



2025 Family Law Conference

ACT LAW SOCIETY

WEDNESDAY 10 SEPTEMBER 2025

10 September 2025

Ethics & Professional Responsibility

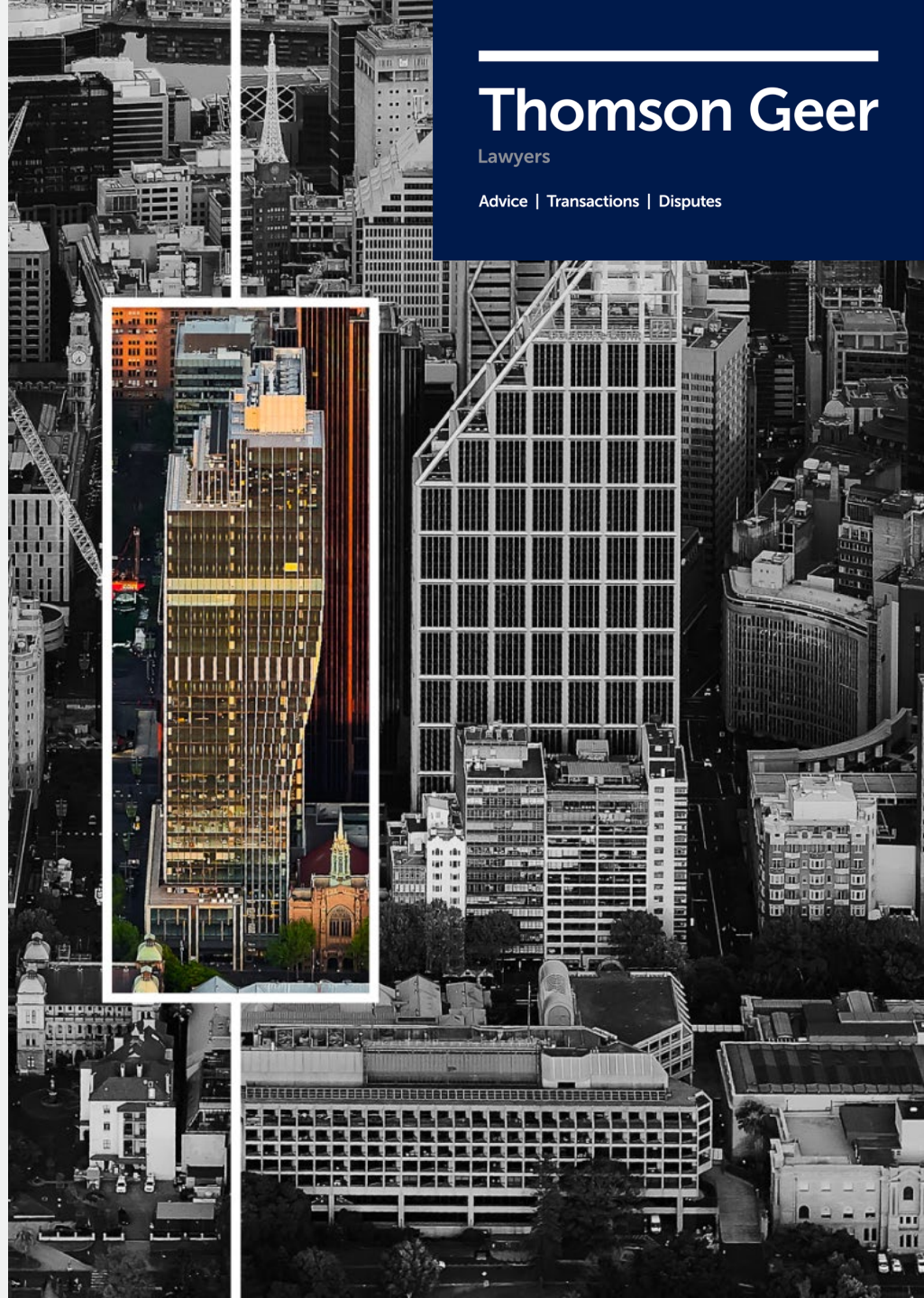
A rundown on recent professional discipline decisions significant to family law

