

**LEGAL PRACTITIONERS COMPLAINTS COMMITTEE
WESTERN AUSTRALIA**

**ANNUAL REPORT
1 JULY 2003 TO 30 JUNE 2004**

**2ND FLOOR
COLONIAL BUILDING
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ANNUAL REPORT
OF THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE
FOR THE YEAR ENDED 30 JUNE 2004

A. Chairman's Report

The Committee is established by the Legal Practice Act 2003, which came into effect on 1 January 2004, replacing the Legal Practitioners Act 1893. The Committee's functions and powers are similar to those which applied under the previous legislation.

The Committee previously had jurisdiction to enquire into unprofessional or illegal conduct, or neglect or undue delay in the course of the practice of the law. Under the new Act, the Committee can enquire into unsatisfactory conduct, which includes each of these categories and, in addition, substantial incompetence and lack of diligence, and a breach of the provisions of the new Act or its rules.

The investigative powers of the Committee have been increased under the new Act. It can now require practitioners to provide information which is the subject of legal professional privilege, and can require a practitioner to provide a written statement on oath.

The new Act also, for the first time, prohibits practitioners who have been struck from the roll, from representing persons before any court or Tribunal, or from acting as an executor or trustee of any will or trust without the leave of the Supreme Court.

The Legal Practice Board and the Committee are separate, but related, bodies under the new Act. Their relationship arises from the fact that the Committee consists principally of persons appointed by the Board from amongst its members, the affairs of the Committee are managed by the Law Complaints Officer who is appointed by the Board and the Board funds the operating costs of the Committee, including the employment of staff, other than its accommodation costs which are met by the Government.

Under Section 164(1)(a) of the Act the Committee has specific responsibility to supervise the conduct of legal practitioners and the practice of the law. The Board in turn has certain specific powers under the Act, in relation to the regulation of the legal profession, which are not expressed in a single provision of the Act, but are distributed throughout it. For example, the new Act enables the Board to conduct an enquiry into whether a practitioner is incapable or otherwise unfit to practice law.

There is thus both an overlap and a relationship between the functions of the two bodies.

The Board and Committee are united by a common goal, namely, the efficient regulation of the legal profession, in the public interest. A protocol concerning the exchange of information between the Board and the Committee, to facilitate the performance by each body of their respective statutory functions under the new Act, has been proposed to the Board.

I express my gratitude to Committee members for their considerable work during the year. The legal members receive no fee and sit on the Committee as a service to the public and in the interests of maintaining professional standards.

Finally, I express my thanks to the Law Complaints Officer and her staff for their very considerable assistance to the Committee throughout the year.

C L Zelestis QC
Chairman
December 2004

B. Report from the Law Complaints Officer

It has been another very busy year for the Committee and my staff.

The primary purpose of the Committee is protection of the public. This requires that complaints and other conduct enquiries be dealt with in a timely manner. To do this, it is necessary that the complaints system be adequately resourced.

During the last three reporting years the Committee has issued a total of about 150 References against practitioners for hearing before the Legal Practitioners Disciplinary Tribunal. This number includes multiple References against some practitioners, generally those that the Tribunal subsequently resolved at the conclusion of hearing the References should be suspended from legal practice and a report made to the Full Court, with a recommendation that the practitioner be struck from the roll. Practitioners who fell into this category during the last two reporting periods are referred to in the body of this Report. Every Reference must be got up for hearing and proved to the necessary standard. This requires a significant allocation of staff resources. This number of References also reflects the steady increase in substantive complaints, in line with the growth of the profession, which require careful investigation and consideration by the Committee.

In previous Reports the Committee has reported on staff shortages arising from a lack of sufficient office accommodation. The additional office space which became available in August last year enabled the employment of further legal officers but was not sufficient to satisfactorily address the backlog and meet future needs. There is a need for extra office space and additional investigative staff to meet the current volume of complaints and prosecution commitments. The Board has been sympathetic and supportive of the staffing needs of my office, but constrained by a lack of sufficient office space to accommodate staff.

I have advised the Board of the estimated staff and accommodation needs of the Committee for the next two years.

I am also working with my staff on establishing appropriate staff/workload ratios and benchmarks of preferable time frames for handling complaints, with a view to establishing a framework to assess future staffing needs and budgetary requirements.

A good complaints system should also feed back to the profession information on conduct issues to assist, where possible, in raising professional standards and, hopefully, reduce complaints. This falls within the Committee's broad function under the Act which is "*to supervise the conduct of legal practitioners and the practice of the law*". I have requested that the Board employ an ethics and education officer to the Committee's office for this purpose.

