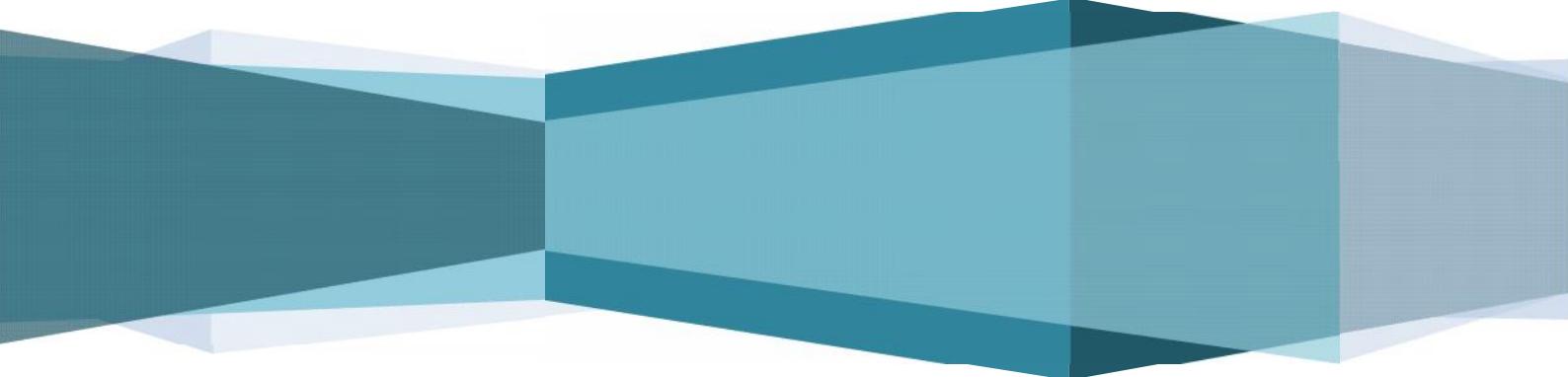


**LEGAL PROFESSION  
COMPLAINTS COMMITTEE  
WESTERN AUSTRALIA**



**2012 Annual Report**

# CONTENTS

1	<b>1. Report from the Chair</b>
3	<b>2. Report from the Law Complaints Officer</b>
7	<b>3. About the Legal Profession Complaints Committee</b> 3.1 Our role, purposes and objectives 3.2 Our relationship with the Legal Practice Board 3.3 Our members 3.4 Our operations 3.5 Trust account inspections 3.6 Our staff training and professional development
11	<b>4. Complaints</b> 4.1 Complaint handling process 4.2 Key statistics
17	<b>5. Formal determination of complaints</b> 5.1 Overview and key statistics 5.2 Matters dismissed or not taken further 5.3 Summary conclusion determinations 5.4 Referrals to SAT
23	<b>6. State Administrative Tribunal and Court Proceedings</b> 6.1 SAT applications 6.2 Review applications 6.3 Reports to the Full Bench 6.4 Appeals
36	<b>7. Promoting Professional Standards</b>
37	<b>8. Tables</b> Table 1 Rapid Resolution inquiries 2012 Table 2 New complaints/conduct investigations/rapid resolution inquiries 2010 – 2012 Table 3 Complaints opened by type of complainant 2010 – 2012 Table 4 Complaints opened by areas of law 2010 – 2012 Table 5 Complaints opened by areas of complaint 2010 – 2012 Table 6 Complaints opened by practitioner type of employment 2010 – 2012 Table 7 Complaints opened by practitioner area of practice 2010 – 2012 Table 8 Complaints opened by practitioner years in practice 2010 – 2012 Table 9 Complaints opened by practitioner age 2010 – 2012 Table 10 Number of practitioners complained of 2010 – 2012 Table 11 Outstanding complaints 2010 – 2012 Table 12 Composition of the WA Legal Profession as at 30 June 2012
49	<b>9. Information Statements</b> 9.1 Freedom of Information Act 9.2 Public Interest Disclosure

# 1. Report from the Chair

This report highlights the outstanding progress achieved by the Committee in improving the way in which complaints are handled and the speed with which they are handled. The conciliated outcomes achieved by the Rapid Resolution team continue to surpass all expectations and reflect the great support it has received from the profession who are willing to listen to, and act upon, the views expressed by the Committee's staff. The impact of the Rapid Resolution team, combined with the hard work of the Investigation team, can also be seen in the reduction in the number of outstanding complaints. The number of outstanding complaints as at 30 June 2012 was less than half the number as at 30 June 2011 and 75% less than the number as at 30 June 2010.

## Trends or special problems

The Committee commenced two appeals in the Court of Appeal during the year against decisions on penalty from the State Administrative Tribunal (SAT). These are the first appeals to have ever been commenced by the Committee. In each case, the Committee was concerned that the penalty imposed by SAT did not properly reflect the seriousness of the conduct which, in the Committee's view, required a higher penalty in order to uphold the standards in the profession.

The number of complainants seeking a review by SAT continues to be high. During the year, parts of two reviews were referred back to the Committee. In one case, extra evidence was provided to SAT which had not been before the Committee.

There was a noticeable rise in the percentage of complaints concerning sole practitioners from 33.5% to 45.5%. The possible cause of

this rise may be the pressures of sole practice combined, in some cases, with the relative inexperience of the practitioner. The establishment of a network of practitioners who sole practitioners may call upon for assistance may go some way to relieve these pressures. Another alternative may be to impose additional requirements on practitioners before they can commence practise as a sole practitioner, for example, the need to pass a course which provides some basic business training.

Another noticeable change was the increase in the percentage of complaints concerning practitioners with between 5 and 9 years experience from 13.4% to 22.2%. This increase was not reflected in a rise in complaints against practitioners under 40 years of age which suggests that some practitioners who enter the profession as mature age people are encountering difficulties. It is possible that this rise is linked with the rise in complaints against sole practitioners and may indicate that some of these practitioners commence sole practice without sufficient experience or backup from a support network.

## Forecast of Committee's workload

The Committee's work, particularly that of the Rapid Resolution team, continues to grow but it is also evident that it has had some success in improving the overall conduct of practitioners, particularly in the costs area, although there is still more work to be done in that regard. With practitioners now listening to the Committee's concerns and acting upon those concerns many practitioners have stemmed an otherwise steady flow of complaints against them.

The Committee's educational work continues to expand with the commencement of

regional visits, increased number of presentations given by staff and the visits to three of the universities to speak to students as part of their ethics courses.

### **Proposals for improving the operations of the Committee**

The implementation of a complaint management system would enhance the Committee's operations. The need for a complaint management system has been raised previously but was not proceeded with while difficulties were being experienced with the electronic document and records management system. It is not envisaged that a complaint management system will be able to be implemented until the 2013-14 year at the earliest.

### **Thanks**

The work of the Committee cannot be carried out without the commitment of the members of the Committee who willingly give up their time to assist in the regulation of the legal profession. Their hard work and commitment is greatly appreciated. My

particular appreciation goes to John Ley, the Deputy Chair, who has provided great assistance to me this year in overseeing the Committee's operations.

I also thank the hard working staff of the Committee who are dedicated to improving the Committee's operations and ensuring the best regulation possible of the legal profession in Western Australia. It is especially important to acknowledge and express gratitude for the outstanding contributions that the senior staff have made to the design and implementation of new complaints handling systems. Those members of staff are Gael Roberts, Law Complaints Officer and the leaders of the Rapid Resolution team, the Investigation team and the Litigation team, respectively, Philippa Rezos, Karen Whitney and Patricia Le Miere.

*Chris Zelestis QC  
Chair  
October 2012*

## 2. Report from the Law Complaints Officer

**I**t was another busy year for the Committee in 2011-12.

The main focuses of the Committee's operations during the year were to refine the operation of the Rapid Resolution team and clear the backlog in investigations.

The Rapid Resolution team was established in October 2010 when the Committee's office was restructured. The aim of the Rapid Resolution team was twofold, firstly to identify those matters which did not raise conduct issues requiring investigation and secondly to provide a faster and more satisfactory mechanism for handling those matters. During the reporting period, the operations of the Rapid Resolution team were broadened to include other work to assist in the complaints process.

The functions of the Rapid Resolution team now include an initial role in dealing with complaints which raise conduct issues. When such a complaint is received, the Rapid Resolution team will examine the matter to see if there are any steps which the practitioner may take to mitigate the conduct issue which has been identified. A member of the team will discuss the Committee's concerns with the practitioner and suggest possible mitigatory steps which the practitioner may wish to consider. The aim of this process is to reduce the impact of the conduct and allow a practitioner to show insight into his or her conduct, which may result in a lower penalty should the conduct ultimately be found to amount to unsatisfactory professional conduct or professional misconduct.

The Rapid Resolution team is also currently exploring methods to better assist practitioners who are the subject of complaints of delay, where the delay appears

to be as a result of temporary personal difficulties being experienced by the practitioner. These issues relate primarily to sole practitioners. Although the conduct issues still require investigation, the aim of the Rapid Resolution team is to protect the interests of all the practitioner's clients, many of whom have not yet complained, while providing the practitioner with the support he or she requires in order to get through a difficult period.

During the reporting period, the work of the Rapid Resolution team has become better known both within the profession and in the public arena. The profession has been extremely supportive of the work of the team, which has led to many service issues and minor conduct issues being successfully conciliated. Of the matters dealt with by the Rapid Resolution team, 15% resulted in a conciliated outcome.

The work of the Rapid Resolution team has resulted in a major reduction in the number of complaint investigations. During the year, approximately 7% of all new matters were dealt with by the Investigation team. This now means that the work of the Investigation team is confined to investigations of substance, which may result in findings of unsatisfactory professional conduct or professional misconduct.

With the number of matters going into the Investigation team being significantly reduced, it has allowed the Investigation team to steadily work through the backlog of complaints which still existed at the start of the reporting period. At the end of the reporting period, the number of complaints over 2 years old had been reduced to 16 (of which 3 had been dealt with by the Committee but were awaiting the issue of applications to the State Administrative

Tribunal) down from 43 as at 31 December 2010. This number is expected to fall even further within the next 6 months. The aim of the Investigation team is to deal with the majority of its matters within 6 to 12 months.

### **Regional visits**

In a new initiative, the Committee commenced visiting regional areas to conduct seminars and talk to practitioners about issues relating to complaints.

The first of these visits was held in Albany in March 2012. All practitioners in Albany were invited to the seminar which dealt with complaint handling procedures and common areas of complaint. The visit also provided an opportunity for discussion with senior Albany practitioners about their CPD programme and general issues concerning the Albany area.

