



LEGAL PROFESSION COMPLAINTS COMMITTEE
WESTERN AUSTRALIA

2016 ANNUAL REPORT

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1. Report from the Chair

This report summarises important aspects of the work undertaken by the Committee during the year. As the Law Complaints Officer reports, the Committee's work is far more wide ranging than complaint handling, and sometimes is the genesis of change which brings benefits to many.

However, at the core of the Committee's functions is complaint handling, and this report shows that, once again, it has been a busy year for the Committee. Many of the investigations completed during the year, and referred to the Committee for consideration, involved complex issues. The Committee members and I were very appreciative of the assistance we received from the considered and comprehensive advice given by the Committee's legal officers and, on occasion, counsel retained by the Committee.

The seriousness of the matters which the Committee considered during the year is reflected in the high percentage of those matters (74%) which resulted in a disciplinary outcome. The disciplinary outcomes ranged from an expression of concern (15.8%), to the exercise of summary conclusion powers (8.8%), and referral to the State Administrative Tribunal (49.1%).

The outcomes of inquiries dealt with by the Rapid Resolution Team (RRT) showed nearly a doubling in the percentage of inquiries resulting in the issue of an expression of concern or a referral for investigation. In previous years, just over 3% of inquiries required such further action, compared with 6% this year.

Trends or special problems

There has been an increasing trend in the last two years for the Committee to refer a large

number of matters to the State Administrative Tribunal. That has continued this year.

However, the large spike in the percentage of complaints in the probate and wills area, which characterized the last two years, was not repeated this year. The percentage of new complaints in this area dropped 8.7%, bringing it closer to the results in previous years. This decrease was offset by an increase in the percentage of complaints relating to the conduct of civil litigation (6.3%). That brought complaint numbers in this area back to similar levels as those experienced several years ago. These changes appear to simply reflect a correction back to more normal levels.

Costs inquiries continued to reduce slightly, from 34.7% to 31.1%. That is a reduction of 15.9% in two years. As I indicated in my report last year, the decrease is possibly due, in part, to the educational work of the RRT in this area.

This year there was a small decrease in the percentage of complaints against sole practitioners. However, the percentage of complaints against sole practitioners still remains high, at 42.7%. The introduction from 1 July 2016 of the requirement for a practitioner to successfully complete an approved Practice Management Course, before being able to become a principal of a firm, may, in the future, assist to reduce the number of complaints against sole practitioners and principals in general.

A noticeable decrease was seen in the percentage of complaints received from opposing parties, which was down by 8.4%. This may be due, in part, to the triaging of inquiries from opposing parties by the RRT, as the percentage of inquiries received from

opposing parties was almost identical to last year.

Forecast of the Committee's workload

Each of the Committee's teams experienced an increase in its workload during the year. The number of inquiries (including miscellaneous inquiries) increased, as did the number of individual complaints which were the subject of applications to the State Administrative Tribunal (although there were actually fewer applications). Although the total number of new complaints and conduct investigations was less than last year, the actual number of new investigations commenced by the Investigation Team was higher than last year. This apparent discrepancy in the statistics occurs because some complaints are identified by the RRT as not requiring an investigation by the Investigation Team, and are referred to the Law Complaints Officer for dismissal.

Due to this increasing workload, the Committee did not undertake any audits of incorporated legal practices this year. Two of the Committee's senior legal officers are now working extra days to assist with this increased workload. With these increased hours, the Committee anticipates being able to resume auditing incorporated legal practices this coming year.

The Committee's workload may increase this coming year with the implementation by the Federal Government of the proposed removal of lawyers from the regulatory scheme governing migration agents. However, the full extent of the proposed changes is not yet known. Nor is it clear exactly when they will come into effect. Previously, the conduct of lawyers undertaking migration assistance work and migration legal assistance work was generally investigated by the Office of the Migration Registration Authority (OMARA),

with which the Committee has a Memorandum of Understanding to share information. The Committee does not know how many complaints concerning the work of migration lawyers in Western Australia OMARA receives on average each year.

Proposal for improving the operations of the Committee

As indicated in the Committee's 2012, 2013, 2014 and 2015 reports, the implementation of a complaints management system would enhance the Committee's operations. Work on reviewing the Committee's needs in this regard continued during the year, and work will soon commence on sourcing a suitable system to meet those needs.

Thanks

Kim Wilson SC, the Deputy Chair of the Committee, has greatly assisted me this year with overseeing the Committee's operations, and I thank him for that assistance. My thanks also go to all of the Committee members for their hard work during the year. In particular, I would like to thank Margaret Nadebaum, whose term as one of the Committee's community representatives concluded during the year, ending her 6 year association with the Committee.

The Committee's work could not be undertaken without its staff. I would like to acknowledge and express gratitude to each of the Committee's staff members for their ongoing contribution and commitment to the Committee's work during the year.

*John Ley
Chair
August 2016*

2. Report from the Law Complaints Officer

This year I would like to highlight the breadth of the Committee's work and some achievements which have resulted from that work. Although the Committee's primary focus is the investigation of complaints and the institution of disciplinary proceedings, its work is broader.

Since late 2010, the Committee has placed great emphasis on conciliating concerns about practitioners' conduct, educating the profession, and seeking to make changes to practitioners' conduct for the benefit of all. Last year I highlighted changes in practitioners' bills, with the Committee's suggestion for allocating nil value to particular work undertaken in certain circumstances being taken on board, and the Committee's facilitation of conciliations involving practitioners and their insurers. This year more outcomes were achieved.

In 2011, the Committee developed an informal policy on travel costs. Philippa Rezos (manager of the Rapid Resolution Team) and I discussed that informal policy with members of the Legal Costs Committee in October 2013. In 2015 the Legal Costs Committee issued the *Legal Profession (Solicitors Costs) Determination 2015* which came into operation on 1 July 2015. In that Determination the Legal Costs Committee refers to its consideration of the Committee's informal policy on travel costs and recent amendments made to the Law Society of Western Australia's standard costs agreement (which were also made after reference to the Committee's informal policy) and sets out that the amount allowed for time spent travelling by a law practice is to be charged at no more than one half of the practitioner's normal rates. Prior to this Determination travel was often charged at

full practitioner rate. The Determination reflects the Committee's informal policy and it is encouraging that the Committee's views have played a part in this change to the Determination. Since 1 July 2016 similar changes have come into effect for travel costs in other costs determinations.

Increasingly, the Committee's staff are giving guidance on ethical issues to practitioners and endeavouring to ensure ongoing good relations between practitioners. During the year the Committee received nearly 100 contacts from practitioners seeking such guidance. The bulk of those practitioners were sole practitioners and practitioners with less than 5 years' experience. The Committee's staff are happy to discuss ethical issues with practitioners and provide whatever guidance they can. Early intervention to resolve, for example, problems with communication between practitioners, is of great benefit to the clients concerned as well as the practitioners. The message the Committee seeks to convey to practitioners is that it is always better to seek guidance before acting as it may prevent a problem, and a possible complaint, later.

During the year, the Rapid Resolution Team was instrumental in arranging for a protocol to be developed within the State Solicitors Office (SSO) concerning the SSO's conduct of prosecutions against police officers.

Emerging issues and a cautionary tale

Capacity

An increasing reason for contact with the Committee concerns practitioners taking instructions for wills (and enduring powers of attorney) where there may be doubts as to the testator's mental capacity to give

instructions. The problem often arises when a relative or carer is instrumental in seeking to have an elderly person make a new will or execute an enduring power of attorney. Unfortunately, the problem with testators' mental capacity is likely to increase with the ageing population, so it is important that practitioners are aware of their obligations in this regard.

The Committee provided guidance to practitioners on this issue in an article published in the Law Society's *Brief* magazine in August 2015. The article included useful tips for practitioners on how to make a preliminary assessment of testamentary capacity and what to do if there are 'red flags'. One of the Committee's legal officers will be presenting at a Law Society of Western Australia seminar later in 2016 to discuss these issues.

This is not a problem which is unique to Western Australia and was highlighted in the NSW Office of the Legal Services Commissioner's 2014-15 Annual Report.

Competency

Many of the matters the Committee is currently dealing with involve an allegation of lack of competency concerning, for example, documents prepared or settled by the practitioner or the advice given by the practitioner. Often when issues of competency arise, it becomes apparent that the practitioner in seeking to assist his or her client has merely accepted what the client has said without question and without checking if there is a reasonable basis for the allegation, or has simply followed the client's wishes without exercising his or her own professional judgment.

It is important for practitioners and clients to appreciate that *"[b]oth in respect of litigation and in providing legal advice and assistance generally, a practitioner is not a mere agent*

and mouthpiece for his client, but a professional exercising independent judgment ... and providing independent advice": *Legal Practitioners Complaints Committee and Fleming* [2006] WASAT 352 at [70].

Sometimes it is necessary for a practitioner to inform a client of the practitioner's professional obligation to act otherwise than merely as a mouthpiece for the client, and to refuse to act further for any client who tries to insist that the practitioner does so.

Law graduates

The job market for law graduates over the last few years has been a difficult one, with many practices not taking on as many graduates as they have in the past due to the economic downturn, particularly in the mining and resources areas. As a result, the Committee has seen the emergence of trends among a few practices, generally smaller practices, to require young graduates to agree to working conditions which may be in breach of the minimum conditions of employment to which legal practices, like other employers, are required by law to comply.

Many graduates are reluctant to report such breaches to the Committee as they don't want to lose the opportunity to gain valuable work experience. However, it is important that as a profession we look after our graduates and ensure that their legal rights are fully met and no advantage is taken of them.

Technology

Technology brings with it so many advantages but there can be downsides. Law practices need to take great care to ensure that their IT systems are secure, and confidentiality of client documents is maintained.

During the year, a firm placed an unpublished decision in a family law matter on its intranet which identified the parties. The *Family Law Act 1975* (Cth) prohibits the publication of court proceedings which identifies the parties to the proceedings. Google 'web crawlers' were, for reasons that IT specialists are yet to explain, able to capture that decision even though the practice's intranet was password protected. The result was that a Google search was able to provide a link to that decision on the law practice's intranet. On being advised what had occurred, the law practice immediately removed all decisions from its intranet and arranged for IT specialists to look into the matter.

Update on mental health initiatives

In the 2013 Annual Report, I set out a number of important steps the Committee had taken, in the previous two years, to address mental health issues faced by practitioners when a complaint is made against them.

The Committee continued with its work in this area during the year by finalising an internal protocol for managing practitioners suffering from serious mental health issues. At the outset, the protocol ensures that focus is placed on ensuring that practitioners have support mechanisms in place, such as mentors or access to Law Care. When the Committee becomes aware that a practitioner the subject of a complaint or inquiry has mental health issues, a legal officer will be appointed as the sole point of contact for all new inquiries concerning that practitioner, and that legal officer will determine the best way of handling contact with that practitioner. For example, a practitioner may prefer to receive a telephone call to alert him or her to the fact he or she will be receiving a letter from the Committee.

From there, the way a complaint is handled will depend upon the seriousness of the mental health issues. If those issues are so serious that the practitioner is unable to practise, the Committee will only progress the complaint if the Committee receives (with the practitioner's consent) advice from the practitioner's treating psychiatrist/psychologist that the practitioner is mentally and psychologically competent to receive and respond to the complaint, and will not be placed at risk if he or she receives the complaint and is asked to respond to it.

Where there are very serious mental health issues, or other health issues, which prevent a practitioner from practising, the Committee will take those issues into account when determining a complaint or, if the Committee has referred the matter to the State Administrative Tribunal, when considering whether there are any orders to which the Committee could consent.

Information available to the public

The Committee's staff are increasingly referring inquirers to publicly available information on various websites. Many of the initial inquiries received by the Committee, although framed as inquiries about a practitioner's conduct, are often more concerned with the legal issues the inquirers are facing.

There is a wealth of information now easily accessible to members of the public which provides information about rights and processes. For example, during the year inquirers were referred to the website of Landgate, the Legal Aid Commission of Western Australia, the Supreme Court of Western Australia (dealing with probate), the Family Court of Western Australia and the Office of the Franchise Mediation Adviser.

Seminars to the profession

The Committee continued its commitment to providing educational seminars to the profession through seminars run by the Law Society of Western Australia and Legalwise Seminars, as well as to the Legal Aid Commission of Western Australia, the Community Legal Centres Association (WA) Inc and individual law firms.

