



# **Legal Profession Complaints Committee**

## **Annual Report 2021/22**

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**LPCCAWA**

# Statement of Compliance for the year ended 30 June 2022

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**The Hon. John Quigley LLB JP MLA.**

Attorney General of Western Australia; Minister for Electoral Affairs.

In accordance with section 551 of the *Legal Profession Act 2008*, we hereby submit for your information and presentation to Parliament, the annual report for the Legal Profession Complaints Committee for the financial year ended 30 June 2022.

The annual report has been prepared in accordance with the provisions of the *Financial Management Act 2006*.

22 December 2022.

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# Message from the Chair

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## John Ley SC

I am pleased to present the Legal Profession Complaints Committee (**Committee**) annual report for the financial year ending 30 June 2022. It was another year marked by the anticipation of and planning for the introduction of the Uniform Law Scheme.

## Uniform Law

On 5 April 2022, the *Legal Profession Uniform Law Application Act 2022 (WA)* (**Application Act**), passed the Western Australian Parliament, introducing the Scheme into Western Australia as the *Legal Profession Uniform Law (WA)* (**Uniform Law**).

On 1 June 2022, the Attorney General announced that the Uniform Law would commence in Western Australia on 1 July 2022.

The commencement of the Uniform Law is a significant milestone in the regulation of the legal profession in Western Australia. The objectives of the Uniform Law include bringing about interjurisdictional consistency, promoting high ethical and professional standards for the profession, enhancing consumer protection, empowering clients to make informed choices, and promoting regulation that is efficient, effective, targeted and proportionate.

The Application Act provides that the Legal Practice Board (**Board**) is the designated legal authority for the Uniform Law, with power to delegate to the Committee (which, pursuant to the Application Act, will become the Legal Services and Committee, its powers of dispute resolution and professional discipline under Chapter 5 of the Uniform Law.

The transition to the new powers and tools available under the Uniform Law will be somewhat gradual, as the *Legal Profession Act 2008 (WA)* (**LPA**) will continue to apply to complaints and investigations that are already on foot and new powers dealing with cost disputes as consumer matters will only apply to cases where the client has retained the practitioner after the Uniform Law commences. However, these new powers will, over time, allow the Committee to provide better outcomes for consumers and practitioners alike.

During the year, the Committee received two presentations on the Uniform Law from the Law Complaints Officer, and had the opportunity to consider the new powers and functions, with the benefit of the experience of Victoria and New South Wales since 2015. The Law Complaints Officer and other staff also gave many presentations to the profession about the imminent changes the Uniform Law will bring. Much work also went on within the office in preparation for the changes.

I am confident that the commencement of the Uniform Law will allow the Committee and the Board to better serve the profession and the public in fulfilling their important roles. I would also like to thank the staff for all the work they have done over the last year in preparation for the introduction of the Uniform Law, particularly when they were, in the end, only given a month's notice of when the Uniform Law would commence.

## Service Model Review

One activity that occurred in anticipation of the commencement of the Uniform Law was a review of the service model adopted by the Board (which is the employer of all staff who work for both the Board and the Committee). Other drivers for this review included the Board becoming a respondent to the *Government Officers' Salaries, Allowances and Conditions Award 1989 (GOSAC)*, as well as the introduction of the Board's new strategic direction, and recommendations and observations from the West Australian Ombudsman.

This review, led by the Management Committee of the Board and senior staff, resulted in an organisational restructure which officially commenced in March 2022.

Goals of the new service model were to build on the opportunities presented by the commencement of the Uniform Law, and embrace its objectives, and to allow for better and more timely outcomes for the public and the profession. The redesign looked to reduce multiple handling of the same matter and cross-skill staff, while also promoting better collaboration across the Board and Committee, thereby creating efficiencies in the use of resources. The aim was also to ensure (as far as it was possible) that the complainant and the practitioner in a complaint were able to deal with the same staff member throughout the duration of the complaint.

I am told that work here has already translated to new matters being handled in ways that bring about an outcome for all parties in a more timely fashion, and look forward to the commencement of the Uniform Law to help build on early success. I also thank the staff, old and new, for their continuing work during the transition, which inevitably brings about disruption and some uncertainty.

## Ombudsman Report

In December 2020, the West Australian Ombudsman (**Ombudsman**) reported on his *'Investigation into the handling of complaints by the Legal Services and Committee' (Report)*. The Report examined complaint handling practices and made numerous observations along with 13 recommendations arising from the investigation. The recommendations focused on several areas such as the timeliness of investigations, achieving complaint handling efficiencies, developing and reporting on key performance indicators, and implementing an electronic case management system.

I have discussed the Report with the Ombudsman and other members of his office, and the Committee has done much work to progress the recommendations and give effect to them. The Report acknowledges that the Uniform Law provides further opportunities to improve complaint handling practices. The Service Model Review also responded to observations in the Report. Improved ways of working have also been adopted under the current complaints handling scheme provided for by the LPA, including in dealing with new enquiries and complaints.

Action also continues to be undertaken to bring older investigations to an appropriate outcome. This has been a large task and one that has also been instructive in terms of dealing with new matters.

I am pleased to be able to report that, and after much development work with the Board, the first iteration of the case management system went live in late 2021. Work continues to capitalise on its performance, including in developing new workflows for the Uniform Law and building its reporting capabilities.

I thank the Ombudsman for the constructive way in which he has engaged to assist me and the Committee to improve the Committee's services.

## The reporting year

While this year saw the end of the COVID-19 related border restrictions in Western Australia, the continuing impact of the pandemic on staff and the Committee itself must be acknowledged. Many of us have experienced the direct impact of the virus on ourselves and our loved ones this year, and yet the work of the Committee does not cease.

This year, the data for the Committee's operations has also begun to be collected from the new case management system (**CMS**). In this time of transition and change, it is notable to see that there remains consistency in the areas of law that attract the most enquiries and complaints.

Family Law (including de facto matters) continues to make up about 35% of new enquiries and over 20% of new complaints. Criminal Law accounted for 11% of new complaints and 9% of new enquiries. Other areas attracting over 5% of new enquiries include Wills/Powers of Attorney, Commercial/ Corporate/Franchise law, Probate/Family Provision and Personal Injuries. With complaints, the areas of Wills/Powers of Attorney, Probate/Family Provision and Employment Law made up over 5% of those received, while Conveyancing was also was the subject of a notable proportion of enquiries and complaints.



Under the Uniform Law, this data will be collected across all participating jurisdictions, allowing ready comparison between them. However, changes made in preparation for this data sharing, as well as with the CMS and changes to ways of working, have meant that some data will not be directly comparable with figures from previous years.

However, the number of new enquires received and complaint investigations begun remains broadly consistent with previous years (924 and 72 respectively).

The Committee made a greater number of determinations than in recent years (52), and a similar number of complaints were determined by the Law Complaints Officer under delegation. Overall, the number of matters that were formally determined increased (from 43 in 2020-21 to 110 this year). This is a result of a number of the initiatives that I have described above to bring about more timely complaint handling.

The percentage of matters considered by the Committee that resulted in some form of disciplinary action (for unsatisfactory professional conduct or professional misconduct) was up this year (44% to 57%). The Committee also expressed its concern in certain cases where it identified shortcomings by a lawyer that were not serious enough to cause the Committee to form the view that the practitioner had engaged in unsatisfactory professional conduct or professional misconduct. The Committee expressed its concern in 12% of matters it determined this year. The Committee always does this with the view to assisting practitioners to improve their practices in the future, so as to benefit their clients and those dealing with them professionally.

Communication and billing issues were frequent concerns to the party contacting the Committee in enquiries, as were issues of competence such as case handling, and the legal advice received. These concerns were also the major issues raised in complaints received this year.

The Uniform Law will provide for a greater range of outcomes when a complaint is made, with a focus on the timely and effective resolution of disputes or issues between clients and practitioners. While the Committee tries to achieve such outcomes already by working with the parties, the additional powers under the Uniform Law will provide more options to bring about more effective dispute resolution where no disciplinary action is warranted.

The vast majority of the members of the profession do all that they can to resolve disputes with their clients and maintain the highest of standards professionally and ethically. The Committee always looks to see what it can do to assist resolving such disputes and assisting lawyers to maintain high standards.

However, the Committee is also required to put a great deal of its efforts into conducting disciplinary matters in the State Administrative Tribunal and the Supreme Court. In this last year, the Committee has again prosecuted some resource intensive matters as a part of its role to protect the public and maintain the high standards which the community expects of the profession.

## **Trends and forecast workload**

While there do not seem to be any discernible changes in the make-up of the complaints that people make, the Committee expects to see continued change in the way the data reflects the changes that I have outlined above.

With the transition to the Uniform Law, it is more difficult this year to confidently forecast any possible changes in incoming complaints and enquiries. However, I am confident that the Committee is in a good position to manage those changes.

## **Education**

The Law Complaints Officer and staff frequently present on topics relating to ethics and complaint handling and, during the year, continued to provide informative guidance to the profession about the introduction of the Uniform Law and the changes facing the profession.

## **Relationships**

The Committee works closely with the Board to achieve the best regulatory outcomes for the legal profession and public in Western Australia. The Committee, the Law Complaints Officer and staff maintain good working relationships with the Law Society of Western Australia, Legal Aid Western Australia, the State Administrative Tribunal, the Supreme Court and other bodies under the justice banner working on complaints handling and regulation generally.

This collaboration extends to close working relationships with the other regulatory bodies in the jurisdictions including New South Wales, Victoria and throughout Australia.

The Committee this year also worked closely with the Law Society of Western Australia and the Legal Services Council in actively planning for the commencement of the Uniform Law.

## Acknowledgments

During 2021/22, the Committee farewelled a number of its legal members, as well as welcoming numerous new members. The Committee also lost some valuable members of staff.

In January 2022, Michael Feutrill SC left the Committee when he was appointed as a Judge of the Federal Court.

Also leaving the Committee on 21 March 2022, was my Deputy Chair, Brahma Dharmananda SC, who had been a member of the Committee since 2014 and Deputy Chair since early 2020.

Also departing was Michael Berry SC, who was appointed as a Judge of the Family Court of Western Australia on 7 June 2022. Michael was good enough to take over as Deputy Chair when Brahma left the Committee, but, regrettably, was only able to serve in that capacity for a few months.

In addition, Ms Maria-Luisa Coulson resigned from the Committee on 4 March 2022.

I thank Michael Feutrill, Michael Berry, Brahma and Maria-Luisa for the contributions in which they made to the Committee.

Also during the year, the Committee welcomed new members Geoff Bourhill SC, Steve Jones SC, Matt Curwood SC, Anna Ciffolilli, Fraser Robertson and Amy Pascoe.

I am grateful for all of the members of the Board who serve on the Committee for the very thorough consideration they give to all matters they are asked to assess and decide. Each member puts in a large amount of their own time, all without payment, to ensure that professional standards are upheld and the public is protected.

I also give special thanks to each of the Community Representatives who bring their valuable perspective to each matter and help the Committee fulfil its roles in upholding standards, and protecting the public.

I also thank the Barristers who undertake challenging and complex work for the Committee at reduced rates, and for the assistance afforded by the Western Australian Bar Association (**WABA**) to practitioners who are investigated and prosecuted by the Committee. Barristers who act for practitioners through the involvement of the WABA are integral to the efficient resolution of disciplinary matters.

And finally, I want to personally extend my thanks and gratitude to each of the dedicated and hardworking members of staff that have departed the Committee in the last year. In particular, to the former Managers of the former Rapid Resolution and Litigation teams, Cath Carroll and Cassie Paterson, together with Steve Merrick, with whom I had the great pleasure of working for many years.

# Message from the Law Complaints Officer



## Russell Daily

In my third report as Law Complaints Officer, I am very pleased to say that Western Australia is at last on the brink of entering the Uniform Law Scheme.

Much work has gone into preparation, but a lot more will continue to be done during this time of transition. All of this continues while we carry on doing the important work that we do with complainants and lawyers alike.

The commencement of the Uniform Law provides a great opportunity to help improve the way that we operate and serve. However we have not been waiting for this to commence before taking action to improve what we do

## Uniform Law

The Uniform Law has been designed to bring about a modern regulatory scheme for the legal profession that is applied consistently around the country. Both this harmonisation, and the content of the scheme, are of great benefit to consumers and the profession.

States and territories have the choice about whether to opt into the scheme. I returned to Western Australia in 2020 to take on this role, excited by the prospect of bringing the Uniform Law into being in my home state.

Having worked for over 13 years in legal regulation in Victoria, including when the Uniform Law commenced there (and in New South Wales) in 2015, I had experienced firsthand the benefits it could bring with a modern, principles based scheme built with proportionality and consumer protection at its heart.

The Uniform Law importantly promotes informed customer choice and has strong customer protection measures. These measures bring benefits for both the public and the profession. Soon, 75% lawyers in Australia will fall under Uniform Law, once Western Australia joins New South Wales and Victoria.

The *Legal Profession Uniform Law Application Bill* has had a long journey through Parliament. However, on 5 April 2022, the *Legal Profession Uniform Law Application Act 2022 (WA)* finally passed, and on 1 June 2022 it was confirmed that the Uniform Law would commence on 1 July 2022.

Over the last year, I have presented to various groups and we have worked closely with the Law Society WA and others, to inform the profession about the imminent changes. The sessions have been extremely well attended. We have also answered questions directly and placed a great deal of information on our website to assist the profession and the community.

The Uniform Law provides the regulator with a new broader suite of tools to help deal with regulatory issues in a more timely and proportionate manner.

When it comes to complaint handling, one example is the introduction of consumer matter complaints to Western Australia. These allow a client to raise a cost dispute with the regulator, who must try and resolve the dispute by informal means as soon as practicable. If resolution is not achieved by agreement then the regulator can determine or close the complaint as appropriate.

This compares to the current situation where the LPA provides only for the investigation of a complaint to see if unsatisfactory professional conduct or professional misconduct is made out.

While we can try and help the parties resolve a dispute there are no powers to allow that to occur or bring it to a prompt resolution. Currently a consumer disputing costs and seeking an outcome can only consider going to



court and applying for a costs assessment – not an appealing prospect when relatively low amounts of costs are in dispute.

For the lawyer, the prospect of being investigated to see whether they might be guilty of unsatisfactory professional conduct is also not appealing. Nor is it a good use of the regulator's resources in many cases.

The Uniform Law provides for regulation that is efficient, effective, targeted and proportionate. The main aim of the complaints regime is to provide a framework for the timely and effective resolution of disputes or issues between clients and lawyers. Changes that are in the interest of all parties.

I look forward to helping to realise these benefits as we move into next year.

## **Responding to the Ombudsman Report**

Another useful guide to improving the way we work is the Ombudsman's Report '*Investigation into the handling of complaints by the Legal Services and Complaints Committee*', and the observations and recommendation it contains.

The Report makes references to similar experiences which occurred with the Victorian legal regulator back at the beginning of my time there. It too provided a helpful blueprint for reforms.

