



**LEGAL PROFESSION COMPLAINTS COMMITTEE  
WESTERN AUSTRALIA**

**2014 ANNUAL REPORT**



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# 1. Report from the Chair

The Committee's workload during the year was very similar to last year, which was essentially the Committee's first full operational year under its new structure without a backlog. The consistency achieved in the Committee's work during the last two years is a testament to the effectiveness of its new processes.

This year, over 81% of new matters were dealt with within 90 days of receipt and less than 10% of matters remained open after 6 months. Those matters which remained open after 6 months were the more complex investigations.

Although speed is an important element of complaint handling, effective outcomes are also important. Those outcomes include the protection of the public and the upholding of standards in the legal profession, as well as the conciliation of disputes which may underlie some inquiries and complaints. During the year, the Committee conciliated (sometimes by way of mitigation of possible conduct issues) matters resulting in over \$500,000 being discounted, waived or refunded by practitioners. This result reflects the continuing willingness of the legal profession to engage in the Committee's conciliation processes.

The Committee's work expanded during the year with the introduction of compliance audits for incorporated legal practices. These audits provide a useful mechanism for looking at the entire operation of a law practice in order to identify problems which might require further investigation and to recommend changes to practice. The Committee also consolidated its work in conducting informal audits of firms and sending out risk alert letters. A large part of the Committee's expansion of its work into

these areas is aimed at preventing complaints.

## Trends or special problems

Last year's increase in the number of complaints being dealt with by the Committee in the exercise of its summary conclusion powers was not sustained. This year the percentage of complaints dealt with by the Committee in the exercise of its summary conclusion powers fell from 15% to 3%. This fall was offset by an increase in the percentage of matters being referred to the State Administrative Tribunal, from 10% to 41%. The increase in referrals was due to the serious nature of the matters which came before the Committee and the previous history of the practitioners involved which meant that they could not be dealt with by the Committee. It is too early to know whether this trend will continue.

Although, as in previous years, sole practitioners were the group most complained about, the percentage of complaints received against sole practitioners fell from 45% to 36%. This may be due, in part, to the targeting of continued professional development seminars to their needs, such as the establishment of the Sole Practitioner and Boutique Firm Forum by The Law Society of Western Australia. Although heartening to report a reduction in the number of complaints against sole practitioners, as I have indicated in previous reports, I believe there is a need for the imposition of additional requirements before a practitioner can commence to practise as a sole practitioner. The Legal Practice Board has established a Professional Development Committee which I understand is examining this issue.

Complaints in relation to family law rose 7% to be back to 2011 levels which suggests there is a need for seminars targeted to family law practitioners.

Although inquiries relating to costs remained high, the number of costs concerns which required a full investigation fell. This fall continues the trend from 2011 which has seen a decline in the percentage of costs complaints from 18% to 11%. This reduction in serious costs concerns is reflective of the extensive work undertaken by the Committee with practitioners in recent years aimed at addressing costs issues and their prevention.

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

The Committee's workload has remained constant apart from the additional work related to its new initiatives referred to above. The Committee's ability to undertake compliance audits is restricted, as resources need to be diverted from the Committee's day to day activities. The number of audits expected to be undertaken over the next few years is expected to rise.

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

As indicated in my last two reports, the implementation of a complaints management system would enhance the Committee's operations. Although work has begun on sourcing a complaints management system to meet the Committee's needs, that work is taking longer than originally anticipated.

### **Thanks**

I thank the Committee's Deputy Chair, John Ley, for his continued assistance and for the hard work of all the members of the Committee during the year. Their ongoing generosity and dedication in giving up their time to attend to the Committee's work is greatly appreciated.

I commend and thank the Committee's staff for always seeking new ways to enhance the Committee's operations and improve the way in which the legal profession in this state is regulated.

***Chris Zelestis QC***  
***Chair***  
***August 2014***

## 2. Report from the Law Complaints Officer

**D**uring the 2013-14 year, in addition to undertaking its day to day work handling inquiries and complaints, the Committee's staff worked on enhancing its procedures and processes, and identifying firms at increased risk of complaints being made in order to address with them how they may reduce that risk.

Re-directing resources to preventing complaints, whilst not compromising the day to day work of the Committee, is an important part of the Committee's work in promoting professional standards and protecting consumers of legal services. Addressing potential problems early saves time and costs later both for the practitioner, the aggrieved person and the Committee.

### Enhancements to procedures and processes

In May 2014, the complaints area on the Legal Practice Board's website was updated to make it more user friendly and to ensure that the public was better able to access information on the website about the Committee's processes. The quality and accessibility of information for the public about the Committee's processes is important to ensure that the public is aware of what the Committee can and can't do and have realistic expectations when they make contact with the Committee.

The Committee's senior trust account inspector is now routinely bringing to the attention of the Rapid Resolution team (**RRT**) any costs disclosure documents she identifies during her inspections which appear to have obvious deficiencies or where she cannot locate any costs disclosure on files where bills total more than \$1,500. If, on review, an RRT legal officer has concerns with the costs disclosure given or the lack of costs disclosure, the legal officer contacts the

principal of the firm, discusses those concerns and asks the principal to address those concerns. This work has resulted in new costs disclosure documents being prepared which benefit all clients of the firm.

There is now earlier collaboration between the Investigation and Litigation teams on matters which an Investigation team legal officer considers may result in a referral to the State Administrative Tribunal (**SAT**). This early collaboration is working well and provides a good opportunity for legal officers in the Investigation team to become more familiar with how SAT matters are conducted and to utilise that knowledge when carrying out investigations. This contributes to the thoroughness and efficiency of the investigation.

The form of the SAT applications filed by the Committee has changed. The grounds of the application are now more detailed regarding the nature of the conduct which the Committee is alleging amounts to unsatisfactory professional conduct or professional misconduct. The additional detail in the grounds should assist practitioners to fully understand the nature of the Committee's case against them.

Shortly after the end of the reporting period, the Committee filed its first application in SAT which set out the mitigating conduct taken by the practitioner during the RRT process. The inclusion of such mitigating conduct in an application is an important acknowledgement of the immediacy of the insight shown by a practitioner into his or her conduct when it was brought to his or her attention by the RRT. Mitigating conduct taken by a practitioner at a later stage (for example, during the course of the investigation or once SAT proceedings have commenced) continues to be acknowledged

in minutes of consent orders and in submissions on penalty.

### **Risk alert letters**

The process of sending out risk alert letters to practices whose employees had been the subject of 3 contacts raising substantive issues (either consumer issues or conduct issues) within the previous 6 months had just started towards the end of the previous reporting period and at that stage no feedback from practitioners had been received.

During the reporting period, 45 risk alerts were sent out. Risk alert letters are addressed to the principals of the practice and provide them with information about the number of contacts made with the Committee concerning practitioners within their firm, the nature of the issues raised and suggestions for what can be done to reduce the number of contacts. The principals are also invited to contact the RRT to discuss the matter further.

In many cases, principals receiving the risk alert letters did not know that their employed practitioners had had dealings with the Committee and were keen to discuss with the RRT what steps could be taken to reduce the number of contacts. As a result of these contacts with the RRT, one informal audit of a firm was undertaken by RRT legal officers to discuss the management systems in place in that firm. Also, at the invitation of some firms, RRT legal officers have presented seminars to the practitioners in those firms on ethical issues.

The aim of the risk alert letters is to try to change the behavior in the firms which is the cause of contact with the Committee. Such changes benefit all the clients of those firms and will hopefully result in less inquiries/complaints being made against practitioners in those firms.

The sending out of risk alert letters by the Committee was commented on favourably in the Productivity Commission's Draft Report on Access to Justice Arrangements.

### **Incorporated Legal Practice/Firm audits**

The Committee has the power to conduct audits of incorporated legal practices (*ILPs*) to check compliance of an ILP with the conduct rules and to check the management of the provision of legal services.

The first formal ILP audit was conducted in October 2013 and during the reporting period notice was given of the Committee's intention to undertake another formal ILP audit (although the audit was undertaken in July 2014). The identification of ILPs to be audited can be based on different factors such as the number and nature of recent contacts made with the Committee regarding practitioners in those ILPs (particularly the legal practitioner directors) and the external examiner's reports on the ILP's compliance with trust account requirements. Depending on the reason for identifying the need for an audit, the audit itself will focus on particular areas of the practice such as competence and diligence, communication, billing practices, records management, supervision and trust account regulation.

Before commencing the first formal ILP audit, the Committee prepared an article which was published in the September 2013 edition of The Law Society of Western Australia's monthly magazine *'Brief'* to assist legal practitioner directors to understand their professional obligations including the need to ensure that appropriate management systems are implemented and maintained in their firm. The article also gave guidance as to what may constitute 'appropriate management systems' and advised of the Committee's power to conduct audits.

When a formal ILP audit is undertaken a report on the audit is prepared for the ILP. The reports are comprehensive and provide recommendations for the legal practitioner director to consider implementing. The process of conducting the audit and preparing a report is time intensive but an audit can provide an immediate overview of the management of the ILP and whether any further action is required either to improve the ILP's practices or to protect the public. As a result of the first ILP audit, the legal practitioner director appointed a mentor to assist with improving the ILP's work practices.

At the request of firms (sometimes as a result of receiving a risk alert letter), informal audits of firms have been conducted. During the reporting period, 2 informal audits were carried out. These informal audits are not restricted to ILPs.

The work undertaken in an informal audit varies depending on what has been requested by the firm. Sometimes the focus has been on costs issues, with the firm's documentation dealing with costs (costs disclosure information, costs agreements, bills) being reviewed and discussed. No legal advice is given. The aim is to point out any concerns which the legal officers identify with the documents such as obvious deficiencies in complying with the legislative requirements or where the information provided can be improved. Other informal audits have involved looking at procedures in place to check for adequacy of supervision of junior practitioners and/or paralegals and arrangements for alternate management of offices during absences of sole principals.

### **Mentoring arrangements**

The Committee continued its work in identifying the need for mentors to assist practitioners. During the reporting period, four practitioners continued with mentoring

arrangements and one practitioner was put on a mentoring arrangement.

### **Regional visits**

This year the Committee's officers visited Busselton to present a seminar on current ethical issues and met with the principals of many firms in the area. Practitioners attending the seminar included practitioners from Bunbury, Margaret River, Manjimup and Narrogin.

