



LEGAL PROFESSION COMPLAINTS COMMITTEE
WESTERN AUSTRALIA

2019 ANNUAL REPORT

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1. Report from the Chair

This report covers the operations of the Committee for the year ended 30 June 2019.

It has been a difficult year for the Committee, particularly with the resignation of the Law Complaints Officer (**LCO**), Philippa Rezos, in December 2018, and the resignation of the Manager of the Committee's Rapid Resolution Team (**RRT**), Natasha Erlandson, in February 2019 (following the resignation of the previous RRT Manager at the end of May 2018).

Despite the difficulties and an increase in the number of complaint investigations, the Committee's operations were admirably maintained due to the dedicated, skilled and hard work of the Committee's staff. Foremost in those endeavours was Nick Pope, the Manager of the Committee's Investigation Team, who stepped into the role of Acting LCO (as well as continuing to carry out his duties as Manager of the Investigation Team) and Cassandra Paterson, the Manager of the Committee's Litigation Team. Specific mention should also be made of the extra effort by the Committee's other senior legal officers, Catherine Carroll (who was appointed RRT Manager on 1 April 2019), Cathy Donaldson (Investigations), Rebecca Rorrison (RRT) and Stephen Merrick (Litigation).¹

Family Law continued to be the area which generated the most inquiries and complaints, followed by Civil Litigation and Probate/Wills/Family Provision.

Overall there were 1,146 Rapid Resolution inquiries. Whilst that figure was less than last year (1,337), this was possibly due to the refinement of initial triaging requiring

wherever possible all initial inquiries to be via the website complaint form. Despite this, it is notable that the number of complaints and conduct matters referred for formal investigation increased from 62 to 83. As at 30 June 2019, there were 106 outstanding matters under investigation. Although this is an increase from the previous year (97), this was a good result when considering the significant increase in new matters referred to the Investigation Team.

During the reporting year, and consistent with recent years, determinations by members of the Committee overwhelmingly resulted in some form of disciplinary outcome (77%), with 31 matters referred to the State Administrative Tribunal (**SAT**), seven dealt with in the exercise of the Committee's summary conclusion powers and nine dismissed but with a formal expression of concern. Of the remainder, 13 complaints were dismissed and, in respect of one conduct investigation, the Committee decided to take no further action.

As detailed in Section 4 of this report, many of the matters determined (particularly those referred to SAT) involved multiple conduct issues and multiple client files. It was also not uncommon for serious conduct issues to be identified during the course of an investigation leading to the Committee investigating further matters of its own initiative pursuant to Section 421 of the *Legal Profession Act 2008 (LP Act)*. Disturbingly, of the matters referred to SAT, 13 involved allegations of misappropriation and/or serious misleading conduct (including misleading the Committee during the course of an investigation).

Around half of the summary conclusion matters were "Fast Track" matters, which was an innovation of the former LCO, Philippa Rezos.

¹ As at December 2019, a new LCO had yet to be appointed (though an appointment was imminent)

As should be apparent from Section 5 of this report (SAT and Court proceedings), the Committee continued to achieve significant disciplinary outcomes from its prosecutions and was successful in all appeals of SAT decisions and reviews by SAT of determinations by the Committee to dismiss complaints.

Trends

In addition to Family Law continuing to be the area which generated the most complaints, the number of complaints rose in the reporting year. Many of those complaints were complaints against the opposing party's lawyer and invariably involved child related disputes. This was no doubt reflective of the highly charged emotions in this area which I note is also the subject of a wider public debate concerning persons who feel aggrieved by the family law system. The nature of these complaints often involved difficult and stressful work for the Committee's staff.

Complaints in the conveyancing area also rose in number.

There was a significant increase in complaints against practitioners admitted less than 5 years and between 5 and 9 years. This might be reflective of market conditions which see lawyers going into practice on their own or with other young lawyers at an early stage. I also note that this increase has coincided with the number of complaints against practitioners in the suburbs dramatically increasing (now more than for the CBD/West Perth).

A possible related trend is the increasing emergence of national 'low cost' firms (usually in the form of an incorporated practice) where there may be a sole principal resident in another State. That circumstance, along with the employment of many junior

lawyers, raises issues as to the adequacy of supervision.

The number of breaches of the LP Act and the *Legal Profession Regulations 2009*, particularly relating to trust accounts, continues to be of concern, particularly matters involving the depositing of trust account monies into general bank accounts. Some of this appears to stem from misconceived notions as to an entitlement to bill before the work is done. As observed earlier, some stems from what appears to be outright misappropriation.

The workload and stress of the Committee's staff regrettably continues to be exacerbated by the failure of some practitioners to engage appropriately with the Committee and to respond courteously, candidly and fulsomely in accordance with their professional obligations. Recently, SAT re-affirmed the importance and seriousness of practitioners giving their full co-operation to legal regulators and that it was incumbent on all practitioners to ensure that the Board and the Committee were able to carry out their regulatory functions effectively.

There were also a number of complainants who, through the nature and volume of their communications, were a drain on the Committee's resources.

It is a credit to the Committee's staff and the members of the Committee that, despite a year of disruption, the Committee achieved many commendable outcomes, particularly where many of the investigations and subsequent prosecutions involved serious and complex issues.

Uniform Law

In February this year, the State Attorney General, the Hon John Quigley MLA, announced the intention of the State Government to introduce legislation for

Western Australia to adopt the Uniform Law legal profession legislation which has been in force in Victoria and New South Wales since 2015, with WA to join the scheme as of 1 July 2020.

The introduction of the Uniform Law will be by way of a Western Australian Application Act, which will include provision for local regulatory authorities to be a Designated Local Regulatory Authority (**DLRA**) to exercise the various functions and powers under the Uniform Law, including the complaints and disciplinary functions and powers currently being exercised by the Committee under the LP Act.

I mentioned in last year's annual report that (following consultation with, and the invitation of, the then State Solicitor General) there was agreement between the Committee and the Legal Practice Board (**Board**) as to the allocation of Uniform Law functions to the Board and Committee as DLRA's. At that stage, I had understood that, under the Application Act, the Committee would be appointed as a DLRA with the exclusive function in relation to complaints and discipline. However, the Attorney has since informed me that that may not be the case and that the Board may be the DLRA charged with the disciplinary function, but with the power to delegate that function to the Committee.

I have concerns that such an arrangement would adversely compromise the independence of the Committee. Currently, the Committee is an independent statutory body which has the exclusive functions of receiving and dealing with complaints against legal practitioners and for prosecuting legal practitioners for professional misconduct and unsatisfactory professional conduct. Although the Committee is funded by the Board, the LP Act provides that the Board must not direct or impose any requirement on the Committee as to the performance of

its functions. I understand that will remain the position under the Uniform Law.

Public confidence in the system under which complaints against legal practitioners are dealt with and action is taken to ensure that those who have engaged in misconduct are appropriately disciplined depends on the independence of the body which exercises those functions.

The Committee was originally created in 1992, by amendments to the *Legal Practitioners Act 1893* (WA) following a report by the State Government appointed Inquiry into the Future Organisation of the Legal Profession in Western Australia, which recommended that the enforcement of discipline of legal practitioners in Western Australia should be carried out through an independent body and further recommended the establishment of the Committee and the appointment of a LCO.

Much more recently, the independence of the Committee was considered by the Court of Appeal in *Legal Profession Complaints Committee v Rayney* [2017] WASCA 78. Besides confirming the Committee's statutory independence, that decision made it abundantly clear that it is essential to have complaints and disciplinary functions exercised by a body which is independent of the Board.

A consultation draft of the Application Bill was recently made available to interested parties by the Solicitor General and I took that opportunity to express the above views to him. It remains to be seen how that matter evolves.

Whilst, on a practical level, the Committee is already utilising a number of the objectives of the Uniform Law in the manner in which it deals with inquiries and complaints, the provision of a legislative imprimatur, in particular to the Committee's triage

processes, would be welcome. The Uniform Law provides for a preliminary assessment where, amongst other things, unmeritorious complaints can be closed without further consideration. Under the Uniform Law, the Committee would be able to determine if a matter was “a consumer issue”, “a consumer dispute”, a complaint, or a conduct issue only. Under the Uniform Law, cost disputes up to \$100,000 could be dealt with (including formal determinations up to \$10,000) and there would be a simplified summary determination process.

The formalising of decision making (with preliminary and binding determinations) and, in essence, increased jurisdiction with consumer and costs disputes, would raise the prospect of an additional workload for the Committee’s staff and the need for more resourcing. Certainly, in the lead up to the Uniform Law, resourcing will be required to enable familiarisation with the Uniform Law and the adoption of new procedures.

Education

The Committee’s legal officers have continued to support and participate in the presentation of seminars held by the Law Society, universities, firms, and professional associations. That has included presentations in the areas of Avoiding Complaints, Costs and Billing, Ethics, Conduct Rules, Elder Abuse and LPCC Processes. There is no question that such engagement with the profession promotes an understanding of the Committee and of professional obligations, assists in upholding of the profession’s standards and allows the Committee an opportunity to have some feedback from the profession.

Mental Health Protocol

The Mental Health Protocol introduced by the Committee in 2016 has been utilised in a number of matters where it has become

apparent to the Committee during the course of an investigation that the practitioner may have a mental health issue and, following the obtaining of medical evidence, has resulted in investigations being put on hold pending the practitioners being well enough to respond (which has usually coincided with the practitioner not being fit to practise).

Relationships

The Committee continues to engage proactively with Legal Aid (WA) and the Office of the Migration Agents Registration Authority (**OMARA**), including the exchange of information pursuant to Memoranda of Understanding.

As to migration agents, legislation directed at removing practising lawyers from the regulatory scheme that governs migration agents so that they are entirely regulated by legal regulators lapsed on 1 July 2019. However, it is expected this will be re-introduced. If passed, complaints against such practitioners will be dealt with by the appropriate legal regulator, which in WA would be the Committee.

Nick Pope and I are members of the Uniform Law Working Group set up by the Solicitor-General which, besides the Solicitor-General, includes representatives of the State Solicitor’s Office, the Board, the Law Society and the WA Bar Association.

The Committee continues to have representation on the Law Society’s Costs and Mental Health Wellbeing Committees, noting the benefits gained from information sharing and consideration of topical matters as well as being another avenue for the Committee to contribute to upholding the standards and wellbeing of the profession.

Forecast workload

As mentioned, there was an increase in the number of investigations referred to the Investigations Team and the Committee's regular workload again shows no signs of diminishing. This extends to the prosecution of SAT referred matters, particularly where many involve multiple and complex conduct issues. The Committee's workload is likely to be exacerbated as work begins on planning and preparation for the introduction of the Uniform Law.

Proposals for improving the operations of the Committee

Previous Annual Reports have emphasised the need for an electronic complaints management system (ECMS).

The Committee's operations are funded entirely by the Board, which under the LP Act must ensure that the Committee is provided with such services and facilities as are reasonably necessary to enable the Committee to perform its functions. Whilst there was some impetus during 2016 in planning for the implementation of an ECMS the project appears to have stalled with the Board waiting to assess further the needs of the Board as a whole. These needs include the upgrading of the IMIS program and it is hoped that when this is complete, the ECMS will be re-examined, particularly with the introduction of the Uniform Law.

Staffing

In addition to the resignations of Philippa Rezos and Natasha Erlandson, the Committee also said farewell during the reporting year to RRT Legal Officer Fiona Johnson and Administrative Assistants Sonja Hammond and Siobhan Evans. Of particular note, Sonja had been with the Committee since 2008 and was the sole legal secretary assisting the RRT from its inception in 2010

until her departure in December 2018. Their contribution to the work of the Committee is appreciated and I wish them well.

Thanks

First, I would like to thank Philippa Rezos for her immense contribution to the Committee's operations, particularly with the formation and development of the RRT. The RRT first came into existence in September 2010 and 3 months later Philippa became RRT Manager and continued in that role until February 2018. Although the RRT concept came from Victoria, Philippa took it to another level, to the point where legal officers from disciplinary bodies in the other States specifically sought out Philippa's guidance in maximising the effectiveness of the concept. It has certainly improved the Committee's operations, enabling the Investigation Team and members of the Committee to concentrate on those matters where it is likely there would be a finding that a practitioner has engaged in unsatisfactory professional conduct or professional misconduct. By the end of June 2010, there remained 501 matters not determined. In contrast, by the end of June 2019, there remained 106 open matters. A hallmark of Philippa's time as LCO was her enthusiasm for innovation, an example of which was the introduction of the Committee's "fast track" process.

I also express my thanks to the Deputy Chair of the Committee, Mr Kim Wilson SC for his invaluable support, particularly where he has had to deal with important matters arising in my absence. I also acknowledge and thank all other members of the Committee for their contribution by devoting their time free of charge to deal with the varied and complex matters which the Committee is required to determine. I would like to give special thanks to the community members of the Committee, who participate fully in the work of the Committee and bring a different and

valuable perspective to the Committee's decision making.

During the year, Community Representative Mr Garry Fischer retired from membership of the Committee. Garry was a very active member of the Committee. It was particularly pleasing to hear his parting words which were very complimentary of the manner in which the Committee went about its decision making and about the high quality and hard work of the Committee's staff.

Three legal members of the Committee also left during the reporting year. One was my old friend, Theo Lampropoulos SC, who had been a member of the Committee for nearly 10 years. The others were Darren Jackson SC (now the Hon Justice Jackson of the Federal Court) and Stephen Lemonis (now Judge Lemonis of the District Court). I thank Theo, Darren and Stephen for their valuable contributions to the Committee.

As always, I extend the Committee's gratitude to the barristers who undertake work for the Committee at reduced rates, who are invariably required to act on challenging and complex matters. Further, I am grateful for the assistance afforded by

the Western Australian Bar Association to practitioners who are investigated and prosecuted by the Committee.

I have already acknowledged the extra commitment and dedication of the Committee's Senior Legal Officers in difficult and demanding circumstances. That dedication and commitment extends to the rest of the Committee's staff. That is particularly so in circumstances where, in their dealings with enquirers and some practitioners, they can be subject to difficult and unreasonable demands.

Notwithstanding that, the feedback I consistently receive from the staff is that they like the nature of their work, finding it both intellectually stimulating and challenging. More significantly, they tell me that they also find the work rewarding, knowing that they are doing something to uphold and maintain the standards of an honourable profession, and, at the same time, protecting the public.

***John Ley SC
Chair
December 2019***

2. About the Legal Profession Complaints Committee

2.1 Our role, purposes and objectives

The Legal Profession Complaints Committee has statutory responsibility under the *Legal Profession Act 2008 (LP 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 and prosecute 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.

2.2 Our relationship with the Legal Practice Board

The Committee is one of the two regulatory authorities established under the LP 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 LP Act. This ensures that in the exercise of its statutory functions the Committee acts independently of the Board. Despite the independence of the Committee, it works closely with the Board to ensure the effective operation of the regulatory scheme governing legal practitioners.

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

2.3 Our members

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

During the reporting year the Committee was constituted by:

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

Legal members:

Mr K M Pettit SC
Mr T Lampropoulos SC (until 6 February 2019)
Mr B Dharmananda SC
Mr D J Jackson SC (until 19 March 2019)
Mr M H Zilko SC
Mr J B Hedges SC (from 25 January 2019)
Mr M R Berry SC (from 25 January 2019)
Ms C J Thatcher SC (from 25 January 2019)
Mr J G Syminton
Mr S J Lemonis (until 1 February 2019)
Ms K A Shepherd (from 12 April 2019)
Mr R G Wilson (from 8 March 2019)

Community representatives:

Mr G R Fischer (until 2 October 2018)
Ms K Ballard AM
Mr T Buckingham (from 22 October 2018)

Deputy community representatives:

Mr T Buckingham (until 21 October 2018)
Ms S Hunt (from 29 March 2019)

Since February 2019 Mr Buckingham has had to take leave of absence from the Committee due to an overseas

appointment, which leave of absence has been granted by the Attorney General until 1 January 2020. During this period, both Ms Ballard and Ms Hunt have been and continue to be of great assistance to the Committee. The Committee looks forward to Mr Buckingham's return in 2020.

