

1 July 2008 - 30 June 2009

LEGAL PROFESSION COMPLAINTS COMMITTEE



WESTERN AUSTRALIA

ANNUAL REPORT

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1. Report from the Chairperson

This report covers the activities of the Committee under two Acts, as the Legal Practitioners Complaints Committee under the Legal Practice Act 2003 until February 2009 and from 1 March 2009 as the Legal Profession Complaints Committee under the Legal Profession Act 2008.

The Committee's statutory functions under the new Act remain substantially the same although the legislation is more prescriptive and detailed than the previous Act. I am pleased to report that there was a smooth transition to the new regulatory scheme.

Section 571(2)

The following matters address Section 571(2) of the new Act:

- a. The report summarises the complaints received this year, the conduct investigations commenced, the disciplinary proceedings commenced and their outcome and those matters outstanding.
- b. Trends or special problems that have emerged:

The new Act restored the right of aggrieved complainants to bring in-person proceedings. This is by application to the State Administrative Tribunal (SAT) seeking a review of the Committee's decision. A similar process was available to complainants under the previous legislation, by commencing proceedings before the SAT's predecessor, the Legal Practitioners Disciplinary Tribunal, but was removed from the Legal Practice Act 2003 in December 2004. The Committee supports the restoration of an avenue for external review of Committee decisions to dismiss a complaint. However, the review procedure appears to be confusing to complainants and the extent of the Committee's involvement in the review procedure is more than was anticipated and has involved significant staff resources. Some 12 review applications have been filed by complainants between 1 March 2009 and late November 2009.

The number of matters that the Committee is able to deal with by exercising its summary disciplinary powers is expected to diminish in light of the requirements of Section 426 of the new Act under which the Committee must first be satisfied that a practitioner is generally competent and diligent. This will increase the number of matters which the Committee will have to refer to the SAT.

- c. Forecast Workload:

It is anticipated that the workload of the Committee for the forthcoming year will not diminish and will increase. General enquiries to the Committee's office have increased since early April 2009. The Committee has a significant number of SAT matters on foot or pending – it resolved to refer some 59 matters to SAT during the reporting year. The SAT work will continue to require significant resources in light of the volume of SAT Applications and the necessary getting up work to properly

present these matters before the SAT. The Law Complaints Officer's staff investigate, draft Applications and conduct as many SAT matters as practicable in order to limit the costs involved in briefing external counsel.

Section 431 of the new Act requires the Committee to deal with complaints as efficiently and expeditiously as practicable. During the year the Committee with the Law Complaints Officer concluded a review of its procedures with a view to improving processes, and will continue to monitor these matters on an ongoing basis.

d. Proposals for improving the operations of the Committee:

The most significant problem impacting upon the Committee's functions remains the lack of an electronic data based complaints management system and the lack of an electronic document management system (EDRMS). The urgent need for an electronic complaints database to extract reports has been referred to in previous reports. The Board has taken steps with respect to both systems, as part of its Project Arch, but neither are yet operational in the Committee's office. The Board has linked the Committee to its new IMIS database system, but the implementation of the proposed complaints module did not occur. The Board is taking steps to address this utilising the IMIS database so that the Committee can extract the necessary reports. The lack of adequate electronic support hampers administrative efficiency, file monitoring and extraction of statistics for reporting and educational purposes. In relation to an EDRMS, the Board has employed a consultant to assist in selecting and establishing an appropriate system for both the Board and Committee's offices and the Law Complaints Officer is working with the Board to facilitate this. It is anticipated that the Board will implement a system in the current financial year or the next.

During the reporting year, as part of a proposed review process, the Board commenced employing legal officers based at the Committee's office on short contracts of only 6 to 12 months. This has made the positions less attractive to applicants and limits the pool of senior experienced staff which the Committee wants to attract. It is hoped that this situation will be resolved in the forthcoming budget year so that longer contracts can be offered to suitable staff in order to build up a team of experienced legal officers.

The year ahead

Only a few months after the new Act came into effect we were advised of steps being taken in respect of the National Legal Reform Project. The Committee supports the aim of the project to strengthen the role and powers of complaint handling bodies to ensure the more efficient, cost effective and timely resolution of complaints while also addressing the lack of consistency across jurisdictions in relation to these matters.

The Committee notes that the Project's report on the proposed new regulatory framework does not indicate how the State and Territory bodies would be resourced and funded. The level of resourcing and funding provided to a complaint handling body will

impact on the provision of its services. These are matters which must be examined. The Committee supports the retention of the current structure in Western Australia of a Committee working with a Law Complaints Officer as the current structure enables input from a group of senior members of the legal profession independent of the professional associations, on a pro bono basis, combined with the administrative efficiency of delegating functions to a Law Complaints Officer.

The Committee is concerned about adding a further layer to the complaint handling system in Australia. It agrees with the concept of a national ombudsman to ensure continuity of approach between State and Territory jurisdictions but considers that the national ombudsman should not be the body to receive all complaints but could carry out its role of overseeing the operation of complaint handling by being responsible for setting guidelines for complaint handling and performing a monitoring role. The complaints handling function should continue to be carried out by one body in each jurisdiction. The Committee agrees that only one body should be nominated and that it should be a body independent from the professional associations. In that regard, it agrees that it should be the body nominated in Western Australia.

The Committee welcomes the opportunity to make submissions on the proposed reform and will continue to do so.

Thanks

My sincere thanks to the Committee members for sharing a significant workload during the year. The legal members attend monthly meetings and spend a considerable amount of professional time on Committee work, on a pro bono basis, solely in the interests of protecting the public and promoting appropriate professional standards. The system could not function without their voluntary work. My thanks also to the Law Complaints Officer and her staff for carrying out the delegated functions of the Committee in a diligent and professional manner, which makes the workload of the Committee considerably less than it would otherwise be.

Chris Zelestis QC
Chairperson
December 2009

2. Report from the Law Complaints Officer

It has been another very busy year for my office, as demonstrated by this report.

The Chairperson has commented on the significant number of matters referred to SAT during the year under review. Against this, I am pleased to report that the number of practitioners complained about has varied little over the last 3 years and represents a relatively small percentage of the practising profession – some 7.6% of the profession was the subject of a complaint during the year, compared to 6.85% in the 07/08 year and 8.25% in the 06/07 year.

Legal Profession Act

The Chairperson has reported on the smooth transition to the new regulatory scheme. A significant amount of work was necessary to achieve this; several in-house information seminars were conducted for staff on changes under the new Act; a number of precedent documents were created to assist staff in complying with the new requirements under the Act; new procedures were formulated for matters such as the Committee's summary conclusion powers under the new Act which are significantly different to those under the old Act and, to assist the public, seven new fact sheets were created and the Committee's general information brochure and complaint form were reviewed to make them as informative and user friendly as possible.

Under Section 118 of the new Act the Committee can now conduct audits of incorporated legal practices to monitor compliance with the requirements of the Act, in particular, its management of the provision of legal services. This power was previously only exercisable by the Board, under the Legal Practice Act 2003. It is understood that the Board will adopt an online self assessment process which exists in New South Wales and Queensland, which will be incorporated in the new website which is underway. This initiative is strongly supported and will assist the Committee and the Board with their auditing powers. Research undertaken in New South Wales indicates that such a self assessment process reduces complaints and such a process might usefully be considered more widely than simply incorporated practices.

The year ahead

We will continue to workshop ideas for dealing with complaints more quickly and efficiently. We try to resolve matters where appropriate when a telephone call is first received, without requiring people to put in a formal written complaint. We try to resolve, either informally (by telephone and/or letter) or formally (by mediation under the mediation power in the new Act) a written complaint, in circumstances where a senior legal officer assesses that this is appropriate. We are undertaking formal mediations, with success, under the new Act and will be encouraging practitioners to be open to this process if it is suggested to them by this office. Two legal officers have recently completed LEADR mediation courses for this purpose (and for the purpose of mediations in SAT). We are also endeavouring to meet with practitioners or complainants at an early stage to get to the bottom of a matter rather than engaging in protracted correspondence and we are requesting or summoning files/documents at an early stage for the same purpose. The

overall purpose of these measures is to resolve those matters which can be resolved as early as possible, in the interests of complainant and practitioner alike, and to conduct and conclude enquiries into matters that cannot be resolved as thoroughly and efficiently as possible.

I will also be meeting with the Board and Law Society to discuss how we can collectively better assist practitioners who are incapacitated from practice by reason of depression or other debilitating illness. It is desirable that there be a coordinated approach by all stakeholders in the interests of the affected practitioners and the public. My office will continue to endeavour to assist practitioners who are experiencing difficulties as much as possible.

