



LEGAL PROFESSION COMPLAINTS COMMITTEE
WESTERN AUSTRALIA

2018 ANNUAL REPORT

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1. Report from the Chair

This report covers the activities of the Committee during its first full year at its new premises, 111 St George's Terrace, following the relocation of both the Committee and the Legal Practice Board to a single shared premises.

A review of all of the tables published in this report demonstrates that, for the reporting year, Family Law remained the field of practice which generated the highest amount of contact between the public and the Committee. Overall, there were approximately 1,700 enquiries from members of the public and from the profession, an increase of 5% from the previous year. A noticeable change in the nature of enquiries from previous years was that this year there were many more enquiries concerning elder issues and the preparation of wills and enduring powers of attorney.

The continuing refinement of triaging complaints to the Committee through the Committee's Rapid Resolution Team has resulted in a further reduction in the time taken for the disposition of complaints and conduct investigations. The RRT was introduced at the beginning of 2010. By the end of June 2010, there remained undetermined 501 matters, comprising 453 complaints and 48 conduct investigations. In contrast, by the end of June 2017, there remained undetermined only 127 matters, comprising 99 complaints and 28 conduct investigations. 70 matters were opened between 1 July 2017 and 30 June 2018. By 30 June 2018, only 97 matters remained to be dealt with.

The tables further indicate that, during the reporting year, the members of the Committee were only called upon to determine matters when it was likely there would be a finding by the State

Administrative Tribunal that a practitioner had engaged in professional misconduct or unsatisfactory professional conduct. During the reporting period, the Committee determined 67 matters, of which 3 were dismissed, because the Committee was satisfied that it was in the public interest to do so. Of the remainder, the Committee resolved to refer 56 to the State Administrative Tribunal and dealt with the other 8 in the exercise of its summary conclusion powers. That represented a significant increase in the number of matters dealt with by the Committee by exercising its summary conclusion powers. That increase resulted from the introduction of a "fast track" option offered to practitioners who indicate a preparedness to engage responsively and candidly with an investigation requiring determination.

The Committee however has disappointingly experienced some increased resistance from a small number of practitioners and/or their counsel to respond courteously, candidly and fulsomely in their dealings with the Committee (Legal Profession Conduct Rule 50). In contrast to the fast track process, these matters are a drain on the Committee's limited resources and are time consuming.

I am pleased to be able to report that, despite the significant disruption imposed by the move to new premises, and the Law Complaints Officer being required to fill that role, and the role of manager of the RRT, for more than 8 months, and the other managers, Nick Pope and Cassie Paterson, having to deal with the strain of responding to matters of increasing complexity and seriousness, the staff of the Committee have managed to achieve admirable outcomes in each of their respective roles. Additionally, during the reporting period, the Committee prosecuted some particularly complex

matters, and was involved in a number of intricate trust account investigations, which caused a significant diversion of the Committee's resources.

During the year, the Deputy Chair of the Committee, Kim Wilson SC, and I engaged with the State Solicitor General (as the Honourable the Chief Justice then was) and discussed at length a proposal by the Attorney General that Western Australia adopt the uniform legal profession legislation (**Uniform Law**) which has been in force in Victoria and New South Wales since 2015. Although no final decision has yet been made for Western Australia to adopt the Uniform Law, a provisional commencement date of 1 July 2019 has been suggested. The understanding of both the Committee and the Legal Practice Board of the possible advantages of adopting the Uniform Law was greatly enhanced by the Law Complaints Officer and the Executive Director of the Board travelling to New South Wales and Victoria, meeting with representatives of the relevant regulatory bodies in those States, and viewing the Uniform Law in operation.

Leaving aside the merits of joining a uniform scheme, as opposed to introducing "mirror" legislation in this State, the advantages of some aspects of the Uniform Law, from the Committee's perspective, would be that it would provide a legislative imprimatur to the triage processes of the Committee. Under the Uniform Law, the Committee would be able to determine if a matter was "a consumer issue", "a consumer dispute", a complaint, or a conduct issue only. The Uniform Law would also provide an effective disposition mechanism for cost disputes up to \$100,000, and a simplified summary determination process.

While the Committee and the Board are in agreement as to the suggested allocation of the various proposed chapters of the Uniform Law between the Committee and

the Board, there are differences between the two bodies regarding some suggestions by the Committee for the adoption of legislative changes to clarify the relationship between the Committee and the Board.

In essence, the Committee is already utilising a number of the objectives of the Uniform Law with regard to the provision of legal services. Those objectives have been the foci of a significant education programme delivered by the Committee to the profession, and have been addressed at the Rapid Resolution level of the Committee. The Rapid Resolution Team's involvement may result in a referral to the Investigation Team, a routine or causative trust account inspection, informal or formal audit and/or suggestions on training and other related matters. The filtering by the Rapid Resolution Team of the issues raised has ensured the members of the Committee are only required to deal with complaints and conduct issues which are of substance.

Trends

I previously mentioned that, during the reporting year, there was an increase in the number of elder issues raised by enquirers to the Committee. In addition, there has been an increase in the number of matters referred to the Committee by the State Administrative Tribunal and the Family Court which involved elder issues. Concerns were often expressed that practitioners had failed to understand to whom they owed their fiduciary duties in matters which involved those issues.

Forecast workload

The Committee's workload shows no signs of diminishing. An interesting and pleasing aspect of the statistics is the increasing contact from the profession on ethical issues. Practitioners now regularly contact the Committee to discuss whether they should

continue to act in a matter where they believe they may have a conflict of interest. While the Committee does not give legal advice, its legal officers will indicate whether they believe the practitioner needs to obtain independent advice and what information the practitioner should give to the client.

Proposals for improving the operations of the Committee

The Committee's operations would undoubtedly be greatly improved if it had a dedicated complaint management system. That innovation has been discussed for many years but has been delayed as a result of both the co-location and the need for the Board's information technology team to make further enquiries of potential providers. That team is endeavouring to assess the ability of different providers to meet the requirements of both the Board and the Committee in managing both practitioner and firm data and complaints generally.

In the interim, the Committee, with the assistance of the Board's records officer and the Board's information technology team, has created a rudimentary hybrid electronic file management process which has allowed for more expeditious responses when identifying matters which could be considered "consumer issues", as distinct from matters which could involve conduct requiring investigation by the Committee

Thanks

I express my thanks to the Deputy Chair of the Committee, Mr Kim Wilson SC for his invaluable support. I would also like to thank all other members of the Committee who devote their time free of charge to deal with

the varied and complex matters which the Committee is required to determine. In particular, I would like to thank the community members of the Committee, who participate fully in the work of the Committee and bring a different and valuable perspective for the Committee's decision making.

During the course of the reporting year, two members left the Committee. One was Sabina Schlink, who had been a member of the Committee for many years, and the other was Simon French, who had been a member of the Committee since 2016. I thank both Sabina and Simon for their considerable contributions to the Committee.

I also wish to acknowledge the commitment and dedication of the Committee's legal and support staff. They work in conditions which can sometimes be very difficult and demanding. That applies both to their engagement with the enquiries and complaints and their dealings with some practitioners, all of whom can at times subject them to unreasonable demands.

In particular, I would like to thank the Law Complaints Officer, Philippa Rezos, for all the support she has provided to the Committee, and for her unswerving dedication to what is a very difficult job. I also thank for the reporting year the managers, Nick Pope and Cassie Paterson, for all the hard work which they have done. The Committee could simply not function without them.

John Ley
Chair
December 2018

2. Report from the Law Complaints Officer

I present this report in the context of the significant changes arising from the Committee co-locating to the same premises as the Legal Practice Board, refining of the Committee's approaches to triaging complaints and conduct matters and addressing the proposed introduction of the Uniform legislation.

In my report last year I referred to the challenges being faced by the Committee following its co-location with the Office of the Board.

The Committee's status and the Uniform Law (UL)

Those challenges remain and the Committee and its staff are continuing to navigate a quite difficult landscape arising both from its obligations and duties due to its status as an independent statutory agency but where the Board administratively supports it. This complexity was the subject of careful analysis by the Court of Appeal in *Legal Profession Complaints Committee -V- Rayney* [2017] WASCA 78 which clearly and succinctly stated the position that the Committee is not a privy of the Board and where it was enabled by certain provisions of the *Legal Profession Act 2008 (LPA)*, could determine the basis on which it would disclose information to the Board.

This means that the Committee has had to take careful heed of information barriers and make certain protocols are in place to ensure its processes and investigations remain inviolable and uncompromised. This will not change in the likely advent of the introduction into parliament of the *Application Act Uniform Law (AAUL)* The AAUL will provide for the designation of responsibility of regulation of legal services

and legal practitioners to the designated regulatory authority (DLRA) with the relevant DLRA being either the Board or the Committee and as such may assist in resolving some of the confusion surrounding each of their roles.

Committee Initiatives and the UL

The Committee continues to explore refining its triaging of investigation of conduct matters and the manner in which it responds to an initial enquirer as well as preparing itself for the changes it will need to make following the implementation of the UL. The UL's significant foci on the delivery of legal services and the protection of the public offers an expanded suite of means of redress in what could be broadly described as consumer disputes about an aspect of legal service rather than about a possible conduct issue requiring investigation. According to the Committee's statistics this aligns with the Committee's experience of the number of enquiries to it which are increasingly about an aspect of legal service as against those which are either maintained as complaints requiring investigation or where the Committee commences on its own initiative a conduct investigation. In short a fair portion of the current contact with the Committee would under the UL most likely be dealt with as a consumer and/or costs dispute.

One of the unknowns with UL but a significant concern is the possibility of an additional workload which may be necessitated for the Committee's legal staff, if, based on the experiences reported by the existing UL states, there is the need to make preliminary and at times binding cost determinations. This is to be borne in mind in light of the significant demand on the Committee's resources where the level of

contact with the Committee is unrelenting and increasing.

An opportunity remains however to consider a review of the DLRA's rather than merely inserting into the enabling Act, the AAUL, the provisions of the LPA, establishing the Office of the Board and the Committee. Based on the nature of the complaints to the Committee and in reviewing the tables, the descriptor "complaints" for the Committee represents a fraction of the Committee's work and indeed its objectives. It is not a proactive word inviting discussion but rather it connotes and enlivens that to be able to contact the Committee it must be for the purpose of making a complaint and where such a descriptor does not appear in the title of any other legal regulatory authority in Australia. The objectives of the Committee detailed in this report are not so circumscribed but embrace its educative role and the utilisation of its summary processes.

As indicated in my last report the Committee had just introduced a fast track process where appropriate for the disposition of complaints and I am pleased to say this has been embraced by a number of practitioners and counsel who may be assisting a practitioner responding to a complaint. This has meant a de-escalating of the complaint issues with early and responsive mitigation, and is less burdensome on the Committee's resources, and allows for an efficient and transparent determination. This is reflected in the tables with the significant increase in summary conclusion matters dealt with by the members of the Committee.

Technology and Information available to the public

Part of the refining process has been the introduction of an elementary electronic enquiry file management process in the absence of a dedicated complaint management system, which remains long

overdue. The electronic enquiry system allows for a limited collation of relevant practitioner information held by the Committee and the Board and enquirer history where relevant before any response to either party may be required. Further, the Committee provides some explanatory information at the outset about its role and attempts to manage expectations about what may or may not be achieved from enlivening the Committee's processes. The Committee is also in the process of both amending and adding to its information brochures.

Education

The Committee's legal officers have continued to support and participate in the presentation of seminars held by the Law Society, Universities, firms, and professional associations. There is no question that such engagement with the profession promotes an understanding of the Committee and of professional obligations, and also allows the Committee an opportunity to have some feedback from the profession.

Trends

A trend identified in previous reports and now emerging as a significant issue is the number of practitioners being investigated in regard to serious conduct issues in regard to elder abuse, in particular where a practitioner either unwittingly or deliberately has facilitated "inheritance impatience" in preparing enduring powers of attorney, wills, and/or deeds which provide for the gifting of properties. In many of the complaints investigated by the Committee, a practitioner has failed to consider the red flags in regard to a purported client; such as who made the appointment, who attended at the appointment, who paid the account, the nature of the documents against a backdrop relevantly of the age (often advanced), medical health, the existence of

previous wills and the reason and/or necessity for such documents to be drafted and who benefits from the documents.

Another emerging trend is with practitioners demonstrating a failure to manage trust accounts compliant with legislative requirements sometimes linked to personal issues. Whilst it is distressing to note the number of practices requiring the appointment of a manager by the Board, often following Committee intervention, such matters entail a degree of sensitivity and support being provided by the RRT legal officers often with the assistance of the Law Complaints Officer (**LCO**) in implementing approaches to manage the enquirer's concerns as well as the practitioner, particularly if they are disclosing at risk behaviours, being mindful also of the objectives of the LPA of both addressing protection of the public and maintaining standards. It can be very time consuming and difficult dealing with distressed clients who have not been able to contact the relevant practitioner to ascertain a reason why there has been no response to a client for some time and/or not accounting to the client about monies which should be in the practitioner's trust account.

At times the immediacy of certain risk issues becoming apparent demands a concentration of resources which may for a period divert staff from other investigations, such as in a matter arising during the reporting year where the RRT with impressive alacrity together with an investigating legal officer and the senior trust account inspector, co-ordinated by me in roles of both the LCO, and manager of the RRT, dealt with a very serious trust account defalcation which saw protective measures being employed to secure the practice trust account funds and referral to the police including the provision of seized material.

Mental Health Protocol

The Mental Health Protocol introduced by the Committee in 2016 has been utilised in a few matters where it has become apparent to the Committee during the course of an investigation that the practitioner may have a mental health issue and the matter may be placed on hold pending provision of the appropriate health professional's report.

Relationships

The Committee continues to engage proactively with the Office of the Migration Agents Registration Agency (**OMARA**) as it transitions to being absorbed into the Department of Border Control and the changes that can be expected by Migration agent lawyers on the relevant legislative changes becoming operative and legal practitioners then coming under the auspices of the Committee and the Board, and no longer OMARA.