### **Seminars to the profession**

The Committee's legal officers continued to accept as many invitations, as work loads permitted, to address the profession and law students on ethical issues. During this reporting period there was a marked increase in the number of presentations to the government sector and individual legal practices.

Two highlights were the opportunity for the Committee to participate in 2 hypotheticals run by The Law Society. One was run by the Young Lawyers Committee and was on mental health issues, which raised many interesting issues which currently confront younger practitioners. The other was on ethics and gave rise to a lively discussion.

### **Guidelines for Disciplinary Applications**

The Committee's Guidelines for Disciplinary Applications, published in the previous reporting period, have received endorsement from SAT. In a review decision dealing with the test to be applied by the Committee when considering whether to dismiss a complaint, SAT specifically approved the Guidelines saying that they enable an appropriate evaluation of the prospects of success of a complaint.

The Guidelines were also commented on favourably in the Productivity Commission's



Draft Report on Access to Justice Arrangements.

### **New Guidelines for the profession**

The Committee produced new Guidelines for the use of the terms 'specialist' and 'expert' in advertisements. The Guidelines are available on the Legal Practice Board's website under the complaints area. To ensure the profession was aware of the Guidelines and to give practitioners time to review their advertisements and other promotional material to ensure compliance with the Guidelines, the Committee prepared an article alerting the profession to the new Guidelines which was published in *Brief* in June 2014 and will not be applying the specific criteria set out in the Guidelines until 1 September 2014.

### **Developing and maintaining relationships**

In October 2013, at the Committee's initiative, investigation and litigation legal officers of the various complaint handling bodies in Australia and New Zealand commenced regular telephone hook-ups to discuss ideas and experiences concerning complaints and disciplinary proceedings. Nick Pope, manager of the Investigation team, and Patricia Le Miere, manager of the Litigation team, participate in those hook-ups.

Telephone hook-ups with other regulators of the legal profession now occur between those working in early resolution, those working in investigation and litigation and those overseeing the operations of each body.

The interaction between the various legal regulators provides an opportunity to gain legal and practical knowledge from other offices' experiences which contributes to the Committee's operations. It also enables cross jurisdictional issues to be discussed and a

more unified approach to discipline issues generally to be developed.

In July 2013 we hosted the manager of the Victorian Legal Services Commissioner's RRT for two days to demonstrate the way the Committee's RRT works. The Committee's RRT was established in late 2010 based on the Victorian model but over time has developed and adopted different processes and now operates quite differently from its Victorian counterpart. The Victorian office reciprocated in August 2013 by hosting Philippa Rezos, the manager of the RRT, to show the operation of their RRT model and their complaint management system.

At the invitation of The Society of Consumer Affairs Professionals (**SOCAP**), in July 2013 Philippa Rezos gave a presentation to its members about the Committee's RRT approach to the early resolution of complaints. Philippa has since become a member of SOCAP and in April 2014 met with Ms Amanda Blesing, CEO of SOCAP, to discuss the RRT's early dispute resolution process and approach to triaging complaints. Philippa also published an article in the December 2013 edition of SOCAP's magazine titled 'Circumventing letter in/letter out'. Philippa has also joined SOCAP's government working party which brings together representatives from commonwealth and state government agencies who teleconference monthly on matters of mutual and topical interest such as privacy laws, data collection and issues of confidentiality.

In June 2014 Philippa Rezos met with representatives of the Australasian Legal Practice Management Association (**ALPMA**) (which includes practice managers, managing partners and sole practitioners) to discuss Philippa giving a seminar to its members in March 2015 on 10 important tips to avoid a complaint being made.



Contact with different organisations such as SOCAP and ALPMA facilitates a useful exchange of information on various matters and ensures that the Committee is at the leading edge of discussion about complaint handling and practice management.

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

At the invitation of the Legal Costs Committee, Philippa Rezos and I attended a meeting of that committee in October 2013 to discuss fixed fee agreements and other issues the Committee had identified with respect to charges rendered by practitioners. As a result of that meeting, the Committee prepared an article on fixed fee agreements which was published in the May 2014 edition of *Brief*. The article aimed to provide the profession with some guidance on the types of issues which had arisen, and which may arise in the future, with respect to fixed fee agreements.

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

During the reporting period, the Committee worked with the LAC to finalise a Memorandum of Understanding (**MOU**) to permit the Committee to disclose relevant information to the LAC concerning the disciplinary history of practitioners on their panels or lists of private legal practitioners who are eligible to provide legal assistance to those receiving legal aid or practitioners nominating for those panels or lists. The MOU was signed in early July 2014.

The decision to release disciplinary information is discretionary and will only occur if the practitioner has consented to

such information being released. The LAC intends to seek that consent when a practitioner nominates to join a panel or list. The exchange of this information with a practitioner's consent is an important part of ensuring the quality of practitioners who are eligible to receive public funds to undertake legal aid work.

### **Western Australian Bar Association (WABA) assistance**

During this reporting period, an increasing number of practitioners against whom disciplinary proceedings have been commenced have been assisted by counsel from WABA usually without fee or for a reduced fee.

The increased level of counsel assistance may be due, in part, to the increasing awareness amongst practitioners of the availability of such assistance which includes both advice and, where appropriate, representation from members of WABA in respect of disciplinary hearings. The Committee ensures that practitioners against whom disciplinary proceedings are commenced are aware of the availability of such assistance and encourages them to avail themselves of the service.

The use by practitioners of counsel for advice or representation in disciplinary proceedings significantly aids the resolution of proceedings without the need for hearings and, where that cannot be achieved, the conduct of hearings. The Committee recognises that the willingness of counsel to undertake this work without fee or at a reduced fee is a significant contribution to the legal profession.

The WABA scheme is administered by the Vice President of WABA who may be contacted through WABA's Executive Officer.

## IT hardware and software

The upgrade of the entire Legal Practice Board's IT network, which I referred to in last year's annual report, was completed in October 2013. The upgrade has substantially improved the efficiency of the Committee's IT system. As part of that upgrade a new version of our electronic document and records management system was installed. This upgrade resolved the problems which the Committee had been experiencing with not being able to search its electronic records.

Following the upgrade to the IT network, the old computer equipment in the Committee's office has started to be replaced. This project is expected to be finalised shortly. Once the upgrade of the computer equipment is complete, staff will be able to use dual monitors to assist in their work.

## Complaints management system

As reported in last year's report, in June 2013 a project team was established to select a complaints management system (**CMS**). The process of reviewing the Committee's requirements for a complaints management has taken longer than expected and no recommendation has yet been made of the CMS best suited to the Committee's requirements. I am hopeful that this project may be able to be finalised during 2014-15.

## Staffing

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

## Thanks

My continuing thanks go to each member of the Committee's staff for their hard work and enthusiasm. If not for their dedication and preparedness to embrace change we would not be able to continue to enhance the Committee's operations as we have. I also thank the Executive Director of the Legal Practice Board for his assistance in all administrative matters.

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

Last, but not least, my thanks to the Chair, Deputy Chair and all members of the Committee for your continued assistance and hard work during the year.

**Gael Roberts**  
**Law Complaints Officer**  
**August 2014**

## 3. About the Legal Profession Complaints Committee

### 3.1 OUR ROLE, PURPOSES and OBJECTIVES

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

The statutory purposes of the Committee's work are:

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

Our objectives are:

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

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

### 3.2 OUR RELATIONSHIP WITH THE LEGAL PRACTICE BOARD

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

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

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

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

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

### 3.3 OUR MEMBERS

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

During the reporting year the Committee was constituted by:

Chair: Mr C L Zelestis QC  
Deputy Chair: Mr J R B Ley

Legal members:  
Mr K R Wilson SC  
Mr M T Ritter SC  
Mr T Lampropoulos SC  
Mr R M Mitchell SC  
Mr B Dharmananda SC  
Mr J G Syminton  
Ms S M Schlink  
Ms N A Hossen

Community representatives:  
Ms M Nadebaum  
Mr C Hudson

Deputy community representative:  
Mr G R Fischer

### 3.4 OUR OPERATIONS

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

During the year, the Committee held 12 meetings.

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

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

The Rapid Resolution team is managed by Ms Philippa Rezos and comprises 2.4 full time equivalent (*FTE*) legal officers, 0.6 *FTE* senior legal officer and one secretary.

The Investigation team is managed by Mr Nicholas Pope and comprises 3 *FTE* legal officers, a senior trust account inspector and two secretaries.

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

### 3.5 TRUST ACCOUNT INSPECTIONS

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

During the year Ms Young undertook 56 inspections of which 11 were causal inspections and 45 were routine inspections. Some of the routine inspections were undertaken on behalf of the Board. Ms Young's reports on two of the inspections undertaken

during the year were referred to the Investigation team for further investigation.

Many of the routine inspections undertaken were of newly established legal practices, generally within 6 months of commencement. The aim of these inspections is to assist these legal practices to establish the required accounting records for trust monies and to confirm that they are meeting all legislative requirements. These inspections are also beneficial in establishing a communication with new legal practices so that they are willing to contact the Committee or the Board if they require assistance in meeting their trust account obligations.

Inspections of new practices are able to be completed quickly which has resulted in a greater number of inspections being able to be completed during the year.

During her inspections, Ms Young reviews a selection of the legal practices' files. If she identifies any apparent deficiencies in the costs disclosure documents on those files, she is now routinely bringing those issues to the attention of the Rapid Resolution team.

Causal and routine inspections of legal practices are extremely valuable. They enable face to face discussions with practitioners and their bookkeepers on issues and concerns which have arisen regarding their trust account records. Sometimes Ms Young can provide options to resolve a problem or enhance their records which the legal practice can discuss with their external examiners.

Also during the year, Ms Young completed a unit on Forensics and Information Technology through the University of Western Australia. Following completion of that unit, Ms Young provided training to legal staff to enhance their knowledge of forensic information technology and trust accounts.

Ms Young prepared an article which was published during the year in *Brief* warning practitioners about withdrawing monies from trust accounts in cash.

