

**LEGAL PRACTICE BOARD  
OF WESTERN AUSTRALIA**

**REPORT FOR THE PERIOD  
1 JULY 2003 - 30 JUNE 2004**

**5TH FLOOR  
KINGS BUILDING  
533 HAY STREET  
PERTH WA 6000**

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## REPORT FROM THE CHAIRMAN OF THE BOARD

2003 / 2004 saw the introduction of the *Legal Practice Act, 2003*.

As foreshadowed, the Act has brought about a significant change to the framework in which legal practitioners and the Board operate. Some of these changes are outlined in the attached Report.

This year also saw the Advisory Committee into Practical Legal Training in Western Australia publish its final report. The Committee's recommendations were embraced by the Board (as well as the Law Society) and are presently being implemented.

The Committee's final recommendation was that "consideration now be given to establishing an alternate route to admission offered in Western Australia through the satisfactory completion of a PLT course in the State". A new Advisory Committee is presently being established to investigate and report on that topic. I am hopeful that the Advisory Committee's work will be completed by the end of 2005.

Another significant development is the introduction of mandatory continuing legal education in Western Australia. A draft scheme has been prepared by the Board and made available to the profession for comment. Comments are presently being received by the Board and will be considered in the early New Year.

Each CLE period will be 12 months commencing 1 April each year. The first CLE period will commence on 1 April 2006 and conclude on 31 March 2007. In respect of that first CLE period, the Board has decided that CLE points may be to be accumulated from as early as 1 April 2005.

As with past years, my thanks go to those members of the Board who have regularly attended at meetings and, where necessary, been prepared to volunteer their services, often at short notice. Again, the Board's work load this year has been immense.

My thanks also go to Ken Martin QC and Anna Liscia, Deputy Chair's during the period the subject of this report, Mary-Anne Paton, the Board's Secretary and General Manager and, as always, the Board's hard working and dedicated staff.



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S Penglis  
Chairman  
December 2004

## REPORT FROM THE SECRETARY AND GENERAL MANAGER

The *Legal Practice Act 2003* ('the Act') came into effect in Western Australia on 1 January 2004, with the exception of Part 8 (Foreign Lawyers) which came into force on 1 April 2004.

In repealing the *Legal Practitioners Act 1893*, the new Act has given the WA legal profession access to far reaching changes, particularly in terms of business structures and entry into the National Practice Certificate Scheme.

In respect to WA's participation in the National Scheme, it is noted that whilst supporting the development of a national legal services market, a consequence for the Board, and hence the WA profession, is a drop in the Board's revenue. The Board's primary source of income is from fees for practice certificates. This annual cash income funds the Board's operations and salaries of its staff. As is noted further on in this Report, the Board's staff carry out operations in Central Administration, the Legal Practitioners Complaints Committee, The Law Library and the Articles Training Program.

Board members provide their services, as these encompass the work of the Board, the Legal Practitioners Complaints Committee and the Legal Practitioners Disciplinary Tribunal, on a voluntary basis.

The new Act has widened the Board's powers in several areas, including the regulation of articled clerks and their principals, and practice certificates.

The *Legal Practice Board Rules 2004*, promulgated on 14 May 2004, have, inter alia, introduced a new fee structure as well as provided a revised and expanded series of forms to facilitate registration and the provision of key information to the Board.

In preparing for and implementing the *Legal Practice Act 2003*, the Board has continued its organisational review. This has seen an expansion in human and technological resources, which although advanced, remains a work in progress.

The Board has, like all Western Australian state organisations, been required to implement requisite records management processes to comply with the State Records Act 2000. This legislation has significant implications for the handling of all records and continues to require dedication of resources to ensure compliance.

In implementing new legislation and continuing an organisational restructure during 2003 and 2004 the Board has focused on several areas requiring significant resources to regulate. In particular, these include the annual renewal of practice certificates and the continuing failure of practitioners to ensure their certification prior to commencing legal practice.

It is of great concern to the Board that a significant percentage of the profession is apparently either unaware of their professional obligations in the above areas as provided for by the *Legal Practice Act 2003*, (and previously the *Legal Practitioners Act 1893*), or not giving these professional obligations due regard.

The profession is reminded that an uncertificated practitioner (unless held to fall under the ambit of Section 36 of the Act) cannot engage in the practice of law in this jurisdiction and cannot raise fees for any work undertaken whilst uncertificated.

The Board is also concerned about a related and apparently increasing trend of employing admitted legal practitioners as law clerks. In this regard the profession's attention is drawn

to sections 128 and 131 of the Act and reminded that claiming status as a law clerk is not an adequate defence against engaging in the practice of law without a practice certificate.

The Board has been also focussed on preparing a draft policy for the introduction of continuing legal education (CLE), anticipating continuing legal education will commence on 1 April 2005. As the Board understands, the second reading speeches in relation to the Act make it clear that the Government intended to make CLE mandatory, and that it be mandatory for all practitioners.

However, a review of the legislation has indicated that the Board does not have the power to impose mandatory CLE on the WA legal profession. This matter has been brought to the attention of the Attorney General who has indicated his intention to seek appropriate amendments to the Act in the New Year.

In responding to the demands and challenges of 2003 and 2004 I am indebted to the support, professionalism and dedication of my colleagues.

I also welcome this opportunity to personally thank members of the Legal Practice Board, particularly the Chairperson, Steven Penglis, the Deputy Chairperson, Anna Liscia, the Convenors and Deputy Convenors of the Board's standing Committees – Ted Sharp and Robert Cock QC (Management), Ken Martin QC and Mark Ritter SC (Admissions), Michael Odes QC and Wayne Martin QC (Professional Affairs), and Gail Archer and Grant Donaldson SC (Legal Education) – and their colleagues, for their ongoing and voluntary commitment to the Western Australian legal profession and their support of the Board's staff.

I extend my personal thanks to the Hon. Justice McKechnie, the Hon. Justice Hasluck and the Hon. Justice Simmonds for their expertise and support in respect to the Articles Training Program and the Law Library.



Mary-Anne Paton  
Secretary and General Manager  
December 2004

## **LEGAL PRACTICE BOARD OF WESTERN AUSTRALIA**

### **ROLE OF THE BOARD**

The Legal Practice Board ('the Board') is the statutory regulatory authority for the legal profession in Western Australia. It is responsible for the admission, regulation and, through the Legal Practitioners Complaints Committee and the Legal Practitioners Disciplinary Tribunal, the discipline of all legal practitioners in Western Australia, pursuant to the provisions of the *Legal Practice Act 2003* and the *Legal Practice Board Rules 2004*.

### **BACKGROUND**

Originally named the Barristers' Board, the organisation was created on 4 October 1893 when the *Legal Practitioners Act 1893* came into operation. It was renamed the Legal Practice Board when amendments to the Act came into effect on 1 February 1993.

Pursuant to these amendments, disciplinary functions of the Barristers Board were passed to two new statutory bodies, the Legal Practitioners Complaints Committee ('the Complaints Committee'), and the Legal Practitioners Disciplinary Tribunal.

With regard to their statutory functions, these two bodies report directly to Parliament via the Attorney General, and each produces an annual report, independently of the Board. In terms of administrative, financial and human resource structures, the Complaints Committee is part of the Board-wide organisation.

The Board's original enabling legislation, the *Legal Practitioners Act 1893*, was replaced with the *Legal Practice Act 2003* on 1 January 2004. The *Legal Practice Board Rules 1949* were replaced with the *Legal Practice Board Rules 2004*, effective 14 May 2004.

