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29 August 2019

The Hon. Elise Archer MP
Attorney-General / Minister for Justice
Level 10, Executive Building,
15 Murray Street
HOBART TAS 7000

Dear Attorney-General

LEGAL PROFESSION BOARD OF TASMANIA – ANNUAL REPORT 2018-19

Please find enclosed the Annual Report of the Legal Profession Board of Tasmania for the period 2018-19, in satisfaction of section 601(2) of the *Legal Profession Act 2007*.

One bound copy and one loose leaf copy (for further copying and distribution) have been included for your convenience.

Yours sincerely

K Pitt QC
CHAIRPERSON,
LEGAL PROFESSION BOARD OF TASMANIA

Frank Ederle
CHIEF EXECUTIVE OFFICER,
LEGAL PROFESSION BOARD OF TASMANIA

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Report of the Chairperson



I am pleased to present the Legal Profession Board of Tasmania's annual report for the financial period ending 30 June 2019.

This year's report marks the tenth anniversary of the Board's operations, having commenced in January 2009. In recognition of the Board's tenth anniversary, this year's report provides some insightful statistics which highlight some shifting trends which have occurred over time in the Board's regulatory space. These are explored further in Part 2 of the report.

The past 12 months for the Board has again been very rewarding and has kept both the Board and the operational team consistently occupied. The upswing in complaint numbers experienced in the previous reporting period has been maintained over the past 12 months, with only a very modest decrease in complaint numbers received in the reporting period.

The CEO, supported by his team were able to quickly identify and deploy additional resources to address the ongoing workload in order to ensure any ballooning backlog and delays were avoided.

Membership of the Board

Last year I noted that the terms of two of the Board's inaugural lay members came to an end. Both Ms Judith Paxton and Mr Peter Dane had generously served their respective terms of over ten years with the Board. In November 2018, two replacement lay members were appointed to the Board. I take this opportunity to formally welcome Ms Heather Francis and Ms Marion Hale to the Board. Their professionalism and diligence to the ongoing work of the Board has already been gratefully acknowledged by all members.

I also take this opportunity to express my sincere thanks and gratitude to all current serving members of the Board for their outstanding commitment over the past 12 months. As in previous years, I continue to be inspired by my Board colleagues. Without exception, all members generously contribute their valuable time and effort to ensure the important work of the Board is being done.

Workload of the Board

The Board received 113 complaints for the reporting period which was just 7 less than last year. The upswing in complaints received by the Board in the 2017/18 period was accordingly maintained in the current reporting period.

As has been the trend over past years, allegations in relation to costs/overcharging; delay; abusive/threatening conduct; and lack of competence remain the most prevalent issues raised by consumers of legal services.

The Board commenced 32 investigations within the reporting period and finalised 98 complaints over the past 12 months. As has been the case since the commencement of operations in 2009, the Board maintains its commitment to the early resolution of complaints by mediation in appropriate circumstances. 24% of all finalised complaints were as a result of mediatory intervention by Board officers.

Meetings and Determinations of the Board

The Board convened 11 complaints-specific meetings over the past 12 months, and a further 3 section 456 (1) meetings (procedure for less serious matter), whereby a practitioner is required to provide an explanation to the Board in relation to their conduct arising from a complaint.

As has been the case for many years, the Board combines both its complaint and administrative meetings for reasons of financial restraint.

In accordance with the Legal Profession Act 2007, both a complainant and practitioner the subject of a complaint, are entitled to receive a written determination and reasons following a decision to finalise a complaint. The Board provided 71 written determinations and reasons in the reporting period.

Funding of the Board

Each year the Board is required to submit to the Attorney an application for funding for its operations over the coming 12 months. The Attorney, if satisfied, will approve an amount to be paid from the Solicitors' Guarantee Fund to the Board.

It is with satisfaction that I am able to report that over the past ten years of the Board's operation, no additional funding over the course of any reporting

period has been sought by the Board. This is a direct consequence of sound financial management and the Board consistently operating within agreed financial parameters.

I take this opportunity to thank the Attorney for her continued support and interest in the work of the Board.

I also take the opportunity, on behalf of all members of the Board, to gratefully acknowledge the work and dedication of the CEO, Mr Frank Ederle, who has been with the Board since its inception in 2009. I congratulate both Mr Ederle and his loyal and professional team for their work; dedication and continued enthusiasm for the Legal Profession Board of Tasmania.



Keyran Pitt QC

Chairperson,
Legal Profession Board of Tasmania

Report of the Chief Executive Officer



The report for the period ending 30 June 2019 marks a milestone of a 10-year journey for the Legal Profession Board of Tasmania. I find myself as the 'last man standing' as the sole remaining inaugural employee of the Board since operations commenced in January 2009.

Over the past 10 years I have been witness to, and been part of, much change. One would expect change of course over such a period. Board members have come and gone; the operational team has matured and expanded in number; a host of emerging issues for the profession have arisen and been dealt with; and, importantly, I have seen a maturing of the organisation as a whole over this time. It may also be that my hair has become a bit greyer, although I cannot be entirely sure as to that.

The 10 year statistics (see Part 2 of this report) reveal that the complexity of complaint investigations undertaken by the Board have, over time, increased. Perhaps this is indicative of an increase in complexity of the law generally, or perhaps as a consequence of a maturing profession where low-level issues are more likely to be addressed by practitioners before those issues become complaints. It is difficult to say with exactitude.

Viewing the regulatory space through the lens of a 10-year filter can be helpful not only for the regulator, but also the profession. Family law had been, up until 2016, the area of the law which attracted the most complaints. In 2017, that statistic began to change. In the last 3 years, complaints arising from probate/wills and estate matters have dominated, and continue to do so.

The benefit of hindsight is well established. Despite acknowledging the significant level of change over the past 10 years, on reflection I must say that some things rarely appear to change at all. It is fair to say that a large portion of complaints I have seen over the period of my tenure with the Board, have arisen as a result of a disconnect in communication between lawyer and client.

REPORT OF THE CHIEF EXECUTIVE OFFICER 2018–2019

A failure by practitioners to manage expectations and to communicate effectively with their clients often leads to issues which can result in a complaint being made to the Board. These matters rarely arise as a consequence of any misconduct or wrong-doing generally. Flexible, regular and targeted communication is crucial in ensuring a productive client-lawyer relationship. Effective listening skills, when combined with managing client expectations is the gold-dust all practitioners ought consider mining on a regular basis.

Over the past 12 months the operational focus of the Board has remained on the Board's core function of dealing with complaints and effecting investigations. With the continued high level of complaints received in the period, it has been necessary to ensure the investigatory resources of the Board have been able to keep pace with the increase in workload. To this end, outsourcing some investigations to external investigators has been one strategy employed by the Board in the reporting period.

I am pleased to report that earlier in the year, in an effort to promote and assist young lawyers and the profession generally, the Board agreed to develop an ongoing graduate-lawyer position. This position was only made available to Tasmanian graduates for a fixed term of 2 years. The response to the position was excellent and highly competitive. I am pleased to confirm that Ms Alexandra Eaton was the successful candidate and will commence in the role in August 2019.

Our commitment to communicating with the profession and wider community has continued throughout the reporting period. For example, we have continued to participate in the ongoing professional development program provided by the Law Society of Tasmania and regularly represent the Board at professional conferences and functions.

I am again pleased to report that the Board's financial management over the past 12 months has successfully supported the Board in achieving its statutory obligations in its role as principal regulator of the legal profession in Tasmania. Notwithstanding the strains placed upon the organisation through increases in complaint volumes and litigation, I am grateful to all members and employees for consistently appreciating the need for financial restraint, and careful financial planning to ensure the Board is able to meet its obligations and liabilities into the future.

Finally, I would like to take this opportunity to thank all the employees of the Board for their continued hard work, professionalism and patience over the past 12 months which has been foundational in the organisation achieving its goals. I also thank the members of the Board, and in particular the Chairperson, for their guidance, sound judgment and support.



Frank Ederle

Chief Executive Officer,
Legal Profession Board of Tasmania



Part 1 – The Legal Profession Board

Our Statutory Functions

The Board has the following statutory functions under section 591 of the *Legal Profession Act 2007* (the Act):

- to maintain the Register (of legal practitioners);
- to monitor the standard and provision of legal professional services;
- to receive, investigate and, where appropriate, determine complaints and, as necessary, refer complaints to the Tribunal or Supreme Court for hearing and determination;
- to approve terms and conditions of professional indemnity insurance policies provided to law practices;
- to advise the profession on appropriate standards of conduct;
- to monitor and identify trends and issues that emerge within the legal profession;
- to approve courses of continuing legal education;
- to advise the Minister for Justice on any matters relating to the Act;
- to conduct education programs relating to client-lawyer relationships for members of the public; and
- any other functions imposed by the Act or any other Act.

As the regulator of the legal profession, there are a number of other duties imposed on the Board by the Act.

The Purpose of the Disciplinary Provisions

The Board exercises its functions under the Act with the following aims in mind:

- protect consumers of legal services within Tasmania against unsatisfactory professional conduct and professional misconduct of Australian legal practitioners;
- promote and enforce the application of professional standards, competence and honesty within the legal profession in Tasmania; and
- provide an effective and efficient redress mechanism for persons unhappy with the conduct of Australian legal practitioners in Tasmania.

Our Board Members

The Board is the independent statutory body responsible for receiving and investigating complaints about the conduct of lawyers. It consists of six members appointed by the Governor of Tasmania for a term not exceeding five years.

Change in Lay Membership

In October 2018 the membership terms of the Board's inaugural two lay members, Ms Judith Paxton and Mr Peter Dane came to an end. Their outstanding tenure and contribution to the work of the Board was recognised by the Chair in his report in the 2018 Annual Report.

Ms Heather Francis and Ms Marion Hale were nominated by the Minister as the new lay members. Following appointment by the Governor they took up membership of the Board in November 2018. Both bring an exceptional depth of experience to the Board in a non-legal capacity.



Chairperson of the Board

MR KEYRAN PITT QC

Mr Pitt QC has formerly held appointments as Chairman of the Resource Management and Planning Appeal Tribunal; the Planning Appeals Board; the Mental Health Review Tribunal; and the Medical Complaints Tribunal. He was also the Deputy Chairman for the Building Appeals Board and the Environmental Protection Appeal Board.

Mr Pitt QC is a former President of the Bar Association of Tasmania and Medico-Legal Society of Tasmania. He actively supported the legal profession in Tasmania as a former Council Member of the Law Society of Tasmania and Bar Association of Tasmania.

Mr Pitt QC currently works as a Barrister and an Arbitrator and is also the Chairman of the Forest Practices Tribunal, and President of the Property Agents Tribunal. He is an Honorary Fellow of the Royal Planning Institute of Australia.

Mr Pitt QC is a nominee of the Minister.

Lay Members



MS JUDITH PAXTON JP

Ms Judith Paxton completed her term in October 2018.

Ms Paxton was the Tasmanian Legal Ombudsman from 1994 until 2008, a Prison Official Visitor and State Director of the Commonwealth Merit Protection and Review Agency. She was Deputy Director then Director of the Commonwealth Public Service Board in Tasmania.

In Canberra, she worked in the Department of the Prime Minister and Cabinet and also chaired the Commonwealth Council of Public Service Organisations' Standing Committee on the Status of Employment of Women.

Ms Paxton has worked with a number of organisations including as a Member of the Tasmanian Administrative Review Advisory Council, a Member of the Commonwealth Aged Care Complaints Resolution Committee, a Member of the Veterinary Board of Tasmania, Chair of the CSIRO Grievance and Appeals Tribunal.

Ms Paxton is a nominee of the Minister.



MR PETER DANE

Mr Peter Dane completed his term in October 2018.

Mr Dane has worked across the telecommunications and energy sector in excess of 22 years including as a Business Analyst at Hydro Tasmania in 1995 and management positions at White Pages, TasTel and Aurora Energy. Apart from his time at TasTel, Mr Dane has been responsible for Marketing, Pricing and Retail Regulation in the energy sector in Tasmania.

He has served on a number of Boards and Associations, is a foundation member of the Australian Direct Marketing Association and a graduate member of the Australian Institute of Company Directors. Mr Dane has a key focus on community involvement currently working part time as a coordinator for people moving into Independent Living Units in Aged Care and volunteering for organizations such as Royal Guide Dogs Tasmania, Community Transport and the Lenah Valley RSL.

Mr Dane is a nominee of the Minister.



MS HEATHER FRANCIS

Ms Heather Francis commenced her term in November 2018.

Ms Francis is presently the CEO of the RHH Research Foundation, an independent entity that has become one of the largest funding bodies for local medical research conducted in Tasmania. She is currently on the Board of the Tasmanian Community Fund and also Primary Health Tasmania, and leads the Board of St Michael's Collegiate School as Chair.

Ms Francis has previously been on the Board of Crime Stoppers Tasmania and also served two terms as the Deputy Chair of the Australian Marketing Institute at a national level. She was on the Tasmanian Women's Council and also served as Chair of the Panel of Judges for the Tasmanian Honour Roll of Women for four years. Ms Francis was acknowledged as the Telstra Business Woman of the Year (Community and Government) in 2013.

Ms Francis is a nominee of the Minister.



MR MARION HALE

Ms Marion Hale commenced her term in November 2018.

Ms Hale has worked in improving equity and justice in the community for the last 28 years. Her career has spanned education, crisis support, counselling, community development, policy development and population health. In 2012 Ms Hale was awarded a Churchill Fellowship to visit programs, around the world, that support women to become smoke free in pregnancy. As a result of the Fellowship, Ms Hale was elected to be the President of the International Network of Women Against Tobacco in 2015 and is serving her second three-year term as President.

Ms Hale works as an Educator for the Drug Education Network. She is also a member of the Mental Health Tribunal of Tasmania, a Consumer Representative on The College of Emergency Medicine, a Panel Member on the Alcohol Review Panel and a Community Member of the Psychology Board of Australia.

Ms Hale is a nominee of the Minister.

Legal Members



MR GRAEME JONES

Mr Jones completed a Bachelor of Laws degree at the University of Tasmania in 1977 and was admitted as a practitioner of the Supreme Court of Tasmania in 1980.

He is an active member of the legal profession and the community. His current and previous activities are as follows:

- Legal Assistance Committee member (1983-1990)
- Bar Association Committee member (1981-1992)
- Member of the Board of Legal Education (2004-2008)
- Council member of the Law Society of Tasmania (2006-2013)
- President of the Law Society of Tasmania (2009-2010)
- Chairman Law Foundation of Tasmania (2009-2010)
- Board member of the Centre of Legal Studies (2008-current)
- Member of the Legal Profession Board of Tasmania (2015-current)
- Board member of Eskleigh Foundation Inc. (2005-2009)
- Board member of Wildcare Inc. (2009-2013)

He recently retired from private legal practice and is an experienced legal practitioner having practiced as both a barrister and solicitor for over thirty-five years.

Mr Jones is a nominee of the Law Society.



MR ANTHONY MIHAL

Mr Mihal is a director of a generalist law practice in Ulverstone and he undertakes mainly litigious work including civil, criminal and child protection matters. He served on the Council of the Law Society of Tasmania for 7 years including as President in 2013/2014, the Law Foundation of Tasmania, the Management Committee of the North West Community Legal Centre including as Chair, and the Law Council of Australia's Regional, Remote, Rural Lawyers' Advisory Committee. He is currently Chairman of a charitable organisation called the Roland View Estate Trust, and a member of the Local Government Code of Conduct Panel and the Guardianship and Administration Board.

Mr Mihal is a nominee of the Law Society.



MR DAVID LEWIS

Mr Lewis, a prominent barrister on the North West Coast of Tasmania with in excess of 25 years' experience, was appointed to the Board on 27 June 2016. He has served on a number of Professional Boards and Committees over the years including his time as a member of the Bar Council of Tasmania. Mr Lewis has enjoyed a diverse practice in law which, in addition to his experience at the Queensland and Tasmanian Bars, includes appointment as a senior Crown Prosecutor in Darwin, Managing Practitioner of the Katherine Regional Aboriginal Legal Aid Service and Legislative Counsel for the external Australian Territory of Norfolk Island.

Mr Lewis is a nominee of the Tasmanian Bar.

Board meetings

The Board convened **11** complaint-specific meetings during the reporting period. The table below illustrates the number of meetings each Board member attended during that period.

Ordinary board meetings are open to the public unless the Board determines otherwise. The conduct of ordinary board meetings is governed by Schedule 3 of the Act.

Board hearings in accordance with section 453 are open to the public unless the Board considers that there are reasonable grounds to make an order that the hearing be closed to the public. Hearings are governed by Schedule 1 of the Act.

However, board meetings convened for purposes of dealing with a less serious complaint in accordance with section 456 of the Act are not open to the public.

Table 1 – Board meetings and Hearings attended in 2018-2019

BOARD MEMBER	BOARD MEETINGS	S450(A) HEARING	S456 HEARING
Keyran Pitt QC	10	0	3
Heather Francis [^]	7	0	2
Marion Hale [^]	6	0	1
Graeme Jones	11	0	3
Anthony Mihal	11	0	2
David Lewis	10	0	2
Judith Paxton*	4	0	1
Peter Dane*	4	0	1

*Judith Paxton and Peter Dane each concluded their term in October 2018. [^]Heather Francis and Marion Hale were appointed in November 2018 and only eligible to attend 7 meetings.

In addition to the above meetings, the Board also convened three section 456(1) hearings for less serious complaints.

Consequent to the Board meetings and hearings, the Board produced 71* written complaint determinations with reasons during the reporting period. Although this is a reduced number from last year, it reflects the greater number of matters which have been referred to investigation, and ultimately to hearing.

* On occasions multiple complaints will be combined into a single determination.

Funding of the Board

The Act provides at section 359 that the Board is to submit an application for funding to the Minister by 30 April each year. The Minister approves an amount to be paid from the Solicitors’ Guarantee Fund and directs the Solicitors’ Trust to pay the approved amount from the Fund to the Board.

In 2018-19, the funding which was approved by the Minister was **\$1,345,012.00**.

The Board, by virtue of s 591(d) of the Act is to approve terms and conditions of professional indemnity insurance policies provided to law practices. No changes were made to the terms and conditions of the current policies since Board approval in April 2018.