The Committee's staff seek to ensure that each seminar addresses current issues so that the profession is kept as up to date as possible about emerging issues. Many of the seminars are conducted based on the facts of matters that have recently been dealt with in the Committee's office. Learning by reference to the misfortunes of others has proven to be very successful. Practitioners may not encounter the same set of events which led to a practitioner making a mistake, but if they can take away from any seminar the need to stop and think or get advice before they act, this may well prove to be successful in preventing conduct which may lead to a complaint.

Regional visits

This year the Committee's officers visited Albany. Albany was the first regional city visited when the Committee commenced its initiative in 2012 of visiting a regional area each year. The Committee presented a one hour seminar to practitioners highlighting ethical issues based on matters which had recently been dealt with by the Committee, with great interaction with the practitioners present. Following that seminar, the Committee met for one hour with principals of practices in the area to discuss practice management systems.

Developing and maintaining relationships

In June 2016, Philippa Rezos and I met with Mr Dale Boucher, the Chief Executive Officer of the Legal Services Council and Ms Bridget Sordo, Executive Officer of the Legal Services Council, to discuss complaint handling in Western Australia.

Since its inception, the Legal Services Council has been instrumental in formulating guidelines and directions for practitioners on costs estimates. Although those guidelines and directions are prepared by reference to the Legal Profession Uniform Law which is in operation in New South Wales and Victoria, the guidelines reflect the Committee's views on how practices should approach giving costs estimates. Accordingly, where appropriate, practitioners are referred to the Legal Services Council website to access those guidelines.

In May 2016, Philippa Rezos and I met with representatives of the Legal Aid Commission of Western Australia to discuss the types of issues which may warrant referral of a practitioner's conduct to the Committee.

In April 2016, the Committee responded to an invitation from the Legal Costs Committee to provide input on possible changes in the structure of the legal costs scales as they pertain to legal practitioner categories.

As in previous years, Philippa Rezos continued as a member on the Law Society's Mental Health and Wellbeing Committee and its Costs Committee.

Legal Profession Uniform Law

Last financial year, the Attorney General requested the Board's views on a number of matters concerning the Legal Profession Uniform Law which came into operation in Victoria and New South Wales on 1 July

2015. Three members of the Committee formed part of an *ad hoc* Board committee to prepare a response to the Attorney General.

The Committee's staff prepared a comparison of the major differences in the complaints and associated areas between the Western Australian legislation and the Uniform Law in order to assist the *ad hoc* Committee. In November 2015, the *ad hoc* Committee met to consider that comparison and its views were presented to the Board at a meeting in February 2016 to enable a response to be sent to the Attorney General.

Legal Aid Commission of Western Australia (LAC)

During the year, the Committee continued to respond to requests from LAC pursuant to the Memorandum of Understanding between LAC and the Committee to provide the disciplinary histories of practitioners to assist with the formulation and ongoing operation of its various legal aid panels and lists. That information is disclosed with the consent of the practitioners, such consent being required by LAC as a prerequisite to a practitioner nominating for a legal aid panel or list.

Complaints management system

As I reported in the Committee's 2013, 2014 and 2015 Annual reports, planning for a complaints management system (*CMS*) commenced in June 2013 and, after stalling, resumed in May 2015 with a new IT staff member from the Legal Practice Board. Unfortunately, the project has not progressed as quickly as hoped.

As I stated in the Committee's 2015 Annual Report, there is an urgent need for a *CMS* to assist with the Committee's operations. I am hopeful that this project can now be finalised as quickly as possible.

Staffing

At the end of August 2015, Patricia Le Miere, the manager of the Litigation team, resigned to take up a full time position as a member of the State Administrative Tribunal. Patricia worked for the Committee for nearly 10 years and was active in planning and implementing the restructure of the Committee's office in late 2010. Patricia's hard work and dedication in running the Litigation team, at times single handed, ensured the smooth and efficient operation of the Litigation team.

Staffing levels remained constant during the year with staff continuing to work at full capacity. Two senior legal officers increased their working hours.

Thanks

During the year, Margaret Nadebaum, one of the Committee's community representatives, reached the end of her term of appointment and was not eligible for reappointment. Margaret served the Committee as a deputy community representative and then later as one of the community representatives. Margaret's contribution to the Committee's work was greatly valued.

Once again, I commend the ongoing commitment and effort of each member of the Committee's staff to the smooth running of the Committee. The role of dealing with complaints is far from easy and all too often individual staff members face unwarranted criticism from those they are trying to assist. Despite this, the Committee's staff keep their sense of humour and good spirits, and remain dedicated to the Committee's work. I thank each and every one of them.

Each year the Committee calls upon barristers from the independent bar to undertake the Committee's work at greatly reduced rates. Their generosity to the whole

profession in doing so is a credit to them and is greatly appreciated. My very special thanks to one particular counsel who, not for the first time, undertook work for the Committee and waived his fees.

My thanks also to the Chair and deputy Chair for their ongoing support and assistance during the year, as well as the assistance and hard work of each of the Committee's members. I also thank the Executive Director of the Board for his assistance in administrative matters.

*Gael Roberts
Law Complaints Officer
July 2016*



3. About the Legal Profession Complaints Committee

3.1 Our role, purposes and objectives

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

The statutory purposes of the Committee's work are:

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

Our objectives are:

- to provide an efficient and expeditious system for dealing with complaints
- to proactively monitor the conduct of the legal profession
- to initiate disciplinary proceedings as appropriate
- to promote and enforce the professional standards, competence and honesty of the profession

- to maintain a productive and motivating work environment.

3.2 Our relationship with the Legal Practice Board

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

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

The Committee's operations are now fully funded by the Board. Prior to the end of 30 June 2015 part of the Committee's accommodation costs were funded by the Government. The Board also employs all the staff of the Committee including the Law Complaints Officer.

The office of the Law Complaints Officer is established by the Act. The Law Complaints Officer assists the Committee in the exercise of its functions and the Committee may delegate many of its powers and duties to the Law Complaints Officer, which the Committee has done, including the power to dismiss certain complaints.

3.3 Our members

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

During the reporting year the Committee was constituted by:

Chair: Mr J R B Ley
Deputy Chair: Mr K R Wilson SC

Legal members:
Mr K M Pettit SC
Mr M T Ritter SC
Mr T Lampropoulos SC
Mr B Dharmananda SC
Mr M R Berry SC (until 27 November 2015)
Ms S M Schlink
Mr J G Syminton
Mr A J Pascoe (until 6 April 2016)
Mr S French (from 6 April 2016)

Community representatives:
Ms M Nadebaum (until 15 December 2015)
Mr C Hudson
Mr G R Fischer (from 15 December 2015)

Deputy community representatives:
Mr G R Fischer (until 15 December 2015)
Ms K Ballard AM (from 15 December 2015)

3.4 Our operations

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

During the year, the Committee held 15 meetings.

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

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

The Rapid Resolution team is managed by Ms Philippa Rezos and comprises 2.8 full time equivalent (*FTE*) legal officers, 0.8 FTE senior legal officer and one secretary.

The Investigation team is managed by Mr Nicholas Pope and comprises 2.4 FTE legal officers, 0.8 FTE senior legal officer, a senior trust account inspector and two secretaries.

The Litigation team is managed by Ms Cassandra Paterson and comprises 1 full time legal officer and one secretary.

3.5 Trust account inspections

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

During the year, Ms Young undertook 29 inspections of which 5 were causal

inspections and 24 were routine inspections.

Ms Young's reports on two inspections undertaken during the year were referred to the Investigation team for further investigation. The result of another inspection was referred to the Legal Practice Board with a recommendation that conditions be placed on the principal's practising certificate.

One of Ms Young's inspections concerned a law practice whose trust bank account remained open for 9 months following the sale of the practice and in circumstances where the principal no longer had access to the former practice's accounting records and some of the client files.

Ms Young, with the assistance of the Committee's legal officers, arranged for herself and the principal to gain access to the practice's accounting records and relevant client files. Ms Young identified on whose behalf trust monies were retained and verified the amount of the trust funds held for each client, which was then reconciled against the funds remaining in the trust bank account. Having completed this reconciliation, Ms Young set out for the principal the steps he needed to take to close the practice's bank account, which he is currently undertaking.

The concerns identified by Ms Young during her inspections this year included the lack of adequate records for controlled money, lack of adequate detail being recorded when funds are received into or paid from trust, and adequate detail for deposits into a practice's general account (whether by a direct deposit by a client or the transfer of funds from the practice's

trust account) to confirm direct deposits were not trust funds, and transfers from trust were made in accordance with legislative requirements.

What was also evident to Ms Young was that many practices, particularly small practices, did not have a full understanding of the computer software programs they maintained for their trust accounting records and how best to utilise that software to ensure compliance with their trust accounting obligations. Principals of such practices would benefit from additional training on the capabilities of the software they utilise.

Ms Young believes that her face to face interaction with practitioners during inspections makes practitioners more comfortable discussing trust account issues. This allows her to offer suggestions to them for improvements to their systems, and provide explanations for the reasons behind some legislative requirements to assist with their understanding of trust account requirements. It also means that following that interaction practitioners are often more willing in the future to contact the trust account inspectors to discuss trust accounting issues.

3.6 Our staff training and professional development

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

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

of the professional staff. These in-house seminars included the following topics:

- A guide to the Construction Contracts Act
- Managing unreasonable complaints conduct
- Recent developments on costs
- Best practice for family law practitioners
- Estate disputes and family provision claims
- Confidentiality and conflict in the context of director's duties.

The Committee has been fortunate to secure highly respected and experienced presenters for these in-house seminars. Speakers have included a Justice of the Supreme Court, senior counsel and highly experienced practitioners in their areas of practice. The aim of these seminars is to ensure that the Committee's staff receive the

training they need to undertake their work to the highest possible standard and to enhance their legal knowledge in a number of key areas.

With the addition of the new category of 'Practice Management' to the Continuing Professional Development scheme from 1 April 2015, two in-house workshops were held for professional staff which covered a range of topics relating to office procedures, protocols and processes.

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

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



4. Complaints

4.1 Complaint handling process

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

People with a concern about a practitioner are encouraged to contact the RRT by telephone. During the relevant period, 76% of all new contact with the Committee was via the telephone or in person.

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

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

Even if an inquiry or complaint is received in writing, it is quite common for the legal officer to telephone the inquirer/complainant to discuss the matter.

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

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

During this assessment process, it is not only the particular concerns raised by the inquirer/complainant which are examined. Often during this process the legal officer will identify other issues which need to be addressed. For example, a complaint about delay may involve checking the bills issued to see what work was claimed to be done and when it was done. This check may reveal problems with some of the charges being rendered by the firm. Any problems so identified, are raised with the practitioner.

Once the legal officer has reached a preliminary view on an inquiry/complaint (a process that can happen on the spot, the same day, within a few days or require a few

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

If a concern but not a conduct issue is identified, the legal officer discusses with the inquirer/complainant whether they would like to have the matter 'conciliated'. This term is used very broadly to describe a number of outcomes which may be achieved, from seeking a waiver of fees, to the manager of the RRT expressing concern about the practitioner's conduct. This process is only undertaken if the inquirer/complainant agrees to the matter being dealt with as an inquiry rather than as a complaint (although a complainant is advised that if the conciliation process is unsuccessful they may reinstate their complaint).

If the inquirer/complainant is agreeable to conciliation being attempted, the legal officer then undertakes this process with the practitioner (if he or she is agreeable). The practitioner is advised at the outset of the legal officer's preliminary view of the matter and the process which is to be followed. If conciliation is successful, the inquiry into the concern is closed on that basis. If the conciliation process is not successful and the inquirer/complainant wishes to have a complaint determined that is done. Frequently, in highly conflicted matters face to face meetings may occur with the practitioner (sometimes accompanied by counsel) and/or the inquirer/complainant.

If a conduct issue is identified which the legal officer considers may be mitigated in some way, the legal officer will speak to the practitioner immediately to discuss his or her preliminary view, possible mitigation and why taking mitigating action may benefit the practitioner. The practitioner is not asked for any formal response to the matter at this stage. The RRT officer recommends to the practitioner that prior to providing any response on taking up the invitation to mitigate that the practitioner consult with senior counsel or use the WA Bar Association referral scheme, which assists practitioners to obtain advice from counsel. Either when the practitioner decides not to take any mitigating action or after any mitigating action has been taken, the complaint is then referred to the Investigation team which undertakes a formal investigation of the matter.