Katie Binstock, Partner

Thomson Geer

Lawyers

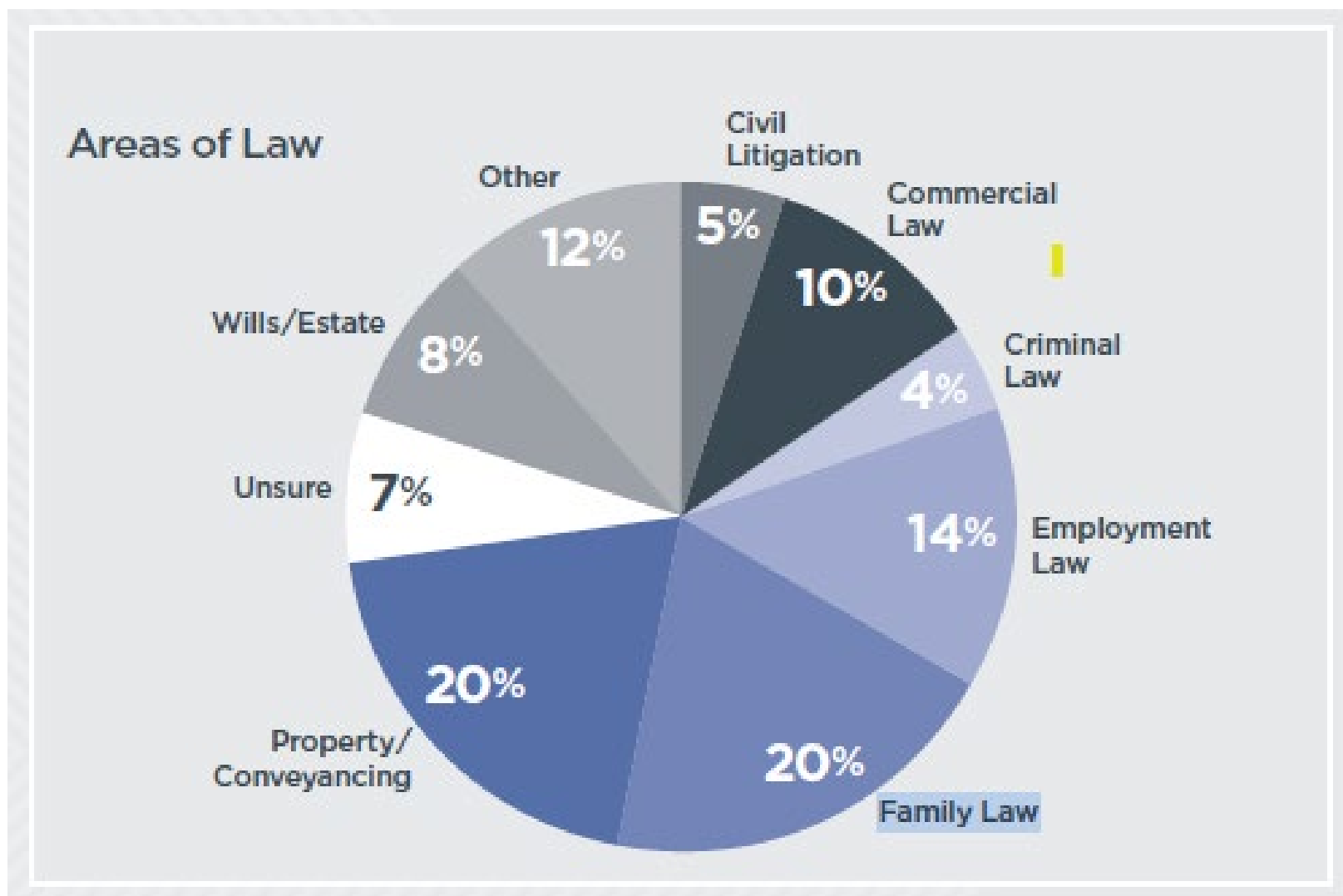
Advice | Transactions | Disputes



Overview

- Family law stats
- Professional discipline landscape
- Significant decisions in 2024 and 2025
 1. Use of AI
 2. Filing evidence
 3. Courteous communication
 4. Confidentiality and restraints from acting
 5. Costs
 - a. Disclosure
 - b. Ongoing disclosure
 - c. Trust transfers
 6. File maintenance
- Takeaways