It is clear that a number of complaints were made simply because of ineffective communications from the practitioner to his/her client. Practitioners should be mindful of their obligation to keep clients fully informed. This difficulty extended in some instances to a lack of adequate communications by practitioners with the Committee. As a result the Committee has developed a brochure providing guidelines to practitioners about communicating with the Committee.

In the interests of public accountability the Committee has resolved that the published findings of the Legal Practitioners Disciplinary Tribunal made within the last five years should be placed on the Committee's website with a notice that earlier decisions of the Tribunal are available by email enquiry to my office. Such findings are, of course, already available by enquiry from the Registry of the Legal Practitioners Disciplinary Tribunal. The Board has also been requested to place on the website a list of practitioners struck from the roll.

The Law Society has taken the positive step of implementing a Law Care program for practitioners who are experiencing personal difficulties which, obviously, may impact upon their ability to practice law. I have recommended to the Board that it provide a Law Care card to all practitioners when it issues annual practising certificates.

Finally, I would like to express my sincere appreciation to the staff for their hard work and professionalism throughout a very demanding year.

D Howell
Law Complaints Officer
December 2004

C. The Committee

FUNCTIONS

The Legal Practitioners Complaints Committee (*“the Committee”*) was created by amendments to the Legal Practitioners Act 1893 (*“the old Act”*) which came into effect on 1 February 1993.

On 1 January 2004 the old Act was replaced by the Legal Practice Act 2003 (*“the new Act”*). The structure and role of the Committee is largely unchanged under the new Act.

The Committee’s functions, under Section 164 of the new Act, are substantially the same, except that the purpose of enquiring into complaints and other conduct issues is to determine whether a practitioner’s conduct may constitute *“unsatisfactory conduct”*, rather than whether conduct may constitute unprofessional or illegal conduct or neglect or undue delay in the course of the practice of the law, as was the case under Section 25 of the old Act.

The definition of unsatisfactory conduct is inclusive, not exclusive. It is defined in Section 3 of the new Act to include:

- (a) unprofessional conduct;
- (b) illegal conduct;
- (c) neglect or undue delay in the course of legal practice;
- (d) a contravention of the new Act, the regulations or the rules; and
- (e) conduct occurring in connection with legal practice that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

The Committee’s functions are:

- (a) to supervise the conduct of legal practitioners and the practice of the law;
- (b) to receive and enquire into complaints from the Attorney General, the Legal Practice Board (*“the Board”*), the Law Society of Western Australia, any practitioner or any other person who has a direct personal interest in the matters alleged in the complaint;
- (c) to investigate of its own volition, whether the Committee has received a complaint or not, any conduct on the part of a practitioner or matters relating to legal practice for the purpose of determining whether it may constitute unsatisfactory conduct (or unprofessional or illegal conduct, or neglect or undue delay in the course of the practice of the law under the old Act);
- (d) where appropriate, to conciliate complaints;

- (e) if the practitioner consents, to exercise its summary professional disciplinary jurisdiction;
- (f) to commence disciplinary proceedings against practitioners before the Legal Practitioners Disciplinary Tribunal (“the Tribunal”), or related proceedings before the Supreme Court of Western Australia;
- (g) to supervise and direct the functions of the Law Complaints Officer (a practitioner appointed by the Board to assist the Committee); and
- (h) to make recommendations in respect of the Act insofar as they affect the functions of the Committee.

Under the new Act the Committee’s jurisdiction is in respect of “*legal practitioners*”, and the definition of “*legal practitioners*” in the new Act is broader than “*practitioner*” in the old Act.

In the old Act the Committee had jurisdiction to supervise and enquire into complaints regarding “*practitioners*”, which was defined to mean a person admitted and entitled to practice as a barrister and solicitor in the Supreme Court of Western Australia, including a person who has been a practitioner, and a person authorized under a law of the Commonwealth to practice law in this State. “*Legal practitioner*”, as it is in the new Act, is defined to include:

- (a) Any legal practitioner including one without a current practice certificate;
- (b) A person who was a legal practitioner;
- (c) A deceased legal practitioner;
- (d) A person authorized under a law of the Commonwealth to carry out the functions of a barrister or solicitor in this State;
- (e) Interstate practitioners engaging in legal practice in this State;
- (f) A person who was an interstate practitioner engaged in legal practice in this State when the conduct the subject of the enquiry occurred. Under Section 95 the Committee may refer a complaint lodged with it in relation to a local or interstate practitioner to a regulatory authority of another State.
- (g) A person who is a registered foreign lawyer and a person who was a registered foreign lawyer when the alleged unsatisfactory conduct occurred.

