



LEGAL PROFESSION COMPLAINTS COMMITTEE
WESTERN AUSTRALIA

2021 ANNUAL REPORT

CONTENTS

PAGE

1. Report from the Chair **1**

2. Report from the Law Complaints Officer **6**

3. About the Legal Profession Complaints Committee **8**

- 3.1 Our role, purposes and objectives
- 3.2 Our relationship with the Legal Practice Board
- 3.3 Our members
- 3.4 Our operations
- 3.5 Trust account inspections
- 3.6 Our staff training and professional development

4. Complaints **11**

- 4.1 Complaint handling process
- 4.2 Key statistics

5. Formal determination of complaints **15**

- 5.1 Overview and key statistics
- 5.2 Overview and key statistics
- 5.3 Matters dismissed or not taken further
- 5.4 Summary conclusion determinations
- 5.5 Referrals to the State Administrative Tribunal

6. State Administrative Tribunal and Court Proceedings **19**

- 6.1 SAT Applications
- 6.2 Review Applications
- 6.3 Reports to the Full Bench of the Supreme Court
- 6.4 Appeals
- 6.5 Other
- 6.6 Special leave applications

7. Promoting Professional Standards **81**

8. Tables **82**

- Table 1 Rapid Resolution enquiries 2019 – 2021
- Table 2 New complaints/conduct investigations/rapid resolution enquiries 2019 – 2021
- Table 3 Complaints opened by type of complainant 2019 – 2021
- Table 4 Complaints opened by areas of law 2019 – 2021
- Table 5 Complaints opened by areas of complaint 2019 – 2021
- Table 6 Complaints opened by practitioner type of employment 2019 – 2021
- Table 7 Complaints opened by practitioner area of practice 2019 – 2021
- Table 8 Complaints opened by practitioner years in practice 2019 – 2021
- Table 9 Complaints opened by practitioner age 2019 – 2021
- Table 10 Number of practitioners complained of 2019 – 2021
- Table 11 Outstanding complaints 2019 – 2021

9. Information Statements **96**

- 9.1 Freedom of Information Act
- 9.2 Public Interest Disclosure

1. Report from the Chair

This report covers the operations and activities of the Legal Profession Complaints Committee for the reporting year ended 30 June 2021.

It has been another year marked by anticipation about, and planning for, the arrival of the Uniform Law. It has also been another year in the shadow of the COVID-19 global pandemic.

The Committee was supported through this challenging period by its dedicated and hardworking staff. I would like to thank all of them for their efforts and commitment.

Looking at the data for the Committee's operations in 2020-21, it can again be seen that the area that attracted the most enquiries and complaints was family/de facto law (35% of the enquiries and 20.2% of the complaints). This is consistent with the Committee's experience over many years.

Criminal law attracted the second highest number of enquiries (11.7%), followed by wills/powers of attorney (6.4%). Criminal law and professional negligence accounted for the second most complaints (16.7% each).

There was increase in the number of enquiries received by the Committee's Rapid Resolution Team (RRT) in 2020-21.

The RRT receives and triages all new contacts, and does what it can to try and assist people who come to the Committee with a concern. In 2020-21 1060 enquiries were received by the RRT. This was up from 989 the year before.

In the reporting year, the Committee investigated a smaller number of complaints than the year before (59, down from 71). However, the Committee commenced a higher number of investigations of its own

initiative (25, up from 11 in 2019-20). These investigations are commenced when there is no complaint but, on the basis of information provided, the Committee has reasonable cause to suspect that a practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.

Overall, the number of formal investigations conducted by the Committee during the reporting year was about the same as the previous year.

A notable increase was seen in complaints made by practitioners on their own behalf. This increased from 7.3% of all complaints in 2019-20 to 17.9% of all complaints this reporting year. This year consequently also saw a drop in the percentage of complaints made by clients or former clients (38.1%, down from 48.8% last year).

During the reporting year, the Committee made determinations in 48 matters, up from 42 the year before. Of these determinations, 31% resulted in a referral of the practitioner's conduct to the State Administrative Tribunal (SAT).

The proportion of matters considered by the Committee which resulted in some form of disciplinary action (that is, either a referral to SAT, or a summary conclusion), was down this year, from 50% to 44%. The Committee also dismissed 54% of the complaints brought before it, compared with 45% the year before.

In some cases, the Committee had concerns about the conduct of the practitioner, but considered that the shortcoming identified was not sufficiently serious to require a disciplinary response. In those cases, the complaint was dismissed, but the Committee expressed its concern about certain specific aspects of the practitioner's conduct. That is

always done with a view to assisting the practitioner to improve his or her practice in the future. In 2020-21, the Committee expressed concern in 23% of cases before it, up from 9% in 2019-20.

Enquiries about both costs and communication remained steady compared with previous years (22% and 25% of all enquiries respectively). Communication issues are often the reason for many of the enquiries and complaints which the Committee receives, and are usually the most amenable to a conciliated result.

During the year, extra initiatives were put in place to assist in dealing with those serious matters which are referred to SAT. External counsel were engaged to assist the Litigation Team with more applications to SAT. Proceedings in SAT involve the Committee acting in the public interest and as a model litigant. The work is complex and challenging for staff and counsel alike.

Overall, while the vast majority of the profession maintains very high standards and provides an excellent service to its clients and the courts, the Committee has an important role to play to promote and enforce the professional standards of the profession, as well as to pursue disciplinary action where necessary to protect consumers and the public, in the interests of the administration of justice.

Trends

As noted above, family law remains the area which generates the greatest number of enquiries and complaints. The Committee is aware that the areas of law which attract the most complaints are those where individuals come into contact with the law during highly stressful times of their lives – such as where there is a marital breakdown, a death in the family, or where someone is facing criminal charges.

When things go wrong in these situations, people will reach out for assistance. It is important that such assistance is available, to help to resolve disputes, and to deal with serious cases of misconduct.

I have already mentioned that there has been this year an increase in complaints made by practitioners on their own behalf. Complaints which were made by practitioners against members of the Committee's staff (and members of the Committee) account for a number of these complaints, as well as complaints which involve allegations of professional negligence.

There are cases, however, where the complainant or the practitioner the subject of the complaint can place a disproportionate burden on the resources of the Committee and staff generally, through the nature and volume of their communications and actions. There are also some practitioners who do not engage appropriately, courteously, candidly and fulsomely, in accordance with their professional obligations. Staff do what they can to deal with those cases appropriately.

As I have mentioned already, enquiries and complaints about costs and communication remain a staple, which the Committee endeavours to resolve informally. The Uniform Law will, however, provide an increased range of legislative tools to help the Committee deal with these complaints, including powers to deal with consumer matters, cost disputes and the ability to conduct audits of a law firm where there is a complaint or concerns.

The power to conduct an audit is a useful tool that can be utilised prior to conducting a full scale investigation into whether there has been unsatisfactory professional conduct or professional misconduct. It also can have a much more immediate impact on

improving services to consumers engaged with the audited practice and managing risk.

Usefully an audit provides a means for management systems to be examined, and for directions to be issued to the practice, to help the practice address identified areas for improvement. This means that, in suitable cases, it may be more effective to address concerns directly through such directions, rather than taking disciplinary action. This can have benefits for all concerned.

Uniform Law

On 23 June 2021, the State Government introduced into the Legislative Assembly the *Legal Profession Uniform Law Application Bill 2021* (WA), which, when passed, will introduce into Western Australia (with modifications) the Legal Profession Uniform Law, which is already in operation in New South Wales and Victoria.¹

A version of the Bill had been introduced in the previous Parliament but not passed before it was prorogued for the 2021 State election.

The first objective of the complaint provisions of the Uniform Law will be to provide a framework for the timely and effective resolution of disputes or issues between clients and lawyers or law practices. The Uniform Law will refer to such disputes as consumer matters, which will include costs disputes. As I have mentioned in previous annual reports, the Committee looks forward to what this can achieve in WA.

The Uniform Law will allow for determinations to be made where disputes cannot be resolved by agreement, including in cost disputes where the total costs are

under \$100,000, or where the amount in dispute is under \$10,000 (indexed).

Education

Despite the ongoing impact of COVID-19, and the social distancing practices it brought about, we have seen a return in 2020-21 to some in-person seminars and presentations. The new normal however is that these generally now operate in a hybrid fashion, with a number of participants able to attend via video link rather than having to travel and be there in person.

The Law Complaints Officer and senior staff frequently present on topics relating to ethics and complaint handling, and, in the reporting year, worked with the Law Society of Western Australia to provide guidance to the profession about the imminent Uniform Law.

Relationships

The Committee works closely with the Legal Practice Board to try and achieve the best regulatory outcomes for the legal profession and the public in WA.

Locally, the Committee, the Law Complaints Officer, and staff have good working relationships with the Law Society, Legal Aid (WA), SAT, the various courts and other bodies in the justice portfolio, the State Ombudsman, and other bodies working in complaints handling and regulation generally.

The Committee works with the profession, including its various representative bodies, and extensively with the Committee's counterparts in New South Wales and Victoria, and throughout Australia.

The Committee has continued to have representation on the Law Society's Costs and Mental Health Wellbeing Committees, noting the benefits gained from information

¹ At the time of writing this report the Bill had not passed through State Parliament and remained before the Legislative Council.

sharing and collaboration. This representation has also been another avenue for the Committee to contribute to maintaining the standards and wellbeing of the profession.

Forecast workload

2020-21 saw a number of initiatives aimed at finalising older investigations, as well as improving handling times in enquiries, complaints and prosecutions generally. In particular, the Committee finalised 52% of all investigations begun before 2019. The RRT also performed very well and resolved over 83% of new matters within 90 days, and 97% within 6 months.

The Committee also began clearing older matters which it had resolved to refer to SAT, but which had not been filed.

Work also progressed to implement a new electronic Case Management System (CMS) which is further described below.

All of these initiatives, along with preparatory work already mentioned regarding the Uniform Law, help to best place the Committee to deal with its ongoing, as well as its anticipated, workload. Where there is no expectation that the number of new contacts with the Committee will reduce, work can be (and is being) done to improve the way it is handled.

Proposals for improving the operations of the Committee

The initiatives described above are part of a move towards implementing measurable key performance indicators to help the Committee to monitor and evaluate its performance. Critical to this is an effective CMS allowing for proper management reporting.

Work in building the first iteration of the CMS progressed during 2020-21, with its introduction expected in mid-2021².

Staffing

The expected arrival of the Uniform Law in the near future is one of several drivers behind a service model review begun in 2020-21 by the Legal Practice Board, the employer of staff supporting both the Board and the Committee.

After significant staff turnover in the Investigations Team in 2019-20, new resources were engaged to assist the team during 2020-21. Despite the loss of some experience, recent acquisitions have shown considerable aptitude and enthusiasm for the tasks ahead.

Thanks

Despite the relatively protected position we have had here as a community in Western Australia during the COVID-19 pandemic, it has not been without its challenges, big and small. Both Committee members and staff alike have had to deal with these, and I thank all of them for their continued efforts in the face of the uncertainties. New challenges will no doubt arise as the new normal evolves into 2021-22 and beyond.

During the reporting year, the Committee farewelled a number of its members, and welcomed new members to replace them.

Leaving the Committee were the former Chair of the Legal Practice Board, and now the Parliamentary Inspector of the Crime and Corruption Commission, Matt Zilko SC, as well as Karen Shepherd, now Her Honour Judge Shepherd of the District Court. I am grateful to Matt and Karen for the

² At the time of writing this Report the first iteration of the CMS had gone live.

contribution both made to the Committee during their time as members.

On the other hand, the Committee welcomed as new members Jason MacLaurin SC and Gary Mack.

I am grateful for all of the members of the Board who serve on the Committee for the very thorough consideration they give to all matters they are asked to assess and make decisions about. Each member puts in a large amount of their own time, all without payment, to ensure that professional standards are upheld and the public is protected. I also give special thanks to each of the community representatives who bring their valuable perspective to each matter, and help the Committee fulfil its roles in upholding standards, and protecting the public.

Also during the year, the Committee farewelled two very significant members of its Investigation Team, Cath Donaldson and Jan Deptula. I thank Cath and Jan for their hard work for the Committee over many years.

I also thank all the other members of staff and the managers, who support the work of the Committee for their extraordinary efforts and commitment. The work they do can be very trying, and they deal with some very

challenging situations and behaviours. The reporting year also brought additional challenges which required everyone to demonstrate flexibility and resilience. Both the Committee and I are grateful to each of them.

I also thank the barristers who undertake challenging and complex work for the Committee at reduced rates, and for the assistance afforded by the Western Australian Bar Association to practitioners who are investigated and prosecuted by the Committee. Barristers who act for practitioners through the involvement of the WABA are integral to the efficient resolution of disciplinary matters.

In 2021-22 I hope that the Committee can begin to realise some of the benefits presented when the Uniform Law finally arrives, as well as see the payoff from the new CMS. These benefits ultimately are about providing better service and outcomes for the public and the profession, and are what the Committee and the staff are all committed to achieving.

***John Ley SC
Chair
December 2021***

2. Report from the Law Complaints Officer

This reporting year began with staff returning to the physical office after a period of forced remote working due to the beginning of the COVID-19 global pandemic. Several short lock downs punctuated the year, including one that ended the period. It is undeniable that the pandemic shaped the times and the operations of the Committee.

However important steps were taken during the year in several areas. This included work in developing an electronic case management system (CMS), the first iteration of which will begin operations later in 2021. When this is fully operational it will provide major benefits for staff, management and the Committee.

Work also continued in earnest in preparation for the arrival of the Legal Profession Uniform Law in Western Australia. I am looking forward to the commencement of this new scheme having seen the benefits it provides for consumers and the profession alike. It promises to streamline the way we can assist and provide better outcomes all around.

Major efforts by staff also saw improved resolution times in new enquiries and complaints, increased finalisation of old investigations, and progress in outstanding applications being made to the State Administrative Tribunal.

Work also began to review the way our services are delivered, and we took lessons from the lockdowns and began the move to working in a more digital environment. Staff recruitment and development in the Investigations area also was a focus.

There is much more to be done, however I hope to start to realise some of the benefits of these actions in 2021-22.

While the delay of the expected commencement of the Uniform Law Scheme has been unfortunate, it has allowed us further time to work with local bodies such as the Law Society to plan for its implementation, and to learn from our colleagues in Victoria and New South Wales when considering how the scheme will best work here in WA. I am very grateful to all of them for their invaluable and extensive assistance.

I am also extremely grateful for the support of my managers and all of our staff for the efforts they have put in during these times of both uncertainty and opportunity. I thank them all for the extraordinary work that they do.

The Committee and the Legal Practice Board are an invaluable resource who give so much to the WA profession and public, with a significant investment of their own time. Their contribution to regulation and the handling of concerns is immeasurable. I am grateful to each of the members, and in particular the Committee Chair, John Ley SC, and Deputy Chair, Brahma Dharmananda SC, and the Board Chair John Fiocco.

Thank you also to the profession, the vast majority of whom are committed to assisting us to help when we contact them regarding a concern raised with us. I value the opportunity to present to the profession whenever the opportunity presents, especially in the lead up to the commencement of the Uniform Law.

While WA largely remained untouched by the COVID-19 virus itself, the effects of the pandemic experience should not be underestimated. It cut us off from the rest of our own country as well as the world. It has had a personal impact on everyone. While it has also led to novel ways of working, for the

Committee it also meant that certain proceedings unfortunately had to be deferred due to an inability of some people involved to appear in person. This impacted those individual as well as our operations more broadly.

And unfortunately the annual Conference of Regulatory Officers (CORO), which was due to be hosted by the New South Wales legal regulators in late 2020, was also a victim of the pandemic. CORO is an invaluable forum where information and ideas are exchanged with jurisdictions across Australia and New Zealand, and was last hosted by the Committee and Board in Perth in 2018.

In 2021-22 I look forward to its return, along with the Uniform Law providing us with a modern, consumer-focused regulatory

scheme which will benefit consumers and the profession alike. I also look forward to the CMS and its management reporting – better measurement of data allows for us to better manage people’s concerns.

Finally I also wish to thank those staff who have left the Board and Committee during the year and will not be joining us for the journey forward. Thank you for all of your hard work and for the assistance you provided to the profession and the public here in WA

Russell Daily
Law Complaints Officer
December 2021

3. About the Legal Profession Complaints Committee

3.1 Our role, purposes and objectives

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

Under the LP Act the statutory purposes of the Complaints and discipline chapter 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; and
- to provide a means of redress for complaints about lawyers.

The Committee's objectives are:

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

- to promote and enforce the professional standards, competence and honesty of the profession; and
- 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 LP Act, the other being the Legal Practice Board (**Board**).

Although the Committee is constituted as a committee of the Board, it does not derive its powers from the Board. Instead, its powers are conferred on it directly by the LP Act, and it exercises its statutory functions independently of the Board. Despite this independence, the Committee works closely with the Board to ensure the effective operation of the regulatory scheme governing legal practitioners.

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

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. It also must have not less than two community representatives, none of whom is or has been an Australian lawyer, who are appointed by the Attorney General.

During the reporting year the Committee was constituted by:

Chair: Mr J R B Ley SC

Deputy Chair: Mr B Dharmananda SC

Legal members:

Mr M H Zilko SC (until 13 November 2020)

Mr J B Hedges SC

Mr M R Berry SC

Ms C J Thatcher SC

Mr J D MacLaurin SC (from 11 August 2020)

Mr J Garas SC (from 10 December 2020)

Mr M Feutrill SC (from 17 April 2021)

Mr J G Syminton

Ms K A Shepherd (until 2 August 2020)

Mr R G Wilson

Ms M-L Coulson

Mr G Mack (from 9 April 2021)

Community representatives:

Ms K Ballard AM

Mr T Buckingham

Deputy community representatives:

Ms S Hunt

3.4 Our operations

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

During the year, the Committee held 10 meetings.

The Committee's day-to-day operations are conducted by the LCO and staff who are all employed by the Board to also assist the Committee.

The LCO's office is divided into three operational areas: Rapid Resolution, Investigation and Litigation. Each of these operational areas was managed by a Senior Legal Officer during the reporting year, who formed a part of the LCO's Complaint Leadership team. The LCO and leadership team are ably supported by multi-disciplinary teams and shared services across the broader office.

During the reporting year the Rapid Resolution team was managed by Ms Catherine Carroll, the Investigations team was managed by Mr Nicholas Pope, and the Litigation team was managed by Ms Cassandra Paterson. Each was supported variously by a mix of lawyers, case officers, investigators, paralegals and administrative staff.

3.5 Trust account investigations

Trust account investigations are undertaken on a routine basis or where a concern has arisen about the handling of trust monies by firms. Issues can arise regarding this, the maintenance of trust account records, or where a firm might be handling trust monies but does not have a trust account.

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

The Trust Account Inspectors perform work for both the Board and the Committee. This promotes flexibility in the allocation of resources as needed.

Certain trust account investigations can also benefit from the involvement of those handling a complaint or other investigation.

The Trust Account Inspectors are often also requested to assist in the handling of a complaint or other investigation by reviewing various accounting issues generally in regard to invoices, receipt of funds (trust and general) and accounting for trust monies received by the law firm.

3.6 Our staff training and professional development

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

In 2020 there was a focus on preparation for the implementation of the Uniform Law in Western Australia.

Discussions and workshops took place internally in assessing the Uniform scheme, and there was extensive engagement with our equivalent legal regulators in the current Uniform Law jurisdictions (being the Legal Services Commissioner, Law Society, and Bar Association in NSW, as well as the Victorian Legal Services Board + Commissioner).

A working group was formed along with the Law Society of Western Australia and work was done in educating the local profession about the details of the scheme.

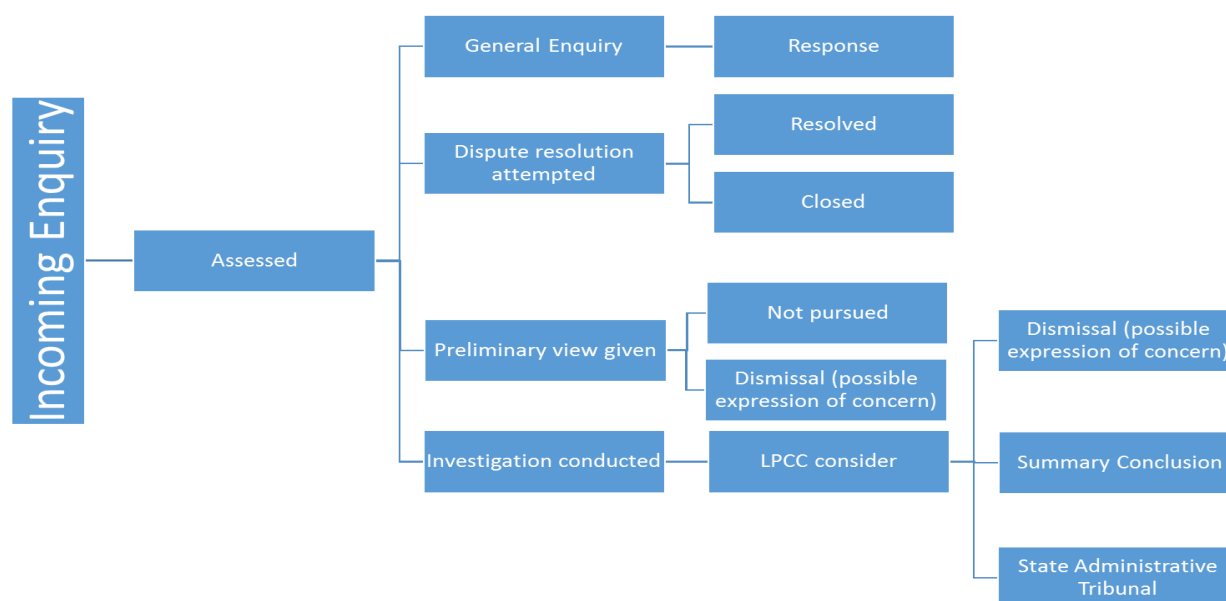
However as the anticipated commencement of the scheme was deferred the immediate focus moved away from this in the latter half of the reporting year.