Family law stats



ACT Law Society Annual Report 2024

Types of complaints (%)



ACT Law Society Annual Report 2024

Professional discipline landscape

Sources of obligations

- Legislation regulating the legal profession and subordinate legislation, for example:
 - Legal Profession Acts
 - Uniform Law
 - Australian Solicitors' Conduct Rules
- Common law
- Note also: Court rules and practice directions

Who is required to comply with ethical obligations:

- Australian legal practitioners
- Employees of Australian legal practitioners

Some terminology

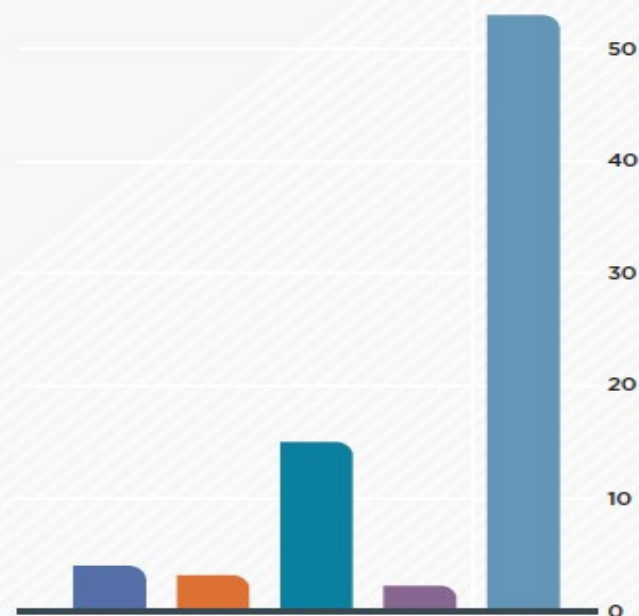
- ***unsatisfactory professional conduct*** includes conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

- ***professional misconduct*** includes—
 - unsatisfactory professional conduct, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
 - conduct whether occurring in connection with the practice of law or otherwise that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

Determination of complaints

s.399 dismissal:	53
s.412 dismissal:	15
s.400 withdrawal:	2
s.413 - <i>Summary Conclusion</i> :	3
s.419 - <i>Referral to ACAT</i> :	4

Complaints finalised



Professional discipline landscape

■ **S 399 dismissal**

- Frivolous or vexatious
- Lacking in substance
- Subject of previous complaint

■ **S 412 dismissal**

- No misconduct
- Human error

■ **S 413 summary conclusion**

- Courtesy
- Cost disclosure
- Lack of competence and diligence
- Failure to provide advice or follow instructions
- Delay
- Contacting another practitioner's client

■ **S 419 referral to ACAT**

- Repeated unsatisfactory professional conduct
- Gross neglect and delay
- Conflicts
- Breach of confidentiality
- Breach of undertaking
- Trust account breaches
- Bullying and harassment
- Dishonesty

Artificial intelligence and lawyers' duties

What is AI?

Blackburn Lecture 2024

Do lawyers have a future? Legal practice in the age of AI

Anne Trimmer AO

- At its broadest, artificial intelligence, or AI, is defined as technologies and systems comprising software and/or hardware that can learn to solve complex problems, make predictions or undertake tasks that require human-like sensing (such as vision, speech, and touch), perception, cognition, planning, learning, communication, or physical action.
- The subset of AI that has attracted interest, and debate, is generative AI (**Gen AI**) which uses deep learning algorithms to generate new outputs based on large quantities of existing or artificially created input data. These outputs can include multiple modes such as text, images, audio or video. Gen AI systems have been trained on massive amounts of data, and work by predicting the next word or pixel to produce a creation.
- **As the Law Society (of England and Wales) succinctly puts it, traditional AI recognises, while generative AI creates. Generative AI has the capacity to create new content based on the data that has been fed into it. However, it does not have the capacity to validate or check its outputs.**

