

# Financial protection, and related issues, for consumers of legal services in Victoria, Australia

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# Presentation Outline

1. The operation of the Fidelity Fund
2. Challenges in compensating consumers
3. 'Solicitor Loans'
4. Responses to Criminal Conduct



# The operation of the Fidelity Fund



The Fidelity Fund is established under the *Legal Profession Uniform Law Application Act 2014* (Vic).

The Fidelity Fund consists of:

- (a) the money paid by practitioners as annual contributions or levies;
- (b) the interest or other income accruing from investment of the money in the Fidelity Fund; and
- (c) Other

The Fund is administered by the Victorian Legal Services Board. Presently has four employees whose principal roles are to administer the Fund.



# Making a claim



The claimant must have an entitlement to make a claim.



The claim must be made in time (*or ought to be accepted out of time, that is notification to the Board of the alleged default within 6 months of becoming aware*).



Victoria is the appropriate jurisdiction to lodge a claim.



The claim is in respect of trust money or trust property received by the law practice in the course of legal practice.



There has been a failure of the law practice to pay or deliver trust money or fraudulent dealing with trust property, where the failure arises from an act or omission of an associate that involves fraud or dishonesty.



# Exemptions to making a claim



Money was provided to the law practice in relation to a financial service (in specific circumstances)

- (i) Money was provided to the law practice in relation to an investment purpose unless it was provided and invested in the ordinary course of legal practice for the ancillary purpose of maintaining or enhancing the value.
- (ii) Money was provided to the law practice in relation to a managed investment scheme, or mortgage financing, undertaken by the law practice.
- (iii) Strict reduction of a claim
- (iv) Claimant has been, or likely to be, compensated for their pecuniary loss via other amounts or the value of other benefits



# Discretion for exclusion/reduction of a claim



The claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim.

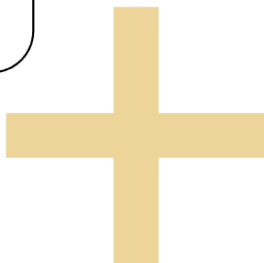
The claimant was negligent.

The claimant knew or ought reasonably to have known the relevant transaction was illegal.

The claimant knew or ought reasonably to have known that the law practice did not keep or destroyed proper and usual records

The claimant unreasonably failed to mitigate their losses.

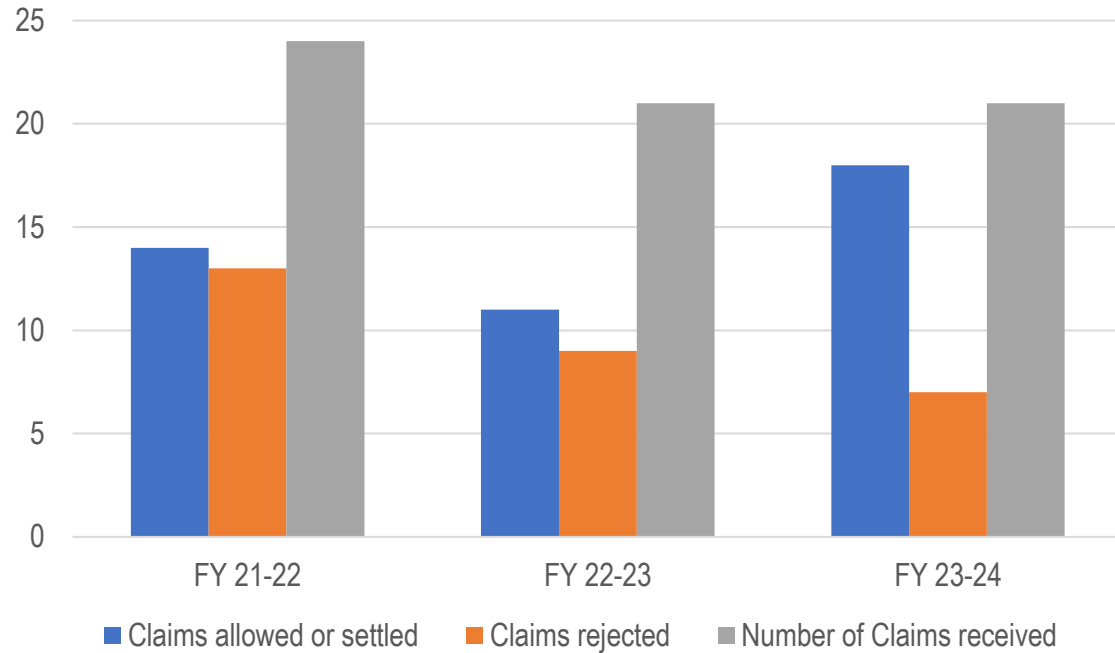
The claimant unreasonably hindered the claim investigation