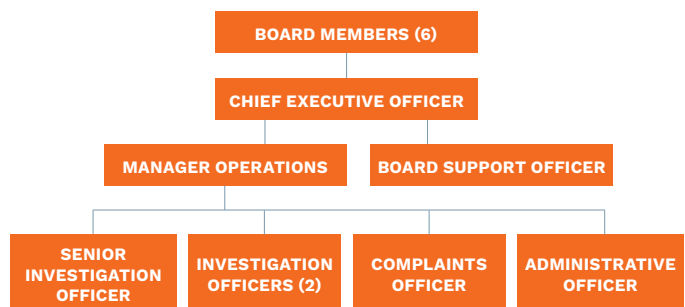
The Board's Goal

Through its statutory functions, the Board seeks to assist the legal profession in Tasmania to meet the highest standards of propriety and efficiency and to give effective redress to members of the public adversely affected by any shortfall in meeting those standards. To this end, the Board seeks to maintain a complaints handling process which is as good as or better than any other in the nation.

Organisational Chart

The Legal Profession Board is supported by an administrative and investigative team as represented in the organisational chart as at 30 June 2019.

The Board also retains the services of external lawyers and counsel, as required, and when prosecuting matters in either the Disciplinary Tribunal or Supreme Court.





Part 2 – Operations Report

The Year in Review

Complaints to the Legal Profession Board Of Tasmania

The following statistical information regarding the Board's performance is based on the twelve month period, from 1 July 2018 to 30 June 2019.

Enquiries to the Board

Enquiries to the Board comprise a significant part of the Board's overall workload. The enquiries, in large part, account for the Board's public education function.

It is important that the Board deals effectively with complaints at the time of the initial enquiry as, on occasions and where appropriate, it provides an opportunity to resolve a problem before it escalates into a formal complaint. Not all enquiries to the Board involve a person who is experiencing difficulties with their legal representative. The Board on occasion receives enquiries where we recommend a person seek independent legal advice or other appropriate action.

The Board continues to receive a number of enquiries which seek information related to applications for admission to legal practice. Those enquiries and other purely administrative matters are recorded separately.

Recognising that the first enquiry to the Board represents a significant step in the complaint process, as far as possible senior officers at the Board deal with the initial enquiry. Our senior officers can spend some time trying to understand the root cause of the issue which prompted the enquiry and where possible will assist the caller to resolve or understand what may simply be a service issue, rather than a conduct issue.

The table below shows that the Board has dealt with a total of 245 enquiries. The number of enquiries has remained, in the main, constant since the Board commenced operations.

The Board records the total time spent per enquiry throughout the period which includes not only the time taken with the initial enquiry, but also the administrative work that flowed from the enquiry. The average time spent per enquiry is just under 30 minutes.

A total of 57 enquiries in the reporting period resulted in a written complaint. This represents a conversion rate of 23%, which is consistent with the previous year.

Over 88% of enquiries were dealt with by telephone, with the remaining enquiries being by email or letter. Members of the public are invited to attend the Board's offices to discuss their issues in person if they wish to. Four people made an enquiry in person at the Board's offices.

Consistent with our complaints data, enquiries primarily concern:

- family law
- probate and estate work
- civil litigation; and
- criminal law.

Fees, costs, perceptions of overcharging or 'bill shock' continue to be the most common query to the Board, irrespective of the area of law. Queries about perceived delay by lawyers were a close second followed by negligence/competency.

The enquiries we receive, coupled with the complaints, make it clear that there is frequently a disconnect between a client's understanding of what to expect and of what has happened, and the lawyers delivery of that service. In the vast majority of matters, it is the lack of communication that leads to problems rather than actual wrongdoing.

Table 2 - Enquiries by source

MONTH	ENQUIRIES BY PHONE	ENQUIRIES IN PERSON	ENQUIRIES BY EMAIL	ENQUIRIES BY LETTER	TOTAL ENQUIRIES 2018-19	TOTAL ENQUIRIES 2017-18	TOTAL ENQUIRIES 2016-17
July	19	0	2	0	21	25	35
August	27	0	5	0	32	24	23
September	12	0	0	1	13	20	18
October	21	1	3	0	25	19	18
November	22	0	2	2	26	22	20
December	13	0	0	0	13	14	20
January	8	1	4	0	13	17	21
February	28	0	1	0	29	22	22
March	21	2	1	0	24	28	28
April	15	0	2	0	17	15	29
May	25	0	0	0	25	17	30
June	4	0	3	0	7	17	25
Total Enquiries	215	4	23	3	245	240	289

Enquiries about non-lawyers

The Board also receives enquiries about the status of persons who may appear to be providing legal advice or acting in a legal capacity.

It is an offence under the Act to engage in legal practice when a person is not entitled to do so. The penalty following a conviction for doing so is a fine or a term of imprisonment.

If a person engaging in legal practice in Tasmania is not an Australian legal practitioner, the Board has limited scope to make relevant enquiries.

In late 2018 the Board referred 1 matter to Tasmania Police where the information provided to the Board alleged the person, who was not an Australian lawyer nor a legal practitioner, was engaging in legal practice contrary to the Act.

Complaints

OUR PROCESS

A complaint may be made about the conduct of an Australian legal practitioner by any person, including the Board itself. The Board is required by the Act to take all reasonable steps to ensure that any person wishing to make a written complaint is given the appropriate assistance to do so.

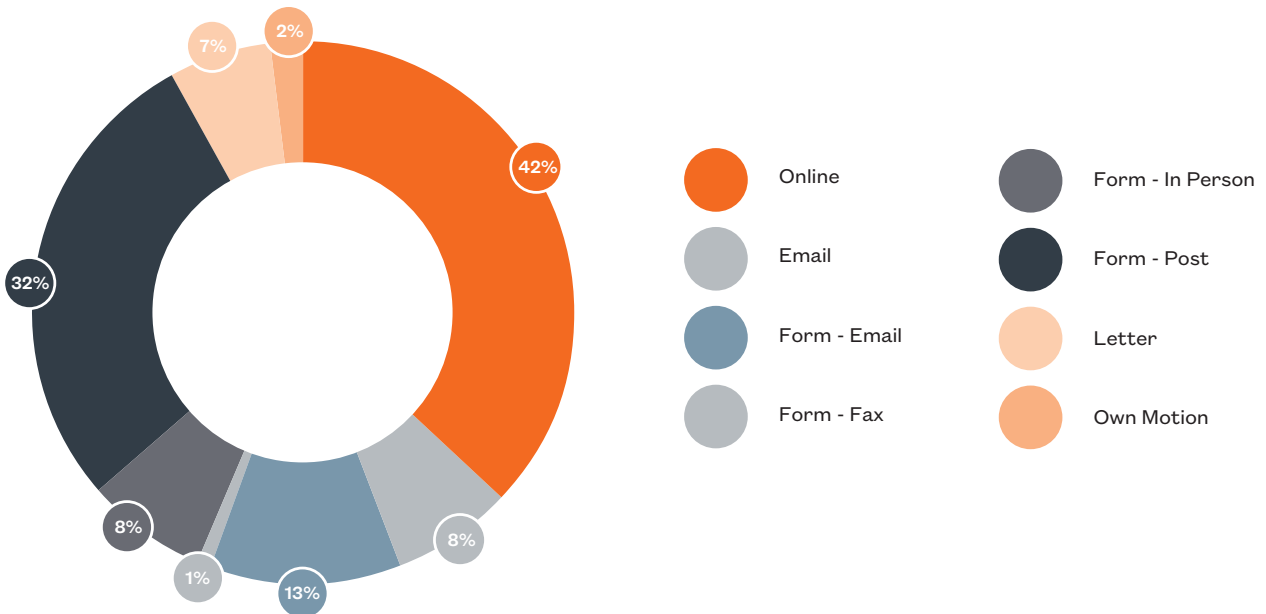
A complaint to the Board must be in writing and must identify the complainant, the lawyer (if possible) and describe the alleged conduct. The Board receives written complaints in a number of ways, including from complainants in person, handwritten forms posted to the Board, via email to our enquiry inbox, and via the online complaint form on our webpage.

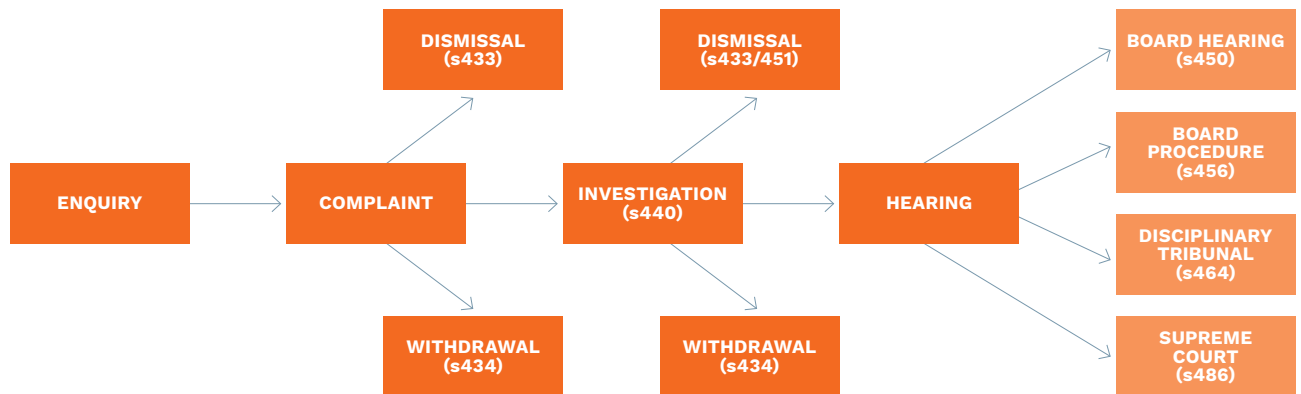
As can be seen in the above chart, complaints are primarily received via the online form on the Board’s website, a facility that has been available for the last 2 years. The next highest category is postal complaints.

A small number of complaints are made to the Board in person. The Board, pursuant to its obligations under section 511 of the Act to provide assistance to members of the public in making complaints, will meet with complainants when they seek assistance.

ANONYMOUS COMMUNICATIONS

On occasions the Board will receive anonymous ‘complaints’ in that the complainant does not identify themselves. An anonymous communication with the Board, even if in writing, is not a complaint as it is a fundamental requirement under the Act that the person making the complaint is identified. However, having regard to its primary purpose of protecting the public, the Board may make enquiries relevant to the issues raised anonymously.





Flow chart 1 – Progress of a complaint through the Board

When a complaint is received by the Board, a preliminary assessment is made. If necessary, further information is sought from the complainant to specifically identify the conduct that is alleged to have occurred, to seek documents referred to in the complaint or to seek additional information relevant to the Board’s jurisdiction.

A complaint may include any number of allegations against a legal practitioner or law firm.

If a complainant is not able to clearly describe the specific matters of complaint against a practitioner, the Board is required, under section 427 (5) of the Act, to take all reasonable steps to ensure that they are given the necessary assistance to do so. Further, at section 511(c) of the Act, the Board must provide assistance to members of the public in making complaints.

In the Board’s view, the public interest requires that any conduct capable of amounting to unsatisfactory professional conduct or professional misconduct, which may have been omitted in a complaint by a complainant, ought to be properly considered by the Board.

This may result in the omitted or missed conduct being included in the complaint. Section 588 of the Act relevantly prescribes that if an investigator becomes aware of any matter in the course of a complaint investigation which may constitute conduct capable of amounting to unsatisfactory professional conduct or professional misconduct, the investigator must refer the matter to the Board to consider whether disciplinary action should be taken against the practitioner. In other words, there is a positive obligation for the Board, irrespective of whether conduct is raised in a complaint or otherwise, to

consider whether action should be taken in respect of conduct capable of amounting to a disciplinary matter.

Once the preliminary inquiries have been completed, a ‘Notice of Complaint Received’ together with a copy of the complaint is sent to the practitioner, accompanied by an invitation to provide comment (submissions) in relation to it.

The practitioner’s submissions are provided to the complainant for further comment. On occasion a complainant, having received a detailed explanation, may withdraw their complaint.

All information obtained during the assessment of the complaint is collated and reviewed by one of the Board’s officers. All of the material is then considered by the Board at an ordinary scheduled meeting. At that stage the complaint will either proceed to investigation, or be summarily dismissed. As complaints may contain a number of allegations, on some occasions the Board may summarily dismiss part of the complaint, with the remaining part proceeding to investigation.

The Board has a duty to deal with complaints as efficiently and expeditiously as is practicable. The preliminary process prior to the investigation of a complaint commencing, or the complaint being summarily dismissed, may take several months as sufficient time is allowed to both the complainant and the practitioner to provide submissions. When a complaint is in the assessment phase for longer than 6 months, the status of its progress is reported to the Board at regular intervals.

The Board has produced fact sheets which can be found on its website to assist both the complainant and the practitioner during the assessment stage.

COMPLAINTS THIS YEAR

The Board received **113 complaints** in the reporting period, which was a small decrease compared to the previous reporting period.

Table 3 - Written complaints received

MONTH	COMPLAINTS RECEIVED 2018-19	COMPLAINTS RECEIVED 2017-18	COMPLAINTS RECEIVED 2016-17	COMPLAINTS RECEIVED 2015-16
July	22	5	5	7
August	13	12	3	4
September	10	14	3	4
October	3	18	9	4
November	13	13	8	5
December	3	7	3	1
January	7	12	3	3
February	12	3	7	3
March	11	13	11	2
April	7	13	9	3
May	9	6	9	7
June	3	4	7	7
Total Complaints	113	120	77	50

The Board collates additional data about complaints in an effort to provide greater awareness to the legal profession about the complaints it receives.

The Board commenced **2** own motion complaints against legal practitioners arising from information provided to the Board.

PRACTISING CERTIFICATES

Of the 113 complaints, **96** were directed against lawyers who held local practising certificates issued by the prescribed authority (the Law Society of Tasmania).

This year the Board also received **2** complaints against Tasmanian government lawyers. In Tasmania a government lawyer is entitled to practise in Tasmania without a practising certificate. However government lawyers still fall within the jurisdiction of the Board.

The Board also received **3** complaints against legal practices, rather than individual lawyers.

A further **4** complaints concerned lawyers holding practising certificates in Victoria but where the conduct arose in Tasmania.

8 complaints were against Australian lawyers who did not at the time hold a practising certificate for a variety of reasons including because they were retired, on extended personal leave, or had not renewed for unknown reasons.

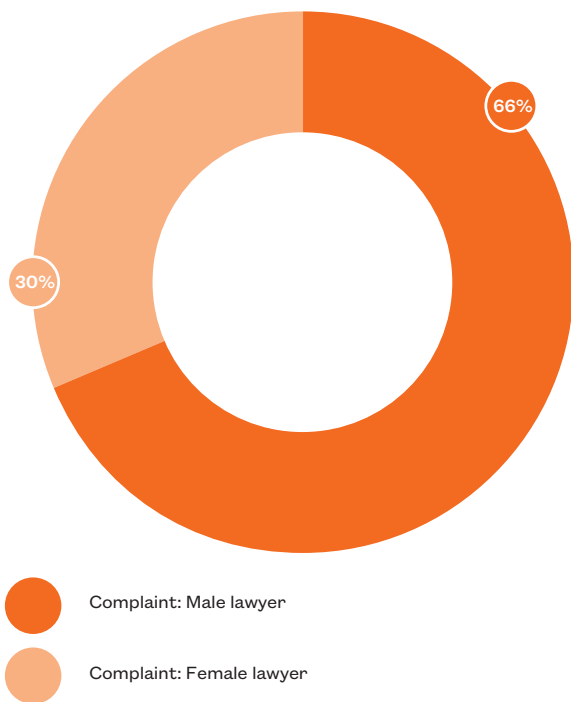
Consistent with the previous year, the majority of complaints were made against lawyers holding a principal local practising certificate (53%) with the next biggest category being those holding an employee practising certificate.

39 complaints (35%) identified lawyers employed by an incorporated legal practice.

Table 4 - Complaints by practising certificate type in Tasmania

PC TYPE	NUMBER OF COMPLAINTS
Barrister	6
Community	4
Corporate	1
Employed	34
Principal	51
Grand Total	96

GENDER



Of the 113 new complaints, 75 complaints (66%) identified a male lawyer while 34 identified a female lawyer (30%).

PART TWO — OPERATIONS REPORT

ADMISSION DATES

The admission date of the lawyer against whom a complaint had been made was available for 105 of the complaints received.

NO OF COMPLAINTS	DATE RANGE OF ADMISSION	MALE	FEMALE	PRINCIPAL PC
16	2014-2018	7	9	-
10	2009-2013	4	6	-
32	1998-2008	20	11	16
47	Prior to 1997	40	7	35

Overwhelmingly the majority of the complaints were made against lawyers with more than 20 years' experience. Of those **79** complaints, 75% were against male practitioners. Of the lawyers with more than 20 years' experience, 66% held a Principal practising certificate. This is consistent with last year's data, and may indicate that senior lawyers would benefit from targeted continuing legal education around complaint matters.

ALLEGATIONS

Table 5 identifies the principal allegation for each complaint received in the reporting period. Where a complaint included more than one allegation, only the principal allegation is the one identified.

As can be seen from Table 5, allegations relating to costs, delay, and rude, abusive or threatening conduct, comprised a significant proportion of complaint allegations received by the Board in the reporting period.

Table 5 - Principal allegations against legal practitioners

PRINCIPAL ALLEGATION	2018-19	2018-19 %	2017-18	2017-18 %	2016-17	2016-17 %
Abusive/Rude/Threat	14	12%	16	13%	6	8%
Breach of Act, rules, court order or undertaking	6	5%	7	6%	4	5%
Communication with client - including failure to communicate	10	9%	5	4%	11	14%
Confidentiality breach	4	3%	1	1%	1	1%
Conflict of interest	5	4%	7	6%	6	8%
Costs/Bills/Fees/Overcharging	20	18%	22	18%	20	26%
Court performance	3	3%	0	0%	1	1%
Delay	12	11%	15	12%	3	4%
Dishonest/Misleading (including misleading the Court)	10	9%	6	5%	6	8%
Instructions - failure to act or to comply	9	8%	11	10%	6	8%
Instructions - acting without instructions	3	3%	3	2.5%	2	3%
Negligence/Competency - including poorly handling of case	11	10%	22	18%	7	9%
Criminal allegations	1	1%	3	2.5%	-	-
Trust money - including failure to account	1	1%	1	1%	0	0%
Inappropriately ceasing to act	4	3%	0	0%	-	-
*Abuse of position as a legal practitioner	-	-	1	1%	4	5%
Totals	113	100%	120	100%	77	100%

*allegation no longer recorded in the 2018-19 reporting period.

