

**LEGAL PROFESSION
COMPLAINTS COMMITTEE
WESTERN AUSTRALIA**

2013 Annual Report



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1. Report from the Chair

This report sets out the key aspects of the work undertaken by the Committee during the year.

With the backlog of complaints now effectively dealt with, this report reflects what is essentially the first fully operational year of the Committee under its new structure.

As the report shows, the majority of contacts with the Committee are dealt with by the Rapid Resolution team. The ongoing success of that team is evident from the increasing number of inquiries which are conciliated. These outcomes are achieved in a timely manner with all inquiries on average being dealt with in less than three months, many within one month.

The flow on effect from the Rapid Resolution team has been the reduction in the number of complaints requiring investigation. The matters which now come before Committee meetings for determination raise substantial conduct issues which, irrespective of the final outcome, warranted investigation and consideration by Committee members.

The effectiveness of the education process undertaken by the Rapid Resolution team and other legal staff through seminars to the profession cannot be underrated. It has been reported to me that many practitioners have changed aspects of their practise, particularly with respect to charging, as a direct result of contact with the Committee's Rapid Resolution team. These changes in practise are of benefit to all existing and future clients of those practitioners. Of course, these changes could not be achieved without the support of the profession in working with the Committee's legal officers on these issues.

Trends or special problems

At the Committee level, the percentage of matters coming before the Committee which are being dealt with by way of the Committee's summary conclusion powers has risen by 10% from last year. This increase is likely to be due, in part, to the work of the Rapid Resolution team in encouraging practitioners to show insight into their conduct at an early stage. In appropriate cases, the effect of this insight enables matters which would otherwise warrant referral to the State Administrative Tribunal to be dealt with by the Committee.

Last year I highlighted the high percentage of complaints concerning sole practitioners. The percentage of complaints received against sole practitioners has not changed significantly from last year, with sole practitioners still the subject of 45% of all complaints. However, I am pleased that one of the initiatives I suggested in my report last year to address this issue has been acted upon by The Law Society of Western Australia through the establishment of its free Sole Practitioner and Boutique Firm Forum. The Committee will continue to monitor whether this initiative proves to be sufficient on its own to address this issue or whether further action is required, as I suggested last year, through the imposition of additional requirements before a practitioner can commence to practise as a sole practitioner.

The other trend I highlighted last year was the increase in the percentage of complaints concerning practitioners with between 5 and 9 years' experience. This trend continued during the year with a further 5.5% increase in complaints from this group. This group now accounts for nearly 28% of all complaints. This year there was also an

increase of 9% in the complaints from practitioners with between 10 and 14 years' experience. As with last year, the rise was not reflected in a noticeable increase in complaints against practitioners under 40 years of age. There was, however, an increase in the percentage of complaints against practitioners between 55 and 69 years of age. As I suggested last year, it is possible that there is a link between these increases and the high rate of complaints against sole practitioners.

The number of review applications lodged in the State Administrative Tribunal against decisions to dismiss complaints was half of the previous year's total. During the year, part of one review was referred back to the Committee.

Forecast of Committee's workload

The Committee's workload has been steady during the year. The statistics record a small decrease in the number of inquiries received during the year. That decrease may, in part, be due to improvements in the recording of the Committee's statistics by improved matching of 'new' inquiries with inquiries previously received.

The Committee has expanded, or is in the process of expanding, its workload in three areas: by arranging mentors for practitioners in appropriate circumstances, issuing risk alert letters and conducting audits of incorporated legal practices. The first two of these initiatives are discussed in more detail in the following report from the Law Complaints Officer. The planning for conducting audits of incorporated legal practices was commenced during the year and culminated in one informal audit being undertaken during the year.

As in recent years, the Committee's educational work continued in response to

requests received from many different sources for speakers as well as seminars being arranged as a result of the Committee's legal officers raising the need to address certain conduct issues.

Proposals for improving the operations of the Committee

As indicated in last year's Annual Report, the implementation of a complaint management system would enhance the Committee's operations. Work is now underway to source a complaint management system which will meet the Committee's needs.

Thanks

I again thank the continuing commitment of the members of the Committee in giving up their time to assist in the regulation of the profession. The commitment of each member is greatly appreciated. However, I would like to highlight the work of our community representatives and deputy community representatives who, as members of the Committee, play an important role in providing a non-legal perspective on complaints. Two of our recently retired community representatives, Lea Anderson and James Hunter, performed this task for 6 years. During that time, the Committee's members had the benefit of their considered and thoughtful views on the matters under consideration. On behalf of all the Committee's members and staff I thank them for all their hard work.

My thanks also go to the Committee's Deputy Chair, John Ley, who has continued to provide me with great assistance in overseeing the Committee's operations.

The work of the Committee could not be achieved without the hard work of the Committee's staff. Once again this year, they

have shown that they are truly dedicated to the work of the Committee in protecting the public and upholding standards in the legal profession.

Chris Zelestis QC
Chair
September 2013



2. Report from the Law Complaints Officer

After two years of major changes to the Committee's operations, the 2012-13 year was a time for consolidation and for reflection on the current processes to enable refinements to be made where needed.

In October 2012, the legal officers of the Rapid Resolution team attended two specially designed workshops on mediation and alternate dispute resolution techniques. The aim of those workshops was to enhance the skills of those legal officers, as a large percentage of their work involves conciliating service issues and minor conduct issues.

The enhancement of the legal officers' skills combined with the continuing willingness of the profession to embrace the aims of the Rapid Resolution team has resulted in a 6.2% increase in the number of inquiries which were successfully conciliated during the year.

The Rapid Resolution team has also progressed its initiative of arranging for mentors to assist practitioners experiencing temporary personal difficulties. During the year, there were four practitioners who had mentors arranged to assist them during temporary difficulties. The results of that initiative have been very successful. The practitioners have all continued in practice, the mentors have examined the practices to ensure clients were being properly looked after, recommendations for change in work practices have been made and follow ups conducted to ensure recommendations are being followed.

The number of new matters which were transferred to the Investigation team for a full investigation has continued to fall. Approximately 6% of all new matters were transferred to the Investigation team. The reduced number of new matters requiring

investigation has enabled the Investigation team to successfully deal with the backlog in complaints caused, in part, by the 2010 changes to the Committee's operations. At the end of the reporting period there were only 8 complaints over 2 years old; 80% less than as at 31 December 2010.

The time taken for complaints to be investigated has also steadily decreased. Since the beginning of 2012, the average open time for current investigation files has nearly halved.

During the year, the Investigation team initiated a number of improvements to the manner in which investigations are handled. These changes have largely been driven by the number of large and complex investigations on foot. Unlike more routine investigations dealing with one particular client matter, these investigations are multifaceted and usually involve many matters, or even a significant part of a practitioner's practice. In order to assist with case planning and workload efficiency, a major initiative has been the introduction of investigation plans. With the development and success of plan protocols in larger investigations, individual plans are now created for each new investigation and regularly refined by legal officers in conjunction with the Manager of the Investigation team.

In response to the increasing sophistication of practitioners' approaches to file management and storage, such as the use of electronic files, the Investigation team has ensured that, where necessary, information stored in electronic form is sought as part of its information gathering processes.

The work of the Litigation team has remained constant throughout the year. The

number of applications filed in the State Administrative Tribunal has fallen from previous years. During the year 7 applications (some containing conduct issues arising from multiple complaints) were filed compared with 19 in the 2011-12 year. This decrease is, in part, a reflection of the work undertaken by the Rapid Resolution team in discussing with practitioners at an early stage the steps they may wish to consider taking in order to mitigate their conduct. Many practitioners take that opportunity to show insight at an early stage and take steps to diminish the effect of their conduct, for example, by refunding fees, issuing an apology or withdrawing an offending letter. In many instances, these actions have meant that instead of a practitioner's conduct being referred to the State Administrative Tribunal it has been able to be dealt with by the Committee in the exercise of its summary conclusion powers.

The reduction in the number of new applications has been offset by the increase in the number of appeals to the Court of Appeal from decisions of the State Administrative Tribunal filed by both practitioners and complainants. As at the end of the year, the Committee had 7 appeals on foot. The Litigation team is also now instructed by the Legal Practice Board (Board) to initiate proceedings to recover unpaid fines and costs owing to the Board where those unpaid fines and costs arise from orders made in the favour of the Board (or the Committee) as a result of proceedings in which the Committee was a party.

During the year, a decision was delivered by the Court of Appeal in an appeal commenced by the Committee. This was the first appeal to have ever been commenced by Committee. The appeal was against the penalty imposed by the State Administrative Tribunal on a practitioner for breaching an undertaking given to another practitioner by authorising the release of the balance of

funds held in trust. The Committee was concerned that the penalty originally ordered of a reprimand and a condition on the practitioner's practising certificate did not reflect the seriousness of the practitioner's conduct. The Court of Appeal allowed the appeal, set aside the original penalty and imposed a fine of \$10,000.

Risk alert letters

The Committee is now routinely reviewing its records to identify practices which have had multiple inquiries or complaints made against their practitioners in the previous 6 months.

Once identified, the Committee aims to send a risk alert letter to those practices which sets out the nature of the inquiries/complaints received and invites the practitioner in charge of the firm to consider ways to reduce the practice's exposure to inquiries/complaints. The process of sending out these risk alert letters has already commenced.

As inquiries and complaints are made against individual practitioners and not firms, practices often do not realise the extent of the inquiries/complaints received against all their practitioners. It is hoped that this notification will provide practices with the knowledge they need to address the cause of the inquiries/complaints.

