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The *Queensland Law Handbook* is a comprehensive plain-English legal resource designed to help you deal with your legal problems.

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COMMUNITY LEGAL CENTRE

## Complaints against Professionals

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## **INTRODUCTION**

Most professionals have codes of conduct, ethics and professional standards with which they are required to comply. Making a complaint can help a client or customer to resolve their problem or concern and may help the professional to provide a better service in the future.

The procedure of making and resolving complaints about professionals, such as doctors, engineers and accountants, differ for each profession and specific problems warrant expert advice.

Information about complaints against lawyers can be found in the Accessing Legal Assistance and Resolving Disputes chapter and against builders in the Buying, Selling and Building a Home chapter.

## **DESIRED OUTCOME FOR A COMPLAINT**

A person might wish to make a complaint if:

- the service was inadequate or different to what they expected
- the professional engaged in misconduct or acted in an unprofessional manner
- a professional caused damage to their property or person when undertaking their work
- in medical cases, a procedure caused unexpected side-effects.

A complainant should consider what outcome they wish to achieve. Possible outcomes include:

- receiving an apology or acknowledgement of a mistake
- having a problem or mistake fixed
- implementing change to prevent the same thing from happening to someone else
- receiving compensation.

Receiving compensation is generally only possible in the most serious cases and usually requires consulting a lawyer.

## **STEPS TO RESOLVING A COMPLAINT**

Depending on the nature of the complaint, and the outcome sought, there are various steps a complainant can take. It is usually best to start with the most informal and direct approach. Below are steps that could be taken to resolve a complaint:

- talking directly to the professional about your concerns
- making a complaint to the professional's direct employer about your concerns
- making a complaint to the relevant professional association (for example, the Australian Association of Social Workers)
- making a complaint to the regulatory board or Ombudsman relevant to that profession (for example, the Office of the Health Ombudsman)
- commencing legal proceedings (suing someone).

## Talking directly to the professional

Many complaints against professionals result from poor communication or misunderstandings.

Professionals sometimes fail to appreciate that their clients or patients do not share their expertise. A competent professional should explain their services and the likely results and risks in non-technical language that the client can understand.

Most organisations that handle complaints recommend or require (if appropriate) that the complainant first speaks directly to the professional about the concern.

The Office of the Health Ombudsman has resources to assist in talking to a provider about a complaint, and many of the suggestions are relevant to other professionals.

If this does not resolve the problem or is not an appropriate first step, a complaint can be lodged with the respective professional association or regulatory board.

## Making a complaint to the professional association

Professional associations usually:

- are established by professionals (who are members of that association) to regulate the conduct of their profession
- control the activities of their members and try to uphold the profession's public image
- set standards of ethical conduct for their members
- recommend the level of fees that should be charged for various services
- receive and investigate complaints about the conduct of their members and take disciplinary action, when appropriate
- attempt to settle complaints by discussion or negotiation, rather than by formal inquiry

- deal with less serious complaints concerning delay, discourtesy or excessive fees
- do not have the power to award compensation.

A complaint should generally be in writing and include as much detail as possible. If the professional organisation is unable to deal with the matter, it will normally notify the complainant and recommend alternative avenues for making the complaint.

If a complainant alleges that a professional is negligent, dishonest or unfit to practise in that profession, the association will usually refer the complaint to the regulatory board.

### Making a complaint to the regulatory board

- Regulatory boards usually:
  - are established by government
  - control the licensing, registration and practice of professionals
  - receive and investigate complaints about the conduct of the professionals in their industry
  - ensure that only people with sufficient training and good character, if applicable, are registered
  - take disciplinary action or pursue a prosecution where necessary
  - do not have the power to award compensation.

### Commencing legal proceedings (suing someone)

Not every complaint will give rise to the right to sue someone. Anyone contemplating legal proceedings should seek expert legal advice from a private lawyer, a community legal centre or Legal Aid Queensland about their chance of succeeding and the risks involved.

Legal proceedings are generally only worth pursuing if the complainant can show financial loss, damage to property or injury to health. Sometimes, a complaint will not be worth taking to court because the cost of the legal proceeding is more than the compensation that is likely to be obtained.

For a claim to be successful, it must be shown that the professional's conduct amounted to either a 'breach of contract' or 'negligence', or a contravention of a relevant legislative provision (for example, under the *Civil Liability Act 2003* (Qld)).