We will continue to make submissions on the National Legal Profession Reform Project as the statutory authority in Western Australia which handles complaints against legal practitioners. Several of the proposals coming out of the proposed Ombudsman structure are issues in respect of which there would be unanimity amongst the statutory complaint handlers. The Committee has also identified inadequacies in the current legislation in terms of its powers to deal with consumer complaints and law practices. It supports new powers being given to deal with consumer complaints and law practices, as well as the conduct of investigations into systemic matters of its own volition. Insofar as consumer complaints are concerned, it supports the provision of powers to make binding determinations. It agrees with the proposal that the disciplinary jurisdiction should extend to law practices, not simply individual practitioners. There are many instances when there are conduct concerns which are very difficult to pursue against individual practitioners because of their position in the firm or because it is not clear who has control of a particular matter at the time the conduct (generally omission) occurred. For this reason, although disciplinary proceedings, where possible, should be brought against individual practitioners the Committee considers that there should be a power to bring disciplinary proceedings against a law practice. This would ensure that any penalty, particularly by way of a compensation order, is directed to the firm rather than a particular practitioner who may only have been responsible for part of the conduct.

Thanks

My thanks to the Chairperson, Chris Zelestis QC, and to the Deputy Chairpersons, Ken Martin QC (as he then was) then Michael Corboy SC, for their considerable assistance to me in carrying out the Committee's functions which have been delegated to my office, and for always making themselves available to deal with the inevitable urgent matters which regularly cropped up throughout the year. My thanks also to my staff who worked very hard as a team, notwithstanding considerable pressures in managing the workloads throughout the year. Finally, my thanks to Graeme Geldart, the Executive Director of the Board, for his assistance to me with various administrative issues during the year, particularly staffing arrangements.

Diane Howell
Law Complaints Officer
December 2009

3. The Legal Profession Complaints Committee

3.1 ROLE

Under Section 557 of the new Act the Legal Profession Complaints Committee continues to have the statutory responsibility of supervising the conduct of legal practitioners and enquiring into complaints and other conduct concerns which come to its attention. It also continues to have statutory responsibility for instituting and conducting disciplinary proceedings against practitioners in the State Administrative Tribunal (“SAT”).

Its purposes are set out in Part 13 of the new Act as follows:

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

The objectives of the Committee and the Law Complaints Officer are:

- To provide an efficient and expeditious system for dealing with complaints
- To proactively monitor the conduct of the legal profession
- To initiate disciplinary proceedings as appropriate
- To promote and enforce the professional standards, competence and honesty of the profession
- To maintain a productive and motivating work environment

3.2 ORGANISATIONAL STRUCTURE

The Committee is one of three, related, regulatory authorities defined under Part 16 of the new Act. The other two are the Legal Practice Board and the office of Law Complaints Officer.

The Committee continues to be the statutory regulatory authority charged with the functions of supervising the conduct of legal practitioners and enquiring into complaints and conduct concerns (Section 557).

The Committee is constituted as a Committee of the Board in the new Act. However, it does not derive its functions from the Board. Rather, the functions are conferred directly on the Committee by the Act (Section 557). This ensures that, as regards the performance of its functions, the Committee acts entirely independent of the Board. Nevertheless, because the functions of the two bodies are related in many respects, there is close cooperation between them to ensure the effective implementation of the regulatory system established by the Act.

The Committee's operations are funded by the Board, other than its accommodation costs which, like the Board, are funded by the Government. Section 557 of the new Act provides that the Board must ensure that the Committee is provided with the necessary services and facilities to enable the Committee to perform its functions.

Section 572 of the Act establishes the office of Law Complaints Officer to assist the Committee exercise its functions and the Act provides that the Board must appoint a legal practitioner with experience in the conduct of a legal practice to this office. The Committee may delegate any of its powers or duties to the Law Complaints Officer (other than its summary conclusion powers under Section 426) and the Committee delegated many of its functions to the Law Complaints Officer shortly after the new Act came into effect.

Finally, Part 16 of the Act provides that the Board may employ staff to assist the Committee and the Law Complaints Officer. The staff of the Committee and Law Complaints Officer comprise legal officers, support staff and a senior accountant.

3.3 MEMBERS

The composition of the Committee remains the same under the new Act.

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, appointed by the Attorney General after consultation with the Minister responsible for consumer affairs. Community representatives must not be legal practitioners.

Mr C L Zelestis QC continued as the Chairperson. Mr K J Martin QC continued as Deputy Chairperson until 11 March 2009 when he was appointed to the Supreme Court Bench. Subsequently Mr E M Corboy SC was appointed Deputy Chairperson on 13 March 2009.

Board members appointed to the Committee were:

Mr R E Birmingham QC (from 15 April 2009), Mr K R Wilson SC, Mr S D Hall SC (until 22 June 2009), Mr J D Allanson SC, Mr T Lampropoulos SC, Mr J G M Fiocco, Mr J R B Ley, Mr J G Syminton, Mr J L Sher and Mr S Penglis (from 15 April 2009), Ms F B Walter, Ms A M Van Onselen (until 30 June 2009) and Ms S M Schlink.

Community representatives appointed by the Attorney General were Ms J McFarlane (until 22 May 2009) and Ms L Anderson. The deputy community representatives were Ms G J Walker and Mr J Hunter.

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, the Chairperson chairing one division and the Deputy Chairperson chairing the other. It met on 25 occasions during the year.

3.4 STAFF

The Law Complaints Officer, Ms Diane Howell was assisted by several legal practitioners employed by the Board during the year, the number varying but averaging about the equivalent of 9.5 full time practitioners. This comprised 2 Principal Legal Officers, Ms Gail McCahon and Ms Gael Roberts who shared that position, 2.4 equivalent full time Senior Legal Officers and the balance Legal Officers. Seven support staff were also employed in the office. A Senior Trust Account Inspector, Ms Anna Young continued to be based at the Committee's office and conducted inspections for the Committee and the Law Complaints Officer.

The legal officers are encouraged to attend courses and undergo training in order to improve work skills and professional knowledge (and in order to comply with the new Continuing Professional Development Policy introduced for all legal practitioners in WA).

Two legal officers attended seminars conducted by other Australian regulatory bodies, one conducted by the Legal Services Commissioner in Victoria on complaints investigations and another conducted by the Office of the Legal Services Commissioner in New South Wales on the issue of depression, mental health and well being for lawyers.

Various of the legal officers attended locally run courses in Notices under the Corporation Act and ASIC regulatory requirements, Trial preparation, Rules of evidence, Cross examination, Pre-empting difficult decisions in Court, Modern powers of attorney, Freedom of Information Act, Discovery, Fatal accidents and the Coroners Court, Negotiating and documenting out of Court settlement, Commercial litigation, Ethical values, Criminal Law Amended (Homicide) Act 2008, Criminal Law and Evidence Act 2008, Multi party litigation, People management, Solicitors costs obligations, General litigation, Risk management, Government lawyers, Advocacy, Disputing estates, Executors and trustees, Admiralty and Maritime Law.

During the year a staff induction program was formulated to assist new staff.

Senior Trust Account Inspector

Ms Anna Young has been employed at the Committee's office for some years undertaking work for both the Committee and the Board as the sole inspector employed by the Board. With the appointment of a second inspector in July 2008 based at the office of the Board, Ms Young became available to work exclusively for the Committee. She assists legal officers with complaints concerning trust accounting issues, investigates possible defalcations, undertakes causal inspections and also undertakes inspections with a view to preventing future trust accounting breaches. She also assists with disciplinary prosecutions as required. During the year she undertook some 35 inspections.

In addition, to assist the Board, she presented a paper at the Law Society seminar in April 2009, which was televised to regional centres in the State, which covered changes in the new Act and Regulations in respect of trust accounts. She also presented seminars on behalf of the Board in the following regional areas: Albany, Kalgoorlie, Broome, Bunbury and Geraldton. She liaises closely with her Eastern States counterparts and meets with them regularly with a view to uniformity of approach on trust account issues across Australia and sharing information on trust account concerns. Through her counterparts she was informed of attempted scams on practitioner's trust accounts from international parties and articles were published to WA practitioners warning of these scams.