### **MEMBERSHIP**

The Board as constituted under Section 7 of the *Legal Practice Act 2003* consists of:

- a) The Attorney General;
- b) The Solicitor General, or, if there is no Solicitor General, the State Solicitor;
- c) Each Queen's Counsel, and each Senior Counsel, whose principal place of practice is in this State and who is not a full-time judicial officer; and
- d) 12 legal practitioners of at least 3 years standing and practice in this State who are elected as members.

### **Queens Counsel**

As at 30 June 2004 there were 25 Queens Counsel resident and practising in Western Australia, and therefore members of the Board. Of these 25 members, Mr RH Pringle QC and Mr TE O'Connor QC both retired as of 30 June 2004.

## **Senior Counsel**

Following proclamation of the Act on 1 January 2004, Board membership extended to all Senior Counsel resident and practising in Western Australia. As at 30 June 2004, there were 13 Senior Counsel resident and practising in Western Australia, and therefore members of the Board.

Ms Jane Crisford SC, originally an elected member of the Board prior to her appointment as Senior Counsel, retired from the Board on 6 February 2004, due to her appointment to the bench of the District Court of Western Australia.

## **Elected members**

### 1 June 2003 – April 2004 election

Elected members in office during this period were: Ms GA Archer, Ms J Crisford SC (resigned 6 February 2004), Ms AM Liscia, Mr S Penglis, Mr MT Ritter, Mr TH Sharp, Mr AS Stavrianou, Mr JG Syminton and Mr I Weldon.

Members appointed pursuant to the *Legal Practitioners Act 1893* were for a term of one year.

### April 2004 election to 30 June 2004

Pursuant to the provisions of the new Act, twelve members (increased from nine) were elected to office in the April 2004 election. These were: Ms GA Archer, Mr GR Donaldson, Ms R Lee, Ms AM Liscia, Mr S Penglis, Mr MT Ritter, Ms S Schlink, Mr TH Sharp, Mr JG Syminton, Ms CH Thompson, Ms F Walter and Mr I Weldon.

Members appointed pursuant to the *Legal Practice Act 2003* are for terms of two years and one year. In this first election held under the new Act, Part 2, Section 6(4) of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* provides "in the case of the 12 members of the new Board first elected after the coming into operation of this section –

- a) the 6 members first elected are to hold office for a term of 2 years from the date of becoming a member; and
- b) the 6 members next elected are to hold office for a term of one year from the date of becoming a member."

## **Appointment of Chairperson and Deputy Chairperson**

Mr S Penglis was re-appointed Chairperson on 5 May 2004, effective for the ensuing year.

Deputy Chairperson, Mr KJ Martin QC, who did not stand for reappointment, was succeeded on 5 May 2004 by Ms AM Liscia, who was appointed for the ensuing year.

## Board members as at 30 June 2004

### Attorney General

The Hon. Mr J McGinty, MLA

### Solicitor General

Mr RJ Meadows QC

### Chair

Mr S Penglis

### Deputy Chair

Ms AM Liscia

### Elected Members

Ms GA Archer

Mr GR Donaldson

Ms R Lee

Ms AM Liscia

Mr S Penglis

Mr MT Ritter

Ms S Schlink

Mr TH Sharp

Mr JG Syminton

Ms CH Thompson

Ms F Walter

Mr I Weldon

### Queen's Counsel

Mr RE Birmingham QC

Mr MJ Buss QC

Mr F Castiglione QC

Mr RE Cock QC

Mr RJ Davies QC

Dr AF Dickey QC

The Hon. Mr P Foss QC

Mr J Gilmour QC

Mr PI Jooste QC

Mr KJ Martin QC

Mr WS Martin QC

Mr MJ McCusker QC

Mr NW McKerracher QC

Mr RJ Meadows QC

Mr RK O'Connor QC

Mr MW Odes QC

Mr S Owen-Conway QC

Mr SP Pallas QC

Mr TF Percy QC

Mr BJ Singleton QC

Mr MT Trowell QC

Mr RI Viner, AO QC

Mr CL Zelestis QC

### Senior Counsel

Ms AG Braddock SC

Mr CG Colvin SC

Mr EM Corboy SC

Mr PM'C Dowding SC

Mr CB Edmonds SC

Mr SD Hall SC

Mr GMG McIntyre SC

Mr GH Murphy SC

Mr KM Pettit SC

Mr AN Siopis SC

Mr GTW Tannin SC

Mr KR Wilson SC

Mr MH Zilko SC

## Code of Conduct

As an entity created for a public purpose under Western Australian legislation, the Board is required to observe and comply with the *Western Australian Public Sector Code of Ethics*, which promotes accountability and transparency within the public sector.

In accordance with this requirement, the Board has adopted a *Code of Conduct* for its members. This Code provides members with a summary of their obligations, and includes information and practical guidance on ethical issues likely to confront members.

## COMMITTEES

The *Legal Practitioners Act 1893* made no provision for the Board to operate through committees. Although called 'committees', each 'committee' was in fact a meeting of the Board, with notice of the meeting being given to all Board members.

The *Legal Practice Act 2003* now enables the Board to create committees and delegate matters to those committees.

This allows meetings of the Board to be held quarterly and to concentrate on matters of policy and "macro" issues.



Accordingly, pursuant to Section 10 of the *Legal Practice Act 2003*, the Board may appoint committees of its members, and pursuant to Section 11 the Board may delegate to a committee established under Section 10 any power or duty of the Board under the Act other than this power of delegation. At a meeting of the Board on 4 February 2004, the following committees were established:

- Admissions and Registrations Committee;
- Professional Affairs Committee;
- Management Committee.

Details of the above committees are provided in the respective sections of this report.

It was furthermore agreed that the following remain as “standing” (or advisory) Committees of the Board, without delegated authority:

- Legislation Committee;
- Trust Accounts Review Committee;
- Law Library Committee;
- Mandatory Continuing Legal Education Committee (see below)

#### Legal Education Committee

The Mandatory Continuing Legal Education Committee became a statutory committee of the Board by resolution of the Board on 5 May 2004, and was re-named the Legal Education Committee.

#### Other Committees

The Board has a number of advisory Committees whose members include representatives of key stakeholders. For the period concerned these Committees were:

- Practical Legal Training Advisory Committee
- Articles Training Program Advisory Committee
- PLEAS Advisory Sub-Committee
- Legal Practice Board / Legal Contribution Trust Committee.

## MEETINGS OVERVIEW

Throughout the year under review, the following meetings took place:

Full Board	7
Admissions and Registrations Committee	11
Professional Affairs Committee	11
Management Committee	12
Legal Education Committee	4
Legislation Committee	2
Trust Accounts Review Committee	1
Law Library Committee	10
Committee to consider special admissions matters	3
Ad-hoc Committee: Legal Practice Act 2003	2

Meetings of joint committees took place as follows:

Practical Legal Training Advisory Committee	4
Articles Training Program Advisory Committee	1
PLEAS Advisory Sub-Committee	1
IT Sub-Committee	1
Joint Legal Practice Board / Law Society Mandatory Continuing Legal Education Advisory Committee	2

## ORGANISATIONAL STRUCTURE

As presently structured and as provided for by the *Legal Practice Act 2003*, the Board carries out its functions in four distinct locations:

1. Central Administration (Kings Building, Hay Street, Perth)
2. The Articles Training Program (Mt Lawley)
3. The Law Library (Supreme Court and a branch library at the Central Law Courts)
4. The Legal Practitioners Complaints Committee (55 St Georges Tce)

The Legal Practitioners Disciplinary Tribunal is located in the Kings Building.