Training was also provided to our staff by the Equal Opportunity Commission on issues to do with sexual harassment in the workplace, aligning with work being done to help address the issue within the legal profession itself.

The COVID global pandemic had a major impact on how training was both experienced and delivered during the year. A positive was staff from the office were able to take up the opportunity provided by the CPD Freedom initiative provided by the Law Society of WA. Most learning was delivered and received over video and online, no matter where the parties were.

The inability to experience face to face interactivity was a however a casualty of the year. And unfortunately the 2020 annual Conference of Regulatory Officers (**CORO**), which was due to be hosted by the New South Wales legal regulators, unfortunately could not take place. CORO brings together jurisdictions across Australia and New Zealand and fosters collaboration and innovation in legal regulation.

4. Complaints



4.1 Complaint handling process

The diagram above indicates how an incoming enquiry may be dealt with, from when they are received, all the way through to cases where a recommendation regarding a complaint is considered by the Committee.

Virtually all new contact with the Committee (whether referred to as a complaint or enquiry) is received and assessed by the Rapid Resolution team (**RRT**). In most cases, while this preliminary assessment process is being undertaken the matter is dealt with as an enquiry.

People with a concern about a practitioner are encouraged to contact the RRT by submitting an enquiry form via the website. During the relevant period, about two thirds of all new contacts were received through the website.

The first objective of the RRT is to see if they can help the person with their concerns.

This may involve clarifying and discussing matters with the person, referring them to appropriate services, contacting the practitioner to discuss the issues, and working with the parties to try and negotiate an outcome or talk through any options.

The RRT will also form a preliminary view about whether there are any possible professional conduct issues which might arise, and which might require formal investigation.

When the RRT has reached a preliminary view about an enquiry or complaint (which may happen quickly, or require further information to be gathered and considered), then this view is conveyed to the person raising their concerns, either verbally or in writing.

This process itself will sometimes help to resolve the matter, or may mean that it does not need to go on for further consideration.

Where the matter cannot be resolved, and no professional conduct issue has been identified, the matter will generally be closed or dismissed. If the complainant is not satisfied with this, it will be further investigated if that is required.

Where a concern that could be conciliated is identified, the RRT will try and do so. This term is used very broadly to describe a broad range of outcomes which may be achieved; examples include waiving of fees, improved communication in an ongoing solicitor-client relationship, providing guidance on how the practitioner can avoid such issues in the future.

The RRT will suggest steps that may be implemented by the practitioner to improve their practices if it becomes apparent that practices could be improved.

In highly conflicted matters face to face meetings may occur with the parties, who sometimes can be legally represented themselves.

If the RRT identify any professional conduct issues that should be addressed then these will generally be investigated by the Investigations team. The issues that are investigated however will sometimes not be the same as the ones that were originally complained about.

The RRT or Investigation team may suggest that the practitioner consider getting advice or use the WA Bar Association referral scheme, which assists practitioners to obtain advice from counsel.

The Investigation team generally conducts the formal investigation of complaints, as well as investigations initiated where there is no complaint. An own initiative investigation can occur where information has come to the attention of the LCO or Committee which warrants a disciplinary

investigation. Own initiative investigations can also arise when further serious conduct issues are identified during the course of investigating a complaint.

The investigation process involves seeking written submissions from the practitioner, the subject of the allegations, addressing identified issues as well as seeking other evidence where needed. This further evidence may be sought from the complainant, the practitioner, the Courts or other third parties, and sometimes requires the use of the investigator's coercive powers. Those powers include requesting or sometimes summoning documents and/or 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 recommendation from the investigator. After consideration of those materials the Committee may:

- dismiss a complaint;
- with the consent of the practitioner, exercise its summary conclusion powers; or
- refer the matter to the State Administrative Tribunal.

Sometimes, the Committee may direct that further enquiries be made or defer investigation; for example, pending the outcome of litigation relating to the conduct under investigation.

4.2 Key statistics

Full statistical information on complaints is set out in chapter 8. In this section, key statistics are highlighted.

References to “complaints” in this section do not include matters dealt with by the RRT but do include own initiative investigations initiated by the Committee of its own initiative unless stated otherwise.

Number of Rapid Resolution matters finalised

The RRT dealt with 1,208 complaint related enquiries of which 12.7% were conciliated. Outcomes in conciliated matters included the discount, waiver or refund of fees to clients; release of liens; retractions and apologies; and improved communication practices.

Complaint investigations

Over a third (38.1%) of all complaint investigations arose from complaints made by clients or former clients of the practitioner complained about. 17.9% of such complaints were made by practitioners on their own behalf.

In respect of matters handled by the RRT, 51.0% were made by or on behalf of clients or former clients of the practitioner, including by friends or relatives of those clients. Over a quarter of (26.8%) were made by an opposing party.

The areas of law

The areas of law attracting the most complaint investigations were family/de facto law (20.2%) followed by criminal law (16.7%), and professional negligence (16.7%).

In respect of RRT matters, 35.0% were in the area of family/de facto law, 11.7% in criminal law and 7.3% in commercial, corporations, and franchise law.

The types of complaint

Many complaint investigations raise more than one issue. This year, misleading

conduct (10.7%), poor advice and/or case handling (10.1%) and competence and diligence concerns (9.5%) attracted the most complaints there.

However, looking all of the enquiries received by the RRT, communication issues were the highest category with a quarter of all enquiries raising a communication related issue (25.1%). The next highest issues were ethical matters (23.6%) and costs (22.9%).

The practitioners

The greatest number of complaint investigations related to Sole Principals (40.5%), followed by Non Principals (21.4%) and Other Principals and Barristers (both 9.5%).

The number of practitioners investigated

Some 69 practitioners were the subject of one or more complaint investigation (including conduct investigations) during the year. Of this total, 59 practitioners were the subject of one complaint, 7 practitioners were the subject of two complaints and 3 practitioners were the subject of three or more complaints.

In Western Australia there were 7292 certificated or deemed certificated practitioners practising as at the end of the reporting year. This figure does not include those interstate based practitioners practising in this State who are not required to take out a practising certificate here as they hold one in their home jurisdiction.

These 69 practitioners represented around 0.9% of certificated or deemed certificated Western Australian practitioners, which was broadly in line with previous reporting years.

The vast majority of practitioners do not attract complaints and provide services to the public of a very high standard.

Number of complaint investigations commenced and dealt with

| <i>Matters under investigation</i> | <i>Total</i> | <i>Complaints</i> | <i>Conduct Investigations</i> |
|---------------------------------------|--------------|-------------------|-------------------------------|
| Open as at 1 July 2020 | 145 | 107 | 38 |
| Opened during year | 84 | 59 | 25 |
| Closed during year | (67) | (54) | (13) |
| Outstanding as at 30 June 2021 | 162 | 112 | 50 |

5. Formal determination of complaints

5.1 Overview and key statistics

Once an investigation has been finalised, the matter is generally referred to the Committee for formal determination.

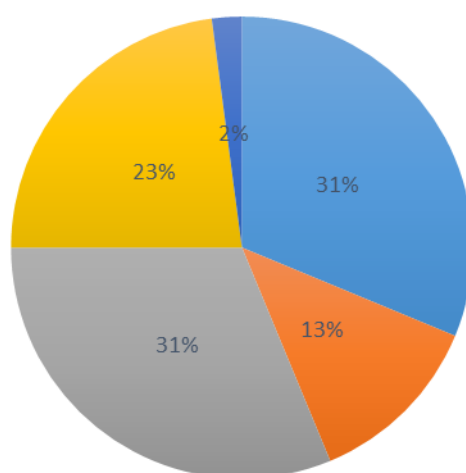
The Committee may finally determine the matter in one of three ways:

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

During the year the Committee determined 48 matters, of which 31% were referred to SAT, 13% were dealt with in the exercise of the Committee's summary conclusion powers, 11 were dismissed with an expression of concern to the practitioner, 15 were dismissed, and one own initiative investigation was closed because it was considered that it would not be in the public interest to proceed with it.

The Law Complaints Officer also exercised the delegated power of the Committee to summarily dismiss 46 complaints handled by the RRT during the reporting period, without a full investigation being completed.

Committee determinations



■ Referred to SAT (15)

■ Dismissed 425 (15)

■ Closed on basis no further action (1)

■ Summary Conclusion (6)

■ Dismissed 425 and expression of concern (11)

5.2 Determinations

Although the tables refer to 48 investigations being determined, frequently those matters involve multiple and complex conduct issues and can involve multiple client files. Careful review, consideration and analysis of extensive amounts of documentation is often required.

The Committee has the power to investigate further issues of its own initiative. This discretion is exercised where it is appropriate to take action, weighing up the various issues involved. These will include the evidence available suggesting that the conduct occurred, how long ago the conduct took place, the severity of the conduct, and whether there is any ongoing risk to the public.

Such investigations can involve the use of significant resources and impact upon the time taken to investigate complaints, however such issues may ultimately be relevant to consideration of whether a practitioner is a fit and proper person to remain on the roll of practitioners and are therefore considered an important part of the Committee's functions of protecting the public, which would be diminished if action could only be taken in response to a complaint that was made.

5.3 Matters dismissed or not taken further

A complaint may be dismissed without completing an investigation in certain situations. This power of summary dismissal is used by the Committee and the LCO. Examples of where this occurs include when the complaint is misconceived or lacking in substance, where it is made outside the 6 year time limitation, or if the same complaint has been dealt with before.

In around 40% of the matters which were dismissed or not taken further, the Committee expressed concern to the practitioner about an aspect of their conduct. Such expressions of concern are generally used when the conduct 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.

Examples of where the Committee expressed concern included:

- Providing effective written costs disclosure pursuant to section 260 and 262 of the *Legal Profession Act 2008*, so that clients are fully informed about the work to be done and the estimated cost of that work.
- Taking proper care to ensure that all matters attested to are correct and accurate when preparing and swearing affidavits.
- Ensuring written advice is given to the client where the practitioner should be aware that a client is litigating disproportionately, setting out the risks that a client's legal costs could exceed the value of the claim, and seeking written instructions where the client wishes to proceed despite that advice.
- Being courteous in all dealings in the course of legal practice, where discourteous conduct is likely to increase tension, inflame disputes and bring the administration of justice into disrepute.

5.4 Summary conclusion determinations

If, after an investigation is completed, the Committee is satisfied that there is a reasonable likelihood that a practitioner would be found guilty by SAT of unsatisfactory professional conduct (but not professional misconduct) in respect of a matter the Committee may deal with the matter using its summary conclusion powers.

The use of these summary conclusion powers means that a matter can be dealt with by the Committee directly without the need for it to be referred to SAT. A range of sanctions are available to the Committee to deal with matters by way of summary conclusion, including issuing a public

reprimand (or, if there are special circumstances, a private reprimand), imposing a fine of up to \$2,500, and making a compensation order in certain circumstances.

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 6 practitioners during the reporting year.

Summary of matters determined in the exercise of summary conclusion powers

| <i>Grounds of unsatisfactory professional conduct</i> | <i>Finding</i> |
|---|-------------------------------------|
| Failing, as the legal practitioner director of a firm acting for a client in family law proceedings, to ensure that an employed practitioner (a restricted practitioner) was properly supervised, or that there were appropriate management systems in place to ensure that the restricted practitioner provided adequate legal services, where the restricted practitioner prepared and sent a letter to the children's school which conveyed the impression that the Family Court had prohibited the father from having any contact with the children, which was not the case; made serious allegations concerning the Principal's conduct without reasonable grounds; threatened to request an external investigation into the Principal; and in an attempt to intimidate sent a copy of the correspondence to the Standards and Integrity Directorate of the Department of Education. | Public reprimand |
| In a criminal matter arising from alleged domestic violence incidents involving the client and the client's former partner, failed to provide adequately written costs disclose regarding counsel retained on behalf of the client; did not keep the client updated directly (despite informing the client's mother of certain developments); did not reply to the client directly; failed to advise the client as to the merits and prospects of negotiating with the prosecution despite having been requested to do so and where the prosecution had sought to negotiate; and when the client terminated the retainer handed the files to the new solicitor in an incomplete and unworkable state. | Public reprimand Fine of \$2,500 |

| <i>Grounds of unsatisfactory professional conduct</i> | <i>Finding</i> |
|--|--|
| In the course of acting for a number of clients, recording that certain pieces of legal work had been carried out, when that was not so. In some cases this caused the firm to overcharge the client and to withdraw trust money to meet those overcharged amounts. | Public reprimand Fine of \$2,000 |
| Not providing adequate written costs disclosure to the client when applying, on the client's behalf, for a grant of Letters of Administration in respect of the estate of the client's deceased son. The practitioner also failed to deposit trust monies into a trust account; prepared and filed an affidavit in support of an application in which the client deposed that they were the only person entitled to distribution of the estate, which was not so; prepared and filed a deed of trust which was inadequate; and failed to repay trust monies. | Public reprimand Fine of \$1,500 Compensation of \$1,200 |
| Charging in a family law matter that were excessive and unreasonable for the services provided to the client. | Public reprimand Compensation of \$5,573.50 |
| Sending correspondence to the opposing lawyer and their client in a family law matter that was discourteous, demanding and repetitious; and emailing and leaving a phone message at the children's school that were threatening. | Public reprimand Fine of \$1,500 |

5.5 Referrals to the State Administrative Tribunal

During the year, the Committee resolved to refer matters arising from 15 complaints or conduct investigations to SAT, involving 9 practitioners. As at 30 June 2021, 3 of these matters had been filed in SAT.

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

The referral is by way of an Application filed in SAT. The Application sets out the Grounds of the professional misconduct or unsatisfactory professional conduct together with the supporting facts and contentions.

Where matters are unable to be resolved at mediation and proceed to a defended hearing, counsel from the independent bar is briefed to represent the Committee.

6. State Administrative Tribunal and Court proceedings

6.1 SAT Applications

The Committee filed 10 Applications in SAT during the period under review (which included 10 individual matters).

During the year there were 13 Applications determined by SAT (which included 19 individual matters).

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

One Application was withdrawn by the Committee by way of consent.

At the conclusion of the reporting period there were 20 Applications relating to 21 individual matters which had not been determined.

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

All minutes of proposed consent orders are referred to SAT. SAT is required to consider and determine if the proposed orders are appropriate before making orders in those terms.

12 matters relating to 6 practitioners were referred to SAT during the year which have not yet been filed.

14 matters relating to six practitioners referred to SAT previously have not yet been filed in SAT for various reasons, including the personal circumstances of practitioners and public interest considerations.

Summary of SAT matters determined - 1 July 2020 – 30 June 2021

| Application No. & Date determined | Practitioner | Orders |
|--|---------------------------|--|
| 173/2019 03/08/2020 (Mediated Outcome) | Scott, Craig Muir | Reprimand Fine: \$15,000 Costs: \$3,500 |
| Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in: <ul style="list-style-type: none"> Professional misconduct – by making, in response to a direct enquiry by the Family Court, statements which were false and misleading, recklessly indifferent as to whether the statements were false and misleading and as to whether the court would be misled; and failing to correct the record of the Court as soon as possible after becoming aware that the Statements were false and misleading, including at a subsequent hearing where a further enquiry by the Court as to the same matters was made; and Unsatisfactory professional conduct – by failing to competently and diligently discharge his obligations pursuant to section 165 of the <i>Family Court Act 1997</i> (WA) as the ICL in the proceedings. <p>Where the orders took into account the Legal Aid had already sanctioned the practitioner following its own ‘show cause’ procedure and that he provided an undertaking to Legal Aid. Further, on 6 April 2020 he sent a fulsome letter of apology and correction to the Court.</p> | | |
| 5/2020 10/08/2020 | Turner, Helen Margaret | Proceedings withdrawn Parties to bear their own costs |
| Following a determination of the Committee that it was not in the public interest to pursue these proceedings in light of the orders made and undertaking given by the practitioner in VR 93 of 2019, leave to withdraw this matter was granted and it was dismissed by the Tribunal. | | |
| 59/2020 13/10/2020 (Mediated Outcome) | Blandford, Mark Noel | Reprimand Fine: \$4,000 Costs: \$4,000 |
| Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in: <ul style="list-style-type: none"> Professional misconduct – in that in a written complaint addressed to a member of the Committee dated 8 August 2018, the practitioner made an allegation that the Officer assisting the Committee had acted dishonestly; and in a letter addressed to that Officer dated 12 September 2018 again made an allegation that the Officer had acted dishonestly. <p>While not stated in the orders, the statement of agreed facts states that the practitioner had no, or alternatively, no reasonable, grounds to make the complaint.</p> <p>[These complaints were dismissed by the Committee as misconceived and lacking in substance pursuant to s 415(1)(b) LP Act and the Committee had specifically found the complaints to be unreasonable].</p> <p>Where the orders took into account that the practitioner wrote an apology on 30 October 2018 to</p> | | |

| <i>Application No. & Date determined</i> | <i>Practitioner</i> | <i>Orders</i> |
|--|---------------------|--|
| | | the Officer, and through his solicitors on 21 June 2019 provided a written explanation to the Committee in relation to his apology and conveyed his deep regret as to his wrongdoing against the Officer. He engaged in a peer review process with another barrister and senior member of the Bar which demonstrated considerable insight on his part. |
| 142/2019 19/11/2020 (Mediated Outcome) | Muir, Mirina Jane | Reprimand Local practising certificate not granted before 3 February 2022 Recommendation that an interstate practising certificate not be granted before 3 February 2022 Costs: \$10,302.60 |
| Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in: | | |
| <ul style="list-style-type: none"> • Professional misconduct – by sending an email to a firm in which she made, with reckless disregard, false and misleading statements that she had paid an account in full to the firm’s clients before Magistrates Court proceedings were served on her, when she had not, and on which statement she intended the firm to rely • Professional misconduct – by signing and causing to be sent to the firm three letters (between late June and early July 2014), the contents of which were discourteous, threatening, intimidating and misleading and were likely to bring the profession into disrepute in that she had no basis for the demand, threats and allegations made in the letters, which included: <ul style="list-style-type: none"> ○ Threatening to make an application to the Supreme Court for an urgent injunction preventing the sale of her land (which was by then subject to a Property (Seizure and Sale) Order (PSSO)), and an order that the principal and an employed solicitor of the firm personally pay all costs on an indemnity basis, when demanding an unconditional undertaking from them not to take steps to enforce the PSSO and that default judgment be set aside with costs in her favour (when the firm’s law clerk had told the practitioner the firm had instructed the bailiff to hold all action); ○ Alleging default judgment as irregular when it was not and was compliant with the relevant Act and Regulations and she had failed to particularise the alleged irregularity despite repeated request by the firm to do so; ○ Alleging that the firm’s law clerk had held herself out as a legal practitioner, when she had no basis to make that allegation; ○ Threatening to write to the Chief Magistrate about the manner in which the firm had conducted the proceedings, which the practitioner described without any basis as misleading the Court, where it was improper to write to a judicial officer in those terms; ○ Threatening to make a complaint against the firm to the Committee where there was no basis to do so; ○ Alleging the employed solicitor failed to advise the Court the debt had been paid in | | |

| <i>Application No. & Date determined</i> | <i>Practitioner</i> | <i>Orders</i> |
|--|---------------------|---|
| | | <p>full either before or after it obtained default judgment and that the firm continued to take steps to enforce judgment, where the practitioner knew she had not paid the allowable costs outstanding;</p> <p>[all the above were made by the practitioner being recklessly indifferent as to whether there were grounds on which to make threats, demands and allegations]</p> <ul style="list-style-type: none"> ○ Threatening, by way of making a knowingly false and misleading statement, that if the matter was not resolved by a certain date, the Committee would be taking action to address the issues, where although she had contacted the Committee she had not taken it any further and there was nothing before the Committee to action; ● Professional misconduct – by commencing a Form 9 application to suspend the enforcement of the default judgment and a Form 23 application seeking orders for substituted service in respect of the Form 9, and seeking the default judgment be set aside and her costs paid on a personal indemnity basis by the firm’s solicitors, which application were misconceived, incompetent, bound to be unsuccessful and wasted the time and resources of the Court and were an abuse of process; ● Professional misconduct – by signing and causing to be delivered to the Chief Magistrate a letter seeking his intervention in the matter, which letter should not have been sent at all, and was improper, discourteous and likely to diminish public confidence in the administration of justice, and in which the practitioner: <ul style="list-style-type: none"> ○ recklessly made false and misleading statements as to the content of the unconditional written undertakings she had sought from the principal and an employed solicitor; ○ knowingly made false and misleading statements that the serious and improper allegations against the firm and its solicitors, namely that default judgment was “irregularly entered” when the practitioner was “in the process of paying” the \$870 balance of the \$1,870 invoice and the firm was aware she intended to defend the balance of the claim, and further where she failed to disclose that the sum awarded against her when the default judgment was entered included allowable court costs to which the surveyors were entitled and which she had not yet paid and where she knew the dispute related, at least in part, to her failure to pay those allowable court costs, and the practitioner intended the Chief Magistrate to be misled by those statements; ○ improperly suggested to the Chief Magistrate that the firm or the clients would take steps to enforce the PSSO notwithstanding the Form 9 application to suspend the PSSO had been filed and despite the tax invoice having been paid in full prior to the default judgment being obtained, when she was recklessly indifferent as to whether there were any grounds to make those allegations; ○ requested that the Chief Magistrate exercise “discretionary powers” to issue an instruction to the bailiff to place the PSSO on hold until the applications the practitioner had filed in the proceedings had been determined, which was improper and likely to diminish public confidence in the administration of justice. ● Unsatisfactory professional conduct – by causing to be filed in the proceedings a Form 23 |