MEMBERS

The composition of the Committee remains the same under Section 163 of the new Act which requires that the Committee consist of:

- (a) a Chairperson and not less than six other practitioners appointed by the Board from amongst its membership; and

- (b) not less than two other persons as representatives of the community, none of whom shall be a person who is or has been a practitioner.

Community representatives are appointed by the Attorney General after consultation with the Minister responsible for consumer affairs.

Mr C L Zelestis QC was the Chair of the Committee. Mr K J Martin QC, formerly a member of the Committee, was appointed the Deputy Chair of the Committee on 5 May 2004 in place of Mr A S Stavrianou, who retired from the Committee on 6 April 2004.

Other practitioners who were members of the Committee during the period of the report were:

Messrs R H B Pringle QC (until 30 June 2004), R E Birmingham QC and T F Percy QC (until 26 May 2004); Ms J Crisford SC (until 6 February 2004); Messrs E M Corboy SC, A N Siopis SC and S D Hall SC and Ms F B Walter (all from 27 May 2004); Messrs T H Sharp, J G Syminton and M T Ritter.

The community representatives were Ms J Dudley, Mr S J Hardie (until 12 October 2003) and Mrs R V Kean who was a deputy community representative until her appointment as a community representative on 1 December 2003.

The deputy community representatives were Mr K G Langdon and Ms G J Walker (from 9 February 2004).

The community representatives may report independently to the Attorney General on any aspect of a complaint or other conduct enquiry or the rules, the activities of the Law Complaints Officer or the Committee.

At least one community representative must be present at each Committee meeting in order to constitute a quorum.

The Committee sits as two divisions in order to share the workload. Each division meets monthly to consider complaints and other conduct investigations that are referred to it.

As is apparent under both the new Act and the old Act, although the legal members of the Committee are appointed by the Board, the Committee is a statutory body having statutory functions which are independent of the Board.

MEETINGS

Throughout the period under review the Committee met on 25 occasions.

STAFF

The office of the Law Complaints Officer remains unchanged under the new Act. The Law Complaints Officer is a lawyer appointed by the Board to assist the Committee and may, subject to the directions of the Committee, exercise the functions of the Committee, other than the exercise of its summary professional disciplinary jurisdiction. The Law

Complaints Officer is a statutory office with statutory powers and acts under the general supervision of the Committee, not the Board.

The Law Complaints Officer, Ms D Howell, was assisted by six practitioners employed by the Board, of whom two were employed in October 2003. The practitioners were Ms C F M Coombs, Mr D Peterson, Ms K Williams, Ms J King, Ms R Tapper and Ms G McCahon (or a relief legal officer). Five support staff were also employed in the Law Complaints Officer's office, of whom one was employed in May 2004.

D. The Complaints

INFORMAL ENQUIRIES OR COMPLAINTS

During the period under review the Law Complaints Officer and her staff received complaints or enquiries by telephone or in person from approximately 1683 people or organisations, a decrease of 6.2% over the previous year. Of that total, 57 represented personal visits and the remaining 1,626 represented telephone enquiries. Many callers telephoned on more than one occasion to discuss an ongoing matter of concern but only the initial telephone call is included in these statistics.

These figures include those enquiries that were precursors to formal complaints. Some were simply requests for information on how to make a complaint and how complaints are investigated. Many callers wished to discuss informally concerns in respect of the conduct of a legal matter on their behalf.

It was possible to resolve several conduct concerns informally. For example:

- Practitioner A represented a client who claimed not to have received the whole of his file from his former solicitor, practitioner B. He wished to inspect the remainder of the file held by practitioner B who maintained that the client had received all the documents to which he was entitled. Following contact from the Law Complaints Officer's office practitioner B agreed to co-operate by allowing inspection of the remainder of his file by practitioner A.
- A family law practitioner, practitioner A, left the employ of practitioner B leaving the practice of practitioner B with no expertise in family law. Without that expertise practitioner B correctly decided that he could no longer competently represent a client, but refused to hand the client's file to practitioner A who had taken over instructions from the client, in circumstances where a Family Court trial was imminent. The client owed substantial fees in respect of which practitioner B sought to exercise a lien. The matter was conciliated by practitioner B agreeing to release the file upon receiving an undertaking that practitioner A would preserve the lien and return the file intact upon completion of the trial.

In those cases where the enquiry or complaint involved a possible conduct concern, or was not a matter that could be resolved by telephone, the client was invited to make a written complaint or to make an appointment to see the Law Complaints Officer's staff to further discuss the matter.