One initiative that the Ombudsman's Report highlighted was the need for the prompt introduction of a case management system. I am pleased to say that we went live with the initial iteration of this in the reporting year, and we continue to develop it in anticipation of the Uniform Law's commencement.

We are also in the beginning of working towards measuring our performance against key performance indicators. In tandem with the Board's new strategic direction and the development of a Regulatory Approach Statement, such initiatives will translate to improved outcomes for lawyers and consumers.

Taking the view that timeliness is important, and knowing that it will be measured, is a good first step towards turning that belief into real results.

In tandem with the service model review and consequent restructure of the way we operate, we have also made changes to the way we handle matters during their lifespan. This is described in some detail in the body of Annual Report, but the aims of our reforms have been to (where possible) eliminate double (and triple) handling of matters, and to cross skill staff to increase flexibility and capacity to respond. This helps reduce reliance on pockets of specialisation (with the consequential risks this brings). We have also sought to bring on board a diversity of skill sets and perspectives, and instil a focus on achieving the best outcomes for all concerned, rather than being process focused.

While we have some way to go, including in bringing some old legacy cases to finality, I am pleased that we have been able to take steps towards giving effect to all of the Ombudsman's recommendations, with the benefit of the observations made in the Report.

## **Service Model Review and Restructure**

In preparation for the commencement of the Uniform Law, we have gone through an extensive organisational review and redesign, building new roles and teams, designed to achieve efficiencies and realise the advantages I have already described.

We began the transition to the new model and ways of working during the final quarter of the year, and while the changes brought about some disruption along the way, the streamlined enquiries and complaints handling approach is already beginning to be visible. An increased number of complaints being finalised at an earlier stage has benefits for all concerned.

## **Acknowledgements**

It has been a busy year, with much change and still living in the shadow of the COVID-19 pandemic, but it has also been a year of anticipation and expectation. I look forward to being able to report on what we will achieve next year. I thank the members of the Committee and the Board for their support, and the staff who have worked so hard through it all.

While a number of staff have departed this year, and consequentially a number of new people have come on board, I want to thank each of them for all that they have done. To single out some would be to neglect many.

I am grateful for what we have been able to do together and look forward to what we will do next.

# About the Committee

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## Role, purpose and objectives

The Committee has statutory responsibility under the LPA for supervising the conduct of legal practitioners, inquiring into complaints and other professional conduct concerns which come to its attention, and instituting professional disciplinary proceedings against practitioners in the State Administrative Tribunal (**SAT**) where appropriate.

Under the Act the statutory purposes of the Complaints and Discipline Chapter 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; and
- to provide a means of redress for complaints about lawyers.

The Committee's objectives are:

- to provide an efficient and expeditious system for dealing with complaints;
- to proactively monitor the conduct of the legal profession;
- to initiate and prosecute disciplinary proceedings as appropriate;
- to promote and enforce the professional standards, competence and honesty of the profession; and
- to maintain a productive and motivating work environment.

The Law Complaints Officer (**LCO**) is also established under the LPA. The LCO assists the Committee in the exercise of its functions and the Committee has delegated many of its powers and duties to the LCO, including the power to determine certain complaints.

## Relationship with the Legal Practice Board

The Committee is one of the two regulatory authorities established under the Act, the other being the Board.

Whilst the Committee is a committee of the Board, it does not derive its powers from the Board. Instead, its powers are conferred on it directly by the LPA, and it exercises its statutory functions independently of the Board. Despite this independence, the Committee must work closely with the Board to ensure the effective operation of the regulatory scheme governing legal practitioners.

On 1 July 2022, the Uniform Law will commence and replace the current LPA. The introduction of the Uniform Law will bring about many changes, including that the Committee will become the Legal Services and Complaints Committee, and the LCO will become the Legal Services and Complaints Officer. Both of these bodies will be able to be delegated powers by the Board to handle complaints under the Uniform Law. Under the Uniform Law the Board will be the designated local regulatory authority when it comes to complaint handling, with the power to delegate that function.

## Committee membership and operations

### Membership

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



*Pictured left to right: Rob Wilson, Amy Pascoe, John Syminton, John Ley SC (Chair), Geoffrey Bourhill SC and Anna Ciffolilli.*

During 2021/22, the Committee was constituted by:

#### Chair

John Ley SC.

#### Deputy Chair

- Brahmananda Dharmananda SC (*resigned 16 March 2022*);
- Michael Berry SC (*assumed 22 March 2022 and resigned 7 June 2022*); and
- Darren Renton SC (*commenced 5 November 2021 as a Legal Member and assumed the Deputy Chair on 17 June 2022*).

#### Other Members

Committee A	Committee B
Michael Feutrill SC ( <i>resigned 17 January 2022</i> )	John Hedges SC
Joseph Garas SC	Carolyn Thatcher SC
Matthew Curwood SC ( <i>commenced 10 June 2022</i> )	Jason MacLaurin SC
Steven Jones SC ( <i>commenced 31 March 2022</i> )	Geoffrey Bourhill SC ( <i>commenced 5 November 2021</i> )
John Syminton	Robert Wilson
Ms Anna Ciffolilli ( <i>commenced 2 May 2022</i> )	Gary Mack
Ms Maria-Luisa Coulson ( <i>resigned 4 March 2022</i> )	Terry Buckingham ( <i>Community Representative</i> )

Committee A	Committee B
Mr Fraser Robertson ( <i>commenced 2 May 2022</i> )	Suzanne Hunt ( <i>Deputy Community Representative for Committee A and B</i> )
Ms Amy Pascoe ( <i>commenced 10 March 2022</i> )	
Karina Ballard AM ( <i>Community Representative</i> )	

## Operations

The Committee sits as two divisions (A and B) in order to share the significant workload. One community representative is present at each meeting, who along with two legal representatives constitutes a quorum, as per section 566 of the LPA.

During 2021/22, the Committee held 13 meetings in total. Two of these were full meetings of the Committee to discuss the commencement of the Uniform Law. The other 11 meetings were regular monthly meetings of a division of the Committee (divisions alternate each month) to consider complaints and investigations under the LPA.

The Committee's day-to-day operations are conducted by the LCO and staff who are all employed by the Board to also assist the Committee.

During the year the operations of the Board and its committees were restructured following a Service Model Review, in part in preparation for the commencement of the Uniform Law. Assisting the LCO operationally presently are the following teams:

- Investigations – Manager, John-Paul Colella;
- Audit and Review – Manager, Stephen Ramsay;
- Dispute Resolution – Manager, Dale Wescombe; and
- Enquiries and Assessment – Manager, Catherine McKinnon.

Investigations and Audit and Review report directly to the LCO, whereas Dispute Resolution and Enquiries and Assessment report to the Director Enquiries and Complaints, as part of the restructure. Dispute Resolution and Investigation officers conduct individual matters from receipt through to any proceedings in SAT or the courts as appropriate. The Strategy and Business Services directorate assist with corporate support functions, and all teams work collaboratively across a matrix style structure.

## Trust account investigations

Trust account investigations are undertaken either proactively or in response to a concern that has arisen about the handling of trust monies by firms. Concerns might also arise regarding the maintenance of trust account records, or where a firm might be handling trust monies but does not have a trust account.

Following an investigation, a report is prepared and provided to the law firm.

The Review and Audit team plans and delivers these investigations and reviews across the responsibilities of the Board and the Committee. This promotes a coordinated approach. Certain trust account investigations can also benefit from the involvement of those handling a complaint or other investigation.

Given their expertise the team will often assist in the handling of a complaint or regulatory concern by reviewing various accounting issues generally in regard to invoices, and the receipt and accounting funds (trust and general) by law firms.

## Our staff training and professional development

The Committee and Board place a high value on strengthening and developing the knowledge and skills of all staff.

In 2021/22 extensive work was done in preparation for the commencement of the Uniform Law in Western Australia. The LCO and other staff were involved in working groups and in preparing and presenting seminars on the changes anticipated under the Uniform Law.



Extensive liaison also took place with our equivalent legal regulators in the current Uniform Law jurisdictions (being the Legal Services Commissioner, Law Society, and Bar Association in NSW, as well as the Victorian Legal Services Board + Commissioner).

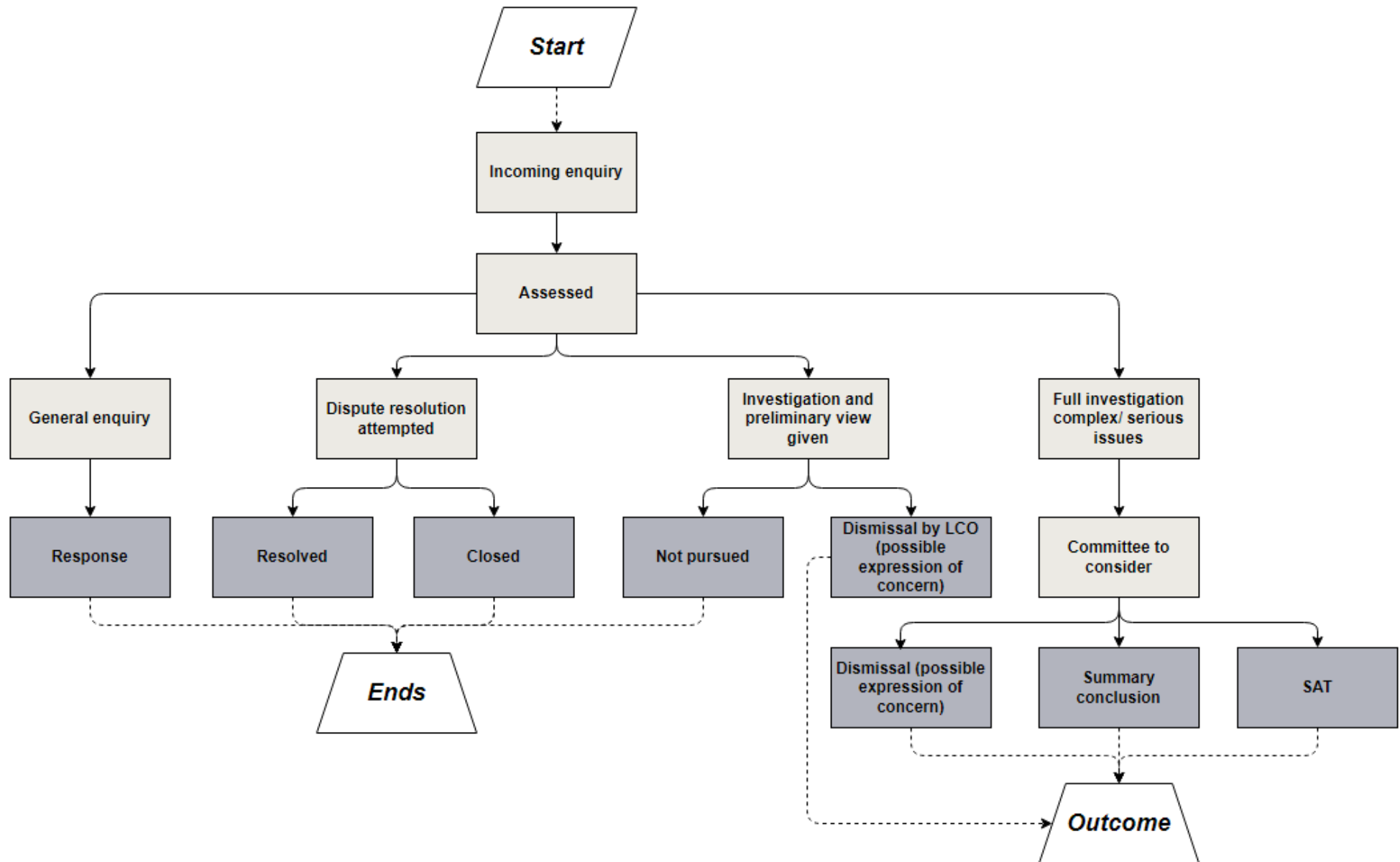
A working group was formed along with the Law Society of Western Australia and work was done in educating the local profession about the details of the scheme.

Training was also provided to our staff by the Information Commissioner on issues to do with freedom of information issues.

Unfortunately the 2020 Annual Conference of Regulatory Officers (**CORO**), which was due to be hosted by the New South Wales legal regulators, could not take place. CORO brings together jurisdictions across Australia and New Zealand and fosters collaboration and innovation in legal regulation.

It was therefore, of great value to conduct a virtual CORO hosted online by New South Wales in 2021. A benefit of this model meant that a larger number of staff could participate than an in person conference.

# Complaint Handling



The diagram above indicates how an incoming enquiry or complaint is dealt with under the *Legal Profession Act 2008 (LPA)*, from when it is received through to cases that may be considered by the Legal Profession Complaints Committee (**Committee**).

During the course of the year, the way in which new matters were received and handled changed, in part in preparation for the commencement of the Uniform Law.

Presently, all new contacts in relation to a possible complaint are received and assessed by the Enquiries and Complaints directorate. Matters which warrant immediate escalation for formal investigation are taken over by the Investigations team. However most matters are dealt with as an 'enquiry' initially by the Dispute Resolution Team.

## Dispute Resolution

The first objective of the Dispute Resolution team is to see if they can assist the enquirer with their concern. This will often involve discussing the matter with the enquirer to clarify what may or may not be able to be done. The team will often contact the practitioner to discuss the issue and then work with the parties to negotiate an agreed outcome and discuss options. The enquirer may also be informed about other sources of assistance they can go to, or be informed about what options they might have to try and resolve the situation themselves.

Outcomes that the Dispute Resolution may try and achieve through conciliation include a firm waiving some fees or providing documents or an apology, through to helping to improve the ongoing communication and relationship between the enquirer and practitioner. The team may also provide suggestions to the practitioner on how to avoid such issues in future.

In other cases the enquirer might raise concerns that are important to them, but which are not things that the practitioner can address. This might be the case for example where the concerns are about the lawyer acting for the other side, or where the expectations of the enquirer exceed what is reasonable in the circumstances.

It might also be the case that for whatever reasons a dispute cannot be resolved.

In such cases, where the enquiry is assessed as not raising disciplinary issues, Dispute Resolution will provide the enquirer with their preliminary views about the enquiry. This may occur fairly quickly, or may require some time to gather further information for consideration. That view is then conveyed to the enquirer verbally or in writing.

Sometimes this will result in the enquirer choosing not to pursue the matter further, in which case the enquiry is generally then closed. In some circumstances, where the conduct of the practitioner does not reach the required threshold to become a disciplinary matter but still raises some concerns, then the team might make suggestions for improvement or an expression of concern might be provided to the practitioner.

If the enquirer has questions about the preliminary view that has been provided then these are addressed. If that still does not resolve the matter then the team will consider the matter as a complaint and assess whether any further investigation is required, or whether it should be dismissed.

Where the investigation conducted by the team reveals potential serious or complex disciplinary issues then the complaint will be often be escalated to the Investigations and review directorate.