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

The above process is very time and labour intensive. The RRT legal officers spend a great deal of time on the telephone ensuring that both inquirers/complainants and practitioners understand the process, the views being expressed and the basis for those views. Often the legal officers also have to review a large volume of material in order to reach a preliminary view.

The Investigation team conducts the formal investigations of complaints

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

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

the Committee for formal determination.

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

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

Sometimes, the Committee may direct that further enquiries be made or defer investigation pending the outcome of litigation concerning the practitioner's conduct.

Examples of the Rapid Resolution Team's work

Case Study 1

Fairness and reasonableness of fees charged for work carried out on an application for Letters of Administration

The administrator of a deceased estate contacted the Committee about the reasonableness of the fees a firm had charged to a modest estate. The administrator's concerns included the proportionality of the firm's fees to the value of the estate and the necessity for the work which had been carried out.

On reviewing the firm's costs agreement, invoices rendered and the nature of the work carried out the RRT legal officer identified the following issues:

- the fees charged were almost double the costs estimate (which had never been revised);
- the amount charged for the professional time of a junior lawyer of less than 5 year's experience was almost 70% greater than the scale amount (the State Administrative Tribunal has previously commented on charging professional fees disproportionate to the experience of the relevant practitioner);

- each bill rendered was treated as a final bill, it appeared in order to attempt to avoid the application of section 293 of the *Legal Profession Act 2008* (LPA) which permits an interim bill to be assessed either at the time it is issued or at the time the final bill is rendered;
- the failure at the outset to consider what work was required and the most efficient way of undertaking the work;
- delay in undertaking the work;
- ceasing to act following receipt of requisitions from the Probate Office, which increased the costs incurred by the estate as it then retained the Public Trustee to undertake the work.

Both the administrator and the firm agreed to conciliate the matter. The firm retained a costs consultant to address the Committee's concerns about the efficacy of the costs agreement and its charges. The matter was resolved with the firm making a partial refund of fees, adopting changes in its billing practices and revising its costs agreement to ensure it met the requirements of the LPA.

Case Study 2

Advertising on Facebook

The Committee was contacted regarding advertisements appearing on the Facebook page of a family law firm. The advertisements included photographs with captions such as, "*If the fairy tale ended, would you keep his car?*"

On viewing the Facebook advertisements, the Committee had concerns that some of the scenes depicted and the accompanying captions had both the potential to bring the profession into disrepute and possibly amounted to a breach of the conduct rules relating to advertising.

On being contacted, the firm's principal acknowledged the Committee's concerns and made arrangements to remove the advertisements which caused concern.

The matter was resolved on the basis of the Committee expressing concern to the practitioner about the nature of the advertising and noting the remedial steps taken.

Case Study 3

Practitioner acting for opposing party in a small claims dispute using unfair processes

The opposing party, D, contacted the Committee expressing concern about the practitioner's conduct of a small claim dispute. As a consequence of steps taken by the

practitioner, the opposing party was imprisoned overnight pursuant to the provisions of the *Restraint of Debtors Act 1984* (RDA).

The issues identified by the Committee included:

- failing to give consideration as to the best forum for instituting his client's proceedings for the recovery of the debt which was less than \$10,000;
- imposing unreasonable time periods in a letter of demand for responding prior to instituting proceedings;
- failing to consider other alternatives available pursuant to the RDA if there was a concern about the debtor possibly absconding from the jurisdiction;
- failing to adequately address the requirements of the relevant provisions of the RDA when seeking a warrant for arrest;
- failing to consider the likelihood of the warrant being granted and executed by the court.

In partial mitigation of his conduct, the practitioner:

- apologised for the distress and embarrassment D suffered from being imprisoned;
- reimbursed D's subsequent solicitor/client costs of \$2,000;
- paid compensation to D of \$5,000.

The practitioner's conduct was subsequently referred to the Investigation team for investigation.

Case Study 4

Conduct of defence counsel

The Committee received for its consideration the transcript of a trial due to concerns about the practitioner's lack of courtesy to the trial judge and the manner of her conduct of the defence of her client.

Upon reviewing the trial transcripts the Committee contacted the practitioner to discuss her interaction both with the trial judge and the prosecutor.

On being contacted, the practitioner agreed to meet with a legal officer from the RRT. During a meeting, the legal officer went through the trial transcript with the practitioner identifying both examples of professional discourtesy and what appeared to be a lack of objectivity. The practitioner accepted the concerns and agreed to apologise in writing to the trial judge.

On receiving the apology, the trial judge contacted the RRT legal officer to discuss the matter. The trial judge then wrote to the RRT legal officer indicating that when he received the apology he had been about to forward a complaint about the practitioner but having received the apology and knowing the consideration given to it by the Committee had now determined not to proceed with a complaint. The trial judge further indicated he had been minded to complain not for the purpose of the practitioner being sanctioned but rather in the hope of ascertaining the practitioner's attitude to her behaviour. Further, he considered the RRT had handled the matter "professionally and sensitively", and accepted the practitioner's apology.

4.2 Key statistics

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

In this section, key statistics are highlighted.

References to "complaints" in this section do not include the inquiries dealt with by Rapid Resolution but do include conduct investigations initiated by the Committee of its own initiative unless stated otherwise.

Number of Rapid Resolution inquiries finalised

The Rapid Resolution team dealt with 1421 inquiries of which 18% were conciliated. The conciliated matters included the discount, waiver or refund of fees to clients in excess of \$488,000.

The complainants

Nearly half of all complaints (43.9%) were from clients/former clients of the practitioner complained about or friends or relatives of those clients. 12.2% of complaints were made

against the practitioner acting for the opposing party in proceedings.

In respect of Rapid Resolution inquiries, 59.5% were made by or on behalf of clients or former clients of the practitioner being enquired about or by friends or relatives of those clients. A fifth of all inquiries (20.9%) were made by an opposing party.

The areas of law

The areas of law attracting the most complaints were family/de facto law (28.9%) followed by civil litigation (20.5%) and then criminal law (15.7%).

In respect of Rapid Resolution inquiries, 30.2% were in the area of family/de facto law, 15.3% in civil litigation and 13.2% in probate and wills.

The types of complaint

Many complaints raised more than one matter of complaint. This year, costs issues (20.1%) and unethical conduct (10.3%) attracted the most complaints.

However, for Rapid Resolution inquiries, costs issues were the highest category with almost a third of all inquiries raising a costs related issue (31.1%) with the next highest categories being unethical conduct (12.6%) and no communication (9.8%).

The practitioners

The greatest number of complaints related to Sole Principals (42.7%), followed by Other Principals (15.9%) and Non Principals (13.4%).

The number of practitioners complained about

Some 68 practitioners were the subject of one or more complaints (including conduct investigations) during the year. Of this total, 59 practitioners were the subject of one

complaint, 6 practitioners were the subject of two complaints and 3 practitioners were the subject of three or more complaints.

The Board has reported that there were 6350 certificated or deemed certificated practitioners practising in Western Australia as at the end of the year. However, this figure does not include those interstate based practitioners practising in this State who are not required to take out a practising certificate in Western Australia by reason of holding a home jurisdiction practice certificate.

The number of practitioners complained about represented 1.0% of certificated or deemed certificated Western Australian practitioners, which was in line with 1.1% of practitioners in the 2014-15 reporting year.

Number of complaints received and dealt with

<i>Matters under investigation</i>	<i>Total</i>	<i>Complaints</i>	<i>Conduct Investigations</i>
Open as at 1 July 2015	125	80	45
Opened during year	86	67	19
Closed during year	(88)	(57)	(31)
Outstanding as at 30 June 2016	123	90	33

5. Formal determination of complaints

5.1 Overview and key statistics

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

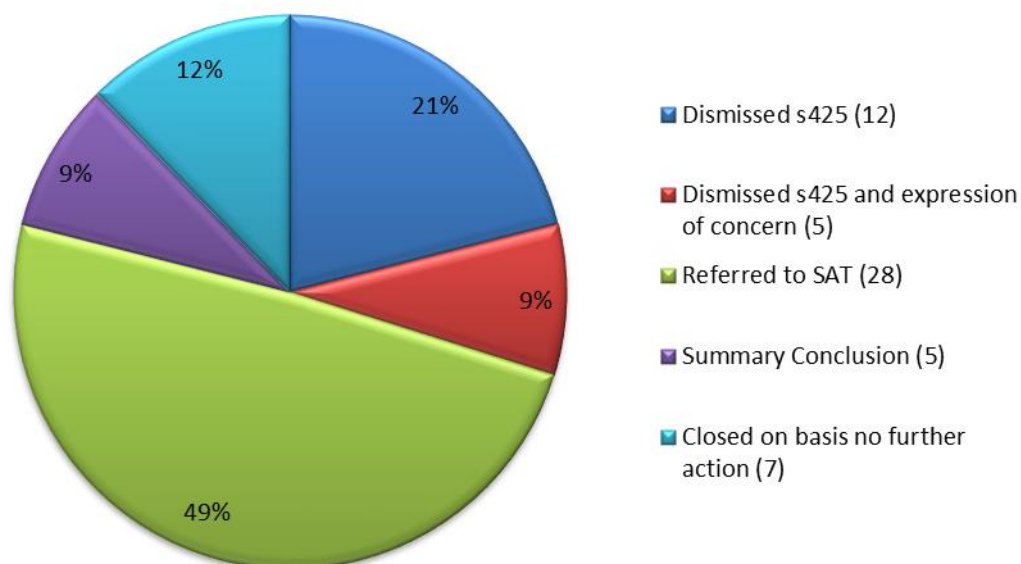
When a matter goes before the Committee, the Committee may finally determine the matter in one of three ways:

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

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

During the year the Committee determined 57 matters of which 42.1% were dismissed (or not taken further), 49.1% were referred to SAT, and 8.8% were dealt with in the exercise of its summary conclusion powers.

Committee determinations



In addition to the matters dealt with by the Committee, a further 14 complaints were dismissed by the Law Complaints Officer exercising the delegated power of the Committee.

5.2 Matters dismissed or not taken further

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

Officer exercising the delegated power of the Committee. All complaints dismissed by the Committee were dismissed following a full investigation.

In 37.5% of the matters dismissed or not taken further, the Committee expressed concern to the practitioner about an aspect of the practitioner's conduct. Such expressions of concern are generally used by the Committee when the conduct of the practitioner is not such that it would amount to unsatisfactory professional conduct or professional misconduct but is still of some concern to the Committee. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future.

Some examples of expressions of concern

Case Study 1

Take note

During July 2011 the practitioner acted for a client in respect of an extradition warrant issued by authorities in the United States of America.

Between July 2011 and 2014 the complainant sought a costs assessment in relation to the practitioner's fees and the practitioner sought a review of the costs assessment. As a result of those proceedings close to 50% of the practitioner's fees were reduced.

The Registrar who conducted the review of the costs assessment commented on the lack of notes made by the practitioner with no notes of any attendances on the client or any other party and no timesheets which could establish that particular events occurred, on what day they occurred or how long they took.

The client made various complaints against the practitioner including that the practitioner had failed to properly document instructions and advice given.

In submissions to the Committee the practitioner stated that all notes were taken by another person who at one stage held a power of attorney for the client. Apparently, the

other person kept notes in a workbook and it was the practitioner's intention to copy the workbook and place it on the file, but the person left Perth before that was done.

In communications with the Committee's Rapid Resolution Team, the practitioner stated that he now routinely keeps detailed file notes and fills out task sheets to document telephone conversations and meetings.

In determining the complaint the Committee commented that it was unclear why the practitioner felt it appropriate to have an associate of the client document both instructions and advice on behalf of the practitioner rather than himself or someone working for him, and considered that that was an inappropriate practice.

The Committee noted from a review of the practitioner's file that although there were no notes by the practitioner of any meeting with the client or any correspondence from the practitioner to the client, there were two undated unsigned opinions which referred to instructions provided by the client and set out advice. Further, in documents provided by the client to the Committee, there was a letter from the practitioner confirming some instructions provided by the client and providing some brief advice.

