

**LEGAL PRACTITIONERS COMPLAINTS COMMITTEE  
WESTERN AUSTRALIA**

**ANNUAL REPORT  
1 JULY 2005 TO 30 JUNE 2006**

**2ND FLOOR  
COLONIAL BUILDING  
55 ST GEORGES TERRACE  
PERTH WA 6000**

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**ANNUAL REPORT**  
**OF THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE**  
**FOR THE YEAR ENDED 30 JUNE 2006**

**A. Chairman's Report**

Each year the Committee considers a significant number of complaints at its fortnightly meetings. Although a quorum for a meeting is two legal members and one community representative, usually at least four or five members attend the meetings, so that a range of experience is brought to the Committee's deliberations. The legal members perform this work voluntarily - these members include senior counsel and other senior members of the profession. The community representatives bring a different and invaluable perspective to the Committee's deliberations. I express my thanks to all members for their hard work on the Committee during the year.

The Committee is a stakeholder in the development of a national legal practice and is keen to contribute to the development of a national regulatory and registration regime for the legal profession. It has participated in the setting up of a national information exchange protocol of legal regulators and is a signatory to the protocol.

In March this year the Committee provided submissions to the Attorney General on the draft national legal profession model laws, insofar as they affect Western Australia, and it has advised the Attorney that it would welcome the opportunity to make further submissions when the draft amendments to the Legal Practice Act, to take up the model laws, are available for comment. The Committee fully supports the setting up of a national register of all disciplinary decisions in Australia which can be accessed by both the regulators and the public, and it is hoped that this will occur in the very near future. There is also a need for a national practice certificate register which can be accessed by all.

With the forthcoming amendments to the Legal Practice Act, and the increasing workload of the Committee, it is timely to review the operations of the Committee and I will be meeting with the Deputy Chairperson of the Committee, Mr Ken Martin QC, and the Law Complaints Officer, Ms Diane Howell, to discuss how the review of the Committee can best proceed and what matters the review could usefully include.

Finally, I express my thanks to the Law Complaints Officer and her staff for their considerable assistance to the Committee during the year. It has been a very busy but successful year due to the outstanding efforts of Ms Howell and her staff.



C L Zelestis QC  
Chairperson  
December 2006

## **B. Report from the Law Complaints Officer**

I have reported elsewhere in this report on the workload of the Committee's staff, and the Committee – this is evidenced by the number of matters determined in the State Administrative Tribunal during the reporting year (61) and the number of Applications lodged in that Tribunal (38). The Tribunal is dealing with the Applications expeditiously. Although the number of complaints has not increased in recent times, there appears overall to have been an increase in the more substantive complaints which require careful consideration. This takes time and resources. I would like to express my sincere thanks to both the professional and support staff for their hard work in managing a difficult workload during the reporting period. On a more positive note, since the end of the reporting period there has been a welcome increase in the Committee's staff which will significantly assist with the workload.

My thanks also to the Chairperson Mr C L Zelestis QC and the Deputy Chairperson Mr K J Martin QC, who always make themselves available, usually at very short notice, to assist with urgent conduct concerns, and to the other members of the Committee who considered a significant number of matters this year, in the interests of the public and professional standards.

With the increase in the Committee's staff, I would like to focus some attention on the role the Committee can play in educating the profession so as to reduce the overall number and seriousness of complaints. This was a matter of considerable discussion at the Australian Conference of Regulatory Officers this year. If the Committee can target its education towards those sectors which produce the greatest volume of complaints, it may help to reduce the types of conduct which lead to complaints. Although the Committee's staff may have some capacity to undertake a limited educational role of this nature in the forthcoming year, I believe it would be beneficial for a full time education officer to be appointed to the Committee's staff.

I am pleased to report that the Committee is actively working with the regulatory bodies of other jurisdictions in Australia to assist in the preparation of papers dealing with particular disciplinary issues which we all encounter. Such sharing of information is of great assistance and will help to ensure the uniformity of approach in what is becoming a national profession.

Finally, while I stress that the primary objective of the disciplinary function is, and will always be, to protect the public interest, nonetheless it remains a primary focus of staff to assist in ensuring the highest levels of confidence in the profession and mutual trust between the profession and the wider community.

Diane Howell  
Law Complaints Officer  
December 2006

## C. The Committee

### ROLE

The role of the Committee is to promote and protect the rights of legal services consumers by effectively and efficiently:

- a) supervising the conduct of practitioners and the practice of the law;
- b) investigating complaints against practitioners;
- c) investigating the conduct of practitioners or matters relating to legal practice in the absence of complaint where there is possible unsatisfactory conduct;
- d) initiating disciplinary proceedings when it considers it appropriate to do so; and
- e) making recommendations in respect of legislation which may affect the functions of the Committee.

The Committee is established under the Legal Practice Act 2003 (*“the Act”*), which came into effect on 1 January 2004, replacing the Legal Practitioners Act 1893 (*“the old Act”*).

The Committee’s functions under Section 164 of the Act are:

- (a) to supervise the conduct of legal practitioners and the practice of the law;
- (b) to receive and enquire into complaints from the Attorney General, the Legal Practice Board (*“the Board”*), the Law Society of Western Australia, any practitioner or any other person who has a direct personal interest in the matters alleged in the complaint;
- (c) to investigate of its own volition, whether the Committee has received a complaint or not, any conduct on the part of a practitioner or matters relating to legal practice for the purpose of determining whether it may constitute unsatisfactory conduct;
- (d) where appropriate, to conciliate complaints;
- (e) if the practitioner consents, to exercise its summary professional disciplinary jurisdiction;
- (f) to commence disciplinary proceedings against practitioners before the State Administrative Tribunal (*“SAT”*) or related proceedings before the Supreme Court of Western Australia;
- (g) to supervise and direct the functions of the Law Complaints Officer (a practitioner appointed by the Board to assist the Committee); and
- (h) to make recommendations in respect of the Act insofar as they affect the functions of the Committee.

The Committee's functions remain similar to those which applied under the old Act, except that the purpose of enquiring into complaints and other conduct issues is to determine whether a practitioner's conduct may constitute "*unsatisfactory conduct*", rather than whether conduct may constitute unprofessional or illegal conduct or neglect or undue delay in the course of the practice of the law, as was the case under Section 25 of the old Act.

Unsatisfactory conduct is defined in Section 3 of the Act to include:

- (a) unprofessional conduct;
- (b) illegal conduct;
- (c) neglect or undue delay in the course of legal practice;
- (d) a contravention of the Act, the regulations or the rules; and
- (e) conduct occurring in connection with legal practice that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

The substantive law as at the date of the conduct in question governs whether or not a practitioner is in breach of his professional obligations – the provisions of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 (WA) and Sections 36 and 37 of the Interpretation Act refer. Hence, the old Act applies to conduct occurring before 1 January 2004.

## ORGANISATIONAL STRUCTURE

The Committee is, under Section 3 of the Act, one of four regulatory authorities in this State. The others are the Board, the Supreme Court and the SAT.

Its accommodation is provided by the Government but it is otherwise funded by the Board. The Committee accounts for approximately one third of the Board's annual budget.

