



LEGAL  
PROFESSION  
BOARD OF  
TASMANIA



# Annual Report 2020–2021

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31 August 2021

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 2020-21**

Please find enclosed the Annual Report of the Legal Profession Board of Tasmania for the period 2020-21, 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

**The Legal Profession Board of Tasmania acknowledges the palawa people as the traditional custodians of lutruwita/Tasmania and pays its respect to elders past, present and emerging.**

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# Report of the Chairperson



I am pleased to present the Legal Profession Board of Tasmania's annual report for the financial period ending 30 June 2021.

This year's report marks 12 years since the Board commenced operations in January 2009, and my eighth year of service with the Board.

As I was able to relay last year, it is with some relief that I again report the Board has not been adversely affected to the extent that many other businesses, communities and organisations have been affected by the global pandemic.

That said, the Board has in place a suite of COVID-19 safety and operational measures to ensure that in the event of a 'lock-down' in the Hobart area, the Board is able to continue operations seamlessly, whilst ensuring the safety of the Board's members, employees and the wider community is maintained.

I take this opportunity to thank the Board's CEO, Mr Frank Ederle, and his team for their efforts in ensuring the organisation remains nimble and flexible in order to cope with all of the challenges which have surfaced during the current pandemic.

## Workload of the Board

For the period ending 30 June 2021, the Board received 102 complaints which was 29 less than for the same period last year, or a percentage decrease of 22%. The decrease in volume of complaints received was a pleasing result in comparison with last year's record of the highest number of complaints received since the Board commenced operations.

As has been observed in past years, complaint allegations in relation to costs/overcharging; dishonest/misleading conduct; abusive/threatening conduct; and lack of competence remain the most prevalent issues raised by consumers of legal services in the reporting period.

The Board commenced 22 formal investigations within the reporting period where an investigator was appointed by the Board, and finalised a total of 111 matters over the past 12 months. As has been the case since the commencement of operations in 2009, the Board maintains a commitment to the early resolution of complaints by mediation in appropriate circumstances, and I am pleased to report that 20% of all finalised

complaints were as a result of some measure of mediatory intervention by the Board and its Officers.

This year's report provides further insightful statistics in relation to the Board's operations, which are explored further in Part 2 of the report.

## Meetings and Determinations of the Board

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

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

In accordance with the *Legal Profession Act 2007*, both a complainant and practitioner the subject of a complaint, are entitled to receive a written determination and reasons following a decision to finalise a complaint. The Board produced 93 written determinations and reasons in the reporting period.

## Membership of the Board

I am pleased to report there have been no changes to the Board's six-person membership over the past 12 months, noting that Mr Anthony Mihal was re-appointed as a professional member and nominee of the Law Society of Tasmania within the reporting period. We have been advised that Mr David Lewis has not been renominated by the Bar Association, but have not yet been advised of a replacement.

The Board continues to operate in an efficient and effective manner and is supported by a dedicated team of professional employees under the guidance of the Board's CEO.

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

## Sexual Harassment

I am pleased to report that the Board has played a leading role in the instigation and development of a profession-wide working group made up of senior leaders of the legal profession state-wide. The working group's purpose is to initiate a catalyst for cultural change across all of the legal profession in Tasmania in relation to sexual harassment and to provide ongoing leadership in relation to this issue.

In the Board's view it is a credit to the legal profession that its leaders are willing to take the issue of sexual harassment within the legal profession seriously, and to genuinely seek to address this issue collectively.

The Board through its members, CEO and staff have actively supported the work of the sexual harassment working group in the reporting period.

## Funding of the Board

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

It is with satisfaction that I am able to report that over the past twelve years of the Board's operations, no additional funding over the course of any reporting period has been sought by the Board. This is a direct consequence of sound financial management and the Board consistently operating within agreed financial parameters.

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

Finally, on behalf of all members of the Board, I gratefully acknowledge the work and dedication of the CEO, Mr Frank Ederle and his loyal and professional team for their work, dedication and continued enthusiasm for the Legal Profession Board of Tasmania.



**K Pitt QC**

Chairperson,  
Legal Profession Board of Tasmania

# Report of the Chief Executive Officer



## COVID-19

I echo the Chairperson's sentiments in relation to the Board being to date very fortunate to have not suffered the same level of adverse effects of the pandemic which have been endured, and continue to be endured, within Australia and globally.

Over the past 12 months the Board has implemented 'working from home arrangements' for all of its employees in the event of a lock-down for the Hobart area. This level of preparation has seen the introduction of laptops for all employees and the ability to conduct all Board business remotely and virtually with the aid of technology.

I am confident that the operational aspects of the organisation are able to meet all of the challenges that may present as a consequence of the pandemic, and that the focus will be maintained on ensuring the safety of the Board's members, staff and the wider community.

## Externally Focussed Endeavours

Over the last 12 months of operations there has been a reduction in the number of complaints received by the Board compared with last year, and although this is a pleasing result, the higher intake of complaints received last year still represents a significant ongoing workload for the Board and its employees.

In the reporting period, the number of matters for which the Board resolved to litigate, either before the Board or by way of an application to either the Supreme Court or Disciplinary Tribunal, remained at record levels. At the conclusion of the reporting period, the Board had 19 active litigation matters on foot. This high volume of litigation matters places pressure on the Board's financial resources.



The Manager Operations and her team also 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. This excellent and worthwhile work has at its core the goal to improve client-lawyer relationships both with emerging professionals as well as with established legal practitioners.

A very important achievement in the reporting period was the establishment by the Board of the legal profession-specific sexual harassment working group.

The Board recognises that sexual harassment of any kind is unacceptable. For lawyers and members of the legal profession generally, it is also conduct that is capable of resulting in serious disciplinary action.

The working group is made up of influential and progressive leaders within the Tasmanian legal profession and the work of the group is supported by the Judiciary.

The purpose and goals of the working group include identifying initiatives in order to facilitate cultural change regarding sexual harassment in the legal profession in Tasmania. By securing the engagement and commitment of leaders within the legal profession, those important cultural changes in relation to sexual harassment are likely to be achieved.

Participation in the working group from leading Tasmanian legal organisations, representative bodies and Courts includes; Australian & Tasmanian Women Lawyers, Community Legal Centres, Crown Law, Department of Justice, Equal Opportunity Tasmania, Legal Aid Commission Tasmania, Law Society Tasmania, Magistrates Court Tasmania, Supreme Court Tasmania, Tasmanian Bar Association, Tasmanian Civil and Administrative Tribunal, Tasmanian Legal Practice Course and the University of Tasmania Law School.

## Internally Focused Endeavours

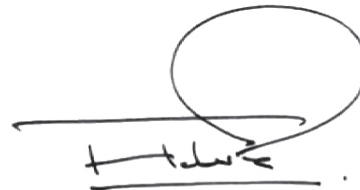
The Board has continued to exercise financial restraint in all of its dealings within the reporting period. As I have noted in previous reports, although the *Legal Profession Act 2007* empowers the Board to impose levies on local legal practitioners (section 592(2)), it has not been necessary to do so since the commencement of the Board's operations in 2009.

Notwithstanding the strains placed upon the

organisation through higher complaint litigation activity, I am grateful to all members and employees for consistently appreciating the need for financial restraint and careful financial planning to ensure the Board is able to meet its obligations and liabilities into the future.

I also take this opportunity to gratefully acknowledge the Attorney-General, the Honourable Elise Archer, for supporting the Board's funding application for the period, which underpins the Board's ability to fulfil its statutory obligations.

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

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# Part one



**The  
Legal  
Profession  
Board**

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## 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.

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## PART ONE – THE LEGAL PROFESSION BOARD

### 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; the Medical Complaints Tribunal and as a coroner. 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 HEATHER FRANCIS

Ms Heather Francis commenced her term in November 2018.

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

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

Ms Francis is a nominee of the Minister.



##### MS MARION HALE

Ms Marion Hale commenced her term in November 2018.

Ms Hale has worked in improving equity and justice in the community for the last 28 years. Her career has spanned education, crisis support, counselling, community development, policy development and population health. In 2012 Ms Hale was awarded a Churchill Fellowship to visit programs, around the world, that support women to become smoke free in pregnancy. As a result of the Fellowship, Ms Hale was elected to be the President of the

International Network of Women Against Tobacco in 2015 and is serving her second three-year term as President.

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

Ms Hale is a nominee of the Minister.

## Legal Members



### MR GRAEME JONES

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

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

- Legal Assistance Committee member (1983-1990)
- Bar Association Committee member (1981-1992)
- Member of the Board of Legal Education (2004-2008)
- Council member of the Law Society of Tasmania (2006-2013)
- President of the Law Society of Tasmania (2009-2010)
- Chairman Law Foundation of Tasmania (2009-2010)
- Board member of the Centre of Legal Studies (2008-2019)
- Member of the Legal Profession Board of Tasmania (2015-current)
- Board member of Eskleigh Foundation Inc. (2005-2009)
- Board member of Wildcare Inc. (2009-2013)
- He recently retired from private legal practice and is an experienced legal practitioner having practiced as both a barrister and solicitor for over thirty-five years.

Mr Jones is a nominee of the Law Society.



### MR ANTHONY MIHAL

Mr Mihal is a director of a generalist law practice in Ulverstone and he undertakes mainly litigious work including civil, criminal and child protection matters. He served on the Council of the Law Society of Tasmania for 7 years including as President in 2013/2014, the Law Foundation of Tasmania, the Management Committee of the North West Community Legal Centre including as

Chair, and the Law Council of Australia's Regional, Remote, Rural Lawyers' Advisory Committee. He is currently Chairman of a charitable organisation called the Roland View Estate Trust, and a member of the Local Government Code of Conduct Panel and the Guardianship and Administration Board. Mr Mihal is a nominee of the Law Society.



### MR DAVID LEWIS

Mr Lewis, a prominent barrister on the North West Coast of Tasmania, was appointed to the Board on 27 June 2016. Over the last 30 years he has enjoyed a diverse practice in law which, in addition to his experience at the Queensland, South Australian, and Tasmanian Bars, includes appointment as a Senior Crown Prosecutor in Darwin, General Counsel for the Director

of Public Prosecutions in the Northern Territory, Managing Practitioner of the Katherine Regional Aboriginal Legal Aid Service, Senior In-house Family Law Counsel with the Legal Aid Commission of Tasmania, and Legislative Counsel for the external Australian Territory of Norfolk Island. Mr Lewis is a nominee of the Tasmanian Bar.

**PART ONE –  
THE LEGAL PROFESSION BOARD**

**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 2020-2021**

<b>BOARD MEMBER</b>	<b>BOARD MEETINGS</b>	<b>S450(A) HEARING</b>	<b>S456 HEARING</b>
Keyran Pitt QC	11	1 (directions hearing)	10
Heather Francis	11	0	11
Marion Hale	10	0	10
Graeme Jones	11	0	11
Anthony Mihal	11	0	11
David Lewis	11	0	7

In addition to the above meetings, the Board also convened 11 section 456(1) hearings for less serious complaints.

Consequent to the board meetings and hearings, the Board produced **93\*** written complaint determinations with reasons during the reporting period. This is an increased number from last year, reflecting the greater number of complaints received the previous reporting year.

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

**FUNDING OF THE BOARD**

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

In 2020-21, the funding which was approved by the Minister was **\$1,492,790**.

The Board, by virtue of section 591(d) of the Act is to approve terms and conditions of professional indemnity insurance policies provided to law practices. The Board has not been made aware of any changes to the terms and conditions of the current policies in this reporting period.

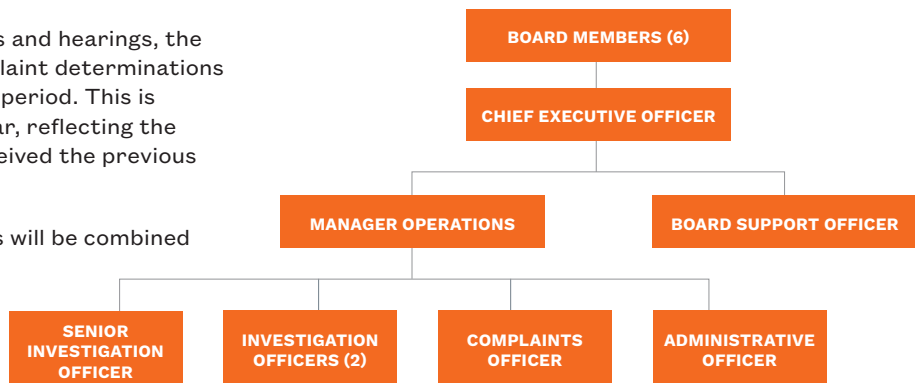
**THE BOARD’S GOAL**

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 2021. One of our investigation officers was on parental leave as at 30 June 2021.

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





# Part two

## Operations report

## **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 2020 to 30 June 2021.

### **COVID-19**

Like institutions Australia wide, the Board has been impacted by the COVID-19 pandemic.

Although only a small organisation, as the pandemic progressed, 50% of our workforce, which was mainly the Board's investigators, commenced working from home. Our workforce was back working from our office by September 2020. Members of the public were originally not permitted to enter our premises without an appointment. That requirement has now been relaxed in line with government advice.

Early in the pandemic in 2020 there were a number of complaints which were referred to section 456 meetings. The section 456 meetings which were held in abeyance in the previous reporting period, were recommenced in late July 2020, with some meetings held by video conferencing and some on the papers. Face to face section 456 meetings were held from the beginning of 2021.

