
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : LEGAL PROFESSION ACT 2008 (WA)

CITATION : LEGAL SERVICES AND COMPLAINTS
COMMITTEE and BOSTOCK [2022] WASAT 100

MEMBER : JUDGE H JACKSON, DEPUTY PRESIDENT
MR D AITKEN, SENIOR MEMBER
MR R POVEY, MEMBER

HEARD : DETERMINED ON THE DOCUMENTS

DELIVERED : 17 NOVEMBER 2022

FILE NO/S : VR 49 of 2021

BETWEEN : LEGAL SERVICES AND COMPLAINTS
COMMITTEE
Applicant

AND

GRAEME JOHN BOSTOCK
Respondent

Catchwords:

Vocational regulation - Legal practitioner - Professional misconduct and unsatisfactory conduct - Consent orders - Transitional provisions - Penalty - Undertaking - Reprimand and fine - Costs

Legislation:

Interpretation Act 1984 (WA), s 37(1)(d), s 37(1)(f)
Legal Profession Act 2008 (WA), s 12, s 260, s 262, s 402, s 403, s 404(a),

s 428, s 438, s 439(d), s 441(a)

Legal Profession Regulations 2009 (WA), reg 65(3)(a)(ii), reg 65(3)(b)(i),
reg 65(3)(b)(ii), reg 65(4)

Legal Profession Uniform Law (WA)

Legal Profession Uniform Law Application Act 2022 (WA), s 6, s 57, s 260,
s 216(1)(b), s 260(a), s 261, s 269

State Administrative Tribunal Act 2004 (WA), s 56(1), s 56(2), s 87(2)

Result:

The practitioner is reprimanded

The practitioner is fined \$5,000

The practitioner is to pay the applicant's costs fixed at \$5,000

Category: B

Representation:

Counsel:

Applicant : N/A

Respondent : N/A

Solicitors:

Applicant : Legal Services and Complaints Committee

Respondent : Ms C Thompson

Case(s) referred to in decision(s):

*Australian Competition and Consumer Commission v Real Estate Institute of
Western Australia Inc* [1999] FCA 18

*Australian Securities and Investments Commission Re; Richstar Enterprises Pty
Ltd ACN 099 071 968 v Carey (No 17)* [2007] FCA 1395

Khosa v Legal Profession Complaints Committee [2017] WASCA 192

Legal Profession Complaints Committee and Park (2017) 92 SR (WA) 33;
[2017] WASAT 89

Legal Profession Complaints Committee and Rayney [No 2]
[2018] WASAT 5 (S)

Legal Profession Complaints Committee v Leask [2011] WASC 310

Legal Services and Complaints Committee and Goldsmith [2022] WASAT 43 (S)

Mijatovic v Legal Practitioners Complaints Committee [2008] WASCA 115

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction and Overview

- 1 These proceedings were commenced by the Legal Profession Complaints Committee (**LPCC**) by application dated 30 June 2021.
- 2 By that application the LPCC referred certain matters to the Tribunal for determination, pursuant to s 428 of the *Legal Profession Act 2008* (WA) (**LP Act**).
- 3 On 1 July 2022, the LP Act was repealed by s 260(a) of the *Legal Profession Uniform Law Application Act 2022* (WA) (**Application Act**), which also, by s 6, provides that the Legal Profession Uniform Law (WA) (**Uniform Law**) applies as a law of Western Australia on and from 1 July 2022.
- 4 On 12 April 2022, the parties to these proceedings filed with the Tribunal a Minute of Consent Orders (Minute) by which they recorded the terms of the agreement reached between them on 8 April 2022 to settle the proceedings.
- 5 The Minute proceeds on the basis that the LP Act continues to apply to the proceedings and that any orders made by the Tribunal will be made pursuant to that Act.
- 6 In *Legal Services and Complaints Committee and Goldsmith* [2022] WASAT 43 (S) (**Goldsmith**), the Tribunal held that the LP Act continued to apply to those proceedings, which concerned conduct that had occurred prior to 1 July 2022, and had also both been referred to the Tribunal and had been the subject of findings by the Tribunal before that date.
- 7 For reasons that follow, we are of the view that the same conclusion applies to this case, in which the relevant conduct predates the LP Act's repeal but the Tribunal's findings are made after that date.
- 8 By way of a final introductory matter, it is worth repeating that which is sometimes overlooked by parties submitting orders to confirm their agreement as to the (proposed) terms of settlement, although, we hasten to add, not in this case. This is the fact that, despite the agreement of the parties, the Tribunal is required to form its own view as to two matters:

- 1) whether it has the power to determine the matter in the manner proposed; and
- 2) where it forms the view that it does have such power, whether the settlement terms are appropriate for the Tribunal to endorse.

9 Any agreement between the parties as to the terms on which they wish to settle the proceedings is relevant to the Tribunal's determination but does not, and cannot, absolve the Tribunal of its role in determining both of those questions.

10 As to the first of those two questions (going to jurisdiction), so much follows from s 56(2) of the *State Administrative Tribunal Act 2004* (WA) (**SAT Act**). That section provides that orders can be made to 'give effect to the settlement'¹ only if the Tribunal is 'satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms that are consistent with the terms of the agreed settlement'.

