

Note: this document is an exact replica of the survey form that has been completed by a range of legal practitioners, law students, members of the public and regulators. It has been altered only to include the results to 31 October 2006 and some brief commentary about those results. The survey is still available on-line.



SURVEY

(Example – instructions for one of the groups surveyed)

1. This survey consists of a series of fact situations, and you are asked to give your opinion by ticking “Yes” or “No” beneath each scenario.
2. Please complete this survey prior to the seminar
3. Please retain the completed survey for reference during the seminar (however, please do not make any additional changes during the seminar)
4. At completion of the seminar, please return the survey as instructed

Please Note:-

Participation in this survey is entirely voluntary. You may choose not to respond to any questions, or only to some of them. However, you are encouraged to respond to as many questions as you can. Please do not let your response be influenced by what you suppose others might think. It is *your* opinion that matters! Your participation in this survey is anonymous. This means that you will not be identified in any way as a result of responding to these questions.

The results of this survey will be published on the website of the Legal Services Commission (Queensland) in a short report which will be updated periodically. You are invited to consult this website whenever you choose. The address is <http://www.lsc.qld.gov.au>

We thank you for your time and consideration. Your answers will help us build up a valuable and useful view of what a range of people in various groups and professions think about situations such as those described.

Background and purpose: survey on “unsatisfactory professional conduct”

The *Legal Profession Act 2004* requires the Legal Services Commission to ask a fundamental question of every complaint it receives about the conduct of legal practitioners. That question is: ***Does the practitioner’s conduct fall 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?*** (*Legal Profession Act 2004* at section 244)

The Survey

We are gathering opinions on whether the conduct described in each of the attached scenarios falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian practitioner.

It may be helpful to keep in mind:

- The survey is completed anonymously. There is no possibility of linking answers with any individual person who responds to this survey.
- There are ***no*** right or wrong answers – we are interested only in your personal opinion.
- You are asked to answer YES (that is, the conduct ***falls short*** of the standard) or NO (that is, the conduct ***does not fall short*** of the standard).

It may also be helpful to know that a YES answer means, in effect, that you are saying the practitioner’s conduct ***may*** warrant a disciplinary consequence. That consequence, if there is one, may for example take the form of an order that the practitioner attend a training course, or that he or she does (or refrains from doing) something in connection with their practice, or be reprimanded or possibly be fined.

A NO answer means, in effect, that you are saying that the practitioner’s conduct ***does not*** warrant any disciplinary action.

We have attached sixteen different scenarios. Please state, in relation to each scenario, whether you believe that ***the practitioner’s conduct falls short of the standard of competence and diligence that you would expect of a reasonably competent Australian legal practitioner*** - YES or NO.

The Survey – the scenario and the results to date

The survey has been completed by 542 respondents as at 31 October 2006 – 238 lawyers; 212 final year law students; 58 members of the public and 34 staff of the regulatory authorities. Some of the surveys were completed in hardcopy and some on-line.

SCENARIO ONE

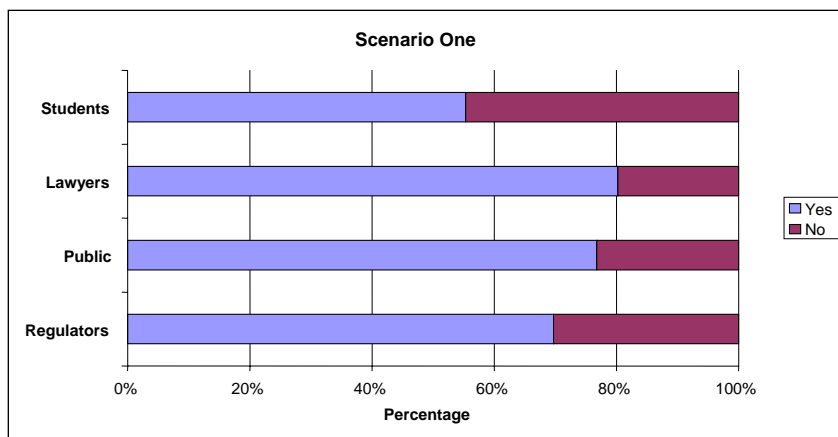
A legal practitioner writes to a real estate company saying that the practitioner's client Ms Smith is aware the real estate company received stolen confidential information from Mr Jones, resulting in a loss of \$150,000 for Ms Smith. The practitioner intends to submit a formal complaint to the Office of Fair Trading about the cooperation of the real estate company with Mr Jones in the fraud, writing to the real estate company:

"Should you not wish to have this matter proceed then you can save yourself both embarrassment and the possibility of having to "show cause" why your Real Estate Licence should not be cancelled, by contacting this office with a view to financial settlement."