The Committee continues to support the utility of the LCO or a manager being a member of the Law Society's Costs and Mental Health Committees noting the benefits gained from information sharing, assisting in CPD and consideration of topical matters.

The LCO and the RRT manager met with the new Director of Legal Aid WA (**LAWA**) and discussed topics of mutual interest and also the benefits gained from the memorandum of understanding between the two in regard to practitioner member panels and investigating referral of conduct matters from LAWA

Staffing

During the reporting year as a result of the co-location and an assessment by the Board that the Committee's human resources needs could be absorbed by the Board, the

Committee lost the service of one of its longest serving employees, the very able Office Administrator Ms Michelle Rodgers who accepted redundancy. The transfer of the Committee's human resources management to the Board is a work in progress and I remain hopeful that some of the problems encountered between the different operational needs of the Board and the Committee will be resolved.

Ms Caroline Brookes, Ms Ann Bowler and Ms Danielle Flint also either embarked on new ventures or for personal reasons were not in a position to continue working and I wish them well.

Thanks

Mr Simon French and Ms Sabina Schlink resigned from the Committee during the reporting year. I extend my thanks on behalf of the Committee's legal officers for their time and contributions to the Committee's determinations.

I extend my sincere appreciation to the Chair John Ley and the Deputy Chair Kim Wilson SC for their extraordinary support and the giving up of their valuable time to assist in the governance of the Committees' processes.

Further I am indebted to each of my managers Nick Pope, Cassandra Paterson and the newly appointed RRT manager, Natasha Erlandson (who had the baptism of fire only joining the Committee in early June, days before I went on leave), for their unswerving support and collaboration. The Committee's legal staff is a very professional and enthusiastic group who have not hesitated to adjust to the changes imposed on them by the co-location and are willing to embrace change and make suggestions of their own to ensure continuous improvement.

I again extend the Committee's gratitude to the barristers who undertake work for the Committee at reduced rates and often acting on quite challenging and complex matters. Further, I am grateful for the assistance afforded to practitioners by the Western Australian Bar Association and the inaugural members' advisory panel of the Family Law Practitioner's Association.

***Philippa Rezos
Law Complaints Officer
December 2018***



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 (LPA)* 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 statutory 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 office of the Law Complaints Officer (**LCO**) is established by the Act. The LCO assists the Committee in the exercise of its functions and the Committee may delegate many of its powers and duties to the LCO, 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 J R B Ley
Deputy Chair: Mr K R Wilson SC

Legal members:
Mr K M Pettit SC
Mr T Lampropoulos SC
Mr B Dharmananda SC
Mr D J Jackson SC
Mr M H Zilko SC (from 11 May 2018)
Ms S M Schlink
Mr J G Syminton
Mr S French (until 20 March 2018)
Mr S J Lemonis (from 18 April 2018)

Community representatives:
Mr G R Fischer
Ms K Ballard AM

Deputy community representatives:
Mr T Buckingham

3.4 Our operations

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

During the year, the Committee held 11 meetings.

The Committee's day-to-day operations are conducted by the LCO and the staff of the Committee.

The LCO'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 LCO's management team. The LCO and her management team are ably supported by a team of administrative staff.

The Rapid Resolution team is managed by Ms Natasha Erlandson and comprises 2.8 full time equivalent (FTE) legal officers, 0.8 FTE senior legal officer, a paralegal and a secretary.

The Investigation team is managed by Mr Nicholas Pope and comprises 4 legal officers, 0.8 FTE senior legal officer, a senior trust account inspector and 1.4 FTE secretaries.

The Litigation team is managed by Ms Cassandra Paterson and comprises a full time senior legal officer, a paralegal and 0.6 FTE secretary.

3.5 Trust account inspections

Ms Anna Young, a Senior Trust Account Inspector, during the reporting year has assisted all of the Committee's teams where a concern has arisen about the management or otherwise by firms in regard to their trust account records or not having a trust account where on the face of the material being reviewed by the Committee it appeared the firm has been handling money which is likely to be characterized as trust money.

During the reporting year Ms Young undertook 38 inspections of which 13 were for the purpose of carrying out a trust account investigation with a Committee legal officer and 25 were conducted on a routine basis usually also at the request of the RRT.

The trust account investigations undertaken by the Committee are increasingly more complex, necessitating the involvement of the Committee's legal officers in assisting in identifying non compliant transfers from trust, payments into the general account, and further examples of issues include failing to account, falsifying of

trust ledgers, and improper use of credit card authorities. The preparation of such written reports on Committee initiated trust account investigations for provision to the practitioner for comment and which are also provided to the Board, are time consuming and require careful analysis of the source material. At least two of the trust account investigations resulted in one practitioner being referred to the police and another with conditions being imposed on their practising certificates. Since the co-location Ms Young has undertaken reviews of External Examiners' reports and also attended planning meetings with the other trust account inspectors to work towards a unified approach when undertaking inspections from the Board's perspective.

At times Ms Young is also requested to assist the Committee's legal officers in reviewing various accounting issues with respect to complaints and these generally are in regard to invoices, receipt of funds (trust and general) and accounting for trust monies received by the practice.

Inspections of new legal practices is an invaluable tool to establish a rapport with the legal practitioner and to assist in establishing the correct accounting records from the beginning without establishing bad habits including maintaining incorrect records. It also assists these practitioners to fully understand all their legislative requirements as a legal practitioner in control of a law practice. This is a preventative, proactive and educative approach.

3.6 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 included the following topics:

- Misleading Conduct Proceedings in the State Administrative Tribunal
- Knowing Your Way Around Legal Aid
- When is Negligence a Question of Competency
- Elder Law Issues
- Expert Evidence

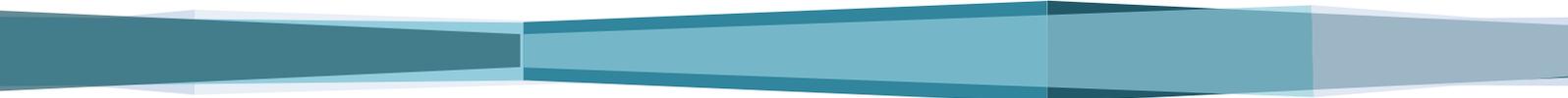
The Committee has been fortunate to engage speakers including a Justice of the Supreme Court, senior counsel and highly experienced practitioners in their areas of practice. The aim of these seminars is to ensure that the Committee's staff receive the training they need to undertake their work to the highest possible standard and to enhance their legal knowledge in a number of key areas.

With the addition of the new category of 'Practice Management' to the Continuing Professional Development scheme from 1 April 2015 in house seminars were presented by the Executive Director on the Board's processes and by the Board's Records manager on the management of resources and information technology.

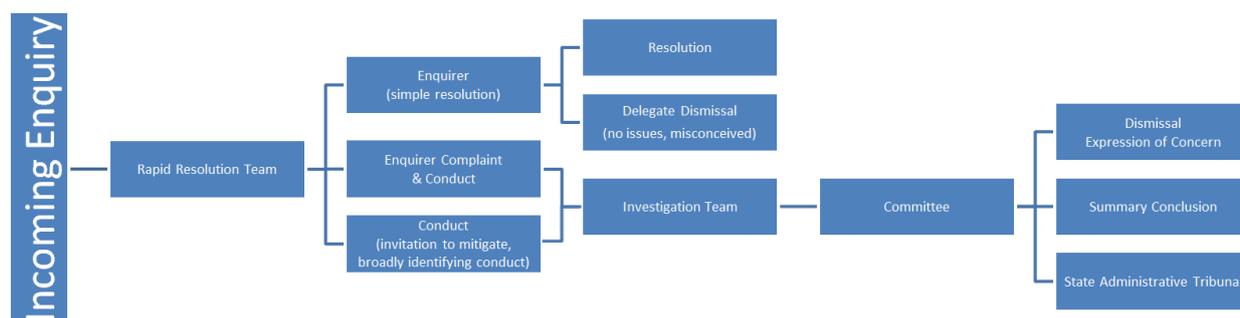
Professional and administrative staff attended also external continuing professional development and training seminars on a broad range of topics.

A number of key staff also attended the annual Conference of Regulatory

Officers in Adelaide, where information and ideas were exchanged with the Committee's counterparts from interstate and New Zealand.



4. Complaints



4.1 Complaint handling process

All new contact with the Committee (whether referred to as a complaint or inquiry) goes to the Rapid Resolution team (RRT) to be assessed. In most cases, while this assessment process is being undertaken the matter is dealt with as an inquiry.

People with a concern about a practitioner are encouraged to contact the RRT by telephone. During the relevant period, 59.3% of all new contact with the Committee was via the telephone or in person.

During this assessment process, it is not only the particular concerns raised by the inquirer/complainant which are examined. Often during this process the legal officer will identify other issues which need to be addressed. For example, a complaint about delay may involve a review of a practitioner's accounts and may require comment about aspects of some of the charges with suggestions as to possible steps which could be implemented as a risk management consideration.

Once the legal officer has reached a preliminary view on an inquiry/complaint (a process that can

happen on the spot, the same day, within a few days or require a few weeks depending on the extent of the information needed), this view is conveyed to the inquirer/complainant orally and, quite often, in writing. If no conduct issue or other concern has been identified, the inquirer/complainant is so advised. If, despite that view, they wish the matter to be dealt with as a formal complaint that is done.

If a concern but not a conduct issue is identified, the legal officer discusses with the inquirer/complainant whether they would like to have the matter 'conciliated'. This term is used very broadly to describe a number of outcomes which may be achieved, from seeking a waiver of fees, to the manager of the RRT expressing concern about the practitioner's conduct.

If the inquirer/complainant is agreeable to conciliation being attempted, the legal officer then undertakes this process with the practitioner (if he or she is agreeable). The practitioner is advised at the outset of the legal officer's preliminary view of the matter and the process which is to be followed. If conciliation is successful, the inquiry into the

concern is closed on that basis. If the conciliation process is not successful and the inquirer/complainant wishes to have a complaint determined that is done. Frequently, in highly conflicted matters face to face meetings may occur with the practitioner (sometimes accompanied by counsel) and/or the inquirer/complainant.

If a conduct issue is identified which the legal officer considers may be mitigated in some way, the legal officer will speak to the practitioner immediately to discuss his or her preliminary view, possible mitigation and why taking mitigating action may benefit the practitioner. The practitioner is not asked for any formal response to the matter at this stage. The RRT officer recommends to the practitioner that prior to providing any response on taking up the invitation to mitigate, that the practitioner consult with senior counsel or use the WA Bar Association referral scheme, which assists practitioners to obtain advice from counsel. This includes a consideration of engaging in the fast track process in which one of the steps in mitigating the conduct is an acceptance of the facts which may obviate the need for a response.

The diagram above indicates the stages and manner in which a matter maybe dealt with by the Committee.

The process of determining how best to facilitate and triage if necessary a concern about a practitioner is very time and labour intensive. Often the legal officers also have to review a large volume of material in order to reach a preliminary view.

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 identified 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 concerning the practitioner's conduct.

4.2 Key statistics

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

In this section, key statistics are highlighted.

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 initiative unless stated otherwise.

Number of Rapid Resolution inquiries finalised

The Rapid Resolution team dealt with 1481 inquiries (excluding practitioner initiated enquiries) of which 16% were conciliated. The conciliated matters included the discount, waiver or refund of fees to clients in excess of \$500,000.

The complainants

A third of all complaints (37.1%) were from clients/former clients of the practitioner complained about or friends or relatives of those clients. 11.3% of complaints were made against the practitioner acting for the opposing party in proceedings.

In respect of Rapid Resolution inquiries, 54.3% were made by or on behalf of clients or former clients of the practitioner being enquired about or by friends or relatives of those clients. A fifth of all inquiries (21.9%) were made by an opposing party.

The areas of law

The areas of law attracting the most complaints were family/de facto law (23.0%) followed by probate and wills (14.9%) and criminal law (13.5%).

In respect of Rapid Resolution inquiries, 31.4% were in the area of family/de facto law, 13.4% in civil litigation and 13.1% in probate and wills.

The types of complaint

Many complaints raised more than one matter of complaint. This year, costs issues (21.1%), delay (7.2%) and unethical conduct (7.2%) attracted the most complaints.

However, for Rapid Resolution inquiries, costs issues were the highest category with over a quarter of all inquiries raising a costs related issue (28.7%) with the next highest categories being no communication (9.7%) and unethical conduct (9.1%).

The practitioners

The greatest number of complaints related to Sole Principals (59.7%), followed by Other Principals and Non Principals (both 11.3%).

The number of practitioners complained about

Some 56 practitioners were the subject of one or more complaints (including conduct investigations) during the year. Of this total, 51 practitioners were the subject of one complaint, 4 practitioners were the subject of two complaints and 1

practitioner was the subject of three or more complaints.

The Board has reported that there were 6692 certificated or deemed certificated practitioners practising in Western Australia as at the end of 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 0.8% of certificated or deemed certificated Western Australian practitioners, which was in line with 0.9% of practitioners in the 2016-17 reporting year.

Number of complaints received and dealt with

<i>Matters under investigation</i>	<i>Total</i>	<i>Complaints</i>	<i>Conduct Investigations</i>
Open as at 1 July 2017	127	99	28
Opened during year	70	41	29
Closed during year	(100)	(71)	(29)
Outstanding as at 30 June 2018	97	69	28

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.

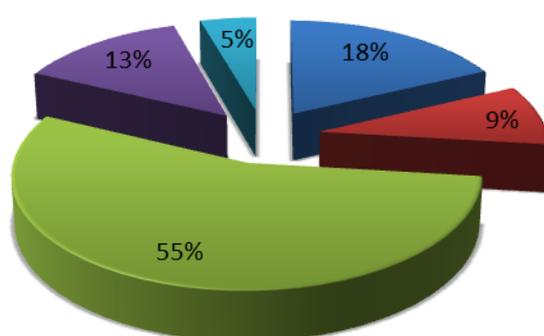
When a matter goes before the Committee, the Committee may finally determine the matter in one of three ways:

- 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 67 matters of which 3 were closed on the basis of not being in the public interest, 12 were dismissed and 6 dismissed with an expression of concern to the practitioner, 55.2% were referred to SAT, and 13.4% were dealt with in the exercise of its summary conclusion powers.