## **1. Central Administration**

The Central Administration Office, in the Kings Building, provides administrative and executive support to the Board and its committees.

Key responsibilities of Central Administration include:

- Executive support of Board and Committees;
- The maintenance of the practitioner register (a record of all practitioners admitted to practice in Western Australia), plus various other records pertaining to legal practitioners in this State;
- Processing of admissions applications;
- The issue and renewal of annual practice certificates, and the administering of other practitioner compliance matters;
- Conducting the Board's annual election;
- Management of the Board's human, financial and physical assets.

## **2. The Articles Training Program ('the ATP') Office**

Established in 1995, the ATP is a post-graduate pre-admission course designed to enhance practical legal training for articulated clerks.

The ATP office, situated in Mt Lawley, administers the course and its ongoing review and development, in accordance with direction of the Board. Part-time lecturers are contracted to conduct the courses. Please refer to the section below on the ATP Advisory Committee.

## **3. The Law Library (Supreme Court and Central Law Courts)**

The Law Library is owned and administered by the Board, and operates a branch library at the Central Law Courts.

The Law Library provides reference and research facilities for the legal profession in Western Australia and through Rule 64 of the *Legal Practice Board Rules 2004* gives wide access to members of Parliament, members of the Police Force, holders of an office, post or position established under an Act and public service officers and employees. Several groups such as law students, interstate practitioners, foreign lawyers and litigants in person may use the library subject to any restrictions determined by the Committee.

The operation of The Law Library is supported by the Law Library Advisory Committee, chaired until December 2003 by the Hon Justice Parker and following His Honour's invitation to the bench of the International War Crimes Tribunal for the former Yugoslavia in The Hague, by the Hon Justice Hasluck. (Please see below.)

## **4. The Legal Practitioners Complaints Committee**

The Complaints Committee is responsible for supervising the conduct of legal practitioners and the practice of law. Pursuant to the Act, it has investigative and conciliation powers, and also initiates disciplinary proceedings.

## **STAFF**

As at 30 June 2004, the following numbers of staff were in full-time, part-time or contract employment:

- Central Administration 11
- Articles Training Program, including part time lecturers/contract staff 21
- Supreme Court Library & Central Law Courts Library 7
- Legal Practitioners Complaints Committee 12
- Trust Account Inspector 1

Total of 52 employed staff as at 30 June 2004.

### **New appointments**

Mr Simon Dorset resigned as Director of the Articles Training Program ('ATP') on 12 September 2003. Ms Deborah Milton, Deputy Director of the ATP, was appointed Acting Director of the ATP following Mr Dorset's resignation, and following advertisement of the position, appointed Director as at 5 April 2004.

During the year under review, 3 new positions were created with regards the Legal Practitioners Complaints Committee.

In response to the increasing workload and re-structure, new appointments through out the Board are planned for the forthcoming financial year.

### **Professional Development**

To better equip staff in their respective roles within the organisation, the Board encourages training and development activities which enable staff to enhance their skills and experience.

Some of the training activities undertaken in the 2003-2004 year were related to specific compliance requirements, such as the new recordkeeping requirements stipulated in the *State Records Act 2000*. However, the Board also supports developmental opportunities which correspond with the individual needs and interests of staff, in relation to their duties.

### **Equal Employment Opportunity**

The Board is committed to promoting Equal Employment Opportunity (EEO) for all its employees, and has devised policy statements with a view to encouraging and supporting staff development opportunities. Policy statements are provided to all new staff as part of their induction.

## **STATE RECORDS ACT 2000**

### Draft Recordkeeping Plan

Pursuant to the requirements of the *State Records Act 2000*, the Board lodged with the State Records Office its first draft Recordkeeping Plan, including a draft Retention and Disposal Schedule, in March 2004. Both are pending approval by the State Records Commission.

### Needs and developments

The Board's recordkeeping systems are in considerable need of review, across the various divisions of the organisation. The drafting of the Board's Recordkeeping Plan has assisted in ascertaining areas where the minimum requirements of State Records Commission standards are currently not being met. Records management has been identified as an administrative priority of the Board, to be developed simultaneously with refurbishment of Central Administration and the Articles Training Program and IT projects.

### Staff training and information sessions

As noted earlier, staff participated in requisite training throughout 2003/2004. It is anticipated training requirements in this areas will continue throughout 2004/2005.

### **FREEDOM OF INFORMATION ACT 1992**

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

## **LPB: SIGNIFICANT ISSUES AND DEVELOPMENTS 2003- 2004**

### **LEGAL PRACTICE ACT 2003 and LEGAL PRACTICE BOARD RULES 2004**

As noted previously, the new Act was proclaimed on 1 January 2004, and the Rules became effective as of 14 May 2004. Key changes introduced with the new legislation include:

- the extension of Board membership to include Senior Counsel, and twelve rather than nine elected members;
- provision for the creation of Committees of the Board;
- abolition of Five Year articles of clerkship;
- revised fee schemes, including a levy payable on late practice certificate renewal applications;
- new provisions pertaining to the regulation of interstate practitioners;
- provision for new business structures for legal practitioners;
- provision for the regulation of foreign lawyers seeking to practice foreign law in this jurisdiction (this Part of the Act effective as of 1 April 2004);

### **PRACTICAL LEGAL TRAINING**

Over the past 18 months the Board has conducted a review of Practical Legal Training in WA. The Review has been conducted through an Advisory Committee, chaired by the Chairperson of the Board and including members of the Judiciary and representatives from the Attorney General, the Board, the Law Society of WA and the 3 WA Law Schools.

Western Australia is the only Australian State or Territory in which articles remain the only form of pre-admission practical legal training. However, the existing system does not satisfy the requirements of the Uniform Admission Rules, which the Board adopted in principle in 2002.

Following completion of the review in the first half of 2004 the Board has adopted the Final Report (see below) and commenced implementation of the Report's recommendations.

The Review made 5 main recommendations to the Board, being:

- 1 The Committee considers workplace training, supplemented by programmed training, remains an effective method of pre-admission practical legal training.
- 2 The present system of articles, supplemented by the Articled Training Program, ought be retained, but substantially modified as follows:
  - 2.1 as is now provided by the Legal Practice Act, 2003, the Board ought not allow a legal practitioner to take an articled clerk unless the Board is satisfied that the practitioner has both the ability and capacity to train the clerk to the standards required by the Uniform Admission Rules;