Question: *Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?*

Please Circle: Yes No

Results



Respondents	Yes	No
Students (215)	55.3%	44.7%
Lawyers (238)	80.3%	19.7%
Members of the public (56)	76.8%	23.2%
Regulators (33)	69.7%	30.3%
Total for all groups	69.4%	30.6%

Comment:

There is a significant difference between the responses across some of the groups. In particular, more than three quarters of the lawyers but just over half the students saw the conduct as problematic, while two-thirds of the public and regulators found the conduct problematic. **The majority of respondents across all 4 groups found this conduct problematic.**

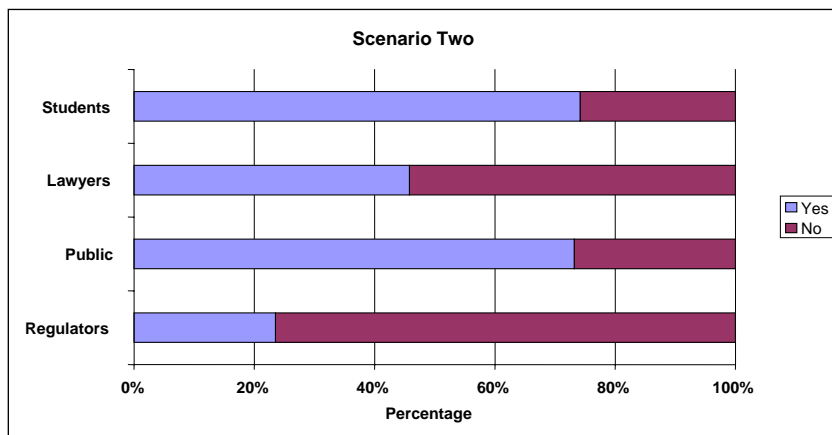
SCENARIO TWO

A practitioner represents his client, Mr Brown, in a personal injuries matter and fails to enter into an agreement with Mr Brown on how he will provide his services, and the cost of his services. He obtains a settlement in the matter with which Mr Brown is satisfied and in full agreement, and he charges Mr Brown in accordance with the appropriate scale. Mr Brown pays the account without seeking an itemised account.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (217)	74.2%	25.8%
Lawyers (238)	45.8%	54.2%
Members of the public (56)	73.2%	26.8%
Regulators (34)	23.5%	76.5%
Total for all groups surveyed	58.5%	41.5%

Comment:

There is a significant difference between the responses across the groups. Almost 3 in 4 of the students and members of the public found the conduct to be problematic but just under half the lawyers and less than one quarter of the regulators. **The respondents were divided on whether they found the conduct problematic.**

SCENARIO THREE

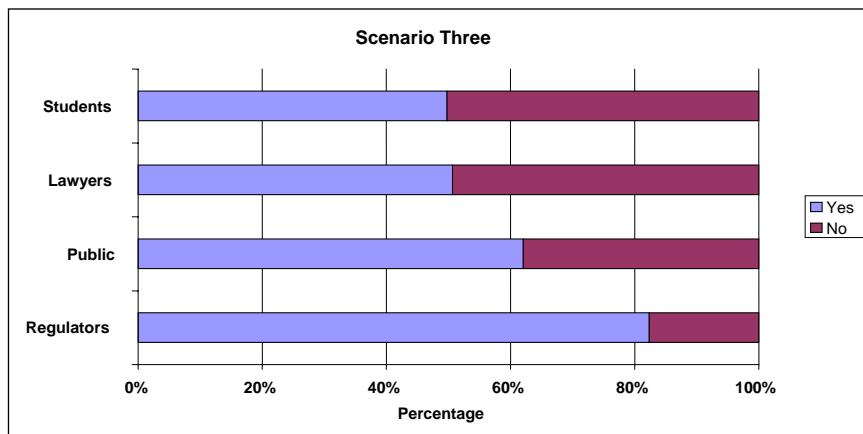
A sole practitioner accepts Mr Green's retainer to act for him in a family law dispute about where his son should live. Mr Green arrives at the practitioner's office one afternoon without an appointment. As the practitioner is committed to previous appointments and is unable to see him, Mr Green leaves some papers which the practitioner asks his secretary to put on the file.

