

**LEGAL PROFESSION COMPLAINTS COMMITTEE  
WESTERN AUSTRALIA**

**2015 ANNUAL REPORT**

<b>1. Report from the Chair</b>	<b>1</b>
<b>2. Report from the Law Complaints Officer</b>	<b>4</b>
<b>3. About the Legal Profession Complaints Committee</b>	<b>9</b>
3.1 Our role, purposes and objectives	
3.2 Our relationship with the Legal Practice Board	
3.3 Our members	
3.4 Our operations	
3.5 Trust account inspections	
3.6 Our staff training and professional development	
<b>4. Complaints</b>	<b>13</b>
4.1 Complaint handling process	
4.2 Key statistics	
<b>5. Formal determination of complaints</b>	<b>20</b>
5.1 Overview and key statistics	
5.2 Matters dismissed or not taken further	
5.3 Summary conclusion determinations	
5.4 Referrals to the State Administrative Tribunal	
<b>6. State Administrative Tribunal and Court Proceedings</b>	<b>30</b>
6.1 SAT Applications	
6.2 Review Applications	
6.3 Reports to the Full Bench of the Supreme Court	
6.4 Appeals	
6.5 Special leave applications	
<b>7. Promoting Professional Standards</b>	<b>53</b>
<b>8. Tables</b>	<b>54</b>
Table 1 Rapid Resolution inquiries 2013 – 2015	
Table 2 New complaints/conduct investigations/rapid resolution inquiries 2013 – 2015	
Table 3 Complaints opened by type of complainant 2013 – 2015	
Table 4 Complaints opened by areas of law 2013 – 2015	
Table 5 Complaints opened by areas of complaint 2013 – 2015	
Table 6 Complaints opened by practitioner type of employment 2013 – 2015	
Table 7 Complaints opened by practitioner area of practice 2013 – 2015	
Table 8 Complaints opened by practitioner years in practice 2013 – 2015	
Table 9 Complaints opened by practitioner age 2013 – 2015	
Table 10 Number of practitioners complained of 2013 – 2015	
Table 11 Outstanding complaints 2013 – 2015	
Table 12 Composition of the WA Legal Profession as at 30 June 2015	
<b>9. Information Statements</b>	<b>66</b>
9.1 Freedom of Information Act	
9.2 Public Interest Disclosure	



## 1. Report from the Chair

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I took over the role of Chair of the Committee at the beginning of 2015, following the resignation of its long serving Chair, Mr Chris Zelestis QC. Mr Zelestis was a great stalwart of the Committee, having served as a member since 14 May 2002, and as its Chair since 10 June 2003. I had the pleasure of working closely with Mr Zelestis as deputy Chair from 17 August 2010.

When Mr Zelestis joined the Committee in 2002, it was called the Legal Practitioners Complaints Committee, and its governing legislation was the *Legal Practitioners Act 1893* (WA). Disciplinary proceedings were brought in the Legal Practitioners Disciplinary Tribunal, where proceedings were not open to the public. That Tribunal no longer exists, and all disciplinary proceedings are now brought in the State Administrative Tribunal.

That is one major change, but there have been many other changes to the Committee's operations since that time. Those changes have resulted from many factors, including changes to the legal profession itself (which has grown from 4,535 practitioners to 6,185 practitioners), the expectations of clients using legal services (particularly as a result of their ready access to information about legal matters), and the recognition of the psychological distress caused to practitioners when a complaint is made.

The most significant internal changes to the Committee's operations were made in late 2010, when its entire operations were restructured and the Rapid Resolution Team (*RRT*) was established. Mr Zelestis supported and promoted those changes, which were designed to deal with the changing legal environment.

The Committee has been extremely fortunate to have had a practitioner of Mr Zelestis' experience and legal knowledge as its leader for such a long time, to provide guidance in dealing with the difficult and challenging work it undertakes.

Mr Zelestis was farewelled by the Attorney General, the Solicitor General, Committee members and staff, members of the Legal Practice Board (*Board*), and the Executive Director of the Board, at a small function in February. It was my pleasure to give the farewell speech and thank him for his enormous contribution to the work of the Committee and for his outstanding leadership.

However, time does not stand still, and, since the departure of Mr Zelestis, the work of the Committee has continued unabated. This report sets out a summary of the work undertaken during the year.

The effectiveness of the 'triaging' of inquiries by the RRT is highlighted in this report. The RRT's educational approach to dealing with many matters, rather than seeking disciplinary outcomes, has ensured that only matters warranting investigation go to the Investigation team. This means that the Investigation team is dealing with complex and serious matters which take time to complete. Following a full investigation by the Investigation team, 75% of matters which went before the Committee for consideration this year resulted in outcomes ranging from an expression of concern (14.8%), to exercise of summary conclusion (6.6%), and to referral to the State Administrative Tribunal (54.1%). The percentage of matters referred to the State Administrative Tribunal has increased by 13.2%, which has

had a flow on effect on the workload of the Litigation team.

### **Trends or special problems**

The trend from last year of an increasing number of matters being referred to the State Administrative Tribunal continued as indicated above.

Also this year, there was a big spike in the percentage of complaints in the probate and wills area. 19.5% of all complaint files opened this year were in this area. In the previous two years, that percentage was between 4.5% and 9.7%. The reason for this is unclear, but may be due, in part, to practitioners venturing into this area, due to financial reasons, even though it is not within their area of expertise.

Costs inquiries have reduced from 47% to 34.7%. That is possibly due, in part, to the educational work of the RRT in this area. The percentage of overcharging complaints which were investigated, however, rose by 4.6%. That is likely to be a flow on from the number of costs inquiries received in the previous year. Based on the reducing percentage of inquiries in this area, there may be a reduction next year in the number of overcharging complaints.

Unfortunately, last year's reduction in the percentage of complaints received against sole practitioners was not repeated this year, with the percentage of such complaints rising to 45.1%, which is just above the 2013 level. This only serves to again highlight the need for imposition of additional requirements before practitioners can commence practice as a sole practitioner, a matter being considered by the Board's Professional Development Committee.

A further trend this year, which may be linked to the increased percentage of complaints against sole practitioners, is that

the percentage of complaints against suburban practices has increased. Over 50% of all complaints this year have been against suburban practitioners.

### **Forecast of the Committee's workload**

The Committee's workload increased during the year, with an increase in the number of inquiries and complaints, as well as the number of applications filed in the State Administrative Tribunal. Combined with this increase, the Committee has undertaken six audits of incorporated legal practices, which have produced extensive reports with recommendations for implementation. The Committee's ability to undertake more extensive audit work is restricted by its resources. The need for more audits to be undertaken is not expected to diminish.

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

As indicated in the Committee's 2012, 2013 and 2014 reports, the implementation of a complaints management system would enhance the Committee's operations. Work on reviewing the Committee's needs in this regard, in order to source a suitable system, stalled during the year, but has recently recommenced.

### **Thanks**

My thanks go to all the Committee members for their contribution this year. The work of Committee members is challenging and their generosity in undertaking that work is greatly appreciated. My special thanks go to Kim Wilson SC, who very kindly agreed to take up the role of deputy Chair when I was elevated to Chair, and has assisted me greatly with the management of the Committee.

The work of the Committee could not be done without the dedication of the Committee's staff, who, once again, have worked hard to deal with complaints in the most effective and efficient manner.

*John Ley*  
*Chair*  
*August 2015*



## 2. Report from the Law Complaints Officer

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The work of the Committee continued apace during the 2014-2015 year. The start of 2015 was notable by being the busiest start to a year I have experienced during my time at the Committee. It was also notable as being the first year since 2004 that Mr Chris Zelestis QC was not the Chair of the Committee.

Mr Zelestis resigned from the Committee at the end of 2014. Mr Zelestis' contribution to the Committee's work since joining as a member on 14 May 2002 has been immense. I have greatly valued his assistance and support during my tenure as Law Complaints Officer.

It is difficult to do justice to Mr Zelestis' contribution to the Committee, but I take this opportunity to highlight some aspects of that contribution:

- the enormous amount of time he devoted pro bono to the Committee's work not just preparing for and attending Committee meetings, but all other time spent on Committee matters;
- the leadership he provided to the Committee and its staff on complaint matters and the regulation of the legal profession generally, particularly through a number of legislative changes (1893 Act, 2003 Act and the 2008 Act);
- his willingness to make himself available to members of the legal profession to discuss Committee matters;
- the support and assistance he generously gave to the Committee staff to assist them to undertake

their work, particularly during the restructure of the Committee's office in late 2010.

The change of leadership of the Committee to Mr John Ley as Chair and Mr Kim Wilson SC as deputy Chair has been seamless. This has been largely due to both Mr Ley's and Mr Wilson's long association with the Committee, having both been members of the Committee since 7 June 2006 and Mr Ley having been its deputy Chair since 17 August 2010.

### Positive changes and emerging issues

The Committee's Rapid Resolution team (**RRT**) has worked very hard since its inception to achieve changes to some practices which give rise to both inquiries and complaints. One area which the RRT has focused on is costs, in particular, the charging of fair and reasonable fees.

During the period the RRT has been very pleased to see many invoices for legal services where practices have implemented their suggestions. One of those changes is including a nil value for particular work which when undertaken in certain circumstances was not fairly or reasonably chargeable. Such work included research, collating files and intra-office meetings.

Previously many practices charged for such work which was, at least in part, the reason for contact with the Committee. As part of its educational role, the RRT team discussed with many principals the appropriateness of these charges. Although the principals accepted the view that the work was not chargeable they were concerned that their invoices would not properly reflect the

volume of work undertaken. The RRT suggestion of including the work but ascribing it a nil value was considered a good approach to take. By including the work in this way, clients can then appreciate that the work was undertaken but also know they are not being charged for it.

During the period as part of its conciliation/mitigation processes, the RRT facilitated conciliations which brought together all relevant parties, such as the practitioner's insurer, to achieve settlements of a number of issues (such as negligence issues) arising in the same matters. This approach enables all compensation issues (not just the compensation issues considered by the Committee, which are limited in nature and amount) to be dealt with at the same time rather than in a piecemeal fashion. This results in a more efficient and less expensive process for both the practitioner and the complainant/inquirer.

An emerging issue of whether or not the Committee could provide the State Administrative Tribunal with consent orders on penalty or make submissions as to an appropriate penalty following a hearing was resolved, at least for the time being, by the decision of the Full Court of the Supreme Court in *Legal Profession Complaints Committee v Love* [2014] WASC 389. The Full Bench decided that there was nothing precluding the Committee from doing so. Whether or not this position changes may depend on what the High Court decides in a case emanating from the Fair Work jurisdiction, possibly later in 2015. There is more on this issue in section 6.1 of this report.

### Risk alert letters

The process of sending out risk alert letters to practices whose employees had been the subject of 3 contacts raising substantive issues (either consumer issues or conduct

issues) within the previous 6 months started in earnest in October 2013.

As I explained in previous reports, the aim of these risk alert letters is to try to change the behavior in practices which causes contact with the Committee. Such changes benefit all the clients of those firms as they hopefully result in less inquiries/complaints being made against practitioners in those practices.

As the practice of sending out risk alert letters has now been in place since October 2013, it is possible to start to review the success of this work.

In total, 61 risk alert letters have been issued with 14.7% of practices requiring a second risk alert letter to be sent. Of those 9 practices which were issued with a second risk alert letter, only two had contacted the Committee in response to the original risk alert letter.

The first risk alert letter invites contact with the Committee but does not require it. This is in keeping with the aim of the letters, which is merely to provide information to the principals of a practice which they can use to address their internal management systems. When a second risk alert letter raising the same issues is sent to the same practice, a different approach is adopted with legal officers from the RRT seeking to meet with the principals. Although there has been some initial reservation by principals to this approach, when meetings have taken place they have achieved a very positive outcome.

Although it is still early days, I am hopeful that the number of practices requiring a second risk alert letter or any further risk alert letter after a visit, will be very small.

### Incorporated Legal Practice/Firm audits

The audit of incorporated legal practices (*ILPs*) continued during the period. The

audits conducted since the first audit in October 2013 have been targeted to ILPs which, for one reason or another, were considered to have possible deficiencies in the management of the provision of legal services. As such, the audits have not been routine audits but have been targeted to the concerns which led to the audit being conducted.

Although only a small number of audits are undertaken each year, the amount of work involved in those audits is immense. During the period, 6 audits were undertaken of which 4 involved reviewing all the practice's files as serious concerns arose as to competency.

Following audits, comprehensive reports are prepared containing recommendations for immediate implementation. These recommendations vary but depending on the level of concern may involve a recommendation aimed at protecting the public, for example, supervision of the legal practitioner director's work. The implementation of such a recommendation provides protection to the public while a full conduct investigation of each concern is undertaken.

