

**Legal Profession
Board of Tasmania**
Annual Report
2017–2018



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31 August 2018

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 2017–18

Please find enclosed the Annual Report of the Legal Profession Board of Tasmania for the period 2017-18, 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



On behalf of the Legal Profession Board of Tasmania I present the organisation's annual report for the year ending 30 June 2018.

The past year has been both rewarding and challenging for the Board and the management team alike. The number of complaints received by the Board within the reporting period increased considerably from the previous period. This upturn in complaint numbers placed greater pressure on the Board's resources generally. I am pleased however to report that the organisation, supported by the CEO and his operational team, was able to deal with those challenges professionally and efficiently as they arose.

Over the past 12 months the Board was also able to continue its engagement with both the community, through targeted seminars delivered to key community organisations, and the profession through CPD training and lectures delivered to Tasmanian law students and law graduates.

As foreshadowed in last year's report, the Board developed and formally adopted a model litigant policy and guidelines in October 2017. The policy commits the Board and its officers to adopting the highest of standards when undertaking litigation work in respect to disciplinary matters.

Membership of the Board

In June 2018 the membership terms of the Board's two lay members, Ms Judith Paxton and Mr Peter Dane, sadly came to an end. The Board is fortunate that both Judith and Peter will remain active Board members until replacements for both of them are announced in the 2018/19 financial year. Judith and Peter, both inaugural members of the Board, will be greatly missed and I take this opportunity to formally thank both of them for their respective considerable contributions over the past 10 years.

I also take this opportunity to thank all of the Board's members for their outstanding dedication and commitment to the highest of principles over the past 12 months. I continue to be inspired by members' level of professionalism and generosity of time to ensure the Board's important work is being done.

The Workload of the Board

COMPLAINTS AND INVESTIGATIONS

As has been the case since the Board's commencement of operations, complaint handling and undertaking investigations remain some of the core activities of the Board.

The increase in complaint numbers, which I reported the Board had experienced last year, continued to follow a similar trajectory into the reporting period with another significant increase of 56% in the number of complaints received for the financial year ending 30 June 2018.

The increased level of complaints during the course of the reporting period, together with those complaints which remained unfinalised as at 30 June 2018, amounted to 179 complaints, compared with 118 complaints at the end of last financial year.

The Board's well established direction in relation to resolving complaints at an early stage in circumstances where it is appropriate to do so, continued to be successful in the reporting period with 27% of all complaints resolved as a result of some form of mediatory intervention by Board Officers.

Further in-depth commentary in relation to the complaints and investigations statistical information can be found in Part 2 of this report.

MEETINGS AND DETERMINATIONS OF THE BOARD

The Board convened 11 complaints-specific meetings during the reporting period. The Board, where possible, continues to combine its administrative meetings with complaints meetings in an effort to reduce time and costs.

The Board is obliged to provide to the complainant, the practitioner and the prescribed authority a written determination and reasons following a decision to finalise a complaint. The Board produced 91 written complaint determinations and reasons during the reporting period.

Funding of the Board

It is with some pride that I am able to report the organisation has operated within its allocated finances for the ninth year in a row and has not been required to seek extraordinary funding during the course of the reporting period.

On behalf of the Board, I gratefully acknowledge the hard and enthusiastic work of the CEO and all of the employees of the Board, whose professionalism and dedication are pivotal to the Board's ongoing success.



Keyran Pitt QC

Chairperson,
Legal Profession Board of Tasmania

Report of the Chief Executive Officer



2017-18 has been an exciting year for the operational team at the Legal Profession Board of Tasmania. The launch of the Board's new website coupled with the Board adopting a model litigant policy and guidelines, are but two of the leading projects the Board undertook, completed and implemented within the period.

These and other exciting projects are hall marks of an organisation that is moving forward and embracing the role of being an innovative and progressive regulator.

Externally Focussed Endeavours

The last 12 months of operations of the Board has been marked by a continued increase in complaints being filed with the Board. The Board's litigation work also increased in the period, with a number of matters being progressed through the Supreme court and one significant matter heard before the Full Court of Tasmania.

The Board has, in recent years, taken active steps to make its officers available to both the public and the profession to speak about the work of the Board and complaint handling generally. This year I was kindly invited to present an information session to the YNOT Tasmania front line employees whom, on occasion, interact with legally represented consumers in circumstances where the client-lawyer relationship has deteriorated. It was a terrific opportunity to present to people who are interacting directly with consumers of legal services.

I was very fortunate to be supported by the Board to attend the International Conference of Legal Regulators in Singapore in October 2017. It was an exciting conference attended by over 120 representative legal regulators from over 18 countries worldwide. The theme of the conference was regulation in a borderless world and building networks. There was a focus on regulating in a time of great change, and in particular the effect of emerging technologies on the regulatory space. Although Tasmania by comparison is a tiny jurisdiction it was comforting that many of the issues

REPORT OF THE CHIEF EXECUTIVE OFFICER 2017–2018

facing regulators abroad are not dissimilar to those experienced here in Tasmania.

The Board continued its valuable work in developing its extensive suite of fact and information sheets in the period. New topics such as types of costs; liens; opposing representatives; board initiated complaints; and a practical guide for dealing with complaints to name a few have been added to the Board's website.

The organisation's newly refreshed brochure, which describes the Board's role, continues to be made available throughout Tasmania in a variety of community-based locations including all branches of Service Tasmania.

The Manager Operations and her team have continued to engage directly with members of the profession at all levels through the Law Society's continuing professional development scheme; the Legal Practice Course; and Tasmania University Law Faculty. Gayle and her team have developed a substantial program of presentations in relation to legal ethics; dealing with complaints and the Board as a practitioner; and guidance regarding how to avoid common pitfalls in legal practice which could result in a complaint.

This excellent and worthwhile work has at its core a goal to improve client-lawyer relationships both with emerging professionals as well as with established legal practitioners.

Internally Focused Endeavours

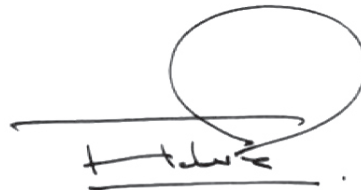
In November 2017, Ms Alison Clues on behalf of the professional indemnity insurer attended a meeting with the Board in order to brief members in relation to the terms of the insurance policy currently taken up by the majority of Tasmanian legal practices.

I am happy to report that the Board has again exercised financial restraint in all of its dealings within the reporting period despite the marked increase in complaints which has placed significant pressure on existing resources.

Although the *Legal Profession Act 2007* empowers the Board to impose levies on local legal practitioners (s 592(2)), it has not been necessary to do so since the commencement of the Board's operations in 2009. I accordingly take this opportunity to gratefully acknowledge the Attorney-General, the Honourable Elise Archer, for approving the Board's funding application for the coming period, which underpins the Board's ability to fulfil its statutory obligations.


Other exciting projects have been developed in the past 12 months including the legal practitioner self-audit program development and construction of an electronic decision data base. These projects have been canvassed in further depth in this report.

