

Submission No. 31⑤
Received 21/01/2008
Law Reform Committee

Legal Services COMMISSIONER

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17 January 2007

The Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
East Melbourne VIC 3002

To the Executive Officer

Alternative Dispute Resolution

I refer to my letter dated 4 December 2007, and to the submission enclosed with it.

The submission was directed at the dispute resolution service provided by my office when it receives a civil complaint involving a civil dispute between a lawyer and client. I understand that the Law Reform Committee is also interested in hearing about the power of my office to receive complaints about lawyers acting as mediators. Accordingly, I enclose a supplementary submission for the Committee's consideration.

If you have any queries or comments about this matter, please contact me or Caroline Morgan (Senior Policy Officer).

Yours faithfully



Victoria Marles
Legal Services Commissioner

Supplementary Submission – Alternative Dispute Resolution

The Legal Services Commissioner is a provider of ADR (see main submission). This occurs through the receipt and handling of civil complaints that involve civil disputes.

The Legal Services Commissioner may also receive disciplinary complaints about lawyers, this includes lawyers who provide mediation services. A disciplinary complaint is a complaint about the conduct of a lawyer to the extent that the conduct may amount to unsatisfactory professional conduct or professional misconduct. That said the Legal Services Commissioner does not receive many complaints about lawyers in their capacity as mediators. The reason for this is that generally disciplinary issues arise in the context of the lawyer/client relationship rather than in relation to third party service providers (eg mediators and costs consultants).

The role of the Legal Services Commissioner with respect to disciplinary complaints is to investigate them. Following an investigation a determination must be made as to whether the Victorian Civil and Administrative Tribunal is likely to find the practitioner guilty of a disciplinary breach. If so, there are a number of options open, including applying to the Tribunal for an order against the practitioner. We have not located any reported cases involving a mediator and allegations of a disciplinary breach.