Section 163 of the Act requires that its members consist of:

- (a) a Chairperson and not less than six other practitioners appointed by the Board from amongst its membership; and
- (b) not less than two other persons as representatives of the community, none of whom shall be a person who is or has been a practitioner. Community representatives are appointed by the Attorney General after consultation with the Minister responsible for consumer affairs.

Mr C L Zelestis QC and Mr K J Martin QC continued as the Chairperson and Deputy Chairperson of the Committee respectively.

Other practitioners who were members of the Committee were:

Mr R E Birmingham QC (until 5 April 2006), Mr K R Wilson SC (from 7 June 2006), Mr E M Corboy SC, Mr S D Hall SC, Mr M T Ritter SC (until 10 October 2005), Ms T D Sweeney SC (from 7 to 22 June 2006), Mr T H Sharp (until 5 April 2006), Mr J R B Ley (from 7 June 2006), Mr J G Syminton, Ms F B Walter, Mr B K Davies (from 7 June 2006), Ms R J Lee and Ms S M Schlink.

The community representatives were Ms J Dudley, Mrs R V Kean (until 22 January 2006) and Mrs D A English (from 23 January 2006 until 19 April 2006). The deputy community representatives were Ms G J Walker, Mr K G Langdon (until 22 January 2006) and Mr J Hunter (from 23 January 2006).

The community representatives may report independently to the Attorney General on any aspect of a complaint or other conduct enquiry or the rules, the activities of the Law Complaints Officer or the Committee. At least one community representative must be present at each Committee meeting in order to constitute a quorum.

The Committee sits as two divisions in order to share the workload. Each division meets monthly to consider complaints and other enquiries into conduct that are referred to it.

Although the legal members of the Committee are appointed by the Board, the Committee is a statutory body having statutory functions which are independent of the Board.

Section 167 of the Act establishes an office of Law Complaints Officer. It provides that the Board must appoint to the office of Law Complaints Officer a legal practitioner with experience in the conduct of a legal practice. The Law Complaints Officer may, subject to the directions of the Committee, exercise the functions of the Committee, other than the exercise of its summary professional disciplinary jurisdiction. The Law Complaints Officer is a statutory office with statutory powers and acts under the general supervision of the Committee. The Law Complaints Officer reports to the Committee on professional matters, and to the Committee and Board on administrative matters. Ms Diane Howell is the Law Complaints Officer.

## STAFF

The Law Complaints Officer was assisted by several practitioners employed by the Board. The full time practitioners were Ms C F M Coombs, Mr D Peterson, Ms K L Whitney, Ms B Chandran, Ms K Somerville-Brown (until March 2006) and Ms P E Le Miere (from September 2005). Part time practitioners were Ms G McCahon, Ms G L Roberts, Ms R Tapper, Ms K Williams (on leave from August 2005), Ms K Shannon (from January 2006), Ms A Kennedy (from October 2005) and Mr P R Jordan (from March 2006). Six support staff were also employed in the Law Complaints Officer's office. The Board's Senior Trust Account Inspector is also based at the Committee's office and performs work for each of the Committee and the Board.

All staff are encouraged to attend courses and undergo training with a view to enhancing work skills and professional knowledge.

## MEETINGS

Throughout the period under review the Committee met on 26 occasions.

### **D. Significant Issues and Developments**

#### *Accommodation and Staff*

The most difficult issue for the Committee during the reporting period was the need for additional staff to address the backlog of complaints and meet current needs, which was raised in last years report. The Committee must be adequately resourced if it is to carry out its statutory functions in the public interest. The Board was sympathetic to the Committee's needs, and agreed to fund the employment of further Legal Officers, however additional office space was required before this could occur. It was reported last year that in October 2005 the Government agreed to meet the rental cost of the additional office space that had been requested. However, this space did not become available until 1 June 2006 and it required partitioning and refurbishment, so it was not possible to engage additional staff until after the reporting period, in October and November 2006. This created pressures on the current staff, exacerbated by the backlog of Tribunal matters which had been transferred by the LPDT to the SAT when the latter took over the functions of the former in January 2005. The staff, through much hard work, coped with the workload of the SAT matters – the schedules at the end of the report list some 61 disciplinary matters which the SAT concluded during the reporting period.

With the additional three Legal Officers (one of whom is part time) recently employed, the Law Complaints Officer will be directing efforts to reduce further the backlog of the SAT matters and also to reduce the backlog of current complaints. The public interest requires that complaints be lodged and dealt with as expeditiously as possible.

#### *Education*

The role of the Committee in reducing causes for complaint is a key element of its protective and supervisory roles. There is a need for a research and education officer to extract relevant data from the complaints received and assist in establishing and implementing an education strategy, directed at promoting compliance and high ethical standards amongst the profession, and providing information to consumers of legal services, with the aim of reducing causes for complaint. The Committee has sought funding from the Board for this purpose.

The work commitments of the Committee's staff, and the lack of an education officer, precluded the development and implementation of an overall education strategy. However, during the reporting year its Legal Officers provided input into the Articles Training Program by providing ethical scenarios for inclusion in its program, and talks to each stream of articulated clerks. One staff member contributed to Law Week by giving a school lecture. The Committee caused two articles to be published in the Law Society of WA magazine, one on matters the profession should bear in mind when proposing to write on professional letterhead in respect of personal matters and another on the



responsibilities of a principal of an articulated clerk. The Committee has also suggested that the Law Society, which formulates the Professional Conduct Rules, consider amending those rules to address the conduct issue of practitioners forming sexual relationships with clients – this is the subject of current discussions with the Society.

### *Data System*

There is an urgent need for an integrated electronic complaints data system, to allow easy access to data for scheduled and ad hoc reports, to assist in educational strategies and to track complaint files. The Board has advised that it has engaged consultants to upgrade the Board's system and the Committee's system, but the consultant's reports have not yet been made available.

### *National Model Laws*

The Committee has been advised that it is intended that the WA Parliament will introduce a Bill, modeled on the National Model Bill, in March 2007. The Committee has made preliminary submissions on the National Bill and will consider the WA Bill with a view to making submissions on it. It is not known at this stage what, if any, impact the amendments will have on the operations of the Committee.

## **E. The Complaints**

### INFORMAL ENQUIRIES OR COMPLAINTS

During the period under review the Law Complaints Officer's staff received complaints or enquiries by telephone or in person from approximately 1381 people, a decrease over the previous year. Of that total, 49 represented personal visits and the remaining 1332 represented telephone enquiries. Many callers telephoned on more than one occasion to discuss an ongoing matter of concern but only the initial telephone call is included in these statistics.

These figures include those enquiries that were precursors to formal complaints. Some were simply requests for information on how to make a complaint and how complaints are investigated. Many callers wished to discuss informally concerns in respect of the conduct of a legal matter on their behalf. It was possible to resolve several conduct concerns informally.

In those cases where the enquiry or complaint involved a possible conduct concern, or was not a matter that could be resolved by telephone, the caller was invited to make a written complaint or to make an appointment to see the Law Complaints Officer's staff to further discuss the matter.