Given the existence of the "*opinions*" on the practitioner's file and the letter to the client amongst the client's documents, the Committee was of the view that there was evidence that the practitioner had documented in some way instructions given to him by the complainant and advice he had given, and dismissed this particular complaint. In doing so, the Committee expressed concern about aspects of the practitioner's conduct, namely to remind the practitioner of the importance of:

1. making contemporaneous notes regarding the instructions provided to the practitioner by a client and the advice provided to a client by the practitioner; and
2. not relying on a person outside of the practitioner's firm to make such notes.

Case Study 2

How not to "lay" down the law

The practitioner was instructed in respect of a defamation matter and sent a detailed letter to the complainant that was expressed to be a "*Concerns Notice*" pursuant to section 14 of the *Defamation Act 2005* (Act) and inviting the complainant to make an Offer of Amends in accordance with Part 3 of the Act.

The complainant responded to the "*Concerns Notice*" disputing certain matters, raising possible defences to any defamation action and seeking particulars of alleged statements and emails referred to in the "*Concerns Notice*". The complainant described his letter as a Further Particulars Notice pursuant to section 14(3) of the Act.

The practitioner responded to the complainant in curt terms and in a derisory and disparaging manner which included suggesting that the complainant's failure to comprehend matters in the practitioner's notice was a pretence and done so as to avoid responsibility for what was said to be persistent and continued conduct in defaming the practitioner's client.

The complainant complained to the Committee about various aspects of the practitioner's conduct including that the practitioner's reply to the complainant's letter was discourteous.

According to the practitioner, when he wrote the letter he genuinely believed that the complainant had understood the "Concerns Notice" and was attempting to evade answering it.

The Committee took into account that the letter was written to a lay person and was of the view that the letter was unnecessarily aggressive and rude in the sense that it suggested that the complainant, a non lawyer, was deliberately misunderstanding a technical legal document. However, the Committee noted that when the matter was first raised with the practitioner by the Committee's legal officers, he had accepted that the letter was blunt and apologised if his letter gave the impression of, or conveyed, some element of discourteousness. The practitioner also stated that he had no intention of being rude to the complainant.

Although the Committee was of the view that the practitioner's conduct in sending the letter was not such as to amount to unsatisfactory professional conduct, the Committee expressed concern that the practitioner's correspondence was unnecessarily aggressive and rude, particularly, to a lay person. The practitioner was reminded of the need for interchange in legal matters to be polite, respectful, and also balanced, measured and reasonable.

Case Study 3

Relative concerns

The practitioner entered into a costs agreement with Mr D and Mrs D in relation to their son, W, who had been charged with breaching a police order in contravention of the *Restraining Orders Act 1997*.

The police order arose out of an altercation involving Mrs D and W under which W was not to communicate with Mrs D or enter or remain on any premises where Mrs D lived or worked. The contraventions arose out of W returning to Mrs D's residence and attempting to communicate with Mrs D by phone.

Mr and Mrs D arranged for the practitioner to represent W in respect of the contravention of the police order and met the practitioner with W (at a time when the police order had expired).

The practitioner represented W in the Magistrates Court where W pleaded guilty, was fined and a spent conviction order was made.

Not long after, there was a further incident involving violent behaviour by W to Mrs D following which W was charged with aggravated assault and criminal damage.

The practitioner entered into a costs agreement with Mrs D to act for W in relation to that further charge.

The practitioner appeared for W in the Magistrates Court on the hearing of the further charge when W pleaded guilty and was sentenced to a 12 months community based order with supervision conditions.

The Committee investigated the practitioner's conduct of its own initiative, in particular regarding possible conflict of interest issues.

The practitioner provided the Committee with a copy of a report from W's treating medical practitioner which confirmed that W had been diagnosed with various mental illness conditions, was on medication under the treating doctor's supervision, could display irrational and aggressive behaviour unless properly medicated and, during the period which resulted in the charges, had ceased taking the medication upon the advice of another medical practitioner which had resulted in destabilisation and irrational behaviour on the part of W.

Although Mr and Mrs D had reported matters to the police, they did so as they were unable to cope with W and believed that it would result in W being hospitalised for appropriate medical attention. They did not do so with the intention that W be charged.

Mr and Mrs D continued to support W in spite of his aggressive behaviour and requested that the practitioner represent W with them being responsible for his legal fees.

Although both costs agreements were worded as though the client involved was Mr and Mrs D and Mrs D respectively, there was no evidence before the Committee that the practitioner had advised, or sought to advise, Mr and Mrs D as clients in relation to the charges and the practitioner's conduct supported her submissions that she had been instructed only to advise and represent W as the client.

The Committee noted that the practitioner had met with W, Mr D and Mrs D together, at least in relation to the police order matter, in circumstances where Mr and Mrs D were witnesses to the breach of the police order.

A practitioner should not confer with more than one lay witness at the same time about any matter which the practitioner believes may be contentious at a hearing and which could be affected by, or may affect, evidence to be given by any of those witnesses.

The Committee decided that given the unusual circumstances, including W's medical condition and it being unlikely that the facts would be contentious, that it would take no further action in relation to the matter.

The Committee did however express concern that the practitioner did not give proper consideration as to whether it was appropriate that she take instructions from W in the presence of Mr and Mrs D (who were witnesses to the charges) or whether such a meeting may affect the evidence to be given if the matter progressed to trial.

The practitioner should have considered the potential conflict of interest between the parties, raised this issue with the parties so they were aware of it and taken steps to lessen the effect of any potential conflict, such as, by having an independent person present at her meeting with W instead of Mr and Mrs D or, if a family member's presence was necessary (due to W's medical condition), that only Mr D be present as a support person.

The Committee also expressed concern that the practitioner did not take care to ensure that the costs agreements properly documented who was the client and the arrangements for payment of legal fees by Mr and Mrs D.

5.3 Summary conclusion determinations

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

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

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

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

The Committee exercised its summary conclusion powers in respect of 3 practitioners during the year.

Summary of matters determined in the exercise of summary conclusion powers

<i>Grounds of unsatisfactory professional conduct</i>	<i>Finding</i>
By taking her employer legal firm's intellectual property and work product and other confidential information (including confidential client information and information confidential to third parties) without the knowledge or permission of her employer or any other permitted justification.	Fine of \$1,000
As against 2 practitioners: by causing to be published, in a local regional newspaper on Friday, 19 September 2014, a notice regarding the cessation of an employed solicitor's employment with the practitioner's legal practice, that was likely to bring the legal profession into disrepute.	Public reprimand

5.4 Referrals to the State Administrative Tribunal

During the year, the Committee resolved to refer matters arising from 29 complaints or conduct investigations to SAT involving 18 practitioners. As at 30 June 2016, 17 of these matters had been filed in SAT and four were on hold due to the practitioners' personal circumstances.

The referral is by way of an Application filed in SAT. The Application sets out the Grounds of the professional misconduct or unsatisfactory professional conduct together with the supporting facts and contentions.

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

6. State Administrative Tribunal and Court Proceedings

6.1 SAT Applications

The Committee filed 14 Applications in SAT during the period under review (which included 25 individual matters).

During the year there were 16 Applications determined by SAT.

Of the matters determined, 11 were determined (including penalty) as a result of consent orders, one was determined as a result of the finding being made by consent but with penalty being referred to SAT for hearing, and one was partly determined (including penalty) by consent with one ground being referred to SAT for hearing.

At the conclusion of the period there were 13 Applications 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 SAT for consideration. SAT is required to consider and determine if the proposed orders are appropriate before making orders in those terms. In previous years there have been 2 occasions when SAT has declined to make the proposed consent orders on the basis that the penalty was not adequate given the nature of the conduct.

An issue that arose during the 2014 – 2015 year following the decision of the High Court in *Barbaro v R* [2014] HCA 2 (**Barbaro**) was whether the Committee (and other regulatory bodies) could provide SAT with consent orders for its consideration or make submissions as to an appropriate penalty following a hearing.

The issue has now been clarified following the decision of the High Court in *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; the decision in *Barbaro* has no application to civil penalty proceedings, such that the Committee will be able to agree with practitioners on facts and civil penalties to be imposed, but the Tribunal will need to be persuaded that the penalty proposed is appropriate on the facts.

The High Court was concerned with the “*important public policy involved in promoting predictability of outcome in civil penalty proceedings*”.

The Court emphasised the difference between the “available range” of penalties in a criminal proceedings as opposed to the “permissible range” in civil penalty proceedings where there is considerable scope for the parties to agree upon facts and penalty. The Court approved observations in *NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* (1996) 71 FCR 285 that regulatory bodies “*will be in a position to offer informed submissions*

as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance” and noted that civil penalty is “primarily if not wholly protective in promoting the public interest in compliance”.

The Court stated it was *“entirely consistent with the nature of civil proceedings for a court to make*

orders by consent and to approve a compromise of proceedings on terms proposed by the parties provided the court is persuaded that what is proposed is appropriate”.

Summary of SAT matters determined 1.7.15 – 30.6.16

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
130/2014 18/09/2015 (Finding) 2/12/2015 (Penalty)	Barber, Julia	Professional misconduct Knowingly caused SAT to be misled by submissions of counsel and by the tender of and reliance upon the witness statements which as she well knew: a) conveyed the impression, either expressly or impliedly, that H was the owner of a business; and b) concealed the fact that RS was the owner of the business; when in fact she well knew that RS (and not H) was the owner of the business	Finding of professional misconduct Practising certificate suspended for a period of 6 months Reprimand Costs: \$38,812
206/2014 25/09/2015	Reyburn, John Henry	Unsatisfactory professional conduct/ professional misconduct a) in preparing a will pursuant to which the practitioner was appointed executor with an entitlement to be paid remuneration as a legal practitioner he failed to keep any record of compliance with rule 15(5)(a)(ii) of the LPCR 2010 as to disclosure to the deceased of such entitlement; b) in the course of acting as executor, did not inform beneficiaries of the estate, or seek their views concerning, an offer made and continued to seek to reduce the 10% commission sought by the offeror to act as selling	Mediated outcome Finding of unsatisfactory professional conduct in respect of a) and c) Finding of professional misconduct in respect of b) Conditions placed on practising certificate Fine: \$12,000 Costs: \$7,500