Finally, it is with great pride and pleasure that I thank all of the staff of the Board whose diligence, professionalism and energy have again been exceptional this year. I also thank the Board for their guidance, patience and sound decisions over the past 12 months.



Frank Ederle

Chief Executive Officer,
Legal Profession Board of Tasmania



1. The Legal Profession Board

Our Statutory Functions

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

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 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 Acting 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, and Chair of the CSIRO Grievance and Appeals Tribunal.

Ms Paxton is a nominee of the Minister.



MR PETER DANE

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.

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. 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.

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 2017-2018

BOARD MEMBER	BOARD MEETINGS	S450(a) HEARING	S456 HEARING
Keyran Pitt QC	11	3*	1
Judith Paxton	11	2	1
Peter Dane	9	2	1
Graeme Jones	9	2	1
Anthony Mihal	11	2	1
David Lewis	9	0	1

*The Chairperson, Keyran Pitt QC, conducted a directions hearing for the s450(a) hearings which did not require any additional Board members be present.

In addition to the above meetings, the Board also convened one directions hearing, one section 456(1) hearing for less serious complaints, and two section 450(a) hearings.

Consequent to the Board meetings and hearings, the Board produced **91** written complaint determinations with reasons during the reporting period.

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 2017-18, the funding which was approved by the Minister was \$1,080,985.00.

Professional Indemnity Insurance

The Board, by virtue of s591(d) of the Act is to approve terms and conditions of professional indemnity insurance policies provided to law practices.

In the reporting period, the Board actively engaged with the Law Society; Tasmanian Bar and Ms Alison Clues in relation to the two insurance policies currently made available to Tasmanian law practices. In April 2018, the Board approved the terms and conditions of both current policies.

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 2018.

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.



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, 1 July 2017 to 30 June 2018.

Enquiries to the Board

Enquiries to the Board comprise a significant part of the Board's overall workload. The enquiries, in large part, contribute to 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 for people in the complaint process, as far as possible senior officers at the Board deal with the initial enquiry. Our senior officers can spend significant 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 **240 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 time spent dealing with each enquiry for the reporting period was, on average, just over 32 minutes.

A total of 52 enquiries in the reporting period resulted in a written complaint. This represents a conversion rate of 22%, which is a significant increase from the last two reporting years.

Over 83% of enquiries were dealt with by telephone, with the remaining enquiries being by email or in person. Members of the public are invited to attend the Board's offices to discuss their issues in person if they wish to.

Consistent with our complaints data, enquiries primarily concern:

- probate and estate work;
- family law;
- conveyancing; 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.

The Board has produced a number of fact sheets on topics of enquiry or concern which frequently arise. These include:

- Independent Children's Lawyers
- No Win No Fee Agreements
- Conflict of Interest
- Types of Costs
- Liens
- File Ownership and Handling
- Opposing Representatives

Table 2 - Enquiries by source

MONTH	ENQUIRIES BY PHONE	ENQUIRIES IN PERSON	ENQUIRIES BY EMAIL	ENQUIRIES BY LETTER	TOTAL ENQUIRIES 2017-18	TOTAL ENQUIRIES 2016-17	TOTAL ENQUIRIES 2015-16
July	21	0	4	0	25	35	14
August	22	0	1	1	24	23	21
September	15	1	4	0	20	18	24
October	15	1	2	1	19	18	21
November	20	0	1	1	22	20	25
December	12	0	2	0	14	20	17
January	12	1	4	0	17	21	19
February	17	1	3	1	22	22	26
March	25	1	1	1	28	28	27
April	11	1	1	2	15	29	26
May	15	0	2	0	17	30	20
June	15	1	1	0	17	25	20
TOTAL ENQUIRIES	200	7	26	7	240	289	260

Case Studies

Enquiry

John* contacted the Board after his lawyer had resolved his legal matter. John said he wasn't sure about the terms or the 'basic fundamentals' of settlement but said he had paid his account promptly. John was quite agitated on the phone to the Board. He said he had rung his lawyer twice without the courtesy of a return phone call and had made an appointment but his lawyer had gone to court instead and not made another appointment.

John didn't have a mobile phone or access to email but he did have a land line. His lawyer was a barrister he had direct briefed about a criminal matter. The officer dealing with the enquiry advised John that barristers undertake a lot of court work, sometimes at short notice and there might be good reasons why his lawyer had not been able to attend the appointment. It was also likely his lawyer did not know how concerned John was about the lack of return phone calls. The officer recommended John put his concerns in writing to the barrister with a request that there be a response within a certain time frame. It was also recommended John photocopy his note at the local post office so he would have a record of having written.

John called back several days later and said the barrister had responded positively to his note about his concerns and the matter was completely resolved.

Overall the Board spent 45 minutes engaged in this enquiry.

*names have been changed.

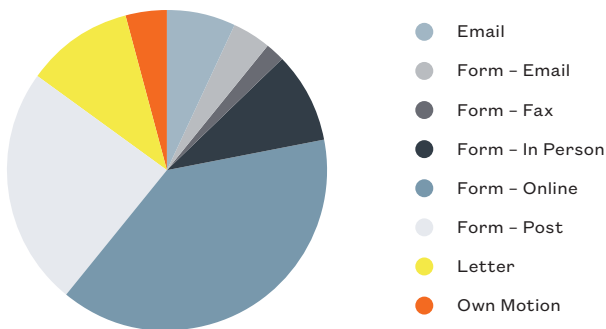
Complaints

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.

WAYS COMPLAINTS ARE MADE

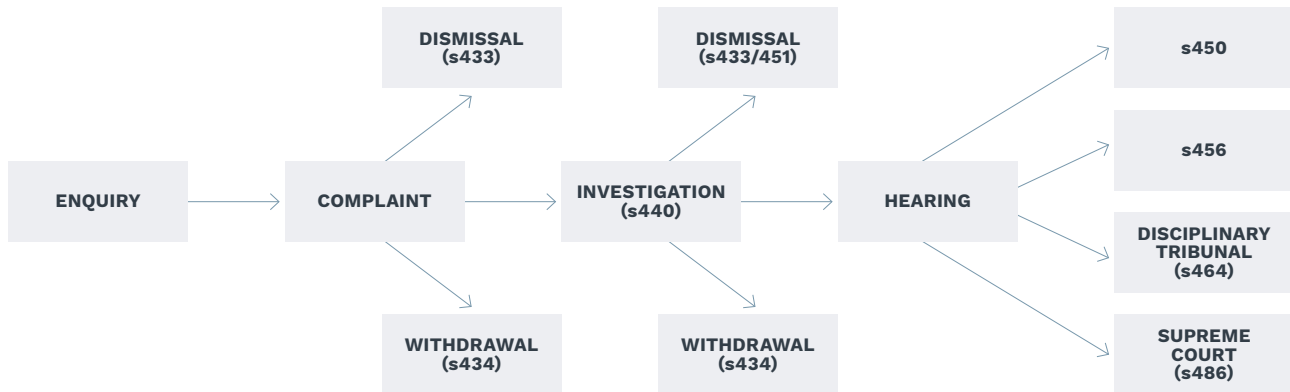


As can be seen in the above chart, complaints are primarily received via the online form on the Board's website, with the next highest category being postal complaints. However 9% of complaints are made to the Board in person. The Board, pursuant to its obligations under section 511 of the Act to provide 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 by the anonymous communication. In this reporting period the Board received one anonymous letter which raised very serious but unsubstantiated allegations against a practitioner. The Board engaged with the practitioner and decided to take no further action.