- 2.2 those parts of the competencies required by the Uniform Admission Rules in respect of which the principal undertakes to train the clerk are to be clearly identified by way of a schedule to the Deed of Articles;
  - 2.3 the Deed of Articles should also identify the means by which it is intended that the articulated clerk will be trained in the remaining competencies, either by way of attendance at the Articled Training Program (as to which see 2.6 below) and/or otherwise (such as, for example, small firms jointly facilitating programmed training);
  - 2.4 the certification provided to the Board by the principal at the conclusion of Articles will be amended to include a statement to the effect that the clerk has been trained in the relevant competencies in which the principal covenanted to train the clerk, and that the clerk has achieved the requisite standards with respect to each such competency;
  - 2.5 with respect to any competency for which a clerk has not obtained training from the principal (and therefore not the subject of the principal's certificate), the clerk will need to provide evidence to the Board's satisfaction that the clerk has undertaken training in such competencies and has achieved the requisite standards (eg a certificate of satisfactory completion by an accredited provider such as the Articles Training Program).
  - 2.6 the Articles Training Program ought be revised so that, whilst a minimum number (say 120) of hours will be imposed upon all articulated clerks (core course), additional training is only required of those whose principal is not able to accommodate the minimum level of principal training for which the Articles Training Program course is designed. The core course would cover ethics and professional responsibility, trust and office accounting as well as other skills-based competencies such as advocacy, negotiation and the like. Transactional competencies or "practice areas" (eg. Property) would be offered as options which could be taken if a clerk's principal was unable to undertake adequate training in such areas.
- 3 The Board should consult with the Law Society of Western Australia and the Bar Association of Western Australia as to the desirability of adopting Professional Conduct Rules and Bar Rules governing the professional obligations of a principal with respect to his or her articulated clerks.
  - 4 At the same time, steps ought be taken by the Board, preferably in conjunction with the Law Society of Western Australia and the Bar Association of Western Australia, to educate the profession as to the professional obligations of a principal with respect to his or her articulated clerk.
  - 5 The Committee recommends that consideration ought now be given to establishing an alternate route to admission in Western Australia through the satisfactory completion of a PLT course offered in this State.

## **STATE ADMINISTRATIVE TRIBUNAL (SAT)**

During 2003/2004 the Board waited upon the introduction of legislation which will establish the State Administrative Tribunal (SAT) in Western Australia. As of 1 January 2005, the Legal Practitioners Disciplinary Tribunal will be absorbed by the State Administrative Tribunal ('SAT'), which will merge more than forty existing tribunals and boards.

Whilst SAT will absorb the functions of the Legal Practitioners Disciplinary Tribunal, it will not take over the role of the Legal Practitioners Complaints Committee which will continue

to investigate and prosecute complaints against legal practitioners. The Complaints Committee will also retain its powers of summary jurisdiction.

In preparation for the commencement of SAT, the Tribunal and the Board have been in discussion with SAT to determine appropriate protocols.

#### **FOURTH LAW SCHOOL**

During the period under the review the Board received an application from Edith Cowan University to approve its proposed law degree (to commence in 2005) for the purposes of section 27(2)(a)(i) of the *Legal Practice Act, 2003*.

The Admissions and Registrations Committee considered the application at length and, in November 2004, approved the degree for the purpose of section 27(2)(a)(i), but reserving the Board's right to exercise its power under that section to require a person completing the degree to undertake "such academic requirements, if any, as may be specified" if the curriculum for the balance of the degree (ie beyond the subjects to be taught in 2005) do not meet with the Board's approval.

#### **EDYTH HAYNES CENTENARY**

[Please note the Board's records, including documents submitted by Miss Haynes, have Miss Haynes name spelt as Edyth rather than Edith. Accordingly, this spelling is used by the Board.]

On 9 August 2004, WA Women Lawyers Group held a reception at the Supreme Court to commemorate Miss Edyth Haynes, the first woman to attempt to qualify for the practice of law in Western Australia. Women Lawyers Group members and a range of invited guests were present at the reception, including representatives of the Board, and relatives of Miss Haynes. The Chief Justice of Western Australia, the Hon. David Malcolm, kindly gave a commemorative speech to inaugurate the occasion.

9 August 2004 marked the centenary of the Supreme Court decision to refuse Miss Haynes the possibility of proceeding to admission to practice because of her gender. Whilst the *Legal Practitioners Act 1893* allowed for the admission of 'persons', the Court maintained it could not take the initiative of determining whether the term 'person' included women, asserting that no such precedent existed elsewhere.

Original Board documents dating 1900 to 1904 were placed on display at the centenary reception at the Supreme Court. The documents included Miss Haynes' registration of articles, her examinations, correspondence with the Board, as well as minutes of Board meetings in which her case was discussed and determinations of the Board were made.

#### **LEGAL PRACTICE BOARD WEB-SITE**

The Board's web-site is [www.lpbwa.org.au](http://www.lpbwa.org.au)

At this time, contents of the site include general information on Admissions, Articles of Clerkship and applications for admission for both local graduates and graduates from outside the state (include interstate and overseas).

In addition, there is more general information on the home page and links to the *Legal Practice Act 2003* and the *Legal Practice Board Rules 2004*.



There is information as to the complaints process and common areas of complaint provided by the Legal Practitioners Complaints Committee. This is particularly designed to assist members of the public.

The site also contains information regarding the Articles Training Program and The Law Library.

Of particular use to members of the profession is information and forms regarding practice certificates and trust accounts.

The web-site will continue to evolve to assist both the general public and members of the legal profession.

## **PROFILE OF THE CURRENT WA LEGAL PROFESSION**

The WA Legal Profession has experienced steady growth over recent decades, both in terms of the current practising profession (certificated and deemed certificated practitioners), and the rate of new admissions.

As noted earlier in the Report the *Legal Practice Act 2003* has provided for major change in business structures available to practitioners. The Act's provisions in this respect now allow for the possibility of national incorporated legal practices. On a local level, the first incorporated legal practice was established almost simultaneously with the Act and is an area which has engendered much interest in the WA profession.

Further comment and data on these two areas is provided below.

### **NEW BUSINESS STRUCTURES**

The *Legal Practice Act 2003* introduced provision for legal practitioners to engage in any form of business structure recognised by law. Under the old Act, practitioners were not entitled to enter into practice with any person other than a certificated practitioner. The new Act allows practitioners to engage in:

- incorporated legal practices; and
- multi disciplinary partnerships.

During the year under review, registrations and queries pertaining to this area of regulation were referred to quarterly meetings of the Board as well as the Professional Affairs Committee.

Statistics: new business structures. In the year under review:

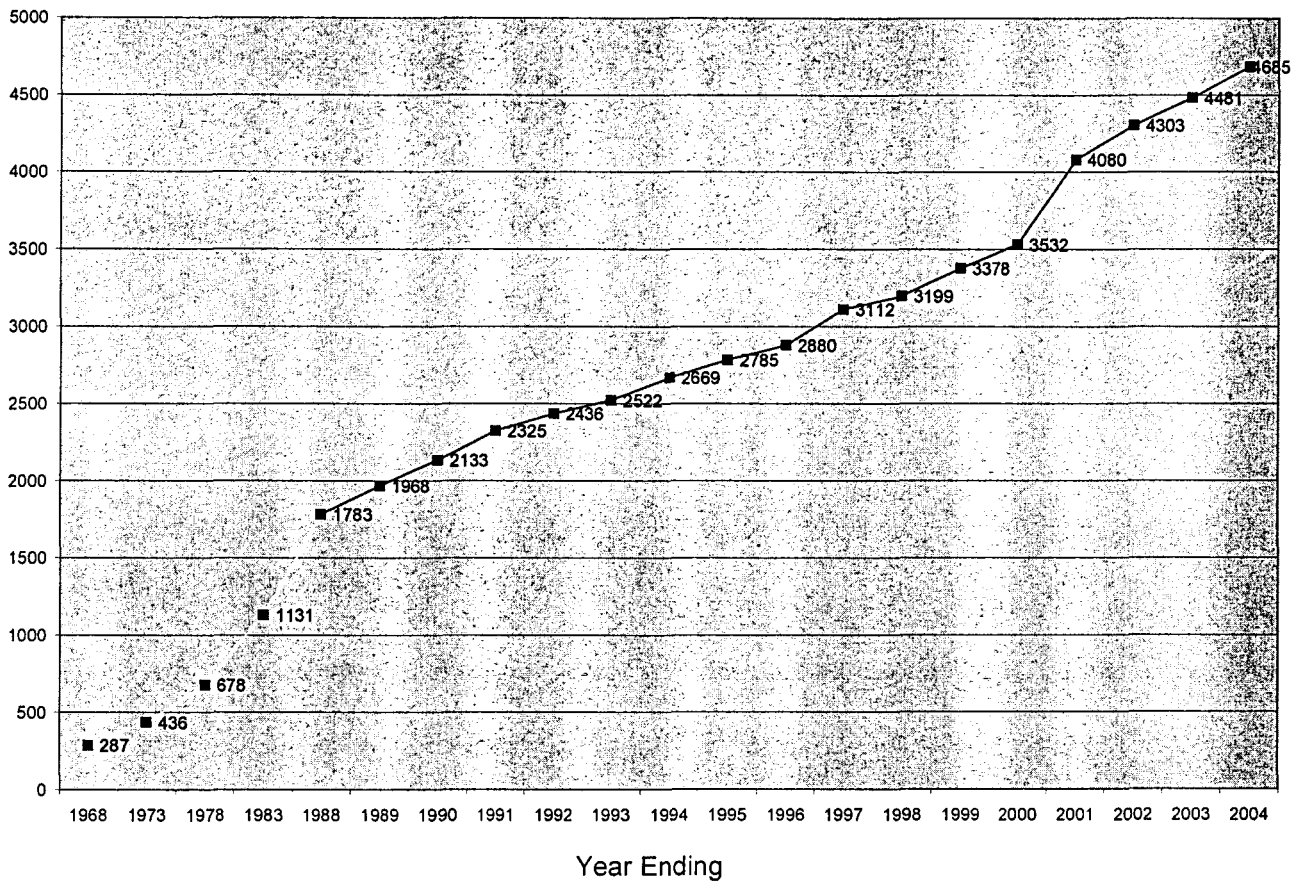
- 27 incorporated legal practices were registered;
- 9 incorporated legal practices commenced practice;
- No multi disciplinary partnerships were registered.

### **NUMBER OF PRACTICE CERTIFICATES ISSUED**

The number of practice certificates issued annually continues to increase. Graph 1 shows the increasing number of practice certificates issued in WA since 1968. Please note this graph does not represent practitioners deemed certificated under section 62(a) of the Legal Practitioners Act 1893 or Section 36 of the Legal Practice Act 2003. Also note early statistics report in 5 year intervals.

Below is a statistical breakdown of the current Profession.

**Graph 1:**  
**Growth in number of Practice Certificates issued to the WA Legal Profession since 1968**



**COMPOSITION OF THE WA LEGAL PROFESSION, CERTIFICATED AND DEEMED CERTIFICATED, AS AT 30 JUNE 2004  
(AS REFLECTED IN BOARD RECORDS)**

	Resident Females	Non - Resident Females	Resident Males	Non - Resident Males	TOTAL
Barristers	20	10	150	166	346
Commonwealth Government	13	2	21	2	38
Consultants	20	-	50	12	82
Corporate	64	3	111	17	195
Employees	746	34	676	58	1514
Locum	-	-	1	-	1
Not Practising (certificated)	115	39	94	63	311
Partners	80	148	519	866	1613
Sole Practitioners	95	3	396	12	506
Miscellaneous	4	-	6	2	12
Judiciary ^	3	-	4	2	9
Deceased ^	-	-	4	1	5
Struck Off ^	-	-	3	-	3
State Government **	28	1***	21	-	50
<b>Practice Certificates ISSUED</b>	<b>1188</b>	<b>240</b>	<b>2056</b>	<b>1201</b>	<b>4685</b>
* (Deemed) State Solicitor	49	-	41	-	90
* (Deemed) DPP	32	-	40	-	72
* (Deemed) Other Departments	77	1***	53	-	131
<b>TOTAL Practitioners **</b>	<b>1318</b>	<b>240</b>	<b>2169</b>	<b>1201</b>	<b>4928</b>

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

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

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

\*\*\* State Government employee on secondment in NSW

## **ADMISSIONS AND REGISTRATIONS COMMITTEE**

**Convenor:** Mr KJ Martin QC  
**Deputy convenor:** Mr MT Ritter SC

The Admissions and Registration Committee deals with such areas as articles of clerkship, admissions and restricted practice, and subsequent to the proclamation of the *Legal Practice Act 2003*, newly introduced provisions for the regulation of interstate practitioners and foreign lawyers. Details of these regulatory areas are published on the Board's website, at [www.lpbwa.org.au](http://www.lpbwa.org.au)

### **ARTICLES OF CLERKSHIP**

The principal post-graduate pre-admission practical training in this jurisdiction is articles of clerkship. Most graduates are articulated for a period of twelve-months and during that period must attend and satisfactorily complete the Articles Training Program (ATP) course. The clerk's principal must be a practitioner of at least two years standing, practising on his or her own account in this State, and approved by the Board to take an articulated clerk.

Apart from graduates of local law degrees, graduates of interstate or overseas law degrees seeking first time admission are also required to complete a term of articles of clerkship. In some cases, practitioners admitted in overseas jurisdictions may also be subject to this requirement, depending on their professional experience.

#### **Five Year articles of clerkship**

Pursuant to section 15(2)(b) of the *Legal Practitioners Act 1893*, an alternative route to admission was available to applicants without a law degree by completing a five year term of articles of clerkship. Five year articulated clerks were required to pass examinations ('not for degree') in law subjects prescribed by the Board, at either the University of Western Australia, Murdoch University, or the University of Notre Dame. They also needed to complete the Articles Training Program.

This provision was withdrawn when the *Legal Practitioners Act 1893* was repealed and the *Legal Practice Act 2003* proclaimed on 1 January 2004. Accordingly, this route to admission remains open to those 5 year articulated clerks registered prior to 1 January 2004, but there is no longer provision for new applications of this kind.

### **ADMISSION OF LEGAL PRACTITIONERS**

The Board acts as the Court's agent for the purpose of lodgement and processing of applications for admission.

Section 27 of the *Legal Practice Act 2003* sets out the circumstances in which persons may be admitted as practitioners of the Supreme Court of Western Australia. The *Mutual Recognition (WA) Act 2001* furthermore provides for the admission of practitioners from other Australian jurisdictions. Accordingly, admissions applicants can be divided into the following streams:

## **Admission streams processed by the Legal Practice Board:**

- 1. Admissions pursuant to s27(2)(a) of the *Legal Practice Act 2003*.** This includes law graduates from the University of Western Australia, Murdoch University, or the University of Notre Dame, and graduates from other jurisdictions, both interstate and overseas, who have completed any further study requirements stipulated by the Board. To be eligible for admission, graduates will have completed a 12 month term of Articles of Clerkship, or in certain circumstances a 6 month term, plus the Articles Training Program.
- 2. Applicants who have completed Five year articles of clerkship,** registered prior to 1 January 2004.
- 3. Admissions pursuant to the *Mutual Recognition (WA) Act 2001*.** Practitioners admitted in another Australian jurisdiction are eligible for admission in this State on the basis of their admission interstate. Terms and conditions of practice which are applicable to the applicant in the first jurisdiction also apply in this jurisdiction.