| Application No. & Date determined | Practitioner | Orders |
|---|---------------------------------|--|
| <p>application seeking orders that any reference to the proceedings appearing on the Credit Reference File of the practitioner held by a particular, or any credit agency, be removed forthwith in circumstances where prior to filing the Form 23 application she failed to confirm or otherwise give notice to the other party in the proceedings and then failed to serve them; further the Form 23 application sought orders be made affecting entities not parties to the proceedings and was therefore misconceived and incompetent and bound to be, and was, unsuccessful, wasting both the time and resources of the Court and was likely to bring the profession into disrepute.</p> | | |
| <ul style="list-style-type: none"> • Professional misconduct – by preparing and sending to the Committee written submissions containing false and misleading statements, on which she intended the Committee to rely in the investigation, including representations that: <ul style="list-style-type: none"> ○ there was nothing misleading about making certain statements in an email; ○ that she had requested and the solicitor had refused to provide to her a “simple” undertaking not to proceed with the PSSO, where the practitioner in fact had sought from the principal and an employed solicitor unconditional written undertakings not to take any steps to enforce the PSSO until the default judgment was set aside and that they take all necessary steps to do so and have the proceedings dismissed with costs awarded in her favour; ○ that an employee of the firm had held herself out as a legal practitioner, when on her own sworn version of events in her 2 July 2014 affidavit, she knew that any representation had not been made by that employee but by another. | | |
| <p>Where the orders took into account that the practitioner, in anticipation of the resolution of these proceedings, on 3 February 2020 handed in her New South Wales practising certificate to the New South Wales Law Society, and provided a written undertaking dated 21 September 2020 to the Tribunal, the Committee and the Legal Practice Board of Western Australia that she would not apply in any Australian jurisdiction for a practising certificate before 3 February 2022.</p> | | |
| 25/2019 2/06/2020 and 15/12/2020 | Staffa, Kevin Colin Benedict | Report to the Full Court with a recommendation that the practitioner’s name be removed from the roll Local practising certificate suspended until determination by the Supreme Court (full bench) Costs: \$58,000 ³ |
| <p>Orders made by the Tribunal in circumstances where on 2 June 2020 the Tribunal had made the following findings in relation to the conduct of the practitioner:</p> | | |
| <ul style="list-style-type: none"> • Professional misconduct – by providing legal services to a client when the practitioner and his law practice were engaged by another client in the same or a related matter and the interests of the client and the other client were adverse and there was a conflict of the duties to act in the best interests of each client contrary to rule 14(2) of the <i>Legal Profession Conduct Rules 2010</i>. | | |

³ Determination of conduct, penalty and costs being appealed to the Court of Appeal by Mr Staffa (CACV 72 of 2020 and CACV 131 of 2020).

| Application No. & Date determined | Practitioner | Orders |
|--|----------------------------|--|
| | | <ul style="list-style-type: none"> • Unsatisfactory professional conduct – by rendering two invoices to a client in respect of work carried out for another client • Professional misconduct – by advising a client to transfer money belonging to another client to a bank account controlled by the first client without the consent or authority of the other client. • Professional misconduct – by failing to be open and candid in his dealings with the Committee in breach of rule 50 of the <i>Legal Profession Conduct Rules 2010</i>. The Tribunal specifically found the practitioner knew his statement to the Committee in the investigation was false and intended to mislead the Committee (at [166]) and that his response was a deliberate attempt to mislead the Committee and to cover up the true state of affairs (at [162]). <p>The practitioner has lodged a consolidated appeal in respect to both conduct and penalty decisions. His appellant’s case was lodged 12 February 2021.</p> |
| 7/2020 and 64/2020 6/08/2020 (7/2020) 05/02/2021 (64/2020) 10/02/2021 (both) (Mediated outcome) | Elek-Roser, Dean Oliver | Reprimand Local practising certificate suspended for 4 weeks. For a period of 2 years upon the practitioner’s return to practice, his local practising certificate be subject to the condition that he only practice law as an employed solicitor in the employment of, and supervised by, a practitioner with a minimum of 10 years’ experience approved in writing by the Board Costs: \$3,500 |
| Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in: | | <ul style="list-style-type: none"> • Professional misconduct (VR 7 of 2020 – contravention orders made 6 August 2020) - by failing to provide written confirmation of the lodgement of his BAS to the Legal Practice Board in circumstances where a condition on his local practising certificate required him to provide such written confirmation within 7 days of the due date of lodgement; and by failing to respond to letters and emails from the Board and the Committee and a summons to provide written information from the Committee without reasonable excuse. • Professional misconduct (VR 64 of 2020 – contravention orders made 5 February 2021) - by: <ul style="list-style-type: none"> ○ receiving trust money where the practitioner did not maintain a general trust account, and did not deposit the cash payment into a trust account; ○ failing to take any substantive steps (over approx. 9 months) to progress a divorce or keep the client informed or respond to their emails sent February to June 2019 ○ failing to refund the cash payment despite client’s first request to do so being 5 June 2019, and while practitioner agreed with the Committee to do so on 22 November 2019, he did not do so until 28 February 2020. |

| <i>Application No. & Date determined</i> | <i>Practitioner</i> | <i>Orders</i> |
|--|-----------------------------|---|
| 164/2019 24/02/2021 (Mediated Outcome) | Wiese, Elizabeth | Reprimand Local practising certificate suspended for 3 months from 30 days of the Order Costs: \$5,000 |
| Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in: | | |
| <ul style="list-style-type: none"> • Professional misconduct – by failing to ensure that: <ul style="list-style-type: none"> ○ A restricted practitioner under her supervision was supervised adequately while he had daily conduct of the client’s matter ○ The client was properly advised in respect to being able to seek leave for an extension of time to review consent orders and in respect to her ongoing duty of disclosure in Family Court proceedings ○ The client’s case for an interim application for spousal maintenance was properly prepared ○ A valuer engaged as an expert witness was properly instructed as to his obligations in accordance with the <i>Family Law Rules 2004</i> and where the client had nominated the expert, the client was properly advised against contacting the expert directly and the potential consequences for her in the proceedings of making such contact; • Unsatisfactory professional conduct – by continuing to act for the client when she ought reasonably to have known there was a conflict or potential conflicts of interests between her own interests and those of the client. | | |
| Where the orders took into account that the practitioner provided an undertaking dated 28 January 2021 that from the date of the orders she will not employ or otherwise any engage any person to undertake restricted legal practice to work at the firm of which she is the sole principal and not supervise any person currently undertaking restricted legal practice already employed or otherwise engaged at the firm and supervision of such a person is to be undertaken by an employee of the firm who holds an unrestricted practising certificate. | | |
| 141/2019 18/03/2021 (Mediated Outcome) | Roach, Kathryn Elizabeth | Reprimand Fine: \$15,000 Attend at practitioner’s own expense two Continuing Professional Development seminars concerning legal practitioners’ obligations to maintain objectivity and proper demeanour in dealing with colleagues or such other similar seminars approved by the LPB Costs: \$4,100 |
| Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in: | | |
| <ul style="list-style-type: none"> • Professional misconduct – in the course of assisting another legal practitioner in mid 2014 in relation to Magistrates Court proceedings lodged by a legal firm on behalf of the firm’s clients against the other legal practitioner personally for the recovery of a debt, and enforcement of | | |

| <i>Application No. & Date determined</i> | <i>Practitioner</i> | <i>Orders</i> |
|---|---|---------------|
| <p>the default judgment by way of a Property (Seizure and Sale) Order (PSSO) against Ms M's land, by:</p> | <ul style="list-style-type: none"> ○ assisting the other legal practitioner in circumstances where their personal and working relationship compromised the practitioner's professional judgement and independence, in breach of rule 6(1)(d) LPCR; ○ assisting in preparing letters between late June and early July 2014 based on documents and instructions provided to the practitioner by the other legal practitioner (that were signed by the other legal practitioner and sent to the firm), the contents of which were discourteous, intimidating and inappropriate and were likely to bring the profession into disrepute, including: <ul style="list-style-type: none"> ● threatening to make an application to the Supreme Court for an urgent injunction preventing the sale of the other legal practitioner's land the subject of the PSSO and an order that the principal and an employed solicitor of the firm personally pay all costs on an indemnity basis, when demanding an unconditional undertaking that no steps would be taken to enforce the PSSO and that the default judgment be set aside with costs in favour of the other legal practitioner, (when the firm's law clerk had told the other legal practitioner the firm had instructed the bailiff to hold all action); ● alleging that the firm's law clerk had held herself out as a legal practitioner; ● threatening that the other legal practitioner would write to the Chief Magistrate saying that the firm misled the Court, where it would be improper for a practitioner to write to a judicial officer in those terms; ● threatening that the other legal practitioner would make a complaint against the firm to the Committee; ● alleging the employed solicitor failed to advise the Court the debt had been paid in full either before or after the firm obtained default judgment and that the firm continued to take steps to enforce judgment, when the allowable legal costs remained outstanding; ● threatening, by way of making a knowingly false and misleading statement, that if the matter was not resolved by a certain date, the Committee would be taking action to address the issues, where although the other legal practitioner had contacted the Committee she had not taken it any further and there was nothing before the Committee to action; ○ assisting in preparing and delivering a letter signed by the other legal practitioner and sent to the Chief Magistrate seeking his intervention, which should not have been sent at all, and was improper, discourteous and likely to diminish public confidence in the administration of justice, and which: <ul style="list-style-type: none"> ● made statements as to the content of the unconditional written undertakings sought from the firm that, by reason of not completely describing the requested undertaking, inadvertently had the potential to mislead; ● improperly suggested to the Chief Magistrate that the firm or the clients | |

| Application No. & Date determined | Practitioner | Orders |
|---|-------------------------|---|
| | | <p>would take steps to enforce the PSSO notwithstanding the Form 9 application to suspend the PSSO had been filed and despite the tax invoice having been paid in full prior to the default judgment being obtained;</p> <ul style="list-style-type: none"> • requested the Chief Magistrate exercise “discretionary powers” to issue an instruction to the bailiff to place the PSSO on hold until the applications filed in the proceedings had been determined, which was improper and likely to diminish public confidence in the administration of justice; <ul style="list-style-type: none"> ○ dealing and attempting to deal directly with the clients, by preparing and causing to be sent directly to them an email in relation to the proceedings which: <ul style="list-style-type: none"> • made an allegation, without any reasonable basis, that the clients were “deliberately avoiding service”; • demanded the clients “provide written confirmation by return email by no later than 4pm today of your agreement to accept service of the Court documents by way of delivery of the documents to [the firm’s] offices” failing which various orders, including for indemnity costs, would be sought; • in breach of r 6(2)(c) LPCR, used discourteous, threatening and intimidatory language that was likely to bring the profession into disrepute. |
| 24/2020 18/05/2021 (Mediated Outcome) | Velevski, Diana | Reprimand Fine: \$5,000 Costs: \$5,500 |
| | | <p>Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in:</p> <ul style="list-style-type: none"> • Unsatisfactory professional conduct – by preparing and filing an application seeking a misconduct restraining order in her favour in which application the practitioner made allegations which were vague, lacked particulars and unsupported by any evidence accompanying the application; failing to comply with court orders that the practitioner particularise the allegations by way of an affidavit to be filed in the court; and failing to appear at the mention hearing of the application |
| 94/2019 25/05/2021 (Mediated Outcome) | Burg, Wayne Nicholas | Reprimand Local practising certificate suspended for 3 years from 30 days of the Order Costs: \$55,000 |
| | | <p>Findings were made by the Tribunal by way of a mediated outcome that the practitioner engaged in:</p> <ul style="list-style-type: none"> • Professional misconduct – by: <ul style="list-style-type: none"> ○ swearing two affidavits in the Magistrates Court which were false and misleading in material respects, where the practitioner knew the affidavits were false and misleading and intended that the Magistrates Court rely on and be misled by the |

| <i>Application No. & Date determined</i> | <i>Practitioner</i> | <i>Orders</i> |
|--|-------------------------|---|
| | | <p>affidavits and, further, failing to correct the false and misleading aspects of the second affidavit during three attendances when he could have done so</p> <ul style="list-style-type: none"> ○ receiving sums of cash from three clients, being “trust money”, which he did not deposit or cause to be deposited into a general trust account, did not disclose to or deliver up to the instructed law practice, and in respect for two client matters, he failed to open, or cause the instructed law practice to open, any file for the carriage of the client matters, nor create any accounting records at all for the work carried out; and for all three clients he failed to account, such that he is unable to establish that the cash payments were received by the instructed law practice or by counsel retained in the matters ○ failing to disclose legal costs or revised legal costs of the instructed law practice or counsel in respect to five client matters ○ causing the instructed law practice to charge three clients for work which he knew could not properly be charged or for which the practitioner did not carry out ○ causing the instructed law practice to charge three clients legal costs which were grossly excessive |
| 15/2021 26/05/2021 | Mizen, David Charles | Report to the Full Court with a recommendation that the practitioner’s name be removed from the roll |
| | | <p>After a hearing on 26 May 2021 the Tribunal found that the practitioner engaged in professional misconduct by:</p> <ul style="list-style-type: none"> ○ between 29 January 2019 and 1 February 2019 making child exploitation material available for access by electronic or other means by other persons using a file sharing network, for which he pleaded guilty to, and was convicted of, one count of the indictable offence of distributing child exploitation material under s 219(2) of the <i>Criminal Code</i> (WA) ○ on 19 March 2019 having in his possession child exploitation material, for which he pleaded guilty to, and was convicted of, two counts of the indictable offence of possessing child exploitation material under s 220 of the <i>Criminal Code</i> (WA) |
| 176/2019 14/06/2021 | Metaxas, Arthur | Findings only Orders still to be determined ⁴ |
| | | <p>After a hearing on 14 June 2021 the Tribunal found that the practitioner engaged in unsatisfactory professional conduct by commencing, serving, maintaining and prosecuting proceedings in the Supreme Court without any reasonable basis</p> <p>On 12 July 2021, the practitioner lodged a notice of appeal against the conduct decision, but is yet to seek a stay.</p> |

⁴ Determination of conduct being appealed to the Court of Appeal by Mr Metaxas (CACV 55 of 2021)

Summary of SAT matters which were not determined as at 30 June 2021⁵

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|-----------------------------|--|--|
| 117/2016 Filed 2/08/2016 | <p>Professional misconduct by:</p> <p>a) in respect of an application for probate and in the administration of the estate:</p> <p>(i) failing to maintain accurate and complete records and books of account relating to the administration of the estate including trust moneys;</p> <p>(ii) failing to account, or properly account, in respect of the assets, income, liabilities, expenses and transactions relating to the estate, including not producing accounts;</p> <p>(iii) not depositing trust money to the credit of a trust account; and</p> <p>(iv) not finalising the administration of the estate and/or not progressing the administration of the estate in a timely manner;</p> <p>b) in both Family Court proceedings and in the course of acting with respect to criminal charges:</p> <p>(i) failing to maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with and/or failing to maintain books of account in such a manner as to disclose the true position as regards those moneys;</p> <p>(ii) failing to account, or properly account, for trust moneys received;</p> <p>d) not having in force professional indemnity insurance;</p> <p>e) 2 counts of not depositing trust money to the credit of a trust account;</p> <p>f) 2 counts of dishonest conduct in intending to use, and using, trust monies at his own will or otherwise for his own benefit in circumstances where he was not authorised, directed or otherwise entitled to do so; and</p> <p>g) (Amended Grounds 12/12/17) dishonest conduct by signing and causing to be filed in the SAT</p> | On 15/05/2018 proceedings stayed until further order, directions hearing listed for 31/08/2021 |

⁵ A further two matters are the subject of non-publication orders made by the Tribunal and are not detailed here