## WRITTEN COMPLAINTS

### i) The number of complaints

The Committee received a total of 502 written complaints.

Most were initiated by a letter of complaint but some were initiated by a statement of complaint prepared by the Law Complaints Officer's staff following a telephone call or visit to the office.

In addition, the Law Complaints Officer or the Committee itself initiated an enquiry into 43 matters in the absence of a complaint being received. For the purpose of this report, these enquiries have been categorised as complaints by the Committee.

### ii) The Complainants

As may be expected, clients or former clients of practitioners formed the largest group of complainants.

Complaints were received from the following:

<b>Source of complaints</b>	
Client or former client	279
Other party to proceedings	138
Legal practitioner	27
Judiciary	5
Legal Practice Board	12
Other	41
Committee enquiry	43
<b>Total</b>	<b>545</b>

### iii) The types of complaints

Approximately 71% were complaints of unprofessional conduct, 13% were complaints of neglect and/or undue delay, 3% were complaints of illegal conduct, 3% were complaints of contravention of the Act and 6% were complaints of incompetence or lack of diligence.

Many complaints raised more than one conduct issue.

As was the case last year, family law attracted the most complaints. The areas of law in which the complaints arose were as follows:

<b>Areas of law</b>	
Commercial/Company law	29
Probate/Wills/Inheritance Act	38
Professional negligence	1
Leases/Mortgages/Franchises	12
Conveyancing	27
Criminal law	41
Employment/Industrial law	13
Immigration	3
Family/Defacto law	137
Personal injuries	77
Workers Compensation	25
Civil Litigation	105
Victims Compensation	3
Conduct in respect of legal practice	21
Other	25

In addition, 19 complaints were in respect of the conduct of legal practitioners outside legal practice.

The main areas of complaint were:

<b>Areas of complaint</b>		<b>Areas of complaint</b>	
Inadequate estimate of costs	13	Improperly terminating retainer	6
Overcharging/wrongful charging	134	Discourtesy	55
No costs disclosure	19	Disclosure of confidential information	15
Transfer costs from trust funds without authority	3	Communicating with a client of another solicitor	8
No Notice of taxation rights	5	Improper communication with witness	3
Failing/delay to account for moneys	27	Personal interest undisclosed	2
Failure/delay to provide detailed account	21	Undue pressure to settle	5
Failure/Delay tax costs	1	Incompetence	46
Failing to pay third party	12	Incompetence during trial	4
No client advice	11	Failing to comply with court directions	7
Other costs complaint	2	Failing to appear in court	4
Failure to carry out instructions	52	Bias of child representative	2
Act without/contrary to instructions	41	Conflict of interest	24
Failure to communicate/inform on progress	29	Advertising	9
Failure to transfer documents/file	12	Practising without certificate/ suspended	6
Liens	6	Conduct as employer – lack of supervision	10
Loss of documents	3	Conduct as employer – other	5
Not complying with undertaking	15	Irregularities in trust account dealings	7
Misleading client or court	46	Criminal conviction	5
Misleading other practitioner	10	Neglect	58
Misleading other	24	Delay	69
Alleging fraud	2	Negligence	41
Allowing client to make false statement in document	6	Lack of explanation as to rights before settlement	4
False statement in document by practitioner	11	Defalcation	1

Areas of complaint		Areas of complaint	
Making threatening demands	23	Threatening/bullying behaviour	5
Other breach of Act	11	Sexual relationship with client	2
Failing to pay tax	1	Other illegal behaviour	8
Failing to disclose information to other party	2	Other	28
Inadequate notice to witness	1	<b>TOTAL</b>	984
Seeking confidential information from third party	2		

The above shows that the areas of complaint attracting most complaints were overcharging or wrongful charging; neglect or delay; discourtesy; failure to carry out instructions or acting without or contrary to instructions; incompetence and misleading conduct.

#### iv) The Practitioners

##### Type of employment

Sole practitioners continue to be the largest category of practitioners complained of. Principals of sole practitioner firms received 37% of complaints.

Practitioners complained of by employment status	
Barrister	26
Employee in sole practitioners firm	27
Principal in sole practitioners firm	203
Employee in 2 partner firm	25
Partner in 2 partner firm	36
Employee in 3 to 10 partner firm	34
Partner in 3 to 10 partner firm	67
Employee in more than 10 partner firm	9
Partner in more than 10 partner firm	16
Employee other organisation	22
Consultant	5
Not practising	17
Struck off/suspended/deceased	4
Firm only	2
Not named/not known	8
Practitioner in incorporated practice	43
Interstate practitioner	1
<b>TOTAL</b>	545

Area of practice

An analysis of practitioners complained of by location of practice is as follows:

<b>Area of practice</b>	
CBD/West Perth	293
Suburbs	185
Country	43
Interstate/Overseas	11
Not named/Not known	13
<b>Total</b>	<b>545</b>

Years in practice and age

The largest number of complaints or conduct enquiries were in respect of practitioners aged between 50 – 54, followed by those aged between 45 - 49, 40 - 44 and 55 - 59 respectively.

<b>Complaints by age of solicitor</b>	
20 – 24	3
25 – 29	28
30 – 34	45
35 – 39	55
40 – 44	81
45 – 49	89
50 – 54	92
55 – 59	72
60 – 64	52
65 – 69	11
70 – 75	2
Not known/Not applicable	15
<b>Total</b>	<b>545</b>

An analysis of the number of complaints received by reference to the years in practice, in Western Australia, of the practitioner is as follows.

<b>Complaints by years in practice</b>	
Under 5	83
5 – 9	82
10 – 14	95
15 – 19	68
20 – 24	73
25 – 29	79
30 – 34	30
35 – 39	17
Over 40	3
Not known/Not applicable	15
<b>Total</b>	<b>545</b>

### The number of practitioners complained of

Some 398 practitioners were the subject of one or more written complaints during the period under review, compared to 394 in the last reporting period. Of this total, 303 practitioners were the subject of one complaint, (309 in the previous year), 62 practitioners were the subject of two complaints (56 in the previous year) and 33 practitioners were the subject of three or more complaints (29 in the previous year).

The Board has reported that there were 4010 certificated or deemed certificated practitioners practising in WA during the reporting period. A table of the composition of this figure is at the end of this report. However, this figure does not include those interstate based practitioners practising in this State who are no longer required to take out a practice certificate in WA by reason of holding a home jurisdiction practice certificate.

## **F. The investigation of complaints**

### THE INVESTIGATION PROCESS

The complaint is normally sent to the practitioner who is asked to provide a written answer to the complainant's allegations. Practitioners have a professional responsibility to respond to the enquiries of the Committee and a failure to do so may result in disciplinary proceedings being commenced by the Committee against the practitioner.

The Committee's policy is to send a copy of the practitioner's answer to the complainant for further comment before the matter is considered by the Committee unless there are special reasons why this should not occur. Often, if the Committee concludes that there is good reason why a response should not be sent on, it will attempt to agree with the practitioner an edited version which can be.