## Investigations

The Investigations team conducts formal investigation of serious or complex complaints, as well as in cases where concerns have become apparent about a lawyer but where there is no complaint. An own initiative investigation may occur when information has come to the attention of the LCO or Committee which warrants disciplinary investigation. They can also arise when further serious disciplinary issues are identified during the course of a complaint investigation, or through other referrals, notifications, or general intelligence.

The investigation process almost invariably involves seeking written submissions from the practitioner who is the subject of the allegation, addressing identified allegations or issues. There will often be a need to seek other documentary evidence or evidence from witnesses. Further evidence may also be sought from the complainant, practitioner, the Courts or other third parties, and may require the Investigator to use coercive powers.

Staff are appointed by the LCO as investigators to use the investigation powers available under the LP Act. Investigators can use coercive powers to obtain documents and/or written information from various parties including the practitioner being investigated, however a practitioner is also required to cooperate with the regulator in any event.

Once an investigation is complete, a recommendation will usually be put to the Committee, or LCO in some cases, for a formal decision.

The Committee will consider recommendations from investigators at its monthly meetings, viewing the results of the investigation as well as the recommendation. After consideration of the matter the Committee may:

- dismiss the complaint;
- with the consent of the practitioner, exercise its summary conclusion powers; or
- refer the matter to the State Administrative Tribunal (**SAT**).

Sometimes, the Committee may instead ask for further enquiries be made, or defer the matter (for example, pending the outcome of litigation relating to the matter under investigation).

## Key statistics

### Number of enquiries finalised

This year 924 enquiries were received. As indicated above, the way in which they were handled this year has changed over the course of the year. This is in part due to process improvements designed to make the handling of matters more timely and to reduce delays which had occurred in the past, in part due to multiple staff handling matters.

Nearly three quarters of enquiries received are dealt with by the Dispute Resolution team and then require no further action. This may be because the enquirer has been provided with sufficient information to satisfy their queries, or they do not wish to pursue the matter any further when given an indication of the likely outcome.

Approximately 13% of enquires result in some form of conciliated outcome as described above. This year a similar percentage of matters have been escalated to being handled as a complaint. While this percentage is up on previous years, so is the number that are promptly finalised where they do not warrant disciplinary action (approximately 10%). Greater rigour has been placed around which matters are escalated to the Investigations team, again in order to promote more timely handling of matters where the investigation is generally already complete, and where double handling of a matter can be avoided. This more proportionate allocation of resources allows improvements in all complaint handling over time..

### Complainants and investigations

The LP Act provides for formal investigation powers, which all staff working on complaints have been provided with. The LCO is granted such powers under the LP Act. Escalating powers are available, but in most cases practitioners will readily cooperate with our enquiries in any event, in line with the *Legal Profession Conduct Rules 2010 (WA)* (see Rule 50), and as officers of the court.

When a matter is classified as a complaint will change with the commencement of the Uniform Law. The Uniform Law provides for complaints to contain either or both of a disciplinary matter and a consumer matter (which include costs disputes). Any complaint can be investigated under the Uniform Law.

The LP Act only recognises the equivalent of disciplinary matters, which are investigated. Any consumer or costs concerns are generally dealt with as enquiries. However under the Uniform Law it is expected that more enquiries will count as complaints, increasing the number of complaints received each year but decreasing the number of enquiries.

Changes to processes have seen some movements in numbers this year, particularly after the restructure and introduction of the case management system. Therefore comparisons between the data for this year and previous years is not direct.

However this year we have seen an increase in the number of complaint determinations overall, up from 43 two years ago, to 117 this year.

Again this reflects our focus on finalising new complaints in a more timely and proportionate way. This allows greater capacity to be dedicated to more complex matters, and entrenched older investigations which need finalisation.



## The areas of law

The areas of law attracting the most complaint investigations were family/de facto law (21.3%) followed by conveyancing and criminal law (11-12% each), and wills/powers of attorney, probate/family provisions and employment (just under 7% each).

With enquiries it was also family/de facto law that was most frequently raised (35.5%), followed by criminal law (9.4%), and with each of commercial/franchise, personal injuries, probate/family provisions and wills/powers of attorney following (5-6% each).

## The types of complaint

Many matters raise more than one issue. Many enquiries raise general communications, costs or competence issues. Costs has also been significant in complaints this year. This may reflect some of the matters discussed above in terms of changed ways of working.

## The practitioners

Principals generally account for over half of all new complaints. Non principals make up about a quarter of complaints, and barristers about 11%. Government and corporate lawyers attract minimal complaints.

## The number of practitioners investigated

Some 63 practitioners were the subject of one or more complaint investigations commenced during the year. Of this total, 2 practitioners were the subject of two complaints and 3 practitioners were the subject of three or more complaints.

In Western Australia there were 7,314 certificated or deemed certificated practitioners practising as at the end of the reporting year. This figure does not include those interstate based practitioners practising in this State who are not required to take out a practising certificate here as they hold one in their home jurisdiction.

These 63 practitioners represented around 1% of certificated or deemed certificated Western Australian practitioners, which was broadly in line with previous reporting years.

The vast majority of practitioners do not attract complaints and provide services to the public of a very high standard.

# Committee Complaints

## Overview and key statistics

Once an investigation is finalised by the investigator, a report and recommendation are generally put to the Committee for formal consideration.

The Committee may determine the matter in one of three ways:

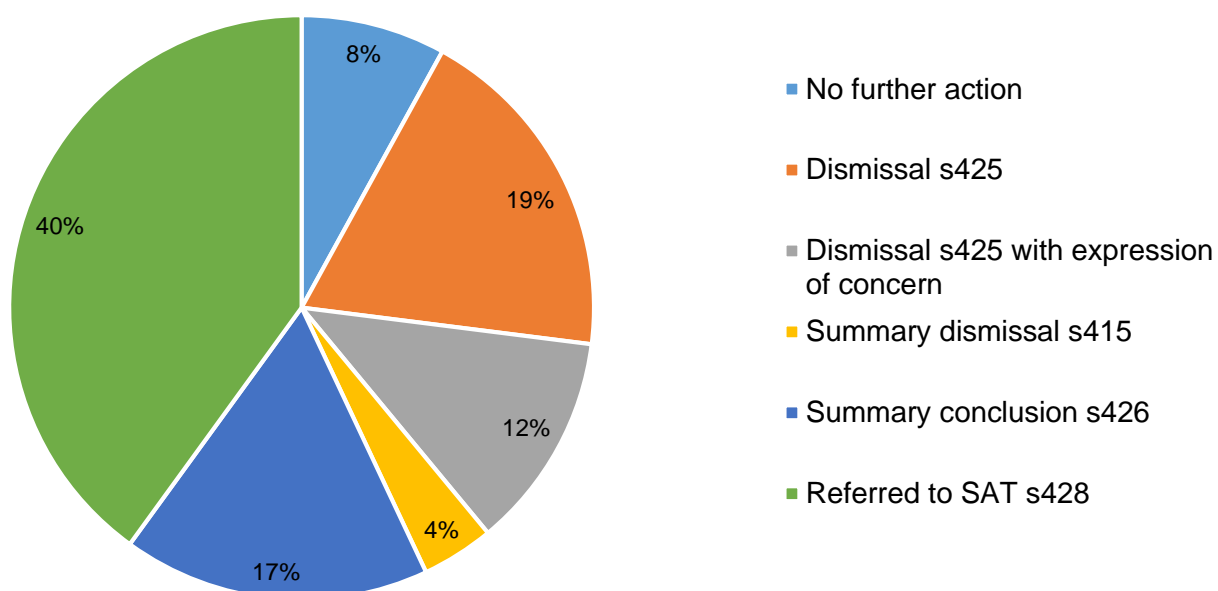
- dismiss the complaint (or take no further action if it is an own-initiative investigation);
- exercise its summary conclusion powers (with the consent of the practitioner); or
- refer the matter to the SAT.

During 2021/22 the Committee determined 52 matters. In four cases it determined to take no further action, whereas two were summarily dismissed, 10 were otherwise dismissed, six were dismissed with an expression of concern, nine were dealt with by way of summary conclusion and 21 were referred to SAT.

The LCO also exercised the delegated power of the Committee to dismiss 58 complaints, mostly summarily.

## Committee determinations

LPCC determinations 2021/22



## Determinations

Determinations made by the Committee after an investigation has taken place frequently concern matters where there are complex conduct issues, sometimes involving multiple clients of a practitioner. Careful review, consideration and analysis of extensive amounts of documentation is often required by the investigator and the Committee.

The Committee has the power to investigate further issues of its own initiative. This discretion is exercised where it is appropriate to take action, weighing up the various issues involved. These will include the evidence available suggesting that the conduct occurred, how long ago the conduct took place, the severity of the conduct, and whether there is any ongoing risk to the public.

Investigations and any subsequent prosecutions can involve the use of significant resources. Decisions are made bearing in mind the role of the Committee and Board to protect the public and act in the public interest.

Initiating an investigation where there is no complaint is considered an important part of the Committee's functions of protecting the public, which would be diminished if action could only be taken in response to a complaint that was made.

### Matters dismissed or not taken further

A complaint may be summarily dismissed without completing an investigation in certain situations. This power of summary dismissal is generally used by LCO in order to bring such complaints to a timely conclusion with a proportionate allocation of resources. Examples of where this occurs include when the complaint is misconceived or lacking in substance, where it is made outside the six year time limitation, or if the same complaint has been dealt with before.

Of those matters dismissed by the Committee, 27% resulted in an expression of concern being made to the practitioner. Such expressions of concern are generally used when the conduct is not such that it would amount to unsatisfactory professional conduct or professional misconduct, but it still warrants an observation being made by the Committee. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future. Examples of where the Committee expresses concern include where proper written costs disclosure has not been given to the client, or where the practitioner has used language that is intemperate or inappropriate:

### 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 the SAT of unsatisfactory professional conduct (but not professional misconduct) 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 can be finalised with without the need for it to be referred to the SAT. This is a more efficient, timely and proportionate way of handling matters that do not amount to professional misconduct.

A range of sanctions are available to the Committee to deal with matters by way of summary conclusion, including issuing a public reprimand (or, if there are special circumstances, a private reprimand), imposing a fine of up to \$2,500, and making a compensation order in certain circumstances.

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 eight investigations during the reporting year.

### Summary of matters determined in the exercise of Summary Conclusion powers

Grounds of unsatisfactory professional conduct	Finding
<p>The practitioner's conduct in the course of acting for his client in respect of property and parenting matters fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, by submitting a reply to a "Google review" that resulted in an improper disclosure of the client's confidential information, was contrary to the client's best interests, was discourteous, may be prejudicial to the administration of justice and has the potential to bring the profession into disrepute.</p>	<p>Public reprimand Fine \$500</p>
<p>In the course of acting for judgement creditor in applying for a Property (Seizure and Sale) Order (<b>PSSO</b>), the practitioner:</p> <p>(a) wrote to the Registrar of the Magistrates Court of Western Australia applying for a PSSO indicating that the defendant in the debt order was the registered proprietor of a property which was not the case; and</p>	<p>Public reprimand Fine \$2,500</p>

Grounds of unsatisfactory professional conduct	Finding
(b) made a statutory declaration in an application to Landgate to register the PSSO in which he declared that judgment debtor as shown in the PSSO is one and the same person as the proprietor of the saleable interest, which was not the case.	
The practitioner's conduct was in breach of the <i>Criminal Code Compilation Act 1913 (WA)</i> and Rules 6(1)(e), 6(2)(b) and 6(2)(c) of the <i>Legal Profession Conduct Rules 2010 (WA)</i> , in that during two meetings with a client he made sexual advances without the consent of the client.	Public reprimand Fine \$2,000
The practitioner in the course of representing his client at the Family Court, made assertions of criminality, including an allegation of fraud, against the other party to the proceeding, as well as members of their family, that were not reasonably supported by evidence in breach of Rule 36 of the <i>Legal Profession Conduct Rules 2010 (WA)</i> .	Public reprimand Fine \$1,000
The practitioner in the course of representing his client in District Court proceedings, failed to attend Court, failed to communicate with the parties to the proceedings and generally delayed the progress of the matter in breach of Rules 5 to 8 of the <i>Legal Profession Conduct Rules 2010 (WA)</i> .	Public reprimand Fine \$2,500
The practitioner confused the sentencing options that were available to their client. This error resulted in the practitioner's client receiving incorrect legal advice, and losing the option to seek an urgent application for a favourable order only available to this client for a limited period.	Public reprimand Fine \$2,000 Order to seek and implement advice
The practitioner in the course of representing a client on a grant of Legal Aid WA, carelessly lead evidence that likely led to a false inference being drawn by the jury, thereby misleading the jury and resulting in prejudicial evidence being introduced into the proceedings to the potential detriment to his client.	Privately reprimand
The practitioner's conduct was not in the best interests of her client, dishonest and was discourteous in the course of preparing and filing a Form 11 application in the Family Court of Western Australia.	Public reprimand Fine \$2,500

## Referrals to SAT

During the year, the Committee resolved to refer matters arising from 21 complaints or conduct investigations to the SAT, involving 18 practitioners. As at 30 June 2022, four of the matters in relation to three practitioners had been filed in SAT. As indicated, such matters often involve multiple and complex conduct issues.

The referral is by way of an application filed in the 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. Counsel will also be briefed in other matters where appropriate.



# **State Administrative Tribunal and Court Proceedings**

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During the year, there were 12 applications determined by the SAT (which included 12 individual matters).

Of the matters determined, three were determined (including sanction) as a result of consent orders, and six matters were determined after a hearing; one of which is still awaiting sanction orders.

Three applications were withdrawn by the Committee, which related to the passing of a practitioner.

At the conclusion of the reporting period there were 14 applications relating to 15 individual matters which had not been determined.

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

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

The Committee filed three applications with SAT during 2021/22, which included four individual matters.

16 matters relating to 15 practitioners were referred to the SAT during the year which have not yet been filed.

21 matters relating to 10 practitioners referred to the SAT previously have not yet been filed in the SAT. Some of these have not yet been filed for reasons relating to the personal circumstances of practitioners and public interest considerations.