**PART TWO —
OPERATIONS REPORT**



Flow chart 1 – Progress of a complaint through the Board

When a complaint is received by the Board, a preliminary assessment is made and 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.

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 and prepared into a report. The report, together with all relevant material, is then considered by the Board at an ordinary scheduled meeting. At that stage the complaint will either proceed to investigation, or is summarily dismissed. As complaints may contain a number of allegations, on some occasions the Board will 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 the following fact sheets to assist both the complainant and the practitioner during the assessment stage:

FOR THE COMPLAINANT

- Working with your lawyer
- Making a complaint
- Mediation of complaints
- Out of time complaints
- FAQs

FOR LAWYERS

- Avoiding complaints
- Practical guide for dealing with complaints
- Responding to a complaint

COMPLAINTS THIS YEAR

The Board received **120 complaints** in the reporting period, which was a significant increase of 56% compared to the previous reporting period.

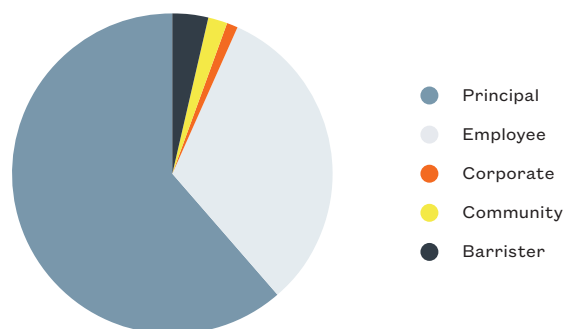
Table 3 - Written complaints received

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

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

Of the 120 complaints received, 103 were directed against lawyers who held local practising certificates issued by the prescribed authority (the Law Society of Tasmania). Overwhelmingly the majority of complaints were made against lawyers holding a principal local practising certificate (61%) with the next biggest category being those holding an employee practising certificate. This year the Board also received 4 complaints against government lawyers. In Tasmania a government lawyer is entitled to practise without a practising certificate. However government lawyers still fall within the jurisdiction of the Board.

COMPLAINTS BY PRACTISING CERTIFICATE TYPE



Of the 120 new complaints, 118 named lawyers, while 2 referred to the law practice. 89 complaints (74%) identified a male lawyer while 29 identified a female lawyer (24%).

39 complaints (32%) identified lawyers employed by an incorporated legal practice.

The 11 complaints that did not involve lawyers holding a local or deemed to hold a practising certificate, or that named a law practice, made allegations against Australian lawyers who did not hold a practising certificate.

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, incompetence, and rude, abusive or threatening conduct, comprised 50% of all complaint allegations received by the Board in the reporting period.

**PART TWO —
OPERATIONS REPORT**

Table 5 - Principal allegations against legal practitioners

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

Table 6 - Area of law to which complaints related

AREA OF THE LAW	2017-18	2017-18 %	2016-17	2015-16
Administrative	6	5	0	3
Anti-discrimination	0	0	0	0
Defamation	0	0	1	0
Banking Law	0	0	6	0
Building	7	6	5	0
Commercial/Contract	7	6	4	10
Civil Litigation	2	2	6	0
Commonwealth/Constitutional	0	0	0	0
Conveyancing	14	12	8	3
Criminal	8	7	15	4
Debt collection	3	2	1	0
Family/de facto	25	21	11	14
Industrial relations	3	2	0	1
Personal injury	4	3	2	3
Probate/estate/wills	29	24	16	12
Workers' compensation	9	8	0	0
Restraint Orders	0	0	0	0
Medical Negligence	0	0	1	0
Migration	0	0	0	0
Coronial	0	0	1	0
Other - not related to practice of law	3	2	0	0
TOTAL	120	100%	77	50

PART TWO — OPERATIONS REPORT

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

The areas of law also highly represented in the reporting period were Family Law and Conveyancing. Those three areas of law represent 58% 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, 13 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 5 Board initiated complaints, although not all of those 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 may 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.

Table 7 - Complainants' profile (region & gender)

PROFILE	2017-18 NO. COMPLAINANTS	%	2016-17 NO. COMPLAINANTS	2015-16 NO. COMPLAINANTS
Male	56	46%	46	29
Female	64	48%	31	20
Business	1	1%	-	-
Complaints made by the Board	5	5%	0	1
TOTAL	126	100%	77	50

*The number of complainants exceeds the number of complaints made during the reporting period due to six (6) complaints having been made jointly by several people.

COMPLAINTS BY REGION	2017-18 NO. COMPLAINANTS	%	2016-17 NO. COMPLAINANTS	2015-16 NO. COMPLAINANTS
South	75	62%	42	27
North	18	15%	17	13
North West	14	12%	8	7
Interstate/International	13	11%	10	3
TOTAL	120	100%	77	50

In addition to the 120 complaints received the Board also dealt with a further 59 complaints carried forward from the 2016-17 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 2017

COMPLAINTS	CARRIED FORWARD AS AT 1 JULY 2017	%
Complaints under investigation	25	42%
Unfinalised complaints pending (not yet under investigation or awaiting hearing) as at 30 June 2017	34	58%
TOTAL COMPLAINTS CARRIED FORWARD AS AT 1 JULY 2017	59	100%

Investigations

A total of **35 investigations** were commenced in the reporting period, which was an increase of 3 investigations compared to the previous year. The number of investigations is reflective of the sustained increase in complaints received.

A total of 28 investigations were completed. 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 2017-18

MONTH	INVESTIGATIONS COMMENCED 2017-18	INVESTIGATIONS COMPLETED 2017-18	INVESTIGATIONS COMMENCED 2016-17	INVESTIGATIONS COMPLETED 2016-17	INVESTIGATIONS COMMENCED 2015-16	INVESTIGATIONS COMPLETED 2015-16
July	4	3	1	1	0	4
August	2	0	3	0	0	0
September	3	6	0	1	0	2
October	4	1	3	0	0	2
November	4	1	3	1	3	4
December	0	3	0	2	0	3
January	0	0	0	0	0	1
February	5	3	5	3	2	3
March	3	5	5	1	3	8
April	3	3	0	0	1	1
May	3	1	9	3	0	0
June	4	2	3	3	1	1
TOTAL	35	28	32	15	10	29

Table 10 - Complexity of investigations commenced

CATEGORY OF INVESTIGATION	INVESTIGATION CRITERIA	INVESTIGATIONS COMMENCED 2017-18	%	INVESTIGATIONS COMMENCED 2016-17	INVESTIGATIONS COMMENCED 2015-16
Simple	Basic investigation, low volume of documentary evidence, no witness or 3rd party involvement	15	43%	8	3
Intermediate	Medium volume of documentary evidence, single witness or 3rd party involvement	10	29%	18	6
Complex	Multiple witnesses, significant volume of evidence	4	11%	5	1
Very Complex	High volume of evidence, multiple witnesses, interaction with commercial entities	6	17%	1	0
TOTAL		35	100%	32	10

In general terms, the greater the complexity of the investigation, the longer 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 Investigations Officer's ability to readily access information held by either the practitioner or complainant.