Sometimes the Committee will need to obtain further information from the client or the practitioner concerned. In some cases it needs to examine the practitioner's file or to check court or other office records relevant to the complaint. On occasions enquiry will be made of a third party who may have information relevant to the complaint.

Pursuant to Section 198(1) of the Act the Committee and the Law Complaints Officer can summons a person to give evidence on oath; provide written information verified by statutory declaration; produce records; require a practitioner or firm of practitioners (or incorporated legal practice or multidisciplinary partnership) to allow the Law Complaints Officer or other nominated person to visit a legal practice and examine records including files and trust account records; make enquiry of practitioners' auditors and take possession of documents. The Act provides a penalty of \$5,000 for failing to comply with a requirement under Section 198(1).

Section 201 allows the Committee to require a practitioner to disclose to the Committee privileged information. This section also provides that privilege is not waived by providing the information when so required, and the information cannot be used in any other proceedings or be reported.

## WRITTEN COMPLAINTS RESOLVED

In some cases, the answer of the practitioner to the complaint resolved the matter for the complainant.

In a number of other cases the Law Complaints Officer's staff were able informally to conciliate the matter, by discussion with the parties or by facilitating communications between the practitioner and the complainant client. For example:

- The complainants were an elderly couple who consulted a practitioner at a small firm with respect to a problem they were having with their builder. They wished the practitioner to write a letter on their behalf. The complainants were not happy with the advice provided by the practitioner as they believed it went well beyond the specific issue they had instructed him to address and he had not provided them with the letter they sought. They complained that the practitioner had failed to act diligently and in a cost efficient manner and that he had unnecessarily prolonged his consultation with them. The complainants had paid their bill but were disappointed that they had not achieved that for which they had consulted the practitioner in the first place. The practitioner denied the matters of complaint, however, agreed to reimburse the complainant's costs. The complaint was resolved on this basis.
- The complainant was the client of the practitioner in a claim for damages for personal injuries suffered in a motor vehicle accident; it was a term of the practitioner's retainer that his solicitor and client costs would not exceed a given percentage of the compensation; the complainant asserted that the actual costs were to the order of twice the stated maximum percentage. One of the legal officers analysed the practitioner's bill of costs and was able to point out that on a proper reading of the same the practitioner had properly observed the limits as to costs and further that if the practitioner were to discharge counsel's fees and other disbursements his profit costs would be minimal. This explanation was given to the complainant and appeared to satisfy her concerns. It had not proved necessary to pass the complaint to the practitioner for a response.

## COMPLAINTS CONSIDERED BY THE COMMITTEE

Complaints not conciliated, or which indicated a possible breach of the Act or the old Act (as applicable), were, after investigation by the Law Complaints Officer's staff, referred to the Committee for consideration which dealt with them in one of the following ways.

The Committee considered 279 complaints and other conduct enquiries during the period under review, some of which had been received during the period under review and others received previously. Of these complaints, 37 complaints had earlier initially been considered by the Committee and deferred for further investigation or advice, or pending the conclusion of civil litigation in respect of the same matter, or pending taxation of an account.

i) Applications to the SAT

Where the Committee determines that a conduct matter should be referred to the SAT it resolves to issue a document called an Application against the practitioner concerned. That Application gives particulars of the unprofessional conduct, illegal conduct or neglect or undue delay under the old Act, or unsatisfactory conduct under the Act, as the case may be, that is alleged against the practitioner. The Application is filed at the Registry of the SAT and served on the practitioner, who is required to file a written answer to it. It is then listed for hearing. The Committee acts as the prosecutor when Applications are heard by the SAT and is required to prove the conduct matters alleged.

In respect of 28 complaints considered by it, the Committee resolved to issue a total of 38 Applications in respect of a total of 19 practitioners.

In respect of a further 7 matters considered by it, the Committee determined that an Application should issue against a practitioner but it had not been settled and approved by the Committee before the end of the period under review.

ii) Summary Professional Disciplinary Jurisdiction

Pursuant to Section 28A of the old Act and Section 177 of the Act the Committee has jurisdiction, with the consent of the practitioner concerned, itself to make a finding that a practitioner has been guilty of illegal conduct, unprofessional conduct or neglect or undue delay in the course of the practice of the law (under the old Act) or unsatisfactory conduct (under the Act), rather than issue an Application. Generally speaking, the Committee moves to exercise its own summary jurisdiction in cases of a lesser degree of seriousness.

It can order the practitioner to pay a fine not exceeding \$2,500 (\$500 under the old Act); reprimand the practitioner; order that the practitioner seek and implement advice in relation to the management and conduct of a legal practice; order that the practitioner reduce or refund any fees or disbursements or order that the practitioner pay part or all of the costs incurred or expenses (under the old Act) by either or both the complainant or the Committee in relation to the inquiry.

Adverse findings of the Committee form part of the practitioner's disciplinary record.

The Committee exercised its summary professional disciplinary jurisdiction in respect of 14 complaints considered by it. These were as follows:

- A practitioner was found guilty of neglect or undue delay in respect of a failure to comply, over an 18 month period, with a client's request that he submit his accounts to the Supreme Court for taxation. The Committee resolved to impose no penalty by reason of various mitigating circumstances.
- A practitioner was found not guilty of unsatisfactory conduct by neglect in the course of legal practice in respect of a failure to act on instructions to lodge an application for leave to appeal/stay execution against an order of the Building Disputes Tribunal within the time specified by Statute, alternatively a failure to



advise the clients that he was unable to deal with the matter. However, the Committee informally cautioned the practitioner in respect of the matter.

- A practitioner was found not guilty of unprofessional conduct in respect of an alleged failure to supervise his employees in permitting them to issue two summonses against a former client. However, the Committee informally cautioned the practitioner in respect of the matter.
- A practitioner was found guilty of undue delay in the course of the practice of the law in respect of instructions to prepare and finalise a transfer of land. The penalty imposed was a fine of \$500.
- A practitioner was found guilty of unprofessional conduct in that he had acted in a position where there was a conflict of interest between two parties to a transaction, yet he failed to identify that conflict or seek each party's informed consent to continue acting. The practitioner was reprimanded.
- A practitioner was found guilty of unsatisfactory conduct by neglect in the course of legal practice by failing to act on instructions from another solicitor to stamp and register certain mortgages and return them to the other solicitor, and in failing to inform the solicitor of progress on the matter; the practitioner was also found guilty of unsatisfactory conduct by unprofessional conduct in failing to respond to correspondence from the Committee and a notice issued by it under Section 198(1) of the Act, in a timely manner. The practitioner was reprimanded on each matter.
- A practitioner was found guilty of neglect and/or undue delay in the course of the practice of the law in relation to proceedings in respect of which he was instructed by his clients. He was also found guilty of unprofessional conduct by accepting and retaining instructions beyond his experience or competence in respect of those proceedings. The practitioner was reprimanded in relation to both matters and advised that the Committee would have taken a more serious view but for the mitigating factors of the practitioner's personal circumstances and the difficulties the practitioner had found himself in both with his clients and with counsel who had been briefed.
- A practitioner was found guilty of neglect in the course of legal practice in failing to provide advice to his client about the merits and costs of the client's claim and failing to obtain the client's instructions. The penalty imposed was a reprimand.
- A practitioner was found guilty of unprofessional conduct by signing a statement which was not correct. The Committee imposed a fine of \$500 and a reprimand.
- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct by failing to attend court on the relevant date until some five hours later, and for not advising the court that he would be delayed. The practitioner was fined \$500.
- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct by failing to attend a case management conference as directed by the

court and failing to respond to correspondence from the court. The practitioner was reprimanded.