Whether someone can successfully sue a professional for breach of contract will depend upon the terms of the contract between the professional and the complainant, what happened and how much evidence can be provided.

A negligence case will generally require a high standard of evidence.

In some cases, it is possible to negotiate a settlement with the professional or their insurers without having to sue. There are some downsides to starting legal proceedings that mean it can be better to try to resolve the matter with the professional:

- court proceedings generally take a lot of time
- paying a lawyer can be expensive, and self-representing can be challenging
- there can be a risk of being ordered to pay the legal costs of the other party
- the outcome is outside the control of the parties
- proving a professional has been negligent requires a high level of evidence, and it can be difficult and expensive to get other professionals to provide this evidence.

Legal advice should also be obtained before signing any settlement agreement that discharges the professional from liability for their conduct.

## **PROFESSIONAL NEGLIGENCE**

The *Personal Injuries Proceedings Act 2002* (Qld) (Personal Injuries Act) applies to claims for personal injuries and requires a number of procedures to be complied with before starting legal proceedings. These include strict provisions as to:

- the notice of an intention to proceed, which must be supplied as soon as practicable after the closure of conciliation
- any information gathered for the purpose of conciliation and that it cannot be used in any subsequent legal action.

Strict time limits apply to personal injuries complaints including the requirement that a notice of claim be provided to the person who caused the injury within one month of a lawyer being engaged by the injured person (s 9(3)(b) Personal Injuries Act) (see also *Accidents and Injury chapter*).

Most professionals insure themselves against the risk of being found liable in negligence. Some ask their clients or patients to sign documents waiving their right to sue the professional for negligent conduct. Although the courts are reluctant to give effect to such documents, they should not be signed without first seeking legal advice.

A claim in professional negligence would need to prove:

- the professional owed the complainant a duty of care
- the professional did not behave the way in which a reasonably competent professional would have behaved in the circumstances
- the negligent conduct caused damage to the complainant
- the damage suffered is in a category for which the law allows compensation.

## **‘NO WIN, NO FEE’ LEGAL HELP**

If a person has a claim for compensation, particularly for a personal injury caused by medical negligence, a law firm may agree to represent them on a ‘speculative’ or ‘no win, no fee’ basis.

This means that the law firm will not charge for its professional fees unless and until compensation is recovered. A law firm will only take the matter on this basis if a claimant has reasonable prospects of receiving an amount of compensation that would justify the cost of the legal action. The claimant may still have to pay for disbursements such as medical reports and faces the risk of being ordered to pay the other party’s legal costs.

Law firms that practise in personal injuries are listed on the Queensland Law Society website.

## **COMPLAINTS ABOUT HEALTH CARE**

When people are dissatisfied with their healthcare, it can have a profound emotional and physical impact on their lives. The healthcare system has a structured system for handling complaints, so people should be encouraged to pursue and resolve their complaints.

The Australian Commission on Safety and Quality in Health Care sets out consumers’ rights in terms of healthcare, which includes the right to:

- access (accessing services and treatment that meet your needs)
- safety (safe and high-quality health care in an environment where you feel safe)
- respect (be treated with dignity and respect and have your culture, identity, beliefs and choices respected)
- partnership (communicating and making decisions)
- information (including assistance to help you understand health information if you need it)

- privacy
- feedback (give and receive feedback).

## Making a complaint

Complaints about health practitioners should first be raised with the practitioner and their hospital, health facility or service to see if the issue can be resolved internally.

If the issue cannot be resolved, a complaint may be made to the Office of the Health Ombudsman (Health Ombudsman) (see more information below).

The Health Ombudsman will manage the most serious complaints relating to the health, conduct and performance of health practitioners, and may refer other complaints to Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards.

AHPRA regulates 16 health professions with nationally consistent laws and supports the governing board of each profession.

Where a complaint about the provision of health care also involves personal injuries that might eventuate in legal action, strict time limits apply to the notification of an intention to make a claim (see the *Accidents and Injury* chapter). If these time limits are not met, the complainant may lose the right to sue the practitioner.

## Complaints to the Health Ombudsman

The Health Ombudsman can take a complaint about any health service provided by any health service provider anywhere in Queensland. Complaints should be made within two years of when the matter arose and the complainant became aware of the matter. If not made within this time, the Health Ombudsman may decide to take no further action on the complaint.