Regional visits

The Committee continued its program of visiting regional areas to conduct seminars and talk to practitioners about issues relating to complaints. This year the Committee's officers visited Geraldton.

Since the Committee commenced its regional visits, the number of complaints from regional areas has reduced by 5%.

The Committee is looking forward to continuing its regional visits program.

Seminars to the profession

As occurred in recent years, the Committee's legal officers continued to provide as many seminars as possible to the profession about ethical issues being encountered.

In addition to accepting invitations to speak, the Committee's legal officers are also instrumental in arranging for seminars on particular issues to be held. Philippa Rezos, Manager of the Rapid Resolution team, was proactive during the year in arranging and speaking at a seminar organised by the Family Law Practitioners' Association of Western Australia to raise awareness of the obligation to maintain confidentiality of court documents, following a number of complaints being received concerning alleged breaches of that duty in family law proceedings. An article on this issue was also published in the Law Society's magazine, Brief, in June 2013.

The Committee was also pleased to support an initiative of the Law Society in holding a free forum for sole practitioners in February 2013 to discuss ethical issues. Such seminars address the need to target the requirements of certain groups of practitioners, in this case sole practitioners, particularly given the concern raised in the Committee's 2012 Annual Report regarding the rise in complaints against sole practitioners.

I am pleased to say that this year there has not been any rise in the number of complaints received about sole practitioners. However, the number of complaints against sole practitioners still remains high with 45%

of all complaints being about sole practitioners.

Update on Mental Health Initiatives

In 2011 the Law Society released its report on psychological distress and depression in the legal profession. The report highlighted the anxiety and stress faced by practitioners when a complaint is made against them and the need to educate the profession about complaint handling.

Since that report was issued, the Committee has taken a number of steps to address these issues including:

- representatives of the Committee attending a meeting in August 2011 with representatives of the Law Society and Board with a view to implementing a broad strategy aimed at educating the profession about the Committee's procedures and addressing mental health concerns;
- having a senior legal officer as a member of the Law Society's Mental Health and Wellbeing Committee including membership of a continuing professional development (CPD) working group with responsibility for developing a CPD series on professional responsibility;
- publishing an article in Brief in June 2011 entitled "You and the LPCC How to Reduce Stress";
- providing speakers at various seminars to talk about complaint handling and ethical issues including a CPD session in October 2012 on "Professional Responsibility and Mental Health";
- encouraging practitioners the subject of significant complaints to utilise the services of senior counsel and senior juniors (who offer assistance for no or nominal charges) and members of

the Law Society's Senior Advisors' Panel;

- promoting and encouraging practitioners to speak more openly about mental health issues and seek help including encouraging practitioners who disclose possible mental health issues to utilise the Law Society's Law Care Service which offers 3 free consultations;
- conducting an internal CPD seminar in June 2012 on Mental Health and the Law which was presented by a legal officer from the Committee who had completed a Mental Health First Aid Course;
- providing a speedier approach to handling complaints;
- assisting practitioners suffering temporary personal difficulties by arranging mentors.

The Committee will continue taking a proactive approach to these issues.

New Guidelines

During the year, the Committee approved Guidelines for Disciplinary Actions. The purpose of the Guidelines is to set out the principles by which the Committee will be guided in exercising its discretion to institute disciplinary proceedings in the State Administrative Tribunal. The Guidelines are available on the Legal Practice Board's website.

Developing and maintaining relationships

During the year, representatives of various complaint handling bodies in Australia and New Zealand agreed to hold regular meetings via skype to discuss matters relating to early complaint resolution.

Philippa Rezos has participated in these meetings in which ideas to improve complaint handling are discussed. I hope that similar meetings might be able to be established for representatives of the Investigation and Litigation teams.

Philippa Rezos and I also held teleconferences during the year with representatives from The Office of the Migration Agents Registration Authority to discuss complaint handling and streamlining of work, and with the co-ordinator of the Law Society's risk management seminars to discuss complaints concerning conflicts of interest.

As part of the exchange of information about early resolution of complaints, Philippa Rezos was asked to give a presentation to members of The Society of Consumer Affairs Professionals (SOCAP) in June 2013, although this presentation had to be rescheduled. SOCAP members were interested in the approach the Rapid Resolution team takes to handling new matters.

Philippa Rezos is a member of both the Law Society's Mental Health and Wellbeing Committee and its Costs Committee. As a member of those committees, Philippa has enjoyed the benefits of discussions and exchange of information with other committee members on emerging trends in both mental health and costs areas.

Patricia Le Miere, Manager of the Litigation team, is a member of the sub-committee of the Western Australian chapter of the Council of Australasian Tribunals (COAT). COAT has organised a seminar to be held in August 2013 focussing on mental health issues and unrepresented litigants.

Electronic Document and Records Management System (EDRMS)

The ongoing problems which I referred to in previous Annual Reports with our EDRMS continued during the year. It was hoped that the upgrade which occurred in June 2012 would alleviate all problems but this did not eventuate. The search function on the EDRMS has not been fully operational for many months. The inability to properly search the Committee's records has hampered the Committee's operations. It is hoped that these problems will be overcome with the upgrade to the EDRMS which will occur as part of the planned upgrade of the Board's network infrastructure.

IT hardware and software

In October 2012 an independent consultant completed a business technology review of the Board's IT network and presented a short and long term IT plan for the Board's operations.

Following consideration of that plan, in February 2013 the Board resolved to upgrade its network infrastructure. That upgrade commenced in July 2013. Once completed, it is hoped that the upgrade will substantially improve the speed and efficiency of the Committee's IT system.

As part of the upgrade, more up to date software will be installed.

Complaint management system

As I indicated in last year's Annual Report, I have experienced drawbacks with the spreadsheets established in January 2011 for compilation of statistical information. The extraction of information to assist with the management of the office is time consuming and subject to inaccuracies.

In June 2013 a team was organised to participate in a project to select a complaints management system. The aim of the team is to finalise its recommendation for a complaint management system during 2013-14 with a view to the necessary approvals being obtained so it can be installed in 2014-15.

Staffing

In October 2012, Karen Whitney, the manager of the Investigation team, resigned. Karen worked for the Committee for over 8 years and led the Investigation team at the very difficult and challenging time shortly after the Committee's operations were restructured in 2010. When Karen took on the role of manager of the Investigation team she inherited a backlog of complaints to manage. Through her hard work and determination, together with that of her team, that backlog was nearly all dealt with by the time of her departure.

In July 2012, the Board approved the creation of a new full time senior legal officer position. The approval of this position has been an important step in implementing a succession plan for the Committee's office. Nicholas Pope was appointed to act in this position until he successfully applied for the position of manager of the Investigation team.

As in previous years, the Committee's staff have worked at full capacity.

Thanks

Once again, I thank the hard work and dedication of all the Committee's staff. It is always heartening to see how enthusiastic and positive staff are about their work. The

achievements of the Committee during the year are directly due to their hard work.

I also thank the continued generosity of the barristers from the independent bar who have undertaken work for the Committee during the year. Their ongoing agreement to carry out that work at reduced rates continues to reduce the cost to the whole profession of disciplinary proceedings.

During the year, two of our long serving community representatives, Lea Anderson and James Hunter, reached the end of their terms of appointment and were not eligible for reappointment. Both Lea and Jim were hard working and dedicated members of the

Committee and their contribution to Committee meetings was greatly appreciated.

I have also been very grateful for the ongoing support provided by the Chair and Deputy Chair. There were challenges during the year and your unfailing support was greatly appreciated. My thanks also go to the other members of the Committee for their ongoing work during the year.

Gael Roberts
Law Complaints Officer
September 2013



3. About the Legal Profession Complaints Committee

3.1 OUR ROLE, PURPOSES and OBJECTIVES

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

The statutory purposes of the Committee's work are:

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

Our objectives are:

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

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

3.2 OUR RELATIONSHIP WITH THE LEGAL PRACTICE BOARD

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

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

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

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

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

3.3 OUR MEMBERS

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

During the reporting year the Committee was constituted by:

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

Legal members:
Mr K R Wilson SC
Mr M T Ritter SC
Mr T Lampropoulos SC
Mr R M Mitchell SC
Mr B Dharmananda SC
Mr J G M Fiocco (until 30 April 2013)
Mr J G Syminton
Ms S M Schlink
Ms N A Hossen (from 24 June 2013)

Community representatives:
Ms L Anderson (until 2 October 2012)
Mr J Hunter (until 2 October 2012)
Ms M Nadebaum (from 3 October 2012)
Mr C Hudson (from 3 October 2012)

Deputy community representatives:
Ms M Nadebaum (until 2 October 2012)
Mr C Hudson (until 2 October 2012)
Mr G R Fischer (from 3 October 2012)

3.4 OUR OPERATIONS

The Committee usually sits as two divisions in order to share the workload.

One of the community representatives is present at every meeting.

During the year, the Committee held 19 meetings.

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

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

The Rapid Resolution team is managed by Ms Philippa Rezos and comprises 3 full time equivalent (*FTE*) legal officers, 0.5 *FTE* senior legal officer and one secretary.

The Investigation team is managed by Mr Nicholas Pope and comprises 2.5 *FTE* legal officers, 0.5 *FTE* senior legal officer, a senior trust account inspector and two secretaries.

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

3.5 TRUST ACCOUNT INSPECTIONS

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

If the Rapid Resolution team receives an inquiry which involves trust account issues, Ms Young can often assist the team by attending the law practice to review the trust records or by advising the team's legal officers regarding the information which is needed to deal with the inquiry. She also assists the legal officers to review information received from both the inquirer and the practitioner.