## Summary of SAT matters determined

Number	Matter Identification	Summary of SAT Findings	Summary of Orders Made
1	LPCC and Chelvathurai VR 117 of 2016 orders made 21 June 2022	<i>Proceedings withdrawn</i>	
2	LPCC and Chelvathurai VR 240 of 2017 orders made 21 June 2022	<i>Proceedings withdrawn</i>	
3	LPCC and Chelvathuari VR 241 of 2017 orders made 21 June 2022	<i>Proceedings withdrawn</i>	
4	<a href="#">LPCC and Mugliston [2019] VR 165 delivered 16 August 202 (published 24 August 2021)</a> <a href="#">Settlement of proceeding delivered 28 October 2021</a>	<p>Six findings of professional misconduct in:</p> <ul style="list-style-type: none"> <li>○ providing inadequate advice in estate matters between June 2016 and August 2016;</li> <li>○ improperly seeking costs and trust monies from the client from June 2016;</li> <li>○ misleading the Committee from February 2017 in the investigation of the complaint;</li> <li>○ failing to comply with a summons from July 2018;</li> <li>○ misleading the Board from December 2017 in his submissions; and</li> <li>○ misleading the Committee from February 2017 in his submissions.</li> </ul>	<ul style="list-style-type: none"> <li>i. Referral to the Supreme Court (full bench)</li> <li>ii. Costs \$29,221</li> </ul>
5	<a href="#">LPCC and Tang [2021] WASAT 117 delivered 3 September 2021</a>	<p>Two findings of professional misconduct in:</p> <ul style="list-style-type: none"> <li>○ between February 2015 and March 2015; and</li> <li>○ misleading the Committee between November 2016 and August 2017 in the investigating of the complaint.</li> </ul> <p>where at the time of providing legal services soliciting a cash payment of \$12,500 for the benefit of a company controlled by his father and causing the payment to be received through an employee of his legal practice.</p>	<ul style="list-style-type: none"> <li>i. Referral to the full bench</li> <li>ii. Interim suspension</li> <li>iii. Costs \$11,750</li> </ul>

Number	Matter Identification	Summary of SAT Findings	Summary of Orders Made
6	<a href="#">LPCC and Dalip Singh VR91/2020 Mediated Outcome delivered 16 September 2021</a>	<p>Two findings of professional misconduct by:</p> <ul style="list-style-type: none"> <li>○ improperly disbursing trust money that was to be held in trust in December 2017; and</li> <li>○ misleading the Committee during the course of its investigation between October 2018 and October 2019.</li> </ul> <p>Two findings of unsatisfactory professional conduct by:</p> <ul style="list-style-type: none"> <li>○ providing instructions on two occasions to a real estate agent to not release keys where there was no basis to provide those instructions;</li> <li>○ failing to comply with regulations 41(5), 41(6), 42(2) and 60 of the <i>Legal Profession Regulations 2009 (WA)</i> and sections 216(3) and 292 of the LPA in November 2017 in regards trust account and invoices.</li> </ul>	<ul style="list-style-type: none"> <li>i. Three month suspension of her practising certificate</li> <li>ii. Reprimand</li> <li>iii. Costs \$3,500</li> </ul>
7		Professional Misconduct – due to a non-publication order, this matter will not be reported on in detail.	
8	<a href="#">LPCC and Lawson [2021] WASAT 152 (S) delivered 22 June 2022</a>	<p>Penalty decision following findings made on 30 November 2021 (<i>LPCC and Lawson [2021] WASAT 152</i>) that the practitioner engaged in professional misconduct in relation to 9 grounds, arising from:</p> <ul style="list-style-type: none"> <li>○ the preparation and issuing of an itemised account to the practitioner’s client for sums of ~\$27,500 (disputed fees) in circumstances where it was found that the itemised account was false in that the practitioner claimed to have done work (and a considerable amount of work) that he had not in fact done and knew he had not done;</li> <li>○ the swearing and filing of an affidavit and the filing of a bill of costs in the Supreme Court, both of which were associated with the disputed fees, and both of which were found to have been false and misleading;</li> <li>○ the sending of correspondence to the Committee and the Board which, in each case, were also associated with the disputed fees and in each case were found to have been false and misleading; and</li> </ul>	Order that the SAT make and transmit a report to the Full Bench of the Supreme Court with a recommendation that Mr Lawson’s name be removed from the local roll.

Number	Matter Identification	Summary of SAT Findings	Summary of Orders Made
		<ul style="list-style-type: none"> <li>○ false and misleading statements regarding JR, a former employee of Mr Lawson, who had done the vast majority of the work for which the practitioner falsely claimed credit and sought payment for.</li> </ul>	
9	<a href="#">LPCC and Silver [2022] WASAT 8 delivered 27 January 2022</a>	<p>One finding of professional misconduct by preparing and causing to be sent a letter that was misleading and deceptive to the opposing party.</p> <p>One finding of unsatisfactory professional conduct by commencing and maintaining an application filed in the Magistrates Court without a reasonable basis to do so.</p>	Penalty and costs are yet to be determined
10	<a href="#">LPCC and Gregory VR5/2021 Mediated Outcome delivered 10 February 2022</a>	<p>One finding of unsatisfactory professional conduct by failing to advise clients trading as a building contractor as to the likely consequences arising from the inactive cases regime of not pursuing a breach of contract claim commenced in the Magistrates Court against the owners of a property in respect to which they had undertaken works.</p>	<ul style="list-style-type: none"> <li>i. Reprimand</li> <li>ii. Fine of \$2,500</li> <li>iii. Costs of \$1,500</li> </ul>
11	<a href="#">LPCC and Metaxas [2021] WASAT 82(S) delivered 31 March 2022</a>	<p>Penalty decision following conduct finding made 14 June 2021 ([2021] WASAT 82) that in 2018 the practitioner engaged in unsatisfactory professional conduct in commencing, serving, maintaining, and prosecuting proceedings in the Supreme Court without any reasonable basis.</p>	<ul style="list-style-type: none"> <li>i. Reprimand;</li> <li>ii. Fine of \$24,000</li> <li>iii. Costs of \$13,816</li> </ul>
12	<a href="#">LPCC and Goldsmith [2022] WASAT 43 delivered 23 May 2022</a>	<p>Four findings of professional misconduct, where the practitioner:</p> <ul style="list-style-type: none"> <li>○ failed to pay any or all of counsel fees between December 2016 and August 2017 pursuant to a costs agreement;</li> <li>○ made and maintained a complaint against counsel to the West Australian Bar Association, without any reasonable basis;</li> <li>○ prepared and filed a defence in the Magistrates Court which contained untrue statements;</li> <li>○ sought to include in an offer of settlement that counsel withdraw his complaint with the Committee.</li> </ul> <p>One finding of unsatisfactory professional conduct in that the practitioner invited counsel to accept instructions in which their relationship lacked necessary mutual trust and confidence.</p>	Penalty and costs are yet to be determined.



## SAT matters not determined as at 30 June 2022

Application No.	Allegation	Status
VR159/2017 filed 18 August 2017	<p>Professional misconduct by:</p> <ul style="list-style-type: none"> <li>(a) entering a retainer agreement agreeing that the practice would be liable to pay the fees of junior counsel for the client in proceedings even if the practice did not receive funds from the client to pay those fees, where at all material times neither the practice or the practitioner personally had the capacity to pay if the client did not make payment of those fees to the practice, and where the practice failed to pay five invoices issued by the junior counsel and in preference paid invoices issued by the practice, thereby breaching the retainer and rule 26 <i>Legal Profession Conduct Rules 2010</i>;</li> <li>(b) (Amended Ground 22/02/2019) sending an email to junior counsel in which he knowingly made a false and/or misleading representation;</li> <li>(c) knowingly making false and/or misleading representations to the Legal Practice Board at a meeting that the practice could meet its current debts and was solvent and failing to inform the Board the practice had significant outstanding debts which the practice did not have the means to pay, and knowingly misrepresenting to the Board that a new incorporated legal practice (new ILP) was not taking over the existing practice, when the true position was that it was;</li> <li>(d) attempting to avoid the liabilities of the practice, including the obligations to pay junior counsel's fees pursuant to the Retainer and Rule 26 of the Conduct Rules by deriving a new ILP from the existing practice;</li> <li>(e) without reasonable excuse, failing over a 12 month period (September 2015 to September 2016) and then after 28 September 2018 (and continuing) during a conduct investigation pursuant to section 421 of the LPA to respond to correspondence from the Committee in breach of Rule 50(3) Conduct Rules and to a summons issued pursuant to section 520(1) of the LPA in contravention of sections 520(5) and 532(5) of the LPA.</li> </ul>	<p>Orders 21 June 2022</p> <p>Matter to be listed for final hearing between October 2022 and 30 June 2023</p>
VR 52/2019 filed 15 April 2019	<p>Professional misconduct by</p> <ul style="list-style-type: none"> <li>(a) by attempting to further the matter of his client, namely to procure a transfer of a Property into the client's name as the sole registered proprietor, by unfair and/or dishonest means where the practitioner knew that the client held the Property in whole or in part, on trust with Ms A for the benefit of the client's adult children, and at a time when the practitioner did not act for the Children he: <ul style="list-style-type: none"> <li>i. wrote to Ms A with a partially-completed transfer of land form in respect of the Property in which the 'consideration' and 'transferee' panels were both left blank and demanded, alternatively requested, that Ms A execute the partially-completed transfer form to transfer the Property to an unspecified person or persons for an unspecified consideration; and</li> </ul> </li> </ul>	<p>Orders 16 June 2022</p> <p>Directions hearing listed for 23 August 2022</p>

	<ul style="list-style-type: none"> <li>ii. wrote to Ms A’s solicitors and demanded, alternatively requested, that Ms A execute the transfer form which sought to transfer the Property to his client, and</li> <li>iii. the practitioner made intentionally false statements to Ms A and Ms A’s solicitors, as well as intentionally failed to disclose various matters, and attempted to improperly intimidate Ms A to sign the transfer form;</li> </ul> <p>(b) making false and/or misleading statements to Ms A’s solicitors by letter;</p> <p>(c) acting for both the client and each of the Children in circumstances in which their interests were adverse and the practitioner knew, or was recklessly indifferent or grossly careless as to whether, there was a conflict or potential conflict of the practitioner’s duties to act in the best interests of each of the client and the Children, individually and/or collectively as beneficiaries, and the practitioner failed to protect and preserve the interests of the Children unaffected by the interests of the client;</p> <p>(d) procuring and/or preparing or assisting with the preparation of, 2016 statutory declarations which contained false and/or misleading statements, where the practitioner knew, or was recklessly indifferent as to whether, the 2016 statutory declarations contained false and/or misleading statements; and knowingly or recklessly misleading or attempting to mislead both the nominated investigator appointed by the LPCC and the Committee by causing to be provided to the Investigator and the Committee the 2016 statutory declarations;</p> <p>(e) knowingly or recklessly making a 2018 statutory declaration which contained false and/or misleading statements; and misleading, or attempting to mislead, the Committee by causing the 2018 Statutory Declaration made by him to be provided to the Committee which he knew, or was recklessly indifferent to whether it contained false and/or misleading statements and as to whether the Committee would be misled.</p>	
VR 90/2019	By orders made on 23 September 2019, the disciplinary proceedings were withdrawn. On 19 September 2019 an application for costs was filed by the practitioner.	Orders 20 July 2020 Decision is reserved
VR 133/2019 filed 10 September 2019	Professional misconduct by: <ul style="list-style-type: none"> <li>(a) causing to be commenced and maintained and/or commencing and maintaining legal proceedings against her former husband, in circumstances where the applications: <ul style="list-style-type: none"> <li>i. had no, or no proper, basis;</li> <li>ii. were an abuse of process;</li> <li>iii. were conducted in a manner which was oppressive to the husband;</li> <li>iv. had the potential to diminish public confidence in the administration of justice; and/or</li> <li>v. had the potential to bring the profession into disrepute;</li> </ul> </li> <li>(b) in the course of acting in proceedings commenced by the practitioner on 25 March 2013 against the husband in the Family Court of Australia (Family Court) to reinstate an appeal against orders made by the Federal Magistrates Court on 30 October 2012 (FC Appeal), in that she:</li> </ul>	Orders 13 May 2022 Decision is reserved

- i. at a hearing on 8 May 2013, made oral submissions in support of an oral application to restrain the husband's counsel from acting for the husband in the FC Appeal, without any, or any proper, basis;
  - ii. at a hearing at which she attended by way of telephone on 28 June 2013, deliberately severed the telephone connection with the Family Court before the hearing was concluded;
  - iii. prepared, filed and maintained an application dated 5 July 2013 seeking orders that the presiding judge be disqualified from hearing the FC Appeal on the grounds of alleged bias (presiding judge; disqualification application) and that the husband's solicitor and counsel be restrained from acting for the husband in the FC Appeal on the grounds of an alleged conflict of interest, which had no, or no proper, basis;
  - iv. at a hearing on 31 July 2013 did not accurately read to the Family Court from the transcripts of previous hearings, which the practitioner knew had the potential to mislead the Family Court and the practitioner intended the Family Court to be misled, alternatively was recklessly indifferent as to whether the conduct had the potential to mislead the Family Court and as to whether the Family Court would be misled; made comments that were discourteous, intemperate and/or scandalous, made without any, or any reasonable, basis, and had the potential to diminish public confidence in the administration of justice and/or to bring the profession into disrepute;
  - v. prepared, filed and maintained an appeal against the presiding judge's decision on 31 July 2013 to dismiss the disqualification application, which appeal had no, or no proper, basis and in which the practitioner made discourteous, intemperate and/or scandalous comments in written and oral submissions;
  - vi. on 28 August 2013 prepared and sent two emails to a Registrar of the Family Court which contained comments that were discourteous, intemperate and/or scandalous, made without any, or any reasonable, basis, and had the potential to diminish public confidence in the administration of justice and/or had the potential to bring the profession into disrepute;
  - vii. at a hearing on 12 February 2015, made oral submissions which were inconsistent with her oral submissions at the hearing on 8 May 2013; discourteous, intemperate and/or scandalous, made without any, or any reasonable basis, and which had the potential to bring the profession into disrepute; and
  - viii. at a hearing on 27 March 2015, made discourteous, intemperate and/or scandalous comments and, where she attended by way of telephone, deliberately severed the telephone connection with the Family Court before the hearing was concluded;
- (c) preparing, swearing, filing, and failing to correct an affidavit sworn by her in circumstances where the practitioner knew that the affidavit was false and/or misleading in a material respect and intended the Court to rely on it and to be misled; alternatively, the practitioner was recklessly indifferent as to

	whether the affidavit was false and/or misleading in a material respect and as to whether the Court would be misled by it.	
VR 60/2020 filed 30 June 2020	<p>Professional misconduct:</p> <p>(a) in respect to the Firm acting in relation to a deceased's will and Estate by failing to:</p> <ul style="list-style-type: none"> <li>i. ensure that a legal practitioner employed by the Firm as a restricted practitioner under his supervision was supervised adequately, or at all, in respect to the taking of instructions for the will and after the death of the deceased, failing to provide any or any adequate legal advice to the Estate in relation to the proper process for applications for letters of administration under the <i>Administration Act 1903 (WA)</i>, and preparing and causing to be filed applications in the Probate Registry which failed to comply with the requirements of both the Administration Act and the <i>Non-Contentious Probate Rules 1967 (NCPR)</i> and which was refused by order of the Probate Registry and dismissed and/or required a supplementary affidavit and revised statement of assets and liabilities to be filed, and where the practitioner failed to have in place a competent standard practice at the Firm when taking instructions for wills to make enquiries as to the existence of any previous wills; and/or</li> <li>ii. take any, or any adequate, steps to implement and/or maintain appropriate management systems to ensure the provision of legal services by the Firm was in accordance with the professional obligations of Australian legal practitioners.</li> </ul> <p>(b) by preparing and sending a letter dated 19 February 2018 to the administrator of the Estate which letter made misleading and/or deceptive representations as to the Firm's delays in obtaining letters of administration and the practitioner well knew the representations were misleading and/or deceptive and/or had the potential to mislead and/or deceive the Administrator as to the true reasons for delay and the practitioner intended that the Administrator rely on the representations and be misled and/or deceived as to the reasons for delay; alternatively, the practitioner acted with reckless disregard or indifference as to whether or not the representations were misleading and/or deceptive and/or had the potential to mislead and/or deceive the Administrator as to the reasons for the delay and as to whether the Administrator would rely on and be misled and/or deceived by the Representations as to the reasons for delay.</p> <p>(c) in that by his correspondence to the Committee dated 17 February 2018 and 1 July 2018 the practitioner was not open and candid in his dealings with the Committee and failed to provide a full and accurate account of his conduct in relation to matters covered by requests by the Committee to provide comments or information in relation to the practitioner's conduct or professional behaviour contrary to rule 50 of the <i>Legal Profession Conduct Rules 2010</i> in that the practitioner made false and/or misleading statements to the Committee and well knew the statements were false and/or misleading and/or that they had the potential to mislead the Committee and the practitioner intended the Committee to rely on the Statements and be misled; alternatively, the practitioner acted with reckless disregard or indifference, further alternatively,</p>	<p>Orders 15 June 2022</p> <p>Directions hearing listed for 19 July 2022</p>

was grossly careless, as to whether or not the statements were false and/or misleading and/or had the potential to mislead the Committee and as to whether the Committee would rely on and be misled by the statements.

