

**LEGAL PRACTITIONERS COMPLAINTS COMMITTEE  
WESTERN AUSTRALIA**

**ANNUAL REPORT  
1 JULY 2004 TO 30 JUNE 2005**

**2ND FLOOR  
COLONIAL BUILDING  
55 ST GEORGES TERRACE  
PERTH WA 6000**

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**ANNUAL REPORT**  
**OF THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE**  
**FOR THE YEAR ENDED 30 JUNE 2005**

**A. Chairman's Report**

The only legislative change during the period under review which concerns the procedures of the Committee is the State Administrative Tribunal Act 2004 which came into effect on 1 January 2005. This, with consequential amendments to the Legal Practice Act 2003 ("the Act") means that the Committee now commences disciplinary proceedings against practitioners in the State Administrative Tribunal ("SAT") instead of in the Legal Practitioners Disciplinary Tribunal ("LPDT") which has now been abolished. Under the new legislation applications by the Committee for the interim suspension of a practitioner are now made to SAT instead of the Supreme Court and appeals by practitioners from summary jurisdiction findings of the Committee are now to SAT instead of the Supreme Court. Hearings are now public. There have been delays in concluding those matters which were part heard by the LPDT as at 1 January 2005, in light of legislative difficulties which have only recently been resolved by the making of regulations. Apart from this initial difficulty the new system appears to be working well.

In May 2004 the Standing Committee of Attorneys General released the National Model Bill on the legal profession for the regulation of the profession throughout Australia. The Committee had earlier made submissions to the Attorney General on the draft laws insofar as they concern matters within the Committee's jurisdiction. The Legal Practice Act 2003, which came into effect on 1 January 2004, has already adopted some of the features of the National Model Laws, for example, incorporated legal practices and multi disciplinary practices. The Attorney General has advised the Committee that work is underway to determine the extent to which the Legal Practice Act 2003 would need to be amended in order for Western Australia to conform to the National Model Bill. The Attorney General has invited comment on the latest version of the National Model Bill and proposed National Model Regulations and the Committee is considering making submissions.

Last year I reported that a protocol concerning the exchange of information between the Legal Practice Board and the Committee, to facilitate the performance by each body of their respective statutory functions under the Act, had been proposed to the Board. I am pleased to report that the protocol has now been agreed by the Board.

I would like to express my sincere thanks to the Committee members for their hard work throughout the year and to the Law Complaints Officer and her staff for their considerable assistance to the Committee.

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C L Zelestis QC  
Chairman  
December 2005

## **B. Report from the Law Complaints Officer**

It has been another very busy year for the Committee and my staff. Last year I reported on the need for additional staff to address the backlog of complaints and meet current needs. This problem was not able to be resolved during the period under review. However, I am pleased to report that in October 2005 I was advised that the Court Services Division of the Department of Justice has agreed to meet the rental cost of the additional office space that has been requested. This will enable the Board to employ further legal officers once the space is made available, which it is hoped will be in the near future. The Committee must be adequately resourced if it is to carry out its statutory functions in the public interest.

The extra office space will also enable the employment of a Research and Education Officer to formulate and implement a program aimed at reducing the number of complaints. This is an important goal for the Committee. I will again be requesting the Board employ a legal officer for this purpose. A good complaints system should feed back to the profession information on conduct issues to facilitate the raising of professional standards with the overall aim of reducing complaints. This falls within the Committee's overall statutory responsibility which is to supervise the conduct of practitioners and the practice of the law.

I am pleased to report that the State Administrative Tribunal, which came into existence on 1 January this year, publishes on its website in full all its decisions on disciplinary matters. This is of benefit to the public and it also informs the legal profession of conduct issues. The Legal Practice Board has recently published on its website summaries of past adverse findings by the Legal Practitioners Disciplinary Tribunal and a schedule of suspended and struck off practitioners. There were discussions at a recent regulatory officers conference on the need to set up a national register of all disciplinary decisions in Australia which can be accessed by both the regulators and the public. This is essential because practitioners who have a current practising certificate in their home State may now practice law in other States without registering with those other States (in Western Australia under Part 7 of the Legal Practice Act).