WRITTEN COMPLAINTS

i) The number of complaints

The Committee received a total of 509 written complaints, an increase of 40 over the previous year.

Most were initiated by a letter of complaint but some were initiated by a statement of complaint prepared by the Law Complaints Officer's staff following a telephone call or visit to the office.

In addition, the Law Complaints Officer or the Committee itself initiated an enquiry into 31 matters in the absence of a complaint being received, an increase of 4 over the previous year. For the purpose of this report, these enquiries have been categorised as complaints by the Committee.

ii) The Complainants

As may be expected, clients or former clients of practitioners formed the largest group of complainants.

The second largest group of complainants comprised parties to legal proceedings in which the practitioner complained of acted for the opposing party. A substantial number of these complainants were involved in Family Court litigation.

Complaints were received from the following:

Source of complaints	II.
Client or former client	309
Other party to proceedings	93
Legal practitioner	37
Judiciary	8
Legal Practice Board	17
Law Society	-
Other	45
Committee enquiry	31
Total	540

iii) The types of complaints

Approximately 75% were complaints of unprofessional conduct, 16% were complaints of neglect and/or undue delay and 3.8% were complaints of illegal conduct.

Many complaints raised more than one conduct issue.

As was the case last year, family law attracted the most complaints, followed by civil litigation then personal injuries law. The areas of law in which the complaints arose were as follows:

Areas of law	
Commercial/Company law	69
Probate/Wills/Inheritance Act	40
Professional negligence	4
Victims compensation	7
Leases/Mortgages/Franchises	7
Conveyancing	16
Criminal law	46
Employment/Industrial law	16
Immigration	2
Family/Defacto law	110
Personal injuries	75
Workers Compensation	20
Civil Litigation	80
Other	48

In addition, 11 complaints were in respect of the conduct of legal practitioners outside legal practice.

The main areas of complaint were:

Areas of complaint			
Inadequate estimate of costs	19	Improperly terminating retainer	26
Overcharging/wrongful charging	106	Discourtesy	42
No costs disclosure	7	Disclosure of confidential information	17
Transfer costs from trust funds without authority	10	Improper communication with witness	1
No Notice of taxation rights	1	Communicating with a client of another solicitor	4
Failing/delay to account for moneys	11	Seeking confidential information from third party	1
Failure/delay to provide detailed account	13	Undue pressure to settle	6
Failure/Delay tax costs	2	Lack of explanation as to rights before settlement	5
Failing to pay third party	8	Incompetence during trial	8
Claiming costs in letter of demand	2	Failing to comply with court directions	3
No client advice	7	Failing to appear in court	8
Failure to carry out instructions	48	Bias of child representative	1
Act without/contrary to instructions	27	Conflict of interest	31
Failure to communicate/inform on progress	32	Advertising	5
Failure to transfer documents/file	15	Practising without certificate/suspended	9
Liens	15	Conduct as Employer – lack of supervision	3
Loss of documents	3	Conduct as Employer – other	5
Not complying with undertaking	5	Failing to respond adequately to LPB/LPCC	3
Misleading client or court	54	Irregularities in trust account dealings	11
Misleading other practitioner	2	Criminal conviction	2
Misleading other party	9	Neglect	62
Alleging fraud	4	Delay	79
False statement in document by practitioner	6	Negligence	49
Allowing client to make false statement in document	1	Other	83
Making threatening demands	10		
TOTAL			881

The above shows that the areas of complaint attracting most complaints were neglect or delay (16%); the quantum of costs - overcharging, wrongful charging, inadequate estimate of costs or failing to disclose costs at the commencement of the retainer (15%);

negligence (5.6%); misleading conduct (7.3%); failure to carry out instructions (5.4%) and discourtesy (4.8%).

iv) The Practitioners

Type of employment

Sole practitioners continue to be the largest category of practitioners complained of. Principals of sole practitioner firms received 219 or 41%, of complaints, but comprise only 10% of the practising profession.

A schedule of the composition of the profession as at 30 June 2004 is at the end of this report.

Practitioners complained of by employment status	
Barrister	18
Employee in sole practitioners firm	27
Principal in sole practitioners firm	219
Employee in 2 partner firm	10
Partner in 2 partner firm	61
Employee in 3 to 10 partner firm	28
Partner in 3 to 10 partner firm	84
Employee in more than 10 partner firm	8
Partner in more than 10 partner firm	8
Employee other organisation	24
Consultant	15
Not practising	22
Struck off/suspended/deceased	5
Firm only	4
Not named/not known	7
Total	540

Area of practice

An analysis of practitioners complained of by location of practice is as follows:

Area of practice	
CBD/West Perth	301
Suburbs	174
Country	45
Interstate/Overseas	8
Not named/Not known	12
Total	540

Years in practice and age

The largest number of complaints or conduct enquiries were in respect of practitioners aged between 45 and 49 (about 17.8%) followed by those aged between 50 - 54 (16.5%), 55 - 59 (14%), 40 - 44 and 35 - 39 (each about 13%).