- (d) in that having been engaged by A, alternatively, A and B, with respect to the distribution of the matrimonial assets of A and B following their separation and impending divorce after 30 years of marriage, the practitioner advised the parties that their agreed distribution of the matrimonial assets was not just and equitable and would not be approved by the Family Court of Western Australia and:
- i. prepared, caused to be executed by A and B (parties) and filed in the Family Court a Form 11 Application for Consent Orders (Application) and Minute of Consent Orders (Minute) dated 8 August 2016, which relevantly included false and/or misleading terms as to the distribution of B's interest in his superannuation plan (superannuation split), as the practitioner well knew, and which terms were included by the practitioner with the intention that the Family Court rely on its terms and thereby be misled that the distribution of the matrimonial assets between the parties was just and equitable and make orders in terms of the Minute under section 79 FLA, when in fact the parties did not intend to enforce the terms of the superannuation split;
  - ii. further or alternatively, failed to advise A adequately, or at all, as to her rights under the FLA to a fairer division of the matrimonial assets and/or to seek independent legal advice in this respect;
  - iii. further or alternatively, in his letters to:
    - A. the Family Court dated 8 August 2016 (8 August FC letter), 24 August 2016 (24 August FC letter) and 9 September 2016;
    - B. the Fund Administrator (Trustee) dated 24 August 2016; and/or
    - C. the solicitors for the Trustee dated 9 September 2016,the practitioner represented to the Family Court, the Trustee and/or the solicitors for the Trustee respectively that the parties intended to enforce the superannuation split in the distribution of the matrimonial assets (enforcement representations) in circumstances where the enforcement representations were false and/or misleading as the parties did not intend to enforce the superannuation split, which the practitioner well knew (given his intention in (a)(i) above) and he intended the Family Court, the Trustee and/or the solicitors for the Trustee to rely on the enforcement representations and be misled as the parties' intentions in respect to the enforcement of the superannuation split.
- (e) preparing and causing to be sent the 8 August FC letter in which the practitioner made the misleading and/or deceptive representation to the Family Court that his role was limited to only assisting the parties to file the Application and the Minute, in circumstances where in fact he well knew he had devised and the terms of the Application and the Minute to ensure that the Family Court was misled and/or deceived by the



	<p>enforcement representations, and not simply assisted the parties to file them, and intended that the Family Court rely on the assistance representation and be misled as the true nature and extent of his involvement in devising the terms of the Application and the Minute;</p> <p>(f) by preparing and causing to be sent the 24 August FC letter in which he made a false and/or misleading representation to the Family Court that the Trustee had previously been asked by the practitioner to approve the terms of the Application and the Minute but had not provided a reply to the practitioner and the practitioner had sent a follow up letter (Trustee representation), where the practitioner well knew he had not previously asked the Trustee to approve the terms of the Application and the Minute and wrote to the Trustee for the first time in this respect by letter dated 24 August 2016, which was posted 25 August 2016; and intended the Family Court to rely on and be misled by the Trustee representation; alternatively, the practitioner was recklessly indifferent as to whether the Trustee representation was false and/or misleading and as to whether the Family Court would be misled.</p> <p>(g) in that he provided legal services to the parties A and B with respect to the same matter, namely approval by the Family Court of the Application and the Minute in the terms required under section 79 FLA, in circumstances in which the interests of the parties were adverse and the practitioner had advised the parties that the agreed distribution of the matrimonial assets was not just and equitable to A, such that there was a conflict or potential conflict between the duties of the practitioner to act in the best interests of each of the parties as to their rights and entitlements under the FLA and he was in breach of rules 7(d) and 14(2) of the <i>Legal Profession Conduct Rules 2010</i>.</p> <p>(h) in that he, without reasonable excuse:</p> <ol style="list-style-type: none"> <li>i. failed to respond to letters sent to him by the Committee on 9 July 2019, 23 August 2019 and 5 November 2019 requesting submissions and responses, including as to his failure to respond, in breach of rule 50(3) of the Conduct Rules and/or section 531(2) LPA;</li> <li>ii. failed to comply with a summons issued to the practitioner by the Committee pursuant to: <ol style="list-style-type: none"> <li>A. sections 520(1)(a) and (d) LPA dated 9 July 2019 to produce documents; and</li> <li>B. sections 520(1)(a), (c) and (d) and 520(3) of the LPA dated 5 November 2019 to produce a document and provide written information verified by statutory declaration,</li> </ol> </li> </ol> <p>in breach of sections 520(5) and 532(3) LPA.</p>	
<p>VR 95/2020 filed 30 November 2020</p>	<p>Professional misconduct, in acting for a 74 year old terminally ill patient for whom, following a meeting between them the practitioner had prepared two alternative wills, one a simple will and the other a complex testamentary instrument which created a discretionary trust the purpose of which was to potentially avoid one of the beneficiaries, his daughter who was then an undischarged bankrupt, from being subject to a claim by the Official Trustee in Bankruptcy by:</p>	<p>Orders 28 June 2022 Directions hearing listed for 26 July 2022</p>

- a) acting on the instructions of the daughter who conveyed to the practitioner the client's purported instructions:
- i. that of the two alternative wills, the client wished to execute the will incorporating a testamentary trust; and
  - ii. authorising the practitioner's attendance on the client at the hospital for the purposes of assessing his testamentary capacity and to take his instructions for and witness him executing the testamentary trust will,
- and on 11 October 2016 and on the basis of the purported instructions, attending on the client at the hospital, who was then in the final (palliative) stage of his illness, for the purposes of assessing his testamentary capacity, taking his instructions for and arranging for him to execute the testamentary trust will, with:
- 1.1. reckless disregard as to whether he had the capacity to provide instructions and/or as to whether the purported instructions were, in fact his instructions and/or as to whether the purported instructions were provided independently and free from the influence of the daughter;
  - 1.2. further or alternatively, was grossly negligent in that both prior to attending and while attending at the hospital the practitioner failed to take any, or any adequate, steps, to discuss the purported instructions directly with the client, to satisfy herself that the client had the capacity to provide instructions and/or that the purported instructions were, in fact his instructions and/or that they were provided independently and free from the influence of the daughter,
- in circumstances where the practitioner knew, or ought to have known, that there was real doubt as to whether the client had the capacity to provide instructions.
2. On 11 October 2016 and in circumstances where the practitioner had prepared a letter to the client dated 7 October 2016 enclosing the alternative wills in which she advised that one of the witnesses to the execution of his new will should be a medical practitioner, and where the practitioner was aware prior to her attending at the hospital that the client was having difficulty in having a new will witnessed by a medical practitioner, the practitioner attended at the hospital and prior to purporting to take instructions for and causing to be executed before her the testamentary trust will, failed to:
    - 2.1. accept the opinion of the treating resident medical officer at the hospital with care of the client, which was to the effect that the client did not have the capacity to provide proper instructions, and thereafter decline to take the instructions for a new will;
    - 2.2. further or alternatively, make enquiries of either of the client's treating oncologist or his palliative care specialist as to whether, having regard to his illness, his physical and mental state and the treatment he was receiving, including the medication he was taking, he could provide proper or adequate, instructions;
    - 2.3. further or alternatively, obtain a formal medical assessment of the client by a medical specialist experienced in assessing testamentary capacity;

	<p>2.4. further or alternatively, arrange for one of the client's treating medical practitioners or an appropriate medical specialist to witness him signing the new will, contrary to her advice in her letter,</p> <p>in circumstances where the practitioner knew, or ought to have known, that there was a real doubt as to whether the client had the capacity to provide instructions for, and to make, a new will, and instead relied on her own assessment of his testamentary capacity.</p> <p>3. On 11 October 2016 and while attending on the client at his bed in the hospital between 5.00pm and 5.20pm, purporting to take instructions from him for, and causing to be executed before her, the testamentary trust will with reckless disregard or indifference as to whether he:</p> <p>3.1. had the capacity to provide any, or any proper or adequate, instructions to make a will;</p> <p>3.2. was able to provide proper instructions to the practitioner about:</p> <p>3.2.1. which of the alternative wills he wished to execute;</p> <p>3.2.2. a complex will incorporating a discretionary testamentary trust; and</p> <p>3.3. had understood and approved the contents, in circumstances where the practitioner knew, or ought to have known, that there was real doubt as to whether the client had the capacity to provide instructions for, and to make, a new will.</p>	
<p>VR 46/2021 filed 16 June 2021</p>	<p>Professional misconduct:</p> <p>a) causing his firm to purport to act as the solicitor of record for a defendant to Supreme Court proceedings when the firm was not authorised and had no instructions to do so;</p> <p>b) purporting to act as solicitor and counsel for the defendant when he was not authorised and had no instructions to do so;</p> <p>c) sending an email to another practitioner in circumstances where:</p> <p>i. the practitioner knew that the email contained statements that were misleading;</p> <p>ii. the practitioner intended the other practitioner to be misled by those statements;</p> <p>iii. alternatively, the practitioner was recklessly indifferent as to whether the statements were misleading and as to whether the other practitioner would be misled by those statements.</p> <p>d) preparing and sending a letter to the Associate to Justice Archer of the Supreme Court in circumstances where:</p> <p>i. the practitioner knew that the letter contained statements that were misleading;</p> <p>ii. the practitioner intended the Court to be misled by those statements;</p> <p>iii. alternatively, the practitioner was recklessly indifferent as to whether the statements were misleading and as to whether the Court would be misled by those statements.</p> <p>e) by swearing an affidavit and causing it to be filed in the Supreme Court in circumstances where:</p>	<p>Orders 27 May 2022 Directions hearing listed for 19 July 2022</p>

	<ul style="list-style-type: none"> <li>i. the practitioner knew that the affidavit contained statements that were misleading;</li> <li>ii. the practitioner intended the Court to be misled by those statements;</li> <li>iii. alternatively, the practitioner was recklessly indifferent as to whether the statements were whether the Court would be misled by those statements.</li> </ul> <p>f) preparing and sending a letter to another practitioner in circumstances where:</p> <ul style="list-style-type: none"> <li>i. the practitioner knew that the letter contained statements that were misleading;</li> <li>ii. the practitioner intended the other practitioner to be misled by those statements;</li> <li>iii. alternatively, the practitioner was recklessly indifferent as to whether those statements were misleading and as to whether the other practitioner would be misled by those statements.</li> </ul> <p>g) by swearing an affidavit and causing it to be filed in the Supreme Court in circumstances where:</p> <ul style="list-style-type: none"> <li>i. the practitioner knew the affidavit contained statements that were misleading;</li> <li>ii. the practitioner intended the Court to rely on those statements;</li> <li>iii. alternatively, the practitioner was recklessly indifferent as to whether the statements were misleading and as to whether the Court would be misled by those statements.</li> </ul>	
<p>VR 47/2021 filed 23 June 2021</p>	<p>Professional misconduct in the course of acting for a client concerning a dispute in the Mandurah Magistrates Court relating to the client's purchase of a second-hand motor vehicle from a dealer, in that the practitioner received from, or on behalf of, the client:</p> <ul style="list-style-type: none"> <li>(a) a sum of \$500 in cash in advance of and for specific work to be carried out; and</li> <li>(b) a sum of \$880 by electronic funds transfer in advance of and for specific work to be carried out,</li> </ul> <p>by the practitioner for the client being trust money within the meaning of section 205(1) of the LPA, in circumstances where the practitioner did not maintain a general trust account in this jurisdiction, in contravention of section 214(1) of the LPA.</p> <p>Professional misconduct, between about 19 October 2015 and 5 July 2017, by:</p> <ul style="list-style-type: none"> <li>1. failing to provide adequate written costs disclose to the client before, or as soon as was reasonably practicable after, he was retained;</li> <li>2. failing to adequately and competently plead the cause or causes of action, in a statement of minor case claim, which the practitioner was retained to review, advise on, and was involved in preparing, which was subsequently filed by the client;</li> <li>3. giving incompetent advice to the client as to the causes of action arising, and the remedies available;</li> <li>4. failing to adequately and competently plead the cause or causes of action in a statement of general procedure claim prepared by the practitioner and subsequently filed;</li> </ul>	<p>Orders 3 May 2022 Mediation listed for 11 August 2022</p>

	<ol style="list-style-type: none"> <li>5. failing to competently and/or diligently progress the action by: <ol style="list-style-type: none"> <li>5.1. failing to file and serve a statement of general procedure claim in accordance with the rules of the Magistrates Court and in compliance with an order of the Mandurah Magistrates Court of 3 February 2016; and</li> <li>5.2. failing to progress the action to the next procedural step under the rules of the Magistrates Court after pleadings were filed and served and, consequently, causing the action to be taken to be inactive by operation of the rules of the Magistrates Court and causing it to be liable to be placed on the inactive cases list;</li> </ol> </li> <li>6. failing to advise the client as to: <ol style="list-style-type: none"> <li>6.1. the fact that, because no step had been taken for 12 months, on 23 May 2017, the action was taken to be inactive;</li> <li>6.2. the urgency in filing a request for a pre-trial conference, in circumstances where: <ol style="list-style-type: none"> <li>a. on 31 May 2017, the practitioner directed the client to file a request for a pre-trial conference and pay the associated fee; and</li> <li>b. at that time, the practitioner knew, or should have known, that because the action was taken to be inactive it was liable to be placed on the inactive cases list at any time; and</li> </ol> </li> <li>6.3. the specific consequences for the client of a notice issued by the Court on 6 June 2017 notifying the parties that the action was placed on the inactive cases list;</li> </ol> </li> <li>7. failing to make any inquiry of the Court concerning the issuing of a notice that the action had been placed on the inactive cases list and a subsequent notice that a pre-trial conference had been listed in, in circumstances where those two notices were inconsistent;</li> <li>8. rendering an invoice to the client on 13 March 2016 for legal costs including the sum of \$880 (inclusive of GST) for the preparation of a statement of general procedure claim which was excessive, in that it was not the fair and reasonable value of the legal services provided by the practitioner in the preparation of that document;</li> <li>9. rendering invoices to, and accepted payments from, the client for legal costs totalling between \$2,970 and \$5,630 (inclusive of GST) for work carried out by the practitioner, which was excessive, in that it was not the fair and reasonable value of the legal services provided by the practitioner; and/or</li> <li>10. terminating his retainer without proper cause and without giving reasonable notice of his intention to terminate the retainer.</li> </ol>	
VR 48 of 2021 filed 29 June 2021	Professional misconduct by, <ol style="list-style-type: none"> <li>a) on 21 April 2013, preparing and sending emails to the beneficiaries of certain trusts in which he: <ol style="list-style-type: none"> <li>i. asserted, directly or indirectly, that the practitioner's sister had or may have committed a criminal offence by</li> </ol> </li> </ol>	Orders 27 June 2022 Directions hearing listed for 26 July 2022



breaching the 'whistleblower' provisions of the *Corporations Act 2001 (Cth)*, and