A further visit took place in Broome in June 2012 when a legal officer from the Committee was visiting in order to present a talk at a family lawyers' conference. All practitioners in the Broome area were informed of the visit and invited to contact the Committee's legal officer if they wished to discuss any complaint issues.

More visits to regional areas are being planned.

### **Seminars to the profession**

The Committee's staff have accepted an ever increasing number of invitations to present seminars to the profession on a range of ethical issues. Although the preparation and presentation of seminars is time consuming, this work is done in the hope that the guidance given in these seminars about ethical issues will prevent practitioners from making the same mistakes as others have done in the past.

### **Law Week Seminar**

During Law Week 2012, which is run by The Law Society of Western Australia, the Committee hosted a seminar targeted at clients and potential clients on how to get the most out of their relationship with their lawyer.

### **New Brochures**

During the year, new brochures were prepared for the assistance of the public. The new brochures provide up to date information about the Committee and its operations and answer frequently asked questions.

### **Migration Agents**

The Committee has entered into a Memorandum of Understanding with The Office of the Migration Agents Registration Authority (OMARA) which establishes processes to share information between the Committee and OMARA and to facilitate timely communication and advice on regulatory matters.

The need for the Memorandum arises as some legal practitioners are also registered migration agents or employ registered migration agents. Conduct issues relating to migration work are of interest to OMARA.

The establishment of a working relationship with OMARA has already proved useful in enabling the Committee to assist a practitioner with information and contact details of a legal officer in OMARA who could deal with issues concerning the orderly transfer of files from an employed registered migration agent.

## **Legal Profession Reform**

In May 2012, I joined a working group established by the Solicitor General to reform the *Legal Profession Act 2008*. The working group had its first meeting in June 2012.

## **Developing and maintaining relationships**

I have continued to develop the Committee's relationships with the profession and other co-regulators. Part of this development included a visit to the Legal Services Commission's office in Queensland in October 2011. I would like to pass on my thanks to John Briton and his staff for taking the time to meet with us. In turn, we have provided some assistance to our counterparts in New Zealand with the establishment of their early intervention process for complaints.

Karen Whitney, Manager of the Investigation team, has continued as a member of The Law Society's Mental Health and Wellbeing Committee and Patricia Le Miere, Manager of the Litigation Team, is a member of the sub-committee of the Western Australian chapter of the Council of Australasian Tribunals.

## **Monthly management meetings**

To assist with the running of the Committee's office, I now meet with the Chair and Deputy Chair, the managers of each of the Committee's operational areas and the Executive Director of the Legal Practice Board (*Board*) on a monthly basis to discuss any issues concerning the Committee's operations.

## **Electronic Document and Records Management System (EDRMS)**

The ongoing problems which I referred to in last year's Annual Report with our EDRMS continued during the reporting period. This led to a new version of the EDRMS being installed in June 2012. The installation of this upgrade, combined with other changes to hardware, appears to have alleviated many of the problems which were being encountered.

## **IT hardware and software**

Difficulties were experienced during the year with one of the main servers at the Board's office which had a flow on effect to the Committee's office. The server was replaced in April 2012.

The Committee's computers have been operating on Windows XP utilising Office 2003. We are currently aiming to have all of the computers running on Windows 7 with Office 2010 so that the speed and efficiency of the Committee's operations can be improved.

## **Complaint management system**

The databases established in January 2011 have continued to be updated and modified to provide easy compilation of statistical information. However, some drawbacks have been encountered in easily extracting information which would assist in the management of the office. With the assistance of the Executive Director of the Board, I hope to shortly commence examining different complaint management systems which are available with the hope that a complaint management system may be able to be installed in the 2013-14 financial year.

## **Staffing**

Throughout the year, the Committee's staff have been working at full capacity. Any significant increase in the Committee's work load would require an increase in the staffing levels.

## **Accommodation**

As reported last year, the Committee expanded its offices in October 2011. The new look offices provide a more functional reception area and mediation rooms as well as providing more storage space, a library and kitchen/lunchroom.

## **Thanks**

The improvements in the handling of complaints could not have been achieved without the dedication of the Committee's staff. The Managers of the three operational areas have continued to work extremely hard to ensure the smooth operation of the Committee and our office administrator has worked hard overseeing the renovations of the Committee's offices (dealing with great

diplomacy with different views about colour and style). Although space prevents me from thanking each staff member individually, we are a team and the effort of everyone in the office is greatly appreciated.

My thanks also go to those barristers from the independent bar who continue to accept briefs from the Committee at reduced rates. This generosity assists to reduce the cost to the whole profession of disciplinary proceedings.

Last, but not least, my thanks to the Chair and Deputy Chair for their ongoing support and assistance throughout the year, as well as the assistance provided by the members of the Committee and the former Executive Director of the Board, Graeme Geldart.

*Gael Roberts  
Law Complaints Officer  
October 2012*

### 3. About the Legal Profession Complaints Committee

#### 3.1 OUR ROLE, PURPOSES and OBJECTIVES

The Legal Profession Complaints Committee has statutory responsibility under the *Legal Profession Act 2008 (Act)* for supervising the conduct of legal practitioners, enquiring into complaints and other conduct concerns which come to its attention and instituting professional disciplinary proceedings against practitioners in the State Administrative Tribunal (**SAT**).

The statutory purposes of the Committee's work are:

- to provide for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;
- to promote and enforce the professional standards, competence and honesty of the legal profession;
- to provide a means of redress for complaints about lawyers.

Our objectives are:

- To provide an efficient and expeditious system for dealing with complaints
- To proactively monitor the conduct of the legal profession
- To initiate disciplinary proceedings as appropriate

- To promote and enforce the professional standards, competence and honesty of the profession
- To maintain a productive and motivating work environment.

#### 3.2 OUR RELATIONSHIP WITH THE LEGAL PRACTICE BOARD

The Committee is one of the two regulatory authorities established under the Act, the other being the Legal Practice Board (**Board**).

Although the Committee is constituted as a committee of the Board, it does not derive its powers from the Board. Instead, its powers are conferred on it directly by the Act. This ensures that in the exercise of its functions the Committee acts independently of the Board. Despite the independence of the Committee, it works closely with the Board to ensure the effective operation of the regulatory scheme governing legal practitioners.

The Committee's operations are funded by the Board other than its accommodation costs which are funded by the Government. The Board also employs all the staff of the Committee including the Law Complaints Officer.

The office of the Law Complaints Officer is established by the Act. The Law Complaints Officer assists the Committee in the exercise of its functions and the Committee may delegate many of its powers and duties to the Law Complaints Officer, which

the Committee has done, including the power to dismiss certain complaints.

### 3.3 OUR MEMBERS

The Committee consists of a Chair and not less than six other legal practitioners appointed by the Board from amongst its membership and not less than two community representatives, none of whom is or has been an Australian lawyer, appointed by the Attorney General.

During the reporting year the Committee was constituted by:

Chair: Mr C L Zelestis QC

Deputy Chair: Mr J R B Ley

Legal members:

Mr K R Wilson SC

Mr M T Ritter SC

Mr T Lampropoulos SC

Mr R M Mitchell SC

Mr S M Davies SC (until 4 April 2012)

Mr B Dharmananda SC (from 3 May 2012)

Mr J G M Fiocco

Mr J G Syminton

Ms F B Walter (until 24 August 2011)

Ms S M Schlink

Community representatives:

Ms L Anderson

Mr J Hunter

Deputy community representatives:

Ms M Nadebaum

Mr C Hudson

### 3.4 OUR OPERATIONS

The Committee usually sits as two divisions in order to share the workload. One of the community representatives is present at every meeting.

During the year, the Committee held 23 meetings.

The Committee's day to day operations are conducted by the Law Complaints Officer and the staff of the Committee.

The Law Complaints Officer's office is divided into three operational areas: Rapid Resolution, Investigation and Litigation. Each of these operational areas is managed by a Senior Legal Officer who forms part of the Law Complaints Officer's management team. The Law Complaints Officer and her management team are ably supported by the Office Administrator, Ms Michelle Johnston, and other administrative staff.

The Rapid Resolution team is managed by Ms Philippa Rezos and comprises 3 full time equivalent (*FTE*) legal officers and one secretary.

The Investigation team is managed by Ms Karen Whitney and comprises 3.5 *FTE* legal officers, a senior trust account inspector and two secretaries. Shortly after the end of this reporting period one of the legal officers was appointed as an acting senior legal officer.

The Litigation team is managed by Ms Patricia Le Miere and comprises 1 full time legal officer and one secretary.

### 3.5 TRUST ACCOUNT INSPECTIONS

Ms Anna Young, a Senior Trust Account Inspector, forms part of the Investigation team.

Part of Ms Young's work includes undertaking both causal and routine inspections of the trust records of legal practices. During the year, Ms Young

carried out 24 causal investigations and 3.6 22 routine inspections.

The inspections undertaken during the year highlighted a need to inspect new practices within their first six months of operation to ensure that the principals have a clear understanding of trust account requirements. Many of the principals of the new practices inspected did not fully understand their obligations and their trust records were not compliant. An early inspection of such practices assists practitioners to set up proper records and ensures that clients' trust monies are being properly handled.

Ms Young's work often leads to her being called as a witness in disciplinary proceedings commenced by the Committee. During the year, Ms Young appeared as a witness in two SAT proceedings and attended one court hearing.

Ms Young has also undertaken further courses of study in financial investigation and forensic accounting, and understanding and managing digital technology. These courses have assisted Ms Young to keep up to date with the data which is available in current software packages which may assist in investigations of trust defalcations.

Ms Young has also provided training to the Committee's legal officers on how to identify different warning signs which may be an indication of a possible defalcation.

## OUR STAFF TRAINING AND PROFESSIONAL DEVELOPMENT

The Committee places a high value on strengthening and developing the knowledge and skills of its staff.

During the year, there was a continued focus on continuing professional development with in-house seminars being held. Speakers from both outside and inside the office were invited to present on topics targeted to the work of the professional staff. These in-house seminars were on the following topics:

- The Law Society of Western Australia's Ethical & Practice Guidelines
- Ethics involved in taking witness statements
- Tips for alternative dispute resolution
- Plain English drafting
- Wills
- Criminal law – Evidence issues
- Taxation/Assessment of costs in the Supreme Court
- Breach of Confidentiality/Conflict of Interest
- Mental Health issues in the profession

The Committee has been fortunate to secure highly respected and experienced presenters for these in-house seminars. Speakers have included a Justice of the Supreme Court, senior counsel, a Registrar of the Supreme Court and staff of Legal Aid WA. The aim of these seminars is to ensure that the Committee's staff receive the training they need to undertake their work to the highest possible standard and to enhance their

legal knowledge in a number of key areas.