The ILP audits are carried out using the "Ten Objectives of Appropriate Management Systems" used by regulators in other states as part of self assessment audit kits which practices can use to assess their compliance with the equivalent provisions to those in the *Legal Profession Act 2008*. These kits are available for download at [www.olsc.nsw.gov.au](http://www.olsc.nsw.gov.au) and [www.lsbv.vic.gov.au](http://www.lsbv.vic.gov.au).

Although the Act only requires appropriate management systems to be implemented and maintained by ILPs, such systems are essential for all legal practices. I urge all practices to undertake an assessment of their practice. Improved management

systems benefit both the practice and its clients. It may also assist to reduce complaints against practitioners in the practice.

### Seminars to the profession

During the period, in consultation with Law Mutual, the Committee's legal officers gave 10 seminars to practitioners who opted to stay at the end of the compulsory risk management seminars run by Law Mutual.

The risk management seminars are attended by a significant number of local practitioners, both junior and experienced. The Law Mutual seminars were divided between seminars for junior practitioners and seminars for experienced practitioners/sole practitioners. This enabled the content of the Committee's seminars to be specifically tailored for the audience.

The seminars for the experienced practitioners were run using a series of anonymised case studies based on matters which were then currently before the Committee. The case studies were chosen to cover a number of different areas of law and to highlight many of the emerging issues being seen by the Committee.

I was heartened that a number of practitioners took the opportunity to stay and listen to the seminars, and the feedback from those who did stay was very positive. Many practitioners reported that they had taken the time on their return to their offices to read recent State Administrative Tribunal decisions in disciplinary matters. Hearing and reading about the mistakes made by other practitioners will hopefully assist practitioners to not the make the same mistakes themselves.

The seminars were time intensive but worthwhile. I hope the Committee may be



able to repeat this experience every few years.

### Regional visits

This year the Committee's officers visited Kalgoorlie and presented a two hour seminar outlining the workings of the Committee and highlighting ethical issues using some of the anonymised case studies used for the Law Mutual seminars.

With the growth of e-learning, the Kalgoorlie practitioners said they considered that face to face seminars were of continuing value due to the opportunity to interact with other practitioners (particularly those new to the region) and exchange matters of professional interest.

### Developing and maintaining relationships

In July 2014, I met with Mr Steve Ingram, the Chief Executive Officer of the Office of the Migration Agents Registration Authority (**OMARA**), to discuss the philosophy of the Committee's and OMARA's approaches to regulation and the issues being encountered.

Ms Philippa Rezos, Manager of the Committee's Rapid Resolution Team, and I met with members of the Continuing Legal Education Association of Australasia in July 2014 to discuss methods of delivery of continuing professional development.

Also in July 2014, Philippa Rezos attended a meeting organised by the Health and Disability Service Commission which brought together around 20 agencies to discuss alternative dispute resolution. Philippa is now a member of a steering committee of government agencies working towards a conciliation model. A charter of objectives was launched by the steering committee in November 2014.

In May 2015, Mr Ley, Mr Wilson and I attended a meeting with the Executive of the Law Society to discuss how the Committee operates, continuing professional development, and the stress of complaints on practitioners' wellbeing.

As in previous years, Philippa Rezos continued as a member on the Law Society's Mental Health and Wellbeing Committee and its Costs Committee and Patricia Le Miere continued as a member on the Western Australian chapter of the Council of Australasian Tribunals.

### Legal Profession Act 2008 and the Legal Profession Uniform Law

During 2013-2014, at the invitation of the Legal Practice Board, the Committee provided to the Board for on-forwarding to the State Solicitor some suggested amendments to the *Legal Profession Act 2008* to assist with its operations.

During the year, in response to some queries on those proposed amendments received via the Board from the State Solicitor, the Committee provided further explanation regarding those proposed amendments. I understand that the State Solicitor has made recommendations to the Attorney General on the proposed amendments.

The Committee is currently waiting to hear about the progress of the proposed amendments.

Also during the year, the Attorney General requested the Board's views on a number of matters concerning the Legal Profession Uniform Law which came into operation in Victoria and New South Wales on 1 July 2015. Three members of the Committee are part of an *ad hoc* Board committee which is preparing a response to the Attorney General.

The Committee's staff have prepared a comparison of the major differences in the complaints and associated areas between the Western Australian legislation and the Uniform Law in order to assist the *ad hoc* Committee.

### Legal Aid Commission of Western Australia (LAC)

As I reported last year, in July 2014 the Committee finalised a Memorandum of Understanding (*MOU*) to permit the Committee to disclose relevant information to the LAC concerning the disciplinary history of practitioners. That information is disclosed with the consent of the practitioners, such consent being required by LAC as a prerequisite to a practitioner nominating for a legal aid panel or list.

During the period, the Committee has provided disclosure to the LAC for its new panels for independent children's lawyers, dispute resolution, criminal law, civil, family law and violence restraining orders.

The gathering of disciplinary history for LAC is time consuming but provides a valuable service as it is an important part of ensuring the quality of practitioners who are eligible to receive public funds to undertake legal aid work.

### Complaints management system

As I reported in the Committee's 2013 and 2014 Annual reports, planning for a complaints management system (*CMS*) commenced in June 2013. Although work commenced, it stalled for some time but resumed in May 2015 with a new IT staff member.

There is an urgent need for a CMS to assist with the Committee's operations. I am hopeful that this project will now proceed

without any further delay and be completed in 2016.

### Staffing

Staffing levels have remained constant during the year with staff continuing to work at full capacity.

### Thanks

My report would never be complete without thanking all who have assisted me personally and the Committee in general during the year.

My thanks to all members of the Committee's staff who continue to work hard to achieve the Committee's aims. Dealing with complaints every day is not easy but each day the staff undertake their work with good humour, doing the best job they can. I also thank the Executive Director of the Legal Practice Board for his assistance in all administrative matters.

I am also grateful for the continuing hard work and assistance provided by the members of the Committee. My special thanks to the former Chair, Mr Zelestis, and the new Chair and deputy Chair for their continuing assistance and support.

Barristers from the independent bar have continued to provide valuable assistance to the regulation of the legal profession by undertaking work for the Committee at reduced rates. All of us at the Committee greatly appreciate their willingness to do so.

**Gael Roberts**  
**Law Complaints Officer**  
**August 2015**



## 3. About the Legal Profession Complaints Committee

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### 3.1 Our role, purposes and objectives

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

The statutory purposes of the Committee's work are:

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

Our objectives are:

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

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

### 3.2 Our relationship with the Legal Practice Board

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

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

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

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

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

### 3.3 Our members

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

During the reporting year the Committee was constituted by:

Chair: Mr C L Zelestis QC  
(until 31 December 2014)  
Mr J R B Ley  
(from 1 January 2015)

Deputy Chair: Mr J R B Ley  
(until 31 December 2014)  
Mr K R Wilson SC  
(from 1 January 2015)

Legal members:  
Mr K R Wilson SC (until 31 December 2014)  
Mr K M Pettit SC (from 1 January 2015)  
Mr M T Ritter SC  
Mr T Lampropoulos SC  
Mr R M Mitchell SC (until 1 October 2014)  
Mr B Dharmananda SC  
Mr M R Berry SC (from 8 April 2015)  
Ms S M Schlink  
Mr J G Syminton  
Ms N A Hossen (until 31 March 2015)  
Mr A J Pascoe (from 1 January 2015)

Community representatives:  
Ms M Nadebaum  
Mr C Hudson

Deputy community representative:  
Mr G R Fischer

### 3.4 Our operations

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

During the year, the Committee held 11 meetings.

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

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

The Rapid Resolution team is managed by Ms Philippa Rezos and comprises 2.6 full time equivalent (*FTE*) legal officers, 0.6 *FTE* senior legal officer and one secretary.

The Investigation team is managed by Mr Nicholas Pope and comprises 2.4 *FTE* legal officers, 0.6 senior legal officer, a senior trust account inspector and two secretaries.

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

### 3.5 Trust account inspections

Ms Anna Young, a Senior Trust Account Inspector, is part of the Investigation team but also assists the Rapid Resolution team and the Litigation team.

During the year Ms Young undertook 33 inspections of which 9 were causal inspections, 19 were routine inspections and 5 were as part of audits of incorporated legal practices (*ILPs*). Some of the routine inspections were undertaken on behalf of the Board. The 5 ILP audits were undertaken with other legal officers from the Committee as those audits included a review of the management systems in place for trust accounts.

The continuing value of inspections was again underlined this year when a number of routine inspections disclosed that, despite unqualified external examiners reports, there was a lack of detail in some firm's records such that the records did not fully comply with the requirements of the legislation.

Ms Young's reports on four of the inspections undertaken during the year were referred to the Investigation team for further investigation. One of these inspections was as a result of a legal practitioner contacting the Board regarding a deficiency in his firm's trust bank account. On inspection, Ms Young identified that there was potentially a number of clients' trust ledgers involved and the size of the deficiency was larger than initially identified by the practitioner. Based on the initial results of Ms Young's inspection, the Board appointed a supervisor over the practice's trust bank accounts. Ms Young has continued to assist the supervisor in identifying the extent of

the trust deficiency and the clients affected.

On 11 December 2014 Ms Young was appointed by the Board as Supervisor of Trust Money to manage the closure of the trust account of an ILP which had been audited by the Committee. That appointment ended on the closure of the trust bank account on 23 February 2015.

Following the end of that appointment, Ms Young made some suggestions to the Board as to how its processes could be improved to ensure better communication with banks regarding the appointment of supervisors of trust money. In April 2015, the Board resolved to implement those suggestions. The implementation of those suggestions should result in a quicker and smoother transition for the appointed supervisor of trust money to achieve the timely protection and control of trust money.

Also during the year Ms Young assisted a supervising manager of a legal practice obtain an up to date reconciliation of the legal practice's trust bank account and assisted with identifying various transactions on the trust bank statement so that those amounts could be allocated to individual client trust ledgers. This task is ongoing and has required regular contact with the supervising manager, the bank and the accounting firm employed to undertake the reconciliation task.

In November 2014, Ms Young provided in-house training to legal staff to enhance their knowledge of trust accounting.

### 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 were on the following topics:

- The life of a criminal trial
- Enduring powers of attorney – capacity and general issues
- Recent trends in disciplinary matters in the State Administrative Tribunal
- High conflict resolutions
- A guide to Trust Accounts
- Company Law
- e-Conveyancing
- Employment practices in legal practice
- Obligations to the client versus Obligations to the court
- Prosecutor's duties

The Committee has been fortunate to secure highly respected and experienced presenters for these in-house seminars. Speakers have included a Justice of the Supreme Court, the Director of Public Prosecutions, 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.

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

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



## 4. Complaints

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### 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, 78% of all new contact with the Committee was via the telephone or in person.

Telephone contact enables the RRT's legal officers to discuss the caller's concerns in detail, which most members of the public find easier than having to put those concerns in writing. It also allows the legal officer to gain a real understanding of what the caller hopes to achieve by contacting the Committee. Sometimes it transpires that the caller's expectations about the Committee's role are not correct.

In quite a number of cases, the legal officer will require more information before any proper assessment of the concern can be undertaken. The advantage of the telephone call is that the caller can be asked to provide relevant identifiable information rather than receiving irrelevant or incomplete information which may occur when a written complaint is received.

Even if an inquiry or complaint is received in writing, it is quite common for the legal officer to telephone the

inquirer/complainant to discuss the matter.

Once the preliminary information is received from the inquirer/complainant, the legal officer conducts an assessment of the concerns raised. This assessment may be undertaken in a number of ways. For example, clarification may be sought over the telephone from the practitioner or the practitioner's file requested to allow a more thorough review. On other occasions the practitioner is asked in writing to provide some further information.

The aim of the assessment process is to enable the legal officer to reach a preliminary view of the inquiry/complaint as to whether it raises a conduct issue (that may amount to either unsatisfactory professional conduct or professional misconduct) or other concern which should be addressed.

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 checking the bills issued to see what work was claimed to be done and when it was done. This check may reveal problems with some of the charges being rendered by the firm. Any problems so identified, are raised with the practitioner.

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. This process is only undertaken if the inquirer/complainant agrees to the matter being dealt with as an inquiry rather than as a complaint (although a complainant is advised that if the conciliation process is unsuccessful they may reinstate their complaint).

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. Either when the practitioner decides not to take any mitigating action or after any mitigating action has been taken, the complaint is then referred to the Investigation team which undertakes a formal investigation of the matter.

The practitioner's decision to participate in conciliation or to take mitigating action is one for the practitioner to make. Further, if there is a likelihood of a potential claim in negligence the RRT officer suggests that the practitioner should consider notifying his or her professional indemnity insurer.

The above process is very time and labour intensive. The RRT legal officers spend a great deal of time on the telephone ensuring that both inquirers/complainants and practitioners understand the process, the views being expressed and the basis for those views. 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 the issues as well as seeking other material evidence concerning the events the subject of the investigation. This further evidence may be sought from the complainant, the practitioner, the Courts or other third parties and sometimes requires the use of the Committee's compulsory powers. Those powers include summoning documents or requesting provision of written information. Once an

investigation is complete it is referred to the Committee for formal determination.