3.5 2008/2009 A STATISTICAL OVERVIEW

- 455 complaints were received, 10% more than the previous year.
- 31 conduct investigations were commenced by the Committee of its own volition, 5 less than the previous year.
- The Committee closed a total of 454 complaints, up 6% from last year, and 54 conduct investigations.
- The Committee considered 322 complaints/conduct investigations. Of those, it determined to dismiss or not take further 199 matters.
- In respect of 59 matters considered by it, involving 35 practitioners, it approved for filing Applications in the State Administrative Tribunal (“SAT”) (not all were filed within the period under review).
- 38 Applications were filed in the SAT (some involving more than one matter) in respect of 29 practitioners, up from 27 Applications against 22 practitioners during the previous year.
- In respect of 27 matters, involving 23 practitioners, the Committee exercised its summary conclusion powers.
- 27 Applications to SAT were concluded during the year, compared to 33 Applications concluded the previous year.
- 5 practitioners had their practice certificate cancelled or suspended by the SAT.
- At the end of the period under review there were 18 Applications filed by the Committee which the SAT had not concluded.
- 2 practitioners were struck from the roll by the Supreme Court.
- 5 complainants applied to the SAT under the new Act for review of the Committee’s decision to dismiss a complaint – none were determined during the period under review.
- The total number of practitioners receiving one or more written complaints over the year was 356, up from 309 in the previous year. This represents only 7.6% of the 4673 certificated or deemed certificated practitioners. However, the number of practitioners who were the subject of 3 or more complaints over the year was down to 16, compared to 32 the previous year.

4. The complaints received

4.1 INFORMAL ENQUIRIES

Members of the public with an enquiry or concern can telephone, visit or write in with an enquiry. This is a free service and a legal officer is available each work day to assist with such enquiries. Where necessary, the Law Complaints Officer will arrange an interpreter to assist the enquirer. During the period under review the Law Complaints Officer's staff received approximately 1345 enquiries, of which 1261 were by telephone. 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 caller 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, or for assistance in formulating a written complaint.

When possible and appropriate the legal officer will endeavour to resolve the complaint with the parties concerned.

4.2 WRITTEN COMPLAINTS

The number of complaints

The Committee received a total of 455 written complaints, compared to 411 received last year.

In addition, the Law Complaints Officer or the Committee itself initiated an enquiry into 31 matters in the absence of a complaint being received, compared to 36 such enquiries in the last reporting period. For the purpose of this report, these enquiries have been categorised as complaints by the Committee. These enquiries arise as a result of a possible conduct concern coming to the attention of the Law Complaints Officer or a member of the Committee.

Statistical information on the complaints received is tabulated at the back of this report.

The Complainants

Some 56% of complaints were from clients or former clients of the practitioner, and about 23% of complaints were from the other party to proceedings in which the practitioner acted for a party.

The types of complaint

Many complaints raised more than one matter of complaint. Costs continued to attract the most complaints followed by, in order, failing to communicate or inform on the progress of a matter, delay, failing to carry out instructions, misleading conduct, discourtesy and neglect.

The areas of law

The areas of law attracting the most complaints were family law (23%), civil litigation (22%) and criminal law (9%).

The practitioners

Sole practitioners continue to be the largest category of practitioners complained of (28%) followed by practitioners in incorporated practice (26%) – it is understood that this latter figure includes those sole practitioners who have moved to an incorporated structure.

The number of practitioners complained of

Some 356 practitioners were the subject of one or more written complaints during the period under review, compared to 309 in the last reporting period. Of this total, 263 practitioners were the subject of one complaint, (242 in the previous year), 77 practitioners were the subject of two complaints (35 in the previous year) and 16 practitioners were the subject of three or more complaints (32 in the previous year).

The Board has reported that there were 4673 certificated or deemed certificated practitioners practising in WA during the reporting period (4510 last year). See Table 11 of the composition of this figure at the Appendix. However, this figure does not include those interstate based practitioners practising in this State who are no longer required to take out a practice certificate in WA by reason of holding a home jurisdiction practice certificate.

The number of practitioners complained of represented 7.6% of certificated or deemed certificated WA practitioners compared with 6.85% of practitioners in the 2007/2008 reporting year and 8.25% in the 2006/2007 reporting year.

Outstanding complaints

At the commencement of the period under review the Committee had 528 matters undetermined and still under investigation (443 complaints and 85 conduct enquiries). During the period 455 complaints were received and 31 conduct enquiries commenced (totalling 486 matters). At the end of the period 506 matters remained undetermined (444 complaints and 62 conduct enquiries). The result is that over the whole of the period under review a total of 508 matters were finalised upon the conclusion of investigations and, if appropriate, a final determination by the Committee (454 complaints and 54 conduct enquiries). These statistics include previously closed files which were reopened upon further information being received.

Performance Criteria

With the coming into effect of the new Act on 1 March 2009 the LCO and her staff have resolved to apply the performance criteria adopted by New South Wales under its Legal Profession Act. This will be implemented when the electronic complaints system is installed by the Board to enable the necessary statistics to be extracted. Steps are being taken to facilitate this occurring in the next few months.

4.3 THE COMPLAINTS PROCESS

Under the new Act the Committee is required to notify practitioners of complaints, and of their right to make submissions to the Committee in respect of them. 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.

Investigations

The Committee continues to have wide powers of investigation under Part 15 of the new Act – it can obtain files or other documents from practitioners or third parties, examine practice records, examine on oath the practitioner or other persons involved in the practitioner’s affairs, or require the practitioner to provide written information verified by statutory declaration. The investigation of substantive complaints, or those of some complexity, may take some time. In the case of even straightforward complaints investigations may be necessary, for example, if there is a conflict in facts as to what occurred it may be necessary to make enquiry of witnesses, or examine court records. The Law Complaints Officer issues a large number of summonses each year as part of the investigative process - for example, between 27 January 2009 and 30 June 2009 the Law Complaints Officer issued 43 Summonses for information, documents or evidence pursuant to the powers under the old Act or the new Act.

Receipt of several complaints, or a particular complaint, may indicate that a practitioner isn’t coping. When appropriate, the Law Complaints Officer’s staff will visit a practice and inspect practice records, which may include an audit of client files, discuss matters with the practitioner in respect of the conduct of the practice and make recommendations.

The trust account inspector based at the Committee’s office is also available to conduct an examination of the financial and related records of a practice, either broadly or in respect of a particular client matter.

Written complaints resolved

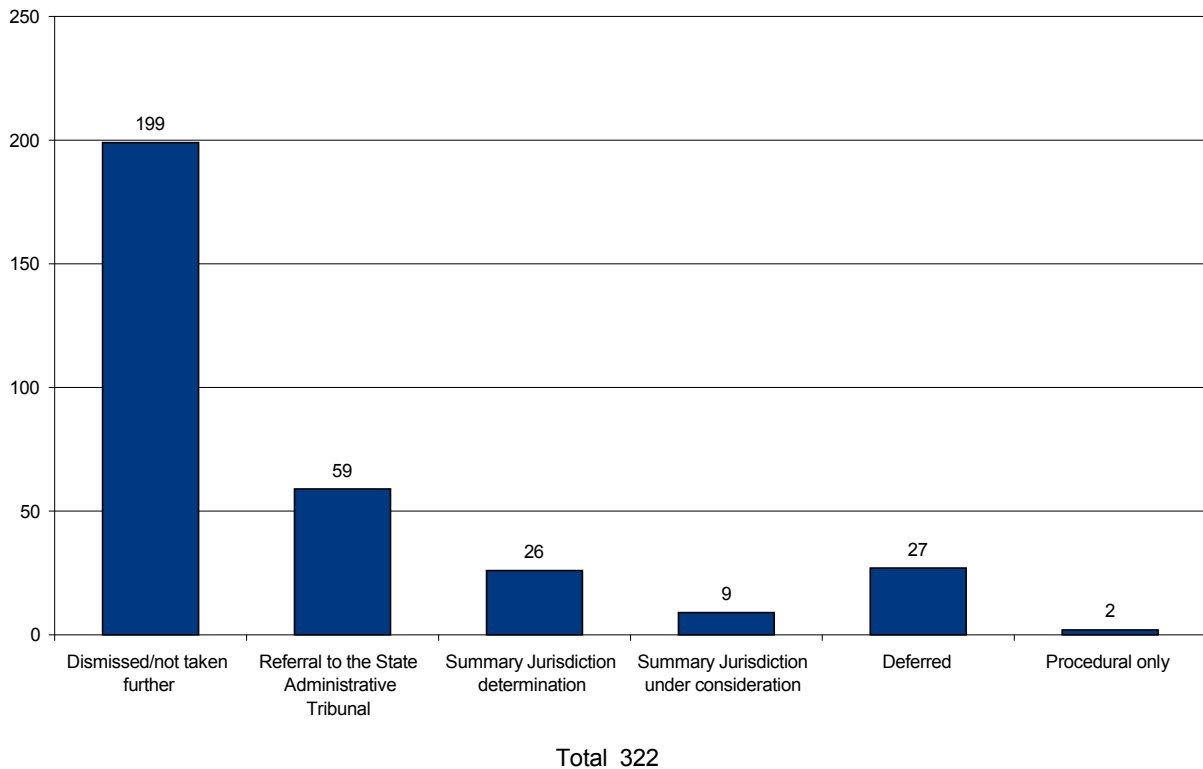
If it appears appropriate to do so, the legal officer handling the complaint will endeavour to informally resolve the complaint. Under the new Act the Committee may refer a complaint for mediation (unless it involves possible professional misconduct), and the Law Complaints Officer and her staff will encourage practitioners and complainants to agree to this process in appropriate cases. The Committee has on its staff a number of accredited mediators. For example, a mediation was conducted which involved complaints and cross complaints of gross discourtesy between two practitioners. At the time there was litigation on foot between the clients of the practitioners.