Throughout the period the Board was able to continue to meet on a monthly basis by way of video conferencing until the end of 2020. In person Board meetings resumed in February 2021.

The Board has continuously revised all of its work processes and work stations to ensure the workplace is and remains COVID safe.

### **ENQUIRIES TO THE BOARD**

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

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

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

The table below shows that the Board has dealt with a total of **221** enquiries. The number of enquiries has remained, in the main, reasonably constant since the Board commenced operations, with a slight downward trend over the last 3 years. This might be attributable to the increased information available online.

A total of **38** enquiries in the reporting period resulted in a written complaint. This represents a conversion rate of just **17%**.

Consistently the majority of enquiries were dealt with by telephone, with the remaining enquiries being by email or letter. Subject to COVID-19 restrictions, members of the public may attend the Board's offices to discuss their issues in person with an appointment.

The referral source of enquiries to the Board, although varied, is primarily from an internet search engine or the Law Society of Tasmania. Enquiries are also referred to the Board through the Ombudsman, other lawyers, Tasmania Police, Ministerial offices and the National Redress Scheme.

Consistent with our complaints data, enquiries primarily concern:

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

As in previous years, fees, costs, perceptions of overcharging or 'bill shock' continue to be the most common query to the Board, irrespective of the area of law. Queries about perceived delay by lawyers were a close second followed by failures to act as instructed or communicate.

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

**TABLE 2 - ENQUIRIES**

MONTH	TOTAL ENQUIRIES 2020-21	TOTAL ENQUIRIES 2019-20	TOTAL ENQUIRIES 2018-19
July	23	20	21
August	21	18	32
September	8	25	13
October	20	22	25
November	16	19	26
December	12	12	13
January	9	14	13
February	19	23	29
March	35	22	24
April	21	15	17
May	22	24	25
June	15	13	7
<b>Total Enquiries</b>	<b>221</b>	<b>227</b>	<b>245</b>

**Enquiries about non-lawyers**

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

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

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



**COMPLAINTS**

**Our process**

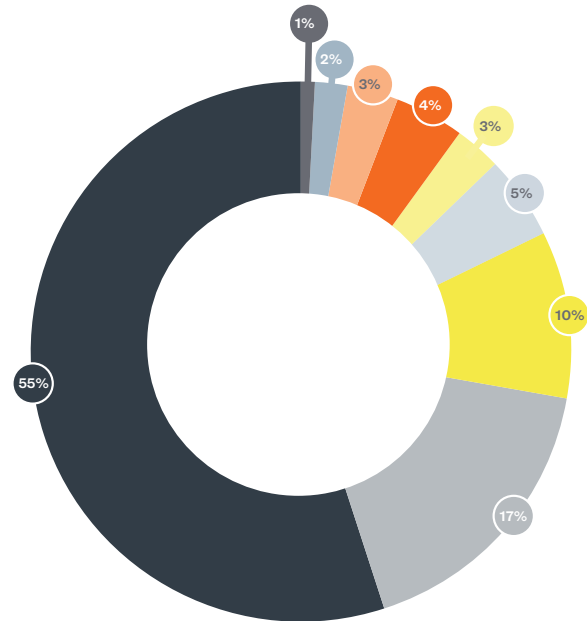
A complaint may be made about the conduct of an Australian legal practitioner by any person, including the Board itself. The Board is required by the Act to take all reasonable steps to ensure that any person wishing to make a written complaint is given the appropriate assistance to do so.

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.

- 56 online
- 2 email
- 18 form email
- 4 in person
- 10 form post
- 3 letter post
- 1 letter in person
- 5 letter email
- 3 own motion

As can be seen in the above chart, complaints are primarily received electronically either via the online form on the Board’s website or by email.

The Board, pursuant to its obligations under section 427(5) and 511 of the Act, is to give such assistance as is reasonably necessary to members of the public in making complaints. Although COVID restricted our ability to meet complainants face to face until the beginning of 2021, assistance was provided by phone and online.



### Anonymous communications

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

#### Flow chart 1 - Progress of a complaint through the Board

When a complaint is received by the Board, a preliminary consideration 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. Further, at section 511(c) of the Act, the Board must provide assistance to members of the public in making complaints.

In the Board's view, the public interest requires that any conduct capable of amounting to unsatisfactory professional conduct or professional misconduct,

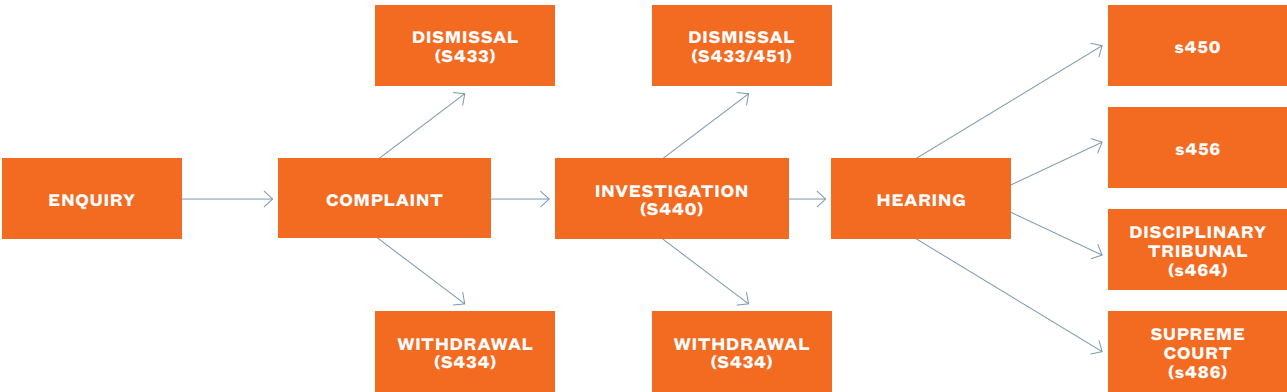
which may have been omitted or missed from inclusion in a complaint by a complainant, ought to be properly considered by the Board.

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

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

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

All information obtained initially is collated and all of the material is then considered by the Board at a monthly meeting. At that stage the complaint will either proceed to have an investigator appointed, or is summarily dismissed. As complaints may contain a



## PART TWO – OPERATIONS REPORT

number of allegations, on some occasions the Board may summarily dismiss part of the complaint, with the other allegations remaining until the investigation is finalised.

The Board has a duty to deal with complaints as efficiently and expeditiously as is practicable. The preliminary process prior to the appointment of an investigator, 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.

The Board has produced fact sheets which can be found on its website to assist both the complainant and the practitioner understand the statutory framework for dealing with complaints.

### Complaints this year

The Board received **102 complaints** in the reporting period, which is a **22%** decrease on the immediately preceding year.

**TABLE 3 - WRITTEN COMPLAINTS RECEIVED**

MONTH	COMPLAINTS RECEIVED 2020-21	COMPLAINTS RECEIVED 2019-20	COMPLAINTS RECEIVED 2018-19	COMPLAINTS RECEIVED 2017-18
July	7	19	22	5
August	6	11	13	12
September	4	13	10	14
October	9	10	3	18
November	16	13	13	13
December	5	4	3	7
January	2	6	7	12
February	8	10	12	3
March	8	11	11	13
April	11	9	7	13
May	15	16	9	6
June	11	9	3	4
<b>Total Complaints</b>	<b>102</b>	<b>131</b>	<b>113</b>	<b>120</b>

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

The Board commenced **3** own motion complaints against legal practitioners arising from information provided to the Board.

### Practising certificates

Of the 102 complaints, **85** were directed against lawyers who held local practising certificates issued by the prescribed authority (the Law Society of Tasmania).

A further **2** complaints concerned lawyers holding practising certificates interstate, but where the conduct principally arose in Tasmania.

A further **6** complaints were made about people who were ultimately not Australian lawyers nor Australian legal practitioners.

This year the Board also received **7** complaints against Tasmanian government lawyers. In Tasmania a government lawyer is entitled to practise in Tasmania without a practising certificate. However government lawyers still fall within the jurisdiction of the Board.

**1** complaint was made against a person who holds a position as a government employee and is also an Australian lawyer.

Consistent with the previous year, the majority of complaints were made against lawyers holding a principal local practising certificate (**45%**) with the next biggest category being those holding an employee practising certificate.

**TABLE 4 – COMPLAINTS BY PRACTISING CERTIFICATE TYPE IN TASMANIA**

PC Type	Number of complaints
Barrister	3
Community	1
Corporate	-
Employed	37
Principal	44
Grand Total	85

**30** complaints identified lawyers employed by an incorporated legal practice with **51** against lawyers working in a law firm. **1** complaint was against a lawyer working at a community legal centre and **3** complaints were against barristers.

### Gender

Of the 102 new complaints **64** complaints (**63%**) identified a male lawyer while **38** identified a female lawyer (**37%**).



## Admission dates

The admission date of the lawyer against whom a complaint had been made was available for **97** of the complaints received.

NO OF COMPLAINTS	DATE RANGE OF ADMISSION	MALE	FEMALE	PRINCIPAL PC
15	2017 - 2021	5	10	1
11	2011 - 2016	8	3	2
25	2001 - 2010	12	13	13
46	Prior to 2001	35	11	30

Similar to previous years, the majority of the complaints were made against lawyers with more than 20 years' experience. Of those **46** complaints, **76%** were against male practitioners. Of the lawyers with more than 20 years' experience, **65%** held a Principal practising certificate. This is a consistent trend, and continues to indicate that senior lawyers may benefit from targeted continuing legal education around complaint matters.



## Allegations

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

As can be seen from Table 5, allegations relating to costs, dishonest or misleading conduct, negligence / competency, and delay comprised the majority of complaint allegations received by the Board in the reporting period.

**TABLE 5 - PRINCIPAL ALLEGATIONS AGAINST LEGAL PRACTITIONERS**

PRINCIPAL ALLEGATION	2020-21	2020-21	2019-20	2019-20	2018-19	2018-19
		%		%		%
Abusive/Rude/Threat	7	7%	10	8%	14	12%
Breach of Act, rules, court order or undertaking	1	1%	12	9%	6	5%
Communication with client - including failure to communicate	4	4%	7	6%	10	9%
Confidentiality breach	1	1%	1	0.5%	4	3%
Conflict of interest	3	3%	13	10%	5	4%
Costs/Bills/Fees/Overcharging	22	21%	14	11%	20	18%
Court performance	8	8%	0	-	3	3%
Delay	10	10%	12	9%	12	11%
Dishonest/Misleading (including misleading the Court)	17	16%	3	2%	10	9%
Instructions - failure to act or to comply	8	8%	23	18%	9	8%
Instructions - acting without instructions	2	2%	3	2%	3	3%
Negligence/Competency - including poorly handling of case	12	12%	26	20%	11	10%
Criminal allegations	0	-	3	2%	1	1%
Trust money - including failure to account	2	2%	3	2%	1	1%
Inappropriately ceasing to act	5	5%	1	0.5%	4	3%
<b>Totals</b>	<b>102</b>	<b>100%</b>	<b>131</b>	<b>100%</b>	<b>113</b>	<b>100%</b>

**PART TWO –  
OPERATIONS REPORT**

**TABLE 6 - AREA OF LAW TO WHICH COMPLAINTS RELATED**

<b>AREA OF THE LAW</b>	<b>2020-21</b>	<b>2020-21 %</b>	<b>2019-20</b>	<b>2019-20 %</b>	<b>2018-19</b>	<b>2018-19 %</b>
Administrative	0	-	5	4%	3	3%
Building	2	2%	0	-	3	3%
Commercial/Corporations/franchise	5	4%	9	7%	1	1%
Other - civil includes debt collection, anti- discrimination, defamation	7	7%	14	11%	14	12%
Constitutional	0	-	0	-	0	0%
Conveyancing	7	7%	12	10%	14	12%
Criminal	19	19%	19	15%	12	11%
Family/de facto	26	26%	31	24%	17	15%
Employment Used to be Industrial relations	1	1%	2	0.5%	1	1%
Personal injury	7	7%	3	2%	5	4%
Probate/family provisions	21	21%	21	16%	26	23%
Wills/powers of attorney	5	4%	6	5%	5	4%
Workers' compensation	1	1%	4	3%	3	3%
Immigration	1	1%	1	0.5%	2	2%
Land & Environment	0	-	1	0.5%	0	0%
Victim Compensation	0	-	0	-	0	0%
Leases/Mortgages	0	-	2	1%	1	1%
Insolvency	0	-	1	0.5%	0	0%
Unknown	0	-	0	-	6	5%
<b>Total</b>	<b>102</b>	<b>100%</b>	<b>131</b>	<b>100%</b>	<b>113</b>	<b>100%</b>

Table 6 indicates that the area of law most often involved in complaints received by the Board in the reporting period, at a combined **51%** of complaints was Family/De facto and Probate and Wills provisions.

The area of law also highly represented in the reporting period was Criminal which represents **19%** of complaints to the Board.

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

During the investigation of a complaint, the investigator may become aware of facts which the investigator considers may constitute unsatisfactory professional conduct or professional misconduct not already the subject of a complaint. In such a case, the investigator must refer the matter to the Board to consider whether disciplinary action should be taken. Further, circumstances may arise where a practitioner may fail to comply with a direction of the Board. In these circumstances, the Board may elect to make a complaint of its own motion. This year the Board made **3** board initiated complaints. The Board has developed a fact sheet, available on its website, to provide context as to when the Board will commence a board initiated complaint.