I express my sincere thanks to staff members for their hard work throughout the busy year.

D Howell  
Law Complaints Officer  
December 2005

## C. The Committee

### FUNCTIONS

The Committee is established by the Legal Practice Act 2003 (*“the Act”*), which came into effect on 1 January 2004, replacing the Legal Practitioners Act 1893 (*“the old Act”*). The Committee’s functions and powers are similar to those which applied under the old Act.

The Committee is defined as a regulatory authority under Section 3 of the Act.

The Committee’s functions, under Section 164 of the Act, are substantially the same as the old Act, 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.

Unsatisfactory conduct is defined in Section 3 of the 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 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;
- (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 ("LPDT") (to 31 December 2004) or the State Administrative Tribunal ("SAT") (from 1 January 2005), 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.

The Committee's jurisdiction is in respect of "*legal practitioners*". Legal practitioner 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; and
- (g) A person who is a registered foreign lawyer and a person who was a registered foreign lawyer when the alleged unsatisfactory conduct occurred.

The substantive law as at the date of the conduct in question governs whether or not a practitioner is in breach of his professional obligations – the provisions of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 (WA) and Sections 36 and 37 of the Interpretation Act refer. Hence, the old Act applies to conduct occurring before 1 January 2004.

## MEMBERS

Section 163 of the Act 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 and Mr K J Martin QC was the Deputy Chair of the Committee.

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

Messrs R E Birmingham QC, E M Corboy SC, A N Siopis SC (until April 2005), S D Hall SC, M T Ritter SC, T H Sharp, J G Syminton, Ms F B Walter (absent from Committee from 15 December 2004 until June 2005) and Ms S M Schlink (from 15 July 2004).

The community representatives were Ms J Dudley and Mrs R V Kean. The deputy community representatives were Mr K G Langdon and Ms G J Walker.

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 enquiries into conduct that are referred to it.

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 21 occasions.

## STAFF

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.

The Law Complaints Officer, Ms D Howell, was assisted by nine legal practitioners employed by the Board (equivalent to eight full time positions), of whom one was employed in August 2004 and another was employed in December 2004. The practitioners were Ms C F M Coombs, Mr D Peterson, Ms K Williams, Ms G McCahon, Ms R Tapper, Ms J King (until December 2004), Ms K Somerville-Browne (from January 2005), Ms K L Whitney, Mrs G L Roberts and Ms B Chandran. Six support staff were also

employed in the Law Complaints Officer's office, of whom one was employed in October 2004. The Board's Trust Account Inspector is also based at the Committee's office.

## **D. The Complaints**

### INFORMAL ENQUIRIES OR COMPLAINTS

During the period under review the Law Complaints Officer's staff received complaints or enquiries by telephone or in person from approximately 1706 people, a small increase over the previous year. Of that total, 69 represented personal visits and the remaining 1637 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.

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 503 written complaints.

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 26 matters in the absence of a complaint being received. 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:

<b>Source of complaints</b>	
Client or former client	291
Other party to proceedings	107
Legal practitioner	27
Judiciary	6
Legal Practice Board	18
Other	54
Committee enquiry	26
<b>Total</b>	<b>529</b>

### iii) The types of complaints

Approximately 68% were complaints of unprofessional conduct, 16.5% were complaints of neglect and/or undue delay, 3% were complaints of illegal conduct, 0.5% were complaints of contravention of the Act and 6% were complaints of incompetence or lack of diligence.

Many complaints raised more than one conduct issue.