If the complaint isn’t resolved, or withdrawn, or if it indicates a breach of the Act, it is referred to the Committee for consideration.

5. Complaints considered by the Committee

The Committee considered 322 complaints (and conduct enquiries) during the period under review. Those considered up to 28 February 2009 were, of course, considered under the old Act and those considered from 1 March 2009 fell under the new Act. Some 65 of the complaints had earlier been initially considered by the Committee and deferred pending further investigation or advice, or pending the conclusion of litigation or a taxation of costs.

A brief summary of how these complaints were determined is as follows:



5.1 REFERRED TO THE TRIBUNAL

The Committee resolved to refer matters arising from some 59 complaints or conduct enquiries to the Tribunal. Those matters involved 35 practitioners, the Committee resolving to refer more than one matter in respect of several practitioners. Such referrals were made under Sections 180 or 182 of the old Act or, after 1 March 2009, under Sections 428 or 436 of the new Act.

The referral is by way of an Application filed in the Tribunal and served on the practitioner. It identifies the conduct issues and the facts supporting the Application. The Committee is the applicant and is represented in the Tribunal by the Committee's staff or, in the case of defended hearings, external counsel briefed from the bar.

Some of the matters referred to above were not filed in the Tribunal before the end of the period under review.

5.2 SUMMARY JURISDICTION DETERMINATIONS

The Committee exercised its summary conclusion powers in respect of 27 complaints or conduct investigations involving 23 practitioners.

Four were concluded under Section 426 of the new Act and the balance under Section 177 of the old Act. These matters were as follows:

- A practitioner was found guilty of neglect between 18 November 2004 and 16 December 2005 in relation to pursuing a civil action against the Commissioner of Police on behalf of the complainant. In particular, the practitioner:
 - a) failed to pursue the civil action;
 - b) failed to issue any originating documents in court; and
 - c) failed to communicate with the client regarding the status of proceedings and the need for documentation to be submitted.The practitioner was fined \$500.

- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct:
 - a) between May 2005 and July 2005 and between October 2005 and April 2007 or thereabouts by failing at least once a month to reconcile the trust ledgers of the practice in which he was the sole director, as required by Rule 57 of the *Legal Practice Board Rules 2004*.
 - b) between October 2005 and April 2007 or thereabouts by failing to maintain the books of account for the practice in which he was the sole director in such a manner as to enable the books to be readily and conveniently audited as required by Section 140 of the *Legal Practice Act 2003*.The penalty imposed was a reprimand in respect of each matter.

- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct, between 27 July 2006 and 5 March 2007 by:
 - a) breaching Family Law Rules 19.03(1) and 19.04(1), (3), and (5); and
 - b) contrary to the client's instructions, directing a practitioner who worked under the practitioner's supervision to send a letter to another party.The Committee imposed no penalty.

- The Committee found that a practitioner was in March and April 2006 or thereabouts guilty of unsatisfactory conduct by way of unprofessional conduct in that without good cause he terminated the retainer from his clients to act for them in the purchase of a property. The practitioner was reprimanded.

- The Committee found that a practitioner was, between January 2001 and October 2001 or thereabouts guilty of unsatisfactory conduct by:
 - a) neglect in the course of the practice of the law in failing to follow a client's instructions to file and serve a defence in a Supreme Court action and/or to advise the clients of the possible consequences of failing to do so and failing to file a Notice of Appointment of Solicitors;

- b) unprofessional conduct in misleading the court as to the status of the representation of the clients and the reason for the failure to file a defence in the action;
- c) unprofessional conduct in misleading the Plaintiff's solicitors as to the status of legal representation for the clients by failing to serve them with the clients' Notice of Intention to Act in Person within a reasonable time.

The practitioner was fined \$2,000 and ordered to refund to the clients the sum of \$2,000.

- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct in failing to frankly advise the Court of Appeal, in response to a comment from the President, that he took responsibility for the inadequate quality of the written submissions in a matter knowing that the President had been led to assume from his response that he bore no responsibility for the content of those submissions. The penalty imposed was a fine of \$1,000.
- The Committee found a practitioner guilty of unsatisfactory conduct between about 22 May 2007 and 8 November 2007 inclusive by failing to comply with requests made by the office of the LPCC to provide a letter explaining the reasons for his delay in providing a response to a letter to him from the office of the LPCC dated 17 October 2006. A reprimand was imposed.
- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct by:
 - a) rendering interim accounts totalling \$2,493.15 between February 2006 and June 2006 to his client, when he was not entitled to do so; and
 - b) between about November 2006 and April 2007, applying the total sum of \$11,635.80 from trust monies received from the client to payment of fees charged, and disbursements incurred, by the incorporated legal practice of which he was a director, without having caused to be served upon the client within 14 days after each occasion on which the trust monies were applied, a bill of costs showing the application of trust monies to payment of such fees and disbursements. The Committee imposed a reprimand.
- The Committee found that a practitioner was guilty of unsatisfactory conduct by unprofessional conduct by breaching an undertaking given to another practitioner and further or in the alternative by failing to notify the recipient of the undertaking of material matters affecting the efficacy of his undertaking. The practitioner was fined \$500.
- The Committee found a practitioner guilty of unsatisfactory conduct by unprofessional conduct between in or about February 2005 and in or about June 2005 in:
 - a) failing to provide his client with a Costs Notice and/or Costs Disclosure in or around February 2005 in breach of Family Law Rule 19.03(1);
 - b) failing to provide his client with a Costs Notice and make reference to that Notice in an invoice dated 20 April 2005 and an itemised account in breach of Family Law Rule 19.03(2);

- c) rendering an account dated 20 April 2005 which charged the client an hourly rate in excess of that provided for in the Family Law Court Costs Scale in the absence of a written Costs Agreement permitting the charge outside of the scale in breach of Family Law Rule 19.18;
- d) issuing proceedings against the client for recovery of the amount of the account in circumstances where the practitioner had not complied with the clients request that the account be itemised and taxed.

In addition, the practitioner was found guilty of unsatisfactory conduct by undue delay in the course of legal practice between in or around June 2005 to in or around September 2005 in providing his clients with an itemised account in response to her request dated 12 May 2005.

The practitioner was fined a total of \$750.

- A practitioner was found guilty of unsatisfactory conduct between 1 July 2006 and 2 August 2007 by contravention of Sections 35 and 123 of the Legal Practice Act 2003 by engaging in legal practice without being the holder of a current practice certificate. The practitioner was reprimanded.
- A practitioner was found guilty of unsatisfactory conduct by way of unprofessional conduct between July and September 2007 or thereabouts in the course of acting for clients by improperly making the withdrawal of a complaint to the Committee a term of a compromise agreement regarding his account. The practitioner was fined \$750.
- The Committee found a practitioner Christopher Neil Raphael guilty of unsatisfactory conduct by:
 1. In respect of a client Ms F, unprofessional conduct on or about 30 and 31 July 2004 by engaging in conduct likely to bring the profession into disrepute when he intervened in an altercation between the client and Mr and Mrs H and acted in a manner, and used language, which was likely to increase the level of animosity between the parties and which would be viewed by most members of the public as distasteful and inflammatory. The Committee imposed a fine of \$1,000.
 - 2.(a) In respect of a client Mrs L, unprofessional conduct in the period December 2004 to March 2005, in that he engaged in a sexual and social relationship with his client Mrs L, whilst in the course of acting for her in property settlement proceedings against her then estranged husband Mr L, and thereby:
 - i. engaged in conduct which had the potential to affect adversely the client's interests in the matter in which he was retained and which was not then concluded; and
 - ii. used his position as the client's solicitor to advance his own emotional and sexual gratification, inconsistently with his duty to provide the client with independent and objective advice and representation in the proceedings.
 - 2.(b) Unprofessional conduct on 27 June 2006 whilst giving evidence as a witness for the prosecution in the matter of the State of Western Australia

and Mr L, when he made statements that were not frank and accurate and which the practitioner later admitted under cross-examination were untrue.