| Application No. | Allegation | Status |
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| | <p>proceedings an Amended Response which to the knowledge of the practitioner, contained false statements concerning the practitioner's dealing with moneys relating to the estate and the executrix of the estate; and attached a handwritten note of the practitioner's dated 5/11/08 which the practitioner subsequently altered by adding to the note with the intention of creating the false impression that the whole of the note had been written on 5/11/08.</p> | |
| <p>159/2017 Filed 18/08/2017</p> <p>Leave to amend in terms of Substituted Annexure A given 22/02/2019</p> | <p>Professional misconduct by:</p> <p>a) in his capacity as the sole legal practitioner director of the practice in entering a retainer agreement agreeing that the practice would be liable to pay the fees of junior counsel for the client in proceedings (estimated by junior counsel as between \$135,000 to \$180,000) even if the practice did not receive funds from the client to pay those fees, where at all material times neither the practice or the practitioner personally had the capacity to pay if the client did not make payment of those fees to the practice, and where the practice failed to pay 5 invoices issued by the junior counsel and in preference paid invoices issued by the practice, thereby breaching the retainer and rule 26 <i>Legal Profession Conduct Rules 2010</i>;</p> <p>b) (Amended Ground 22/02/2019) sending an email to junior counsel in which he knowingly made a false and/or misleading representation;</p> <p>c) knowingly making false and/or misleading representations to the Legal Practice Board at a meeting that the practice could meet its current debts and was solvent and failing to inform the Board the practice had significant outstanding debts, including the \$137,815 owed to junior counsel, which the practice did not have the means to pay, and knowingly misrepresenting to the Board that a new incorporated legal practice (new ILP) was not taking over the existing practice, when the true position was that it was;</p> <p>d) attempting to avoid the liabilities of the practice, including the obligations to pay junior counsel's</p> | <p>On 18/05/2021 listed for directions hearing on 20/07/2021</p> |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|--|--|---|
| | <p>fees pursuant to the Retainer and rule 26 of the Conduct Rules by deriving a new ILP from the existing practice;</p> <p>e) without reasonable excuse, failing over a 12 month period (September 2015 to September 2016) and then after 28 September 2018 (and continuing) during a conduct investigation pursuant to section 421 of the LP Act to respond to correspondence from the Committee in breach of rule 50(3) Conduct Rules and to a summons issued pursuant to section 520(1) of the LP Act in contravention of section 520(5) and 532(5) of the LP Act.</p> | |
| <p>240/2017 Filed 20/12/2017</p> | <p>Professional misconduct by:</p> <p>a) in the course of acting for the client, in respect of Family Court proceedings for an alteration of property interests, sending to a Scottish law firm, a letter enclosing two original dispositions which by their terms gifted the ownership of two properties located in Scotland (First Property and Second Property) to the client's mother which, once registered in Scotland, would complete or effect a transfer of the ownership of the First Property and the Second Property to the client's mother, in circumstances in which the practitioner knew that, or was recklessly indifferent as to whether:</p> <p>(i) the dispositions would complete or effect a transfer of the ownership of the First Property and the Second Property to the client's mother;</p> <p>(ii) as intended by the client, a transfer of ownership of the First Property to the client's mother would contravene a specific order made by the Court restraining the parties from transferring or otherwise dealing with those funds (Order); and</p> <p>(iii) as intended by the client, a transfer of ownership of the Second Property to the client's mother would have the effect of removing that property from the pool of assets that was the subject of the proceedings;</p> <p>b) the practitioner, or a restricted practitioner under his supervision, caused an affidavit sworn by the client in support of an application to vary the Orders, of</p> | <p>Directions listed for 31/08/2021</p> |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|--|--|---|
| | <p>which the Order was one, to be filed in the Court which was misleading in material respects in circumstances where the practitioner knew, or was recklessly indifferent to whether, the affidavit was misleading in material respects.</p> | |
| <p>241/2017 Filed 20/12/2017</p> | <p>a) Professional misconduct by providing to the police an unsigned statement and later, a signed statement which both contained admissions by the client in respect of the charges and information as to the identity and conduct of two alleged co-offenders who had not yet been apprehended by Police in circumstances where the practitioner failed to:</p> <ul style="list-style-type: none"> (i) obtain clear instructions from the client as to whether he would be pleading guilty or not guilty and to which charges; (ii) adequately explain to the client the legal and factual consequences related to the provision of the statements to the Police; <p>and/or</p> <ul style="list-style-type: none"> (iii) obtain written instructions from the client to provide the statements to the Police; <p>b) Unsatisfactory professional conduct by failing to provide the client with adequate costs disclosure as required by section 262 of the LP Act.</p> | <p>Directions listed for 31/08/2021</p> |
| <p>52/2019 Filed 15/04/2019</p> | <p>a) Professional misconduct by attempting to further the matter of his client, namely to procure a transfer of a Property into the client's name as the sole registered proprietor, by unfair and/or dishonest means contrary to rule 16(1) <i>Legal Profession Conduct Rules 2010</i> where the practitioner knew that the client held the Property in whole or in part, on trust with Ms A for the benefit of the client's adult children, and at a time when the practitioner did not act for the Children he:</p> <ul style="list-style-type: none"> (i) wrote to Ms A with a partially-completed transfer of land form in respect of the Property in which the 'consideration' and 'transferee' panels were both left blank and demanded, alternatively requested, that Ms A execute the partially-completed transfer form to transfer | <p>Directions listed for 20/07/2021</p> |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>the Property to an unspecified person or persons for an unspecified consideration; and</p> <p>(ii) wrote to Ms A's solicitors and demanded, alternatively requested, that Ms A execute the transfer form which sought to transfer the Property to his client,</p> <p>and the practitioner made intentionally false statements to Ms A and Ms A's solicitors, as well as intentionally failed to disclose various matters, and attempted to improperly intimidate Ms A to sign the transfer form;</p> <p>b) Professional misconduct by making false and/or misleading statements to Ms A's solicitors by letter contrary to rule 37(1) Conduct Rules;</p> <p>c) Professional misconduct by acting for both the client and each of the Children in circumstances in which their interests were adverse and the practitioner knew, or was recklessly indifferent or grossly careless as to whether, there was a conflict or potential conflict of the practitioner's duties to act in the best interests of each of the client and the Children, individually and/or collectively as beneficiaries, and contrary to rule 14 Conduct Rules the practitioner failed to protect and preserve the interests of the Children unaffected by the interests of the client, contrary to rule 12 Conduct Rules;</p> <p>d) Professional misconduct by procuring and/or preparing or assisting with the preparation of, the 2016 statutory declarations which contained false and/or misleading statements, where the practitioner knew, or was recklessly indifferent as to whether, the 2016 statutory declarations contained false and/or misleading statements; and knowingly or recklessly misleading or attempting to mislead both the nominated investigator appointed by the Legal Profession Complaints Committee and the Committee by causing to be provided to the Investigator and the Committee the 2016 statutory declarations;</p> <p>e) Professional misconduct by knowingly or recklessly making a 2018 statutory declaration which contained false and/or misleading</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|----------------------------|---|---|
| | statements; and misleading, or attempting to mislead, the Committee by causing the 2018 Statutory Declaration made by him to be provided to the Committee which he knew, or was recklessly indifferent to whether it contained false and/or misleading statements and as to whether the Committee would be misled. | |
| 60/2019 Filed 1/05/2019 | <p>a) Unsatisfactory professional conduct by not providing adequate disclosure to the client as to costs as required by sections 260 and 262 of the LP Act;</p> <p>b) Professional misconduct by charging the client professional fees of \$27,500 (including GST) for the legal services, later varied by the practitioner to \$22,253 (including GST), that were excessive and included charges for work not in fact carried out by the practitioner; further or alternatively, included charges which were unreasonable and/or not properly chargeable;</p> <p>c) Unsatisfactory professional conduct by making payable and providing to the client's sister a cheque which was trust money in the amount of \$60,500 where the sister had not yet executed her acceptance of an EPA instrument as the donee and without the practitioner taking any steps to ensure that the EPA pursuant to which the trust money was released by the practitioner was a valid and effective instrument in that the sister had signed and accepted the EPA as the donee;</p> <p>d) Professional misconduct by preparing and issuing to the client at his request the First Itemised Account relating to tax invoice 0545 in the sum of \$27,500 (including GST) for the practitioner's fees for the legal services (Original Invoice), in circumstances where the practitioner knew the First Itemised Account was false and/or misleading and intended the client be misled by the First Itemised Account; alternatively, the practitioner was recklessly indifferent as to whether the First Itemised Account was false and/or misleading and as to whether the client would be misled by the First Itemised Account;</p> <p>e) Professional misconduct by preparing and sending</p> | Hearing held on 12-16 and 21/10/2020; further hearing listed for 01/09/21 |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>a letter to the Committee regarding a complaint made by the client against the practitioner, in circumstances where the practitioner knew the letter was false and/or misleading and intended the Committee be misled by the letter; alternatively, the practitioner was recklessly indifferent as to whether the letter was false and/or misleading and as to whether the Committee would be misled by the letter;</p> <p>f) Professional misconduct by preparing and issuing to the client at his request a Second Itemised Account) relating to tax invoice 0545C in the sum of \$27,544 (including GST) for the practitioner's fees for the legal services, in circumstances where the practitioner knew the Second Itemised Account was false and/or misleading and intended the client be misled by the Second Itemised Account; alternatively, the practitioner was recklessly indifferent as to whether the Second Itemised Account was false and/or misleading and as to whether the client would be misled by the Second Itemised Account;</p> <p>g) Professional misconduct by swearing and filing, or permitting to be filed, an Affidavit in Supreme Court of Western Australia costs assessment proceedings commenced by the client against the practitioner, in circumstances where the practitioner knew the Affidavit was false and/or misleading and intended the Supreme Court be misled by the Affidavit; alternatively, the practitioner was recklessly indifferent as to whether the Affidavit was false and/or misleading and as to whether the Supreme Court would be misled by the Affidavit;</p> <p>h) Professional misconduct by filing, or permitting to be filed, a Bill of Costs in the sum of \$22,253 (including GST, but excluding a claim for drafting the bill and preparing for and attending the taxation) in the costs assessment proceedings, in circumstances where the practitioner knew the Bill of Costs was false and/or misleading and intended the Supreme Court be misled by the Bill of Costs; alternatively, the practitioner was recklessly indifferent as to whether the Bill of Costs was false</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>and/or misleading and as to whether the Supreme Court would be misled by the Bill of Costs;</p> <p>i) Professional misconduct by not refunding to the client the sum of \$5,247, being the difference between the Original Invoice (\$27,500) and the Bill of Costs (\$22,253) for the practitioner's professional fees for the legal services;</p> <p>j) Professional misconduct by preparing and sending to the Committee Letters regarding a complaint made by the client against the practitioner, in circumstances where the practitioner knew the Letters were false and/or misleading and intended the Committee be misled by the Letters; alternatively, the practitioner was recklessly indifferent as to whether the Letters were false and/or misleading and as to whether the Committee would be misled by the Letters;</p> <p>k) Professional misconduct by preparing and sending to the Committee a Further Letter in response to a letter from the Committee regarding a conduct investigation pursuant to section 421(1) LP Act, and providing, or permitting to be provided, to the Committee with the Further Letter a witness statement from the practitioner's wife (wife; wife's Statement), in circumstances where the practitioner knew the Further Letter and the wife's Statement were false and/or misleading and intended the Committee be misled by the Further Letter and the wife's Statement; alternatively, the practitioner was recklessly indifferent as to whether the Further Letter and the wife's Statement were false and/or misleading and as to whether the Committee would be misled by the Further Letter and the wife's Statement;</p> <p>l) Professional misconduct by under cover of a letter to the Legal Practice Board of Western Australia and in response to a letter from the Board requesting further information in relation to the conduct investigation for the purposes of consideration by the Board's Professional Affairs Committee (PAC) of the practitioner's application for the renewal of his local practising certificate, providing a copy of the Further Letter and a copy of the wife's Statement and preparing and sending</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|---------------------------------|---|---|
| | <p>to the Board an email (Email), in circumstances where the practitioner knew the Further Letter, the wife's Statement and the Email were false and/or misleading and intended the PAC be misled by the Further Letter, the wife's Statement and the Email; alternatively, the practitioner was recklessly indifferent as to whether the Further Letter, the wife's Statement and the Email were false and/or misleading and as to whether the PAC would be misled by the Further Letter, the wife's Statement and the Email;</p> <p>m) Professional misconduct by preparing and sending to the Committee a letter (November letter) in response to a letter from the Committee regarding the conduct investigation, and providing, or permitting to be provided, with the November letter a letter from the wife (wife's letter), in circumstances where the practitioner knew the November letter and the wife's letter were false and/or misleading and intended the Committee be misled by the November letter and the wife's letter; alternatively, the practitioner was recklessly indifferent as to whether the November letter and the wife's letter were false and/or misleading and as to whether the Committee would be misled by the November letter and the wife's letter;</p> <p>n) Professional misconduct by preparing, declaring and providing to the Committee a Statutory Declaration in response to a summons issued by the Committee pursuant to sections 520(1)(c), 520(1)(d), and 520(3) LP Act, in circumstances where the practitioner knew the Statutory Declaration was false and/or misleading and intended the Committee be misled by the Statutory Declaration; alternatively, the practitioner was recklessly indifferent as to whether the Statutory Declaration was false and/or misleading and as to whether the Committee would be misled by the Statutory Declaration.</p> | |
| 133/2019 Filed 10/09/2019 | a) Professional misconduct by causing to be commenced and maintained and/or commencing and maintaining legal proceedings against her former husband, namely: | Listed for hearing commencing on 25/10/2021 |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>(i) an application to the Busselton Magistrates Court for final orders in relation to an interim violence restraining order made on 11 July 2012 which application was heard and dismissed on 20 March 2013 (March 2013 Decision);</p> <p>(ii) an application to the District Court of Western Australia filed on around 10 April 2013 to appeal the March 2013 Decision which was heard on 24 October 2013 and dismissed on 27 November 2013 (District Court Decision);</p> <p>(iii) an application to the Court of Appeal of the Supreme Court of Western Australia on around 7 January 2014 for leave to appeal the District Court Decision which was heard and dismissed on 20 June 2014 (Court of Appeal Decision);</p> <p>(iv) an application to the High Court of Australia in around August 2014 for leave to appeal the Court of Appeal Decision which was heard and dismissed on 10 December 2014;</p> <p>(v) an application to the Busselton Magistrates Court on around 28 August 2015 to set aside the March 2013 Decision which was heard and dismissed on 24 September 2015 (September 2015 Decision); and</p> <p>(vi) an application to the District Court of Western Australia on around 5 November 2015 to appeal the September 2015 Decision, which was heard on 6 January 2017 and dismissed on 3 March 2017,</p> <p>(together, the applications),</p> <p>in circumstances where the applications:</p> <p>(vii) had no, or no proper, basis;</p> <p>(viii) were an abuse of process;</p> <p>(ix) were conducted in a manner which was oppressive to the husband;</p> <p>(x) had the potential to diminish public confidence in the administration of justice; and/or</p> <p>(xi) had the potential to bring the profession into disrepute;</p> <p>b) Professional misconduct in the course of acting in</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>proceedings commenced by the practitioner on 25 March 2013 against the husband in the Family Court of Australia (Family Court) to reinstate an appeal against orders made by the Federal Magistrates Court on 30 October 2012 (FC Appeal), in that she:</p> <ul style="list-style-type: none"> (i) at a hearing on 8 May 2013, made oral submissions in support of an oral application to restrain the husband's counsel from acting for the husband in the FC Appeal, without any, or any proper, basis; (ii) at a hearing at which she attended by way of telephone on 28 June 2013, deliberately severed the telephone connection with the Family Court before the hearing was concluded; (iii) prepared, filed and maintained an application dated 5 July 2013 seeking orders that the presiding judge be disqualified from hearing the FC Appeal on the grounds of alleged bias (presiding judge; disqualification application) and that the husband's solicitor and counsel be restrained from acting for the husband in the FC Appeal on the grounds of an alleged conflict of interest, which had no, or no proper, basis; (iv) at a hearing on 31 July 2013 did not accurately read to the Family Court from the transcripts of previous hearings, which the practitioner knew had the potential to mislead the Family Court and the practitioner intended the Family Court to be misled, alternatively was recklessly indifferent as to whether the conduct had the potential to mislead the Family Court and as to whether the Family Court would be misled; made comments that were discourteous, intemperate and/or scandalous, made without any, or any reasonable, basis, and had the potential to diminish public confidence in the administration of justice and/or to bring the profession into disrepute; (v) prepared, filed and maintained an appeal against the presiding judge's decision on 31 July 2013 to dismiss the disqualification application, which appeal had no, or no proper, basis and in | |

| Application No. | Allegation | Status |
|---------------------------------|---|---|
| | <p>which the practitioner made discourteous, intemperate and/or scandalous comments in written and oral submissions;</p> <p>(vi) on 28 August 2013 prepared and sent two emails to a Registrar of the Family Court which contained comments that were discourteous, intemperate and/or scandalous, made without any, or any reasonable, basis, and had the potential to diminish public confidence in the administration of justice and/or had the potential to bring the profession into disrepute;</p> <p>(vii) at a hearing on 12 February 2015, made oral submissions which were inconsistent with her oral submissions at the hearing on 8 May 2013; discourteous, intemperate and/or scandalous, made without any, or any reasonable basis, and which had the potential to bring the profession into disrepute; and</p> <p>(viii) at a hearing on 27 March 2015, made discourteous, intemperate and/or scandalous comments and, where she attended by way of telephone, deliberately severed the telephone connection with the Family Court before the hearing was concluded;</p> <p>c) Professional misconduct by preparing, swearing, filing, and failing to correct an affidavit sworn by her in circumstances where the practitioner knew that the affidavit was false and/or misleading in a material respect and intended the Court to rely on it and to be misled; alternatively, the practitioner was recklessly indifferent as to whether the affidavit was false and/or misleading in a material respect and as to whether the Court would be misled by it.</p> | |
| 165/2019 Filed 28/11/2019 | <p>a) Professional misconduct by:</p> <p>(i) advising the client to commence proceedings under the <i>Family Provision Act 1972 (WA)</i> (FP Act) in circumstances in which the practitioner had not advised the client adequately or at all about the purpose and operation of the FP Act and other relevant matters, including costs and had not taken any, or any adequate instructions about various matters nor taken any steps to</p> | Listed for hearing commencing on 16/08/2021 |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>confirm whether the limitation period in which to commence proceedings under the FP Act had already run; and/or</p> <p>(ii) failing to advise the client adequately or at all as to the merits of and/or prospects of success of other possible causes of action or courses of conduct in the matter; and/or</p> <p>(iii) failing to take any, or any adequate, further instructions from the client, including as to any preliminary inquiries required, in order to properly and competently advise the client as to obtaining any alternative sources of information and documents.</p> <p>b) Professional misconduct by:</p> <p>(i) issuing to the client a memorandum of account in the matter and subsequently seeking payment of that account in advance of providing the legal services the subject of that account, to which money the practitioner was not lawfully entitled; and which money could not lawfully be held by him in circumstances where he did not maintain a general trust account in the jurisdiction in accordance with section 214 of the LP Act;</p> <p>(ii) rendering a final bill of costs to the client, and purporting to account for payments made to him by, or on behalf of, the client in the sum of \$5,000, and retaining that money, for work purportedly performed by him where to his knowledge, he did not perform some of the work for which he billed the client, or by which he purported to account for payments made by the client to him, at all and/or to the extent billed; and sent, or caused to be sent, the bill to the client when he knew, or was recklessly indifferent as to whether, the client could not properly be charged for some of the charges in that Bill, as a result of which the practitioner knowingly misled the client as to the extent of legal services performed by him in the Matter;</p> <p>(iii) further, over the course of the matter, charging the client legal costs and/or retaining money paid to the practitioner by or on behalf of the</p> | |

| Application No. | Allegation | Status |
|-----------------|--|--------|
| | <p>client in the total sum of \$10,000 (inclusive of GST), in circumstances where it was not reasonable to carry out the work to which the legal costs related or for which money was retained by the practitioner; and/or his legal costs were not fair and reasonable, or it was not fair and reasonable for the practitioner to retain the money paid to him.</p> <p>c) Professional misconduct in circumstances where the Legal Profession Complaints Committee was investigating the practitioner's conduct under the LP Act (Investigation) and requested the practitioner to produce to it <i>"all [his] entire original files and all documents relating to [him] acting in the [Matter]"</i> including documents such as file notes:</p> <ul style="list-style-type: none"> (i) the practitioner produced a file containing documents which he represented to be his file in relation to the matter which contained file notes, which by including them in his file in respect to the matter he represented were prepared contemporaneous to the events they recorded (Representation); (ii) the Representation was misleading and deceptive in that the file notes were not prepared contemporaneous to the events they recorded and were in fact dictated and prepared, or caused to have been prepared, by the practitioner in the preceding 2-3 days before providing his file and following the commencement of the Investigation; (iii) the practitioner knew the Representation was misleading and deceptive and intended the Committee to rely on the Representation in the Investigation and be misled or deceived by the Representation; or alternatively he was recklessly indifferent as to whether the Committee would be misled or deceived by the Representation. <p>d) Professional misconduct by, without reasonable excuse, failing to provide information verified by statutory declaration required by the terms of a 'Summons to Provide Written Information verified</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>by Statutory Declaration and to Produce Documents and to otherwise assist in and cooperate with an Investigation' issued to the practitioner by the Committee pursuant to sections 520(1)(c) and 520(3) of the LP Act, in breach of sections 520(5) and 523(3) of the LP Act.</p> <p>e) Professional misconduct by:</p> <ul style="list-style-type: none"> (i) preparing and sending to the Legal Practice Board written submissions as to why he remained a fit and proper person to hold a practising certificate under the LP Act in light of among other things, the client's complaint, in which he made representations which were false and/or misleading in material respects; (ii) making the representations when he knew that they were false and/or misleading; and intending the Board to rely on the representations when considering his fitness to practice and to be misled by the representations; or alternatively, preparing and sending to the Board the representations recklessly indifferent as to whether the Board would be misled by the representations. <p>f) Professional misconduct by:</p> <ul style="list-style-type: none"> (i) providing to the Committee written submissions which contained information that was false/or misleading in material respects, in circumstances where the practitioner provided the written submissions knowing that the written submissions contained false/or misleading information and intending that the Committee rely on the written submissions and be misled; alternatively, the practitioner provided the written submissions to the Committee with reckless disregard or indifference as to whether the written submissions contained the false and/or misleading information and as to whether the Committee would be misled; (ii) providing to the Committee written responses to questions put to the practitioner in relation to matters concerning his conduct, which responses contained information that was | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|---|---|--|
| | <p>false and/or misleading in a material respect, knowing that the written responses contained the false/or misleading information and intending that the Committee rely on the written responses and be misled; alternatively, with reckless disregard or indifference as to whether the written submissions contained the false and/or misleading information and as to whether the Committee would be misled;</p> <p>(iii) providing to the Committee further written responses and, subsequently, a statutory declaration (in the same terms as the further written responses) in purported compliance with the Summons, which contained information that was false and/or misleading in a material respect, and the practitioner provided the written responses and statutory declaration knowing that they contained the false/or misleading information; and intending that the Committee rely on the written responses and statutory declaration and be misled; alternatively, with reckless disregard or indifference as to whether the written responses and statutory declaration contained the false and/or misleading information and as to whether the Committee would be misled.</p> | |
| <p>13/2020 Filed 10/02/2020</p> | <p>a) Professional misconduct by preparing and causing to be sent to the defendant's solicitors (firm) a letter dated 15 May 2018 which:</p> <p>(i) made a false and misleading representation that at a hearing in proceedings at which there was no attendance on behalf of the defendant by the firm, the Magistrate made preliminary indemnity costs orders that either the defendant or the solicitor employed by the firm with conduct of the matter (Ms A) was to pay the claimant's costs; and on the basis of the Representation, sought payment from Ms A of \$5,000 towards the claimant's costs, when no orders, preliminary or otherwise, as to costs were made by the Magistrate;</p> <p>(ii) the practitioner knew that the Representation was misleading and deceptive and the practitioner intended Ms A and/or the firm to</p> | <p>Listed for hearing commencing on 22/09/21</p> |

| Application No. | Allegation | Status |
|---|---|--|
| | <p>rely on and be misled and/or deceived by the Representation and therefore induced to pay the costs sought by him; alternatively, was recklessly indifferent as to whether the Representation was misleading and deceptive and as to whether Ms A and/or the firm would be misled and/or deceived by the Representation and thereby induced to pay the costs sought by him,</p> <p>and when on 16 May 2018 the practitioner provided to the firm a copy of the orders made by the Magistrate, he failed to take any steps to correct, or provide an explanation for, making the misleading and deceptive representation;</p> <p>b) Professional misconduct by commencing and maintaining an application for indemnity costs against Ms A in the proceedings on behalf of his client pursuant to section 25 of the <i>Magistrates Court Civil Proceedings Act 2004</i> (WA) without any reasonable basis to do so and in breach of rules 6(2)(b) and/or 6(2)(c) of the <i>Legal Profession Conduct Rules 2010</i>.</p> | |
| <p>14/2020 Filed 10/02/2020</p> <p>Leave to amend in terms of substituted Annexure A given 16/02/2020</p> | <p>a) Professional misconduct in that, and in circumstances where:</p> <p>(i) on 29 October 2016 the practitioner engaged counsel (Mr A) to act for the client in the Supreme Court of WA proceedings;</p> <p>(ii) on 31 October 2016 Mr A provided the practitioner with an offer to enter a costs agreement (costs agreement), the terms of which provided, relevantly:</p> <p>A. <i>“Your firm will be liable for payment of all bills even if your firm has not received funds from its client to pay the bill”</i> (clause 9);</p> <p>B. <i>“Payment of each bill is due within 30 days”</i> (clause 10);</p> <p>C. <i>“This offer may be accepted in writing or by conduct namely by continuing to instruct me after the receipt of this letter”</i> (clause 12);</p> <p>(iii) thereafter, and on the practitioner’s</p> | <p>Directions hearing 21/07/2021</p> |