2.4 Our operations

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

During the year, the Committee held 9 meetings.

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

The LCO's office is divided into three operational areas: Rapid Resolution, Investigation and Litigation. Each of these operational areas is managed by a Senior Legal Officer who forms part of the LCO's management team. The LCO and the management team are ably supported by a team of administrative staff.

The Rapid Resolution team is managed by Ms Catherine Carroll and comprises 1.8 full time equivalent (FTE) legal officers, 0.8 FTE senior legal officer, a paralegal and a secretary.

The Investigation team is managed by Mr Nicholas Pope and comprises 4 legal officers, 0.8 FTE senior legal officer, 1.4 FTE secretaries and a 0.6 FTE administrative assistant.

The Litigation team is managed by Ms Cassandra Paterson and comprises a full

time senior legal officer, a paralegal and a 0.6 FTE secretary.

2.5 Trust account inspections

Trust account inspections are undertaken on a routine basis or where a concern has arisen about the management or otherwise by firms in regard to their trust account records or not having a trust account where on the face of the material being reviewed by the Committee it appeared the firm has been handling money which is likely to be characterized as trust money.

Following an inspection a report is prepared and provided to the firm.

During the reporting year the Trust Account Inspectors, located within the Board and the Committee, were merged into one team within the Board to each conduct trust account work for both the Board and the Committee. This has improved flexibility in the allocation of resources between the Board and the Committee with all routine investigations now being conducted through the Board.

The trust account investigations undertaken by the Committee are increasingly more complex, necessitating the involvement of the Committee's legal officers.

During the reporting period, and prior to the merger of the Trust Account Inspectors, Ms Anna Young the Senior Trust Account Inspector conducted on behalf of the Committee 8 trust account investigations where she was accompanied by a Committee legal officer and 14 trust account investigations that were of a routine nature.

During the reporting period, and since the merger, three trust account investigations have taken place on behalf of the Committee where the Trust Account Inspector was accompanied by a Committee legal officer. Of these investigations, two were completed and one was still in progress.

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

2.6 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 presented on topics targeted to the work of the professional staff. These in-house seminars included the following topics:

- Conflicts of Interest
- Elder Law & Capacity
- Costs: An Update on Recent Decisions
- Freedom of Information
- Information Security and Insider Threats

The Committee has been fortunate to engage speakers including senior counsel and highly experienced practitioners in their areas of practice.

The aim of these seminars is to ensure that the Committee's staff receive the training they need to undertake their work to the highest possible standard and to enhance their legal knowledge in a number of key areas.

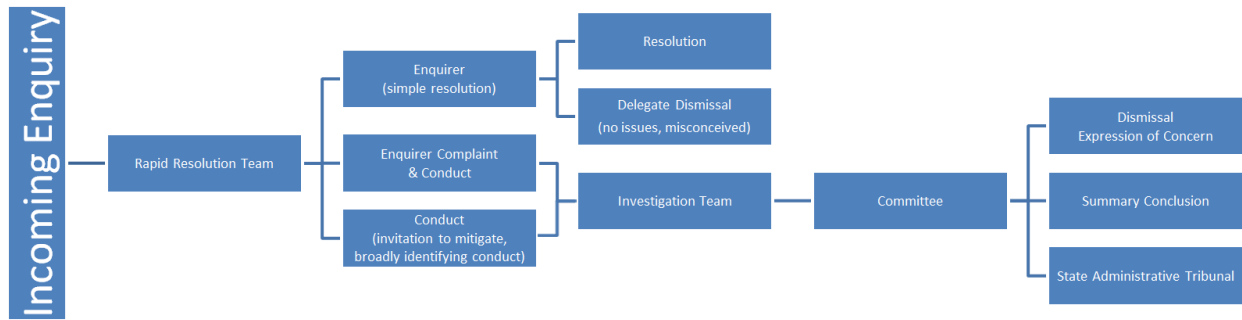
With the addition of the new category of 'Practice Management' to the Continuing Professional Development scheme from 1 April 2015 an in house seminar was presented by the Board's Information Technology manager on the security of and potential risks to information held by the Committee.

Professional and administrative staff 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, which this year was hosted jointly by the Board and the Committee in Fremantle, where information and ideas were exchanged with the Committee's counterparts from interstate and New Zealand.



3. Complaints



3.1 Complaint handling process

Virtually 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 submitting an enquiry form via the website. During the relevant period, 69.5% of all new contact with the Committee was via the website.

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 several 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 broad range of outcomes which may be achieved; examples include improved communication in an ongoing solicitor-client relationship, waiving of fees and the Manager of the RRT expressing concern about a practitioner's conduct.

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

Throughout the RRT process, the legal officer will attempt to identify and suggest steps that may be implemented as a risk management initiative by the practitioner.

During the assessment or conciliation process, the legal officer will identify conduct issues that should be addressed. These conduct issues may not always arise directly from the concerns brought to the Committee by 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 their preliminary view, possible mitigation and why taking mitigating action may benefit the practitioner. The practitioner is not asked for any formal response to the matter at this stage. The RRT officer recommends to the practitioner that prior to providing any response on taking up the invitation to mitigate, that the practitioner consult with counsel or use the WA Bar Association referral scheme, which assists practitioners to obtain advice from counsel. This includes consideration of engaging in the fast track process in which one of the steps in mitigating the conduct is to engage in a process to agree a statement of facts.

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

The Investigation team conducts the formal investigation of complaints including matters 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. Own motion investigations can also arise through identification of further conduct issues during the course of an investigation.

The investigation process involves seeking written submissions from a practitioner addressing identified issues as well as seeking other material evidence concerning the events the subject of the investigation. This further evidence may be sought from the complainant, the practitioner, the Courts or other third parties and sometimes requires the use of the Committee's coercive powers. Those powers include summoning documents and/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; for example, pending the outcome of litigation concerning the practitioner's conduct.

3.2 Key statistics

Full statistical information on complaints is set out in chapter 7.

In this section, key statistics are highlighted.

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

Number of Rapid Resolution inquiries finalised

The Rapid Resolution team dealt with 1080 inquiries (excluding practitioner initiated enquiries) of which almost 13% were conciliated. The conciliated matters included the discount, waiver or refund of fees to clients in excess of \$175,000.

The complainants

A third of all complaints (30.1%) were from clients/former clients of the practitioner complained about. 14.5% of complaints were made against the practitioner acting for the opposing party in proceedings.

In respect of Rapid Resolution inquiries, 56.8% were made by or on behalf of clients or former clients of the practitioner being enquired about or by friends or relatives of those clients. Almost a quarter of all inquiries (22.5%) were made by an opposing party.

The areas of law

The areas of law attracting the most complaints were family/de facto law (23.1%) followed by civil litigation, probate and wills, and criminal law (12.1% each).

In respect of Rapid Resolution inquiries, 37.5% were in the area of family/de facto law, 13.2% in civil litigation and 10.7% in probate and wills.

The types of complaint

Many complaints raised more than one matter of complaint. This year, costs issues (15.9%), unethical conduct (10.3%) and delay (7.7%) attracted the most complaints.

For Rapid Resolution inquiries, costs issues were also the highest category but with over a quarter of all inquiries raising a costs related issue (25.3%). The next highest categories were unethical conduct (14.6%) and no communication (9.6%).

The practitioners

The greatest number of complaints related to Sole Principals (48.2%), followed by Other Principals (18.1%) and Non Principals (10.8%).

The number of practitioners complained about

Some 69 practitioners were the subject of one or more complaints (including conduct investigations) during the year. Of this total, 61 practitioners were the subject of one complaint, 5 practitioners were the subject of two complaints and 3

practitioners were the subject of three or more complaints.

The Board has reported that there were 6798 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% of certificated or deemed certificated Western Australian practitioners, which was broadly in line with 0.8% of practitioners in the 2017-18 reporting year.

Number of complaints received and dealt with

<i>Matters under investigation</i>	<i>Total</i>	<i>Complaints</i>	<i>Conduct Investigations</i>
Open as at 1 July 2018	98	75	23
Opened during year	86	61	25
Closed during year	(78)	(59)	(19)
Outstanding as at 30 June 2019	106	77	29

4. Formal determination of complaints

4.1 Overview and key statistics

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

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

- dismiss the complaint (or in the case of a conduct investigation, decide not to take further action)
- exercise its summary conclusion powers (with the consent of the practitioner)
- refer the matter to SAT.

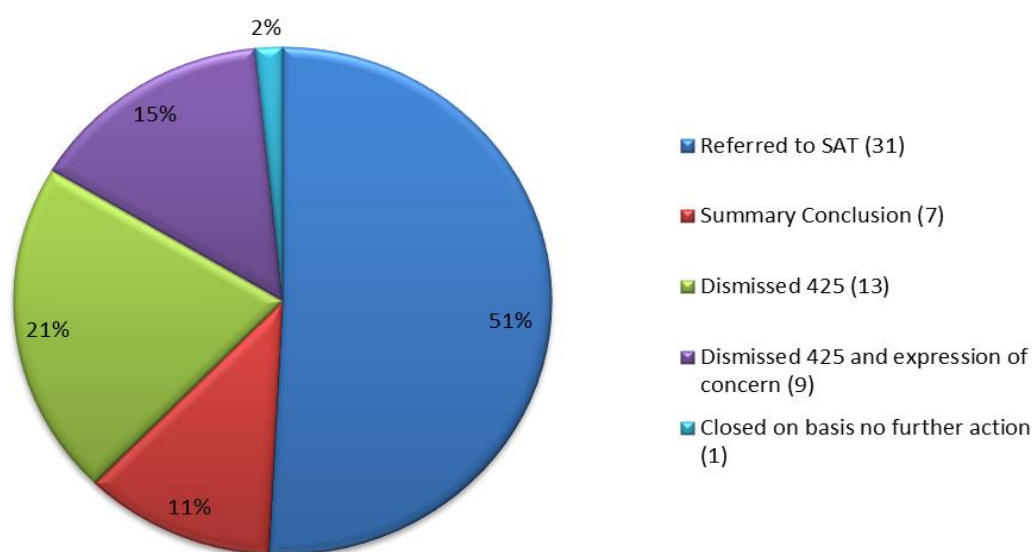
During the year the Committee determined 61 matters of which 50.8% were referred to SAT, 11.5% were dealt with in the exercise of The

Committee's summary conclusion powers, nine were dismissed with an expression of concern to the practitioner, 13 were dismissed and one was closed because it was considered that it would not be in the public interest to proceed with it.

Neither the Law Complaints Officer nor the Acting Law Complaints Officer during the reporting period was required to exercise the delegated power of the Committee to dismiss a complaint which did not require investigation. This seems to be a reflection of the success of the RRT's triaging processes and improving the nature of the information disseminated to the enquirer and the practitioner.

The LCO and the Acting LCO did however exercise delegated decision making powers to take no further action in respect of a number of conduct investigations.

Committee determinations



4.2 Determinations

Although the tables refer to 61 investigative matters being determined, invariably those matters involve multiple and complex conduct issues and can involve multiple client files. For example, with one matter, this began as a complaint concerning a practitioner's costs where during the course of the investigation further significant conduct issues were identified for investigation, including the practitioner's competence, billing practices in terms of compliance with the trust account provisions of the LP Act and misleading the Committee by falsifying file notes. Such matters often involve extensive documentation requiring careful review and consideration (in one matter more than 20 boxes of documents were produced to the Committee for review).

Whilst the investigation of further issues by the Committee of its own initiative may involve the use of significant resources and impact upon the time taken to investigate complaints, such issues may ultimately be relevant to consideration of whether a practitioner is a fit and proper person to remain on the roll of practitioners and are therefore considered an important part of the Committee's functions of protecting the public.

An example of multiple client files listed as one matter being determined was an investigation in respect of alleged false and/or misleading claims to Legal Aid (WA) for payment which involved consideration of ten different client matters.

4.3 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.

In 43.5% of the matters dismissed or not taken further, the Committee expressed concern to the practitioner about an aspect of the practitioner's conduct. Such expressions of concern are generally used by the Committee when the conduct of the practitioner is not such that it would amount to unsatisfactory professional conduct or professional misconduct but is still of some concern to the Committee. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future.

Although the number of dismissals without an expression of concern was greater than last year, five of those were related matters involving the same complainant, which the Committee found to be lacking in substance and unreasonable.

Examples of where the Committee expressed concern included:

- Ensuring exchanges within the Court precincts are consistent with a lawyer's obligations as an Officer of the Court, even where the lawyer is attending in a personal capacity

- The nature of contractual arrangements with restricted practitioners which did not provide for appropriate recognition to their supervised employee status including concerns as to the adequacy of their remuneration
- Distasteful and insensitive advertising
- Purporting to quote words from a legal document different from the actual wording (even when the quoted words may be consistent with a proper interpretation of the document)
- Delays in responding to the Committee's requests for information
- Delay in payment of counsel fees
- Over the extent of a barrister's consideration of obligations under the West Australian Bar Association Rules requiring a barrister to advise an instructing solicitor of a possible conflict of interest between the solicitor's interests and the client's interests

4.4 **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 (but not professional misconduct) in respect of a matter the Committee may deal with the matter using its summary conclusion powers.

The use of these summary conclusion powers means that a matter that would otherwise be referred to SAT, can be dealt with by the Committee and lower penalties apply. The range of penalties available to the Committee are from a public reprimand (or, if there are special circumstances, a private reprimand) up to a fine of \$2,500. The Committee can also make compensation orders.

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

The Committee exercised its summary conclusion powers in respect of 7 practitioners during the reporting year. Three of those matters were as a result of practitioners engaging in a fast track disposition of the matter. Often, a matter dealt with in the exercise of summary conclusion powers can involve significant mitigating factors.

Summary of matters determined in the exercise of summary conclusion powers

<i>Grounds of unsatisfactory professional conduct</i>	<i>Finding</i>
By accepting instructions to act beyond the practitioner's competency, failing to provide proper advice to the beneficiaries of an estate as to an application for probate, breaching the duty of confidence owed to the clients and entering into a retainer which included a costs agreement that was not fair and reasonable.	Public reprimand Compensation of \$7,000
By failing to properly take instructions and advise in relation to the preparation of a will and a deed of gift of a family property, failing to establish that the clients had testamentary capacity and had provided instructions free of any influence of the beneficiaries of the estate and acting in a position of conflict or potential conflict in advising both the clients and the intended recipients of the gifted property.	Public reprimand Fine of \$2,500
By failing to seek approval under section 15(2) of the LP Act to employ an Australian lawyer as a lay associate and seeking to recover and recovering fees for work undertaken by a person not entitled to practice law in breach of section 12 (6) of the LP Act.	Public reprimand
By failing to comply with the terms of a grant of legal aid by providing legal services to a client under a private fee paying arrangement when there was an active grant of legal aid for that client, failing to disclose to Legal Aid WA that the client had entered into the private fee paying arrangement and been invoiced under the arrangement, causing/permitting a restricted practitioner to attend hearings for the client when they were not authorised or eligible to do so and attempting to improperly terminate the client's retainer.	Public reprimand
By filing in the Family Court affidavits which contained incorrect statements and subsequently continuing to provide legal services to the client without advising adequately or at all of a potential conflict of interest between the client and the practitioner.	Private reprimand
By failing to provide adequate advice in a family law property settlement matter as to the effects of the opposing party's bankruptcy on an application for final consent orders, failing to advise adequately or at all of a conflict or potential conflict between the client's interests and the practitioner's interest, failing to properly supervise a junior practitioner in relation to the consent orders contrary to the client's instructions and including permitting	Public reprimand Fine of \$1,000 Compensation of \$10,000

<i>Grounds of unsatisfactory professional conduct</i>	<i>Finding</i>
the junior practitioner to accept instructions beyond their competency and failing to provide adequate costs disclosure.	
By failing to comply with obligations in relation to the keeping and recording of trust moneys, delay with an application for special leave to appeal to the High Court and failing to adequately advise as to the risks and consequences of the delay.	Public reprimand Fine of \$1,000

4.5 Referrals to the State Administrative Tribunal

During the year, the Committee resolved to refer matters arising from 31 complaints or conduct investigations to SAT involving 23 practitioners. As at 30 June 2019, 11 of these matters had been filed in SAT.