In addition, professional and administrative staff have attended external continuing professional development and training seminars on a broad range of topics.

A number of key staff also attended the annual Conference of Regulatory Officers in Sydney where information and ideas were exchanged with the Committee's counterparts from interstate and New Zealand.

## 4. Complaints

### 4.1 COMPLAINT HANDLING PROCESS

The majority of all new complainants/inquirers speak to a legal officer in the Rapid Resolution team. This contact may be initiated in a number of ways, for example, by:

- telephoning the Committee's office
- submitting a Complaint Enquiry Form, available on the Board's website, which provides contact details to enable the Committee to telephone the inquirer
- the Committee contacting the complainant/inquirer after receiving a written complaint or inquiry.

The only time telephone contact is not made at the outset is if a written complaint is received which raises a serious conduct issue with supporting evidence. These complaints are referred direct to the Investigation team, although the Rapid Resolution team may have some involvement in suggesting to a practitioner ways to mitigate his or her conduct.

The Rapid Resolution team will, with the complainant's / inquirer's agreement, attempt to deal with all other new matters as inquiries until it ascertains whether the inquiry raises an issue which, if proved, may amount to unsatisfactory professional conduct or professional misconduct (**a conduct issue**) or the inquirer requires the matter to be formally determined.

The telephone contact enables the legal officers to discuss with the inquirers their concerns to clearly identify the conduct complained about and the evidence available to support the concerns. Many inquirers find it easier to explain their concerns orally rather than in writing. The legal officers discuss with the inquirers their expectations about the complaint process to ensure that they do not have unrealistic expectations as to what might be achieved.

Some inquiries can be easily resolved during this initial telephone contact by the legal officer explaining the legal system and the nature of practitioner's ethical obligations. On other occasions, more information is needed and inquirers are asked to provide documents to assist the legal officers to make an initial assessment of the seriousness of the concerns. Sometimes, inquirers are asked to meet with the legal officers with their documents in order to discuss their concerns further.

Practitioners are contacted very early during this process and advised of the inquiry. Information is often sought from them to assist in the initial assessment process.

Once a legal officer has enough information, an assessment will be made as to whether the conduct complained about raises a conduct issue. The legal officer will discuss this assessment with the inquirer and give the inquirer an explanation of the reasons for the view taken. Sometimes, some of the concerns raised by an inquirer will raise a

conduct issue and others will not. The legal officer will also discuss with the inquirer what may be done to assist the inquirer to resolve their concerns with the practitioner when those concerns do not raise conduct issues. This resolution may involve the legal officer assisting in seeking a conciliated outcome with the practitioner.

The Rapid Resolution team has had considerable success in negotiating conciliated outcomes of inquiries and some case studies are set out at the end of this chapter.

At the end of the initial process, complaints which raise a conduct issue are formally investigated. However, before that is done the Rapid Resolution team will consider whether it would be possible for the practitioner to take steps to resolve the conduct issue. This has the advantage of resolving the conduct issue so far as the inquirer is concerned, for example by compromising the costs owed when overcharging is the concern or the provision of an apology when courtesy is the issue. The Rapid Resolution team makes it clear in any such discussions with the practitioner that the conduct issue will still be referred to the Investigation team and that any resolution achieved may be viewed as possible mitigation of his or her conduct.

Inquirers who are not satisfied with the preliminary view taken by a legal officer during the initial assessment process that their inquiry does not raise a conduct issue, may still request their inquiry be handled as a complaint to be formally determined. This formal determination is usually

made by the Law Complaints Officer exercising the delegated power of the Committee.

The process of speaking to the majority of inquirers and making a preliminary assessment of inquiries and then seeking to conciliate them is labour intensive as time is taken to ensure that inquirers are carefully listened to, evidence examined, full explanations given and care is taken with the conciliation process.

The Investigation team conducts the formal investigations of complaints which are initially assessed as raising possible conduct issues. The Investigation team also investigates all conduct investigations initiated by the Committee on its own motion. Those conduct investigations are commenced as a result of information coming to the attention of the Law Complaints Officer or a member of the Committee.

The investigation process involves seeking written submissions from a practitioner addressing the issues as well as seeking other material evidence concerning the events the subject of the investigation. This further evidence may be sought from the complainant, the practitioner, the Courts or other third parties and sometimes requires the use of the Committee's compulsory powers. Those powers include summoning documents or requesting provision of written information. Once an investigation is complete it is referred to the Committee for formal determination.

At its meetings, the Committee reviews the results of the investigation and the legal advice of the legal officers. After consideration of those materials the Committee may:

- dismiss a complaint
- with the consent of the practitioner, exercise its summary conclusion powers

- refer the matter to the State Administrative Tribunal.

Sometimes, the Committee may direct that further enquiries be made or defer investigation pending the outcome of litigation.

### *Inquiries resolved by Rapid Resolution Team*

#### **Case Study 1**

##### **Opposing party enquired about the content of correspondence their real estate agent received from a practitioner which contained an extraneous threat**

Patrick was involved in an acrimonious dividing fence dispute with his neighbour and instructed his lawyer to enter into negotiations with the neighbour's solicitor (*the practitioner*). Patrick had also engaged a real estate agent to sell his property. It was agreed by Patrick and the neighbour that a survey be undertaken of the disputed boundary to resolve the dispute. However, when the results of the survey were published, the neighbour resiled from his agreement to negotiate the dispute based on the outcome of the survey. The neighbour then instructed the practitioner to write a letter to Patrick's real estate agent, which letter contained an extraneous threat to report the agent to a disciplinary board if he failed to refer to the dividing fence issue when advertising Patrick's property for sale.

Patrick contacted the Committee and a member of the RRT team contacted the practitioner and explained that the demand may have contained an extraneous threat and asked the practitioner to consider *The Law Society's Ethical & Practice Guidelines 2012*. The practitioner agreed to withdraw the threat and apologised to the real estate agent. Further, the practitioner agreed to ensure that he was not acting as his client's mouthpiece and to carefully ascertain the competency of his instructions before proceeding further.

## **Case Study 2**

### **Client expressed a concern at being informed by a firm it could no longer act for her as the firm no longer accepted instructions in litigation work**

Claire contacted the RRT to express concern at being informed by her former solicitor's firm that it could no longer act for her as the firm was no longer undertaking litigation work. Apparently her former solicitor had left the firm and there was no one in the firm undertaking litigation work even though her matter was substantially resolved. The outstanding work to be completed, included providing the Supreme Court with a Minute of Consent Orders and undertaking ancillary matters pursuant to such orders.

A member of the RRT discussed with the firm the possibility of completing the matter with the assistance of counsel who had been previously briefed on the matter and the firm not seeking from the client payment of any solicitor/client costs to finalise the matter and ensuring that the client did not incur any extra costs by reason of counsel being retained. Both the client and the firm agreed to resolve the matter on this basis.

## **Case Study 3**

### **A solicitor contacted the Committee about an incident which occurred at an informal attempt at mediation**

Two practitioners AB and CD agreed to have an informal mediation of a commercial dispute at AB's office. The respective practitioners and their clients apparently understood via an exchange of correspondence the matters to be discussed at mediation. CD's client was a former co-director of AB's corporate client and the dispute centred on the terms of CD's departure from that company. The company also occupied the same premises as AB's firm. Shortly prior to mediation taking place there was a brief telephone discussion between the practitioners, the content of which was not addressed in any correspondence prior to the mediation. At the commencement of the mediation, a dispute arose between the practitioners as to what was understood would be discussed and what each practitioner alleged had been canvassed in the telephone conversation. Practitioner CD reacted in an unacceptably discourteous manner; however AB countered with threats to report CD to the Committee.

AB contacted the Committee, and a member of RRT discussed with CD what had occurred at the mediation. CD agreed to write an apology to AB's client and to AB. Both AB & CD acknowledged that it would be appropriate to undertake mediation training before attempting any further mediation. Both practitioners also acknowledged the need to consider a neutral venue for mediation and to clearly identify in writing beforehand the matters to be addressed at mediation.

## 4.2 KEY STATISTICS

Full statistical information on complaints is set out in chapter 8.

In this section, key statistics are highlighted.

**Due to the restructure of the Committee's operations in October 2010, care should be taken with comparison of statistics from previous years. In previous years, many of the Rapid Resolution inquiries would have been included as complaints because they were all fully investigated and formally determined. References to "complaints" in this section do not include the inquiries dealt with by Rapid Resolution but do include conduct investigations initiated by the Committee of its own volition unless stated otherwise.**

### *Number of Rapid Resolution inquiries finalised*

The Rapid Resolution team dealt with 1573 inquiries of which 15.3% were conciliated. The conciliated matters included the discount, waiver or refund of fees to clients in excess of \$279,000.

### *The Complainants*

Nearly half of all complaints (49.4%) were from clients/former clients (or friends or relatives on their behalf) of the practitioner complained about. Nearly a quarter of complaints (24.4%) were made against the practitioner acting for the opposing party in proceedings.

In respect of Rapid Resolution inquiries, 64.8% were made by or on behalf of clients or former clients of the practitioner being enquired about.

### *The areas of law*

The areas of law attracting the most complaints were civil litigation (23.9%) followed by family/de facto law (21.8%).

In respect of Rapid Resolution inquiries, 32.4% were in the area of family/de facto law, 17.4% in civil litigation and 10.2% in probate and wills.

### *The types of complaint*

Many complaints raised more than one matter of complaint. Costs issues continued to attract the most complaints (18.5%) followed by unethical conduct (14.1%).

Costs issues were also the highest category for Rapid Resolution inquiries with nearly 1 in every 3 inquiries raising a costs related issue (32.6%) with the next highest categories being no communication (9.6%) and unethical conduct (9.1%).

### *The practitioners*

The greatest number of complaints related to Sole Principals (45.5%), followed by Other Principals (20.5%) and Non Principals (12.5%).

### *The number of practitioners complained about*

Some 133 practitioners were the subject of one or more complaints (including conduct investigations) during the year. Of this total, 113 practitioners were the subject of one complaint, 14 practitioners were the subject of two complaints and 6 practitioners were the subject of three or more complaints.

The Board has reported that there were 5481 certificated or deemed certificated practitioners practising in Western Australia during the year.

However, this figure does not include those interstate based practitioners practising in this State who are not required to take out a practising certificate in Western Australia by reason of holding a home jurisdiction practice certificate.

The number of practitioners complained about represented 2.4% of certificated or deemed certificated Western Australian practitioners, compared with 5.3% of practitioners in the 2010-11 reporting year.