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

- dismiss a complaint
- with the consent of the practitioner, exercise its summary conclusion powers
- refer the matter to the State Administrative Tribunal.

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

### *Examples of the Rapid Resolution Team's work*

#### **Case Study 1**

##### **Interviewing two or more child witnesses in the presence of their mother who was also a witness in the proceedings**

R complained that the practitioner, who was opposing counsel in SAT proceedings, interviewed two child witnesses for the purpose of preparing witness statements for them in the presence of each other and their mother who was also a witness in the proceedings. The circumstances surrounding the taking of the statements came to light as a result of an objection made by R's counsel while cross examining one of the children.

When contacted by a legal officer from the RRT, the practitioner confirmed the children, whilst not necessarily always together during their interviews, were interviewed in the presence of their mother and the interviews were recorded but not videoed. The practitioner initially indicated that she had undertaken the interviews in this manner as she had been concerned because they were children.

The RRT legal officer directed the practitioner to rule 40(1) of the *Legal Profession Conduct Rules 2010* which provides, in effect, that a practitioner must not confer with 2 or more lay witnesses at the same time about an issue if there are reasonable grounds to believe that the issue may be contentious at hearing and one of the witnesses may be affected by the other witnesses' evidence, unless the practitioner believes on reasonable grounds that special circumstances exist. The RRT legal officer pointed out to the practitioner that merely being a child did not mean a special circumstance existed. Absent notification to the other side and videoing the interviews to show there had been no interference by one witness with another, there was the potential for the witnesses' evidence to be tainted by the possibility that collusion may have occurred.

The practitioner consulted with senior counsel and in response acknowledged that it would be open to conclude that she should have taken different steps and, should similar circumstances arise again, would explore other solutions to the difficulties which she was presented with in this case, including using the Child Witness Service. It also transpired that there were other circumstances which may have justified an adult being present during the interviews and the two children being present at the same time.

R accepted the practitioner's acknowledgement and did not seek to have the matter further considered by the Committee.

## **Case Study 2**

### **Removal of precedent documents and confidential client documents by a former employed solicitor**

C, a principal of a law firm, raised a concern with the Committee that the practitioner, his former employee (who had been admitted less than 3 years) and whose employment he had terminated, sent 8 separate emails in her final days working for him to her personal email account with 236 client and precedent documents without the firm's permission and in breach of client confidentiality. Prior to contacting the Committee, C had requested the practitioner to delete the documents from her email account, destroy any printed copies, and confirm that the documents had not been copied but the practitioner had failed to comply with that request and had been discourteous in her response to C.

A legal officer from the RRT contacted the practitioner and during a discussion with her it became apparent that she did not appreciate that her actions disclosed any wrongdoing. She believed she was entitled to the documents because she had worked on them. The RRT officer explained that she was not entitled to those documents because they were the firm's intellectual property and they contained confidential client information.

In mitigation of her conduct, the practitioner was invited to apologise to C in writing for the removal of the documents and also for her discourteous response to him. The practitioner provided the apology and also confirmed to C that she had deleted the emails and destroyed any printed copies of the documents.

The matter was referred for to the investigation team and the Committee is now conducting an investigation into the practitioner's conduct on its own initiative pursuant to s421 of the *Legal Profession Act 2008*. The practitioner's mitigation of her conduct will be before the Committee when it considers this matter.

### **Case Study 3**

#### **Practitioner acting for opposing party lodging caveats to secure payment of costs by the other side**

The practitioner acted for the opposing party in Supreme Court proceedings on instructions from the opposing party's insurer. D contacted the Committee concerned that the practitioner had lodged caveats against her two properties to secure payment of costs awarded against D in the proceedings and that the practitioner did not respond to her enquiries at all or in a timely manner and that this necessitated her retaining a solicitor to negotiate with the practitioner for the removal of the caveats.

A legal officer from the RRT contacted the practitioner to ascertain on what basis the caveats had been lodged. The practitioner said she believed her client had a caveatable interest in D's properties because her client had a judgment debt against D and she had relied on the advice of a commercial partner of her firm (H) on this issue. The practitioner also alleged that D was "dangerous" and she did not wish to engage with her in correspondence. The legal officer spoke to H who says that he informed the insurer client that, in his opinion, there was no caveatable interest in D's properties but despite that advice the client instructed the firm to prepare and lodge the caveats, which the practitioner did.

The legal officer discussed with both the practitioner and H the Committee's concerns about preparing and lodging caveats against properties without there being a caveatable interest in those properties. The legal officer also discussed with the practitioner the Committee's concerns about responding to D's enquiries in a discourteous manner and failing to remove the caveats in a timely manner.

In partial mitigation of that conduct, the practitioner and H acknowledged that the caveats were placed on D's properties when the client did not have a caveatable interest, apologised in writing to D for lodging the caveats against her properties, paid D's reasonable costs of having the caveats removed, and agreed to implement a procedure in the firm as to the basis upon which caveats can be lodged.

The matter was referred for to the investigation team and the Committee is now conducting an investigation into the practitioner's conduct on its own initiative pursuant to s421 of the *Legal Profession Act 2008*. The practitioner's partial mitigation of her conduct will be before the Committee when it considers this matter (further mitigation is dependant on D providing further information).

## Case Study 4

### Discourteous letter to a court

A registrar of a court contacted the Committee to express concern about the tone and tenor of correspondence received from a practitioner. The practitioner's letter was highly critical of the apparent delays by registry staff in accepting a document for filing and allocating a date for hearing. The letter referred to the court's response as being the "usual public service nonsense" and of "wasting practitioner's time."

A legal officer from the RRT contacted the practitioner who initially did not appear to appreciate the letter could be viewed as discourteous. The RRT officer explained that whilst the court had no difficulty in being alerted to any delays in processing documents it was not helpful to employ pejorative language and demean the court staff. The practitioner acknowledged that he had allowed his frustration to inflame the wording of his letter. The practitioner agreed to write to the court and unreservedly apologise for his letter. The registrar was satisfied with the apology.

## 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 1341 inquiries of which 19% were conciliated. The conciliated matters included the discount, waiver or refund of fees to clients in excess of \$437,000.

### *The complainants*

Over a third of all complaints (37.3%) were from clients/former clients of the practitioner complained about. A fifth of complaints (20.6%) were made against the practitioner acting for the opposing party in proceedings.

In respect of Rapid Resolution inquiries, 48.8% were made by or on behalf of clients or former clients of the practitioner being enquired about.

### *The areas of law*

The areas of law attracting the most complaints were family/de facto law (23.9%) followed by probate and wills (19.5%).

In respect of Rapid Resolution inquiries, 30.7% were in the area of family/de facto law, 15.4% in civil

litigation and 13.6% in probate and wills.

### *The types of complaint*

Many complaints raised more than one matter of complaint. This year, unethical conduct (19.7%) and costs issues (18.4%) attracted the most complaints.

However, for Rapid Resolution inquiries, costs issues were clearly the highest category with over a third of all inquiries raising a costs related issue (34.7%) with the next highest categories being unethical conduct (12.6%) and no communication (7.7%).

### *The practitioners*

The greatest number of complaints related to Sole Principals (45.1%), followed by Other Principals (20.6%) and Non Principals (12.7%).

### *The number of practitioners complained about*

Some 70 practitioners were the subject of one or more complaints (including conduct investigations) during the year. Of this total, 59 practitioners were the subject of one complaint, 6 practitioners were the subject of two complaints and 5 practitioners were the subject of three or more complaints.

The Board has reported that there were 6185 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 1.1% of certificated or deemed certificated Western Australian practitioners, which was in line with 1.3% of practitioners in the 2013-14 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 2014	99	58	41
Opened during year	105	79	26
Closed during year	(79)	(57)	(22)
<b>Outstanding as at 30 June 2015</b>	<b>125</b>	<b>80</b>	<b>45</b>



## 5. Formal determination of complaints

### 5.1 Overview and key statistics

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

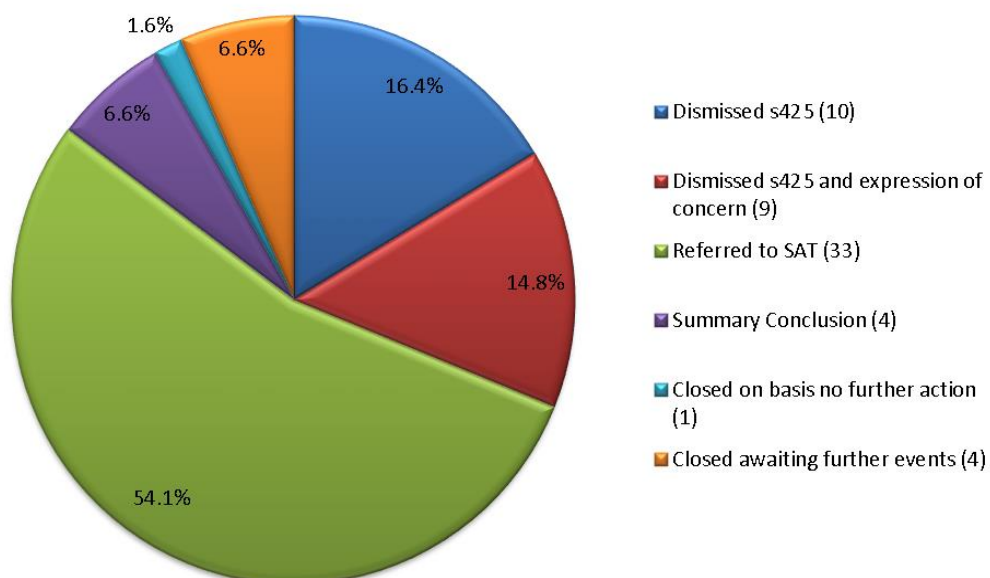
When a matter goes before the Committee, the Committee may finally determine the matter in one of three ways:

- dismiss the complaint (or in the case of a conduct investigation, decide not to take further action)

- exercise its summary conclusion powers (with the consent of the practitioner)
- refer the matter to SAT.

During the year the Committee determined 61 matters of which 32.8% were dismissed (or not taken further), 54.1% were referred to SAT, 6.6% were dealt with in the exercise of its summary conclusion powers and 6.6% were closed awaiting further events.

### *Committee determinations*



In addition to the matters dealt with by the Committee, a further 9 complaints were dismissed by the Law Complaints Officer exercising the delegated power of the Committee.

## 5.2 Matters dismissed or not taken further

The Committee may dismiss a matter without completing an investigation in certain situations. This power of summary dismissal is used, for example, when complaints are made outside the 6 year time limitation, when they have previously been dismissed after investigation or, if the complaint is misconceived or lacking in substance. 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 45% of the matters dismissed or not taken further, the Committee expressed concern to the practitioner about an aspect of the practitioner's conduct. Such expressions of concern are generally used by the Committee when the conduct of the practitioner is not such that it would amount to unsatisfactory professional conduct or professional misconduct but is still of some concern to the Committee. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future.

### *Some examples of expressions of concern*

#### **Case Study 1**

##### ***Unusual Payment Methods***

In 2008, the Committee commenced an investigation against a practitioner following its attention being drawn to proceedings brought by the practitioner against a former client for the recovery of unpaid fees. During evidence in those proceedings the practitioner admitted that he had requested the client to make payments to third parties on the practitioner's behalf in part payment of legal fees. Those payments related to the practitioner's personal affairs and included payments to banks for credit card debts and to a motor vehicle dealer for the purchase of a motor vehicle for the practitioner's wife (***third party personal payments***).

Following those proceedings the practitioner was charged with two counts of dishonestly obtaining a financial advantage from the Australian Taxation Office (***ATO***) by failing to declare income.

The practitioner was acquitted on one charge and convicted on the second charge, which related to payments which included the third party personal payments.

The practitioner appealed against his conviction. Judgment was delivered in May 2014 allowing the practitioner's appeal.

The Committee's investigation, which related to the method of payment of fees by the practitioner's former client and failing to disclose income to the ATO, had been deferred pending the hearing of the charges and the appeal.

Although the practitioner had in fact failed to disclose income, there was no suggestion in the findings of the trial Magistrate and the appeal Judge that the practitioner intentionally submitted false tax returns to the ATO to avoid paying tax on the income in question. In particular, the Magistrate appeared to accept the practitioner's evidence that he expected and relied upon his accountant to check source documents to ensure all income was declared.

The Committee was of the view that the payments requested by the practitioner were a highly unusual method of receiving payment for legal services. The Committee considered that in order for there to be orderly and proper accounting in respect of payments for legal services payments should be made through a business related bank account and proper accounting ledgers or journals kept recording all practice income and expenditure. The Committee noted that the method of payment by the practitioner and failure to keep contemporaneous journal records relating to the payments appeared to contribute to the income not being picked up by his accountant (who the practitioner relied upon) and disclosed to the ATO. Further, the Committee considered that practitioners should avoid involving clients in matters related to personal debts and personal expenditure.