- Two practitioners, partners in a law firm, were each found guilty of illegal conduct in failing to lodge taxation returns. The Committee noted that the conduct arose on the advice of their accountant that this was an appropriate course pending submissions by the accountant to the Commissioner of Taxation, that each continued to pay PAYG tax on the basis of their previous earnings and that all returns were subsequently lodged. Each practitioner was reprimanded.
- A practitioner was found guilty of unprofessional conduct in that, in circumstances where the termination of a retainer was likely to cause significant harm to her client's interests, the practitioner withdrew from representing the client without good cause and without taking reasonable care to avoid foreseeable harm to the client. The practitioner was reprimanded.

In a further 21 matters the Committee resolved to exercise its summary jurisdiction in respect of a complaint or conduct enquiry but the matter had not concluded during the period under review.

iii) *Determinations not to refer to the SAT or deal with summarily*

In respect of 115 complaints referred to it, the Committee decided to neither refer the matter of complaint to the SAT nor deal with it summarily. Section 181(1) of the Act provides that if the Committee decides to neither refer the matter of complaint to the SAT nor exercise its summary jurisdiction in respect of the matter, it must cause the Law Complaints Officer to advise the complainant and the practitioner concerned of that decision and provide particulars of its reasons for that decision.

In a further 39 cases, the Committee determined that there had been no apparent breach of the Act by the practitioner complained of, but it cautioned the practitioner about an aspect of his/her conduct or made a recommendation to the practitioner in respect of an aspect of the complaint. For example:

- The Committee expressed its serious concern to a practitioner who had lodged a caveat in respect of his outstanding fees in circumstances where he was erroneously of the view that he was legally entitled to do so. The practitioner was advised that the Committee would view very seriously any future complaint of a like nature.
- The Committee expressed its strong concerns to a senior practitioner in respect of a large account rendered by him to the Crown for appearing as a Crown witness. The Committee informed the practitioner that his conduct in charging his usual hourly rates for all preparatory work he chose to undertake for appearing as a witness was a significant error of professional judgment.
- One practitioner was reminded that a practitioner who agrees to take on legally aided matters should ensure that those matters are treated equally in priority to non legally aided matters.

- The Committee resolved not to take further, after enquiry, certain complaints in respect of the conduct of a workers compensation claim. However, the Committee made various recommendations to the practitioner in respect of the conduct of such matters, including the need for adequate file notes of telephone conversations and that if a conference is cancelled, he should ensure that the client is informed as soon as possible to minimise inconvenience to the client.
- Concerns were expressed to a practitioner in respect of apparent delays and failure to communicate in respect of a family law matter. It was recommended to the practitioner that he waive the remainder of his fees in the client matter, which he agreed to do.
- A client complained of overcharging. The Committee found that there was no apparent evidence of unprofessional conduct but expressed its concern to the practitioner that his letters to the client in respect of costs were not expressed in plain terms that could easily be understood by the ordinary layman, and that the meaning of the term party/party costs was not specifically explained to the client.
- The Committee advised a practitioner, in respect of a complaint concerning a settlement of property handled by the practitioner's articulated clerk, that there was evidence of inadequate supervision of the clerk in that he allowed her to act in a potential conflict of interest situation. The practitioner was advised that he should ensure that he scrutinises instructions for potential conflicts before accepting them.

Some 51 complaints considered by the Committee during the period under review were deferred for further investigation or advice, or pending the outcome of taxation or related litigation. A further 4 matters considered by the Committee were only for determination on procedural matters ancillary to the complaint.

iv) Outstanding complaints

At the commencement of the period under review the Committee and the Law Complaints Officer and her staff had approximately 450 complaints undetermined and still under investigation or deferred pending the outcome of related litigation. During the period 502 new complaints were received and enquired into. At the end of the period 465 complaints remained undetermined and still under investigation or deferred pending the outcome of related litigation. The result is that over the whole of the period under review a total of 487 complaints were finalised upon the conclusion of investigations and, if appropriate, a final determination of the complaint by the Committee. In addition, 70 conduct enquiries of the Committee had not concluded during the period under review.

These statistics include previously closed files which were reopened upon further information being received after the matter was concluded.

## **G. Tribunal and Court Proceedings**

### THE STATE ADMINISTRATIVE TRIBUNAL (SAT)

On 1 January 2005 the SAT took over the functions of the Legal Practitioners Disciplinary Tribunal (LPDT). The LPDT subsequently transferred files in respect of 61 matters to the SAT. Schedule A at the end of this Report lists those matters transferred by the LPDT to the SAT which were determined during the period under review – there were 36 such matters, including 2 withdrawn by the Committee during the reporting period. Schedule B lists those matters transferred by the LPDT to the SAT which were not determined, and hence remained outstanding, during the period under review – there are 18 such matters, including 11 which have not been listed for hearing pending the hearing of Reports to the Full Court on other disciplinary matters.

During the period under review the Committee filed with the SAT registry some 38 Applications against 19 practitioners.

Schedule C lists Applications filed in the SAT registry by the Committee which were determined during the period under review. There were 30 such Applications, including 3 withdrawn by the Committee before being heard.

At the end of the reporting period there were 31 Applications filed by the Committee in the SAT registry which had not been determined. Some of these have, of course, since been determined.

In summary, some 61 Applications were determined by the SAT during the reporting period.

Staff shortages, the backlog of current matters transferred by the LPDT to the SAT, together with the number of Applications filed by the Committee directly with the SAT, created significant workload problems for the Committee's staff during the reporting period. However, no problems have emerged from the operations of the SAT which is dealing with the Applications expeditiously. Its practice of directions hearings, and referral to mediation where appropriate, has facilitated the disposition of some matters which have been determined by consent orders prior to a defended hearing. The SAT decisions are published in full on its website which is of benefit to the public and the legal profession.

Section 17 of the Act requires that the Board provide information in respect of proceedings instituted in the SAT in its Annual Report and requires that the Law Complaints officer provide information to the Board as requested.

Of course, it is the Committee and not the Board which initiates proceedings against practitioners in respect of conduct matters pursuant to Sections 180 and 198 of the Act. The Board can itself initiate proceedings, of a different kind, under other sections of the Act, for example, Section 39(3) which provides that the Board can apply to SAT for a determination that a practitioner's practice certificate be suspended or cancelled.

The Committee and the Board have agreed on a protocol which provides that each body is to inform the other as soon as possible of the filing of Applications in the SAT.

## REPORTS TO THE FULL COURT

If a disciplinary matter is found proved, the SAT can decline to itself impose a penalty (the maximum penalty available to it is a two year period of suspension from practice) and instead transmit a Report to the Full Court and, pending the hearing of the report, suspend the practitioner from legal practice. The Full Court can strike the practitioner off the roll of practitioners, suspend the practitioner from practice for any period and make any order available to the SAT.