11 As to the second of those two questions (whether the proposed terms are appropriate), the following passage from French J (as his Honour then was) in *ACCC v Real Estate Institute of WA*² is apposite, notwithstanding that it was said in relation to a different statutory context:

The question whether an undertaking is to be accepted or a consent order made is not concluded by a finding that it is within the power of the court to do so. The power of the court to make the orders sought is "defined and conferred by public law not by private agreement" - Fiss, "Against Settlement" (1984) 93 *Yale Law Journal*. In the exercise of that power the court is not merely giving effect to the wishes of the parties, it is exercising a public function and must have regard to the public interest in doing so. This principle applies to the resolution of private litigation by consent orders or undertakings. A fortiori it applies to proceedings brought by the Crown or public or statutory authorities to enforce the law in the public interest. The court has a responsibility to be satisfied that what is proposed is not contrary to the public interest and is at least consistent with it.

¹ SAT Act, s 56(1).

² *Australian Competition and Consumer Commission v Real Estate Institute of Western Australia Inc* [1999] FCA at [18]. See also, *Legal Profession Complaints Committee v Leask* [2011] WASC 310 at [2].

Factual background

12 Attached as Schedule A to the Minute was a document headed Agreed Facts. That document is attached as an annexure to these reasons (**Annexure**).

13 The Annexure is lengthy, totalling nearly 10 pages and we will not repeat facts in any detail here. Rather, we will merely identify some of the more relevant matters as follows:

- a) The respondent (**respondent** or **practitioner**) was admitted to legal practice in Western Australia in December 1973 and carried on practice as a partner in the firm of Bostock & Ryan.
- b) From about 1981 the practitioner 'frequently acted for' a client known as RF, various incorporated entities associated with RF, and various members of RF's family. That is, by the time of his engagement in these matters, the practitioner had been acting for RF and his family for more than 30 years, apparently without complaint.
- c) In about March 2013 the practitioner was engaged by RF and his sibling, TF, to obtain the grant of probate and carry out the administration of the estate of one of their parents. In or about July 2014 the practitioner was further engaged to act for RF and TF in relation to the administration of their other parent's estate. Both matters involved, amongst other things, the administration of various trusts.
- d) There were various failures and inadequacies in relation to the work done by the practitioner, including that the necessary transfer of shares from various companies, held by the relevant estate, to various beneficiaries failed to occur in a timely manner and, indeed, took far too long despite repeated requests for it to occur.
- e) Other problems involved the interim distribution of monies to an entity associated with RF such that, had TF not disclaimed his share in the residue of the relevant estate (which he had previously done verbally but not in

writing) there would have been insufficient monies available for that to occur.

- f) There were also failures to lodge tax returns on time, failures to respond to correspondence, failures to comply with various costs disclosure obligations and, finally, the failure to comply with various requirements relating to the payment of tax invoices from monies retained on trust.

14 The practitioner ceased acting in relation to these matters in or about 2018.

The allegations of professional misconduct and unsatisfactory professional conduct

15 In its application of 30 June 2021, the LPCC alleged that the practitioner had engaged in one count of professional misconduct and four counts of unsatisfactory professional conduct.

16 The Minute records the agreement of the parties as to each of those five counts in terms which are identical to, or nearly so, the original allegations, referred to the Tribunal by the LPCC.

17 The first ground is a single count of professional misconduct which is particularised by six matters, all of which concern the period between 2013 and 2018, during which the practitioner acted in relation to the administration of the estates of RF and TF's parents.

18 The six particulars can reasonably be described as failings as to competence and diligence. They concern the failure to progress and finalise the administration of the estates, the failure to respond to correspondence and requests for information and otherwise to instructions within a timely manner, and the failure to act upon instructions in a proper, timely, competent and diligent manner, as well as making interim distributions before the estate was fully administered in circumstances where, as noted above, there had been a failure to confirm in writing the instructions sufficient to allow that to occur.

19 The four allegations of unsatisfactory professional conduct also, in our view, may reasonably be described as failures of competence and diligence.

20 As noted above, the second and third grounds concern a failure to provide costs disclosure in breach of s 260 and s 262 of the LP Act.

It would appear, however, that such failures occurred in circumstances where there is no allegation that the practitioner stood to gain by such failures and, significantly in our view, where the practitioner had acted for RF and his family for more than 30 years.

21 The fourth ground concerns the withdrawal of trust monies to pay for the practitioner's tax invoices in circumstances where necessary procedures required by the LP Act and the associated *Legal Profession Regulations 2009* (WA) were not satisfied. Again, it appears that such failings occurred, first, without any intention by the practitioner towards personal advantage and, second, where there was a very long history of acting for the relevant clients.

22 Finally, the fifth ground is that the practitioner engaged in unsatisfactory professional conduct by failing to carry out instructions in a timely, competent and diligent manner.

23 The matters particularised in relation to the fifth ground concern failures to, essentially, respond to requests for information from two grandchildren (and their solicitors) in matters unrelated to the estate administration matters which are the subject of the first ground.

24 In our view, the agreed facts set out in the Annexure provide ample factual underpinning to allow the Tribunal to reach the conclusions which the parties agree are appropriate.