Although the Committee considered that the method of payment requested by the practitioner could, depending on the circumstances, arguably amount to unsatisfactory professional conduct, the Committee decided to take no further action taking into account the conduct in question occurred in 2000/2001; admissions by the practitioner; the practitioner had not sought any similar payments since 2000/2001; in the findings of the trial Magistrate and appeal Judge, there was no suggestion that the practitioner intentionally failed to declare income to the ATO in respect of the payments; and the practitioner had already undergone considerable stress and expense (including a period where he was refused a practising certificate) in related criminal and State Administrative Tribunal proceedings.

The Committee did however express concern regarding aspects of the practitioner's conduct, namely:

1. that by requesting payments by the client direct to third parties in respect of personal matters, the practitioner engaged in a highly unusual method of receiving payment for legal services, when in order for there to be orderly and proper accounting in respect of payments for legal services payments should be made through a business related bank account and proper accounting ledgers or journals kept recording all practice income and expenditure; and
2. the practitioner should have avoided involving his client in matters related to personal debts and personal expenditure.



## Case Study 2

### ***To respond or not to respond***

On 12 August 2012 the practitioner issued proceedings in the District Court of Western Australia on behalf of a client who lived in Thailand and Queensland (***client***) against defendants who resided in Queensland and New South Wales in respect of a claim arising out of a dispute concerning the purchase of shares in a Queensland company and involving events that occurred outside of Western Australia (***proceedings***).

Ultimately, on 13 February 2013 a stay application by the defendants was successful with the client ordered to pay costs, on the basis that the proceedings had no connection with Western Australia. The client complained to the Committee about various matters. A matter that the Committee investigated on its own initiative was the practitioner's failure to respond to the defendants' lawyers' correspondence relating to jurisdictional issues.

Following service of the proceedings, on 26 September 2012 the defendants' Queensland lawyers wrote to the practitioner raising jurisdictional issues concerning the proceedings stating that the more appropriate forum would be Queensland or New South Wales. The defendants' lawyers requested the practitioner to advise urgently of any facts which might render the District Court at Perth a more appropriate forum and requested that the practitioner's client agree to stay the proceedings and commence fresh proceedings in any of the forums stated.

By letter dated 9 October 2012 the defendants' lawyers wrote to the practitioner referring to previous correspondence, noting that no substantive response had been received and requested a response as a matter of urgency. The practitioner did not respond and on 10 October 2012 the defendant's lawyers sent a fax to the practitioner enclosing by way of service a defence advising that it had only been filed on account of the failure of the practitioner's firm (***Firm***) to respond to correspondence previously sent seeking the client's position on the jurisdiction issues. The defendants' lawyers also said that they anticipated receiving instructions shortly to file an application seeking orders that the proceedings be stayed.

Amongst other things, the defence pleaded that the defendants did not accept that the District Court of Western Australia at Perth was the most appropriate forum to hear and determine the dispute the subject of the proceedings.

By letter dated 17 October 2012 the defendants' lawyers wrote a letter addressed to the managing partner at the Firm stating that they had written on numerous occasions and spoken to the practitioner and that despite assurances from the practitioner that matters raised on behalf of their client would be responded to, nothing had eventuated. The letter requested, as a matter of professional courtesy, that receipt of their correspondence was acknowledged and sought confirmation that the Firm still held instructions to act on behalf of the client.

By letter dated 18 October 2012 the principal of the Firm responded to the defendants' lawyers fax of 17 October 2012 confirming that the Firm still held instructions to act on behalf of the client and that the practitioner would be responding to their correspondence in due course.

The practitioner did not respond to the defendants' lawyers' correspondence of 17 October 2012 and on 23 October 2012 filed a reply to defence which maintained that the District Court in Western Australia was the appropriate forum to hear and determine the dispute the subject of the proceedings.

The practitioner told the Committee that he received instructions on behalf of the client not to communicate with the defendants' lawyers regarding the jurisdictional issues on the basis that he was to oppose any application for a stay of proceedings and that any correspondence with the defendants' lawyers would only serve to lengthen the proceedings and increase the costs for the client.

Whilst the Committee considered that the practitioner's failure to respond substantively to the defendants' lawyers correspondence was discourteous and not in the client's best interest, given the short period of time involved and that the practitioner did set out the client's position on jurisdiction in the reply to defence on 23 October 2012, the Committee did not consider that the practitioner's shortcomings rose to the level of unsatisfactory professional conduct or professional misconduct warranting disciplinary action. However, the Committee expressed concern at the practitioner's failure to respond to the defendants' lawyers correspondence and that the practitioner did so purely based on what he said were his instructions. It would have been more appropriate for the practitioner to either advise the client that a response should be given, or to respond advising that he was instructed not to respond saying simply that any application for a stay would be opposed.

Other matters raised in the complaint including the practitioner's conduct in continuing the proceedings in Western Australia were referred to the State Administrative Tribunal.

### **Case Study 3**

#### **No limits**

The Committee investigated the conduct of a practitioner who had been referred an urgent litigious matter by another practitioner (*referring lawyer*).

The matter concerned the sale of sheep from a livestock company to a farming company (B). The referring lawyer acted for the livestock company in carrying out various tasks relating to the sale transaction.

Although the livestock were delivered, B was in financial trouble and could not pay for the livestock. The parties agreed on a payment plan; however this was not honoured by B. The livestock company attempted to collect the livestock but B refused to allow them to do so.

The livestock company advised the referring lawyer that they would need to obtain a court order as a matter of urgency as the livestock were deteriorating. The referring lawyer had limited experience in litigation and referred the matter to the practitioner.

The practitioner had discussions with a director of B where B agreed to make full payment for the livestock. However, the practitioner was concerned that payment would again be dishonoured. Ultimately, the practitioner agreed to allow time for B to make payment if B signed an irrevocable direction appointing the referring lawyer as B's solicitor for the purpose of receiving documents and consenting to orders allowing for the livestock company to remove the livestock in the event that B's cheque was dishonoured.

A director of B signed the irrevocable direction and other documents during a meeting with a representative from the livestock company (B's director later contended that he did not understand the documents or that they included court documents).

B's cheque in payment was dishonoured around midday 14 September 2012. The practitioner then filed court documents including orders for urgent delivery up of the livestock with an urgent hearing in the Supreme Court at 5:00pm later that day. At 2:20pm on 14 September 2012 the practitioner emailed the referring lawyer the irrevocable direction and court documents relating to it.

Although the referring lawyer was unable to contact B, pursuant to the irrevocable direction he filed a Memorandum of Appearance on behalf of B and attended the urgent hearing consenting to the orders sought.

Following the hearing B complained about the referring lawyer's conduct in acting for B when he had previously acted for the livestock company, acting without proper instructions and not acting in the best interests of B.

The Committee subsequently investigated conduct of the practitioner in aiding or assisting the referring lawyer to act in a conflict of interest. The practitioner submitted that the irrevocable direction did not authorise the referring lawyer to provide advice or to act in the proceedings generally and that the limited nature of the irrevocable direction meant that no conflict of interest could have arisen.

The Committee did not agree that where a practitioner is on the record as acting in proceedings, that an irrevocable direction could limit a practitioner's duties and obligations to his or her client in the manner contended for by the practitioner.

Nevertheless, the Committee was of the view that it was a matter for the referring lawyer as to whether he accepted the instructions in the irrevocable direction and the practitioner did not in any way "compel" him to act. The referring lawyer could have refused to accept the instructions. Further, although the Committee considered that there was a conflict of interest on the part of the referring lawyer, there were a number of courses of action the referring lawyer could have followed to deal with the conflict.

The practitioner further submitted that her actions must be seen in light of the difficult circumstances and time pressures in the matter. However, the practitioner accepted that

it was preferable that the matter not be dealt with by use of an irrevocable direction. The Committee accepted that the practitioner acted in fairly difficult and pressing circumstances and that she did not fully consider the consequences of her actions.

As to the conduct investigation involving only the practitioner, in all the circumstances, the Committee decided to take no further action. However, the Committee expressed concern regarding aspects of the practitioner's conduct as follows:

- (a) the practitioner should not have put the referring lawyer in a position where he was acting outside his area of competence in circumstances where the practitioner knew that the referring lawyer had no real litigation experience; and
- (b) the practitioner should understand that she could not limit a practitioner's duty to act in a client's best interests, including giving a client advice, in the way she sought to do with the irrevocable direction and that it was contrary to the interests of justice to do so.

The conduct of the referring lawyer was referred to the State Administrative Tribunal.

### 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 range from a public reprimand (or, if there are special

circumstances, a private reprimand) up to a fine of \$2,500. The Committee can also make compensation orders.

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

The Committee exercised its summary conclusion powers in respect of 4 matters 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 on 3 September 2013 disclosing confidential and without prejudice information contained in an opposing party's conciliation conference particulars documents during a Family Court hearing.	Fine of \$750
By not ensuring that trial documents were served by close of registry on 26 July 2013 in accordance with a springing order made in the Family Court of Western Australia on 22 July 2013 and arranging for a sum held in his firm's trust account to be applied in payment of the firm's fees and disbursement contrary to the client's instructions that those funds be reserved for counsel fees and not be used for payment of the firm's fees.	Fine of \$1200
<p>By:</p> <ul style="list-style-type: none"> <li>(a) on 28 September 2007, in the course of representing a client on the trial of criminal charges in the District Court of Western Australia, absenting himself from attending and appearing as junior counsel at the trial without first informing the client and his instructing solicitor of his intention to absent himself and without obtaining the consent of his client and instructing solicitor to him absenting himself from the trial on that day;</li> <li>(b) making it impossible for him to return to Perth to attend and appear as junior counsel for the client upon resumption of the trial on 2 October 2007, by travelling to and attending a conference at Hayman Island off the Queensland coast in circumstances where: <ul style="list-style-type: none"> <li>(i) access to and from Hayman Island was by boat or helicopter from and to Hamilton Island (where there was an airport);</li> <li>(ii) there were only two scheduled commercial flights from Hamilton Island to Sydney a day, one at 9.50am and the other at 3.55pm;</li> <li>(iii) the conference was held between 1:00pm on Saturday 29 September 2007 and 1:00pm on Sunday 30 September 2007;</li> <li>(iv) he had arranged to return to Perth for the completion of the trial by booking seats on: <ul style="list-style-type: none"> <li>(A) the last available flight from Hamilton Island to Sydney on 1 October 2007, which was scheduled to leave Hamilton Island at 3.55pm and arrive in Sydney at 6:40pm; and</li> <li>(B) a connecting flight from Sydney to Perth, which was scheduled to leave at 7:20pm;</li> </ul> </li> </ul> </li> <li>(c) when the last flight from Hamilton Island to Sydney on 1 October 2007 was delayed, and for reasons of his own</li> </ul>	<p>Fine of \$1750</p> <p>Ordered to pay compensation by way of repayment to the client of any disbursements in the practitioner's invoice of 3 October 2007 relating to travel and accommodation to and from Perth after 1 October 2007</p>

<i>Grounds of unsatisfactory professional conduct</i>	<i>Finding</i>
<p>convenience and without giving priority to the interests of the client, failing to wait at Hamilton Island airport to see whether the last flight from Hamilton Island to Sydney on 1 October 2007 would leave in time, and arrive in Sydney in time, to enable him to catch a flight from Sydney to Perth that evening or attempt other steps to return to Perth for the trial, instead returning to Hayman Island by helicopter.</p>	
<p>By:</p> <p>(a) placing himself at risk of being unable to return to Perth to attend and appear as counsel for the client upon resumption of the trial on 2 October 2007, by travelling to and attending a conference at Hayman Island off the Queensland coast in circumstances where:</p> <ul style="list-style-type: none"> <li>(i) access to and from Hayman Island was by boat or helicopter from and to Hamilton Island (where there was an airport);</li> <li>(ii) there were only two scheduled commercial flights from Hamilton Island to Sydney a day, one at 9.50am and the other at 3.55pm;</li> <li>(iii) the conference was held between 1:00pm on Saturday 29 September 2007 and 1:00pm on Sunday 30 September 2007;</li> <li>(iv) he had arranged to return to Perth for the completion of the trial by booking seats on: <ul style="list-style-type: none"> <li>(A) the last available flight from Hamilton Island to Sydney on 1 October 2007, which was scheduled to leave Hamilton Island at 3.55pm and arrive in Sydney at 6:40pm; and</li> <li>(B) a connecting flight from Sydney to Perth, which was scheduled to leave at 7:20pm;</li> </ul> </li> </ul> <p>(b) when the last flight from Hamilton Island to Sydney on 1 October 2007 was delayed, and for reasons of his own convenience and without giving priority to the interests of the client, failing to wait at Hamilton Island airport to see whether the last flight from Hamilton Island to Sydney on 1 October 2007 would leave in time, and arrive in Sydney in time, to enable him to catch a flight from Sydney to Perth that evening or attempt other steps to return to Perth for the trial, instead returning to Hayman Island by helicopter, making it impossible for him to arrive back in Perth in time to appear for the client at the trial.</p>	<p>Fine of \$1750 Ordered to pay compensation by way of repayment to the client of \$7,101.60 in respect of the practitioner's invoice dated 12 October 2007</p>

## 5.4 Referrals to the State Administrative Tribunal

During the year, the Committee resolved to refer matters arising from 33 complaints or conduct investigations to SAT involving 25 practitioners. As at 30 June 2015, 24 of these matters had been filed in SAT. Subsequently, a further 3 have been filed.