### *Number of complaints received and dealt with*

Matters under investigation	Total	Complaints	Conduct Investigations
Open as at 1 July 2011	<b>337</b>	315	22
Opened during year	<b>176</b>	147	29
Closed during year	<b>(379)</b>	(348)	(31)
<b>Outstanding as at 30 June 2012</b>	<b>134</b>	<b>114</b>	<b>20</b>

## 5. Formal determination of complaints

### 5.1 OVERVIEW AND KEY STATISTICS

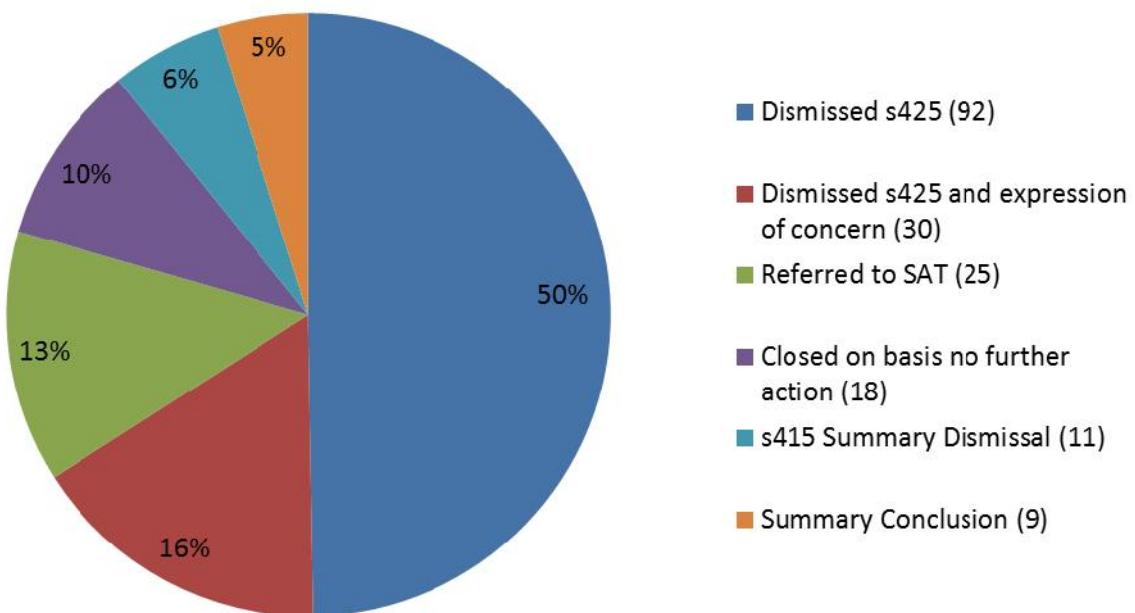
Once the investigation of a complaint has been finalised it is referred for formal determination. Formal determinations are undertaken by the Committee and also the Law Complaints Officer exercising the delegated powers of the Committee.

When a matter goes before the Committee, the Committee may finally determine the matter in one of three ways:

- dismiss the complaint (or in the case of a conduct investigation, decide not to take further action)
- exercise its summary conclusion powers (with the consent of the practitioner)
- refer the matter to SAT.

During the year the Committee determined 185 matters of which 75.7% were dismissed (or not taken further), 13.5% were referred to SAT and 4.9% were dealt with in the exercise of its summary conclusion powers.

*Committee Determinations*



In addition to the matters dealt with by the Committee, a further 30 complaints were dismissed by the Law Complaints Officer exercising the delegated power of the Committee.

## 5.2 MATTERS DISMISSED OR NOT TAKEN FURTHER

The Committee may dismiss a matter without completing an investigation in certain situations. This power of summary dismissal is used, for example, when complaints are made outside the 6 year time limitation, when they have previously been dismissed after investigation or, if the complaint is misconceived or lacking in substance. Of the complaints dismissed by the Committee 7.3%

were summarily dismissed and the remainder were dismissed following a full investigation.

In nearly 20% of the matters dismissed or not taken further, the Committee expressed concern to the practitioner about an aspect of the practitioner's conduct. Such expressions of concern are generally used by the Committee when the conduct of the practitioner is not such that it would amount to unsatisfactory professional conduct or professional misconduct but is still of some concern to the Committee. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future.

*Some examples of expressions of concern*

### **Case Study 1**

#### **Inappropriate charging**

In the process of investigating other complaints, the Committee discovered that the practitioner had charged the client \$390 to respond to an email from the client complaining about the quality of the practitioner's services and terminating the retainer.

The Committee noted that whilst this conduct alone was not capable of amounting to unsatisfactory professional conduct, it appeared to be unnecessary and inappropriate. The Committee therefore expressed its concern about the conduct and requested the practitioner consider refunding this amount to the complainant.

## **Case Study 2**

### **Trust account irregularities**

The Committee investigated on its own initiative whether two practitioners engaged in unsatisfactory professional conduct or professional misconduct by transferring monies held in trust contrary to orders of the Family Court and contravening section 227(1) of the *Legal Profession Act 2008* by failing to report the trust irregularity to the Legal Practice Board on a timely basis. The monies held in the firm's trust account were transit monies, not general trust monies, and the Committee's investigation revealed that a junior practitioner had failed to appreciate this and had not informed her principal of the limitation on the use of the monies. As a result, a portion of the monies were transferred to the firm in payment of client invoices contrary to the orders. Neither the junior practitioner nor her principal appeared to be aware of the requirement imposed by section 227(1) of the Act.

The Committee noted that the transfer had been a genuine error on the part of the practitioners, and the firm had disgorged the amount of the payment shortly after becoming aware of it. Furthermore, the Committee noted that the practitioners had taken adequate steps to ensure that similar errors were prevented in the future, and the junior practitioner had subsequently undertaken training on trust account obligations, and agreed to liaise with her principal more closely on such matters in the future. The Committee further noted that the practitioners eventually reported the irregularity to the Board as required. In light of the steps taken by the practitioners to remedy the error and to prevent a future recurrence, the Committee considered there to be no public interest in taking the matter further.

Nevertheless, the Committee expressed its disquiet that the senior practitioner had apparently been unaware of his obligation pursuant to section 227(1) to report the irregularity as soon as practicable after becoming aware of it. The Committee was also concerned that the senior practitioner had not supervised more closely the junior practitioner's authorisation of the application of trust monies. The Committee warned the senior practitioner to ensure in future that he is more vigilant about such matters, in light of the utmost importance of compliance with court orders and the provisions of Part 9 of the Act. As for the junior practitioner, the Committee reminded her of her obligation to keep current on the provisions of Part 9 of the Act and to ensure in future that instructions and/or orders concerning the payment of transit monies are clearly noted on the file, communicated to the principals of the firm, and complied with as soon as practicable.

### **Case Study 3**

#### **Non compliance with court obligations**

The complainant alleged that the practitioner applied for an injunction in a Supreme Court Action without conferring with the other party as required by the Supreme Court Rules and that he failed to serve the application within the timeframe required by the Supreme Court Rules. The Court dismissed the application, ordered indemnity costs against the complainant (who was the practitioner's client), and ordered the practitioner to be personally responsible for the indemnity costs.

On considering the matter, the Committee noted that the practitioner was remiss in failing to serve the documents in good time and failing to confer with the other party. However, the Committee also noted that the practitioner's conduct had been censured by the Court at the hearing and in the written decision, and that the practitioner had been personally ordered to pay the indemnity costs order. In the circumstances, the Committee was satisfied there was no public interest in taking further action. Nevertheless, the Committee resolved to inform the practitioner of its concern about his failure to engage in conferral as required by the court rules, and his failure to comply with the timeframes and deadlines provided for in those rules. The Committee warned the practitioner that any similar conduct in the future would be dealt with most seriously.

### **5.3 SUMMARY DETERMINATIONS**

#### **CONCLUSION**

If, after an investigation is completed, the Committee is satisfied that there is a reasonable likelihood that a practitioner would be found guilty by SAT of unsatisfactory professional conduct in respect of a matter the Committee may deal with the matter using its summary conclusion powers.

The use of these summary conclusion powers means that a matter that would otherwise be referred to SAT can be dealt with by the Committee and lower penalties apply. The range of penalties available to the Committee range from a public

reprimand (or, if there are special circumstances, a private reprimand) up to a fine of \$2,500. The Committee can also make compensation orders.

However, before it can exercise its summary conclusion powers the Committee must also be satisfied that the practitioner is generally competent and diligent and that the taking of action is justified. The practitioner concerned must also consent to the Committee exercising its summary conclusion powers.

The Committee exercised its summary conclusion powers in respect of 9 matters during the year.

*Summary of matters determined in the exercise of summary conclusion powers*  
**1.7.11 – 30.6.12**

<b>Grounds of unsatisfactory professional conduct</b>	<b>Finding</b>
That the practitioner having been retained as counsel for Mr L O'H ( <i>the client</i> ) to defend him against criminal charges to be heard in the Fremantle Magistrates Court on 16 February 2009, on or about 6 February 2009 wrongfully returned his brief, without taking reasonable care to avoid foreseeable harm to the client, without the client's consent, and when there was insufficient time for another legal practitioner to adequately prepare and appear for the client on the trial.	Private reprimand
That the practitioner on or about 25 March 2009 in the course of acting for his client, Ms S, in relation to proceedings commenced against Ms S by the Chief Executive Officer of the Department of Child Protection (DCP), sent an email to the Director of the DCP and two solicitors appointed to act for Ms S's children in the proceedings, in which he used highly derogatory, intemperate and inappropriate language, to attack the professional competence and integrity of Ms N, a Senior Field Officer employed by the DCP, when there were no reasonable grounds for doing so.	Fine of \$1,500
That the practitioner between February 2009 and June 2009 or thereabouts in her representation of Ms T S in relation to family law issues conducted herself in a manner that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner.	Ordered to pay compensation of \$4,500 to client
That the practitioner on or about 16 March 2009 terminated the retainer between his firm and BTL without good cause and without taking reasonable care to avoid foreseeable harm to the client.	Fine of \$1,000
That the practitioner on or about 24 February 2011 sought to further his client's case by unfair means by forwarding a letter of demand to Mr & Mrs K and S W which contained a threat to refer their conduct, and conduct of other related parties, to the relevant authority if the monies demanded in that letter were not paid.	Fine of \$500 and private reprimand
That the practitioner while acting for Mrs D M in relation to two claims for criminal injuries compensation between 18 January 2005 and 16 November 2006 or thereabouts, failed to progress his client's matter in a timely manner or at all.	Private reprimand
That the practitioner between 12 August 2008 and 13 August 2009, in relation to an undertaking given to the Family Court of Western Australia in proceedings, conducted herself in a manner which fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner.	Fine of \$1,500

Grounds of unsatisfactory professional conduct	Finding
<p>That the practitioner:</p> <ul style="list-style-type: none"> <li>(a) between July 2008 and 29 January 2009 or thereabouts in his representation of Mr TCM in relation to criminal charges conducted himself in a manner that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner; and</li> <li>(b) on an unknown date after 29 January 2009 or thereabouts, destroyed original documents from the client's original file without instructions to do so and without maintaining copies of those documents in circumstances where the practitioner knew or ought to have known that the documents were likely to be relevant to an appeal.</li> </ul>	Fine of \$1,000
<p>That the practitioner between April 2009 and January 2010 in acting for Ms JR in District Court of Western Australia proceedings conducted the proceedings in a manner that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent and diligent legal practitioner in that he:</p> <ul style="list-style-type: none"> <li>(a) failed to notify the client that he had terminated the retainer; and</li> <li>(b) failed to take any or any reasonably necessary steps to apply to the District Court to be removed from the record.</li> </ul>	Fine of \$1,500

#### 5.4 REFERRALS TO SAT

During the year, the Committee resolved to refer matters arising from 26 complaints or conduct investigations to SAT involving 16 practitioners. As at 30 June 2012, 7 matters had yet to be filed in SAT (4 of these matters have subsequently been filed and 2 others have subsequently been dismissed by the Committee after further consideration).