25 Accordingly, we find that the practitioner engaged in one count of professional misconduct and four counts of unsatisfactory professional conduct in the circumstances described in the orders below.

The agreed position as to penalty

26 It is useful to repeat and expand upon a matter addressed in the Introduction section above. Specifically, that the Tribunal must form its own view as to whether or not the agreed penalty is 'appropriate'. As French J (as his Honour then was) said in ***Richstar***:³

When the Court is presented with a proposed order, agreed between the parties, it must be satisfied, before making it, that it is within the power of the Court to make it and that the proposed order is appropriate. The requirement that the order be “appropriate” does not mean that the Court will refuse to make it simply because it thinks a different order would be preferable. This is particularly the case where the parties are

³ *Australian Securities and Investments Commission Re; Richstar Enterprises Pty Ltd ACN 099 071 968 v Carey (No 17)* [2007] FCA 1395 (*Richstar*).

properly advised by competent legal representatives. An appropriate order is one which lies within the range of orders that could reasonably be made on the materials before the Court. The limiting factor is that in making any order the Court exercises the judicial power of the Commonwealth and cannot simply rubber stamp what is proposed without consideration of its substance.

27 We note that both parties appear to have been represented by counsel during discussions from which agreement was reached and that the practitioner was represented by senior counsel.

28 The Minute records, at paragraph 6, that the practitioner provided an undertaking dated 8 April 2022 to the LPCC and the Legal Practice Board of Western Australia which records that he has, of his own volition and from 30 June 2021, retired from practice and that he undertakes not to engage in legal practice or apply for a certificate to practise law in this State or elsewhere.

29 The Minute proceeds on that basis. In the following three paragraphs to the Minute (paragraphs 7, 8 and 9) it sets out three matters which the parties agree ought to follow from the findings of professional misconduct and unsatisfactory professional conduct being:

- a) that the practitioner ought to be reprimanded pursuant to s 439(d) of the LP Act;
- b) that the practitioner is to pay a fine in the amount of \$5,000 pursuant to s 441(a) of the LP Act; and
- c) that the practitioner is to pay the LPCC's costs in the amount of \$5,000 pursuant to s 87(2) of the SAT Act.

30 In our view, such an outcome is, in the words of French J above, within the 'range of orders that could reasonably be made' by the Tribunal on the materials before it.

31 Having said that, we wish to record our views in relation to certain matters.

32 First, the proposed orders are expressed without cross-referencing the particular findings of professional misconduct and unsatisfactory professional conduct.

33 The Tribunal in **Park**⁴ stated that '[i]t is important that the Tribunal makes clear to the public and the legal profession what the penalty is for each of those courses of behaviour'. The Tribunal expressed similar views in **Rayney**.⁵

34 But, as noted in **Rayney**, that proposition is not, of course, an absolute rule and there are times, particularly where the facts of the case are 'inextricably woven', where a global penalty may properly be applied.

35 In our view, such a course is appropriate here where, although extending over a lengthy period, the conduct in question is, effectively, concerned with a connected group of clients and which generally falls under the heading of competence and diligence. We would have taken a different course if, for example, one or more of the grounds concerned dishonesty.

36 Secondly, we note that the agreed facts in the Annexure are expressed, in relation to the question and amount of a fine, to expressly recognise 'the protection to the public by reason of the undertaking' referred to above.⁶

37 In our view, the practitioner's retirement and undertakings provide a very considerable level of protection to the public, which, it is trite to say, is the purpose for which penalties are imposed in disciplinary proceedings.⁷

38 It might be said that the protection of the public that is provided by the undertaking is such that there is no need for an (additional) reprimand and a fine.

39 In our view, however, the concept of general deterrence⁸ may, depending on the circumstances, constitute an important element of a penalty which seeks to protect the public.

40 We accept that it is not unreasonable, in this case, to suggest that more is required for the penalty to provide for general deterrence than would be the case if the only elements of the penalty imposed were the

⁴ *Legal Profession Complaints Committee and Park* (2017) 92 SR (WA) 33; [2017] WASAT 89 (**Park**) at [57].

⁵ *Legal Profession Complaints Committee and Rayney [No 2]* [2018] WASAT 5 (S) (**Rayney**) at [11].

⁶ Minute of Consent Orders dated 8 April 2022, para 8.

⁷ *Khosa v Legal Profession Complaints Committee* [2017] WASCA 192 at [37].

⁸ For obvious reasons, there is no need in this case to address the question of specific deterrence.

retirement of the practitioner and the finding that he has engaged in professional misconduct and unsatisfactory professional conduct.⁹

41 A reprimand and a fine of \$5000 both represent a significant admonition or public shaming of the practitioner and demonstrate that serious consequences will flow from adverse disciplinary findings against practitioners.

42 When imposed together and in addition to the findings and the undertaking to retire we are of the view that the agreed penalty is at the upper end of the range of an appropriate penalty, particularly where no dishonesty is involved.

43 Nonetheless, we are comforted by the fact that the practitioner was represented by senior counsel and accept that the agreed penalty is within the 'appropriate range' and orders giving it effect should be made.