# Fidelity Fund Statistics



### Fidelity Fund claims



### Quantum of claims resolved



# Trends in Fidelity Fund claims



- Law practices engaging in solicitor lending and/or mortgage financing
- Claims by 'questionable' Claimants in relation to dishonest practitioners – which gives rise to challenges in the handling of claims
- Rise in claims involving the conduct of junior solicitors and/or conveyancers/clerks who have been dealing with trust monies with no or minimal supervision
- Very large claims including a \$25m+ which will be very resource intensive





# AMS Ivanhoe Lawyers (October 2023) – Melbourne suburban law practice



- One of the two principals was John Adams, who was a respected figure in various well established Melbourne circles.
- He had since at least the 1990's been running a 'Mortgage Loan' business.
- He would connect up borrowers with lenders apparently secured by real property mortgages. He paid above standard market interest.
- The Loan Business operated on a relatively small scale for much of its life, however, in recent times the funds invested ballooned up to \$80m +.
- Many of the investors had been part of the business for several years.
- In late October 2023, Mr Adams died, and Loan Business repayments for October of approximately \$90k fell due.....





# Characteristics of the 'Loan Business' (Ponzi Scheme)

- 1 The security (real property mortgages) were fictitious.
- 2 Investors believed they were depositing the funds into the law practice's trust account, however, whilst the bank account used was called *AMS Ivanhoe Lawyers Trust Account* it was not the law practice trust account.
- 3 In recent years, the monies 'returned' to investors were not interest on investments, but rather, the principal of other investors.
- 4 The law practice has now been wound up, Supreme Court litigation is on foot.



# How did the AMS Matter occur?



- He was a charming master of deception. Fake mortgages were 'prepared' and 'discharged' as required, eg superannuation fund auditors would attend the law practice periodically to audit the 'secured loan'.
- High trust from investors.
- He did not use the law practice trust account so it could not be detected through normal trust account review processes.
- It had historically operated 'successfully'.
- *A fool and their money are soon parted* = returns were generous
- Should Fidelity Funds underwrite these losses ie bad faith investments as opposed to failed investments?



# Role of VLSB in taking prosecutorial action against law practice wrongdoers



- ❖ Historically in Victoria, only the police investigated and prepared Briefs of Evidence for law practice fraud.
- ❖ Often these investigations were protracted and did not capture the gravity of the offending.
- ❖ In around 2016, the Victorian Legal Services Board took steps to develop its capacity to formally investigate these matters and prepare Briefs of evidence for the Office of Public Prosecutions.
- ❖ Case Study: *Director of Public Prosecutions v George James Bouhalis* [2019] VSC 684
- ❖ Case Study: *Director of Public Prosecutions v Athena Razos* [2023] VCC 1077



# Challenges for legal regulators in prosecuting fraud and Benefits



## Challenges

- Legislative impediments
- Resourcing, especially staff
- Liaising with Police
- Liaising with the State



## Benefits

- Action occurs in a more timely manner
- Investigatory work is often occurring through the Fidelity Fund
- Gain insights into the dishonest practices being utilized
- Enhances trust and confidence in the legal regulator







# Questions?