The referral is by way of an Application filed in SAT. The Application sets out the Grounds of the professional misconduct or unsatisfactory professional conduct together with the supporting facts and contentions. The Committee is the applicant and is represented in SAT by members of the Litigation team or, in the case of defended hearings, counsel briefed from the independent bar.

## 6. State Administrative Tribunal and Court Proceedings

### 6.1 SAT APPLICATIONS

The Committee filed 19 Applications in SAT during the period under review, 6 of which the Committee had resolved to file in the previous reporting year.

During the year there were 36 Applications determined by SAT including 2 matters in respect of which a decision had been delivered as at 30 June 2012 but not penalty. Of the matters determined, half were determined as a result of consent orders. The majority of consent

orders were made following SAT ordered mediation where the Committee and the practitioner reached agreement on the orders to be sought. All minutes of proposed consent orders are referred to SAT for final approval.

At the conclusion of the period under review there were 11 Applications filed by the Committee which had not been determined (compared to 23 last year).

#### *Summary of SAT matters determined 1.7.11 – 30.6.12*

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
34/09 17/02/2012		Neglect and/or undue delay	Withdrawn
35/09 17/02/2012	Paul John O'Halloran	Failing to make superannuation contributions or lodge statements	Finding of professional misconduct* Fine \$2,500 Costs \$133,998 Reprimand
36/2009 17/02/2012	Paul John O'Halloran	Excessive charging/ undue delay/ failing to provide itemised bill	Finding of professional misconduct in respect of excessive charging / undue delay and unsatisfactory professional conduct in failing to provide itemised bill* Suspension 6 months from 19/03/2012 - for charging fees which were grossly excessive + Reprimand for failing to progress the client's claim and failing to provided itemised bill Refer to VR 35/2009 re: Costs

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
37/2009 17/02/2012	Paul O'Halloran	Costs agreement contrary to legislation/ excessive charging/ failing to keep client informed/ application of trust monies	<p>Finding of professional misconduct in respect of costs agreement / excessive charging and unsatisfactory professional conduct in respect of application of trust monies*</p> <p>Reprimand for failure to comply with s34A(b) of LPA 1893 (WA)</p> <p>Compensation \$15,000</p> <p>Refer to VR 36/2009 re: Suspension+</p> <p>Refer to VR 35/2009 re: Costs</p>
38/2009 17/02/2012	Paul O'Halloran	Costs agreement contrary to legislation/excessive charging/ undue delay/ failing to comply with Registrar's directions	<p>Finding of professional misconduct in respect of costs agreement / excessive charging and unsatisfactory professional conduct in failing to comply with Registrar's directions*</p> <p>Reprimand for failing to comply with Registrar's directions</p> <p>Refer to VR 36/2009 re: Suspension+</p> <p>Refer to VR 35/2009 re: Costs</p>
39/2009 17/02/2012	Paul O'Halloran	Costs agreement contrary to legislation/ excessive charging	<p>Finding of professional misconduct in respect of costs agreement / excessive charging*</p> <p>Refer to VR 36/2009 re Suspension+</p> <p>Refer to VR 35/2009 re Costs</p>
87/09 24/04/2012	Ni Kok Chin	Conflict of interest, competence issues, wrongful written communications, failing to deposit monies into trust, failing to render accounts, failing to follow instructions, wrongly altering a costs agreement, seeking remuneration from a client which varied in accordance with the amount to be recovered	<p>Findings of unsatisfactory professional conduct by seeking remuneration from a client which varied in accordance with the amount to be recovered and professional misconduct in respect of all other matters</p> <p>Awaiting decision on penalty</p>
88/09 1/09/2011	Megan Maree in de Braekt	Lack of competence and made allegations against a practitioner without reasonable grounds	<p>Finding of unsatisfactory professional conduct</p> <p>Reprimand</p> <p>Compensation \$22,334.60</p> <p>Fine \$3,000</p> <p>Costs \$17,357</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
201/09 14/07/2011	Corrin Lindsay Caine	<ul style="list-style-type: none"> <li>a) acting when likely to be witness</li> <li>b) attempting to mislead LPCC</li> <li>c) providing witness statement to other party which was false in a material particular</li> <li>d) wrongly suggesting witness confer with other proposed witnesses</li> </ul>	<p>Finding of unsatisfactory professional conduct by:</p> <p>a) continuing to act when witness gives evidence practitioner knows to be false and</p> <p>b) suggesting to a witness that he confer with other proposed witnesses</p> <p>Otherwise dismissed</p> <p>Reprimand</p> <p>Fine \$4,000</p> <p>Fine \$4,000</p> <p>Costs \$10,000</p>
34/10 11/05/2012	Simon Alexander Holme	<ul style="list-style-type: none"> <li>a) retaining interest earned on firm's trust account</li> <li>b) failing to make superannuation contributions</li> <li>c) failing to pay 'PAYG' tax withheld</li> <li>d) failing to ensure documents of practice secured during winding up of practice</li> </ul>	<p>Finding of:</p> <p>a) professional misconduct by receiving and retaining for his own use and benefit interest earned on his trust account</p> <p>b) unsatisfactory professional conduct in failing to make or to cause to be made the required superannuation contributions</p> <p>c) unsatisfactory professional conduct by failing to pay PAYG tax withheld</p> <p>d) unsatisfactory professional conduct by failing to ensure documents of practice secured during windup of practice</p> <p>Suspended for 2 years, conditions on practising certificate for a further 5 years not to practise unsupervised</p> <p>Costs \$10,000</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
83/10 5/12/2011	Lynette Patricia Quinlivan	<ul style="list-style-type: none"> <li>a) using position as a lawyer to intimidate or harass with intention of improperly gaining an advantage</li> <li>b) misleading Court</li> <li>c) attempting to intimidate/harass potential witness</li> </ul>	<p>Finding of unsatisfactory professional conduct by improperly using her entitlement to practice law to intimidate, harass or annoy*</p> <p>Reprimand</p> <p>Finding of professional misconduct by misleading a magistrate*</p> <p>Suspended for 2 months+</p> <p>Otherwise dismissed</p> <p>Costs \$16,033.70+</p>
103/10 16/12/2011	Steven Raymond Fidock	<ul style="list-style-type: none"> <li>a) acting in possible conflict</li> <li>b) swearing affidavits which he knew to be misleading</li> <li>c) making it a condition of compromise of a Supreme Court action that party withdraw a complaint to the LPCC</li> </ul>	<p>Finding of professional misconduct in a) &amp; b)*</p> <p>Suspension for 2 years commencing 13/05/2011</p> <p>Conditions to be imposed on practising certificate after suspension</p> <p>Finding of unsatisfactory professional conduct in relation to c)</p> <p>Fine \$3,000</p> <p>Costs \$25,000</p>
107/10 24/11/2011	Leonard Gandini	<ul style="list-style-type: none"> <li>a) failure to reach or maintain a standard expected of a legal practitioner</li> <li>b) intentionally misled Supreme Court</li> <li>c) intentionally misled another firm of legal practitioners</li> </ul>	<p>Finding of unsatisfactory professional conduct in respect of a) and professional misconduct in respect of b) and c)*</p> <p>Practising Certificate not be granted for 18 months*</p> <p>Costs \$23,832.50</p>
153/10 4/11/2011	Mark Anthony Detata	Released trust account money in breach of undertaking	<p>Finding of professional misconduct</p> <p>Reprimand</p> <p>Condition imposed on practising certificate for 24 months commencing 21 June 2011*</p> <p>Costs \$10,000</p>
182/10 16/09/2011	Sally Marjorie Vanderfeen	<ul style="list-style-type: none"> <li>a) misled Family Court</li> <li>b) failed to notify third party &amp; Family Court of third party interest in property</li> <li>c) misled Court</li> <li>d) misled LPCC in responses</li> </ul>	<p>Finding of professional misconduct in respect of a) to c)</p> <p>Allegation d) dismissed</p> <p>Fine \$20,000</p> <p>Costs \$18,412.70</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
201/10 25/05/2012	Megan Maree in de Braekt	Acting in an offensive, discourteous and threatening manner and misled Court	Finding of professional misconduct Interim suspension Referral to full bench of Supreme Court with recommendation for strike off Costs \$51,291
229/10 10/08/2011	Gavin George Wells	Lack of competence / diligence	Mediated outcome Finding of unsatisfactory professional conduct Reprimand Undertaking not to practise in Superior Courts Fine \$1,000 Costs \$5,000
235/10 17/07/2011	Carmel Anne McKenzie	Misled the Court	Mediated outcome Finding of unsatisfactory professional conduct by making oral submissions to the Court which were incorrect and had the potential to mislead the Court Fine \$3,000 Costs \$2,500
12/11 10/08/2011	Gavin George Wells	Lack of competence / diligence	Mediated outcome Finding of unsatisfactory professional conduct Practising certificate subject to conditions not to practise in superior courts Reprimand Fine \$1,000 Cannot recover any outstanding amount charged to client Costs \$5,000
24/11 17/02/2012		Costs agreement to charge in excess of MVA Act, excessive charges, gross overcharging	Withdrawn
55/11 17/10/2011	John Robert Quigley	a) making threats to publicly disclose a former undercover WA Police Officer's name b) making public details of the former undercover operative's name and telephone number	Mediated outcome Finding of unsatisfactory professional conduct in respect of both matters Reprimand Costs \$3,000