### **3.6 OUR STAFF TRAINING AND PROFESSIONAL DEVELOPMENT**

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

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

- Professional Courtesy
- Workers Compensation
- Deceased Estates
- Family Law procedures and case management
- Forensic information technology and trust accounts
- *Corruption and Crime Commission Act 2003*/Billing practices
- Contemporary legal ethics/ ethical issues considered in SAT/Court decisions in 2013
- Costs
- An insight into the Professional Affairs Committee

- Harman obligation/Intention and recklessness

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 practise. 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.

The Rapid Resolution team also held a role play session on conciliation techniques aimed at enhancing their skills in dealing with difficult situations which may arise in their work from time to time.

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 Darwin 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, 80% 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 matter 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. 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 and no pressure is applied. In serious matters, the practitioners are encouraged to seek legal advice.

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

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

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

At its meetings, the Committee reviews the results of the

investigation and the legal advice of the legal officers. After consideration of those materials the Committee may:

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

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

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

#### **Case Study 1**

##### **Acting against client direction for payment of monies held in trust and failing to look after the client's interests when ceasing to act**

Mr L complained to the Committee that the practitioner who acted for him in a family law matter paid monies from trust to partially meet the firm's fees on an outstanding account in circumstances where the client had directed that those monies be held in trust to cover potential counsel fees. Mr L said his consent had not been obtained for a change in his direction to the firm to permit those monies to be disbursed in part payment of outstanding fees. A legal officer from the RRT conciliated the matter and the firm agreed to refund those monies to Mr L.

As a result of the dispute over the outstanding fees, the firm had filed a notice of ceasing to act in circumstances where, at that time, there was a springing order in place requiring Mr L to file and serve his trial affidavit. Although the firm filed the trial affidavit before ceasing to act, it did not serve the trial affidavit on the opposing party and failed to notify the client of the immediate need to do so or that there was a springing order in place. When the opposing party sought to strike out Mr L's application on the basis of the springing order and proceed to trial undefended, the trial judge allowed an adjournment after sighting the practitioner's letter to Mr L on ceasing to act.

The legal officer from the RRT obtained a waiver of the firm's outstanding fees in mitigation of any conduct issue found after a full investigation.

## **Case Study 2**

### **Unprofessional communications with opposing in-person litigant and referring to confidential communications in court**

Mr B, the opposing in-person litigant, initially contacted the Committee raising concerns in regard to the tone, tenor and colloquial language used by the practitioner in telephone and email communications. The practitioner was contacted by the RRT and reminded that it is not appropriate to call Mr B “dude” or to refer to her own personal circumstances in her contact with Mr B. The practitioner apologised and accepted that her communications needed to be more circumspect and further agreed to have her correspondence with Mr B monitored for a period by a legal officer in the RRT with Mr B providing copies of any correspondence of concern, to keep communications in writing and to ensure communications were courteous.

Mr B subsequently complained to the Committee that when the practitioner made a submission in court, she referred to a ‘without prejudice’ offer he made in a conciliation conference. When contacted by an RRT legal officer, the practitioner did not appear to appreciate the confidential nature of conciliation conferences and acknowledged her failure in this regard. In mitigation of any conduct issue found after a full investigation of her conduct, the practitioner agreed to attend any CPD seminars offered on the topic of confidentiality and, due in part to her personal circumstances and that she practises as a sole practitioner in a professionally isolated environment, to seek assistance from counsel to review her work on the file, to brief counsel to attend at court and to restrict her own attendances at court unless absolutely necessary.

After investigation, the practitioner’s conduct was dealt with by the Committee (outside the current reporting year) in the exercise of its summary conclusion powers and a small fine imposed. The practitioner referred to her early mitigation in her submissions, which Committee took into account in determining the penalty to be imposed.

## **Case Study 3**

### **Unnecessary work carried out by firm when responding to requisitions from the Probate Registry and failing to adequately supervise a junior practitioner**

Mr S contacted the Committee in regard to the fees charged by his solicitor and counsel in completing an application he had commenced for a grant of Letters of Administration (LOA) with the will annexed (where the will was informal as it only had one attesting witness).

On reviewing the material provided by Mr S, it appeared that Mr S’s concern was the fees charged by the practitioner’s firm and counsel for addressing several requisitions issued by the Probate Registrar, in light of the competency of that work. The requisitions were directed at addressing the lack of particularity of the evidence obtained from the witness in order to prove the informal will. The practitioner

### Case Study 3 (Continued)

delegated the work to a junior practitioner who attempted to respond to the requisitions by preparing a new application for a grant of LOA.

The junior practitioner contacted counsel for assistance but seemed to focus on the dispositive provisions of the will which was not the Registrar's concern rather than responding to the specific requisitions. Nevertheless, counsel queried why the firm was attempting to prepare a second application for LOA and suggested that the Registrar may raise the same query. On lodging the second application for LOA, the Registrar responded that the application was "fundamentally misconceived" and required competent answers to the outstanding requisitions on the first application. The practitioner withdrew the second application and an affidavit was prepared and lodged which satisfied the requisitions.

The matter was conciliated on the basis that the practitioner agreed to a substantial discount of the firm's fees as a result of the delay, the inadequate supervision and the unnecessary work undertaken by the firm. The firm also agreed to cover counsel's fees in whatever amount was negotiated between the firm and counsel.

## 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 motion unless stated otherwise.**

### ***Number of Rapid Resolution inquiries finalised***

The Rapid Resolution team dealt with 1378 inquiries of which 22.2% were conciliated. The conciliated matters included the discount, waiver or

refund of fees to clients in excess of \$552,000.

### ***The Complainants***

Over a third of all complaints (36%) were from clients/former clients of the practitioner complained about. Over a quarter of complaints (26%) were made against the practitioner acting for the opposing party in proceedings.

In respect of Rapid Resolution inquiries, 49.8% were made by or on behalf of clients or former clients of the practitioner being enquired about.

### ***The areas of law***

The areas of law attracting the most complaints were family/de facto law (26.1%) followed by civil litigation (22.5%).

In respect of Rapid Resolution inquiries, 31.6% were in the area of family/de facto law, 14% in civil litigation and 13.9% in probate and wills.

### ***The types of complaint***

Many complaints raised more than one matter of complaint. This year, unethical conduct (20.8%) and costs issues (10.9%) attracted the most complaints.

However, for Rapid Resolution inquiries, costs issues were clearly the highest category with over a third of all inquiries raising a costs related issue (47%) with the next highest categories being no communication (12.7%) and unethical conduct (11.2%).

### ***The practitioners***

The greatest number of complaints related to Sole Principals (36%),

followed by Other Principals (22%) and Non Principals (19%).

### ***The number of practitioners complained about***

Some 79 practitioners were the subject of one or more complaints (including conduct investigations) during the year. Of this total, 67 practitioners were the subject of one complaint, 7 practitioners were the subject of two complaints and 5 practitioners were the subject of three or more complaints.

The Board has reported that there were 6064 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 1.3% of certificated or deemed certificated Western Australian practitioners, which was in line with 1.4% of practitioners in the 2012-13 reporting year.

*Number of complaints received and dealt with*

Matters under investigation	Total	Complaints	Conduct Investigations
Open as at 1 July 2013	101	78	23
Opened during year	100	69	31
Closed during year	(102)	(89)	(13)
<b>Outstanding as at 30 June 2014</b>	<b>99</b>	<b>58</b>	<b>41</b>

## 5. Formal determination of complaints

### 5.1 OVERVIEW AND KEY STATISTICS

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

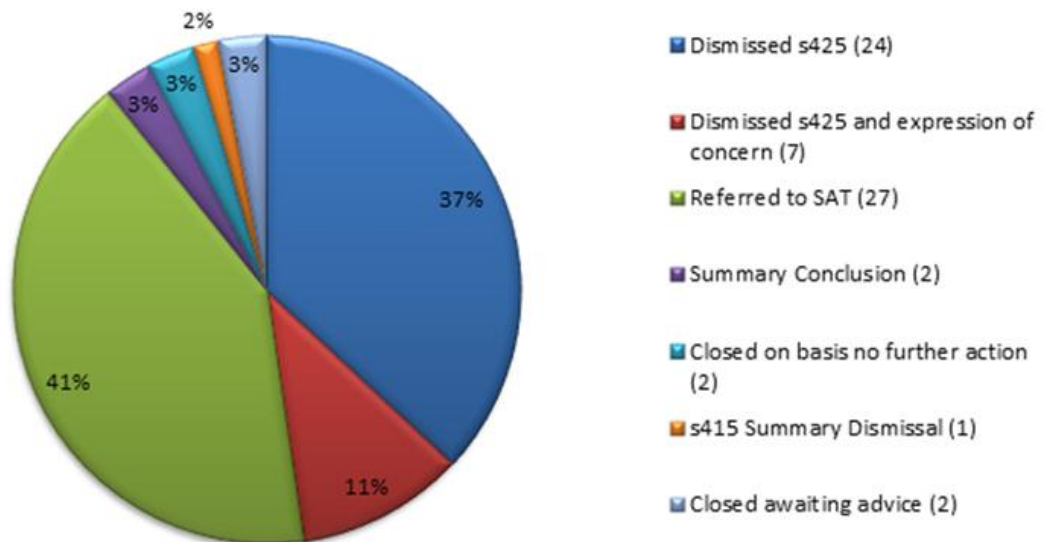
When a matter goes before the Committee, the Committee may finally determine the matter in one of three ways:

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

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

During the year the Committee determined 66 matters of which 51.5% were dismissed (or not taken further), 40.9% were referred to SAT, 3.0% were dealt with in the exercise of its summary conclusion powers and 3.0% were closed awaiting advice.

#### *Committee Determinations*





In addition to the matters dealt with by the Committee, a further 16 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. Of the complaints dismissed by the Committee 2.9% were summarily dismissed and the remainder were dismissed following a full investigation.

In 14% 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**

##### ***Saying too much***

The Committee investigated various aspects of a practitioner's conduct involving an application in the Family Court to restrain the removal of a child from Australia, placing the child on an Airport Watch List and for delivery up of the child's passport to the court (*Application*).

The client instructed the practitioner that he was concerned that his estranged wife intended to re-locate overseas with the only child of the marriage.

In the course of providing instructions for the Application the client informed the practitioner that the wife had possession of the child's passport and sought advice from the practitioner as to whether there was anything he could do to prevent the wife from leaving Australia with the child before the Application could be listed for hearing by the court.