- ii. implied that he would report her to the Australian Federal Police for the asserted breach, when:
  - (A) the practitioner knew there was no reasonable basis to make the assertion, alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless as to whether there was a reasonable basis to make the assertion; and
  - (B) the 21 April 2013 emails were threatening, intimidating and/or discourteous in their tone and content, and
  - (C) the 21 April 2013 emails were intended to deter the sister from seeking legal advice and/or taking legal action in relation to a matter in which the practitioner had a personal interest.
- b) by, on 24 June 2013, in the course of correspondence in relation to the trusts, by preparing and sending an email to the beneficiaries in which the practitioner stated he had "*completed the Attestation of Witness details on the Deeds [of Variation]*" in respect of the signature of his mother on certain Deeds of Variation of Trust when he had not witnessed his mother's signature on the Deeds and had not completed the attestation of witness details, in circumstances where the practitioner:
  - (i) knew statement was false and/or misleading, alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless as to whether or not the statement was false and/or misleading; and
  - (ii) intended the statement to deter the mother and/or sister from taking legal action in relation to a matter in which the practitioner had a personal interest.
- c) on 6 November 2015, stating in evidence on oath in the Supreme Court that he had completed the attestation of witness details in respect to the mother's signature on one of the four Deeds of Variation when in fact the practitioner had not completed the attestation of witness details on any of the four Deeds of Variation, in circumstances where the practitioner:
  - i. knew this statement was false and/or misleading and intended the Supreme Court rely on it and be misled;
  - ii. alternatively, made this statement with reckless disregard or indifference as to whether or not it was false and/or misleading, and/or had the potential to mislead the Supreme Court;
  - iii. further and alternatively, was grossly careless as to whether or not this statement was false and/or misleading, and/or had the potential to mislead the Supreme Court
- d) on 11 February 2017, in the course of correspondence in relation to the trusts, by preparing and sending an email to the Court-appointed trustee of the trusts, in which the practitioner stated that the sister had given character evidence in defence of a friend of hers who had been charged with child molestation, when there was no reasonable basis to make that statement, and:
  - (i) the practitioner knew there was no reasonable basis to make the this statement;

	<ul style="list-style-type: none"> <li>(ii) alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless, as to whether there was a reasonable basis to make this statement;</li> <li>(iii) this statement was insulting and/or discourteous in its tone and content; and</li> <li>(iv) by making this statement without copying it to the mother and sister, the practitioner intended to influence the trustee in his dealings with the trust property in a way that benefitted him, without giving the mother and sister an opportunity to respond to it, in circumstances where there were ongoing disputes about the trust property</li> </ul> <p>e) on 7 July 2018, in the course of correspondence in relation to the trusts, by preparing and sending an email to the trustee and to the beneficiaries and their legal representatives, in which the practitioner implied that the trustee had engaged in 'gaslighting', a form of psychological manipulation, when:</p> <ul style="list-style-type: none"> <li>(i) the practitioner knew there was no reasonable basis to make this statement;</li> <li>(ii) alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless as to whether there were reasonable grounds to make this statement; and</li> <li>(iii) the email of 7 July 2018 was insulting and/or discourteous in its tone and content.</li> </ul>	
<p>VR 49/ 2021 filed 30 June 2021</p>	<p>Professional misconduct, while acting for the executors/trustees of Estate A (of which the practitioner was one of the three) from about March 2013, while acting for the executors/trustees of Estate B (of which the practitioner was not one) from about July 2014, and after he ceased acting regarding both estates in about March 2018, in that:</p> <ol style="list-style-type: none"> <li>1. he failed to progress and finalise the administration of Estate A in a timely, competent and diligent manner in that he failed to: <ol style="list-style-type: none"> <li>1.1 obtain the written authority of his co-executors/trustees or confirm in writing oral instructions provided to him by them prior to making payments and/or distributions in respect of monies held in trust;</li> <li>1.1 effect in a timely manner the transmission of the remaining shares held;</li> <li>1.2 give such directions to the companies which issued these shares and/or the relevant share registries as and when necessary to ensure the receipt of dividends and other income;</li> <li>1.3 respond to requests for information by the accountants preparing the tax returns in a timely manner to facilitate the lodgement of each of the tax returns by the dates on which they were due;</li> </ol> </li> <li>2. in the absence of a binding written notice: <ol style="list-style-type: none"> <li>2.1 making interim distributions to only one of the residuary beneficiaries, before the estate was fully administered;</li> <li>2.2 alternatively, failing to ensure, prior to doing so, that there would be sufficient monies to distribute other entitlements if necessary;</li> </ol> </li> </ol>	<p>Orders 13 April 2022</p> <p>Matter is referred to a panel for consideration of proposed minute of consent orders filed.</p>

3. he failed to progress and finalise the administration of Estate B in a timely, competent and diligent manner in that he failed to:
  - 3.1 effect in a timely manner the transfer of shares held in trust established by the will;
  - 3.2 give such directions to the companies which issued Frederick's shares and/or relevant share registries as and when necessary to ensure that the trust received dividends and other income;
  - 3.3 distribute the income received by the in accordance with the terms of will in a timely manner;
  - 3.4 respond to requests for information by the accountants preparing the tax returns in a timely manner to facilitate the lodgement of each of the tax returns by the dates on which they were due;
  - 3.5 failed to open a trust account to receive trust monies in a timely manner and instead, causing the transfer of those monies into another account;
4. he failed to respond to correspondence and requests for information or reports about the estates in a timely manner, breached his duties under rules 6(1)(b), 8 and 10(2) of the *Legal Profession Conduct Rules 2010 (WA)*, in that he failed to respond to and keep informed:
  - 4.1 from about March 2015, beneficiaries of the trust;
  - 4.2 from about October 2015 until December 2016, a client and executor/trustee of the estates;
  - 4.3 from August 2017, a firm acting for the executors/trustees of an estate, a residuary beneficiary of Estate A and a beneficiary of a trust; and
  - 4.4 from March 2018, the same firm acting for a co-executor/trustee of the estates;
5. from about March 2018 to 19 September 2018, failing to respond within a reasonable time to the instructions and/or requests by a co-executor/trustee of Estate A;
6. from March 2018, following termination of the practitioner's retainer, failing to act upon proper and competent, in a timely, competent and diligent manner in respect to client documents and the transfer of trust monies, in that he failed to.
  - 6.1 provide client documents to the Committee within a reasonable time;
  - 6.2 transfer within a reasonable time the monies held in trust, where the practitioner had been instructed to do so.

Unsatisfactory professional conduct, from about March 2013, in the course of acting for the executors/trustees of Estate A, by failing to provide proper written costs disclosure to the co-executors/trustees, in breach of sections 260 and 262 of the LPA.

Unsatisfactory professional conduct, from about 28 July 2014, in the course of acting for the executors/trustees of Estate B, by failing to provide proper written costs disclosure to the co-executors/trustees, in breach of sections 260 and 262 of the LPA.

Unsatisfactory professional conduct, by withdrawing trust monies for the payment of the practitioner's tax invoices, in circumstances where there was no direction pursuant to section 216(1) of the LPA to do so, prior to either:

	<p>(a) obtaining instructions from the clients to authorise the withdrawal (regulation 65(3)(a)(ii) of the <i>Legal Profession Regulations 2009</i> (WA)), and before effecting the withdrawal, sending a request for payment, referring to the proposed withdrawal (regulation 65(3)(b)(i) of the LP Regulations), or, alternatively, a written notice of withdrawal (65(3)(b)(ii) of the LP Regulations); or,</p> <p>(b) allowing 7 days for the clients to object to the withdrawal of the money after giving the Clients the Tax Invoices (regulation 65(4) of the LP Regulations).</p> <p>Unsatisfactory professional conduct, after the termination of certain retainers, by failing to carry out instructions in respect of the matters on which the practitioner and/or the firm had been retained by the clients in a timely, competent and diligent manner, in that he failed to:</p> <ol style="list-style-type: none"> <li>1. respond in a timely manner to a request for information about matters on which the firm had been instructed by the clients;</li> <li>2. provide within a reasonable time a list of any current and closed matters on which the practitioner had acted for the clients;</li> <li>3. make available for collection within a reasonable time or at all the client documents relating to any closed matters on which the practitioner acted for the clients, alternatively notify that the client documents were available for collection;</li> <li>4. respond to related correspondence of 22 January 2018, 29 March 2018 and 13 June 2018 at all.</li> </ol>	
<p>VR 50/2021 filed 30 June 2021</p>	<p>Professional misconduct by,</p> <p>a) between about June 2014 and November 2014, in acting for clients in regard to the alteration of property interests in a property owned by the clients, and in regard to the purchase of another property, by:</p> <ol style="list-style-type: none"> <li>(i) failing to provide proper written costs disclosure to the clients;</li> <li>(ii) in the circumstances of (i) above, charging fees to the clients in excess of the fees estimated by him;</li> <li>(iii) failing to maintain accurate and complete records of all transactions relating to the property settlements;</li> <li>(iv) failing to account properly or at all, in respect of all the transactions in the settlements, including not producing receipts or vouchers for disbursements that the practitioner charged to the clients and which the practitioner claimed to have incurred while completing the settlements;</li> <li>(v) knowingly, or with reckless disregard or indifference, charging the clients amounts that the practitioner claimed to have incurred as disbursements while completing the settlements, but which had not been incurred; and/or</li> <li>(vi) failing to account for and/or to deliver up to the clients trust monies received from the clients in relation to the settlements including by: <ol style="list-style-type: none"> <li>(A) retaining, without reasonable cause, the sum of \$1,000 more than the amount charged by the Office of State Revenue as transfer duty assessed on a purchase;</li> </ol> </li> </ol>	<p>Orders 9 March 2022 Directions hearing listed for 19 July 2022</p>

(B) retaining, without reasonable cause, various amounts claimed as costs and disbursements but which could not or should not have been claimed; and

(C) knowingly, or with reckless disregard or indifference, causing or permitting

1. the \$1000 sum to be transferred from the practitioner's trust account and retained to his personal bank account; and

2. the various amounts claimed as costs and disbursements, to be paid into the practitioner's general account,

when each of those amounts should have been delivered to the clients immediately after the completion of the settlements in breach of sections 215 and 224 of the LPA.

b) between October 2014 and November 2014, in the course of responding to the clients' queries about the disbursements of funds at the settlements, by:

i. causing to be prepared and sent, an email to the client dated 12 November 2014 which contained statements and/or representations which were false and/or misleading and/or had the potential to mislead and where the practitioner knew the statements and/or representations were false and/or misleading and/or had the potential to mislead and intended that the client be misled; and

ii. failing to send to the clients a comprehensive explanation of all funds disbursed together with the vouchers and documentation that evidenced the amounts so disbursed in relation to each of the settlements.

c) not being open and candid in his dealings with, and failed to provide a full and accurate account of his conduct to the Board and the Committee, by:

i. between about October 2014 and November 2014, and in the course of corresponding with the Board in purported compliance with the practitioner's obligation under section 227 of the LPA to notify the Board of the trust money discrepancy and the failure to deliver trust money, preparing and sending a letter to the Board dated 17 November 2014 in respect of the circumstances surrounding a transfer of the sum in which the practitioner:

(A) made statements and/or representations which were false and/or misleading and/or had the potential to mislead; and

(B) did not give a candid explanation nor provide a full and accurate account to the Board as to the circumstances of the trust money discrepancy and the failure to deliver trust money,

and the practitioner knew that the statements and/or representations in the 17 November letter were false and/or misleading and/or had the potential to mislead and did not give a candid explanation nor provide a full and accurate account of the irregularity purported to be reported to the Board, and intended that the Board rely upon and be misled by the statements and/or representations in that the letter; alternatively, was recklessly indifferent or further alternatively, grossly careless, as to whether the 17 November letter was



	<p>misleading and did not give a candid explanation nor provide a full and accurate account of the irregularity purported to be reported.</p> <p>ii. between 3 December 2014 and 29 June 2017, and in the course of corresponding with the Committee following a complaint made by the clients against the practitioner arising from the practitioner's conduct in the course of acting for the clients, and in relation to matters covered by requests by the Committee to provide comments or information in relation to the practitioner's conduct or professional behaviour, the practitioner prepared and sent (or caused to be prepared and sent):</p> <p>(A) a letter to the Committee dated 3 December 2014;</p> <p>(B) submissions to the Committee dated 21 July 2015;</p> <p>(C) a letter to the Committee dated 10 May 2017; and</p> <p>(D) a letter to the Committee dated 29 June 2017,</p> <p>which did not give a candid explanation nor provide a full and accurate account of his professional conduct in the course of acting for the clients and made statements and/or representations which were false and/or misleading and/or had the potential to mislead the Committee in circumstances where:</p> <p>(A) the practitioner well knew the statements and/or representations were false or misleading, or both, in a material respect and/or that they had the potential to mislead the Committee and the practitioner intended that the Committee be misled;</p> <p>(B) alternatively to (a), the practitioner acted with reckless disregard or indifference as to whether or not the statements and/or representations were false or misleading, or both, and/or had the potential to mislead the Committee and as to whether the Committee would be misled;</p> <p>(C) further alternatively, the practitioner was grossly careless in failing to ensure that the statements and/or representations were not false or misleading, or both, in a material respect, and/or that they did not have the potential to mislead the Committee</p> <p>Unsatisfactory professional conduct by failing to report irregularities in the practitioner's legal practice's trust account to the Legal Practice Board of Western Australia, as soon as practicable after the practitioner became aware of those irregularities.</p>	
<p>VR 78/2021 filed 6 October 2021</p>	<p>Unsatisfactory professional conduct by:</p> <p>a) submitting in 2019 and 2020 a "Notification of Exemption Form" and notifying an Insurance Services Officer at Law Mutual; and</p> <p>b) notifying an Insurance Services Officer at Law Mutual that the practitioner had satisfied both sub-regulations 97(1)(h)(i) and 97(1)(h)(ii)</p> <p>that were false or misleading and had the potential to mislead Law Mutual and was grossly careless as to whether Law Mutual would be misled.</p>	<p>Orders 16 June 2022 Directions hearing listed for 2 August 2022</p>
<p>VR 16 of 2022</p>	<p>Professional misconduct by:</p>	<p>Orders 27 June 2022</p>