In the reporting period to 30 June 2018, the Board classified the majority (72%) of all investigations commenced in the period as either being simple or intermediate in nature. However, unlike the previous

year where only 3% of investigations commenced were considered very complex, in this reporting period 17% of the investigations were considered very complex.

The Board made one written determination under s 428 (2) of the Act, conduct alleged to have occurred more than three years before the complaint was received. The Board determined that it was just and fair to deal with the complaint having regard to the delay and reasons for delay and that the complaint was capable of amounting to an allegation of professional misconduct and it is in the public interest to deal with it.

Finalisations and Outcomes

Table 11 - Complaints finalised and method of finalisation from 2017-18

METHOD OF FINALISATION	RELEVANT SECTION OF ACT	DESCRIPTION	NUMBER FINALISED	% FINALISED COMPARED TO TOTAL FINALISATIONS	NUMBER FINALISED 2016-17
FINALISATIONS PRIOR TO AN INVESTIGATION:					
Summarily dismissed	s.433 (1) (a)	Complaint lacking in substance, vexatious, misconceived or frivolous	47	38%	32
Summarily dismissed	s.433 (1) (e)	Complaint is not one that the Board has the power to deal with	14	11%	1
Summarily dismissed	s.433 (1) (b)	Subject of a previous complaint that has been dismissed	1	1%	0
Summarily dismissed	s.433 (2) (a)	Further information not given or complaint not verified	5	4%	0
Summarily dismissed	s.433 (3) & (4)	Complaint requires no further investigation or no public interest in continuing	7	6%	0
Withdrawal	s.434	Complaint withdrawn by complainant prior to an investigation	23	18%	9
SUB TOTAL			97	78%	42
FINALISATIONS FOLLOWING AN INVESTIGATION:					
Dismissed following an investigation	s.451 (a)	No reasonable likelihood that the practitioner will be found guilty	15	12%	9
Dismissed following an investigation	s.451 (b)	No public interest to continue	0	0%	0
Withdrawal	s.434	Complaint withdrawn (after mediation) following an investigation	10	8%	4
SUB TOTAL			25	20%	13

Continued

METHOD OF FINALISATION	RELEVANT SECTION OF ACT	DESCRIPTION	NUMBER FINALISED	% FINALISED COMPARED TO TOTAL FINALISATIONS	NUMBER FINALISED 2016-17
FINALISATIONS FOLLOWING A HEARING/MEETING OF THE BOARD:					
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7)	No determination	1	1%	1
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7) (a)	Practitioner cautioned or reprimanded	0	0%	1
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7) (ab)	Practitioner required to make an apology or no further action.	0	0%	0
Withdrawal	s.434	Complaint withdrawn	0	0%	0
Practitioner found guilty of unsatisfactory professional conduct	s.454 (2)	Practitioner reprimanded, & required to pay costs	1	1%	1
SUB TOTAL			2	2%	3
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	1	0%	0
Practitioner found guilty of unsatisfactory professional conduct	s.471 (e)	Practitioner reprimanded	0	0%	0
	s.473 (a) s.479				
Application dismissed		Dismissal of complaint	0	0%	1
Practitioner found guilty of professional misconduct	Supreme Court Inherent Jurisdiction	Practitioner removed from Roll	0	0%	0
SUB TOTAL			1	0%	1
TOTAL FINALISATIONS			125	100%	59

PART TWO — OPERATIONS REPORT

FINALISATIONS:

Table 11 shows that a total of 125 complaints were finalised for the reporting period to 30 June 2018, which is a significant increase from the previous reporting period of 59 complaints.

The majority (78%) 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 total of 25 complaints were finalised by the Board following an investigation and prior to a hearing, 12 more finalisations than the previous reporting period. There were 10 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.

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 28 (22%) matters which were finalised this period, were subject to an investigation.

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 one in relation to penalty.

CLEARANCE RATE:

The Board received 120 complaints within the reporting period and finalised a total of 125 complaints to 30 June 2018. The clearance rate achieved during the reporting period was therefore 104%, a marked increase in the clearance rate for the previous reporting period. The increase in the clearance rate despite the increased complaint numbers reflects increased internal efficiencies and indicates the Board is keeping up with the increased workload.

OUTCOME OF DISCIPLINARY ACTION:

At the conclusion of a complaint investigation, the Board may hold a formal hearing (s 453); 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 4 complaints within the reporting period.

The Board completed a hearing either by way of formal hearing or procedure for less serious complaints (section 456 meeting) in relation to 3 complaints within the reporting period. Two 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.

Table 12 - Complaints referred (or resolved to be referred) to Disciplinary Tribunal, Supreme Court or for Board Hearing/Meeting 2017-18

COMPLAINTS REFERRED	SECTION OF ACT	REFERRED 2017-18	REFERRED 2016-17	REFERRED 2015-16
Board Meeting (s.456 procedure for less serious complaint)	s.450 (b)	1	1	1
Board Hearing	s.450 (a)	2	0	1
Disciplinary Tribunal	s.450 (c) (d)	0	0	2
Supreme Court	s.450 (e)	1	0	2
TOTAL COMPLAINTS REFERRED		4	1	6

Table 13 - Number of pending complaints as at 30 June 2018

COMPLAINT SOURCE	2017-18	2016-17	2015/16
Unfinalised complaints under investigation as at 30 June 2017	25	7	24
Unfinalised complaints pending (not yet under investigation or awaiting hearing) as at 30 June 2017	34	34	43
SUBTOTAL PENDING COMPLAINTS AS AT 30 JUNE 2017	59	41	67
Complaints received 1 July 2017 to 30 June 2018	120	77	50
SUBTOTAL COMPLAINTS FOR CURRENT REPORTING PERIOD	179	118	117
Finalised complaints 1 July 2017 to 30 June 2018	125	59	78
BALANCE OF COMPLAINTS ON HAND AS AT 30 JUNE 2018	54	59	39

Table 13 above indicates that 54 complaints remain unfinalised as at 30 June 2018 which is a decrease from the same period last year [59].

Superior Court Matters

During the 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 section 572 notice requiring the production of documents or files. The decision, *Etter v Legal Profession Board of Tasmania; Legal Profession Board of Tasmania v Etter* [2017] TASSC 77 was handed down in December 2017 and was subject to an appeal to the Full Court. Full Court judgment was handed down outside of the reporting period.

Also during the reporting year there was one application for special leave to the High Court in relation to recovery of costs of an appeal to the Full Court of the Supreme Court of Tasmania relating to *QRS v Legal Profession Board of Tasmania (No 2)* [2017] TASFC 13. The special leave application is pending.

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. That decision remains subject to an application to the Full Court.

