The Office of the Legal Services Commissioner, *LSC Satisfaction Survey 2000*.

<sup>24</sup> The Office of the Legal Services Commissioner, *LSC Satisfaction Survey 2000* at 22.

exists for legal practitioners, not consumers. A number of consumers interviewed for the Survey stated that they did not have enough face to face input or feedback from the LSC<sup>26</sup>. These concerns might be alleviated by the implementation of recommendations of Report 99, which would allow the LSC to order mediation in certain cases<sup>27</sup>.

10.3.9 In defence of these perceptions, the LSC notes in the Survey that it does not have the resources to regularly carry out face to face mediation<sup>28</sup> and that in the vast majority of cases, the LSC handles complaints through a series of letters and/or telephone calls. Further, the Survey results may be distorted by a number of factors, most notably that consumers may be dissatisfied with the system because of the outcome of a matter for reasons that do not relate to the conduct of the practitioner, or in the of a handling a complaint by the LSC or the Councils<sup>29</sup>.

10.3.10 Nevertheless the findings of the Survey suggest that greater accountability for the LSC in the conduct of its investigations may be warranted. A consumer group could be established as a reference body for the LSC, perhaps carrying out an initial review of the investigative work of the Councils or advising the LSC with regard to difficult decisions. The existence of such a mechanism has been advocated by some commentators:

*An effective independent regulator at the tip of the pyramid would not only have to have sufficient powers to hold the profession accountable, but would also be subject to the contestations of groups which represent the lay public or consumers so that the office is not 'captured' by the profession ... one of*

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<sup>25</sup> The Office of the Legal Services Commissioner, *LSC Satisfaction Survey 2000* at 8.

<sup>26</sup> See The Office of the Legal Services Commissioner, *LSC Satisfaction Survey 2000* at 21 which shows that many complainants seem to believe that the system favours legal practitioners above individuals. The Survey also shows, at 22, that only 8 of 2,910 complaints dealt with in 1999-2000 were mediated in face to face meetings between the parties.

<sup>27</sup> New South Wales Law Reform Commission *Complaints Against Lawyers: An Interim Report* Report 99, April 2001 at 109.

<sup>28</sup> The Office of the Legal Services Commissioner, *LSC Satisfaction Survey 2000*, at 22 where it is stated that only 8 of 2,910 complains finalised in 1999-2000 were resolved through facilitated meetings between the parties.

<sup>29</sup> The Office of the Legal Services Commissioner, *LSC Satisfaction Survey 2000* at 11-12.

*the most significant things government can do to reform the profession is to create opportunities for community and consumer groups to take part in legal profession regulation*<sup>30</sup>.

- 10.3.11 It is noted that lay members participate in the deliberations of the Councils.
- 10.3.12 It must also be noted that a similar survey does not appear to have been conducted by the Councils, however as discussed above, the Survey covered complaints dealt with by the LSC and those referred to the Councils. It is notable that over 60% of complaints dealt with by the Law Society Council were dismissed in 1999/00, on the basis that no unsatisfactory professional conduct or professional misconduct was identified<sup>31</sup>. From 1 July 1999 to 30 June 2000 the Bar Council dismissed approximately 68 %<sup>32</sup>. There is no suggestion that complaints are being improperly dismissed. However it is possible that some complainants may continue to feel aggrieved after their complaint has been investigated.
- 10.3.13 A further issue for consideration is the adequacy of information available concerning complaints against practitioners. Decisions of the Tribunal and the Supreme Court are publicly available on websites operated by the Attorney General's Department. The Bar Association's website has an outline of disciplinary and related decisions of courts or tribunals where an adverse finding has been made against a barrister from 1987 to the present, as well as links to other relevant sites. Some of these cases also involve solicitors, where the finding is relevant to the Bar. The Law Society's website has a link to the decisions of the Tribunal since 1998. The website of the LSC does not appear to have any links to decisions. However, the information which is publicly available is limited by the Act, which restricts

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<sup>30</sup> Christine Parker, *Just Lawyers: Regulation and Access to Justice* Oxford University Press, Oxford 1999 at 164.

<sup>31</sup> *Law Society of NSW Professional Standards Annual Report, 1999-2000*, Law Society of NSW at 17.

<sup>32</sup> See the NSW Bar Association *Annual Report 2000* at page 30 which shows that 66.07% of complaints dealt with by the Bar Council for the period 1 July 1999 to 30 June 2000 were dismissed pursuant to section 155(4) of the LPA and for the same period 1.79% were

the ability of the Councils or the LSC to publish information.<sup>33</sup> This means that information as to complaints which have been dismissed or where the practitioner has been reprimanded cannot be published. It might be considered that it would be unreasonable for details of all complaints to be published because the vast majority do not lead to any sanction being imposed on the practitioner. However, the establishment of a public register of complaints which brought about sanctions might assist in informing consumers of the performance of individual practitioners, when they choose a solicitor or barrister.

10.3.14 In relation to the investigation of conveyancers, the Department of Fair Trading has raised a number of concerns about the scheme. One of the concerns is the inappropriateness of treating the Director General of the DFT as one of the “Councils” for the purposes of the Legal Profession Act. The other concern is what the DFT perceives to be a lack of clarity about its role under the scheme in relation to the role of the LSC. According to the DFT, the lack of clarity has resulted in a system where there is confusion and uncertainty with respect to jurisdiction and process. It is noted that there is conflicting authority on whether conveyancers owe the same standard of care to clients as solicitors, although it has been suggested that the better view is that they do.<sup>34</sup> If this view is correct, it would add weight to arguments for conveyancers to be subject to the same disciplinary scheme as legal practitioners.

## Questions

- 4. Are changes to the respective roles of the Councils and the LSC required to protect consumer interests and the broader public interest?**

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dismissed pursuant to section 155(3)(b).

<sup>33</sup> Legal Profession Act, section 171P.

<sup>34</sup> See Roger Marshall, The Standard of Care Owed by a Licensed Conveyancer, *Law Society Journal*, Vol 39 No. 9 October 2001, at 35.

- 5. Does the system for dealing with consumer complaints strike the right balance between providing redress to consumers and ensuring the protection of professional standards?**
- 6. Is the current level of participation by non lawyers in the complaints and discipline scheme adequate? What should the level of participation be?**
- 7. Does the scheme include adequate mechanisms for monitoring the decisions and performance of the Councils and the Legal Services Commissioner?**
- 8. Does the scheme include adequate mechanisms for ensuring that the complaints and disciplinary process is an educative tool for the legal profession and the broader community?**
- 9. Would the formal separation of the investigative procedures for consumer disputes from those applying to conduct complaints, as in the Victorian model, enhance the scheme, or introduce undue rigidity?**
- 10. Should a public register of matters in which sanctions were imposed on legal practitioners be established? What information should be included on the register?**
- 11. Is it appropriate for licensed conveyancers to be subject to the scheme for complaints and discipline set out in Part 10?**