As was the case last year, family law attracted the most complaints. The areas of law in which the complaints arose were as follows:

<b>Areas of law</b>	
Commercial/Company law	57
Probate/Wills/Inheritance Act	52
Professional negligence	2
Leases/Mortgages/Franchises	7
Conveyancing	20
Criminal law	48
Employment/Industrial law	6
Immigration	2
Family/Defacto law	113
Personal injuries	59
Workers Compensation	19
Civil Litigation	94
Other	54

In addition, 10 complaints were in respect of the conduct of legal practitioners outside legal practice.

The main areas of complaint were:

Areas of complaint		Areas of complaint	
Inadequate estimate of costs	27	Improperly terminating retainer	6
Overcharging/wrongful charging	96	Discourtesy	47
No costs disclosure	15	Disclosure of confidential information	8
Transfer costs from trust funds without authority	7	Improper communication with witness	4
No Notice of taxation rights	1	Communicating with a client of another solicitor	3
Failing/delay to account for moneys	24	Failing to advise will require payment disbursements	2
Failure/delay to provide detailed account	22	Undue pressure to settle	10
Failure/Delay tax costs	5	Lack of explanation as to rights before settlement	4
Failing to pay third party	6	Incompetence during trial	6
Claiming costs in letter of demand	3	Failing to comply with court directions	3
No client advice	8	Failing to appear in court	8
Failure to carry out instructions	40	Bias of child representative	1
Act without/contrary to instructions	29	Conflict of interest	36
Failure to communicate/inform on progress	28	Advertising	12
Failure to transfer documents/file	10	Practising without certificate/ suspended	7
Liens	6	Conduct as employer – lack of supervision	8
Loss of documents	3	Conduct as employer – other	2
Not complying with undertaking	6	Failing to respond adequately to LPCC	2
Misleading client or court	42	Irregularities in trust account dealings	7
Misleading other practitioner	6	Criminal conviction	4
Misleading other party	21	Neglect	52
Alleging fraud	4	Delay	74
False statement in document by practitioner	8	Negligence	48
Allowing client to make false statement in document	1	Incompetence	34
Making threatening demands	15	Other	102
		<b>TOTAL</b>	<b>923</b>

The above shows that the areas of complaint attracting most complaints were neglect or delay; costs - overcharging, wrongful charging, inadequate estimate of costs or failing to disclose costs at the commencement of the retainer; negligence; misleading conduct; failure to carry out instructions; discourtesy and conflict of interest.

#### iv) The Practitioners

##### Type of employment

Sole practitioners continue to be the largest category of practitioners complained of. Principals of sole practitioner firms received 38% of complaints.

<b>Practitioners complained of by employment status</b>	
Barrister	19
Employee in sole practitioners firm	35
Principal in sole practitioners firm	197
Employee in 2 partner firm	14
Partner in 2 partner firm	58
Employee in 3 to 10 partner firm	39
Partner in 3 to 10 partner firm	77
Employee in more than 10 partner firm	9
Partner in more than 10 partner firm	12
Employee other organisation	14
Consultant	14
Not practising	14
Struck off/suspended/deceased	2
Firm only	8
Not named/not known	3
Practitioner in incorporated practice	13
Interstate practitioner	1
<b>TOTAL</b>	<b>529</b>

### Area of practice

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

<b>Area of practice</b>	
CBD/West Perth	310
Suburbs	160
Country	46
Interstate/Overseas	3
Not named/Not known	10
<b>Total</b>	<b>529</b>

### Years in practice and age

The largest number of complaints or conduct enquiries were in respect of practitioners aged between 45 - 49 followed by those aged between 50 - 54, 40 - 44 and 55 - 59 respectively.

<b>Complaints by age of solicitor</b>	
25 – 29	22
30 – 34	46
35 – 39	58
40 – 44	83
45 – 49	94
50 – 54	89
55 – 59	75
60 – 64	35
65 – 69	10
70 – 74	2
Not known/Not applicable	15
<b>Total</b>	<b>529</b>

An analysis of the number of complaints received by reference to the years in practice, in Western Australia, of the practitioner is as follows.