The practitioner goes home after his final appointment that afternoon with the intention of reading Mr Green's documents the following morning. Unfortunately, the practitioner becomes sick overnight and does not return to the office for a couple of days. Upon returning to the office on the fifth day he reads Mr Green's file only to discover that the documents left by Mr Green had included an application for residence by his estranged wife that had been returnable in the Court the previous day. Mr Green believes that the practitioner's conduct in failing to appear had cost him any chance of obtaining a residence order in his favour.

***Question:** Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?*

Please Circle: Yes No

Results



Respondents	Yes	No
Students (219)	49.8%	50.2%
Lawyers (235)	50.6%	49.4%
Members of the public (58)	62.1%	37.9%
Regulators (34)	82.4%	17.6%
Total for all groups surveyed	53.5%	46.5%

Comment:

There is a significant difference between the responses across the four groups. **A large majority of regulators and a slight majority of members of the public found the conduct to be problematic, but only half the students and lawyers.**

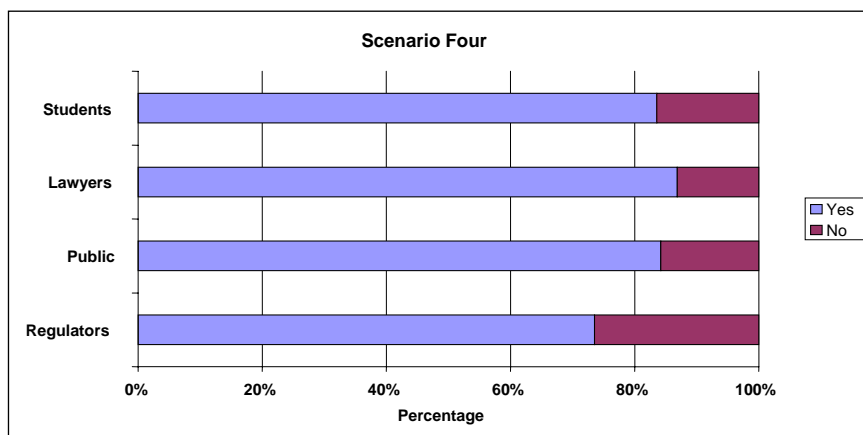
SCENARIO FOUR

A practitioner had acted for Mr & Mrs Black over a number of decades for all of their legal and business affairs and they had become good friends. As a result of the friendship, Mr Black wanted to bequeath some property to the practitioner, which had a value of several hundred thousand dollars. Mr & Mrs Black were quite wealthy and had no dependants. The practitioner drew the Will giving effect to Mr Black's instructions in which he was appointed co-executor.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (219)	83.6%	16.4%
Lawyers (236)	86.9%	13.1%
Members of the public (57)	84.2%	15.8%
Regulators (34)	73.5%	26.5%
Total for all respondents	84.4%	15.6%

Comment:

There is no significant difference between the groups. All groups find the behaviour problematic, although the regulators were more divided than the students, lawyers and members of the public. **A large majority of respondents across all four groups found this conduct problematic.**

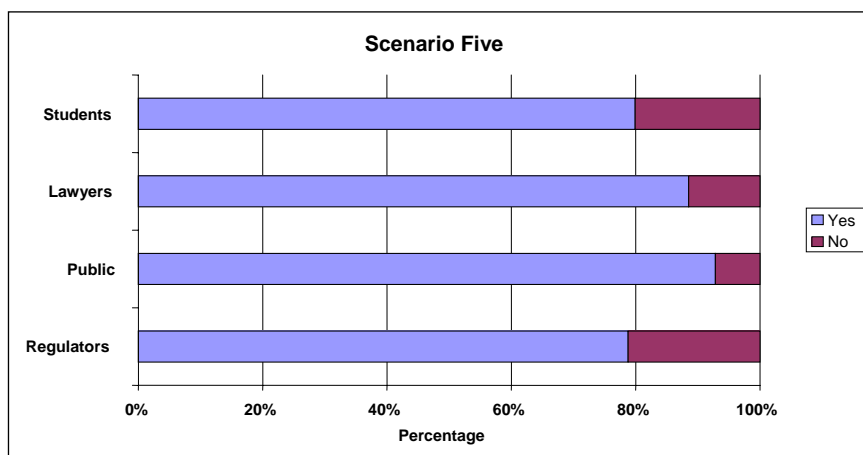
SCENARIO FIVE

A practitioner is representing Ms Green in a family law matter. The practitioner warns one of her own friends, who is currently dating Ms Green's ex-husband that Ms Green had indicated he was violent, although the practitioner did not seek permission to disclose that information to her friend. After being advised of the accusation by the practitioner's friend the ex-husband confronts Ms Green (the practitioner's client).