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
		<p>agent where he ought to have known the offeror would not negotiate on that percentage and had he been less insistent on seeking to reduce the 10% commission sought and had he properly informed himself as to the lack of any evidence of a prior agreement that any commission would be only 4%, there was a real prospect the parties could have moved to negotiate a settlement to the benefit of the estate;</p> <p>c) in the course of acting as executor without exercising sufficient care he prepared and sent communications to a beneficiary of the estate that contained representations which were misleading or had the potential to mislead</p>	
217/2014 19/08/2015	Lourey, Michael Joseph	<p>Professional misconduct</p> <p>By sending letters to WorkCover which:</p> <p>a) made serious allegations against a Conciliation Officer ("Officer C") when there were no reasonable grounds to do so and was recklessly indifferent whether or not there were reasonable grounds to do so;</p> <p>b) stated he would draw Officer C's conduct to the attention of the "Minister" when there were no reasonable grounds to do</p>	<p>Mediated outcome</p> <p>Finding of professional misconduct</p> <p>Fine: \$7,500 Costs: \$7,000</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
		<p>so and was recklessly indifferent to whether or not there were reasonable grounds to do so;</p> <p>c) stated he would seek advice as to whether he should refer a letter he received from WorkCover to the Public Sector Commissioner when there were no reasonable grounds for doing so;</p> <p>d) made allegations concerning Officer C's conduct and stated that he would draw Officer C's conduct to the attention of the Minister and to refer WorkCover's letter to the Public Sector Commissioner with the intention of causing the Acting Director Conciliation Service to question the competence of Officer C and not assign Officer C any matter in which the practitioner or his firm were involved</p>	
18/2015 18/12/2015	Penn, Carol	<p>Professional misconduct</p> <p>a) in the course of acting on behalf of an executor of an estate causing to be prepared under her supervision, settling and causing to be filed and served an affidavit sworn by the executor verifying a Statement of Assets and Liabilities and an updated Statement of Assets and Liabilities in proceedings in the Supreme Court of WA which ascribed values</p>	<p>Mediated outcome for (a) and (c)</p> <p>Finding of professional misconduct</p> <p>On the undertaking by the practitioner not to seek to renew her practising certificate: Reprimand</p> <p>Hearing</p> <p>Finding of professional misconduct in relation to (b)</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
		<p>to properties without taking any or any adequate steps to ensure the value ascribed to the properties was accurate and that there was a basis or alternatively sufficient basis for the value ascribed to the properties;</p> <p>b) charging professional fees that were excessive and further or in the alternative included charges which were unreasonable and/or properly chargeable;</p> <p>c) by not providing any disclosure as to costs as required by section 260 of the <i>Legal Profession Act 2008</i> or at all</p>	No further penalty imposed
19/2015 10/08/2015	Horwood, Louise	<p>Professional misconduct</p> <p>Preparing and causing a draft letter to be sent to the client for approval to be sent to the other party proposing an agreement as to family law property settlement and also acknowledgement of debt owed, which made serious allegations concerning the other party's conduct, in circumstances where:</p> <p>a) the practitioner intended that a letter containing serious allegations be sent to the other party with insufficient regard as to whether there were no or no reasonable grounds for the serious allegations;</p> <p>b) the serious allegations were made concerning the other party in a manner</p>	<p>Mediated outcome</p> <p>Finding of professional misconduct</p> <p>Condition placed on practising certificate that from 1 July 2015 she only practice law as an employed solicitor in the employment of and supervised by a practitioner with a minimum of ten years' experience, approved in writing by the Legal Practice Board.</p> <p>Costs: \$3,000</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
		<p>which was intimidatory and threatening with the intention of causing the other party to:</p> <ul style="list-style-type: none"> i) agree to not apply to the Family Court of WA for an alteration of property interests and to agree to a division of matrimonial assets as proposed in the letter; and ii) to acknowledge an indebtedness 	
<p>20/2015 19/06/2015 (Finding) 7/10/2015 (Penalty)</p>	<p>Aldrich, Alison Janice</p>	<p>Professional misconduct Causing and permitting a letter to be sent to the other party proposing an agreement as to family law property settlement and also seeking acknowledgement of an obligation by the other party to repay her client's family member a sum of money, which made serious allegations concerning the other party's conduct in circumstances where:</p> <ul style="list-style-type: none"> a) the practitioner took no steps to satisfy herself that there were reasonable grounds for making the serious allegations b) the serious allegations were made concerning the other party in a manner which was intimidatory and threatening with the intention of causing the other party: <ul style="list-style-type: none"> i) to agree to not apply to the Family Court of WA for an alteration of property interests and 	<p>Mediated Outcome Finding of professional misconduct</p> <p>Penalty (after hearing) Public reprimand Fine: \$12,000 Costs: \$3,557</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
		<p>to agree to a division of matrimonial assets as proposed in the letter</p> <p>ii) to acknowledge an obligation to repay the client's family member's debt</p>	
<p>34/2015 23/09/2015 (Finding) 16/05/2016 (Penalty)</p>	<p>Khosa, Manraj Singh</p>	<p>Professional misconduct Releasing an executed withdrawal of caveat form for lodgement at Landgate in circumstances where:</p> <p>a) the practitioner undertook that the form would not be lodged at Landgate and that he would not (it being necessarily implicit) release it until such time as the issue of costs in District Court proceedings had been resolved;</p> <p>b) the issue of costs had not been resolved when the practitioner released the form;</p> <p>c) the practitioner released the form in the knowledge it was in breach of the undertaking</p>	<p>Finding of professional misconduct*</p> <p>Suspended from practice for a period of 6 months*</p> <p>Reprimand Costs \$8,367</p>
<p>35/2015 5/08/2015</p>	<p>Brook, Alan Michael</p>	<p>Professional misconduct/ unsatisfactory professional conduct</p> <p>a) not taking any or any adequate steps to progress the Grant of letters in a timely and competent manner;</p> <p>b) not providing any or any adequate advice concerning whether the consents of some or all of the beneficiaries were required to obtain the</p>	<p>Mediated outcome Findings of professional misconduct in respect of (a), (b), (c), (d), (e), (f) and (h)</p> <p>Unsatisfactory professional conduct in respect of (g)</p> <p>Conditions placed on practising certificate Refund to clients of \$1,500 Costs \$2,000</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
		<p>Grant and whether it was necessary and/or desirable to dispense with guarantees by all or some of the beneficiaries and what options were available other than to apply for the Grant;</p> <p>c) providing incorrect advice as to the terms of the will and a beneficiary's position on the distribution of the will;</p> <p>d) not, as he should have, advising some of the beneficiaries (not clients of the practitioner) to obtain independent legal advice;</p> <p>e) not informing beneficiaries that the Grant had been made;</p> <p>f) not providing any or any adequate advice;</p> <p>g) not providing any or any proper costs disclosure;</p> <p>h) charging legal fees that were excessive</p>	
<p>37/2015 28/08/2015</p>	<p>Khosa, Manraj Singh</p>	<p>Unsatisfactory professional conduct / professional misconduct</p> <p>Not giving any, or any adequate, advice to his client with respect to:</p> <p>a) continuing and/or maintaining District Court proceedings in circumstances where the defendants asserted that the proceedings had not been commenced in the most appropriate jurisdiction and foreshadowed an application seeking orders</p>	<p>Mediated outcome</p> <p>Leave to withdraw Ground 1 relating to (a) and (b)</p> <p>Finding of Unsatisfactory professional conduct in respect to (c), (d) and (e)</p> <p>Fine: \$2,000 Costs: \$5,000</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
		<p>that the proceedings be stayed and that the client pay the defendants' costs;</p> <p>b) an application by the defendants to stay the proceedings and further, proceeding, purportedly on behalf of the client, to oppose the stay application without taking any steps or reasonable steps to ensure the client understood the jurisdictional issue and the possible consequences of continuing with the WA proceedings</p> <p>and</p> <p>c) not issuing proceedings in the Supreme Court of Queensland as instructed by the client</p> <p>d) without reasonable excuse, not responding to the client's emails</p> <p>e) not providing any part of the client file requested by the client on 16 July 2013 until 26 August 2013;</p> <p>f) as promised in his email of 24 July 2013, not refunding \$1,000 to the client (paid to his law firm on or about 27 May 2013) for the issue of the Queensland proceedings until on or around 28 August 2013</p>	
55/2015 18/11/2015	Jones, Steven James		Proceedings withdrawn Costs: \$3,300
56/2015 03/07/2015	Bodeker, Shannon	Unsatisfactory professional conduct	Mediated outcome Findings of Unsatisfactory

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
	Margaret	<p>Not advising the client that she should instruct the practitioner to seek leave to amend the Application to include an application for leave to apply for an order in relation to alteration of property interests out of time</p> <p>Professional misconduct Charging professional fees that were excessive and/or in the alternative included charges that were unreasonable and/or not properly chargeable</p>	<p>professional conduct Fine: \$4,000 Professional misconduct Fine: \$6,500</p> <p>Compensation: \$11,792.50 being a refund of fees Costs: \$3,000</p>
87/2015 25/09/2015	Strbac, Sinisa	<p>Professional misconduct</p> <p>a) failing to reach or maintain a reasonable standard of competence and diligence in his preparation and representation of a client in family law proceedings</p> <p>b) failing to comply with a Family Court Order that he personally pay a costs order made in favour of the other side</p>	<p>Mediated Outcome Finding of professional misconduct</p> <p>Conditions on practising certificate Practitioner to pay \$12,859.45 being the balance of the outstanding costs order made in the Family Court</p>
107/2015 01/03/2016	Berry, Judy	<p>Professional misconduct</p> <p>In care and protection proceedings in the Children's Court:</p> <p>a) sending emails without the client's instructions that expressed the practitioner's personal opinion on the merits of the issue, contained confidential information including the client's family's position on proposals for settlement of</p>	<p>Mediated Outcome</p> <p>Finding of professional misconduct in respect to (a), (b) and (c)</p> <p>Fine: \$15,000 Conditions placed on practising certificate</p> <p>Finding of Unsatisfactory professional conduct in respect of (d)</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
		<p>the proceedings, informed DCP that she intended to file a Notice of Ceasing to Act when she had not so informed her client, stating that she would inform Legal Aid that the “matter” did not have merit in going to trial, and which were prejudicial and contrary to the client's interests;</p> <p>b) making statements in a status conference hearing without and/or contrary to the client’s instructions and interests and gave her personal opinion on the merits of the issue;</p> <p>c) making false and/or misleading statements to Legal Aid</p> <p>Unsatisfactory professional conduct</p> <p>d) seeking payment of a client's costs order to be made to her personally in circumstances where there were no tax invoices rendered by the practitioner that remained unpaid, she was acting as counsel and did not maintain a trust account, she did not advise her instructing solicitor of the costs order or that she was seeking payment of the costs order to her directly, and continued to demand payment of the awarded costs despite being informed that the client had instructed his new solicitors not to pay the</p>	<p>Fine: \$2,000</p> <p>Costs: \$3,000</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
		awarded costs to her	
148/2015 10/11/2015	Joubert, Michael John	<p>Professional misconduct / unsatisfactory professional conduct</p> <p>a) did not make adequate inquiries as to what, if any, orders had been made by the Family Court in relation to property proceedings relating to his client;</p> <p>b) continued to prosecute the Magistrates Court proceedings in circumstances where the practitioner had notice that there had been property settlement proceedings and final orders made; and</p> <p>c) contacted his client's ex-wife and stated that his client was willing to withdraw the Magistrates Court proceedings if she would write to the presiding Judge dealing with arson charges against the practitioner's client stating that the client was not mentally stable at the time where:</p> <p>i) the practitioner had been alerted to the fact the subject of the Magistrates Court proceedings may have been previously dealt with by orders of the Family Court;</p> <p>ii) the client had an assault charge against him relating to his ex-wife;</p> <p>iii) the client had pleaded guilty to a charge of arson involving him</p>	<p>Mediated Outcome</p> <p>Finding of Professional misconduct in respect of (c)</p> <p>Public reprimand Fine: \$12,000</p> <p>Finding of Unsatisfactory professional conduct in respect of (a) and (b)</p> <p>Fine: \$3,000</p> <p>Costs: \$2,500</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
		<p>attending his ex-wife's home and setting alight two vehicles belong to her partner;</p> <p>iv) the ex-wife was a victim of crime;</p> <p>v) the approach to the ex-wife involved offering an inducement and the risk that the content of what the ex-wife provided to the court would be influenced by the inducement;</p> <p>vi) he was reckless as to whether the ex-wife would or ought to have known that the ex-wife could feel intimidated or threatened by his approach</p>	
155/2015 2/11/2015	McCardle, Roxanne Maree	<p>Unsatisfactory professional conduct</p> <p>Preparing and sending a letter of complaint to the Department for Child Protection and Family Support which made two allegations concerning a case worker, when the practitioner was recklessly indifferent as to whether there were reasonable grounds for those allegations and when the first allegation was not relevant to the complaint and made with the sole intention of impugning the character and personal and professional integrity of the case worker to her employer</p>	<p>Mediated outcome</p> <p>Finding of Unsatisfactory professional conduct</p> <p>Reprimand Fine: \$2,000 Costs: \$1,000</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Allegation</i>	<i>Finding & Penalty</i>
214/2015 15/01/2016	Teh, Lyn-Lee	<p>Professional misconduct</p> <p>a) by requesting a practitioner of another firm unconnected to her own on a regular and frequent basis to assist her in carrying out or completing legal work on client matters at the law firm where she was employed, in circumstances which included her disclosing to that practitioner information that was confidential to her firm and its clients and the subject of legal professional privilege and knowing or being recklessly indifferent to the fact that the other practitioner in the course of assisting her disclosed information confidential to the other firm or its clients and the subject of legal professional privilege;</p> <p>b) requesting the other practitioner to take office stationery and to allow her use of his firm's printing facilities when she knew he would do so without the knowledge or permission of his law firm;</p> <p>c) continuing to seek the other practitioner's assistance to carry out legal work in relation to legal proceedings in which her firm acted for the plaintiff where she knew the practitioner's firm acted for the defence</p>	<p>Mediated outcome</p> <p>Finding of professional misconduct</p> <p>Practitioner not to apply for a practising certificate until 15 May 2016</p> <p>Costs: \$8,000</p>