The power to proceed

44 The previous two sections of these reasons, which concern:

- a) the factual findings of professional misconduct and unsatisfactory professional conduct; and
- b) the decision as to the appropriate sanction,

proceed on the basis that the Tribunal has power to make such findings and to impose such sanctions under the LP Act.

45 For the reasons that follow, we are of the view that the Tribunal has such power.

46 That is so despite the fact that the proceedings were instituted by the LPCC under the LP Act which, as has been noted above, was repealed on and from 1 July 2022 by s 260 of the Application Act.

47 As also noted above, the Tribunal in ***Goldsmith*** held that the LP Act continued to apply to the determination of penalty where the conduct, referral by the LPCC to the Tribunal, and the Tribunal's own findings of professional misconduct had occurred prior to 1 July 2022.

⁹ In so saying, we acknowledge that such findings themselves represent a sanction which will have a degree of general deterrence.

48 In doing so, the Tribunal found that, consistently with the Court of Appeal's decision in *Mijatovic*¹⁰ the findings of professional misconduct and unsatisfactory professional conduct which it had made against Mr Goldsmith prior to the repeal of the LP Act amounted to a liability which is preserved by s 37(1)(d) of the *Interpretation Act 1984* (WA) (**Interpretation Act**).

49 Section 37(1)(d) and (f) of the Interpretation Act provides as follows:

Where a written law repeals an enactment, the repeal does not, unless the contrary intention appears —

...

(d) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;

...

(f) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture,

and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty or forfeiture may be imposed and enforced as if the repealing written law had not been passed or made.

50 The Tribunal in *Goldsmith* held that the Application Act expresses 'no contrary intention' such that s 37(1)(d) applied.¹¹

51 In our view, the same conclusion must be reached in circumstances where the conduct of concern and the referral of the matter to the Tribunal both predate 1 July 2022 but the Tribunal's determination occurs after that date.

52 Consistent with the (differently constituted) Tribunal in *Goldsmith*, we are of the view that there is nothing in either the Application Act or the Uniform Law which suggests that conduct which occurred prior to 1 July 2022 which may have amounted to professional misconduct or unsatisfactory professional conduct, and which was the subject of

¹⁰ *Mijatovic v Legal Practitioners Complaints Committee* [2008] WASCA 115 (*Mijatovic*).

¹¹ See also s 261 of the Application Act.

referral by the LPCC prior to that date should be addressed under the Uniform Law.

Change of name of applicant

53 One final matter must be addressed, which was also the subject of findings by the Tribunal in ***Goldsmith***.

54 Section 57 of the Application Act establishes, as a Committee of the Legal Practice Board, the 'Legal Services and Complaints Committee,' (**LSCC**).

55 By s 269 of the Application Act it is confirmed that the LSCC 'is the same entity as, and a continuation of, the [LPCC]'.

56 The Application Act makes no provision for the continued use of the name LPCC on and from 1 July 2022 and, accordingly, the name of the applicant ought to be altered to the LSCC. We will make an order to that effect.

57 Nonetheless, we have referred to the applicant as the LPCC in the preceding discussion because all references to it are to it in the context of matters that occurred prior to 1 July 2022.

Conclusion

58 For these reasons, we are of the view that the orders set out in the attached Schedule should be made as well as the following order amending the name of the applicant.

Orders

The Tribunal orders:

1. The name of the applicant be changed from the Legal Profession Complaints Committee to the Legal Services and Complaints Committee.

Schedule

1. The respondent:
 - (a) between about March 2013 and about March 2018, while acting for the executors/trustees of the estate of the late EF

(**EF; EF's Estate**), who were RF, TF and the respondent, in the administration of EF's Estate;

- (b) between about July 2014 and about March 2018, while acting for the executors/trustees of the estate of the late FF (**FF's Estate**), who were RF and TF; and
- c) in the period following the termination in about March 2018 of his retainer to act for the executors/trustees of EF's Estate and for the executors/trustees of FF's Estate (together, the **Estates**),

engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act, in that his conduct fell short, consistently and to a substantial degree, of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner:

- 1.1 by failing to progress and finalise the administration of EF's Estate in a timely, competent and diligent manner;
- 1.2 in the absence of a binding written notice by TF confirming that he disclaimed his share of the residue of EF's Estate (or any other document binding TF):
 - (a) making interim distributions to only one of the residuary beneficiaries, RF, before the estate was fully administered;
 - (b) alternatively, failing to ensure, prior to making interim distributions to RF, that there would be sufficient monies held by EF's Estate to distribute to TF his entitlements under EF's Will once EF's Estate was fully administered, should TF not confirm his oral disclaimer of his share of the residue of EF's Estate;