<b>Complaints by years in practice</b>	
Under 5	63
5 – 9	72
10 – 14	90
15 – 19	88
20 – 24	85
25 – 29	67
30 – 34	26
35 – 39	20
Over 40	5
Not known/Not applicable	13
<b>Total</b>	<b>529</b>

#### The number of practitioners complained of

Some 394 practitioners were the subject of one or more written complaints during the period under review, compared to 351 in the last reporting period, an increase of 12%. Of this total, 309 practitioners were the subject of one complaint, (252 in the previous year), 56 practitioners were the subject of two complaints (63 in the previous year) and 29 practitioners were the subject of three or more complaints (36 in the previous year).

The Board has reported that there were 4004 certificated or deemed certificated practitioners practising in WA during the year under review. A table of the composition of this figure is at the end of this report. However, this figure does not include those interstate practitioners practising in this State who are no longer, pursuant to Part 7 of the Act, required to take out a practice certificate in WA.

## **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 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.

Pursuant to Section 198(1) of the Act the Committee and the Law Complaints Officer can summons a person to give evidence on oath; provide written information verified by statutory declaration; 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.

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

Section 201 allows the Committee to require a practitioner to disclose to the Committee privileged information. 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.

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:

- An elderly married couple were not happy with the service of a small firm they had consulted for the drafting of new wills. They complained of slowness in service and of confused and inconsistent advice from the practitioners who dealt with the matter. However, the principal of the firm responded with particulars of difficulties with the complainants' instructions. The complainants now wanted to consult a different firm for the wills but were afraid of what they might be billed for the failed attempts. By informal conciliation costs were agreed and paid, the retainer was terminated by mutual agreement, and the complaint was resolved.
- The complainants were a mother and son who had retained a firm for the recovery of criminal injuries compensation. They complained of slowness and a lack of competence and wished to terminate the retainer. However, they had not been able to obtain details of costs to the date of termination. The firm denied the matters of complaint but by informal conciliation offered to fix their costs, agreeing that costs should be paid on receipt by the complainants of their respective awards of compensation. The complaint was resolved on this basis.

## COMPLAINTS CONSIDERED BY THE COMMITTEE

Complaints not conciliated, or which indicated a possible breach of the Act or the old 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 273 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, 34 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 LPDT or Applications to the SAT*

On 1 January 2005 the SAT took over the functions of the LPDT.

Where the Committee determines that a conduct matter should be referred to the Tribunal it resolves to issue a document called a Reference (in the LPDT) or an Application (in the SAT) against the practitioner concerned. That Reference/Application gives particulars of the unprofessional conduct, illegal conduct or neglect or undue delay under the old Act, or unsatisfactory conduct under the Act, as the case may be, that is alleged against the practitioner. The Reference/Application is filed at the Registry of the relevant Tribunal and served on the practitioner, who is required to file a written answer to it. It is then listed for hearing. The Committee acts as the prosecutor when References/Applications are heard by the relevant Tribunal and is required to prove the conduct matters alleged.

In respect of 22 matters considered by it, the Committee resolved to issue a total of 33 References/Applications. Those 33 References/Applications involved 14 practitioners, more than one being issued against 7 of the 14 practitioners concerned.

In respect of a further 11 matters considered by it, the Committee determined that a Reference/Application should issue against a practitioner but it 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 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 Act), rather than issue a Reference/Application. 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 \$2,500 (\$500 under the old 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 costs incurred or expenses (under the old Act) by either or both the complainant or the Committee in relation to the inquiry.