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

Applications for Search Warrants

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

Case Studies

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 continued publishing redacted decisions on its website in the reporting period, in circumstances where the decision would be of assistance to the profession.

1. Missed deadline

The practitioner was engaged to prepare a representation to the local council in response to a development application. The complainant advised the practitioner of the deadline for submissions, including calling the practitioner on the day the representation was due. The practitioner assured the complainant it was next on her list. Other matters arose over the course of the afternoon and it was not until around 6pm that the practitioner recalled that the complainant's representation had not yet been completed.

The practitioner emailed the representation to the complainant after hours, noting that it would still be a valid representation if it was submitted before midnight. The practitioner did not call the client to tell him about the email. The practitioner expected the client to submit the representation personally, while the complainant believed the practitioner would submit the representation on his behalf.

Consequently the deadline for submissions was missed.

The practitioner's firm sought an extension of time from the council, but this was refused. The practitioner's firm successfully applied to the Supreme Court and an extension of time to make the representation was ultimately granted by council. However the Court's decision was then appealed by the council and a planning permit issued despite the representation being considered by the council. The Full Court also found in favour of the complainant.

The relationship between the practitioner and the complainant broke down and the complainant engaged another practitioner to appeal to the Resource

Management and Planning Appeals Tribunal, where the planning issue was able to be resolved by consent.

Following the client's complaint about the practitioner's failure to submit the representation on time, the practitioner and the complainant reached a private agreement for settlement and the complaint was withdrawn. No further action was taken by the Board.

2. Be wary of the cut and paste costs agreement

The practitioner accepted instructions from a client on a workers compensation matter. A costs agreement was prepared and sent out to the client with a cover letter.

The cover letter and the costs agreement contained contradictory information. The cover letter to the retainer agreement indicated that the firm was prepared to act 'on a no-win-no-fee' basis on conditions including that the sum of \$10,000 would be paid to the firm up-front. Parts of the costs agreement referred to the client being billed in the event of a successful result, and the client being billed at the end of the matter. Other parts of the costs agreement allowed the practitioner to interim bill the client and indicated that the client would pay his own costs, as well as those of the other side if the case was lost. A further clause in the costs agreement provided that the practitioner was able to deduct costs from trust monies from time to time. No clear written information was given as to whether the \$10,000 was to be held in trust until the case concluded successfully, or was for disbursements, or otherwise.

The client signed the costs agreement and paid the practitioner \$5,000. Work on the matter commenced.

The client became dissatisfied with progress on his matter. He sought advice elsewhere and made a complaint to the Board, saying, among other things, that he wanted his dispute about fees resolved.

The practitioner's costs agreement was reviewed during the investigation. Significant areas of concern were that it was impossible to understand what the costs agreement meant from the written documents alone; whether there really was a no-win-no-fee agreement or not; whether payment would be treated as trust money until the matter concluded; when the client would be billed; and whether a request for payment of \$5000 was an invoice for legal fees

incurred, or a request for the balance payment. In addition the Board was concerned with a clause that 25% of the total bill would apply as a fee for the provision of an itemised invoice.

Practitioner's owe their clients fiduciary obligations during negotiations around agreeing to act, as well as while acting on behalf of their client. The position of practitioner vis a vis their client attracts the presumption of undue influence. These general law principles inform many of the statutory requirements for costs agreements and conditional costs agreements in the Act. For example:

- They must be in writing (sections 306, 307)
- Information about costs must be given at an early stage, the client's rights with respect to costs and such information must be updated if there are substantial changes (sections 291, 299)
- Must be expressed in clear plain language (sections 298, 307);
- Conditional costs agreements (such as no-win-no-fee agreements) must set out the circumstances that constitute a successful outcome of the matter (section 307(3)(a)); and,
- Conditional costs agreements must include a cooling off period and include a statement that the client has been informed of his or her right to seek independent legal advice before entering into the agreement (section 307(3)(d) & (e))
- The obligations to ensure clients understand the terms and implication of a costs agreement, or provision in a costs agreement, can go beyond complying with the legislative obligations. For example where:
 - The client is vulnerable; or,
 - The costs agreement or provision in the costs agreement delivers a special benefit or advantage to the lawyer vis a vis their client, when compared to the more common lawyer/client arrangements.

So far as itemised bills are concerned, the client's right to request an itemised bill from his or her lawyer is provided for in sections 291(1)(b)(iii) and 316 of the Act. The law practice must comply with the request within 21 days. At general law it is not appropriate to charge for the preparation or engrossment of a bill of costs as it is part of the lawyer's duty or business expense, rather than being a legal service (*Re Carter Newell's Bill of Costs* [1996] 2 Qd R 13 per Dowsett J

p 6). The Tasmanian Supreme Court scale provides a modest folio rate for the preparation of a bill of costs. In such an environment, a provision in a costs agreement providing for a charge of 25% if the cost of a total bill has the potential to produce an excessive or an unreasonable charge. The provision also has a tendency to inhibit the client's exercise of his or her legislative right to request an itemised bill.

It became apparent at investigation that:

- the practitioner had cobbled the costs agreement together from costs agreements used in other circumstances;
- while the practitioner had not in fact charged the client 25% of his bill to prepare an itemised account, the practitioner had not provided one when it was requested; and,
- the client, despite the inconsistencies and contradictions in the costs agreement, had understood that he would be billed up to a maximum of \$10,000 for the work along the way, and then would only pay further money if he won.

This complaint is an example of the dangers of taking insufficient care when preparing client costs agreements. The costs agreement is not a mere formality or a tick-box exercise. It should not be contradictory, confusing, vague or uncertain in effect (*Nicholson v Behan and Speed Pty* [2000] VLPT 28). It should be easily understood by the ordinary reader after applying reasonable effort (*Russells v McCardel* [2014] VSC 287 [77]). Remember what your legislative obligations are. Remember your fiduciary obligations to ensure clients fully understand the arrangement they are getting into. It is in your interests to ensure that your costs agreement complies with your legislative and general law obligations, as well as the interests of your client, because a non-compliant costs agreement can be set aside by a costs assessor.

Remember also that your clients are entitled to ask you to prepare an itemised bill. You should conduct your work and manage your file in such a way that you are ready, willing and able to prepare an itemised bill. The complaint described here is far from the only example of a matter where a practitioner has failed to prepare an itemised bill, or been reluctant to prepare one. On occasion, the Board's investigators review files that would not support the preparation of an itemised bill because file notes or other records are patchy, or lacking. Lawyers should be aware of the law about costs agreements that apply to them and be ready to comply with it.

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. In addition to its redevelopment of its website, it has also prepared a number of information sheets to assist the profession and the public to understand the legislative framework around the treatment of complaints and provide guidance about the most common complaint areas. The information sheets are now available on the website.

The Board has also undertaken the following education:

LEGAL PRACTICE COURSE 2017 AND 2018

The Centre for Legal Studies runs its Legal Practice Course in the first half of each calendar year. In 2017, following discussion with the Centre for Legal Studies, the Board increased its participation to three one hour seminars for the legal practice students. The seminars are part of the 'Skills, Ethics and Professional Responsibility' unit and focus on complaints about the profession.