- 1.3 by failing to progress and finalise the administration of FF's Estate in a timely, competent and diligent manner;
 - 1.4 by failing to respond to correspondence and requests for information or reports about the Estates in a timely manner;
 - 1.5 from about March 2018 to 19 September 2018, failing to respond within a reasonable time to the instructions and/or requests by TF, the co-executor/trustee of EF's Estate, in that the respondent failed to provide copies of the client documents relating to EF's Estate within a reasonable time to the applicant (in accordance with TF's signed consent/authority dated 28 March 2018) and then providing incomplete copies of those client documents;
 - 1.6 from March 2018, following termination of the respondent's retainer in respect of the administration of FF's Estate, failing to act upon the proper and competent instructions of TF, the executor/trustee of FF's Estate, in a timely, competent and diligent manner in respect to client documents and the transfer of trust monies.
2. The respondent, from about March 2013, in the course of acting for the executors/trustees of EF's Estate, engaged in unsatisfactory professional conduct within the meaning of sections 402, 404(a) and 438 of the LP Act, in that his conduct fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner by failing to provide any costs disclosure to RF and TF, the co-executors/trustees, with the respondent, of EF's Estate, in writing before, or as soon as practicable after, he was retained, in breach of sections 260 and 262 of the LP Act.
3. The respondent, from about 28 July 2014, in the course of acting for the executors/trustees of FF's Estate,

engaged in unsatisfactory professional conduct within the meaning of sections 402, 404(a) and 438 of the LP Act, in that his conduct fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, by failing to provide any costs disclosure to RF and TF, the executors/trustees of FF's Estate, in writing before, or as soon as practicable after, he was retained, in breach of sections 260 and 262 of the LP Act.

4. The respondent:

- a) in about January 2010, in the course of acting for EF, then an executor/trustee of FF's Estate; and
- b) between about September 2013 and about August 2016, in the course of acting for RF and TF, the co-executors/trustees, with the respondent, of EF's Estate, and the executors/trustees of FF's Estate (**Clients**),

engaged in unsatisfactory professional conduct within the meaning of sections 402, 404(a) and 438 of the LP Act, in that his conduct fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, by withdrawing trust monies for the payment of the respondent's tax invoices dated 14 January 2010 addressed to EF, and the respondent's tax invoices dated 6 September 2013, 7 March 2014, 1 April 2014, 2 October 2015, 8 January 2016, 10 June 2016 and 5 August 2016 addressed to the executors/trustees of EF's Estate (**Tax Invoices**), in circumstances where there was no direction pursuant to section 216(1)(b) of the LP Act to do so, prior to either:

- a) obtaining instructions from the Clients to authorise the withdrawal (regulation 65(3)(a)(ii) of the *Legal Profession Regulations 2009* (WA) (**LP Regulations**)) and, before effecting the withdrawal, sending a request for payment, referring to the proposed withdrawal

(regulation 65(3)(b)(i) of the LP Regulations),
or, alternatively, a written notice of withdrawal
(regulation 65(3)(b)(ii) of the LP Regulations);
or,

- b) allowing seven days for the Clients to object to the withdrawal of the money after giving the Clients the Tax Invoices (regulation 65(4) of the LP Regulations).
5. The respondent, between about December 2015 and about 22 January 2018, when acting in respect of matters on which the respondent and/or the firm had been instructed by RF and/or corporate entities associated with RF and/or members of the F Family, and from 22 January 2018 to about September 2018, after the termination of those retainers, engaged in unsatisfactory professional conduct within the meaning of sections 402 and 438 of the LP Act, in that his conduct fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, by failing to carry out instructions in respect of the matters on which the respondent and/or the firm had been retained by those clients in a timely, competent and diligent manner.
6. The respondent, having of his own accord retired from practice from 30 June 2021, has provided a written undertaking dated 8 April 2022 to the applicant and the Legal Practice Board of Western Australia (**Board**) that:
- 6.1 he will not engage in legal practise in Western Australia within the meaning of s 12 of the LP Act from 8 April 2022; and
 - 6.2 he will not apply for a certificate to practice law in Western Australia or elsewhere after 8 April 2022.
7. The respondent is reprimanded pursuant to section 439(d) of the LP Act.
8. In recognition of the protection to the public by reason of the undertaking referred to in paragraph 6, the

respondent is to pay a fine in the amount of \$5,000 pursuant to section 441(a) of the LP Act.

9. The respondent is to pay the applicant's costs in the amount of \$5,000 pursuant to section 87(2) of the *State Administrative Tribunal Act 2004* (WA).
10. The amounts specified in orders 8 and 9 are to be paid to the Board within 30 days of the date of these orders unless other terms are agreed by the respondent with the Board.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

RM

Associate to Deputy President Judge Jackson

17 NOVEMBER 2022

ANNEXURE

1. The respondent (**practitioner**) was admitted to legal practice in Western Australia on 21 December 1973.
2. At all material times:
 - 2.1 the practitioner was an Australian legal practitioner within the meaning of section 5(a) of the *Legal Profession Act 2008* (WA) (**LP Act**); and
 - 2.2 the practitioner was a partner carrying on a legal practice in the name of Bostock & Ryan (**firm**).

Background

3. From about 1981, the practitioner frequently acted for RF, a businessman, and various incorporated entities associated with RF. RF and members of his family also engaged the practitioner to act for them in personal matters and other matters.
4. FF (**FF**) and EF (**EF**) were the parents of RF and TF and had a number of grandchildren.
5. FF executed a will in August 1997 which, amongst other things, created trusts which benefited EF during her lifetime and, following her death, RF, TF and the grandchildren (**Trusts**). FF died in May 2001.
6. EF executed a will in May 2010 which, amongst other things, appointed RF, TF and the practitioner as executors and trustees of her will, made bequests to each grandchild and gave the residue of her estate to RF and TF. Under EF's Will, the practitioner was authorised to receive out of the estate his usual professional costs and charges. EF died in March 2013.