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 21 Applications in SAT during the period under review (which included 24 individual matters).

During the year there were 19 Applications determined by SAT (including 3 matters in which penalty was outstanding as at 30 June 2014) and 1 matter in respect of which a decision had been delivered as at 30 June 2015 but not penalty.

Of the matters determined, 9 were determined (including penalty) as a result of consent orders and a further 2 were determined as a result of the finding being made by consent but with penalty being referred to SAT for hearing.

At the conclusion of the period there were 14 Applications which had not been determined (compared to 8 last year).

The majority of consent orders were made following SAT ordered mediation where the Committee and the practitioner reached agreement on the orders to be sought.

All minutes of proposed consent orders are referred to SAT for consideration. SAT is required to consider and determine if the proposed orders are appropriate before making orders in those terms. In previous years there have been 2 occasions when SAT has declined to make the proposed consent orders on the basis that the penalty was not

adequate given the nature of the conduct.

An issue arose during the period following the decision of the High Court in *Barbaro v R* [2014] HCA 2 (**Barbaro**) as to whether the Committee (and other regulatory bodies) could provide SAT with consent orders for its consideration or make submissions as to an appropriate penalty following a hearing.

This issue had broad implications for the Committee given the likelihood that many practitioners would not agree to a mediated outcome on a finding if it was not possible for the parties to put forward to SAT a mutually agreed position on penalty. Given the large number of SAT matters which are resolved by way of a mediated outcome, a large increase in the number of defended hearings would have a detrimental impact on the Committee's resources.

Barbaro was considered by the Full Bench of the Supreme Court in *Legal Profession Complaints Committee v Love* [2014] WASC 389. The Supreme Court decided that there was nothing in Barbaro that precludes the Committee and the practitioner in vocational disciplinary proceedings from presenting an agreed position to SAT and inviting SAT to adopt it, should SAT see fit.

The application of Barbaro is still uncertain in a number of jurisdictions.



In *Director, Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* [2015] FCAFC 59 the Federal Court held that the court should not have regard to the figures agreed by the parties in fixing the penalties to be imposed, other than to the extent that the agreement demonstrated a degree of remorse and/or cooperation on the part of each respondent. This decision is on appeal to the High Court.

During the period the Committee applied to SAT for the interim suspension of a practitioner on the ground of incompetence. Previously, the Committee has only sought the urgent and interim suspension of a practitioner where dishonesty or stealing has been alleged.

*Summary of SAT matters determined 1.7.14 – 30.6.15*

<b>Application No. &amp; Date determined</b>	<b>Practitioner</b>	<b>Allegation</b>	<b>Finding &amp; Penalty</b>
183/2010 25/08/2014	A Legal Practitioner	a) misled Family Court b) failed to notify third party & Family Court of third party interest in property c) failed to respond to LPCC inquiries	Finding of professional misconduct in respect of a) and b) Finding of unsatisfactory professional conduct in respect of c)* Penalty* Report to the Full Bench of the Supreme Court with recommendation to strike off Costs \$46,365.75
113/11 23/06//2015	Giudice, Peter George	Causing a client to sign an affidavit which contained a false statement when the practitioner knew that the statement was false or, alternatively, recklessly disregarded whether the statement was true or false	Original SAT finding and penalty: Finding of unsatisfactory professional conduct when he caused to be prepared under his supervision and caused to be sworn, filed and served in court proceedings an affidavit of his client which contained a false statement and he recklessly disregarded whether the statement was true or false. Reprimand Fine \$8,000 Costs \$9,450  On appeal: Finding (and penalty) set aside and the matter referred back to the Tribunal for reconsideration.  On reconsideration by SAT: Finding of professional misconduct that he caused to be sworn, filed and served in court proceedings an affidavit sworn by his client which contained a false statement and he recklessly disregarded

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
			<p>whether the statement was true or false*</p> <p>Penalty (Stayed pending appeal)*</p> <p>Practising certificate suspended for a period of 6 months</p> <p>Costs \$9,450*</p>
110/2012 25/07/2014	Wroughton, Karen Alethea Mullally	The practitioner's representation of her client in District Court proceedings involved conduct which failed to reach a reasonable standard of competence and diligence	<p>Finding of unsatisfactory professional conduct by failing to reach a reasonable standard of competence and diligence in that she</p> <p>a) instituted and continued an action in the District Court on behalf of her client without any evidence to support her client's claim</p> <p>b) failed to provide adequate advice to her client</p> <p>c) failed to respond in a timely manner to requests from other solicitors</p> <p>d) failed to keep her client adequately informed about the proceedings in the District Court</p> <p>Penalty Reprimand Costs \$6,746.40</p>
156/2013 29/07/2014	Amsden, Charlene Sheila	Demanding payment of and commencing and prosecuting a minor case claim for \$2,022 comprised unprofessional conduct in that it	<p>Finding of professional misconduct in that her conduct in demanding payment of and commencing and prosecuting a minor case claim for payment of the amount of \$2,022:</p> <p>a) would reasonably be regarded as disgraceful or dishonourable by practitioners of good repute and competence; or</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
		<p>b) to a substantial degree fell short of the standard of professional conduct observed or approved by members of the profession of good repute and confidence;</p> <p>c) further or in the alternative, comprised a breach of rule 6(2)(b)&amp;(c) and/or 16(1) and was contrary to the intent 18(1) (noting rule 4(2)) of the <i>Legal Profession Conduct Rules</i> 2010 (WA)</p>	<p>repute and competence; and</p> <p>b) comprised a breach of rule 6(2)(b)&amp;(c), 16(1) and 18(1) of the <i>Legal Profession Conduct Rules</i> 2010 (WA)</p> <p>Penalty Reprimand Fine \$5,000 Costs \$20,339.40</p>
159/2013 4/07/2014	Love, Dean Richard	<p>a) causing the publication of a web page on a website that was likely to mislead and deceive a person</p> <p>b) making false representations to LAWA</p> <p>c) submitting an application to LAWA where he provided answers to questions which he had not been given any information in relation to and indicated a declaration that all the information in the application was true and correct had been signed where no such declaration had been signed</p>	<p>Mediated outcome as to finding</p> <p>Finding of professional misconduct in respect of all matters</p> <p>Penalty Report to the Full Bench of the Supreme Court with recommendation to strike off Costs \$5,500</p>
176/2013 16/12/2014	Wells, Gavin George	<p>a) purporting to take instructions for and purporting to prepare a will and an enduring power of attorney with reckless disregard as to whether a terminally ill patient had capacity to provide instructions</p>	<p>Finding of professional misconduct in respect of all matters*</p> <p>Penalty* Report to the Full Bench of the Supreme Court with recommendation to strike off Costs \$19,800*</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
		<p>b) arranging the execution of, and witnessing, a will and enduring power of attorney with reckless disregard as to whether the client had capacity to make, had been able to provide instructions to make, had understood and approved the contents of, and had independently signed, the will and the enduring power of attorney</p> <p>c) failing to reach or maintain a reasonable standard of competence and diligence when purportedly taking instructions to prepare a will and an enduring power of attorney and in arranging the execution of, and witnessing, a will and enduring power of attorney</p>	
194/2013 6/10/2014	Smith, Simon Victor	<p>a) dishonest and/or illegal conduct in misusing trust funds of 5 clients</p> <p>b) contravening s226(1)(a) of the <i>Legal Profession Act</i> 2008</p> <p>c) failing to maintain trust records in the manner required by the <i>Legal Profession Regulations</i> 2009</p> <p>d) not responding to enquiries made by the LPCC</p>	<p>Mediated outcome as to finding</p> <p>Finding of professional misconduct</p> <p>Penalty Report to Full Bench of the Supreme Court with recommendation to strike off Costs \$3,500</p>
29/2014 23/09/2014	Dutton, Geoffrey Paul	<p>a) dishonest conduct by misusing trust funds</p> <p>b) not accounting for trust monies and failing to</p>	<p>Mediated outcome</p> <p>Finding of professional misconduct</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
		deposit trust moneys to the credit of his trust account (12 clients) c) not providing appropriate cost disclosure (10 clients) d) not accounting for trust money (13 clients) e) lack of competence and diligence (10 clients)	Penalty Report to Full Bench of the Supreme Court with recommendation to strike off Costs \$3,500
54/2014 28/08/2014	Penn, Carol	a) when acting as an independent children's lawyer ( <b>ICL</b> ) she did not fulfil her special responsibilities as an ICL to act in the best interests of the child by not informing the Family Court whether the practitioner considered the proposed parenting arrangements were in the best interests of the child before filing a Notice of Ceasing to Act, not making all necessary enquiries in a timely manner so as to form an opinion on the parenting arrangements, not proceeding in a timely manner or at all to finalisation of a proposed Minute of Final Orders setting out the parenting arrangements  b) without exercising sufficient care, preparing and sending an email and letter (which stated that the practitioner had not been granted any further funding to file a Notice of Ceasing to Act) which by reason of what was omitted therefrom, were misleading and which thus	Mediated outcome Finding of professional misconduct  Penalty Condition placed on practising certificate that the practitioner is not to accept instructions in or continue to act as an Independent Children's Lawyer in Family Court proceedings or as Children's Separate Representative in Children's Court (Care and Protection Proceedings) Reprimand Fine \$8,000 Costs \$3,000

<i>Application No. &amp; Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding &amp; Penalty</i>
		had the potential to mislead the parents and the Family Court respectively	
56/2014 6/02/2015	Kirchner, David James	Not progressing the administration of a deceased estate in a competent and timely manner in accordance with his instructions	Mediated outcome Finding of unsatisfactory professional conduct Penalty Fine \$5,000 Costs \$3,000
57/2014 25/02/2015	Holyoak- Roberts, Charmaine Frances	Not taking sufficient steps as an executor to ensure the solicitor administering the deceased estate on her behalf attended to the distribution of the estate in a competent and timely manner	Mediated outcome Finding of unsatisfactory professional conduct Penalty Fine \$2,000 Costs \$3,000
108/2014 21/01/2015	Waters, Kim Joseph	<ul style="list-style-type: none"> <li>a) not progressing a client's claim in a timely and competent manner</li> <li>b) not taking all reasonable and practical steps to keep client informed of significant developments and generally about the progress of her matter</li> <li>c) filing an affidavit which was false and misleading and had the potential to mislead the Court, and which he knew was false and misleading and had the potential to mislead the Court</li> <li>d) sending correspondence to a client which included information that was false or misleading with the intention of misleading the client and/or her husband</li> <li>e) knowingly attempting to mislead the LPCC by</li> </ul>	Mediated outcome Finding of professional misconduct  Penalty Report to the Full Bench of the Supreme Court with recommendation to strike off Costs \$3,000

<i>Application No. &amp; Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding &amp; Penalty</i>
		sending 2 letters that contained statements that were false	
129/2014 22/10/2014	Thomson, Serina Perdy	<p>a) causing an allegation to be made to the WA Police that a client had stolen property from the firm when there were no reasonable grounds for making the allegation</p> <p>b) sending 3 emails to the client asserting</p> <ul style="list-style-type: none"> <li>i. the client had stolen property of the firm</li> <li>ii. the client's retainer agreement required payment of invoice prior to collection of any documents</li> <li>iii. the client would be liable for all additional costs associated with and incidental to measures required to secure unpaid fees when there were no reasonable grounds for so asserting and the emails were written in a manner that was intimidatory and threatening</li> </ul> <p>c) lodging an absolute caveat against property to prevent the client from transferring the property: when the practitioner knew the client needed to transfer the property on an urgent basis; the client only owed \$230.90; the costs purported to be charged by the practitioner to the client to lodge the absolute caveat totalled</p>	Mediated Outcome Finding of professional misconduct Penalty Reprimand Fine \$10,000 Costs \$3,000



Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
		<p>\$550; the time for payment of the account had not expired</p> <p>d) rendered an invoice to the client for time spent reporting the alleged theft of property from the firm and sending the 3 emails in circumstances where the client was not liable under the terms of the retainer agreement for those costs</p>	
170/2014 13/05/2015	Black, Warren Stuart	<p>a) Acting in a conflict of interest in circumstances where the practitioner's own interests in not being identified as the driver of the vehicle issued with an Infringement Notice (Vehicle) were in conflict with the interests of his client in whose interest it was to identify the practitioner as the driver of the Vehicle so as to avoid deemed liability for the Infringement Notice through the provisions of the Local Government Act 1995</p> <p>b) Without exercising sufficient care preparing, and sending to the Council a statutory declaration of his client that was misleading and had the potential to mislead the Council</p>	<p>Mediated Outcome Finding of unsatisfactory professional conduct</p> <p>Penalty On the practitioner undertaking to SAT not to seek to renew or apply for a practising certificate for a period of 10 years, no penalty ordered</p> <p>Costs \$6,500</p>
205/2014 30/01/2015	Grasso, Carmelo Alfio	Not progressing a client's claim for criminal injuries compensation in a timely manner	<p>Mediated Outcome Finding of professional misconduct</p> <p>Penalty On basis the practitioner</p>

<i>Application No. &amp; Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding &amp; Penalty</i>
			<p>agreed to pay the client \$27,000 in compensation for the delay in lodging his application</p> <p>Fine \$5,000</p> <p>Costs \$2,500</p>
<p>20/2015 19/06/2015</p>	<p>Aldrich, Alison Janice</p>	<p>Causing and permitting a letter to be sent to the other party proposing an agreement as to family law property settlement and also seeking acknowledgement of an obligation by the other party to repay her client's family member a sum of money, which made serious allegations concerning the other party's conduct in circumstances where</p> <p>a) the practitioner took no steps to satisfy herself that there were reasonable grounds for making the serious allegations</p> <p>b) the serious allegations were made concerning the other party in a manner which was intimidatory and threatening with the intention of causing the other party:</p> <p>i. to agree to not apply to the Family Court of WA for an alteration of property interests and to agree to a division of matrimonial assets as proposed in the letter</p> <p>ii. to acknowledge an obligation to repay the client's family member's debt</p>	<p>Mediated outcome</p> <p>Finding of professional misconduct</p> <p>Penalty to be determined</p>

<i>Application No. &amp; Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding &amp; Penalty</i>
27/2015 11/02/2015	Quinlivan, Lynette Patricia	Interim suspension pending investigation and determination or referral of a matter by the Committee	Practising certificate suspended until 8 July 2015 (practitioner subsequently withdrew her application for renewal of her practising certificate which resulted in her continuing practising certificate, which had been suspended, ceasing to be in force)
31/2015 17/04/2015	Kipping, Darryl	<p>a) by acting for a party in mandatory injunction proceedings on the basis of an “Irrevocable Direction to Appoint Solicitors” prepared by the solicitors for the opposing party without confirming that he was duly instructed by the party to so act by communicating directly with the director of the party</p> <p>b) by acting for the party in a position of conflict having previously acted for the opposing party in the same matter</p> <p>c) answering affirmatively to a question in the course of the proceedings as to whether he was instructed by the directors of the party, where he had not confirmed his instructions by communicating directly with the director of the party, and thereby creating a risk that the Court might be misled as to the nature and extent of his instructions</p> <p>d) acting outside his area of competence by accepting instructions when he had</p>	<p>Mediated outcome</p> <p>Finding of unsatisfactory professional conduct</p> <p>Penalty</p> <p>Conditions placed on practising certificate that:</p> <p>a) the practitioner is not to accept instructions to provide advice with respect to Court or Tribunal proceedings or possible proceedings, or to accept instructions to commence or maintain proceedings in any Court or Tribunal; and</p> <p>b) the practitioner shall not appear or act as counsel in proceedings in any Court or Tribunal,</p> <p>further, these conditions will not prevent the practitioner, if so requested by a client, from assisting other practitioners, in relation to anticipated or actual proceedings, provided that such other practitioners are not employed or supervised by him.</p> <p>Fine \$3,500</p> <p>Costs \$2,000</p>

<i>Application No. &amp; Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding &amp; Penalty</i>
		no knowledge or experience in that area of law and his experience in legal practice was not in litigation	
112/2015 25/06/2015	Mac, Paul Hsing Yew	<p>a) assisting a practitioner of another firm unconnected to the practitioner's firm (other practitioner) on a regular and frequent basis to carry out or complete legal work where the practitioner knew the other practitioner would represent to her employer that the work was her own legal work and in the course of assisting the other practitioner disclosing information that was confidential to the practitioner's firm and its clients and subject of legal professional privilege</p> <p>b) regularly requesting employees of the practitioner's firm including seasonal clerks, graduate lawyers and legal practitioners to undertake legal work for the benefit of the other practitioner in circumstances where the practitioner deliberately misrepresented to the relevant employees that the legal work he requested they undertake was for the benefit of the practitioner's firm or its clients</p> <p>c) taking stationery and using printing facilities of the practitioner's firm for the</p>	Mediated Outcome Finding of professional misconduct Penalty Practising certificate suspended for a period of 4 months Costs \$12,000

<i>Application No. &amp; Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding &amp; Penalty</i>
		<p>benefit of the other practitioner without the knowledge or permission of the practitioner's firm</p> <p>d) assisting the other practitioner to carry out legal work in respect of legal proceedings in which the other practitioner's firm acted for the plaintiff where he was recklessly indifferent as to whether the practitioner's firm acted for the defendant or otherwise had a pre-existing involvement in the proceedings</p>	

\* Appeal pending

*Summary of SAT matters which were not determined as at 30.6.15*

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
130/2014	18/07/2014	<p>Professional misconduct</p> <p>a) knowingly misled or attempted to mislead SAT by preparing or causing to be prepared under her supervision witness statements which the practitioner knew conveyed the impression either expressly or impliedly that H was the owner of a business when RS was the owner</p> <p>b) knowingly misled or attempted to cause or allow SAT to be misled by submissions of counsel and by the tender of and/or reliance upon Witness Statements which the practitioner knew</p> <p>i. conveyed the impression, either expressly or impliedly that H was the owner of the business</p> <p>ii. concealed the fact that RS was the owner of the business</p>	Hearing 20/05/2015
206/2014	13/11/2014	<p>Unsatisfactory professional conduct/professional misconduct</p> <p>a) preparing a will for signature, further or alternatively, allowing the will to be signed pursuant to which the practitioner was appointed executor with an entitlement to be paid remuneration as a legal practitioner without complying with rule 15(5)(a)(ii) of the LPCR 2010</p> <p>b) in the course of acting as executor, did not inform beneficiaries of the estate, or seek their views concerning, an offer made and/or allowed the offer to lapse without acceptance, or alternatively, he did not within the time specified for acceptance of the offer put a counter-offer that would be acceptable</p> <p>d) in the course of acting as executor, sent communications to a beneficiary of the estate that contained representations which were misleading in circumstances where the practitioner knew that, or alternatively the practitioner was reckless as to whether, the communications were misleading</p>	Hearing 28/08/2015

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
217/2014	2/12/2014	<p>Professional misconduct</p> <p>By sending letters to the WorkCover which:</p> <ul style="list-style-type: none"> <li>a) made serious allegations against a Conciliation Officer (“Officer C”) when he knew or ought to have known that there were no, or no reasonable, grounds for those allegations</li> <li>b) threatened to draw Officer C’s conduct to the attention of the “Minister” when he knew that there were no, or no reasonable, grounds to do so or was recklessly indifferent as to whether or not there were reasonable grounds to do so</li> <li>c) threatened to seek advice as to whether he should refer a letter he received from WorkCover to the Public Sector Commissioner;</li> <li>d) made allegations and threats in a manner which was intimidatory, and with the intention of causing the Acting Director Conciliation Service to question the integrity and/or competence of Officer C and not assign Officer C to any matter in which the practitioner or his firm were involved and thereby attempted to interfere with the administration of justice.</li> </ul>	Hearing 19/08/2015
18/2015	20/01/2015	<p>Professional misconduct/unsatisfactory professional conduct</p> <p>In the course of acting on behalf of an executor of an estate</p> <ul style="list-style-type: none"> <li>a) causing to be prepared under her supervision, settling and causing to be filed and served an affidavit sworn by the executor verifying a Statement of Assets and Liabilities and an updated Statement of Assets and Liabilities which ascribed values to properties without taking any or any adequate steps to ensure the value ascribed to the properties was accurate</li> <li>b) charging professional fees that were excessive and further or in the alternative included charges which were unreasonable and/or not properly</li> </ul>	Hearing 10/09/2015

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		chargeable c) not providing any disclosure as to costs as required by section 260 of the Legal Profession Act 2008 or at all in respect of: i. application for the grant of probate of a will and administration of the estate ii. Supreme Court proceedings	
19/2015	20/01/2015	Professional misconduct Preparing and causing a letter to be sent to the client for approval to be sent to the other party proposing an agreement as to family law property settlement and also acknowledgement of debt owed, which made serious allegations concerning the other party's conduct, in circumstances where a) the practitioner intended that a letter containing serious allegations be sent to the other party in reckless disregard as to whether there were no or no reasonable grounds for the serious allegations or alternatively the practitioner ought to have known there were no or no reasonable grounds for making the serious allegations b) the serious allegations were made concerning the other party in a manner which was intimidatory and threatening with the intention of causing the other party to: i. agree to not apply to the Family Court of WA for an alteration of property interests and to agree to a division of matrimonial assets as proposed in the letter ii. to acknowledge an obligation to repay debt	Hearing 31/07/2015
35/2015	13/02/2015	Professional misconduct/Unsatisfactory professional conduct a) not taking any or any adequate steps to progress a grant for letters of administration in a timely and competent	Awaiting consent orders (dealt with on the papers)



<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		<p>manner</p> <p>b) not providing any or any adequate advice as to whether the consent of all the beneficiaries, including one not resident in the state, was necessary to obtain the grant or to obtain consents to dispense with guarantees</p> <p>c) providing incorrect advice as to the terms of the will and one of the beneficiary's position on the distribution of the will</p> <p>d) not advising some of the beneficiaries of the will (not clients of the practitioner) to obtain independent legal advice</p> <p>e) not informing beneficiaries that the Grant had been made</p> <p>f) not providing any or any adequate advice</p> <p>g) not providing any or any proper costs disclosure</p> <p>h) charging legal fees:</p> <ol style="list-style-type: none"> <li>i. that were grossly excessive</li> <li>ii. that were contrary to the terms of an oral agreement</li> <li>iii. that were not properly able to be charged</li> </ol>	
34/2015	12/02/2015	<p>Professional misconduct</p> <p>Releasing an executed withdrawal of caveat form in circumstances where:</p> <p>a) the practitioner undertook that the form would not be lodged and that he would not release it until such time as the issue of costs had been resolved</p> <p>b) the issue of costs had not been resolved when the practitioner released the form</p> <p>c) the practitioner released the form in the knowledge it was in breach of the undertaking or alternatively in reckless disregard as to whether it was in breach</p>	Hearing 27/08/2015
37/2015	13/02/2015	<p>Unsatisfactory professional conduct/ professional misconduct</p> <p>Not giving any, or any adequate, advice to his client with respect to:</p> <p>a) continuing and/or maintaining District Court proceedings in circumstances</p>	Hearing 28/08/2015

Application No.	Date filed	Allegation	Status
		<p>where the defendants asserted that the proceedings had not been commenced in the most appropriate jurisdiction and foreshadowed an application seeking orders that the proceedings be stayed and that the client pay the defendants' costs;</p> <p>b) an application by the defendants to stay the proceedings and further, proceeding, purportedly on behalf of the client, to oppose the stay application without taking any steps or any reasonable steps to ensure the client understood the jurisdictional issue and the possible consequences of continuing with the WA proceedings</p> <p>and</p> <p>c) not issuing proceedings in the Supreme Court of Queensland as instructed by the client;</p> <p>d) without reasonable excuse, not responding to the client's emails;</p> <p>e) not providing any part of the client file requested by the client on 16 July 2013 until 26 August 2013, and further not providing until early November 2013 the whole of the client's file when he knew the client urgently needed the file;</p> <p>f) as promised in his email of 24 July 2013, not refunding \$1,000 to the client (paid to his law firm on or about 27 May 2013) for the issue of the Queensland proceedings until on or around 28 August 2013</p>	
55/2015	6/03/2015	<p>Unsatisfactory professional conduct</p> <p>Not advising the client or alternatively, her instructing solicitor, that the client should seek leave to amend the Application to include an application for leave to apply for an order in relation to alteration of property interests out of time pursuant to section 205ZB(2) of the Family Court Act 1997</p>	<p>Mediation</p> <p>15/10/2015</p>