The SAT resolved to make a Report to the Full Court in respect of the following practitioners during the reporting period: Michael Murray Tomlinson, Clarence James Stevens, Rohan George Skea, Sze Ming Lim, Janet Walton and Patricia May Verscheur Edward. In each case, other than Mrs Edward, the practitioners were suspended from practice pending the hearing and determination of the Report by the Full Court. None of these Reports were determined during the period under review although some have since been determined. The court has been working to reduce the number of outstanding Reports.

Practitioners struck from the roll during the period under review (being the subject of Reports to the Full Court by the LPDT) were Hayden Wesley Dixon and Alessandro Palumbo.

The following practitioners remained, during the period under review, the subject of Reports to the Full Court by the LPDT which had not been determined: Robert James Lashansky, Vijitha Gamini De Alwis, Colin Robert McKerlie, David Ernest Eley and Andrew Cecil Thorpe. In each case the practitioner remains suspended from practice.

## APPEALS

An Application by Robert James Lashansky, to vacate an earlier decision of the Full Court to dismiss his appeal, was dismissed.

An Application by Leonard Gandini to extend the time to enter his appeal for hearing was dismissed and the Committee's application to dismiss that appeal for want of prosecution was granted.

An appeal filed by Andrew Cecil Thorpe during the previous reporting period was not heard during the period under review.

An appeal was filed by Patricia May Verscheur Edward from a SAT decision to make a Report to the Full Court. It was not determined during the reporting period but has since been determined.

## H. Information Statements

### FREEDOM OF INFORMATION ACT

Pursuant to Part 5 of the Freedom of Information Act 1992 the Committee is required to publish an Information Statement. The Attorney General has approved, in accordance with Section 96(1) of the said Act, publication of the statement by incorporation in an annual report. Accordingly the Information Statement of the Committee is at the end of this report. It has been prepared in accordance with the requirements of Section 94 of the said Act.

### STATE RECORDS ACT

Pursuant to Section 19 of the State Records Act every Government organisation must have a Recordkeeping Plan that has been approved by the State Records Commission under Section 23 of the State Records Act.

The definition of Government organisations under Schedule 1 of the State Records Act includes *“An incorporated or unincorporated body established or continued for a public purpose under a written law”*.

The Committee and the Board each fall into this category.

Although the Committee is a separate statutory body, it is largely administratively managed by the Board because the Board funds the operations of the Committee (other than its accommodation costs which are met by the Government) and the majority of its members are members of the Board. The Board has therefore prepared a Recordkeeping Plan which incorporates the Committee's records. In light of the separate statutory functions the Law Complaints Officer has advised the Board that the Committee's records should be separately indexed from the Board's records and differentiated by a separate plan.

Staff at the Law Complaints Officer's office have been informed of the plan and the Board's Records Officer has been requested to provide an information session to the Committee's staff. Pending those sessions commencing, two staff members have attended an external training course on the requirements of the State Records Act. Procedures are reviewed on an ongoing basis within the Committee's office to monitor compliance with the requirements of the State Records Act. The Board has reported in its plan on its proposal to develop a policies and procedures manual and performance indicators to measure the efficiency and effectiveness of the recordkeeping systems. The Law Complaints Officer will further review procedures upon receipt of these documents.

**SCHEDULE A**

**SUMMARY OF MATTERS DETERMINED BY THE SAT  
PREVIOUSLY TRANSFERRED FROM THE LPDT  
1.7.05 TO 30.6.06**

\* other than directions hearings

<b>APP NO. (LPDT NO.)</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
1/03 (26/03)	13, 14 & 16.6.05 & 16.9.05	QUIGLEY, John Robert	Unprofessional conduct by intimidatory and threatening behaviour towards the LPCC and the LCO.	Proved. Reprimand. Fine \$8,000. Costs \$18,750.
3/03 (32/03)	13.9.05	ZIATAS, Laurence Lambro Anthony	Unprofessional conduct by gross overcharging.	Proved. Fine \$8,750. Costs \$7,500. Undertaking not to see payment of profit costs from client.
4/03 (33A/03)	8.3.06	REYBURN, John Henry	Undue delay in respect of administration of estate.	Proved. Reprimand. Costs \$17,250 on all.
4/03 (33B/03)	8.3.06	REYBURN, John Henry	Neglect or undue delay in transfer of property.	Proved. Fine \$2,000.
4/03 (33C/03)	8.3.06	REYBURN, John Henry	Unprofessional conduct by false statement in letter.	Proved. Fine \$2,000.
4/03 (33E/03)	8.3.06	REYBURN, John Henry	Unprofessional conduct by failing to return estate funds to bank.	Proved. Fine \$5,000.
5/03 (31/03)	24.8.04 & 27.4.06			Order that no publication of decision or reasons.
6/03 (18A/03)	23 & 25.6.04 & 25.5.06			Publication of finding and order stayed pending appeal.

<b>APP NO. (LPDT NO.)</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
6/03 (18B/03)	23 & 25.6.04 & 25.5.06			Publication of finding and order stayed pending appeal.
7/03 (25/03)	20.2.06	ARCHER, Garrick John	Unprofessional conduct by failing to respond to enquiries of LCO.	Proved. Fine \$1,000.
9/03 (8A/03)	24.2.06	GANDINI, Leonard		Withdrawn.
1/04 (1/04)	18.7.05	BRAGG, Gordon Hedley	Neglect in administration of estate.	Dismissed.
2/04 (29/04)	19.7.05	REYBURN, John Henry	Unprofessional conduct in refusing to provide copy of enduring power of attorney and billing.	Dismissed.
3/04 (24/04)		EDWARD, Patricia May Verschuer		Withdrawn.
4/04 (20/04)	2.6.05	GAUNT, Sally Anne	Unprofessional conduct in sending a letter to solicitor containing improper threats.	Proved. Reprimand. Fine \$1,000. Costs \$750.
5/04 (26/04)	22.6.05	TOMLINSON, Michael Murray	Illegal conduct arising from conviction for stalking offence.	Proved. Report to Full Court. Suspension.
6/04 (13/04)	19.4.06	MORTON, Benjamin Shawn	Neglect and unprofessional conduct in conduct of client matter.	Proved. Reprimand. Fines totalling \$16,000 on all (6/04 & 20/04).
7/04 (22/04)	4.8.05	STEVENS, Clarence James	Unprofessional conduct in respect of removal from NSW roll.	Proved. Report to Full Court. Suspension. Costs \$250.
8/04 (14/04)	19.4.06	MORTON, Benjamin Shawn	Unprofessional conduct by misleading conduct.	Dismissed.