Complaints by age of solicitor	
20 – 24	1
25 – 29	19
30 – 34	62
35 – 39	70
40 – 44	72
45 – 49	96
50 – 54	89
55 – 59	76
60 – 64	17
65 – 69	15
70 – 74	7
Not known/Not applicable	16
Total	540

An analysis of the number of complaints received by reference to the years in practice, in Western Australia, of the practitioner is as follows. The schedules indicate that some complaints were received against practitioners who had earlier been admitted in another jurisdiction.

Complaints by years in practice	
Under 5	62
5 – 9	100
10 –14	77
15 – 19	83
20 – 24	97
25 – 29	58
30 – 34	36
35 – 39	7
Over 40	11
Not known/Not applicable	9
Total	540

The number of practitioners complained of

Some 351 practitioners were the subject of one or more written complaints during the period under review, compared to 325 in the last reporting period, an increase of 8%. Of this total, 252 practitioners were the subject of one complaint, (224 in the previous year), 63 practitioners were the subject of two complaints (62 in the previous year) and 36 practitioners were the subject of three or more complaints (26 in the previous year).

The Board has reported that there were 4928 practitioners practising in Western Australia during the period under review, compared with 4742 the previous year, an increase of 4%.

E. The investigation of complaints

THE INVESTIGATION PROCESS

The complaint is normally sent to the practitioner who is asked to provide a written answer to the complainant's allegations. Practitioners have a professional responsibility to respond to the enquiries of the Committee and a failure to do so may result in disciplinary proceedings being commenced by the Committee against the practitioner.

The Committee's policy is to send a copy of the practitioner's answer to the complainant for further comment before the matter is considered by the Committee unless there are special reasons why this should not occur. Often, if the Committee concludes that there is good reason why a response should not be sent on, it will attempt to agree with the practitioner an edited version which can be.

Sometimes the Committee will need to obtain further information from the client or the practitioner concerned. In some cases it needs to examine the practitioner's file or to check court or other office records relevant to the complaint. On occasions enquiry will be made of a third party who may have information relevant to the complaint.

The new Act permits for the first time incorporated legal practices and multi-disciplinary partnerships. Section 198(1) extends the investigative powers of the Committee and the Law Complaints Officer to these structures.

Section 198(1) of the new Act is similar to Section 31D of the old Act in respect of the range of investigative powers of the Committee and the Law Complaints Officer: they can summons a person to give evidence on oath and to produce records; require a practitioner or firm of practitioners (or incorporated legal practice or multidisciplinary partnership) to allow the Committee or the Law Complaints Officer to visit a legal practice and examine records including files and trust account records; make enquiry of practitioners' auditors and take possession of documents.

An additional power under the new Act is to compel practitioners or firms (or incorporated legal practices or multi-disciplinary partnerships) to provide written information verified by statutory declaration.

The new Act also provides a penalty of \$5,000 for failing to comply with a requirement under Section 198(1).

Section 201 is a new provision that allows the Committee to require a practitioner to disclose to the Committee privileged information. The Committee had sought an amendment to the old Act in these terms. This section also provides that privilege is not waived by providing the information when so required, and the information cannot be used in any other proceedings or be reported.

WRITTEN COMPLAINTS RESOLVED

In some cases, the answer of the practitioner to the complaint resolved the matter for the complainant. These complaints were largely due to uncertainty or misunderstanding by the client. Several had arisen through a lack of adequate communication by the practitioner.

In a number of other cases the Law Complaints Officer or her staff were able informally to conciliate the matter, by discussion with the parties or by facilitating communications between the practitioner and the complainant client. For example:

- A duplicate certificate of title left with a sole practitioner for safekeeping was not able to be found. The firm had since been sold. After receiving the complaint the practitioner took steps at his expense to obtain a replacement duplicate certificate of title for the complainant.
- A complainant believed that she had been treated with gross discourtesy by a practitioner and was refusing to pay his costs. The practitioner denied any discourtesy but had not been able to resolve his differences through direct communication with the client. After informal conciliation the practitioner offered a discount of costs, and the complainant paid the fees and withdrew the complaint.
- Despite many attempts by the creditor to obtain payment, over an extended period a practitioner had failed to pay a report fee to an expert for a report provided in a personal injuries matter. On receiving a letter from the Committee the practitioner reported that there had been a breakdown in communication, and the fee was paid immediately, with apologies.