As indicated, such matters often involve multiple and complex conduct issues.

The referral is by way of an Application filed in 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.

5. State Administrative Tribunal and Court Proceedings

5.1 SAT Applications

The Committee filed 13 Applications in SAT during the period under review (which included 15 individual matters).

During the year there were six Applications determined by SAT (which included 11 individual matters).

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

At the conclusion of the reporting period there were 18 Applications relating to 21 individual matters which had not been determined.

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

All minutes of proposed consent orders are referred to SAT. SAT is

required to consider and determine if the proposed orders are appropriate before making orders in those terms.

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

17 matters relating to seven practitioners referred to SAT previously have not yet been filed in SAT for various reasons, including the personal circumstances of practitioners and public interest considerations. One of those matters was referred back to the Investigations Team for further conduct matters raised.

Five matters relating to three practitioners referred to SAT were referred back to the Committee and were rescinded. Three matters related to a now interstate practitioner who has given a permanent undertaking to the Committee and the Board not to engage in legal practice again.

Summary of SAT matters determined 1.7.18 – 30.6.19

Application No. & Date determined	Practitioner	Penalty
183/2016 7/11/2018	Chang, Christina Marie	Practitioner's interim application dismissed Penalty still to be determined Decision to dismiss interim application on appeal in CACV 109 of 2018
<ul style="list-style-type: none"> • The practitioner made an interim application on 27 September 2017 to set aside sealed contravention orders made by the Tribunal on 13 September 2017 (where the matter was set down for a 3 day hearing on 11-13 September 2017 and following consent orders being signed by the practitioner and filed on 13 September 2017 (consent orders) whereby the practitioner agreed she was guilty of: <ul style="list-style-type: none"> ○ professional misconduct by being grossly careless in preparing and causing to be sent 2 letters to a family law client and 1 letter to the Family Court which letters were false and misleading in material respects, and where the practitioner also acted in a position of conflict in breach of rule 15(2) & (3) of the <i>Legal Profession Conduct Rules 2010</i>; ○ professional misconduct by recklessly preparing and filing a witness statement in VR 183 of 2016 (the subject proceedings) which was intended to be part of her evidence before the Tribunal in the hearing commencing 11 September 2017, which was false and misleading in material respects. <p>The practitioner contended that, inter alia, the Tribunal lacked jurisdiction to make the consent orders and the consent orders were not a “final decision” for the purposes of the <i>State Administrative Tribunal Act 2004</i> (SAT Act)</p> <ul style="list-style-type: none"> • Decision by Sharp J in <i>Legal Profession Complaints Committee and Chang</i> [2018] WASAT 121 delivered on 7 November 2018 in which he dismissed the practitioner's interim application and amended interim application and reserved the Committee's costs application for these applications to be heard at the same time as the penalty and costs submissions. He found that the consent orders made under s 56(1) SAT Act were a ‘decision’ within the meaning of the SAT Act and accordingly s 82(1) provides that the consent orders took effect immediately after they were made on 13 September 2017. He did not consider it open to the Tribunal to set aside the consent orders or to vary them except for the limited circumstances under ss 56(3), 83 and 84 of the SAT Act, none of which applied to this matter. He then found the Tribunal did not have power to entertain the practitioner's application to set aside the consent orders and her only recourse is to the Court of Appeal. • The practitioner lodged an appeal on 15 November 2018 against Sharp J's decision commencing CACV 109 of 2018. 		
110/2017 5/11/2018 and 22/01/2019	Oud, Nicholas Neil Peter	Report to the Full Court Local practising certificate suspended from 14 days of the Order Costs: \$53,522.70
<p>This matter proceeded to a hearing before the Tribunal for 3 days between 19-21 September 2018 following which the Tribunal handed down its decision in <i>Legal Profession Complaints Committee and</i></p>		

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p><i>Oud</i> [2018] WASAT 119 and made orders that the practitioner engaged in:</p> <ul style="list-style-type: none"> • Professional misconduct by disbursing from his firm’s trust account \$300,000 (CSG loan funds) received into trust from CSG for use in connection with a purchase of platinum, where he undertook not to transfer, move or use the CSG loan funds without the express written consent of DC and CO, and acted in reckless disregard or with reckless indifference in disbursing those funds without such written consent. • Unsatisfactory professional conduct by failing to keep his firm’s trust records in a way that disclosed the true position in respect to withdrawals from trust of the CSG loan funds in breach of regulation 45 of the <i>Legal Profession Regulations 2009</i> (LPR) and s 228(3)(b) <i>Legal Profession Act 2008</i> (LPA) (where trust records did not accurately record names of persons who received funds and names to BSB details of bank accounts into which the funds were paid). • Unsatisfactory professional conduct by failing to deliver to PR, CSG’s solicitor, the original receipt made out by the practitioner for the receipt of the CSG loan funds when requested to do so by PR by emails sent 22 March 2016 and 28 April 2016, in breach of regs 41(2) and 41(5) LPR. • Professional misconduct by, in responding to PR’s email requiring the return of the CSG loan funds to PR’s trust account, sending emails to PR in which he did not disclose he did not retain the funds in his trust account and implied that he did, thus conveying the impression to PR that the practitioner’s firm retained the CSG loan funds in its trust account and the funds were available to be returned to PR’s trust account when in truth the practitioner had disbursed them and was not in a position to effect the return of the funds, and the practitioner knew his emails were misleading and permitted the impression he conveyed to remain uncorrected. • Professional misconduct by conveying an offer from CO to PR to repay the CSG loan funds which offer was contingent on PR withdrawing a complaint he had made to the LPCC against the practitioner in relation to the practitioner’s breach of the undertaking (as above) • Professional misconduct in that in connection with a creditor’s petition in respect to Mr and Mrs W filed in the Federal Circuit Court in Adelaide he prepared and sent: <ul style="list-style-type: none"> ○ a letter to the Court on 29 March 2016 which contained false and misleading statements (that he acted for an entity ICBC (which he did not and never had, and where ICBC was in liquidation at the time); that he held \$300,000 clear funds in his trust account which he did not (he held \$138,662.80); that his client ICBC was aware of the bankruptcy proceedings against Mr and Mrs W and was prepared to assist them, when he did not act for ICBC and had no such instructions; that he had been instructed to release upon settlement of a pending commodity transaction a minimum of \$200,000 to permit satisfaction of the petition amount, when he did not have any funds in trust at that time which were subject to such instructions); ○ a letter to solicitors CC dated 3 April 2016 which he knew was intended to be used by Mr W in connection with the hearing of the creditor’s petition on 4 April 2016, which contained false and misleading statements (that his reference to ‘ICBC’ in the 29 March 2016 letter was a “cut and paste’ error and he was holding the trust funds for Irongrow, when he was not at the time holding any trust funds for Irongrow; that the substance of

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>the 29 March 2016 letter was otherwise correct, when the 29 March 2016 statements were untrue as set out above),</p> <p>and he well knew the statements in the 29 March 2016 and 3 April 2016 letters were false and misleading and had the potential to mislead the Court and/or the party which had presented the creditor's petition and/or solicitors CC.</p> <ul style="list-style-type: none"> • The Tribunal also found that the practitioner was a deliberately dishonest witness. • Penalty was determined on the documents and the Tribunal's reasons for decision were published in <i>Legal Profession Complaints Committee and Oud</i> [2018] WASAT 119(S) on 22 January 2019 at which time the Tribunal found the totality of the practitioner's misconduct and his almost complete lack of acceptance or even appreciation of it, are plainly incompatible with the characteristics of honesty and integrity that are fundamental to the practice of law, he can't be trusted to deal fairly within the system and is wholly inconsistent with privileges and responsibilities of future legal practice as a legal practitioner, and his conduct so serious that he is permanently or indefinitely unfit to practise and: <ul style="list-style-type: none"> (i) made and transmitted a report of the findings of professional misconduct and unsatisfactory professional conduct to the Supreme Court (full bench) with a recommendation that practitioner's name be removed from the roll (ii) suspended the practitioner's practising certificate suspended within 14 days until determination by Supreme Court (full bench) (iii) the practitioner was to pay the Committee's costs (disbursements only) of \$53,522.70 • Orders were made by the Supreme Court (full bench) on 31 July 2019 to remove the practitioner's name from the roll.
124/2017 29/08/2018	Metaxas, Arthur	Reprimand Practitioner to undertake specific further training Fine: \$24,000 Costs: \$19,118.50 On appeal in CACV 84 of 2018
		<p>Following a hearing on 24 and 25 January 2018, the Tribunal delivered its reasons for decision in <i>Legal Profession Complaints Committee and Metaxas</i> [2018] WASAT 28 on 26 April 2018 and the practitioner was found guilty of professional misconduct in failing to take all necessary steps to ensure that there was a proper factual basis for a proposed ground of appeal and oral submissions made to the Court of Appeal in support of an application for leave to appeal and the appeal.</p> <p>On 24 August 2018 the Tribunal's decision as to penalty and costs in <i>Legal Profession Complaints Committee and Metaxas</i> [2018] WASAT 28 (S) was delivered.</p> <p>On 31 August 2018 the practitioner lodged an appeal against both decisions in the Court of Appeal commencing CACV 84 of 2018.</p>

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
151/2017 8/08/2018 (Mediated Outcome)	Butler, John Wesley	Reprimand Fine: \$7,500 Costs: \$8,000
<p>A finding was made by the Tribunal that the practitioner engaged in unsatisfactory professional conduct where, in acting for a client in respect to family law matters, he failed to provide any or any adequate advice to the client with respect to her claims in respect of child support and, when later responding to an email sent around 2 years later enquiring why he did not raise child support or include it in the settlement reached in the matter, the practitioner sent a letter to the client in which he advised her it was not possible to include child support in consent orders relating to property settlement, which advice (in the absence of any qualification being made by the practitioner) was wrong; further, the practitioner failed to bring to the client's attention his failure to advise as to child support during the matter, as a result of which the client was not advised as to the circumstances when it may have been possible to include child support in the consent orders resolving the matter; and the practitioner's letter was intemperate, disparaging and discourteous of the client.</p>		
77/2018 28/05/2019 (Mediated Outcome)	Hammond, Kristin Anneyce	Reprimand Preclusion period before local practising certificate able to be granted Condition placed on local practising certificate Practitioner to undertake specific further training Costs: \$15,000
<p>Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in:</p> <ul style="list-style-type: none"> Professional misconduct between September 2010 and August 2012 by requesting that a police officer (Officer) provide her with documents and information, which request were unfair and prejudicial to, and likely to diminish public confidence in, the administration of justice, because the practitioner was in a personal relationship with the Officer, the Officer unlawfully accessed the WA police restricted information computer system (System) in order to obtain the documents and information for her, which he then released to her without any authority and she was reckless as to whether he was authorised to access the System to obtain, and then to provide to her, the documents and information; Professional misconduct between 3 and 6 May 2011 by disclosing to the Officer information that she knew was the subject of legal professional privilege, or that it was confidential to a client, of which the practitioner became aware in the course of providing legal services to the client. Professional misconduct on or about 1 August 2012 by failing to immediately return to the WA Police, affidavits and a DVD of an audio visual recording of an interview with a person who was not her client, that the Officer had made available to her in circumstances in which she knew or ought to have known the Officer was not authorised or permitted to make those affidavits or the DVD available to her. Professional misconduct between February and July 2013 by failing to competently advise her client Mr S as to the merits of any defence he may have to a charge, the evidence required to prove or raise any defence, the likely consequences of defending the charge including the risk of an adverse costs order, failing to competently advise him that the prosecution had made an 		

Application No. & Date determined	Practitioner	Penalty
		<p>offer in respect to costs in the event he pleaded guilty to the charge and failed to competently represent him at trial.</p> <ul style="list-style-type: none"> Professional misconduct between March 2014 and February 2015 by, in proceedings relating to VROs, failing to take full and proper instructions in respect to a text message exchange the basis of the VRO, including to view the full exchange, failed to properly consider and advise of the merits and prospects of success of, and evidence require to support, the VRO applications, failing to properly prepare for final order hearing of the VRO applications and to competently advise the client in respect to offers to settle the VRO applications when she was aware or ought to have been aware there was a real risk that the client would not obtain a VRO. Further, by charging fees for the VRO applications which were excessive, in circumstances where the Practitioner failed to appear at a hearing, which was adjourned and for which she briefed another practitioner to appear at the adjourned date, and charged the other practitioner's invoice to the client for payment. <p><u>Penalty</u></p> <ul style="list-style-type: none"> (i) a local practising certificate was not to be granted before 30 June 2019, where an 'in principle' agreement was made in early September 2018, but as a result of unrelated external factors affecting the practitioner, was unable to be signed until February 2019; (ii) practitioner provided a written undertaking to SAT, Committee and Board in respect to providing medical reports to the Board, including in respect to her current health, further treatment, restrictions on practice; (iii) reprimand; (iv) any local practising certificate which may be granted to the practitioner is subject to a condition that she be a supervised employee for 2 years (with supervising practitioner to be physically located in same premises); (v) the practitioner to successfully complete WA College of Law PLT courses in Lawyers' Skills, Ethics and Professional Responsibility and Criminal Law Practice and attend 3 Law Society 'Ethics on Friday' seminars each calendar year while in supervised practice, and provide evidence to the Board of her successful completion of these courses; (vi) at conclusion of 2 years of supervised practice, and having complied to the Board's satisfaction in respect to (v) above, should the practitioner wish to engage in legal practice other than as an employed solicitor, she must give the Board 42 days notice of her intention to do so; and (vii) \$15,000 costs. <p>NB: The practitioner was admitted in 2010 and had not practised since 17 May 2016.</p>
98/2018 21/06/2019	Lourey, Michael Joseph	Findings only Penalty still to be determined On appeal in CACV 78 of 2019
Following a hearing before the Tribunal on 12 and 13 November 2018, the Tribunal's reasons for decision in <i>Legal Profession Complaints Committee and Lourey</i> [2019] WASAT 41 were delivered on 21 June 2019 and findings were made that the practitioner engaged in:		

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<ul style="list-style-type: none"> • Unsatisfactory professional conduct and professional misconduct for writing and causing to be sent a letter dated 17 June 2016 to the Director of WorkCover WA which breached LPCR 6(1)(b) • Unsatisfactory professional conduct and professional misconduct for writing and causing to be sent a letter dated 29 June 2016 to the Director of WorkCover WA which breached LPCR 6(2)(b) • Professional misconduct in failing to comply with a document summons issued by the Law Complaints Officer (LCO) on 4 January 2017 where he was required to produce documents by a certain date • Professional misconduct in failing to comply with an information summons issued by the LCO on 4 January 2017 where he was required to provide information by way of statutory declaration by a certain date • Professional misconduct in failing to adhere to his undertaking given in a letter dated 14 March 2017 to the Committee to provide his submissions in relation to his conduct • Unsatisfactory professional conduct in preparing and causing to be sent a letter dated 22 March 2016 to the Insurance Commission of Western Australia in proceedings where he acted in a claim lodged under the WC Act which breached LPCR 6(1)(b) • Professional misconduct in preparing and causing to be sent a letter dated 12 May 2016 to another practitioner which breached LPCR 6(2)(b) • Professional misconduct in preparing and causing to be sent a letter dated 7 September 2016 to another practitioner which breached LPCR 6(2)(b) • Professional misconduct in preparing and causing to be sent letters dated 6 October 2016 and 13 October 2016 to another practitioner which breached LPCR 6(2)(b) • Professional misconduct in failing to comply with a document summons issued by the LCO on 17 January 2017 where he was required to produce documents by a certain date • Professional misconduct in failing to comply with an information summons issued by the LCO on 17 January 2017 where he was required to provide information by way of statutory declaration by a certain date • Professional misconduct in failing to adhere to his undertaking given in a letter dated 14 March 2017 to the Committee to provide his submissions in relation to his conduct • Unsatisfactory professional conduct and professional misconduct in preparing and causing to be sent a letter dated 6 January 2017 to a doctor in proceedings concerning the practitioner's client which breached LPCR 6(1)(b)
211/2018 21/05/2019 (Mediated Outcome)	Durand, Louis	Reprimand Fine; \$10,000 Costs: \$4,000
Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in professional misconduct in that the practitioner:		
<ul style="list-style-type: none"> • when taking instructions, preparing and arranging for the execution of a will and EPA, failed to 		