FF's Estate

7. The practitioner was engaged on or about 28 July 2014 to act for RF and TF in relation to the administration of FF's estate and the Trusts, as the only ongoing aspects of the administration of the estate.
8. The Trust benefitting the grandchildren vested in them from 8 June 2014 and required the transfer of shares from FF's estate to the grandchildren.

9. The practitioner took a number of steps to transfer the shares, but despite repeated correspondence from some of the grandchildren to the practitioner and to another solicitor employed by the firm asking the practitioner to finalise the distribution, the share transfers were not effected until February 2016.
10. The practitioner took no further steps to progress the finalisation of FF's Estate after February 2016.
11. Steps were taken by others and FF's Estate was finalised on 15 February 2018.

EF's Estate

12. In about March 2013, the practitioner was engaged by RF and TF, as co-executors of EF's Will, to obtain the grant of probate and carry out the administration of the Estate.

RF's distributions

13. In about April 2013, the practitioner was notified by TF orally that he wished to disclaim his entitlement under EF's Will to the residuary estate, leaving RF the sole residuary beneficiary. The practitioner made a file note to that effect but did not obtain a binding written notice by TF (or any other document binding TF) confirming that he disclaimed his share of the residue of EF's Estate.
14. Between 21 January 2015 and 10 June 2016, in the course of administering EF's Estate, the practitioner authorised withdrawals of monies held in trust for EF's Estate in the amount of \$1,168,608.50, which included amounts totalling \$858,610.50 for direct or indirect payment to an entity associated with RF.
15. The payments to the entity associated with RF were such that, should TF not disclaim his share of the residue of EF's Estate, there would have been insufficient monies available to distribute to TF an equal share of the residue of EF's Estate.

SDOT2 units

16. EF's Estate comprised a number of shares in different companies, including 2,500,000 units in SDOT2 (of disputed value at the time of EF's death and the practitioner's appointment as co-executor).

17. No action was taken by the practitioner to sell the units and, by October 2015, SDOT2 had been wound up.
18. In May 2016, \$12,465 was transferred to EF's Estate as distribution monies.

Remaining Shares

19. In about January 2014, the practitioner, following a request from RF, caused the transfer of half of EF's shares to RF (with a value of \$1,583,638.70).
20. The practitioner did not take steps to transfer the remaining shares in EF's name to the executors/trustees of EF's Estate, with the result that correspondence with respect to the shares continued to be directed to EF, care of RF.
21. From about January 2014, dividends were received for most shares held by EF at the time of her death; however, the practitioner's files contain no record of dividends or distributions for shares held in two companies.
22. In April 2014, RF was notified that the Clearing House Electronic Subregister System (**CHESS**) account for EF's Estate was cancelled as at 17 April 2014.
23. As a result, the shares were no longer under the one Holder Identification Number and the practitioner was required to arrange for them to be converted by a stockbroker to a CHESS subregister.
24. From about mid-July 2014, RF received correspondence advising that dividends for a number of the shares held were being retained in non-interest bearing accounts and required direct credit forms to be completed.
25. The practitioner did not send letters to the relevant issuer-sponsored subregisters enclosing the direct credit forms and a certified copy of the grant of probate until April 2015.
26. In August 2015, the practitioner wrote to ASIC with respect to unclaimed monies for shares in one company, stating that he would shortly submit the paperwork to claim the unclaimed monies. The practitioner's files do not contain any documents evidencing any further correspondence with ASIC.

27. By October 2017, RF was deceased and the practitioner responded to queries from the executors of RF's estate, stating that dividends had not been received by EF's Estate and that he was then in the process of locating the dividends.
28. From early 2018, SF, one of the grandchildren undertook the task of consolidating the remaining shares held by EF's Estate and locating unclaimed monies and withheld dividends. No interest was paid on the some of the unclaimed monies recovered by SF.
29. In about June 2018, the practitioner provided his identification to Macquarie to facilitate the consolidation of the share portfolio.

Tax Returns

30. From May 2013, an accountant was retained by the practitioner to prepare tax returns for EF (2012), EF's Estate and FF's Estate.
31. As a result of repeated delays primarily caused by the practitioner's failure to respond to correspondence from the accountant, failure to provide information requested and failure to sign or obtain signatures on documents in a timely fashion when requested by the accountant between May 2013 and October 2015:
 - 31.1 EF's 2012 tax return was lodged over 12 months after the due date;
 - 31.2 the 2012 tax return for FF's Estate was lodged over 12 months after the due date;
 - 31.3 the 2013 tax return for EF's Estate was lodged about 2 years and one month after the due date;
 - 31.4 the 2013 tax return for FF's Estate was lodged about 2 years and 5 months after the due date;
 - 31.5 the 2014 tax return for FF's Estate was lodged nearly 2 years after the due date; and,
 - 31.6 the 2015 tax return for FF's Estate was lodged about 1 year after the due date.
32. During that period, the ATO sent overdue notices and correspondence warning of likely penalties for the late lodgment of the tax returns and eventually

imposed penalties and charged interest in respect of the overdue tax returns for EF's Estate.