During the year Ms Young undertook 17 causal investigations of which three raised issues which led to further investigations being undertaken by the Investigation team. In respect of two of these practices, the qualifications in the external examiner's reports did not include the issues identified by Ms Young. Also during the year, Ms Young was called as a witness in one SAT hearing arising out of a causal inspection she undertook in the 2010-11 year.

Ms Young also undertook 31 random inspections which highlighted that many practices are not maintaining all the records they are required to keep or their records do not contain sufficient details. For example, many practices did not keep trust receipts and trust payments cash books, did not undertake trust reconciliations correctly, and did not have sufficient details in their trust ledgers. Ms Young drew attention to these and other issues during a presentation to the Law Society's forum for sole practitioners in February 2013 and in an article she wrote for the Law Society's Brief magazine in April 2013.

A number of the random inspections were aimed at newly established law practices. Ms Young was able to give the principals of these newly

established practices confidence that their trust records, once any necessary changes had been made, met the legislative requirements.

Overall, the investigations conducted during the year showed the worth of having a trust account inspector attend law practices to review trust records as there were many instances when Ms Young found deficiencies in the trust records despite the external examiner's reports for those law practices not raising any concerns. One reason for this may be that as a trust account inspector who works with the legislation governing trust records for legal practices every day, Ms Young is more familiar with all the requirements of that legislation. A copy of Ms Young's inspection report is sent to the external examiner once it is completed. Where necessary, Ms Young expresses her concern regarding any failure by the external examiner to qualify his or her report given the deficiencies in the law practice's trust records which Ms Young noted during her inspection.

3.6 OUR STAFF TRAINING AND PROFESSIONAL DEVELOPMENT

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

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

- Costs
- Industrial Relations

- Governance and accountability, duty of confidence and legal profession privilege, and government decision making and review
- Personal Injuries
- Legal Capacity
- Advice and litigation privilege
- Procedural fairness and its application to complaint handling

In addition to the in-house seminars, legal officers attended two specially designed workshops on mediation and alternative dispute resolution techniques conducted by a trained mediator.

The Committee has been fortunate to secure highly respected and experienced

presenters for these in-house seminars. Speakers have included a Justice of the Supreme Court, two senior counsel and a specialist costs consultant. The aim of these seminars is to ensure that the Committee's staff receive the training they need to undertake their work to the highest possible standard and to enhance their legal knowledge in a number of key areas.

Professional and administrative staff have also attended external continuing professional development and training seminars on a broad range of topics.

A number of key staff also attended the annual Conference of Regulatory Officers in Brisbane where information and ideas were exchanged with the Committee's counterparts from interstate and New Zealand.



4. Complaints

4.1 COMPLAINT HANDLING PROCESS

The majority of all new complainants/inquirers speak to a legal officer in the Rapid Resolution team. This contact may be initiated in a number of ways, for example, by:

- telephoning the Committee's office
- submitting a Complaint Enquiry Form, available on the Board's website, which provides contact details to enable the Committee to telephone the inquirer
- the Committee contacting the complainant/inquirer after receiving a written complaint or inquiry.

During the year, nearly 80% of all initial contact with the Committee was via the telephone.

The only time telephone contact is not made at the outset is if a written complaint is received which raises a serious conduct issue with supporting evidence. These complaints are referred direct to the Investigation team, although the Rapid Resolution team may have some involvement in suggesting to a practitioner ways to mitigate his or her conduct.

The Rapid Resolution team will, with the complainant's / inquirer's agreement, attempt to deal with all other new matters as inquiries until it ascertains whether the inquiry raises an issue which, if proved, may amount to unsatisfactory professional conduct or professional misconduct (*a conduct issue*) or the inquirer

requires the matter to be formally determined.

The telephone contact enables the legal officers to discuss with the inquirers their concerns to clearly identify the conduct complained about and the evidence available to support the concerns. Many inquirers find it easier to explain their concerns orally rather than in writing. The legal officers discuss with the inquirers their expectations about the complaint process to ensure that they do not have unrealistic expectations as to what might be achieved.

Some inquiries can be easily resolved during this initial telephone contact by the legal officer explaining the legal system and the nature of practitioner's ethical obligations. On other occasions, more information is needed and inquirers are asked to provide documents to assist the legal officers to make an initial assessment of the seriousness of the concerns. Sometimes, inquirers are asked to meet with the legal officers with their documents in order to discuss their concerns further.

Practitioners are contacted very early during this process and advised of the inquiry. Information is often sought from them to assist in the initial assessment process.

Once a legal officer has enough information, an assessment will be made as to whether the practitioner's conduct raises a conduct issue. The legal officer will discuss this assessment with the inquirer and give the inquirer an explanation of the

reasons for the view taken. Sometimes, some of the concerns raised by an inquirer will raise a conduct issue and others will not. The legal officer will also discuss with the inquirer what may be done to assist the inquirer to resolve their concerns with the practitioner when those concerns do not raise conduct issues. This resolution may involve the legal officer assisting in seeking a conciliated outcome with the practitioner.

The Rapid Resolution team has had considerable success in negotiating conciliated outcomes of inquiries and some case studies are set out at the end of this chapter.

At the end of the initial process, complaints which raise a conduct issue are formally investigated. However, before that is done the Rapid Resolution team will consider whether it would be possible for the practitioner to take steps to resolve the conduct issue. This has the advantage of resolving the conduct issue so far as the inquirer is concerned, for example by compromising the costs owed when overcharging is the concern or the provision of an apology when discourtesy is the issue. The Rapid Resolution team makes it clear in any such discussions with the practitioner that the conduct issue will still be referred to the Investigation team and that any resolution achieved may be viewed as possible mitigation of his or her conduct.

Inquirers who are not satisfied with the preliminary view taken by a legal officer during the initial assessment process that their inquiry does not raise a conduct issue, may still

request their inquiry be handled as a complaint to be formally determined. This formal determination is usually made by the Law Complaints Officer exercising the delegated power of the Committee.

The process of speaking to the majority of inquirers and making a preliminary assessment of inquiries and then seeking to conciliate them is labour intensive as time is taken to ensure that inquirers are carefully listened to, evidence examined, full explanations given and care is taken with the conciliation process.

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

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

At its meetings, the Committee reviews the results of the investigation and the legal advice of the legal officers. After consideration of those materials the Committee may:

- dismiss a complaint
- with the consent of the practitioner, exercise its summary conclusion powers

- refer the matter to the State Administrative Tribunal.

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

Inquiries resolved by Rapid Resolution Team

Case Study 1

Party enquires if RRT able to assist on negotiating fees where work carried out on obtaining Letters of Administration may have been unnecessary

Mrs R, a widow, contacted the practitioner with instructions to obtain Letters of Administration (LoA). There was no will. Mrs R provided to the practitioner some basic information of the known assets which included:

1. Jointly owned real estate
2. Several bank accounts
3. Taxi plate registered in NSW (¼ share)
4. Superannuation policy.

On the basis of that information, and without further investigation, the practitioner prepared an application to the Supreme Court for LoA and for Mrs R to be appointed the administrator.

Part of the work undertaken by the practitioner involved engaging in extensive correspondence with the banks and the trustees of the superannuation policy regarding the balances of accounts and the documents necessary to effect the payment out to potential beneficiaries of the estate under the Administration Act.

Mrs R contacted the RRT concerned with the costs incurred and the time taken to obtain LoA.

On investigation, it was found that all the bank accounts bar one minor account were joint accounts and Mrs R was the nominated beneficiary of the superannuation policy. The practitioner had failed to consider whether LoA were necessary in order to administer the estate. Therefore, the practitioner's correspondence with the banks and trustees of deceased's superannuation fund had, in the main, been unnecessary. It transpired, however, that LoA were necessary in order to transfer the NSW taxi plate, irrespective of the value of the deceased's interest in that plate, as this was a requirement of NSW Taxi Control Board. The practitioner was unaware of this requirement.

A legal officer from the RRT discussed with the practitioner his failure to obtain verification of the ownership of the bank accounts and the terms of the superannuation policy. By way of mitigation, the practitioner agreed to substantially reduce his fees noting that he had not made proper enquiries regarding the assets to know whether an application for LoA was necessary. The practitioner apologised to Mrs R. With Mrs R's consent, he agreed to finalise the administration of the estate for no further fee.

Case Study 2

Opposing party in a Family Court matter concerned at information obtained under subpoena being disseminated to a non-party to the proceedings

Mrs S was involved in extensive Family Court litigation concerning the future care arrangements of her young child. During the course of the proceedings, the practitioner for the opposing party issued several subpoenas for the production of documents which included Mrs S's medical records. The practitioner was given leave to inspect the subpoenaed material. After inspecting Mrs S's medical records, the practitioner wrote a detailed letter to her client summarising the inspected material. Unbeknown to the practitioner, the client then forwarded that letter to his psychologist to comment upon. This disclosure was discovered by Mrs S's solicitors when they subpoenaed the practitioner's client's medical records.

Mrs S spoke to a legal officer in RRT expressing concern that confidential information had been provided to a third party to view without either her consent or leave of the court. Following contact with the practitioner, the practitioner apologised for failing to warn her client that the correspondence, including the information in that correspondence, could not be shown or disseminated in any way to a third party. Further, the practitioner acknowledged that, in future, she would ensure that her clients were notified not to disclose confidential information obtained in the course of proceedings.