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

**PART TWO –  
OPERATIONS REPORT**

**TABLE 7 - COMPLAINANTS' PROFILE (REGION & GENDER)**

PROFILE	Male	Female	Couple	Business	Complaints made by the Board	TOTAL
2020-21	53 (52%)	44 (43%)	2 (2%)	0 (-%)	3 (3%)	102 (100%)
2019-20	75	48	4	2	2	131
2018-19	50	54	7	1	2	113
2017-18	56	64	6	-	5	126

REGION	South	North	North West	Interstate/ International	Residence not disclosed	TOTAL
2020-21	63 (62%)	14 (14%)	9 (9%)	16 (15%)	- (-%)	102 (100%)
2019-20	53	30	18	25	5	131
2018-19	52	22	17	16	6	113
2017-18	75	18	14	13	-	120

In addition to the **102** complaints received the Board also dealt with a further **100** complaints carried forward from the 2019-20 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 investigator being appointed.

**TABLE 8 - COMPLAINTS CARRIED FORWARD AT 1 JULY 2020**

COMPLAINTS	CARRIED FORWARD AS AT 1 JULY 2020	%
Unfinalised complaints pending (an investigator yet to be appointed or awaiting hearing) as at 30 June 2020	38	38%
Complaints under investigation	42	42%
Complaints referred to a hearing	20	20%
<b>Total Complaints carried forward as at 1 July 2020</b>	<b>100</b>	<b>100%</b>



## INVESTIGATIONS

**42** investigations were carried forward from the previous reporting year and a total of **22** complaints proceeded to have an investigator appointed in the reporting period.

Of the **22** complaints which proceeded to the appointment of an investigator, an investigator was appointed on average within 4 months after the complaint was initially received by the Board. The average 4 month period enables the collation of material and submissions for consideration by the Board of jurisdiction and/or summary dismissal.

A total of **22** investigations were completed via a dismissal or withdrawal. A further **15** completed investigations were referred to a prosecution either by way of a board hearing, the Disciplinary Tribunal or the Supreme Court.

The Board where necessary, uses 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 section 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 2020-21**

MONTH	INVESTIGATIONS COMMENCED 2020-21	INVESTIGATIONS COMPLETED 2020-21	INVESTIGATIONS COMMENCED 2019-20	INVESTIGATIONS COMPLETED 2019-20	INVESTIGATIONS COMMENCED 2018-19	INVESTIGATIONS COMPLETED 2018-19
July	6	1	4	4	4	2
August	3	0	4	1	1	1
September	3	6	1	5	3	1
October	0	2	3	3	7	3
November	2	2	2	2	4	2
December	1	1	5	4	1	1
January	0	0	0	0	1	0
February	3	3	3	5	3	3
March	2	3	4	3	0	6
April	0	1	3	1	2	0
May	0	2	5	0	4	4
June	2	1	4	1	2	6
<b>Total</b>	<b>22</b>	<b>22</b>	<b>38*</b>	<b>29</b>	<b>32</b>	<b>29</b>

\*one matter was referred back for further investigation after the Board had resolved to commence a prosecution in the Supreme Court.

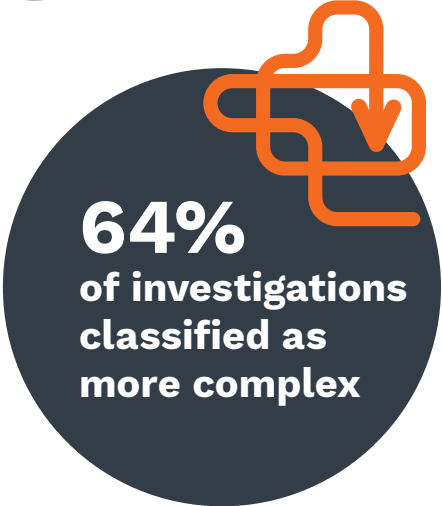
**TABLE 10 – COMPLEXITY OF INVESTIGATIONS COMMENCED**

CATEGORY OF INVESTIGATION	INVESTIGATION CRITERIA	INVESTIGATIONS COMMENCED 2020-21	%	INVESTIGATIONS COMMENCED 2019-20	INVESTIGATIONS COMMENCED 2018-19
<b>SIMPLE</b>	Basic investigation, low volume of documentary evidence, no witness or 3rd party involvement	8	36%	14	7
<b>INTERMEDIATE</b>	Medium volume of documentary evidence, single witness or 3rd party involvement	11	50%	16	7
<b>COMPLEX</b>	Multiple witnesses, significant volume of evidence	-	-	7	11
<b>VERY COMPLEX</b>	High volume of evidence, multiple witnesses, interaction with commercial entities	3	14%	1	7
<b>Total</b>		<b>22</b>	<b>100%</b>	<b>38</b>	<b>32</b>

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 Investigation Officer’s ability to readily access information held by either the practitioner or complainant.

In the reporting period to 30 June 2021, the Board classified the majority (**64%**) of all investigations where an investigator was appointed in the period, as more complex than a simple investigation.

The average length of investigations from the appointment of the investigator to the Board determination for dismissal was 10 months. However, the length of the investigations from the appointment of the investigator to the Board determination for referral to prosecution ranged in time from 1 month to 26 months. The delay is consequent to the significantly increased number of complaints which were referred to investigation the previous year. The investigation team has worked extremely hard over the last 6 months to reduce the backlog of investigations.



## FINALISATIONS AND OUTCOMES

TABLE 11 – COMPLAINTS FINALISED AND METHOD OF FINALISATION FROM 2020-21

METHOD OF FINALISATION	RELEVANT SECTION OF ACT	DESCRIPTION	NUMBER FINALISED	% FINALISED COMPARED TO TOTAL FINALISATIONS	NUMBER FINALISED 2019-20
<b>FINALISATIONS PRIOR TO APPOINTMENT OF AN INVESTIGATOR:</b>					
Summarily dismissed	s.433 (1) (a)	Complaint lacking in substance, vexatious, misconceived or frivolous	48	43%	52
Summarily dismissed	s.433 (1) (e)	Complaint is not one that the Board has the power to deal with	7	6%	13
Summarily dismissed	s.433 (1) (b)	Subject of a previous complaint that has been dismissed	0	-	1
Summarily dismissed	s.433 (2) (a)	Further information not given or complaint not verified	5	5%	2
Summarily dismissed	s.433 (3) & (4)	Complaint requires no further investigation or no public interest in continuing	2	2%	3
Withdrawal	s.434	Complaint withdrawn by complainant prior to an investigation	15	13%	13
<b>Sub Total</b>			<b>77</b>	<b>69%</b>	<b>84</b>
<b>FINALISATIONS FOLLOWING COMPLETION OF INVESTIGATION:</b>					
Dismissed following an investigation	s.451 (a)	No reasonable likelihood that the practitioner will be found guilty	11	10%	7
Dismissed following an investigation	s.451 (b)	No public interest to continue	1	1%	1
Withdrawal	s.434	Complaint withdrawn (after mediation) following an investigation	7	6%	8
Dismissed following an investigation	s.433 (1) (e)	<i>Burns v Corbett</i> [2018] HCA 15 Complaint is not one that the Board has the power to deal with	3	3%	1
<b>Sub Total</b>			<b>22</b>	<b>20%</b>	<b>17</b>



METHOD OF FINALISATION	RELEVANT SECTION OF ACT	DESCRIPTION	NUMBER FINALISED	% FINALISED COMPARED TO TOTAL FINALISATIONS	NUMBER FINALISED 2019-20
<b>FINALISATIONS FOLLOWING A HEARING/MEETING OF THE BOARD:</b>					
Matter not substantiated and dismissed	s.456 (6)	Dismissed	2	2%	1
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7)	No determination	1	1%	2
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7) (a)	Practitioner cautioned or reprimanded	7	6%	1
Practitioner found guilty of unsatisfactory professional conduct	s.456 (7) (ab)	Practitioner required to make an apology or no further action.	1	1%	1
Practitioner found guilty of unsatisfactory professional conduct	s.454 (2)	Practitioner reprimanded, & required to pay costs	-	-	0
<b>Sub Total</b>			<b>11</b>	<b>10%</b>	<b>5</b>
<b>FINALISATIONS FOLLOWING A HEARING OF THE DISCIPLINARY TRIBUNAL OR SUPREME COURT*:</b>					
*Does not include application for rehearing					
Practitioner found guilty of either unsatisfactory professional conduct or professional misconduct	s.471	Practitioner reprimanded and order for costs	1	1%	0
Practitioner found guilty of unsatisfactory professional conduct	s.473 s.479	Practitioner required to pay compensation	0	-	0
Practitioner found guilty of professional misconduct	s.487	Practitioner required to pay a fine	0	-	1
Application dismissed		Dismissal of complaint	0	-	0
Practitioner found guilty of professional misconduct	Supreme Court Inherent Jurisdiction	Practitioner removed from Roll	0	-	0
<b>Sub Total</b>			<b>1</b>	<b>1%</b>	<b>1</b>
<b>TOTAL FINALISATIONS</b>			<b>111</b>	<b>100%</b>	<b>107</b>

### **Finalisations:**

Table 11 shows that a total of **111** complaints were finalised for the reporting period to 30 June 2021, which was a slight increase on the previous year.

Consistent with previous years, the majority (**69%**) of the Board's finalisations occurred prior to an investigator having been appointed and involved complaints which were either summarily dismissed or withdrawn by the complainant following mediatory intervention by the Board. The Board maintains a strategy to resolve matters, in appropriate circumstances, prior to appointing an investigator.

A further **22** complaints were finalised by the Board following completion of the investigation, once an investigator had been appointed and prior to a hearing.

There were **7** finalisations as a result of mediatory intervention after the investigator was appointed.

The matters which were referred to a Board, Tribunal or Supreme Court hearing were also investigated, although the investigation may have commenced or been completed prior to this reporting period.

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

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

The finalisations above includes **2** matters that were determined by the Board but referred to the Supreme Court for rehearing by the complainants. The Board is not a party to those matters. The outcome of each of those matters remains extant.

### **Clearance Rate:**

The Board received **102** complaints within the reporting period and finalised a total of **111** complaints to 30 June 2021. The clearance rate achieved during the reporting period was therefore **109%**, which indicates the Board is keeping up with its workload.

## Outcome of Disciplinary action:

At the conclusion of a complaint investigation, the Board may hold a formal hearing (section 453); deal with the complaint in accordance with section 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 **15** complaints within the reporting period. This is an increase on last year and consistent with the increased number of complaints received.

The Board held a section 456 meeting in relation to **11** complaints. Of the **11** meetings, **6** of the referrals to a section 456 meeting had been made in the previous reporting period, but were delayed as a consequence of COVID-19. In July 2020, in light of the ongoing restrictions, the Board resolved to proceed with the backlog of section 456 meetings and hold them by video or on the papers.

Of the **11** section 456 meetings held:

- **7** matters resulted in the Board being satisfied that the matters had been substantiated, and making a determination which is recorded on the Disciplinary Register as required by the Act.
- **1** matter was dismissed after hearing the Practitioner's explanation with the Board not being satisfied that the matter had been substantiated.
- **1** matter resulted in the Board being satisfied that the matter had been substantiated, but no determination was made in relation to penalty.
- **2** matters heard in June 2021, have yet to be finalised by way of formal determination.
- **1** matter which the Board referred to the Disciplinary Tribunal in 2019, is yet to be finally determined as at 30 June 2021.
- **10** matters were resolved to be referred to the Supreme Court. A number of those matters have yet to be filed. Applications to the Supreme Court may consolidate a number of complaints about the same practitioner into a single application.

As can be seen from the table below, the number of matters referred to prosecution has been increased from the previous year.

## PART TWO – OPERATIONS REPORT

**TABLE 12 – COMPLAINTS REFERRED (OR RESOLVED TO BE REFERRED) TO DISCIPLINARY TRIBUNAL, SUPREME COURT OR FOR BOARD HEARING/MEETING 2020-21**

COMPLAINTS REFERRED	SECTION OF ACT	REFERRED 2020-21	REFERRED 2019-20	REFERRED 2018-19
Board Meeting (s.456 procedure for less serious complaint)	s.450 (b)	5	9	6
Board Hearing	s.450 (a)	-	1	0
Disciplinary Tribunal	s.450 (c) (d)	-	0	2 <sup>#</sup>
Supreme Court	s.450 (e)	10	2 <sup>*</sup>	6
<b>Total Complaints Referred</b>		<b>15</b>	<b>12</b>	<b>14</b>

<sup>#</sup>Filed with the Disciplinary Tribunal in July 2019.

<sup>\*</sup>This does not include the matter which was referred back for further investigation.

**TABLE 13 – NUMBER OF PENDING COMPLAINTS AS AT 30 JUNE 2021**

COMPLAINT SOURCE	2020-21	2019-20	2018-19
Unfinalised complaints pending (investigator yet to be appointed) as at 30 June 2020	38	28	19
Unfinalised complaints with investigator appointed, as at 30 June 2020	42	33	31
Complaints referred to a hearing	20	13	4
Subtotal Pending Complaints as at 30 June 2020	100	74	54
Complaints received 1 July 2020 to 30 June 2021	102	131	113
2012 Applications to the Disciplinary Tribunal, finalised in 2018/19	-	-	3
2019 Application to the Disciplinary Tribunal	-	-	2 <sup>*</sup>
<b>Subtotal complaints for current reporting period</b>	<b>202</b>	<b>205</b>	<b>172</b>
Finalised complaints 1 July 2020 to 30 June 2021	111	107	98
<b>Balance of complaints on hand as at 30 June 2021</b>	<b>91</b>	<b>98</b>	<b>74</b>

Table 13 above indicates that 91 complaints remain unfinalised as at 30 June 2021. This includes pending complaints, pending investigations and pending matters referred.