<p>Filed 05/04/2022</p>	<ol style="list-style-type: none"> <li>1. acting in a position of conflict or potential conflict of interest in representing two parties in relation to a property transfer whose interests were adverse to each other;</li> <li>2. failing to advise client M and/or Mr A adequately or at all of the risks from transferring the property to the other client Mr S;</li> <li>3. appointing Mr S as his agent to verify the identity of M as transferor and/or Mr A for the purposes of Landgate's verification of Identity and Authority Practice, when Mr S had a conflict of interests as the transferee of the property;</li> <li>4. failing to take all reasonable steps to verify the identities of M and/or Mr A; and</li> <li>5. certifying that he had taken all reasonable steps to verify the identities of M and/or Mr A when he knew, or ought to have known, that the practitioner had not taken such steps and was unaware of what steps Mr S had taken.</li> </ol>	<p>Mediation listed for 1 August 2022</p>
<p>VR 28 of 2022 Filed 26/04/2022</p>	<p>Professional misconduct by:</p> <ol style="list-style-type: none"> <li>a) sending an unsolicited email which: <ol style="list-style-type: none"> <li>i) made sexually explicit comments about the client of Ms Z G, another legal practitioner,</li> <li>ii) included a postscript that was grossly explicit and sexually demeaning comments about Ms T</li> <li>iii) attached a screenshot of results of an internet search which contained reference to Ms Z G's historical criminal conviction;</li> <li>iv) attached screenshot of Ms Z G's LinkedIn profile;</li> <li>v) attached an image that had a representation of the grossly explicit and sexually demeaning comments made about Ms T; and</li> <li>vi) was sent to members of the legal profession about other members of the legal profession.</li> </ol> </li> <li>b) sending an unsolicited email to Ms Z G and Mr P that contained inappropriate comments about the client of Ms Z G and did not acknowledge or apologise for the previous email.</li> <li>c) responding to the Committee's letter that: <ol style="list-style-type: none"> <li>i. failed to meaningfully address the conduct issues raised;</li> <li>ii. reiterated in appropriate sexual matters;</li> <li>iii. trivialised the conduct; and</li> <li>iv. was discourteous.</li> </ol> </li> <li>d) sending an unsolicited email to Ms J G, Mr O, Ms T and Dr H, legal practitioners, which was sexually explicit demeaning and humiliating towards Ms J G, grossly unprofessional, disrespectful, offensive, embarrassing and discourteous, in that: <ol style="list-style-type: none"> <li>i. disclosed the Lawyer's sexual fantasies towards Ms J G;</li> <li>ii. contained obscene language; and</li> <li>iii. was targeted at Ms J G and was sent to three other legal practitioner's,</li> </ol> </li> </ol>	<p>Orders 13 May 2022 Mediation listed for 5 July 2022</p>

	in circumstances where the conduct was of a similar nature as previous emails and where the Committee had already raised concerns to the Lawyer.	
e)	sending a further email to Mr O and Ms J G requesting that the email mentioned in (d) above be kept confidential.	

## Review applications

Complainants who have had their complaints dismissed may apply to SAT for a review of that decision. If the Committee specifically finds a complaint to be trivial, unreasonable, vexatious or frivolous, the complainant may apply to SAT for a review of the Committee's decision only with the leave of SAT.

There were three review applications filed during the year and four applications pending from the previous period. Three review applications were dismissed by SAT during the year, and one was set aside and sent back for reconsideration. Three review applications remain pending.

The extent of the Committee's involvement in review proceedings depends on the circumstances of the particular matter, however it is required to use its best endeavours to assist SAT to make its decision on the review (s30, *State Administrative Tribunal Act 2004*). As a matter of course, the Committee appears and provides a book of documents and written submissions to SAT. Ordinarily matters are determined on the papers without an oral hearing.

Review Applications	Total
Pending as at 1 July 2021	4
Lodged during year	3
Dismissed	3
Sent for reconsideration	1
Pending as at 30 June 2022	3

An aggrieved person may apply for a review of either a decision of the Committee or a decision made by the LCO using the delegated powers of the Committee. A comparison of the decisions that have been the subject of review proceedings since 2017/18 is produced below. It should be noted that in 2018/19 and 2019/20 the LCO made very few decisions using the delegated powers of the Committee.

Types of Decisions Reviewed	Total for 2017/18	Total for 2018/19	Total for 2019/20	Total for 2020/21	Total for 2021/22	Total for 2020/21
Delegated Dismissal	0	0	0	4	3	4
Committee Decision	4	3	2	0	1	0
<b>Total</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>4</b>

## Summary of SAT Review Applications

Number	Matter Identification	Summary of Application	Summary of Orders Made
1	Howie and LPCC VR 59 of 2021 Orders 1 February 2022	Application for review pursuant to section 435(1)(a) of the LPA of the Law Complaints Officer's decision to dismiss a complaint arising from the practitioner's actions in a guardianship and administration matter, under sections 415(1)(b) of the LPA.	Pursuant to section 29(3)(c)(ii) of the <i>State Administrative Tribunal Act 2004</i> (WA) the decision under section 415(1)(b) of the LPA is set aside and the matter is sent back for reconsideration having regard to the documents produced to the SAT. The proceeding is otherwise dismissed.
2	<i>Chen and Law Complaints Officer</i> [2022] WASAT 26 Delivered 12 April 2022	Application for review pursuant to section 435(1)(a) of LPA of the Law Complaints Officer's decision to dismiss a complaint arising out of Supreme Court proceedings involving an action under the <i>Family Provisions Act 1972</i> concerning an estate and a Deed of Family Arrangement, under section 415(1)(b) and section 415(3) of the LPA.	Affirmed the decision to dismiss the complaint under section 415(1)(b) and section 415(3) of the LPA.
3	<i>De-Abreu and LPCC</i> [2022] WASAT 42 Delivered 18 May 2022	Application for review pursuant to section 435(1)(a) of LPA of the Committee's decision to dismiss a complaint arising from retaining a practitioner to provide advice as to the merits of a proposed appeal, under section 415(1)(b) and section 425(a) of the LPA.	Dismissed the application and confirmed the decision to dismiss the complaint under section 415(1)(b) and s425(a) of the LPA.
4	<i>Lee and Law Complaints Officer, as Delegate for the LPCC</i> [2022] WASAT 53 Delivered 23 June 2022	Application for review pursuant to section 435(1)(a) of LPA of the Law Complaints Officer's decision to dismiss complaints arising out of defamation proceedings, under section 415(1)(b) and section 415(3) of the LPA.	Dismissed the application and affirmed the decision to dismiss the complaint under section 415(1)(b) of the LPA.

## Reports to the Full Bench of the Supreme Court

If SAT finds a matter to be proved, it has a range of sanctions open to it. These include orders that the practitioners practising certificate be suspended or cancelled, conditions be imposed on the practising certificate, or reprimanding the practitioner.

SAT can also decide to make and transmit a report to the Full Bench of the Supreme Court. SAT may include a recommendation that SAT is of the view that a practitioner's name should be removed from the roll of practitioners.

The Full Bench of the Supreme Court can make any order available to SAT as well as remove a practitioner's name from the roll of practitioners. During the year, there were three orders made to remove a practitioners name from the roll by the Full Bench of the Supreme Court:

- On 6 December 2021, the name David Charles Mizen was removed from the roll of practitioners (after a Notice of Originating Motion was filed on 15 June 2021).
- On 3 May 2022, the name Christina Marie Chang was removed from the roll of practitioners (after a Notice of Originating Motion was filed on 28 June 2021).
- On 8 June 2022, the name Kelvin Ka Chuen Tang was removed from the roll of practitioners (after a Notice of Originating Motion was filed on 16 November 2021).
- On 28 June 2022, the name Patrick James Mugliston was removed from the roll of practitioners (after a Notice of Originating Motion was filed on 22 February 2022).

## Appeals

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

- **Young v LPCC [2022] WASCA 52** (delivered 24 May 2022)  
An appeal to the Court of Appeal by Nicole Anne Young from a SAT penalty decision. The appeal was allowed in part and Orders 2 and 3 of the SAT orders made on 9 March 2020 were set aside and the practitioner was publicly reprimanded for the professional misconduct which the SAT found was proved.
- **LPCC v Chang [2022] WASCA 145** (delivered 3 May 2022)  
An appeal to the Court of Appeal (CACV 109 of 2018) by Christina Marie Chang from a SAT interim decision dismissing the practitioner's interim application to set aside a SAT decision based on consent orders was dismissed: [2020] WASCA 208 and [2020] WASCA 208 (S). On 18 December the Committee filed an application for a special costs order and on 19 November 2021 the Committee's application for special costs was granted.

Appeals lodged prior to the year, but which have not been determined as at 30 June 2022 were:

- an appeal to the Court of Appeal by the Committee from a final SAT decision (CACV 78 of 2019).
- an appeal to the Court of Appeal by Kevin Colin Benedict Staffa from a final SAT decision (CACV 72 of 2020).
- an appeal to the Court of Appeal by Kevin Colin Benedict Staffa from a SAT penalty decision (CACV 131 of 2020).

The following appeals were lodged during the year, but as at 30 June 2022 had not been determined:

- an appeal to the Court of Appeal lodged on 12 July 2021 by Arthur Metaxas from a SAT decision (CACV 55 of 2021)
- an appeal to the Court of Appeal lodged on 20 April 2022 by Arthur Metaxas from a SAT decision (CACV 35 of 2022)
- an appeal to the Court of Appeal lodged on 14 June 2022 by Barrie Goldsmith from a SAT decision (CACV 63 of 2022)

## Other

- An application for judicial review was lodged on 15 September 2020 against the Committee in respect of an alleged failure or refusal to perform its duty to deal with complaints made by the applicant as efficiently and expeditiously as practicable. On 19 July 2021 the application was dismissed. [Goldsmith – CIV 1943 of 2020].
- An application for judicial review was lodged on 12 July 2021 against the Committee in respect to dismissing a complaint as lacking in substance without further investigation. On 20 October 2021 the application was dismissed. [*Gonciarz v LPCC* [2021] WASC 351].
- An application for judicial review was lodged 28 October 2020 against the LCO and Committee in respect of the LCO's purported appointment or nomination of an investigator being beyond power and void, and the alleged breach of statutory duties to investigate each of the applicant's complaints and to deal with each of those complaints as efficiently and expeditiously as practicable. On 26 March 2021 the application for judicial review regarding the nominations made by the Committee were ordered as invalid.



On 19 July 2021 the application regarding dealing with the complaints as efficiently and expeditiously as practicable was dismissed. [Goldsmith – CIV 2080 of 2020].

- An application for judicial review was lodged on 14 June 2021 against the Committee in respect of the Law Complaints Officer's nomination of an investigator in 2016. As at 30 June 2022 the application had not been determined.
- An application for judicial review and writ of certiorari lodged prior to the year against the LCO in respect of a decision to issue a summons to produce documents pursuant to section 520(1)(a) of the LPA in an extant investigation had not been determined as at 30 June 2022.
- An originating motion for contempt lodged prior to the year pursuant to section 520(8) of the LPA in respect of a practitioner's failure to comply without lawful excuse with a summons to produce documents issued pursuant to section 520(1)(a) of the LPA in an extant investigation had not been determined as at 30 June 2022.

## **Special Leave Applications**

No special leave applications were received during the reporting period.

## Tables

In preparation for the introduction of the Uniform Law and the new case management system going live during the reporting year, the way in which data in relation to enquiries and complaints has been defined and recorded was amended throughout the reporting year. Therefore, a disclaimer has been included under tables where the data may appear different to that of previous financial years.

Table 1 – Type of enquirer 2019/20 to 2021/22

	Percentages for 2019/20	Percentages for 2020/21	Percentages for 2021/22
Client/ former client	52.7%	46.8%	47.9%
Friend/ relative of client	4.5%	4.2%	5.5%
Opposing party	24.8%	26.8%	26.3%
Beneficiary/ executor/ administrator	3%	4%	3.2%
Practitioner on own behalf	4.2%	5.4%	5.3%
Practitioner on another's behalf	0.7%	0.8%	1.3%
Other	10.2%	12.2%	10.4%

Table 2 – Enquiries by areas of law 2020/21 and 2021/11

	Percentages for 2020/21	Percentages for 2021/22
Commercial/ Corporations/ Franchise	7.3%	5.6%
Conveyancing	2.8%	2.7%
Criminal	11.7%	9.4%
Family/ de facto	35%	35.5%
Immigration	0.6%	0.2%
Employment Law	3.1%	4.6%
Land and environment	1.6%	1.8%
Leases	1.1%	1.3%
Professional negligence	0.2%	0.5%
Personal injuries	3.4%	5.4%
Probate/ family provisions	4.5%	5.4%
Victims compensation	0.9%	1.7%
Workers compensation	4.7%	4.0%
Building Law	0.4%	1.3%

	Percentages for 2020/21	Percentages for 2021/22
Insolvency	0.1%	0.0%
Strata bodies/ corporates	0.8%	0.3%
Wills/ Powers of Attorney	6.4%	5.8%
Other civil	15.5%	14.5%

**Note:** This table contains only two years' worth of data (rather than three years as in some other tables). This is because of a change in the way in which this data was categorised in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Direct comparisons cannot be made with previous years, but for earlier data please see the [2020/21 LPCC Annual Report](#).