<i>Application No. & Date determined</i>	<i>Practitioner</i>	<i>Penalty</i>
		<p>make proper and adequate file notes of the instructions he obtained and his discussions with the client; he failed to adequately, or at all, advise the client that the effect of the will as drafted was that in the event the client's wife predeceased him all his assets would be gifted to his granddaughter, when his instructions for the making the will were to give to the granddaughter a limited disposition, namely only the contents of a bank account held in his sole name; further, where immediately after the client had executed the will and EPA the client made the practitioner aware of guardianship proceedings at that time before the SAT, which raised a doubt for the practitioner as to the client's capacity to provide instructions, the practitioner failed to advise the client of the possible invalidity of the will and EPA, the possibility of revocation if it was found he did not have capacity and/or (at least) seek instructions from the client to inform the SAT about the fact of the execution of each of the will and EPA; and failed to make comprehensive notes;</p> <ul style="list-style-type: none"> was not open and candid in his dealings with the Committee and failed to provide a full and accurate account of his conduct in relation to matters covered by the Committee's requests of him to provide information concerning his taking instructions from the client, namely whether he enquired of the client about previous wills, in that he made misleading statements with reckless indifference to the Committee by stating he did not so enquire, which he then corrected in a statutory declaration, by saying he did so enquire, but failed to bring to the Committee's attention the discrepancy between the misleading statements and the correct statutory declaration statements, and the reasons for that discrepancy, until asked to do so by the Committee.
<u>Penalty</u>		
(i) reprimand		
(ii) in circumstances where the practitioner provided an undertaking to the SAT, the Committee and the Legal Practice Board from 16 April 2019 not to take any new instructions to prepare wills and enduring powers of attorney and guardianship and, from 1 June 2019, not to prepare wills and enduring powers of attorney and guardianship, he pay a fine of \$10,000		
(iii) \$4,000 costs		

Summary of SAT matters which were not determined as at 30.6.19

Application No.	Allegation	Status
83/2016 Filed 31/05/2016	<p>Professional misconduct by:</p> <p>a) assisting a person to engage in legal practice in contravention of the <i>Legal Practice Act 2003</i> and the <i>Legal Profession Act 2008</i>;</p> <p>b) signing and causing to be filed writs, pleadings, particulars and schedules of damages without satisfying himself the claims, pleading, particulars and schedules were tenable in fact and/or law, and causing to be filed informal lists of documents and correspondence to other parties' lawyers without satisfying himself that reasonable steps had been taken to comply with discovery obligations and that the content of the correspondence was accurate and appropriate, and serving an expert report without satisfying himself that the person who briefed the expert had complied with all usual professional obligations on a legal practitioner when briefing an expert and that the expert had complied with usual obligations imposed on the expert;</p> <p>c) signing and causing to be filed 3 entry for trial certificates when the practitioner knew each to be false and misleading, intended the Court to be misled; alternatively was recklessly indifferent to the above;</p> <p>d) failing to attempt to ascertain in relation to a consent judgment in which he represented the plaintiff whether the plaintiff's total legal costs were not less than the sum of fixed costs agreed pursuant to the consent judgment and, to extent they were not, failing to inform the Court and the defendant;</p> <p>e) failing to provide, or to cause his firm to provide, to 3 clients retaining the firm, costs disclosure in terms of the <i>Law Society Professional Conduct Rules</i> and to 9 clients costs disclosure in accordance with the <i>Legal Profession Act 2008</i>;</p> <p>f) failing to take reasonable steps to inform a client of his rights and possible courses of conduct in relation to proceedings claiming damages for personal injury, failing to keep the client informed about significant developments and generally the proceedings, failing to inform the client that the defendant considered</p>	<p>Directions 19/03/2019 vacated and adjourned to 24/09/2019 now that appeal against SAT findings and penalty in another matter concerning the practitioner have been determined.</p>

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>the proceedings were statute barred and failing to offer advice to, or advise, the client about possible causes of action and/or taking independent legal advice about his having a possible cause of action;</p> <p>g) accepting and carrying out instructions when it caused the practitioner to be in a position of owing conflicting duties to the client and another.</p>	
<p>117/2016 Filed 2/08/2016</p>	<p>Professional misconduct by:</p> <p>a) in respect of an application for probate and in the administration of the estate:</p> <ul style="list-style-type: none"> (i) failing to maintain accurate and complete records and books of account relating to the administration of the estate including trust moneys; and (ii) failing to account, or properly account, in respect of the assets, income, liabilities, expenses and transactions relating to the estate, including not producing accounts; (iii) not depositing trust money to the credit of a trust account; and (iv) not finalising the administration of the estate and/or not progressing the administration of the estate in a timely manner <p>b) in Family Court proceedings:</p> <ul style="list-style-type: none"> (i) failing to maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with and/or failing to maintain books of account in such a manner as to disclose the true position as regards those moneys; (ii) failing to account, or properly account, for trust moneys received; <p>c) in the course of acting with respect to criminal charges:</p> <ul style="list-style-type: none"> (i) failing to maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with and/or failing to maintain books of account in such a manner as to disclose the true position as regards those moneys; (ii) failing to account, or properly account, for trust 	<p>On 15/05/2018 proceedings stayed until further order, directions hearing listed for 25/06/2019 vacated and relisted to 17/03/2020</p>

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>moneys received;</p> <p>d) not having in force professional indemnity insurance;</p> <p>e) 2 counts of not depositing trust money to the credit of a trust account;</p> <p>f) 2 counts of dishonest conduct in intending to use, and using, trust monies at his own will or otherwise for his own benefit in circumstances where he was not authorised, directed or otherwise entitled to do so; and</p> <p>g) (Amended Grounds 12/12/17) dishonest conduct by signing and causing to be filed in the SAT proceedings an Amended Response which:</p> <ul style="list-style-type: none"> (i) to the knowledge of the practitioner, contained false statements concerning the practitioner's dealing with moneys relating to the estate and the executrix of the estate; and (ii) attached a handwritten note of the practitioner's dated 5/11/08 which the practitioner subsequently altered by adding to the note with the intention of creating the false impression that the whole of the note had been written on 5/11/08. 	
<p>159/2017 Filed 18/08/2017</p> <p>Leave to amend in terms of Substituted Annexure A given 22/02/2019</p>	<p>Professional misconduct by:</p> <p>a) in his capacity as the sole legal practitioner director of the practice in entering a retainer agreement agreeing that the practice would be liable to pay the fees of junior counsel for the client in proceedings (estimated by junior counsel as between \$135,000 to \$180,000) even if the practice did not receive funds from the client to pay those fees, where at all material times neither the practice or the practitioner personally had the capacity to pay if the client did not make payment of those fees to the practice, and where the practice failed to pay 5 invoices issued by the junior counsel and in preference paid invoices issued by the practice, thereby breaching the retainer and Rule 26 <i>Legal Profession Conduct Rules 2010</i>;</p> <p>b) (Amended Ground 22/02/2019) sending an email</p>	<p>On 13/03/2019 listed for hearing on 25 & 26/09/2019, subsequently relisted to 5 & 6/11/2019</p>

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	<p>to junior counsel in which he knowingly made a false and/misleading representation that client funds were sufficient to meet the junior counsel's October invoice but the practitioner could only transfer a certain sum due to the daily payment limit being reached on the practice's account and that he would pay the balance the following week when the balance of client funds was insufficient to pay the balance of the October invoice;</p> <p>c) knowingly making false and/or misleading representations to the Legal Practice Board at a meeting that the practice could meet its current debts and was solvent and failing to inform the Board the practice had significant outstanding debts, including the \$137,815 owed to junior counsel, which the practice did not have the means to pay, and knowingly misrepresenting to the Board that a new incorporated legal practice (<i>new ILP</i>) was not taking over the existing practice, when the true position was that it was;</p> <p>d) attempting to avoid the liabilities of the practice, including the obligations to pay junior counsel's fees pursuant to the Retainer and rule 26 of the Conduct Rules by deriving a new ILP from the existing practice;</p> <p>e) without reasonable excuse, failing over a 12 month period (September 2015 to September 2016) and then after 28 September 2018 (and continuing) during a conduct investigation pursuant to section 421 of the <i>Legal Profession Act 2008</i> to respond to correspondence from the Committee in breach of rule 50(3) Rules and to a summons issued pursuant to section 520(1) of the Act in contravention of section 520(5) and 532(5) of the Act;</p>	
240/2017 Filed 20/12/2017	<p>Professional misconduct by:</p> <p>a) in the course of acting for the client, in respect of Family Court proceedings for an alteration of property interests, sending to a Scottish law firm, a letter enclosing two original dispositions which by their terms gifted the ownership of two properties located in Scotland (First Property and Second</p>	On 15/05/2018 proceedings stayed until further order, directions hearing listed for 25/06/2019 vacated and relisted to 17/03/2020

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>Property) to the client's mother which, once registered in Scotland, would complete or effect a transfer of the ownership of the First Property and the Second Property) to the client's mother, in circumstances in which the practitioner knew that, or was recklessly indifferent as to whether:</p> <ul style="list-style-type: none"> (i) the dispositions would complete or effect a transfer of the ownership of the First Property and the Second Property to the client's mother; (ii) as intended by the client, a transfer of ownership of the First Property to the client's mother would contravene a specific order made by the Court restraining the parties from transferring or otherwise dealing with those funds (Order); and (iii) as intended by the client, a transfer of ownership of the Second Property to the client's mother would have the effect of removing that property from the pool of assets that was the subject of the proceedings; and <p>b) the practitioner, or a restricted practitioner under his supervision, caused an affidavit sworn by the client in support of an application to vary the Orders, of which the Order was one (Affidavit to Vary Orders) to be filed in the Court which was misleading in material respects as:</p> <ul style="list-style-type: none"> (i) it conveyed the misleading impression that substantial funds which had been transferred to a bank account in the client's mother's name were still held in a Scottish bank account in the client's name, and which conduct contravened the Order of the ; and (ii) it conveyed misleading reasons as to why the client could not transfer \$100,000 from the monies held in the Scottish bank account as ordered by the Court <p>in circumstances where the practitioner knew, before the Affidavit to Vary Orders was filed in the Court, or was recklessly indifferent to whether, the Affidavit to Vary Orders was misleading in material respects.</p>	

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241/2017 Filed 20/12/2017	<p>a) Professional misconduct by providing to the police an unsigned statement and later, a signed statement which both contained admissions by the client in respect of the charges and information as to the identity and conduct of two alleged co-offenders who had not yet been apprehended by Police in circumstances where the practitioner:</p> <ul style="list-style-type: none"> (i) failed to obtain clear instructions from the client as to whether he would be pleading guilty or not guilty and to which charges; (ii) failed to adequately explain to the client the legal and factual consequences related to the provision of the statements to the Police and/or (iii) failed to obtain written instructions from the client to provide the statements to the Police. <p>b) Unsatisfactory professional conduct by failing to provide the client with adequate costs disclosure as required by section 262 of the <i>Legal Profession Act 2008</i> in that, contrary to section 262, the costs disclosure was not provided in writing either before the practitioner was retained to act for the client or as soon as possible after being so retained.</p>	On 15/05/2018 proceedings stayed until further order, directions hearing listed for 25/06/2019 vacated and relisted to 17/03/2020
51/2018 Filed 6/04/2018 Leave to amend in terms of Further amended annexure A given on 13/06/2019	<p>Professional misconduct by:</p> <ul style="list-style-type: none"> a) in response to a letter of demand from a former client to the practitioner for a refund of fees in a matter in which the practitioner was retained in her capacity as a registered migration agent, preparing and sending emails to the client the contents of which the practitioner knew were false and misleading; b) in circumstances where the former client commenced a claim in the Magistrates Court against the client for the refund of fees, making statements at pre-trial conferences at the Magistrates Court that the practitioner knew were false and misleading; c) in circumstances where the former client 	On 14/03/2019 the final hearing dates for 30 & 31/05/2019 vacated and relisted to 13 & 14/06/2019 which hearing proceeded. Awaiting decision.

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	<p>subsequently made a complaint to the Committee regarding the practitioner's conduct, without reasonable excuse, failing to respond to letters from the Committee and to summonses to produce documents and provide information issued pursuant to section 520(1) of the <i>Legal Profession Act 2008</i></p>	
<p>230/2018 Filed 4/12/2018</p>	<p>a) Professional misconduct by preparing and sending from her work email address an email to the email address "CourtTranscriptDC@justice.wa.gov.au" addressed to "Registrar" seeking access to "decisions" made in the District Court of Western Australia in relation to an offender who was sentenced in 2016, as well as a copy of the sentencing decision (Decisions), which email represented that the practitioner was making the request in the course of the practitioner's practice of law in respect of matters concerning the admissibility of DNA evidence (Representation), which Representation was made in part by the practitioner's use of her work email address; her work signing clause; the presence of her work's corporate logo; and her reference to having access to the PLEAS database when making the request, when the Representation:</p> <ul style="list-style-type: none"> (i) was misleading and deceptive in that the practitioner was not seeking the Decisions for the stated purpose but was seeking them for the purpose of confirming that the identity of the offender named in the Decisions was in fact Mr B, the husband of Ms A, which the practitioner failed to disclose in the email; and (ii) the practitioner knew that the Representation was misleading and deceptive, intended the District Court to rely on the Representation and be misled or deceived by the Representation; or alternatively was recklessly indifferent as to whether the District Court would be misled or deceived by the Representation. <p>b) unsatisfactory professional conduct in that her conduct in a telephone call with Ms A and, or, in a text message she sent to Ms A, was intemperate,</p>	<p>On 12/04/2019 matter listed for hearing on 07/08/2019 to deal with issue of penalty and costs</p>

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	<p>threatening, intimidating and/or discourteous, and had the potential to bring the profession into disrepute by making serious allegations, when the practitioner knew there was no reasonable ground to make that allegation; alternatively, was recklessly indifferent as to whether or not there were reasonable grounds to make that allegation; further or alternatively, in the text message sent to Ms A threatened that Ms A may be imprisoned when the practitioner knew there were no, or no reasonable, grounds for the threatened action to be taken or alternatively, was recklessly indifferent as to whether or not there were reasonable grounds for the threatened action to be taken.</p>	
<p>231/2018 Filed 4/12/2018</p>	<p>Professional misconduct, by:</p> <ul style="list-style-type: none"> a) preparing and filing or causing to be filed in the proceedings a Form 4 Notice of Child Abuse or Family Violence sworn by the client (the father of a child in parenting proceedings) which as she well knew conveyed a false and/or misleading impression either expressly or impliedly; alternatively, the practitioner acted with reckless disregard or indifference, further alternatively was grossly careless, as to whether the false and/or misleading impression was conveyed and as to whether the Family Court would be misled; b) further and alternatively, preparing and filing or causing to be filed in the Family Court a Case Information Affidavit sworn by the client (client's CIA) in which a false and/or misleading Statement and a separate false and/or misleading Impression were made which the practitioner well knew was false and/or misleading; alternatively, the practitioner acted with reckless disregard or indifference, further alternatively was grossly careless, as to whether or not the statement and the impression were false and/or misleading and as to whether the Family Court would be misled; c) further and alternatively, and following a request from the mother's solicitor that the practitioner cause to be amended the false and/or misleading 	<p>On 21/03/2019 mediation proceeded and was adjourned to a further mediation on 15/07/2019</p>