<sup>\*</sup>1 matter still outstanding, 1 matter finalised 9 Feb 2021.

## Notifications to the Prescribed Authority

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

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

In the reporting period the Board notified the Law Society of **218** matters.

## SUPERIOR TRIBUNAL OR COURT MATTERS

One application filed by a practitioner in the Supreme Court, to hear and determine a complaint in accordance with section 486 remains extant.

The Board can make an application to the Supreme Court in its inherent jurisdiction, pursuant to section 486. Such applications do not require a complaint. Applications currently in the Supreme Court, brought by the Board are:

- One application made to the Supreme Court in March 2018. That application remains adjourned pending the outcome of a separate appeal in the Federal Court;
- The Board determined to refer another matter to the Supreme Court in its inherent jurisdiction in October 2018. That matter is yet to be finalised;
- Three matters involving one practitioner have been combined into one application filed in the Supreme Court on 2 July 2019 have been heard but the decision is pending;
- The Board filed an originating application in the Supreme Court on 25 March 2020 against an interstate practitioner with respect to a Tasmanian complaint, which application is set down for hearing in October 2021;
- Four matters involving one practitioner have been combined into one application filed in the Supreme Court on 19 March 2021;
- A further matter was filed in the Supreme Court in November 2020 and is yet to be set down for hearing; and

- One matter was remitted to the Supreme Court following a directions hearing prior to a Board hearing, on the grounds the practitioner considered the Board to have a conflict of interest.

The Board also commenced a further matter in the courts inherent jurisdiction in relation to the *Mutual Recognition Act 1992* (Cth).

There is one further application by the Board to the Supreme Court with respect to an order made by the Disciplinary Tribunal. The decision in that matter is reserved.

## APPLICATIONS FOR SEARCH WARRANTS

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

## REDACTED DECISIONS

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

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



# Case Study

## ISSUES ARISING OUT OF COMPLAINTS

### Case Study

#### A Succession of Complaints in Estate Law: Briefly Enlighten the Beneficiaries when Administering an Estate

Succession law (including powers of attorney, wills and probate) is consistently in the top three areas of law in terms of number of complaints made to the Board. Statistics from other jurisdictions indicate similar (proportionate) numbers of complaints in succession areas of law. With a focus on one area of succession law, that is, legal practitioners instructed by executor(s) to administer an estate, it is asserted here that if beneficiaries are briefed, from the outset, as to roles and processes, it may go a long way to ameliorating beneficiary concerns and, perhaps, reduce the chances of beneficiary complaints to the Board.

The reasons why estate law is a common area of complaint in Tasmania and in other jurisdictions is not known, but it is perhaps not difficult to speculate why. Estate law is an often mysterious and complex area of law that people do not understand very well. Beneficiaries may have a lack of understanding of the application for probate processes, the reasons for it and how long finalisation of probate takes. There may be an expectation gap for the beneficiary between what is achievable in terms of timeframes and the reality of what is required to administer an estate. From a complainant beneficiary point of view, grief, loss and consequent stress, feelings of hurt or jealousy, a sense of injustice that others had more to do with the deceased than they did, or have received more in the will, may fuel discontent. There may have been pre-existing family estrangements and tensions. The prospect of money can lead to unusual behaviours in otherwise quite well adjusted people, or greed in others. Sometimes beneficiaries may wishfully over-estimate the value of estate assets and then become suspicious when they are told the value is less, or critical if the family home is sold for less than they hoped. With share and property prices continually rising, once relatively modest assets in an estate may now be substantial and of increasing value.

One or more of these factors, when coupled with a lack of understanding of the process of distribution of assets under a will, can turn into a complaint. Lack of understanding may result in interpreting things a

legal practitioner does (especially things which they do not understand the reasons for) as being done because of some kind of collusion with other family members, or as an attempt to take or hide estate property or as a money making enterprise by the practitioner. Complainant beneficiaries often believe the legal practitioner appointed by the executor should do what they say or what they think is appropriate in the circumstances. Complaints from beneficiaries often relate to allegations that the practitioner failed to account to the beneficiaries, or seek instructions from them, or that the practitioner failed to respond or communicate adequately, or at all, with the beneficiaries.

### Case study

In a recent case before the Board, the complainant and numerous adult siblings were beneficiaries under their deceased parent's will. The will appointed one of the siblings as executor. The will divided the deceased's estate equally between the siblings. Some time prior to death, the deceased had provided an interest free loan to the sibling who was also appointed as executor. That money was to be repaid from that sibling's share of the estate, upon distribution. The practitioner was engaged by the executor to assist with administration of the estate.

There were several allegations regarding the practitioner's conduct, most relating to the practitioner failing to properly communicate and/or provide details to all beneficiaries in respect to an inventory of the deceased's personal items (some of which were sentimental), valuation of the family home, details of the different quotes from real estate agents as to commission for sale of the home, and that the interest free loan to the executor sibling beneficiary had not been properly accounted for.

In written submissions to the Board, the practitioner's response to the complaint was that there were some responses initially provided to the beneficiaries' requests, but there was no response to further requests, as the executor sibling/beneficiary had instructed the practitioner to not respond, as no elaboration was required and further correspondence would incur unnecessary costs for the estate.

In considering all submissions, it was evident to the Board that there was a family rift between the executor and the beneficiary siblings prior to the parent's death and following. Ultimately, the Board summarily dismissed the complaint pursuant to s.

433(1)(a) of the *Legal Profession Act 2007* as the complaint was misconceived. The practitioner acted for the executor. The practitioner's duty was to advise the executor as to carrying out of executor's duties in accordance with the law and the will. The practitioner had no particular duty to respond to the beneficiaries, and it was not the practitioner's role to 'instruct' the executor. The complaint was misconceived because it confused the duties of the executor to the beneficiaries with the duties of the practitioner to his client, the executor. Additionally, there was no basis to claim an error regarding repayment of the debt in the estate's accounts.

*Even though this complaint was dismissed, it is probable that the complaint process was a stressful and a time consuming process for the complainant, the siblings, the sibling executor and the practitioner. Allowing for procedural fairness for both parties to respond and counter respond, and the Board to reach a determination on the evidence, involved a six month timeline.*

## **Tips to minimise the chance of a complaint**

To minimise the chance of a complaint for lawyers who administer estates (from a beneficiary), it is advisable that from the outset the practitioner, if contacted by the non-executor beneficiaries, provides a clear understanding of 'who is my client'. It is easy to explain in a clear, and courteous, manner for whom you are acting i.e. their client is the executor(s) and as such their professional duty is to help the executor(s) to carry out duties to the estate in accordance with the law and the will (the deceased wishes). Hypothetically, perhaps the practitioner in this case study may have avoided the beneficiary complainant lodging a complaint if there was better communication from the outset as to what the practitioner's role and obligations were.

Consistent with whatever a practitioner's role in the process is, it is a good idea to give everyone involved some basic information about your role and to whom your duties are owed, some timeframes around how long the process will take and what administration of an estate involves. This information could be provided in a pro-forma letter template. The Board provides a fact sheet on our website "deceased estates fact sheet" which can be provided to beneficiaries (with or without a pro-forma letter) to assist understanding is free and accessible at <https://www.lpbt.com.au/wp-content/uploads/2020/10/Deceased-Estates-Fact-Sheet-v2.pdf>.

# Case Study

## Know who your client is (and isn't)

The use of commercial structures can present problems for lawyers when, as a result of a complaint, it becomes necessary to properly identify who the client is, is not, and the client's capacity (for example, in their personal capacity, as trustee, as beneficiary, as shareholder, as director, as agent or as joint venturer).

As Professor Dal Pont relevantly points out, 'A lack of common understanding between lawyer and client, which may in turn generate both an expectation gap and client dissatisfaction, is best addressed by clear channels of communication. It is important that these channels of communication remain open throughout the retainer, and the lawyer, as the expert must take the initiative in this regard'.<sup>1</sup>

Professor Dal Pont goes on to say, 'It is perhaps at the outset of the retainer that there is the greatest opportunity to reduce expectation gaps'.<sup>2</sup>

Essentially, the lesson is, from the outset, confirm with the potential client who your client is going to be and in what capacity and have this clearly articulated in the retainer. If a client is capable of 'wearing more than one hat', if relevant, ensure the client is aware of the limitations of the retainer.

If there is a party that has or may have an interest in the matter who may perceive you to be representing them when you are not, be sure to nullify, in writing, any expectation, or suggestion from that party, that you may also be acting for them.

During the course of the matter do not act in a manner contrary to the retainer. For example, by providing advice relevant to the client in another capacity. Further, where you have been engaged by one of multiple parties to a transaction and it appears one or more of those parties is not independently represented, it is advisable to confirm in writing that you are not acting for them so as to thwart any misapprehension that you are also acting for them.

## Background

The complaint arose following various transactions concerning the restructuring of four companies and a trust. The principal parties were known to each other as they had pre-existing mutual interests in a number of

the entities the subject of the transactions. As a result of the transactions the parties were either divesting or acquiring an interest (directly (personally) or indirectly (as a shareholder in a company or trustee and/or beneficiary of a trust)) in the subject companies and trust.

The practitioner was engaged by Mr C. Mr C had interests of a similar nature to the complainant in the pre and post transaction structures. Those interests were similar, but not the same.

The complainant asserted he understood Mr C was to engage the practitioner to act on behalf of both Mr C and the complainant and to represent their collective interests. The complainant put forward a number of other bases upon which he held the belief the practitioner was also acting for him.

Subsequent to settlement of the transactions an issue arose with respect to one of the principal party's potential contravention of a restraint of trade clause. Further, after the practitioner closed the file, the practitioner was engaged by an entity in which another principal party to the original transaction had an interest.

When the complainant contacted the practitioner to request the practitioner act for him the practitioner properly asserted a conflict of interest and stated they were unable to act.

The complainant submitted his complaint alleging the practitioner had no basis to assert a conflict (and if there was, the practitioner ought not have acted for the complainant in respect of the original transaction) and alleged the practitioner had no basis to assert there had been no retainer between the practitioner and the complainant in respect of the original transaction.

After considering the evidence the Board found the practitioner's refusal to act for the complainant on the basis of a conflict was appropriate and evidenced no impropriety. The Board also found there was insufficient evidence to support a finding that a retainer existed between the complainant and the practitioner, express or implied.

While the facts of the matter did not support a basis for the practitioner to reasonably apprehend the complainant believed he was being represented it is likely the complaint would not have arisen (and much inconvenience and cost avoided) if the practitioner had communicated, in writing at the outset, with any of the parties to the transaction who were not represented noting that they were not represented by the practitioner.

1 [1] Gino E Dal Pont, *Lawyers' Professional Responsibility* (Lawbook Co - Thomson Reuters, 7th ed, 2021) 132 at [4.85]

2 [2] Gino E Dal Pont, *Lawyers' Professional Responsibility* (Lawbook Co - Thomson Reuters, 7th ed, 2021) 133 at [4.85]



# Case Study

## Costs disclosure - litigious matters

The complainant engaged the practitioner for a personal injury claim and proceedings were commenced in the Supreme Court of Tasmania by writ. The matter subsequently settled at mediation for an 'all in' amount and by way of a Deed of Release. The complainant alleged he was not fully aware of the costs and disbursements he was liable for at the time he agreed to settle his claim at mediation, and was accordingly, shocked to receive less than half of his 'all in' settlement some months later.

Disclosure had purportedly been made in writing pursuant to Part 3.3, Division 3 of the *Legal Profession Act 2007* some years prior to the mediation. The estimate of costs had not been updated in writing prior to the mediation occurring. At the time of mediation it was clear that costs had significantly exceeded the upper range of the previous estimate some years earlier. Whilst the practitioner relied on a conversation she had had with the complainant leading up to the mediation the Act requires disclosure in writing.

It was the complainant's submission, which was accepted by the Board, that it was not until he was at the mediation and the mediator asked what the costs were, that he was first made aware of the extent of the costs. Had the estimate been updated in writing as required by the Act the complainant would have understood his position going into the mediation.

One of the reasons for written disclosure is so a client can consider their position. In this complaint in a number of respects the complainant went to the mediation without any indication in writing of the significant increase in costs and therefore relied on what was said at the mediation by the practitioner. The figure for costs given at mediation was significantly different to that which was ultimately deducted for costs from final settlement.

The initial written estimate of costs provided by the practitioner was also silent in relation to an estimate of the range of costs that the complainant might recover if he was successful or that he might be ordered to pay if he was unsuccessful, noting the litigious nature of the proceeding. Further these estimates were not provided to the complainant at any other time prior to the matter being settled. The Board noted that the practitioner did not appear to appreciate the information that a client needs in order to understand whether they should commence proceedings and run the risk of an adverse costs finding or not being able to afford the costs that they may incur over and above

what could be recovered.

'Legal costs' as defined by section 4 of the Act means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services, including disbursements but not including interest;

Section 296 of the Act provides that if a law practice negotiates the settlement of a litigious matter, the law practice must disclose to the client, before the settlement is executed:

- A reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
- A reasonable estimate of any contributions towards those costs likely to be received from another party;

Section 298 requires written disclosure to a client under Division 3 of Part 3.3 of the Act to be expressed in clear plain language.

Section 299 requires written disclosure of any substantial change to anything included in a disclosure already made, as soon as is reasonably practicable after the law practice becomes aware of that change.