Blackburn Lecture 2024

Do lawyers have a future? Legal practice in the age of AI

Anne Trimmer AO

- AI language models that operate as generative pretrained transformers (**GPTs**) are a group of language models 'pre-trained' on a large data set to generate human-like text responses.
- A large language model (**LLM**) is an AI system trained on an exceptionally large amount of data. It uses machine learning to conduct a probability distribution over words to predict the most likely next word in a sentence based on the previous entry. Language models learn from text and can be used for producing original text, predicting the next word in a text, speech recognition, optical character recognition and handwriting recognition.
- Familiar large language models include ChatGPT, developed by OpenAI, and Gemini (formerly known as Bard), developed by Google. There are now many other LLMs with names as diverse as BERT, Claude, and Ernie.

What duties might be engaged from the use of AI?

4.1 A solicitor must also—

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client,
- 4.1.2 be honest and courteous in all dealings in the course of legal practice,
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible,
- 4.1.4 avoid any compromise to their integrity and professional independence, and
- 4.1.5 comply with these Rules and the law.

-
- Diminish the public confidence in the administration of justice – r 5
 - Supervision – r 37
 - Confidentiality – r 9
 - Duty to the Court – r 3, 19

Current guidelines for use of AI

- NSW, Victoria and Queensland – *Statement on the use of Artificial Intelligence in Australian Legal Practice*
- NSW – *A solicitor's guide to the responsible use of Artificial Intelligence*
- NSW Bar Association – *Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice*

General summary of guidelines

- Investigate the technology before using
- Maintaining client confidentiality
- Providing independent advice
- Honesty and delivering legal services competently and diligently
- Implement clear, risk based policies
- Limit use of AI to low risk tasks
- Transparency

Court protocols

- NSW
 - Supreme Court of NSW - Practice Note SC Gen 23 – Use of Generative Artificial Intelligence
 - District Court - General Practice Note 2 - Generative AI Practice Note and Judicial Guidelines
 - Land and Environment Court - Use of Generative Artificial Intelligence
 - NSW Civil and Administrative Tribunal - Procedural Direction 7 - Use of Generative Artificial Intelligence (Gen AI)
- Victoria
 - Supreme Court of Victoria - Guidelines for litigants: responsible use of artificial intelligence in litigation
 - Victorian County Court - Guidelines for litigants: responsible use of artificial intelligence in litigation
- Queensland
 - The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers
- Pending
 - Federal Court of Australia see Notice to the Profession - Artificial intelligence use in the Federal Court of Australia
 - Supreme Court of Western Australia
 - Supreme Court of South Australia

General summary of protocols

- Understand tools, limitations, and risks
- Be aware of confidentiality - not guaranteed
- NSW - General prohibition of use of generative AI in relation to material subject to *Harman* undertaking
- NSW - Prohibition on use to prepare affidavits, witness statements, expert reports and similar
- NSW - Use for submissions or similar subject to disclosure requirements – author to verify in the document that all references exist, are accurate and relevant
- Need to exercise professional judgment and skill

Mata v Avianca Inc (2023)

- Mata sued the airline Avianca, saying he was injured when a metal serving cart struck his knee during a flight.
- Mr Mata's lawyers submitted an "Affirmation of Opposition" in relation to a motion to dismiss that cited more than half a dozen relevant court decisions, which did not exist.
- Lawyers sanctioned for essentially misleading the Court ("subjective bad faith")
- Sanction
 - \$5,000 fine
 - Required to write to client and judges improperly identified as having handed down the decisions

Dayal [2024] FedCFamC2F 1166 (27 August 2024)

- Solicitor representing a husband provided the court with a list of prior cases and summaries that had been requested by Justice Humphreys in relation to an enforcement application in the case.
- Solicitor used artificial intelligence software and it generated inaccurate citations and summaries.
- On 19 August 2025, the Victorian Legal Services Board varied the practising certificate of practitioner resulting in him:
 - no longer being entitled to practise as a principal lawyer
 - no longer being authorised to handle trust money
 - no longer operating his own law practice
 - only practising as an employee solicitor
 - undertaking supervised legal practice for a period of two years
 - both the practitioner and his supervisor reporting to the Victorian Legal Services Board on a quarterly basis during the period of supervised legal practice.