**PART TWO —
OPERATIONS REPORT**

Table 6 - Area of law to which complaints related

AREA OF THE LAW	2018-19	2018-19 %	2017-18	2017-18 %	2016-17	2015-16
Administrative	3	3%	7	6%	0	3
Building	3	3%	7	6%	5	0
Commercial/Corporations/franchise *used to be Commercial/Contract	1	1%	7	6%	4	10
Other - civil includes debt collection, anti-discrimination, defamation *used to be Civil Litigation	14	12%	2	2%	6	0
Constitutional *used to be Commonwealth/ Constitutional	0	0%	-	-	0	0
Conveyancing	14	12%	14	12%	8	3
Criminal	12	11%	8	7%	15	4
Family/de facto	17	15%	25	21%	11	14
Employment Used to be Industrial relations	1	1%	1	1%	0	1
Personal injury	5	4%	4	3%	2	3
Probate/family provisions *used to be Probate/Estates/Wills	26	23%	30	25%	16	12
Wills/powers of attorney *used to be Probate/Estates/Wills	5	4%	-	-	-	-
Workers' compensation	3	3%	9	7%	0	0
Immigration	2	2%	-	-	0	0
Land & Environment	0	0%	-	-	-	-
Victim Compensation	0	0%	-	-	-	-
Leases/Mortgages	1	1%	-	-	-	-
Insolvency	0	0%	-	-	-	-
Unknown	6	5%	-	-	-	-
*Anti-discrimination	-	-	1	1%	0	0
*Defamation	-	-	-	-	1	0
*Banking Law	-	-	-	-	6	0
*Debt collection	-	-	3	3%	1	0
*Restraint Orders	-	-	-	-	0	0
*Medical Negligence	-	-	-	-	1	0
*Coronial	-	-	-	-	1	0
Total	113	100%	120	100%	77	50

* Areas of law have been recategorised for consistency with other jurisdictions and to assist with the recording of data.

Table 6 indicates that the area of law most often involved in complaints received by the Board in the reporting period was Probate/Family provisions and Wills/Powers of attorney.

Other areas of law highly represented in the reporting period were Family Law and Conveyancing. Those three areas of law represent 50% of complaints to the Board.

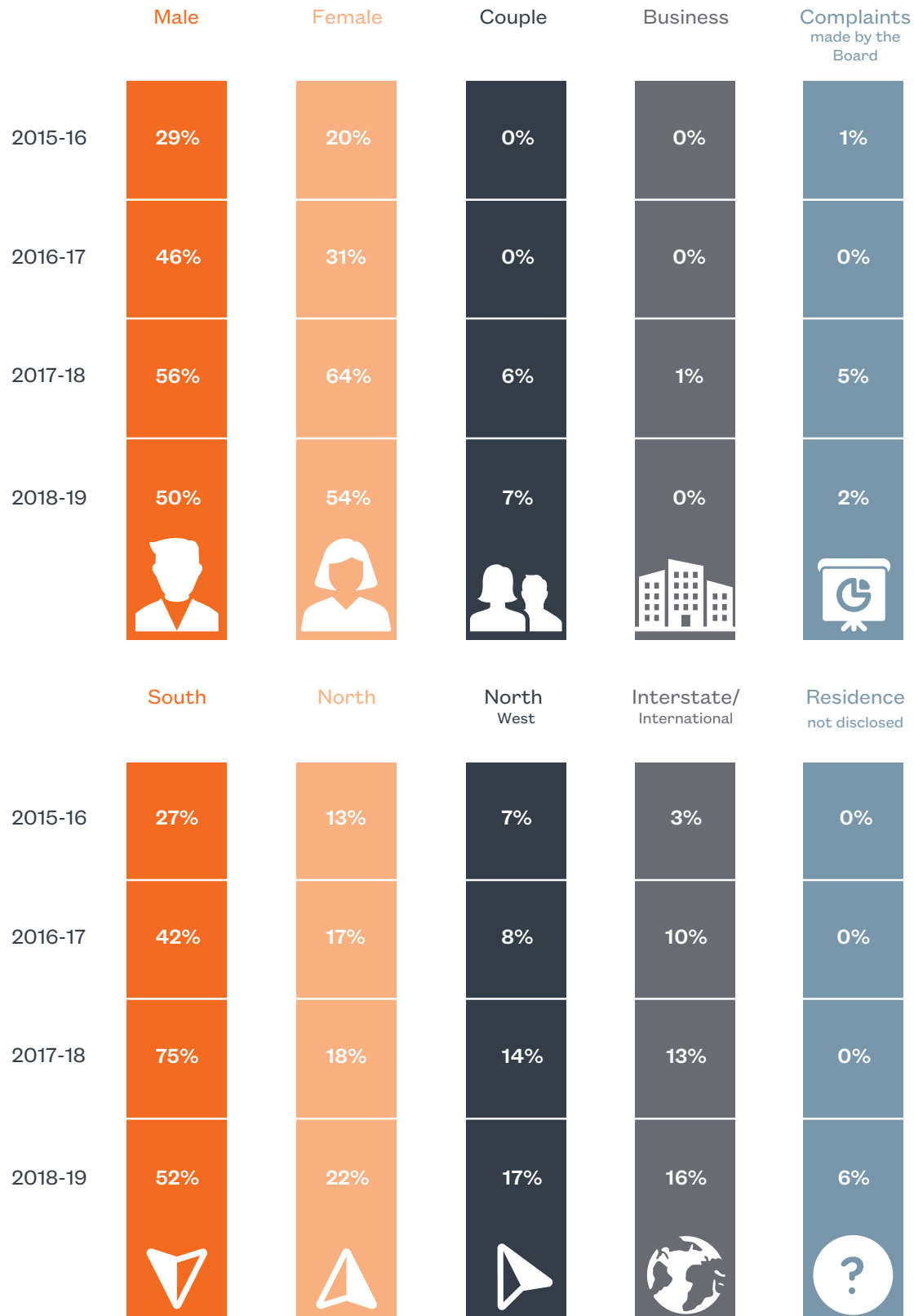
The Board is able to effectively deal with complaints made to it by people residing outside of Tasmania. In the reporting period, **16** complaints were received by the Board from either interstate or overseas complainants.

During the investigation of a complaint, the investigator may become aware of facts which the investigator considers may constitute unsatisfactory professional conduct or professional misconduct not already the subject of a complaint. In such a case, the investigator must refer the matter to the Board to consider whether disciplinary action should be taken. Further, circumstances may arise where a practitioner may fail to comply with a direction of the Board. In these circumstances, the Board may elect to make a complaint of its own motion. This year the Board made 2 board initiated complaints, one of which arose out of a report by an investigator. The Board has developed a fact sheet, available on its website, to provide context as to when the Board will commence a board initiated complaint.

The larger proportion of complainants during the reporting period were female, with the majority of the complaints coming from the south of Tasmania.

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OPERATIONS REPORT**

Table 7 - Complainants' profile (region & gender)



In addition to the 113 complaints received, the Board also dealt with a further **54** complaints carried forward from the 2017-18 period, which included: complaints under investigation; complaints which had been referred for hearing to either the Board, Disciplinary Tribunal or Supreme Court; and complaints being dealt with in accordance with the preliminary statutory process prior to an investigation having been commenced.

Table 8 - Complaints carried forward at 1 July 2018

COMPLAINTS	CARRIED FORWARD AS AT 1 JULY 2018	%
Unfinalised complaints pending (not yet under investigation or awaiting hearing) as at 30 June 2018	19	36%
Complaints under investigation	31	57%
Complaints referred to a hearing	4	7%
Total Complaints carried forward as at 1 July 2018	54	100%

Investigations

31 investigations were carried forward from the previous reporting year and a total of 32 new investigations were commenced in the reporting period. The number of new investigations is similar to the previous year and is reflective of the sustained increase in complaints received.

Of the 32 complaints which proceeded to investigation, 56% commenced investigation within 3 months of being received by the Board. The average time from receipt of the complaint until it commenced investigation was slightly over 4 months.

A total of 18 investigations were completed to a dismissal or withdrawal. A further 11 completed investigations were referred to a prosecution either by way of a board hearing, the Disciplinary Tribunal or the Supreme Court. The total 29 completed investigations is consistent with the previous year.

The Board is conscious that it needs to keep pace with complaints progressing to an investigation, and where possible, utilises external resources to assist in clearing the backlog of investigations.

The purpose of an investigation is to obtain and consider the evidence and for the investigator to provide a recommendation to the Board on the reasonable likelihood or public interest test as set out in s 451 of the Act. That is, if there is no reasonable likelihood that the practitioner will be found guilty of either unsatisfactory professional conduct or professional misconduct, or it is in the public interest, the Board may dismiss the complaint.

The burden of proof of any charge of unsatisfactory professional conduct or professional misconduct brought by the Board following investigation of a complaint rests with the Board. The standard of proof is the balance of probabilities, but carries the rider that the weight or strength of the evidence necessary to prove a disciplinary matter varies depending on the circumstances and the gravity of the matter to be proved. This is known as the *Briginshaw* standard or the standard of 'reasonable satisfaction': *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 362.

The rules of procedural fairness, to the extent that they are not inconsistent with the Act, apply in relation to the investigation of complaints.

Table 9 – Investigations commenced and completed from 2018-19

MONTH	INVESTIGATIONS COMMENCED 2018-19	INVESTIGATIONS COMPLETED 2018-19	INVESTIGATIONS COMMENCED 2017-18	INVESTIGATIONS COMPLETED 2017-18	INVESTIGATIONS COMMENCED 2016-17	INVESTIGATIONS COMPLETED 2016-17
July	4	2	4	3	1	1
August	1	1	2	0	3	0
September	3	1	3	6	0	1
October	7	3	4	1	3	0
November	4	2	4	1	3	1
December	1	1	0	3	0	2
January	1	0	0	0	0	0
February	3	3	5	3	5	3
March	0	6	3	5	5	1
April	2	0	3	3	0	0
May	4	4	3	1	9	3
June	2	6	4	2	3	3
Total	32	29	35	28	32	15

Table 10 – Complexity of investigations commenced

CATEGORY OF INVESTIGATION	INVESTIGATION CRITERIA	INVESTIGATIONS COMMENCED 2018-19	%	INVESTIGATIONS COMMENCED 2017-18	INVESTIGATIONS COMMENCED 2016-17
<i>Simple</i>	Basic investigation, low volume of documentary evidence, no witness or 3rd party involvement	7	22%	15	8
<i>Intermediate</i>	Medium volume of documentary evidence, single witness or 3rd party involvement	7	22%	10	18
<i>Complex</i>	Multiple witnesses, significant volume of evidence	11	34%	4	5
<i>Very Complex</i>	High volume of evidence, multiple witnesses, interaction with commercial entities	7	22%	6	1
Total		32	100%	35	32

In general terms, the greater the complexity of the investigation, the longer the period of time that is required to complete it. The length of time to complete an investigation is also dependant on such matters as the willingness of the parties to resolve the complaint via mediation (if appropriate), and the Investigation Officer’s ability to readily access information held by either the practitioner or complainant.

In the reporting period to 30 June 2019, the Board classified the majority (54%) of all investigations commenced in the period as either being complex or very complex in nature. Last year 17% of the investigations were considered very complex. The increase to 22% being very complex demonstrates a shift over the last two years to a more complex investigative landscape.

The average length of investigations from the appointment of the investigator to the Board determination, or referral to prosecution, is slightly under **11** months.

Finalisations and Outcomes

Table 11 – Complaints finalised and method of finalisation from 2018-19

METHOD OF FINALISATION	RELEVANT SECTION OF ACT	DESCRIPTION	NUMBER FINALISED	% FINALISED COMPARED TO TOTAL FINALISATIONS	NUMBER FINALISED 2017-18
FINALISATIONS PRIOR TO AN INVESTIGATION:					
Summarily dismissed	s.433 (1) (a)	Complaint lacking in substance, vexatious, misconceived or frivolous	40	41%	47
Summarily dismissed	s.433 (1) (e)	Complaint is not one that the Board has the power to deal with	6	6%	14
Summarily dismissed	s.433 (1) (b)	Subject of a previous complaint that has been dismissed	0	-	1
Summarily dismissed	s.433 (2) (a)	Further information not given or complaint not verified	4	4%	5
Summarily dismissed	s.433 (3) & (4)	Complaint requires no further investigation or no public interest in continuing	4	4%	7
Withdrawal	s.434	Complaint withdrawn by complainant prior to an investigation	21	22%	23
Sub Total			75	77%	97
FINALISATIONS FOLLOWING AN INVESTIGATION:					
Dismissed following an investigation	s.451 (a)	No reasonable likelihood that the practitioner will be found guilty	11	11%	15
Dismissed following an investigation	s.451 (b)	No public interest to continue	0	-	0
Withdrawal	s.434	Complaint withdrawn (after mediation) following an investigation	3	3%	10
Dismissed following an investigation	s.433(1)(e)	<i>Burns v Corbett</i> [2018] HCA 15 Complaint is not one that the Board has the power to deal with	3	3%	0
Sub Total			17	17%	25

METHOD OF FINALISATION	RELEVANT SECTION OF ACT	DESCRIPTION	NUMBER FINALISED	% FINALISED COMPARED TO TOTAL FINALISATIONS	NUMBER FINALISED 2017-18
FINALISATIONS FOLLOWING A HEARING/MEETING OF THE BOARD:					
^The s454(2) hearing was held the previous year but the finding was not made formally until 5 July 2018.					
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7)	No determination	0	-	1
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7) (a)	Practitioner cautioned or reprimanded	2	2%	0
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7) (ab)	Practitioner required to make an apology or no further action	0	-	0
Practitioner found guilty of unsatisfactory professional conduct	s.454 (2)	Practitioner reprimanded, & required to pay costs	2^	2%	1
Sub Total			4	4%	2
FINALISATIONS FOLLOWING A HEARING OF THE DISCIPLINARY TRIBUNAL OR SUPREME COURT*:					
*Does not include application for rehearing					
Practitioner found guilty of either unsatisfactory professional conduct or professional misconduct	s.471	Practitioner suspended and fined	0	-	1
Practitioner found guilty of unsatisfactory professional conduct	s.473 s.479	Practitioner required to pay compensation	3*	2%	0
Application dismissed		Dismissal of complaint	0	-	0
Practitioner found guilty of professional misconduct	Supreme Court Inherent Jurisdiction	Practitioner removed from Roll	0	-	0
Sub Total			3	2%	1
TOTAL FINALISATIONS			99	100%	125

*3 matters heard in the Disciplinary Tribunal together, with one decision.

PART TWO — OPERATIONS REPORT

FINALISATIONS:

Table 11 shows that a total of **99** complaints were finalised for the reporting period to 30 June 2019.

Consistent with previous years, the majority (77%) of the Board's finalisations occurred prior to an investigation having commenced and involved complaints which were either summarily dismissed or withdrawn by the complainant following mediatory intervention by the Board.

A further 17 complaints were finalised by the Board following an investigation and prior to a hearing. There were 24 finalisations as a result of mediatory intervention either during or subsequent to an investigation being completed. The Board maintains a strategy to resolve matters, in appropriate circumstances, prior to commencing an investigation. However, the previous year had an increased number of withdrawals (33). The difference in number across the two years is reflected in a drop in mediations during investigation. A cause for the change might be because the investigations this year are more complex with a greater increase in prosecutions.

The matters which proceeded to a Board or Tribunal hearing were also investigated, although the investigation may have commenced or been completed prior to this reporting period. Effectively **24** (24%) matters which were finalised this period were subject to an investigation at some point.

Where a matter proceeds to a hearing and a finding is made, the Board will generally make separate written determinations – one relating to a determination on conduct and then one in relation to penalty.

Finalisations include complaints where a hearing may have been held in a previous reporting period, for example before the Disciplinary Tribunal or Supreme Court.

The finalisations above do not include matters that may have been subject to an appeal or rehearing.

CLEARANCE RATE:

The Board received 113 complaints within the reporting period and finalised a total of 99 complaints to 30 June 2019. The clearance rate achieved during the reporting period was therefore 88%, a decrease in the clearance rate for the previous reporting period.

OUTCOME OF DISCIPLINARY ACTION:

At the conclusion of a complaint investigation, the Board may hold a formal hearing s 450 (a); deal with the complaint in accordance with s 456 (procedure for less serious complaint); make an application to either the Disciplinary Tribunal or Supreme Court for the complaint to be heard and determined; or dismiss the complaint. Table 12 shows that the Board referred, or resolved to refer for hearing, a total of 14 complaints within the reporting period.

The Board held a hearing (either by way of formal hearing or procedure for less serious complaints) in relation to 3 complaints, and finalised one matter from the previous year within the reporting period. Three matters resulted in the Practitioner being found guilty of unsatisfactory professional conduct and a determination which is recorded on the Disciplinary Register as required by the Act. Two of the matters were dismissed after being referred but before hearing, pursuant to s 433(1)(e). One section 456 matter is yet to be finally determined as at 30 June 2019.

Table 12 – Complaints referred (or resolved to be referred) to Disciplinary Tribunal, Supreme Court or for Board Hearing/Meeting 2018-19

COMPLAINTS REFERRED	SECTION OF ACT	REFERRED 2018-19	REFERRED 2017-18	REFERRED 2016-17
Board Meeting (s.456 procedure for less serious complaint)	s.450 (b)	6	1	1
Board Hearing	s.450 (a)	0	2	0
Disciplinary Tribunal	s.450 (c) (d)	2	0	0
Supreme Court	s.450 (e)	6	1	0
Total Complaints Referred		14	4	1

The significant increase in matters referred, including the unprecedented number of matters referred to the Supreme Court, is a consequence of the flow on from the increase in complaints to the Board over the last two years and is reflective of the complex nature of the investigations undertaken.

The 2 matters referred to the Disciplinary Tribunal relate to one legal practitioner and are yet to be heard.

The 6 Supreme Court referrals relate to 3 different legal practitioners and are yet to be heard.

Table 13 – Number of pending complaints as at 30 June 2019

COMPLAINT SOURCE	2018-19	2017-18	2016-17
Unfinalised complaints pending (not yet under investigation or awaiting hearing) as at 30 June 2018	19	34	34
Unfinalised complaints under investigation as at 30 June 2018	31	25	7
Complaints referred to a hearing	4	(not reported)	
Subtotal Pending Complaints as at 30 June 2018	54	59	41
Complaints received 1 July 2018 to 30 June 2019	113	120	77
Plus 3 matters outstanding from the Disciplinary Tribunal since 2012	3		
Plus 2 matters heard the previous year but not finally determined	2		
Subtotal complaints for current reporting period	172	179	118
Finalised complaints 1 July 2018 to 30 June 2019	98	125	59
Balance of complaints on hand as at 30 June 2019	74	54	59

Table 13 above indicates that 74 complaints remain unfinalised as at 30 June 2019. This includes pending complaints, pending investigations and pending matters referred.