In this matter the Board was satisfied that the practitioner's conduct in relation to the above issues (and others) amounted to unsatisfactory professional conduct. The practitioner was cautioned and required to make reparation to the complainant in the amount of \$7,385.64.

The determination is available on the disciplinary register on the Board's website.

# Case Study

## Rude threatening or harassing conduct

### Implied threat in connection with fee recovery

Each year the Board receives a number of enquiries and some complaints which allege rude, threatening or harassing conduct by a practitioner. During the current reporting period 7% of complaints received by the Board listed such conduct as their primary allegation. There is a fine line between robustly advocating for a client and behaviour which may be construed as threatening or harassing. In circumstances where that line is crossed such conduct may amount to misconduct warranting a disciplinary response.

### Background

A barrister agreed to act for the complainant and his friend who were referred to him in relation to an Application for Restraint Order. At the time, the practitioner's clients were also applying for a Subclass 489, Skilled Regional (Provisional) visa. The complainant had voiced concern to the practitioner about the potential impact an adverse finding against them may have on their visa applications.

Due to some difficulty in understanding communications from the practitioner, the complainant and his friend sought assistance from a relative who acted as a conduit. The practitioner appeared for the complainant and his friend on the Application for Restraint Order which was referred by the court to a conciliation conference at a later date. The practitioner advised the complainant and his friend of his fee to appear for them at the conference and began preparatory work researching alternatives and the impact of an adverse finding on migration visas.

The practitioner's communications were conducted predominantly by text message with the complainant, his friend and their relative. While there is nothing precluding a practitioner from communicating with clients in this manner, practitioners ought to be mindful of the tone and the times at which they send such correspondence. It was the practitioner's failure to do so which resulted in the initial complaint to the Board.

Among other matters complained of to the Board, the complainant raised concerns about the practitioner's repeated requests for payment of his fee for the

conciliation conference. The complainant alleged the practitioner sent requests via text message at 'odd times', being outside of traditional business hours i.e. in the early hours of the morning and late at night. The complainant indicated to the Board that they felt intimidated and concerned by the practitioner's conduct.

Having not received payment despite numerous requests, the practitioner sent the following message in the late hours of the evening which read [in part]:

'I'm inclined to write to the Minister for Home Affairs as I'm not convinced we need people like these guys in the country.'

A second text message followed 5 hours later, in the early hours of the morning, retract the above statement.

### Professional conduct

The Board was then required to assess whether the practitioner's statement, in the circumstances, was a conduct issue.

While it is not uncommon for practitioners to be strong advocates for their clients or in some cases to be firm in correspondences with their own clients, barristers do have a duty to conduct themselves in an honest and professional manner. This is reflected at Rule 8 of the Legal Profession Uniform Conduct (Barristers) Rules 2015 [NSW], adopted in Tasmania by Rule 5 of the Legal Profession (Barristers) Rules 2016, which prohibits barristers from engaging in conduct which may be discreditable or likely to diminish public confidence in the legal profession or otherwise bring the profession into disrepute.

At general law, authorities not only support the legislative duty above but impose an obligation on practitioners to:

- act in an honest and courteous manner;<sup>3</sup>
- act in an adult fashion;<sup>4</sup> and
- ensure the manner and tone of all correspondence is appropriate.<sup>5</sup>

3 *Lander v Council of the Law Society of the Australian Capital Territory* (2009) 168 ACTR 32; 231 FLR 399; [2009] ACTSC 117 at [33]-[36] per Higgins CJ, Gray and Refshauge JJ.

4 Shepherd, S (2013) 'Conducting litigation in an adult fashion' accessed from [https://www.qld.com.au/Knowledge\\_centre/Ethics/Resources/Fundamental\\_ethical\\_duties/Courteous\\_dealings/Conducting\\_litigation\\_in\\_an\\_adult\\_fashion](https://www.qld.com.au/Knowledge_centre/Ethics/Resources/Fundamental_ethical_duties/Courteous_dealings/Conducting_litigation_in_an_adult_fashion)

5 3. *Ren Nominees Pty Ltd v MS Cognosis Pty Ltd* (No 1) [2013] FCA 916

For that reason, the Board resolved the practitioner's conduct fell short of those standards. The Board considered those duties in combination with the practitioner's knowledge of the complainant's concerns about the approval of their visa applications and the practitioner's political connections which suggested opportunity to action the threat. The Board had regard to the practitioner's retraction of the message and while there was no evidence the complainant received the message or was aware of the initial statement, it was neither appropriate nor professional to send such a message. Accordingly, the practitioner was reprimanded and required to issue an apology to the complainant, his friend and relative.

### **Advice to practitioners**

Practitioners who communicate with clients via text message are encouraged to consider the time and tone of correspondence sent to clients. There is an "informal" nature to text messages therefore practitioners should ensure the content of the message is considered, appropriate and professional prior to sending it. In circumstances where the brevity or tone of a message may cause confusion for a client, the use of an alternative method of communication may assist in alleviating clients concerns which may reduce the likelihood of a complaint being made to the Board.

## **EDUCATION**

### **The Profession**

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

The Board has also undertaken the following education:

- Legal Practice Course

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

Our investigators delivered the 2021 seminars across June and July 2021 in face to face seminars.

In addition the Manager Operations and Senior Investigator presented a session with the Supreme Court of Tasmania on the requirements for an Application for Admission to the Roll of Practitioners.

- CPD – Law Society of Tasmania

The annual 2020 round-up for CPD with the Law Society of Tasmania was deferred following the implementation of the original lockdown due to COVID-19. That seminar was rescheduled to August 2020 and delivered virtually.

A further 2021 round-up was delivered as a CPD through the Law Society of Tasmania in person on 21 April 2021.

### **INFORMATION AND FACTS SHEETS**

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

- Deceased Estates

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

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
- 'Murray's Case' letter
- Guidance Note – Itemised bills and beneficiaries for lawyers
- Guidance Note – Referral fees & claim farming
- Guidance Note – Note taking (capacity)
- Practitioner Wellbeing Resources
- Statement – Sexual harassment
- Sexual Harassment in the Legal Profession

### *Legal Profession (Solicitor's Conduct) Rules 2020*

*The Legal Profession (Solicitor's Conduct) Rules 2020* (SCR) commenced in Tasmania on 1 October 2020, repealing many of the previous Rules of Practice. The making of the SCR means that the Tasmanian profession is now subject to the same rules of conduct as the legal profession in New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory.

The SCR deal with:

- Fundamental duties of solicitors'
- Relations with clients
- Advocacy and litigation
- Relations with other persons
- Law practice management

In addition to clarifying the common law in relation to confidentiality and conflict of duties, the SCR also prohibits conduct in the course of practice which constitutes discrimination, sexual harassment or workplace bullying.

The SCR also makes it clear when dealing with regulatory authorities, subject only to their duty to their client, a solicitor must be open and frank with the regulator.

### **Availability of interpreters**

The Board is registered with the Tasmanian Interpreter Service.

### **DEVELOPMENT OF LAW WEEK**

Law Week is an annual event held in May each year across Australian jurisdictions to promote public understanding of the law and its role in society.

A key function of the Legal Profession Board is to conduct education programs relating to client/lawyer relationship for members for the public. The Board considered that would be assisted by facilitating Law Week in Tasmania, which had not been held in Tasmania for many years. Accordingly in late 2019 the Board sought expressions of interest to form a working group consisting of representatives from relevant entities who would be willing to contribute to a combined calendar of events, to be held in Law Week.

We received a great response to the call out and representatives from various organisations met several times in early 2020 to design a small calendar of events.

Unfortunately the arrangements for Law Week were placed on hold in late March 2020, when the initial lock down for COVID-19 occurred.

As a consequence of the ongoing intermittent lockdowns associated with COVID-19 the working group reluctantly agreed to delay proceeding with law week in 2021. It is hoped that law week will finally arrive in 2022.

## **GUIDANCE TO THE PROFESSION**

### **Guidance Notes**

The Act provides that a function of the Board is to advise the legal profession on appropriate standards of conduct and to monitor and identify trends and issues that emerge within the profession. The Board has several Guidance Notes available on its website.

### **Sexual harassment**

In February 2020 the Board commenced a project to obtain background on the issue of sexual harassment with the aim to improve our understanding of sexual harassment specifically within the legal profession. The Board considered background material, including detailed consideration of how the issue is being tackled by other regulators in Australia, the outcomes of the survey conducted by the Law Society of Tasmania in early 2019, papers presented at the 2019 CORO conference and a number of other recent studies.

Recognising that The Board's complaint processes are focused towards and are more frequently used by consumers of legal services the Board's staff are not necessarily practiced in dealing with such matters of sexual harassment. the Board's staff undertook training with Equal Opportunity Tasmania for sexual harassment complaint handling.

The Board also endorsed a statement of intent and a factsheet on sexual harassment subject to input from relevant stakeholders.

### **Statement**

In the statement, which is available on our website, the Board recognises that sexual harassment of any kind is unacceptable in the profession. The Board has made a commitment that complaints made to it which alleged sexual harassment will be taken seriously and dealt with in accordance with the law. The Board recognises that sexual harassment is capable of constituting unsatisfactory professional conduct or professional misconduct as well as being prohibited under federal and state anti-discrimination laws. The Board's response to the broader discussion regarding the prevention of sexual harassment within the legal profession includes:

- enhancing awareness of and educating in relation

to sexual harassment by publishing a fact sheet;

- engaging with and adopting best practice complaint management in relation to complaints of sexual harassment by legal practitioners;
- ensuring the Board and its employees are trained to enable the appropriate handling of sensitive complaints; and
- supporting the legal profession to remove the stigma of reporting sexual harassment and eliminate any form of retribution or consequences for doing so.

### **Fact Sheet – Sexual Harassment in the Legal Profession**

The Board's Fact Sheet on sexual harassment makes it clear that sexual harassment is prohibited under the *Anti Discrimination Act 1998* (Tas) and the *Sex Discrimination Act 1984* (Cth). Sexual harassment is also capable of amounting to unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2007*. Sexual harassment is specifically prohibited under the Barrister's Rules and the Solicitors Conduct Rules, both now in force in Tasmania.

### **Working Group**

The working group is made up of influential and progressive leaders within the Tasmanian legal profession and the work of the group is supported by the Judiciary. The purpose and goals of the working group include identifying initiatives in order to facilitate cultural change regarding sexual harassment in the legal profession in Tasmania. By securing the engagement and commitment of leaders within the legal profession, those important cultural changes in relation to sexual harassment are likely to be achieved.

Participation in the working group from leading Tasmanian legal organisations, representative bodies and Courts includes; Australian & Tasmanian Women Lawyers, Community Legal Centres, Crown Law, Department of Justice, Equal Opportunity Tasmania, Legal Aid Commission Tasmania, Law Society Tasmania, Magistrates Court Tasmania, Supreme Court Tasmania, Tasmanian Bar Association, Tasmanian Civil and Administrative Tribunal, Tasmanian Legal Practice Course and the University of Tasmania Law School.

## 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 informal caution. It assists the Board's functions in relation to educating lawyers about issues of concern.

Chidings were issued by the Board on **9** separate dismissed or withdrawn matters.

## Model litigant policy

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

## OTHER STATUTORY FUNCTIONS

### Register of local practising certificates

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

### Admissions

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

the issues relating to the objection. Where the interests of the Law Society and the Board coincide with respect to an objection, they may join together in an application to the Supreme Court to determine the issues.

**72** applications for admission were served on the Board during the reporting period. The Board did not formally object to any applications.

As a consequence of COVID-19, the process for service of applications has been modified several times since March 2020 in order to maintain a safe workplace and to process applications as soon as possible.

### 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 **7** new disciplinary findings were uploaded to the Register, one from the Disciplinary Tribunal and **6** from the Board.

Of the Board matters, there were **6** findings of unsatisfactory professional conduct arising from section 456.

The Disciplinary Tribunal made **1** finding of unsatisfactory professional conduct against one practitioner.

### AustLII

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

Section 498 of the *Legal Profession Act 2007* enables the Board to publicise disciplinary action taken against an Australian legal practitioner in any manner the

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## **PART TWO – OPERATIONS REPORT**

Board thinks fit. In accordance with the Act, both the Disciplinary Tribunal and the Supreme Court are required to provide the Board with sufficient information to enable the Board to perform or exercise the Board's functions or powers in respect of the register.

Unless ordered otherwise, reasons of the Disciplinary Tribunal for a determination, decision or order on and from 1 July 2018 are now published on AustLII.

AustLII decisions can now be searched for the Legal Professional Disciplinary Tribunal of Tasmania



# Part three

## Administrative Matters

## **DISCLOSURES UNDER PUBLIC INTEREST DISCLOSURES ACT 2002**

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

For the purposes of the *Public Interest Disclosures Act* the Board is a public body. During the reporting period the Board adopted the Model Procedures for public interest disclosure as prepared by the Ombudsman. It also developed and published its own Public Interest Disclosure Policy, which is now available on the website at [www.lpbt.com.au](http://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 section 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.

No applications for assessed disclosures of information under the right to information legislation were received during the reporting period.

## **DESTRUCTION OF DOCUMENTS**

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

## **SERVICE LEVEL AGREEMENT**

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

## **WORK HEALTH AND SAFETY**

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

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

- adoption of additional cleaning regime for COVID-19;
- moving to video meetings as required;
- adoption of the 'Check In Tas' App for COVID-19 contact tracing purposes;
- 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.