Summary of SAT matters which were not determined as at 30.6.16

Application No.	Date filed	Allegation	Status
104/2015	5/6/2015	<p>Professional misconduct</p> <ul style="list-style-type: none"> a) failing to provide costs disclosure; b) failing to deposit trust money (cash) of \$25,000 to a general trust account; c) failing to account to the client for the cash payments where he briefed another practitioner to conduct the matter who charged \$4,000 and he did not give the client a bill for the legal services provided by him d) asserting in a letter that he had received certain professional advice prior to writing that letter, in circumstances where he had not or was recklessly indifferent as to whether he had received that certain advice, and so asserted in a manner that was intimidating and threatening; and e) further or in the alternative, did not act honestly and did not treat the client fairly and in good faith, and acted with the intention of deceiving the client as to costs 	Hearing 8/02/2017
105/2015	5/06/2015	<p>Professional misconduct</p> <ul style="list-style-type: none"> a) swearing an affidavit which was false and misleading and had the potential to mislead the court when the practitioner knew, or acted with reckless indifference as to whether, it was false and misleading and had the potential to mislead the court b) charging professional fees that were excessive and further, or in the alternative, included charges which were unreasonable and/or not properly chargeable 	Mediation 26/07/2016
147/2015	10/08/2015	<p>Professional misconduct/unsatisfactory professional conduct</p> <ul style="list-style-type: none"> a) not providing disclosure as to costs; b) not progressing an application for letters of administration in a timely and competent manner and being 	Hearing 6/10/2016

Application No.	Date filed	Allegation	Status
		<p>discourteous to the clients;</p> <p>c) making allegations to the Western Australian Police Service where there were no reasonable grounds and/or no legal practitioner of good repute and competence would have made such a report in all the circumstances; and</p> <p>d) sending a letter to the client that was false or misleading with the intention of misleading the clients or alternatively with reckless disregard as to whether the letter was false and misleading and whether the clients would be misled</p>	
149/2015	11/08/2015	<p>Professional misconduct</p> <p>a) failing to respond to the Committee's requests for copies of documents and information;</p> <p>b) making the provision of an itemised account requested by a fellow executor conditional on the withdrawal of the complaint made against the practitioner to the Committee; and</p> <p>c) without reasonable excuse failing to respond to a summons issued by the Committee</p>	<p>Directions hearing 02/08/2016</p>
173/15	12/10/2015	<p>Professional misconduct</p> <p>a) Recording conversations on a hand held recording device without the knowledge or consent of the person being recorded, in contravention of s 5(1) of the <i>Surveillance Devices Act 1988</i> (WA).</p> <p>b) Swearing an affidavit to be read in the Magistrates Court of Western Australia at Perth in which the practitioner gave evidence on oath when the practitioner knew, or alternatively the practitioner was recklessly indifferent to whether, the evidence was false, doing so with the intention of misleading the Magistrates Court of Western Australia as to the matters the subject of the evidence.</p> <p>c) Giving evidence on oath in the Magistrates Court of Western Australia</p>	<p>Interim hearing 11/08/2016</p>

Application No.	Date filed	Allegation	Status
		when the practitioner knew, or alternatively the practitioner was recklessly indifferent to whether, the evidence was false, doing so with the intention of misleading the Magistrates Court of Western Australia as to the matters the subject of the evidence.	
193/2015	17/11/2015	Professional misconduct a) did not provide to the client any or any adequate legal advice that the practitioner had been retained to, and had agreed to, provide; and b) rendering an invoice for legal fees which was not fair and reasonable	Hearing 19/09/2016
23/2016	9/02/2016	Professional misconduct/Unsatisfactory professional conduct a) witnessing an affidavit being sworn when the practitioner was not an authorised witness under the <i>Oaths Affidavits and Statutory Declarations Act 2005</i> (WA) to witness the affidavit because she had participated in the proceedings; b) swearing an affidavit in Court of Appeal proceedings which the practitioner knew was false or misleading, or both, in a material respect and/or had the potential to mislead the Court or alternatively the practitioner was recklessly indifferent as to whether it was false or misleading, or both, in a material respect and/or had the potential to mislead the Court; alternatively, the practitioner was grossly careless in swearing the affidavit; c) incompetently drafted and/or failed to properly supervise a restricted practitioner in the practitioner's employ to competently draft a Deed of Family Arrangement (DFA); d) failed to ensure the client's execution of the DFA as Beneficiary was witnessed; e) incompetently drafted a will which purported to dispose of real estate assets incapable of forming part of the client's estate and which was uncertain in its	Mediation 8/08/2016

Application No.	Date filed	Allegation	Status
		<p>terms as to cause the will to be at a significant risk of being incapable of carrying into effect the client's instructions;</p> <p>f) drafted a Deed in terms so lacking in certainty as to cause the Deed to be at a significant risk of being incapable of carrying into effect her client's instructions;</p> <p>g) drafting a codicil to the will of her client which purported to make an <i>inter vivos</i> gift where the property the subject of disposition in the codicil already had been disposed of by the terms of the Deed drafted by the practitioner the previous month;</p> <p>h) failed to retain records for a reasonable period of time;</p> <p>i) drafted a codicil to a will containing provisions purporting to dispose of real property which were so uncertain in their terms as to be at a very significant risk of being ineffective to carry out instructions;</p> <p>j) purported to take instructions from, prepared and witnessed a will with reckless disregard as to, alternatively was grossly careless in failing to ascertain, whether the testator had capacity to give instructions and/or make a will and prepared the will to contain provisions from a codicil, which were uncertain in their terms;</p> <p>k) failed to provide costs disclosure;</p> <p>l) charged an amount of \$1,200 for use of a conference room at the practitioner's office;</p> <p>m) acted where there was a conflict of interest and charged fees to resolve matters largely caused by the practitioner's incompetent drafting of a will</p>	
31/2016	11/03/2016	<p>Professional misconduct</p> <p>a) causing or permitting affidavits to be prepared, sworn and filed in the District</p>	<p>Mediation 29/07/2016</p>

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		<p>Court in circumstances where he knew them to be false or misleading and the practitioner intended the Court to be misled; alternatively, was recklessly indifferent to whether they were false or misleading and whether the Court would be misled</p> <p>b) deliberately, alternatively, recklessly permitting an email sent, and emails he sent, to a client about the status and progress of proceedings to remain uncorrected where he knew they were false or misleading and intended the client to be misled; alternatively, was recklessly indifferent to whether they were false or misleading and to whether the client was misled</p> <p>c) failing to take steps as the principal of a law firm retained by the client to ensure that:</p> <ul style="list-style-type: none"> i) proceedings were progressed without undue delay; ii) the client was given timely, accurate and complete information about the significant developments and progress in the proceedings iii) the client was informed about a costs order made against the client, where no representative from the practitioner's law firm attended at a directions hearing, whether there was any basis to apply to have the costs order varied or set aside, that the law firm had not complied with a court's directions to file pleadings, that proceedings had become inactive and why, and the consequences of their having become inactive; <p>d) by issuing an invoice to the client including fees charged for work undertaken to have the proceedings made active, where the proceedings became inactive as a result of undue delay by the law firm, of which the practitioner was the principal</p>	

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
48/2016	18/04/2016	<p>Professional misconduct/Unsatisfactory professional conduct including</p> <ul style="list-style-type: none"> a) Showing a repeated disrespect for the law; b) Making a statement to the court which the practitioner knew was false and misleading and made with the intention of misleading the court c) Attempting to interfere with the administration of justice d) Engaging in conduct which had the potential to be prejudicial to and/or to diminish the public confidence in the administration of justice; e) Knowingly making a false and misleading report to the Police; f) Without reasonable excuse failing to comply with requests and a notice issued by the Legal Practice Board to provide information; g) Making serious allegations of professional impropriety against other legal practitioners; h) Failing to make an application in court proceedings and to attend status conferences in circumstances where the practitioner had been made aware by the court that the practitioner remained on the record; i) Being discourteous and/or unprofessional in communications with a Registrar of the Court; j) Seeking to have costs orders dismissed administratively without copying in other parties to correspondence from the practitioner to the court; k) Failing to take any or any adequate steps to comply with a personal costs order made against the practitioner; l) Charging excessive fees; m)not including a written statement, and then providing inconsistent written statements, as to clients' rights in an invoice n) incompetently drafting wills and 	Mediation 29/07/2016

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		<p>enduring powers of attorney and guardianship</p> <p>o) entering premises despite receiving notice that the practitioner could no longer do so;</p> <p>p) Making a serious allegation against a legal practitioner in an application to the Tribunal and in an email copied to the Legal Practice Board, when the practitioner knew that there were no, or no reasonable, grounds for the allegation, or was recklessly indifferent to whether or not there were reasonable grounds;</p> <p>q) Failing to properly prepare for sentencing, further or alternatively failing to represent the client to the requisite standard at a sentencing hearing; further or alternatively failing to attend an adjourned sentencing hearing without reasonable cause, in District Court proceedings;</p> <p>r) Failing to adequately prepare for a defended hearing of a VRO, and further or alternatively sought an adjournment contrary to instructions, left the court before the VRO was called on for hearing and did not return to represent the client, made inappropriate comments to the client, presented without the papers;</p> <p>s) Made statements to a magistrate which the practitioner knew to be false, or alternatively was recklessly indifferent to whether they were false, in order to secure an adjournment of proceedings which was in the practitioner's own interests</p>	
62/2016	6/05/2016	<p>Unsatisfactory professional conduct</p> <p>a) failing to outline the basis on which legal costs would be calculated when requested to do so;</p> <p>b) rendering two bills without notifying the client of his rights in relation to the bills;</p> <p>c) commencing legal proceedings to</p>	<p>Directions 26/07/2016</p>

<i>Application No.</i>	<i>Date filed</i>	<i>Allegation</i>	<i>Status</i>
		recover legal costs before the expiration of a period of at least 30 days after the date the bill was given to the client	
63/2016	6/05/2016	<p>Professional misconduct</p> <p>a) failing to advise a client who contracted to sell a property, of Family Court orders (of which client was in breach) preventing him disposing of the property, when the practitioner knew of the orders or acted in reckless disregard of whether or not orders were in place;</p> <p>b) failing to advise the client of Family Court orders requiring the law firm not to release to the client a Certificate of Title, knowing of the order; alternatively, acting in reckless disregard as to whether or not an order was in place;</p> <p>c) conveying a false impression to the Family Court concerning the breach of orders by the client and the law firm, and knowingly misleading the Court; alternatively, acting in reckless disregard as to whether the Court was misled, and failing to correct that false impression</p>	
64/2016	6/05/2016	<p>Professional misconduct</p> <p>a) failing to advise the client of Family Court orders (of which the client was in breach) preventing him disposing of property, when the practitioner knew of the orders or acted in reckless disregard of whether or not orders were in place and delayed in advising the client of the need to inform the other party in the proceedings of the client's breach;</p> <p>b) encouraging or assisting the client to breach Family Court orders;</p> <p>c) releasing to the client, in contravention of a Family Court order the Certificate of Title for a property;</p> <p>d) acting for the client when there was a conflict of interest, or potential conflict of interest, between the practitioner /</p>	Mediation 27/07/2016

Application No.	Date filed	Allegation	Status
		law firm's interests and those of the client	
83/2016	31/05/2016	<p>Professional misconduct</p> <p>a) assisting a person to engage in legal practice in contravention of the <i>Legal Practice Act 2003</i> and the <i>Legal Profession Act 2008</i>;</p> <p>b) signing and causing to be filed writs, pleadings, particulars and schedules of damages without satisfying himself the claims, pleading, particulars and schedules were tenable in fact and/or law, and causing to be filed informal lists of documents and correspondence to other parties' lawyers without satisfying himself that reasonable steps had been taken to comply with discovery obligations and that the content of the correspondence was accurate and appropriate, and serving an expert report without satisfying himself that the person who briefed the expert had complied with all usual professional obligations on a legal practitioner when briefing an expert and that the expert had complied with usual obligations imposed on the expert;</p> <p>c) signed and caused to be filed 3 entry for trial certificates when the practitioner knew each to be false and misleading, intended the Court to be misled; alternatively was recklessly indifferent to the above;</p> <p>d) failed to attempt to ascertain in relation to a consent judgment in which he represented the plaintiff whether the plaintiff's total legal costs were not less than the sum of fixed costs agreed pursuant to the consent judgment and to extent they were not, failing to inform the Court and the defendant;</p> <p>e) failing to provide, or to cause his firm to provide, to 3 clients retaining the firm, costs disclosure in terms of the Law</p>	Mediation 29/07/2016

Application No.	Date filed	Allegation	Status
		<p>Society Professional Conduct Rules and to 9 clients costs disclosure in accordance with the <i>Legal Profession Act 2008</i>;</p> <p>f) in circumstances where the practitioner was retained to prosecute a claim for damages for personal injury, failed to take reasonable steps to inform the client of his rights and possible courses of conduct in relation to the proceedings, failed to keep the client informed about significant developments and generally the proceedings, failed to inform client that the defendant considered the proceedings were statute barred and failed to offer advice to, or advise, the client about possible cause of action and/or taking independent legal advice about his having a possible cause of action;</p> <p>g) accepting and carrying out instructions when it caused the practitioner to be in a position of owing conflicting duties to the client and another</p>	

6.2 Review Applications

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

There was one Application filed during the year which was dismissed by SAT.