<b>APP NO. (LPDT NO.)</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
9/04 (15/04)	19.4.06	MORTON, Benjamin Shawn	Unprofessional conduct by misleading conduct.	Dismissed.
10/04 (6A/04)	19 & 20.7.05 & 30.5.06	REYBURN, John Henry	Unprofessional conduct by entry into agreement which would result in a breach of Settlement Agents Act.	Proved. Fine \$8,000. Attend ethics course approved by Board. Costs \$13,700.
10/04 (6B/04)	19 & 20.7.05 & 30.5.06	REYBURN, John Henry	Unprofessional conduct in respect of advice provided re purchase of a business from practitioner.	Proved. As above.
11/04 (27/04)	20.7.05	SKEA, Rohan George	Unsatisfactory conduct in respect of convictions on 37 counts of fraud.	Proved. Report to Full Court. Suspension. Costs \$1,000.
12/04 (19A/04)	10.4.06 & 26.5.06	WILLIAMS, Paul Thomas	Unprofessional conduct by conflict of interest.	Proved. Fine \$2,000. Reprimand. Costs \$5,000.
12/04 (19B/04)	10.4.06	WILLIAMS, Paul Thomas	Unprofessional conduct by misleading conduct.	Dismissed.
15/04 (2/04)	18.7.05	MONACO, Pino	Neglect in the course of the practice of the law.	Dismissed.
18/04 (25A/04)	7.6.05	BENARI, John Connor	Neglect in the course of legal practice.	Proved. Reprimand. Costs on all \$5,000.
18/04 (25B/04)	7.6.05	BENARI, John Connor	Unprofessional conduct by overcharging for work done by law clerk.	Proved. Fine \$2,000.
18/04 (25C/04)	7.6.05	BENARI, John Connor	Unprofessional conduct by constructively representing his law clerk as a lawyer.	Dismissed.

<b>APP NO. (LPDT NO.)</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
20/04 (16/04)	19.4.06	MORTON, Benjamin Shawn	Unprofessional conduct by failing to respond to enquiries of LCO.	Proved. Fine \$1,000.
21/04 (7/04)	15.3.06			Order that no publication of decision and reasons.
23/04 (28/04)	2.12.04 & 20.12.05	EDWARD, Patricia May Verschuer	Borrowing from a trust fund of a deceased former client under her control.	Proved. Report to Full Court. Conditions on practice. Costs \$8,000. Pay \$7,156 to Public Trustee.
25A/04 (3A/04)	20.2.06	ARCHER, Garrick John	Neglect in the course of legal practice.	Proved. Fine \$2,000. Costs on all \$6,000. Suspension until illness overcome.
25B/04 (3B/04)	20.2.06	ARCHER, Garrick John	Unprofessional conduct by removing client file from former firm without clients consent.	Proved. Fine \$3,000. Suspension until illness overcome.
25C/04 (3C/04)	20.2.06	ARCHER, Garrick John	Unprofessional conduct by misleading LPCC.	Dismissed.
26/04 (12A/04)	10.12.04 & 8.3.06	REYBURN, John Henry	Unprofessional conduct in respect of administration of estate in failing to tax costs or agree costs with any of the other defendants.	Proved. Fine \$2,000. Costs \$4,000.

**SCHEDULE B****SCHEDULE OF MATTERS TRANSFERRED FROM THE LPDT  
TO THE SAT WHICH NOT DETERMINED AS AT 30.6.06**

\* deferred pending hearing of Report to Full Court on other matters

<b>SAT APP NO.</b>	<b>LPDT NO.</b>	<b>SAT APP NO.</b>	<b>LPDT NO.</b>
1/02 *	37A/02	10/03 *	5A/03
1/02 *	37B/02	10/03 *	5B/03
1/02 *	37C/02	11/03 *	1A/03
1/02 *	37D/02	11/03 *	1B/03
2/02 *	36/02	13/04	21/04
8/03	22A/03	22/04 *	17/04
8/03	22B/03	24/04	23/04
8/03	22C/03	26/04	12B/04
8/03	22D/03	27/04 *	10/04

**SCHEDULE C****SUMMARY OF OTHER MATTERS DETERMINED BY THE SAT  
1.7.05 TO 30.6.06**

\* other than directions hearings

<b>APP NO.</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
204/05 – 1	6.5.05, 4.8.05 & 14.11.05	WARD, Peter John	Neglect when acting for a client.	Proved. Fine \$1,500. Costs \$2,000 on all. Conditions on practice.
204/05 – 2	6.5.05, 4.8.05 & 14.11.05	WARD, Peter John	Unprofessional conduct by failing to respond to LPCC.	Proved. Fine \$250.
204/05 - 3	6.5.05, 4.8.05 & 14.11.05	WARD, Peter John	Unprofessional conduct by failing to respond to LPCC.	Proved. Fine \$250.

<b>APP NO.</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
228/05	20.7.05	CULLEN, Peter Bruce De Barran	Unprofessional conduct in relation to maintenance of trust account.	Proved. Reprimand. Fine \$8,000. Costs \$2,000. Conditions on practice.
238/05	21.6.06	GANDINI, Leonard	Unprofessional conduct by misleading client in respect of costs.	Dismissed. Costs \$452.63.
239/05	21.6.06	GANDINI, Leonard	Unprofessional conduct by unilaterally varying retainer.	Dismissed.
240/05	21.6.06	GANDINI, Leonard	Unprofessional conduct by improperly claiming a lien.	Dismissed.
310/05	1.6.06	CLARK, Albert Ernest		Withdrawn.
311/05	2 & 3.2.06 & 1.6.06	CLARK, Albert Ernest	Unprofessional conduct by conflict of interest.	Proved. Fine \$7,000. Costs \$29,400.
312/05	23 & 30.11.05	PENKIN, Kevin Michael	Unprofessional conduct by failure to account.	Dismissed.
313/05	23 & 30.11.05	PENKIN, Kevin Michael	Unprofessional conduct by charging for attendance where alcohol consumed excessively.	Dismissed.
351/05	10.4.06	WILLIAMS, Paul Thomas	Unprofessional conduct by swearing false affidavit.	Dismissed.
401/05	3.3.06	LIM, Sze Ming	Neglect and undue delay in the course of legal practice.	Proved. Report to Full Court. Suspension. Costs \$9,300 on all.
402/05	3.3.06	LIM, Sze Ming	Unprofessional conduct by misleading the client.	Proved. Report to Full Court. Suspension. Costs \$9,300 on all.

<b>APP NO.</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
403/05	3.3.06	LIM, Sze Ming	Unprofessional conduct by misleading the client.	Proved. Report to Full Court. Suspension. Costs \$9,300 on all.
404/05	3.3.06	LIM, Sze Ming	Illegal conduct by misappropriating funds.	Proved. Report to Full Court. Suspension. Costs \$9,300 on all.
405/05	3.3.06	LIM, Sze Ming	Unprofessional conduct by misleading client.	Proved. Report to Full Court. Suspension. Costs \$9,300 on all.
406/05	3.3.06	LIM, Sze Ming	Neglect and undue delay in the course of legal practice.	Proved. Report to Full Court. Suspension. Costs \$9,300 on all.
417/05	15.6.06	SINGH, Sukhwant	Unprofessional conduct by gross overcharging.	Proved. Fine \$2,500. Costs \$7,000.
418/05	29.6.06	SORGIOVANNI, Rebecca Lee		Withdrawn.
3/06	26.4.06	BERRIE, David Wallace	Neglect and unsatisfactory conduct by practising without a certificate.	Proved. Payment to Board. Reprimand. Costs \$2,000.
13/06	1.6.06	MACKINLAY, Alistair Robert		Withdrawn.
21/06	6.6.06	WALTON, Janet	Unprofessional conduct by signing certificate of advice knowing incorrect in a material particular.	Proved. Report to Full Court. Suspension. Costs \$15,500 on all.
22/06	6.6.06	WALTON, Janet	Unprofessional conduct by transferring funds from trust in breach of Section 34A of the Legal Practitioners Act.	Proved. Report to Full Court. Suspension. Costs \$15,500 on all.