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

The Committee exercised its summary professional disciplinary jurisdiction in respect of 13 complaints considered by it. The 13 complaints were as follows:

- A practitioner was found guilty of unprofessional conduct when in the course of appearing before the District Court of Western Australia he failed to act with due courtesy to the court. The practitioner was reprimanded.
- One practitioner was found guilty of neglect in the course of the practice of the law over a six month period in respect of the conduct of a personal injuries claim. The practitioner was reprimanded.
- A practitioner was found guilty of unprofessional conduct in that in the course of acting for his client Mr B the practitioner wrote a letter to Ms M which was a possible breach by Mr B of a misconduct restraining order made against Mr B and was discourteous in its terms. The practitioner was reprimanded.
- A practitioner was found guilty of unprofessional conduct in failing to comply with a direction made by the Registrar of the Family Court of Western Australia, an undertaking made to the court and an order of the court. The practitioner was fined \$250.
- A practitioner was found guilty of unprofessional conduct in that in a letter to a Mr K she impliedly threatened that her notifying authorities of allegations of Mr K's alleged criminal and regulatory breaches was contingent on settlement of a civil matter by Mr K's payment of a sum of money to the practitioner's client. The practitioner was reprimanded.
- A practitioner was found guilty of unprofessional conduct by a lack of candor in that she failed to make full and frank disclosure to a Judge of the District Court of Western Australia in respect of matters relevant to her ability to appear in court that day. The penalty imposed was a fine of \$500.
- A practitioner was found guilty of unprofessional conduct on three occasions when he applied monies received from his client in the amounts of \$175, \$275 and \$75 respectively to his fees, without rendering an account in the required form. The practitioner was reprimanded.
- A practitioner was found guilty of unprofessional conduct in that he delivered up his client's file to the Family Court in response to a subpoena without first making reasonable endeavours to contact the client and obtain her instructions with regard to the response to be made to the subpoena. The penalty imposed was a reprimand. In respect of the same client, the practitioner was found not guilty of neglect in failing to arrange for the stamping of a deed and not guilty of unprofessional conduct in failing to fully advise the client on the effect of a proposed deed.

- A practitioner was found guilty of unprofessional conduct with respect to acting for clients when her interests conflicted with those of her clients. The practitioner was fined \$500.
- A practitioner was found not guilty of unprofessional conduct in failing to properly reconcile his trust account ledger with his trust bank account in accordance with the Legal Practice Board Rules.
- A practitioner was found guilty of unprofessional conduct in that he placed himself in a position whereby there was a conflict of interest between the fiduciary duty of confidentiality owed by him as a legal practitioner to his former clients, client A and client B, and the responsibilities owed by the practitioner as a director of company C. The practitioner was fined \$500. The practitioner was found not guilty of unprofessional conduct in respect of alleged intemperate language during a telephone conversation with client A.
- One practitioner was found guilty of undue delay in the course of the practice of the law in failing to comply over a five month period with a request made on behalf of his client, Mr W, for an itemized account of costs and disbursements. The practitioner was fined \$200. The practitioner was further found guilty of unprofessional conduct by charging the client costs incurred by reason of certain delays by the practitioner in the conduct of the client matter. The penalty imposed was a reprimand. The practitioner was also found guilty of unprofessional conduct by transferring monies from his trust account in payment of legal costs without within 14 days thereafter causing to be served upon the client a bill of costs in respect of those costs showing that trust monies had been applied to payment of those costs. The practitioner was fined \$300.
- A practitioner was found guilty of neglect and undue delay in the course of the practice of the law over a nine month period in failing to prepare written submissions to place before the Criminal Injuries Compensation Assessor on behalf of his client, and failing over the same period to keep the client properly informed regarding developments in respect of the client's criminal injuries compensation claim. The practitioner was also found guilty of unprofessional conduct in charging the client costs incurred by reason of the practitioner's undue delay in complying with the Criminal Injuries Compensation Assessor's milestones. The practitioner was fined \$500 and ordered to refund to the client fees in the sum of \$500.