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
56/2015	6/03/2015	<p>Unsatisfactory professional conduct</p> <p>Not advising the client that she should instruct the practitioner to seek leave to amend the Application to include an application for leave to apply for an order in relation to alteration of property interests out of time pursuant to section 205ZB(2) of the Family Court Act 1997</p> <p>Professional misconduct</p> <p>Charging professional fees that were excessive and further or in the alternative included charges that were unreasonable and/or not properly chargeable</p>	Awaiting orders following informal mediation (dealt with on the papers)
87/2015	30/04/2015	<p>Professional misconduct</p> <p>a) failing to reach or maintain a reasonable standard of competence and diligence in his preparation and representation of a client in family law proceedings</p> <p>b) failing to comply with a Family Court Order that he personally pay a costs order made in favour of the other party</p>	Mediation 10/08/2015
104/2015	5/6/2015	<p>Professional misconduct</p> <p>a) did not provide costs disclosure;</p> <p>b) did not deposit trust money (cash) of \$25,000 to a general trust account;</p> <p>c) did not account to the client for the cash payments where he briefed another practitioner to conduct the matter who charged \$4,000 and he did not give the client a bill for the legal services provided by him</p> <p>d) asserted he had received professional advice, in circumstances where he had not or was recklessly indifferent as to whether he had, in a manner that was intimidating and threatening; and</p> <p>e) further or in the alternative, did not act honestly and did not treat the client fairly and in good faith, and acted with the intention of deceiving the client as to costs</p>	Mediation 25/09/2015

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
105/2015	5/06/2015	<p>Professional misconduct</p> <p>a) swearing an affidavit which was false and misleading and had the potential to mislead the court when the practitioner knew, or acted with reckless indifference as to whether, it was false and misleading and had the potential to mislead the court</p> <p>b) charging professional fees that were excessive and further, or in the alternative, included charges which were unreasonable and/or not properly chargeable</p>	<p>Directions 22/07/2015</p>
107/2015	5/06/2015	<p>Professional misconduct</p> <p>a) sending emails without the client's instructions that expressed the practitioner's personal opinion on the merits of the issue, contained confidential information including the client's family's position on proposals for settlement of the proceedings and were prejudicial and contrary to the client's interests;</p> <p>b) making statements in a status conference hearing that were made without and/or contrary to the client's instructions and interests and gave her personal opinion on the merits of the issue;</p> <p>c) making false and/or misleading statements to Legal Aid</p> <p>Unsatisfactory professional conduct</p> <p>d) seeking payment of a client's costs order to be made to her personally in circumstances where there were no tax invoices rendered by the practitioner that remained unpaid and continued to demand payment of the awarded costs despite being informed that the client had instructed his new solicitors not to pay the awarded costs to her</p>	<p>Mediation 4/08/2015</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 cannot apply to SAT for a review of the Committee's decision without the leave of SAT.

There were 4 Applications filed during the year (compared to 7 last year). The extent of the Committee's

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

All the review Applications were either dismissed or withdrawn by SAT.

<i>Review Applications</i>	<i>Total</i>
Pending as at 1 July 2014	<b>3</b>
Lodged during year	<b>4</b>
Withdrawn	<b>(3)</b>
Dismissed	<b>(4)</b>
Pending as at 30 June 2015	<b>0</b>

## 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 struck from the roll of practitioners.

The Full Bench of the Supreme Court can make any order available to SAT and/or strike a practitioner off the roll. During the year, Dean Richard Love was struck from the roll on 28 October 2014, Geoffrey Paul Dutton was struck from the roll on 4 December 2014, Simon Victor Smith was struck from the roll on 4 December 2014 and Kim Joseph Waters was struck from the roll on 23 April 2015.

There were no practitioners who remained, during the period under

review, the subject of a Report to the Full Bench of the Supreme Court which had not been determined.

## 6.4 Appeals

During the year the following appeals were finalised:

- an appeal to the Court of Appeal of the Supreme Court by Mr D Li from a SAT decision dismissing his application for leave to file a review application out of time was dismissed on 26 September 2014
- an appeal to the Court of Appeal of the Supreme Court by Mr F Cuijpers from a SAT decision dismissing a review application was dismissed on 27 March 2015
- an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini from an interim SAT decision was withdrawn
- the part of an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini relating to an interim SAT decision was withdrawn.

One appeal which was lodged prior to the year, but which had not been determined as at 30 June 2015 was:

- the part of an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini relating to a final SAT decision.

The following appeals were lodged during the year, but as at 30 June 2015 had not been determined:

- an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini from a SAT penalty decision
- an appeal to the Court of Appeal of the Supreme Court by Gavin George Wells from a final SAT decision
- an appeal to the Court of Appeal of the Supreme Court by Gavin George Wells from a SAT penalty decision
- an appeal to the Court of Appeal of the Supreme Court by Peter George Giudice from a final SAT decision and from a SAT penalty decision (being SAT's decisions on its reconsideration of the matter following a previous appeal by Mr Giudice where the matter was referred back to SAT).

## 6.5 Special Leave Applications

During the year:

- an application for special leave to appeal to the High Court by Mr D Li from a Court of Appeal of the Supreme Court decision dismissing his appeal of a SAT decision dismissing his application for leave to file a review application out of time was deemed abandoned on 18 November 2014
- an application for special leave to appeal by Leonard Gandini from a Court of Appeal of the Supreme Court decision was dismissed on 18 December 2014 with costs.



## 7. Promoting Professional Standards

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

As in previous years, the Committee has continued to be proactive in this regard, particularly through its work in the Rapid Resolution team.

During the year 15 risk alert letters were sent out to firms which had 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.

Of the 15 risk alert letters sent out, 10 were to firms which had previously received a risk alert letter, although the issues raised in the second risk alert letter were not always the same as those raised in the first risk alert letter. Where the issues were the same, the Committee has arranged to visit the firm to discuss with the principals in person what issues are being raised with the Committee and what the firm could do to reduce that contact.

The number of firms responding to risk alert letters has risen with two thirds of recipients having contact with the Committee to discuss the letter they have received.

The Committee has continued to issue expressions of concern to practitioners to highlight concerns the Committee has about a practitioner's conduct even though the conduct concerned was not sufficient to

amount to unsatisfactory professional conduct. This is done with a view to preventing such conduct from the practitioner in future.

The Committee has also continued to publish articles in *The Law Society's Brief* magazine. Two articles were published during the reporting year which covered confidentiality of settlement conferences, prison visits, and professional obligations when practitioners act for themselves. These articles are also republished on the Board's website.

The Committee's members and staff also give presentations at conferences, continuing professional development seminars and to final year university law students. This reporting year, seminars were also given to practitioners at the conclusion of the Law Mutual (WA) compulsory risk management seminars, Australasian Legal Practice Management Association (ALPMA), AMPLA and at some individual law firms.

There was a 55% increase in the total number of presentations (28 in total) 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.

The Committee also continued with its initiative of visiting regional areas to talk to practitioners about issues relating to complaints. During the year Gael Roberts, Law Complaints Officer, and Philippa Rezos, the manager of the Rapid Resolution team, visited Kalgoorlie and presented a seminar to practitioners.



## 8. Tables

TABLE 1 RAPID RESOLUTION INQUIRIES 2013-2015

### TYPE OF INQUIRER 2013-2015

	<i>Total % 2012 – 2013</i>	<i>Total % 2013 – 2014</i>	<i>Total % 2014 – 2015</i>
Client/Former Client	49.5	49.8	48.8
Friend/Relative of Client	10.2	9.4	8.8
Opposing party	21.7	17.6	20.1
Beneficiary/Executor/Administrator	3.1	4.0	3.6
Practitioner on own behalf	5.9	8.0	8.8
Practitioner on another's behalf	1.0	1.0	2.3
Other	8.7	10.3	7.7

### INQUIRIES BY AREAS OF LAW 2013 - 2015

	<i>Total % 2012 – 2013</i>	<i>Total % 2013 – 2014</i>	<i>Total % 2014 – 2015</i>
Family/Defacto Law	33.2	31.6	30.7
Civil Litigation	17.1	14.0	15.4
Conveyancing	2.8	3.2	3.8
Leases / Mortgages / Franchises	3.0	3.4	2.9
Probate/Wills/ Family Provisions	11.7	13.9	13.6
Commercial/Corporations Law	3.8	3.5	4.5
Criminal	6.7	5.6	7.3
Personal Injuries	5.3	4.7	4.5
Workers Compensation	4.9	6.0	5.0
Victims Compensation	0.5	0.8	0.5
Employment / Industrial Law	1.5	3.2	2.7
Other	9.6	10.3	9.1



TABLE 1 RAPID RESOLUTION INQUIRIES 2013 - 2015

## INQUIRIES BY AREAS OF INQUIRY 2013 - 2015

	<i>Total % 2012 – 2013</i>	<i>Total % 2013 – 2014</i>	<i>Total % 2014 – 2015</i>
<b>Cost/Payment Issues</b>			
Failure to Pay Third Party	0.5	0.2	0.7
Overcharging	16.3	25.5	12.0
No Costs Disclosure	4.8	2.8	5.1
Transfer Costs Without Authority	0.5	0.4	0.5
Failure / Delay to Provide a Detailed Account	1.6	1.9	2.5
Other Costs Complaint	13.9	16.2	13.9
<b>Subtotal</b>	<b>37.5</b>	<b>47.0</b>	<b>34.7</b>
<b>Communication/Service</b>			
Act Without / Contrary to Instructions	3.0	1.5	2.4
No Communication	9.4	12.7	7.7
Failure to Carry Out Instructions	6.0	3.2	5.0
Delay	6.5	3.8	7.0
Lack of Supervision	0.5	0	0.5
No Client Advice	2.0	1.0	1.5
No Advice on Progress	2.1	0.2	1.2
Discourtesy	2.8	4.4	3.6
Neglect	2.6	0.3	1.6
<b>Subtotal</b>	<b>34.8</b>	<b>27.2</b>	<b>30.5</b>
<b>Personal Conduct</b>			
Unethical Conduct	13.1	11.2	12.6
Negligence	3.4	2.0	3.5
Misleading	2.6	0.6	1.4
Conflict of interest	3.3	1.8	2.6
Failure to Transfer Documents	0.8	0.4	0.9
Communicating with a Client of Another Solicitor	0.2	0.2	0.1
Threatening Behaviour	2.1	1.5	2.2
False Swearing of Documents	0.2	0	0
Breach Confidentiality	0.5	0.3	0.4
Undue Pressure	0.9	0.2	0.5
Alteration of Documents	0.1	0	0
Liens	0.6	0.4	0.9
<b>Subtotal</b>	<b>27.7</b>	<b>18.6</b>	<b>25.1</b>
<b>Other</b>	<b>12.5</b>	<b>7.1</b>	<b>9.8</b>

TABLE 1 RAPID RESOLUTION INQUIRIES 2013 - 2015

## RESOLUTION OF INQUIRY 2013 - 2015

	<i>Total % 2012 – 2013</i>	<i>Total % 2013 - 2014</i>	<i>Total % 2014 - 2015</i>
<b>Conciliated Outcome</b>			
Fee waiver	3.8	2.4	2.1
Apology	1.6	1.5	1.5
Undertaking	0.1	0.1	0.2
Discounted fees	5.9	7.2	5.4
Release of lien	0.6	0.6	1.0
Withdrawn	2.3	1.6	0.8
Improved communication	4.7	4.8	5.1
Improved legal practice, training, supervision, mentoring or management systems	2.6	3.9	2.9
Other	0	0	0
<b>Subtotal</b>	<b>21.5</b>	<b>22.2</b>	<b>19.0</b>
<b>No Further Action</b>			
Accepted Committee / practitioner's response	22.4	18.0	18.5
Brochures provided	7.9	11.0	18.6
Suggested direct approach to practitioner	7.8	9.7	8.4
No further information provided	19.0	14.9	16.3
Advised to get legal advice	6.1	4.4	4.0
Misconceived	2.6	5.6	3.4
Other	10.0	10.5	8.3
<b>Subtotal</b>	<b>75.6</b>	<b>74.0</b>	<b>77.5</b>
Expression of Concern issued	1.5*	1.2*	1.1
Part/Whole inquiry resolved per above category, but referred for investigation	0.2	0.3	0.4
Referred for investigation	2.0	3.0	1.7
Referred for formal determination s415 / s425	0.8	0.4	0.6
<b>Subtotal</b>	<b>2.9</b>	<b>3.7</b>	<b>3.8</b>

\*Expressions of concern were not previously reported separately. Accordingly the 2013 and 2014 figures for expressions of concern are not reflected in the totals. They are provided for comparison purposes only to 2015.