## **PROFESSIONAL DEVELOPMENT**

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

## ACCOUNTABILITY

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

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

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

## DELEGATIONS

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

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

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

Instruments of delegation can be inspected on request.



# Part four

## Report of the Disciplinary Tribunal

## DISCIPLINARY TRIBUNAL REPORT FOR FINANCIAL YEAR 2020– 2021

*Legal Profession Act 2007, s. 617*

During the financial year ended 30 June 2021 no applications were made to the Disciplinary Tribunal under section 464 of the *Legal Profession Act 2007* (Act).

On 9 February 2021 the Tribunal published reasons for decision in Proceedings No. 3/2019, commenced by application dated 21 June 2019 lodged with the Tribunal on 3 July 2019.

The applicant was the Legal Profession Board of Tasmania and the respondent was an Australian legal practitioner, John Martin Green.

The Tribunal made orders by consent of the parties pursuant to s. 479 of the Act upon a finding, also made by consent of the parties, that the conduct that was the subject of complaint constituted unsatisfactory professional conduct.

Pursuant to s. 471(e) of the Act, the Respondent was reprimanded, and pursuant to s. 481 (1), the Respondent was ordered to pay the costs of the Applicant in the amount of \$5,000.00.

The Tribunal's decision was published with the medium neutral citation: *Legal Profession Board of Tasmania v Green* [2021] TASLPDT 3.



Philip Jackson SC

Chairman

13 July 2021



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# Part five

## Report of the Prescribed Authority

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



Our ref:L4.2:LOR/TL

3 August 2021

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

Dear Mr Pitt QC

### **Annual Report of the Prescribed Authority 2020/2021**

It is with pleasure that I present this report to the Legal Profession Board of Tasmania (the Board) pursuant to Section 653(3) of the *Legal Profession Act 2007* which requires the prescribed authority, to prepare and present to the Board a report on its operations for the previous financial year.

#### **Overview**

Along with New South Wales, South Australia and Queensland, the Tasmanian legal profession operates under a co-regulatory model. The Board is charged with overseeing complaints and discipline and the prescribed authority has responsibility for the regulation of practising certificates and trust accounts. External intervention is a shared responsibility. The appointment of an investigator of a law practice or a supervisor of trust money is the responsibility of the prescribed authority, whereas the appointment of a manager or receiver for a law practice is the responsibility of the Board.

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

- a. Regulation of practising certificates, including grant and renewal, the imposition of reasonable and relevant conditions, the 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 supervisors of trust money to law practices.

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

#### **Funding of the Prescribed Authority**

The functions of the prescribed authority form part of the operations of the Law Society. Those functions are funded entirely by the Tasmanian legal profession, ostensibly by the payment of practising certificate fees.

#### **Practising Certificate Regulation**

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



development requirements or is an application for the first time granting of a principal practising certificate is considered by the Council of the Law Society.

The following classes and numbers of practising certificates were issued under the *Act* in the period 1 July 2020 to 30 June 2021:

Principal	202
Employee	360
Barrister	56
Corporate	80
Government	10
Locum	3
Community legal centre	76
Volunteer	10
<b>Total</b>	<b>797</b>

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 Tasmania Legal Aid.

#### **Practising Certificate Conditions**

All practising certificates are subject to conditions requiring compliance with continuing professional development obligations and requiring notice to the Law Society of a change of practice or residential address.

Conditions specific to each class of certificate in 2020-2021 were as follows:

1. Principal  
No additional conditions.
2. Employed Practitioner. The holder of the certificate is not entitled to and must not practice as a legal practitioner as either as a sole practitioner or in partnership with any other legal practitioner or as a Director of an incorporated legal practice.
3. Barrister. The practitioner is entitled to practice as a barrister in Tasmania subject to compliance with the *Legal Profession Act 2007*.
4. Corporate. The practitioner must not engage in legal practice otherwise than by providing in house legal services to a corporation by which the lawyer is employed or to a related body corporate.
5. Government. The holder of the certificate must not engage in legal practice otherwise than as a government lawyer engaged in government work.

The holder of the certificate cannot be a Director of an incorporated legal practice, a partner of a legal firm or a legal practitioner in private legal practice.

6. Community Legal Centre. The holder is not to receive or hold any money of for any client. The holder is not to recover costs for the community legal centre for any client or any adverse party other than disbursements, professional fees or charges necessary for the successful carriage of the work of the client. Any disbursements, professional fees or charges received shall immediately be paid to the credit of the community legal centre.

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7. Locum. The practitioner is eligible to practice as a locum practitioner only.
8. Volunteer. The certificate entitles the practitioner to engage in legal practice only as a volunteer at a complying community legal centre. Whilst acting in a voluntary capacity the practitioner:
  - i. Is to act only for clients of a complying community legal centre
  - ii. Must have professional indemnity insurance pursuant to a policy approved by the Law Society
  - iii. Is not to receive or hold any money for any client
  - iv. The practitioner is not to recover costs for the community legal centre from any client or from any adverse party other than disbursements, professional fees or charges necessary for the successful carriage of the work of the client. Any disbursements, professional fees or charges so received shall immediately be paid to the credit of the community legal centre

#### **Additional Conditions**

The Law Society has the power to impose practising certificate conditions which are reasonable or relevant – section 56(2) of the *Legal Profession Act 2007*.

In the relevant period additional conditions were imposed as follows:

- a. Four sole practitioners were subject to a condition appointing a mentor and additional conditions required regular meetings with that mentor as well as regular reporting to the Society. Two of those four practitioners were subject to a condition that a report from the Society's trust accounting examiner be provided within certain time frames.
- b. A number of principal practitioners had a condition imposed that the practitioner was not authorised to receive trust monies. That condition does not relate to the honesty of the practitioner but is an acknowledgement that the practitioner does not intend to operate a trust account and requires further training before being authorised to do so.
- c. One practitioner had a condition imposed that he obtain CPD points in excess of those required by Practice Guideline No. 4.
- d. Two barristers had extra conditions imposed. Each was required to undertake the essential trial advocacy course. In addition one was required to undertake a further 10 hours of education training pursuant to an education plan approved by the President of the Tasmanian Bar.

#### **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 Law 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 Law Society. Use of the one trust account examiner ensures a consistency in approach to examinations and that the examiner has the relevant expertise and knowledge of legislative requirements. This has led to a marked improvement in compliance levels. Each examiner's report is provided to the Law 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 best practice risk mitigation strategies.

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

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

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

Trust account examinations relate to a calendar year. The following information therefore relates to the 2018, 2019 and 2020 calendar years;

Year	2018	2019	2020
Number of firms with trust accounts	104	106	103
Number of trust receipts	108,314	108,112	104,793
Total amount of trust receipts	\$9.2 billion	\$9.7 billion	\$9.5 billion
Amount held on trust at 31 December	\$145 million	\$175 million	\$208.5 million
Amount held on investment at 31 December	\$100 million	\$76 million	\$68.5 million

#### **Incorporated Legal Practices**

An incorporated legal practice is a corporation that engages in legal practice in Tasmania. An ILP is required to have at least one legal practitioner director. Before a corporation engages in legal practice in Tasmania it must give to the Law Society written notice, in an approved form of its intention to do so.

There are now 53 Tasmanian law practices operating as ILP's.

The Board is the prescribed authority for purposes of section 130 of the LPA – audit of incorporated legal practices, section 132 – banning of incorporated legal practices and section 133 – disqualification from managing an incorporated legal practice.

#### **Suspension or Cancellation of a Practising Certificate**

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

#### **Solicitors Conduct Rules**

Under Part 3.1 of the Act, the Prescribed Authority may make rules relating to legal practice. On 1 October 2020 the *Legal Profession (Solicitors' Conduct) Rules 2020* (SCR) commenced. The Rules are modelled on the Australian Solicitors' Conduct Rules that operate in New South Wales, South Australia, the ACT, Queensland and Victoria.

The Tasmanian jurisdiction has traditionally relied on common law obligations to largely regulate the ethical obligations of legal practitioners. The new rules are largely based on those established common law principles.

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The SCR are broken into the following Divisions:

- Fundamental duties of solicitors’
- Relations with clients
- Advocacy and litigation
- Relations with other persons
- Law practice management

Generally speaking, the form of the SCR is to prohibit certain conduct and then provide exceptions.

Rather than have to search for common law principles and cases, the SCR make a practitioner’s obligations clear for a large number of situations. They include:

- Delinquent or guilty clients
- Frankness in court
- Responsible use of court process and privilege
- Communication with opponents
- Communication with witnesses
- Inadvertent disclosure
- Communication with another solicitor’s client
- Lien over essential documents
- Charging for document storage
- Dealing with regulatory authority
- Sharing premises

**Rules of Practice 1994**

The Rules of Practice were substantially amended on 1 October 2020. Out of 89 current Rules, nine were retained in some form. There were two new Rules.

**Rules Retained**

Rule of Practice 4	Attendance at practice
Rule of Practice 6	Firm names and professional description
Rules of Practice Part 6 – Rules 75 to 77	Indemnity Cover
Rule of Practice 80	Charging of commission
Rule of Practice 88A	Barrister professional indemnity insurance
Rule of Practice 5	See table below
Rule of Practice 81	See table below

**Adoption of Four of the Uniform Legal Practice (Solicitors) Rules**

The following Rules were adopted.

Rule of Practice 17	Transfer of a solicitor’s practice – obligations of a solicitor when transferring his or her practice to another solicitor
Rule of Practice 18	Debt collection or mercantile agency – prohibition on misleading use of solicitors’ business name or stationery and obligations when acting for a debt collection or mercantile agency
Rule of Practice 19 (Replacing current Rule 5)	Conducting another business – obligations when conducting another business concurrently, but not directly in association with the conduct of a legal practice
Rule of Practice 20 (Replacing current Rule 81)	Litigation lending – restrictions on the purposes money may be withdrawn from a litigation lending account

It is worthwhile noting that many of the deleted Rules of Practice rules have an equivalent in the SCR.

#### **Growth of the Legal Profession**

In July 2021 the 5<sup>th</sup> National Profile of Solicitors was published. Among other data the report showed that between 2011 and 2020 the number of solicitors in the private profession grew from 448 to 640, an increase of 43%. Such an increase has obvious resource repercussions for the Society and for the Board.

#### **Dealings with the Board**

The Law Society dealt closely with the Board in the relevant period. Many issues experienced by law practices and by individual practitioners traverse the regulatory responsibilities of both organisations.

The Law Society wishes to thank the Board for its openness and willingness to communicate on matters of mutual interest and benefit to the legal profession in Tasmania.

In carrying out its functions as the prescribed authority in 2020-21 the Law Society sought to:

- Maintain public confidence in the legal profession
- Safeguard monies entrusted to law practices
- Ensure that those seeking to enter the profession or renew their practising certificate complied with the relevant character and fitness requirements of the Act
- Ensure that appropriate conditions were placed on practising certificates
- Maintain relevant records relating to ILP's

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

Yours faithfully



**Trevor McKenna**

**PRESIDENT**

M 0414 721 696

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c.c. Attorney-General for Tasmania

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# Part six

## Independent Audit Report and Financial Statements

AS AT 30 JUNE 2021

**PART SIX –  
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS**

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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 Statements**

**Opinion**

I have audited the financial statements of the Legal Profession Board of Tasmania (the Board), which comprises the statement of financial position as at 30 June 2021 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, other explanatory notes and the statement of certification by the Chairman and Chief Executive Officer of the Board.

In my opinion, the accompanying financial statements:

- (a) present fairly, in all material respects, the Board's financial position as at 30 June 2021 and its financial performance and its cash flows for the year then ended
- (b) are in accordance with the *Financial Management Act 2016*, *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 Statements* 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 (including Independence Standards)* (the Code) that are relevant to my audit of the financial statements in Australia. I have also fulfilled my other ethical responsibilities in accordance with the Code.

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

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

**Key Audit Matters**

Key audit matters are those matters that, in my professional judgement, were of most significance in my audit of the financial statements of the current period. These matters were addressed in the context of my audit of the financial statements as a whole, and in forming my opinion thereon, and I do not provide a separate opinion on these matters.

Why this matter is considered to be one of the most significant matters in the audit	Audit procedures to address the matter included
<p><b>Deficiency of net assets</b> <i>Refer to note 9.2</i></p>	
<p>As disclosed in the financial statements, the Board had a deficiency of net assets of \$29 000 at 30 June 2021 and incurred a loss of \$82 000 for the year ended on that date. The Members of the Board (the Members) prepared the financial statements on a going concern basis because:</p> <ul style="list-style-type: none"> <li>the <i>Legal Profession Act 2007</i> makes provision for the Solicitors Trust to apply from the Solicitors' Guarantee Fund such amounts as are necessary to pay or discharge of the expenses, charges and obligations of the Board in the performance of its functions or the exercise of its powers</li> <li>the Solicitors' Guarantee Fund has sufficient financial resources to fulfil the obligation above and to cover the deficiency of net assets of the Board.</li> </ul>	<ul style="list-style-type: none"> <li>Assessing the Members' assertions relating to the Board's ability to continue as a going concern.</li> <li>Assessing the Board's cash flow projections and assumptions to ensure the reasonableness of continued operations.</li> <li>Evaluating the adequacy of disclosures within the financial statements relating to the deficiency of net assets.</li> </ul>

**Responsibilities of the Members for the Financial Statements**

The Members are responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards, and the financial reporting requirements of the *Financial Management Act 2016* and the *Legal profession Act 2007*. This responsibility includes such internal control as determined necessary to enable the preparation of the statements report that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, 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 has no realistic alternative but to do so.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are 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 statements.