33. There were further delays by the practitioner in dealing with the accountant in relation to the 2014, 2015 and 2016 tax returns for EF's estate.
34. In about August 2017, SF retained another accounting firm which then prepared and lodged all remaining tax returns for EF's Estate.

Correspondence

35. In the course of the practitioner's work in administering EF's Estate, including with respect to EF's shares, the practitioner sent and received correspondence from various parties.
36. When the practitioner's files were obtained by the new firm retained with respect to the Estates and by the applicant (**Committee**) following the termination of the practitioner's retainer, a number of pieces of correspondence had not been retained on the file.

Costs Disclosure and Trust Withdrawals

37. For both EF's Estate and FF's Estate, the practitioner did not cause the firm to enter into a costs agreement with RF and TF or provide any written costs disclosure to them before, or as soon as practicable after, the firm was retained, contrary to sections 260 and 262 of the LP Act.
38. On 14 January 2010, the firm addressed to EF, then co-executor/trustee of FF's Estate, care of RF, its tax invoice in the sum of \$1,125.30 for work performed by the practitioner in respect of FF's Estate. On the same day the practitioner caused to be withdrawn from trust monies held on behalf of FF's Estate the sum of \$1,125.30 to pay the tax invoice dated 14 January 2010.
39. The practitioner's files do not disclose any direction pursuant to section 216(1) of the LP Act for the withdrawal of trust monies to pay the tax invoice dated 14 January 2010.
40. The firm subsequently issued invoices to the executors of EF's estate:
 - 40.1 on 6 September 2013, in the sum of \$5,610.00 for work performed by the practitioner in respect of EF's Estate.

- 40.2 on 7 March 2014, in the sum of \$2,140.60 for work performed by the practitioner in respect of EF's Estate.
 - 40.3 on 1 April 2014, in the sum of \$5,500.00 for work performed by the practitioner in respect of EF's Estate and FF's Estate.
 - 40.4 on 2 October 2015, in the sum of \$8,580.00 for work performed by the practitioner in respect of EF's Estate.
 - 40.5 on 8 January 2016, in the sum of \$12,100.00 for work performed by the practitioner in respect of EF's Estate and FF's Estate.
 - 40.6 on 10 June 2016, in the sum of \$1,320.00 for work performed by the practitioner in respect of EF's Estate and FF's Estate.
 - 40.7 on 5 August 2016, in the sum of \$2,747.80 for work performed by the practitioner in respect of EF's Estate and FF's Estate.
41. For each of the invoices in paragraph 40 above, the invoiced amount was withdrawn from trust monies held on behalf of EF's Estate on the date the invoice was issued despite there being no direction pursuant to section 216(1)(b) of the LP Act and no instructions from the executors of EF's Estate to authorise the withdrawals prior to the firm effecting those withdrawals.

Requests for Information and Documents

42. On 10 October 2015, RF sent an email to the practitioner in which, amongst other things, he:
- 42.1 noted that SF and HF had requested complete lists of the assets of the Estates and a receipt for the documents relating to EF's Estate that were provided to the practitioner shortly after she died, and reiterated their request for the lists of assets and a receipt;
 - 42.2 repeated SF's and HF's concerns that the administration of the Estates was not being carried out, in particular the distribution of FF's shares to the grandchildren;
 - 42.3 pointed out that there was a fair amount of outstanding work to be done to finalise the administration of the Estates;

- 42.4 instructed the practitioner that it was urgent that he engage some assistance to complete the outstanding matters; and
- 42.5 requested: *“Please acknowledge that you have received this and will be doing something about it urgently”*.
- 43. The practitioner responded to this email by letter dated 14 October 2015 in which he stated, amongst other things, that a full report would be provided by 19 October 2015. He also provided a receipt for EF’s documents.
- 44. The practitioner did not provide the requested report to RF.
- 45. Further follow up requests were sent to the practitioner and to a solicitor employed by the firm in November and December 2015 which stated, amongst other things, that:
 - 45.1 the distribution of FF’s shares to the grandchildren was urgent;
 - 45.2 an explanation was required as to *“what has happened to the dividend cheques”*; and,
 - 45.3 SF and HF had *“asked many times now verbally and in writing for copies of what’s in the trust accounts relating to all F family matters [matters listed]”*.
- 46. The practitioner’s files do not contain copies of any correspondence between the practitioner and SF and HF about the requests for trust account statements until a year later when the practitioner, by letter dated 1 December 2016, provided to SF and HF the statements for trust accounts held on behalf EF’s Estate, FF’s Estate and by the firm as trustee for RF.
- 47. After RF’s death in December 2016, SF and HF engaged Mr L of S Legal to apply for probate of RF’s will and carry out the administration of RF’s estate **(RF’s Estate)**.
- 48. Between 7 August 2017 and January 2018, Mr L wrote to the practitioner and made a number of telephone calls requesting documents and summaries of the steps taken to finalise the Estates and the steps yet to be taken to finalise the Estates.