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION INQUIRIES 2013 – 2015

	<i>Total</i> 2012 – 13	<i>Total</i> 2013 – 14	<i>Total</i> 2014 – 15
Complaints	80	69	77
Conduct Investigations	21	31	25
Rapid Resolution inquiries	1472	1330*	1413**
<b>Total</b>	<b>1573</b>	<b>1430</b>	<b>1515</b>

\* Does not include 122 miscellaneous inquiries

\*\*Does not include 121 miscellaneous inquiries

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2013 - 2015

	<i>Total %</i> 2012 – 13	<i>Total %</i> 2013 – 14	<i>Total %</i> 2014 – 15
Client / former client	44 (43.6)	36 (36.0)	38 (37.3)
Client's friend / relative	0	3 (3.0)	1 (1.0)
Opposing party	25 (24.8)	26 (26.0)	21 (20.6)
Beneficiary / executor / administrator	4 (4.0)	1 (1.0)	4 (3.9)
Practitioner on own behalf	3 (3.0)	1 (1.0)	6 (5.9)
Practitioner on another's behalf	0	3 (3.0)	1 (1.0)
Legal Practice Board	2 (2.0)	0	1 (1.0)
Other	4 (4.0)	10 (10.0)	8 (7.8)
Court Enquiry	1 (1.0)	3 (3.0)	1 (1.0)
Other Investigation	18 (17.8)	17 (17.0)	21 (20.6)
<b>Total</b>	<b>101</b>	<b>100</b>	<b>102</b>

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2013 – 2015

	<i>Total % 2012 – 13</i>	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>
Family/Defacto law	21 (18.6)	29 (26.1)	27 (23.9)
Civil Litigation	24 (21.2)	25 (22.5)	16 (14.2)
Conveyancing	2 (1.8)	0	3 (2.7)
Leases/Mortgages/Franchises	1 (0.9)	2 (1.8)	1 (0.9)
Probate/Wills/Family Provisions	11 (9.7)	5 (4.5)	22 (19.5)
Commercial/Corporations Law	11 (9.7)	10 (9.0)	7 (6.2)
Criminal law	10 (8.9)	19 (17.1)	13 (11.5)
Personal injuries	4 (3.5)	2 (1.8)	1 (0.9)
Workers Compensation	6 (5.3)	5 (4.5)	2 (1.8)
Victims Compensation	0	0	0
Employment/Industrial law	5 (4.4)	2 (1.8)	9 (7.0)
Professional negligence	0	1 (0.9)	1 (0.9)
Land and Environment	1 (0.9)	2 (1.8)	0
Immigration	0	0	1 (0.9)
Other	17 (15.0)	9 (8.1)	10 (8.8)

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2013 - 2015

	<i>Total % 2012 – 13</i>	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>
<b>Cost/Payment issues</b>			
Failure to pay third party	0	0	0
Overcharging	13 (6.1)	12 (5.9)	24 (10.5)
No costs disclosure	8 (3.8)	4 (2.0)	6 (2.6)
Transfer costs without authority	0	2 (1.0)	0
Failure/delay to provide a detailed account	6 (2.8)	0	2 (0.9)
Other cost complaint	9 (4.2)	4 (2.0)	10 (4.4)
<b>Subtotal</b>	<b>36 (16.9)</b>	<b>22 (10.9)</b>	<b>42 (18.4)</b>
<b>Communication/Service</b>			
Act without/contrary to instructions	6 (2.8)	11 (5.5)	9 (3.9)
No communication	9 (4.2)	8 (4.0)	8 (3.5)
Failure to carry out instructions	14 (6.6)	12 (5.9)	10 (4.4)
Delay	12 (5.6)	7 (3.5)	10 (4.4)
Lack of supervision	2 (0.9)	2 (1.0)	3 (1.3)
No client advice	2 (0.9)	5 (2.5)	2 (0.9)
No advice on progress	4 (1.9)	2 (1.0)	0
Discourtesy	4 (1.9)	9 (4.5)	9 (3.9)
Neglect	9 (4.2)	6 (3.0)	4 (1.9)
<b>Subtotal</b>	<b>62 (29.1)</b>	<b>62 (30.7)</b>	<b>55 (24.2)</b>
<b>Personal Conduct</b>			
Unethical conduct	35 (16.4)	42 (20.8)	45 (19.7)
Negligence	12 (5.6)	5 (2.5)	10 (4.4)
Misleading	12 (5.6)	12 (5.9)	14 (6.1)
Conflict of interest	10 (4.7)	5 (2.5)	8 (3.5)
Failure to transfer documents	3 (1.4)	2 (1.0)	0
Communicating with a client of another solicitor	1 (0.5)	3 (1.5)	0

	<i>Total % 2012 – 13</i>	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>
Threatening behaviour	3 (1.4)	5 (2.5)	6 (2.6)
False swearing of documents	0	2 (1.0)	3 (1.3)
Breach confidentiality	4 (1.9)	3 (1.5)	2 (0.9)
Failure to assist LPCC	2 (0.9)	3 (1.5)	0
Undue pressure	1 (0.5)	2 (1.0)	3 (1.3)
Alteration of documents	1 (0.5)	0	1 (0.4)
Liens	0	0	0
<b>Subtotal</b>	<b>84 (39.4)</b>	<b>84 (41.6)</b>	<b>92 (40.2)</b>
<b>Non-Compliance</b>			
Not complying with undertaking	3 (1.4)	3 (1.5)	2 (0.9)
Practising without a practice certificate	0	1 (0.5)	0
Not complying with Legal Profession Act/Regulations	0	3 (1.5)	2 (0.9)
<b>Subtotal</b>	<b>3 (1.4)</b>	<b>7 (3.5)</b>	<b>4 (1.8)</b>
<b>Trust Account Matters</b>			
Breach of Sections of Act / Regulations relating to trust monies	1 (0.5)	4 (2.0)	1 (0.4)
Misappropriation	1 (0.5)	2 (1.0)	2 (0.9)
Failure to account	6 (2.8)	3 (1.5)	0
Other – Trust Account Matters	0	1 (0.5)	0
<b>Subtotal</b>	<b>8 (3.8)</b>	<b>10 (5.0)</b>	<b>3 (1.3)</b>
<b>Other</b>	<b>20 (9.4)</b>	<b>17 (8.4)</b>	<b>33 (14.4)</b>

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2013 – 2015

	<i>Total % 2012 – 13</i>	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>
Barrister	8 (7.9)	11 (11.0)	4 (3.9)
Sole Principal	45 (44.6)	36 (36.0)	46 (45.1)
Other Principal	18 (17.8)	22 (22.0)	21 (20.6)
Non Principal	13 (12.9)	19 (19.0)	13 (12.7)
Government Legal Position	4 (4.0)	6 (6.0)	7 (6.9)
Corporate Legal Position	1 (1.0)	0	4 (3.9)
Firm only	1 (1.0)	0	0
Struck off/suspended	2 (2.0)	2 (2.0)	2 (2.0)
Other	9 (8.9)	4 (4.0)	5 (4.9)
<b>Total</b>	<b>101</b>	<b>100</b>	<b>102</b>

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2013 – 2015

	<i>Total % 2012 – 13</i>	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>
CBD/West Perth	50 (49.5)	56 (56.0)	43 (42.2)
Suburbs	38 (37.6)	31 (31.0)	54 (52.9)
Country	5 (5.0)	5 (5.0)	5 (4.9)
Interstate	4 (4.0)	5 (5.0)	0
Not known	4 (4.0)	3 (3.0)	0
<b>Total</b>	<b>101</b>	<b>100</b>	<b>102</b>

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2013 – 2015

	<i>Total % 2012 – 13</i>	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>
Under 5	8 (7.9)	8 (8.0)	5 (4.9)
5 – 9	28 (27.7)	23 (23.0)	22 (21.6)
10 –14	20 (19.8)	23 (23.0)	32 (31.4)
15 – 19	9 (8.9)	9 (9.0)	11 (10.8)
20 – 24	11 (10.9)	9 (9.0)	7 (6.9)
25 – 29	9 (8.9)	4 (4.0)	10 (9.8)
30 – 34	10 (9.9)	14 (14.0)	12 (11.8)
35 – 39	2 (2.0)	7 (7.0)	3 (2.9)
Over 40	1 (1.0)	2 (2.0)	0
Not known/Not applicable	3 (3.0)	1 (1.0)	0
<b>Total</b>	<b>101</b>	<b>100</b>	<b>102</b>



TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2013 – 2015

	<i>Total % 2012 – 13</i>	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>
Under 25	0	0	0
25 – 29	2 (2.0)	6 (6.0)	4 (3.9)
30 – 34	7 (6.9)	10 (10.0)	3 (2.9)
35 – 39	4 (4.0)	6 (6.0)	5 (4.9)
40 – 44	11 (10.9)	15 (15.0)	14 (13.7)
45 – 49	15 (14.9)	18 (18.0)	22 (21.6)
50 – 54	19 (18.8)	6 (6.0)	8 (7.8)
55 – 59	21 (20.8)	18 (18.0)	18 (17.6)
60 – 64	9 (8.9)	5 (5.0)	9 (8.8)
65 – 69	7 (6.9)	8 (8.0)	7 (6.9)
70 – 75	3 (3.0)	6 (6.0)	12 (11.8)
76 – 80	0	0	0
81+	0	0	0
Not known/Not applicable	3 (3.0)	2 (2.0)	0
<b>Total</b>	<b>101</b>	<b>100</b>	<b>102</b>

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2013 – 2015

	<i>Total</i> <i>2012 – 13</i>	<i>Total</i> <i>2013 – 14</i>	<i>Total</i> <i>2014 – 15</i>
Practitioners with 1 complaint	70	67	59
Practitioners with 2 complaints	5	7	6
Practitioners with 3 or more complaints	4	5	5
<b>Total number of practitioners</b>	<b>79</b>	<b>79</b>	<b>70</b>

TABLE 11 OUTSTANDING COMPLAINTS 2013 – 2015

	<i>Total</i> <i>2012 – 13</i>	<i>Total</i> <i>2013 – 14</i>	<i>Total</i> <i>2014 – 15</i>
Outstanding complaints	78	58	80
Outstanding conduct investigations	23	41	45
<b>Total</b>	<b>101</b>	<b>99</b>	<b>125</b>

TABLE 12 COMPOSITION OF THE WA LEGAL PROFESSION AS AT 30 JUNE 2015

<i>Composition of WA Local Legal Practitioners</i>	<i>Resident Females</i>	<i>Non-Resident Females</i>	<i>Resident Males</i>	<i>Non-Resident Males</i>	<i>Totals</i>
Barristers	37	0	182	1	220
Commonwealth Government	38	1	25	0	64
Consultants	15	0	34	1	50
Director	137	1	398	2	538
Employees	1512	41	1031	34	2618
Equity Partner	41	1	229	5	276
Fixed Profit-share Partner	18	2	34	4	58
Inhouse	352	15	291	21	679
Locum	0	0	0	0	0
Legal Practitioner Partner	9	0	52	1	62
Not practising (certificated)	313	13	159	9	494
Salaried Partner	26	1	43	5	75
Sole Practitioners	149	2	347	3	501
Judiciary <sup>^</sup>	0	0	3	0	3
Deceased <sup>^</sup>	1	0	2	0	3
Struck Off <sup>^</sup>	0	0	1	0	1
Suspended <sup>^</sup>	0	0	1	0	1
State Government*	49	0	17	0	66
Practising Certificates Cancelled	14	6	16	3	39
<b>Practice Certificates ISSUED</b>	<b>2711</b>	<b>83</b>	<b>2865</b>	<b>89</b>	<b>5748</b>
S.36 Practitioners	277	2	193	4	476
** State Solicitor's Office	77	0	55	2	134
**Director of Public Prosecutions (State)	58	0	54	1	113
**Other Departments	142	2	84	1	229
<b>TOTAL PRACTITIONERS</b>	<b>3216</b>	<b>87</b>	<b>3234</b>	<b>97</b>	<b>6185</b>

<sup>^</sup> held a practising certificate during 2014/2015, however by 30 June 2015, were appointed judiciary/deceased/struck off/suspended.

\* State Government employees who held a local practising certificate during 2014 - 2015

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

## 9. Information Statements

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### 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 LP Act**”) 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 LP Act).

The functions of the Complaints Committee are set out in Sections 409, 410 and 557 of the LP Act 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 LP Act) on the one hand and those among the classes of persons set out in Section 410(1) of the LP Act 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](http://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](http://www.lpbwa.org.au).

## **3. PUBLIC PARTICIPATION IN AGENCY FUNCTIONS**

The purposes of the Complaints Committee are set out in Section 401 of the LP Act. 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 2, 55 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 Ms Dilhari Mahiepala of Level 2, 55 St Georges Terrace, Perth, Legal Practitioner, who is the officer of the Complaints Committee that 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) 9461 2299.

### 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 9461 2265  
 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 9461 2265  
 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 9461 2265  
 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](mailto:info@foi.wa.gov.au)  
Website: [www.foi.wa.gov.au](http://www.foi.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.foi.wa.gov.au](http://www.foi.wa.gov.au).

## **8. STATEMENT REVIEW**

This FOI Information Statement is current as at August 2015 and is reviewed annually.

# **LPCCWA**

**Level 2, Colonial Building, 55 St Georges Terrace, Perth WA 6000  
Post Office Box Z5293, St Georges Terrace, Perth WA 6831**

**Ph: 08 9461 2299 Fax: 08 9461 2265 Email: [lpcc@lpbwa.com](mailto:lpcc@lpbwa.com) Web: [www.lpbwa.org.au](http://www.lpbwa.org.au)**