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 statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Members.
- Conclude on the appropriateness of the 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 statements 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 statements, including the disclosures, and whether the financial statements 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.

From the matters communicated with the Members, I determine those matters that were of most significance in the audit of the financial statements of the current period and are therefore the key audit matters. I describe these matters in my auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare

**PART SIX –  
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS**

circumstances, I determine that a matter should not be communicated in my report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.



Rod Whitehead  
**Auditor-General**  
Tasmanian Audit Office

27 August 2021  
Hobart



### 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 Act 2016 and Section 599 of the Legal Profession Act 2007* to present fairly the financial transactions for the year ended 30 June 2021 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 25th day of August 2021

---

Keyran Pitt QC  
CHAIRPERSON

---

Frank Ederle  
CHIEF EXECUTIVE OFFICER

**PART SIX –  
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS**

**Statement of Comprehensive Income for the year ended 30 June 2021**

	NOTES	2021 \$'000	2020 \$'000
Revenue and other income from continuing operations			
Revenue from Solicitor's Guarantee Fund	1.1	1 493	1 345
Other revenue	1.2	79	109
<b>Total revenue and other income from continuing operations</b>		<b>1 572</b>	<b>1 454</b>
Expenses from continuing operations			
Employee benefits	2.1	1 045	999
Depreciation	2.2	73	76
Supplies and consumables	2.3	146	188
Finance costs	2.4	20	27
Other expenses	2.5	370	305
<b>Total expenses from continuing operations</b>		<b>1 654</b>	<b>1 595</b>
<b>Net result</b>		<b>(82)</b>	<b>(141)</b>
<b>Comprehensive result</b>		<b>(82)</b>	<b>(141)</b>

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

## Statement of Financial Position as at 30 June 2021

	NOTES	2021 \$'000	2020 \$'000
<b>Assets</b>			
Financial Assets			
Cash and cash equivalents	6.1	164	267
Receivables	3.1	12	13
Non-Financial Assets			
Right-of-use assets	3.3	169	252
Other assets	3.4	8	8
<b>Total Assets</b>		<b>353</b>	<b>540</b>
Liabilities			
Payables	4.1	11	22
Lease liabilities	4.2	191	272
Employee benefits	4.3	180	193
<b>Total liabilities</b>		<b>382</b>	<b>487</b>
<b>Net assets</b>		<b>(29)</b>	<b>53</b>
<b>EQUITY</b>			
Accumulated funds		(29)	53
<b>Total equity</b>		<b>(29)</b>	<b>53</b>

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

## Statement of Cash Flows for the year ended 30 June 2021

	NOTES	2021 \$'000	2020 \$'000
		Inflows (Outflows)	Inflows (Outflows)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Cash inflows</b>			
Solicitor's Guarantee Fund Receipts		1 493	1 345
GST Receipts		57	50
Other cash receipts		80	114
<b>Total cash inflows</b>		<b>1 630</b>	<b>1 509</b>
<b>Cash outflows</b>			
Employee benefits		(1 059)	(989)
Finance costs		(20)	(27)
GST payments		(58)	(53)
Supplies and consumables		(147)	(198)
Other expenses		(378)	(303)
<b>Total cash outflows</b>		<b>(1 662)</b>	<b>(1 570)</b>
<b>Net cash from/(used in) operating activities</b>	<b>6.2</b>	<b>(32)</b>	<b>(61)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
<b>Cash Outflows</b>			
Repayment of lease liabilities (excluding interest)		(71)	(56)
<b>Total cash out flows</b>		<b>(71)</b>	<b>(56)</b>
<b>Net cash from/ (used by) financing activities</b>		<b>(71)</b>	<b>(56)</b>
<b>Net increase/(decrease) in cash and cash equivalents held</b>		<b>(103)</b>	<b>(117)</b>
<b>Cash and deposits at the beginning of the reporting period</b>		<b>267</b>	<b>384</b>
<b>Cash and deposits at the end of the reporting period</b>	<b>6.1</b>	<b>164</b>	<b>267</b>

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 2021

	ACCUMULATED SURPLUS	TOTAL EQUITY
	\$'000	\$'000
<b>Balance as at 1 July 2020</b>	<b>53</b>	<b>53</b>
Total comprehensive result	(82)	(82)
<b>Total</b>	<b>(82)</b>	<b>(82)</b>
<b>Balance as at 30 June 2021</b>	<b>(29)</b>	<b>(29)</b>
<hr/>		
	ACCUMULATED SURPLUS / DEFICIT	TOTAL EQUITY
	\$'000	\$'000
<b>Balance as at 1 July 2019</b>	<b>194</b>	<b>194</b>
Total comprehensive result	(141)	(141)
<b>Total</b>	<b>(141)</b>	<b>(141)</b>
<b>Balance as at 30 June 2020</b>	<b>53</b>	<b>53</b>

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

**PART SIX –  
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2021**

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## NOTE 1: REVENUE

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.

Income is recognised in accordance with the requirements of AASB 15 Revenue from Contracts with Customers or AASB 1058 Income of *Not-for-Profit Entities*, dependent on whether there is a contract with a customer defined by AASB 15.

### 1.1 Solicitor's Guarantee Fund

Funding from the Solicitor's Guarantee Fund is recognised in accordance with AASB 1058 when the Board gains control of the funds and it is probable that the inflow of funds has occurred and can be reliably measured.

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Solicitor's Guarantee Fund Revenue	1 493	1 345
<b>Total revenue from Solicitor's Guarantee Fund</b>	<b>1 493</b>	<b>1 345</b>

### 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.

Lease income from operating leases where the Board is a lessor is recognised on a straight line basis. The Board does not have any finance leases as lessor.

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Interest Revenue	2	4
Other Revenue	77	105
<b>Total</b>	<b>79</b>	<b>109</b>

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**NOTE 2 EXPENSES**

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**

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Wages and salaries (Staff)	718	704
Member fees	228	190
Superannuation – defined contribution scheme	67	70
Superannuation – defined benefit scheme	21	21
Other employee expenses	11	14
<b>Total</b>	<b>1 045</b>	<b>999</b>

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 (2020: 12.95 per cent) of salary.

Superannuation expenses relating to defined contribution schemes are paid directly to the relevant superannuation funds at a rate of 9.5 per cent (2020: 9.5 per cent) of salary.

## Remuneration of Key Management Personnel

2021	SHORT-TERM BENEFITS		LONG-TERM BENEFITS			TOTAL \$'000
	SALARY	OTHER BENEFITS	SUPER-ANNUATION	LEAVE BENEFITS	TERMINATION BENEFITS	
	\$'000	\$'000	\$'000	\$'000	\$'000	
<b>Key management personnel</b>						
Frank Ederle, Chief Executive Officer	163	21	21	-11	-	190
Keyran Pitt QC, Chairman	51	-	5	-	-	56
Graeme Jones, Member	42	1	4	-	-	47
David Lewis, Member	35	1	3	-	-	39
Anthony Mihal, Member	33	1	3	-	-	37
Heather Francis	30	-	3	-	-	33
Marion Hale	31	-	3	-	-	34
	<b>385</b>	<b>24</b>	<b>42</b>	<b>-11</b>	<b>-</b>	<b>440</b>

2020	SHORT-TERM BENEFITS		LONG-TERM BENEFITS			TOTAL \$'000
	SALARY	OTHER BENEFITS	SUPER-ANNUATION	LEAVE BENEFITS	TERMINATION BENEFITS	
	\$'000	\$'000	\$'000	\$'000	\$'000	
<b>Key management personnel</b>						
Frank Ederle, Chief Executive Officer	163	20	21	1	-	205
Keyran Pitt QC, Chairman	36	0	3	-	-	39
Graeme Jones, Member	33	2	3	-	-	38
David Lewis, Member	28	2	3	-	-	33
Anthony Mihal, Member	35	2	3	-	-	40
Heather Francis	25	-	2	-	-	27
Marion Hale	27	2	3	-	-	32
	<b>347</b>	<b>28</b>	<b>38</b>	<b>1</b>	<b>-</b>	<b>414</b>

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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 2020-21 for key personnel is set by the Attorney General. Remuneration and other terms of employment are specified in employment contracts. Remuneration includes salary, allowances, motor vehicle and other non-monetary benefits.

Long term 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 cash flows (detailed in Note 4.3) 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 related party transactions requiring disclosure.

**2.2 Depreciation**

All applicable Non-financial assets having a limited useful life are systematically depreciated over their useful lives in a manner which reflects the consumption of their service potential. Land, being an asset with an unlimited useful life, is not depreciated.

**(a) Depreciation**

	<b>MAJOR DEPRECIATION PERIOD</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Rightofuse assets	4 years	73	76
<b>Total</b>		<b>73</b>	<b>76</b>

### 2.3 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.

	2021	2020
	\$'000	\$'000
Audit fees	7	7
Operating leases	7	7
Consultants	23	32
Property expenses	20	23
Communications	7	11
Information technology	53	59
Travel and transport	5	14
Plant and equipment	5	4
Advertising and promotion	1	1
Other supplies and consumables	18	30
<b>Total</b>	<b>146</b>	<b>188</b>

The external audit fee for 2020-21 is \$6,810 (\$6,610 for 2019-20).

Lease expense includes lease rentals for short-term leases, lease of low value assets and variable lease payments. Refer to note 4.2 for breakdown of lease expenses and other lease disclosures.

### 2.4 Finance costs

All finance costs are expensed as incurred using the effective interest method.

Finance costs include lease charges.

	2021	2020
		\$'000
Interest on lease liabilities	20	27
<b>Total</b>	<b>20</b>	<b>27</b>

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**2.5 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.

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Legal Costs	348	283
Other Expenses	22	22
<b>Total</b>	<b>370</b>	<b>305</b>



### 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 initially recognised at fair value plus any directly attributable transaction costs. Trade receivables that do not contain a significant financing component are measured at the transaction price.

Receivables are held with the objective to collect the contractual cash flows and are subsequently measured at amortised cost using the effective interest method. Any subsequent changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process. An allowance for expected credit losses is recognised for all debt financial assets not held at fair value through profit and loss. The expected credit loss is based on the difference between the contractual cash flows and the cash flows that the entity expects to receive, discounted at the original effective interest rate.

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

	2021	2020
	\$'000	\$'000
GST Receivables	12	11
Recoupment of costs	-	2
<b>Total</b>	<b>12</b>	<b>13</b>
Settled within 12 months	12	13
<b>Total</b>	<b>12</b>	<b>13</b>

#### 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). All assets within a class of assets are measured on the same basis.

Cost includes expenditure that is directly attributable to the acquisition of the asset. The costs of self-constructed assets includes the cost of materials and direct labour, any other costs directly attributable to bringing the asset to a working condition for its intended use, and the costs of dismantling and removing the items and restoring the site on which they are located. Purchased software that is integral to the functionality of the related equipment is capitalised as part of that equipment.

When parts of an item of office improvements, plant and equipment have different useful lives, they are accounted

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for as separate items (major components) of office improvements, plant and equipment.

All the Board's Office Improvements, Plant and Equipment have been fully written off as at 30 June 2021 and 30 June 2020.

*(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).

**3.3 Right-of-use assets**

AASB 16 requires the Board to recognise a right of use asset, where it has control of the underlying asset over the lease term. A right of use asset is measured at the present value of initial lease liability, adjusted by any lease payments made at or before the commencement date and lease incentives, any initial direct costs incurred, and estimated costs of dismantling and removing the asset or restoring the site.

The Board has elected not to recognise right of use assets and lease liabilities arising from short term leases, rental arrangements for which Finance General has substantive substitution rights over the assets and leases for which the underlying asset is of low value. Substantive substitution rights relate primarily to office accommodation. An asset is considered low value when it is expected to cost less than \$10 000.

Right of use assets are depreciated over the shorter of the assets useful life and the term of the lease. Where the Board obtains ownership of the underlying leased asset or if the cost of the right-of-use asset reflects that the Board will exercise a purchase option, the Board depreciates the right-of-use asset over its useful life.

<b>2021</b>	<b>BUILDINGS</b>	<b>TOTAL</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Carrying value at 1 July 2020</b>	<b>252</b>	<b>252</b>
Additions	-	-
Disposals / derecognition	-	-
Increase (decrease) due to reassessment lease liability of CPI	(10)	(10)
Depreciation and amortisation	(73)	(73)
Other movements	-	-
<b>Carrying value at 30 June 2021</b>	<b>169</b>	<b>169</b>

<b>2020</b>	<b>BUILDINGS</b>	<b>TOTAL</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Carrying value at 1 July 2019</b>	<b>328</b>	<b>328</b>
Additions	-	-
Disposals / derecognition	-	-
Depreciation and amortisation	(76)	(76)
Other movements	-	-
<b>Carrying value at 30 June 2020</b>	<b>252</b>	<b>252</b>

### 3.4 Other Assets

Other assets comprise of prepayments. Prepayments relate to actual transactions that are recorded at cost with the asset at balance date representing the un-utilised component of the prepayment.

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Other current assets		
Prepayments	8	8
<b>Total</b>	<b>8</b>	<b>8</b>
Utilised within 12 months	8	8
<b>Total other assets</b>	<b>8</b>	<b>8</b>

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**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.

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Payables	-	11
Accrued expenses	11	11
<b>Total</b>	<b>11</b>	<b>22</b>
Settled within 12 months	11	22
<b>Total</b>	<b>11</b>	<b>22</b>

Settlement is usually made within 30 days.