In 2018, the Board continues to participate in the Legal Practice Course with three one hour seminars as part of the 'Skills, Ethics and Professional Responsibility' unit. The seminars are scheduled to occur in July 2018.

CPD SESSIONS THROUGH THE LAW SOCIETY

- **Conduct Complaints: Hypothetical Panel – A Practical Guide to Dealing with Complaints; September 2017**

Panelled by the Manager Operations, Ms Johnston, this seminar provided information to the profession about what to do when faced with a conduct complaint, responding to a complaint and practical tips to assist lawyers in answering a complaint.

- **Legal Ethics and the Litigator – Litigation Convention November 2017, Strahan**

Ms Johnston moderated the panel for this session, who included the Hon Chief Justice Alan Blow and Ms Sandra Taglieri SC.

- **Best Practices for Avoiding Complaints by Clients (Southern Young Lawyers), May 2018**

Conducted by Investigations Officer, Ms White, this seminar provided information to young lawyers about common areas of complaint, including statistical analysis and helpful tips in dealing with the Board.

OTHER SESSIONS

- **Community Presentation, July 2017**

The Chief Executive Officer, Mr Ederle conducted an in-house session on the Board and its complaint process to the staff at Youth Network of Tasmania (YNOT).

- **Legal Regulators Conference**

The CEO attended the International Conference of Legal Regulations in Singapore in October 2017, as referred to in his report.

- **FLAPA Conference, May 2018**

Conducted by the senior investigator, Ms Warner, this presentation provided information to practitioners practising in family law about trends in family law complaints and common allegations, including statistical analysis and helpful guidance on managing client expectations.

Development of Information and Facts Sheets

The Board has developed a number of new 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
- Working with your lawyer
- Making a complaint
- 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

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 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.

Increasing numbers of complaints received by the Board over the last 12 – 24 months relate to probate, estates and wills. A principal allegation of those complaints is in relation to costs or legal fees, perceived issues of overcharging and allegations of a failure to communicate to beneficiaries and/or executors about costs.

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 provision of itemised bills to beneficiaries in estate matters. In developing the guidance note, the Board consulted with relevant stakeholders including the Law Society of Tasmania and the Supreme Court.

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 our 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.

Model Litigant Policy

The Board is committed to ensuring high professional standards, transparency and accountability in the execution of its functions. It has developed a policy and guidelines as to its handling of complaints and with respect to litigation it is involved in or conducts. 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 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

During the reporting period, the Board received 14 enquiries in relation to admission.

In addition, applicants for admission to the legal profession must provide a copy of the application to 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.

In excess of 60 applications for admission were served on the Board during the reporting period. No Notices of Objection were filed by the Board arising from those applications.

APPOINTMENT OF MANAGERS

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

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 three new disciplinary findings were uploaded to the Register.



3. Administrative Matters

Website

In 2016–17, the Board commenced a project focussed on the usability and accessibility of its website.

This included:

- a review and significant improvements to the website structure, menus, navigation and website content; and
- a revised home page layout that is more oriented to user needs.

The update of the website involved a comprehensive audit of accessibility, and completion of a suite of improvements across the site, ensuring a high level of compliance with Web Content Accessibility Guidelines 2.0 standards.

The Board's new website now provides a range of resources for the public and the profession about the law and the Board's processes.

Since being launched in August 2017, the website has had approximately 3166 users during the reporting period with the majority of users aged between 25-34 years old (33.5%). The most consistently accessed page from the website over the period was the searchable Disciplinary Register with 2,244 page views. Other frequently accessed pages include the Board's complaint process, About the Board and the Resources page which displays a suite of information and fact sheets developed by the Board.

The website also enables the Board to publish news items on topical issues which assists to raise awareness and to facilitate in the protection of the public.

The Board identified that the most prominent search term related to admission in Tasmania. The Board has developed a new webpage dedicated to relevant information and bodies for admission in Tasmania and expect it will be available on the Board's website in August 2018.

The reduced number of enquiries during the reporting period, coupled with the increased complaint numbers, illustrates that the Board's audience is able to get the information they need from the website where they would otherwise have contacted the Board staff.

Decisions Database

In April 2017 the Board commenced a project to develop a decisions database. Since it first commenced operations in 2009 the Board has made more than 450 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 was completed in June 2018 and a plan has been developed to include the back capturing of previous decisions.

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. The Board has adopted the Model Procedures for public interest disclosure as prepared by the Ombudsman. A Public Interest Disclosure Policy 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 section 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 no applications for assessed disclosures of information under the right to information legislation during the reporting period.

Legislative Amendments

The Board engaged in consultation with the Office of Parliamentary Counsel in respect to the legislative review of the *Legal Profession (Prescribed Authorities) Regulations 2008* and the *Legal Profession Regulations 2008*. The Board provided recommendations for amendments on both pieces of legislation in an effort to provide greater clarification around the Board's statutory functions.

In August 2017, the Board also received correspondence from the Law Society of Tasmania as the prescribed authority in relation to the proposed adoption of the Australian Solicitors' Conduct Rules (ASCR) in Tasmania. The ASCR are yet to be adopted.

Service Level Agreement

The Board has entered into 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.

The Board has increased its focus on mental health and well-being. Consequently all employees undertook a Mental Health and Wellbeing Course facilitated by the Department of Justice.

Professional Development

Both the Senior Investigations Officer and Manager Operations are legal practitioners and maintain a practising certificate. As part of ongoing professional development, the Senior Investigations Officer, Manager Operations and the part-time Investigations Officer completed the Legal Bookkeepers course on Legal Trust Accounting.

VISIT TO VLSB+C, AUGUST 2017

On 14 and 15 August 2017 the Manager Operations, Ms Johnston, was hosted by the Victorian Legal Services Board + Commissioner (VLSB+C). The main purpose of the inter-jurisdictional visit was to observe how the Commission conducts its core function to receive and handle complaints about lawyers. Victoria has approximately 21,000 practitioners which is significantly more than Tasmania's 706 practitioners who hold local practising certificates.

PART THREE — ADMINISTRATIVE MATTERS

The visit has provided context in relation to management of consumer and cost disputes.

As a direct consequence of the visit the Board has;

- reconsidered the management of enquiries – so that they are dealt with by the more senior officers;
- refocused the Complaints Officer's efforts with respect to the management of complaints, including the introduction of internal time frames and streamlining the handling of matters.

CONFERENCE OF REGULATORY OFFICERS (CORO), OCTOBER 2017

The Manager Operations, Ms Johnston, and Senior Investigator, Ms Warner, represented the Board at the Conference of Regulatory Officers ('CORO') in Adelaide on 26 – 27 October 2017.