NOTIFICATIONS TO THE PRESCRIBED AUTHORITY

The *Legal Profession Act 2007* requires the Board to notify the prescribed authority responsible for the issuing of practising certificates of certain matters within Chapter 4 of the Act. The prescribed authority for those purposes is the Law Society of Tasmania.

Notifications to the Law Society include a complaint made against an Australian legal practitioner, dismissals and withdrawals of complaints, and a decision to proceed with a prosecution.

In the reporting period the Board made **208** notifications to the Law Society.

Superior tribunal or court matters

As reported in the previous reporting year there was one application by a practitioner to the Supreme Court for a determination on the Board's exercise of power in relation to the issuing of a s 572 notice requiring the production of documents or files. The decision was subject to an appeal to the Full Court which was handed down this reporting year in the Board's favour: *Etter v Legal profession Board of Tasmania* [2018] TASFC 2 (9 July 2018).

Orders in an application by a practitioner to the Supreme Court for a determination by way of re-hearing of a complaint were finalised in *Boland v Legal Profession Board of Tasmania* [2016] TASSC 63 and reaffirmed by the Full Court on 29 November 2018: *Boland v Boxall* [2018] TASFC 11.

In addition to the above, the two applications filed by a practitioner to hear and determine a complaint in accordance with s 486 in the previous year remain extant.

The Board can make an application to the Supreme Court in its inherent jurisdiction, pursuant to s 486. Such applications do not require a complaint. Two such applications are in the Supreme Court:

- One application by the Board was made to the Supreme Court in March 2018. That application is adjourned pending the outcome of a rehearing in the Administrative Appeals Tribunal.
- The Board determined to refer another matter to the Supreme Court in its inherent jurisdiction in October 2018.

One matter referred to the Supreme Court in 2018 is set down for hearing in August 2019.

On 6 December 2018 the Disciplinary Tribunal finalised two applications in relation to a former Tasmanian lawyer. The Tribunal made a finding that the practitioner was guilty of unsatisfactory professional conduct, and made orders in relation to compensation and costs by consent (DT 1/2012 and 2/2012: *Legal Profession Board of Tasmania v David Michael Smith*).

APPLICATIONS FOR SEARCH WARRANTS

No applications for a search warrant were made under section 576 of the Act during the reporting period.

REDACTED DECISIONS

It is a function of the Board to advise the profession on appropriate standards of conduct. An effective way of doing that is to publish Board determinations where there are no adverse findings, over and above the publication of disciplinary matters on the Disciplinary Register. Doing so provides the profession with real life examples of current issues which arise in legal practice and provides an opportunity for the Board to express its expectations in relation to conduct in certain circumstances.

The Board publishes redacted decisions on its website in circumstances where the decision would be of assistance to the profession.



Issues arising out of complaints

Case Study 1

The Enduring Power of File Notes

Practitioners are not required to maintain file notes detailing all client dealings, although it is regarded generally as prudent risk management. However, in certain circumstances, the failure to make a file note may amount to misconduct justifying a disciplinary response. The execution of an enduring power of attorney (EPA) is one such instance.

Background

A senior practitioner was approached by the son of a former client who was of advanced age. He instructed the practitioner on the former client's behalf to prepare an EPA, appointing him attorney. The practitioner opened a file in the name of the former client and prepared the necessary documentation. They then met the client at an aged care facility, where they were in respite care, and executed the EPA.

The client's daughter, upon becoming aware of this EPA, lodged a complaint with the Legal Profession Board alleging, *inter alia*, that the practitioner had failed to undertake the necessary tests to ensure that the client had capacity to execute the EPA. Evidence was supplied by the daughter suggesting that, when the EPA was executed, the client suffered from a form of Alzheimer's disease.

The practitioner—whose expertise in this practise area was extensive—outlined that he had followed the proper processes, notably the 'nature and effect' approach set out at section 30 of the *Power of Attorney's Act 2000* (Tas), and that they were not aware of the Alzheimer's diagnosis.

While general law accepts that a person may be diagnosed with a mental disorder and still maintain the requisite capacity to execute an EPA,¹ neither the practitioner nor the witness had made a file note of the meeting at which the EPA was executed. As such, there were no contemporaneous documents illuminating what steps the practitioner took when performing their capacity assessment.

Professional conduct

Against this backdrop, the assessment of the practitioner's conduct turned to whether, in the circumstances, the absence of any file notes was a conduct issue.

EPAs are creatures of statute enabling an individual to delegate authority to another to act on their behalf in legal and financial situations if they lose mental capacity. In view of this purpose, it is not uncommon for an EPA to be executed when the signs of mental incapacity first begin to appear. This precarious timing often makes EPAs ripe for challenge (since they are deemed void if the donor is found to have been incapable at the time of execution).

The *Power of Attorney's Act 2000* (Tas) does not obligate notetaking. However, all practitioners have a duty to their client to use their best endeavours to protect their client's interest, and to exercise reasonable care and skill when executing a client's instructions. This is reflected at rule 10(1)(a) of the *Rules of Practice 1994*, which requires that a practitioner must do his or her best to complete a client's business in a competent manner.

At general law, authority is to the effect that if there is evidence before a court to instil doubt that the donor lacked capacity when the EPA was executed, the onus shifts to the party supporting its validity to negate that suspicion.² Accordingly, file notes surrounding an EPA's execution and documenting the steps taken by the practitioner in determining capacity can influence its survivability—particularly in circumstances where the challenge occurs some years after the EPA's execution, or where the practitioner is unavailable. As a Queensland Tribunal observed recently:

[T]he practitioner is an independent person who has firsthand knowledge of the events surrounding the execution of the documents, including the instructions provided by the client. Not infrequently, the practitioner is the only witness in that position.³

1 Scott v Scott [2012] NSWSC 1541

2 See Ghosn v Principle Focus Pty Ltd [2008] VSC 574; Kantor and Anor v Vosahlo [2004] VSCA 235.

3 Legal Services Commissioner v Ho [2017] QCAT 95, at [44] – [47].

For that reason, tribunals have held that when taking instructions for an EPA, a practitioner is expected to retain file notes of client communications and document the process used to establish capacity.⁴ Returning to the Queensland Tribunal, they noted that the depth of a practitioner's enquiry will vary depending upon the circumstances of each individual capacity assessment:

*Ultimately, questions of capacity are decided by a Court or Tribunal (such as QCAT). Such decision-making may be assisted by reference to evidence based on accurate contemporaneous records. In discharging the duty to the client, where there is any cause to be concerned regarding the issue of capacity, the practitioner must record accurate details of what happened leading up to the execution of the documents which will be relevant to the task which the court or tribunal undertakes. This includes details of the questions and answers which were directed towards the issue of capacity.*⁵

In short, the expectation on notetaking is a matter of degree: the greater the concern about capacity, the greater the desirability of the practitioner keeping detailed notes.⁶ Correspondingly, where the level of notetaking is considered to fall short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner in the circumstances, a disciplinary response will be warranted. This is replicated consistently across Law Society guidelines in various Australian jurisdictions. In this instance, the lack of notetaking by the practitioner was considered to amount to unsatisfactory professional conduct.

Advice to practitioners

Practitioners are advised to employ risk management strategies to protect themselves and their clients. This includes following the Law Society of Tasmania's resource on preparing EPAs,⁷ carefully documenting the scope and limits of the client's retainer, maintaining a contemporaneous record of all matters discussed relevant to capacity, and keeping the practitioner's file secure until it is clear that the EPA is no longer operative (rather than destroying it at the end of the retention date).

4 See: Legal Profession Complaints Committee v Wells

[2014] WASAT 112; Legal Services Commissioner v Given [2015] QCAT 225; Legal Services Commissioner v Ho [2017] QCAT 95; and Legal Services Commissioner v Penny [2015] QCAT 108.

5 Legal Services Commissioner v Ho [2017] QCAT 95, at [44] – [47].

6 Legal Services Commissioner v Penny [2015] QCAT 108, [46] – [49].

7 <https://lst.org.au/wp-content/uploads/2019/06/Resource-Preparing-Enduring-Powers-of-Attorney-26.6.19.pdf>

Case Study 2

Costs and the first appointment with a lawyer / Suggestions to protect your junior professional staff.

Each year the Board receives a number of enquiries and some complaints in circumstances where the caller/complainant tells us that they were shocked to receive a bill after what they felt was an exploratory enquiry of the lawyer/legal practice. These callers/complainants are usually infrequent users of legal services, or using a lawyer for the first time.

These enquiries/complaints tells us that there is a perception within the community that lawyers will attend prospective clients by telephone and/or in person and spend time hearing details of that person's legal matter and/or give out preliminary information relating to the legal matter for free. It appears that this perception may arise from a mixture of:

- having heard of things such as pro-bono legal work, or that some firms have a free first ½ hr attendance or something similar;
- a pre-occupation with the urgency of the individual's legal worries at the time that an approach to a lawyer is made; and
- a degree of wishful thinking on the part of the prospective client.

Some of the people contacting the Board with this sort of costs issue say things such as they told the receptionist they had limited funds or even no money and they just wanted to see if anyone could help them or not. They were then put through to a lawyer, or an appointment was made for them. They then assume the lawyer knows what they told the receptionist. These descriptions of events given in enquiries to the Board or in complaints suggest that prospective clients who find themselves in need of a lawyer often blurt out their core concerns to the receptionist in the first call to a law practice.

A high proportion of these sorts of enquiries/complaint relate to less experienced lawyers who, it is suggested may be:

- More likely to be allocated prospective clients who have no prior familiarity with the law practice;
- Less likely to give a prospective client basic on the spot advice about whether the lawyer can help or not and how; and,
- More likely to spend time following the initial attendance conducting research or consulting colleagues.

There is, of course, nothing wrong with a less experienced lawyer taking care and conducting research before giving advice, quite the opposite.

The legal costs involved in these sorts of enquiries/complaints are usually below the amount (\$1500) over which it is necessary to provide the information about costs prescribed in the *Legal Profession Act 2007*. These enquiries therefore don't involve a breach of a law practice's obligations so far as the provision of costs information is concerned. However, the amount involved may nonetheless be a lot of money to the person making the enquiry.

If a complaint is made of this nature, the matter is invariably dismissed, or withdrawn following explanations from Board staff, the lawyer concerned, or following mediation. However, even if the complaint is dismissed or withdrawn, the fact the complaint was made is likely to have caused the lawyer concerned anxiety and cost him or her time responding to it. The Board is aware that for less experienced lawyers the anxiety caused by a complaint can be particularly intense. These complaints are often accompanied by a refusal to pay legal costs, or a demand that the bill be reduced.

It is proposed that these enquiries/complaints and the anxiety and difficulties they represent for both the prospective client and the lawyers concerned can be avoided if clear basic information about rates, the cost of a first appointment, or the cost of initial enquiries, are provided to prospective new clients of legal practices before they speak to a lawyer.

It is suggested that law practices could consider training reception staff to:

- the first time that contact is made with the firm and before confirming an appointment for the prospective client with a lawyer:
 - ascertain whether the prospective client is new to the firm or not;
 - obtain the prospective client's contact details;
 - obtain basic details of the client's legal matter
- send the prospective client a tentative appointment time, together with the basic initial enquiry rates information or other initial cost requirements applicable to them or their type of legal matter in writing (for example via text or email) either during the call or immediately afterwards;
- ask the prospective client to confirm the appointment and receipt of the basic cost information (for example by texting or emailing back yes or no to the tentative appointment time); and,
- if the prospective client has no money at all, and the law practice is meeting without cost to the client
- document the information given to the receptionist during the first call and the information sent to the prospective client in such a way that this information is available to the lawyer at the first appointment.

This suggestion is not made to create a new standard for lawyers, but to help:

- Ensure clients understand what they are in for so far as the costs of their initial enquiries to a lawyer are concerned; and,
- Enable lawyers to focus upon the client's legal issues and be remunerated for the services they give.

Case Study 3

‘Firing’ a client: a brief summary of when you can terminate a retainer agreement

In this (as in previous) years, the Board has had cases before it which raised the question of whether a lawyer improperly terminated their retainer agreement with a client. Terminating a retainer without client consent and before the work is completed is a serious step. While legislation in Tasmania doesn’t specifically cover the issue⁸, at general law the principles are clear.

Your client can terminate your services whenever they wish to. However, outside of an operation of law, until the work you are retained to do is completed you cannot unilaterally terminate your retainer agreement with a client, except when:

- you have **just cause to terminate**⁹, and
- you give **reasonable notice**¹⁰ of the termination.¹¹

Aside from the contractual and professional responsibilities to your client, you must also comply with any external procedural requirements that apply (such as in certain criminal matters and court rules).¹²

When do you have just cause to terminate?

‘Just cause’ could arise in many different situations¹³, including where:

- Your client’s behaviour is inconsistent with you continuing representation. This might include when you are prevented from properly performing your duties because your client:
 - delays or refuses to pay your disbursements or costs
 - casts insulting imputations upon your character or conduct
 - misrepresents the facts of the matter to you
 - insists you breach the law or professional rules (including insisting that you pursue unarguable points)

- retains / is clearly about to retain another solicitor to carry out the same work
- behaves in a way which shows the solicitor/client relationship has completely broken down, to the point where there is no trust or confidence
- has had legal aid funding which has ended, and they cannot otherwise pay you
- Continuing the retainer would mean that you were breaching fiduciary duty, confidentiality, or professional rules. This includes where you are in a position of conflict of interest, or conflict between duties to more than one client (existing or former).
- Continuing the retainer is likely to seriously adversely affect your health.
- Your client dies. (Client mental incapacity may be relevant but will not necessarily constitute just cause in and of itself.)

What is NOT ‘just cause’?

There are many circumstances in which a lawyer may wish they could terminate their relationship with a client, however they are not necessarily able to do so. Examples include:

- You don’t like your client, or they are difficult or offensive (unless this results in a complete breakdown of the relationship as outlined above)
- You have too much other work to do (a good reason to carefully consider you or your practice’s capacity before entering into a new client retainer agreement)
- You have better paying work or clients
- You have lost interest in the case

8 The Legal Profession Uniform Law Australian Solicitors Conduct Rules adopted in most other Australian jurisdictions does (r13)

9 G E Dal Pont, *Lawyer’s Professional Responsibility* (Thomson Reuters 6th Ed 2017) 101 – 104

10 *Ibid*, 106 - 107

11 What constitutes just cause and reasonable notice may form part of your written retainer agreement

12 G E Dal Pont, *Lawyer’s Professional Responsibility* (Thomson Reuters 6th Ed 2017) 104

13 Resources such as Dal Pont (*ibid*) and similarly LexisNexis Solicitors Manual [3165] provide excellent summaries and comprehensive references for the above examples

What is reasonable notice?

Even when you have just cause to terminate the retainer, you cannot terminate without providing reasonable notice to the client. What constitutes 'reasonable notice' will depend on the facts.¹⁴

In a previous case before the Board, the Complainant was given no specific warning from her lawyer that he was terminating his services and she would be unrepresented at a court appearance, although the court was aware and had given leave to the practitioner to not appear. While a verbal warning of possible termination of the retainer had previously been given to the client (due to her failure to attend appointments and provide instructions), no written warning was given, and the client was unaware she was no longer represented until she attended court. It was the Board's opinion that the Practitioner did not provide the Complainant with reasonable notice of the termination. The Complainant was imprisoned as a result of the unrepresented court appearance, and the disadvantage caused was considered an aggravating feature by the Board, who found the Practitioner guilty of unsatisfactory professional conduct.¹⁵

When deciding what is 'reasonable' notice, consider the content of your retainer. One complaint involved verbal advice of termination 25 minutes before a court appearance, when the retainer agreement stated 14 days written notice would be given. Regardless of the contractual issues, it is difficult to demonstrate reasonableness if you aren't complying with your own timeframes.

The reasonableness of the notice period also requires consideration of whether the client will suffer any detriment¹⁶ as a result of you ceasing to act, and how much time might be reasonable to mitigate potential disadvantage. Depending on the matter, it may be appropriate to allow the client time to engage a new lawyer before your termination takes effect. Particular care should be taken when there are upcoming court appearances or filing deadlines to consider.

Preventing complaints

The Board has received complaints where the lawyer believed there to be just cause when there was not, and where there was arguably just cause but not reasonable notice. In any event, unilateral termination of your retainer with your client requires thoughtful management of the situation, taking into account the specific facts. An explanation to your client of the good reason for the termination, mitigation of detriment and a sensitive treatment of timeframes may assist in avoiding a complaint to the Board.

14 LexisNexis Solicitors Manual [3165.15]

15 Radford v Edwards [2012] LPBT 42

16 LexisNexis Solicitors Manual [3175.5]

Case Study 4

Case study - Precis of complaints about succession law

Succession law, for the purposes of the analysis for the Succession Law Conference included wills and powers of attorney. The Board's complaints numbers relating to succession law over the 4 years analysed show an upward trend:

- 2018/19 30 complaints (27%)
- 2017/18 29 complaints (24%)
- 2016/17 16 complaints (21%)
- 2015/16 12 complaints (24%)

Succession law was the second highest area in Victoria for the last three reporting years getting 15%, 13% and 15% of the complaints over those reporting periods. In NSW the percentage has ranged between 12% and 13% over the last three reporting periods.

Of the complaints made to the Board over the 4 year period reviewed by Ms Warner:

- 5 of the sample were dismissed because the complainant failed to give the Board more information about the complaint in the initial stages of the complaint process;
- 15 were withdrawn by the complainant at the pre-investigation phase;
- 6 were dismissed for want of jurisdiction mostly because they were out of time;
- 43 were dismissed summarily because they were vexatious, lacking in substance or misconceived;
- 5 were withdrawn following mediation at investigation stage; and
- 13 were dismissed following investigation mostly because there was no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct.

62% of succession law complaints were made by women.

Wills/powers of attorney

15 of the total complaints concerned wills or powers of attorney.

- Family dispute appeared to be a factor in 66% of wills/power of attorney complaints;
- Costs or Bill shock was a factor in 28% of the matters;

- Apparent lack of understanding of the process was a factor in half of the matters;
- Seeking a greater share of the estate or to be the donor's power of attorney or guardian in place of someone else, coupled with an allegation that the deceased lacked capacity, was a factor in 42% of the matters.

Executors or executor's lawyers

Complaints about executors or trustees account for 17 complaints of the sample and complaints about the executor's lawyer accounts for 13.

Most of these complaints were made by beneficiaries with some made by co-executors who are also beneficiaries.