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

<i>Review Applications</i>	<i>Total</i>
Pending as at 1 July 2015	0
Lodged during year	1
Withdrawn	(0)
Dismissed	(1)
Pending as at 30 June 2016	0

6.3 Reports to the Full Bench of the Supreme Court

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

The Full Bench of the Supreme Court can make any order available to SAT and/or strike a practitioner off the roll. During the year, no practitioners were struck from the roll.

Due to appeals which are yet to be determined, two practitioners from previous years remain the subject of Reports to the Full Bench of the Supreme Court.

6.4 Appeals

During the year an appeal by Julia Barber from a SAT decision handed down on 18 September 2015 finding her to have engaged in professional misconduct was discontinued on 7 January 2016.

Appeals lodged prior to the year, but which have not been determined as at 30 June 2016 were:

- an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini relating to a final SAT decision.
- an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini from a SAT penalty decision
- an appeal to the Court of Appeal of the Supreme Court by Gavin George Wells from a final SAT decision
- an appeal to the Court of Appeal of the Supreme Court by Gavin George Wells from a SAT penalty decision
- an appeal to the Court of Appeal of the Supreme Court by Peter George Giudice from a final SAT decision and from a SAT penalty decision (being SAT's decisions on its reconsideration of the matter

following a previous appeal by Mr Giudice where the matter was referred back to SAT).

The following appeals were lodged during the year, but as at 30 June 2016 had not been determined:

- an appeal to the Court of Appeal of the Supreme Court by Manraj Singh Khosa from a final SAT decision
- an appeal to the Court of Appeal of the Supreme Court by Manraj Singh Khosa from a SAT penalty decision.

During the year, Ms Megan Maree in de Braekt filed an application for an extension of time to file an appellant's case in an appeal to the Court of Appeal from a final SAT decision, in circumstances where the appeal stands dismissed as from 29 January 2013 following her failure to comply with an order to file her appellant's case. The application is yet to be heard.

6.5 Special Leave Applications

There were no applications for special leave to appeal to the High Court filed during the year.

7. Promoting Professional Standards

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

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

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

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

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

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

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

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

8. Tables

TABLE 1 RAPID RESOLUTION INQUIRIES 2014 - 2016

TYPE OF INQUIRER 2014 - 2016

	<i>Total % 2013 – 2014</i>	<i>Total % 2014 – 2015</i>	<i>Total % 2015 – 2016</i>
Client/Former Client	49.8	48.8	50.5
Friend/Relative of Client	9.4	8.8	9.0
Opposing party	17.6	20.1	20.9
Beneficiary/Executor/Administrator	4.0	3.6	3.8
Practitioner on own behalf	8.0	8.8	4.3
Practitioner on another's behalf	1.0	2.3	1.4
Other	10.3	7.7	10.0

INQUIRIES BY AREAS OF LAW 2014 - 2016

	<i>Total % 2013 – 2014</i>	<i>Total % 2014 – 2015</i>	<i>Total % 2015 – 2016</i>
Family/Defacto Law	31.6	30.7	30.2
Civil Litigation	14.0	15.4	15.3
Conveyancing	3.2	3.8	3.1
Leases / Mortgages / Franchises	3.4	2.9	2.9
Probate/Wills/ Family Provisions	13.9	13.6	13.2
Commercial/Corporations Law	3.5	4.5	3.1
Criminal	5.6	7.3	7.6
Personal Injuries	4.7	4.5	5.6
Workers Compensation	6.0	5.0	5.1
Victims Compensation	0.8	0.5	0.8
Employment / Industrial Law	3.2	2.7	2.7
Other	10.3	9.1	11.3

TABLE 1 RAPID RESOLUTION INQUIRIES 2014 - 2016

INQUIRIES BY AREAS OF INQUIRY 2014 - 2016

	<i>Total % 2013 – 2014</i>	<i>Total % 2014 – 2015</i>	<i>Total % 2015 – 2016</i>
Cost/Payment Issues			
Failure to Pay Third Party	0.2	0.7	0.4
Overcharging	25.5	12.0	13.4
No Costs Disclosure	2.8	5.1	4.4
Transfer Costs Without Authority	0.4	0.5	0.4
Failure / Delay to Provide a Detailed Account	1.9	2.5	1.8
Other Costs Complaint	16.2	13.9	10.7
Subtotal	47.0	34.7	31.1
Communication/Service			
Act Without / Contrary to Instructions	1.5	2.4	2.1
No Communication	12.7	7.7	9.8
Failure to Carry Out Instructions	3.2	5.0	4.7
Delay	3.8	7.0	7.7
Lack of Supervision	0	0.5	0.5
No Client Advice	1.0	1.5	1.8
No Advice on Progress	0.2	1.2	0.6
Discourtesy	4.4	3.6	2.8
Neglect	0.3	1.6	1.1
Subtotal	27.2	30.5	31.1
Personal Conduct			
Unethical Conduct	11.2	12.6	12.6
Negligence	2.0	3.5	3.1
Misleading	0.6	1.4	1.7
Conflict of interest	1.8	2.6	2.5
Failure to Transfer Documents	0.4	0.9	0.1
Communicating with a Client of Another Solicitor	0.2	0.1	0.1
Threatening Behaviour	1.5	2.2	2.3
False Swearing of Documents	0	0	0.2
Breach Confidentiality	0.3	0.4	0.4
Undue Pressure	0.2	0.5	0.3
Alteration of Documents	0	0	0.1
Liens	0.4	0.9	1.1
Subtotal	18.6	25.1	24.4
Other	7.1	9.8	13.4

TABLE 1 RAPID RESOLUTION INQUIRIES 2014 - 2016

RESOLUTION OF INQUIRY 2014 - 2016

	<i>Total % 2013 – 2014</i>	<i>Total % 2014 - 2015</i>	<i>Total % 2015 – 2016</i>
Conciliated Outcome			
Fee waiver	2.4	2.1	1.7
Apology	1.5	1.5	1.6
Undertaking	0.1	0.2	0.1
Discounted fees	7.2	5.4	5.9
Release of lien	0.6	1.0	1.0
Withdrawn	1.6	0.8	1.3
Improved communication	4.8	5.1	2.9
Improved legal practice, training, supervision, mentoring or management systems	3.9	2.9	3.5
Other	0	0	0
Subtotal	22.2	19.0	18.0
No Further Action			
Accepted Committee / practitioner's response	18.0	18.5	18.8
Brochures provided	11.0	18.6	19.0
Suggested direct approach to practitioner	9.7	8.4	6.3
No further information provided	14.9	16.3	14.0
Advised to get legal advice	4.4	4.0	5.8
Misconceived	5.6	3.4	3.8
Other	10.5	8.3	7.7
Subtotal	74.0	77.5	75.4
Expression of Concern issued	1.2*	1.1	3.7
Part/Whole inquiry resolved per above category, but referred for investigation	0.3	0.4	0.0
Referred for investigation	3.0	1.7	2.3
Referred for formal determination s415 / s425	0.4	0.6	0.5
Subtotal	3.7	3.8	6.5

* Expressions of concern were not reported separately prior to 2015. Accordingly the 2014 figure for expressions of concern is not reflected in the total. It is provided for comparison purposes only.

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION INQUIRIES 2014 – 2016

	<i>Total 2013 – 14</i>	<i>Total 2014 – 15</i>	<i>Total 2015 – 16</i>
Complaints	69	77	64
Conduct Investigations	31	25	18
Rapid Resolution inquiries	1330*	1413**	1366***
Total	1430	1515	1448

* Does not include 122 miscellaneous inquiries

** Does not include 121 miscellaneous inquiries

*** Does not include 172 miscellaneous inquiries

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2014 - 2016

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
Client / former client	36 (36.0)	38 (37.3)	34 (41.5)
Client's friend / relative	3 (3.0)	1 (1.0)	2 (2.4)
Opposing party	26 (26.0)	21 (20.6)	10 (12.2)
Beneficiary / executor / administrator	1 (1.0)	4 (3.9)	2 (2.4)
Practitioner on own behalf	1 (1.0)	6 (5.9)	7 (8.5)
Practitioner on another's behalf	3 (3.0)	1 (1.0)	5 (6.1)
Legal Practice Board	0	1 (1.0)	0
Other	10 (10.0)	8 (7.8)	4 (4.9)
Court Enquiry	3 (3.0)	1 (1.0)	0
Other Investigation	17 (17.0)	21 (20.6)	18 (22.0)
Total	100	102	82

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2014 – 2016

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
Family/Defacto law	29 (26.1)	27 (23.9)	24 (28.9)
Civil Litigation	25 (22.5)	16 (14.2)	17 (20.5)
Conveyancing	0	3 (2.7)	0
Leases/Mortgages/Franchises	2 (1.8)	1 (0.9)	1 (1.2)
Probate/Wills/Family Provisions	5 (4.5)	22 (19.5)	9 (10.8)
Commercial/Corporations Law	10 (9.0)	7 (6.2)	5 (6.0)
Criminal law	19 (17.1)	13 (11.5)	13 (15.7)
Personal injuries	2 (1.8)	1 (0.9)	1 (1.2)
Workers Compensation	5 (4.5)	2 (1.8)	2 (2.4)
Victims Compensation	0	0	0
Employment/Industrial law	2 (1.8)	9 (7.0)	1 (1.2)
Professional negligence	1 (0.9)	1 (0.9)	0
Land and Environment	2 (1.8)	0	0
Immigration	0	1 (0.9)	0
Other	9 (8.1)	10 (8.8)	10 (12.0)

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2014 - 2016

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
Cost/Payment issues			
Failure to pay third party	0	0	2 (1.0)
Overcharging	12 (5.9)	24 (10.5)	13 (6.7)
No costs disclosure	4 (2.0)	6 (2.6)	14 (7.2)
Transfer costs without authority	2 (1.0)	0	1 (0.5)
Failure/delay to provide a detailed account	0	2 (0.9)	1 (0.5)
Other cost complaint	4 (2.0)	10 (4.4)	8 (4.1)
Subtotal	22 (10.9)	42 (18.4)	39 (20.1)
Communication/Service			
Act without/contrary to instructions	11 (5.5)	9 (3.9)	7 (3.6)
No communication	8 (4.0)	8 (3.5)	10 (5.2)
Failure to carry out instructions	12 (5.9)	10 (4.4)	4 (2.1)
Delay	7 (3.5)	10 (4.4)	17 (8.8)
Lack of supervision	2 (1.0)	3 (1.3)	4 (2.1)
No client advice	5 (2.5)	2 (0.9)	3 (1.5)
No advice on progress	2 (1.0)	0	2 (1.0)
Discourtesy	9 (4.5)	9 (3.9)	6 (3.1)
Neglect	6 (3.0)	4 (1.9)	9 (4.6)
Subtotal	62 (30.7)	55 (24.2)	62 (32.0)
Personal Conduct			
Unethical conduct	42 (20.8)	45 (19.7)	20 (10.3)
Negligence	5 (2.5)	10 (4.4)	2 (1.0)
Misleading	12 (5.9)	14 (6.1)	17 (8.8)
Conflict of interest	5 (2.5)	8 (3.5)	5 (2.6)
Failure to transfer documents	2 (1.0)	0	1 (0.5)