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	<p>statement in the client's CIA to reflect the true position, the practitioner:</p> <ul style="list-style-type: none"> (i) proposed to the mother's solicitor in a Letter an amendment to the client's CIA which the practitioner well knew would be false and/or misleading; alternatively, the practitioner acted with reckless disregard or indifference, further alternatively was grossly careless, as to whether or not the proposed amendment was false and/or misleading and where; (ii) stated that the false and/misleading Statement made in the client's CIA was a "<i>typographical error</i>" when practitioner well knew it was a serious omission of relevant and required information and that any proposed amendment to the client's CIA would be to correct a matter of relevance and substance in the proceedings and not a mere "<i>typographical error</i>", and which was, in any event, inconsistent with her proposed amendment, and she failed in the Letter to deal appropriately with the serious issue raised by the mother's solicitor, of false and/or misleading evidence being placed by her client before the Family Court in the proceedings and attempted to mislead or misled the mother's solicitors as to the reason for the statement having been made, and failed to correct the record and also failed to disclose another relevant matter, thus maintaining the Impression. <p>d) further and alternatively, by preparing and filing or causing to be filed in the Family Court a supplementary affidavit sworn by the client in which he stated he was amending a "<i>typographical error</i>" (paragraphs 2 and 4) and what the Statement should read (paragraph 5), when the practitioner:</p> <ul style="list-style-type: none"> (i) well knew the Statement was false and/or misleading as a result of the omission by her of relevant information when preparing the client's CIA, and that any amendment to the Statement would be correcting a matter of relevance and substance in the proceedings and not a mere "<i>typographical error</i>", such that 	

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	<p>the statements at paragraph 2 and 4 of the Supplementary Affidavit were false and/or misleading and the practitioner intended that the Family Court, the mother's solicitor and/or the ICL rely on and be misled by paragraphs 2 and 4 of the Supplementary Affidavit; alternatively, the practitioner acted with reckless disregard or indifference as to whether or not the statements at paragraphs 2 and 4 of the Supplementary Affidavit were false and/or misleading in a material respect and as to whether the Family Court would be misled;</p> <p>(ii) well knew that what when preparing paragraph 5, that in the client's CIA the client was also required to "briefly describe" those criminal convictions, and she failed to include a brief description of the client's criminal convictions in paragraph 5 of the Supplementary Affidavit, and failed in all the circumstances, to ensure the client in the Supplementary Affidavit provided a full and frank explanation to the Family Court as to the true circumstances by which the false and/or misleading Statement was made to the Family Court and failed to correct the record by failing to disclose another relevant matter, thus maintaining the Impression.</p> <p>e) further and alternatively, following sending the Letter, failing to provide a full and frank explanation to the Committee as to the circumstances by which the false and/or misleading Statement was made to the Family Court.</p> <p>f) further and alternatively, failing to correct the record of the Family Court in respect of false and/or misleading representations by way of the Statements or the conveying of Impressions, in each of the Form 4, the client's CIA and the Supplementary Affidavit in circumstances where:</p> <p>(i) the practitioner knew each of the Form 4, the client's CIA and the Supplementary Affidavit contained representations which were false and/or misleading in a material respect;</p> <p>(ii) Counsel representing the practitioner in</p>	

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	<p>relation to the Committee's investigation of the practitioner's conduct stated in a letter sent on her behalf to the Committee that she would attend to correcting the record, subject to the client's instructions;</p> <p>(iii) following the letter above being sent, the practitioner continued to act for the client in the proceedings for approximately 6 months when the practitioner caused to be filed in the Family Court a Notice of Ceasing to Act for the client; and</p> <p>(iv) at no time did the practitioner take steps to correct the record of the Family Court.</p>	
<p>233/2018 Filed 5/12/2018</p>	<p><u>ANNEXURE – A</u></p> <p>a) Unsatisfactory professional conduct in respect of an application in existing proceedings in the Family Court, by failing to advise the client, adequately or at all, as to the nature and effect of interim consent orders prepared and filed in the Court on behalf of the client by the practitioner on 31 March 2010 (interim consent orders).</p> <p>b) Professional misconduct by acting for the client when she knew, or ought reasonably to have known, that the competency of the advice the practitioner had provided to the client about the nature and effect of the interim consent orders was in issue, alternatively, her failure to provide any such advice, such that she was in a position of conflict or potential conflict between her interests and/or the interests of the firm of which she was a partner, and those of the client and thereby in breach of rules 15(2) and 15(3) of the <i>Legal Profession Conduct Rules 2010</i> (WA) and her duty to act in the best interests of the client.</p> <p><u>ANNEXURE – B</u></p> <p>a) Professional misconduct in the course of acting for a husband in Family Court divorce proceedings against the client's wife where the client's sworn statement had the date of separation as 31 August 2008 and the wife's sworn statement was that it was 30 December 2012, and where for the client</p>	<p>Mediation took place on 13/05/2019, adjourned to 28/05/2019, and further adjourned to August 2019</p>

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	<p>to be able to re-marry as he planned to do a date of separation no later than 1 March 2012 was required to ensure that the client's sworn Form 3 Application for Divorce (Form 3) was jurisdictionally within the time required pursuant to section 48 of the <i>Family Law Act 1975</i> (Cth) (FLA) to allow a divorce order to be made, and in respect of an offer to settle the proceedings made by the wife's New South Wales-based solicitor on 4 June 2013, including by agreeing the separation date (offer) by:</p> <ul style="list-style-type: none"> (i) failing to advise the client that the offer could be viewed as an improper inducement, and/or of the potential legal consequences of accepting the offer including, but not limited to, that the Court could reject a settlement of the proceedings based on the proposed agreed date of separation, in light of the prior inconsistent sworn statement(s) as to the date of separation; (ii) further and alternatively, preparing and causing to be filed a Minute of Consent Orders (Consent Minute), and a Joint Form 3 Application for Divorce (Joint Form 3), both of which stated that the client and the wife agreed the date of separation as being 30 December 2011 (agreed date of separation), in circumstances where the agreed date of separation was a matter of convenience to facilitate the client's wish to remarry and to meet the wife's terms in respect to a property settlement, and not a genuine acknowledgment by the client and/or the wife that their sworn prior inconsistent statements were mistaken, and thereby false and misleading, or had the potential to mislead the Court and the practitioner knew the agreed date of separation was false and misleading, or had the potential to mislead the Court; alternatively, the practitioner acted with reckless disregard or with reckless indifference; further alternatively, was grossly careless, as to whether or not the agreed date of separation was false and misleading, or had the potential 	

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	<p>to mislead the Court;</p> <p>(iii) further and alternatively, at a Hearing, and following a comment by the Chief Judge that “it is not adequate for the parties to agree the date of separation”, making oral statements and/or conveying the impression to the Court that the agreed date of separation as set out in the Consent Minute was as a result of disclosure by the parties in the course of the proceedings where the statements and/or impression were false and misleading, or had the potential to mislead the Court, the practitioner knew the statements and/or impression were false and misleading, or had the potential to mislead the Court; alternatively, the practitioner acted with reckless disregard or with reckless indifference; further alternatively, was grossly careless, as to whether or not the statements and/or impression were false and misleading, or had the potential to mislead the Court, and the practitioner failed to take any steps as soon as possible, and at all, to correct the statements and/or impression to ensure that the Court would not be misled;</p> <p>(iv) further and alternatively, following the Hearing, failing to advise the client that filing a Notice of Discontinuance in relation to the Form 3 would not overcome the consequences of the sworn prior inconsistent statement(s) as to the date of separation made by him and/or by the wife, in circumstances where at the conclusion of the Hearing the practitioner conveyed the impression to the Court that the client would file an affidavit explaining the discrepancy between the sworn prior inconsistent statement(s) as to the date of separation in the Form 3 and the agreed date of separation and instead the practitioner prepared and caused to be filed, simultaneously with a Joint Form 3, two Form 10 Notices of Discontinuance (Form 10 Notices) in relation to the Form 3 and the Form 3A containing the sworn prior inconsistent statements respectively, and the presiding Registrar dismissed the Joint Form 3</p>	

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	<p>as he could not be satisfied that the parties were separated for not less than 12 months prior to the filing of the Joint Form 3, following which the practitioner prepared and provided to the client a further Form 3 for signing and filing by the client in January 2014, which stated the date of separation as 31 December 2012.</p> <p>(v) further and alternatively, charging the client legal costs that were not fair and reasonable in all the circumstances; alternatively increasing the proper costs of the proceedings, as a result of the failures set out above and the costs of and incidental to the Consent Minute, the Hearing, the Joint Form 3, and the Form 10 Notices;</p> <p>b) Unsatisfactory professional conduct by failing to provide the client with ongoing costs disclosure in a timely manner in contravention of section 267 of the Act.</p>	
<p>236/2018 Filed 5/12/18</p>	<p>Professional misconduct by:</p> <p>a) failing to provide proper and competent advice to the client in respect to the requirements of, and the consequences to the client of failing to comply with, orders of the Family Court in regard to the time in which service of any application for costs and supporting affidavit was to be made, where the Form 2 application for costs (Application) and supporting affidavit (supporting affidavit) (together, the Documents) were served 29 days after they were filed with the Court, and where the service copies were returned by the Court to the practitioner's firm 17 days earlier;</p> <p>b) failing to give notice to the client's former wife and/or her lawyers that the Documents had been filed and/or failing to provide an unsealed copy of the Application by way of notice of that Application having been filed, in circumstances where a sealed copy could not be served within the time required by the Order;</p> <p>c) between the Application being filed under cover</p>	<p>Mediation 9/10/2019</p>

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	<p>of a letter representing that it was to be copied to the lawyers for the client's wife, which it was not, and sending a Letter to the former wife serving the Documents, intentionally failing to inform the wife and/or her lawyers of the filing of the Application or to provide an unsealed copy of the Application because he " ... <i>wanted to make sure the [settlement of property transfers between the parties] had occurred [before effecting service] and I can explain [the delay] on the basis that I was away</i>", in circumstances where that settlement took place only 2 days prior to the Letter being sent to the wife and thereby seeking, and permitting the client, to gain an advantage in giving effect to the orders for property settlement and in so doing the practitioner attempted to further his client's matter by unfair or dishonest means in breach of Rule 16 of the <i>Legal Profession Conduct Rules 2010</i>;</p> <p>d) preparing and sending or causing to be sent the Letter representing that the delay in serving the wife with the Documents was a result of the Documents being received by the practitioner's firm in his absence on leave (first representation), where the first representation was false and misleading in that the practitioner had intentionally not informed the wife of the Application and he intended that she rely on the first representation and be misled as to the actual reason for the delay in service of the Documents;</p> <p>e) preparing and causing to be sworn by the client and then filing with the Court an Affidavit, in circumstances where the Court considered the delay in service of the Documents on the wife a "<i>serious oversight</i>" and ordered that the client file an affidavit explaining the reasons for that delay, which Affidavit caused to be represented to the Court and to the wife and/or her lawyers that the delay in serving the Documents on the wife was due to the practitioner's absence on leave overseas (second representation), where the second representation was false and misleading, the practitioner knew the second representation was false and misleading and intended that the Court, the wife and/or her lawyers rely on it and</p>	

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	<p>be misled as to the actual reason for the delay in service of the Documents; failed to correct the false and misleading representations; and/or failed to identify that it was proper that an affidavit providing an explanation to the Court as to the delay in service should be sworn not by the client, but by the practitioner;</p> <p>f) further, from the date he filed, or caused to be filed, the Documents but failed to serve them within the terms of the Order, until the termination of his retainer by the client the practitioner, when he knew or ought reasonably to have known that there may be a conflict or the potential for a conflict of interest, continued to act and in doing so, preferred his own interests to the client and breached Conduct Rule 15(3), and caused the proper costs to the client to be increased, relevantly by charging the client for the costs of preparing the Affidavit and a supplementary affidavit (which was not filed) to address the delay in service of the Documents, and then charging the client for senior counsel's advice in respect to the reasons for delay.</p>	
<p>25/2019 Filed 1/03/2019</p>	<p>Professional misconduct by:</p> <p>a) in that, having been engaged by the Company through its managing director (MD) to provide legal services to the Company, he provided legal services to the MD for the personal benefit of the MD and pursuant to the MD's instructions in his personal capacity, namely legal advice in relation to his rights and entitlements following the termination or purported termination of his employment by the Company, in circumstances in which the interests of the Company and the MD were adverse and there was a conflict or potential conflict of the duties to act in the best interests of each of the Company and the MD contrary to Rule 14(2) of the <i>Legal Profession Conduct Rules 2010</i>.</p> <p>b) causing the incorporated legal practice of which he was the sole legal practitioner director to render bills to the Company for legal services performed by the practitioner for the personal</p>	<p>Mediation 6/08/2019</p>

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	<p>benefit of the MD (as per (a) above) and further where the MD had expressly requested the practitioner to bill him personally with respect to the legal services the subject of those bills, the legal services the subject of those bills were adverse to the interests of the Company, and where prior to rendering a particular bill the MD had informed the practitioner that he was no longer a director of the Company.</p> <p>c) advising the MD to transfer monies from the Company's bank account to a personal account controlled by the MD in an amount equivalent to the estimated amount of the MD's potential entitlements consequential upon the termination or potential termination of the MD's employment with the Company (Funds), in circumstances in which the practitioner knew that the MD had resigned as a director of the Company and knew or ought to have known that the MD had no entitlement to the Funds and no authority from the Company to transfer the Funds to a personal account, and the practitioner's advice exposed the MD to the possibility of being charged with the offence of stealing contrary to section 378 of the <i>Criminal Code (WA)</i>.</p> <p>d) by not being open and candid in his dealings with the Committee and failing to provide a full and accurate account of his conduct in relation to matters covered by requests contrary to rule 50 of the Conduct Rules in that the practitioner told the Committee that he (the practitioner) did not advise the MD to transfer the Funds from the Company's bank account to a personal account controlled by the MD (Statement), which Statement was false and/or misleading as in fact the practitioner did advise the MD to so transfer the Funds and the practitioner well knew the Statement was false and/or misleading and/or that it had the potential to mislead the Committee and the practitioner intended that the Committee be misled; alternatively the practitioner acted with reckless disregard or indifference further alternatively was grossly careless, as to whether or not the Statement was false and/or misleading and/or had the potential to mislead the</p>	

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	Committee.	
50/2019 Filed 11/04/2019	<p>Professional misconduct by:</p> <p>a) where he was the sole legal practitioner director, failing to take reasonable steps to implement and/or maintain appropriate management systems to ensure the provision of legal services by the law practice was in accordance with the professional obligations of Australian legal practitioners under the <i>Legal Profession Act 2008</i>, in that:</p> <p>(i) a legal practitioner employed by the firm (EP) purported to perform legal services in response to the Company's enquiry about the firm's services, without the firm having been engaged by the Company and/or without having provided information requested by the Company as to whether the firm had the appropriate expertise to provide the advice the subject of the Company's enquiry; and/or an estimate of the firm's total legal costs to provide that advice;</p> <p>(ii) further or alternatively, by signing and allowing to be rendered by the firm to the Company a lump sum invoice and further, and after the proceedings referred to in sub-ground (b) had been commenced, by rendering an itemised invoice in substitution of the lump sum invoice, which invoices were not fair and reasonable and in breach of section 271(b), alternatively, section 271(c) of the Act;</p> <p>(iii) further or alternatively, failed to ensure that the lump sum invoice and the itemised invoice complied with section 291(1) in respect to the notification of client's rights; and/or section 290(3) and/or was provided to the Company within 21 days of the Company's written request made 8 January 2015, in breach of section 292(2);</p> <p>b) commencing or causing to be commenced Magistrates Court proceedings on behalf of the firm to recover the legal fees charged to the</p>	Mediation 15/08/2019