### *Case Study 1 (Continued)*

The practitioner informed the client that he had heard of another family lawyer advising a client to telephone the relevant government department and have a passport cancelled by reporting it as lost or stolen. The practitioner said that he indicated his clear disapproval of doing so and advised the client to telephone the relevant government department to make inquiries as to whether there was any way in which he could have the passport cancelled.

Subsequently, the client telephoned the Department of Foreign Affairs and Trade (DFAT) and apparently informed DFAT that the child's passport had been lost and as a result of that report, DFAT cancelled the child's passport.

The Application was listed for an urgent hearing by which time the wife had received a letter from DFAT advising that the child's passport had been cancelled because it had been reported as lost or stolen.

The Court made interim orders restraining both parties from removing the child from Australia and placing the child on the Airport Watch List.

The client was subsequently charged with giving information to a Commonwealth entity, knowing that the information was false or misleading. Ultimately, the charge was withdrawn because prior to giving the information, he did not receive a caution from DFAT as required by section 137(4) of the Schedule to the *Criminal Code Act 1995*.

The wife complained to the Committee who investigated various aspects of the practitioner's conduct including whether the practitioner engaged in unsatisfactory professional conduct or professional misconduct by informing his client of advice given by another practitioner to have a child's passport cancelled by reporting it as lost or stolen.

The Committee was of the view that it was both unnecessary and imprudent of the practitioner to have mentioned to the client that another lawyer had advised making a false report as a way of achieving an outcome which the practitioner knew the client wanted to achieve, and expressed its concern that the practitioner had done so. The practitioner could have advised the client to contact DFAT to ascertain whether there was a way in which the passport could be legitimately cancelled if it was neither lost nor stolen, without also informing the client that another practitioner had advised the client to telephone DFAT to have a passport cancelled by reporting it as lost or stolen. However, the Committee did not consider that the practitioner's conduct in imparting the information rose to the level of unsatisfactory professional conduct requiring disciplinary action and resolved to take no further action.

## Case Study 2

### ***Inadmissible and Prejudicial Evidence***

The Committee considered a practitioner's role as prosecuting counsel in a jury trial in leading and/or allowing inadmissible and prejudicial evidence to be given by a police witness and failing to control that witness to prevent the giving of inadmissible and prejudicial evidence.

The trial involved drug charges against two accused. The police witness was a detective who had been monitoring intercepted and recorded mobile telephone conversations of the accused. It was accepted at the trial that the detective had expertise in the field of drug investigations.

Whilst the detective did give some admissible expert evidence about the drug involved and the manner in which it was commonly dealt with in '*drug dealing*', he gave considerable inadmissible opinion evidence during what appeared to be a running commentary as to his own views and interpretation of the intercepted telephone conversations.

At the conclusion of the trial the co-accused were convicted of the charges and sentenced to immediate terms of imprisonment of five and six years respectively. They both appealed to the Court of Appeal.

The appeal was successful on the basis there had been a miscarriage of justice by reason of the inadmissible, irrelevant and prejudicial evidence given by the detective.

The Court of Appeal was critical of all counsel and the Trial Judge in allowing inadmissible and prejudicial evidence and of the prosecutor in failing to appropriately control the evidence given by the detective.

Given comments by the Court of Appeal that all counsel and the Trial Judge did not appear to appreciate the inadmissibility of the detective's evidence and of there being other appeals revealing a similar tendency in relation to evidence led from police officers with respect to telephone intercept material, it appeared to the Committee that the practitioner's shortcomings with regard to the inadmissibility of the detective's evidence was shared by other members of the profession. This, together with the practitioner's acknowledgement, remorse and relevant changes in work practices, resulted in the Committee deciding to take no further action. In doing so the Committee expressed its concern at the practitioner's lack of appreciation of the admissibility and the likely prejudice to a fair trial of the evidence that the practitioner allowed or failed to control, particularly given the extent of the inadmissible evidence in this particular case.

### ***Case Study 2 (Continued)***

The Committee reminded the practitioner of the practitioner's individual responsibility as counsel to properly prepare for a hearing, including to fully consider and become acquainted with the admissibility of the evidence to be led and of the duty of a prosecutor to present the evidence in a fair and intelligible manner, particularly where a jury is involved.

### ***Case Study 3***

#### ***Acting on one director's instructions***

The practitioner acted for the wife in Family Court proceedings involving the former husband who complained about aspects of the practitioner's conduct.

The wife and complainant were each a director and shareholder of a company APL as trustee for a family trust which operated the family business.

When the business was prepared for sale it was identified that as a result of the trust financial statements incorrectly recording certain deemed distributions to the wife, the wife had unwittingly accrued a significant personal tax debt to the ATO.

The practitioner obtained orders prescribing a procedure to ensure payment of any "expenses" of APL by the co-signing of cheques by the wife and the complainant, and other orders directed to rectifying the tax situation in respect of the wife including, if necessary, APL obtaining a bank loan to pay the wife's tax to be secured by the trust at its cost.

The complainant failed to comply with his obligations in respect of the orders resulting in the practitioner bringing a successful contravention application with the complainant being placed on a \$50,000 bond against further contraventions.

Subsequently the practitioner opened a new file with APL as the client to record her time spent on resolving the tax issues. The practitioner continued to act for the wife in the Family Court proceedings.

The practitioner issued invoices to APL in respect of work performed in relation to the tax issues. The practitioner says she was instructed to act for APL by the wife in her capacity as a director of APL and was informed by the wife that the complainant, as the other director for APL, had consented to those instructions and agreed for APL to pay the practitioner for that work.

The invoices were initially paid by cheques co-signed by the complainant and the wife in accordance with the procedure outlined in the court orders.

### *Case Study 3 (Continued)*

The complainant subsequently advised the practitioner that he had instructed the APL accountant in relation to the matter, that the practitioner was not required to be involved any further in relation to the tax issues and that if the practitioner wished to monitor the matter on behalf of the wife, it had to be at the cost of the wife and not APL.

The complainant alleged that the practitioner issued invoices and obtained payment of the invoices purportedly pursuant to court orders when those invoices were not payable by APL pursuant to the orders.

The complainant denied that he had agreed for the practitioner to act for APL and for her work in relation to the tax issues to be paid by APL. In answer to having co-signed cheques in payment of some of the practitioner's invoices for this work, the complainant alleged intimidatory conduct on the part of the practitioner, in particular by references to possible breaches of the bond.

Following the complainant complaining to the Committee, the practitioner refunded to APL amounts paid by APL in respect of her invoices, albeit with a denial that she had been guilty of any wrongdoing.

In the circumstances, the Committee dismissed the complaint noting that there was evidence consistent with the practitioner's belief that the complainant had (at least up until the time he specifically objected) agreed to pay for the practitioner's work for APL in connection with the tax issues, in particular the payment of the invoices by cheques co-signed by the complainant. As to the alleged intimidatory conduct, the Committee considered there was no evidence of the practitioner specifically referring to the court orders or possible breach of the bond in the context of seeking payment of the invoices.

The Committee was, however, concerned at the manner in which the practitioner accepted the instructions from the wife to act for APL in respect of the tax issues. The wife's instructions were given on behalf of APL as a director on an informal basis, in circumstances where the practitioner was acting for the wife and where there was an acrimonious relationship between the wife and the other director. The Committee considered that the practitioner should have exercised more caution in these circumstances and confirmed the instructions to act for APL, including arrangements for payment of fees, in writing with both directors.

### **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 2 matters during the year.

### ***Summary of matters determined in the exercise of summary conclusion powers***

Grounds of unsatisfactory professional conduct	Finding
By contravening section 217(1) of the <i>Legal Profession Act 2008</i> on 4 occasions between 12 October 2012 and 23 January 2013 by withdrawing trust money from a general trust account otherwise than by cheque or electronic funds transfer.	Private reprimand
<p>By on or about 21 August 2006 preparing documents being 2 Applications for Shares by X in A and a directors' resolution of A approving 2 Applications for Shares in A from X and Y and signed each Application for Shares on behalf of X and permitted the Directors' Resolution dated 2 August 2005 to be signed by one of the directors of A, when:</p> <ul style="list-style-type: none"> <li>(i) he knew that at no time had X applied in writing for shares in A;</li> <li>(ii) he did not know if any resolution had been passed on 24 August 2005 by the directors of A purporting to approve an application for shares in A from X;</li> <li>(iii) he did not know if any resolution had been passed on 24 August 2005 by the directors of A approving an application for shares in A from Y;</li> <li>(iv) he did not know if any resolution had been passed on 24 August 2005 by the directors of A approving the issue of shares in A to X and Y;</li> <li>(v) he knew that each of the documents was backdated.</li> </ul>	Fine of \$2000

## 5.4 REFERRALS TO SAT

During the year, the Committee resolved to refer matters arising from 27 complaints or conduct investigations to SAT involving 13 practitioners. As at 30 June 2013, all these matters had been filed in SAT.

The referral is by way of an Application filed in SAT. The Application sets out the Grounds of

the professional misconduct or unsatisfactory professional conduct together with the supporting facts and contentions.

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



## 6. State Administrative Tribunal and Court Proceedings

### 6.1 SAT APPLICATIONS

The Committee filed 15 Applications in SAT during the period under review.

During the year there were 15 Applications determined by SAT including 3 matters in respect of which a decision had been delivered as at 30 June 2014 but not penalty. Of the matters determined, 7 were determined (including penalty) as a result of consent orders and a further 4 were determined as a result of the finding being made by consent but with penalty being referred to SAT for hearing. The majority of consent orders were made following SAT ordered mediation where the Committee and the practitioner reached agreement on the orders to be sought.

All minutes of proposed consent orders are referred to SAT for final approval.

On one occasion in this reporting period, SAT declined to make the proposed consent orders on the basis that the penalty was not adequate given the nature of the conduct. After hearing submissions as to the adequacy of the penalty from the

practitioner, SAT indicated what it considered might be an appropriate penalty. After further discussion between the practitioner and the Committee an increased penalty was agreed upon and put forward to SAT that was acceptable to SAT.

At the conclusion of the reporting period there were 8 Applications filed by the Committee which had not been determined (compared to 5 last year). One of these Applications concerned a matter in which a finding was made against the practitioner in the 2012-13 reporting year (this matter was determined shortly after the end of the reporting period).