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
Communicating with a client of another solicitor	3 (1.5)	0	1 (0.5)
Threatening behaviour	5 (2.5)	6 (2.6)	6 (3.1)
False swearing of documents	2 (1.0)	3 (1.3)	0
Breach confidentiality	3 (1.5)	2 (0.9)	1 (0.5)
Failure to assist LPCC	3 (1.5)	0	0
Undue pressure	2 (1.0)	3 (1.3)	2 (1.0)
Alteration of documents	0	1 (0.4)	0
Liens	0	0	0
Subtotal	84 (41.6)	92 (40.2)	55 (28.4)
Non-Compliance			
Not complying with undertaking	3 (1.5)	2 (0.9)	1 (0.5)
Practising without a practice certificate	1 (0.5)	0	0
Not complying with Legal Profession Act/Regulations	3 (1.5)	2 (0.9)	1 (0.5)
Subtotal	7 (3.5)	4 (1.8)	2 (1.0)
Trust Account Matters			
Breach of Sections of Act / Regulations relating to trust monies	4 (2.0)	1 (0.4)	6 (3.1)
Misappropriation	2 (1.0)	2 (0.9)	1 (0.5)
Failure to account	3 (1.5)	0	2 (1.0)
Other – Trust Account Matters	1 (0.5)	0	0
Subtotal	10 (5.0)	3 (1.3)	9 (4.6)
Other	17 (8.4)	33 (14.4)	27 (13.9)

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2014 – 2016

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
Barrister	11 (11.0)	4 (3.9)	9 (11.0)
Sole Principal	36 (36.0)	46 (45.1)	35 (42.7)
Other Principal	22 (22.0)	21 (20.6)	13 (15.9)
Non Principal	19 (19.0)	13 (12.7)	11 (13.4)
Government Legal Position	6 (6.0)	7 (6.9)	3 (3.7)
Corporate Legal Position	0	4 (3.9)	1 (1.2)
Firm only	0	0	1 (1.2)
Struck off/suspended	2 (2.0)	2 (2.0)	0
Other	4 (4.0)	5 (4.9)	9 (11.0)
Total	100	102	82

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2014 – 2016

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
CBD/West Perth	56 (56.0)	43 (42.2)	52 (63.4)
Suburbs	31 (31.0)	54 (52.9)	21 (25.6)
Country	5 (5.0)	5 (4.9)	6 (7.3)
Interstate	5 (5.0)	0	3 (3.7)
Not known	3 (3.0)	0	0
Total	100	102	82

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2014 – 2016

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
Under 5	8 (8.0)	5 (4.9)	3 (3.7)
5 – 9	23 (23.0)	22 (21.6)	24 (29.3)
10 –14	23 (23.0)	32 (31.4)	17 (20.7)
15 – 19	9 (9.0)	11 (10.8)	8 (9.8)
20 – 24	9 (9.0)	7 (6.9)	11 (13.4)
25 – 29	4 (4.0)	10 (9.8)	3 (3.7)
30 – 34	14 (14.0)	12 (11.8)	7 (8.5)
35 – 39	7 (7.0)	3 (2.9)	8 (9.8)
Over 40	2 (2.0)	0	1 (1.2)
Not known/Not applicable	1 (1.0)	0	0
Total	100	102	82

TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2014 – 2016

	<i>Total % 2013 – 14</i>	<i>Total % 2014 – 15</i>	<i>Total % 2015 – 16</i>
Under 25	0	0	0
25 – 29	6 (6.0)	4 (3.9)	2 (2.4)
30 – 34	10 (10.0)	3 (2.9)	8 (9.8)
35 – 39	6 (6.0)	5 (4.9)	2 (2.4)
40 – 44	15 (15.0)	14 (13.7)	7 (8.5)
45 – 49	18 (18.0)	22 (21.6)	11 (13.4)
50 – 54	6 (6.0)	8 (7.8)	16 (19.5)
55 – 59	18 (18.0)	18 (17.6)	9 (11.0)
60 – 64	5 (5.0)	9 (8.8)	12 (14.6)
65 – 69	8 (8.0)	7 (6.9)	6 (7.3)
70 – 75	6 (6.0)	12 (11.8)	8 (9.8)
76 – 80	0	0	0
81+	0	0	0
Not known/Not applicable	2 (2.0)	0	1 (1.2)
Total	100	102	82

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2014 – 2016

	<i>Total 2013 – 14</i>	<i>Total 2014 – 15</i>	<i>Total 2015 – 16</i>
Practitioners with 1 complaint	67	59	59
Practitioners with 2 complaints	7	6	6
Practitioners with 3 or more complaints	5	5	3
Total number of practitioners	79	70	68

TABLE 11 OUTSTANDING COMPLAINTS 2014 – 2016

	<i>Total 2013 – 14</i>	<i>Total 2014 – 15</i>	<i>Total 2015 – 16</i>
Outstanding complaints	58	80	90
Outstanding conduct investigations	41	45	33
Total	99	125	123

TABLE 12 COMPOSITION OF THE WA LEGAL PROFESSION AS AT 30 JUNE 2016

<i>Composition of WA Local Legal Practitioners</i>	<i>Resident Females</i>	<i>Non-Resident Females</i>	<i>Resident Males</i>	<i>Non-Resident Males</i>	<i>Totals</i>
Barristers	42	1	184	1	228
Commonwealth Government	30	1	31	0	62
Consultants	16	0	34	2	52
Director	171	2	439	3	615
Employees	1560	40	1052	31	2683
Equity Partner	42	0	226	9	277
Fixed Profit-share Partner	21	3	30	5	59
Inhouse	340	19	282	24	665
Locum	0	0	0	0	0
Legal Practitioner Partner	9	0	50	1	60
Not practising (certificated)	345	14	148	7	514
Salaried Partner	23	1	51	4	79
Sole Practitioners	150	3	347	4	504
Judiciary [^]	2	0	7	0	9
Deceased [^]	0	0	3	0	3
Struck Off [^]	0	0	0	0	0
Suspended [^]	1	0	1	0	2
State Government*	45	1	18	0	64
Practising Certificates Cancelled	11	3	10	3	27
Practising Certificates ISSUED	2808	88	2913	94	5903
S.36 Practitioners					
** State Solicitor's Office	83	0	52	1	136
**Director of Public Prosecutions (State)	53	0	52	1	106
**Other Departments	143	2	86	1	232
TOTAL PRACTITIONERS	3031	86	3075	94	6350

[^] held a practising certificate during 2015/2016, however by 30 June 2016, were appointed judiciary/deceased/struck off/suspended.

* State Government employees who held a local practising certificate during 2015 - 2016

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

9. Information Statements

9.1 Freedom of Information Act

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

9.2 Public Interest Disclosure

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

No public interest disclosures were received during the relevant period.



Freedom of Information Act 1992 Information Statement

1. INTRODUCTION

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

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

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

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

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

2. STATEMENT OF STRUCTURE AND FUNCTIONS

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

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

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

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

These functions, in particular the Complaints Committee’s decision making functions, do not directly affect members of the public; they affect Australian Lawyers and Australian Legal Practitioners (as defined in Sections 4 and 5 of the LP Act) on the one hand and those among the classes of persons set out in Section 410(1) of the LP Act from whom complaints are received on the other hand.

Further, none of the Complaints Committee's functions are likely to affect the rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject.

Our Process

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

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

Organisational Structure

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

3. PUBLIC PARTICIPATION IN AGENCY FUNCTIONS

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

4. INFORMATION HELD BY THE COMPLAINTS COMMITTEE

Publications

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

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

All of the Complaints Committee's publications are available for inspection or downloading by accessing the website above. Copies of select publications are available at the offices of the Complaints Committee at Level 2, 55 St Georges Terrace, Perth to any person who attends at the office or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions. These publications are not covered by the FOI Act as they are publicly available.

Documents

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

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

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

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

5. PROCEDURES FOR FOI ACCESS

Freedom of Information Officer

Initial enquiries as to access to documents under the FOI Act should be made to Mr Stephen Merrick or Ms Linda Thipthorp of Level 2, 55 St Georges Terrace, Perth, Legal Practitioners, who are the officers of the Complaints Committee that can deal with such enquiries and who have been generally directed to make decisions under the FOI Act. Initial enquiries may be made by telephone to (08) 9461 2299.

Submitting an FOI request

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

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

Facsimile: +61 8 9461 2265
Email: lpcc@lpbwa.com

A valid FOI application needs to:

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

The FOI Process

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

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

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

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

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

Access Charges

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

In addition, other fees may apply for:

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

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

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

Procedure for Amending Personal Information

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

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

Facsimile: +61 8 9461 2265
 Email: lpcc@lpbwa.com

6. INTERNAL REVIEW RIGHTS

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

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

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

Applications for internal review can be made to:

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

Facsimile: +61 8 9461 2265
 Email: lpcc@lpbwa.com

No further fees apply to an application for internal review.

7. EXTERNAL REVIEW RIGHTS

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

Complaints lodged with the OIC must:

- be lodged within 60 days of the applicant receiving the Complaints Committee’s decision in relation to an application for internal review;
- be in writing;
- have attached to it a copy of the Complaints Committee’s decision; and

- give an Australian address to which notices can be sent.

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

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

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

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

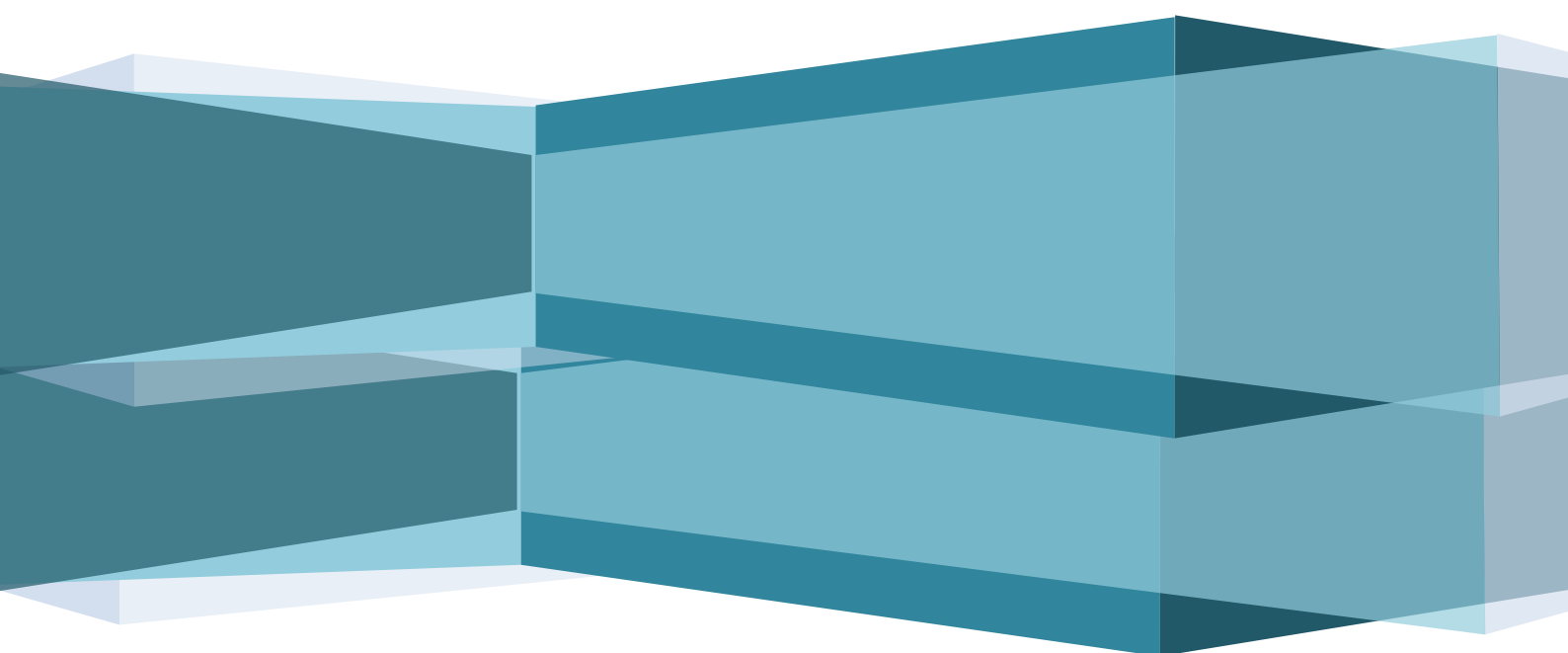
The OIC also provides assistance to members of the public and agencies on matters relevant to the FOI Act.

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

8. STATEMENT REVIEW

This FOI Information Statement is current as at June 2016 and is reviewed annually.





LPCCWA

Level 2, Colonial Building, 55 St Georges Terrace, Perth WA 6000
Post Office Box Z5293, St Georges Terrace, Perth WA 6831
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Email: lpcc@lpbwa.com Web: www.lpbwa.org.au