49. The practitioner provided some information and some of the requested documents but did not provide the retainer agreements (which did not exist) or, despite repeated requests and commitments by the practitioner to do so, summaries of the steps taken to finalise the Estates.
50. On 22 January 2018, Mr L wrote to the practitioner:
- 50.1 notifying him that S Legal was instructed by SF and HF and entities associated with the F family (**clients**);
 - 50.2 requesting, on behalf of the clients, lists of any current and closed matters on which the firm was instructed by RF and/or the clients; and
 - 50.3 notifying him that the current matters were to be transferred to S Legal and the files relating to any closed matters were to be made available for collection by 31 January 2018.
51. On the same day, Mr L wrote to the practitioner on behalf of SF and HF in relation to the Estates, informing the practitioner that:
- 51.1 the practitioner's and the firm's engagement in respect of the Estates is terminated (albeit SF and HF were not executors of the Estates and did not have the authority to give this instruction);
 - 51.2 no further legal services relating to Estates were to be performed;
 - 51.3 the files for the Estates were to be transferred to S Legal;
 - 51.4 all funds held in trust were to be transferred to the trust account of the accounting firm referred to in paragraph 34 above (**Accountant's TA**);
 - 51.5 once transferred a reconciliation of final amounts transferred was to be provided; and
 - 51.6 the files were to be made available for collection by S Legal by 31 January 2018.
52. The practitioner did not respond to either of Mr L's letters.
53. In March 2018, a complaint by SF and HF to the Committee about the practitioner's conduct was transferred to the Committee's investigations team.

54. In March 2018, TF engaged Mr L to act for him as sole executor/trustee of FF's Estate and as an executor/trustee of EF's Estate.
55. On 29 March 2018, Mr L wrote to the practitioner on behalf of TF about EF's Estate:
 - 55.1 requesting that the practitioner consent to his removal as co-executor of EF's Estate;
 - 55.2 notifying the practitioner that his and the firm's engagement was terminated and no further legal services were to be performed, all files were to be transferred to S Legal and all trust monies were to be transferred to the Accountant's TA; and
 - 55.3 requesting his response by 8 April 2018.
56. On the same day (29 March 2018), Mr L wrote to the practitioner on behalf of TF about FF's Estate:
 - 56.1 notifying him that his and the firm's engagement was terminated, no further legal services were to be performed, all files were to be transferred to S Legal and all trust monies were to be transferred to the Accountant's TA; and
 - 56.2 requesting his response by 8 April 2018.
57. Mr L also wrote to the practitioner that day on behalf of SF and HF:
 - 57.1 notifying him that his and the firm's engagements relating to any matters on which he was instructed by RF or the clients were terminated and no further legal services were to be performed, all files were to be transferred to S Legal and all trust monies were to be transferred to the Accountant's TA; and
 - 57.2 requesting his response by 8 April 2018.
58. The practitioner did not respond to Mr L's letters of 29 March 2018.
59. On 23 April 2018, the practitioner commenced handing over his original files relating to the Estates to the Committee for copying and delivery to S Legal.

60. The practitioner delivered the client documents in respect of the Estates in a series of bundles over 5 months to September 2018.
61. The files delivered to the Committee by the practitioner were incomplete in that they did not contain:
 - 61.1 complete records of the correspondence sent and received by the practitioner;
 - 61.2 the transactions undertaken on behalf of the executors/trustees by the practitioner in the course of the administration of the Estates; and
 - 61.3 accounting records relating to the Estates' assets and the income received by the Estates from those assets.
62. On 28 May 2018, the practitioner notified the Committee that:
 - 62.1 he was prepared to step down as trustee of the trust created by EF's Will but he first needed to be satisfied that the tax returns for EF's Estate had been lodged and the tax paid;
 - 62.2 he was of the view that the monies held in trust for EF's Estate and as trustee for RF should be retained for the payment of tax in respect of EF's Estate; and
 - 62.3 he would transfer the monies held in trust on behalf of FF's Estate and he anticipated doing so by 30 May 2018.
63. On 13 June 2018, Mr L wrote to the practitioner on behalf of TF in respect of FF's Estate:
 - 63.1 requesting the transfer of the remainder of the files and the trust monies;
 - 63.2 informing him that the files were incomplete;
 - 63.3 requesting the transfer of the trust monies to the Accountant's TA; and
 - 63.4 requesting evidence of the distributions under clauses 13 and 14 of FF's Will, current trust money balances and a record of all trust transactions.

64. Also on 13 June 2018, Mr L also wrote to the practitioner on behalf of SF and HF requesting:
- 64.1 reasons why he had not responded to Mr L's letter of 29 March 2018 and the instructions of the executors/trustees of RF's Estate to transfer the trust monies and the files; and
 - 64.2 the legal authority supporting the practitioner's position that trust monies held on behalf of RF should be retained for the payment of tax in respect of EF's Estate.
65. On the same day, Mr L wrote to the practitioner requesting a response to his letter of 22 January 2018 in respect of the matters (other than the Estates) where he had acted for RF and/or the clients.
66. The practitioner did not respond to Mr L's letters of 13 June 2018.
67. On 28 June 2018, the practitioner provided to SF a cheque in the sum of \$4,324.94, being the trust monies held by the firm on behalf of FF's Estate.
68. On 18 September 2018, the practitioner provided to the Committee the list of current and closed matters where the practitioner had acted for RF, requested by Mr L in his letter dated 22 January 2018.