JNE24 v Minister for Immigration and Citizenship

[2025] FedCFamC2G 1314

- Solicitor referred to the Legal Practice Board of Western Australia for submitting court documents that contained four citations that either could not be identified or did not appear to correlate with the relevant principles his client's case relied on.
- Judge Gerrard said:
 - placing the false authorities before the Court was the issue;
 - it is not sufficient to simply check that the cases cited were not fictitious;
 - there was potential for the court to be “embarrassed” and the administration of justice risked being compromised; and
 - false citation also “wastes the time and resources of opposing parties and the court”.
- Solicitor was ordered to provide a full reimbursement to his client and to personally pay costs in the total sum of \$8,371.30.

Other examples

- ***Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFam C2G 95**
 - Lawyer submitted application and submissions containing fake citations and quotes.
 - Fell short of standard of competence and diligence and duty to Court.
 - Referred to NSW regulator.
- ***DPP v Khan* [2024] ACTSC 19**
 - Sentencing hearing.
 - Character references produced using Chat GPT.
 - Counsel informed the Court the documents had not been prepared using a large language model.
 - Court found personal references in sentencing should not be generated using LLM.
 - Critical of counsel for failing to make proper enquiries to inform the Court whether LLM had been used.
- ***Murray on behalf of the Wamba Wemba Native Title Claim Group v State of Victoria* [2025] FCA 731**

Filing evidence and courtesy in correspondence

Rule 17.1 Independence – avoidance of personal bias

A solicitor representing a client in a matter that is before the court must not act as the mere mouthpiece of the client or of the instructing solicitor (if any) and must exercise the forensic judgments called for during the case independently, after the appropriate consideration of the client's and the instructing solicitor's instructions where applicable.

Rule 19 Frankness in Court

19.1 A solicitor must not deceive or knowingly or recklessly mislead the court.

19.2 A solicitor must take all necessary steps to correct any misleading statement made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading.

Also, rule 3 – A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

Rule 4 – Fundamental ethical obligations

- 4.1 A solicitor must also —
 - 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client,
 - 4.1.2 be honest and courteous in all dealings in the course of legal practice,**
 - 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible,
 - 4.1.4 avoid any compromise to their integrity and professional independence, and
 - 4.1.5 comply with these Rules and the law.

Legal Services Commissioner v Murray [2025] QCAT 292

Issue 1:

- Preparing and filing an affidavit for a client that was misleading and contained irrelevant and scandalous material – professional misconduct.
- *[39] A solicitor preparing an affidavit on behalf of a client and witnessing a client executing an affidavit should be mindful of whether there is anything in the affidavit which is misleading or false.*
- *[41] A solicitor is permitted to question and test evidence to be given by a witness and is permitted to draw to the witness' attention inconsistencies and other difficulties with the evidence.*
- *[51] A further issue arises where a solicitor witnesses an affidavit where they know that a statement contained in the affidavit is false.*
- See also [67]

Legal Services Commissioner v Murray [2025] QCAT 292

Issue 2:

- Sending correspondence to another practitioner that was inappropriate and discourteous – unsatisfactory professional conduct.
- LSC contended:
 - used rude or intemperate language - ‘nonsensical’;
 - deflected responsibility for the preparing and filing of the Affidavit; and
 - criticising [the opposing solicitor’s] service of documents and implying that the opposing solicitor’s understanding of the rules of service was “deficient”.