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
87/11 22/07/2011	Nicholas Philip Lindsay	a) misleading the Supreme Court / reckless as to whether it was misleading b) lack of diligence in progressing client matter	Mediated outcome Finding of unsatisfactory professional conduct by failing to take due care as to the accuracy of a letter written to the Supreme Court and by lack of diligence in progressing the client matter Fine \$7,000 Fine \$4,000 Costs \$2,000
93/11 10/08/2011	Eric Eng Wei Tan	Failing to supervise adequately or at all a junior practitioner	Mediated outcome Finding of unsatisfactory professional conduct Compensation \$25,668 Costs \$2,000
94/11 21/11/2011	Gary John Huggins	Failed to comply with the prosecutor's statutory duty of disclosure	Mediated outcome Finding of unsatisfactory professional conduct Fine \$6,000 Costs \$2,000
95/11 14/07/2011		Failed to supervise adequately or at all a junior practitioner	Withdrawn
111/11 24/11/2011	Ryan Peter Arndt	Lack of competence and diligence, delay / neglect	Mediated outcome Finding of unsatisfactory professional conduct Fine \$2,000 Costs \$1,250
112/11 29/06/2012	Eapon Carlose	a) acted incompetently b) failing to confer with counsel for the plaintiffs c) requiring the attendance of a witness for cross-examination which consisted of 4 non-contentious questions	Finding of unsatisfactory professional conduct Mediated Penalty For a period of 5 years the practitioner must not: a) have the ongoing conduct of proceedings in District Court of WA, Supreme Court of WA or Federal Court or continue to act in such proceedings unless independent counsel has been briefed b) appear as counsel in any trial or final hearing in District Court of WA, Supreme Court of WA and Federal Court Costs \$6,600

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
115/11 17/08/2011	Geoffrey Paul Dutton	a) lack of diligence b) intentionally / recklessly misleading or attempting to mislead the Court	Mediated outcome Finding of unsatisfactory professional conduct by lack of diligence and lack of care in preparing statement for Court Fine \$6,000 Costs \$2,000
116/11 24/11/2011	Ryan Peter Arndt	Lack of diligence	Mediated outcome Finding of unsatisfactory professional conduct Fine \$2,000 Costs \$1,250
126/11 13/02/2012	Andrew Skerritt Paul	a) sending letter to the State Administrative Tribunal which was misleading or reckless as to whether it was misleading; and/or b) failed, or failed to adequately, progress client's application	Mediated outcome Finding of professional misconduct by misleading the State Administrative Tribunal Otherwise dismissed Awaiting Penalty
135/11 9/12/2011	Alexander Jason McLean	Illegal conduct by, with intent to defraud, gaining a benefit	Finding of professional misconduct Referred to full bench of Supreme Court with recommendation for strike off Costs \$1,500
138/11 17/10/2011	Charles Robert Cook	a) lack of competence and diligence b) wrongfully terminating retainer	Mediated outcome Finding of unsatisfactory professional conduct in respect of all matters Reprimand Fine \$3,500 Costs \$1,500 Compensation \$2,500
144/11 17/01/2012	David Leask Charles	Lack of competence and diligence	Mediated outcome Finding of professional misconduct No penalty in light of suspension ordered by Full Bench in another matter

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
175/11 23/12/2011	Kevin Colin Benedict Staffa	Attempting to procure delivery of a cheque made payable to his firm's trust account when he knew he was not entitled or was reckless as to whether he was entitled to such payment / cheque	Mediated outcome Finding of unsatisfactory professional conduct Fine \$1,500 Costs \$2,000
194/11 6/03/2012		Attempting further case by unfair means, or alternatively providing incompetence advice	Withdrawn
204/11 29/05/2012	David Vilensky	(a) made serious allegations against an expert witness without a reasonable basis for doing so (b) made threats against an expert witness which had a real potential to interfere with the due administration of justice (c) sought costs without any basis for doing so (d) made serious allegations against another practitioner without a reasonable basis for doing so	Mediated outcome Finding of professional misconduct: a) made serious allegations against an expert witness, Dr F, and threatened to commence proceedings against Dr F for contempt, in circumstances where he failed to take any steps to ensure there were any grounds to support the allegations or to commence such proceedings b) made the said allegations concerning Dr F's conduct and threatened to commence the said proceedings with the intention of causing Dr F to withdraw expert reports which he had issued and not to give evidence in commercial arbitration proceedings in which he had been retained as an expert witness c) demanded payment of \$3,000 in costs to the practitioner's firm, when the practitioner knew that there were no reasonable grounds for his said demands d) made serious allegations concerning the conduct of WHL and threatened to refer the conduct of WHL to the

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
204/11 (continued)			LPB, in circumstances where he failed to take any steps to ensure there were any grounds to support those allegations Fine \$10,000 Costs \$2,300
215/11 22/05/2012	Christopher John Cook	Sending emails containing images or videos of a sexually explicit nature to a client	Finding of unsatisfactory professional conduct Reprimand Fine \$500 Costs \$1,000
220/11 14/03/2012	Carolyn Margaret Tomich	a) knowingly or recklessly misled the Family Court of WA b) making unqualified statements impugning the character of the party on the other side who was in person	Mediated Outcome Finding of professional misconduct Reprimand Undertaking not to engage in legal practice after 1 May 2012
33/12 29/05/2012	Kyle Jay Kutasi	Engaged in legal practice in WA whilst not an Australian legal practitioner	Mediated outcome Finding of unsatisfactory professional conduct Fine \$850 Costs \$2,000
34/12 29/05/2012	Dean Richard Love	Failed or failed to adequately inform, discuss or provide advice to his client about serious sexual assault charges so that the client could make an informed decision as to how to plead	Mediated outcome Finding of unsatisfactory professional conduct Fine \$5,000 Costs \$2,500 Partial Refund of fees \$2,000

\* Appeal pending

+ Stay Granted

*Summary of SAT matters which were not determined as at 30.6.12*

Application No.	Date filed	Allegation	Status
183/2010	24/09/2010	Professional misconduct – a) misled Family Court b) failed to notify third party & Family Court of third party interest in property c) failed to respond to LPCC inquiries	Hearing 6/3/2012 - 7/3/2012 and 17/07/2012
113/2011	24/06/2011	Professional misconduct by causing a client to sign an affidavit which contained a false statement, when the practitioner knew that the statement was false or, alternatively, recklessly disregarded whether the statement was true or false	Hearing 28/05/2012
114/2011	24/06/2011	Unsatisfactory professional conduct by failing to adequately supervise an articled clerk	Hearing 28/05/2012
211/2011	29/11/2011	Unsatisfactory professional conduct – a) failed to comply with the prosecutor's duty of disclosure b) failed to review written materials to ascertain that there was a reasonable evidentiary foundation to support a material submission of fact before advancing that material submission of fact during his opening address at the trial c) failed to lead evidence other than the accused's confession in support of a material submission of fact advanced in his opening address in circumstances where he ought to have done so d) in the circumstances above failed to withdraw the material submission of fact at any time prior to the conclusion of the trial	Mediation 5/04/2012
43/2012	13/03/2012	Professional misconduct relating to 7 client matters: a) not accounting for trust monies b) failing to carry out work he agreed to do c) neglect of client matters d) failing to inform clients of his ceasing to practice and/or providing their files to new solicitors	Mediation 17/10/2012

<b>Application No.</b>	<b>Date filed</b>	<b>Allegation</b>	<b>Status</b>
44/2012	13/03/2012	Professional misconduct – by withdrawing without authority and using for own benefit funds from the general trust account of the practitioner's law firm; further, making or causing false entries to be made in the trust account ledgers of the practitioner's law firm	Mediation 05/09/2012
47/2012	14/03/2012	Professional misconduct by: a) deliberately misleading a fellow practitioner b) breaching a court order c) lack of diligence in progressing client matter	Mediation 14/06/2012
78/2012	21/05/2012	Professional misconduct - a) engaging in legal practice in WA inconsistent with conditions imposed from home jurisdiction b) misleading Legal Practice Board WA c) misleading the other party	Directions 24/07/2012
79/2012	21/05/2012	Unsatisfactory professional conduct - a) failing to make an enquiry requested by a Magistrate of the Family Court and which she agreed to do b) making statements to a member of staff at a school when she knew that there were no, or no reasonable, grounds for some of those statements, or was recklessly indifferent to whether or not there were reasonable grounds for some of those statements	Directions 31/07/2012
85/2012	24/05/2012	Professional misconduct – a) failed to make superannuation contributions b) failed to lodge some or all of the superannuation guarantee statements with the Commissioner c) failed to pay GST to the Commissioner d) failed to pay PAYG tax withheld to the Commissioner	Mediation 6/09/2012
101/2012	29/06/2012	Professional misconduct - failing to supervise adequately or at all a law clerk so as to ensure the clerk took any or any adequate steps to substantively progress the client's matter in a timely manner or at all	Directions 17/7/2012

## 6.2 REVIEW APPLICATIONS

Complainants who have had their complaints dismissed have the right to apply to SAT for a review of the Committee's decision. If the Committee specifically finds a complaint to be trivial, unreasonable, vexatious or frivolous, the complainant cannot apply to SAT for a review of the Committee's decision without the leave of SAT.

There were 21 Applications filed during the year (compared to 24 last year). The extent of the Committee's

involvement in these proceedings depends on the circumstances of the particular matter. The Committee is usually requested to appear and provide documents to SAT. Sometimes the matter proceeds to a defended hearing in which the Committee is a party.

All the review Applications were either dismissed or withdrawn with the exception of 2 where some parts of the complaints which had been dismissed by the Committee were referred back for reconsideration by the Committee.

Review Applications	Total
Pending as at 1 July 2011	<b>12</b>
Lodged during year	<b>21</b>
Withdrawn	<b>(5)</b>
Dismissed	<b>(14)</b>
Part referred back/Part dismissed	<b>(2)</b>
Pending as at 30 June 2012	<b>12</b>

## 6.3 REPORTS TO THE FULL BENCH

If SAT finds a matter to be proved, it has a range of penalties open to it. The maximum penalty is a period of suspension. Where SAT considers that a period of suspension is inadequate it can decide to transmit a Report to the full bench with a recommendation as to penalty. This is ordinarily done when SAT is of the view that a practitioner's name should be struck from the roll of practitioners.

The full bench can make any order available to SAT and/or strike a

practitioner off the roll. During the year, David Charles Leask was ordered not to apply for a practising certificate until 1 July 2015, Tricia Yeo Bachmann was struck from the roll on 15 November 2011 and Carmel Mary Fitzpatrick was struck from the roll on 1 December 2011.