Following an appeal to the Court of Appeal, Supreme Court of Western Australia, a matter regarding Peter George Giudice has been referred back to SAT for reconsideration pursuant to section 105(9)(c) of the *State Administrative Tribunal Act 2004*, with an order that it be heard by the same Tribunal members without the hearing of further evidence.

*Summary of SAT matters determined 1.7.13 – 30.6.14*

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
43/2012 12/12/2013	Segler, Martin Lee	<ul style="list-style-type: none"> <li>a) not accounting for trust monies and failing to deposit trust moneys to the credit of his trust account (6 clients)</li> <li>b) failing to carry out work he agreed to do (6 clients) and substantial failure to reach or maintain a reasonable standard of competence and diligence (2 clients)</li> <li>c) intentionally misleading or attempting to mislead the Family Court</li> <li>d) failing to respond to the LPCC's reasonable enquiries on various dates between 30 June 2010 and about March 2011</li> <li>e) failing to comply with summonses to produce documents</li> <li>f) failing to respond to a letter from the Senior Trust Account Inspector</li> </ul>	<p>Findings of professional misconduct by</p> <ul style="list-style-type: none"> <li>a) failing to deposit trust moneys to the credit of his trust account (6 clients)</li> <li>b) a substantial failure to reach or maintain a reasonable standard of competence and diligence</li> <li>c) intentionally misleading or attempting to mislead the Family Court</li> <li>d) failing to respond to the LPCC's reasonable enquiries on various dates between 30 June 2010 and about March 2011</li> <li>e) failing to comply with summonses to produce documents</li> <li>f) failing to respond to a letter from the Senior Trust Account Inspector</li> </ul> <p>Report to Full Bench of the Supreme Court with recommendation to strike off Costs \$18,790.60</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
79/2012 10/09/2013	Johnston, Julia	<ul style="list-style-type: none"> <li>a) failing to make an enquiry requested by a Magistrate of the Family Court and which she agreed to do</li> <li>b) making statements to a member of staff at a school when she knew that there were no, or no reasonable, grounds for some of those statements, or was recklessly indifferent to whether or not there were reasonable grounds for some of those statements</li> <li>c) when acting as ICL, making statements to a member of staff at a school in breach of s243 of the Family Court Act</li> <li>d) making a statement to a member of staff at a school which contained information confidential to the parties and in so doing acting outside the scope and function of her role as ICL</li> </ul>	<p>Mediated outcome as to finding Findings of unsatisfactory professional conduct by</p> <ul style="list-style-type: none"> <li>a) when acting as independent children’s lawyer (ICL) in child custody proceedings, failing to make enquiries which were appropriate for her to make in view of the submissions made by Mr T and the remarks of the magistrate, before proceeding to make submissions to the Court concerning the best interests of the relevant child</li> <li>b) making statements about Mr T’s mental health to a member of staff at the child’s school which were based on information that had been provided to her in her role as ICL, and was confidential to the parties.</li> </ul> <p>Reprimand Costs \$2,500</p>
110/2012 27/11/2013	Wroughton, Karen Alethea Mullally	<p>The practitioner’s representation of her client in District Court proceedings involved conduct which failed to reach a reasonable standard of competence and diligence</p>	<p>Finding of unsatisfactory professional conduct by failing to reach a reasonable standard of competence and diligence in that she</p> <ul style="list-style-type: none"> <li>a) instituted and continued an action in the District Court on behalf of her client without any evidence to support her client’s claim</li> <li>b) failed to provide adequate advice to her client</li> <li>c) failed to respond in a timely manner to requests from other solicitors</li> <li>d) failed to keep her client adequately informed about the proceedings in the District Court</li> </ul> <p>Awaiting Penalty</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
176/2012 5/07/2013	O'Halloran, Paul John	In relation to 2 client matters – a) charging contrary to costs agreement b) contravening s260 and 267 of the Legal Profession Act c) sending a letter to his client that was misleading d) seeking payment from ICWA in excess of that charged and incurred by client e) charging fees that were grossly excessive	Mediated outcome as to finding Finding of professional misconduct in relation to all matters Report to Full Bench of the Supreme Court with recommendation to strike off Costs \$27,861.20
30/2013 5/07/2013	O'Halloran, Paul John	In relation to client A - a) charging fees that were grossly excessive b) entering into a costs agreement which purported to allow charges more than allowed by the <i>Motor Vehicle (Third Party Insurance) Act</i> c) failing to provide information regarding party/party costs contrary to representation he would do so d) billing for services contrary to the manner in which he had represented or agreed e) misleading the client as to the basis he would charge  In relation to client B - f) charging fees that were grossly excessive g) charging contrary to a costs agreement h) providing misleading information with respect to when he was entitled to or would render bills i) rendering interim bills more frequently than he represented he would	Mediated outcome as to finding Finding of professional misconduct in relation to all matters Report to Full Bench of the Supreme Court with recommendation to strike off Refer to VR 176 of 2012 regarding costs

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
36/2013 23/07/2013	Reyburn, John Henry	<ul style="list-style-type: none"> <li>a) deliberately or recklessly not acting in client's best interest or in the alternative</li> <li>b) failing to reach or maintain a reasonable standard of competence and diligence</li> <li>c) failing to respond in a timely manner or at all to correspondence from Supreme Court between 6 May 2008 and May 2009</li> </ul>	<p>Mediated outcome as to finding Finding of professional misconduct in relation to b) Reprimand Conditions imposed on practitioner's practising certificate Refund of fees: \$19,182.11</p> <p>Finding of unsatisfactory professional conduct in relation to c) Reprimand Fine \$2,000 Costs \$8,000</p>
122/2013 02/08/2013	O'Halloran, Paul John	<ul style="list-style-type: none"> <li>a) charging fees that were grossly excessive</li> <li>b) charging fees on a basis that was contrary to the terms of a purported costs agreement</li> <li>c) failing to provide information regarding party/party costs contrary to a representation that he would do so</li> </ul>	<p>Mediated outcome Finding of professional misconduct in relation to all matters Report to Full Bench of the Supreme Court</p>
126/2013 14/08/2013	Brickhill, Trevor Howard	<ul style="list-style-type: none"> <li>a) giving evidence which he knew was misleading in a material particular</li> <li>b) counselling a person to destroy a document or thing that was or may be required by the CCC of Western Australia with the intention of preventing it from being effectively used in evidence</li> </ul>	<p>Mediated outcome Finding of professional misconduct in relation to all matters Report to Full Bench of the Supreme Court with recommendation to strike off Costs \$1,000</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
156/2013 22/05/2014	Amsden, Charlene Sheila	<p>Demanding payment of and commencing and prosecuting a minor case claim for \$2,022 comprised unprofessional conduct in that it</p> <ul style="list-style-type: none"> <li>a) would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence; or</li> <li>b) to a substantial degree fell short of the standard of professional conduct observed or approved by members of the profession of good repute and confidence;</li> <li>c) further or in the alternative, comprised a breach of rule 6(2)(b)&amp;(c) and/or 16(1) and was contrary to the intent 18(1) (noting rule 4(2)) of the <i>Legal Profession Conduct Rules 2010 (WA)</i></li> </ul>	<p>Finding of professional misconduct in that her conduct in demanding payment of and commencing and prosecuting a minor case claim for payment of the amount of \$2,022:</p> <ul style="list-style-type: none"> <li>a) would reasonably be regarded as disgraceful or dishonourable by practitioners of good repute and competence; and</li> <li>b) comprised a breach of rule 6(2)(b)&amp;(c), 16(1) and 18(1) of the <i>Legal Profession Conduct Rules 2010 (WA)</i></li> </ul> <p>Awaiting penalty</p>
159/2013 19/02/2014	Love, Dean Richard	<ul style="list-style-type: none"> <li>a) causing the publication of a web page on a website that was likely to mislead and deceive a person</li> <li>b) making false representations to LAWA</li> <li>c) submitting an application to LAWA where he provided answers to questions which he had not been given any information in relation to and indicated a declaration that all the information in the application was true and correct had been signed where no such declaration had been signed</li> </ul>	<p>Mediated outcome as to finding</p> <p>Finding of professional misconduct in relation to all matters</p> <p>Awaiting penalty</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
<p>193/2013 20/05/2014 193/2013 (Cont) 20/05/2014</p>	<p>Wiese, Elizabeth</p>	<p>a) signing an independent solicitor's certificate for a client of the Firm which the practitioner knew was false or was recklessly indifferent as to whether it was false in a material particular</p> <p>b) on 3 occasions not advising clients that they should obtain independent legal advice before entering into a litigation funding agreement in circumstances where the practitioner's own interests in having the clients enter into the funding agreements had the potential to conflict with those of the clients</p> <p>c) instructing 2 employed solicitors in the Firm to sign independent solicitor's certificates for a client of the Firm which the practitioner knew were false or was recklessly indifferent as to whether they were false in a material particular</p>	<p>Mediated outcome Finding of professional misconduct by</p> <p>a) signing an independent solicitor's certificate for a client which the practitioner ought to have known was false in a material particular in that it stated the practitioner did not act for the client in the transaction in circumstances where a reasonably competent practitioner would have known that she did</p> <p>b) on 3 occasions not advising her client to obtain independent legal advice before entering into a litigation funding agreement in circumstances where the practitioner's own interests had the potential to conflict with those of the client</p> <p>c) requesting an employed solicitor Mr G, to sign an independent solicitor's certificate for a client that was misleading in a material particular and which the practitioner ought to have known was misleading in a material particular in that it stated Mr G did not act for Ms C in the transaction in circumstances where a reasonably competent practitioner would have known that he should be taken to act for Ms C for the purposes of the certificate</p> <p>d) requesting an employed solicitor Mr R to sign an independent solicitor's certificate for Ms C which the practitioner ought to have known was misleading in a material particular in that it stated Mr R did not act for</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
193/2013 (Cont) 20/05/2014			Ms C in the transaction in circumstances where a reasonably competent practitioner would have known that he did Fine \$10,000 Costs \$2,500
207/2013 5/03/2014	Stokes, Bryan Francis	Preparing and causing to be sworn or affirmed, and filing affidavits which contained statements and assertions which were: a) offensive, insulting, provocative and/or intemperate b) irrelevant to the issues involved in the proceedings c) argumentative d) statements or assertions of belief or opinion, which were made without any reasonable factual foundation for the belief or opinion being given e) inadmissible f) inappropriate for the advancement of the proceedings	Mediated outcome Finding of unsatisfactory professional conduct Condition placed on practising certificate for 6 months Fine \$1,500 Costs \$2,500
216/2013 15/05/2014	Aldrich, Alison Janice	Seeking to advance her client's interests by unfair means by writing directly to an opposing party to proceedings which was represented by a legal firm	Mediated Outcome Finding of professional misconduct Fine \$10,000 Costs \$3,250



Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
55/2014 23/06/2014	Grasa, George	<p>a) not advising his clients that they should obtain independent legal advice before agreeing to and then entering into arrangements whereby a company in which his clients had a significant interest, obtained finance for the purpose of the company lending that sum to the practitioner for the practitioner's personal purposes in circumstances where the practitioner's own interests conflicted or alternatively had the potential to conflict with the interests of his clients</p> <p>b) making a false statement in 2 statutory declarations and permitting his client to make a false statement in a statutory declaration that independent legal advice had been received</p>	<p>Mediated Outcome Finding of unsatisfactory professional conduct in relation to all matters Fine \$8,000 Costs \$3,000</p>
83/2014 29/05/2014	Mugliston, Patrick James	Failing to lodge with the Commissioner of Taxation GST returns in the approved form from December 2009 to September 2011	<p>Mediated Outcome Finding of unsatisfactory professional conduct Fine \$5,000 Costs \$2,500</p>

*Summary of SAT matters which were not determined as at 30.6.14*

Application No.	Date filed	Allegation	Status
176/2013	24/09/2013	<p>Professional misconduct</p> <p>a) purporting to take instructions for and purporting to prepare a will and an enduring power of attorney with reckless disregard as to whether a terminally ill patient had capacity to provide instructions</p> <p>b) arranging the execution of, and witnessing, a will and enduring power of attorney with reckless disregard as to whether the client had capacity to make, had been able to provide instructions to make, had understood and approved the contents of, and had independently signed, the will and the enduring power of attorney</p> <p>c) failing to reach or maintain a reasonable standard of competence and diligence when purportedly taking instructions to prepare a will and an enduring power of attorney and in arranging the execution of, and witnessing, a will and enduring power of attorney</p>	Hearing 19 & 20 May 2014
194/2013	14/10/2013	<p>Professional misconduct</p> <p>a) dishonest and/or illegal conduct in misusing trust funds of 5 clients</p> <p>b) contravening s226(1)(a) of the <i>Legal Profession Act 2008</i></p> <p>c) failure to maintain trust records in the manner required by the <i>Legal Profession Regulations 2009</i></p> <p>d) not responding to enquiries made by the LPCC</p>	Directions 12/08/2014
29/2014	14/02/2014	<p>Professional misconduct and Unsatisfactory professional conduct</p> <p>a) dishonest and/or illegal conduct by misusing trust funds</p> <p>b) not accounting for trust monies and failing to deposit trust moneys to the credit of his trust account (12 clients)</p> <p>c) not providing appropriate cost disclosure(10 clients)</p> <p>d) not accounting for trust money (13 clients)</p> <p>e) lack of competence and diligence (10 clients)</p>	Mediation 18/06/2014

Application No.	Date filed	Allegation	Status
54/2014	21/03/2014	<p>Professional misconduct and/or Unsatisfactory professional conduct</p> <p>a) when acting as an independent children's lawyer (<b>ICL</b>) she did not fulfil her special responsibilities as an ICL to act in the best interests of the child by not informing the Family Court whether the practitioner considered the proposed parenting arrangements were in the best interests of the child before filing a Notice of Ceasing to Act, not making all necessary enquiries in a timely manner so as to form an opinion on the parenting arrangements, not proceeding in a timely manner or at all to finalisation of a proposed Minute of Final Orders setting out the parenting arrangements</p> <p>b) knowingly or recklessly attempting to mislead the parents by sending emails that were misleading and incomplete in that they did not disclose all material particulars and conveyed a misleading impression</p> <p>c) knowingly or recklessly attempting to mislead the Family Court of WA by a letter sent to the Principal Registrar that was misleading and incomplete in that it did not disclose all material particulars and conveyed a misleading impression</p>	Mediation 25/07/2014
56/2014	21/03/2014	<p>Professional misconduct</p> <p>By not progressing the administration of a deceased estate in a competent and timely manner</p>	Mediation 04/08/2014
57/2014	21/03/2014	<p>Unsatisfactory professional misconduct</p> <p>Not taking any steps as an executor to ensure the solicitor administering the deceased estate on her behalf attended to the distribution of the estate in a competent and timely manner</p>	Mediation 31/07/2014

Application No.	Date filed	Allegation	Status
108/2014	24/06/2014	Professional misconduct a) not progressing a client's claim in a timely and competent manner b) not taking all reasonable and practical steps to keep the client informed of significant developments and generally about the progress of the matter c) filing an affidavit which was false and misleading and had the potential to mislead the Court, and which he knew was false and misleading and filed with the intention of misleading the Court or was reckless as to whether it was false and misleading and had potential to mislead the Court d) sending correspondence to the client that was false and misleading e) knowingly attempting to mislead the LPCC by sending 2 letters that contained statements that were false	Directions 29/07/2014

## 6.2 REVIEW APPLICATIONS

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

There were 7 Applications filed during the year (compared to 10 last year). The extent of the Committee’s

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

All the review Applications were either dismissed, withdrawn or not accepted by SAT with the exception of two related matters where one part of the complaint (made against 2 practitioners) which had been dismissed by the Committee was referred back for reconsideration by the Committee.

Review Applications	Total
Pending as at 1 July 2013	5
Lodged during year	7
Withdrawn	(3)
Dismissed	(3)*
Application not accepted by SAT	(1)
Part referred back/Part dismissed	(2)**
Pending as at 30 June 2014	3

\* appeal pending on matter with respect to refusal to grant leave to seek a review out of time

\*\* relates to one complaint made against 2 practitioners

## 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, Trevor Howard Brickhill was struck from the roll on 9 October 2013, Paul John O'Halloran was struck from the roll on 4 December 2013 and Martin Lee Segler was struck from the roll on 13 May 2014.

There were no practitioners who remained, during the period under review, the subject of a Report to the Full Bench of the Supreme Court which had not been determined.

## 6.4 APPEALS

During the year:

- an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini from a SAT decision on findings of professional misconduct and the subsequent costs decision was allowed in part:
  - one finding of professional misconduct was upheld and one was dismissed
  - the SAT order on costs was set aside and the practitioner ordered to pay 75% of the Committee's costs of the SAT proceedings
  - the Committee was ordered to pay 75% of the practitioner's costs of the appeal
- an appeal filed by the Committee with respect to penalty with respect to the same SAT decision as above in relation to Leonard

Gandini was discontinued and the cross appeal filed by the practitioner was dismissed with no order as to costs

- an appeal to the Court of Appeal of the Supreme Court by Peter George Giudice from a SAT decision was allowed and was referred back to SAT for reconsideration with no order as to costs
- an appeal by Mr D Sims from a SAT decision dismissing a review application was discontinued on 30 May 2013 (notification received on 20 January 2014).

Appeals which were lodged prior to the year, but which had not been determined as at 30 June 2014 were:

- an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini from an interim SAT decision
- an appeal to the Court of Appeal of the Supreme Court by Leonard Gandini from an interim and final SAT decision.

The following appeal was lodged during the year, but as at 30 June 2014 had not been determined:

- an appeal to the Court of Appeal of the Supreme Court by Li Dongguang from a SAT decision dismissing his application for leave to file a review application out of time.

## 6.5 SPECIAL LEAVE APPLICATIONS

During the year:

- an application for special leave to appeal to the High Court by Peter Neil from a Court of Appeal of the Supreme Court decision dismissing his appeal of a SAT decision dismissing his review application was dismissed on 3 December 2013 with costs awarded against Mr Neil
- an application for special leave to appeal to the High Court by Leonard Gandini from Court of Appeal of the Supreme Court decision was filed but as at 30 June 2014 had not been determined.

## 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.

The initiative which had just commenced last reporting year of issuing risk alert letters continued this reporting year. 45 risk alert letters were sent out to firms which had received multiple inquiries or complaints of substance against their practitioners in the previous 6 months. The letters set out the nature of the inquiries/complaints and invites the practice to consider ways to reduce the practice's exposure to inquiries/complaints.

Over a third of the firms who received a risk alert letter contacted the Committee to discuss the letter and the issues it raised in more detail. As a result of the risk alert letters, RRT legal officers presented 3 seminars to firms and undertook one informal audit.

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

The Committee has also continued to publish articles in The Law Society's *Brief* magazine. Three articles were published during the reporting year which covered incorporated legal practices, fixed fee agreements, use of the terms 'specialist' and 'expert' in advertisements and cash withdrawals from trust. These articles are also republished on the Board's website.

The Committee's members and staff also give presentations at conferences, continuing professional development seminars and to final year university law students. This reporting year, seminars were also given to government lawyers, the Citizens Advice Bureau, The College of Law and a group of barristers. There was also an increase in the number of seminars given to individual law firms (some of which were organised as a result of the firm receiving a risk alert letter). During the year a total of 18 presentations were 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 Busselton and presented a seminar to practitioners.