COMPLAINTS CONSIDERED BY THE COMMITTEE

Complaints not conciliated, or which indicated a possible breach of Section 25 of the old Act or Section 164(1) of the new Act (as applicable), were, after investigation by the Law Complaints Officer's staff, referred to the Committee for consideration which dealt with them in one of the following ways.

The Committee considered 231 complaints and other conduct enquiries during the period under review, some of which had been received during the period under review and others received previously. Of these complaints, 38 complaints had earlier initially been considered by the Committee and deferred for further investigation or advice, or pending the conclusion of civil litigation in respect of the same matter, or pending taxation of an account.

i) Reference to the Legal Practitioners Disciplinary Tribunal

Where the Committee determines that a conduct matter should be referred to the Disciplinary Tribunal it resolves to issue a Reference against the practitioner concerned. That Reference gives particulars of the unprofessional conduct, illegal conduct or neglect or undue delay under the old Act, or unsatisfactory conduct under the new Act, as the case may be, that is alleged against the practitioner. The Reference is filed at the Registry of the Tribunal and served on the practitioner, who is required to file a written

answer to it. It is then listed for hearing before the Tribunal. The Committee acts as the prosecutor when References are heard by the Tribunal and is required to prove the conduct matters alleged in the Reference.

In respect of 32 matters considered by it, the Committee resolved to issue a total of 53 References. Those 53 References involved 21 practitioners, more than one Reference being issued against 6 of the 21 practitioners concerned.

In respect of a further 5 matters considered by it, the Committee determined that a Reference should issue against a practitioner but the Reference had not been settled and approved by the Committee before the end of the period under review.

ii) Summary Professional Disciplinary Jurisdiction

Pursuant to Section 28A of the old Act and Section 177 of the new Act the Committee has jurisdiction, with the consent of the practitioner concerned, itself to make a finding that a practitioner has been guilty of illegal conduct, unprofessional conduct or neglect or undue delay in the course of the practice of the law (under the old Act) or unsatisfactory conduct (under the new Act), rather than issue a Reference to the Tribunal. Generally speaking, the Committee moves to exercise its own summary jurisdiction in cases of a lesser degree of seriousness.

It can order the practitioner to pay a fine not exceeding \$500 (\$2,500 under the new Act); reprimand the practitioner; order that the practitioner seek and implement advice in relation to the management and conduct of a legal practice; order that the practitioner reduce or refund any fees or disbursements or order that the practitioner pay part or all of the expenses incurred (under the old Act) or costs (under the new Act) by either or both the complainant or the Committee in relation to the inquiry.

The Committee had earlier recommended that the quantum of the fine that the Committee was able to impose under the old Act be increased from \$500.

Adverse findings of the Committee form part of the practitioner's disciplinary record.

The Committee exercised its summary professional disciplinary jurisdiction in respect of 5 complaints considered by it. The 5 complaints were as follows:

- Practitioner B was found guilty of unprofessional conduct by threatening practitioner A that she would raise an alleged act of improper conduct by practitioner A unless certain funds were paid to her by practitioner A. Practitioner B was fined \$400.
- One practitioner was found guilty of unprofessional conduct in respect of two matters. Firstly the practitioner was found guilty of making an untrue statement to the court. Secondly, the practitioner was found guilty of failing to provide a response, to a material aspect of a complaint, over a five month period. The practitioner was fined \$500 and \$400 respectively.
- A practitioner was found guilty of neglect or undue delay in the course of the practice of the law in failing fully to account over a period of time to Mr A in respect of monies paid by Mr A on account of the legal costs of his son Mr B. A fine of \$250 was imposed.

- Practitioner A was found guilty of unprofessional conduct by sending a letter to practitioner B, who was acting for an opposing party to litigation, which contained an improper threat to disclose certain privileged information which practitioner A had received in error. The practitioner was reprimanded.
- One practitioner was found guilty of unprofessional conduct for a delay of fourteen months in reimbursing certain funds to the client following a taxation of costs. A fine of \$500 was imposed. The same practitioner was found not guilty of unprofessional conduct in failing to properly inform the client in respect of incurring certain unusual disbursements.