| Application No. | Allegation | Status |
|-----------------|---|--------|
| | <p>instructions, Mr A prepared for and attended hearings in the proceedings on 3 and 9 November 2016;</p> <p>(iv) on 21 November 2016 Mr A provided the practitioner with an invoice for his fees in the sum of \$23,100 inclusive of GST (Fees),</p> <p>the practitioner failed to pay any or all of the Fees, which conduct was in breach of clauses 9 and 10 of the costs agreement and the practitioner's professional obligations pursuant to rule 26 of the <i>Legal Profession Conduct Rules 2010</i>.</p> <p>b) Professional misconduct in that he:</p> <p>(i) made and maintained a complaint to the Western Australian Bar Association (WABA) against Mr A (WABA complaint), without any reasonable basis and solely in response to a complaint made by Mr A to the Committee against the practitioner (as particularised in (1) below) (LPCC complaint) and proceedings commenced in the Magistrates Court by Mr A against the practitioner for payment of the Fees (as particularised in (3) below) (MC proceedings);</p> <p>(ii) by email to Mr B, who had been engaged as junior counsel for the client in the proceedings, on 20 April 2017, offered to withdraw the WABA complaint if Mr A agreed to withdraw the LPCC complaint and the MC proceedings,</p> <p>in circumstances where:</p> <ol style="list-style-type: none"> 1. by email to Mr A on 10 February 2017, and in response to an email from Mr A the same day, the practitioner stated that if Mr A made a complaint to the LPCC regarding the practitioner's non-payment of the Fees, the practitioner "<i>will be left with no alternative other than to lodge a formal complaint with WABA</i>" about both Mr A and Mr B; 2. on 8 March 2017 Mr A made the LPCC complaint regarding the practitioner's non-payment of the Fees and his email of 10 February 2017; 3. on or about 17 March 2017 Mr A caused to be | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>filed in the Perth Registry of the Magistrates Court a Form 3 general procedure claim against the practitioner for payment of the Fees, thereby commencing the MC proceedings;</p> <p>4. on 7 April 2017 the practitioner made the WABA complaint, which related to Mr A's expertise and conduct of the proceedings;</p> <p>5. by letter dated 9 May 2017, the President of WABA informed the practitioner that the President considered that the conduct the subject of the WABA complaint was not within the range of matters about which a complaint could be made to the WABA Disciplinary Committee and, accordingly, no further action would be taken in relation to the WABA complaint;</p> <p>6. on or about 17 July 2017, and while the MC proceedings were still on foot, the practitioner sought to engage Mr A to act for the client in a new matter (as particularised in (d) below).</p> <p>c) Professional misconduct in that he prepared and filed, alternatively caused to be prepared and filed, in the MC proceedings a Form 21 statement of defence which relevantly stated that:</p> <p>(i) it was an express term of the retainer between the practitioner and Mr A that any bills rendered by Mr A would be payable by the practitioner upon the exercise by the practitioner of his rights under a caveat registered against the title to a property owned by the client (alleged term; Caveat);</p> <p>(ii) the alleged term was orally agreed to by Mr A in the course of a telephone discussion with the practitioner on 29 October 2016 (discussion);</p> <p>(iii) the alleged term was not, but ought to have been, included in the costs agreement;</p> <p>(iv) Mr A was not entitled to payment of the Fees because as at the commencement of the MC proceedings the practitioner had not exercised his rights under the Caveat,</p> <p>which statements were false and misleading in</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|--------------------------------|--|-----------------------------|
| | <p>material respects, as, in truth, at no time during the discussion, or subsequent to the discussion and prior to the completion of the retainer by Mr A, did the practitioner raise the alleged term with Mr A; or Mr A agree to the alleged term, and the practitioner knew the statements were false and misleading in material respects and intended that the Magistrates Court rely on and be misled by the statements, alternatively the practitioner was recklessly indifferent as to whether the statements were false and misleading in material respects and as to whether the Magistrates Court would be misled by the statements.</p> <p>d) Professional misconduct in that, and in circumstances where he had made and maintained the WABA complaint, the MC proceedings were still on foot, and in the Form 21 he alleged that, relevantly, Mr A had made misleading and deceptive representations as to his experience, he sought to engage Mr A to act for the client in a new matter;</p> <p>e) Professional misconduct in that:</p> <p>(i) in the course of a pre-trial conference (PTC) in the MC proceedings before a Registrar, and in circumstances where terms of settlement of the MC proceedings had been agreed by the parties, the practitioner stated that he would not sign a Form 49 memorandum of consent orders unless it included an additional term of settlement that Mr A would withdraw the LPCC complaint;</p> <p>(ii) following the PTC, by email to Mr A's solicitor in the MC proceedings (which email attached the Form 49 signed by the practitioner), the practitioner requested that Mr A withdraw the LPCC complaint.</p> | |
| 58/2020 Filed 30/06/2020 | a) Professional misconduct by soliciting from Mr A, the proprietor of an engineering business engaged by Company B in respect of a development (and in respect of which engagement the practitioner acted on behalf of Company B), a secret commission in the sum of \$12,500 in cash (Commission) for his own benefit, alternatively, for | Programming orders in place |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|---|--|---------------------------------|
| | <p>the benefit of a company controlled by him and/or his father and causing the Commission to be received through an employee of his legal practice, Ms C, which conduct was to the practitioner's knowledge, engaged in without the knowledge or authority of Company B, was dishonest, in breach of the practitioner's fiduciary duties to Company B and/or understood by the practitioner to be in connection with Mr A's engagement by Company B in respect of the development and/or future work which Mr A may receive.</p> <p>b) Professional misconduct in that by his correspondence to the Legal Profession Complaints Committee the practitioner made statements in respect to the solicitation of the Commission which were false or misleading, or both, and well knew the statements were false or misleading, or both, and/or had the potential to mislead the Committee and the practitioner intended that the Committee rely on and be misled by the statements and that the Committee thereby be obstructed in its investigation into his conduct; and further, the practitioner failed to correct the statements until the Committee provided to him evidence of the solicitation by him of the Commission; and/or was not open and candid in his dealings with the Committee and failed until later in the investigation to provide a full and accurate account of his conduct contrary to rule 50(2) and (3) of the <i>Legal Profession Conduct Rules 2010</i>.</p> | |
| <p>60/2020 Filed 30/06/2020</p> | <p><u>ANNEXURE A</u></p> <p>a) Professional misconduct in respect to the Firm acting in relation to a deceased's will and Estate by failing to:</p> <p>(i) ensure that a legal practitioner employed by the Firm as a restricted practitioner under his supervision was supervised adequately, or at all, in respect to the taking of instructions for the will and after the death of the deceased, failing to provide any or any adequate legal advice to the Estate in relation to the proper process for applications for letters of administration under the <i>Administration Act 1903 (WA)</i>, and</p> | <p>Mediation 20/09/2021</p> |

| Application No. | Allegation | Status |
|-----------------|--|--------|
| | <p>preparing and causing to be filed applications in the Probate Registry which failed to comply with the requirements of both the Administration Act and the <i>Non-Contentious Probate Rules 1967</i> (NCPR) and which was refused by order of the Probate Registry and dismissed and/or required a supplementary affidavit and revised statement of assets and liabilities to be filed, and where the practitioner failed to have in place a competent standard practice at the Firm when taking instructions for wills to make enquiries as to the existence of any previous wills; and/or</p> <p>(ii) take any, or any adequate, steps to implement and/or maintain appropriate management systems to ensure the provision of legal services by the Firm was in accordance with the professional obligations of Australian legal practitioners pursuant to section 105(3) of the LP Act.</p> <p>b) Professional misconduct by preparing and sending a letter dated 19 February 2018 to the administrator of the Estate which letter made misleading and/or deceptive representations as to the Firm's delays in obtaining letters of administration and the practitioner well knew the representations were misleading and/or deceptive and/or had the potential to mislead and/or deceive the Administrator as to the true reasons for delay and the practitioner intended that the Administrator rely on the representations and be misled and/or deceived as to the reasons for delay; alternatively, the practitioner acted with reckless disregard or indifference as to whether or not the representations were misleading and/or deceptive and/or had the potential to mislead and/or deceive the Administrator as the reasons for the delay and as to whether the Administrator would rely on and be misled and/or deceived by the Representations as to the reasons for delay.</p> <p>c) Professional misconduct in that by his correspondence to the Committee dated 17 February 2018 and 1 July 2018 the practitioner was not open and candid in his dealings with the</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>Committee and failed to provide a full and accurate account of his conduct in relation to matters covered by requests by the Committee to provide comments or information in relation to the practitioner's conduct or professional behaviour contrary to rule 50 of the <i>Legal Profession Conduct Rules 2010</i> in that the practitioner made false and/or misleading statements to the Committee and well knew the statements were false and/or misleading and/or that they had the potential to mislead the Committee and the practitioner intended the Committee to rely on the Statements and be misled; alternatively, the practitioner acted with reckless disregard or indifference, further alternatively, was grossly careless, as to whether or not the statements were false and/or misleading and/or had the potential to mislead the Committee and as to whether the Committee would rely on and be misled by the statements.</p> <p><u>ANNEXURE B</u></p> <p>a) Professional misconduct in that having been engaged by A, alternatively, A and B, with respect to the distribution of the matrimonial assets of A and B following their separation and impending divorce after 30 years of marriage, the practitioner advised the parties that their agreed distribution of the matrimonial assets was not just and equitable and would not be approved by the Family Court of Western Australia and:</p> <p>(i) prepared, caused to be executed by A and B (parties) and filed in the Family Court a Form 11 Application for Consent Orders (Application) and Minute of Consent Orders (Minute) dated 8 August 2016, which relevantly included false and/or misleading terms as to the distribution of B's interest in his superannuation plan (superannuation split), as the practitioner well knew, and which terms were included by the practitioner with the intention that the Family Court rely on its terms and thereby be misled that the distribution of the matrimonial assets between the parties was just and equitable and make orders in terms of the Minute under</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>section 79 FLA, when in fact the parties did not intend to enforce the terms of the superannuation split;</p> <p>(ii) further or alternatively, failed to advise A adequately, or at all, as to her rights under the FLA to a fairer division of the matrimonial assets and/or to seek independent legal advice in this respect;</p> <p>(iii) further or alternatively, in his letters to:</p> <p>A. the Family Court dated 8 August 2016 (8 August FC letter), 24 August 2016 (24 August FC letter) and 9 September 2016;</p> <p>B. the Fund Administrator (Trustee) dated 24 August 2016; and/or</p> <p>C. the solicitors for the Trustee dated 9 September 2016,</p> <p>the practitioner represented to the Family Court, the Trustee and/or the solicitors for the Trustee respectively that the parties intended to enforce the superannuation split in the distribution of the matrimonial assets (enforcement representations) in circumstances where the enforcement representations were false and/or misleading as the parties did not intend to enforce the superannuation split, which the practitioner well knew (given his intention in (a)(i) above) and he intended the Family Court, the Trustee and/or the solicitors for the Trustee to rely on the enforcement representations and be misled as the parties' intentions in respect to the enforcement of the superannuation split.</p> <p>b) Professional misconduct by:</p> <p>(i) preparing and causing to be sent the 8 August FC letter in which the practitioner made the misleading and/or deceptive representation to the Family Court that his role was limited to only assisting the parties to file the Application and the Minute, in circumstances where in fact he well knew he had devised and the terms of the Application and the Minute to ensure that the Family Court was misled and/or deceived by</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>the enforcement representations, and not simply assisted the parties to file them, and intended that the Family Court rely on the assistance representation and be misled as the true nature and extent of his involvement in devising the terms of the Application and the Minute;</p> <p>(ii) by preparing and causing to be sent the 24 August FC letter in which he made a false and/or misleading representation to the Family Court that the Trustee had previously been asked by the practitioner to approve the terms of the Application and the Minute but had not provided a reply to the practitioner and the practitioner had sent a follow up letter (Trustee representation), where the practitioner well knew he had not previously asked the Trustee to approve the terms of the Application and the Minute and wrote to the Trustee for the first time in this respect by letter dated 24 August 2016, which was posted 25 August 2016; and intended the Family Court to rely on and be misled by the Trustee representation; alternatively, the practitioner was recklessly indifferent as to whether the Trustee representation was false and/or misleading and as to whether the Family Court would be misled.</p> <p>c) Professional misconduct in that he provided legal services to the parties A and B with respect to the same matter, namely approval by the Family Court of the Application and the Minute in the terms required under section 79 FLA, in circumstances in which the interests of the parties were adverse and the practitioner had advised the parties that the agreed distribution of the matrimonial assets was not just and equitable to A, such that there was a conflict or potential conflict between the duties of the practitioner to act in the best interests of each of the parties as to their rights and entitlements under the FLA and he was in breach of rules 7(d) and 14(2) of the <i>Legal Profession Conduct Rules 2010</i>.</p> <p>d) Professional misconduct in that he, without</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|---|--|---------------------------------|
| | <p>reasonable excuse:</p> <ul style="list-style-type: none"> (i) failed to respond to letters sent to him by the Committee on 9 July 2019, 23 August 2019 and 5 November 2019 requesting submissions and responses, including as to his failure to respond, in breach of rule 50(3) of the Conduct Rules and/or section 531(2) LP Act; (ii) failed to comply with a summons issued to the practitioner by the Committee pursuant to: <ul style="list-style-type: none"> A. sections 520(1)(a) and (d) LP Act dated 9 July 2019 to produce documents; and B. sections 520(1)(a), (c) and (d) and 520(3) of the LP Act dated 5 November 2019 to produce a document and provide written information verified by statutory declaration, <p>in breach of sections 520(5) and 532(3) LP Act.</p> | |
| <p>91/2020 Filed 17/11/2020</p> | <p>Professional misconduct by, in the course of acting for the vendors in the settlement of a sale by auction of a property to the purchaser, pursuant to a contract for sale which incorporated the 2011 Joint Form of General Conditions for the Sale of Land, where at Settlement the purchaser paid to the practitioner the sum of \$2,153.58, which was the sum of penalty interest claimed by the vendors due to an alleged delay by the purchaser in settling the sale, the practitioner withdrew from her trust account the trust money, and disbursed the trust money by:</p> <ol style="list-style-type: none"> 1. paying \$880 to herself in payment of her legal fees for preparing and issuing a default notice to the purchaser; and 2. paying \$1,273.58 of the remaining balance of the trust money to the vendors in part payment of the disputed penalty interest <p>in circumstances where the practitioner:</p> <ul style="list-style-type: none"> (a) knew that the purchaser disputed that the vendors were entitled to the disputed penalty interest; (b) knew that she was obliged to retain the trust money in her trust account until the dispute as | <p>Mediation 22/07/2021</p> |

| Application No. | Allegation | Status |
|-----------------|---|--------|
| | <p>to the penalty interest was resolved;</p> <p>(c) did not have a written direction from, and the consent of, the purchaser to withdraw the trust money from her trust account or to make the payments;</p> <p>(d) sought both to obtain an advantage for herself by making payment to herself of the legal fees for the default notice, and attempted to further the vendors' matter by releasing the balance of the trust money to the vendors;</p> <p>in contravention of section 216(1) of the LP Act and breached clause 4.6(e) of the General Conditions and rule 16(1) of the <i>Legal Profession Conduct Rules 2010</i>.</p> <p>Professional misconduct, in that the practitioner stated:</p> <ol style="list-style-type: none"> 1. in the course of a meeting on 18 October 2018 with the then Law Complaints Officer and a Senior Legal Officer, that at the time she withdrew the trust money from her trust account and made the payments the practitioner was not aware that: <ol style="list-style-type: none"> 1.1 the purchaser disputed that he was obliged to pay the vendors the disputed penalty interest; and 1.2 the purchaser had issued proceedings against the vendors in the Magistrates Court claiming the return of the disputed penalty interest 2. in a letter dated 26 October 2019 which she prepared and sent to the Committee in the course of the investigations, that: <ol style="list-style-type: none"> 2.1 she did not have any recollection whether she withdrew the trust money from her trust account and made the payments before or after a process server attended her office and purported to serve her with a Minor Case Claim Form issued in the proceedings; 2.2 she had withdrawn the trust money from her trust account and had made the payments in the honest belief that the purchaser had agreed to her doing so; | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>and</p> <p>2.3 it was not until the following day when the practitioner received and read a letter from the purchaser's solicitors, dated 13 December 2017, instructing her not to release to the vendors the disputed penalty interest, that she realised that the purchaser was still disputing the disputed penalty interest</p> <p>in circumstances where:</p> <p>(a) Settlement had been effected on 17 November 2017 in circumstances where the purchaser had paid the practitioner the disputed penalty interest as there was a dispute as to its payment and where, prior to the Settlement, the correspondence made clear that the purchaser disputed the penalty interest claimed by the vendors, and that the disputed penalty interest was to be held in trust by the practitioner in accordance with Clause 4.6;</p> <p>(b) it was clear from the face of the claim form that the purchaser had issued the proceedings to recover the disputed penalty interest from the vendors;</p> <p>(c) the practitioner on 12 December 2017 withdrew the trust money from her trust account and made the payments but only after she was aware of the proceedings following her receipt that morning of the claim form from a process server, which she read and sent to the purchaser, by both facsimile sent at 11:25am and by email sent 11:41am, on the stated basis she was not the defendant named in the claim and not instructed to accept service on behalf of the vendors;</p> <p>(d) the Statements were false and misleading, or both, and/or had the potential to mislead the Committee as, in truth, the practitioner had made the</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>withdrawals of the trust money from her trust account and made the payments only after receiving the claim form and notice of the proceedings;</p> <p>(e) the practitioner knew the Statements were false or misleading, or both, and made the statements with the intention that the Committee rely on and be misled by the statements;</p> <p>(f) alternatively, the practitioner acted with reckless disregard or indifference as to whether or not the Statements were false or misleading, or both, and/or had the potential to mislead the Committee and as to whether the Committee would rely on and be misled by the statements.</p> <p>Professional misconduct in that:</p> <ol style="list-style-type: none"> 1. on 17 November 2017, following the settlement of the sale of the property, the practitioner wrote to the vendors' real estate agent stating that settlement had been effected but that the vendors had instructed her to request that the keys to the property not be released to the purchaser because the purchaser had not paid the practitioner's legal fees of \$880 for preparing the default notice; and 2. further, on 20 November 2017, the practitioner sent an email to the agent stating that she had received instructions from the vendors that the keys could be released to the purchaser only if the purchaser undertook to deposit the sum of \$880 into the vendors' bank account by close of business on 21 November 2017, <p>in circumstances where:</p> <ol style="list-style-type: none"> (a) the practitioner knew there was no basis, or was recklessly indifferent as to whether there was any basis, for the instructions, which were in breach of Clause 6.5 of the General Conditions; (b) the practitioner, by giving the instructions to the agent, was seeking to further her own interests in receiving payment of her legal fees and/or the interests of the vendors by unfair means in | |