**4.2 Lease Liabilities**

A lease liability is measured at the present value of the lease payments that are not paid at that date. The discount rate used to calculate the present value of the lease liability is the rate implicit in the lease. Where the implicit rate is not known and cannot be determined the Tascorp indicative lending rate including the relevant administration margin is used.

The Board has elected not to recognise right of use assets and lease liabilities arising from short term leases, rental arrangements for which Finance General has substantive substitution rights over the assets and leases for which the underlying asset is of low value. Substantive substitution rights relate primarily to office accommodation. An asset is considered low value when it is expected to cost less than \$10 000.

The Board has entered into the following leasing arrangements:

CLASS OF RIGHT OF USE ASSET	DETAILS OF LEASING ARRANGEMENTS	
Buildings	Office Accommodation at Level 3 (Suite 1 and 2), 147 Macquarie Street, Hobart	
The Board's leasing arrangement is for five years, with lease payments to increase annually through CPI adjustments. The Board makes a number of assumptions regarding CPI and interest rates which it uses to calculate the present value of the lease liability.		
	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Current</b>		
Lease liabilities	77	71
<b>Non-current</b>		
Lease liabilities	114	201
<b>Total</b>	<b>191</b>	<b>272</b>

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The following amounts are recognised in the Statement of Comprehensive Income

	2021 \$'000	2020 \$'000
Interest on lease liabilities included in note 2.4	20	27
Short term leases and/or low-value leases	7	7
Net expenses from leasing activities	27	34

**4.3 Employee Liabilities**

*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.

Other employee entitlements 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.

	2021 \$'000	2020 \$'000
Accrued salaries	28	22
Annual leave	26	44
Long service leave	126	127
<b>Total</b>	<b>180</b>	<b>193</b>
Settled within 12 months	56	57
Settled in more than 12 months	124	136
<b>Total</b>	<b>180</b>	<b>193</b>

#### 4.4 Superannuation

##### *Key estimate and judgement*

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 Finance General Division of the Department of Treasury and Finance.

#### NOTE 5 COMMITMENTS AND CONTINGENCIES

##### 5.1 Schedule of Commitments

Commitments represent those contractual arrangements entered by the Board that are not reflected in the Statement of Financial Position.

Leases are recognised as right-of-use assets and lease liabilities in the Statement of Financial Position, excluding short term leases and leases for which the underlying asset is of low value, which are recognised as an expense in the Statement of Comprehensive Income.

	2021	2020
	\$'000	\$'000
<b>BY TYPE</b>		
Lease Commitments		
Short terms and/or low value leases	25	17
Total lease commitments	<b>25</b>	<b>17</b>
<b>BY MATURITY</b>		
Operating Lease commitments		
One year or less	13	11
From one to five years	12	6
Total lease commitments	<b>25</b>	<b>17</b>

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 Leases for 30 June 2021 commitments include motor vehicles and information technology equipment leases. All amounts shown are inclusive of GST.

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**5.2 Contingent Assets and Liabilities**

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

**(a) Quantifiable contingencies**

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

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

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>QUANTIFIABLE CONTINGENT LIABILITIES</b>		
Contingent claims		
Contingent legal claims	180	145
<b>Total quantifiable contingent liabilities</b>	<b>180</b>	<b>145</b>

At 30 June 2021 the Board had five legal claims against it in dispute. It is not possible at the reporting date to accurately estimate the amounts of any eventual payments that may be required in relation to these claims.



## NOTE 6 CASH FLOW RECONCILIATION

Cash means notes, coins, any deposits held at call with a bank or financial institution, as well as funds held in Specific Purpose Accounts, being short term of three months or less and highly liquid. Deposits are recognised at amortised cost, being their face value.

### **6.1 Cash and Cash Equivalents**

Cash and cash equivalents includes the balance of the Specific Purpose Accounts held by the Board, and other cash held, excluding those accounts which are administered or held in a trustee capacity or agency arrangement..

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Operating Account	164	267
<b>Total cash and cash equivalents</b>	<b>164</b>	<b>267</b>

### **6.2 Reconciliation of Net Result to Net Cash from Operating Activities**

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Net result	(82)	(141)
Depreciation	73	75
(Increase) / Decrease in Receivables	(1)	1
Decrease (increase) in Prepayments	-	(8)
Increase / (Decrease) in Employee benefits	(13)	10
Increase / (Decrease) in Payables	(9)	2
<b>Net cash generated from operating activities</b>	<b>(32)</b>	<b>(61)</b>

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**6.3 Reconciliation of liabilities arising from financing activities**

Liabilities arising from financing activities are liabilities for which cash flows were, or future cash flows will be, classified in the Statement of Cash Flows as cash flows from financial activities.

	<b>LEASE LIABILITIES</b>
	<b>\$'000</b>
<b>Balance as at 1 July 2020</b>	<b>272</b>
Acquisitions/New leases	-
Increase (decrease) due to reassess lease liability of CPI	(10)
Changes in fair value	-
Other movements (interest expense)	20
Transfers to / (from) other Government entity	-
Changes from financing cash flows:	
Cash Received	-
Cash Repayments	(91)
<b>Balance as at 30 June 2021</b>	<b>191</b>

	<b>LEASE LIABILITIES</b>
	<b>\$'000</b>
<b>Balance as at 1 July 2019</b>	<b>328</b>
Acquisitions/New leases	-
Foreign exchange rate movements	-
Changes in fair value	-
Other movements	-
Transfers to / (from) other Government entity	-
Changes from financing cash flows:	
Cash Received	-
Cash Repayments	(56)
<b>Balance as at 30 June 2020</b>	<b>272</b>

## 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:

- Credit risk
- 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) Credit risk exposures

Credit risk is the risk of financial loss to the Board if a customer or counterparty to a financial instrument fails to meet its contractual obligations.

<b>FINANCIAL INSTRUMENT</b>	<b>Accounting and strategic policies (including recognition criteria and measurement basis)</b>	<b>Nature of underlying instrument (including significant terms and conditions affecting the amount. Timing and certainty of cash flows)</b>
<b>FINANCIAL ASSETS</b>		
Cash and deposits	Deposits are recognised at amortised cost, being their face value.	Cash means notes, coins, any deposits held at call with a bank or financial institution, as well as funds held in the Special Deposits and Trust Fund.

The Board does not have any concentration of credit risk. The Board monitors receivables on a monthly basis and follow up procedures are undertaken for all debts that are overdue. Action taken is dependent on the length of time the debt is overdue.

The carrying amount of financial assets recorded in the Financial Statements, net of any allowances for losses, represents the Board's maximum exposure to credit risk. The Board does not hold any collateral or other security over its receivables. The Board's credit risk is considered to be minimal.

Except as detailed in the following table, the carrying amount of financial assets recorded in the Financial Statements, net of any allowances for losses, represents the Board's maximum exposure to credit risk without taking into account of any collateral or other security:

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Cash	164	267
<b>Total</b>	<b>164</b>	<b>267</b>

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**(c) 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.

<b>Financial Instrument</b>	<b>Accounting and strategic policies (including recognition criteria and measurement basis)</b>	<b>Nature of underlying instrument (including significant terms and conditions affecting the amount. Timing and certainty of cash flows)</b>
<b>FINANCIAL LIABILITIES</b>		
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.
Lease liabilities	Lease liabilities are measured at the present value of the lease payments that are not paid at that date	The discount rate used to calculate the present value of the lease liability is the rate implicit in the lease. Where the implicit rate is not known and cannot be determined the Tascorp indicative lending rate including the relevant administration margin is used.

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:

**2021**

<b>MATURITY ANALYSIS FOR FINANCIAL LIABILITIES</b>						
	<b>1 YEAR</b>	<b>2 YEARS</b>	<b>3 YEARS</b>	<b>4 YEARS</b>	<b>UNDISCOUNTED TOTAL</b>	<b>CARRYING AMOUNT</b>
<b>Financial liabilities</b>						
Payables	12	-	-	-	12	12
Lease liabilities	91	91	30	-	212	191
<b>Total</b>	<b>103</b>	<b>91</b>	<b>30</b>	<b>-</b>	<b>224</b>	<b>203</b>

2020

**MATURITY ANALYSIS FOR FINANCIAL LIABILITIES**

	1 YEAR	2 YEARS	3 YEARS	4 YEARS	UNDISCOUNTED TOTAL	CARRYING AMOUNT
<b>Financial liabilities</b>						
Payables	22	-	-	-	22	22
Lease liabilities	92	94	96	32	314	272
<b>Total</b>	<b>114</b>	<b>94</b>	<b>96</b>	<b>32</b>	<b>336</b>	<b>294</b>

**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:

	2021 \$'000	2020 \$'000
<b>VARIABLE RATE INSTRUMENTS</b>		
Financial assets		
Cash and cash equivalents	164	267
<b>Total</b>	<b>164</b>	<b>267</b>

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:

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

	STATEMENT OF COMPREHENSIVE INCOME		EQUITY	
	100 BASIS POINTS INCREASE	100 BASIS POINTS DECREASE	100 BASIS POINTS INCREASE	100 BASIS POINTS DECREASE
	\$'000	\$'000	\$'000	\$'000
<b>30 June 2020</b>				
Cash in Special Deposits and Trust Fund	2	(2)	2	(2)
<b>Net sensitivity</b>	<b>2</b>	<b>(2)</b>	<b>2</b>	<b>(2)</b>
<b>30 June 2020</b>				
Cash in Special Deposits and Trust Fund	3	(3)	3	(3)
<b>Net sensitivity</b>	<b>3</b>	<b>(3)</b>	<b>3</b>	<b>(3)</b>

**7.2 Categories of Financial Assets and Liabilities**

AASB 9 CARRYING AMOUNT	2021	2020
	\$'000	\$'000
<b>Financial assets</b>		
Cash and cash equivalents	164	267
Receivables at amortised cost	12	13
<b>Total</b>	<b>176</b>	<b>280</b>
<b>Financial Liabilities</b>		
Financial liabilities measured at amortised cost	11	22
Lease liabilities measured at amortised cost	191	272
<b>Total</b>	<b>202</b>	<b>294</b>

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

	<b>CARRYING AMOUNT</b>	<b>NET FAIR VALUE</b>	<b>CARRYING AMOUNT</b>	<b>NET FAIR VALUE</b>
	<b>2021</b>	<b>2021</b>	<b>2020</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Financial assets</b>				
Cash and cash equivalents	164	164	267	267
Receivables	12	12	13	13
<b>Total financial assets</b>	<b>176</b>	<b>176</b>	<b>280</b>	<b>280</b>
<b>Financial liabilities</b>				
Payables	12	12	22	22
Lease liabilities	191	191	272	272
<b>Total financial liabilities</b>	<b>203</b>	<b>203</b>	<b>294</b>	<b>294</b>

The Board does not have any financial assets or financial liabilities recognised at fair value through the profit and loss or through other comprehensive income.

#### *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 Lease liabilities 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 2021.

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## PART SIX – INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS

### 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 Act 2016*, it has elected to prepare these financial statements in accordance with the Treasurer's Instructions issued under the provisions of the *Financial Management Act 2016*.

The financial statements were signed by the Chairperson and the Chief Executive Officer on 25 August 2021.

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.

The financial statements have been prepared on the going concern basis, which assumes that the Board will be able to realise its assets and discharge its liabilities in the normal course of business.

For the year ended 30 June 2021 the Board incurred a loss of \$82,000. The Board also had a deficiency of net assets of \$29,000.



The Members of the Board are confident of the Board's ability to continue as a going concern as:

*The Legal Profession Act 2007* makes provision for the Solicitors Trust to apply from the Solicitors' Guarantee Fund such amounts as are necessary to pay or discharge of the expenses, charges and obligations of the Board in the performance of its functions or the exercise of its powers.

The Solicitors' Guarantee Fund has sufficient financial resources to fulfil the obligation under 1 above and to cover the deficiency of net assets of the Board.

### **9.3 Functional and Presentation Currency**

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

### **9.4 Changes in Accounting Policies**

#### **(a) Impact of new and revised Accounting Standards**

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

- AASB 1059 Service Concession Arrangements: Grantors – This Standard prescribes the accounting for a service concession arrangement by a grantor that is a public sector entity. Service concession arrangements are contracts between an operator and a grantor, where the operator provides public services related to a service concession asset on behalf of the grantor for a specified period of time and manages at least some of those services.

Where AASB 1059 applies, the grantor recognises the service concession asset when the grantor obtains control of the asset and measures the service concession asset at current replacement cost. At the same time, the grantor recognises a corresponding financial liability or unearned revenue liability or a combination of both.

The modified retrospective approach, permitted under AASB 1059, has been adopted, by recognising and measuring service concession assets and related liabilities as the date of initial application of 1 July 2019, with any net adjustments to the amounts of assets and liabilities recognised in accumulated funds at that date.

There is no effect of adopting AASB 1059 on the Board's financial statements.

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

There are no applicable Standards that have been issued by the AASB that are yet to be applied.

#### **(c) Impact of COVID-19 on Financial Reporting for 2020-21**

COVID-19 has had a minimal impact on the Financial Statements of the Office. Expenditure incurred directly due to COVID-19 was less than \$1,000 in 2020-21, compared with approximately \$1,000 in 2019-20.

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**PART SIX –  
INDEPENDENT AUDIT REPORT AND FINANCIAL STATEMENTS**

**9.5 Rounding**

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

**9.6 Taxation**

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

**9.7 Goods and Services Tax**

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

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



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