The program included presentations on:

- Anti-money laundering
- The impact on legal practice and regulation with respect to developments in cyber security and artificial intelligence
- An update on the Assuring Professional Competence Project being run by Law Council of Australia
- An update of the review of the Australian Solicitors Conduct Rules by the Legal Services Council and Commissioner
- Supervision of newly admitted practitioners
- The implementation of practice management courses in some jurisdictions (WA and NSW)
- The risks and regulation of practitioner insolvency
- Changes to the Migration Act with respect to the regulation of migration lawyers
- The use of disciplinary data by regulators with an update on the VLSB + C Project, Stage 2

Overall the conference presented a good opportunity to mix with other regulators, all of which experience similar issues, albeit on a different scale for some jurisdictions.

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 adopted 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.

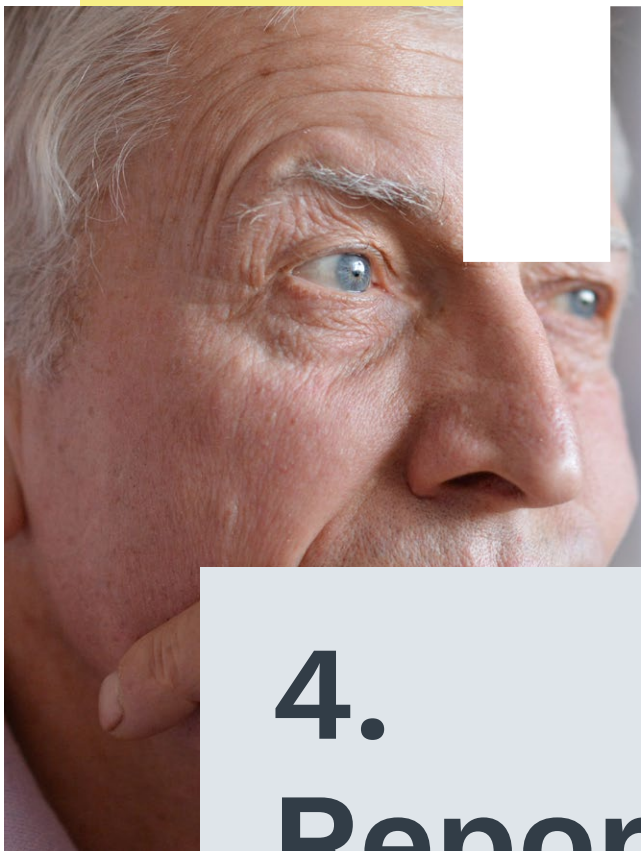
Delegations

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.



4. Reports 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 2017–2018

Legal Profession Act 2007, s. 617

No applications were made to the Disciplinary Tribunal under section 464 of the Legal Profession Act 2007 during the financial year ended 30 June 2018

Philip Jackson SC
Chairperson
27 July 2018

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

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

31 July 2018

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

Dear Sir

Report of the Prescribed Authority 2017/2018

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, being the prescribed authority presents its report to the Board for the financial year 2017/2018.

Overview

For the relevant financial year the *Legal Profession (Prescribed Authorities) Regulations 2008* designated the Society as the prescribed authority for the purposes of some 132 sections 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.

Funding of the Prescribed Authority

The functions of the prescribed authority are funded entirely 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 relevant legislative requirements. This has led to a marked improvement in compliance levels.

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DX 111 Hobart | info@lst.org.au
www.lst.org.au ABN 79 607 763 856

The examiner's report is provided to the Society. Reports 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 two days per week 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. 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.

The Society provides firms with online resources including an administration calendar and relevant forms.

Of increasing concern in the legal profession nationally and internationally is the rise in cybercrime, particularly targeting law practices. 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. The Society has provided information to law practices including in its weekly email update, directly to managing partners, by way of a poster for firms to display in their accounting area and through professional development seminars.

Trust account examinations relate to a calendar year. The following information therefore relates to the 2017 calendar year;

- Number of firms with trust accounts – 110
- Number of trust receipts – 104,588
- Total amount of trust receipts – \$8.56 billion
- Total amount held on trust at 31 December 2017 - \$151 million
- Total amount held on investment at 31 December 2017 - \$95.8 million

Practising Certificates

The following classes and numbers of practising certificates were issued under the Act during the period 1 July 2017 to 30 June 2018:

- Principal – 203
- Employee – 318
- Barrister – 58
- Corporate – 49
- Locum – 7
- Community legal centre – 60
- Volunteer community legal centre - 11

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.

Each class of practising certificate has a number of practising certificate conditions attached to it as a matter of course. All practitioners are subject to a condition they comply with the Society's practice guideline mandating minimum requirements for continuing professional development. 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 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

Suspension of a Practising Certificate

On 30 October 2017 the Board directed the Society to suspend the practising certificate issued to Barbara Etter. The Society suspended Ms Etter's practising certificate on 31 October 2017. That suspension was subsequently stayed by the Full Court of the Supreme Court of Tasmania.

Conclusion

The Tasmanian Legal 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



6. Independent Audit Report and Financial Statements as at 30 June 2018

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 2018 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 2018 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.

...1 of 3

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

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 using 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 Board.

...2 of 3

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- Conclude on the appropriateness of the Members' 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.
- 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.



Ric De Santi
Deputy Auditor-General
Delegate of the Auditor-General

Tasmanian Audit Office

15 August 2018
Hobart

...3 of 3

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Statement by Chairman and Chief Executive Officer

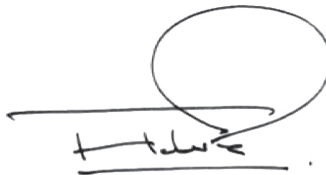
The accompanying Financial Statements of the Legal Profession Board of Tasmania are in agreement with the relevant accounts and records and have been prepared in compliance with Treasurer's Instructions issued under the provision of the *Financial Management and Audit Act 1990* and Section 599 of the *Legal Profession Act 2007* to present fairly the financial transactions for the period ended 30 June 2018 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 2018



Keyran Pitt QC
CHAIRPERSON



Frank Ederle
CHIEF EXECUTIVE OFFICER

Statement of Comprehensive Income for the year ended 30 June 2018

		2018	2017
	Notes	\$'000	\$'000
Revenue and other income from transactions			
Revenue from Solicitor's Guarantee Fund	1.1	1 081	969
Other revenue	1.2	51	9
Total revenue and other income from transactions		1 132	978
Expenses from transactions			
Employee benefits	2.1	882	709
Supplies and consumables	2.2	261	262
Other expenses	2.3	225	152
Total expenses from transactions		1 368	1 123
Net result from transactions		(236)	(145)
Comprehensive result		(236)	(145)

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

Statement of Financial Position as at 30 June 2018

		2018	2017
	Notes	\$'000	\$'000
Assets			
<i>Financial Assets</i>			
Cash and cash equivalents	6.1	125	338
Receivables	3.1	12	7
Total assets		137	345
Liabilities			
Payables	4.1	18	14
Employee benefits	4.2	174	150
Total liabilities		192	164
Net assets/(liabilities)		(55)	181
Equity			
Accumulated funds		(55)	181
Total equity		(55)	181

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

Statement of Cash Flows for the year ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000
		Inflows (Outflows)	Inflows (Outflows)
Cash flows from operating activities			
Cash inflows			
Solicitor's Guarantee Fund Receipts		1 081	968
GST Receipts		43	43
Other cash receipts		51	10
Total cash inflows		1 175	1 021
Cash outflows			
Employee benefits		(857)	(705)
GST payments		(46)	(39)
Supplies and consumables		(262)	(255)
Other expenses		(223)	(155)
Total cash outflows		(1 388)	(1 154)
Net cash generated from (used in) operating activities	6.2	(213)	(133)
Net increase (decrease) in cash and cash equivalents held		(213)	(133)
Cash and deposits at the beginning of the reporting period		338	471
Cash and deposits at the end of the reporting period	6.1	125	338

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 2018

	Accumulated surplus / deficit \$'000	Total equity \$'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)

	Accumulated surplus / deficit \$'000	Total equity \$'000
Balance as at 1 July 2016	326	326
Total comprehensive result	(145)	(145)
Total	(145)	(145)
Balance as at 30 June 2017	181	181

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

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NOTE 1 INCOME 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.