The Committee imposed a fine of \$2,500.

3. In relation to a client Mr S L, neglect in that from on or about 11 July 2007 he failed to file written submissions on behalf of his client within 14 days as ordered by the Family Court on 25 June 2007. The Committee reprimanded the practitioner.

The Committee also determined to recommend that the Board consider imposing a restriction on the practitioner's practice certificate. It further resolved to publish its decisions in respect of the practitioner. These are located on the Committee's website.

- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct:
 - a) by intentionally, or alternatively recklessly, misleading the District Court and a fellow practitioner in respect of an application filed in a District Court Action to compromise those proceedings by representing that his client was alive when that was not the case. The practitioner was fined \$2,500.
 - b) by gross discourtesy over a three month period in failing to respond to correspondence from a fellow practitioner. The practitioner was reprimanded.

- A practitioner was found guilty of unsatisfactory conduct by unprofessional conduct in the course of acting on behalf of a client from in or about February 2005 to August 2006 by:
 - a) distributing trust fund monies received and held on behalf of the client without the client's authority contrary to Section 137 of the Legal Practice Act 2003; and
 - b) acting in a position of conflict of interest.The penalty imposed was a reprimand.

- The Committee found that a practitioner was, in acting for a client:
 - a) between about 4 November 2004 and about 15 October 2006 in Family Court proceedings guilty of unsatisfactory conduct by unprofessional conduct by:
 - i. failing to adequately inform the client about costs as required by Family Law Rule 19.03;
 - ii. failing to provide the client with adequate notification of costs at each court event ("the Costs Notifications") as required by Family Law Rule 19.04(1) and (2); and
 - iii. failing to provide copies of the Costs Notifications to the Court and/or to the husband as required by Family Law Rule 19.04(3).

The practitioner was fined \$250.

- b) on or about 3 May 2006 guilty of unsatisfactory conduct by unprofessional conduct in that whilst he continued to act for the client he prepared for the client's signature (and requested that she sign) a statement for the Committee by which she accepted personal responsibility for breaching certain Family

Court orders in circumstances where the statement was potentially detrimental to the client's interests. The practitioner was fined \$250.

- A practitioner was found guilty of unsatisfactory conduct:
 - a) between 1 July 2006 and 22 August 2006 inclusive by contravention of Sections 35 and 123 of the *Legal Practice Act 2003* by engaging in legal practice without being the holder of a current practice certificate; and
 - b) between 8 December 2005 and 21 July 2006 by not operating the trust account of an incorporated legal practice properly in breach of Part 10 of the said Act. The practitioner was reprimanded in respect of each matter.

- A practitioner was found guilty of unsatisfactory conduct between:
 - a) 1 July 2006 and 3 October 2006 by contravention of Sections 35 and 123 of the *Legal Practice Act 2003* by engaging in legal practice without being the holder of a current practice certificate;
 - b) on or about 23 July 2006 by displaying a lack of candour in responding to requests for information by the Board about the legal work she carried out during July 2006; and
 - c) on or about 29 January 2007 by displaying a lack of candour in responding to requests for information by the office of the Committee about the legal work she carried out during the period from 1 July 2006 and 3 October 2006.The practitioner was reprimanded in respect of each of the three matters.

- The Committee found a practitioner guilty of unsatisfactory conduct by sending a letter to the other parties lawyers who were acting for the complainant and his mother, who were the executors of a disputed will of the deceased, which implied that the complainant and/or his mother were implicated in and possibly responsible for, the death of the deceased, which the practitioner did not have reasonable grounds to support. A fine of \$500 was imposed.

- The Committee found a practitioner guilty of unsatisfactory conduct by unprofessional conduct from on or about 4 May 2007 by breaching his duty of confidentiality and loyalty to his former client by swearing and filing an affidavit in the Family Court of WA that he knew contained:
 - a) confidential communications between his former client and himself; and
 - b) allegations against his former client of withholding information and knowingly providing incorrect information to another solicitor at the practitioner's firm.The practitioner was fined \$500.

The following matters were determined under the new Act:

- The Committee resolved that it was satisfied that there was a reasonable likelihood that a practitioner would be found guilty of unsatisfactory professional conduct by the Tribunal on the grounds that between 25 May 2005 and December 2007 the practitioner when acting for his clients with respect to the purchase of land and a business, failed to lodge an application for the transfer of a well licence to the clients and in about May 2005 improperly charged the clients \$200 as a

disbursement for the transfer when the practitioner had not lodged the transfer with Landgate. A private reprimand was imposed.

- The Committee resolved that it was satisfied that there was a reasonable likelihood that a practitioner would be found guilty of unsatisfactory professional conduct by the Tribunal on the grounds of:
 - a) recklessly drafting and permitting a client to swear an affidavit of documents in Family Court proceedings which failed to disclose some relevant documents;
 - b) recklessly drafting and permitting the client to sign an undertaking that the client had complied with his duty to give full and frank disclosure.A private reprimand was imposed.

- The Committee resolved that it was satisfied that there was a reasonable likelihood that a practitioner would be found guilty of unsatisfactory professional conduct by the Tribunal on the grounds that the practitioner failed to represent her clients at a taxation, alternatively, failed to clarify that she would not be representing them on that date. A private reprimand was imposed.

- The Committee resolved that it was satisfied that there was a reasonable likelihood that a practitioner would be found guilty of unsatisfactory professional conduct by the Tribunal on the grounds that between about January 2000 and mid 2004 she failed to follow the clients instructions to successfully lodge water easements with Landgate. A private reprimand was imposed.

In respect of a further 9 matters, the Committee had under consideration summary conclusion of a matter pursuant to Section 426 of the new Act but these matters were not concluded during the period under review.

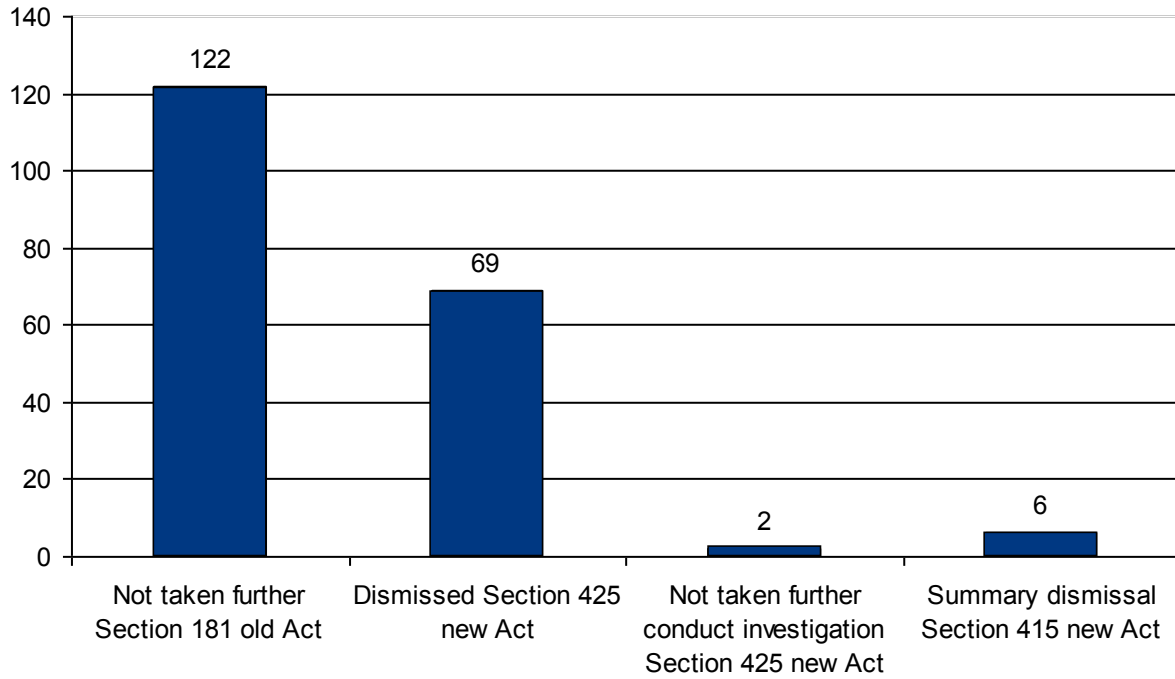
5.3 NOT TAKEN FURTHER/DISMISSED

In respect of 199 complaints the Committee resolved to not take the complaint further (under the old Act) or to dismiss the complaint (under the new Act) or to not take a conduct investigation further. However, of these 199 matters the Committee resolved in 72 matters (whilst there had been no apparent breach of the Act by the practitioner complained of) to express its concern to the practitioner about an aspect of his/her conduct, or to make a recommendation to the practitioner in respect of an aspect of the conduct complained of. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future.