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	<p>Company by the firm in circumstances where the firm had not been engaged by the Company to provide legal services; and/or as a result of the EP not adequately, or at all, carrying out or performing the legal services, the firm was not entitled to charge the Company at all; and/or due to the lump sum invoice not being compliant with section 291(1), the firm was not entitled to commence legal proceedings to recover legal costs by reason of section 289(1), of which non-compliance the practitioner was put on notice by the Committee after the proceedings were commenced, and further the practitioner maintained the proceedings, when he knew or ought to have known there was no basis for the proceedings to have been commenced and/or to be maintained.</p>	
<p>52/2019 Filed 15/04/2019</p>	<p>a) Professional misconduct by attempting to further the matter of his client, namely to procure a transfer of a Property into the client's name as the sole registered proprietor, by unfair and/or dishonest means contrary to rule 16(1) of the <i>Legal Profession Conduct Rules 2010</i> where the practitioner knew that the client held the Property in whole or in part, on trust with Ms A for the benefit of the client's three adult children (Children), and that the practitioner did not act for the Children prior to 29 December 2014, he:</p> <p>(i) wrote to Ms A with a partially-completed transfer of land form in respect of the Property in which the 'consideration' and 'transferee' panels were both left blank and demanded, alternatively requested, that Ms A execute the partially-completed transfer form to transfer the Property to an unspecified person or persons for an unspecified consideration, and when he:</p> <p>A. knew that his client had no right or authority as a joint trustee of the Property to require Ms A to do so or, alternatively, was recklessly indifferent as to whether the client had any such</p>	<p>Mediation 21/08/2019</p>

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>right or authority;</p> <p>B. intentionally failed to state that he acted for the client in her own right only and not for the Children;</p> <p>C. intentionally failed to disclose that the intended transferee of the Property was his client in her own right only;</p> <p>D. intentionally failed to disclose the reasons and circumstances for the proposed transfer of the Property;</p> <p>E. intentionally sought to convey the impression, knowing it to be false, that he acted for the Children;</p> <p>F. intentionally sought to convey the impression, knowing it to be false, that his demand or request to Ms A to execute the partially-completed transfer form was being made on behalf of the Children; and</p> <p>G. demanded or requested that Ms A execute the partially-completed transfer form in circumstances which the practitioner knew would constitute a breach of her duties as a joint trustee given his demand or request in actual fact was not made on behalf of the Children being the beneficiaries of the trust but rather on behalf of the client in her own right, alternatively, was made without regard to the need for Ms A to ensure she complied with her duties as trustee; and</p> <p>(ii) wrote to Ms A's solicitors and demanded, alternatively requested, that Ms A execute the transfer form which sought to transfer the Property to his client, and the practitioner:</p> <p>A. intentionally stated, knowing it to be false, that he acted on behalf of the Children and he had instructions from the client and the Children to apply to the Court to compel the transfer of the Property when in actual fact he acted</p>	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>only for the client in her own right;</p> <p>B. demanded or requested that Ms A execute the transfer form in circumstances which the practitioner knew would constitute a breach of her duties as trustee given that his demand or request was not made on behalf of the Children being the beneficiaries of the trust but rather on behalf of the client in her own right, alternatively was made without regard to the need for Ms A to ensure that she complied with her duties as trustee;</p> <p>C. attempted to improperly intimidate Ms A by demanding she sign and return the transfer form within 2 days, when there was no urgency, and by threatening to commence Court proceedings against her with the further threat of seeking indemnity costs against her without any reasonable basis, and without regard to the need for Ms A to ensure she complied with her duties as trustee.</p> <p>b) Professional misconduct by intentionally making false and/or misleading statements to Ms A's solicitors contrary to rule 37(1) of the Conduct Rules.</p> <p>c) Professional misconduct by acting for both the client and each of the Children from on or about 29 December 2014 in circumstances in which:</p> <p>(i) the interests of the client and the interests of the Children were adverse and there was a conflict or potential conflict of the practitioner's duties to act in the best interests of each of the client and the Children, individually and/or collectively as beneficiaries, in circumstances where the Children had not obtained independent legal advice concerning their rights as beneficiaries under the Trust Deed, such that they were unable to give, and the practitioner did not obtain, informed consent from each of the Children, nor from the client, contrary to rule 14 of the Conduct</p>	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>Rules;</p> <ul style="list-style-type: none"> (ii) the practitioner knew of the conflict or potential for conflict between the interests of the client and the Children, alternatively was recklessly indifferent, further alternatively, was grossly careless, as to whether there was a conflict or potential for conflict, between the interests of the client and the Children; and (iii) the practitioner failed to protect and preserve the interests of the Children unaffected by the interests of the client, contrary to rule 12 of the Conduct Rules. <p>d) Professional misconduct by:</p> <ul style="list-style-type: none"> (i) procuring and/or preparing or assisting with the preparation of, statutory declarations of Ms B and the client (2016 Statutory Declarations) which contained false and/or misleading statements, namely that the practitioner had never acted for any of the Children during the course of the matter, in circumstances where the practitioner knew, alternatively, was recklessly indifferent as to whether, the 2016 Statutory Declarations contained false and/or misleading statements; and (ii) misleading or attempting to mislead both the nominated investigator appointed by the Legal Profession Complaints Committee and the Committee by causing the 2016 Statutory Declarations to be provided to the Investigator in circumstances where the practitioner knew the 2016 Statutory Declarations contained false and/or misleading statements and doing so with an intention of misleading the Investigator and the Committee, or alternatively, was recklessly indifferent as to whether the 2016 Statutory Declarations contained false and/or misleading statements, and as to whether the Investigator and the Committee would be misled. <p>e) Professional misconduct by:</p> <ul style="list-style-type: none"> (i) knowingly making a Statutory Declaration (2018 Statutory Declaration) which contained false and/or misleading statements; 	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>alternatively, was recklessly indifferent as to whether the 2018 Statutory Declaration contained false and/or misleading statements; and</p> <p>(ii) misleading, or attempting to mislead, the Committee by causing the 2018 Statutory Declaration made by him to be provided to the Committee which he knew contained false and/or misleading statements and doing so with an intention of misleading the Committee; alternatively, was recklessly indifferent as to whether the 2018 Statutory Declaration contained false and/or misleading statements, and as to whether the Committee would be misled.</p>	
<p>60/2019 Filed 1/05/2019</p>	<p>a) Unsatisfactory professional conduct by not providing adequate disclosure to the client as to costs as required by sections 260 and 262 of the <i>Legal Profession Act 2008</i>.</p> <p>b) Professional misconduct by charging the client professional fees of \$27,500 (including GST) for the legal services, later varied by the practitioner to \$22,253 (including GST), that were excessive and included charges for work not in fact carried out by the practitioner; further or alternatively, included charges which were unreasonable and/or not properly chargeable in circumstances where a reasonable sum of costs to be charged for the work done by a reasonably competent and diligent practitioner was \$9,517 (including GST).</p> <p>c) Unsatisfactory professional conduct within the meaning of sections by providing a cheque to the sister of the client, made payable to the sister in the amount of \$60,500 from funds held in trust by the practitioner on behalf of the client (trust money) in circumstances where the sister had not yet executed her acceptance of an Enduring Power of Attorney (EPA) instrument as donee of the power of attorney from the client such that when the practitioner paid the trust money to the sister the EPA was not a valid and effective instrument and the sister was not a donee of the power for</p>	<p>Mediation 31/10/2019</p>

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>the client, and the practitioner paid the trust money to the sister without taking any steps to ensure that the EPA pursuant to which the trust money was released by the practitioner was a valid and effective instrument in that the sister had signed and accepted the EPA as the donee.</p> <p>d) Professional misconduct by preparing and issuing to the client at his request an itemised account dated 6 August 2011 (First Itemised Account) relating to tax invoice 0545 in the sum of \$27,500 (including GST) for the practitioner's fees for the legal services (Original Invoice), in circumstances where the practitioner knew the First Itemised Account was false and/or misleading and intended the client be misled by the First Itemised Account; alternatively, the practitioner was recklessly indifferent as to whether the First Itemised Account was false and/or misleading and as to whether the client would be misled by the First Itemised Account.</p> <p>e) Professional misconduct by preparing and sending a letter to the Legal Profession Complaints Committee regarding a complaint made by the client against the practitioner, in circumstances where the practitioner knew the letter was false and/or misleading and intended the Committee be misled by the letter; alternatively, the practitioner was recklessly indifferent as to whether the letter was false and/or misleading and as to whether the Committee would be misled by the letter.</p> <p>f) Professional misconduct by preparing and issuing to the client at his request an itemised account (Second Itemised Account) relating to tax invoice 0545C in the sum of \$27,544 (including GST) for the practitioner's fees for the legal services, in circumstances where the practitioner knew the Second Itemised Account was false and/or misleading and intended the client be misled by the Second Itemised Account; alternatively, the practitioner was recklessly indifferent as to whether the Second Itemised Account was false and/or misleading and as to whether the client would be misled by the Second Itemised Account.</p> <p>g) Professional misconduct by swearing and filing, or</p>	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>permitting to be filed, an Affidavit in Supreme Court of Western Australia costs assessment proceedings commenced by the client against the practitioner, in circumstances where the practitioner knew the Affidavit was false and/or misleading and intended the Supreme Court be misled by the Affidavit; alternatively, the practitioner was recklessly indifferent as to whether the Affidavit was false and/or misleading and as to whether the Supreme Court would be misled by the Affidavit.</p> <p>h) Professional misconduct by filing, or permitting to be filed, a bill of costs in the sum of \$22,253 (including GST, but excluding a claim for drafting the bill and preparing for and attending the taxation) (Bill of Costs) in the costs assessment proceedings, in circumstances where the practitioner knew the Bill of Costs was false and/or misleading and intended the Supreme Court be misled by the Bill of Costs; alternatively, the practitioner was recklessly indifferent as to whether the Bill of Costs was false and/or misleading and as to whether the Supreme Court would be misled by the Bill of Costs.</p> <p>i) Professional misconduct by not refunding to the client the sum of \$5,247, being the difference between the Original Invoice (\$27,500) and the Bill of Costs (\$22,253) for the practitioner's professional fees for the legal services.</p> <p>j) Professional misconduct by preparing and sending to the Committee Letters regarding a complaint made by the client against the practitioner, in circumstances where the practitioner knew the Letters were false and/or misleading and intended the Committee be misled by the Letters; alternatively, the practitioner was recklessly indifferent as to whether the Letters were false and/or misleading and as to whether the Committee would be misled by the Letters.</p> <p>k) Professional misconduct by preparing and sending to the Committee a Further Letter in response to a letter from the Committee regarding a conduct investigation pursuant to section 421(1) of the Act, and providing, or permitting to be provided, to the</p>	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>Committee with the Further Letter a witness statement from the practitioner's wife (wife; wife's Statement), in circumstances where the practitioner knew the Further Letter and the wife's Statement were false and/or misleading and intended the Committee be misled by the Further Letter and the wife's Statement; alternatively, the practitioner was recklessly indifferent as to whether the Further Letter and the wife's Statement were false and/or misleading and as to whether the Committee would be misled by the Further Letter and the wife's Statement.</p> <p>l) Professional misconduct by under cover of a letter to the Legal Practice Board of Western Australia and in response to a letter from the Board requesting further information in relation to the conduct investigation for the purposes of consideration by the Board's Professional Affairs Committee's (PAC) of the practitioner's application for the renewal of his local practising certificate, providing a copy of the Further Letter and a copy of the wife's Statement and preparing and sending to the Board an email (Email), in circumstances where the practitioner knew the Further Letter, the wife's Statement and the Email were false and/or misleading and intended the PAC be misled by the Further Letter, the wife's Statement and the Email; alternatively, the practitioner was recklessly indifferent as to whether the Further Letter, the wife's Statement and the Email were false and/or misleading and as to whether the PAC would be misled by the Further Letter, the wife's Statement and the Email.</p> <p>m) Professional misconduct by preparing and sending to the Committee a letter (November letter) in response to a letter from the Committee regarding the conduct investigation, and providing, or permitting to be provided, with the November letter a letter from the wife (wife's letter), in circumstances where the practitioner knew the November letter and the wife's letter were false and/or misleading and intended the Committee be misled by the November letter and the wife's letter; alternatively, the practitioner was recklessly</p>	

Application No.	Allegation	Status
	<p>indifferent as to whether the November letter and the wife's letter were false and/or misleading and as to whether the Committee would be misled by the November letter and the wife's letter.</p> <p>n) Professional misconduct by preparing, declaring and providing to the Committee a Statutory Declaration in response to a summons issued by the Committee pursuant to sections 520(1)(c), 520(1)(d), and 520(3) of the Act, in circumstances where the practitioner knew the Statutory Declaration was false and/or misleading and intended the Committee be misled by the Statutory Declaration; alternatively, the practitioner was recklessly indifferent as to whether the Statutory Declaration was false and/or misleading and as to whether the Committee would be misled by the Statutory Declaration.</p>	
85/2019 Filed 5/06/2019	Professional misconduct by illegal and dishonest conduct, in that she stole a total of \$1,967,741.51 from the trust account of a law practice of which she was an employee, for which she pleaded guilty to, and was convicted of, 9 indictable offences of stealing as a servant under section 378(7) of the <i>Criminal Code</i> (WA).	Programming orders made 25/06/2019, including that the proceeding be determined entirely on the documents
90/2019 Filed 20/06/2019	Unsatisfactory professional conduct in the course of participating in two interviews on radio, that is, the practitioner made public comment about a criminal matter in which the practitioner was professionally engaged, and did not give a fair and objective account of the matter in a manner consistent with the maintenance of the good reputation and standing of the legal profession; and/or attempted to further the client's matter by unfair means.	Directions hearing 23/07/2019
92/2019 Filed 24/06/2019	Professional misconduct by: a) failing to provide any or any proper advice to his clients (Executors and trustees of an Estate, with a duty to act in the best interests of the minor beneficiaries (trustees' duty)) as to the effect of and the risk of relying on the terms of a Heads of Agreement (HOA) prepared by the practitioner which, amongst other things, required that a one quarter share interest of minor beneficiaries be	Mediation 2/09/2019

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>registered on a certificate of title to a new property to be purchased by the mother of the minor beneficiaries and where the mother was to receive a portion of trust funds towards the purchase in circumstances where the transfer documentation prepared by the mother's solicitor named only the mother as the registered proprietor, including that the transfer would be contrary to the terms agreed in the HOA as the minor beneficiaries would not be registered on the certificate of title; the implications and risks of proceeding with the transfer on these terms, including the risks of releasing the trust sum to the mother to assist in the purchase of the new property on the basis only of a proposed caveat where such action was not in the best interests of the minor beneficiaries or consistent with the trustees' duty, their instructions to the practitioner and the terms agreed in the HOA, and the practitioner agreed to the transfer;</p> <p>b) between July 2016 (when the settlement of the new property was effected) and July 2018 failing to take any or any adequate steps to progress the registration of a transfer of a one quarter share in the new property from the mother to the Executors as trustees for the minor beneficiaries to ensure that the mother did not remain the sole registered proprietor on the title to the new property;</p> <p>c) failing to provide adequate costs disclosure in the conduct of the matter in breach of sections 260 and 262 of the <i>Legal Profession Act 2008</i>;</p> <p>d) acting for the Executors when he knew or ought reasonably to have known there was a conflict of interest, or potential conflict of interest, between the interests of the practitioner and the interests of the Executors in circumstances where he was subsequently informed by the Legal Profession Complaints Committee and a supervising practitioner of the conflict or potential conflict between his interests and those of the Executors and of the requirements of rules 15(2) and 15(3) of the <i>Legal Profession Conduct Rules 2010</i> and continued to act in a position of conflict by</p>	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>continuing to act for the Executors when he knew that there was a conflict or potential for conflict and he did not obtain fully informed consent in accordance with 15(4) of the Conduct Rules from the Executors and was in breach of his duty to act in the best interests of the Executors.</p>	
<p>93/2019 Filed 25/06/2019</p>	<p><u>ANNEXURE – A</u></p> <p>a) Professional misconduct in the course of acting as the independent children’s lawyer (ICL) in proceedings commenced by the husband seeking parenting orders in respect of the three children of the husband and the wife (Children) in that she failed to competently and diligently discharge her duties as the ICL, including to act with impartiality, procedural fairness and for the advancement of the Children’s interests by:</p> <ul style="list-style-type: none"> (i) failing to meet with or otherwise ascertain the views of the Children in respect to the parenting orders sought; (ii) from around August 2014 when she was in receipt of information she requested from the parties to enable her to issue subpoenas to obtain medical and other records pertaining to the Children to put before the Court to assist it with its determinations, and where a Single Expert Witness (SEW) was appointed by the Court in February 2015, failing to file any subpoenas until December 2015, as a result of which the SEW did not have all relevant information made available to him before preparing and presenting his September 2015 SEW report to the Court; and after receipt of the subpoenaed materials from February 2016, failing until after the proceedings were listed for hearing to seek an updated SEW report with reference to the subpoenaed materials; (iii) after receipt in November 2014 of information from a medical practitioner in respect of the husband’s conduct concerning the Children’s existing medication regime, which conduct was in breach, or had the potential to be in breach, of orders of the Court made in April 2014, 	<p>Directions hearing 23/07/2019</p>