	2018	2017
	\$'000	\$'000
Solicitor's Guarantee Fund Revenue	1 081	968
Total revenue from Solicitor's Guarantee Fund	1 081	968

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.

	2018	2017
	\$'000	\$'000
Interest Revenue	7	9
Other Revenue	44	1
Total	51	10

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

	2018	2017
	\$'000	\$'000
Wages and salaries (Staff)	605	516
Wages and salaries (Board members)	183	116
Superannuation – defined contribution scheme	60	44
Superannuation – defined benefit scheme	21	20
Other employee expenses	13	13
Total	882	709

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 (2017: 12.85 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 (2017: 9.5 per cent) of salary.

(b) Remuneration of Key Management Personnel

	Short-term benefits		Long-term benefits			Total
2018	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

2017	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	154	17	20	(6)	-	185
Keyran Pitt QC, Chairman	29	-	3	-	-	32
Judith Paxton, Member	15	-	1	-	-	16
Peter Dane, Member	21	-	2	-	-	23
Graeme Jones, Member	19	2	2	-	-	23
David Lewis, Member	11	2	1	-	-	14
Anthony Mihal, Member	21	3	2	-	-	26
	270	24	31	(6)	-	319

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 2017-18 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.

	2018	2017
	\$'000	\$'000
Audit fees	7	6
Operating leases	83	83
Consultants	20	36
Property expenses	32	38
Communications	10	10
Information technology	61	51
Travel and transport	18	10
Plant and equipment	5	5
Advertising and promotion	2	5
Other supplies and consumables	23	18
Total	261	262

The external audit fee for 2017-18 is \$6,610 (\$6,440 for 2016-17).

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.

	2018	2017
	\$'000	\$'000
Legal Costs	205	131
Other Expenses	20	21
Total	225	152

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

Receivables are recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables are not discounted back to their present value.

	2018	2017
	\$'000	\$'000
GST Receivables	10	7
Recoupment of costs	2	-
Total	12	7
Settled within 12 months	12	7
Total	12	7

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 2018.

(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 daytoday 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.

	2018 \$'000	2017 \$'000
Accrued expenses	18	14
Total	18	14
Settled within 12 months	18	14
Total	18	14

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.

	2018	2017
	\$'000	\$'000
Accrued salaries	10	6
Annual leave	43	41
Long service leave	121	103
Total	174	150
Settled within 12 months	45	41
Settled in more than 12 months	129	109
Total	174	150

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

	2018	2017
	\$'000	\$'000
By type		
<i>Lease Commitments</i>		
Operating leases	32	113
<i>Total lease commitments</i>	32	113
By maturity		
<i>Operating lease commitments</i>		
One year or less	30	84
From one to five years	2	29
<i>Total operating lease commitments</i>	32	113

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.

	2018	2017
	\$'000	\$'000
Quantifiable contingent liabilities		
<i>Contingent claims</i>		
Contingent legal claims	190	50
Total quantifiable contingent liabilities	190	50

At 30 June 2018 the Board had four legal claims against it in dispute.

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.

	2018	2017
	\$'000	\$'000
Operating Account	125	338
Total cash and cash equivalents	125	338

6.2 Reconciliation of Net Result to Net Cash from Operating Activities

	2018	2017
	\$'000	\$'000
Net result	(236)	(145)
(Increase) / Decrease in Receivables	(5)	5
Increase / (Decrease) in Employee benefits	24	7
Increase / (Decrease) in Payables	4	-
Net cash generated from operating activities	(213)	(133)

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.

**PART SIX —
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS AS AT 30 JUNE 2018**

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:

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

2017	Maturity analysis for financial liabilities		
	1 Year	Undiscounted Total	Carrying Amount
Financial liabilities			
Payables	14	14	14
Total	14	14	14

(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:

	2018	2017
	\$'000	\$'000
Variable rate instruments		
<i>Financial assets</i>		
Cash and cash equivalents	125	338
Total	125	338

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 2018				
Cash in Special Deposits and Trust Fund	1	(1)	1	(1)
Net sensitivity	1	(1)	1	(1)
30 June 2017				
Cash in Special Deposits and Trust Fund	3	(3)	3	(3)
Net sensitivity	3	(3)	3	(3)

7.2 Categories of Financial Assets and Liabilities

	2018 \$'000	2017 \$'000
Financial assets		
Cash and cash equivalents	125	338
Receivables	12	7
Total	137	345
Financial Liabilities		
Financial liabilities measured at amortised cost	18	14
Total	18	14

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

	Carrying Amount 2018 \$'000	Net Fair Value 2018 \$'000	Carrying Amount 2017 \$'000	Net Fair Value 2017 \$'000
Financial assets				
Cash and cash equivalents	125	125	338	338
Receivables	12	12	7	7
Total financial assets	137	137	345	345
Financial liabilities				
Payables	18	18	14	14
Total financial liabilities	18	18	14	14

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 2018.

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 2018.

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 Office 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:

- 20162 Amendments to Australian Accounting Standards – Disclosure Initiative: Amendments to AASB 107 – The objective of this Standard is to amend AASB 107 Statement of Cash Flows to require entities preparing statements in accordance with Tier 1 reporting requirements to provide disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and noncash changes. This Standard applies to annual periods beginning on or after 1 January 2017. The impact is increased disclosure of financial activities in relation to cash flows and noncash changes as shown at Note 14.5. There is no financial impact.

(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 9 *Financial Instruments* and 2014-7 *Amendments to Australian Accounting Standards arising from AASB 9 (December 2014)* - the objective of these Standards 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. These standards apply to annual reporting periods beginning on or after 1 January 2018. The future impact is to recognise impairment losses on financial assets on an expected basis rather than an incurred basis and introduces a fair value through other comprehensive income category for non-equity financial assets. The financial impact is expected to be minimal.
- AASB 16 *Leases* – The objective of this Standard is to introduce a single lessee accounting model and require a lessee to recognise assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value. This Standard applies to annual reporting periods beginning on or after 1 January 2019. The impact is enhanced disclosure in relation to leases. The Office has commenced reviewing the financial impact of this standard, which is expected to be material.

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 Department 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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