Further, the Committee wrote an article for the Law Society's Brief magazine and the manager of the RRT participated in a panel seminar organised, at her suggestion, by the Family Law Practitioner's Association on this issue.

Case Study 3

Opposing party concerned at professional negligence proceedings being instituted in circumstances where liability was denied and the injury was minor

The opposing party instructed solicitors to defend professional negligence proceedings where the claim for damages related to a minor injury. The proceedings were instituted in circumstances where the opposing party had already paid the special damages claimed by the plaintiff for remedial work and his solicitors had provided an expert's report which supported the procedures he had followed. The matter eventually settled at a pre-trial conference solely on the basis of no orders as to costs.

With the practitioner's client's consent, a legal officer from the RRT reviewed the client's file to examine whether the opposing party's concerns were established. A review of the file indicated that at the time of instituting proceedings, the practitioner had not obtained any expert report and the available medical evidence did not appear to support any allegation that the treatment administered to the practitioner's client was negligent. The file showed that the practitioner did not obtain any expert report until the eve of the pre-trial conference, and the report obtained tended to support the expert report obtained by the opposing party. The file also raised concerns that there were serious doubts that the threshold for commencing the proceedings could ever have been met.

The practitioner and her counsel met with a legal officer from the RRT to discuss the concerns held by the RRT and later agreed to confirm in writing that, in future, the practitioner would take more care to consider, as soon as possible after taking initial instructions, if expert evidence was required to establish negligence before instituting proceedings. Further, the practitioner would provide clear advice to clients on the inherent risks involved in proceedings where liability is denied and the need to obtain expert evidence to support an allegation of breach of duty of care.

The Committee is also proposing to liaise with the Australian Lawyers Alliance in regard to holding a seminar addressing this type of issue.

4.2 KEY STATISTICS

Full statistical information on complaints is set out in chapter 8.

In this section, key statistics are highlighted.

Due to the restructure of the Committee's operations in October 2010, care should be taken with comparison of statistics from the 2010-11 year. For the first 4 to 6 months of that year, many of the Rapid Resolution inquiries would have been included as complaints because they were all fully investigated and formally determined. References to "complaints" in this section do not include the inquiries dealt with by Rapid Resolution but do include conduct investigations initiated by the Committee of its own volition unless stated otherwise.

Number of Rapid Resolution inquiries finalised

The Rapid Resolution team dealt with 1515 inquiries of which 21.5% were conciliated. The conciliated matters included the discount, waiver or refund of fees to clients in excess of \$489,000.

The Complainants

Nearly half of all complaints (43.6%) were from clients/former clients of the practitioner complained about. Nearly a quarter of complaints (24.8%) were made against the practitioner acting for the opposing party in proceedings.

In respect of Rapid Resolution inquiries, 59.7% were made by or on behalf of clients or former clients of the practitioner being enquired about.

The areas of law

The areas of law attracting the most complaints were civil litigation (21.2%) followed by family/de facto law (18.6%).

In respect of Rapid Resolution inquiries, 33.2% were in the area of family/de facto law, 17.1% in civil litigation and 11.7% in probate and wills.

The types of complaint

Many complaints raised more than one matter of complaint. This year, costs issues (16.9%) and unethical

conduct (16.4%) attracted the most complaints.

However, for Rapid Resolution inquiries, costs issues were clearly the highest category with over a third of all inquiries raising a costs related issue (37.5%) with the next highest categories being unethical conduct (13.1%) and no communication (9.4%).

The practitioners

The greatest number of complaints related to Sole Principals (44.6%), followed by Other Principals (17.8%) and Non Principals (12.9%).

The number of practitioners complained about

Some 79 practitioners were the subject of one or more complaints

(including conduct investigations) during the year. Of this total, 70 practitioners were the subject of one complaint, 5 practitioners were the subject of two complaints and 4 practitioners were the subject of three or more complaints.

The Board has reported that there were 5481 certificated or deemed certificated practitioners practising in Western Australia as at the start of the year. However, this figure does not include those interstate based practitioners practising in this State who are not required to take out a practising certificate in Western Australia by reason of holding a home jurisdiction practice certificate.

The number of practitioners complained about represented 1.4% of certificated or deemed certificated Western Australian practitioners, compared with 2.4% of practitioners in the 2011-12 reporting year.

Number of complaints received and dealt with

Matters under investigation	Total	Complaints	Conduct Investigations
Open as at 1 July 2012	133	113	20
Opened during year	101	80	21
Closed during year	(133)	(115)	(18)
Outstanding as at 30 June 2013	101	78	23



5. Formal determination of complaints

5.1 OVERVIEW AND KEY STATISTICS

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

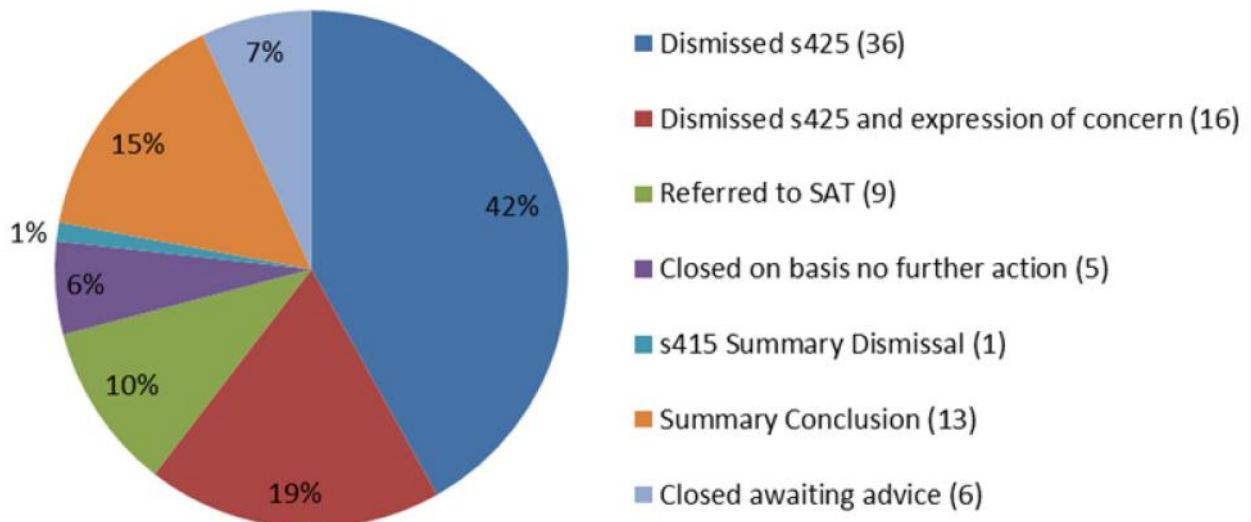
When a matter goes before the Committee, the Committee may finally determine the matter in one of three ways:

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

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

During the year the Committee determined 86 matters of which 67.4% were dismissed (or not taken further), 10.5% were referred to SAT, 15.1% were dealt with in the exercise of its summary conclusion powers and 7.0% were closed awaiting advice.

Committee Determinations



In addition to the matters dealt with by the Committee, a further 16 complaints were dismissed by the Law Complaints Officer exercising the delegated power of the Committee.

5.2 MATTERS DISMISSED OR NOT TAKEN FURTHER

The Committee may dismiss a matter without completing an investigation in certain situations. This power of summary dismissal is used, for example, when complaints are made outside the 6 year time limitation, when they have previously been dismissed after investigation or, if the complaint is misconceived or lacking in substance. Most complaints which are summarily dismissed are dismissed by the Law Complaints Officer exercising the delegated

power of the Committee. Of the complaints dismissed by the Committee 1.2% were summarily dismissed and the remainder were dismissed following a full investigation.

In 31% of the matters dismissed or not taken further, the Committee expressed concern to the practitioner about an aspect of the practitioner's conduct. Such expressions of concern are generally used by the Committee when the conduct of the practitioner is not such that it would amount to unsatisfactory professional conduct or professional misconduct but is still of some concern to the Committee. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future.

Some examples of expressions of concern

Case Study 1

Contact with Witnesses in Domestic Violence Cases

The Committee investigated whether a practitioner in her contact with a witness subject to alleged domestic violence had engaged in conduct which may be prejudicial to, or diminish public confidence in, the administration of justice and which may bring the profession into disrepute.

The practitioner represented a client, Mr D, in respect of charges of aggravated stalking and numerous breaches of restraining orders against Mr D's former domestic partner, Ms C.

In the course of representing Mr D, the practitioner received a telephone call from Ms C in which Ms C advised that she did not wish to give evidence against Mr D in respect of the charges and no longer had an accurate recollection of events. The practitioner asked Ms C if she would be willing to make a statement to that effect and Ms C agreed to do so. The practitioner then caused the statement to be prepared and forwarded it for Ms C to sign

and return. The practitioner provided a copy of the signed statement to the prosecutor over a week later.

In her discussion with the practitioner, Ms C told the practitioner that she was suffering from anxiety attacks for which she was taking anti-depressants and anti-anxiety medication.

The Committee noted that the practitioner stated that she had told Ms C that she could not give her any advice as she was acting for Mr D and Ms C's statement would be provided to the court and the police.

There was no allegation, and no evidence, that Ms C had been pressured to sign the statement.