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>failing to adequately, if at all, consider the information and to take any, or any adequate steps, where the conduct caused, or had the potential to cause, the Children not to receive medical treatment necessary for their diagnosed medical conditions;</p> <p>(iv) failing to take any, or any adequate, steps to facilitate the resolution of the dispute between the parties about the Children’s medication regime and seek to orders from the Court for independent medical reviews of the Children by paediatricians and other specialists in respect to their medication, in circumstances where the SEW had made recommendations that the Children be reviewed by independent medical professionals and that the husband be guided by those reviews in respect to the Children’s medication regimes; the treatment of the Children fell into a hiatus for reasons including the reluctance of medical practitioners to treat the Children where there was significant conflict between the parents’ wishes and/or where the husband had withdrawn his consent to treatment; and/or the wife brought to the practitioner’s attention the need for the Children to have medical attention;</p> <p>(v) failing to ensure that the best evidence was obtained by the practitioner, including by subpoena, and put before the Court to assist it in determining what was in the best interests of the Children;</p> <p>(vi) making statements and assertions of belief or opinion about the wife which were offensive, insulting, provocative and intemperate; made without any, or any reasonable, factual foundation for the belief or opinion being given; not consistent with her role as the ICL in being impartial and objective; and/or inappropriate for the advancement of the Children’s best interests in the proceedings;</p> <p>(vii) acting in a discourteous, insulting and/or intemperate manner towards the wife, including in respect to the wife’s attempts to</p>	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>discuss with the practitioner matters relating to the Children and the wife's concerns about the effect on the Children's health of the matters;</p> <p>(viii) failing to ascertain if the proceedings were ready to proceed to trial in February 2017, including agreeing to the matter being listed mother's solicitor without:</p> <ul style="list-style-type: none"> A. having met with the Children at all since her appointment as ICL B. obtaining updated medical evidence; C. obtaining an updated report from the SEW in light of changed circumstances in relation to the children's living arrangements, medical treatment and schooling, all of which was known to the practitioner, <p>and opposing an adjournment of the hearing in circumstances where the proceedings were not ready to proceed to trial including as a result of the practitioner's failure, as ICL, to facilitate the proceedings progressing in a competent and diligent manner.</p> <p><u>ANNEXURE – B</u></p> <p>a) Professional misconduct by in the course of acting for her client in the Family Court seeking parenting orders in respect of the three children of the client and the client's former spouse, by:</p> <ul style="list-style-type: none"> (i) failing to act upon the client's proper and competent instructions and to progress the proceedings in a competent and diligent manner, by failing to seek final orders in the Court for equal shared care of the Children, consistent with the client's instructions and wishes, which instructions from November 2016 were also consistent with the recommendations of the Single Expert Witness (SEW) and from May 2016 by failing to negotiate a settlement of the proceedings on terms consistent with the client's instructions in circumstances where in May 2016 and again in January 2017 the spouse offered to settle the proceedings on terms acceptable to, and 	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>consistent with the proper and competent instructions of, the client for equal shared care of the Children, which increased the proper costs to the client.</p> <p>(ii) preparing and filing in the proceedings a Form 2 application for orders that the Children live with the client and the spouse have only supervised contact and seeking an urgent hearing date in circumstances where:</p> <ul style="list-style-type: none"> A. the orders sought were contrary to the SEW recommendation and to the principle that a child's best interests are met by having a meaningful relationship with both parents, both of which the Court would give weight to in considering the application; B. there had been a delay of some 7 months since the SEW recommendation was made to the date of the practitioner filing the application; C. there was no, or no adequate, evidence that the circumstances of the parties had changed since the SEW recommendation was made, which would provide a reasonable basis on which to make the application; D. the practitioner knew, or ought to have known, that the application would be unsuccessful and failed to adequately, or at all, advise the client of this in light of the above matters; and E. the application increased the proper costs to the client. <p>(iii) by failing to communicate with the client in a courteous and professional manner, as well as failing to respond to his communications in breach of the practitioner's duty to treat the client fairly and in good faith, having regard to the client's dependence on, and high trust in, her and encroaching on the client's private and social life in a manner that had the potential to compromise the practitioner's integrity and to</p>	

<i>Application No.</i>	<i>Allegation</i>	<i>Status</i>
	<p>bring the profession into disrepute.</p> <p>b) Professional misconduct by:</p> <p>(i) in November 2014 preparing and sending to the Principal Registrar of the Court a letter in which the practitioner made a false and/or misleading statement which the practitioner well knew was false and/or misleading and/or that it had the potential to mislead the Court and the practitioner intended that the Court be misled; alternatively, the practitioner acted with reckless disregard or indifference; further alternatively was grossly careless, as to whether or not the statement was false or misleading, or both, and/or had the potential to mislead the Court and as to whether the Court would be misled by the Statement;</p> <p>(ii) failing until October 2018 to correct the record of the Court in circumstances where by letter to the practitioner dated December 2014 the spouse's solicitor had drawn to the practitioner's attention the false and/or misleading nature of the Statement and invited the practitioner to correct the Court record</p>	

5.2 Review Applications

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

There were three Review Applications filed during the year and five applications pending from the

previous period, four of which were dismissed by SAT. Four Review Applications remain pending.

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

<i>Review Applications</i>	<i>Total</i>
Pending as at 1 July 2018	5
Lodged during year	3
Withdrawn	0
Dismissed	4
Pending as at 30 June 2019	4

An aggrieved person may review either a decision of the Committee or a decision made by the Law Complaints Officer using the delegated powers of the Committee. A comparison of the decisions that have been the subject of review proceedings since 14/15 is

produced below, and shows no real trend or indication as to the type of decision likely to attract review (noting that in the 18/19 period the Law Complaints Officer was not called upon to make any dismissals using the delegated powers of the Committee).

<i>Types of Decisions Reviewed</i>	<i>Total 14 – 15</i>	<i>Total 15 – 16</i>	<i>Total 16 – 17</i>	<i>Total 17 – 18</i>	<i>Total 18 – 19</i>
Delegated Dismissal	0	1	1	0	0
Committee Decision	3	0	1	4	3
Total	3	1	2	4	3

Summary of SAT review applications pursuant to s 435 LPA determined 1.7.18 – 30.6.19

Application No. & Date determined	Applicant	Outcome
97/2018 7/08/2018	Name not published	Application for review dismissed
		<ul style="list-style-type: none"> Review proceeding pursuant to s 435(1)(a) of LPA. At a directions hearing on 7 August 2018 (with no appearance by complainant), His Honour Curthoys J delivered ex tempore reasons and dismissed the proceeding pursuant to s 47(2) of SAT Act.
41/2018 13/02/2019	Lee, Jeff	Application for review dismissed
		<p><i>Lee and Legal Profession Complaints Committee</i> [2019] WASAT 5 (13 February 2019)</p> <ul style="list-style-type: none"> Final decision in review proceeding pursuant to s 435(1)(a) LPA. On 6 September 2018, His Honour Curthoys J dismissed the complainant's interim application for, inter alia, access to access to a report from the practitioner's treating practitioner to the Committee included in Part B of Committee's book of relevant documents filed pursuant to s 24 of SAT Act. Curthoys J found that the report contained "protected matter" for purposes of s 3 of SAT Act and disclosure to complainant would not be in the public interest: <i>Lee and Legal Profession Complaints Committee</i> [2018] WASAT 91. As to the substantive review the Tribunal was satisfied it was in the public interest to dismiss the complaint.
150/2017 08/05/2019	Betts, Trevor	Application for review dismissed
		<p><i>Betts and Legal Profession Complaints Committee</i> [2019] WASAT 25 (8 May 2019)</p> <ul style="list-style-type: none"> Final decision in review proceeding pursuant to s 435(1)(a) LPA. On 27 June 2018, His Honour Curthoys J dismissed the complainant's interim application for access to documents subject to claim of legal professional privilege by practitioner on behalf of their client provided to Committee in course of its investigation of complaint and included in Part B of Committee's book of relevant documents filed pursuant to s 24 of the SAT Act on basis that those documents comprised/contained "protected matter" for purposes of s 3, SAT Act: <i>Betts and Legal Profession Complaints Committee</i> [2018] WASAT 55. As to the substantive review, the Tribunal was satisfied the Committee's decision to dismiss complaints was the correct and preferable decision and thus dismissed the complainant's application.
114/2018 04/06/2019	Lawson, Barry	Application for review dismissed
		<p><i>Lawson and Legal Profession Complaints Committee</i> [2019] WASAT 36 (4 June 2019)</p> <ul style="list-style-type: none"> Final decision in application for leave to review Committee's decision to dismiss complaints pursuant to s 435(2) LPA. The Tribunal dismissed the application.

5.3 Reports to the Full Bench of the Supreme Court

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

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

- On 21 March 2019 a Notice of Originating Motion was filed with the Supreme Court of Western Australia to remove Ronald William Bower from the roll of practitioners, but as at 30 June 2019 had not been determined but is listed for hearing on 31 July 2019.
- On 21 March 2019 a Notice of Originating Motion was filed with the Supreme Court of Western Australia to remove Nicholas Neil Peter Oud from the roll of practitioners, but as at 30 June 2019 had not been determined but is listed for hearing on 31 July 2019.

5.4 Appeals

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

- an appeal to the Court of Appeal of the Supreme Court (CACV 52 of 2017) by Ronald William Bower from a final SAT decision was dismissed: [2018] WASCA 222
- an appeal to the Court of Appeal of the Supreme Court (CACV 53 of 2017) by Ronald William Bower from a SAT penalty decision was dismissed: [2018] WASCA 222 [CACV 52 of 2017 and 53 of 2017 were consolidated].

Appeals lodged prior to the year, but which have not been determined as at 30 June 2019 were:

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

The following appeals were lodged during the year, but as at 30 June 2019 had not been determined:

- an appeal to the Court of Appeal of the Supreme Court by Arthur Metaxas from a final SAT decision and SAT penalty decision (CACV 84 of 2018).
- an appeal to the Court of Appeal of the Supreme Court by Christina Marie Chang from a SAT interim decision dismissing the practitioner's interim

application to set aside a SAT decision based on consent orders (CACV 109 of 2018).

- an appeal to the Court of Appeal of the Supreme Court by Michael Joseph Lourey from a Supreme Court decision dismissing the practitioner's interim application in contempt proceedings brought by the Committee (CACV 42 of 2019).
- an appeal to the Court of Appeal of the Supreme Court by Richard Bruce Whitwell from a mediated final SAT decision and SAT penalty decision (CACV 49 of 2019).

5.5 Other

An application for judicial review and writ of certiorari was filed against a former Law Complaints Officer in respect of a decision to issue a

summons to produce documents pursuant to section 520(1)(a) of the LP Act in an extant investigation, on which the Committee entered a conditional appearance.

An originating motion for contempt lodged prior to the year pursuant to section 520(8) of the LP Act in respect of a practitioner's failure to comply without lawful excuse with a summons to produce documents issued pursuant to section 520(1)(a) of the LP Act in an extant investigation had not been determined as at 30 June 2019.

5.6 Special Leave Applications

During the year there were no applications for special leave to appeal to the High Court filed and determined.

6. Promoting Professional Standards

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

As in previous years, the Committee has continued to be proactive in this regard.

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

Due to the RRT workloads, whether risk alert letters should be sent out was only assessed once during the year.

Also, the RRT Manager and LCO continued to issue expressions of concern to practitioners

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

The Committee's focus during the year has been on oral presentations at conferences and continuing professional development seminars, as well as to individual law firms and to university law students. This included presentations in the areas of Avoiding Complaints, Ethics, Costs and Billing, Conduct Rules, Elder Abuse and LPCC Processes.

Legal staff of the Committee also contributed through their membership of the Law Society's Costs and Mental Health and Wellbeing Committees.

7. Tables

TABLE 1 RAPID RESOLUTION INQUIRIES 2017 - 2019

TYPE OF INQUIRER 2017 - 2019

	<i>Total % 2016 – 2017</i>	<i>Total % 2017 – 2018</i>	<i>Total % 2018 – 2019</i>
Client/Formal Client	49.2	48.1	52.4
Friend/Relative of Client	8.1	6.2	4.4
Opposing party	21.8	21.9	22.5
Beneficiary/Executor/Administrator	4.4	5.7	4.6
Practitioner on own behalf	4.0	4.1	2.7
Practitioner on another's behalf	1.7	2.2	1.6
Other	10.7	11.8	11.9

INQUIRIES BY AREAS OF LAW 2017 - 2019

	<i>Total % 2016 – 2017</i>	<i>Total % 2017 – 2018</i>	<i>Total % 2018 – 2019</i>
Family/Defacto Law	30.7	31.4	37.5
Civil Litigation	15.4	13.4	13.2
Conveyancing	3.0	3.2	1.9
Leases / Mortgages / Franchises	1.7	3.2	1.5
Probate/Wills/ Family Provisions	11.2	13.1	10.7
Commercial/Corporations Law	2.2	4.0	5.5
Criminal	8.7	7.8	6.2
Personal Injuries	4.2	3.0	3.7
Workers Compensation	5.7	4.4	3.3
Victims Compensation	0.2	0.8	1.6
Employment / Industrial Law	3.0	2.9	3.4
Other	11.9	12.7	11.5

TABLE 1 RAPID RESOLUTION INQUIRIES 2017 - 2019

INQUIRIES BY AREAS OF INQUIRY 2017 - 2019

	<i>Total % 2016 – 2017</i>	<i>Total % 2017 – 2018</i>	<i>Total % 2018 – 2019</i>
Cost/Payment Issues			
Failure to Pay Third Party	0.1	0.5	0.4
Overcharging	13.1	13.8	7.6
No Costs Disclosure	2.9	2.9	1.8
Transfer Costs Without Authority	0.8	0.4	0.3
Failure / Delay to Provide a Detailed Account	1.2	1.4	1.1
Other Costs Complaint	10.1	9.8	14.3
Subtotal	28.2	28.7	25.5
Communication/Service			
Act Without / Contrary to Instructions	1.2	1.8	2.1
No Communication	10.3	9.7	9.6
Failure to Carry Out Instructions	4.1	4.6	3.8
Delay	7.8	7.6	5.5
Lack of Supervision	0.5	0.5	0.3
No Client Advice	0.9	0.6	1.7
No Advice on Progress	0.8	1.3	1.4
Discourtesy	3.7	5.2	2.5
Neglect	1.2	2.6	1.6
Subtotal	30.4	34.1	28.6
Personal Conduct			
Unethical Conduct	12.0	9.1	14.6
Negligence	3.8	4.5	3.9
Misleading	1.2	1.8	2.6
Conflict of interest	2.9	3.1	3.4
Failure to Transfer Documents	0.7	0.7	0.4
Communicating with a Client of Another Solicitor	0.1	0.3	0.1
Threatening Behaviour	2.1	2.6	1.6
False Swearing of Documents	0.2	0.2	0.1
Breach Confidentiality	0.5	0.9	0.8
Undue Pressure	0.6	0.2	0.6
Alteration of Documents	0.1	0.2	0.1
Liens	0.9	0.9	1.1
Subtotal	24.9	24.4	29.0
Other	16.5	12.8	16.8