| Application No. | Allegation | Status |
|-----------------|---|--------|
| | <p>breach of rule 16(1) of the Conduct Rules;</p> <p>(c) alternatively, the practitioner was grossly careless in providing the instructions to the agent as she ought to have known there was no basis for the instructions which were in breach of Clause 6.5.</p> <p>Unsatisfactory professional conduct in that she:</p> <ol style="list-style-type: none"> 1. failed as soon as was reasonably practicable to provide to the purchaser or their agent with a trust receipt for the amount paid by the purchaser at settlement in contravention of Regulation 41(6) of the <i>Legal Profession Regulations 2009 (WA)</i>; 2. on 23 November 2017, produced a trust receipt which contained inaccuracies and/or omissions in that: <ol style="list-style-type: none"> 2.1 it showed that the disputed penalty interest had been received from the vendors when, in fact, it had been received from the purchaser; 2.2 it did not record that the disputed penalty interest had been received by cheque; and 2.3 the date shown on the trust receipt as the date on which the disputed penalty interest was received was incorrect, <p>in contravention of Regulation 41(5) of the LP Regulations;</p> 3. failed to provide the purchaser with a trust account statement in respect of the payment, in contravention of both Regulation 60 of the LP Regulations, and section 216(3) of the LP Act; 4. failed to provide to the purchaser an itemised invoice of her costs for preparing the default notice, despite requests made by the purchaser's agent, in contravention of section 292 of the LP Act; and 5. failed to keep a deposit record produced to her authorised deposit taking institution in contravention of Regulation 42(2) of the LP | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|--------------------------------|--|-------------------------|
| | Regulations. | |
| 95/2020 Filed 30/11/2020 | <p>Professional misconduct, in acting for a 74 year old terminally ill patient for whom, following a meeting between them on 27 September 2016, the practitioner had prepared two alternative wills, one a simple will of six pages and the other a complex testamentary instrument of 23 pages which created a discretionary trust the purpose of which was to potentially avoid one of the beneficiaries, his daughter who was then an undischarged bankrupt, from being subject to a claim by the Official Trustee in Bankruptcy by:</p> <ol style="list-style-type: none"> 1. acting on the instructions of the daughter who, on 10 October 2016, conveyed to the practitioner the client's purported instructions: <ol style="list-style-type: none"> (a) that of the two alternative wills, the client wished to execute the will incorporating a testamentary trust; and (b) authorising the practitioner's attendance on the client at the hospital for the purposes of assessing his testamentary capacity and to take his instructions for and witness him executing the testamentary trust will, <p>and on 11 October 2016 and on the basis of the purported instructions, attending on the client at the hospital, who was then in the final (palliative) stage of his illness, for the purposes of assessing his testamentary capacity, taking his instructions for and arranging for him to execute the testamentary trust will, with:</p> <ol style="list-style-type: none"> 1.1. reckless disregard as to whether he had the capacity to provide instructions and/or as to whether the purported instructions were, in fact his instructions and/or as to whether the purported instructions were provided independently and free from the influence of the daughter; 1.2. further or alternatively, was grossly negligent in that both prior to attending and while attending at the hospital the practitioner failed to take any, or any | Mediation 30/08/2021 |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>adequate, steps, to discuss the purported instructions directly with the client, to satisfy herself that the client had the capacity to provide instructions and/or that the purported instructions were, in fact his instructions and/or that they were provided independently and free from the influence of the daughter,</p> <p>in circumstances where the practitioner knew, or ought to have known, that there was real doubt as to whether the client had the capacity to provide instructions.</p> <p>2. On 11 October 2016 and in circumstances where the practitioner had prepared a letter to the client dated 7 October 2016 enclosing the alternative wills in which she advised that one of the witnesses to the execution of his new will should be a medical practitioner, and where the practitioner was aware prior to her attending at the hospital that the client was having difficulty in having a new will witnessed by a medical practitioner, the practitioner attended at the hospital and prior to purporting to take instructions for and causing to be executed before her the testamentary trust will, failed to:</p> <p>2.1. accept the opinion of the treating resident medical officer at the hospital with care of the client, which was to the effect that the client did not have the capacity to provide proper instructions, and thereafter decline to take the instructions for a new will;</p> <p>2.2. further or alternatively, make enquiries of either of the client's treating oncologist or his palliative care specialist as to whether, having regard to his illness, his physical and mental state and the treatment he was receiving, including the medication he was taking, he could provide proper or adequate, instructions;</p> <p>2.3. further or alternatively, obtain a formal medical assessment of the client by a medical specialist experienced in</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|-------------------------------|---|-------------------------|
| | <p>assessing testamentary capacity;</p> <p>2.4. further or alternatively, arrange for one of the client's treating medical practitioners or an appropriate medical specialist to witness him signing the new will, contrary to her advice in her letter,</p> <p>in circumstances where the practitioner knew, or ought to have known, that there was a real doubt as to whether the client had the capacity to provide instructions for, and to make, a new will, and instead relied on her own assessment of his testamentary capacity.</p> <p>3. On 11 October 2016 and while attending on the client at his bed in the hospital between 5.00pm and 5.20pm, purporting to take instructions from him for, and causing to be executed before her, the testamentary trust will with reckless disregard or indifference as to whether he:</p> <p>3.1. had the capacity to provide any, or any proper or adequate, instructions to make a will;</p> <p>3.2. was able to provide proper instructions to the practitioner about:</p> <p>3.2.1. which of the alternative wills he wished to execute;</p> <p>3.2.2. a complex will incorporating a discretionary testamentary trust; and</p> <p>3.3. had understood and approved the contents,</p> <p>in circumstances where the practitioner knew, or ought to have known, that there was real doubt as to whether the client had the capacity to provide instructions for, and to make, a new will.</p> | |
| 5/2021 Filed 28/01/2021 | Unsatisfactory professional conduct, in the course of acting for clients trading as a building contractor in respect of a breach of contract claim against owners of a property in respect to which the clients had undertaken works commenced in the Magistrates Court in March 2007, placed on the inactive cases list in 2014 | Mediation 22/09/2021 |

| Application No. | Allegation | Status |
|-----------------|---|--------|
| | <p>and dismissed in 2015, and further in respect to an application to extend the operation of a caveat lodged in November 2007 by the practitioner on behalf of the client over the property, by:</p> <ol style="list-style-type: none"> <li data-bbox="414 459 1133 649">4. from 2008, failing to advise the client adequately, or at all, as to the likely consequences of their decision not to prosecute the claim and of their obligations as a caveator to act proactively in relation to his interest the subject of the caveat; <li data-bbox="414 672 1133 1086">5. in about April 2017 commencing in the Supreme Court of Western Australia, and maintaining, an application to extend the operation of the caveat in circumstances where: <ol style="list-style-type: none"> <li data-bbox="502 840 1133 952">5.1. there was no reasonable basis for the caveat to remain registered, or for its removal to be opposed, by the client; <li data-bbox="502 974 1133 1086">5.2. further or alternatively, the underlying claim had been dismissed by the Busselton Magistrates Court in 2015, <p>which caused both the client and the property owners to incur unnecessary legal costs;</p> <li data-bbox="414 1198 1133 2049">6. in around April 2017 and in circumstances where the practitioner knew, or ought to have known, that for almost ten years the claim had not been prosecuted, with no procedural steps taken and therefore a number of court milestones not met, failing to advise the client adequately, or at all, in relation to the application to extend the operation of the caveat: <ol style="list-style-type: none"> <li data-bbox="502 1534 1133 1758">6.1. as to the merits of the application in circumstances where Rules 95B, 95C and 95F of the <i>Magistrates Court (Civil Proceedings) Rules 2005</i> (the Inactive Cases regime) applied or had the potential to apply to the claim; <li data-bbox="502 1780 1133 1926">6.2. further or alternatively, failing to make proper enquiry as to the status of the caveat and the claim prior to commencing the application; <li data-bbox="502 1948 1133 2049">6.3. further or alternatively, regardless of whether the Inactive Cases regime applied, failing to advise that in | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|---|--|---------------------------------|
| | <p>responding to the application it was open to the owners to oppose the application given the significant delay in prosecuting the claim such that the balance of convenience did not favour extending the caveat, and the costs implications for the client in those circumstances.</p> | |
| <p>46/2021 Filed 16/06/2021</p> | <p>Professional misconduct, between about 11 October 2017 and about 5 August 2019 by:</p> <ul style="list-style-type: none"> (a) causing his firm to purport to act as the solicitor of record for a defendant to Supreme Court proceedings when the firm was not authorised and had no instructions to do so; (b) purporting to act as solicitor and counsel for the defendant when he was not authorised and had no instructions to do so. <p>Professional misconduct, on about 18 July 2019, by preparing and sending an email to another practitioner in circumstances where:</p> <ul style="list-style-type: none"> (a) the practitioner knew that the email contained statements that were misleading; (b) the practitioner intended the other practitioner to be misled by those statements; (c) alternatively, the practitioner was recklessly indifferent as to whether the statements were misleading and as to whether the other practitioner would be misled by those statements. <p>Professional misconduct, on about 22 July 2019, by preparing and sending a letter to the Associate to Justice Archer of the Supreme Court in circumstances where:</p> <ul style="list-style-type: none"> (a) the practitioner knew that the letter contained statements that were misleading; (b) the practitioner intended the Court to be misled by those statements; (c) alternatively, the practitioner was recklessly indifferent as to whether the statements were misleading and as to whether the Court would | <p>Direction 27/07/2021</p> |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|--------------------------------|--|--------------------------|
| | <p>be misled by those statements.</p> <p>Professional misconduct, on about 22 July 2019, by swearing an affidavit and causing it to be filed in the Supreme Court in circumstances where:</p> <ul style="list-style-type: none"> (a) the practitioner knew that the affidavit contained statements that were misleading; (b) the practitioner intended the Court to be misled by those statements; (c) alternatively, the practitioner was recklessly indifferent as to whether the statements were whether the Court would be misled by those statements. <p>Professional misconduct, on about 22 July 2019, by preparing and sending a letter to another practitioner in circumstances where:</p> <ul style="list-style-type: none"> (a) the practitioner knew that the letter contained statements that were misleading; (b) the practitioner intended the other practitioner to be misled by those statements; (c) alternatively, the practitioner was recklessly indifferent as to whether those statements were misleading and as to whether the other practitioner would be misled by those statements. <p>Professional misconduct, on about 5 August 2019, by swearing an affidavit and causing it to be filed in the Supreme Court in circumstances where:</p> <ul style="list-style-type: none"> (a) the practitioner knew the affidavit contained statements that were misleading; (b) the practitioner intended the Court to rely on those statements; (c) alternatively, the practitioner was recklessly indifferent as to whether the statements were misleading and as to whether the Court would be misled by those statements. | |
| 47/2021 Filed 23/06/2021 | Professional misconduct in the course of acting for a client concerning a dispute in the Mandurah Magistrates Court relating to the client's purchase of a second-hand motor vehicle from a dealer, in that the | Directions 27/07/2021 |

| Application No. | Allegation | Status |
|-----------------|--|--------|
| | <p>practitioner received from, or on behalf of, the client:</p> <ul style="list-style-type: none"> (a) a sum of \$500 in cash on 8 December 2016 in advance of and for specific work to be carried out; and (b) a sum of \$880 by electronic funds transfer on 5 June 2017 in advance of and for specific work to be carried out, <p>by the practitioner for the client being trust money within the meaning of section 205(1) of the LP Act, in circumstances where the practitioner did not maintain a general trust account in this jurisdiction, in contravention of section 214(1) of the LP Act.</p> <p>Professional misconduct, between about 19 October 2015 and 5 July 2017, by:</p> <ol style="list-style-type: none"> 1. failing to provide adequate written costs disclose to the client before, or as soon as was reasonably practicable after, he was retained, in contravention of sections 260(1) and 262(1) of the LP Act; 2. failing to adequately and competently plead the cause or causes of action, in a statement of minor case claim, which the practitioner was retained to review, advise on, and was involved in preparing, which was subsequently filed by the client; 3. giving incompetent advice to the client as to the causes of action arising, and the remedies available; 4. failing to adequately and competently plead the cause or causes of action in a statement of general procedure claim prepared by the practitioner and subsequently filed; 5. failing to competently and/or diligently progress the action by: <ol style="list-style-type: none"> 5.1. failing to file and serve a statement of general procedure claim in accordance with the rules of the Magistrates Court and in compliance with an order of the Mandurah Magistrates Court of 3 February 2016; and 5.2. failing to progress the action to the next | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>procedural step under the rules of the Magistrates Court after pleadings were filed and served and, consequently, causing the action to be taken to be inactive by operation of the rules of the Magistrates Court and causing it to be liable to be placed on the inactive cases list;</p> <p>6. failing to advise the client as to:</p> <p>6.1. the fact that, because no step had been taken for 12 months, on 23 May 2017, the action was taken to be inactive;</p> <p>6.2. the urgency in filing a request for a pre-trial conference, in circumstances where:</p> <p>a. on 31 May 2017, the practitioner directed the client to file a request for a pre-trial conference and pay the associated fee; and</p> <p>b. at that time, the practitioner knew, or should have known, that because the action was taken to be inactive it was liable to be placed on the inactive cases list at any time; and</p> <p>6.3. the specific consequences for the client of a notice issued by the Court on 6 June 2017 notifying the parties that the action was placed on the inactive cases list;</p> <p>7. failing to make any inquiry of the Court concerning the issuing of a notice that the action had been placed on the inactive cases list and a subsequent notice that a pre-trial conference had been listed in, in circumstances where those two notices were inconsistent;</p> <p>8. rendering an invoice to the client on 13 March 2016 for legal costs including the sum of \$880 (inclusive of GST) for the preparation of a statement of general procedure claim which was excessive, in that it was not the fair and reasonable value of the legal services provided by the practitioner in the preparation of that document;</p> | |

| Application No. | Allegation | Status |
|---|--|--------|
| | <ol style="list-style-type: none"> 9. rendering invoices to, and accepted payments from, the client for legal costs totalling between \$2,970 and \$5,630 (inclusive of GST) for work carried out by the practitioner, which was excessive, in that it was not the fair and reasonable value of the legal services provided by the practitioner; and/or 10. terminating his retainer without proper cause and without giving reasonable notice of his intention to terminate the retainer. | |
| <p>48/2021 Filed 29/06/2021</p> | <p>Professional misconduct by, on 21 April 2013, preparing and sending emails to the beneficiaries of certain trusts in which he:</p> <ol style="list-style-type: none"> 1. asserted, directly or indirectly, that the practitioner's sister had or may have committed a criminal offence by breaching the 'whistleblower' provisions of the <i>Corporations Act 2001 (Cth)</i>, and 2. implied that he would report her to the Australian Federal Police for the asserted breach, <p>when:</p> <ol style="list-style-type: none"> 2.1 the practitioner knew there was no reasonable basis to make the assertion, alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless as to whether there was a reasonable basis to make the assertion; and 2.2 the 21 April 2013 emails were threatening, intimidating and/or discourteous in their tone and content, and 2.3 the 21 April 2013 emails were intended to deter the sister from seeking legal advice and/or taking legal action in relation to a matter in which the practitioner had a personal interest. | |

| Application No. | Allegation | Status |
|-----------------|--|--------|
| | <p>Professional misconduct by, on 24 June 2013, in the course of correspondence in relation to the trusts, by preparing and sending an email to the beneficiaries in which the practitioner stated he had “<i>completed the Attestation of Witness details on the Deeds [of Variation]</i>” in respect of the signature of his mother on certain Deeds of Variation of Trust when he had not witnessed his mother’s signature on the Deeds and had not completed the attestation of witness details, in circumstances where the practitioner:</p> <ol style="list-style-type: none"> 1. knew the statement was false and/or misleading, alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless as to whether or not the statement was false and/or misleading; and 2. intended the statement to deter the mother and/or sister from taking legal action in relation to a matter in which the practitioner had a personal interest. <p>Professional misconduct by, on 6 November 2015, stating in evidence on oath in the Supreme Court that he had completed the attestation of witness details in respect to the mother’s signature on one of the four Deeds of Variation when in fact the practitioner had not completed the attestation of witness details on any of the four Deeds of Variation, in circumstances where the practitioner:</p> <ol style="list-style-type: none"> 1. knew this statement was false and/or misleading and intended the Supreme Court rely on it and be misled; 2. alternatively, made this statement with reckless disregard or indifference as to whether or not it was false and/or misleading, and/or had the potential to mislead the Supreme Court; 3. further and alternatively, was grossly careless as to whether or not this statement was false and/or misleading, and/or had the potential to mislead the Supreme Court. <p>Professional misconduct by, on 11 February 2017, in the course of correspondence in relation to the trusts, by preparing and sending an email to the Court-appointed</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|--------------------------------|---|---------------|
| | <p>trustee of the trusts, in which the practitioner stated that the sister had given character evidence in defence of a friend of hers who had been charged with child molestation, when there was no reasonable basis to make that statement, and:</p> <ol style="list-style-type: none"> 1. the practitioner knew there was no reasonable basis to make the this statement; 2. alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless, as to whether there was a reasonable basis to make this statement; 3. this statement was insulting and/or discourteous in its tone and content; and 4. by making this statement without copying it to the mother and sister, the practitioner intended to influence the trustee in his dealings with the trust property in a way that benefitted him, without giving the mother and sister an opportunity to respond to it, in circumstances where there were ongoing disputes about the trust property. <p>Professional misconduct by, on 7 July 2018, in the course of correspondence in relation to the trusts, by preparing and sending an email to the trustee and to the beneficiaries and their legal representatives, in which the practitioner implied that the trustee had engaged in 'gaslighting', a form of psychological manipulation, when:</p> <ol style="list-style-type: none"> 1. the practitioner knew there was no reasonable basis to make this statement; 2. alternatively the practitioner was recklessly indifferent or further and alternatively, was grossly careless as to whether there were reasonable grounds to make this statement; and 3. the email of 7 July 2018 was insulting and/or discourteous in its tone and content. | |
| 49/2021 Filed 30/06/2021 | Professional misconduct, while acting for the executors/trustees of Estate A (of which the practitioner was one of the three) from about March | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>2013, while acting for the executors/trustees of Estate B (of which the practitioner was not one) from about July 2014, and after he ceased acting regarding both estates in about March 2018, in that:</p> <ol style="list-style-type: none"> 1. he failed to progress and finalise the administration of Estate A in a timely, competent and diligent manner in that he failed to: <ol style="list-style-type: none"> 1.1 obtain the written authority of his co-executors/trustees or confirm in writing oral instructions provided to him by them prior to making payments and/or distributions in respect of monies held in trust; 1.1 effect in a timely manner the transmission of the remaining shares held; 1.2 give such directions to the companies which issued these shares and/or the relevant share registries as and when necessary to ensure the receipt of dividends and other income; 1.3 respond to requests for information by the accountants preparing the tax returns in a timely manner to facilitate the lodgement of each of the tax returns by the dates on which they were due; 2. in the absence of a binding written notice: <ol style="list-style-type: none"> 2.1 making interim distributions to only one of the residuary beneficiaries, before the estate was fully administered; 2.2 alternatively, failing to ensure, prior to doing so, that there would be sufficient monies to distribute other entitlements if necessary; 3. he failed to progress and finalise the administration of Estate B in a timely, competent and diligent manner in that he failed to: <ol style="list-style-type: none"> 3.1 effect in a timely manner the transfer of shares held in trust established by the will; 3.2 give such directions to the companies which issued Frederick's shares and/or relevant share registries as and when | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>necessary to ensure that the trust received dividends and other income;</p> <p>3.3 distribute the income received by the in accordance with the terms of will in a timely manner;</p> <p>3.4 respond to requests for information by the accountants preparing the tax returns in a timely manner to facilitate the lodgement of each of the tax returns by the dates on which they were due;</p> <p>3.5 failed to open a trust account to receive trust monies in a timely manner and instead, causing the transfer of those monies into another account;</p> <p>4. he failed to respond to correspondence and requests for information or reports about the estates in a timely manner, breached his duties under rules 6(1)(b), 8 and 10(2) of the <i>Legal Profession Conduct Rules 2010 (WA)</i>, in that he failed to respond to and keep informed:</p> <p>4.1 from about March 2015, beneficiaries of the trust;</p> <p>4.2 from about October 2015 until December 2016, a client and executor/trustee of the estates;</p> <p>4.3 from August 2017, a firm acting for the executors/trustees of an estate, a residuary beneficiary of Estate A and a beneficiary of a trust; and</p> <p>4.4 from March 2018, the same firm acting for a co-executor/trustee of the estates;</p> <p>5. from about March 2018 to 19 September 2018, failing to respond within a reasonable time to the instructions and/or requests by a co-executor/trustee of Estate A;</p> <p>6. from March 2018, following termination of the practitioner's retainer, failing to act upon proper and competent, in a timely, competent and diligent manner in respect to client documents and the transfer of trust monies, in that he failed to.</p> | |

| Application No. | Allegation | Status |
|-----------------|--|--------|
| | <p>6.1 provide client documents to the Committee within a reasonable time;</p> <p>6.2 transfer within a reasonable time the monies held in trust, where the practitioner had been instructed to do so.</p> <p>Unsatisfactory professional conduct, from about March 2013, in the course of acting for the executors/trustees of Estate A, by failing to provide proper written costs disclosure to the co-executors/trustees, in breach of sections 260 and 262 of the LP Act.</p> <p>Unsatisfactory professional conduct, from about 28 July 2014, in the course of acting for the executors/trustees of Estate B, by failing to provide proper written costs disclosure to the co-executors/trustees, in breach of sections 260 and 262 of the LP Act.</p> <p>Unsatisfactory professional conduct, by withdrawing trust monies for the payment of the practitioner's tax invoices, in circumstances where there was no direction pursuant to section 216(1) of the LP Act to do so, prior to either:</p> <p>(a) obtaining instructions from the clients to authorise the withdrawal (regulation 65(3)(a)(ii) of the <i>Legal Profession Regulations 2009</i> (WA)), and before effecting the withdrawal, sending a request for payment, referring to the proposed withdrawal (regulation 65(3)(b)(i) of the LP Regulations), or, alternatively, a written notice of withdrawal (65(3)(b)(ii) of the LP Regulations); or,</p> <p>(b) allowing 7 days for the clients to object to the withdrawal of the money after giving the Clients the Tax Invoices (regulation 65(4) of the LP Regulations).</p> <p>Unsatisfactory professional conduct, after the termination of certain retainers, by failing to carry out instructions in respect of the matters on which the practitioner and/or the firm had been retained by the clients in a timely, competent and diligent manner, in that he failed to:</p> <p>1. respond in a timely manner to a request for information about matters on which the firm had</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|---|--|---------------|
| | <p>been instructed by the clients;</p> <ol style="list-style-type: none"> 2. provide within a reasonable time a list of any current and closed matters on which the practitioner had acted for the clients; 3. make available for collection within a reasonable time or at all the client documents relating to any closed matters on which the practitioner acted for the clients, alternatively notify that the client documents were available for collection; 4. respond to related correspondence of 22 January 2018, 29 March 2018 and 13 June 2018 at all. | |
| <p>50/2021 Filed 30/06/2021</p> | <p>Professional misconduct by, between about June 2014 and November 2014, in acting for clients in regard to the alteration of property interests in a property owned by the clients, and in regard to the purchase of another property, by:</p> <ol style="list-style-type: none"> 1. failing to provide proper written costs disclosure to the clients in contravention of sections 260 and 262 of the LP Act; 2. in the circumstances of (1) above, charging fees to the clients in excess of the fees estimated by him; 3. failing to maintain accurate and complete records of all transactions relating to the property settlements; 4. failing to account properly or at all, in respect of all the transactions in the settlements, including not producing receipts or vouchers for disbursements that the practitioner charged to the clients and which the practitioner claimed to have incurred while completing the settlements; 5. knowingly, or with reckless disregard or indifference, charging the clients amounts that the practitioner claimed to have incurred as disbursements while completing the settlements, but which had not been incurred; and/or 6. failing to account for and/or to deliver up to the clients trust monies received from the clients in relation to the settlements including by: <ol style="list-style-type: none"> 6.1 retaining, without reasonable cause, the | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | <p>sum of \$1,000 more than the amount charged by the Office of State Revenue as transfer duty assessed on a purchase;</p> <p>6.2 retaining, without reasonable cause, various amounts claimed as costs and disbursements but which could not or should not have been claimed; and</p> <p>6.3 knowingly, or with reckless disregard or indifference, causing or permitting</p> <p>(a) the \$1000 sum to be transferred from the practitioner's trust account and retained to his personal bank account; and</p> <p>(b) the various amounts claimed as costs and disbursements, to be paid into the practitioner's general account,</p> <p>when each of those amounts should have been delivered to the clients immediately after the completion of the settlements in breach of sections 215 and 224 of the LP Act.</p> <p>Professional misconduct by, between October 2014 and November 2014, in the course of responding to the clients' queries about the disbursements of funds at the settlements, by:</p> <ol style="list-style-type: none"> 1. causing to be prepared and sent, an email to the client dated 12 November 2014 which contained statements and/or representations which were false and/or misleading and/or had the potential to mislead and where the practitioner knew the statements and/or representations were false and/or misleading and/or had the potential to mislead and intended that the client be misled; and 2. failing to send to the clients a comprehensive explanation of all funds disbursed together with the vouchers and documentation that evidenced the amounts so disbursed in relation to each of the settlements. <p>Unsatisfactory professional conduct by, between October and November 2014 in the course of acting for the clients, in failing to report irregularities in the</p> | |