Following proclamation of the *Legal Practice Act 2003* on 1 January 2004, interstate practitioners are able to practise in this jurisdiction on the basis of their home jurisdiction practice certificate, without needing to seek admission in this State pursuant to the *Mutual Recognition (WA) Act 2001*. This new provision applies to practitioners whose principle place of practice remains interstate. (Please see 'Interstate Practitioners' below).

- 4. Admissions pursuant to s27(2)(b) of the *Legal Practice Act 2003*.** This section pertains to practitioners qualified and admitted in another jurisdiction, whether interstate or overseas, who have met any requirements imposed by the Board, including further study and, in some cases, a term of articles of clerkship.

**Statistics pertaining to matters considered by the Admissions and Registrations Committee from 1 July 2003 to 30 June 2004:**

**Articles of Clerkship**

- 195 new registrations of articles of clerkship were made. This figure does not include 5 year articulated clerks.
- Of this total, 108 were female and 87 were male, and were graduates as follows:
  - 104 from the University of Western Australia
  - 52 from Murdoch University, and
  - 25 from Notre Dame University.
- 6 from interstate tertiary institutions
- 8 from overseas institutions.
- As at June 30 2004, there were 20 clerks registered for 5 year articles.

**Admissions**

- 220 graduates were admitted to practice after completion of Articles of Clerkship in Western Australia, being 116 female and 104 male. These were graduates as follows:
  - 206 from West Australian tertiary institutions (114 from the University of Western Australia, 66 from Murdoch University and 26 from the University of Notre Dame);
  - 11 from interstate tertiary institutions;
  - 3 from overseas.
- 1 admission took place pursuant to completion of 5 year articles.
- 232 new mutual recognition applications were registered;
- 232 practitioners were admitted pursuant to the *Mutual Recognition Act 2001*.
- 2 practitioners from overseas jurisdictions were admitted to practice in Western Australia.
- These practitioners were both previously admitted in South Africa, one also previously admitted in Israel.

### Assessments

- 6 applications were made for the assessment of an interstate law degree.
- 39 applications were made for the assessment of an overseas law degree. These applicants came from various countries as follows:
  - 25 from the United Kingdom
  - 3 from United States
  - 3 from South Africa
  - 2 from New Zealand
  - 2 from Egypt
  - 1 each from Italy, Croatia, Malaysia, and Pakistan.
- 97 applications were made for the assessment of practitioners admitted overseas. These applicants came from various countries as follows:
  - 36 from the United Kingdom
  - 16 from South Africa
  - 12 from Singapore
  - 10 from Malaysia
  - 6 from the United States
  - 4 from Pakistan
  - 2 each from Canada and Jordan
  - 1 each from Egypt, Ireland, Namibia, India, New Zealand, France, Hong Kong, Peru, and Israel.

### Other

- No foreign lawyers registered with the Board.



## **PROFESSIONAL AFFAIRS COMMITTEE**

**Convenor:** Mr MW Odes QC  
**Deputy convenor:** Mr WS Martin QC

The Professional Affairs Committee deals with areas relating to the issue of practice certificates (including annual renewal and uncertificated practitioners), bankrupt practitioners, trust accounts, business structures and practices, professional conduct matters and unqualified and prohibited practice.

### **UNQUALIFIED AND PROHIBITED PRACTICE**

The Board is responsible for investigating and instituting proceedings against unqualified persons who perform legal work for reward or who hold themselves out as admitted legal practitioners. These matters are considered by the Professional Affairs Committee and referred to the Board's solicitors if proceedings are to be instituted.

Since 1996, the Board has considered and investigated over 60 major complaints and breaches against Part 9 of the Act. A significant number of these matters further involve several complaints requiring separate investigations.

Additionally, a number of these instances are recidivist and accordingly run for many years. The Board regularly obtains successful prosecutions but it is an ongoing concern that the community is being disadvantaged by persons offering so called 'legal services' without the appropriate professional training and with no financial protection against claims of negligence and/ or unprofessional conduct.

To assist the general public, the Board encourages people to check with the Board to determine whether or not a person is an admitted legal practitioner in this State.

### **Uncertificated practitioners / renewal of practice certificates 2003/2004**

The Professional Affairs Committee considers the late renewal of annual practice certificates, and instances of uncertificated practitioners engaging in legal practice. For the annual renewal of practice certificates, correctly completed applications and payment must be lodged with the Board by 30 June in order that practice certificates be valid from 1 July. Applications received after 30 June (the expiry date of the preceding year's practice certificate) take effect on the date upon which a complete and correct application is lodged with the Board, or if special circumstances exist, on such earlier date as is determined by the Board.

The Board is concerned at:

- a) the high number of incorrectly completed renewal forms;
- b) the number of late renewals.

### Statistics - Late renewal of practice certificates

With regard the 2003-2004 practice certificate renewal period:

144 practice certificate renewal forms were lodged up to one week late;

185 practice certificate renewal forms were lodged between one week and one month late;

21 practice certificate renewal forms were lodged over one month late.

The Board's policy in dealing with the late renewal of practice certificates is to refer every instance to the Professional Affairs Committee, inviting such practitioners to provide submissions as to the circumstances of their late renewals. Furthermore, in instances in which it is apparent that a practitioner has been engaging in the practice of law without a practice certificate, the name of every such practitioner is referred to the Committee, again inviting such practitioners to make submissions to explain their position. The Committee will then use its discretion in determining whether a matter should be referred to the Legal Practitioners Complaints Committee.

These matters place a continuing drain on the Board's human resources. The Board is particularly concerned at the apparent lack of awareness or the failure to give due regard to individual practitioner's professional obligations under the Act.

The Board has sought to address the matter of late renewals by means of an early lodgement discount for applications received complete and correct prior to 31 May, and a late fee scheme applicable as of the 2004-2005 practice certificate renewal period. Please refer to Management Committee below.

## **MANAGEMENT COMMITTEE**

**Convenor:** Mr TH Sharp  
**Deputy convenor:** Mr RE Cock QC

The Management Committee has delegated to it all the powers and duties of the Board under sections 12(2), 13 and 14 of the *Legal Practice Act 2003*, namely the management of human and physical resources, finance and records.

## **COMMITTEE PRIORITIES FOR THE YEAR UNDER REVIEW**

### **Administrative Priorities**

At a meeting of the Management Committee in September 2003, the following areas were deemed the immediate administrative priorities of Board management:

- Accommodation needs
- IT needs
- Implementing the new provisions of the *Legal Practice Act 2003*
- Preparation for the proposed Continuing Legal Education Scheme.

### **Late fees – annual practice certificate renewals**

The *Legal Practice Board Rules 2004* introduced provision for surcharges on overdue renewals of annual practice certificates. Rule 44(4) states:

*Any application for a practice certificate that is not lodged with the secretary on or before 30 June is subject to the following surcharge -*

- (a) if the completed application is lodged on or before 31 July, 25% of the application fee; or*
- (b) if the completed application is lodged after 31 July but on or before 31 August, 50% of the application fee; or*
- (c) if the completed application is lodged after 31 August, 100% of the application fee.*

This new fee scheme was introduced for the renewal period which commenced in May 2004.

### **Performance management**

The Board resolved to implement a performance management system for all staff members. The aim of such a system is to establish a clear understanding between individual employees and management of the employee's duties and required performance standards. It is envisaged that this will assist staff in achieving their potential within the organisation, and will furthermore address organisational needs through business planning processes.

During the year under review, an initial information session was held to discuss with all staff members the aims and objectives of the performance management system. Implementation of the system is expected to commence in the first half of the 2004-2005 financial year.

