



## 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, dentists, engineers and accountants, differs 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:

- a professional charged them too much
- the service was different to what they expected
- the professional engaged in misconduct or acted in an unprofessional manner
- the service did not work as expected
- a professional caused damage to their property or person
- 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
- preventing 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
- making a complaint to the professional association
- making a complaint to the regulatory board
- seeking review of the complaint in the Queensland Civil and Administrative Tribunal (available for some professions)

- commencing legal proceedings (suing someone).

Some complaints would not warrant being pursued through to court proceedings, even if the complainant is unhappy with the result.

In most cases there are time limits, so complaints should be made promptly.

## Talking directly to the professional

Many complaints against professionals result from poor communication or misunderstandings.

Professional people sometimes fail to appreciate that their clients or patients do not share their expertise. A competent professional should explain, in non-technical language, their work and the likely results.

Speaking directly to the professional to request information and explanation may resolve the problem.

If not, 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 to regulate their own conduct
- control the activities of their members and preserve the good public image that most professions enjoy
- set standards of ethical conduct to which their members are expected to conform
- 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 complaint 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 their members
- 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.

## Seeking review of the complaint in the Queensland Civil and Administrative Tribunal

- In certain professions, a complaint can be reviewed by the Queensland Civil and Administrative Tribunal (QCAT) if:
  - a complainant is unhappy with a disciplinary decision made by a board or association or
  - the professional involved does not abide by the organisation's decision, the body can apply directly to QCAT for further disciplinary proceedings or enforce its decision.
- Also, if a complaint is serious, a professional association or regulatory board can refer the complaint directly to QCAT.

Decisions of QCAT can generally be appealed to the QCAT Appeals Tribunal and then to the Court of Appeal.

## 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 about their chance of succeeding.

Legal proceedings should only be considered when 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'.

A breach of contract case will depend upon the terms of the contract.

To prove that conduct is negligence, other professionals in the same field will have to give evidence about how the work fell short of the standard of most professionals. It may be difficult to find an expert who is prepared to give the necessary evidence. It can also be expensive to have expert reports prepared.

In some cases, it is possible to negotiate a settlement with the professional's insurers without having to sue.

Legal advice should also be obtained before signing settlement documents that discharge 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 notice of an intention to proceed and must be supplied as soon as practicable after the closure of conciliation. Any information gathered for the purpose of conciliation 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 claiming in professional negligence would need to prove:

- the professional did not behave the way in which a reasonably competent professional would have behaved in the circumstances and
- the negligent conduct caused damage to the complainant and
- 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 which practise in personal injuries are listed on the Queensland Law Society website.

## Complaints about Health Care

The Australian Charter of Healthcare Rights sets out consumers’ rights in terms of healthcare, which include the right to access safe and high-quality care, respect, communication, participation, privacy and the right to comment on the care received.

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 Office of the Health Ombudsman provides guidance for talking to health service providers before making a complaint.

## Making a complaint

In Queensland, all complaints about health practitioners should be made to the Office of the Health Ombudsman. The other important organisation is the Australian Health Practitioner Regulation Agency (AHPRA), which regulates 14 health professions with nationally consistent laws and supports the governing board of each profession, whose role is to protect the public and set standards of professional conduct.

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 AHPRA and the national boards.

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 can be made about unregistered practitioners and about organisations such as hospitals.

More information about the complaints process can be found on the Health Ombudsman's website. It lists that complaints may be about:

- 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.

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
- take immediate action
- investigate the complaint
- refer the complaint for possible referral to the Queensland Civil and Administrative Tribunal
- conciliate the complaint
- carry out an inquiry.

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

- the complaint is frivolous, vexatious, trivial or not made in good faith

- the complaint lacks substance
- 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.

## 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. Patients have a level of ownership over X-rays they have paid for directly.

## 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 the consumer has lost money because of something the professional did or failed to do, they can lodge a claim for compensation with the Office of Fair Trading, 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.

The Office of Fair Trading will deal with simple or straightforward claims, and will refer more complex claims to the Queensland Civil and Administrative Tribunal (QCAT). 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 Office of Fair Trading has more information about the claims that it can deal with.

## Complaints against Business

The Office of Fair Trading can take complaints against businesses. If a professional is operating a business, and if the relevant professional organisation does not satisfactorily deal with a complaint, or

the complaint relates to the business practices of the professional, the complainant may make a complaint to the Office of Fair Trading.

# Legal Notices

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