The Committee noted that the practitioner said that she had informed Ms C that she should go to the police and/or seek independent advice but Ms C declined to do either. The Committee further noted that this information was not recorded in the practitioner's file note nor was it confirmed to Ms C in writing, which suggested that the practitioner's advice to Ms C may have been somewhat perfunctory. Nevertheless, the Committee concluded that there was no evidence to contradict the practitioner's evidence that she had informed Ms C that she should go to the police and/or seek independent legal advice and accordingly, there was no reasonable likelihood that the practitioner would be found guilty by SAT of unsatisfactory professional conduct or professional misconduct.

The Committee noted that in general terms caution should be exercised in dealing with victims in domestic violence situations when acting for the accused perpetrators and if contacted by a complainant, a practitioner ought to inform the complainant that they could not discuss the matter and refer the complainant to the police prosecutor and/or advise the complainant to obtain independent legal advice, rather than the practitioner themselves assisting in preparing a statement for provision to the police. Even if in particular circumstances a complainant expressed reluctance when advised to seek independent advice or speak to the police prosecutor, a practitioner should still provide a reasonable opportunity for the complainant to obtain independent advice and/or speak to the police and make a detailed file note of the advice to do so. Further, the practitioner should confirm the advice in writing.

In all the circumstances, including where Ms C had informed the practitioner that she was suffering anxiety attacks and was taking anti-depressants and anti-anxiety medication, the Committee expressed its concern that the practitioner:

- a) did not decline to speak with Ms C;
 - b) had not provided Ms C with a reasonable opportunity to obtain independent legal advice or speak to the police prior to any further communication;
 - c) failed to make a proper record of her conversation with Ms C; and
 - d) failed to confirm the conversation with Ms C in writing,
- but otherwise decided to take no further action.

Case Study 2

Testamentary Capacity and Record Taking

A practitioner acted for an elderly lady who was at the centre of a family dispute between the complainants and the client's son. The practitioner prepared a will and enduring power of attorney (EPA) for her client and represented her in respect of an application by one of the complainants to SAT seeking a declaration that the client lacked capacity and orders appointing a guardian and administrator to represent the client.

The Committee noted that when the practitioner commenced acting for the client and took her instructions to prepare a new will and enduring power of attorney, the practitioner took reasonable steps to satisfy herself that the client had capacity to instruct her, including by reference to the test for testamentary capacity in *Banks v Goodfellow*.

The Committee also noted that although a medical practitioner had made a diagnosis of advanced Alzheimer's disease, this was contested by the practitioner and was later found by SAT to have been premature.

The SAT proceedings were heard around five months after the practitioner was initially instructed and three months later SAT delivered its decision finding that the client lacked capacity and appointing a limited guardian and plenary administrator. However, the Committee noted that when the practitioner appeared for the client at SAT, there was a divergence in the available medical evidence, and on one reading of the evidence, and in the absence of any order by SAT that the client lacked capacity, it was reasonably open to the practitioner to conclude that the client had capacity to instruct her.

However, the Committee expressed concern regarding the adequacy of the practitioner's file notes. The Committee was concerned that in circumstances where her client's testamentary capacity was at issue, it would have been in both the client's and the practitioner's interest to take a more complete file note of her attendance with the client when the practitioner obtained instructions for the Will and EPA.

Case Study 3

Obtaining Consent for Tissue Sampling

The complainant was the applicant in workers' compensation dependency proceedings and a *Fatal Accidents Act* action in the District Court in relation to the death of her husband. The practitioner acted for the insurer of the complainant's husband's employer, which was the respondent in the workers' compensation proceedings and the defendant in the District Court proceedings.

The complainant asserted that, without the appropriate authority, and without informing her solicitors of the intention to do so, the practitioner caused a pathologist, who had prepared tissue samples taken from her late husband while he was alive, to provide those tissue samples to another pathologist, who had been retained by the insurer as an expert in the proceedings to assess and conduct tests on the samples, and report on his findings.

The practitioner submitted that he did have authority because the complainant signed a form 2D Workers' Compensation Claim Form for dependents of deceased workers in which the complainant had given her consent to all doctors who had been involved in her late husband's treatment disclosing any "information" in respect of her late husband to her late husband's employer or its insurer. The practitioner also submitted that, in any event, the tissue samples were the property of the providing pathologist, and, therefore, authority from the complainant was not required.

The practitioner admitted that, before causing the first pathologist to provide the second pathologist with the tissue samples for assessment and testing, he had not informed the complainant's solicitors of his intention to do so.

The Committee considered that both the question of whether the practitioner had authority, and the question of whether he had needed authority, were arguable and it could not be concluded that the practitioner had engaged in unsatisfactory professional conduct or professional misconduct. Notwithstanding that, however, the Committee considered that it would have been prudent and preferable for the practitioner to have notified the complainant's solicitors of his intention to request the first pathologist to provide the second pathologist with the tissue samples for assessment and testing in order to:

- provide the complainant with notice that her late husband's tissue was to be utilised in that way; and
- provide the complainant with the opportunity to object to that course of action if she wished.

The Committee expressed concern about the practitioner's failure to notify the complainant's solicitors of his intentions and wished to make it clear to the practitioner that should the same circumstances arise again, he must notify the deceased next-of-kin of his intentions.

5.3 SUMMARY CONCLUSION DETERMINATIONS

If, after an investigation is completed, the Committee is satisfied that there is a reasonable likelihood that a practitioner would be found guilty by SAT of unsatisfactory professional conduct in respect of a matter the

Committee may deal with the matter using its summary conclusion powers.

The use of these summary conclusion powers means that a matter that would otherwise be referred to SAT can be dealt with by the Committee and lower penalties apply. The range of penalties available to the Committee range from a public

reprimand (or, if there are special circumstances, a private reprimand) up to a fine of \$2,500. The Committee can also make compensation orders.

However, before it can exercise its summary conclusion powers the Committee must also be satisfied that the practitioner is generally

competent and diligent and that the taking of action is justified. The practitioner concerned must also consent to the Committee exercising its summary conclusion powers.

The Committee exercised its summary conclusion powers in respect of 13 matters during the year.

***Summary of matters determined in the exercise of summary conclusion powers
1.7.12 – 30.6.13***

Grounds of unsatisfactory professional conduct	Finding
That on or about 30 November 2009 the practitioner breached a written undertaking to Dr T K and Dr E V not to release the Australian passport of their child K born 6 October 2007 from her possession unless ordered to do so by the Family Court of Western Australia or in accordance with the parties joint written instructions.	Fine of \$500
That between 14 October 2009 and 25 October 2010 the practitioner in acting for Mr I R M in respect of the Will of Mr M M conducted the matter in a manner that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.	Fine of \$500
That between 22 February and 7 July 2008 the practitioner breached a written undertaking given to VML to serve on VML a copy of the application which his clients, MT, VT and DM, were intending to make to reinstate the registration of TROML.	Private reprimand
That the practitioner: <ol style="list-style-type: none"> 1. between 20 January 2006 and 10 February 2006, or thereabouts, in preparing wills on behalf of Mr and Mrs L, conducted the matter in a manner that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent and diligent legal practitioner; and 2. between 20 April 2005 and 5 June 2008, in acting as the Executor of the Estate of NCL, in the administration of the Estate, conducted himself in a manner that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent and diligent legal practitioner. 	Fine of \$1,000 in respect of each matter

Grounds of unsatisfactory professional conduct	Finding
<p>That between August 2011 and October 2011 or thereabouts in acting for JT in an unfair dismissal application by JT to Fair Work Australia against JT's former employer, the practitioner conducted the proceedings in a manner that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent and diligent legal practitioner in that prior to lodging the proceedings he:</p> <ul style="list-style-type: none"> (a) failed to advise the client of the maximum amount of compensation she could reasonably expect to receive if the proceedings were successful; and (b) failed to advise the client that the practitioner would need the permission of Fair Work Australia to appear for her on any hearing in the proceedings. 	<p>Fine of \$1,000 and ordered to pay compensation to the client of \$3000</p>
<p>That:</p> <ul style="list-style-type: none"> 1. between 4 November 2010 and about October 2011, the practitioner failed to take any, or any adequate, steps to advise his client, Mr W, in relation to the progress of Supreme Court proceedings to which Mr W was a party; 2. between 11 October 2010 and 28 September 2011, the practitioner failed to take any, or any adequate, steps to ensure Mr W's interests were properly protected and advanced; and 3. the practitioner did not: <ul style="list-style-type: none"> a. respond to the Legal Profession Complaints Committee's reasonable enquiries by letters dated 14 March 2012 and 24 April 2012 until 21 June 2012; and b. comply with a Notice to Provide Written Information issued on 15 May 2012 pursuant to section 520(1)(c) of the <i>Legal Profession Act 2008</i> until 21 June 2012 in circumstances where the Notice required compliance on or before 25 May 2012. 	<p>Fine of \$1,500 and public reprimand</p>
<p>That on 12 July 2010 the practitioner witnessed his client's affidavit, when, by operation of section 9(7) of the Oaths, Affidavits and Statutory Declarations Act 2005, he was not an authorised witness because he participated in the preparation of the affidavit.</p>	<p>Public reprimand</p>