The Law Complaints Officer for the reporting period was not required to exercise the delegated power of the Committee to dismiss a complaint which did not require investigation. This seems to be a reflection of the success of the RRT's triaging processes and improving the nature of the information disseminated to the enquirer and the practitioner.

Committee determinations



- Dismissed S425 (12)
- Dismissed S425 and expression of concern (6)
- Referred to SAT (37)
- Summary Conclusion (9)
- Closed on basis no further action (3)

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. Most complaints which are summarily dismissed are dismissed by the Law Complaints Officer exercising the delegated power of the Committee. All complaints dismissed by the Committee were dismissed following a full investigation.

In 38.1% 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.

Examples of where the Committee expressed concern included the use of inappropriate language in communications with clients (with proper apologies provided) and inadequate costs disclosure.

5.3 Summary conclusion determinations

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 are 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 as a result of a number of practitioners engaging in a fast track disposition of a matter dealt with a significant number on a summary conclusion basis.

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

Summary of matters determined in the exercise of summary conclusion powers

<i>Grounds of unsatisfactory professional conduct</i>	<i>Finding</i>
By failing to provide any or any adequate advice to the beneficiaries of an estate in relation to their instructions, and failing to answer, return or respond to telephone calls made on multiple occasions.	Public reprimand Fine of \$750
By continuing to act in a matter when a conflict arose between the duty owed by the practitioner to the client and the duty owed to a former client of the practitioner's firm, and breaching the duty of confidence owed to that former client.	Public reprimand
By failing to advise, adequately or at all, of a potential conflict of interest and or claim for professional negligence between a client and instructing solicitor.	Public reprimand Fine of \$1,000
By failing to properly or adequately advise as to the merits of a claim for damages for negligence, ensure the proper supervision of junior practitioners, and take all reasonable steps to keep the client informed of the status of the proceedings.	Fine of \$1,500
By failing to properly prepare adequately or at all for a sentencing hearing, and properly present submissions adequately or at all at the hearing.	Public reprimand
By failing to properly take instructions and advise, prepare adequately or at all, and properly conduct a criminal trial.	Public reprimand Fine of \$1,000
By failing to provide adequate costs disclosure, commencing proceedings without agreeing or confirming the client and scope of instructions, and attempting to make the withdrawal of a complaint to the Committee a condition of settlement of costs assessment proceedings.	Public reprimand Fine of \$2,500
By filing in the State Administrative Tribunal an application which contained statements or assertions of belief or opinion which were unnecessarily contentious, provocative and intemperate and sending a letter to the Tribunal which contained statements and assertions which were irrelevant, contentious, provocative and intemperate and, also, contained personal and sensitive information.	Private reprimand

<i>Grounds of unsatisfactory professional conduct</i>	<i>Finding</i>
By failing to give adequate care and attention to the preparation of an Application filed in the State administrative Tribunal in that the application contained unqualified statements and assertions without any reasonable basis for the practitioner making those assertions and, in the case of an assertion that the application was “urgent”, without any due consideration as to the consequences that might flow in terms of the orders the Tribunal might make.	Private reprimand

5.4 Referrals to the State Administrative Tribunal

During the year, the Committee resolved to refer matters arising from 37 complaints or conduct investigations to SAT involving 18 practitioners. As at 30 June 2018, 11 of these matters had been filed in SAT.

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.

Where matters are unable to be resolved at mediation and proceed to a defended hearing, counsel from the independent bar is briefed to represent the Committee.

6. State Administrative Tribunal and Court Proceedings

6.1 SAT Applications

The Committee filed 14 Applications in SAT during the period under review (which included 23 individual matters).

During the year there were 16 Applications determined by SAT (which included 20 individual matters).

Of the matters determined, 14 were determined (including penalty) as a result of consent orders, two matters were determined after a hearing; one of which is still awaiting penalty orders.

At the conclusion of the period there were 11 Applications relating to 17 individual matters which had not been determined.

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, with SAT declining to make penalty orders

proposed by the parties on one occasion, with the matter proceeding to a penalty and costs hearing.

All minutes of proposed consent orders are referred to SAT. SAT is required to consider and determine if the proposed orders are appropriate before making orders in those terms.

24 matters relating to 12 practitioners were referred to SAT during the year but have not yet been filed.

Four matters relating to 3 practitioners referred to SAT in the previous year have not yet been filed in SAT for various reasons, including the personal circumstances of practitioners and public interest considerations. One of those matters was referred back to the Committee for further conduct matters raised.

5 matters relating to 3 practitioners referred to SAT in previous years were referred back to the Committee and were rescinded.

Summary of SAT matters determined 1.7.17 – 30.6.18

Application No. & Date determined	Practitioner	Penalty
173/2015 18/04/2018	Rayney, Lloyd Patrick	Report to the Full Court Local practising certificate suspended from 21 days of the Order Costs: \$90,994.74 ¹
<ul style="list-style-type: none"> • 1 count of professional misconduct by recording conversations between himself and his wife, Corryn Rayney (Mrs Rayney) on a hand held recording device, namely, a dictaphone (recordings), without the knowledge or consent of Mrs Rayney, in contravention of 25(1) of the <i>Surveillance Devices Act 1998</i> (WA). Penalty: Public reprimand. • 1 count of professional misconduct by swearing an affidavit in the Magistrates Court of Western Australia at Perth in which he gave evidence on oath knowing the evidence was false (essentially that Mrs Rayney consented to the recordings) and did so with the intention of misleading the Magistrates Court. • 1 count of professional misconduct by giving evidence on oath before Magistrate Flynn (again that Mrs Rayney had consented to the recordings) when the practitioner knew the evidence was false and doing so with the intention of misleading the Magistrates Court as to the matters the subject of the evidence. 		
<p><u>Penalty</u></p> <p>(i) Report to the Supreme Court (full bench) with a recommendation that the practitioner's name be removed from the roll of persons admitted to the legal profession.</p> <p>(ii) The practitioner's local practising certificate is suspended with effect from 21 days after the completion of a criminal trial (Criminal Trial), whether by verdict or otherwise, until the determination of the Supreme Court (full bench) [the Criminal Trial was a long running jury trial in which the practitioner was involved]. For the purpose of imposing penalty, the Tribunal found that the practitioner also knowingly gave false evidence on the same subject matter in October 2015, in his evidence to the Tribunal on a review of the Board's decision to cancel his practising certificate; in March 2017, in his evidence in the trial of his Supreme Court claim for damages for defamation; and in December 2017, on the hearing of VR 173/2015.</p> <p>(iii) A condition is placed on the practitioner's practising certificate, with effect from 14 days after the date of the order [18.04.18], that his entitlement to practise is restricted to appearing in or advising on the Criminal Trial (such condition to remain until his practising certificate is suspended).</p> <p>(iv) The practitioner to pay to the Legal Profession Complaints Committee its costs of the proceeding in the amount of \$90,994.74 within 28 days after the date of the order [since paid].</p>		

¹ Determination and penalty (but not costs) being appealed to the Court of Appeal by Mr Rayney (CACV 23 of 2018 & CACV 46 of 2018)

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
121/2016 12/01/2018 (Mediated Outcome)	Grewal, Gundeep	Undertaking not to engage in legal practice and to not apply to practice law Reprimand Costs: \$10,000
<ul style="list-style-type: none"> • 1 count of professional misconduct in circumstances where her client feared for her safety and had a lifetime VRO arising from a serious and violent attack from her former partner and had instructed the practitioner not to release her address to anyone, the practitioner filed a Form 13 (financial statement) with the Family Court that contained the client's address, then at a hearing in the Court with reckless disregard or indifference made a false and misleading statement to the Court that the client 'did not mind' the former partner having her address, and having done so, failed for 6 weeks or so thereafter to check the position as she had stated it to the Court and to correct her statement to the Court where she had available to her the client file, where the correct position was that the client has instructed her that her address was not to be released to anyone, in particular to the former partner; • 1 count of professional misconduct by preparing and sending letters to the Committee dated 10 March 2015, 6 May 2015 (x 2) and 9 June 2015 in the course of its investigation into the above conduct in which she knowingly made false and misleading statements to the Committee as to the client's instructions in respect to not revealing her address to anyone, including the former partner, in order to provide a basis for a false or misleading explanation to the Committee as to the reason she made the statement to the Family Court in order to attempt to excuse and/or mitigate her conduct the subject of the Committee's investigation. 		
<u>Penalty</u>		
(i) Reprimand only in circumstances where the practitioner provided an undertaking to the Tribunal, the Committee and the Legal Practice Board not to engage in legal practice in WA and not to apply for a certificate to practise law in WA or elsewhere after 20 December 2017.		
(ii) \$10,000 costs		
183/2016 18/09/2017 (Mediated Outcome)	Chang, Christina Marie	Finding only Penalty still to be determined
<ul style="list-style-type: none"> • 1 count of professional misconduct by: (i) gross carelessness in preparing and causing to be sent a letter to the client that was false and misleading in that it stated it was a requirement of non-existent subsidiary legislation that no substantive work could be done on the client's matter until she signed the firm's costs agreement, whereas the true position was there was no such requirement; (ii) gross carelessness in preparing and causing to be sent a letter to the client that was false and misleading in that it stated orders made on an interim payment application filed on behalf of the client in her Family Court proceedings "dictated" the sale proceeds of almost 4,000 Wesfarmers shares ordered to be transferred to the client by the ex-husband be sent to the firm to pay outstanding legal fees, whereas the true position was that the orders simply provided that the ex-husband transfer the shares to the client; (iii) gross carelessness in preparing and causing to be sent a letter to the Court that was false and misleading in that it stated the firm had "no security for the payment of outstanding legal fees", whereas the true position was there was security by way of a caveat lodged by the firm 		

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>against a property owned by the client pursuant to the costs agreement; (iv) in circumstances where the firm remained the solicitors on record for the client in the proceedings, acting in a position of conflict between the interests of the client and the interests of the firm by preparing and causing to be filed an application against the client in the proceedings for orders that, inter alia, the client transfer the sale proceeds of the shares to the firm's trust account;</p> <ul style="list-style-type: none"> • 1 count of professional misconduct by preparing, signing and filing a witness statement in VR 183/16 which stated that, inter alia, the practitioner did not prepare/was not aware of the letters referred to in (i)-(iii) above, which statements were false and misleading and had the potential to mislead the Tribunal, when the practitioner acted with reckless disregard or indifference as to whether the false statements were false and misleading and had the potential to mislead the Tribunal. • Adjourned to hearing on penalty and costs on 28 September 2017, but penalty is yet to be determined as on 27 September 2017, the practitioner filed an interim application to, in effect, set aside the Mediated Outcome, and on 19 June 2018 filed an amended interim application which raised a further jurisdictional issue. As of 30 June 2018, that application had not been determined.
184/2016	Quahe, Anthony	Reprimand
18/07/2017 (Mediated Outcome)	Cheng-Hai	Fine: \$12,000 Costs: \$3,000
		<ul style="list-style-type: none"> • 1 count of professional misconduct by: (i) gross carelessness in failing to correct a letter from a senior associate of the firm (who had day-to-day conduct of the subject matter under the supervision of the practitioner) to the client that was false and misleading in that it stated orders made on an interim payment application filed on behalf of the client in her Family Court proceedings "dictated" the sale proceeds of almost 4,000 Wesfarmers shares ordered to be transferred to the client by the ex-husband be sent to the firm to pay outstanding legal fees, whereas the true position was that the orders simply provided that the ex-husband transfer the shares to the client; (ii) gross carelessness in failing to correct a letter from the senior associate to the Court that was false and misleading in that it stated the firm had "no security for the payment of outstanding legal fees", whereas the true position was there was security by way of a caveat signed by the practitioner and lodged by the firm against a property owned by the client pursuant to the costs agreement; (iii) in circumstances where the firm remained the solicitors on record for the client in the proceedings, acting in a position of conflict between the interests of the client and the interests of the firm by causing an application to be filed against the client in the proceedings for orders that, inter alia, the client transfer the sale proceeds of the shares to the firm's trust account.
<u>Penalty</u>		
(i) Reprimand		
(ii) \$12,000 fine		
(iii) \$3,000 costs		

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
56/2017 07/08/2017 (Mediated Outcome)	Turner, Helen Margaret	Condition placed on local practising certificate Fine: \$5,000 (in respect to (a)); and \$2,000 (in respect to (b)) Costs: \$3,000
<ul style="list-style-type: none"> • 1 count of professional misconduct in that in Family Law proceedings, seeking parenting orders in respect of the client's grandchild, preparing and causing to be sworn and filed a case information affidavit containing statements and assertions which were offensive, insulting, provocative and intemperate, irrelevant, without any reasonable factual foundation, inadmissible and inappropriate for the advancement of the client's case. Further, being grossly careless in failing to exercise reasonable care and make all due and proper inquiries in order to satisfy herself that certain statements in the affidavit were true and correct, when those statement conveyed an impression concerning previous Family Court orders which was false and misleading. • 1 count of unsatisfactory professional conduct for inadequate costs disclosure to the client in contravention of sections 260 and 262 <i>Legal Profession Act 2008</i>. 		
<u>Penalty</u>		
(i) Reprimand		
(ii) \$5,000 fine in respect of Order 1 (professional misconduct); \$2,000 fine in respect of Order 2 (unsatisfactory professional conduct).		
(iii) Conditions placed on practising certificate and any practising certificate to be granted to her for a period of 12 months that the practitioner must not file or cause to be filed in proceedings in the Family Court of WA any affidavit, including any case information affidavit, but excluding any affidavit to be filed only arising from her role as an independent children's lawyer, that she prepared or caused to be prepared unless and until the affidavit has been reviewed, at the practitioner's own expense, by a legal practitioner with a minimum of 10 years legal experience, approved in writing by the Legal Practice Board of WA (reviewing practitioner), with three monthly reports to be provided by the previewing practitioner to the Board and to the Committee.		
(iv) \$3,000 costs		
84/2017 27/07/2017 (Mediated Outcome)	Scarff, Earle Russell	Reprimand Conditions placed on local practising certificate Fine: \$15,000 Costs: \$2,500
<ul style="list-style-type: none"> • 1 count of professional misconduct in that the practitioner in acting for clients in Supreme Court proceedings for an increased provision under a will, without reasonable cause, failed between 26 February 2013 and 1 June 2015 to (i) progress the proceedings in a timely and diligent manner and/or at all; (ii) failed to take all reasonable and practicable steps to keep the clients informed about all significant developments in, and generally about the progress of, the proceedings and, further, failed to respond in a timely manner or at all to telephone calls and email correspondence from the clients (where both (i) and (ii) were particularised in Schedule A); and (iii) failed to attend a directions hearing on 11 June 2015 at which the proceedings 		