For example:

- The Committee received a complaint in respect of a letter sent by a practitioner acting for the other party in a family law matter. The Committee resolved that the conduct did not amount to unsatisfactory conduct. However, the practitioner was advised that his response to the complaint contained statements which went beyond the facts and which were inflammatory, and that he should refrain from making such statements when responding to complaints from the Committee. It further resolved to advise the partner in charge of the relevant section of the practitioner's firm of the Committee's concern and the need to counsel the practitioner in this regard, although the practitioner would first be given notice that such a letter would be sent.
- The Committee considered a complaint which included a complaint of delay in transferring the balance of the complainant's trust account to her new solicitor and in responding to a letter of complaint the complainant sent to the practitioner. The practitioner stated that he had overlooked responding to the complainant's letter and apologised for that oversight. The Committee advised the practitioner that requests that the balance of a client's trust account be transferred to a new solicitor, and letters of complaint from clients, should be addressed promptly. The practitioner was directed to forward the trust account balance to her new solicitor immediately.
- The Committee considered a complaint that a practitioner improperly used his position as a legal practitioner in his dealings with the complainant by writing utilising his legal employer's letterhead as a result of which the complainant felt intimidated. The Committee found that the conduct did not amount to unsatisfactory conduct in the circumstances and noted that the practitioner had apologised to the complainant. However, the Committee expressed concern about the tone of the practitioner's letters and advised him to ensure in future that he removes the legal letterhead when communicating with parties regarding a personal dispute.

A breakdown of the 199 matters determined is as follows:



Finally, some 27 complaints considered by the Committee were deferred for further investigation or advice, or pending the outcome of taxation or related litigation. A further 2 matters considered by the Committee were only for determination on procedural matters ancillary to the complaint.



6. Tribunal and Court Proceedings

6.1 STATE ADMINISTRATIVE TRIBUNAL (SAT)

As reported, the Committee resolved to refer matters arising from some 59 complaints or conduct enquiries to the SAT. In respect of 46 of these matters, the Committee filed 38 Applications in the SAT in respect of a total of 29 practitioners. Some involved multiple conduct matters rolled into one Application. The balance of 13 matters (involving 8 practitioners) were not filed before the end of the period under review and one of these was withdrawn before filing.

At the request of the SAT, the Committee has in recent years, in some instances, included several conduct matters in one Application, rather than file separate Applications for each matter. This has reduced a little the number of Applications filed from previous years.

The following schedule summarises those Applications which were determined by the SAT during the period under review - there were 27 such Applications. The SAT publishes its decisions on its website in order to inform the public and the profession.

At the conclusion of the period under review there were 18 Applications filed by the Committee in the SAT registry which had not been determined. These are listed in the following schedule.

The practice of listing SAT Applications for mediation at any early stage of the proceedings has facilitated the early resolution of several Applications by way of agreed orders which are approved by the SAT. In relation to matters proceeding to a defended hearing, mediation may assist in narrowing the matters in issue and the evidence to be called.

Under the new Act, the right of complainants to bring in person proceedings in the SAT, if unhappy with the Committee's decision to dismiss a complaint, has been restored. (It had been removed in the Legal Practice Act 2003). A party to a complaint who is aggrieved by the Committee's decision can ask the SAT to review the decision (Section 435 of the new Act). There were 5 such Applications filed during the period under review.

6.2 SUMMARY OF TRIBUNAL MATTERS DETERMINED 1.7.08 – 30.6.09

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
177/07	13.03.09 03.04.09	TROWELL, Mark Terence	Without his client Ms Corby's consent, disclosed confidential information of Ms Corby and (based on the same disclosures) made statements to the media concerning Ms Corby.	Reprimand Costs \$55,000
252/07	16.01.09	McCORMACK, Richard James Larry	Whether failure to inform Court of insufficient evidence to justify making declaration. Whether failure to inform Court it would be unsafe to rely on affidavit. Whether recklessly indifferent to truth of affidavit.	Dismissed
4/08	19.09.08 24.11.08	SINGH, Sukhwant	a) Seeking and accepting payment of costs when matter arose because of conduct of firm. b) Delay in notifying client of significant development. c) Delay in responding to fellow practitioner.	a) Fine \$5,500 b) Fine \$1,000 c) Fine \$800 Costs \$9,825
99/08	15.08.08	TANG, Kelvin Ka Chuen		Withdrawn Costs \$1,750

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
124/08	24.09.08	GAUNT, Sally Anne	Sending a letter to the Court which the practitioner knew was false and misleading and forwarding a letter to the Committee which the practitioner knew was misleading.	Suspension from practice 1 November 2008 to 30 June 2009. Practitioner undertook not to practice law again and not to apply for a certificate to practice law in WA or elsewhere. Costs \$2,500
129/08 and 153/08	08.07.08 24.10.08	PEPE, Josephine	Conviction of attempting to pervert the course of justice.	Interim suspension from practice 8.7.08. Suspended from practice. Report to Supreme Court Costs agreed
150/08	27.10.08	WATTERS, Simon Barry	Applications for leave to appeal and appeals on behalf of two clients fell short of standard of competence and diligence.	Reprimand Costs \$4,225
157/08	13.01.09	FITZPATRICK, Carmel Mary		Withdrawn
158/08	04.09.08			Interim suspension from practice. Name of practitioner suppressed.

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
163/08	24.09.08	TANG, Kelvin Ka Chuen	a) Grossly excessive charges in family law matter and criminal matter. b) Failing to provide costs information under Family Law Rules.	a) Fine \$2,000 b) Reprimand Costs \$1,000
169/08	24.10.08	ALDRICH, Alison Janice	a) Between 1 October 2005 and 10 March 2006 failing to have insurance in respect of incorporated legal practice. b) On about 18 November 2005 providing ambiguous and misleading information concerning the provision of legal services by the practice.	a) Fine \$5,000 b) Fine \$2,000 Costs \$3,000
178/08	01.12.08	GEBARSKI, Allan Zbigniew	Grossly excessive charges when acting for client in personal injury claim.	Fine \$2,000 Refund client \$1,700 Costs \$1,500
179/08	14.11.08	GOH, Lynette May Lin	a) Recklessly advising client that caveat had been lodged and registered when it had not. b) Undue delay in lodging caveat.	a) Fine \$4,000 b) Fine \$1,500 Costs \$1,500

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
187/08	22.12.08	AVERY, Dirk Hazel	Including provision in will for him to receive executor's commission in addition to his ordinary fees for administering an estate. Improperly charging commission of \$9,559.66.	Undertaking not to charge commission without prior approval of Court or all beneficiaries. Undertaking that when preparing will, will not seek or agree to be appointed executor. Fine \$8,000 Pay to residual beneficiary \$9,559.66 Costs \$3,500
194/08	05.05.09	REYBURN, John Henry	Whether charged a client an amount in excess of that entitled to charge under costs agreement, whether amount excessive.	Dismissed
195/08	24.04.09	GOODLET, Walter Leslie		Withdrawn
198/08	02.12.08	McEWAN, Ian Stuart	a) Practising without certificate between 27 December 2007 and about 29 January 2008. b) Misleading a client as to his practice certification and misleading Board by representing he intended to practice when he had already commenced doing so.	a) Reprimand b) Fine \$3,500 Costs \$1,000

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
208/08	27.02.09	HAVILAH, Bruce Douglas	Rendering accounts when firm responsible for work charged by reason of failure to act in timely manner. Prepared and swore affidavit which by reason of what omitted therefrom was misleading and had the potential to mislead the court.	Fine \$6,000 Costs \$1,500
209/08	10.06.09	VOGT, Willfried	Swearing an affidavit and making oral submissions with the intention of misleading the court.	Suspended from practice 1 August 2009 until 31 October 2009. (Suspension stayed pending appeal) Costs \$10,000
215/08	06.03.09	OFFER, Thomas Henry	Undue delay or neglect between 27 July 2007 and January 2008 in failing to prepare draft minute of amended or substituted statement of claim.	Reprimand Costs \$1,500
4/09	18.02.09	SOUTH, Darren Bruce	Failing over period of time to comply with requests by Board to provide audit certificate and using correspondence and preparing documentation in an action in which he and his wife were plaintiffs which implied he was certificated.	Reprimand Costs \$1,000