## LEGAL EDUCATION COMMITTEE

**Convenor:** Ms GA Archer  
**Vice-convenor:** Mr GR Donaldson SC

Prior to proclamation of the *Legal Practice Act 2003* the Board convened an industry wide Advisory Committee, with particular support of the Western Australian Law Society, and chaired by the Hon. Justice McKechnie, to develop a draft scheme for continuing legal education in this state.

In addition, the Board established its own sub-committee, then known as the MCLE Committee, to consider queries raised by the Advisory Committee.

At a meeting on 5 May 2004 the Board adopted in principle the Advisory Committee's Report. The Report was then referred back to the Advisory Committee for final amendment.

Also at the Board's meeting on 5 May 2004, pursuant to Section 10 of the Act, the Board resolved that there be appointed a committee of members of the Board to be called the Legal Education Committee and then executed a delegation pursuant to Section 11 of the Act delegating to the Committee all powers and duties of the Board under Sections 12(2), 13 and 14 of the Act.

Accordingly, it is envisaged that the Board's Legal Education Committee will be responsible for:

- Administration of the accreditation system for CLE activities and CLE activity providers;
- Determination of applications for exemptions and partial exemptions of CLE requirements to the Board;
- Issuing of notices to the profession about approved activities and CLE points;
- Approval of a special loading for lawyers or activities located 50 kilometres from the Perth GPO, Western Australia.

At the time of annual practice certificate renewals, practitioners will be required to certify that they have complied with CLE requirements during the preceding CLE year (1 April to 31 March). Requirements are based on a point system, plus certain mandatory subject areas, namely:

- Professional Practice and Skills: risk management, trust accounting, time management and business skills, occupational health and safety, equal opportunity, unlawful discrimination, practical legal skills including advocacy, drafting etc
- Practice Areas: substantive law
- Values: ethics and professional responsibility

The Board has disseminated the Draft Policy for Continuing Legal Education to the profession for comment and suggestion and through consultation with the profession is continuing the process of refining what will become (with legislative amendment noted earlier) the Mandatory Continuing Legal Education Scheme.

## **REPORT FROM THE LAW LIBRARIAN**

The mission of the Law Library is to provide effective reference and research facilities for the legal profession in Western Australia.

The 2003 – 2004 year has been a busy time for the Law Library Committee and the library staff with the planning and implementation of two major projects.

The first was the installation of independent broadband Internet access for the libraries.

The second was the relocation of collections and the partial refurbishment of the main Law Library. This was occasioned by the need to provide space for additional Judge's chambers for the court within the 1987 Supreme Court building.

The Law Library's accommodation is provided by the State Government through the Department of Justice and is subject, to some degree, to their priorities in the use of space in the Supreme Court. An example of this was seen early in 2004 when The Law Library lost a third of its space to new Judges' Chambers. This is a matter of on-going communication between the Board and the Government in order to maintain the effectiveness and usefulness of The Law Library.

The important function provided by the location of The Law Library in the Supreme Court is recognized by the Judiciary.

The Law Library continues to support and administer PLEAS (practitioner legal electronic access service) on behalf of the Legal Practice Board. This service provides an electronic unreported judgment subscription service to the legal profession in Western Australia.

### **KEY ACHIEVEMENTS:**

#### **Client Services:**

- Refurbishment of the client reading area in the Supreme Court library
- A more functional and user-friendly reference help-desk.
- Better PC access and hardware
- The improvement to the reference section and the general ambience of the Branch library at the Central Law Courts
- Enhanced access to online library products in the libraries. Most Timebase and the Butterworths research material are now available online.
- Faster access to the Internet.
- Subscriptions to important legal online databases such as Westlaw and HeinOnline.
- The revision of the PLEAS user manual. The Personal Injuries database has been enhanced by adding a link to the full-text of the Supreme Court Appeal decisions.
- Training in information literacy continues. 34 new Articled Clerks received induction training, as did two groups of new Judge's Associates. A survey was conducted among library users to determine the interest in receiving training on the use of the Library Catalogue and on PLEAS.

This elicited a very favourable response. Two sessions were given to approximately 20 practitioners in the library and a further two sessions conducted by request at the Francis Burt chambers. Further training sessions had to be cancelled owing to the building operations in the library.

- Two legal research training courses were given to Police prosecuting teams by the Branch Librarian at the Central Law Courts library.

### Collection Management:

As approximately one-third of the original library area was required by the Supreme Court for additional Judge's chambers, the focus this year was on ensuring that the collection was adequately housed and properly re-organised within the remaining space.

Much credit is due to Ms. Catherine Harrold, the Librarian responsible for the Catalogue and Collections management, for the planning and implementation of the project within the given 3 month period. The Department of Justice funded a contact Librarian to assist with the project.

- The entire collection of United States material, as well as some from the English jurisdiction, is now housed in compactus shelving in the basement. Almost half of the shelving in the library had to be moved and the entire collection re-shelved in order to maintain the logical classified order.
- Shelving was installed in the Burt Seminar room to create a closed access area for some of the more fragile material. Locked cupboards were installed for the rare book collection.
- The Library Catalogue was amended to reflect the changes.
- **Binding programme:** This is most important for the maintenance and preservation of the collection. During the past financial year 515 volumes were bound. The Rare Book collection was evaluated in terms of preservation and the relevant material was stored in acid-free paper and/ or conservation boxes.
- **New Acquisitions – Supreme Court Law Library and Central Law Courts Branch Library from 1 July 2003 – 30 June 2004.**

	Supreme Court	Central Law Court	Total
Serials (including Law Reports and Loose-leaf Monographs)	319,048.00	92,101.00	411,149.00
Monographs	15,257.00	3,016.00	18,273.00
Electronic publications	74,343.00	2,410.00	76,753.00
	<b>\$408,648.00</b>	<b>\$97,527.00</b>	<b>\$506,175.00</b>

### **Professional Development:**

The training of library staff, especially as regards legal reference skills and information technology skills, continues to have high priority.

- Staff have attended new product launches presented by publishers, and professional training and workshops presented by the Australian Law Librarian's Group.
- Librarians attended seminars on training on Web searching and on copyright provisions.
- The Cataloguer attended an advanced course on DB/TEXT
- The Librarian attended the Law Librarian's seminar in Adelaide during August 2003. The AIJA Court Librarian's meeting was held in conjunction with this at the Federal Court Registry, and a visit was made to the South Australian Supreme Court Library.

The Law libraries have also contributed to professional development in the wider legal community.

- Library tours have been given to groups of law students from Notre Dame University.
- The Law Libraries have supported the training initiatives of the Court Services Directorate in hosting work experience students, as well as participating in the Summer Clerkship programme.

The past year has been a demanding one for library staff. In spite of the additional work and disruption occasioned by the accommodation changes, the library team managed to maintain a high standard of service to library clients. I take this opportunity of thanking them for their enthusiastic participation and support.

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Alice Anderson  
Supreme Court Librarian  
December 2004

## **REPORT FROM THE DIRECTOR OF THE ATP**

### **Background and Purpose**

The Board is required to ensure that applicants for admission in Western Australia possess the levels of legal knowledge and practical skills necessary to practice law in Western Australia. Post-graduate pre-admission practical training in Western Australia is articles of clerkship. Most graduates are articulated for a period of twelve-months and during that twelve-month period the clerk must attend and satisfactorily complete the ATP course.

The Board established the ATP in 1995. It is a five-week course intended to enhance practical legal training for articulated clerks and complement the articled experience. The ATP is housed in rental premises in Mt Lawley.