Grounds of unsatisfactory professional conduct	Finding
<p>That between 5 August 2009 and 19 November 2009 or thereabouts in his representation of Mr & Mrs A in relation to Supreme Court proceedings the practitioner conducted himself in a manner that fell short of the standard of competence that a member of the public is entitled to expect of a reasonably competent practitioner.</p>	<p>Fine of \$1,000</p>
<p>That between about March 2005 and July 2008, the practitioner acted in circumstances amounting to a conflict of interest in that, having accepted instructions jointly from DH and PH in respect of the will and estate of the late SH, he acted for DH against PH and others in probate proceedings in the Supreme Court of Western Australia in respect of the late SH's will.</p>	<p>Private reprimand</p>
<p>That between September 2007 and October 2010 or thereabouts in acting for TP in respect of a medical negligence matter the practitioner engaged in conduct that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent and diligent Australian legal practitioner.</p>	<p>Fine of \$1,500</p>
<p>That between February 2008 and 23 December 2010 in her representation of LJ in a claim for damages arising out of a personal injury and in proceedings filed in Dispute Resolution Directorate in April 2010 for a determination of percentage disability, the practitioner conducted herself in a manner that fell short of the standard of diligence that a member of the public is entitled to expect from a reasonably competent Australian legal practitioner.</p>	<p>Fine of \$500</p>
<p>That on 25 July 2011 in the course of representing Mr MM in relation to two charges of aggravated common assault against Ms H, the practitioner conducted himself in a manner that may be prejudicial to, or diminish public confidence in, the administration of justice and may bring the profession into disrepute by meeting with Ms H and taking a statement from her, and in particular by doing so in the presence of the client, and where protective bail conditions were in force prohibiting the client from being within 20 metres of Ms H.</p>	<p>Fine of \$250</p>
<p>That, on two occasion in February 2011 and November 2011, the practitioner provided copies of documents which he had obtained by subpoena in the Family Court of Western Australia, to a third party, for a purpose unrelated to the Family Court proceedings, and, in so doing, engaged in conduct that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the profession of good repute and competence.</p>	<p>Fine of \$2,000</p>

5.4 REFERRALS TO SAT

During the year, the Committee resolved to refer matters arising from 9 complaints or conduct investigations to SAT involving 5 practitioners. As at 30 June 2013, 2 matters had yet to be filed in SAT (both of those matters have subsequently been filed).

The referral is by way of an Application filed in SAT. The Application sets out the Grounds of the professional misconduct or unsatisfactory professional conduct together with the supporting facts and contentions. The Committee is the applicant and is represented in SAT by members of the Litigation team or, in the case of defended hearings, counsel briefed from the independent bar.



6. State Administrative Tribunal and Court Proceedings

6.1 SAT APPLICATIONS

The Committee filed 7 Applications in SAT during the period under review.

During the year there were 14 Applications determined by SAT including 3 matters in respect of which a decision had been delivered as at 30 June 2013 but not penalty. Of the matters determined, 7 were determined (including penalty) as a result of consent orders and a further 3 were determined as a result of the finding being made by consent but with penalty being referred to SAT for

hearing. The majority of consent orders were made following SAT ordered mediation where the Committee and the practitioner reached agreement on the orders to be sought. All minutes of proposed consent orders are referred to SAT for final approval.

At the conclusion of the period under review there were 5 Applications filed by the Committee which had not been determined (compared to 11 last year).

Summary of SAT matters determined 1.7.12 – 30.6.13

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
87/2009 20/08/2012	Chin, Ni Kok	Conflict of interest, competence issues, wrongful written communications, failing to deposit monies into trust, failing to render accounts, failing to follow instructions, wrongly altering a costs agreement, seeking remuneration from a client which varied in accordance with the amount to be recovered	Finding of unsatisfactory professional conduct by seeking remuneration from a client which varied in accordance with the amount to be recovered and professional misconduct in respect of all other matters Report to the full bench of Supreme Court with recommendation for strike off Costs \$16,721.42
183/2010 12/03/2013 (revised 20/06/13)	A legal practitioner	a) misled Family Court b) failed to notify third party & Family Court of third party interest in property; c) failed to respond to LPCC inquiries	Finding of professional misconduct in respect of a) and b) Finding of unsatisfactory professional conduct in respect of c)* Awaiting penalty

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
113/2011 2/11/2012	Giudice, Peter George	Causing a client to sign an affidavit which contained a false statement, when the practitioner knew that the statement was false or, alternatively, recklessly disregarded whether the statement was true or false	Finding of unsatisfactory professional conduct when he caused to be prepared under his supervision and caused to be sworn, filed and served in court proceedings an affidavit of his client which contained a false statement and he recklessly disregarded whether the statement was true or false. All other grounds were dismissed. Reprimand Fine \$8,000 Costs \$9,450*
114/2011 26/07/2012	Giudice, Peter George	Failed to adequately supervise an articulated clerk	Dismissed
126/2011 9/11/2012	Skerritt, Andrew Paul	a) sending letter to the State Administrative Tribunal which he knew was misleading or reckless as to whether it was misleading; and/or b) failed, or failed to adequately, progress client's application	Mediated outcome Finding of professional misconduct by sending a letter to the State Administrative Tribunal which he knew was misleading Otherwise dismissed Suspended for 6 months Practitioner must undergo counselling and medical treatment as prescribed by, and act in accordance with advice from, his treating medical practitioner until 31 May 2013 Conditions imposed on practising certificate Costs \$4,784.50

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
211/2011 20/07/2012	Bates, Kenneth Paul	<p>a) failed to comply with the prosecutor's duty of disclosure</p> <p>b) failed to review written materials to ascertain that there was a reasonable evidentiary foundation to support a material submission of fact before advancing that material submission of fact during his opening address at the trial</p> <p>c) failed to lead evidence other than the accused's confession in support of a material submission of fact advanced in his opening address in circumstances where he ought to have done so</p> <p>d) in the circumstances above failed to withdraw the material submission of fact at any time prior to the conclusion of the trial</p>	<p>Mediated outcome</p> <p>Finding of unsatisfactory professional conduct in that:</p> <p>a) he failed to comply with the prosecutor's duty of disclosure;</p> <p>b) he failed to review his written materials to ascertain there was a reasonable evidentiary foundation to support a material submission of fact before advancing that submission of fact during his opening address at the trial</p> <p>c) he failed to lead evidence additional to evidence of statements to the police in respect of a material submission of fact advanced during his opening address when he ought to have done so</p> <p>d) in the circumstances above he failed to expressly withdraw his submission at any time prior to the conclusion of the trial</p> <p>Reprimand Fine \$10,000 Costs \$3,500</p>
44/2012 10/10/2012	Schapper, Derek Henry	<p>Withdrawing without authority and using for his own benefit funds from the general trust account of the practitioner's law firm; further, making or causing false entries to be made in the trust account ledgers of the practitioner's law firm</p>	<p>Mediated outcome</p> <p>Finding of professional misconduct</p> <p>Not be granted a local practising certificate for the period of 1/07/2012 to 30/06/2013</p> <p>Costs \$2,250</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
47/2012 17/07/2012	Clifton, Cameron David	<ul style="list-style-type: none"> a) breaching a court order b) deliberately misleading a fellow practitioner c) lack of diligence in progressing client matter 	<p>Mediated outcome</p> <p>Finding of unsatisfactory professional conduct</p> <ul style="list-style-type: none"> a) while acting as administrator of an Estate paying his client's legal costs and disbursements from funds held for the benefit of the Estate contrary to a mediated agreement and/or an order of the Supreme Court b) in writing to another party's solicitor without exercising sufficient care which by reason of what was omitted therefrom, was misleading c) failed to take any or any adequate steps to progress his client's matter <p>Fine \$8,000 Costs \$2,000</p>
78/2012 27/08/2012		<ul style="list-style-type: none"> a) engaging in legal practice in WA inconsistent with conditions imposed from home jurisdiction b) misleading Legal Practice Board WA c) misleading the other party 	<p>Withdrawn until practitioner can be located</p>
85/2012 27/06/2013	Marsh, Neville William	<ul style="list-style-type: none"> a) failed to make superannuation contributions b) failed to lodge some or all of the superannuation guarantee statements with the Commissioner c) failed to pay GST to the Commissioner d) failed to pay PAYG tax withheld to the Commissioner 	<p>Mediated outcome</p> <p>Finding of professional misconduct in respect of all matters</p> <p>Fine \$10,000</p> <p>Conditions imposed on practising certificate</p> <p>Costs \$6,000</p>

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
101/2012 4/02/2013	Stephens, Hayden	Failed to supervise adequately or at all a law clerk so as to ensure the clerk took any or any adequate steps to substantively progress the client's matter in a timely manner or at all	Mediated outcome Finding of unsatisfactory professional conduct Failed to supervise adequately a senior managing law clerk so as to ensure the managing clerk took adequate steps to substantively progress the client's matter in a timely manner Fine \$5,000 Costs \$5,000
136/2012 26/04/2013	Horwood, Louise	Lack of competence in one client matter and lack of competence and diligence in two separate client matters and failing to respond to enquiries of the LPCC	Mediated outcome Findings of unsatisfactory professional conduct in relation to the client matters and professional misconduct in respect of the failure to respond to the LPCC Conditions imposed on practising certificate Refund of fees \$3,360 & \$5,000 Fine \$4,000 in respect of the finding of professional misconduct Costs \$2,500
176/2012 19/03/2013	O'Halloran, Paul John	In relation to 2 client matters – a) charging contrary to costs agreement b) contravening s260 and 267 of the Legal Profession Act c) sending a letter to his client that was misleading d) seeking payment from ICWA in excess of that charged and incurred by client e) charging fees that were grossly excessive	Mediated outcome Finding of professional misconduct in relation to all matters Awaiting Penalty
22/2013 18/06/2013	Alteruthemeyer, Stefan Otto	a) paid estate money from his firm's trust account to the executor's wife, purportedly as executor's commission, when he knew the executor was not then entitled to that payment b) gross overcharging	Mediated outcome Finding of unsatisfactory professional conduct in relation to both matters Reprimand Compensation by refund of fees of \$19,000 Fine \$2,000 Costs \$2,500