<b>APP NO.</b>	<b>HEARING DATE *</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
23/06	6.6.06	WALTON, Janet	Unprofessional conduct by interfering in court proceedings	Proved. Report to Full Court. Suspension. Costs \$15,500 on all.
24/06	6.6.06	WALTON, Janet	Unprofessional conduct by disclosing confidential information.	Proved. Report to Full Court. Suspension. Costs \$15,500 on all.
25/06	6.6.06	WALTON, Janet	Unprofessional conduct by issuing bills of costs when no proper basis for doing so.	Proved. Report to Full Court. Suspension. Costs \$15,500 on all.
26/06	6.6.06	WALTON, Janet	Unprofessional conduct by grossly discourteous communications to court.	Proved. Report to Full Court. Suspension. Costs \$15,500 on all.
40/06	14 & 15.3.06	GLENN, Joseph		Interim suspension order pursuant to Section 182 of the Legal Practice Act 2003 pending enquiry and determination of conduct matters.
53/06	20.6.06	BULL, David Canute Lyle	Illegal conduct by possessing a prohibited drug.	Proved. Reprimand. Fine \$8,000. Costs \$3,500.

**FREEDOM OF INFORMATION ACT 1992 (“FOI ACT”)  
INFORMATION STATEMENT  
LEGAL PRACTITIONERS COMPLAINTS COMMITTEE**

1. This information statement is prepared and published pursuant to the requirements of Part 5 of the FOI Act and relates to the Legal Practitioners Complaints Committee (“*Complaints Committee*”).
2. The structure of the Complaints Committee is set out in Sections 162 and 163 of the Legal Practice Act 2003; the functions of the Complaints Committee are set out in Sections 164 and 175.
3. The functions of the Complaints Committee including, in particular, its decision making functions, do not affect members of the public; they affect legal practitioners on the one hand and those among the classes of persons set out in Section 175(2) from whom complaints are received on the other hand.
4. The policy of the Complaints Committee is set forth in Sections 163, 164 and 175; no arrangements exist to enable members of the public to participate in the formulation of its policy or in the performance of its functions other than the fact that representatives of the community are members of the Complaints Committee being appointed as such by the Attorney General.
5. The kinds of documents that are usually held by the Complaints Committee comprise firstly its complaint files containing correspondence, memoranda, and the like, and secondly documents related to meetings of the Complaints Committee, such as agendas, minutes, memoranda, and the like. The Complaints Committee also has a form of brochure which explains the nature and limits of its functions.

There is no written law other than the FOI Act whereunder any of these documents can be inspected.

There is no law or practice whereunder any of these documents can be purchased. Copies of the said brochure can be inspected or obtained from the Complaints Committee free of charge.

6. Copies of the said brochure are available at the offices of the Complaints Committee at 2nd Floor, 55 St Georges Terrace, Perth, to any person who calls at those offices or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions.
7. Ms Catherine Coombs of 2nd Floor, 55 St Georges Terrace, Perth, Legal Practitioner is the officer to whom initial enquiries as to access to documents can be made and who has been generally directed to make decisions under the FOI Act; enquiries may be made by telephone (08) 9461 2299.
8. Access applications under the FOI Act can be made to the Complaints Committee by letter to Post Office Box Z5293, St Georges Terrace, Perth WA 6831 or by facsimile message at (08) 9461 2265.

9. The Complaints Committee has no procedures for amending under Part 3 of the FOI Act personal information in its documents. Any application for an amendment would be dealt with in accordance with Part 3.
10. None of its functions affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject.
11. Applications for access should be in writing, give enough information so that the documents requested can be identified, give an Australian address to which notices can be sent, and be lodged as provided in paragraph 8 with a fee of \$30 (unless the application is one for personal information about the applicant only which may be made without fee); for financially disadvantaged applicants or those issued with prescribed pensioner concession cards that charge is reduced by 25%.
12. Applications will be acknowledged in writing and applicants will be notified of the decision as soon as practicable and in any case within 45 days. In the notice of decision applicants will be provided firstly with the date of its making, the name and designation of the officer making it, the reasons for classifying any particular document as exempt, and the fact that access is given to an edited document and secondly with information as to the right to review and the procedures to be followed to exercise that right.
13. Access to documents may be granted by way of inspection, copies of documents, a copy of an audio or video tape, a computer disk, a transcript of a recording, shorthand or encoded document from which words can be reproduced, or by agreement in other ways.
14. Applicants who are dissatisfied with the decision of any officer may apply for an internal review of the decision; the application should be made in writing within 30 days of receipt of the notice of decision.
15. Applicants will be notified of the result of an internal review within 15 days.
16. Applicants who are dissatisfied with the result of an internal review may apply to the Information Commissioner for an external review; details will be advised to applicants when the internal review decision is issued.



**COMPOSITION OF THE WA LEGAL PROFESSION, CERTIFICATED AND DEEMED  
CERTIFICATED, AS AT 30 JUNE 2006  
(AS REFLECTED IN BOARD RECORDS)**

	Resident Females	Non-Resident Females	Resident Males	Non-Resident Males	Totals
Barristers	25		160	4	189
Commonwealth Government	24		19		43
Consultants	24		62		86
Director	21		140		161
Employees	786	29	670	49	1534
Equity Partner	47		350	8	405
Inhouse	102	5	178	11	296
Locum	2				2
Not practising (certificated)	131	55	84	98	368
Salaried Partner	26	1	56		83
Sole Practitioners	84	1	360	6	451
Judiciary <sup>^</sup>	2			8	10
Deceased <sup>^</sup>			2		2
Struck Off /Suspended <sup>^</sup>	2		1		3
State Government*	31		20		51
<b>Practice Certificates ISSUED</b>	<b>1307</b>	<b>91</b>	<b>2102</b>	<b>184</b>	<b>3684</b>
S.36 Practitioners					
** State Solicitor's Office	60		46		106
**Director of Public Prosecutions (State)	43		40		83
**Other Departments	83		54		137
<b>TOTAL PRACTITIONERS</b>	<b>1493</b>	<b>91</b>	<b>2242</b>	<b>184</b>	<b>4010</b>

<sup>^</sup> Held practice certificate during 2005-2006 however by 30 June 2006 were appointed judiciary / deceased / struck off / suspended.

\* State Government employees who held a practice certificate during 2005-2006.

\*\* State Government employees taken to be certificated pursuant to Section 36 of the Legal Practice Act 2003.