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>were dismissed and the clients ordered to pay the defendants' costs of the proceedings, in circumstances where prior to 11 June 2015 the practitioner (a) knew the proceedings were in danger of being dismissed at the directions hearing as a result of his failures in (i); and (b) had informed the Committee and the clients he would attend.</p> <p><u>Penalty</u></p> <p>(i) Reprimand</p> <p>(ii) \$15,000 fine</p> <p>(iii) Condition placed on his practising certificate and any local practising certificate to be granted to him that he must not accept instructions to have the conduct of any proceedings in any Court or Tribunal (except non-contentious probate proceedings) or have the ongoing conduct of any proceedings in any Court or Tribunal (except non-contentious probate proceedings).</p> <p>(iv) \$2,500 costs</p>
88/2017 20/07/2017 (Mediated Outcome)	Aria-Retnam, Aria Rani	Reprimand Fine: \$17,500 Costs: \$6,000
		<ul style="list-style-type: none"> 1 count of professional misconduct by causing caveats to be prepared and lodged on behalf of the defendant/employer client, based on costs orders made in favour of the client in the District Court and the Court of Appeal, against properties owned by the plaintiff/worker in circumstances where: (i) the costs orders did not create a caveatable interest in the properties; (ii) the practitioner was recklessly indifferent as to whether the client had a caveatable interest in the properties by reason of the costs orders; and (iii) the registration of the caveats had the potential to advance the interests of the client's insurer and/or the client by unfair means in that the caveats were utilised as part of a strategy recommended by the practitioner to exert pressure on the plaintiff to abandon her High Court special leave application. <p><u>Penalty</u></p> <p>(i) Reprimand</p> <p>(ii) \$17,500 fine</p> <p>(iii) \$6,000 costs</p>
103/2017 9/08/2017 (Mediated Outcome)	Soactar, Bogdan	Reprimand Fine: \$10,000 Costs: \$3,000
		<ul style="list-style-type: none"> 1 count of professional misconduct in that, when acting for an executor who derived no benefit from the will and where the practitioner knew she expected her reasonably and properly incurred legal costs in carrying out her duties as executor to be fully reimbursed from the estate, the practitioner on 24 August 2012 permitted a Deed to finalise all matters in respect of the will and the estate, including the full reimbursement from the estate of the client's legal costs, to include an upper limit for the reimbursement of the client's costs, when he (i) knew or ought to have known that the upper limit was at that time insufficient to effect full reimbursement and on 30 August 2012 provided the Deed to the client without advising

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>her to instruct him to negotiate an amendment to increase the costs to ensure she was fully reimbursed; further, continued to invoice her until 31 October 2012, and provided the Deed to her to execute between 15 and 25 October 2012 without obtaining instructions to amend the Deed, thus depriving her of the right to be fully reimbursed from the estate and causing her to be out of pocket approximately \$8,600; and (ii) when he knew the upper limit was not sufficient to effect full reimbursement for the client, without informing the client on 14 November 2012 he sought that another party to the Deed pay her costs in excess of the upper limit and between 15 November 2012 and 11 March 2013 issued further invoices to the client and, after 11 March 2013 having then informed the client that she would not be fully reimbursed, caused or permitted his firm's outstanding invoices to be paid from the monies deposited in his trust account representing the upper limit under the Deed in preference to ensuring the client was not left out of pocket.</p> <p><u>Penalty</u></p> <p>(i) Reprimand</p> <p>(ii) \$10,000 fine</p> <p>(iii) \$3,000 costs</p>
121/2017 12/04/2018 (Mediated Outcome)	Taylor, David Gerald	Reprimand Fine; \$10,000 Costs: \$5,000
		<ul style="list-style-type: none"> 1 count of professional misconduct for failing to progress proceedings in a timely and competent manner, namely and without reasonable cause, by failing to take any or any adequate steps to progress the proceedings for various time periods (2005-2008, 2009-2009, 2009-2012, 2012-2013 and 2013-2014), failing to respond to enquiries from clients on 7 occasions in 2012-2013 and failing to respond in a competent and timely manner to requests from the client's new solicitors for the client's documents relating to the proceedings in February to April 2014. <p><u>Penalty</u></p> <p>(i) Reprimand</p> <p>(ii) \$10,000 fine</p> <p>(iii) \$5,000 costs</p>
124/2017 26/04/2018	Metaxas, Arthur	Finding only Penalty still to be determined
		<ul style="list-style-type: none"> 1 count of professional misconduct in failing to take all necessary steps to ensure that there was a proper factual basis for a proposed ground of appeal and oral submissions made to the Court of Appeal in support of an application for leave to appeal and the appeal Penalty and costs to be determined on the documents after written submissions filed by the parties

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
125/2017 1/12/2017 (Mediated Outcome)	Gregory, Ian Ross	Local practising certificate suspended for a period of three (3) months Reprimand Costs: \$7,000
Orders that:		
<ul style="list-style-type: none"> • 1 count of professional misconduct, in the course of acting for his client for the recovery of a deposit payment of \$5,000 paid by her to the owner of a horse in respect of a contract for the client to purchase the horse from the owner, by at 2.55pm on 6 May 2015 sending a letter of demand via Facebook Messenger which constituted an attempt to further the client's matter by unfair means in that the letter, inter alia, stated that unless the deposit was repaid by 3.00pm that day (i.e. within 5 minutes), the client would obtain an order under the <i>Restraint of Debtors Act 1984 (RDA)</i> that the owner be restrained from leaving WA (the owner had accepted a position at an equestrian centre in Germany); • 1 count of professional misconduct by on 6 May, and subsequent to sending the letter of demand, filing on behalf of the client an application for an order under the RDA for a warrant to issue for the arrest of the owner without any reasonable basis, and in circumstances where, inter alia, the practitioner knew that the most recent documentary evidence indicated the owner would not be departing for Germany until about 22 May, and the owner was arrested on the warrant on 7 May and taken into police custody overnight; • 1 count of professional misconduct by on 13 May, and in circumstances where a letter from the owner's solicitors put the client to proof of her contentions as to the horse's "unsoundness" and where the practitioner knew the client would require veterinary evidence to support her contentions, proposing in an email to the client that she orchestrate the making by others of a sham contract for the purchase of the horse. 		
<u>Penalty</u>		
(i) Reprimand		
(ii) 3 month suspension		
(iii) \$7,000 costs		
167/2017 8/11/2017 (Mediated Outcome)	Concanen, Hudson David	Reprimand Fine: \$17,000 Costs: \$5,000
Orders that:		
<ul style="list-style-type: none"> • 1 count of professional misconduct for in July 2010 failing to ensure before the deceased executed his will (2010 will) that a list of artworks referred to in the will existed, and on becoming aware in October 2011 that the list did not exist, failing to advise the deceased that a list could not be incorporated into the will and that a new will or codicil would need to be executed to do so and instead arranging for the deceased to execute a new list to be incorporated in the 2010 will, and failing to prepare any or any detailed file notes as to the deceased's instructions in respect of the list; • 1 count of professional misconduct in knowingly attempting to mislead the solicitor acting for 		

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>the children of the deceased post death by failing to send him the correct copy of the list referred to in the 2012 will as requested and twice sending the incorrect version of the list and then failing to correct the solicitor's (mis)understanding that he had the list referred to in the will when he did not;</p> <ul style="list-style-type: none"> 1 count of unsatisfactory professional conduct for preparing an affidavit for the executor to swear which ascribed values to the artworks said to be at the date of death which were not at the date of death but from 2010 for insurance purposes only and failing to ensure that the values were accurate at time of death and that there was a valid basis for them <p><u>Penalty</u></p> <p>On the basis of factors in mitigation:</p> <ul style="list-style-type: none"> (i) Reprimand (ii) \$17,000 fine (iii) \$5,000 costs
194/2017 13/04/2018 (Mediated Outcome)	Separovic, Tony	Reprimand Fine: \$5,000 Costs: \$4,000
		<ul style="list-style-type: none"> 1 count of unsatisfactory professional conduct for failing prior to and during common law proceedings to properly or adequately advise the client precisely in respect of her claim, including the variables that could affect her legal costs and the risk of adverse costs orders against her, failing to take all reasonably practicable steps to keep the client informed about all significant developments in the proceedings and where he was entitled to take reasonable security for legal costs, failed to take all reasonable steps to inform the client of the need to place \$150,000 in the firm's trust account if the matter proceeded to trial where costs disclosure made in March 2012 and the client not informed until 28 January 2014 two days after he had advised her to reject a settlement offer which was never reinstated and where he in May, June and July 2014 continued to demand the money be placed into trust; <p><u>Penalty</u></p> <ul style="list-style-type: none"> (i) Reprimand (ii) \$7,000 fine (iii) \$5,000 costs
198/2017 29/03/2018 (Mediated Outcome)	Kakay, Ibrahim Baba	Reprimand Condition placed on practising certificate Fine: \$7,000 Costs: \$3,000
		<ul style="list-style-type: none"> 1 count of professional misconduct for swearing and filing an affidavit in opposition to an application for security for costs in District Court civil proceedings in which the practitioner's Nigeria-based clients sought recovery of about \$60,000 paid to a Perth-based defendant company pursuant to an agreement for the purchase of second hand clothing. The affidavit

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>contained multiple statements of fraud and other serious misconduct on the part of the defendant and the defendant's solicitors, without the practitioner having any reasonable grounds based on admissible evidence for the statements, and which were offensive and/or scandalous.</p> <ul style="list-style-type: none"> Practitioner sole practitioner and had not previously been the subject of any finding of the Tribunal that he had engaged in professional misconduct or unsatisfactory professional conduct. <p><u>Penalty</u></p> <ul style="list-style-type: none"> (i) Reprimand (ii) \$7,000 fine (iii) Condition placed on his practising certificate and any local practising certificate to be granted for 18 months that he not file any affidavit in proceedings unless and until the affidavit has been first reviewed by a legal practitioner with a minimum of 10 years' legal experience, approved in writing by the Board (reviewing practitioner), with reviewing practitioner to provide 6 monthly reports to the Board and Committee outlining any areas of concern (iv) \$3,000 costs
213/2017 13/04/2018 (Mediated Outcome)	Whitwell, Richard Bruce	Undertaking not to engage in legal practice and to not apply for a certificate to practice law in Western Australia Reprimand Costs: \$6,500
		<ul style="list-style-type: none"> 1 count of professional misconduct in failing to inform client A of and to advise her in relation to a letter from the DCT in response to a settlement offer made by her, failing to competently advise her on the terms of, and liability for debts of an investment Trust created by, a trust deed, as well as to the effect of consent orders in family law proceedings on the liabilities for the debts of the Trust, and acting for client A and her ex husband in relation to proceedings brought by the DT where their interests in not being liable for the debts of the Trust were in conflict. 1 count of professional misconduct by disclosing sensitive information about client, which was known to him as a result only of his having acted for her, without the express or implied authority of her to do so and where that disclosure was not in her best interests 1 count of professional misconduct in failing to competently advise client C as to the elements of the charges and any available defences to those charges before he entered a plea of guilty and ceasing to act for client C in relation to the charges without a reasonable basis as a result of the practitioner having incorrectly formed the view that to continue to act would place the practitioner in a position of conflict by reason only of his having previously acted on an unrelated matter for the co-accused. 1 count of professional misconduct in failing to advise client D and to take full and proper instructions as to whether she had an arguable defence of self defence to a charge of aggravated unlawful wounding and advising her to plead guilty, and 11 months later making a statement to the sentencing judge that client D had entered a guilty plea before he acted for

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>her, which was false and misleading and misled the presiding Judge into thinking the practitioner did not advise client C to plead guilty, when he did, and failing to prepare adequately or at all for the sentencing hearing and failing to identify relevant circumstances which would make it unjust for the judge to sentence client D for a conviction in respect to which a conditional suspended imprisonment order had been imposed.</p> <p><u>Penalty</u></p> <p>(i) Reprimand only in circumstances where practitioner had given an undertaking to the Tribunal, the Committee and the Board not to engage in, or apply for a certificate to engage in, legal practice after 1 May 2018</p> <p>(ii) \$7,000 fine</p> <p>(iii) \$5,000 costs</p>
224/2017 23/04/2018 (Mediated Outcome)	Thompson, Clare Helen	Reprimand Fine: \$5,000 Costs: \$4,000
		<ul style="list-style-type: none"> 1 count of unsatisfactory professional conduct for failing to appreciate that a claim by a builder in respect to the client's defective work was a payment dispute for the purpose of the <i>Constructions Contracts Act 2004</i> ('CCA') and settled a letter in response which failed to comply with the CCA 'notice of dispute' requirements, and following the claim being adjudicated in the builder's favour because that settled letter was not a valid notice of dispute, later accepted and acted on instructions to amend a statement of claim in proceedings commenced for the client to recover the adjudication award where she failed to take adequate steps to satisfy herself that the client had been advised to take independent legal advice as to whether she should accept the instructions. <p><u>Penalty</u></p> <p>(i) Reprimand</p> <p>(ii) \$5,000 fine</p> <p>(iii) \$4,000 costs</p>
225/2017 19/06/2018 (Mediated Outcome)	Benz, Hariette Elke	Reprimand Fine: \$5,000 Costs: \$4,000
		<ul style="list-style-type: none"> 1 count of count of unsatisfactory professional conduct where, in a construction dispute to which the <i>Construction Contracts Act 2004</i> (CCA) applied, failing to appreciate that the claim made on her client was a claim under the CCA and then failing to respond to the claim in terms compliant with the requirements of a notice of dispute under the CCA, rendering the client vulnerable in contesting an adjudication of the claim and increasing the proper costs of the client in the claim. Further and subsequently, after becoming aware of her failure above, she continued to act for the client when she knew or ought reasonably to have known that there was a conflict or potential conflict between the interests of the P and/or her firm (of which she was the sole legal practitioner director) and the interests of the client, and thereby was in