## 8. Tables

TABLE 1 RAPID RESOLUTION INQUIRIES 2012-2014

### TYPE OF INQUIRER 2012-2014

	Total % 2011 – 2012	Total % 2012 - 2013	Total % 2013 – 2014
Client/Former Client	52.9	49.5	49.8
Friend/Relative of Client	11.9	10.2	9.4
Opposing party	18.7	21.7	17.6
Beneficiary/Executor/Administrator	2.6	3.1	4.0
Practitioner on own behalf	3.6	5.9	8.0
Practitioner on another's behalf	0.6	1.0	1.0
Other	9.8	8.7	10.3

### INQUIRIES BY AREAS OF LAW 2012 - 2014

	Total % 2011 – 2012	Total % 2012 - 2013	Total % 2013 - 2014
Family/Defacto Law	32.4	33.2	31.6
Civil Litigation	17.4	17.1	14.0
Conveyancing	2.5	2.8	3.2
Leases / Mortgages / Franchises	2.6	3.0	3.4
Probate/Wills/ Family Provisions	10.2	11.7	13.9
Commercial/Corporations Law	4.1	3.8	3.5
Criminal	9.4	6.7	5.6
Personal Injuries	4.5	5.3	4.7
Workers Compensation	4.7	4.9	6.0
Victims Compensation	0.4	0.5	0.8
Employment / Industrial Law	n/a	1.5	3.2
Other	12.0	9.6	10.3

TABLE 1 RAPID RESOLUTION INQUIRIES 2012 - 2014

**INQUIRIES BY AREAS OF INQUIRY 2012 - 2014**

	Total % 2011 - 2012	Total % 2012 - 2013	Total % 2013 - 2014
<b>Cost/Payment Issues</b>			
Failure to Pay Third Party	0.2	0.5	0.2
Overcharging	13.9	16.3	25.5
No Costs Disclosure	2.8	4.8	2.8
Transfer Costs Without Authority	0.3	0.5	0.4
Failure / Delay to Provide a Detailed Account	2.0	1.6	1.9
Other Costs Complaint	13.4	13.9	16.2
<b>Subtotal</b>	<b>32.6</b>	<b>37.5</b>	<b>47.0</b>
<b>Communication/Service</b>			
Act Without / Contrary to Instructions	2.2	3.0	1.5
No Communication	9.6	9.4	12.7
Failure to Carry Out Instructions	4.8	6.0	3.2
Delay	6.8	6.5	3.8
Lack of Supervision	0.1	0.5	0
No Client Advice	1.7	2.0	1.0
No Advice on Progress	1.2	2.1	0.2
Discourtesy	2.3	2.8	4.4
Neglect	3.5	2.6	0.3
<b>Subtotal</b>	<b>32.2</b>	<b>34.8</b>	<b>27.2</b>
<b>Personal Conduct</b>			
Unethical Conduct	9.1	13.1	11.2
Negligence	4.2	3.4	2.0
Misleading	2.0	2.6	0.6
Conflict of interest	2.3	3.3	1.8
Failure to Transfer Documents	0.6	0.8	0.4
Communicating with a Client of Another Solicitor	0.1	0.2	0.2
Threatening Behaviour	1.4	2.1	1.5
False Swearing of Documents	0	0.2	0
Breach Confidentiality	0.2	0.5	0.3
Undue Pressure	0.7	0.9	0.2
Alteration of Documents	0.1	0.1	0
Liens	0.5	0.6	0.4
<b>Subtotal</b>	<b>21.2</b>	<b>27.7</b>	<b>18.6</b>
<b>Other</b>	<b>14</b>	<b>12.5</b>	<b>7.1</b>

TABLE 1 RAPID RESOLUTION INQUIRIES 2012 - 2014

**RESOLUTION OF INQUIRY 2012 - 2014**

	Total % 2011 – 2012	Total % 2012 - 2013	Total % 2013 - 2014
<b>Conciliated Outcome</b>			
Fee waiver	1.7	3.8	2.4
Apology	2.2	1.6	1.5
Undertaking	0.1	0.1	0.1
Discounted fees	5.2	5.9	7.2
Release of lien	0.5	0.6	0.6
Withdrawn	1.5	2.3	1.6
Improved communication	2.4	4.7	4.8
Improved legal practice, training, supervision, mentoring or management systems	0.3	2.6	3.9
Other	1.4	0	0
<b>Subtotal</b>	<b>15.3</b>	<b>21.5</b>	<b>22.2</b>
<b>No Further Action</b>			
Accepted Committee / practitioner's response	8.5	22.4	18.0
Brochures provided	12.5	7.9	11.0
Suggested direct approach to practitioner	10.6	7.8	9.7
No further information provided	12.8	19.0	14.9
Advised to get legal advice	5.3	6.1	4.4
Misconceived	6.1	2.6	5.6
Other	24.9	10.0	10.5
<b>Subtotal</b>	<b>80.7</b>	<b>75.6</b>	<b>74.0</b>
Part/Whole inquiry resolved per above category, but referred for investigation	0.3	0.2	0.3
Referred for investigation	3.6	2.0	3.0
Referred for formal determination s415 / s425	0.1	0.8	0.4
<b>Subtotal</b>	<b>4.0</b>	<b>2.9</b>	<b>3.7</b>

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION INQUIRIES 2012 – 2014

	Total 2011 – 12	Total 2012 – 13	Total 2013 – 14
Complaints	147	80	69
Conduct Investigations	29	21	31
Rapid Resolution inquiries	1652	1472	1330*
<b>Total</b>	<b>1828</b>	<b>1573</b>	<b>1430</b>

\* Does not include 122 miscellaneous inquiries

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2012 - 2014

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
Client / former client	81 (46.0)	44 (43.6)	36 (36.0)
Client's friend / relative	6 (3.4)	0	3 (3.0)
Opposing party	43 (24.4)	25 (24.8)	26 (26.0)
Beneficiary / executor / administrator	2 (1.1)	4 (4.0)	1 (1.0)
Practitioner on own behalf	6 (3.4)	3 (3.0)	1 (1.0)
Practitioner on another's behalf	0	0	3 (3.0)
Legal Practice Board	0	2 (2.0)	0
Other	9 (5.1)	4 (4.0)	10 (10.0)
Court Enquiry	4 (2.3)	1 (1.0)	3 (3.0)
Other Investigation	25 (14.2)	18 (17.8)	17 (17.0)
<b>Total</b>	<b>176</b>	<b>101</b>	<b>100</b>

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2012 – 2014

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
Family/Defacto law	41 (21.8)	21 (18.6)	29 (26.1)
Civil Litigation	45 (23.9)	24 (21.2)	25 (22.5)
Conveyancing	4 (2.1)	2 (1.8)	0
Leases/Mortgages/Franchises	4 (2.1)	1 (0.9)	2 (1.8)
Probate/Wills/Family Provisions	12 (6.4)	11 (9.7)	5 (4.5)
Commercial/Corporations Law	8 (4.3)	11 (9.7)	10 (9.0)
Criminal law	17 (9.0)	10 (8.9)	19 (17.1)
Personal injuries	12 (6.4)	4 (3.5)	2 (1.8)
Workers Compensation	9 (4.8)	6 (5.3)	5 (4.5)
Victims Compensation	4 (2.1)	0	0
Employment/Industrial law	4 (2.1)	5 (4.4)	2 (1.8)
Professional negligence	0	0	1 (0.9)
Land and Environment	1 (0.5)	1 (0.9)	2 (1.8)
Immigration	1 (0.5)	0	0
Other	26 (13.8)	17 (15.0)	9 (8.1)

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2012 - 2014

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
<b>Cost/Payment issues</b>			
Failure to pay third party	0	0	0
Overcharging	36 (11.5)	13 (6.1)	12 (5.9)
No costs disclosure	4 (1.3)	8 (3.8)	4 (2.0)
Transfer costs without authority	4 (1.3)	0	2 (1.0)
Failure/delay to provide a detailed account	7 (2.2)	6 (2.8)	0
Other cost complaint	7 (2.2)	9 (4.2)	4 (2.0)
<b>Subtotal</b>	<b>58 (18.5)</b>	<b>36 (16.9)</b>	<b>22 (10.9)</b>
<b>Communication/Service</b>			
Act without/contrary to instructions	12 (3.8)	6 (2.8)	11 (5.5)
No communication	18 (5.8)	9 (4.2)	8 (4.0)
Failure to carry out instructions	18 (5.8)	14 (6.6)	12 (5.9)
Delay	18 (5.8)	12 (5.6)	7 (3.5)
Lack of supervision	2 (0.6)	2 (0.9)	2 (1.0)
No client advice	7 (2.2)	2 (0.9)	5 (2.5)
No advice on progress	6 (1.9)	4 (1.9)	2 (1.0)
Discourtesy	13 (4.2)	4 (1.9)	9 (4.5)
Neglect	11 (3.5)	9 (4.2)	6 (3.0)
<b>Subtotal</b>	<b>105 (33.6)</b>	<b>62 (29.1)</b>	<b>62 (30.7)</b>
<b>Personal Conduct</b>			
Unethical conduct	44 (14.1)	35 (16.4)	42 (20.8)
Negligence	17 (5.4)	12 (5.6)	5 (2.5)
Misleading	19 (6.1)	12 (5.6)	12 (5.9)
Conflict of interest	5 (1.6)	10 (4.7)	5 (2.5)
Failure to transfer documents	1 (0.3)	3 (1.4)	2 (1.0)
Communicating with a client of another solicitor	1 (0.3)	1 (0.5)	3 (1.5)
Threatening behaviour	6 (1.9)	3 (1.4)	5 (2.5)

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
False swearing of documents	2 (0.6)	0	2 (1.0)
Breach confidentiality	3 (1.0)	4 (1.9)	3 (1.5)
Failure to assist LPCC	1 (0.3)	2 (0.9)	3 (1.5)
Undue pressure	1 (0.3)	1 (0.5)	2 (1.0)
Alteration of documents	0	1 (0.5)	0
Liens	0	0	0
<b>Subtotal</b>	<b>100 (32)</b>	<b>84 (39.4)</b>	<b>84 (41.6)</b>
<b>Non-Compliance</b>			
Not complying with undertaking	3 (1.0)	3 (1.4)	3 (1.5)
Practising without a practice certificate	0	0	1 (0.5)
Not complying with Legal Profession Act/Regulations	3 (1.0)	0	3 (1.5)
<b>Subtotal</b>	<b>6 (1.9)</b>	<b>3 (1.4)</b>	<b>7 (3.5)</b>
<b>Trust Account Matters</b>			
Breach of Sections of Act / Regulations relating to trust monies	8 (2.6)	1 (0.5)	4 (2.0)
Misappropriation	3 (1.0)	1 (0.5)	2 (1.0)
Failure to account	4 (1.3)	6 (2.8)	3 (1.5)
Other – Trust Account Matters	3 (1.0)	0	1 (0.5)
<b>Subtotal</b>	<b>18 (5.8)</b>	<b>8 (3.8)</b>	<b>10 (5.0)</b>
<b>Other</b>	<b>26 (8.3)</b>	<b>20 (9.4)</b>	<b>17 (8.4)</b>