- Delay is the most common allegation in 53% of these complaints;
- Cost is the second most common allegation in 11% of the matters;
- Bullying or rude behaviour was alleged in 10% of the matters;
- Family dispute is a factor in 43% of the matters;
- Lack of understanding of the processes involved is a factor in 23% of the matters; and
- Seeking a greater share of the estate motivated the complainants in 26.6% of the matters.

Where the complaint was about the complainant's own lawyer, the most frequent allegations were excessive costs and delay.

Education

THE PROFESSION

The Board continues to interact with the profession as a means of fulfilling its function of advising the profession on appropriate standards of conduct. The website, fact sheets and guidance notes for the profession are part of our educative process.

The Board has also undertaken the following education:

- Legal Practice Course
 - The Centre for Legal Studies runs its Legal Practice Course in the first half of each calendar year. The Board delivers three one hour seminars to the legal practice students. The seminars are part of the 'Skills, Ethics and Professional Responsibility' unit and focus on complaints about the profession and are delivered in July each year.
- CPD sessions through the Law Society
 - **Dealing with a Complaint – A Personal Perspective; November 2018**
Panelled by Manager Operations, Ms Johnston, and Investigations Officer, Ms White. A Practitioner provided a personal perspective of her experience dealing with a complaint and the Board.
- Other sessions
 - **Succession Law Conference – June 2019**
Senior investigator, Ms Warner presented to the Succession Law Conference in June 2019 on complaints to the Board about succession law and learnings from those complaints.

Information and Fact Sheets

The Board continues to develop information and fact sheets for both the profession and the public to assist in understanding the complaint process and disciplinary outcomes. Some of the information has been reproduced and adapted for Tasmania with permission from the Board's sister agencies interstate. The fact sheets are available on the Board's website. For the public they include:

- Frequently asked questions
- 5 simple steps to follow when a problem arises with your lawyer
- Working with your lawyer
- Making a complaint
- Out of Time Complaints
- Mediation of Complaints
- Independent Children's Lawyers (ICL)
- No Win No Fee Agreements
- Conflict of Interest
- Compensation Orders
- Liens
- File Ownership and Handling
- Opposing Representatives
- Types of Costs
- Legal Costs - Your Right to Know
- Your Right to Challenge Legal Costs

For the profession they include:

- Avoiding complaints
- Practical guide for dealing with complaints
- Responding to a complaint
- Investigation of Complaints
- Dealing with less serious complaints – s456
- Board Initiated Complaints
- Guidance Note – Itemised bills and beneficiaries for lawyers
- Guidance Note – Referral fees & claim farming

Guidance to the Profession

GUIDANCE NOTE

The Act provides that a function of the Board is to advise the legal profession on appropriate standards of conduct and to monitor and identify trends and issues that emerge within the profession.

The Board was made aware of instances in other jurisdictions of legal practitioners paying a referral fee or 'claim farming'. The Board received an enquiry relating to a similar practice within Tasmania.

In an effort to provide guidance to the profession in relation to appropriate standards of conduct, the Board has developed a guidance note for lawyers relating to the appropriateness of paying a fee for referrals from third parties. In developing the guidance note, the Board consulted with the Law Society of Tasmania.

It is hoped that the guidance note will assist in educating both the profession and the public in this area and reduce complaints made to the Board.

The guidance note was distributed to the profession and is available on the website.

CHIDING

As part of its functions in relation to advising the legal profession on appropriate standards of conduct, the Board may 'chide' a practitioner. Chidings are used in circumstances where the Board has formed the view that the practitioner's conduct did not amount to a disciplinary matter but requires an informal warning or caution. It assists the Board's functions in relation to educating lawyers about issues of concern.

Chidings were issued by the Board on 8 separate dismissed or withdrawn matters.

REFERRAL OF ISSUES TO THE LAW SOCIETY OF TASMANIA

Consequent to issues raised by complainants or practitioners, the Board will refer relevant issues to the Law Society for consideration. During the reporting period the Board referred the following:

- A suggested continuing professional development seminar for legal professionals dealing with clients with an acquired brain injury. The Board has involvement with complainants who are vulnerable for a variety of reasons, including those who may have an acquired brain injury; and
- Information relating to a legal practitioners' trust account, arising incidentally in an unrelated investigation.

Model Litigant Policy

The Board is committed to ensuring high professional standards, transparency and accountability in the execution of its functions. The Model Litigant Policy and Guidelines are available on the Board's website.

Other Statutory Functions

REGISTER OF LOCAL PRACTISING CERTIFICATES

The Board continued to delegate to the Law Society of Tasmania its statutory function regarding the maintaining of the public register of names of Australian lawyers to whom the prescribed authority grants local practising certificates as well as the register of names of locally registered foreign lawyers.

ADMISSIONS

Applicants for admission to the legal profession must serve a copy of the application on the Board in accordance with the Tasmanian admission rules. The Board considers each application and may, if it has reasonable grounds, object to an application for admission. Such objection is by way of a Notice of Objection to the Supreme Court to hear and determine the issues relating to the objection. Where the interests of the Law Society and the Board coincide with respect to an objection, they may join together in an application to the Supreme Court to determine the issues.

75 applications for admission were served on the Board during the reporting period.

The Board also received one application for re-admission to the Roll of Legal Practitioners.

2 Notices of Objection were filed by the Board arising from those applications. On both matters the Board joined with the Law Society to object to the applications.

The application for re-admission was dismissed on 11 December 2018 with the applicant agreeing to pay the Board and Law Society's costs of and incidental to the application. The applicant gave an undertaking not to re-apply for admission as a legal practitioner in any Australian jurisdiction.

The remaining application for admission, for which a Notice of Objection was filed, remains extant.

APPOINTMENT OF MANAGERS

During the reporting period no new managers were appointed by the Board to a law practice.

However, the Law Society of Tasmania, pursuant to a delegation from the Board, extended the appointment of a manager to the legal practice of Surinder Kaur Mahindroo in accordance with section 534 of the *Legal Profession Act 2007*, on an ongoing basis.

REGISTER OF DISCIPLINARY ACTION

It is a function of the Board to maintain the Register of Disciplinary Action. Information relating to disciplinary action taken by the Board, the Disciplinary Tribunal or the Supreme Court must be published on the Register which is required to be made available on the Board's website.

During the reporting period 4 new disciplinary findings were uploaded to the Register, one from the Disciplinary Tribunal and 3 from the Board.

Of the Board matters, there was:

- one finding of unsatisfactory professional conduct arising from section 454;
- one finding that a complaint had been partly substantiated, arising from section 456 and
- one finding of unsatisfactory professional conduct arising from section 456.

The Disciplinary Tribunal made one finding of unsatisfactory professional conduct against one practitioner in relation to two complaints.

AUSTLII

The Australasian Legal Information Institute (AustLII) is an online free access resource for Australian legal information. It is a joint facility of the UTS and UNSW Faculties of Law with a broad public policy agenda to improve access to justice through better access to information.

Section 498 of the *Legal Profession Act 2007* enables the Board to publicise disciplinary action taken against an Australian legal practitioner in any manner the Board thinks fit. In accordance with the Act, both the Disciplinary Tribunal and the Supreme Court are required to provide the Board with sufficient information to enable the Board to perform or exercise the Board's functions or powers in respect of the register.

Over and above the publication of the disciplinary register, some jurisdictions also make disciplinary decisions available on AustLII. In the past, in Tasmania it is only Supreme Court disciplinary decisions which were available on AustLII.

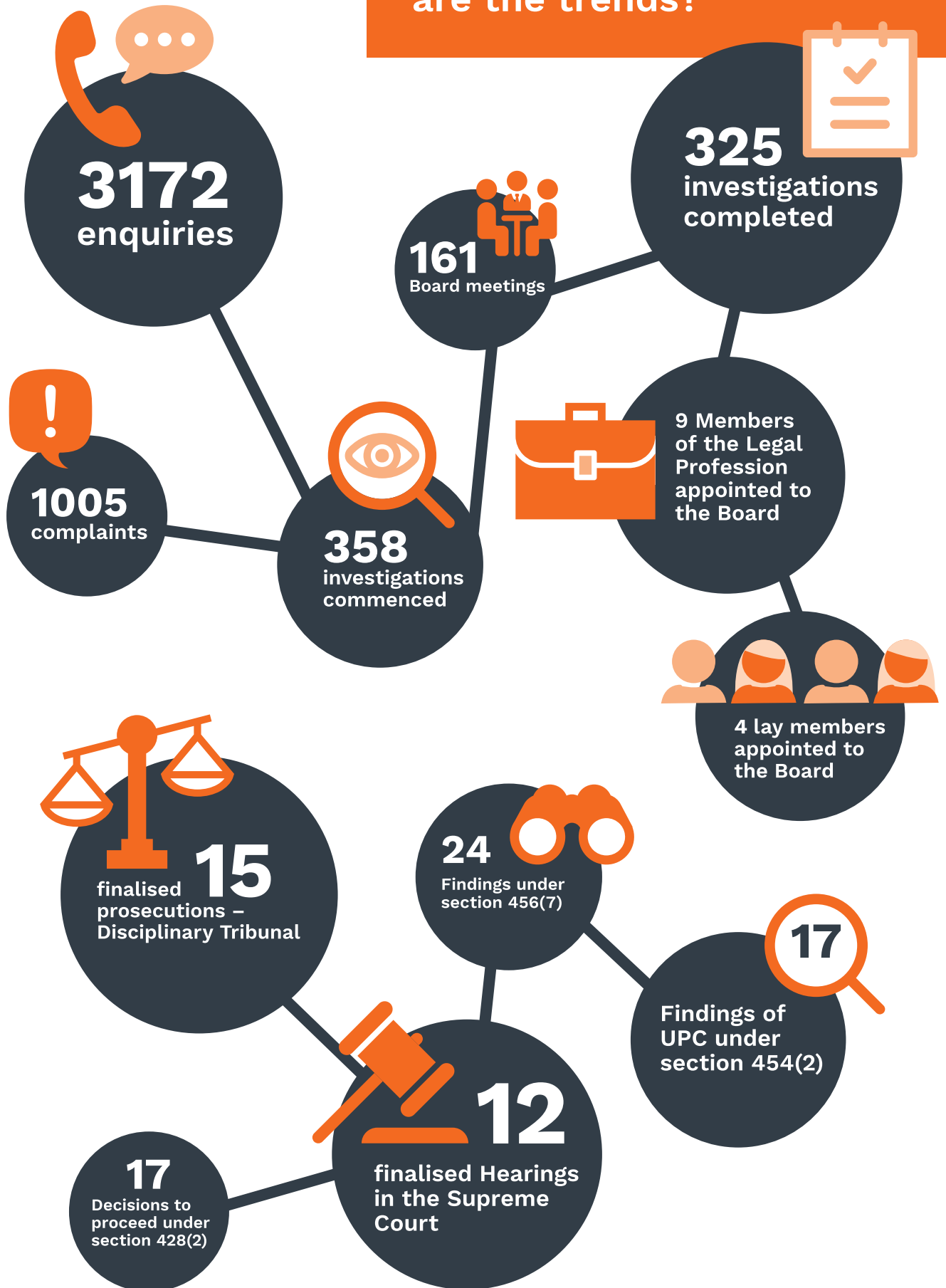
The Board considers that the publication of disciplinary outcomes over and above the disciplinary register provides a greater level of transparency to both the public and the wider legal profession as well as a level of accountability with respect to the regulatory process. Publication on AustLII also assists the Board to fulfil its legislative function to advise the profession on appropriate standards of conduct.

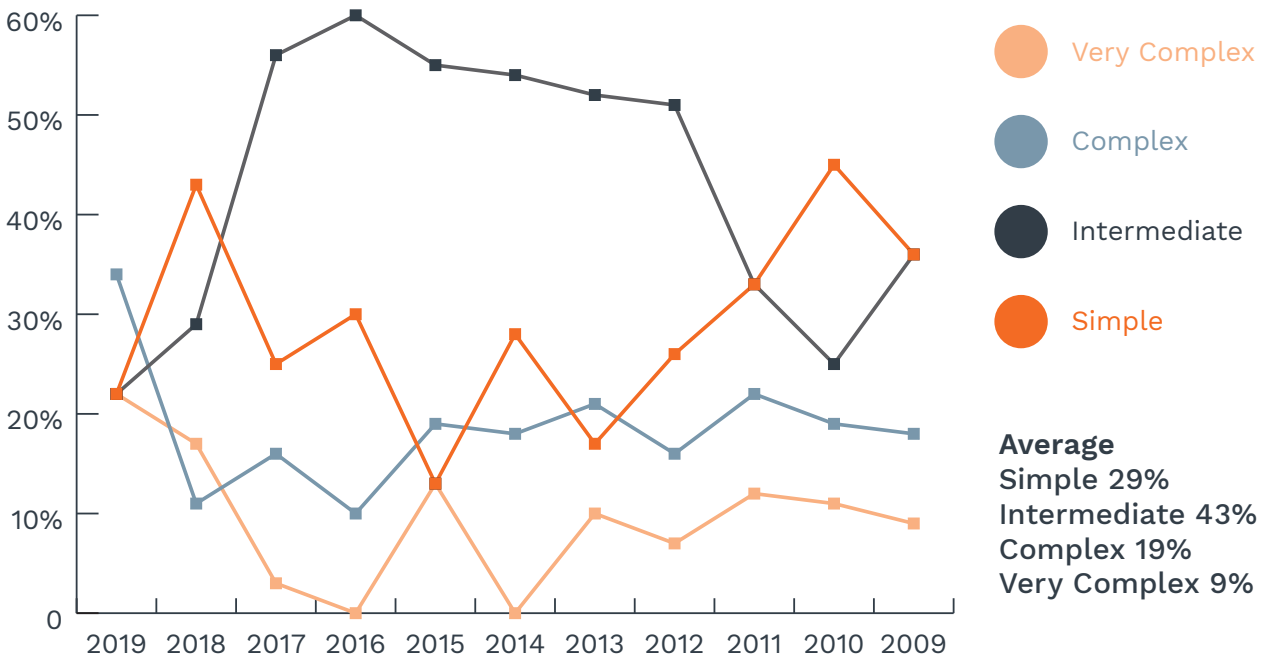
At its Board meeting on 24 September 2018, the Board resolved to publish the reasons of the Disciplinary Tribunal for determinations, decisions or orders from 1 July 2018 on AustLII.

AustLII decisions can now be searched for the Legal Profession Disciplinary Tribunal of Tasmania (TASLPDT).

Snapshot of our 10 years

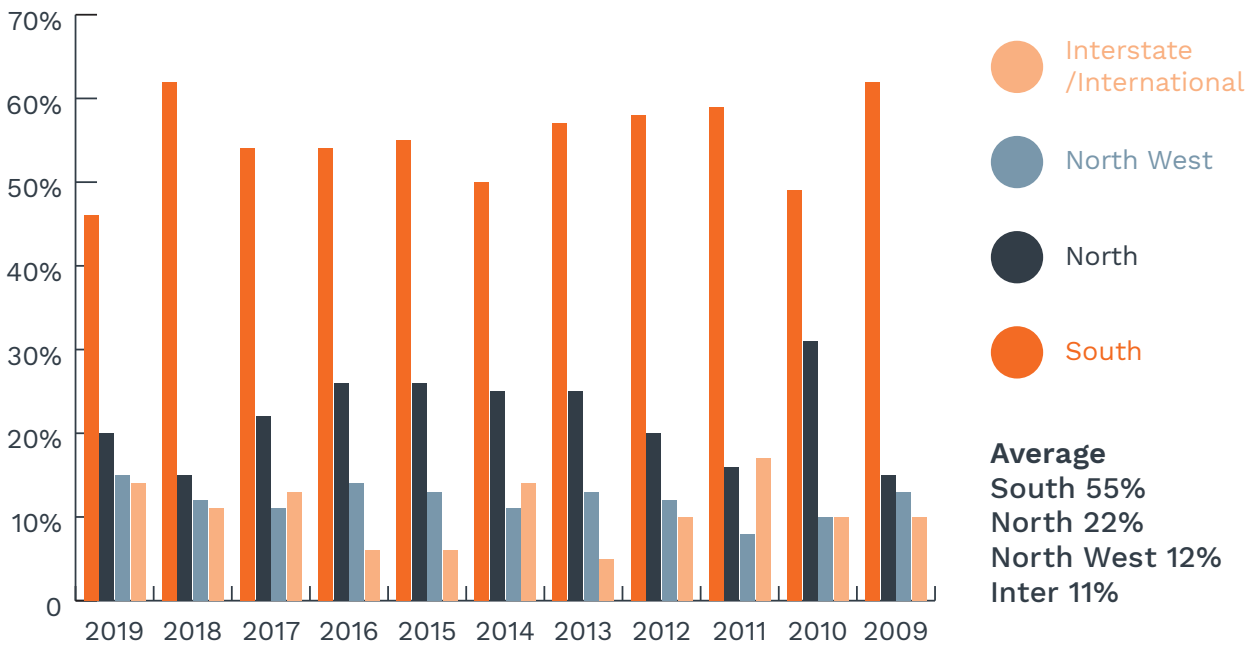
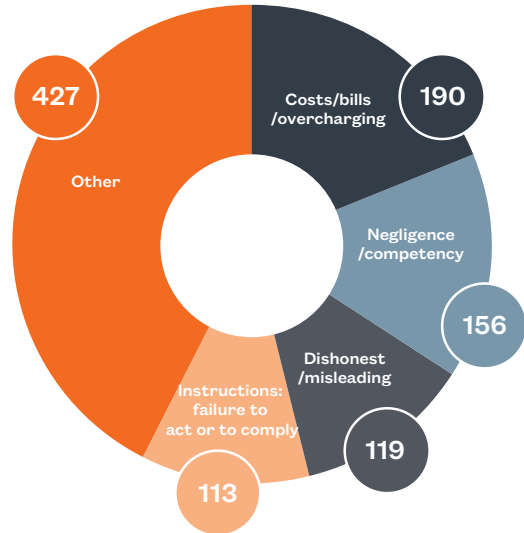
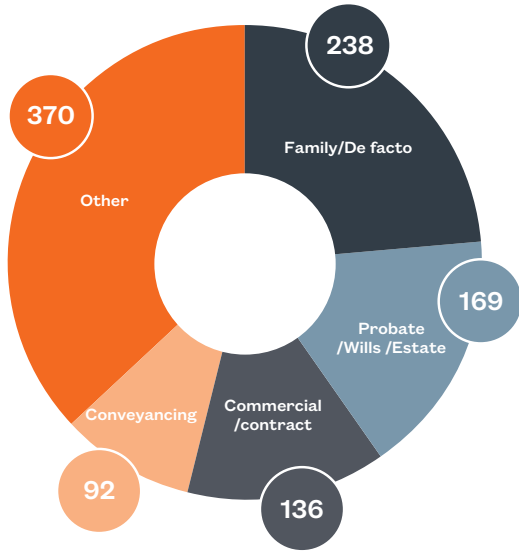
One of the Board's functions is to identify trends – what are the trends?