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		breach of her duty to avoid that conflict and her obligation not to provide legal services to a client contrary to rules 15(2) and 15(3) of the <i>Legal Profession Conduct Rules 2010</i> (WA).
		<u>Penalty</u>
		(i) Reprimand
		(ii) \$5,000 fine
		(iii) \$4,000 costs

Summary of SAT matters which were not determined as at 30.6.18

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
83/2016	31/05/2016	<p>Professional misconduct by</p> <p>a) assisting a person to engage in legal practice in contravention of the <i>Legal Practice Act 2003</i> and the <i>Legal Profession Act 2008</i>;</p> <p>b) signing and causing to be filed writs, pleadings, particulars and schedules of damages without satisfying himself the claims, pleading, particulars and schedules were tenable in fact and/or law, and causing to be filed informal lists of documents and correspondence to other parties' lawyers without satisfying himself that reasonable steps had been taken to comply with discovery obligations and that the content of the correspondence was accurate and appropriate, and serving an expert report without satisfying himself that the person who briefed the expert had complied with all usual professional obligations on a legal practitioner when briefing an expert and that the expert had complied with usual obligations imposed on the expert;</p> <p>c) signing and causing to be filed 3 entry for trial certificates when the practitioner knew each to be false and misleading, intended the Court to be misled;</p>	<p>Directions 28/08/2018 (Further directions dependent on outcome of appeal against SAT findings and penalty in another matter concerning the practitioner)</p>

Application No.	Date filed	Allegation	Status
		<p>alternatively was recklessly indifferent to the above;</p> <p>d) failing to attempt to ascertain in relation to a consent judgment in which he represented the plaintiff whether the plaintiff's total legal costs were not less than the sum of fixed costs agreed pursuant to the consent judgment and, to extent they were not, failing to inform the Court and the defendant;</p> <p>e) failing to provide, or to cause his firm to provide, to 3 clients retaining the firm, costs disclosure in terms of the <i>Law Society Professional Conduct Rules</i> and to 9 clients costs disclosure in accordance with the <i>Legal Profession Act 2008</i>;</p> <p>f) failing to take reasonable steps to inform a client of his rights and possible courses of conduct in relation to proceedings claiming damages for personal injury, failing to keep the client informed about significant developments and generally the proceedings, failing to inform the client that the defendant considered the proceedings were statute barred and failing to offer advice to, or advise, the client about possible causes of action and/or taking independent legal advice about his having a possible cause of action;</p> <p>g) accepting and carrying out instructions when it caused the practitioner to be in a position of owing conflicting duties to the client and another.</p>	
117/2016	2/08/2016	<p>Professional misconduct by:</p> <p>a) in respect of an application for probate and in the administration of the estate:</p> <p>(i) failing to maintain accurate and complete records and books of account relating to the administration of the estate including trust moneys; and</p> <p>(ii) failing to account, or properly account, in respect of the assets,</p>	<p>SAT Order 15/05/2018: Proceedings be stayed until further order</p>

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		<p>income, liabilities, expenses and transactions relating to the estate, including not producing accounts;</p> <p>(iii) not depositing trust money to the credit of a trust account; and</p> <p>(iv) not finalising the administration of the estate and/or not progressing the administration of the estate in a timely manner</p> <p>b) in Family Court proceedings:</p> <p>(i) failing to maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with and/or failing to maintain books of account in such a manner as to disclose the true position as regards those moneys;</p> <p>(ii) failing to account, or properly account, for trust moneys received;</p> <p>c) in the course of acting with respect to criminal charges:</p> <p>(i) failing to maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with and/or failing to maintain books of account in such a manner as to disclose the true position as regards those moneys;</p> <p>(ii) failing to account, or properly account, for trust moneys received;</p> <p>d) not having in force professional indemnity insurance;</p> <p>e) 2 counts of not depositing trust money to the credit of a trust account;</p> <p>f) 2 counts of dishonest conduct in intending to use, and using, trust monies at his own will or otherwise for his own benefit in circumstances where he was not authorised, directed or otherwise entitled to do so; and</p> <p>g) (Amended Grounds 12/12/17) dishonest conduct by signing and causing to be filed in the SAT proceedings an Amended Response which:</p> <p>(i) to the knowledge of the practitioner,</p>	

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		<p>contained false statements concerning the practitioner's dealing with moneys relating to the estate and the executrix of the estate; and</p> <p>(ii) attached a handwritten note of the practitioner's dated 5/11/08 which the practitioner subsequently altered by adding to the note with the intention of creating the false impression that the whole of the note had been written on 5/11/08.</p>	
110/2017	07/06/2017	<p><u>Annexure A</u></p> <p>Professional misconduct by:</p> <p>a) disbursing funds from the firm's trust account in circumstances where the practitioner undertook not to deal with, transfer, move or use the funds without express written consent and where the practitioner did not have express written consent and in releasing the funds acted in reckless disregard as to whether he was, alternatively was grossly careless in failing to ensure that release was not, in breach of his undertaking;</p> <p>b) sending emails which conveyed an impression which was misleading, which he permitted to remain uncorrected, which he knew were misleading in a material respect; alternatively, the practitioner was recklessly different as to whether the emails were misleading in a material respect or further alternatively the practitioner was grossly careless as to whether the emails were misleading in a material respect;</p> <p>c) conveying an offer to repay funds that was contingent upon withdrawal of a complaint about him to the Committee.</p> <p>Unsatisfactory professional conduct by:</p> <p>d) failing to keep trust records in a way that disclosed the true position in relation to withdrawals;</p> <p>e) failing to deliver an original receipt for the receipt of funds into trust when requested to do so;</p>	<p>Hearing 19/09/2018 to 21/09/2018</p>

Application No.	Date filed	Allegation	Status
		<p><u>Annexure B</u> Professional misconduct by</p> <p>a) preparing and sending letters to the Federal Circuit Court and to solicitors containing false and misleading statements where the practitioner knew the statements were false and misleading and had the potential to mislead or, alternatively, acted with reckless disregard as to whether the statements were false and misleading and had the potential to mislead</p>	
151/2017	09/08/2017	<p>Unsatisfactory professional conduct by:</p> <p>a) failing to include in Family Court of Western Australia proceedings filed by the practitioner on behalf of the client (Proceedings), or otherwise dealing or adequately dealing, with the client's claims in respect of child support from her former husband;</p> <p>b) failing to provide any, or any adequate, advice to the client with respect to the client's claims in respect of child support; and</p> <p>c) responding to an email from the client querying why child support was not raised or included within the settlement of the Proceedings by the consent orders signed by the parties, by sending a letter to the client in which the practitioner:</p> <p>i) advised the client that it was not possible to include child support in consent orders relating to property settlement, which advice was wrong;</p> <p>ii) was intemperate, disparaging of the client and discourteous.</p>	Hearing 13/08/2018 to 14/08/2018
159/2017	18/08/2017	<p>Professional misconduct by:</p> <p>a) in his capacity as the sole legal practitioner director of the practice in entering a retainer agreement undertaking that the practice would be liable to pay the fees of junior counsel</p>	Directions 18/07/2018

Application No.	Date filed	Allegation	Status
		<p>for the client in proceedings (estimated by junior counsel as between \$135,000 to \$180,000) even if the practice did not receive funds from the client to pay those fees, where at all material times neither the practice or the practitioner personally had the capacity to pay if the client did not make payment of those fees to the practice, which the practitioner knew or was recklessly indifferent to, and where the practice failed to pay 5 invoices issued by the junior counsel and in preference paid invoices issued by the practice, thereby breaching the retainer and Rule 26 <i>Legal Profession Conduct Rules 2010</i>;</p> <p>b) making false and/or misleading representations to the Legal Practice Board at a meeting that the practice could meet its current debts and was solvent and failing to inform the Board the practice had significant outstanding debts, including the \$137,815 owed to junior counsel which the practice did not have the means to pay, and attempting to avoid the practice's liabilities by deriving a new incorporated legal practice from the existing practice;</p> <p>c) without reasonable excuse, failing over a 12 month period to respond to correspondence from the Committee in breach of rule 50(3) <i>Legal Profession Conduct Rules 2010</i> and to a summons issued pursuant to section 520(1) <i>Legal Profession Act 2008</i> in contravention of section 520(5) and 532(5) of the Act;</p> <p>d) failing to provide full and frank disclosure of the assets and liabilities of the practice and instead providing false and/or misleading financial statements of the practice and the practitioner personally to the Committee where he knew that, alternatively was recklessly indifferent or grossly careless as to the</p>	

Application No.	Date filed	Allegation	Status
		fact, the financial statements were false and/or misleading.	
240/2017	20/12/2017	<p>Professional misconduct by:</p> <p>a) on or about 8 March 2013 in the course of acting for Mr S (client), in respect of Family Court of Western Australia (Court) proceedings for an alteration of property interests (proceedings), sending to a Scottish law firm, a letter dated 7 March 2013 enclosing two original dispositions which by their terms gifted the ownership of two properties located in Scotland (First Property and Second Property) to the client's mother as at 26 February 2013 which, once registered in Scotland, would complete or effect a transfer of the ownership of the First Property and the Second Property) to the client's mother, in circumstances in which the practitioner knew that, or was recklessly indifferent as to whether:</p> <p>(i) the dispositions would complete or effect a transfer of the ownership of the First Property and the Second Property to the client's mother;</p> <p>(ii) as intended by the client, a transfer of ownership of the First Property to the client's mother would contravene an order made by the Court on 12 February 2013; and</p> <p>(iii) as intended by the client, a transfer of ownership of the Second Property to the client's mother would have the effect of removing that property from the pool of assets that was the subject of the proceedings; and</p> <p>b) in that on or about 6 March 2013 the practitioner, or a restricted practitioner under his supervision (restricted practitioner), caused an affidavit sworn by the client on 28 February 2013 in support of an application to vary the 12 February 2013 Orders (Affidavit to Vary Orders) to be filed in the Court which was</p>	SAT Order 15/05/2018: Proceedings be stayed until further order

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		<p>misleading in material respects as:</p> <p>(i) it conveyed the misleading impression that substantial funds which had been transferred to a bank account in the client's mother's name were still held in a Scottish bank account in the client's name, and which conduct contravened an order of the 12 February 2013 Orders which restrained the parties from transferring or otherwise dealing with those funds; and</p> <p>(ii) it conveyed misleading reasons as to why the client could not transfer \$100,000 from the monies held in the Scottish bank account as ordered by the Court on 12 February 2013</p> <p>in circumstances where the practitioner knew, before the Affidavit to Vary Orders was filed in the Court, or was recklessly indifferent to whether, the Affidavit to Vary Orders was misleading in material respects.</p>	
241/2017	20/12/2017	<p>Professional misconduct by providing to the police an unsigned statement and later, a signed statement which both contained admissions by the client in respect of the charges and information as to the identity and conduct of two alleged co-offenders who had not yet been apprehended by Police in circumstances where the practitioner:</p> <p>a) failed to obtain clear instructions from the client as to whether he would be pleading guilty or not guilty and to which charges;</p> <p>b) failed to adequately explain to the client the legal and factual consequences related to the provision of the statements to the Police and/or</p> <p>c) failed to obtain written instructions from the client to provide the statements to the Police.</p> <p>Unsatisfactory professional conduct by failing to provide the client with adequate costs disclosure as required by section 262 of the Act in that, contrary to s 262 of the Act, the</p>	SAT Order 15/05/2018: Proceedings be stayed until further order

Application No.	Date filed	Allegation	Status
		costs disclosure was not provided in writing either before the practitioner was retained to act for the client or as soon as possible after being so retained.	
51/2018	06/04/2018	Professional misconduct by: <ol style="list-style-type: none"> a) in response to a letter of demand from a former client (client) to the practitioner for a refund of fees in a matter in which the practitioner was retained in their capacity as a registered migration agent, preparing and sending emails to the client the contents of which the practitioner knew were false and misleading; b) in circumstances where the former client commenced a claim in the Magistrates Court (Court) against the client for the refund of fees, making statements at pre-trial conferences at the Court that the practitioner knew were false and misleading; c) in circumstances where the Court entered judgment for the client against the practitioner, without reasonable excuse, failing to pay any and all of the judgment sum; d) in circumstances where the client subsequently made a complaint to the Committee regarding the practitioner's conduct, without reasonable excuse, failing to respond to letters from the Committee and to summonses to produce documents and provide information issued pursuant to section 520(1) of the <i>Legal Profession Act 2008</i> 	Directions 4/09/2018
77/2018	09/05/2018	<u>Annexure A</u> Professional misconduct by: <ol style="list-style-type: none"> a) persistently requesting a police officer (<i>Officer</i>) to provide her with documents and information, which requests were unfair and prejudicial to, and likely to diminish public confidence in, the administration of justice, because she 	Mediation 6/09/2018