In a further 12 matters the Committee resolved to exercise its summary jurisdiction in respect of a complaint or conduct enquiry but the matter had not concluded during the period under review.

iii) *Determinations not to refer to the Tribunal or deal with summarily*

In respect of 73 complaints referred to it, the Committee decided to neither refer the matter of complaint to the Tribunal nor deal with it summarily. Section 181(1) of the new Act (and Section 28C(2) of the old Act) provides that if the Committee decides to neither refer the matter of complaint to the Tribunal nor exercise its summary jurisdiction in respect of the matter, it must cause the Law Complaints Officer to advise the complainant and the practitioner concerned of that decision and provide particulars of its reasons for that decision.

In respect of a further 2 complaints the Committee made the determination referred to above and also made a specific determination pursuant to Section 28C(3) of the old Act (now Section 181(4) of the new Act) that the complaint was trivial or unreasonable or vexatious. If such a determination is made, a complainant can only commence proceedings in the Tribunal against the practitioner complained of with the leave of the Attorney General.

In a further 29 cases, the Committee determined that there had been no apparent breach of the Act by the practitioner complained of, but it cautioned the practitioner about an aspect of his/her conduct. For example:

- One practitioner was advised that it was inappropriate for him to seek to exercise a lien in respect of an indictment and other documents provided by the prosecution to his client who had been charged with a criminal offence. The documents were subsequently released to the client. The Committee requested that the Law Society formulate a Professional Conduct Rule that practitioners should hand over to the client material received from the prosecution if a retainer is terminated, in order to facilitate the client's defence. The Law Society published guidelines which provided that a practitioner cannot seek to exercise a lien, in respect of a criminal law file, if refusal to hand over documents could impact on the client's ability to defend himself/herself or require the court to vacate a court listing.
- Concern was expressed to two principals of a firm in respect of delays in the prosecution of two related criminal appeals. Although it was appreciated that the delays were caused in some part by matters beyond their control, for example, the

unavailability of two counsel, the criminal justice system requires that appeals be dealt with promptly.

- Concern was expressed to one practitioner in respect of errors in an initial account to the client, together with factual errors in a cover letter to the client. The Committee recommended that the practitioner refund the modest amount which had been charged to and paid by the client. The practitioner agreed to do so.
- One practitioner was cautioned over the potential for a conflict of interest in providing, in the course of acting for a client charged with a criminal offence, certain advice to a witness to the matter the subject of the charge. The practitioner advised the Committee that the decision to advise the witness was one that he would not make again given a similar factual scenario.

Some 64 complaints considered by the Committee during the period under review were deferred for further investigation or advice, or pending the outcome of taxation or related litigation. A further 9 matters considered by the Committee were only for determination on procedural matters ancillary to the complaint.

iv) Outstanding complaints

At the commencement of the period under review the Committee and the Law Complaints Officer and her staff had approximately 339 complaints still under investigation. During the period 509 new complaints were received and enquired into. At the end of the period 409 complaints remained undetermined and still under investigation or deferred pending the outcome of related litigation. The result is that over the whole of the period under review a total of 439 complaints were finalised upon the conclusion of investigations and, if appropriate, a final determination of the complaint by the Committee. In addition, 39 conduct enquiries of the Committee had not concluded during the period under review.

These statistics include previously closed files which were reopened upon further information being received after the matter was concluded.

F. Tribunal and Court Proceedings

TRIBUNAL

The Committee filed with the Registry of the Tribunal during the period under review some 57 References involving 22 practitioners. This included 4 References against one practitioner which were the subject of a Committee resolution during the previous period under review.

Twenty practitioners were the subject of proceedings before the Tribunal which had been instituted by References issued by the Committee. In several cases, more than one Reference had issued against the practitioner concerned. Hearings in respect of eight of the practitioners referred to did not conclude during the period under review. Particulars of the References that were the subject of concluded proceedings and the outcome of the hearings are not addressed in this report as they are dealt with in the Annual Report of the Tribunal.

Both the old Act and the new Act provide that the Tribunal is required to publish a summary of its findings if it finds a Reference proved unless it is of the opinion that the circumstances are of such a minor nature as to not warrant publication.

COURT PROCEEDINGS

In the Annual Report for the year ending 30 June 2003 the Tribunal reported that it had resolved to suspend from legal practice and transmit a Report to the Full Court in respect of the following practitioners: Robert Peter Weston, Alessandro Palumbo, Haydn Wesley Dixon, Vincent Scaffidi-Gennarino and Terence James Malone. The Committee appears before the Full Court by counsel on the hearing of such Reports. Only one of these Reports was heard by the Full Court during the year: the Full Court heard the report in respect of Mr Scaffidi-Gennarino and ordered that the practitioner be struck from the roll.