TABLE 1 RAPID RESOLUTION INQUIRIES 2017 - 2019

RESOLUTION OF INQUIRY 2017 - 2019

	<i>Total % 2016 – 2017</i>	<i>Total % 2017 - 2018</i>	<i>Total % 2018 – 2019</i>
Conciliated Outcome			
Fee waiver	1.4	1.1	1.2
Apology	1.2	1.7	0.6
Undertaking	0.0	0.2	0.1
Discounted fees	8.7	5.9	4.4
Release of lien	1.0	0.4	0.4
Withdrawn	0.6	1.3	2.7
Improved communication	5.2	4.3	2.7
Improved legal practice, training, supervision, mentoring or management systems	2.9	1.5	0.7
Other	0	0	0
Subtotal	20.9	16.4	12.9
No Further Action			
Accepted Committee / practitioner's response	17.9	22.3	14.8
Brochures provided	11.8	5.3	2.9
Suggested direct approach to practitioner	5.7	5.3	1.8
No further information provided	14.5	24.1	32.1
Advised to get legal advice	7.1	5.7	6.3
Misconceived	3.3	4.4	4.4
Other	10.1	8.5	13.7
Subtotal	70.4	75.6	76.0
Expression of Concern issued	6.3	5.6	5.2
Part/Whole inquiry resolved per above category, but referred for investigation	0.3	0.2	0.4
Referred for investigation	2.0	2.2	5.5
Referred for formal determination s415 / s425	0.1	0.2	0.1
Subtotal	8.7	8.1	11.2

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION INQUIRIES 2017 - 2019

	<i>Total 2016 – 17</i>	<i>Total 2017 – 18</i>	<i>Total 2018 – 19</i>
Complaints	56	37	59
Conduct Investigations	10	25	24
Rapid Resolution inquiries	1479*	1337**	1146***
Total	1545	1399	1229

* Does not include 197 miscellaneous inquiries

** Does not include 217 miscellaneous inquiries

*** Does not include 118 miscellaneous inquiries

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2017 - 2019

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
Client / former client	14 (21.2)	19 (30.6)	25 (30.1)
Client's friend / relative	3 (4.5)	4 (6.5)	0
Opposing party	15 (22.7)	7 (11.3)	12 (14.5)
Beneficiary / executor / administrator	2 (3.0)	2 (3.2)	5 (6)
Practitioner on own behalf	3 (4.5)	1(1.6)	8 (9.6)
Practitioner on another's behalf	2 (3.0)	0	3 (3.6)
Legal Practice Board	0	0	0
Other	17 (25.8)	4 (6.5)	5 (6)
Court Enquiry	0	6 (9.7)	1 (1.2)
Other Investigation	10 (15.2)	19 (30.6)	23 (27.7)
Total	66	62	83

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2017 - 2019

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
Family/Defacto law	15 (21.7)	17 (23.0)	21 (23.1)
Civil Litigation	11 (15.9)	8 (10.8)	11 (12.1)
Conveyancing	0	3 (4.1)	7 (7.7)
Leases/Mortgages/Franchises	1 (1.4)	3 (4.1)	3 (3.3)
Probate/Wills/Family Provisions	11 (15.9)	11 (14.9)	11 (12.1)
Commercial/Corporations Law	1 (1.4)	4 (5.4)	4 (4.4)
Criminal law	7 (10.1)	10 (13.5)	11 (12.1)
Personal injuries	6 (8.7)	0	3 (3.3)
Workers Compensation	1 (1.4)	2 (2.7)	0
Victims Compensation	0	0	3 (3.3)
Employment/Industrial law	4 (5.8)	0	2 (2.2)
Professional negligence	0	0	0
Land and Environment	1 (1.4)	0	0
Immigration	1 (1.4)	0	0
Other	10 (14.5)	16 (21.6)	15 (16.5)

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2017 - 2019

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
Cost/Payment issues			
Failure to pay third party	1 (0.7)	1 (0.6)	2 (0.9)
Overcharging	8 (5.8)	15 (9.0)	10 (4.3)
No costs disclosure	6 (4.4)	9 (5.4)	8 (3.4)
Transfer costs without authority	2 (1.5)	2 (1.2)	5 (2.1)
Failure/delay to provide a detailed account	1 (0.7)	0	2 (0.9)
Other cost complaint	9 (6.6)	8 (4.8)	10 (4.3)
Subtotal	27 (19.7)	35 (21.1)	37 (15.9)
Communication/Service			
Act without/contrary to instructions	2 (1.5)	8 (4.8)	11 (4.7)
No communication	4 (2.9)	6 (3.6)	7 (3.0)
Failure to carry out instructions	6 (4.4)	7 (4.2)	12 (5.2)
Delay	3 (2.2)	12 (7.2)	18 (7.7)
Lack of supervision	1 (0.7)	2 (1.2)	3 (1.3)
No client advice	5 (3.6)	4 (2.4)	10 (4.3)
No advice on progress	0	1 (0.6)	7 (3.0)
Discourtesy	10 (7.3)	9 (5.4)	13 (5.6)
Neglect	2 (1.5)	2 (1.2)	9 (3.9)
Subtotal	33 (24.1)	51 (30.7)	90 (38.6)
Personal Conduct			
Unethical conduct	26 (19.0)	12 (7.2)	24 (10.3)
Negligence	6 (4.4)	2 (1.2)	0
Misleading	8 (5.8)	11 (6.6)	17 (7.3)
Conflict of interest	7 (5.1)	11 (6.6)	15 (6.4)
Failure to transfer documents	1 (0.7)	0	0

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
Communicating with a client of another solicitor	0	0	2 (0.9)
Threatening behaviour	4 (2.9)	3 (1.8)	3 (1.3)
False swearing of documents	0	0	0
Breach confidentiality	0	1 (0.6)	2 (0.9)
Failure to assist LPCC	1 (0.7)	0	1 (0.4)
Undue pressure	1 (0.7)	1 (0.6)	1 (0.4)
Alteration of documents	1 (0.7)	0	1 (0.4)
Liens	0	1 (0.6)	0
Subtotal	55 (40.1)	42 (25.3)	66 (28.3)
Non-Compliance			
Not complying with undertaking	0	2 (1.2)	2 (0.9)
Practising without a practice certificate	0	2 (1.2)	2 (0.9)
Not complying with Legal Profession Act/Regulations	2 (1.5)	3 (1.8)	9 (3.9)
Subtotal	2 (1.5)	7 (4.2)	13 (5.6)
Trust Account Matters			
Breach of Sections of Act / Regulations relating to trust monies	5 (3.6)	8 (4.8)	7 (3.0)
Misappropriation	0	1 (0.6)	1 (0.4)
Failure to account	4 (2.9)	3 (1.8)	2 (0.9)
Other – Trust Account Matters	0	1 (0.6)	2 (0.9)
Subtotal	9 (6.6)	13 (7.8)	12 (5.2)
Other	11 (8.0)	18 (10.8)	15 (6.4)

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2017 - 2019

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
Barrister	8 (12.1)	2 (3.2)	3 (3.6)
Sole Principal	30 (45.5)	37 (59.7)	40 (48.2)
Other Principal	8 (12.1)	7 (11.3)	15 (18.1)
Non Principal	10 (15.2)	7 (11.3)	9 (10.8)
Government Legal Position	0	0	1 (1.2)
Corporate Legal Position	0	0	1 (1.2)
Firm only	0	0	0
Struck off/suspended	0	0	0
Other	10 (15.2)	9 (14.5)	14 (16.9)
Total	66	62	83

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2017 - 2019

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
CBD/West Perth	40 (60.6)	34 (54.8)	38 (45.8)
Suburbs	20 (30.3)	23 (37.1)	42 (50.6)
Country	2 (3.0)	3 (4.8)	3 (3.6)
Interstate	4 (6.1)	1 (1.6)	0
Not known	0	1 (1.6)	0
Total	66	62	83

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2017 - 2019

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
Under 5	0	4 (6.5)	7 (8.4)
5 – 9	14 (21.2)	5 (8.1)	21 (25.3)
10 –14	22 (33.3)	11 (17.7)	13 (15.7)
15 – 19	8 (12.1)	13 (21.0)	12 (14.5)
20 – 24	1 (1.5)	5 (8.1)	10 (12.0)
25 – 29	5 (7.6)	3 (4.8)	7 (8.4)
30 – 34	6 (9.1)	8 (12.9)	4 (4.8)
35 – 39	6 (9.1)	5 (8.1)	6 (7.2)
Over 40	1 (1.5)	5 (8.1)	2 (2.4)
Not known/Not applicable	3 (4.5)	3 (4.8)	1 (1.2)
Total	66	62	83

TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2017 - 2019

	<i>Total % 2016 – 17</i>	<i>Total % 2017 – 18</i>	<i>Total % 2018 – 19</i>
Under 25	0	0	2 (2.4)
25 – 29	1 (1.5)	1 (1.6)	3 (3.6)
30 – 34	6 (9.1)	1 (1.6)	11 (13.3)
35 – 39	6 (9.1)	6 (9.7)	6 (7.2)
40 – 44	6 (9.1)	6 (9.7)	6 (7.2)
45 – 49	4 (6.1)	9 (14.5)	8 (9.6)
50 – 54	10 (15.2)	4 (6.5)	13 (15.7)
55 – 59	11 (16.7)	11 (17.7)	13 (15.7)
60 – 64	8 (12.1)	8 (12.9)	11 (13.3)
65 – 69	5 (7.6)	10 (16.1)	6 (7.2)
70 – 75	2 (3.0)	2 (3.2)	2 (2.4)
76 – 80	3 (4.5)	1 (1.6)	1 (1.2)
81+	0	0	0
Not known/Not applicable	4 (6.1)	3 (4.8)	1 (1.2)
Total	66	62	83

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2017 - 2019

	<i>Total 2016 – 17</i>	<i>Total 2017 – 18</i>	<i>Total 2018 – 19</i>
Practitioners with 1 complaint	50	51	61
Practitioners with 2 complaints	4	4	5
Practitioners with 3 or more complaints	2	1	3
Total number of practitioners	56	56	69

TABLE 11 OUTSTANDING COMPLAINTS 2017 - 2019

	<i>Total 2016 – 17</i>	<i>Total 2017 – 18</i>	<i>Total 2018 – 19</i>
Outstanding complaints	98	69	77
Outstanding conduct investigations	29	28	29
Total	127	97	106

8. Information Statements

8.1 Freedom of Information Act

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

8.2 Public Interest Disclosure

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

No public interest disclosures were received during the relevant period.



Freedom of Information Act 1992 Information Statement

1. INTRODUCTION

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

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

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

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

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

2. STATEMENT OF STRUCTURE AND FUNCTIONS

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

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

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

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

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

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

Our Process

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

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

Organisational Structure

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

3. PUBLIC PARTICIPATION IN AGENCY FUNCTIONS

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

4. INFORMATION HELD BY THE COMPLAINTS COMMITTEE

Publications

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

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

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

Documents

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

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

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

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

5. PROCEDURES FOR FOI ACCESS

Freedom of Information Officer

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

Submitting an FOI request

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

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

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

A valid FOI application needs to:

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

The FOI Process

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

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

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

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

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

Access Charges

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

In addition, other fees may apply for:

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

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

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

Procedure for Amending Personal Information

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

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

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

6. INTERNAL REVIEW RIGHTS

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

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

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

Applications for internal review can be made to:

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

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

No further fees apply to an application for internal review.

7. EXTERNAL REVIEW RIGHTS

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

Complaints lodged with the OIC must:

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

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

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

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

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

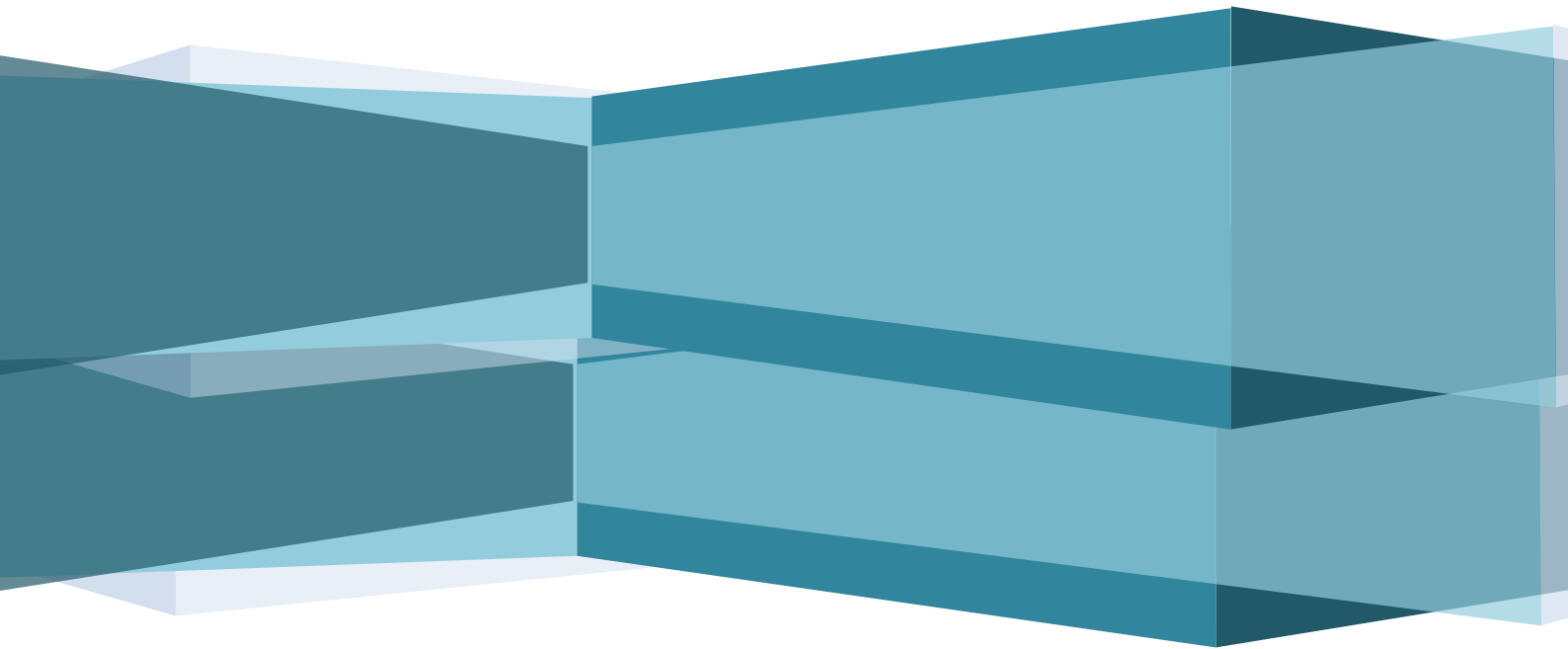
The OIC also provides assistance to members of the public and agencies on matters relevant to the FOI Act.

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

8. STATEMENT REVIEW

This FOI Information Statement is current as at July 2019 and is reviewed annually.





LPCCWA

Level 6, 111 St Georges Terrace, Perth WA 6000
Post Office Box Z5293, St Georges Terrace, Perth WA 6831
Ph: 08 6211 3699 Fax: 08 6211 3650
Email: lpcc@lpbwa.com Web: www.lpbwa.org.au