Application No.	Date filed	Allegation	Status
		<p>was involved in a personal relationship with the Officer, he unlawfully accessed the Western Australian Police restricted access computer system (the <i>System</i>) in order to obtain the documents and information for the practitioner, which he then released to the practitioner without any authority; and the practitioner knew he was not authorised, alternatively was recklessly indifferent, or further alternatively, grossly careless, about whether he was authorised, to access the System in order to obtain the documents and information for the practitioner, and to then provide them to the practitioner;</p> <p>b) disclosing to the Officer information that she knew was, alternatively was recklessly indifferent, or further alternatively, grossly careless about whether the information was, the subject of legal professional privilege, or that it was confidential to a client of which the practitioner became aware in the course of providing legal services to the client;</p> <p>c) failing to immediately return to the WA Police, affidavits and a DVD of an audiovisual recording of an interview with a person who was not her client, that the Officer had made available to her in circumstances in which she knew, alternatively was recklessly indifferent, or further alternatively, grossly careless, about whether, the Officer was not authorised or permitted to make those affidavits or the DVD of an audiovisual recording of an interview available to her.</p> <p><u>Annexure B</u> Professional misconduct by failing to:</p> <p>a) competently advise the client as to the merits of any defence he might have to the charge the subject of the Proceedings and the evidence required</p>	

Application No.	Date filed	Allegation	Status
		<p>to prove or raise the defence;</p> <p>b) competently advise the client as to the likely consequences of defending the charge, including the risk of an adverse costs order;</p> <p>c) competently advise the client that the prosecution had offered not to apply for costs if the client pleaded guilty to the charge;</p> <p>d) properly prepare for the trial in the Proceedings, which was held on 5 July 2013; and</p> <p>e) further or alternatively, competently represent the client at the trial.</p> <p><u>Annexure C</u> Professional misconduct by:</p> <p>a) failing to:</p> <p>(i). take full and proper instructions from the client and in respect of an exchange of text messages between the client and Mr S, who became the respondent to VRO Applications (<i>respondent</i>), which took place over an extended period over 12 and 13 February 2014 (the <i>text message exchange</i>) and, in particular, failed to view, or to take sufficient steps to view, the entire text message exchange;</p> <p>(ii). properly consider and competently advise the client, taking into account the text message exchange, as to the merits of the Applications, the prospects of success of the Applications and the evidence required to support the Applications and to properly prepare for the final order hearing of the Applications;</p> <p>(iii). competently advise the client in relation to offers to settle the Applications by an exchange of mutual undertakings made by the respondent prior to the final order hearing of the Applications in</p>	

Application No.	Date filed	Allegation	Status
		<p>circumstances where she was aware or ought to have been aware that there was a real risk that the client would not obtain a violence restraining order from the Applications; and</p> <p>(iv). appear at the final order hearing of the Applications without reasonable excuse;</p> <p>b) charging fees for acting for the client in relation to the Applications, including fees charged by another firm instructed to attend at a directions hearing caused by the practitioner's failure to attend the final order hearing in circumstances where these fees were not justified and, thereby, were excessive.</p>	
98/2018	8/06/2018	<p><u>Annexure A</u> Professional misconduct by:</p> <p>a) preparing and causing to be sent, alternatively by causing or permitting to be prepared and sent and for which the practitioner has expressly accepted professional responsibility, letters to the Director, Conciliation Service, WorkCover WA, the contents of which were intemperate, threatening, intimidating and/or discourteous, and by which the practitioner attempted to interfere with the due administration of justice;</p> <p>b) without reasonable excuse, and for the purpose or a substantial purpose of seeking to frustrate or hinder the Committee's investigation into complaint 1, failing to comply with a summons served on the practitioner by the Law Complaints Officer pursuant to sections 520(1)(a) and 520(1)(d) of the <i>Legal Profession Act 2008</i>;</p> <p>c) without reasonable excuse, and for the purpose or a substantial purpose of seeking to frustrate or hinder the Committee's investigation into complaint 1, failing to comply with a</p>	Mediation 15/08/2018

Application No.	Date filed	Allegation	Status
		<p>summons served on the practitioner by the Law Complaints Officer pursuant to sections 520(1)(c) and (d) and 520(3) of the Act, for the provision of written information verified by statutory declaration including where he provided to the Committee a statutory declaration of the practitioner, by which he purported to object to providing any of the information required by the Information Summons and failed to provide that information save only to admit (which did not constitute compliance or purported compliance with the Information Summons) that he (the practitioner) was <i>“responsible from a professional point of view for all correspondence that is prepared and sent on my files”</i>, when the practitioner had no or no reasonable basis for objecting to providing the information required by the Information Summons;</p> <p>d) without reasonable excuse, failing to comply with an undertaking he gave to the Committee to provide his submissions in relation to the conduct the subject of complaint 1.</p> <p><u>Annexure B</u> Professional misconduct by:</p> <p>a) preparing and causing to be sent, alternatively by causing or permitting to be prepared and sent and for which the practitioner has expressly accepted professional responsibility, letters to the RiskCover Division, Insurance Commission of Western Australia and to Mr A, a practitioner employed at a firm, the contents of which were discourteous and intemperate, and letters to Mr A’s firm, the contents of which were intemperate, threatening, intimidating and/or discourteous and by which the practitioner attempted to advance the client’s matter by unfair</p>	

Application No.	Date filed	Allegation	Status
		<p>means;</p> <p>b) preparing and causing to be sent, alternatively by causing or permitting to be prepared and sent and for which the practitioner has expressly accept professional responsibility, letters to Mr B, a director of Mr A's firm, the contents of which were intemperate, threatening, intimidating and/or discourteous;</p> <p>c) without reasonable excuse, and for the purpose or a substantial purpose of seeking to frustrate or hinder the Committee's investigation into complaint 2 and/or the conduct investigation, failing to comply with a summons served on the Practitioner by the Law Complaints Officer pursuant to sections 520(1)(a) and 520(1)(d) of the Act;</p> <p>d) without reasonable excuse, and for the purpose or a substantial purpose of seeking to frustrate or hinder the Committee's investigation into complaint 2 and/or the conduct investigation, failing to comply with a summons served on the practitioner by the Law Complaints Officer pursuant to sections 520(1)(c) and (d) and 520(3) of the Act for the provision of written information verified by statutory declaration, including where he provided to the Committee a statutory declaration of the practitioner, by which he purported to object to providing any of the information required by the Information Summons and failed to provide that information save only to admit (which did not constitute compliance or purported compliance with the Information Summons) that he (the practitioner) was <i>"responsible from a professional point of view for all correspondence that is prepared and sent on my files"</i>,</p>	

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		<p>when the practitioner had no or no reasonable basis for objecting to providing the information required by the Information Summons;</p> <p>e) without reasonable excuse, failing to comply with an undertaking he gave to the Committee to provide his submissions in relation to the conduct the subject of complaint 2.</p> <p><u>Annexure C</u> Professional misconduct by preparing and causing to be sent, alternatively by causing or permitting to be prepared and sent and for which the practitioner has expressly accepted professional responsibility, a letter to Dr A, a treating medical practitioner of his client, that was discourteous and intemperate in its tone and content, and which had the potential to bring the profession into disrepute.</p> <p><u>Annexure D</u> Professional misconduct by preparing and sending, alternatively by causing or permitting to be prepared and sent and for which the practitioner has implicitly accepted professional responsibility, a letter to Dr B that was discourteous, threatening and intemperate in its tone and content, and which had the potential to bring the profession into disrepute.</p>	

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 may apply to SAT for a review of the Committee's decision only with the leave of SAT.

There were four Review Applications filed during the year and one application pending from the

previous period was dismissed by SAT. Four Review Applications remain pending.

The extent of the Committee's involvement in review proceedings depends on the circumstances of the particular matter. The Committee usually appears, and provides documents and submissions to SAT. The matter may proceed to a defended hearing in which the Committee is a party or, on occasion, may be dealt with on the papers.

<i>Review Applications</i>	<i>Total</i>
Pending as at 1 July 2017	1
Lodged during year	4
Withdrawn	0
Dismissed	1
Pending as at 30 June 2018	4

An aggrieved person may review either a decision of the Committee or a decision made by the Law Complaints Officer using the delegated powers of the Committee. A comparison of the decisions that have been the subject of review proceedings since 13/14 is

produced below, and shows no real trend or indication as to the type of decision likely to attract review (noting that in the 17-18 period the Law Complaints Officer was not called upon to make any dismissals using the delegated powers of the Committee).

<i>Types of Decisions Reviewed</i>	<i>Total 13 – 14</i>	<i>Total 14 – 15</i>	<i>Total 15 – 16</i>	<i>Total 16 – 17</i>	<i>Total 17 – 18</i>
Delegated Dismissal	4	0	1	1	0
Committee Decision	2	3	0	1	4
Total	6	3	1	2	4

6.3 Reports to the Full Bench of the Supreme Court

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 of the Supreme Court with a recommendation as to penalty. This is ordinarily done when SAT is of the view that a practitioner's name should be removed from the roll of practitioners.

The Full Bench of the Supreme Court can make any order available to SAT and/or remove a practitioner's name from the roll of practitioners. During the year, there were no orders removing from the roll the name of any practitioner.

Two motions filed to remove from the roll the names of practitioners were discontinued for various reasons, including the death of one practitioner. The appeals initiated by another practitioner who was the subject of a Report to the Full Bench of the Supreme Court were finalised by consent, and in circumstances where an undertaking was given by the practitioner not to apply for a practising certificate or engage in legal practice, the appeal against penalty was dismissed and no motion was filed.

6.4 Appeals

During the year the following matters were determined from previous years:

- an appeal to the Court of Appeal of the Supreme Court (CACV 33 of 2013) by Leonard Gandini relating to a final SAT decision was dismissed by consent, with the practitioner to pay the Committee's costs of the application for leave to appeal and the costs of the appeal to be taxed if not agreed.
- an appeal to the Court of Appeal of the Supreme Court (CACV 117 of 2014) by Leonard Gandini from a SAT penalty decision was allowed *upon the practitioner's undertaking from the date of the order and at any time in the future that he will not apply for a local practising certificate or engage in legal practice in WA, including in a pro bono capacity, whether in his own right, as an employee or under supervision.*
- an appeal to the Court of Appeal of the Supreme Court (CACV 150 of 2015) by Manraj Singh Khosa from a final SAT decision was dismissed: [2017] WASCA 192 & [2017] WASCA 192 (S)
- an appeal to the Court of Appeal of the Supreme Court (CACV 55 of 2016) by Manraj Singh Khosa from a SAT penalty decision [CACV 150 of 2015 and 55 of 2016 were consolidated]. Decision relating to penalty: Appeal was allowed in part and paragraph 1 of the orders of SAT was set aside and in lieu thereof the appellant's practising certificate was suspended for 2 months (instead of the 6 months imposed by SAT).
- an appeal to the Court of Appeal of the Supreme Court (CACV 6 of 2017) by Peter Christison Neil from a SAT interlocutory

decision was dismissed: [2017] WASCA 160

- an appeal to the Court of Appeal of the Supreme Court (CACV 42 of 2017) by Peter Christison Neil from a final SAT decision was dismissed: [2017] WASCA 160
- an appeal to the Court of Appeal of the Supreme Court (CACV 65 of 2017) by Peter Christison Neil from a SAT penalty decision was dismissed: [2017] WASCA 160

(Note: the 3 appeals by Peter Christison Neil that were dismissed were then appealed to the High Court)

Appeals lodged prior to the year, but which have not been determined as at 30 June 2018 were:

- an appeal to the Court of Appeal of the Supreme Court by Ronald William Bower from a final SAT decision (CACV 52 of 2017).
- an appeal to the Court of Appeal of the Supreme Court by Ronald William Bower from a SAT penalty decision (CACV 53 of 2017).

The following appeals were lodged during the year, but as at 30 June 2018 had not been determined:

- an appeal to the Court of Appeal of the Supreme Court by Lloyd Patrick Rayney from a SAT decision (CACV 23 of 2018).
- an appeal to the Court of Appeal of the Supreme Court by Lloyd Patrick Rayney from a SAT penalty decision (CACV 46 of 2018).

During the year the following appeals were filed and determined:

- Nil.

6.5 Full Bench Supreme Court

- On 1 September 2017, a Notice of Discontinuance was filed with the Supreme Court of Western Australia in relation to Gavin George Wells and where the motion was filed in the previous reporting year, following consideration of matters including the application of the Committee's Disciplinary Guidelines.
- On 11 August 2017 a Notice of Originating Motion was filed with the Supreme Court of Western Australia to remove Alison Janice Aldrich from the roll of practitioners. On 30 January 2018 a Notice of Discontinuance was filed with the Supreme Court, following the death of the practitioner.

6.6 Other

An originating motion for contempt was filed pursuant to section 520(8) of the LPA for a practitioner's failure to comply without lawful excuse with a summons to produce documents issued pursuant to section 520(1)(a) LPA in an extant investigation.

6.7 Special Leave Applications

During the year the following applications for special leave to appeal to the High Court were filed and determined:

- an appeal to the High Court (P37 of 2017) by Peter Christison Neil from a Court of Appeal of the Supreme Court decision (CACV 65 of 2017 - [2017] WASCA 109) was dismissed.
- an appeal to the High Court (P55 of 2017) by Peter Christison Neil from a Court of Appeal of the Supreme Court decision (CACV 6 of 2017 - [2017] WASCA 160) was refused.
- an appeal to the High Court (P56 of 2017) by Peter Christison Neil from a Court of Appeal of the Supreme Court decision (CACV 42 of 2017 - [2017] WASCA 160) was refused.
- an appeal to the High Court (P57 of 2017) by Peter Christison Neil from a Court of Appeal of the Supreme Court decision (CACV 65 of 2017 - [2017] WASCA 160) was refused.

7. Promoting Professional Standards

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

As in previous years, the Committee has continued to be proactive in this regard, particularly through its work in the RRT and the issuing of risk alert letters.

Risk alert letters are sent out to firms which have received multiple inquiries or complaints of substance against their practitioners in the previous 6 months. The letters set out the nature of the inquiries/complaints and invites the practice to consider ways to reduce the practice's exposure to inquiries/complaints.

Due to the RRT workloads, whether risk alert letters should be sent out was only assessed once during the year and three letters were issued. However, in a follow up to risk alert letters sent (two from the previous year), legal officers from the RRT visited three firms. The purpose of those visits was to discuss the reasons behind contact being

made with the Committee and to discuss what proactive steps the firms could take to reduce the reason for that contact.