Downward trend for simple and intermediate investigations.

A breakdown of the 1,005 complaints over the 10 years breakdown



Breakdown of regions where complaints are from over time.

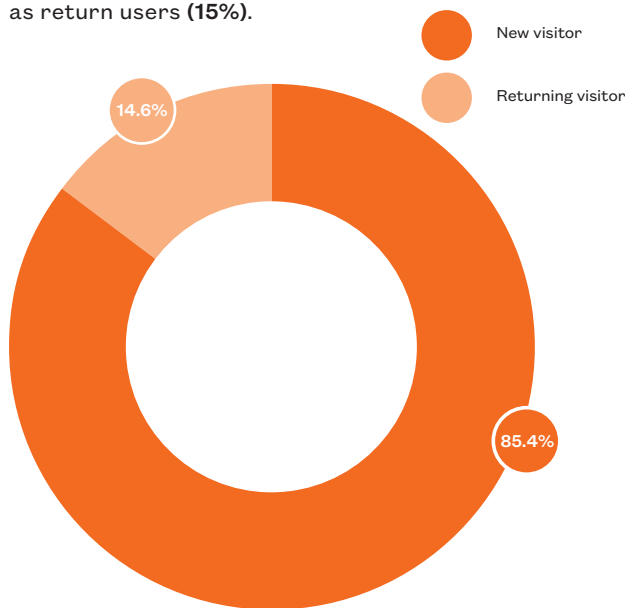


Part 3 – Administrative Matters

Website

The Board endeavours to provide a range of resources for the public and the profession about the law and the Board's processes through its website.

During the reporting period the website had approximately **5,918** users with the majority of users aged between 25-34 years old (33.5%)¹⁷. Of those users, a significant majority accessing the website were doing so for the first time (**85%**) with only a small proportion as return users (**15%**).



The most frequently accessed pages from the website over the reporting period were consistent with the previous reporting period. The following table demonstrates the increase of numbers accessing those pages more broadly.

WEBPAGES	PAGEVIEWS 2018-19	PAGEVIEWS 2017-18
Disciplinary Register	2,539	2,244
Online complaint form	1,118	905
Complaints process	781	544
Contact Us	830	649
About the Board	993	578
Resources – Fact Sheets	488	431
Resources – Policy, Rules & Guidelines	611	493

¹⁷ As determined by Google Analytics.

The searchable Disciplinary Register and online complaint form saw an increase of views from the previous reporting period. The increase in number of views of the online complaint form is consistent with the preferred method of complaint to the Board during the reporting period being via the Board's website.

The increase in access to pages such as the Complaints Process, About the Board and the Board's various resources, coupled with the slight decrease of enquiries received by the Board, illustrates that the Board's audience is able to readily obtain information they need from the website where they might have otherwise contacted the Board. Search terms identified by the Board such as 'responding to a complaint' and the increase in views of Resources - Policies, Rules and Guidelines suggests that the website has been utilised more frequently by the legal profession than the previous reporting period.

During the previous reporting period, the Board identified that the most prominent search term related to admission in Tasmania. As a consequence the Board developed a new webpage dedicated to relevant information and bodies for admission in Tasmania. The website registered **331** views of the information within the reporting period which led to a significant decrease in enquiries to the Board about admission generally. The Board notes that of the **10** general admission enquiries received, 7 were in relation to admission from international students.



Decisions Database

In 2017 the Board commenced a project to develop a decisions database. Since it first commenced operations in 2009 the Board has made more than 600 formal decisions or determinations. While those decisions are currently collated and categorised within spreadsheets, the Board has decided it would be appropriate to create an internal database that would enable users to search the decisions by keywords and phrases contained within the decision and by the types of complaints made against legal practitioners and the outcomes of the complaints.

The database build was completed in June 2018 and a plan has been developed to include the back capturing of previous decisions. As at June 2019 all decisions from 2012 had been back captured.

Disclosures Under *Public Interest Disclosures Act 2002*

The Board is committed to the aims and objectives of the *Public Interest Disclosures Act 2002*. It does not tolerate improper conduct by its employees, officers or members, or the taking of detrimental action against those who come forward to disclose such conduct.

For the purposes of the Public Interest Disclosures Act the Board is a public body. During the reporting period the Board adopted the Model Procedures for public interest disclosure as prepared by the Ombudsman. It also developed and published its own Public Interest Disclosure Policy, which is now available on the website at www.lpbt.com.au or from our office on request.

No referrals were made to the Ombudsman or other public bodies under s 29B (disclosure relating to misconduct) of the Public Interest Disclosures Act by the Board. Similarly, no referrals were made to the Board by the Ombudsman.

Right to Information

The Board is excluded from the *Right to Information Act 2009* by s 6 of that Act, unless the information relates to its administration. Complaint related information, including investigation material is therefore exempt. The Board is committed to ensuring that, where appropriate, its administrative information is available to the public. This is generally achieved through its annual reporting process and provision of information on its website.

The CEO of the Board, Mr Ederle, acting as principal officer and in accordance with section 24 of the *Right to Information Act*, has delegated his powers and functions with respect to Right to Information to the Manager Operations of the Board.

The Board received one application for assessed disclosures of information under the right to information legislation during the reporting period.

Destruction of Documents

The Board is subject to provisions of the *Archives Act 1983* (Tas). The Board has developed a Retention and Disposal Schedule to ensure that the management and disposal of documents relating to the functions of the Board are compliant under the Archives Act.

Legislative Amendments

Legal Profession Regulations 2018 and Legal Profession (Prescribed Authorities) Regulations 2018

On 28 November 2018 the new *Legal Profession Regulations 2018* and *Legal Profession (Prescribed Authorities) Regulations 2018* came into effect.

For the purposes of the 2018 Regulations, the prescribed authority is now the Board for the production and maintenance of the fact sheets referred to in Regulations 64 and 67.

Legal Profession Amendment Act 2018

The *Legal Profession Amendment Act 2018* came into effect on 16 November 2018. The Act amended the *Legal Profession Act 2007* to clarify the powers and procedures to be applied in determining applications under section 458 of the Act.

The Amendment Act amended section 458 to provide that the Disciplinary Tribunal may determine an application made under section 458 in accordance with Part 4.7 of the Act (with the exception of specified provisions that are not considered to be appropriate to re-hearing proceedings, i.e. sections 464, 466(7)(b), 467(5)(b) and 468).

In relation to section 458 applications made to the Court, the Amendment Act clarified that the Court can determine its own practice and procedures.

The Amendment Act also included provisions to remove doubt about the validity of applications under section 458 made and determined prior to the commencement of the proposed amendments. Under these provisions an application under section 458 made prior to the commencement of the amendments is taken to have been validly made if it was accepted by the Tribunal or Court. The provisions clarify that the fact a section 458 application was determined by the Tribunal in accordance with Part 4.7, is not, of itself, grounds for the determination being invalid.

Court Security Regulations 2018

The Court Security Regulations came into effect on 1 July 2018. The Regulations defined the Board as a 'tribunal' for the purpose of the *Court Security Act 2017*.

Service Level Agreement

The Board has a Service Level Agreement (SLA) with the Department of Justice for the provision of corporate services such as financial and accounting services, human relations, occupational health and safety and information technology support. The Board's employees have access to information material via the Department's intranet in relation to corporate services, guidelines, policies and professional learning.

Work Health and Safety

The Board has adopted the Department of Justice Work Health and Safety System and associated policies and procedures to the extent that they are relevant to the Board. We continue to review and develop Work, Health and Safety (WHS) policies and procedures specific to the Board.

Work, health and safety strategies employed during the reporting period include:

- as required safety inspections of office premises;
- as required reporting to the Board on WHS matters;
- WHS awareness for all employees, including completion of WHS Induction or Refresher programmes, facilitated by the Department of Justice;

- ergonomic assessments at induction, as well as follow-up assessments where required; and
- provision of ergonomic equipment as identified through ergonomic assessment.

Administrative staff have also undertaken First Aid training with St Johns.

Professional Development

The Manager Operations and the Investigation Officers are Australian lawyers and each participate in the mandatory continuing professional development scheme run by the Law Society of Tasmania, to maintain and extend their knowledge, expertise and competence in the law.

CONFERENCE OF REGULATORY OFFICERS (CORO), OCTOBER 2018

The Manager Operations, Ms Johnston, and Investigation Officer, Ms White, represented the Board at the Conference of Regulatory Officers ('CORO') in Fremantle Western Australia on 25 and 26 October 2018.

The program included presentations on:

- The practice of law – profession or business
- 'Me too' and the rule of law
- Legal practice and the aging population
- Cybersecurity and the law
- When is negligence a question of competency
- Legal ethics as a habit of being

Accountability

The CEO is responsible for the Board's operations, management and general administration and reports on those matters to the Board at each of its meetings. All Board staff are independently employed. Where a complaint is made against Board staff, the CEO will investigate the complaint. Complaints about other decisions made by the Board, excluding investigations, are directed to the CEO.

The Board has endorsed a comprehensive Conflict of Interest policy for its employees and contractors. The policy includes the establishment of a register of conflicts, maintained by the CEO's office.

Board members are subject to the legislative provisions of the Legal Profession Act 2007 (Schedule 3) with respect to their ongoing obligations with respect to disclosing their interests.

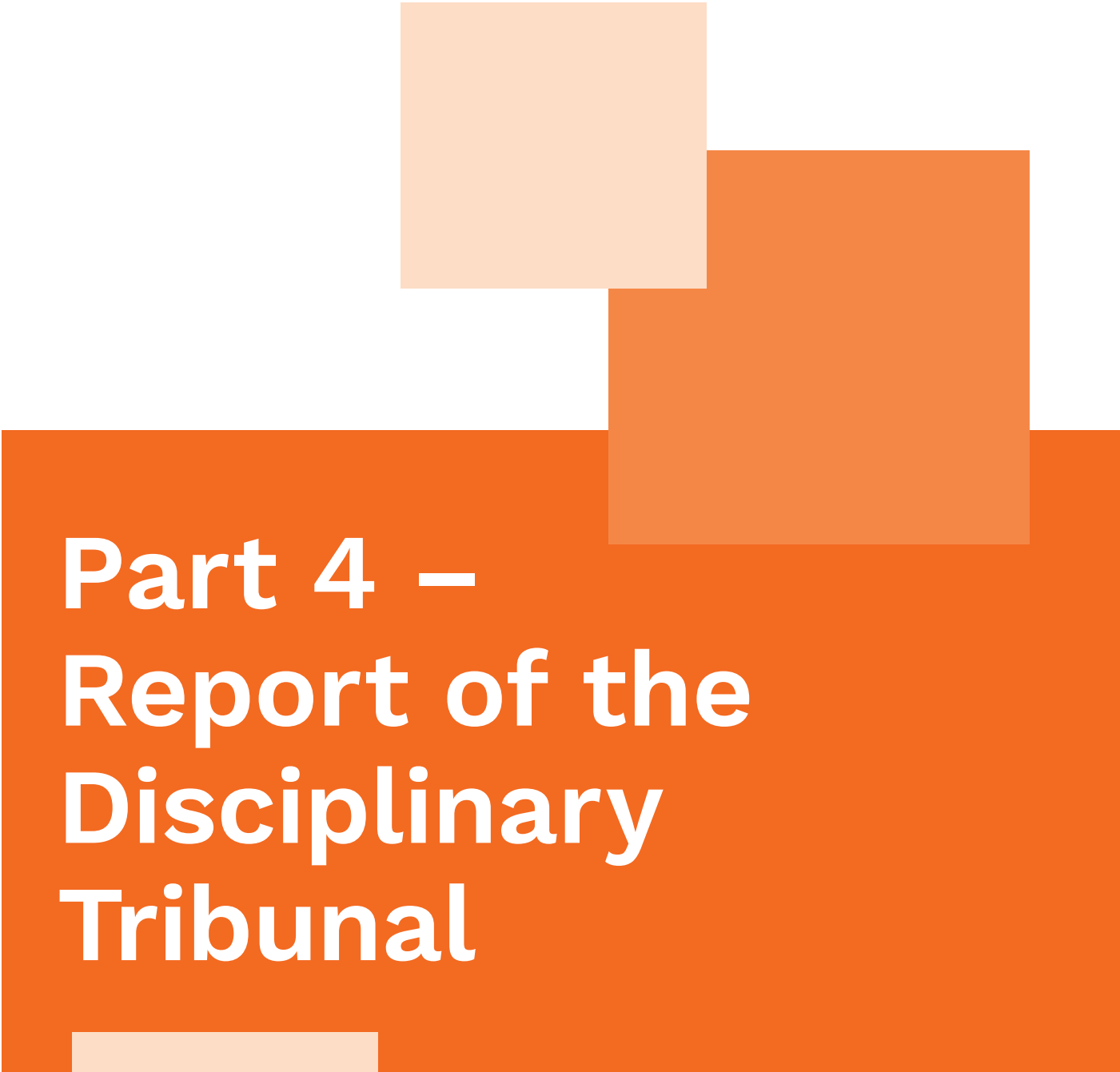
Delegations

The Board is able to delegate its regulatory functions in accordance with section 593 of the Act. Delegated functions are exercised consistently with any applicable Board policy or direction.

The Board has a current delegation to the prescribed authority (Law Society of Tasmania) to keep the Registers of local practicing certificates and locally registered foreign lawyers.

The Board also has relevant delegations to the Chief Executive Officer, the Manager Operations and the Complaints Officer to enable the efficient and effective functioning of the Board with respect to the processes associated with the receipt of complaints and for applications of admission.

Instruments of delegation can be inspected on request.



Part 4 – Report of the Disciplinary Tribunal

The following attached report is provided by the Disciplinary Tribunal in satisfaction of section 617 (1) of the *Legal Profession Act 2007*.

DISCIPLINARY TRIBUNAL

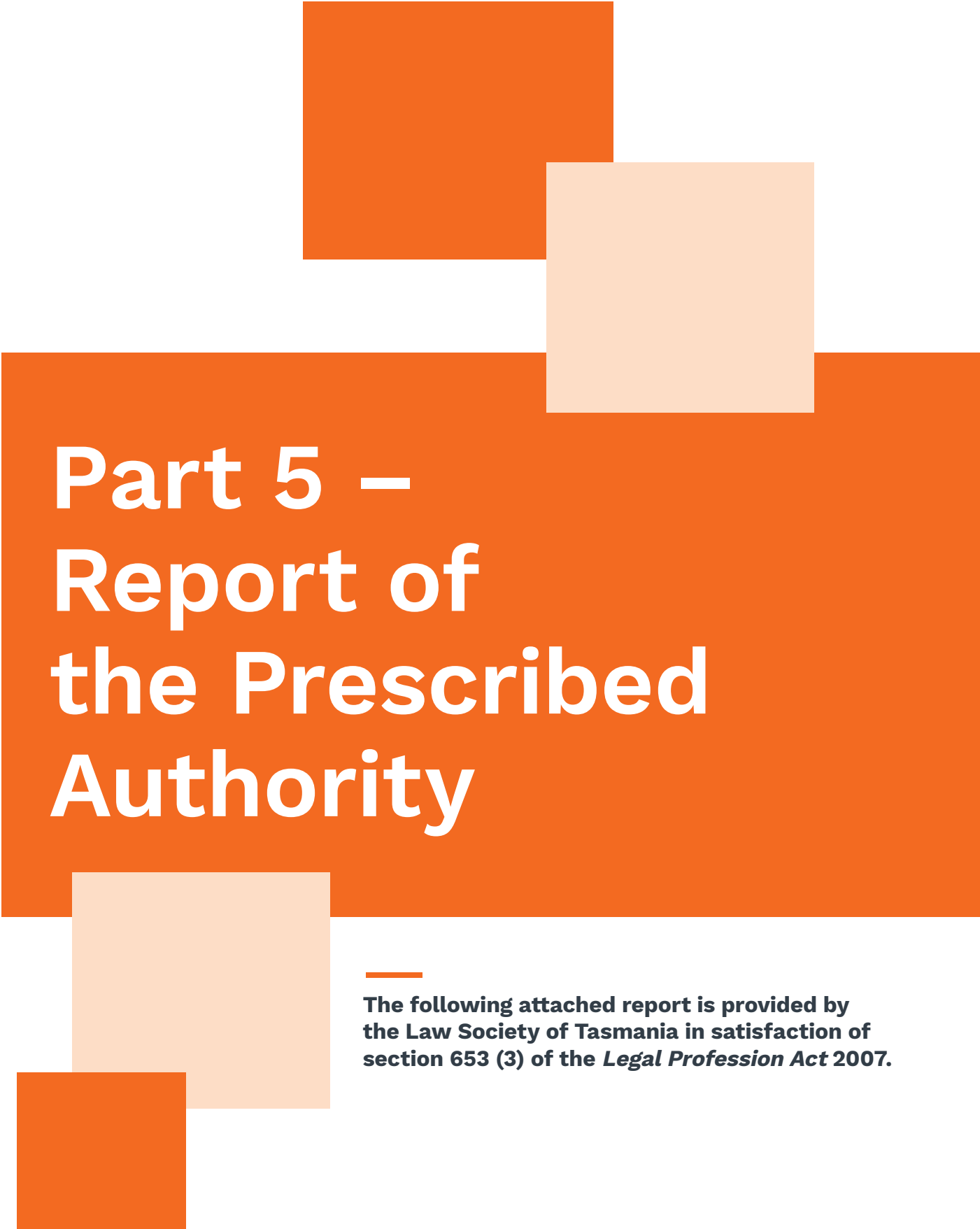
REPORT FOR FINANCIAL YEAR 2018–2019

Legal Profession Act 2007, s. 617

During the financial year ended 30 June 2019 no applications were made to the Disciplinary Tribunal under section 464 of the *Legal Profession Act 2007*.

Philip Jackson SC
Chairperson
25 July 2019

A handwritten signature in black ink, appearing to read 'Philip Jackson', is positioned below the typed name and date.

The page features several decorative squares in orange and light orange. A large orange square is at the top center. Below it, a light orange square is on the right. A large orange square spans the width of the page, containing the main title. Below this, a light orange square is on the left, and a smaller orange square is at the bottom left.