Complaints can be made about unregistered practitioners and about organisations such as hospitals. The Health Ombudsman requires complainants to first seek a resolution with the health service provider (if it is reasonable in the circumstances). More information about the complaints process can be found on the Health Ombudsman's website.

Complaints to the Health Ombudsman can be about any health service provided and could include:

- diagnosis, treatment or care
- sharing information without permission
- inappropriate behaviour by a provider

- the quality of the health service provided
- how a provider has dealt with a complaint.

Anyone can make a complaint including:

- a patient who received a health service
- a parent or guardian of a patient
- a relative, friend or representative chosen by the patient
- a health service provider
- any other concerned person.

The Health Ombudsman can decide what action to take in relation to a complaint. It can:

- assess a complaint
- facilitate local resolution of the complaint (usually within 30 days)
- take immediate action to protect the safety of the public such as:
  - suspending or imposing conditions on a registered health practitioner
  - for other health practitioners, prohibiting or imposing restrictions on their practice
- decide a complaint is more complex and refer it for further assessment (usually within 30 days)
- investigate the complaint
- refer the complaint for possible proceedings in QCAT
- conciliate the complaint (usually within six months)
- refer a complaint to AHPRA
- conduct an inquiry.

The Health Ombudsman can decide to take no further action if:

- the complaint lacks substance, is frivolous, vexatious, trivial or not made in good faith
- the complainant fails to cooperate with the Health Ombudsman or provide information requested
- it is more than two years since the matter arose and the complainant became aware of the matter.

If a complainant is unhappy with the decision of the Health Ombudsman, they should first contact them to discuss their concerns.

If a complainant remains unhappy with the decision, they may seek an external review by the Queensland Ombudsman. An external review only investigates the administrative actions and decisions of the Health Ombudsman when handling the complaint. They will not conduct a fresh investigation of the complaint itself.

A request for an external review must be made to the Queensland Ombudsman within one year of the notice of the Health Ombudsman decision, unless there are special circumstances.

Refer to the Health Ombudsman Frequently asked questions webpage.

### Access to health records

Patients may seek access to their medical records. A patient does not have a right to know the contents of clinical notes made by a medical practitioner, but could negotiate for access to them.

For more information about accessing your health records, please see the chapter on *Right to Information and Freedom of Information of this Handbook*.

## COMPLAINTS INVOLVING THE PROPERTY, MOTOR AND DEBT COLLECTION INDUSTRIES

If a consumer has a complaint against a professional from the property, motor and debt collection industries, they should first try to resolve the complaint directly with the professional.

If speaking with the professional and their employer does not resolve the issue, there are various consumer protection agencies and industry organisations in place that consumers could approach. In certain circumstances, complaints can be made to the Office of Fair Trading (OFT). If the consumer has lost money because of something the professional did or failed to do, they can lodge a claim for compensation with the OFT, which manages a claim fund in relation to:

- real estate agents
- resident letting agents
- auctioneers and chattel auctioneers
- motor dealers that sell used vehicles on consignment
- debt collectors and process servers.

The types of claims covered by the claim fund include (among other things):

- making a false or misrepresentative claim
- not returning a deposit if the consumer cancels during a cooling-off period or if the professional did not fulfil their obligations
- not guaranteeing clear title on a vehicle sold
- not forwarding residential bond money to the Residential Tenancies Authority.

Certain types of claims must go straight to QCAT, including where a motor dealer does not honour the statutory warranty on a used vehicle.

The OFT has more information about the claims that it can deal with. Consumers should not leave it too long to make a claim, as time limits apply.

QCAT can:

- Consider proceedings on referral from the OFT regarding any allegations of professional misconduct (n.b. only the OFT can refer these matters).
- Conduct reviews of particular decisions, including some decisions in relation to a claim against the Claim Fund (n.b. you must have a 'reviewable decision' in order to make an application to QCAT).

## **COMPLAINTS AGAINST BUSINESS**

The OFT can take complaints from consumers about businesses. Part of the role of the OFT is to give information to consumers and businesses, and to help resolve issues in the workplace. A complaint about a professional could be made to the OFT if a professional is operating a business and the complaint relates to the business practices of the professional, rather than their professional work.

The OFT may investigate the complaint, refer it to another agency, conciliate the complaint, or return the complaint to the party to resolve. It cannot provide compensation or force a business to provide a refund or other remedy.

Consumers should review the OFT's website for further information.

## LEGAL NOTICES

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