-
- *[77] In the context of family law proceedings, the obligation for legal practitioners to maintain courtesy in dealings with other legal practitioners is of particular importance. That is not to detract from the obligation in other contexts. However, the subject matter in family law proceedings means that there is often heightened emotions between the parties. Legal practitioners should remain dispassionate and objective, and the maintenance of courtesy is a critically important part of legal practice in matters involving family law disputes.*
 - *[78] The relevant part of the Respondent's correspondence, while on the lower end of the potential scale, is inappropriate and discourteous.*
 - *[86] In the family law context where dispute resolution processes are an important part of the court processes, the Respondent's conduct was likely to have a detrimental impact on the prospects of the Proceedings being settled as it needlessly antagonised the other party's solicitor.*

Rule 32 – Unfounded allegations

A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.

Rule 34 – Dealing with other parties

A solicitor must not in any action or communication associated with representing a client:

- (a) make any statement which grossly exceeds the legitimate assertion of the rights or entitlements of the solicitor's client, and which misleads or intimidates the other person;
- (b) threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the solicitor's client is not satisfied; or
- (c) use tactics that go beyond legitimate advocacy and which are primarily designed to embarrass or frustrate another person.

Confidentiality and restraints

Mihova v Mihova [2025] FEDCFAMC1F 113

- The wife had a 45-minute consultation with Ms Guo, a solicitor at Longton Legal, back in September 2024, regarding her family law matter. She later chose a different firm and did not retain Longton Legal. The husband later engaged Longton Legal for the same dispute, and Ms Guo is not involved in his representation.
- The wife argued Longton Legal should be disqualified due to a potential breach of confidentiality and to preserve the appearance of justice, since she had shared confidential information with the firm in her earlier consultation.
- Application dismissed.

Costs

Cost disclosure

Legal Profession Act 2006 (ACT)

- **S 269**
 - Basis on which costs will be worked out
 - Estimate of total costs or a range of estimates and major variables
 - Range of costs that might be recovered if successful
 - Range of costs that might be ordered to pay if unsuccessful
- **S 270**
 - Disclosure if another law practice is to be retained – e.g. the barrister must disclose to the firm details of the barrister's legal costs and billing arrangements and the firm must disclose the details to the client
- **S 271**
 - Made in writing before, or as soon as practicable after, the law practice is retained in the matter
- **S 277**
 - Effect of failure to disclose –client need not pay the costs unless they have been assessed.

Ongoing disclosure

- **S 276** - Disclose in writing of any substantial change to anything included in a disclosure as soon as reasonably practicable after the practice becomes aware of the change
- Demands for progress payments or the delivery of regular invoices for work already completed do not satisfy the requirements of providing updated disclosure
- The notion of a “significant change” is, in context, an important, material or noticeable alteration from a prior costs “disclosure”, which bears upon or informs the choice the client made regarding the client’s “legal options”. It may be a change, for example, regarding the basis on which legal costs will be calculated and/or the estimate of the total legal costs: see *Sanjiv v Coleman Greig Lawyers Pty Ltd* [2025] NSWSC 528 [372]

Federal Circuit and Family Court of Australia (Family Law) Rules 2021 R 12.06

- **Content of cost notices:**
 - The party's actual costs, both paid and owing, up to and including the event
 - The estimated future costs of the party up to and including each future court event
 - Any expenses paid or payable to an expert witness or, if those expenses are not known, an estimate of the expenses
 - In a financial proceeding a notice must specify the source of the funds for the costs paid or to be paid
- **Must be given to:**
 - Client
 - Served on other party
 - Filed with the Court
- **Different requirements for a party receiving legal aid and ICL**

Consequences of failure to disclose

- Often unsatisfactory professional conduct but substantial or consistent can be professional misconduct.
- See e.g. *Council of the Law Society of the ACT v Legal Practitioner M1* [2015] ACAT 78 at [65] and [70] the Tribunal stated the importance of providing cost disclosure in the following terms:
 - *The detailed provisions of the LPA regarding the advice that a practitioner must give to a client about the costs to be charged reflects both the importance of this matter to both of them, and to the difference in knowledge and ability to control costs in a matter such as acrimonious litigation. The fiduciary relationship between a practitioner and a client means that not only is the practitioner obliged to comply with the LPA, but that the practitioner must be able to carry out the work in accordance with an agreed rate of charging.*
 - *This case illustrates the confused and regrettable consequences of the Practitioner failing to comply with the provisions of the LPA, consequences which if they were followed would have avoided conflict about what the agreement as to costs was.*