Table 3 – Enquiries by issues raised 2020/21 and 2021/22

	Percentages for 2020/21	Percentages for 2021/22
<b>Communication</b>	<b>25.1%</b>	<b>24.0%</b>
Rudeness/ threatening behaviour/ discourtesy	9.8%	9.5%
Poor/ no communication	8.9%	10.2%
Other communication	6.3%	4.2%
<b>Compliance matters</b>	<b>0.9%</b>	<b>0.4%</b>
Practising certificate issues	0.1%	0%
Failure to respond to regulator	0.1%	0%
Other breaches of the LPA, Regulations or Rules	0.1%	0.1%
Other compliance matters	0.7%	0.2%
<b>Costs</b>	<b>22.9%</b>	<b>22.7%</b>
Disclosure	2.8%	2.1%
Billing issues	3.7%	6%
Overcharging	3.9%	5.8%
Liens	0.6%	0.7%
Other costs	12%	8.1%
<b>Ethical matters</b>	<b>23.6%</b>	<b>23.1%</b>
Settlement issues	0.7%	0.4%
Fraud (not trust account)	0.1%	0.6%
Misleading conduct	6.7%	6%
Ceasing to act	0.2%	1.1%

	Percentages for 2020/21	Percentages for 2021/22
Conflict of interest	2.8%	3.6%
Communicating with another lawyer's client	0.2%	0.5%
Undertakings	0%	0.1%
Breach of confidentiality	1.6%	1.8%
Instructions issues	5.3%	3%
Advertising	0.1%	0.1%
Failure to pay third party	0.4%	0.2%
Abuse of process	0.8%	0.7%
Failure to comply with court orders	0.7%	0.4%
Unethical conduct	2.8%	3.4%
Other ethical matters	1.2%	1.3%
<b>Competence and diligence</b>	<b>18.5%</b>	<b>21.5%</b>
Failure to supervise	0.2%	0%
Delay	3.3%	3.4%
Poor advice/ case handling	8.2%	10.7%
Client capacity	0.3%	0.2%
Record management	0.1%	0.4%
General incompetence	0%	6%
Other competence and diligence	6.4%	0.9%
<b>Trust money and trust accounts</b>	<b>0.5%</b>	<b>0.3%</b>
Failure to account for trust monies	0.1%	0.2%
Other breaches of the LPA, Regulations or Rules	0.2%	0%
Other trust money and trust accounts	0.2%	0.1%
<b>Personal conduct</b>	<b>8.6%</b>	<b>4.1%</b>
Discrimination	0%	0.2%
Sexual harassment	0.1%	0.5%
Workplace bullying	0%	0.1%
Other Personal conduct	8.5%	3.8%

**Note:** This table contains only two years' worth of data (rather than three years as in some other tables). This is because of a change in the way in which this data was categorised in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Direct comparisons cannot be made with previous years, but for earlier data please see the [2020/21 LPCC Annual Report](#).

Table 4 – Resolution of enquiries 2019/20 to 2021/22

	Percentages for 2019/20	Percentages for 2020/21	Percentages for 2021/22
<b>Conciliated outcome</b>	<b>10.4%</b>	<b>12.7%</b>	<b>13.4%</b>
Fee waiver	1.3%	1.4%	0.9%
Apology	1.1%	0.5%	0.7%
Undertaking	0.2%	0%	0.3%
Discounted fees	3.1%	2.4%	1.0%
Expression of concern	0%	0%	0.9%
Release of lien	0%	0.2%	0%
Withdrawn	2.2%	5.2%	7.8%
Improved communication	2%	2.5%	1.5%
Improved legal practice, training, supervision, mentoring or management systems	0.6%	0.5%	0.3%
<b>No further action</b>	<b>83.0%</b>	<b>76.4%</b>	<b>73.5%</b>
Accepted explanation/ practitioner's response	14.4%	21.8%	11.2%
Further information provided	3%	0.4%	0.9%
Suggested direct approach to practitioner	1.4%	1.2%	0.7%
No further information provided	28%	29.1%	36.9%
Suggested seek own legal advice	6.4%	6.3%	5.7%
Misconceived	5.1%	6.7%	13.8%
Other	24.6%	11%	12.7%
<b>Decisions</b>	<b>6.6%</b>	<b>10.9%</b>	<b>13.1%</b>
Expression of concern issued	0.4%	1.5%	0.6%
Escalated to disciplinary investigation	6.1%	5.9%	2.9%
Finalisation as complaint	0.1%	3.6%	10.1%

**Note:** There have been some changes in the way in which this data was categorised, including with the introduction of the new Case Management System and in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Comparisons between years is not necessarily direct.



Table 5 – New investigations and enquiries 2019/20 to 2021/22

	Total for 2019/20	Total for 2020/21	Total for 2021/22
Enquiries received	989	1,060	924
Complaint investigations commenced	71	59	72
Own initiative investigations commenced	11	25	8
<b>Total</b>	<b>1,071</b>	<b>1,144</b>	<b>1,004</b>

**Note:** There have been some changes in the way in which this data was categorised, including with the introduction of the new Case Management System and in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Comparisons between years is not necessarily direct.

Table 6 – New complaint investigations by type of complainant 2019/20 to 2021/22

	Total for 2019/20	Total for 2020/21	Total for 2021/22
Client/ former client	40 (48.8%)	32 (38.1%)	21 (29.2%)
Client's friend/ relative	1 (1.2%)	1 (1.2%)	6 (8.3%)
Opposing party	14 (17.1%)	7 (8.3%)	22 (30.6%)
Beneficiary/ executor/ administrator	0	1 (1.2%)	6 (8.3%)
Practitioner on own behalf	6 (7.3%)	15 (17.9%)	4 (5.6%)
Practitioner on another's behalf	2 (2.4%)	0	1 (1.4%)
Independent Children's Lawyer (ICL)	2 (2.4%)	1 (1.2%)	1 (1.4%)
Other	17 (20.8%)	27 (32.2%)	11 (15.4%)
<b>Total</b>	<b>82</b>	<b>84</b>	<b>72</b>

**Note:** There have been some changes in the way in which this data was categorised, including with the introduction of the new Case Management System and in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Comparisons between years is not necessarily direct.

Table 7 – New complaint investigations by area of law 2020/21 and 2021/22

	Total for 2020/21	Total for 2021/22
Commercial/ corporations/ franchise	6 (7.1%)	4 (4.5%)
Conveyancing	4 (4.8%)	11 (12.4%)
Criminal	14 (16.7%)	10 (11.2%)
Family/ de facto	17 (20.2%)	19 (21.3%)
Immigration	2 (2.4%)	0
Employment law	1 (1.2%)	6 (6.7%)

	Total for 2020/21	Total for 2021/22
Land and environment	0	3 (3.4%)
Leases	2 (2.4%)	3 (3.4%)
Professional negligence	14 (16.7%)	1 (1.1%)
Personal injuries	2 (2.4%)	1 (1.1%)
Probate/ family provisions	4 (4.8%)	6 (6.7%)
Victims compensation	1 (1.2%)	1 (1.1%)
Workers compensation	3 (3.6%)	-
Building law	-	4 (4.5%)
Wills/ Powers of Attorney	2 (2.4%)	6 (6.7%)
Other civil	9 (10.7%)	11 (12.4%)

**Note:** This table contains only two years' worth of data (rather than three years as in some other tables). This is because of a change in the way in which this data was categorised in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Direct comparisons cannot be made with previous years, but for earlier data please see the [2020/21 LPCC Annual Report](#).

**Note:** Some complaints have been made involving multiple areas of law.

Table 8 – New complaint investigations by issues raised 2020/21 and 2021/22

	Total for 2020/21	Total for 2021/22
<b>Communication</b>	<b>27 (16%)</b>	<b>13 (14.6%)</b>
Rudeness/ threatening behaviour/ discourtesy	15 (8.9%)	5 (5.6%)
Poor/ no communication	10 (5.9%)	4 (4.5%)
Other communication	2 (1.2%)	4 (4.5%)
<b>Compliance matters</b>	<b>15 (8.9%)</b>	<b>2 (2.2%)</b>
Practising certificate issues	2 (1.2%)	0
Non-compliance with fiscal obligation	1 (0.6%)	0
Failure to respond to regulator	5 (3%)	0
Other breaches of the LPA, Regulations or Rules	4 (2.4%)	2 (2.2%)
Other compliance matters	3 (1.8%)	0
<b>Costs</b>	<b>14 (8.3%)</b>	<b>31 (34.8%)</b>
Disclosure	4 (2.4%)	4 (4.5%)
Billing issues	5 (3%)	12 (13.5%)

	Total for 2020/21	Total for 2021/22
Overcharging	5 (3%)	5 (5.6%)
Liens	0	0
Other costs	0	10 (11.2%)
<b>Ethical matters</b>	<b>58 (34.3%)</b>	<b>28 (31.5%)</b>
Settlement issues	0	3 (3.4%)
Fraud (not trust fund)	7 (4.1%)	2 (2.2%)
Misleading conduct	18 (10.7%)	4 (4.5%)
Ceasing to act	0	0
Conflict of interest	8 (4.7%)	5 (5.6%)
Communicating with another lawyer's client	0	0
Undertakings	0	0
Breach of confidentiality	1 (0.6%)	2 (2.2)
Instructions issues	1 (0.6%)	0
Advertising	1 (0.6%)	0
Failure to pay third party	0	0
Abuse of process	3 (1.8%)	0
Failure to comply with court orders	3 (1.8%)	1 (1.1%)
Unethical conduct	12 (7.1%)	8 (9%)
Other ethical matters	4 (2.4%)	3 (3.4%)
<b>Competence and diligence</b>	<b>43 (25.4%)</b>	<b>10 (11.2%)</b>
Failure to supervise	1 (0.6%)	0
Delay	8 (4.7%)	0
Poor advice/ case handling	17 (10.1%)	4 (4.5%)
Client capacity	1 (0.6%)	0
Record management	0	0
General incompetence	0	5 (5.6%)
Other competence and diligence	16 (9.5%)	1 (1.1%)
<b>Trust money and trust accounts</b>	<b>8 (4.7%)</b>	<b>1 (1.1%)</b>
Failure to account for trust monies	2 (1.2%)	1 (1.1%)

	Total for 2020/21	Total for 2021/22
Other breaches of the LPA, Regulations or Rules	2 (1.2%)	0
Other trust money and trust accounts	4 (2.4%)	0
<b>Personal conduct</b>	<b>4 (2.4%)</b>	<b>4 (4.1%)</b>
Discrimination	0	0
Sexual harassment	0	0
Workplace bullying	0	0
Other personal conduct	4 (2.4%)	4 (4.1%)

**Note:** This table contains only two years' worth of data (rather than three years as in some other tables). This is because of a change in the way in which this data was categorised in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Direct comparisons cannot be made with previous years, but for earlier data please see the [2020/21 LPCC Annual Report](#).

**Note:** Numerous complaints raise multiple issues.

Table 9 – New complaint investigations by practitioner category 2019/20 to 2021/22

	Total for 2019/20	Total for 2020/21	Total for 2021/22
Barrister	1 (1.2%)	8 (9.5%)	8 (11.1%)
Sole Principal	34 (41.5%)	34 (40.5%)	14 (19.4%)
Other Principal	9 (11%)	8 (9.5%)	20 (27.8%)
Non Principal	16 (19.5%)	18 (21.4%)	19 (26.4%)
Government legal position	1 (1.2%)	0	1 (1.4%)
Corporate legal position	0	0	2 (2.8%)
Firm only	11 (13.4%)	1 (1.2%)	3 (4.2%)
Struck off/ suspended	1 (1.2%)	2 (2.4%)	0
Other	9 (11%)	13 (15.5%)	5 (6.9%)
<b>Total</b>	<b>82</b>	<b>84</b>	<b>72</b>

**Note:** There have been some changes in the way in which this data was categorised, including with the introduction of the new Case Management System and in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Comparisons between years is not necessarily direct.

Table 10 – New complaint investigations by location of practice 2019/20 to 2021/22

	Total for 2019/20	Total for 2020/21	Total for 2021/22
CBD/ West Perth	49 (59.8%)	50 (59.5%)	34 (47.2%)
Suburbs	29 (35.4%)	29 (34.5%)	34 (47.2%)
Country	2 (2.4%)	3 (3.6%)	2 (2.8%)
Interstate	2 (2.4%)	2 (2.4%)	2 (2.8%)
<b>Total</b>	<b>82</b>	<b>84</b>	<b>72</b>

Table 11 – New complaint investigations by years in practice 2019/20 to 2021/22

	Total for 2019/20	Total for 2020/21	Total for 2021/22
Under 5	3 (3.7%)	2 (2.4%)	5 (6.9%)
5 to 9	15 (18.3%)	10 (11.9%)	10 (13.9%)
10 to 14	15 (18.3%)	11 (13.1%)	15 (20.8%)
15 to 19	8 (9.8%)	13 (15.5%)	12 (16.7%)
20 to 24	13 (15.9%)	15 (17.9%)	11 (15.3%)
25 to 29	5 (6.1%)	17 (20.2%)	8 (11.1%)
30 to 34	3 (3.7%)	3 (3.6%)	4 (5.6%)
35 to 39	3 (3.7%)	6 (7.1%)	2 (2.8%)
40 and over	3 (3.7%)	6 (7.1%)	5 (6.9%)
Not known/ not applicable	14 (17.1%)	1 (1.2%)	0
<b>Total</b>	<b>82</b>	<b>84</b>	<b>72</b>

Table 12 – New complaint investigations by practitioner age 2019/20 to 2021/22

	Total for 2019/20	Total for 2020/21	Total for 2021/22
Under 25	0	0	0
25 to 29	2 (2.4%)	0	0
30 to 34	4 (4.9%)	4 (4.8%)	4 (5.6%)
35 to 39	8 (9.8%)	4 (4.8%)	6 (8.3%)
40 to 44	11 (13.4%)	6 (7.1%)	7 (9.7%)
45 to 49	8 (9.8%)	12 (14.3%)	11 (15.3%)
50 to 54	8 (9.8%)	27 (32.1%)	14 (19.4%)



	Total for 2019/20	Total for 2020/21	Total for 2021/22
55 to 59	14 (17.1%)	10 (11.8%)	11 (15.3%)
60 to 64	8 (9.8%)	9 (10.7%)	4 (5.6%)
65 to 69	3 (3.7%)	8 (9.5%)	8 (11.1%)
70 to 75	2 (2.4%)	3 (3.6%)	4 (5.6%)
76 to 80	1 (1.2%)	1 (1.2%)	1 (1.4%)
81 and over	0	0	0
Not known/ not applicable	13 (15.9%)	0	2 (2.8%)
<b>Total</b>	<b>82</b>	<b>84</b>	<b>72</b>

Table 13 – Number of practitioners receiving complaints 2019/20 to 2021/22

	Total for 2019/20	Total for 2020/21	Total for 2021/22
Practitioners with 1 complaint	53	59	58
Practitioners with 2 complaints	7	7	2
Practitioners with 3 or more complaints	3	3	3
<b>Total number of practitioners</b>	<b>69</b>	<b>63</b>	<b>63</b>

Table 14 – Resolution of complaints and investigations by LPCC 2019/20 to 2021/22

	Percentages for 2019/20	Percentages for 2020/21	Percentages for 2021/22
Dismissed s425 and expression of concern	9%	23%	12%
Closed on basis of no further action	5%	2%	8%
Summary conclusion	12%	13%	17%
Dismissed s415/ s425	36%	31%	23%
Referred to SAT	38%	31%	40%

Table 15 – Investigations commenced and finalised 2021/22

	Complaints	Own initiative investigations	Total
Commenced during reporting year	72	8	80
Finalised during reporting year	118	8	126
Outstanding as at 30 June 2022	124	30	154

**Note:** There have been some changes in the way in which this data was categorised, including with the introduction of the new Case Management System and in preparation for the commencement of the *Legal Profession Uniform Law (WA)*. Comparisons between years is not necessarily direct.

# Information Statements

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## Freedom of information

Pursuant to Part 5 of the *Freedom of Information Act 1992*, the Committee is required to publish an information statement. See the [Board's website for the Information Statement](#), which is updated annually.

## Public interest disclosure

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

There were no public interest disclosures received during the reporting period.