Part 5 – Report of the Prescribed Authority

The following attached report is provided by the Law Society of Tasmania in satisfaction of section 653 (3) of the *Legal Profession Act 2007*.



Our ref:L4.2:LOR/TL

30 July 2019

Mr Keyran Pitt QC
Chairman
Legal Profession Board of Tasmania
Level 3, 147 Macquarie Street
HOBART TAS 7000

Dear Sir

Annual Report of the Prescribed Authority 2018/2019

Section 653(3) of the *Legal Profession Act 2007* requires the prescribed authority on or before 1 August after the end of a financial year, to prepare and present to the Board a report on its operations for that financial year. The Law Society of Tasmania, as the prescribed authority presents its report to the Board for the financial year 2018/2019.

Overview

The *Legal Profession (Prescribed Authorities) Regulations 2018* commenced on 9 July 2018, replacing the 2008 version. The regulations appoint the Society as the prescribed authority for the purposes of some 129 separate parts of the Act. They include:

- a. Regulation of practising certificates, including grant and renewal, the imposition of reasonable and relevant conditions, amendment, suspension and cancellation of practising certificates
- b. Maintaining a record of incorporated legal practices
- c. The regulation of trust accounts
- d. The appointment of investigators to law practices
- e. The appointment of external intervenors to law practices.

The Board is now the prescribed authority for five parts of the Act. For purposes of this report the term 'prescribed authority' refers to the Society.

Funding of the Prescribed Authority

The functions of the prescribed authority are funded by the legal profession through the payment of practising certificate fees.

Regulation of Trust Accounts

Most, but not all law practices in Tasmania operate a trust account. Trust money is money entrusted to a law practice in the course of or in connection with the provision of legal services. Part 3.2 of the *Legal Profession Act* deals with trust money and trust accounts. Obligations relating to trust accounts are also in part 3 of the *Legal Profession Regulations 2008*.

The major obligation of the Society is to ensure that trust money is held by law practices in a way that protects the interests of persons for or on whose behalf that money is held. Every law practice that holds money in its general trust account must undergo an annual trust account examination by an authorised examiner. For some years all trust account annual examinations have been carried by the one examiner authorised by the Society. Use of the one trust account examiner ensures a consistency in approach to examinations and that the examiner has the relevant expertise and knowledge of legislative requirements. This has led to a marked improvement in compliance levels. Each examiner's report is provided to the Society. Reports

26 Murray Street Hobart TAS 7000
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DX 111 Hobart | info@lst.org.au
www.lst.org.au ABN 79 607 763 856

identify any breaches of the relevant Act or Regulations, any unsatisfactory practices and make general recommendations regarding the operation of the trust account, including appropriate risk mitigation strategies.

The Society expends not inconsiderable resources in undertaking its statutory duties as the regulator of trust accounts. A trust account administrator is employed under the supervision of the Executive Director. The administrator's role is to manage the administration of trust accounting reporting requirements including checking and recording quarterly returns with regards to the designated deposit account, the review and analysis of all external examination reports and reviewing other documents lodged with the Society such as the notification of irregularities, and the opening or closing of trust accounts.

The Society provides firms with online resources including an administration calendar and relevant forms. In addition, the Society's authorised trust account examiner is retained to provide advice as and when needed to law practices or prospective law practices. Such advice may include advice of a technical nature or providing information as to the appropriate practice management/trust accounting system for a particular firm.

Cybercriminals targeting law practices continues to be of concern. The Society has made and will continue to make law practices aware of the risks and provide education and resources in how to deal with those risks.

Trust account examinations relate to a calendar year. The following information therefore relates to the 2018 and 2015 calendar years;

Year	2018	2015
Number of firms with trust accounts	104	116
Number of trust receipts	108,314	93,066
Total amount of trust receipts	\$9.2 billion	\$6.8 billion
Amount held on trust at 31 December	\$145 million	\$100 million
Amount held on investment at 31 December	\$100 million	\$70.5 million

Total amount receipted increase of 35%

Total number of receipts increase of 17%

Practising Certificates

A major role of the prescribed authority is the granting of new practising certificates and the annual renewal of existing certificates. The renewal process begins in May with renewal applications being sent to individual practitioners. On its return each application is reviewed by the Society. The majority of applications are renewed by the Executive Director under delegated authority. Any application that discloses a suitability issue, a failure to comply with continuing professional development requirements or is an application for the first time granting of a principal practising certificate is considered by the Council of the Society.

The following classes and numbers of practising certificates were issued under the Act in the period 1 July 2018 to 30 June 2019:

Principal	205
Employee	318
Barrister	51
Corporate	67
Locum	4
Community legal centre	63
Volunteer	11
Total	719

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Each class of practising certificate has a number of practising certificate conditions attached to it as a matter of course. Further conditions may be and are imposed depending on the practitioner's circumstances. Examples include:

- The imposition of pupillage conditions for new barristers
- In the case of practitioners operating as a sole practitioner for the first time, the obligation to complete a trust accounting course, to appoint a mentor, to meet with that mentor and for that mentor to report to the Society
- The imposition of additional continuing professional development obligations
- A condition a practitioner not be authorised to receive trust money

Section 41 of the Act states that an Australian lawyer engaged under the *State Service Act*, by a state, territory or commonwealth instrumentality, a local council or in a state or territory statutory office is taken to hold for the purposes of the Act and that employment, a practising certificate as a legal practitioner. The above figures therefore do not include practitioners who fall within section 41 including practitioners employed in the Office of the Director of Public Prosecutions, the Solicitor-General and the Legal Aid Commission of Tasmania.

Suspension or Cancellation of a Practising Certificate

There were no suspensions or cancellations of practising certificates in the relevant period.

Appointment of External Intervenors

No external intervenors were appointed in the relevant period.

Interstate Legal Practices

The Society regularly receives queries from interstate firms about undertaking work in the state on a 'fly in fly out' basis or the requirements for setting up a Tasmanian office. The Society has received 13 notices of an intention to begin providing legal services from interstate incorporated legal practices with no Tasmanian practising certificate holders. This will continue to present challenges to all legal regulators. For example, a number of firms although receiving trust moneys in Tasmania, receive written instructions to have that money banked in an interstate trust account. Any risks are managed by informing the relevant interstate trust account regulator and having the practice agree to, among other things, make available to the Society its external examination report.

Conclusion

Between 2011 and 2018 the number of practitioners in the private profession increased by 35%. Although the number of firms operating trust accounts has fallen, the amount of transactions and the value of receipts has increased considerably in recent years. This growth in practitioner numbers and trust money has increased the burden on the Society of carrying out its regulatory activities.

The Society acknowledges and thanks the Board for the level of cooperation and communication shown to the Society. The profession operates under a co-regulatory model. For that model to operate effectively and efficiently it is necessary that there be a high degree of confidence and open communication between regulators. The Society records its appreciation to the Board for its continuing efforts in this regard.

Should the Board require any further information, please do not hesitate to contact the Society.

Yours faithfully



LUKE RHEINBERGER
EXECUTIVE DIRECTOR

c.c. Attorney-General for Tasmania

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Part 6 – Independent Audit Report and Financial Statements as at 30 June 2019

The independent audit report and financial statements is attached in satisfaction of section 601 of the *Legal Profession Act 2007*.

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Independent Auditor's Report

To the Members of Parliament

Legal Profession Board of Tasmania

Report on the Audit of the Financial Report

Opinion

I have audited the financial report of the Legal Profession Board of Tasmania (the Board), which comprises the statement of financial position as at 30 June 2019 and statements of comprehensive income, changes in equity and cash flows for the year then ended, notes to the financial statements, including a summary of significant accounting policies and the statement of certification by the members of the Board (the Members).

In my opinion, the accompanying financial report:

- (a) presents fairly, in all material respects, the financial position of the Board as at 30 June 2019 and its financial performance and its cash flows for the year then ended
- (b) is in accordance with the *Financial Management Act 1990*, *Legal Profession Act 2007* and Australian Accounting Standards.

Basis for Opinion

I conducted the audit in accordance with Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of my report. I am independent of the Board in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to my audit of the financial report in Australia. I have also fulfilled my other ethical responsibilities in accordance with the Code.

The *Audit Act 2008* further promotes the independence of the Auditor-General. The Auditor-General is the auditor of all Tasmanian public sector entities and can only be removed by Parliament. The Auditor-General may conduct an audit in any way considered appropriate and is not subject to direction by any person about the way in which audit powers are to be exercised. The Auditor-General has for the purposes of conducting an audit, access to all documents and property and can report to Parliament matters which in the Auditor-General's opinion are significant.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

...1 of 3

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Responsibilities of the Members for the Financial Report

The Members are responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards, and the financial reporting requirements of the *Legal Profession Act 2007* and for such internal control as they determine is necessary to enable the preparation of the financial report that is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the Members are responsible for assessing the Board's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and the going concern basis of accounting unless the Board is to be dissolved by an Act of Parliament, or the Members intend to cease operations, or have no realistic alternative but to do so.

Auditor's Responsibilities for the Audit of the Financial Report

My objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

As part of an audit in accordance with the Australian Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial report, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Members.
- Conclude on the appropriateness of the Member's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Board's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial report or, if such disclosures are inadequate, to modify my opinion. My conclusion is based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Board to cease to continue as a going concern.

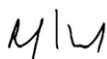
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- Evaluate the overall presentation, structure and content of the financial report, including the disclosures, and whether the financial report represents the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Members regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.



Rod Whitehead
Auditor-General
Tasmanian Audit Office

21 August 2019
Hobart

...3 of 3

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Statement by Chairman and Chief Executive Officer

The accompanying Financial Statements of the Legal Profession Board of Tasmania are in agreement with the relevant accounts and records and have been prepared in compliance with Treasurer’s Instructions issued under the provision of the *Financial Management and Audit Act 1990* and Section 599 of the *Legal Profession Act 2007* to present fairly the financial transactions for the period ended 30 June 2019 and the financial position as at the end of the year.

At the date of signing, we are not aware of any circumstances which would render the particulars included in the financial statements misleading or inaccurate.

Dated this 13th day of August 2019



Keyran Pitt QC
CHAIRPERSON



Frank Ederle
CHIEF EXECUTIVE OFFICER

Statement of Comprehensive Income for the year ended 30 June 2019

		2019	2018
	Notes	\$'000	\$'000
Revenue and other income from transactions			
Revenue from Solicitor's Guarantee Fund	1.1	1 532	1 081
Other revenue	1.2	122	51
Total revenue and other income from transactions		1 654	1 132
Expenses from transactions			
Employee benefits	2.1	960	882
Supplies and consumables	2.2	253	261
Other expenses	2.3	192	225
Total expenses from transactions		1 405	1 368
Net result from transactions		249	(236)
Comprehensive result		249	(236)

This Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

Statement of Financial Position as at 30 June 2019

		2019	2018
	Notes	\$'000	\$'000
Assets			
<i>Financial Assets</i>			
Cash and cash equivalents	6.1	384	125
Receivables	3.1	14	12
Total assets		398	137
Liabilities			
Payables	4.1	20	18
Employee benefits	4.2	184	174
Total liabilities		204	192
Net assets/(liabilities)		194	(55)
Equity			
Accumulated funds		194	(55)
Total equity		194	(55)

This Statement of Financial Position should be read in conjunction with the accompanying notes.

Statement of Cash Flows for the year ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000
		Inflows (Outflows)	Inflows (Outflows)
Cash flows from operating activities			
Cash inflows			
Solicitor's Guarantee Fund Receipts		1 532	1 081
GST Receipts		45	43
Other cash receipts		116	51
Total cash inflows		1 693	1 175
Cash outflows			
Employee benefits		(945)	(857)
GST payments		(42)	(46)
Supplies and consumables		(258)	(262)
Other expenses		(189)	(223)
Total cash outflows		(1 434)	(1 388)
Net cash generated from (used in) operating activities	6.2	259	(213)
Net increase (decrease) in cash and cash equivalents held		259	(213)
Cash and deposits at the beginning of the reporting period		125	338
Cash and deposits at the end of the reporting period	6.1	384	125

This Statement of Cash Flows should be read in conjunction with the accompanying notes.

Statement of Changes in Equity for the year ended 30 June 2019

	Accumulated surplus / deficit	Total equity
	\$'000	\$'000
Balance as at 1 July 2018	(55)	(55)
Total comprehensive result	249	249
Total	249	249
Balance as at 30 June 2019	194	194

	Accumulated surplus / deficit	Total equity
	\$'000	\$'000
Balance as at 1 July 2017	181	181
Total comprehensive result	(236)	(236)
Total	(236)	(236)
Balance as at 30 June 2018	(55)	(55)

This Statement of Changes in Equity should be read in conjunction with the accompanying notes.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2019

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NOTE 1 REVENUE FROM TRANSACTIONS

Income is recognised in the Statement of Comprehensive Income when an increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably.

1.1 Solicitor's Guarantee Fund

Funding from the Solicitor's Guarantee Fund is recognised in accordance with AASB 1004 *Contributions* whereby 'non-reciprocal' contributions are recognised as revenue when the funds are received or receivable.

	2019	2018
	\$'000	\$'000
Solicitor's Guarantee Fund Revenue	1 532	1 081
Total revenue from Solicitor's Guarantee Fund	1 532	1 081

1.2 Other Revenue

Revenue from other sources is recognised when the Board gains control of the funds and it is probable that the inflow of funds has occurred and can be reliably measured.

	2019	2018
	\$'000	\$'000
Interest Revenue	7	7
Other Revenue	115	44
Total	122	51

NOTE 2 EXPENSES FROM TRANSACTIONS

Expenses are recognised in the Statement of Comprehensive Income when a decrease in future economic benefits related to a decrease in asset or an increase of a liability has arisen that can be measured reliably.

2.1 Employee Benefits

Employee benefits include, where applicable, entitlements to wages and salaries, annual leave, sick leave, long service leave, superannuation and any other post-employment benefits.

(a) Employee expenses

	2019 \$'000	2018 \$'000
Wages and salaries (Staff)	668	605
Wages and salaries (Board members)	186	183
Superannuation – defined contribution scheme	71	60
Superannuation – defined benefit scheme	21	21
Other employee expenses	14	13
Total	960	882

As the Board has staff who are members of defined benefits superannuation schemes, superannuation expenses relating to those defined benefits schemes relate to payments into the Consolidated Fund. The amount of the payment is based on an employer contribution rate determined by the Treasurer, on the advice of the State Actuary. The current employer contribution is 12.95 per cent (2018: 12.95 per cent) of salary.

Superannuation expenses relating to defined contribution schemes are paid directly to the relevant superannuation funds at a rate of 9.5 per cent (2018: 9.5 per cent) of salary.

(b) Remuneration of Key Management Personnel

2019	Short-term benefits		Long-term benefits			Total \$'000
	Salary \$'000	Other Benefits \$'000	Super- annuation \$'000	Leave Benefits \$'000	Termination Benefits \$'000	
Key management personnel						
Frank Ederle, Chief Executive Officer	160	17	21	7	-	205
Keyran Pitt QC, Chairman	43	-	4	-	-	47
Judith Paxton, Member (resigned as at 7-11-18)	10	-	1	-	-	11
Peter Dane, Member (resigned as at 7-11-18)	10	-	1	-	-	11
Graeme Jones, Member	39	2	4	-	-	45
David Lewis, Member	26	3	3	-	-	32
Anthony Mihal, Member	34	3	3	-	-	40
Heather Francis (from 7-11-18)	14	-	1	-	-	15
Marion Hale (from 7-11-18)	11	1	1	-	-	13
	347	26	39	7	-	419

2018	Short-term benefits		Long-term benefits			Total
	Salary	Other Benefits	Super-annuation	Leave Benefits	Termination Benefits	
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Key management personnel						
Frank Ederle, Chief Executive Officer	158	16	20	(8)	-	186
Keyran Pitt QC, Chairman	48	-	4	-	-	52
Judith Paxton, Member	25	-	2	-	-	27
Peter Dane, Member	18	-	2	-	-	20
Graeme Jones, Member	26	1	3	-	-	30
David Lewis, Member	25	2	2	-	-	29
Anthony Mihal, Member	39	4	4	-	-	47
	339	23	37	(8)	-	391

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the agency, directly or indirectly.

Remuneration during 2018-19 for key personnel is set by the Attorney General. Remuneration and other terms of employment are specified in employment contracts. Remuneration includes salary, allowances and other non-monetary benefits. Longterm employee expenses include annual leave, long service leave, superannuation obligations and termination payments. Short-term benefits include motor vehicle and car parking fringe benefits in addition to any other short term benefits. Fringe benefits have been reported at the grossed up reportable fringe benefits amount. The Fringe Benefits Tax (FBT) year runs from 1 April to 31 March each year, any FBT attributable to key management personnel is reported on that basis.

It should be noted that because annual and long service leave liabilities are calculated by discounting future cashflows (detailed in Note 4.2) which may change from year to year, it is possible for key personnel to accrue negative leave benefits in any particular financial year, or they may utilise more leave than they accrue in any particular financial year.

Acting Arrangements

When members of key management personnel are unable to fulfil their duties, consideration is given to appointing other members of senior staff to their position during their period of absence. Individuals are considered members of key management personnel when acting arrangements are for more than a period of one month.

(c) Related Party Transactions

There are no material related party transactions requiring disclosure.

2.2 Supplies and Consumables

Other expenses from ordinary activities, supplies and consumables are recognised when it is probable that the consumption or loss of future economic benefits resulting in a reduction of assets or an increase in liabilities has occurred and can be reliably measured.

	2019	2018
	\$'000	\$'000
Audit fees	7	7
Operating leases	84	83
Consultants	24	20
Property expenses	34	32
Communications	9	10
Information technology	53	61
Travel and transport	17	18
Plant and equipment	5	5
Advertising and promotion	2	2
Other supplies and consumables	18	23
Total	253	261

The external audit fee for 2018-19 is \$6,610 (\$6,610 for 2017-18).

2.3 Other Expenses

Other expenses from ordinary activities, supplies and consumables are recognised when it is probable that the consumption or loss of future economic benefits resulting in a reduction of assets or an increase in liabilities has occurred and can be reliably measured.

	2019	2018
	\$'000	\$'000
Legal Costs	170	205
Other Expenses	22	20
Total	192	225

NOTE 3 ASSETS

Assets are recognised in the Statement of Financial Position when it is probable that the future economic benefits will flow to the Board and the asset has a cost or value that can be measured reliably.

3.1 Receivables

In 2017-18 receivables were recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables were not discounted back to their present value. In addition, receivables were subject to an annual review for impairment, where there was objective evidence that, as a result of one or more events that occurred after the initial recognition, the future cash flows have been affected.