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's focus during the year has been on oral presentations at conferences and continuing professional development seminars, as well as to individual law firms and to university law students.

There were a total of 22 presentations given by Committee staff. Where these presentations are accompanied by papers or power point presentations, those papers and presentations are also published on the Board's website.

8. Tables

TABLE 1 RAPID RESOLUTION INQUIRIES 2016 - 2018

TYPE OF INQUIRER 2016 - 2018

	<i>Total % 2015 – 2016</i>	<i>Total % 2016 – 2017</i>	<i>Total % 2017 – 2018</i>
Client/Former Client	50.5	49.2	48.1
Friend/Relative of Client	9.0	8.1	6.2
Opposing party	20.9	21.8	21.9
Beneficiary/Executor/Administrator	3.8	4.4	5.7
Practitioner on own behalf	4.3	4.0	4.1
Practitioner on another's behalf	1.4	1.7	2.2
Other	10.0	10.7	11.8

INQUIRIES BY AREAS OF LAW 2016 - 2018

	<i>Total % 2015 – 2016</i>	<i>Total % 2016 – 2017</i>	<i>Total % 2017 – 2018</i>
Family/Defacto Law	30.2	30.7	31.4
Civil Litigation	15.3	15.4	13.4
Conveyancing	3.1	3.0	3.2
Leases / Mortgages / Franchises	2.9	1.7	3.2
Probate/Wills/ Family Provisions	13.2	11.2	13.1
Commercial/Corporations Law	3.1	2.2	4.0
Criminal	7.6	8.7	7.8
Personal Injuries	5.6	4.2	3.0
Workers Compensation	5.1	5.7	4.4
Victims Compensation	0.8	0.2	0.8
Employment / Industrial Law	2.7	3.0	2.9
Other	11.3	11.9	12.7

TABLE 1 RAPID RESOLUTION INQUIRIES 2016 - 2018

INQUIRIES BY AREAS OF INQUIRY 2016 - 2018

	<i>Total % 2015 – 2016</i>	<i>Total % 2016 – 2017</i>	<i>Total % 2017 – 2018</i>
Cost/Payment Issues			
Failure to Pay Third Party	0.4	0.1	0.5
Overcharging	13.4	13.1	13.8
No Costs Disclosure	4.4	2.9	2.9
Transfer Costs Without Authority	0.4	0.8	0.4
Failure / Delay to Provide a Detailed Account	1.8	1.2	1.4
Other Costs Complaint	10.7	10.1	9.8
Subtotal	31.1	28.2	28.7
Communication/Service			
Act Without / Contrary to Instructions	2.1	1.2	1.8
No Communication	9.8	10.3	9.7
Failure to Carry Out Instructions	4.7	4.1	4.6
Delay	7.7	7.8	7.6
Lack of Supervision	0.5	0.5	0.5
No Client Advice	1.8	0.9	0.6
No Advice on Progress	0.6	0.8	1.3
Discourtesy	2.8	3.7	5.2
Neglect	1.1	1.2	2.6
Subtotal	31.1	30.4	34.1
Personal Conduct			
Unethical Conduct	12.6	12.0	9.1
Negligence	3.1	3.8	4.5
Misleading	1.7	1.2	1.8
Conflict of interest	2.5	2.9	3.1
Failure to Transfer Documents	0.1	0.7	0.7
Communicating with a Client of Another Solicitor	0.1	0.1	0.3
Threatening Behaviour	2.3	2.1	2.6
False Swearing of Documents	0.2	0.2	0.2
Breach Confidentiality	0.4	0.5	0.9
Undue Pressure	0.3	0.6	0.2
Alteration of Documents	0.1	0.1	0.2
Liens	1.1	0.9	0.9
Subtotal	24.4	24.9	24.4
Other	13.4	16.5	12.8

TABLE 1 RAPID RESOLUTION INQUIRIES 2016 - 2018

RESOLUTION OF INQUIRY 2016 - 2018

	<i>Total % 2015 – 2016</i>	<i>Total % 2016 - 2017</i>	<i>Total % 2017 – 2018</i>
Conciliated Outcome			
Fee waiver	1.7	1.4	1.1
Apology	1.6	1.2	1.7
Undertaking	0.1	0.0	0.2
Discounted fees	5.9	8.7	5.9
Release of lien	1.0	1.0	0.4
Withdrawn	1.3	0.6	1.3
Improved communication	2.9	5.2	4.3
Improved legal practice, training, supervision, mentoring or management systems	3.5	2.9	1.5
Other	0	0	0
Subtotal	18.0	20.9	16.4
No Further Action			
Accepted Committee / practitioner's response	18.8	17.9	22.3
Brochures provided	19.0	11.8	5.3
Suggested direct approach to practitioner	6.3	5.7	5.3
No further information provided	14.0	14.5	24.1
Advised to get legal advice	5.8	7.1	5.7
Misconceived	3.8	3.3	4.4
Other	7.7	10.1	8.5
Subtotal	75.4	70.4	75.6
Expression of Concern issued	3.7	6.3	5.6
Part/Whole inquiry resolved per above category, but referred for investigation	0.0	0.3	0.2
Referred for investigation	2.3	2.0	2.2
Referred for formal determination s415 / s425	0.5	0.1	0.2
Subtotal	6.5	8.7	8.1

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION INQUIRIES 2016 – 2018

	<i>Total 2015 – 16</i>	<i>Total 2016 – 17</i>	<i>Total 2017 – 18</i>
Complaints	64	56	37
Conduct Investigations	18	10	25
Rapid Resolution inquiries	1366*	1479**	1337***
Total	1448	1545	1399

* Does not include 172 miscellaneous inquiries

** Does not include 197 miscellaneous inquiries

*** Does not include 217 miscellaneous inquiries

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2016 - 2018

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
Client / former client	34 (41.5)	14 (21.2)	19 (30.6)
Client's friend / relative	2 (2.4)	3 (4.5)	4 (6.5)
Opposing party	10 (12.2)	15 (22.7)	7 (11.3)
Beneficiary / executor / administrator	2 (2.4)	2 (3.0)	2 (3.2)
Practitioner on own behalf	7 (8.5)	3 (4.5)	1(1.6)
Practitioner on another's behalf	5 (6.1)	2 (3.0)	0
Legal Practice Board	0	0	0
Other	4 (4.9)	17 (25.8)	4 (6.5)
Court Enquiry	0	0	6 (9.7)
Other Investigation	18 (22.0)	10 (15.2)	19 (30.6)
Total	82	66	62

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2016 - 2018

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
Family/Defacto law	24 (28.9)	15 (21.7)	17 (23.0)
Civil Litigation	17 (20.5)	11 (15.9)	8 (10.8)
Conveyancing	0	0	3 (4.1)
Leases/Mortgages/Franchises	1 (1.2)	1 (1.4)	3 (4.1)
Probate/Wills/Family Provisions	9 (10.8)	11 (15.9)	11 (14.9)
Commercial/Corporations Law	5 (6.0)	1 (1.4)	4 (5.4)
Criminal law	13 (15.7)	7 (10.1)	10 (13.5)
Personal injuries	1 (1.2)	6 (8.7)	0
Workers Compensation	2 (2.4)	1 (1.4)	2 (2.7)
Victims Compensation	0	0	0
Employment/Industrial law	1 (1.2)	4 (5.8)	0
Professional negligence	0	0	0
Land and Environment	0	1 (1.4)	0
Immigration	0	1 (1.4)	0
Other	10 (12.0)	10 (14.5)	16 (21.6)

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2016 - 2018

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
Cost/Payment issues			
Failure to pay third party	2 (1.0)	1 (0.7)	1 (0.6)
Overcharging	13 (6.7)	8 (5.8)	15 (9.0)
No costs disclosure	14 (7.2)	6 (4.4)	9 (5.4)
Transfer costs without authority	1 (0.5)	2 (1.5)	2 (1.2)
Failure/delay to provide a detailed account	1 (0.5)	1 (0.7)	0
Other cost complaint	8 (4.1)	9 (6.6)	8 (4.8)
Subtotal	39 (20.1)	27 (19.7)	35 (21.1)
Communication/Service			
Act without/contrary to instructions	7 (3.6)	2 (1.5)	8 (4.8)
No communication	10 (5.2)	4 (2.9)	6 (3.6)
Failure to carry out instructions	4 (2.1)	6 (4.4)	7 (4.2)
Delay	17 (8.8)	3 (2.2)	12 (7.2)
Lack of supervision	4 (2.1)	1 (0.7)	2 (1.2)
No client advice	3 (1.5)	5 (3.6)	4 (2.4)
No advice on progress	2 (1.0)	0	1 (0.6)
Discourtesy	6 (3.1)	10 (7.3)	9 (5.4)
Neglect	9 (4.6)	2 (1.5)	2 (1.2)
Subtotal	62 (32.0)	33 (24.1)	51 (30.7)
Personal Conduct			
Unethical conduct	20 (10.3)	26 (19.0)	12 (7.2)
Negligence	2 (1.0)	6 (4.4)	2 (1.2)
Misleading	17 (8.8)	8 (5.8)	11 (6.6)
Conflict of interest	5 (2.6)	7 (5.1)	11 (6.6)
Failure to transfer documents	1 (0.5)	1 (0.7)	0

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
Communicating with a client of another solicitor	1 (0.5)	0	0
Threatening behaviour	6 (3.1)	4 (2.9)	3 (1.8)
False swearing of documents	0	0	0
Breach confidentiality	1 (0.5)	0	1 (0.6)
Failure to assist LPCC	0	1 (0.7)	0
Undue pressure	2 (1.0)	1 (0.7)	1 (0.6)
Alteration of documents	0	1 (0.7)	0
Liens	0	0	1 (0.6)
Subtotal	55 (28.4)	55 (40.1)	42 (25.3)
Non-Compliance			
Not complying with undertaking	1 (0.5)	0	2 (1.2)
Practising without a practice certificate	0	0	2 (1.2)
Not complying with Legal Profession Act/Regulations	1 (0.5)	2 (1.5)	3 (1.8)
Subtotal	2 (1.0)	2 (1.5)	7 (4.2)
Trust Account Matters			
Breach of Sections of Act / Regulations relating to trust monies	6 (3.1)	5 (3.6)	8 (4.8)
Misappropriation	1 (0.5)	0	1 (0.6)
Failure to account	2 (1.0)	4 (2.9)	3 (1.8)
Other – Trust Account Matters	0	0	1 (0.6)
Subtotal	9 (4.6)	9 (6.6)	13 (7.8)
Other	27 (13.9)	11 (8.0)	18 (10.8)

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2016 - 2018

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
Barrister	9 (11.0)	8 (12.1)	2 (3.2)
Sole Principal	35 (42.7)	30 (45.5)	37 (59.7)
Other Principal	13 (15.9)	8 (12.1)	7 (11.3)
Non Principal	11 (13.4)	10 (15.2)	7 (11.3)
Government Legal Position	3 (3.7)	0	0
Corporate Legal Position	1 (1.2)	0	0
Firm only	1 (1.2)	0	0
Struck off/suspended	0	0	0
Other	9 (11.0)	10 (15.2)	9 (14.5)
Total	82	66	62

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2016 - 2018

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
CBD/West Perth	52 (63.4)	40 (60.6)	34 (54.8)
Suburbs	21 (25.6)	20 (30.3)	23 (37.1)
Country	6 (7.3)	2 (3.0)	3 (4.8)
Interstate	3 (3.7)	4 (6.1)	1 (1.6)
Not known	0	0	1 (1.6)
Total	82	66	62

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2016 - 2018

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
Under 5	3 (3.7)	0	4 (6.5)
5 – 9	24 (29.3)	14 (21.2)	5 (8.1)
10 –14	17 (20.7)	22 (33.3)	11 (17.7)
15 – 19	8 (9.8)	8 (12.1)	13 (21.0)
20 – 24	11 (13.4)	1 (1.5)	5 (8.1)
25 – 29	3 (3.7)	5 (7.6)	3 (4.8)
30 – 34	7 (8.5)	6 (9.1)	8 (12.9)
35 – 39	8 (9.8)	6 (9.1)	5 (8.1)
Over 40	1 (1.2)	1 (1.5)	5 (8.1)
Not known/Not applicable	0	3 (4.5)	3 (4.8)
Total	82	66	62

TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2016 - 2018

	<i>Total % 2015 – 16</i>	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>
Under 25	0	0	0
25 – 29	2 (2.4)	1 (1.5)	1 (1.6)
30 – 34	8 (9.8)	6 (9.1)	1 (1.6)
35 – 39	2 (2.4)	6 (9.1)	6 (9.7)
40 – 44	7 (8.5)	6 (9.1)	6 (9.7)
45 – 49	11 (13.4)	4 (6.1)	9 (14.5)
50 – 54	16 (19.5)	10 (15.2)	4 (6.5)
55 – 59	9 (11.0)	11 (16.7)	11 (17.7)
60 – 64	12 (14.6)	8 (12.1)	8 (12.9)
65 – 69	6 (7.3)	5 (7.6)	10 (16.1)
70 – 75	8 (9.8)	2 (3.0)	2 (3.2)
76 – 80	0	3 (4.5)	1 (1.6)
81+	0	0	0
Not known/Not applicable	1 (1.2)	4 (6.1)	3 (4.8)
Total	82	66	62

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2016 - 2018

	<i>Total</i> <i>2015 – 16</i>	<i>Total</i> <i>2016 – 17</i>	<i>Total</i> <i>2017 – 18</i>
Practitioners with 1 complaint	59	50	51
Practitioners with 2 complaints	6	4	4
Practitioners with 3 or more complaints	3	2	1
Total number of practitioners	68	56	56

TABLE 11 OUTSTANDING COMPLAINTS 2016 - 2018

	<i>Total</i> <i>2015 – 16</i>	<i>Total</i> <i>2016 – 17</i>	<i>Total</i> <i>2017 – 18</i>
Outstanding complaints	90	98	69
Outstanding conduct investigations	33	29	28
Total	123	127	97

9. Information Statements

9.1 Freedom of Information Act

Pursuant to Part 5 of the *Freedom of Information Act 1992 (FOI Act)* the Committee is required to publish an Information Statement. The Attorney General has approved, in accordance with section 96(1) of the FOI 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 FOI 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 Information Statement

1. INTRODUCTION

The *Freedom of Information Act 1992* (“**the FOI Act**”) is the legislation in Western Australia which provides members of the public with a general right of access to a vast majority of records and information held by public bodies.