Application No. & Date determined	Practitioner	Allegation	Finding & Penalty
30/2013 10/05/2013	O'Halloran, Paul John	<p>In relation to client A -</p> <ul style="list-style-type: none"> a) charging fees that were grossly excessive b) entering into costs agreement which purported to allow charges more than allowed by the <i>Motor Vehicle (Third Party Insurance) Act</i> c) failing to provide information regarding party/party costs contrary to representation he would do so d) billing for services contrary to the manner in which he had represented or agreed e) misleading the client as to the basis he would charge <p>In relation to client B -</p> <ul style="list-style-type: none"> f) charging fees that were grossly excessive g) charging contrary to a cost agreement h) providing misleading information with respect to when he was entitled to or would render bills i) rendering interim bills more frequently than he represented he would 	<p>Mediated outcome</p> <p>Finding of professional misconduct in relation to all matters</p> <p>Awaiting penalty</p>

* Appeal pending

Summary of SAT matters which were not determined as at 30.6.13

Application No.	Date filed	Allegation	Status
43/2012	13/03/2012	Professional misconduct relating to 7 client matters: a) not accounting for trust monies b) failing to carry out work he agreed to do c) neglect of client matters d) failing to inform clients of his ceasing to practise and/or providing their files to new solicitors	Hearing 17/04/2013 to 19/04/2013
79/2012	21/05/2012	Unsatisfactory professional conduct – a) failing to make an enquiry requested by a Magistrate of the Family Court and which she agreed to do b) making statements to a member of staff at a school when she knew that there were no, or no reasonable, grounds for some of those statements, or was recklessly indifferent to whether or not there were reasonable grounds for some of those statements c) when acting as ICL, making statements to a member of staff at a school in breach of s243 of the Family Court Act d) making statement to member of staff at a school which contained information confidential to the parties and in so doing acting outside the scope and function of her role as ICL.	Mediation 1/05/2013 Hearing 10/09/2013
110/2012	13/07/2012	Professional misconduct – Lack of competence and diligence	Mediation 25/03/2013 Hearing 9/08/2013
36/2013	14/02/2013	Professional misconduct / Unsatisfactory professional conduct a) deliberately or recklessly not acting in client's best interests b) failing to reach or maintain a reasonable standard of competence and diligence c) failing to respond in a timely manner or at all to correspondence from Supreme Court	Mediation 26/03/2013 Hearing 23/07/2013
122/2013	28/06/2013	Professional misconduct a) charging fees that were grossly excessive; b) charging fees on a basis that was contrary to the terms of a purported costs agreement c) failing to provide information regarding party/party costs contrary to a representation that he would do so	Directions 9/07/2013

6.2 REVIEW APPLICATIONS

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

There were 10 Applications filed during the year (compared to 21 last year). The extent of the Committee's

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

All the review Applications were either dismissed or withdrawn with the exception of one where one part of the complaint which had been dismissed by the Committee was referred back for reconsideration by the Committee.

Review Applications	Total
Pending as at 1 July 2012	12
Lodged during year	10
Withdrawn	(2)
Dismissed	(14)
Part referred back/Part dismissed	(1)
Pending as at 30 June 2013	5

6.3 REPORTS TO THE FULL BENCH

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

The full bench can make any order available to SAT and/or strike a practitioner off the roll. During the year, Alexander Jason McLean was struck from the roll on 28 August 2012, Ni Kok Chin was struck from the roll on 12 December 2012 and Megan Maree in de Braekt was struck from the roll on 12 April 2013.

There were no practitioners who remained, during the period under review, the subject of a Report to the full bench which had not been determined.

6.4 APPEALS

During the year:

- an appeal by Peter Neil from a SAT decision dismissing his review application was dismissed on 3 August 2012
- an appeal for leave to appeal by Mr F J Cuipers from a SAT decision dismissing a review application was dismissed on 12 October 2012
- an appeal on penalty by the Committee against a SAT decision in relation to Mark Anthony Detata with respect to a finding of professional misconduct by breach of an undertaking was allowed and a fine of \$10,000 imposed on 26 October 2012
- an appeal by Leonard Gandini from an interim SAT decision was discontinued on 18 December 2012
- an appeal by Lynette Patricia Quinlivan from a SAT decision finding her guilty of unsatisfactory professional conduct and professional misconduct was allowed on 14 December 2012
- an appeal by Megan Maree in de Braekt from a SAT decision finding her guilty of professional misconduct was dismissed on 10 January 2013
- appeals by Paul John O'Halloran from 5 SAT decisions finding him guilty of professional misconduct in relation to his costs agreements, gross overcharging and failing to make superannuation payments to staff was dismissed on 6 March 2013
- an appeal by Dr J Salmon from a SAT decision dismissing his

application for review was dismissed on 13 March 2013

- an appeal by Steven Raymond Fidock from a SAT decision finding him guilty of professional misconduct was dismissed on 23 April 2013.

Appeals which were lodged prior to the year, but which had not been determined as at 30 June 2013 were:

- an appeal by Leonard Gandini from a SAT decision
- an appeal on penalty by the Committee against a SAT decision in relation to Leonard Gandini in which the practitioner has cross-appealed.

The following appeals were lodged during the year, but as at 30 June 2013 had not been determined:

- an appeal by Peter George Giudice from a SAT decision
- an appeal by Peter Neil from a Court of Appeal decision dismissing his appeal of a SAT decision dismissing his review application
- an appeal by Leonard Gandini from an interim SAT decision
- an appeal by Leonard Gandini from an interim and final SAT decision
- an appeal by Mr D Sims from a SAT decision dismissing a review application.

6.5 OTHER COURT PROCEEDINGS

During the year an originating motion for a prerogative writ was filed in the Supreme Court by Leonard Gandini. The application was dismissed on 26 October 2012.



7. Promoting Professional Standards

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

The Committee has continued to be proactive in this regard, particularly through its work in the Rapid Resolution team. A new initiative was commenced during the year with the aim of issuing risk alert letters to all practices which have received multiple inquiries or complaints against their practitioners within the previous 6 months. The letters set out the nature of the inquiries/complaints and invites the practice to consider ways to reduce the practice's exposure to inquiries/complaints.

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

The Committee has also continued to publish articles in *The Law Society's Brief* magazine. Three articles were published during the

reporting year which covered how the LPCC is progressing, limited retainers, client communication, taking will instructions through intermediaries, trust records – some practical tips from the LPCC's Senior Trust Account Inspector, obligation to maintain confidentiality of court documents and undertakings. These articles are also republished on the Board's website.

The Committee's members and staff also give presentations at conferences and continuing professional development seminars and to final year university law students, government bodies and other organisations such as the Community Legal Centres Association. Some of these presentations are accompanied by papers or power point presentations which are also published on the Board's website. During the year, 12 such presentations were given by Committee staff.

The Committee also continued with its initiative of visiting regional areas to talk to practitioners about issues relating to complaints. During the year Gael Roberts, Law Complaints Officer, and Philippa Rezos, the manager of the Rapid Resolution team, visited Geraldton and presented a seminar to practitioners.



8. Tables

TABLE 1 RAPID RESOLUTION INQUIRIES 2012-2013

TYPE OF INQUIRER 2012-2013

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

INQUIRIES BY AREAS OF LAW 2012 - 2013

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

TABLE 1 RAPID RESOLUTION INQUIRIES 2012 - 2013

INQUIRIES BY AREAS OF INQUIRY 2012 - 2013

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

TABLE 1 RAPID RESOLUTION INQUIRIES 2012 - 2013

RESOLUTION OF INQUIRY 2012 - 2013

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

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION INQUIRIES 2011 – 2013

	Total 2010 – 11	Total 2011 – 12	Total 2012 – 13
Complaints	336	147	80
Conduct Investigations	16	29	21
Rapid Resolution inquiries	556*	1652	1472
Total	908	1828	1573

* For part year only 13.12.10 – 30.6.11

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT 2011 - 2013

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
Client / former client	168 (47.7)	81 (46.0)	44 (43.6)
Client's friend / relative	10 (2.8)	6 (3.4)	0
Opposing party	105 (29.8)	43 (24.4)	25 (24.8)
Beneficiary / executor / administrator	5 (1.4)	2 (1.1)	4 (4.0)
Practitioner on own behalf	11 (3.1)	6 (3.4)	3 (3.0)
Practitioner on another's behalf	3 (0.9)	0	0
Legal Practice Board	3 (0.9)	0	2 (2.0)
Other	31 (8.8)	9 (5.1)	4 (4.0)
Court Enquiry	1 (0.3)	4 (2.3)	1 (1.0)
Other Investigation	31 (4.3)	25 (14.2)	18 (17.8)
Total	352	176	101