| Application No. | Allegation | Status |
|-----------------|---|--------|
| | <p>practitioner's legal practice's trust account to the Legal Practice Board of Western Australia, namely the contravention of sections 215 and 224 of the LP Act referred to in Ground 1 above, as soon as practicable after the practitioner became aware of those irregularities, in breach of section 227(1) of the LP Act.</p> <p>Professional misconduct by, contrary to rule 50 of the <i>Legal Profession Conduct Rules 2010 (WA)</i>, not being open and candid in his dealings with, and failed to provide a full and accurate account of his conduct to the Board and the Committee, by:</p> <ol style="list-style-type: none"> 1. between about October 2014 and November 2014, and in the course of corresponding with the Board in purported compliance with the practitioner's obligation under section 227 of the LP Act to notify the Board of the trust money discrepancy and the failure to deliver trust money, preparing and sending a letter to the Board dated 17 November 2014 in respect of the circumstances surrounding a transfer of the sum in which the practitioner: <ol style="list-style-type: none"> 1.1 made statements and/or representations which were false and/or misleading and/or had the potential to mislead; and 1.2 did not give a candid explanation nor provide a full and accurate account to the Board as to the circumstances of the trust money discrepancy and the failure to deliver trust money, <p>and the practitioner knew that the statements and/or representations in the 17 November letter were false and/or misleading and/or had the potential to mislead and did not give a candid explanation nor provide a full and accurate account of the irregularity purported to be reported to the Board, and intended that the Board rely upon and be misled by the statements and/or representations in that the letter; alternatively, was recklessly indifferent or further alternatively, grossly careless, as to whether the 17 November letter was misleading and did not give a candid explanation nor provide a full and</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|--|---------------|
| | <p>accurate account of the irregularity purported to be reported.</p> <p>2. between 3 December 2014 and 29 June 2017, and in the course of corresponding with the Committee following a complaint made by the clients against the practitioner arising from the practitioner's conduct in the course of acting for the clients, and in relation to matters covered by requests by the Committee to provide comments or information in relation to the practitioner's conduct or professional behaviour, the practitioner prepared and sent (or caused to be prepared and sent):</p> <p>2.1 a letter to the Committee dated 3 December 2014;</p> <p>2.2 submissions to the Committee dated 21 July 2015;</p> <p>2.3 a letter to the Committee dated 10 May 2017; and</p> <p>2.4 a letter to the Committee dated 29 June 2017,</p> <p>which did not give a candid explanation nor provide a full and accurate account of his professional conduct in the course of acting for the clients and made statements and/or representations which were false and/or misleading and/or had the potential to mislead the Committee in circumstances where:</p> <p>(a) the practitioner well knew the statements and/or representations were false or misleading, or both, in a material respect and/or that they had the potential to mislead the Committee and the practitioner intended that the Committee be misled;</p> <p>(b) alternatively to (a), the practitioner acted with reckless disregard or indifference as to whether or not the statements and/or representations were false or misleading, or both, and/or had the potential to mislead the Committee and as to whether the</p> | |

| <i>Application No.</i> | <i>Allegation</i> | <i>Status</i> |
|------------------------|---|---------------|
| | (c) Committee would be misled; further alternatively, the practitioner was grossly careless in failing to ensure that the statements and/or representations were not false or misleading, or both, in a material respect, and/or that they did not have the potential to mislead the Committee. | |

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 may apply to SAT for a review of the Committee's decision only with the leave of SAT.

There were four Review Applications filed during the year and two applications pending from the previous period, two of which were

dismissed by SAT. Four Review Applications remain pending.

The extent of the Committee's involvement in review proceedings depends on the circumstances of the particular matter, however it is required to use its best endeavours to assist SAT to make its decision on the review (s30, *State Administrative Tribunal Act 2004*). As a matter of course, the Committee appears and provides a book of documents and written submissions to SAT. Ordinarily matters are determined on the papers without an oral hearing.

| <i>Review Applications</i> | <i>Total</i> |
|----------------------------|--------------|
| Pending as at 1 July 2020 | 2 |
| Lodged during year | 4 |
| Withdrawn | 0 |
| Dismissed | 2 |
| Pending as at 30 June 2021 | 4 |

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

2016-17 is produced below. It should be noted that in 2018-19 and 2019-20 the Law Complaints Officer made very few dismissals using the delegated powers of the Committee.

| <i>Types of Decisions Reviewed</i> | <i>Total 16 – 17</i> | <i>Total 17 – 18</i> | <i>Total 18 – 19</i> | <i>Total 19 – 20</i> | <i>Total 20 – 21</i> |
|------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Delegated Dismissal | 1 | 0 | 0 | 0 | 4 |
| Committee Decision | 1 | 4 | 3 | 2 | 0 |
| Total | 2 | 4 | 3 | 2 | 4 |

Summary of SAT review applications pursuant to s 435 LPA determined 1 July 2020 – 30 June 2021

| <i>Application No. & Date determined</i> | <i>Applicant</i> | <i>Outcome</i> |
|--|---------------------------|--|
| 171/2019 30/07/2020 | Beros, David | Application for review dismissed |
| <i>Beros and Legal Profession Complaints Committee [2020] WASAT 83 (30 July 2020)</i> | | |
| <ul style="list-style-type: none"> Application for review pursuant to s 435(1)(a) of LP Act of Committee's decision to dismiss multiple complaints arising out of Supreme Court proceedings involving an action under the <i>Family Provision Act 1972</i> concerning the estate of the complainant's father. Application dismissed and leave to review under s 435(2) refused. | | |
| 66/2020 17/11/2020 | Ludlow, Jeremy Richard | Decision set aside and matter remitted for reconsideration Application for review otherwise dismissed |
| <ul style="list-style-type: none"> Application for review pursuant to s 435(1)(b) of LP Act of the Law Complaints Officer's decision to summarily dismiss multiple complaints arising out of Family Court of Western Australia proceedings and subsequent investigation undertaken by the Committee pursuant to s 415 of LP Act. Decision set aside and matter sent back to the Committee for reconsideration having regard to the applicant's reformulated complaints. Proceedings otherwise dismissed. | | |

6.3 Reports to the Full Bench of the Supreme Court

If SAT finds a matter to be proved, it has a range of sanctions open to it, up to and including a period of suspension. Where SAT

considers that a period of suspension is inadequate it can decide to transmit a Report to the Full Bench of the Supreme Court with a recommendation. This is ordinarily done when SAT is of the view that a practitioner's

name should be removed from the roll of practitioners.

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

- On 15 June 2021 a Notice of Originating Motion was filed with the Supreme Court of Western Australia to remove David Charles Mizen from the roll of practitioners. As at 30 June 2021 this had not been determined.
- On 28 June 2021 a Notice of Originating Motion was filed with the Supreme Court of Western Australia to remove Christina Marie Chang from the roll of practitioners. As at 30 June 2021 this had not been determined.

Due to appeals which are yet to be determined, one further practitioner remains the subject of a Report to the Full Bench of the Supreme Court.

6.4 Appeals

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

- an appeal to the Court of Appeal of the Supreme Court (CACV 151 of 2019) by Carroll Penn from a mediated final SAT decision was dismissed by consent.
- an appeal to the Court of Appeal of the Supreme Court (CACV 109 of 2018) by Christina Marie Chang from a SAT interim decision dismissing the practitioner's interim application to set aside a SAT decision based on consent orders was dismissed: [2020] WASCA 208 and [2020] WASCA 208 (S).

- an appeal to the Court of Appeal of the Supreme Court (CACV 61 of 2020) by Christina Marie Chang from a SAT decision was dismissed [CACV 61 of 2020 and 72 of 2020 were consolidated].

Appeals lodged prior to the year, but which have not been determined as at 30 June 2021 were:

- an appeal to the Court of Appeal of the Supreme Court by the Committee from a final SAT decision (CACV 78 of 2019).
- an appeal to the Court of Appeal of the Supreme Court by Nicole Anne Young from a SAT penalty decision (CACV 40 of 2020).
- an appeal to the Court of Appeal of the Supreme Court by Kevin Colin Benedict Staffa from a final SAT decision (CACV 72 of 2020).

The following appeals were lodged during the year and determined:

- an appeal to the Court of Appeal of the Supreme Court (CACV 79 of 2020) by Christina Marie Chang from a final SAT decision was dismissed [CACV 61 of 2020 and 72 of 2020 were consolidated].
- an appeal to the Court of Appeal of the Supreme Court by Manraj Singh Khosa from a SAT interim decision (CACV 132 of 2020).

The following appeals were lodged during the year, but as at 30 June 2021 had not been determined:

- an appeal to the Court of Appeal of the Supreme Court by Kevin Colin Benedict Staffa from a SAT penalty decision (CACV 131 of 2020).

6.5 Other

An application for judicial review and writ of mandamus was lodged during the year against the Committee in respect of an

alleged failure or refusal to perform its duty to deal with complaints made by the applicant as efficiently and expeditiously as practicable, but had not been determined as at 30 June 2021.

An application for judicial review and writs of certiorari and mandamus was lodged during the year against the Law Complaints Officer and Committee in respect of the Law Complaints Officer's purported appointment or nomination of an investigator being beyond power and void, and the alleged breach of statutory duties to investigate each of the applicant's complaints and to deal with each of those complaints as efficiently and expeditiously as practicable, but had not been determined as at 30 June 2021.

An application for judicial review and writ of certiorari lodged prior to the year against a former Law Complaints Officer in respect of a decision to issue a summons to produce documents pursuant to section 520(1)(a) of the LP Act in an extant investigation had not been determined as at 30 June 2021.

An originating motion for contempt lodged prior to the year pursuant to section 520(8) of the LP Act in respect of a practitioner's failure to comply without lawful excuse with a summons to produce documents issued pursuant to section 520(1)(a) of the LP Act in an extant investigation had not been determined as at 30 June 2021.

6.6 Special Leave Applications

During the year one application for special leave to appeal to the High Court was filed and dismissed on the basis the applicant had not identified a question of law sufficient to warrant the grant of special leave.

7. Promoting Professional Standards

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

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

Work has continued in providing guidance in individual cases when dealing with practitioners even where no formal concern is expressed. This can be where suggestions are offered about improving communications with clients, or about improving the written costs disclosure that is provided to a client

either when they are retained or when the likely amount of legal costs exceeds an initial estimate. Practitioners will also contact us directly for guidance which is welcomed.

Staff also engage with practitioners in this way through trust investigations and incorporated legal practice audits when these are conducted.

The LCO and senior staff continue to work collaboratively with the Law Society, the Universities and in other cases to provide CPD seminars and presentations on issues including ethical behaviour and trends in complaint handling.

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

8. Tables

Beginning with the commencement of the 2020–21 period, in preparation for the expected arrival of the Uniform Law, data began to be recorded as agreed by the bodies overseeing the Uniform Law (Legal Services Council and Commissioner for Uniform Legal Services Regulation), and the current Uniform Law jurisdictions (currently New South Wales and Victoria). This refined

the way data was recorded regarding areas of law and issues in enquiries and complaints. Statistics in line with the new categorisation for the 2020 – 21 period are provided by way of separate table, with the previous two years' statistics with the then categorisation scheme provided for comparison purposes.

TABLE 1 RAPID RESOLUTION COMPLAINT ENQUIRIES 2019 - 2021

TYPE OF ENQUIRER 2019 - 2021

| | <i>Total % 2018 – 2019</i> | <i>Total % 2019 – 2020</i> | <i>Total % 2020 – 2021</i> |
|------------------------------------|--------------------------------|--------------------------------|--------------------------------|
| Client/Former Client | 52.4 | 52.7 | 46.8 |
| Friend/Relative of Client | 4.4 | 4.5 | 4.2 |
| Opposing party | 22.5 | 24.8 | 26.8 |
| Beneficiary/Executor/Administrator | 4.6 | 3.0 | 4.0 |
| Practitioner on own behalf | 2.7 | 4.2 | 5.4 |
| Practitioner on another's behalf | 1.6 | 0.7 | 0.8 |
| Other | 11.9 | 10.2 | 12.2 |

ENQUIRIES BY AREAS OF LAW 2019 - 2021

| | <i>Total % 2018 – 2019</i> | <i>Total % 2019 – 2020</i> | <i>Total % 2020 – 2021</i> |
|----------------------------------|--------------------------------|--------------------------------|--------------------------------|
| Family/Defacto Law | 37.5 | 34.5 | - |
| Civil Litigation | 13.2 | 15.4 | - |
| Conveyancing | 1.9 | 2.0 | - |
| Leases / Mortgages / Franchises | 1.5 | 2.4 | - |
| Probate/Wills/ Family Provisions | 10.7 | 11.3 | - |
| Commercial/Corporations Law | 5.5 | 7.1 | - |
| Criminal | 6.2 | 8.4 | - |
| Personal Injuries | 3.7 | 2.8 | - |
| Workers Compensation | 3.3 | 5.6 | - |
| Victims Compensation | 1.6 | 1.6 | - |
| Employment / Industrial Law | 3.4 | 4.3 | - |
| Other | 11.5 | 4.8 | - |

ENQUIRIES BY AREAS OF LAW 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|-----------------------------------|------------------------------|------------------------------|------------------------------|
| Commercial/Corporations/Franchise | - | - | 7.3 |
| Conveyancing | - | - | 2.8 |
| Criminal | - | - | 11.7 |
| Family/DeFacto | - | - | 35.0 |
| Immigration | - | - | 0.6 |
| Employment Law | - | - | 3.1 |
| Land and Environment | - | - | 1.6 |
| Leases | - | - | 1.1 |
| Professional Negligence | - | - | 0.2 |
| Personal Injuries | - | - | 3.4 |
| Probate/Family Provisions | - | - | 4.5 |
| Victims Compensation | - | - | 0.9 |
| Workers Compensation | - | - | 4.7 |
| Building Law | - | - | 0.4 |
| Insolvency | - | - | 0.1 |
| Strata Bodies/Corporates | - | - | 0.8 |
| Wills/Powers of Attorney | - | - | 6.4 |
| Other Civil | - | - | 15.5 |

ENQUIRIES BY ISSUES RAISED 2019 - 2021

| | <i>Total % 2018 – 2019</i> | <i>Total % 2019 – 2020</i> | <i>Total % 2020 – 2021</i> |
|---|--------------------------------|--------------------------------|--------------------------------|
| Cost/Payment Issues | | | |
| Failure to Pay Third Party | 0.4 | 0.5 | - |
| Overcharging | 7.6 | 2.5 | - |
| No Costs Disclosure | 1.8 | 1.4 | - |
| Transfer Costs Without Authority | 0.3 | 0.0 | - |
| Failure / Delay to Provide a Detailed Account | 1.1 | 0.5 | - |
| Other Costs Complaint | 14.3 | 19.4 | - |
| Subtotal | 25.5 | 24.2 | - |
| Communication/Service | | | |
| Act Without / Contrary to Instructions | 2.1 | 3.1 | - |
| No Communication | 9.6 | 9.3 | - |
| Failure to Carry Out Instructions | 3.8 | 2.2 | - |
| Delay | 5.5 | 3.4 | - |
| Lack of Supervision | 0.3 | 0.1 | - |
| No Client Advice | 1.7 | 0.9 | - |
| No Advice on Progress | 1.4 | 0.4 | - |
| Discourtesy | 2.5 | 3.8 | - |
| Neglect | 1.6 | 0.7 | - |
| Subtotal | 28.6 | 23.9 | - |

| | <i>Total % 2018 – 2019</i> | <i>Total % 2019 – 2020</i> | <i>Total % 2020 – 2021</i> |
|--|--------------------------------|--------------------------------|--------------------------------|
| Personal Conduct | | | |
| Unethical Conduct | 14.6 | 2.2 | - |
| Negligence | 3.9 | 0.9 | - |
| Misleading | 2.6 | 2.0 | - |
| Conflict of interest | 3.4 | 3.8 | - |
| Failure to Transfer Documents | 0.4 | 0.2 | - |
| Communicating with a Client of Another Solicitor | 0.1 | 0.2 | - |
| Threatening Behaviour | 1.6 | 6.0 | - |
| False Swearing of Documents | 0.1 | 0.3 | - |
| Breach Confidentiality | 0.8 | 1.4 | - |
| Undue Pressure | 0.6 | 1.0 | - |
| Alteration of Documents | 0.1 | 0.1 | - |
| Liens | 1.1 | 1.4 | - |
| Subtotal | 29.0 | 19.6 | - |
| Other | 16.8 | 32.2 | - |

ENQUIRIES BY ISSUES RAISED 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|---|------------------------------|------------------------------|------------------------------|
| Communication | | | |
| Rudeness/Threatening Behaviour/Discourtesy | - | - | 9.8 |
| Poor/No Communication | - | - | 8.9 |
| Other Communication | - | - | 6.3 |
| Subtotal | - | - | 25.1 |
| Compliance Matters | | | |
| Practising Certificate Issues | - | - | 0.1 |
| Non-Compliance with Fiscal Obligation | - | - | 0 |
| Failure to Respond to Regulator | - | - | 0.1 |
| Other Breaches of the LP Act, Regs or Rules | - | - | 0.1 |
| Other Compliance Matters | - | - | 0.7 |
| Subtotal | - | - | 0.9 |
| Costs | | | |
| Disclosure | - | - | 2.8 |
| Billing Issues | - | - | 3.7 |
| Overcharging | - | - | 3.9 |
| Liens | - | - | 0.6 |
| Other Costs | - | - | 12.0 |
| Subtotal | - | - | 22.9 |

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|---|------------------------------|------------------------------|------------------------------|
| Ethical Matters | | | |
| Settlement Issues | - | - | 0.7 |
| Fraud (Not trust fund) | - | - | 0.1 |
| Misleading Conduct | - | - | 6.7 |
| Ceasing to Act | - | - | 0.2 |
| Conflict of Interest | - | - | 2.8 |
| Communicating with another lawyer's client | - | - | 0.2 |
| Undertakings | - | - | 0 |
| Breach of Confidentiality | - | - | 1.6 |
| Instructions Issues | - | - | 5.3 |
| Advertising | - | - | 0.1 |
| Failure to pay third party | - | - | 0.4 |
| Abuse of Process | - | - | 0.8 |
| Failure to comply with court orders | - | - | 0.7 |
| Unethical Conduct | - | - | 2.8 |
| Other Ethical Matters | - | - | 1.2 |
| Subtotal | - | - | 23.6 |
| Competence and Diligence | | | |
| Failure to Supervise | - | - | 0.2 |
| Delay | - | - | 3.3 |
| Poor Advice / Case Handlings | - | - | 8.2 |
| Client Capacity | - | - | 0.3 |
| Record Management | - | - | 0.1 |
| General Incompetence | - | - | 0 |
| Other Competence and Diligence | - | - | 6.4 |
| Subtotal | - | - | 18.5 |
| Trust Money and Trust Accounts | | | |
| Failure to Account for Trust Monies | - | - | 0.1 |
| Other Breaches of the LP Act, Regs or Rules | - | - | 0.2 |
| Other Trust Money and Trust Accounts | - | - | 0.2 |
| Subtotal | - | - | 0.5 |
| Personal Conduct | | | |
| Discrimination | - | - | 0 |
| Sexual Harassment | - | - | 0.1 |

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|------------------------|------------------------------|------------------------------|------------------------------|
| Workplace Bullying | - | - | 0 |
| Other Personal Conduct | - | - | 8.5 |
| Subtotal | - | - | 8.6 |