In a further 15 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 119 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 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 a further 31 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:

- The Committee considered a complaint that practitioner A had acted inappropriately in writing a letter direct to the client of practitioner B. The Committee considered that the reasons given by the practitioner for doing so did not excuse his conduct. It resolved to informally reprimand the practitioner and advise him that he ought in future make enquiries of the practitioner acting for the client before making assumptions of the kind that he did in this case. The Committee advised the practitioner that his letter was intimidatory and contrary to the spirit and intent of the relevant Professional Conduct Rule.
- The Committee considered complaints of discourtesy to the court by a practitioner, whose behaviour was described as bullying, argumentative and disrespectful. The Committee noted that the practitioner wrote a letter of apology to the court very shortly after the incidents, his acceptance that his behaviour was inappropriate, his assurance to the court that there would be no repetition and medical reports received in respect of his health problems at that time. The Committee resolved in all the circumstances not to take the matter further but cautioned the practitioner that it will view very seriously any complaints of a like nature received in the future.
- The Committee resolved not to take further certain practitioners who had practised without a practising certificate for a period of time, after considering relevant circumstances and the explanations provided by those practitioners for the apparent oversight. The practitioners were informally reprimanded and advised that the Committee will view with the utmost seriousness any future instances of such conduct.

Some 52 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 10 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 409 complaints undetermined and still under investigation or deferred pending the outcome of related litigation still under investigation. During the period 503 new complaints were received and enquired into. At the end of the period 450 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 462 complaints were finalised upon the conclusion of investigations and, if appropriate, a final determination of the complaint by the Committee. In addition, 43 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

Up to 31 December 2004 References issued by the Committee against practitioners were filed with the Registry of the LPDT and heard by that Tribunal.

During the period under review the Committee filed with the LPDT Registry nine References against 6 practitioners to 31 December 2004.

A summary of References finally determined and which were the subject of adverse findings by the LPDT between 1 July 2004 and 31 December 2004 is at the end of this report.

On 1 January 2005 the SAT took over the functions of the LPDT pursuant to the State Administrative Tribunal Act 2004 and amendments to the Act.

The Committee was advised by letter dated 4 March 2005 that the LPDT had transferred files in respect of 61 References to SAT. Twenty one of these References had been partly heard but not determined by the LPDT and a further 10 had been held in abeyance pending the outcome of a Report to the Full Court on other disciplinary matters in respect of the practitioner concerned.

The Committee filed with the SAT Registry a further 24 Applications (formerly called References by the LPDT) against 8 practitioners.

A summary of those References/Applications finally determined by SAT between 1 January 2005 and 30 June 2005 is at the end of this report. A number of other matters were heard by SAT during this period but a decision was not published until after 30 June 2005. Those matters are on the SAT website. SAT decisions are published in full on the website which is of benefit to both the public and the profession.

As at 30 June 2005 approximately 2 matters had been heard and found proved, 3 matters had been withdrawn by the Committee and three References which had been transferred by the LPDT to SAT had in fact been dismissed but were transferred with related matters which were still on foot. There were therefore 77 References/Applications still on foot as at 30 June 2005. As referred to above, this figure includes 10 matters which have not been listed for hearing pending the outcome of Reports to the Full Court on other matters.

During the last four years the Committee has issued a total of 181 References/Applications and it is anticipated that the number of Applications filed in the year to 30 June 2006 will be similar to the average of the last four years. No problems have emerged from the operations in SAT. SAT is dealing with the Applications expeditiously and its practice of directions hearings for all matters has greatly assisted in programming Applications to a timely conclusion. The backlog of References which have

built up and transferred to SAT, together with current commitments, has created a difficult workload for the Committee's staff but it is hoped that the extra office space which the Government has recently agreed to provide will be made available as soon as possible to enable the Committee to employ two further legal officers.

Section 17 requires that the Board provide information in respect of proceedings instituted in SAT in its Annual Report and requires that the Law Complaints Officer provide information to the Board as requested.

It is the Committee and not the Board which initiates proceedings against practitioners in respect of conduct matters pursuant to Section 180 of the Act. The Board can itself initiate proceedings, of a different kind, under other sections of the Act, for example, Section 39(3) which provides that the Board can apply to SAT for a determination that a practitioners practice certificate be suspended or cancelled.