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
20/09	05.02.09	ASHBY, Michael Hillary		Interim suspension from practice
31/09	02.04.09	LOUREY, Michael Joseph	Undue delay between February 2005 and June 2006 and between 19 September 2006 and 5 January 2007 in carrying out work for client which he had agreed to do.	Fine \$2,500 Costs \$1,500
46/09	22.05.09	SORENSEN, Peter John	Failure to properly maintain trust records. Requesting auditor to issue unqualified audit certificate when qualifications appropriate. Misleading Board by forwarding misleading certificate.	Condition on practice that only practice as employee for 2 years. Fine \$5,000 Costs \$1,500
58/09	21.05.09	MASTEN, Paul Ernest		Interim condition that entitlement to practice is limited to work done for law practice Denning Deane Masten and only under supervision of manager of practice.
65/09	12.06.09	HAVILAH, Bruce Douglas	Undue delay between April 2006 and February 2007 in progressing finalisation of an estate.	Fine \$2,500 Costs \$1,000

6.3 SUMMARY OF TRIBUNAL MATTERS WHICH WERE NOT DETERMINED AS AT 30.6.09

PRACTITIONER	DATE FILED	TYPE OF ALLEGATION	STATUS
Case 1	28.02.07	Unsatisfactory conduct: knowingly making false representations as to nature of work carried out in respect of 8 matters, wrongly invoicing, practising while suspended and failing to deposit funds into trust account.	Proved. To file submissions on penalty
Case 2	05.04.07	Unsatisfactory conduct: misleading conduct and improperly lodging caveats against property.	Proved. To file submissions on penalty
Case 3	09.12.08	Unsatisfactory conduct: wrongly advising client to breach Builders Registration Act, misleading response to LPCC.	Hearing date 7.8.09
Case 4	09.12.08	Unsatisfactory conduct: sending a letter containing threats and intimidatory demands.	Proved. Awaiting decision on penalty
Case 5	05.01.09	Unsatisfactory conduct: inappropriate statements to client.	Deferred to fixed date
Case 6	12.01.09	Unsatisfactory conduct: sending two letters which misrepresented the terms of court orders made.	Hearing date 10.8.09
Case 7	26.02.09	Unsatisfactory conduct: Failing to keep client informed or seek her instructions regarding party/party costs, neglect or undue delay.	Referred to mediation
Case 8	26.02.09	Unsatisfactory conduct: Failing to make superannuation contributions and lodge superannuation guarantee statements.	Referred to mediation
Case 9	26.02.09	Unsatisfactory conduct: Excessive charges, failing to supervise, failing to progress matter, failing to itemise account.	Referred to mediation

PRACTITIONER	DATE FILED	TYPE OF ALLEGATION	STATUS
Case 10	26.02.09	Unsatisfactory conduct: terms of costs agreement, excessive charges, failure to comply with Section 34A(b) of the Legal Practitioners Act, failing to keep client informed or seek her instructions regarding party/party costs.	Referred to mediation
Case 11	26.02.09	Unsatisfactory conduct: terms of costs agreement, excessive charges, undue delay or neglect, failing to comply with court direction.	Referred to mediation
Case 12	26.02.09	Unsatisfactory conduct: terms of costs agreement and excessive charges.	Referred to mediation
Case 13	11.05.09	Professional misconduct: attempting to mislead LPCC, unsatisfactory professional conduct by neglect or undue delay during conduct of client matter.	Listed for mediation 22.7.09
Case 14	11.05.09	Professional misconduct: by reason of conviction for offence.	Listed for mediation 20.7.09
Case 15	19.05.09	Professional misconduct: lack of competence, undue delay and failing to respond to LPCC. Unsatisfactory professional conduct: failing to advise client of withdrawal of trust funds.	Listed for mediation 30.7.09
Case 16	11.06.09	Professional misconduct: dishonest conduct by withdrawing and using for own benefit trust funds.	Directions hearings
Case 17	30.06.09	Professional misconduct: conflict of interest, costs issues, competence issues, wrongful written communications, failing to deposit monies into trust, failing to render accounts, failing to follow instructions, wrongly altering a costs agreement.	Directions hearing 14.7.09
Case 18	30.06.09	Unsatisfactory professional conduct: lack of competence and made allegations against a practitioner without reasonable grounds.	Directions hearing 14.7.09

6.4 REPORTS TO THE FULL BENCH

If a disciplinary matter is found proved, the State Administrative Tribunal can decline to itself impose a penalty and instead transmit a Report to the Full Bench. The Full Bench can make any order available to the State Administrative Tribunal and/or strike a practitioner off the roll.

Practitioner's struck from the roll during the period under review were Tomas Mijatovic and Josephine Pepe.

The only practitioner who remained, during the period under review, the subject of a Report to the Full Bench which had not been determined was Alan James Camp.

6.5 APPEALS

The practitioner Alan James Camp appealed to the Court of Appeal from a decision of a single Judge refusing leave to appeal on one ground arising from unprofessional conduct findings by the Tribunal. In September 2008 the Court dismissed the appeal. The practitioner subsequently filed a special leave application with the High Court which wasn't determined during the period under review. In December 2008 the Court of Appeal allowed the practitioner's Appeal in respect of another ground arising from the findings of the Tribunal and ordered that the Tribunal's finding on that ground be quashed.

7. Promoting Professional Standards

The Committee aims to be proactive in its complaints handling, with a view to reducing the causes of complaint.

One of the purposes of Part 13 of the Act, which concerns complaints and discipline, is

“to promote and enforce the professional standards, competence and honesty of the legal profession”

(Section 401(b))

This involves the Committee feeding back to the profession conduct issues arising from the exercise of its functions.

It aims to do so, firstly, by advising particular practitioners about an aspect of his/her conduct which it found to be of concern, or reminding a practitioner of a particular professional obligation, or making a recommendation to a practitioner in respect of future conduct arising out of the Committee’s consideration of a complaint. The Committee took this course in respect of 72 complaints considered by it.

Secondly, it does so by disseminating information to the profession as a whole, by way of publishing notices or articles in Brief Magazine and on its website, and by speaking to members of the profession when invited to do so.

A number of articles were published during the year and, at the request of the Law Society, the Law Complaints Officer provides an article every 3 months for Brief Magazine. The articles are also placed on the Committee’s website to make them accessible to the entire profession.

Published articles concerned:

- Dealing with the Legal Practitioners Complaints Committee
- Internet Banking Warning
- Changes relating to the Legal Practitioners Complaints Committee under the Legal Profession Act
- Recent matters before the Legal Practitioners Complaints Committee: Taking care with correspondence to third parties about Family Court orders; Specifying GST in costs agreements; and Dealing with letters of complaint
- Reasons for Decision of the Legal Practitioners Complaints Committee in respect of Mr C N Raphael
- Costs Complaints

A brochure on best practice for answering complaints was reviewed in light of the new Act and provided to practitioners.

During the year the Law Complaints Officer presented papers at two seminars, one on best billing practice and another on ethics in general litigation: the Deputy Chairperson of the Committee also spoke at the latter seminar; the Chairperson spoke at a Law Society seminar on changes under the new Act; senior legal officers addressed articled clerks as

part of the clerks training programme and at a family law seminar; the Senior Trust Account Inspector employed at the Committee's office presented a paper at a Law Society seminar on changes under the new Act and spoke at various country seminars arranged by the Board.

Thirdly, the Committee aims to assist and inform the public by producing brochures and fact sheets which are available at its office, and on its website. Seven new fact sheets were created and placed in reception and on the website. A general information brochure and taxation brochure were also reviewed and amended.

The publication of disciplinary proceedings against practitioners also serves the purpose of promoting professional standards: adverse disciplinary findings serve not only to inform the public but also to educate the profession at large of the expected standards of professional conduct. These decisions are published by the State Administrative Tribunal on its website and summaries of them are published in the Law Society's Brief Magazine.

The Committee has two representatives on a Board committee which has been established to formulate new Professional Conduct Rules.

The Committee will also make submissions on the current legislation and any proposed legislative change which may impact on the regulatory scheme.