During the period under review the Tribunal resolved to transmit a Report to the Supreme Court in respect of the following practitioners: Vijitha Gamini De Alwis, Colin Robert McKerlie, Andrew Roderick Fraser and Alessandro Palumbo (a second matter). None of these Reports were heard by the Full Court during the year.

In each case the Tribunal had suspended the practitioner from legal practice pending the hearing of the Report by the Full Court.

APPEALS

An appeal lodged by one practitioner, Nino Anthony De Pardo, from a finding of unprofessional conduct by gross overcharging was heard during the year under review and dismissed. The Supreme Court also delivered a decision on an appeal (heard during the previous reporting period), by a practitioner, John Robert Quigley, from a finding by the Tribunal of unprofessional conduct in respect of a public statement made by the practitioner on a matter in which he was professionally engaged. The Full Court dismissed the appeal.

The Full Court gave to a practitioner, Robert James Lashansky, a limited right to reopen an appeal lodged by him from a number of findings of unprofessional conduct made by the Tribunal. The appeal had previously been dismissed for want of prosecution. The practitioner remains suspended from legal practice.

Another practitioner lodged an appeal from an interlocutory decision of the Tribunal. That appeal was not heard during the period under review.

G. Information Statements

FREEDOM OF INFORMATION ACT

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

STATE RECORDS ACT

Pursuant to Section 19 of the State Records Act every Government organisation must have a Recordkeeping Plan that has been approved by the State Records Commission under Section 23 of the State Records Act.

The definition of Government organisations under Schedule 1 of the State Records Act includes *“An incorporated or unincorporated body established or continued for a public purpose under a written law”*.

The Committee and the Board each fall into this category.

Although the Committee is a separate statutory body, it is largely administratively managed by the Board because the Board funds the operations of the Committee (other than its accommodation costs which are met by the Government) and the majority of its members are members of the Board. The Board has therefore prepared a Recordkeeping Plan which incorporates the Committee's records. In light of the separate statutory functions the Law Complaints Officer has suggested to the Board that the Committee's records should be separately indexed from the Board's records and differentiated by a separate, but related plan, in the same manner as that of the Tribunal.

Staff at the Law Complaints Officer's office have been informed of the plan at two information sessions conducted this year and information notes have been prepared for provision to staff members. The office administrator attended a one day course on file management and titling systems. Procedures will be reviewed on an ongoing basis within the Committee's office to monitor compliance with the requirements of the State Records Act. The Board has reported in its plan on its proposal to develop a policies and procedures manual and performance indicators to measure the efficiency and effectiveness of the recordkeeping systems. The Law Complaints Officer will further review procedures upon receipt of these documents.

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

1. This information statement is prepared and published pursuant to the requirements of Part 5 of the FOI Act and relates to the Legal Practitioners Complaints Committee (“*Complaints Committee*”).
2. The structure of the Complaints Committee is set out in Sections 162 and 163 of the Legal Practice Act 2003; the functions of the Complaints Committee are set out in Sections 164 and 175. A copy of Sections 162 to 164 and 175 is attached.
3. The functions of the Complaints Committee including, in particular, its decision making functions, do not affect members of the public; they affect legal practitioners on the one hand and those among the classes of persons set out in Section 175(2) from whom complaints are received on the other hand.
4. The policy of the Complaints Committee is set forth in Sections 163, 164 and 175; no arrangements exist to enable members of the public to participate in the formulation of its policy or in the performance of its functions other than the fact that representatives of the community are members of the Complaints Committee being appointed as such by the Attorney General.
5. The kinds of documents that are usually held by the Complaints Committee comprise firstly its complaint files containing correspondence, memoranda, and the like, and secondly documents related to meetings of the Complaints Committee, such as agendas, minutes, memoranda, and the like. The Complaints Committee also has a form of brochure which explains the nature and limits of its functions.

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

There is no law or practice whereunder any of these documents can be purchased. Copies of the said brochure can be inspected or obtained from the Complaints Committee free of charge.

6. Copies of the said brochure are available at the offices of the Complaints Committee at 2nd Floor, 55 St Georges Terrace, Perth, to any person who calls at those offices or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions.
7. Ms Catherine Coombs of 2nd Floor, 55 St Georges Terrace, Perth, Legal Practitioner is the officer to whom initial enquiries as to access to documents can be made and who has been generally directed to make decisions under the FOI Act; enquiries may be made by telephone (08) 9461 2299.
8. Access applications under the FOI Act can be made to the Complaints Committee by letter to Post Office Box Z5293, St Georges Terrace, Perth WA 6831 or by facsimile message at (08) 9461 2265.

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