Practitioners who remained, during the period under review, the subject of a Report to the full bench which had not been determined were Alexander Jason McLean and Megan Maree in de Braekt.

## 6.4 APPEALS

During the year:

- an application for special leave to appeal to the High Court by Peter Neil from a Court of Appeal decision dismissing his appeal from a SAT decision dismissing his review application was dismissed
- an appeal by Leonard Gandini from an interim SAT decision was withdrawn on 3 April 2012
- an appeal by Michael Joseph Lourey from a SAT decision not to award costs in his favour following the dismissal of an Application brought against him by the Committee was dismissed on 29 May 2012.

Appeals which were lodged prior to the year, but which had not been determined as at 30 June 2012 were:

- an appeal by Peter Neil from a SAT decision dismissing another review application
- an appeal by Leonard Gandini from a SAT decision
- an appeal by Steven Raymond Fidock from a SAT decision.

The following appeals were lodged during the year, but as at 30 June 2012 had not been determined:

- an appeal by Paul John O'Halloran from SAT decisions
- an appeal by Lynette Patricia Quinlivan from a SAT decision
- an appeal on penalty by the Committee against a SAT decision in relation to Mark Anthony Detata
- an appeal on penalty by the Committee against a SAT decision in relation to Leonard Gandini in which the practitioner has cross-appealed.

## 7. Promoting Professional Standards

One of the purposes of Part 13 of the Act (which deals with complaints and discipline) is to promote and enforce professional standards, competence and honesty.

The Committee is becoming more proactive in this regard, particularly through its work in the Rapid Resolution team.

The Committee has continued to issue expressions of concern to practitioners to highlight concerns the Committee has about a practitioner's conduct even though the conduct concerned was not sufficient to amount to unsatisfactory professional conduct. This is done with a view to preventing such conduct from the practitioner in future.

The Committee has also continued to publish articles in The Law Society's *Brief* magazine. Two articles were published during the reporting period which covered threats to cause extraneous detriment, caveats in family law matters and preparation of witness statements. These articles are also republished on the Board's website.

The Committee's members and staff also give presentations at conferences and continuing professional development seminars and sometimes to government bodies and individual firms. Some of these presentations are accompanied by papers or power point presentations which are also published on the Board's website. During the year, 17 such presentations were given by Committee staff.

In a new initiative, representatives from the Legal Profession Complaints Committee also visited regional areas to talk to practitioners about issues relating to complaints. The first visit was to Albany in March 2012 and presented by Gael Roberts, Law Complaints Officer and Philippa Rezos, the manager of the Rapid Resolution team. The second visit was to Broome in June 2012 when Patricia Le Miere, the manager of the Litigation team, was visiting to present a talk at a Family Law conference about complaints, and, in particular, issues associated with legal practice in regional areas. While Patricia was in Broome she made herself available to speak to practitioners individually about complaint issues.

## 8. Tables

TABLE 1 RAPID RESOLUTION INQUIRIES 2012

No comparisons are available from past years, as previously data was not collected for written inquiries falling within this category.

### TYPE OF INQUIRER 2012

	Total % 2011 – 2012
Client/Former Client	52.9
Friend/Relative of Client	11.9
Opposing party	18.7
Beneficiary/Executor/Administrator	2.6
Practitioner on own behalf	3.6
Practitioner on another's behalf	0.6
Other	9.8

### INQUIRIES BY AREAS OF LAW 2012

	Total % 2011 – 2012
Family/Defacto Law	32.4
Civil Litigation	17.4
Conveyancing	2.5
Leases / Mortgages / Franchises	2.6
Probate/Wills/ Family Provisions	10.2
Commercial/Corporations Law	4.1
Criminal	9.4
Personal Injuries	4.5
Workers Compensation	4.7
Victims Compensation	0.4
Other	12.0

TABLE 1 RAPID RESOLUTION INQUIRIES 2012

## INQUIRIES BY AREAS OF INQUIRY 2012

	Total % 2011 - 2012
<b>Cost/Payment Issues</b>	
Failure to Pay Third Party	0.2
Overcharging	13.9
No Costs Disclosure	2.8
Transfer Costs Without Authority	0.3
Failure / Delay to Provide a Detailed Account	2.0
Other Costs Complaint	13.4
<b>Subtotal</b>	<b>32.6</b>
<b>Communication/Service</b>	
Act Without / Contrary to Instructions	2.2
No Communication	9.6
Failure to Carry Out Instructions	4.8
Delay	6.8
Lack of Supervision	0.1
No Client Advice	1.7
No Advice on Progress	1.2
Discourtesy	2.3
Neglect	3.5
<b>Subtotal</b>	<b>32.2</b>
<b>Personal Conduct</b>	
Unethical Conduct	9.1
Negligence	4.2
Misleading	2.0
Conflict of interest	2.3
Failure to Transfer Documents	0.6
Communicating with a Client of Another Solicitor	0.1
Threatening Behaviour	1.4
False Swearing of Documents	0
Breach Confidentiality	0.2
Undue Pressure	0.7
Alteration of Documents	0.1
Liens	0.5
<b>Subtotal</b>	<b>21.2</b>
<b>Other</b>	<b>14</b>

TABLE 1 RAPID RESOLUTION INQUIRIES 2012

## RESOLUTION OF INQUIRY 2012

	Total % 2011 – 2012
<b>Conciliated Outcome</b>	
Fee waiver	1.7
Apology	2.2
Undertaking	0.1
Discounted fees	5.2
Release of lien	0.5
Withdrawn	1.5
Improved communication	2.4
Improved legal practice, training, supervision, mentoring or management systems	0.3
Other	1.4
<b>Subtotal</b>	<b>15.3</b>
<b>No Further Action</b>	
Accepted Committee / practitioner's response	8.5
Brochures provided	12.5
Suggested direct approach to practitioner	10.6
No further information provided	12.8
Advised to get legal advice	5.3
Misconceived	6.1
Other	24.9
<b>Subtotal</b>	<b>80.7</b>
Part/Whole inquiry resolved per above category, but referred for investigation	0.3
Referred for investigation	3.6
Referred for formal determination s415 / s425	0.1
<b>Subtotal</b>	<b>4.0</b>

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION INQUIRIES 2010 – 2012

	Total 2009 – 10	Total 2010 – 11	Total 2011 – 12
Complaints	442	336	147
Conduct Investigations	29	16	29
Rapid Resolution inquiries	n/a	556*	1652
<b>Total</b>	<b>471</b>	<b>908</b>	<b>1828</b>

\* For part year only 13.12.10 – 30.6.11

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2010 - 2012

	Total 2009 – 10 (%)	Total 2010 – 11 (%)	Total 2011 – 12 (%)
Client / former client	227 (48.2)	168 (47.7)	81 (46.0)
Client's friend / relative	18 (3.8)	10 (2.8)	6 (3.4)
Opposing party	124 (26.3)	105 (29.8)	43 (24.4)
Beneficiary / executor / administrator	12 (2.5)	5 (1.4)	2 (1.1)
Practitioner on own behalf	16 (3.4)	11 (3.1)	6 (3.4)
Practitioner on another's behalf	11 (2.3)	3 (0.9)	0
Legal Practice Board	3 (0.6)	3 (0.9)	0
Other	24 (5.1)	31 (8.8)	9 (5.1)
Court Enquiry	No data	1 (0.3)	4 (2.3)
Other Investigation	29 (6.2)	31 (4.3)	25 (14.2)
<b>Total</b>	<b>471</b>	<b>352</b>	<b>176</b>

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2010 – 2012

	Total 2009 – 10 (%)	Total 2010 – 11 (%)	Total 2011 – 12 (%)
Family/Defacto law	131 (26.9)	94 (26.0)	41 (21.8)
Civil Litigation	111 (22.8)	73 (20.2)	45 (23.9)
Conveyancing	18 (3.7)	8 (2.2)	4 (2.1)
Leases/Mortgages/Franchises	15 (3.1)	10 (2.8)	4 (2.1)
Probate/Wills/Family Provisions	32 (6.6)	27 (7.5)	12 (6.4)
Commercial/Corporations Law	30 (6.2)	23 (6.4)	8 (4.3)
Criminal law	39 (8.0)	31 (8.6)	17 (9.0)
Personal injuries	18 (3.7)	13 (3.6)	12 (6.4)
Workers Compensation	20 (4.1)	9 (2.5)	9 (4.8)
Victims Compensation	6 (1.2)	2 (0.6)	4 (2.1)
Employment/Industrial law	11 (2.3)	13 (3.6)	4 (2.1)
Professional negligence	4 (0.8)	2 (0.6)	0
Land and Environment	7 (1.4)	6 (1.7)	1 (0.5)
Immigration	3 (0.6)	1 (0.3)	1 (0.5)
Other	24 (4.9)	49 (13.5)	26 (13.8)

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2010 - 2012

	Total 2009–10 (%)	Total 2010–11 (%)	Total 2011–12 (%)
<b>Cost/Payment issues</b>			
Failure to pay third party	4 (0.5)	4 (0.7)	0
Overcharging	96 (10.9)	64 (11.0)	36 (11.5)
No costs disclosure	27 (3.1)	6 (1.0)	4 (1.3)
Transfer costs without authority	2 (0.2)	2 (0.3)	4 (1.3)
Failure/delay to provide a detailed account	17 (1.9)	4 (0.7)	7 (2.2)
Other cost complaint	41 (4.7)	26 (4.5)	7 (2.2)
<b>Subtotal</b>	<b>187 (21.3)</b>	<b>106 (18.2)</b>	<b>58 (18.5)</b>
<b>Communication/Service</b>			
Act without/contrary to instructions	33 (3.8)	19 (3.3)	12 (3.8)
No communication	67 (7.6)	39 (6.7)	18 (5.8)
Failure to carry out instructions	55 (6.3)	46 (7.9)	18 (5.8)
Delay	61 (6.9)	38 (6.5)	18 (5.8)
Lack of supervision	9 (1.0)	1 (0.2)	2 (0.6)
No client advice	14 (1.6)	12 (2.1)	7 (2.2)
No advice on progress	11 (1.3)	7 (1.2)	6 (1.9)
Discourtesy	44 (5.0)	49 (8.4)	13 (4.2)
Neglect	37 (4.2)	12 (2.1)	11 (3.5)
<b>Subtotal</b>	<b>331 (37.7)</b>	<b>228 (38.4)</b>	<b>105 (33.6)</b>
<b>Personal Conduct</b>			
Unethical conduct	113 (12.9)	86 (14.8)	44 (14.1)
Negligence	28 (3.2)	27 (4.7)	17 (5.4)
Misleading	63 (7.2)	31 (5.3)	19 (6.1)
Conflict of interest	32 (3.6)	20 (3.4)	5 (1.6)
Failure to transfer documents	11 (1.3)	2 (0.3)	1 (0.3)
Communicating with a client of another solicitor	1 (0.1)	1 (0.2)	1 (0.3)
Threatening behaviour	23 (2.6)	15 (2.6)	6 (1.9)