As a public body established for a public purpose, the Legal Profession Complaints Committee (“**the Complaints Committee**”) is obligated to:

- assist the public to obtain access to documents;
- allow access to documents to be obtained promptly and at the lowest reasonable cost; and
- assist the public to ensure that personal information contained in documents is accurate, complete, up to date and not misleading.

Some material held by the Complaints Committee may be exempt from access. There are provisions under the FOI Act which allow the Complaints Committee to refuse access to certain documents or information.

The Complaints Committee at all times complies with the provisions of the FOI Act and has included, in this Information Statement, details of the website where internal publications can be located.

2. STATEMENT OF STRUCTURE AND FUNCTIONS

Section 555 of the *Legal Profession Act 2008* (“**the LPA**”) establishes the Complaints Committee, which consists of the following members:

- a chairperson, and not less than 6 other legal practitioners; and
- not less than 2 representatives of the community who are not and have never been Australian lawyers (see section 556 of the LPA).

The functions of the Complaints Committee are set out in sections 409, 410 and 557 of the LPA and include, among other things, the responsibility of:

- supervising the conduct of legal practitioners;
- inquiring into complaints received about legal practitioners for the purposes of determining whether such conduct may constitute unsatisfactory professional conduct or professional misconduct; and
- instituting professional disciplinary proceedings against legal practitioners in the State Administrative Tribunal, if appropriate to do so.

These functions, in particular the Complaints Committee’s decision making functions, do not directly affect members of the public; they affect Australian lawyers and Australian legal practitioners (as defined in sections 4 and 5 of the LPA) on the one hand and those among the classes of persons set out in section 410(1) of the LPA from whom complaints are received on the other hand.

Further, none of the Complaints Committee's functions are likely to affect the 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.

Our Process

The Complaints Committee receives inquiries and complaints about legal practitioners. All inquiries and complaints are assessed on receipt to ascertain whether they raise an issue which, if proved, may amount to a conduct issue.

Further information on the Committee's processes is publicly available and can be found using the link "The Committee's Services" in the Complaints area on the Legal Practice Board's website at www.lpbwa.org.au.

Organisational Structure

Information as to the organisational structure of the Complaints Committee and statistics in relation to its performance are publicly available and can be found in the Complaints Committee's Annual Reports which are located in the Complaints area on the Legal Practice Board's website at www.lpbwa.org.au.

3. PUBLIC PARTICIPATION IN AGENCY FUNCTIONS

The purposes of the Complaints Committee are set out in section 401 of the LPA. There are no arrangements to enable members of the public to participate in the formulation of the Complaints Committee's purposes or in the performance of its functions other than through the community representatives appointed by the Attorney General as members of the Complaints Committee.

4. INFORMATION HELD BY THE COMPLAINTS COMMITTEE

Publications

The Complaints Committee produces a number of publications which are available free of charge from the website at <https://www.lpbwa.org.au/Complaints>. These publications include (but are not limited to):

- Annual Reports;
- Forms;
- Brochures;
- Fact Sheets;
- Guidelines;
- Papers; and
- Press Releases.

All of the Complaints Committee's publications are available for inspection or downloading by accessing the website above. Copies of select publications are available at the offices of the Complaints Committee at Level 6, 111 St Georges Terrace, Perth to any person who attends at the office or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions. These publications are not covered by the FOI Act as they are publicly available.

Documents

The other kinds of documents usually held by the Complaints Committee comprise:

- the Complaints Committee's files containing correspondence, memoranda and other associated documents; and
- documents related to meetings of the Complaints Committee such as agendas, minutes, memoranda and other associated documents.

The FOI Act is the only written law under which any of these types of documents may be inspected.

There is no other law or practice under which any of these documents can be purchased.

5. PROCEDURES FOR FOI ACCESS

Freedom of Information Officer

Initial enquiries as to access to documents under the FOI Act should be made to Mr Stephen Merrick of Level 6, 111 St Georges Terrace, Perth, Legal Practitioner, the officer of the Complaints Committee who can deal with such enquiries and who has been generally directed to make decisions under the FOI Act. Initial enquiries may be made by telephone to (08) 6211 3699.

Submitting an FOI request

Should an applicant wish to proceed with a formal request for access to documents under the FOI Act, a valid FOI application can be made in writing to the Complaints Committee by letter to:

The Freedom of Information Officer
Legal Profession Complaints Committee
Post Office Box Z5293
St George's Terrace
Perth WA 6831

Facsimile: +61 8 6211 3650
Email: lpcc@lpbwa.com

A valid FOI application needs to:

- be in writing;
- give enough information so the documents requested can be identified;
- give an Australian address to which notices can be sent; and
- be lodged at the Complaints Committee's office with a fee of \$30 (unless the application is one for personal information only, which does not attract a fee). No reductions to the application fee are available.

The FOI Process

Applications submitted to the Complaints Committee will be acknowledged in writing and applicants will be notified of the decision as soon as practicable and in any case within 45 days of a valid application being received.

In the notice of decision, applicants will be provided with:

- the date the decision was made;
- the name and designation of the officer making the decision;
- the reasons for classifying any particular documents as exempt under the FOI Act;
- the fact that access is to be given to an edited document; and
- information as to the right of review and the procedures to be followed to exercise that right.

The Complaints Committee is obligated under the FOI Act to assist applicants in clarifying and narrowing the scope of the documents for which access is sought.

Access to documents may be granted by way of: inspection at the office of the Complaints Committee; provision of copies of documents; provision of copies of audio or video tapes; by a computer disk; or by agreement in other ways. The best method of providing access to documents will be discussed with the applicant.

Access Charges

The FOI Act states that a valid FOI application must be accompanied by a \$30 application fee unless the request is entirely for personal information about the applicant. The Complaints Committee's Freedom of Information Officer can assist applicants determine if their request is likely to attract the application fee prior to an application being submitted.

In addition, other fees may apply for:

- the reasonable cost of photocopying documents sought which will be charged at 20 cents per photocopy or \$30 per hour of staff time taken to photocopy the documents required;
- staff time for dealing with an application, at a rate of \$30 per hour;
- supervision by staff when access is given to an applicant by way of inspection of the documents sought, at a rate of \$30 per hour; and
- the actual costs incurred by the Complaints Committee for preparing copies of audio or video tapes, computer disks etc and for arranging delivery, packaging and postage of documents or other items.

For financially disadvantaged applicants or those applicants issued with prescribed pensioner concession cards, charges for dealing with FOI applications (such as copying material, searching for documents or supervision by staff when documents are inspected) will be reduced by 25%.

If the charges are likely to exceed \$25, then under section 17 of the FOI Act, the Complaints Committee is required to provide the applicant with an estimate of the charges and ask whether the applicant wishes to proceed with his or her FOI application. The applicant must notify the Complaints Committee, in writing, of his or her intention to proceed within 30 days of receiving the estimate. In some instances the Complaints Committee may request an advance deposit for estimated charges.

Procedure for Amending Personal Information

The Complaints Committee has no procedures for amending personal information in its documents pursuant to Part 3 of the FOI Act. Any application for an amendment will be dealt with in accordance with Part 3 of the FOI Act. Such applications should be addressed to:

The Freedom of Information Officer
Legal Profession Complaints Committee
Post Office Box Z5293
St Georges Terrace
Perth WA 6831

Facsimile: +61 8 6211 3650
Email: lpcc@lpbwa.com

6. INTERNAL REVIEW RIGHTS

Applicants who are dissatisfied with the decision of an FOI officer may apply for an internal review of the decision pursuant to section 39 of the FOI Act. Once an applicant has received his or her notice of decision from the Complaints Committee, there is 30 days in which to lodge an application for internal review with the Complaints Committee. The application for internal review should:

- be in writing;
- give particulars of the decision to be reviewed; and
- confirm an Australian address to which notices can be sent.

The Complaints Committee is required to notify an applicant of the result of his or her application for internal review within 15 days of the Complaints Committee receiving an application for internal review.

Applications for internal review can be made to:

Legal Profession Complaints Committee
Post Office Box Z5293
St Georges Terrace
Perth WA 6831

Facsimile: +61 8 6211 3650
Email: lpcc@lpbwa.com

No further fees apply to an application for internal review.

7. EXTERNAL REVIEW RIGHTS

If an applicant is dissatisfied with the decision regarding an application for internal review, the applicant may lodge a complaint with the Office of the Information Commissioner ("**the OIC**") pursuant to section 65 of the FOI Act.

Complaints lodged with the OIC must:

- be lodged within 60 days of the applicant receiving the Complaints Committee's decision in relation to an application for internal review;
- be in writing;
- have attached to it a copy of the Complaints Committee's decision; and
- give an Australian address to which notices can be sent.

There is no charge for lodging a complaint with the OIC and complaints should be lodged at:

Office of the Information Commissioner
Albert Facey House
469 Wellington Street
PERTH WA 6000

Telephone: +61 8 6551 7888
Facsimile: +61 8 6551 7889
Email: info@foi.wa.gov.au
Website: www.oic.wa.gov.au

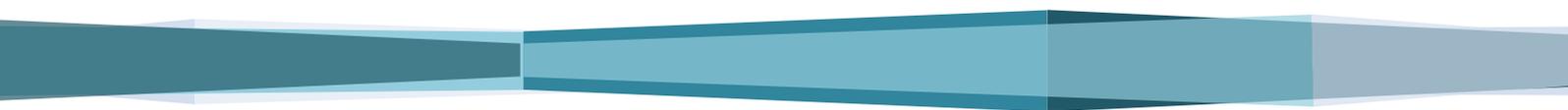
The Information Commissioner is an independent officer who reports directly to Parliament and whose role it is, where an applicant is dissatisfied with a decision, to review decisions by agencies on access applications and applications to amend personal information.

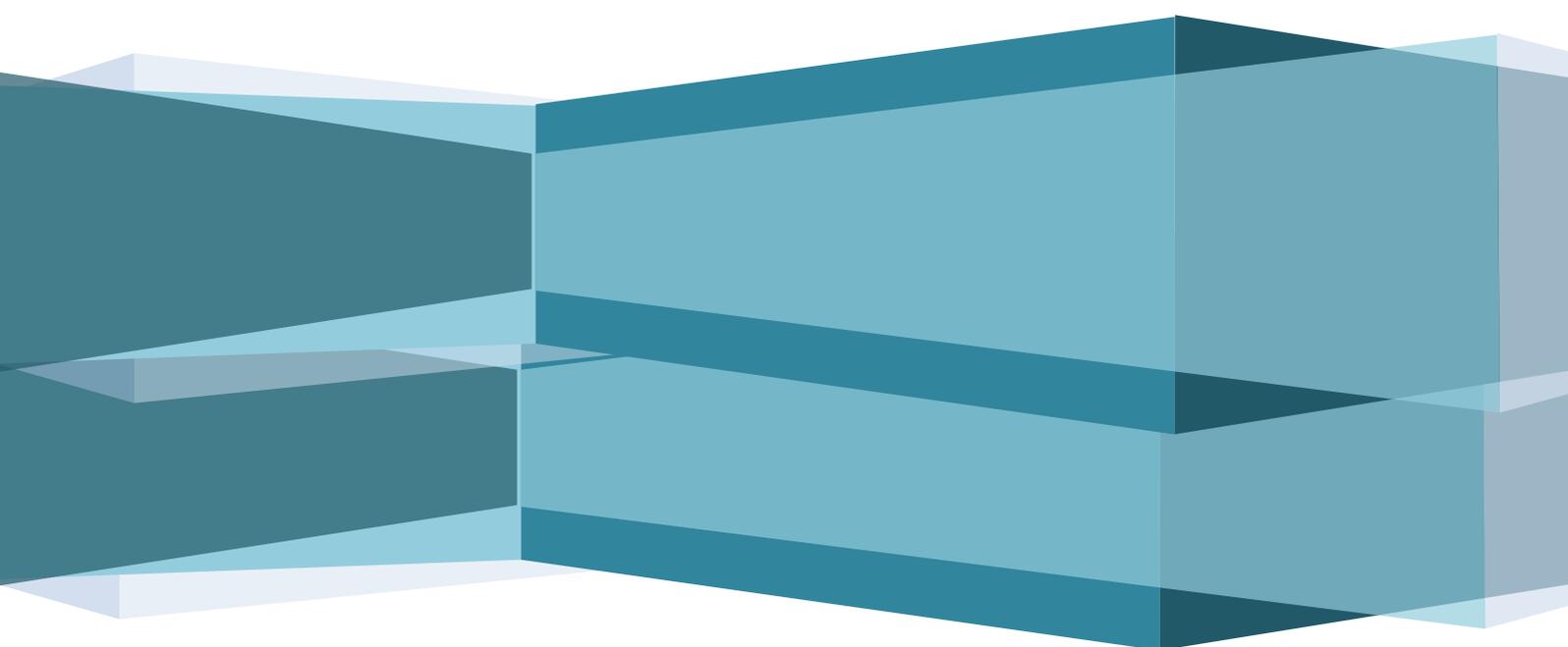
The OIC also provides assistance to members of the public and agencies on matters relevant to the FOI Act.

Further information on the Office of the Information Commissioner as well as access to the FOI Act and Regulations, can be found at www.oic.wa.gov.au.

8. STATEMENT REVIEW

This FOI Information Statement is current as at July 2018 and is reviewed annually.





LPCCWA

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Email: lpcc@lpbwa.com Web: www.lpbwa.org.au