From 2018-19, the Board recognises receivables at amortised cost using the effective interest method. Any subsequent changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process. The Board recognises an allowance for expected credit losses for all debt financial assets not held at fair value through profit and loss. The expected credit loss is based on the difference between the contractual cash flows and the cash flows that the entity expects to receive, discounted at the original effective interest rate.

For trade receivables, the Board applies a simplified approach in calculating expected credit losses. The Board recognises a loss allowance based on lifetime expected credit losses at each reporting date. The Board has established a provision matrix based on its historical credit loss experience for trade receivables, adjusted for forward-looking factors specific to the receivable.

	2019	2018
	\$'000	\$'000
GST Receivables	7	10
Recoupment of costs	7	2
Total	14	12
Settled within 12 months	14	12
Total	14	12

3.2 Office Improvements, Plant and Equipment

(i) Valuation basis

Office improvements, plant and equipment is valued at historic cost less accumulated depreciation and accumulated impairment losses (where relevant).

Cost includes expenditure that is directly attributable to the acquisition of the asset.

When parts of an item of office improvements, plant and equipment have different useful lives, they are accounted for as separate items (major components) of office improvements, plant and equipment.

All the Office's Office Improvements, Plant and Equipment have been fully written off as at 30 June 2019.

(ii) Subsequent costs

The cost of replacing part of an item of office improvements, plant and equipment is recognised in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Board and its costs can be measured reliably. The carrying amount of the replaced part is derecognised. The costs of day-to-day servicing of office improvements, plant and equipment are recognised in profit or loss as incurred.

(iii) Asset recognition threshold

The asset capitalisation threshold adopted by the Board is \$4,000. Assets valued at less than \$4,000 are charged to the Statement of Comprehensive Income in the year of purchase (other than where they form part of a group of similar items which are material in total).

NOTE 4 LIABILITIES

Liabilities are recognised in the Statement of Financial Position when it is probable that an outflow of resources embodying economic benefits will result from the settlement of a present obligation and the amount at which the settlement will take place can be measured reliably.

4.1 Payables

Payables, including goods received and services incurred but not yet invoiced, are recognised at amortised cost, which due to the short settlement period, equates to face value, when the Board becomes obliged to make future payments as a result of a purchase of assets or services.

	2019	2018
	\$'000	\$'000
Payables	3	-
Accrued expenses	17	18
Total	20	18
Settled within 12 months	20	18
Total	20	18

Settlement is usually made within 30 days.

4.2 Employee Benefits

Key estimate and judgement

Liabilities for wages and salaries and annual leave are recognised when an employee becomes entitled to receive a benefit. Those liabilities expected to be realised within 12 months are measured as the amount expected to be paid. Employee benefits are measured as the present value of the benefit at 30 June, where the impact of discounting is material, and at the amount expected to be paid if discounting is not material. The Board assumes that all staff annual leave balances less than 20 days will be settled within 12 months, and therefore valued at nominal value, and balances in excess of 20 days will be settled in greater than 12 months and therefore calculated at present value.

A liability for long service leave is recognised, and is measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date. The Board makes a number of assumptions regarding the probability that staff who have accrued long service leave, but are ineligible to take it will remain with the Board long enough to take it. For those staff eligible to take their long service leave, the Board assumes that they will utilise it on average, evenly over the following ten years. All long service leave that will be settled within 12 months is calculated at nominal value and all long service leave that will be settled in greater than 12 months is calculated at present value.

	2019	2018
	\$'000	\$'000
Accrued salaries	9	10
Annual leave	40	43
Long service leave	135	121
Total	184	174
Settled within 12 months	38	45
Settled in more than 12 months	146	129
Total	184	174

4.3 Superannuation

The Board does not recognise a liability for the accruing superannuation benefits of Board employees. This liability is held centrally and is recognised within the FinanceGeneral Division of the Department of Treasury and Finance.

NOTE 5 COMMITMENTS AND CONTINGENCIES

5.1 Schedule of Commitments

	2019	2018
	\$'000	\$'000
By type		
<i>Lease Commitments</i>		
Operating leases	485	32
<i>Total lease commitments</i>	485	32
By maturity		
<i>Operating lease commitments</i>		
One year or less	110	30
From one to five years	375	2
<i>Total operating lease commitments</i>	485	32

The Board has entered into a number of operating lease agreements for property, plant and equipment, where the lessors effectively retain all the risks and benefits incidental to ownership of the items leased. Equal instalments of lease payments are charged to the Statement of Comprehensive Income over the lease term, as this is representative of the pattern of benefits to be derived from the leased property.

The Operating Lease commitments include buildings, motor vehicles and information technology equipment leases. All amounts shown are exclusive of GST.

5.2 Contingent Assets and Liabilities

Contingent assets and liabilities are not recognised in the Statement of Financial Position due to uncertainty regarding any possible amount or timing of any possible underlying claim or obligation.

(a) Quantifiable contingencies

A quantifiable contingent asset is a possible asset that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity.

A quantifiable contingent liability is a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or a present obligation that arises from past events but is not recognised because it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation. To the extent that any quantifiable contingencies are insured, details provided below are recorded net.

	2019	2018
	\$'000	\$'000
Quantifiable contingent liabilities		
<i>Contingent claims</i>		
Contingent legal claims	290	190
Total quantifiable contingent liabilities	290	190

**PART SIX —
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS AS AT 30 JUNE 2019**

At 30 June 2019 the Board had six Supreme Court proceedings against practitioners on foot where an adverse costs order may be made against the Board. It is not possible at the reporting date to accurately estimate the amounts of any eventual payments that may be required in relation to these claims.

NOTE 6 CASH FLOW RECONCILIATION

6.1 Cash and Cash Equivalents

Cash means notes, coins, any deposits held at call with a bank or financial institution. Deposits are recognised at amortised cost, being their face value.

	2019	2018
	\$'000	\$'000
Operating Account	384	125
Total cash and cash equivalents	384	125

6.2 Reconciliation of Net Result to Net Cash from Operating Activities

	2019	2018
	\$'000	\$'000
Net result	249	(236)
(Increase) / Decrease in Receivables	(2)	(5)
Increase / (Decrease) in Employee benefits	10	24
Increase / (Decrease) in Payables	2	4
Net cash generated from operating activities	259	(213)

6.3 Reconciliation of liabilities arising from financing activities

The Board does not have any liabilities arising from financing activities.

NOTE 7 FINANCIAL INSTRUMENTS

7.1 Risk Exposures

(a) Risk Management Policies

The Board has exposure to the following risks from its use of financial instruments:

- liquidity risk; and
- market risk.

The Chairman has overall responsibility for the establishment and oversight of the Board's risk management framework. Risk management policies are established to identify and analyse risks faced by the Board, to set appropriate risk limits and controls, and to monitor risks and adherence to limits. The Board's funding is legislated and therefore the Board does not have any material exposure to credit risk. The Board currently has no material exposure to market risks.

(b) Liquidity Risk

Liquidity risk is the risk that the Board will not be able to meet its financial obligations as they fall due. The Board's approach to managing liquidity is to ensure that it will always have sufficient liquidity to meet its liabilities when they fall due.

Financial Instrument	Accounting and strategic policies (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms and conditions affecting the amount. Timing and certainty of cash flows)
Financial Liabilities Payables	Payables are recognised at amortised cost, which due to the short settlement period, equates to face value, when the Board becomes obliged to make future payments as a result of a purchase of assets or services.	Payables, including goods received and services incurred but not yet invoiced arise when the Board becomes obliged to make future payments as a result of a purchase of assets or services. The Board's terms of trade are 30 days.

Monitoring of expenditure against budget is undertaken by the Board on an ongoing basis.

The following tables detail the undiscounted cash flows payable by the Board by remaining contractual maturity for its financial liabilities. It should be noted that as these are undiscounted, totals may not reconcile to the carrying amounts presented in the Statement of Financial Position:

2019	Maturity analysis for financial liabilities		
	1 Year	Undiscounted Total	Carrying Amount
Financial liabilities			
Payables	20	20	20
Total	20	20	20

**PART SIX —
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS AS AT 30 JUNE 2019**

2018	Maturity analysis for financial liabilities		
	1 Year	Undiscounted Total	Carrying Amount
Financial liabilities			
Payables	18	18	18
Total	18	18	18

(c) Market Risk

Market risk is the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in market prices. The primary market risk that the Board is exposed to is interest rate risk.

The Board's exposure to interest rate risk is considered to be minimal. All of the Board's interest bearing financial instruments are managed by the Westpac Bank.

At the reporting date the interest rate profile of the Board's interest bearing financial instruments was:

	2019 \$'000	2018 \$'000
Variable rate instruments		
<i>Financial assets</i>		
Cash and cash equivalents	384	125
Total	384	125

Changes in variable rates of 100 basis points at reporting date would have the following effect on the Board's profit or loss and equity:

Sensitivity Analysis of the Board's Exposure to Possible Changes in Interest Rates

	Statement of Comprehensive Income		Equity	
	100 basis points increase \$'000	100 basis points decrease \$'000	100 basis points increase \$'000	100 basis points decrease \$'000
30 June 2019				
Cash in Special Deposits and Trust Fund	4	(4)	4	(4)
Net sensitivity	4	(4)	4	(4)
30 June 2018				
Cash in Special Deposits and Trust Fund	1	(1)	1	(1)
Net sensitivity	1	(1)	1	(1)

7.2 Categories of Financial Assets and Liabilities

AASB 9 Carrying amount	2019
	\$'000
Financial assets	
Cash and cash equivalents	384
Amortised cost	14
Total	398
Financial Liabilities	
Financial liabilities measured at amortised cost	20
Total	20

AASB 139 Carrying amount	2018
	\$'000
Financial assets	
Cash and cash equivalents	125
Loans and receivables	12
Total	137
Financial Liabilities	
Financial liabilities measured at amortised cost	18
Total	18

7.3 Comparison between Carrying Amount and Net Fair Value of Financial Assets and Liabilities

	Carrying Amount	Net Fair Value	Carrying Amount	Net Fair Value
	2019	2019	2018	2018
	\$'000	\$'000	\$'000	\$'000
Financial assets				
Cash and cash equivalents	384	384	125	125
Receivables	14	14	12	12
Total financial assets	398	398	137	137
Financial liabilities				
Payables	20	20	18	18
Total financial liabilities	20	20	18	18

The Board does not have any financial assets or financial liabilities carried at fair value through the profit and loss or any available for sale financial assets.

Financial Assets

The net fair values of Cash and cash equivalents and Receivables approximate their carrying amounts as this is the amount the Board expects to be able to settle on these items.

Financial Liabilities

The net fair values for Payables and Other accrued expenses approximate their carrying amounts as this is the amount the Board expects to be able to settle on these items.

NOTE 8 EVENTS OCCURRING AFTER BALANCE DATE

There have been no events subsequent to balance date which would have a material effect on the Board's Financial Statements as at 30 June 2019.

NOTE 9 SIGNIFICANT ACCOUNTING POLICIES

9.1 Objectives and Funding

The Legal Profession Board of Tasmania (the Board) is an independent statutory body whose purpose is to:

- Protect consumers of legal services within Tasmania against unsatisfactory professional conduct and professional misconduct of legal practitioners;
- Promote and enforce the application of professional standards, competence and honesty within the legal profession in Tasmania; and
- Provide an effective and efficient redress mechanism for persons unhappy with the conduct of Australian legal practitioners in Tasmania.

The Legal Profession Act 2007 (the Act) received Royal Assent on 15 August 2007 and the Board commenced operations on 31 December 2008. The Board consists of six Board Members appointed by the Governor of Tasmania for a term of five years. Pursuant to section 589 of the Act, the Board is established as a body corporate with perpetual succession. The functions of the Board were in part previously performed by the Law Society of Tasmania and the Legal Ombudsman.

Pursuant to section 359 of the Act, the Board is to submit to the Minister an application for funding by 30 April in each year. The Minister approves an amount to be paid from the Solicitors' Guarantee Fund and directs the Solicitors' Trust to pay the approved amount from the Fund to the Board.

9.2 Basis of Accounting

The Financial Statements are a general purpose financial report and have been prepared in accordance with the Australian Accounting Standards (AAS) and Australian Accounting Interpretations issued by the Australian Accounting Standards Board (AASB).

While the Board is not bound by the *Financial Management and audit Act 1990*, it has elected to prepare these financial statements in accordance with the Treasurer's Instructions issued under the provisions of the *Financial Management and Audit Act 1990*.

The financial statements were signed by the Chairman and the Chief Executive Officer on 13 August 2019.

Compliance with the AAS may not result in compliance with International Financial Reporting Standards (IFRS), as the AAS include requirements and options available to not-for-profit organisations that are inconsistent with IFRS. The Board is considered to be not-for-profit and has adopted some accounting policies under the AAS that do not comply with IFRS.

The Financial Statements have been prepared on an accrual basis and, except where stated, are in accordance with the historical cost convention.

9.3 Functional and Presentation Currency

These financial statements are presented in Australian dollars, which is the Board's functional currency.

9.4 Changes in Accounting Policies

(a) Impact of new and revised Accounting Standards

In the current year, the Board has adopted all of the new and revised Standards and Interpretations issued by the Australian Accounting Standards Board that are relevant to its operations and effective for the current annual reporting period. These include:

- *AASB 7 Financial Instruments: Disclosures* – the objective of this Standard is to require entities to provide disclosures in their financial statements that enable users to evaluate the significance of financial instruments for the entity's financial position and performance; and the nature and extent of risks arising from financial instruments to which the entity is exposed during the period and at the end of the reporting period, and how the entity manages those risks. The amendments to this Standard have resulted in a reconciliation being required where there is a reclassification of financial assets or liabilities resulting from the adoption of AASB 9. The financial impact is minimal.
- *AASB 9 Financial Instruments* – the objective of this Standard is to establish principles for the financial reporting of financial assets and financial liabilities that will present relevant information to users of financial statements for their assessment of the amounts, timing, uncertainty of an entity's future cash flows, and to make amendments to various accounting standards as a consequence of the issuance of AASB 9. AASB 9 has replaced accounting for impairment losses with a forward looking credit loss approach. The Board has applied AASB 9 retrospectively and has not restated comparative information which was reported under AASB 139. The Board's assessment for impairment of receivables at year end did not result in the recognition of any expected credit losses. This is consistent with the assessment in the prior year and, as a result, no adjustment was required to opening equity. For further details of the Board's assessment for impairment of receivables refer to Note 3.1. The only change resulting from the introduction of AASB 9 was in the categorisation of receivables financial assets from loans and receivables under AASB 139, to amortised cost under AASB 9. Other categories remained unchanged. For further details on categories of financial assets and liabilities refer to Note 7.2.

(b) Impact of new and revised Accounting Standards yet to be applied

The following applicable Standards have been issued by the AASB and are yet to be applied:

- *AASB 15 Revenue from Contracts with Customers* – The objective of this Standard is to establish the principles that an entity shall apply to report useful information to users of financial statements about the nature, amount, timing, an uncertainty of revenue and cash flows arising from a contract with a customer. In accordance with 2015-8 Amendments to Australian Accounting Standards - Effective Date of AAS 15, this Standard applies to annual reporting periods beginning on or after 1 January 2019. Where an entity applies the Standard to an earlier annual reporting period, it shall disclose that fact. The future impact is to enhance disclosure in relation to revenue from contracts with customers. The financial impact is expected to be minimal.
- *2014-5 Amendments to Australian Accounting Standards arising from AASB 15* – The objective of this Standard is to make amendments to Australian Accounting Standards and Interpretations arising from the issuance of AASB 15 Revenue from Contracts with Customers. This Standard applies when AASB 15 is applied, except that the amendments to AASB 9 (December 2009) and AASB 9 (December 2010) apply to annual reporting periods beginning on or after 1 January 2018. This Standard shall be applied when AASB 15 is applied. The financial impact is expected to be minimal.
- *2016-3 Amendments to Australian Accounting Standards – Clarifications to AASB 15* – The objective of this Standard is to clarify the requirements on identifying performance obligations, principal versus agent considerations and the timing of recognising revenue from granting a licence. This Standard applied to annual periods beginning on or after 1 January 2019. The impact is enhanced disclosure in relation to revenue. The financial impact is expected to be minimal.

- **AABS 16 Leases** – The objective of this Standard is to introduce a single lessee accounting model and require a lessee to recognise assets and liabilities. This Standard applied to annual reporting periods beginning on or after 1 January 2019. The standard will result in most of the Board’s operating leases being brought onto the Statement of Financial Position and additional note disclosures. The calculation of the lease liability will take into account appropriate discount rates, assumptions about the lease term, and required lease payments. A corresponding right to use of asset will be recognised, which will be amortised over the term of the lease. There are limited exceptions relating to low-value leases and short-term lease. Operating lease costs will no longer be shown. The Statement of Comprehensive Income impact of the leases will be through amortisation and interest charges. The Board’s current operating lease cost is shown in notes 6.1. In the Statement of Cash Flows, lease payments will be shown as cash flows from financing activities instead of operating activities. The financial impact is estimated to impact the balance sheet in the order of \$485,000.
- **AABS 1058 Income of Not-for-Profit Entities** – The objective of this Standard is to establish principles for not-for-profit entities that apply to transactions where the consideration to acquire an asset is significantly less than fair value principally to enable a not-for-profit entity to further its objectives, and the receipt of volunteer services. This Standard applies to annual reporting periods beginning on or after 1 January 2019. The impact is enhanced disclosure in relation to income for not-for-profit entities, The financial impact is expected to be minimal.

9.5 Rounding

All amounts in the Financial Statements have been rounded to the nearest thousand dollars, unless otherwise stated. Where the result of expressing amounts to the nearest thousand dollars would result in an amount of zero, the financial statement will contain a note expressing the amount to the nearest whole dollar.

9.6 Taxation

The Board is exempt from all forms of taxation except Fringe Benefits Tax and GST. All taxation issues are managed by the Board of Justice on the Board’s behalf.

9.7 Goods and Services Tax

Revenue, expenses and assets are recognised net of the amount of GST, except where the GST incurred is not recoverable from the Australian Taxation Office. Receivables and payables are stated inclusive of GST. The net amount recoverable, or payable, to the ATO is recognised as an asset or liability within the Statement of Financial Position.

In the Statement of Cash Flows, the GST component of cash flows arising from operating, investing or financing activities which is recoverable from, or payable to, the Australian Taxation Office is, in accordance with the Australian Accounting Standards, classified as operating cash flows.

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