

Our ref:LSC:CNM:71001907 & 71001908

8 November 2005

Private & Confidential

Mr Russell Mathews
254 Hawken Drive
ST LUCIA QLD 4067

Dear Mr Mathews

COMPLAINT ABOUT JOANNE WHITING & WAYNE TOLTON

Thank you for your complaint received by this office on 19 October 2005.

As you may be aware, the new regulatory scheme under the *Legal Profession Act 2004* (“**the Act**”) enables my office to investigate “complaints” about legal practitioners. In particular, I may investigate complaints of “professional misconduct” or “unsatisfactory professional conduct”.

It is only in respect of conduct which falls within either of these statutory descriptions by a legal practitioner that I have any power to consider whether disciplinary action should be taken.

You have raised a number concerns about the advice provided by Mr Tolton to Ms Whiting for the Brisbane City Council (**BCC**). You alleged that this advice was used by the BCC to deny you ‘Due Process’ and a ‘Right to be Heard’. In particular, you have raised concerns that Mr Tolton:

- May not have received written instructions to prepare the advice;
- Provided an ambiguous advice;
- Incorrectly interpreted sections 200 and 209 of the *Health Regulation 1996* (“**the Regulation**”); and
- Failed to consider cases on the common law right of entry in preparing his advice.

In regards to your complaint in relation to Ms Whiting I understand that you allege that she misinterpreted Mr Tolton’s advice to mean that the BCC could enter your premises without obtaining your consent.

After considering this matter carefully I regret to advise you that I am not able to deal with your complaint against either Mr Tolton or Ms Whiting. Whilst I acknowledge that the matters which are the subject of your complaint are of great concern to you they are not matters in respect of which it is appropriate for me to intervene or to take disciplinary action. Let me explain why.