The above information has been forwarded to the Board.

## COURT PROCEEDINGS

The LPDT had power, and the SAT has power, to suspend a practitioner from legal practice and transmit a Report to the Full Court with a recommendation that the practitioner be struck from the roll. Those practitioners who were the subject of such reports by the LPDT which had not been determined by the Full Court by 1 July 2004 were Robert Peter Weston, Alessandro Palumbo (2 reports), Hayden Wesley Dixon, Terence James Malone, Vijitha Gamini De Alwis, Colin Robert McKerlie and Andrew Roderick Fraser.

During the period under review the LPDT resolved to suspend from practice and transmit a report to the Full Court in respect of practitioners David Ernest Eley (suspended on 29 July 2004) and Andrew Cecil Thorpe (suspended on 20 September 2004).

Terence James Malone, Andrew Roderick Fraser and Robert Peter Weston were struck from the roll during the period. Hearings in respect of the balance of the reports had not concluded.

## APPEALS

An Application by Robert James Lashansky, in respect of a limited right to re-open an appeal previously reported, was not finally determined during the period under review.

Three practitioners, Leonard Gandini, Paul John O'Halloran and John Henry Reyburn, lodged appeals in respect of decisions of the LPDT, none of which were determined during the period under review.

Andrew Cecil Thorpe has appealed against a number of findings of unprofessional conduct made by the LPDT. That appeal was not heard during the period under review. Two Applications by the practitioner for a stay of the suspension order of the LPDT were dismissed and the practitioner remains suspended from legal practice.

## 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 advised the Board that the Committee's records should be separately indexed from the Board's records and differentiated by a separate plan.

Staff at the Law Complaints Officer's office have been informed of the plan and the Board's Records Officer has been requested to provide an information session to the Committee's staff. Procedures are 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.

**SUMMARY OF DETERMINED MATTERS FOUND PROVED BY LPDT**  
**1.7.04 TO 31.12.04**

\* other than directions hearings

<b>REF NO.</b>	<b>HEARING DATE*</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
42/02	5.11.03 & 15.3.04	AVERY, David Holt	Unprofessional conduct by continuing to act for client when knew conflict with own personal interests.	Reprimand. Fine \$5000. Costs agreed \$14,161.53. Publication.
10/03	13.8.04	PENKIN, Kevin Michael	Unprofessional conduct in failing to respond to enquiries of the LPCC.	Proved. Reprimand. Costs \$2,000. Publication.
19/03	13.8.04	PENKIN, Kevin Michael	Unprofessional conduct in failing to respond to enquiries from the LCO.	Proved. Reprimand. Costs \$2000 (including 10/03 and 23/03). Publication.
23/03	13.8.04	PENKIN, Kevin Michael	Unprofessional conduct in failing to respond to enquiries of the LPCC.	Proved. Reprimand. Costs \$2000 (including 10/03 and 23/03). Publication.
14B/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct in improperly permitting client to lend monies and preferring personal interests to those of the client.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.
14C/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct in charging costs and disbursements without informing client and applying monies held upon trust without providing bill of costs or otherwise informing client.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.

<b>REF NO.</b>	<b>HEARING DATE*</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
14D/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct in falsely representing that he had made advances on the client's behalf to a company when they had in fact been made to practitioner.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.
15A/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct by acting in a conflict of interest situation.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.
15B/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct by gross overcharging.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.
15C/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct by failing fully to account.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.
24A/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct in failing to promptly repay \$8,334.78 to client.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.
24B/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct in failing to act in accordance with instructions; without clients knowledge permitted sum of \$12,000 to be advanced to purchasers of property and failed to inform client.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.