Trust transfers

Holding, disbursing and accounting for trust money

- S 223 - A law practice must:
 - (a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and
 - (b) disburse the trust money only in accordance with a direction given by the person.
- S 229(1)(b) A law practice may do any of the following, in relation to trust money held in a general trust account or controlled money account of the practice for a person: ... withdraw money for payment to the practice's account for legal costs owing to the practice if any relevant provision of this Act is complied with;

Reg 62(3) and (5)

The law practice may withdraw the trust money:

- the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
- the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or
- the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person.

And if before effecting the withdrawal, the practice gives or sends to the person—

- a request for payment, referring to the proposed withdrawal; or
- written notice of the proposed withdrawal and when it will occur.

Instructions

- if given in writing—must be kept as a permanent record; or
- if not given in writing—either before, or not later than 5 working days after, the law practice effects the withdrawal, must be confirmed in writing and a copy kept as a permanent record.

Reg 62(4)

The law practice may withdraw the trust money—

- if the practice has given the person a bill relating to the money; and
- if:
 - the person has not objected to withdrawal of the money not later than 7 days after being given the bill; or
 - the person has objected not later than 7 days after being given the bill but has not applied for a review of the legal costs not later than 60 days after being given the bill; or
 - the money otherwise becomes legally payable.

Council of the Law Society of the ACT v LP 012022

[2025] ACAT 14; [2025] ACAT 15

- Scheme of obtaining funds into trust and performing trust to office transfers without sending invoices to clients.
- Issues
 - Transfer of client funds in breach of trust account regulations on 50 occasions and in circumstances where the respondent dishonestly misappropriated clients' moneys knowing that they had no lawful entitlement to do so.
 - Failing to report 56 instances involving trust account irregularities to the Law Society.
 - The practitioner was dishonest in dealings with the Law Society during its investigation.
 - Other issues
 - Outcome
 - Professional misconduct
 - Strike off recommendation
 - Costs

File maintenance

***Council of the Law Society of New South Wales v Lee* [2024] NSWCATOD 108**

- Manager appointed to practice.
- Manager approved correspondence on two files but solicitor issued other correspondence.
- Declared that stamp duty had been paid when it had not to enable a settlement to occur.
- Failure to provide information to the regulator.
- Files stored at home in plastic container:
 - No matter register
 - Incomplete files – contracts, retainer/cost disclosure, invoices, advices, file notes, status of matter
 - Client names and contact details not recorded
- Practising when not entitled to do so.
- Engaged in legal practice without holding professional indemnity insurance.

Characterisation: Professional misconduct with respect to most grounds individually and globally

Sanctions:

- Reprimand
- Fine of \$10,000
- Course in practice management
- Cannot apply for a principal's practising certificate unless supervised for 5 years
- Costs fixed in the sum of \$10,000

Takeaways

Takeaways

- Know the rules that apply to the use of AI, how the tech works, and the risks.
- Interrogate affidavit evidence.
- Ensure all correspondence is courteous, including cautious use of work email address.
- Consider carefully:
 - the legitimate rights or entitlements of the client against the opponent before sending correspondence; and
 - the evidence in support of any allegations made against opponents.
- Second counsel serious allegations and 'heated' correspondence.
- Disclose, disclose, disclose.
- Ensure authority to transfer funds from trust to office.
- Good file maintenance.

Contact



Katie Binstock

Partner

T: +61 2 5135 8603

M: +61 447 328 813

E: kbinstock@tglaw.com.au



Thomson Geer

Lawyers

Advice | Transactions | Disputes



Law Society of the Australian Capital Territory
Level 4, 1 Farrell Place, Canberra City ACT 2601
Phone 02 6274 0333 | memberconnect@actlawsociety.asn.au

actlawsociety.asn.au