RESOLUTION OF COMPLAINT ENQUIRIES 2019 - 2021

| | <i>Total % 2018 – 2019</i> | <i>Total % 2019 - 2020</i> | <i>Total % 2020 – 2021</i> |
|---|--------------------------------|--------------------------------|--------------------------------|
| Conciliated Outcome | | | |
| Fee waiver | 1.2 | 1.3 | 1.4 |
| Apology | 0.6 | 1.1 | 0.5 |
| Undertaking | 0.1 | 0.2 | 0 |
| Discounted fees | 4.4 | 3.1 | 2.4 |
| Release of lien | 0.4 | 0 | 0.2 |
| Withdrawn | 2.7 | 2.2 | 5.2 |
| Improved communication | 2.7 | 2.0 | 2.5 |
| Improved legal practice, training, supervision, mentoring or management systems | 0.7 | 0.6 | 0.5 |
| Other | 0 | 0 | 0 |
| Subtotal | 12.9 | 10.4 | 12.7 |
| No Further Action | | | |
| Accepted Committee/practitioner's response | 14.8 | 14.4 | 21.8 |
| Brochures provided | 2.9 | 3.0 | 0.4 |
| Suggested direct approach to practitioner | 1.8 | 1.4 | 1.2 |
| No further information provided | 32.1 | 28.0 | 29.1 |
| Advised to get legal advice | 6.3 | 6.4 | 6.3 |
| Misconceived | 4.4 | 5.1 | 6.7 |
| Other | 13.7 | 24.6 | 11.0 |
| Subtotal | 76.0 | 83.0 | 76.4 |
| Expression of Concern issued | 5.2 | 0.4 | 1.5 |
| Part/Whole enquiry resolved per above category, but referred for investigation | 0.4 | 0 | 0.2 |
| Referred for investigation | 5.5 | 6.1 | 5.7 |
| Referred for formal determination s415/s425 | 0.1 | 0.1 | 3.6 |
| Subtotal | 11.2 | 6.6 | 10.9 |

TABLE 2 NEW COMPLAINTS/CONDUCT INVESTIGATIONS/RAPID RESOLUTION ENQUIRIES 2019 - 2021

| | <i>Total 2018 – 19</i> | <i>Total 2019 – 20</i> | <i>Total 2020 – 21</i> |
|----------------------------|----------------------------|----------------------------|----------------------------|
| Complaint Investigations | 59 | 71 | 59 |
| Conduct Investigations | 24 | 11 | 25 |
| Rapid Resolution enquiries | 1146 | 989 | 1060 |
| Total | 1229 | 1071 | 1144 |

TABLE 3 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY TYPE OF COMPLAINANT 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|--|------------------------------|------------------------------|------------------------------|
| Client / former client | 25 (30.1) | 40 (48.8) | 32 (38.1) |
| Client's friend / relative | 0 | 1 (1.2) | 1 (1.2) |
| Opposing party | 12 (14.5) | 14 (17.1) | 7 (8.3) |
| Beneficiary / executor / administrator | 5 (6) | 0 | 1 (1.2) |
| Practitioner on own behalf | 8 (9.6) | 6 (7.3) | 15 (17.9) |
| Practitioner on another's behalf | 3 (3.6) | 2 (2.4) | 0 |
| Legal Practice Board | 0 | 0 | 0 |
| Other | 5 (6) | 9 (11.0) | 3 (3.6) |
| Court Enquiry | 1 (1.2) | 2 (2.4) | 1 (1.2) |
| Other Investigation | 23 (27.7) | 8 (9.8) | 24 (28.6) |
| Total | 83 | 82 | 84 |

TABLE 4 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY AREAS OF LAW 2019
- 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|---------------------------------|------------------------------|------------------------------|------------------------------|
| Family/Defacto law | 21 (23.1) | 29 (28.2) | - |
| Civil Litigation | 11 (12.1) | 11 (10.7) | - |
| Conveyancing | 7 (7.7) | 4 (3.9) | - |
| Leases/Mortgages/Franchises | 3 (3.3) | 2 (1.9) | - |
| Probate/Wills/Family Provisions | 11 (12.1) | 14 (13.6) | - |
| Commercial/Corporations Law | 4 (4.4) | 7 (6.8) | - |
| Criminal law | 11 (12.1) | 10 (9.7) | - |
| Personal injuries | 3 (3.3) | 1 (1.0) | - |
| Workers Compensation | 0 | 4 (3.9) | - |
| Victims Compensation | 3 (3.3) | 0 | - |
| Employment/Industrial law | 2 (2.2) | 1 (1.0) | - |
| Professional negligence | 0 | 2 (1.9) | - |
| Land and Environment | 0 | 0 | - |
| Immigration | 0 | 1 (1.0) | - |
| Other | 15 (16.5) | 17 (16.5) | - |

TABLE 4 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY AREAS OF LAW 2020
- 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|-----------------------------------|------------------------------|------------------------------|------------------------------|
| Commercial/Corporations/Franchise | - | - | 6 (7.1) |
| Conveyancing | - | - | 4 (4.8) |
| Criminal | - | - | 14 (16.7) |
| Family/DeFacto | - | - | 17 (20.2) |
| Immigration | - | - | 2 (2.4) |
| Employment Law | - | - | 1 (1.2) |
| Land and Environment | - | - | 0 |
| Leases | - | - | 2 (2.4) |
| Professional Negligence | - | - | 14 (16.7) |
| Personal Injuries | - | - | 2 (2.4) |
| Probate/Family Provisions | - | - | 4 (4.8) |
| Victims Compensation | - | - | 1 (1.2) |
| Workers Compensation | - | - | 3 (3.6) |
| Building Law | - | - | 0 |
| Insolvency | - | - | 0 |
| Strata Bodies/Corporates | - | - | 3 (3.6) |
| Wills/Powers of Attorney | - | - | 2 (2.4) |
| Other Civil | - | - | 9 (10.7) |

TABLE 5 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY AREAS OF COMPLAINT 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|--|------------------------------|------------------------------|------------------------------|
| Cost/Payment issues | | | |
| Failure to pay third party | 2 (0.9) | 0 | - |
| Overcharging | 10 (4.3) | 8 (3.5) | - |
| No costs disclosure | 8 (3.4) | 9 (3.9) | - |
| Transfer costs without authority | 5 (2.1) | 2 (0.9) | - |
| Failure/delay to provide a detailed account | 2 (0.9) | 1 (0.4) | - |
| Other cost complaint | 10 (4.3) | 4 (1.7) | - |
| Subtotal | 37 (15.9) | 24 (10.4) | - |
| Communication/Service | | | |
| Act without/contrary to instructions | 11 (4.7) | 11 (4.8) | - |
| No communication | 7 (3.0) | 25 (10.9) | - |
| Failure to carry out instructions | 12 (5.2) | 17 (7.4) | - |
| Delay | 18 (7.7) | 22 (9.6) | - |
| Lack of supervision | 3 (1.3) | 15 (6.5) | - |
| No client advice | 10 (4.3) | 12 (5.2) | - |
| No advice on progress | 7 (3.0) | 3 (1.3) | - |
| Discourtesy | 13 (5.6) | 13 (5.7) | - |
| Neglect | 9 (3.9) | 4 (1.7) | - |
| Subtotal | 90 (38.6) | 122 (53.0) | - |
| Personal Conduct | | | |
| Unethical conduct | 24 (10.3) | 19 (8.3) | - |
| Negligence | 0 | 2 (0.9) | - |
| Misleading | 17 (7.3) | 11 (4.8) | - |
| Conflict of interest | 15 (6.4) | 3 (1.3) | - |
| Failure to transfer documents | 0 | 1 (0.4) | - |
| Communicating with a client of another solicitor | 2 (0.9) | 0 | - |
| Threatening behaviour | 3 (1.3) | 6 (2.6) | - |
| False swearing of documents | 0 | 2 (0.9) | - |
| Breach confidentiality | 2 (0.9) | 3 (1.3) | - |
| Failure to assist LPCC | 1 (0.4) | 4 (1.7) | - |
| Undue pressure | 1 (0.4) | 3 (1.3) | - |

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|--|------------------------------|------------------------------|------------------------------|
| Alteration of documents | 1 (0.4) | 1 (0.4) | - |
| Liens | 0 | 1 (0.4) | - |
| Subtotal | 66 (28.3) | 56 (24.3) | - |
| Non-Compliance | | | |
| Not complying with undertaking | 2 (0.9) | 0 | - |
| Practising without a practice certificate | 2 (0.9) | 0 | - |
| Not complying with Legal Profession Act/Regulations | 9 (3.9) | 2 (0.9) | - |
| Subtotal | 13 (5.6) | 2 (0.9) | - |
| Trust Account Matters | | | |
| Breach of Sections of Act / Regulations relating to trust monies | 7 (3.0) | 5 (2.2) | - |
| Misappropriation | 1 (0.4) | 3 (1.3) | - |
| Failure to account | 2 (0.9) | 1 (0.4) | - |
| Other – Trust Account Matters | 2 (0.9) | 2 (0.9) | - |
| Subtotal | 12 (5.2) | 11 (4.8) | - |
| Other | 15 (6.4) | 15 (6.5) | - |

TABLE 5 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY AREAS OF COMPLAINT 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|---|------------------------------|------------------------------|------------------------------|
| Communication | | | |
| Rudeness/Threatening Behaviour/Discourtesy | - | - | 15 (8.9) |
| Poor / No Communication | - | - | 10 (5.9) |
| Other Communication | - | - | 2 (1.2) |
| Subtotal | - | - | 27 (16.0) |
| Compliance Matters | | | |
| Practising Certificate Issues | - | - | 2 (1.2) |
| Non-Compliance with Fiscal Obligation | - | - | 1 (0.6) |
| Failure to Respond to Regulator | - | - | 5 (3.0) |
| Other Breaches of the LP Act, Regs or Rules | - | - | 4 (2.4) |
| Other Compliance Matters | - | - | 3 (1.8) |
| Subtotal | - | - | 15 (8.9) |
| Costs | | | |

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|--|------------------------------|------------------------------|------------------------------|
| Disclosure | - | - | 4 (2.4) |
| Billing Issues | - | - | 5 (3.0) |
| Overcharging | - | - | 5 (3.0) |
| Liens | - | - | 0 |
| Other Costs | - | - | 0 |
| Subtotal | - | - | 14 (8.3) |
| Ethical Matters | | | |
| Settlement Issues | - | - | 0 |
| Fraud (Not trust fund) | - | - | 7 (4.1) |
| Misleading Conduct | - | - | 18 (10.7) |
| Ceasing to Act | - | - | 0 |
| Conflict of Interest | - | - | 8 (4.7) |
| Communicating with another lawyer's client | - | - | 0 |
| Undertakings | - | - | 0 |
| Breach of Confidentiality | - | - | 1 (0.6) |
| Instructions Issues | - | - | 1 (0.6) |
| Advertising | - | - | 1 (0.6) |
| Failure to pay third party | - | - | 0 |
| Abuse of Process | - | - | 3 (1.8) |
| Failure to comply with court orders | - | - | 3 (1.8) |
| Unethical Conduct | - | - | 12 (7.1) |
| Other Ethical Matters | - | - | 4 (2.4) |
| Subtotal | - | - | 58 (34.3) |
| Competence and Diligence | | | |
| Failure to Supervise | - | - | 1 (0.6) |
| Delay | - | - | 8 (4.7) |
| Poor Advice / Case Handlings | - | - | 17 (10.1) |
| Client Capacity | - | - | 1 (0.6) |
| Record Management | - | - | 0 |
| General Incompetence | - | - | 0 |
| Other Competence and Diligence | - | - | 16 (9.5) |
| Subtotal | - | - | 43 (25.4) |

| Trust Money and Trust Accounts | | | |
|---|---|---|----------------|
| Failure to Account for Trust Monies | - | - | 2 (1.2) |
| Other Breaches of the LP Act, Regs or Rules | - | - | 2 (1.2) |
| Other Trust Money and Trust Accounts | - | - | 4 (2.4) |
| Subtotal | - | - | 8 (4.7) |
| Personal Conduct | | | |
| Discrimination | - | - | 0 |
| Sexual Harassment | - | - | 0 |
| Workplace Bullying | - | - | 0 |
| Other Personal Conduct | - | - | 4 (2.4) |
| Subtotal | - | - | 4 (2.4) |

TABLE 6 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|---------------------------|------------------------------|------------------------------|------------------------------|
| Barrister | 3 (3.6) | 1 (1.2) | 8 (9.5) |
| Sole Principal | 40 (48.2) | 34 (41.5) | 34 (40.5) |
| Other Principal | 15 (18.1) | 9 (11.0) | 8 (9.5) |
| Non Principal | 9 (10.8) | 16 (19.5) | 18 (21.4) |
| Government Legal Position | 1 (1.2) | 1 (1.2) | 0 |
| Corporate Legal Position | 1 (1.2) | 0 | 0 |
| Firm only | 0 | 11 (13.4) | 1 (1.2) |
| Struck off/suspended | 0 | 1 (1.2) | 2 (2.4) |
| Other | 14 (16.9) | 9 (11.0) | 13 (15.5) |
| Total | 83 | 82 | 84 |

TABLE 7 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY PRACTITIONER AREA OF PRACTICE 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|----------------|------------------------------|------------------------------|------------------------------|
| CBD/West Perth | 38 (45.8) | 49 (59.8) | 50 (59.5) |
| Suburbs | 42 (50.6) | 29 (35.4) | 29 (34.5) |
| Country | 3 (3.6) | 2 (2.4) | 3 (3.6) |
| Interstate | 0 | 2 (2.4) | 2 (2.4) |
| Not known | 0 | 0 | 0 |
| Total | 83 | 82 | 84 |

TABLE 8 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY PRACTITIONER YEARS IN PRACTICE 2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|--------------------------|------------------------------|------------------------------|------------------------------|
| Under 5 | 7 (8.4) | 3 (3.7) | 2 (2.4) |
| 5 – 9 | 21 (25.3) | 15 (18.3) | 10 (11.9) |
| 10 – 14 | 13 (15.7) | 15 (18.3) | 11 (13.1) |
| 15 – 19 | 12 (14.5) | 8 (9.8) | 13 (15.5) |
| 20 – 24 | 10 (12.0) | 13 (15.9) | 15 (17.9) |
| 25 – 29 | 7 (8.4) | 5 (6.1) | 17 (20.2) |
| 30 – 34 | 4 (4.8) | 3 (3.7) | 3 (3.6) |
| 35 – 39 | 6 (7.2) | 3 (3.7) | 6 (7.1) |
| Over 40 | 2 (2.4) | 3 (3.7) | 6 (7.1) |
| Not known/Not applicable | 1 (1.2) | 14 (17.1) | 1 (1.2) |
| Total | 83 | 82 | 84 |

TABLE 9 COMPLAINTS/CONDUCT INVESTIGATIONS OPENED BY PRACTITIONER AGE
2019 - 2021

| | <i>Total % 2018 – 19</i> | <i>Total % 2019 – 20</i> | <i>Total % 2020 – 21</i> |
|--------------------------|------------------------------|------------------------------|------------------------------|
| Under 25 | 2 (2.4) | 0 | 0 |
| 25 – 29 | 3 (3.6) | 2 (2.4) | 0 |
| 30 – 34 | 11 (13.3) | 4 (4.9) | 4 (4.8) |
| 35 – 39 | 6 (7.2) | 8 (9.8) | 4 (4.8) |
| 40 – 44 | 6 (7.2) | 11 (13.4) | 6 (7.1) |
| 45 – 49 | 8 (9.6) | 8 (9.8) | 12 (14.3) |
| 50 – 54 | 13 (15.7) | 8 (9.8) | 27 (32.1) |
| 55 – 59 | 13 (15.7) | 14 (17.1) | 10 (11.8) |
| 60 – 64 | 11 (13.3) | 8 (9.8) | 9 (10.7) |
| 65 – 69 | 6 (7.2) | 3 (3.7) | 8 (9.5) |
| 70 – 75 | 2 (2.4) | 2 (2.4) | 3 (3.6) |
| 76 – 80 | 1 (1.2) | 1 (1.2) | 1 (1.2) |
| 81+ | 0 | 0 | 0 |
| Not known/Not applicable | 1 (1.2) | 13 (15.9) | 0 |
| Total | 83 | 82 | 84 |

TABLE 10 NUMBER OF PRACTITIONERS INVESTIGATED 2019 – 2021

| | <i>Total 2018 – 19</i> | <i>Total 2019 – 20</i> | <i>Total 2020 – 21</i> |
|---|----------------------------|----------------------------|----------------------------|
| Practitioners with 1 complaint | 61 | 53 | 59 |
| Practitioners with 2 complaints | 5 | 7 | 7 |
| Practitioners with 3 or more complaints | 3 | 3 | 3 |
| Total number of practitioners | 69 | 63 | 69 |

TABLE 11 OUTSTANDING INVESTIGATIONS 2019 - 2021

| | <i>Total 2018 – 19</i> | <i>Total 2019 – 20</i> | <i>Total 2020 – 21</i> |
|------------------------------------|----------------------------|----------------------------|----------------------------|
| Outstanding investigations | 77 | 111 | 112 |
| Outstanding conduct investigations | 29 | 34 | 50 |
| Total | 106 | 145 | 162 |

9. Information Statements

9.1 Freedom of Information Act

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

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

Information Statement

1. INTRODUCTION

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

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

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

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

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

2. STATEMENT OF STRUCTURE AND FUNCTIONS

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

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

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

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

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

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

Our Process

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

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

Organisational Structure

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

3. PUBLIC PARTICIPATION IN AGENCY FUNCTIONS

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

4. INFORMATION HELD BY THE COMPLAINTS COMMITTEE

Publications

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

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

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

Documents

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

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

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

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

5. PROCEDURES FOR FOI ACCESS

Freedom of Information Officer

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

Submitting an FOI request

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

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

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

A valid FOI application needs to:

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

The FOI Process

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

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

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

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

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

Access Charges

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

In addition, other fees may apply for:

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

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

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

Procedure for Amending Personal Information

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

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

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

6. INTERNAL REVIEW RIGHTS

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

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

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

Applications for internal review can be made to:

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

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

No further fees apply to an application for internal review.

7. EXTERNAL REVIEW RIGHTS

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

Complaints lodged with the OIC must:

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

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

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

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

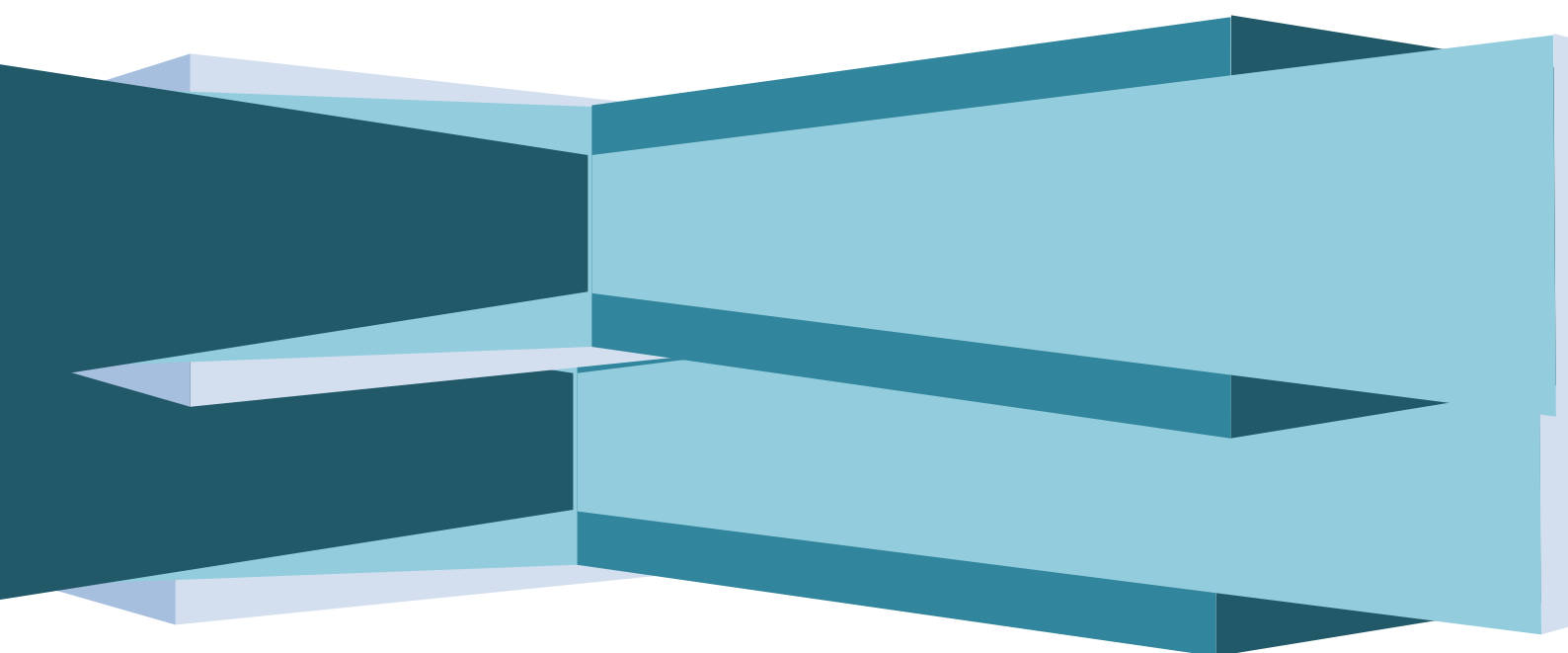
The Information Commissioner is an independent officer who reports directly to Parliament and whose role it is, where an applicant is dissatisfied with a decision, to review decisions by agencies on access applications and applications to amend personal information.

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

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

8. STATEMENT REVIEW

This FOI Information Statement is current as at August 2020 and is reviewed annually.



LPCCWA

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