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2012 – 2014

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
Barrister	15 (8.5)	8 (7.9)	11 (11.0)
Sole Principal	80 (45.5)	45 (44.6)	36 (36.0)
Other Principal	36 (20.5)	18 (17.8)	22 (22.0)
Non Principal	22 (12.5)	13 (12.9)	19 (19.0)
Government Legal Position	2 (1.1)	4 (4.0)	6 (6.0)
Corporate Legal Position	0	1 (1.0)	0
Firm only	1 (0.6)	1 (1.0)	0
Struck off/suspended	7 (4.0)	2 (2.0)	2 (2.0)
Other	13 (7.4)	9 (8.9)	4 (4.0)
<b>Total</b>	<b>176</b>	<b>101</b>	<b>100</b>

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2012 – 2014

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
CBD/West Perth	96 (54.6)	50 (49.5)	56 (56.0)
Suburbs	63 (35.8)	38 (37.6)	31 (31.0)
Country	12 (6.8)	5 (5.0)	5 (5.0)
Interstate	2 (1.1)	4 (4.0)	5 (5.0)
Not known	3 (1.7)	4 (4.0)	3 (3.0)
<b>Total</b>	<b>176</b>	<b>101</b>	<b>100</b>



TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2012 – 2014

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
Under 5	19 (10.8)	8 (7.9)	8 (8.0)
5 – 9	39 (22.2)	28 (27.7)	23 (23.0)
10 – 14	19 (10.8)	20 (19.8)	23 (23.0)
15 – 19	21 (11.9)	9 (8.9)	9 (9.0)
20 – 24	17 (9.7)	11 (10.9)	9 (9.0)
25 – 29	23 (13.1)	9 (8.9)	4 (4.0)
30 – 34	22 (12.5)	10 (9.9)	14 (14.0)
35 – 39	5 (2.8)	2 (2.0)	7 (7.0)
Over 40	11 (6.3)	1 (1.0)	2 (2.0)
Not known/Not applicable	0	3 (3.0)	1 (1.0)
<b>Total</b>	<b>176</b>	<b>101</b>	<b>100</b>

TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2012 – 2014

	Total 2011 – 12 (%)	Total 2012 – 13 (%)	Total 2013 – 14 (%)
Under 25	1 (0.6)	0	0
25 – 29	7 (4.0)	2 (2.0)	6 (6.0)
30 – 34	6 (3.4)	7 (6.9)	10 (10.0)
35 – 39	11 (6.3)	4 (4.0)	6 (6.0)
40 – 44	28 (15.9)	11 (10.9)	15 (15.0)
45 – 49	30 (17.1)	15 (14.9)	18 (18.0)
50 – 54	34 (19.3)	19 (18.8)	6 (6.0)
55 – 59	31 (17.6)	21 (20.8)	18 (18.0)
60 – 64	10 (5.7)	9 (8.9)	5 (5.0)
65 – 69	10 (5.7)	7 (6.9)	8 (8.0)
70 – 75	6 (3.4)	3 (3.0)	6 (6.0)
76 – 80	0	0	0
81+	1 (0.6)	0	0
Not known/Not applicable	1 (0.6)	3 (3.0)	2 (2.0)
<b>Total</b>	<b>176</b>	<b>101</b>	<b>100</b>

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2012 – 2014

	Total 2011 – 12	Total 2012 – 13	Total 2013 – 14
Practitioners with 1 complaint	113	70	67
Practitioners with 2 complaints	14	5	7
Practitioners with 3 or more complaints	6	4	5
<b>Total number of practitioners</b>	<b>133</b>	<b>79</b>	<b>79</b>

TABLE 11 OUTSTANDING COMPLAINTS 2012 – 2014

	Total 2011 – 12	Total 2012 – 13	Total 2013 – 14
Outstanding complaints	114	78	<b>58</b>
Outstanding conduct investigations	20	23	<b>41</b>
<b>Total</b>	<b>134</b>	<b>101</b>	<b>99</b>

TABLE 12 COMPOSITION OF THE WA LEGAL PROFESSION AS AT 30 JUNE 2014

	Resident Females	Non- Resident Females	Resident Males	Non- Resident Males	Totals
Barristers	36	0	179		215
Commonwealth Government	30	0	23	0	53
Consultants	15	0	33	1	49
Director	116	1	361	2	480
Employees	1444	37	1033	27	2541
Equity Partner	38	1	250	6	295
Fixed Profit-share Partner	18	3	33	4	58
Inhouse	343	19	290	16	668
Lay Associates	0	0	0	0	0
Locum	0	0	0	0	0
Legal Practitioner Partner	7	0	37	2	46
Not practising (certificated)	329	11	168	13	521
Salaried Partner	22	1	38	3	64
Sole Practitioners	139	1	339	2	481
Judiciary <sup>^</sup>	1	0	2	0	3
Deceased <sup>^</sup>	1	0	5	0	6
Struck Off /Suspended <sup>^</sup>	0	0	0	0	0
State Government <sup>*</sup>	43	0	21	1	65
<b>Practice Certificates ISSUED</b>	<b>2582</b>	<b>74</b>	<b>2812</b>	<b>77</b>	<b>5545</b>
Practising Certificates Cancelled	18	2	12	4	36
S.36 Practitioners					
** State Solicitor's Office	66	0	55	1	122
**Director of Public Prosecutions (State)	56	0	51	1	108
**Other Departments	190	3	131	1	325
<b>TOTAL PRACTITIONERS</b>	<b>2869</b>	<b>79</b>	<b>3040</b>	<b>83</b>	<b>6064</b>

<sup>^</sup> held a practice certificate during 2013/2014, however by 30 June 2014, were appointed judiciary/deceased/struck off/suspended.

<sup>\*</sup> State Government employees who held a practice certificate during 2013 - 2014

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

## 9. Information Statements

### 9.1 FREEDOM OF INFORMATION ACT

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

### 9.2 PUBLIC INTEREST DISCLOSURE

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

No public interest disclosures were received during the relevant period.

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

1. This information statement is prepared and published pursuant to the requirements of Part 5 of the *Freedom of Information Act 1992* (“the FOI Act”) and relates to the Legal Profession Complaints Committee (“Complaints Committee”).
2. The structure of the Complaints Committee is set out in Sections 555 and 556 of the *Legal Profession Act 2008* (“the Act”); the functions of the Complaints Committee are set out in Sections 409, 410, and 557.
3. The functions of the Complaints Committee including, in particular, its decision making functions, do not affect members of the public; they affect Australian Legal Practitioners (as defined in Section 5(a) of the Act) on the one hand and those among the classes of persons set out in Section 410(1) of the Act from whom complaints are received on the other hand.
4. The policy of the Complaints Committee is formulated by statute and is set out at Part 13 of the Act. There are no arrangements to enable members of the public to participate in the formulation of its policy or in the performance of its functions other than the fact that representatives of the community are members of the Complaints Committee being appointed as such by the Attorney General.
5. The kinds of documents that are usually held by the Complaints Committee comprise firstly its complaint files containing correspondence, memoranda, and the like, and secondly documents related to meetings of the Complaints Committee, such as agendas, minutes, memoranda, and the like. The Complaints Committee also prepares brochures which explain the nature and limits of its functions.

There is no written law other than the FOI Act whereunder any of these documents can be inspected.

There is no law or practice whereunder any of these documents can be purchased. Copies of the said brochures can be inspected or obtained from the Complaints Committee free of charge, or can be downloaded from <http://www.lpbwa.org.au/>.

6. Copies of the said brochures are available at the offices of the Complaints Committee at 2nd Floor, 55 St Georges Terrace, Perth, to any person who calls at those offices or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions. Copies of the said brochures are also available to the general public for inspection or downloading from <http://www.lpbwa.org.au/>.
7. Dilhari Mahiepala of 2<sup>nd</sup> Floor, 55 St Georges Terrace, Perth, Legal Practitioner is the officer to whom initial enquiries as to access to documents can be made and who has

been generally directed to make decisions under the FOI Act; enquiries may be made by telephone (08) 9461 2299.

8. Access applications under the FOI Act can be made to the Complaints Committee by letter to Post Office Box Z5293, St Georges Terrace, Perth WA 6831 or by facsimile message at (08) 9461 2265.
9. The Complaints Committee has no procedures for amending under Part 3 of the FOI Act personal information in its documents. Any application for an amendment would be dealt with in accordance with Part 3 of the FOI Act. Such applications may be addressed to the Complaints Committee by letter to Post Office Box Z5293, St Georges Terrace, Perth WA 6831 or by facsimile message at (08) 9461 2265.
10. None of the Complaints Committee's functions affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject.
11. Applications for access should be in writing, give enough information so that the documents requested can be identified, give an Australian address to which notices can be sent, and be lodged as provided in paragraph 8 with a fee of \$30 (unless the application is one for personal information about the applicant only which may be made without fee). No reductions to the application fee are available.
12. Applications will be acknowledged in writing and applicants will be notified of the decision as soon as practicable and in any case within 45 days. In the notice of decision applicants will be provided firstly with the date of its making, the name and designation of the officer making it, the reasons for classifying any particular document as exempt, and the fact that access is given to an edited document and secondly with information as to the right to review and the procedures to be followed to exercise that right.
13. Access to documents may be granted by way of inspection, copies of documents, a copy of an audio or video tape, a computer disk, a transcript of a recording, shorthand or encoded document from which words can be reproduced, or by agreement in other ways. Charges may apply. For financially disadvantaged applicants or those issued with prescribed pensioner concession cards charges to provide copies of documents, audio or video tapes, computer disks, transcripts of recordings, shorthand or encoded documents from which words can be reproduced are reduced by 25%.
14. Applicants who are dissatisfied with the decision of any officer may apply for an internal review of the decision; the application should be made in writing within 30 days of receipt of the notice of decision.
15. Applicants will be notified of the result of an internal review within 15 days.
16. Applicants who are dissatisfied with the result of an internal review may apply to the Information Commissioner for an external review; details will be advised to applicants when the internal review decision is issued.

## **LPCC WA**

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