	Total 2009–10 (%)	Total 2010–11 (%)	Total 2011–12 (%)
False swearing of documents	4 (0.5)	1 (0.2)	2 (0.6)
Breach confidentiality	8 (0.9)	0 (0)	3 (1.0)
Failure to assist LPCC	No data	1 (0.2)	1 (0.3)
Undue pressure	11 (1.3)	6 (1.0)	1 (0.3)
Alteration of documents	1 (0.1)	0 (0)	0
Liens	6 (0.7)	2 (0.3)	0
<b>Subtotal</b>	<b>301 (34.2)</b>	<b>192 (33)</b>	<b>100 (32)</b>
<b>Non-Compliance</b>			
Not complying with undertaking	2 (0.2)	2 (0.3)	3 (1.0)
Practising without a practice certificate	7 (0.8)	2 (0.3)	0
Not complying with Legal Profession Act/Regulations	6 (0.7)	2 (0.3)	3 (1.0)
<b>Subtotal</b>	<b>15 (1.7)</b>	<b>6 (0.9)</b>	<b>6 (1.9)</b>
<b>Trust Account Matters</b>			
Breach of Sections of Act / Regulations relating to trust monies	5 (0.6)	2 (0.3)	8 (2.6)
Misappropriation	1 (0.1)	4 (0.7)	3 (1.0)
Failure to account	7 (0.8)	2 (0.3)	4 (1.3)
Other – Trust Account Matters	2 (0.2)	1 (0.2)	3 (1.0)
<b>Subtotal</b>	<b>15 (1.7)</b>	<b>9 (1.5)</b>	<b>18 (5.8)</b>
<b>Other</b>	<b>30 (3.4)</b>	<b>45 (7.8)</b>	<b>26 (8.3)</b>

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2010 – 2012

	Total 2009 – 10 (%)	Total 2010 – 11 (%)	Total 2011 – 12 (%)
Barrister	19 (4.0)	22 (6.3)	15 (8.5)
Sole Principal	151 (32.1)	118 (33.5)	80 (45.5)
Other Principal	120 (25.5)	96 (27.3)	36 (20.5)
Non Principal	121 (25.7)	80 (22.7)	22 (12.5)
Government Legal Position	15 (3.2)	15 (4.3)	2 (1.1)
Corporate Legal Position	9 (1.9)	3 (0.9)	0
Firm only	3 (0.6)	1(0.3)	1 (0.6)
Struck off/suspended	6 (1.3)	5 (1.4)	7 (4.0)
Other	No data	3.41	13 (7.4)

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2010 – 2012

	Total 2009 – 10 (%)	Total 2010 – 11 (%)	Total 2011 – 12 (%)
CBD/West Perth	239 (50.7)	193 (54.8)	96 (54.6)
Suburbs	182 (38.6)	115 (32.7)	63 (35.8)
Country	31 (6.6)	35 (9.9)	12 (6.8)
Interstate	11 (2.3)	4 (1.1)	2 (1.1)
Not known	8 (1.7)	4 (1.1)	3 (1.7)
<b>Total</b>	<b>471</b>	<b>351</b>	<b>176</b>

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2010 – 2012

	Total 2009 – 10 (%)	Total 2010 – 11 (%)	Total 2011 – 12 (%)
Under 5	71 (15.1)	47 (13.4)	19 (10.8)
5 – 9	69 (14.7)	47 (13.4)	39 (22.2)
10 – 14	70 (14.9)	55 (15.6)	19 (10.8)
15 – 19	62 (13.2)	41 (11.7)	21 (11.9)
20 – 24	53 (11.2)	38 (10.8)	17 (9.7)
25 – 29	55 (11.7)	43 (12.2)	23 (13.1)
30 – 34	45 (9.6)	41 (11.7)	22 (12.5)
35 – 39	26 (5.5)	1 (5.1)	5 (2.8)
Over 40	11 (2.3)	13 (3.7)	11 (6.3)
Not known/Not applicable	9 (1.9)	8 (2.3)	0
<b>Total</b>	<b>471</b>	<b>351</b>	<b>176</b>

TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2010 – 2012

	Total 2009 – 10 (%)	Total 2010 – 11 (%)	Total 2011 – 12 (%)
Under 25	1 (0.2)	4 (1.1)	1 (0.6)
25 – 29	21 (4.5)	19 (5.4)	7 (4.0)
30 – 34	38 (8.1)	25 (7.1)	6 (3.4)
35 – 39	44 (9.3)	41 (11.7)	11 (6.3)
40 – 44	59 (12.5)	38 (10.8)	28 (15.9)
45 – 49	72 (15.3)	52 (14.8)	30 (17.1)
50 – 54	77 (16.4)	54 (15.3)	34 (19.3)
55 – 59	75 (15.9)	50 (14.2)	31 (17.6)
60 – 64	44 (9.3)	31 (8.8)	10 (5.7)
65 – 69	12 (2.6)	19 (5.4)	10 (5.7)
70 – 75	5 (1.1)	5 (1.4)	6 (3.4)
76 – 80	2 (0.4)	0	0
81+	4 (0.9)	1 (0.3)	1 (0.6)
Not known/Not applicable	17 (3.6)	12 (3.4)	1 (0.6)
<b>Total</b>	<b>471</b>	<b>351</b>	<b>176</b>

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2010 – 2012

	Total 2009 – 10	Total 2010 - 11	Total 2011 – 12
Practitioners with 1 complaint	302	235	113
Practitioners with 2 complaints	45	30	14
Practitioners with 3 or more complaints	21	14	6
<b>Total number of practitioners</b>	<b>368</b>	<b>279</b>	<b>133</b>

TABLE 11 OUTSTANDING COMPLAINTS 2010 – 2012

	Total 2009– 10	Total 2010 - 11	Total 2011 – 12
Outstanding complaints	453	295	<b>114</b>
Outstanding conduct investigations	48	42	<b>20</b>
<b>Total</b>	<b>501</b>	<b>337</b>	<b>134</b>

TABLE 12 COMPOSITION OF THE WA LEGAL PROFESSION AS AT 30 JUNE 2012

	Resident Females	Non-Resident Females	Resident Males	Non-Resident Males	Totals
Barristers	36	0	167	0	203
Commonwealth Government	30	0	25	0	55
Consultants	15	0	29	1	45
Director	81	0	303	2	386
Employees	1264	50	907	38	2259
Equity Partner	40	0	282	6	328
Fixed Profit-share Partner	11	0	37	0	48
Inhouse	297	17	288	14	616
Lay Associates	0	0	0	0	0
Locum	0	0	0	0	0
Not practising (certificated)	238	12	134	15	399
Salaried Partner	24	1	39	2	66
Sole Practitioners	125	0	354	1	480
Judiciary^	1	0	1	0	2
Deceased^	1	0	1	0	2
Struck Off /Suspended^					0
State Government*	43	0	21	0	64
Legal Practitioner Partner of a Multidisciplinary Partnership					
	1	0	2	0	3
<b>Practice Certificates ISSUED</b>	<b>2207</b>	<b>80</b>	<b>2590</b>	<b>79</b>	<b>4956</b>
S.36 Practitioners					
** State Solicitor's Office	61	0	47	1	109
**Director of Public Prosecutions (State)	60	0	53	0	113
**Other Departments	173	125	4	1	303
<b>TOTAL PRACTITIONERS</b>	<b>2458</b>	<b>205</b>	<b>2673</b>	<b>81</b>	<b>5481</b>

^ held a practice certificate during 2010/2011, however by 30 June 2011, were appointed judiciary/deceased/struck off/suspended.

\* State Government employees who held a practice certificate during 2011 - 2012

\*\* State Government employees taken to be certificated pursuant to Section 36 of the *Legal Profession Act 2008*

## **9. Information Statements**

### **9.1 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.

### **9.2 PUBLIC INTEREST DISCLOSURE**

In accordance with the *Public Interest Disclosure Act 2003* the Committee has appointed a Public Interest Disclosure Officer.

No public interest disclosures were received during the relevant period.

**FREEDOM OF INFORMATION ACT 1992 ("FOI ACT")**  
**INFORMATION STATEMENT**  
**LEGAL PROFESSION COMPLAINTS COMMITTEE**

1. This information statement is prepared and published pursuant to the requirements of Part 5 of the *Freedom of Information Act 1992* ("the FOI Act") and relates to the Legal Profession Complaints Committee ("Complaints Committee").
2. The structure of the Complaints Committee is set out in Sections 555 and 556 of the *Legal Profession Act 2008* ("the Act"); the functions of the Complaints Committee are set out in Sections 409, 410, and 557.
3. The functions of the Complaints Committee including, in particular, its decision making functions, do not affect members of the public; they affect Australian Legal Practitioners (as defined in Section 5(a) of the Act) on the one hand and those among the classes of persons set out in Section 410(1) of the Act from whom complaints are received on the other hand.
4. The policy of the Complaints Committee is formulated by statute and is set out at Part 13 of the Act. There are no arrangements 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 prepares brochures which explain 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 brochures can be inspected or obtained from the Complaints Committee free of charge, or can be downloaded from <http://www.lpbwa.org.au/>.

6. Copies of the said brochures 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. Copies of the said brochures are also available to the general public for inspection or downloading from <http://www.lpbwa.org.au/>.
7. Philippa Rezos of 2<sup>nd</sup> 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 of the FOI Act. Such applications may be addressed 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.
10. None of the Complaints Committee's 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). No reductions to the application fee are available.
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. Charges may apply. For financially disadvantaged applicants or those issued with prescribed pensioner concession cards charges to provide copies of documents, audio or video tapes, computer disks, transcripts of recordings, shorthand or encoded documents from which words can be reproduced are reduced by 25%.
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.

**LPCCWA**

**Level 2, Colonial Building, 55 St Georges Terrace, Perth WA 6000  
Post Office Box Z5293 St Georges Terrace, Perth WA 6831  
Ph 08 9461 2299 | Fx 08 9461 2265 | Em [lpcc@lpbwa.com](mailto:lpcc@lpbwa.com) | Web [www.lpbwa.org.au](http://www.lpbwa.org.au)**