### **Course Design and Content**

The Course is divided into two parts. Part A runs for two weeks. Topics covered are Ethics & Professional Responsibility, Advice & Negotiation, Legal Writing & Drafting, Work Practice Management and Trust & Office Accounting. Part B runs for three weeks and covers the following topics: Litigation, Property, Revenue & Taxation, Business and Wills & Estates.

The course content and practical exercises focus specifically on Western Australian law and practice. The majority of teaching staff are practicing Barristers and Solicitors who are able to impart a great deal of practical knowledge and experience of legal practice to the clerks.

Each part of the course is repeated up to six times a year. A calendar of course dates is published. Each working day of the course runs between 8.45am and 4.30pm and attendance each day is compulsory.

During the twelve months under review there has been a continuation of adjustments to better cover the national competency standards published jointly by the National Law Admissions Consultative Committee and the Australasian Professional Legal Education Council (APLEC). The adjustments have included:

- a further revision of the Ethics materials to reflect changes arising out of the implementation of the Legal Practice Act 2003.
- Further refinement of the witness handling exercise in which every clerk delivers an opening, examines in chief and cross-examines a witness.
- Revision of the Legal Writing and Drafting course to concentrate on providing clerks with more opportunity to practice good writing and drafting skills.

The design and content of the Course is subject to continuous development and improvement.

### **Staff**

Ms Deborah Milton B Juris LL.B. who was appointed Acting Director for the balance of 2003 following the departure of the former Director in September of that year, was appointed to the position on a permanent basis. The Course Administrator is Ms Linda Norrish and Mrs Amanda Ferrante (nee Bertolini) assists her. In addition to the three permanent staff, the ATP relies heavily on 20-25 legal practitioners who serve as sessional instructors throughout the year.



At the time of preparing this report the Board is considering a recommendation of a selection panel to fill the vacant position of Deputy Director.

### **The Clerks**

During the period under review, around 240 clerks participated in an A course and a similar number in a B course.

### **Links with the Profession and wider community**

In addition to the practitioner instructors who teach at the ATP, the ATP maintained and increased its links with the profession during the period. Ms Milton has served on the clear writing committee of the Law Society. Ms Milton attended the APLEC annual conference in Brisbane in November 2003 and was appointed a member of the APLEC executive committee during the year under review. Ms Milton is a Deputy Chair of the Building Disputes Tribunal and is a member of the board of an independent primary school.

The Law Society made a presentation to each A course and Law Mutual contributed to several risk management seminars in each course.

The Board's ATP Advisory Committee continues to assist with policy matters. The committee is chaired by The Hon Justice McKechnie of the Supreme Court and includes members of the Board and representatives of the Law Society and Bar. The Deans of each WA Law School are observer members of the committee

The Director maintains important informal links with Human Resource Managers of firms whose clerks attend the ATP.

### **Issues for the Future**

The main issues for the ATP during the period under review were:

The Practical Legal Training Advisory Committee appointed by the Board to review practical legal training options for Western Australia submitted its report to the Board. The report recommended the continuation of articles of clerkship together with attendance at the ATP as an acceptable form of PLT in Western Australia.

The report also foreshadowed some changes to the areas taught at the ATP, and recommended that the Board should consider whether to investigate the desirability or necessity of permitting alternative PLT options for first time admission in Western Australia. In response to this recommendation the Board has appointed an advisory committee to investigate and make recommendations to the Board. It is expected the advisory committee will report mid-late 2005.

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Ms Deborah Milton  
Director  
Articles Training Program  
December 2004

## **REPORT FROM THE TRUST ACCOUNTS INSPECTOR**

The Board employs one trust account inspector and has done so since 1995. The position is funded by the Legal Contribution Trust.

At the direction of the Board, the inspector answers enquiries to the Board from auditors and legal practitioners in respect of trust accounts; examines and makes recommendations to the Board in respect of qualified audit certificates; conducts seminars on trust account requirements for practitioners, their office staff, auditors and large firms; publishes material on trust account requirements; responds to ongoing requests from the Board for advice in respect of trust account matters; assists new practices with advice on trust account requirements; advises the Board and makes recommendations in respect of the trust account legislation; attends meetings of the Board when requested and undertakes consensual inspections of practitioners' trust accounts and related records.

The inspector also conducts trust account inspections at the request of the Legal Practitioner's Complaints Committee and the Law Complaints Officer. In light of the increasing non inspection administrative workload it is only possible to conduct a limited number of trust account inspections for either the Board or the Committee.

In August 2003 the Legal Contribution Trust agreed to meet the costs of the Board employing two further inspectors and a support staff person, but those appointments have not yet been made.

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Anna Buckley MBA CPA  
Senior Trust Account Inspector  
December 2004

## **FREEDOM OF INFORMATION ACT 1992 (FOI ACT)**

### **Information Statement The Legal Practice Board of Western Australia**

1. This Information Statement is prepared and published pursuant to the requirements of Part 5 of the Freedom of Information Act ("FOI") and relates to the Board.
2. The structure of the Board is set out in the Legal Practitioners Act 1893 Section 4(1). A copy of Section 4 is attached.
3. The functions of the Board including, in particular, its decision making functions, do not directly affect members of the public. The functions of the Board affect legal practitioners. The Board has statutory responsibility for the admission and supervision and, through the Legal Practitioners Complaints Committee and Legal Practitioners Disciplinary Tribunal, for the discipline of all legal practitioners in the State. It also regulates the issue of annual Practice Certificates and owns and operates the Law Library.
4. No arrangements exist to enable members of the public to participate in the formulation of the Board's policy or in the performance of its functions. (other than by virtue of the fact that representatives of the community are members of the Legal Practitioners Disciplinary Tribunal and the Legal Practitioners Complaints Committee, such being appointed by the Attorney General).
5. The types of documents usually held by the Board comprise the following:
  - files containing documents, correspondence and memoranda relating to the admission of practitioners;
  - files relating to the registration of articles for articled clerks;
  - enquiries from overseas and interstate practitioners relating to admission in Western Australia;
  - documents relating to meetings of the Board, such as agendas, minutes, memoranda and the like;
  - documents relating to the management of the Board's assets and facilities, including documents relating to staff, premises, information technology, etc;
  - notes dealing with the Board's procedures relating to application for admission, application for and issue of practice certificates, the audit of practitioners trust accounts for auditors.
6. There is no written law other than the FOI Act whereunder any of these documents are able to be inspected.
7. There is no law or practice whereunder any of these documents can be purchased. Copies of the notes referred to in 5(f) above may be obtained from the Board free of charge.

8. Copies of the notes referred to in 5(f) are available at the offices of the Board situated at 5th Floor, 533 Hay Street, Perth to any person who calls at that office or who otherwise contacts the Board with an enquiry concerning the functions of the Board.
9. Mary-Anne Paton of 5th Floor, 533 Hay Street, Perth, is the officer to whom initial enquiries as to access to documents can be made.
10. Access applications under the FOI Act may be made to the Board in person at the above address, or by letter to the same address, or by telephone on 08 9325 1311, or by facsimile on 08 9325 2743.
11. The Board has no procedures for amending under Part 3 of the FOI Act personal information in its documents. Any application for an amendment would be dealt with in accordance with Part 3.
12. The Board has no internal manual as defined in Section 95 of the FOI Act. None of its functions affect or are likely to affect rights, privileges or other benefits or obligations, penalties or other detriments to which members of the public are or may become entitled, eligible, liable or subject.