<b>REF NO.</b>	<b>HEARING DATE*</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
28/03	27.8.04, 3.9.03, 15, 17 & 18.12.03	THORPE, Andrew Cecil	Unprofessional conduct in failing to properly account and borrowing funds.	Proved. Report to Full Court. Suspension. Costs to be taxed. Publication.
29A/03	29.6.04 & 9.7.04	ELEY, David Ernest	Neglect in the course of the practice of the law when acting for clients.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.
29B/03	29.6.04 & 9.7.04	ELEY, David Ernest	Unprofessional conduct in failing to respond to enquiries of the LPCC and LCO.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.
29C/03	29.6.04 & 9.7.04	ELEY, David Ernest	Unprofessional conduct in failing to follow instructions of clients to transfer their file to their new solicitor.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.
29D/03	29.6.04 & 9.7.04	ELEY, David Ernest	Unprofessional conduct in misleading clients with regard to status of the matter in which practitioner was instructed.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.
30/03	29.6.04 & 9.7.04	ELEY, David Ernest	Unprofessional conduct by gross negligence.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.
4/04	29.6.04 & 9.7.04	ELEY, David Ernest	Neglect and Undue Delay in the course of the practice of the law.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.
5A/04	29.6.04 & 9.7.04	ELEY, David Ernest	Neglect and Undue Delay in the course of the practice of the law.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.

<b>REF NO.</b>	<b>HEARING DATE*</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
5B/04	29.6.04 & 9.7.04	ELEY, David Ernest	Unprofessional conduct in failing to respond to the enquiries of the LPCC.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.
9/04	29.6.04 & 9.7.04	ELEY, David Ernest	Unprofessional conduct between 30 October 2002 and 1 November 2002 when acting for client in property transaction.	Proved. Report to Full Court. Suspension. Costs \$30,000 for all. Publication.

**SUMMARY OF DETERMINED MATTERS BY SAT**

**1.1.05 TO 30.6.05**

\* other than directions hearings

<b>APP NO.</b>	<b>HEARING DATE*</b>	<b>PRACTITIONER</b>	<b>ALLEGATION</b>	<b>FINDING</b>
232/05	24.5.05	McKENZIE, Carmel Anne	Undue delay in the administration of an estate.	Proved. Fined \$1000. Costs \$500.
14/04	24.5.05	McKENZIE, Carmel Anne	Unprofessional conduct in failing to respond to the enquiries of the LPCC within a reasonable period of time.	Proved. Fined \$1000. Costs \$500.



**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.
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.

	Resident Females	Non - Resident Females	Resident Males	Non - Resident Males	TOTAL
Barristers	21	-	148	18	187
Commonwealth Government	21	1	19	-	41
Consultants	25	-	57	2	84
Corporate	79	3	129	11	222
Employees	742	11	666	40	1459
Locum	1	-	2	-	3
Not Practising (certificated)	126	84	122	208	540
Partners	81	2	508	20	611
Sole Practitioners	92	1	407	8	508
Miscellaneous	-	-	1	-	1
Judiciary ^	2	-	6	-	8
Deceased ^	-	-	6	1	7
Struck Off ^	-	-	2	-	2
<i>State Government **</i>	36	-	19	-	56
<b>Practice Certificates ISSUED</b>	<b>1226</b>	<b>103</b>	<b>2092</b>	<b>308</b>	<b>3729</b>
* (Deemed) State Solicitor	59	-	45	-	104
* (Deemed) DPP (Deemed) Other	38	-	41	-	79
* Departments	93	-	54	-	148
<b>TOTAL Practitioners **</b>	<b>1380</b>	<b>103</b>	<b>2213</b>	<b>308</b>	<b>4004</b>

^ Held Practice Certificate this Financial Year however by June 30 was admitted to Judiciary / Deceased / Struck Off

\* State Government employees deemed certificated under section 62(a) of the Legal Practitioners Act 1893 or Section 36 of the Legal Practice Act 2003

\*\* State Government employees who held a Practice Certificate represent a component of each of the 3 categories below, hence this figure not included in 'Total Practitioners'