

Legal Ethics and Professional Responsibility

Regulation

Conduct, Complaint and Discipline

Professional misconduct is a common law concept – that is, something done by a lawyer which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency *Allinson v General Council of Medical Education and Registration*; s 296 Uniform Law

- Lying to or otherwise misleading the court *Re Davis*
- Improperly influencing a witness *Kennedy v Law Society of NSW*
- Gross negligence *Re Mayes and Legal Practitioners Act*
- Conviction for a serious crime *Ziems v Prothonotary of the Supreme Court of NSW*
- Failure to lodge income tax returns over a lengthy period of time *NSW Bar Association v Cummins*
- Specific conduct prescribed under legislation and regulation, such as defalcation of trust account, failure to properly maintain trust accounts, breach of professional conduct rules *Council of the Law Society of NSW v Martin; Legal Services Commissioner v O'Donnell*
- Conduct occurring outside of legal practice, which might bring the profession into disrepute *Re Foster*
- Overcharging *Legal Services Commissioner v Bechara*

Unsatisfactory professional conduct is a concept created by legislation to cover more specific instances of conduct involving failure to meet a reasonable standard of competence and diligence s 297 Uniform Law

Compulsory disclosure of conduct – conduct of others

Uniform Law 154(1) – irregularity in any of that law practice's trust accounts or trust ledger accounts, fail to give written notice of the irregularity to the designated local regulatory authority as soon as becoming aware of it

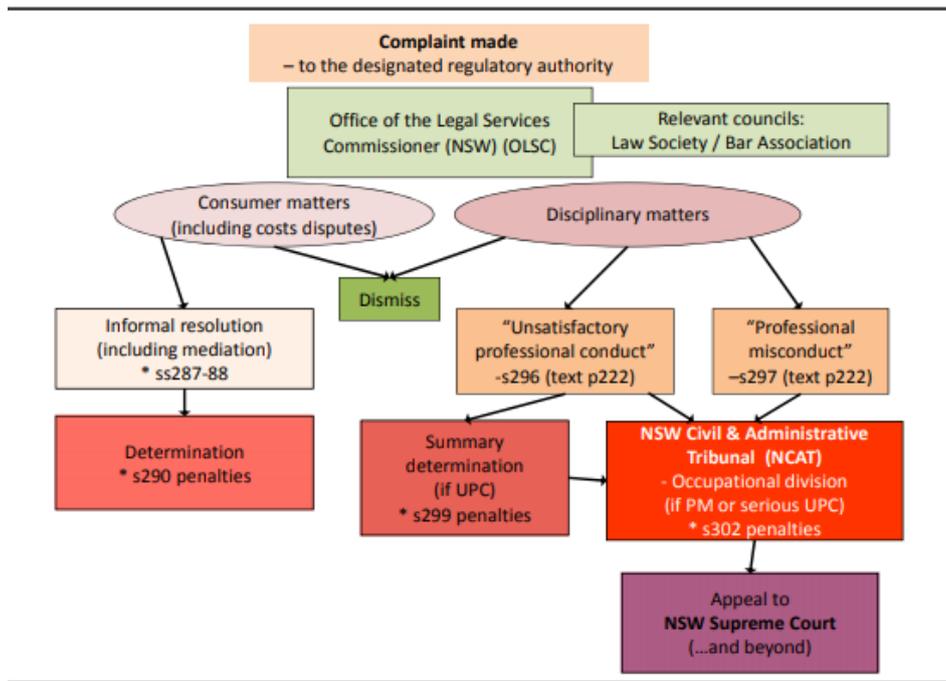
Uniform Law 152(2) – fail to notify the relevant authority if in connection with the receipt, recording or disbursement of any trust money received by another law practice

Uniform Conduct Rules (Solicitors) r 32.1 – prohibit a solicitor from making allegations of UPC or PM against another solicitor unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it

Complaints and disciplinary processes

Complaints are primarily made in the first instance to Office of the Legal Services Commissioner (NSW)

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Uniform Law s 272

- ➔ Costs disputes – 60 days after cost become payable or 30 days after request for itemised bill complied with **s 272(3)** but subject to extensions if made within 4 months of that period and fair and just and proceedings to recover not commenced **s 272(2)**
- ➔ Other complaints – within 3 years of alleged conduct **s 272(1)** subject to extension if just and fair to deal with it or it involves professional misconduct and in public interest

Consumer matter **s 269 Uniform Law**

- ➔ Mediation **s 287, 288** – must attempt resolve informally, may require parties to mediate
- ➔ Includes 'costs disputes' (\$100,000 total or \$10,000 dispute limitation **s 291**)

Discipline matters **s 270 Uniform Law**

- ➔ PM
- ➔ UPC
- ➔ **Clyne v NSW Bar Association**: In the one class stand those rules which are mainly conventional in character. They are designed primarily to regulate the conduct of members of the profession in their relations with one another. A breach of any of these rules is treated seriously, but would not warrant disbarment - at least unless it were shown to be part of a deliberate and persistent system of conduct. Rules of the other class are not merely conventional in character. They are fundamental. They are, for the most part, not to be found in writing. It is not necessary that they should be reduced to writing, because they rest essentially on nothing more and nothing less than a generally accepted standard of common decency and common fairness.

Uniform Law s 289(h), (i) – Failure by a lawyer to respond to a complaint, however ill-founded or unjustified the complainant may be, or to attend a mediation, or to obey directions or orders of the investigating body or respond to notices from that body during the complaint investigation process may itself constitute PM