8. Tables

TABLE 1 NEW COMPLAINTS/CONDUCT ENQUIRIES 2007 – 2009

	Total 2006 – 07	Total 2007 – 08	Total 2008 – 09
Complaints	440	411	455
Conduct Enquiries	66	36	31
Total	506	447	486

TABLE 2 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2007 - 2009

Source of complaints	Total 2006 – 07	Total 2007 – 08	Total 2008 – 09
Client or former client	260	241	273
Other party to proceedings	94	105	114
Legal practitioner	33	23	29
Judiciary	1	0	8
Legal Practice Board	16	10	5
Law Society	1	0	0
Police	0	1	3
Other	35	31	31
Committee enquiry	66	36	23
Total	506	447	486

TABLE 3 COMPLAINTS OPENED BY AREAS OF LAW 2007 – 2009

Areas of law	Total	Total	Total
	2006 – 07	2007 – 08	2008 – 09
Commercial/Company law	18	31	40
Probate/Wills/Inheritance Act	54	48	34
Professional negligence	3	2	9
Leases/Mortgages/Franchises	8	9	12
Conveyancing	25	21	23
Criminal law	46	36	48
Employment/Industrial law	5	2	5
Immigration	1	2	5
Family/Defacto law	116	127	115
Personal injuries	51	42	26
Workers Compensation	24	11	20
Victims Compensation	0	3	2
Civil Litigation	108	93	110
Conduct in respect of legal practice	34	20	29
Conduct outside legal practice			9
Native Title	3	0	2
Other	17	15	20

TABLE 4 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2007 – 2009

Areas of complaint	Total 2006 – 07	Total 2007 – 08	Total 2008 – 09
Inadequate estimate of costs	16	10	21
Overcharging/wrongful charging	102	91	98
No costs disclosure	15	22	15
Transfer costs without authority	9	1	6
Failing/delay to account for moneys	17	17	14
Failure/delay to provide detailed account	10	10	5
Failure/Delay tax costs	8	8	3
Failing to pay third party	6	2	2
Claiming costs in letters of demand	3	1	1
No client advice/Inadequate	21	28	27
Other costs complaint	20	16	26
Failure to carry out instructions	45	52	64
Act without/contrary to instructions	29	25	42
Failure to communicate/inform on progress	50	52	74
Failure to transfer documents/file	11	13	9
Failing to respond to LPCC/LPB	4	0	2
Loss of documents	5	2	3
Not complying with undertaking	4	3	5
Misleading conduct	104	74	62
Alleging fraud	4	2	3
False statement in document	14	11	14
Failing to pay tax/lodge return	3	1	
Failing to disclose information to other party	3	5	3
Inadequate notice to witness	1	1	
Improperly terminating retainer	10	5	21
Discourtesy	37	32	50
Disclosure of confidential information	18	9	14
Communicating with a client of another solicitor	4	3	2
Improper communication with witness	3	1	2
Personal interest undisclosed	1	0	
Undue pressure to settle	7	10	5

Areas of complaint	Total 2006 – 07	Total 2007 – 08	Total 2008 – 09
Incompetence	37	16	24
Lack of diligence			28
Failing to comply with court directions	6	8	15
Failing to appear in court	2	3	7
Complaint against child representative	1	3	4
Conflict of interest	29	29	19
Advertising	2	2	3
Practising without certificate/suspended	19	11	3
Conduct as employer	1	4	4
Other breach of LPB Act	8	1	1
Irregularities in trust account dealings	16	6	14
Neglect	44	46	47
Delay	62	67	68
Negligence	37	38	26
Threat to make complaint	1	0	2
Defalcation	1	2	1
Threatening/bullying conduct	64	25	33
Sexual relationship with client	2	0	1
Liens	0	11	9
Public statements	1	0	2
Other illegal behaviour	7	10	7
Other	23	41	32

TABLE 5 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2007 - 2009

Practitioners complained of by employment status	Total 2006 – 07	Total 2007 – 08	Total 2008 – 09
Barrister	22	20	19
Employee in sole practitioners firm	17	31	21
Principal in sole practitioners firm	178	136	137
Employee in 2 partner firm	14	14	12
Partner in 2 partner firm	19	28	22
Employee in 3 to 10 partner firm	15	21	21
Partner in 3 to 10 partner firm	47	15	34
Employee in more than 10 partner firm	9	5	4
Partner in more than 10 partner firm	12	7	6
Employee other organisation	43	20	33
Consultant	7	6	4
Not practising	21	18	28
Struck off/suspended/deceased	4	4	2
Firm only	7	5	1
Not named/not known	8	8	9
Practitioner in incorporated practice	82	106	128
Interstate practitioner	1	3	5
Total	506	447	486

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2007 – 2009

Area of practice	Total	Total	Total
	2006 – 07	2007 – 08	2008 – 09
CBD/West Perth	276	208	236
Suburbs	165	158	172
Country	43	68	39
Interstate/Overseas	1	2	5
Not known/Not applicable	21	11	34
Total	506	447	486

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2007 – 2009

	Total	Total	Total
	2006 – 07	2007 – 08	2008 – 09
Under 5	71	60	74
5 – 9	66	82	92
10 – 14	78	52	67
15 – 19	67	58	75
20 – 24	57	53	50
25 – 29	95	68	52
30 – 34	30	41	42
35 – 39	12	10	9
Over 40	6	9	8
Not known/Not applicable	24	14	17
Total	506	447	486

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER AGE 2007 – 2009

Complaints by age of solicitor	Total 2006 – 07	Total 2007 – 08	Total 2008 – 09
Under 25	0	6	2
25 – 29	22	19	20
30 – 34	37	31	40
35 – 39	67	42	64
40 – 44	51	39	56
45 – 49	102	97	81
50 – 54	95	82	81
55 – 59	50	59	57
60 – 64	48	32	50
65 – 69	11	18	9
70 – 75	1	4	5
76 – 80	2	3	2
Not known/Not applicable	20	15	19
Total	506	447	486

TABLE 9 NUMBER OF PRACTITIONERS COMPLAINED OF 2007 – 2009

	Total	Total	Total
	2006 – 07	2007 – 08	2008 – 09
Practitioner with 1 complaint	263	242	263
Practitioners with 2 complaints	61	35	77
Practitioners with 3 or more complaints	25	32	16
Total number of practitioners	349	309	356

TABLE 10 OUTSTANDING COMPLAINTS 2007 – 2009

	Total	Total	Total
	2006 – 07	2007 – 08	2008 – 09
Outstanding complaints	458	443	444
Outstanding conduct investigations	78	85	62
Total	536	528	506

TABLE 11 COMPOSITION OF THE WA LEGAL PROFESSION AS AT 30 JUNE 2009

	Resident Females	Non-Resident Females	Resident Males	Non-Resident Males	Totals
Barristers	33	0	159	0	192
Commonwealth Government	30	0	28	0	58
Consultants	21	0	44	1	66
Director	54	0	239	1	294
Employees	1078	45	861	50	2034
Equity Partner	37	0	290	4	331
Fixed Profit-share Partner	5	0	21	1	27
Inhouse	131	10	193	8	342
Locum	0	0	0	0	0
Not practising (certificated)	197	22	122	31	372
Salaried Partner	19	0	40	2	61
Sole Practitioners	104	1	340	4	449
Judiciary [^]	2	0	7	0	9
Deceased [^]	0	0	3	0	3
Struck Off /Suspended [^]	1	0	1	0	2
State Government*	45	1	18	0	64
Practice Certificates ISSUED	1757	79	2366	102	4304
S.36 Practitioners					
** State Solicitor's Office	60	0	36	0	96
**Director of Public Prosecutions (State)	52	0	54	0	106
**Other Departments	105	0	62	0	167
TOTAL PRACTITIONERS	1929	78	2500	102	4673

[^] held a practice certificate during 2008/2009, however by 30 June 2009, were appointed judiciary/deceased/struck off/suspended.

* State Government employees who held a practice certificate during 2008 - 2009

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

9. Information Statements

9.1 FREEDOM OF INFORMATION ACT

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

9.2 PUBLIC INTEREST DISCLOSURE

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

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

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

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

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

6. Copies of the said brochures are available at the offices of the Complaints Committee at 2nd Floor, 55 St Georges Terrace, Perth, to any person who calls at those offices or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions. Copies of the said brochures are also available to the general public for inspection or downloading from <http://www.lpbwa.org.au/>.
7. Karen Whitney 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 of the FOI Act. Such applications may be addressed to the Complaints Committee by letter to Post Office Box Z5293, St Georges Terrace, Perth WA 6831 or by facsimile message at (08) 9461 2265.
10. None of the Complaints Committee's functions affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject.
11. Applications for access should be in writing, give enough information so that the documents requested can be identified, give an Australian address to which notices can be sent, and be lodged as provided in paragraph 8 with a fee of \$30 (unless the application is one for personal information about the applicant only which may be made without fee); for financially disadvantaged applicants or those issued with prescribed pensioner concession cards that charge is reduced by 25% to \$22.50.
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.