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2011 – 2013

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
Family/Defacto law	94 (26.0)	41 (21.8)	21 (18.6)
Civil Litigation	73 (20.2)	45 (23.9)	24 (21.2)
Conveyancing	8 (2.2)	4 (2.1)	2 (1.8)
Leases/Mortgages/Franchises	10 (2.8)	4 (2.1)	1 (0.9)
Probate/Wills/Family Provisions	27 (7.5)	12 (6.4)	11 (9.7)
Commercial/Corporations Law	23 (6.4)	8 (4.3)	11 (9.7)
Criminal law	31 (8.6)	17 (9.0)	10 (8.9)
Personal injuries	13 (3.6)	12 (6.4)	4 (3.5)
Workers Compensation	9 (2.5)	9 (4.8)	6 (5.3)
Victims Compensation	2 (0.6)	4 (2.1)	0
Employment/Industrial law	13 (3.6)	4 (2.1)	5 (4.4)
Professional negligence	2 (0.6)	0	0
Land and Environment	6 (1.7)	1 (0.5)	1 (0.9)
Immigration	1 (0.3)	1 (0.5)	0
Other	49 (13.5)	26 (13.8)	17 (15.0)

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT 2011 - 2013

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
Cost/Payment issues			
Failure to pay third party	4 (0.7)	0	0
Overcharging	64 (11.0)	36 (11.5)	13 (6.1)
No costs disclosure	6 (1.0)	4 (1.3)	8 (3.8)
Transfer costs without authority	2 (0.3)	4 (1.3)	0
Failure/delay to provide a detailed account	4 (0.7)	7 (2.2)	6 (2.8)
Other cost complaint	26 (4.5)	7 (2.2)	9 (4.2)
Subtotal	106 (18.2)	58 (18.5)	36 (16.9)
Communication/Service			
Act without/contrary to instructions	19 (3.3)	12 (3.8)	6 (2.8)
No communication	39 (6.7)	18 (5.8)	9 (4.2)
Failure to carry out instructions	46 (7.9)	18 (5.8)	14 (6.6)
Delay	38 (6.5)	18 (5.8)	12 (5.6)
Lack of supervision	1 (0.2)	2 (0.6)	2 (0.9)
No client advice	12 (2.1)	7 (2.2)	2 (0.9)
No advice on progress	7 (1.2)	6 (1.9)	4 (1.9)
Discourtesy	49 (8.4)	13 (4.2)	4 (1.9)
Neglect	12 (2.1)	11 (3.5)	9 (4.2)
Subtotal	228 (38.4)	105 (33.6)	62 (29.1)
Personal Conduct			
Unethical conduct	86 (14.8)	44 (14.1)	35 (16.4)
Negligence	27 (4.7)	17 (5.4)	12 (5.6)
Misleading	31 (5.3)	19 (6.1)	12 (5.6)
Conflict of interest	20 (3.4)	5 (1.6)	10 (4.7)
Failure to transfer documents	2 (0.3)	1 (0.3)	3 (1.4)
Communicating with a client of another solicitor	1 (0.2)	1 (0.3)	1 (0.5)
Threatening behaviour	15 (2.6)	6 (1.9)	3 (1.4)

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
False swearing of documents	1 (0.2)	2 (0.6)	0
Breach confidentiality	0	3 (1.0)	4 (1.9)
Failure to assist LPCC	1 (0.2)	1 (0.3)	2 (0.9)
Undue pressure	6 (1.0)	1 (0.3)	1 (0.5)
Alteration of documents	0	0	1 (0.5)
Liens	2 (0.3)	0	0
Subtotal	192 (33)	100 (32)	84 (39.4)
Non-Compliance			
Not complying with undertaking	2 (0.3)	3 (1.0)	3 (1.4)
Practising without a practice certificate	2 (0.3)	0	0
Not complying with Legal Profession Act/Regulations	2 (0.3)	3 (1.0)	0
Subtotal	6 (0.9)	6 (1.9)	3 (1.4)
Trust Account Matters			
Breach of Sections of Act / Regulations relating to trust monies	2 (0.3)	8 (2.6)	1 (0.5)
Misappropriation	4 (0.7)	3 (1.0)	1 (0.5)
Failure to account	2 (0.3)	4 (1.3)	6 (2.8)
Other – Trust Account Matters	1 (0.2)	3 (1.0)	0
Subtotal	9 (1.5)	18 (5.8)	8 (3.8)
Other	45 (7.8)	26 (8.3)	20 (9.4)

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2011 – 2013

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
Barrister	22 (6.3)	15 (8.5)	8 (7.9)
Sole Principal	118 (33.5)	80 (45.5)	45 (44.6)
Other Principal	96 (27.3)	36 (20.5)	18 (17.8)
Non Principal	80 (22.7)	22 (12.5)	13 (12.9)
Government Legal Position	15 (4.3)	2 (1.1)	4 (4.0)
Corporate Legal Position	3 (0.9)	0	1 (1.0)
Firm only	1(0.3)	1 (0.6)	1 (1.0)
Struck off/suspended	5 (1.4)	7 (4.0)	2 (2.0)
Other	12 (3.4)	13 (7.4)	9 (8.9)
Total	351	176	101

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2011 – 2013

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
CBD/West Perth	193 (54.8)	96 (54.6)	50 (49.5)
Suburbs	115 (32.7)	63 (35.8)	38 (37.6)
Country	35 (9.9)	12 (6.8)	5 (5.0)
Interstate	4 (1.1)	2 (1.1)	4 (4.0)
Not known	4 (1.1)	3 (1.7)	4 (4.0)
Total	351	176	101

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2011 – 2013

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
Under 5	47 (13.4)	19 (10.8)	8 (7.9)
5 – 9	47 (13.4)	39 (22.2)	28 (27.7)
10 – 14	55 (15.6)	19 (10.8)	20 (19.8)
15 – 19	41 (11.7)	21 (11.9)	9 (8.9)
20 – 24	38 (10.8)	17 (9.7)	11 (10.9)
25 – 29	43 (12.2)	23 (13.1)	9 (8.9)
30 – 34	41 (11.7)	22 (12.5)	10 (9.9)
35 – 39	1 (5.1)	5 (2.8)	2 (2.0)
Over 40	13 (3.7)	11 (6.3)	1 (1.0)
Not known/Not applicable	8 (2.3)	0	3 (3.0)
Total	351	176	101

TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2011 – 2013

	Total 2010 – 11 (%)	Total 2011 – 12 (%)	Total 2012 – 13 (%)
Under 25	4 (1.1)	1 (0.6)	0
25 – 29	19 (5.4)	7 (4.0)	2 (2.0)
30 – 34	25 (7.1)	6 (3.4)	7 (6.9)
35 – 39	41 (11.7)	11 (6.3)	4 (4.0)
40 – 44	38 (10.8)	28 (15.9)	11 (10.9)
45 – 49	52 (14.8)	30 (17.1)	15 (14.9)
50 – 54	54 (15.3)	34 (19.3)	19 (18.8)
55 – 59	50 (14.2)	31 (17.6)	21 (20.8)
60 – 64	31 (8.8)	10 (5.7)	9 (8.9)
65 – 69	19 (5.4)	10 (5.7)	7 (6.9)
70 – 75	5 (1.4)	6 (3.4)	3 (3.0)
76 – 80	0	0	0
81+	1 (0.3)	1 (0.6)	0
Not known/Not applicable	12 (3.4)	1 (0.6)	3 (3.0)
Total	351	176	101

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2011 – 2013

	Total 2010 - 11	Total 2011 – 12	Total 2012 – 13
Practitioners with 1 complaint	235	113	70
Practitioners with 2 complaints	30	14	5
Practitioners with 3 or more complaints	14	6	4
Total number of practitioners	279	133	79

TABLE 11 OUTSTANDING COMPLAINTS 2011 – 2013

	Total 2010 - 11	Total 2011 – 12	Total 2012 – 13
Outstanding complaints	295	114	78
Outstanding conduct investigations	42	20	23
Total	337	134	101



9. Information Statements

9.1 FREEDOM OF INFORMATION ACT

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

requirements of section 94 of the said Act.

9.2 PUBLIC INTEREST DISCLOSURE

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

No public interest disclosures were received during the relevant period.



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

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

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

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

6. Copies of the said brochures are available at the offices of the Complaints Committee at 2nd Floor, 55 St Georges Terrace, Perth, to any person who calls at those offices or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions. Copies of the said brochures are also available to the general public for inspection or downloading from <http://www.lpbwa.org.au/>.
7. Dilhari Mahiepala of 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). No reductions to the application fee are available.
12. Applications will be acknowledged in writing and applicants will be notified of the decision as soon as practicable and in any case within 45 days. In the notice of decision applicants will be provided firstly with the date of its making, the name and designation of the officer making it, the reasons for classifying any particular document as exempt, and the fact that access is given to an edited document and secondly with information as to the right to review and the procedures to be followed to exercise that right.
13. Access to documents may be granted by way of inspection, copies of documents, a copy of an audio or video tape, a computer disk, a transcript of a recording, shorthand or encoded document from which words can be reproduced, or by agreement in other ways. Charges may apply. For financially disadvantaged applicants or those issued with prescribed pensioner concession cards charges to provide copies of documents, audio or video tapes, computer disks, transcripts of recordings, shorthand or encoded documents from which words can be reproduced are reduced by 25%.
14. Applicants who are dissatisfied with the decision of any officer may apply for an internal review of the decision; the application should be made in writing within 30 days of receipt of the notice of decision.
15. Applicants will be notified of the result of an internal review within 15 days.
16. Applicants who are dissatisfied with the result of an internal review may apply to the Information Commissioner for an external review; details will be advised to applicants when the internal review decision is issued.



LPCC WA

Level 2, Colonial Building, 55 St Georges Terrace, Perth WA 6000
Post Office Box Z5293, St Georges Terrace, Perth WA 6831
Ph: 08 9461 2299 Fx: 08 9461 2265 Em: lpcc@lpbwa.com Wb: www.lpbwa.org.au