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (219)	79.9%	20.1%
Lawyers (235)	88.5%	11.5%
Members of the public (56)	92.9%	7.1%
Regulators (33)	78.8%	21.2%
Total for all respondents	84.9%	15.1%

Comment

All groups found the conduct problematic, although fewer of the students and regulators than the lawyers and members of the public. **The majority of respondents across all four groups found this conduct problematic.**

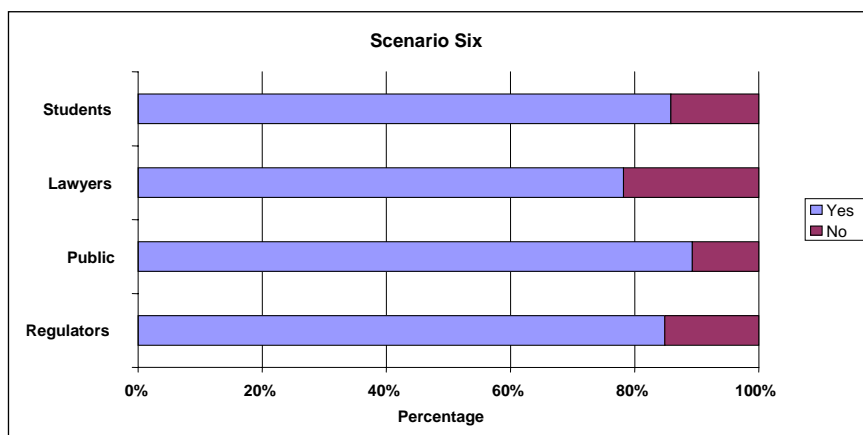
SCENARIO SIX

A practitioner acted for Mr & Mrs Jones in relation to the sale of their property. Mr & Mrs Jones were moving to England and instructed the practitioner to electronically deposit the sale funds into their account in Australian dollars. The funds were incorrectly deposited into Mr & Mrs Jones's account in English pounds. As a result, and due to fluctuations in the conversion rate, Mr & Mrs Jones suffered a loss of \$15,000.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (219)	85.8%	14.2%
Lawyers (234)	78.2%	21.8%
Members of the public (56)	89.3%	10.7%
Regulators (33)	84.8%	15.2%
Total for all respondents	82.8%	17.2%

Comment:

There is a significant difference between the responses across groups (although borderline). **A majority of all groups, but more members of the public, students, and regulators found the conduct to be problematic than lawyers.**

SCENARIO SEVEN

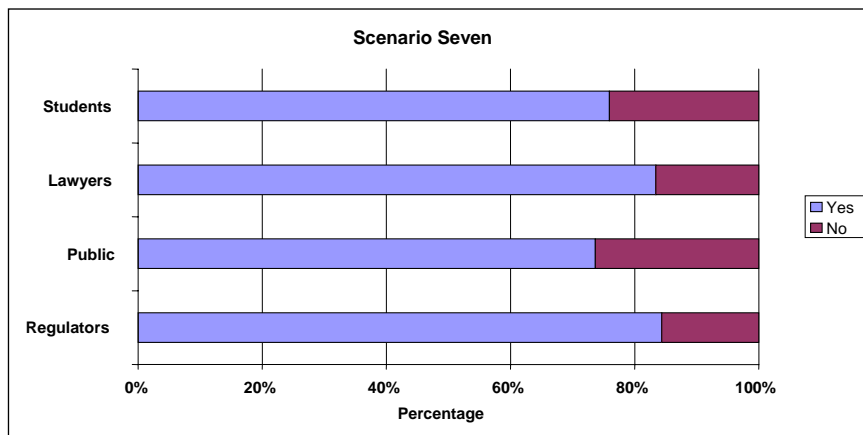
A practitioner acts for the purchaser of a unit off the plan. The purchase price of the unit is \$400,000. The purchaser has paid a deposit of \$50,000 to the vendor's solicitor. Settlement figures provided by the vendor's solicitor prior to settlement state the purchaser has paid a deposit of \$150,000 and is only required to pay a balance sum of \$250,000, instead of \$350,000.

The practitioner advised the purchaser that the vendor's solicitor has made an error. The purchaser instructs the practitioner not to tell the vendor of the error and to tender a bank cheque in the sum of \$250,000 at settlement. The practitioner does as requested.

***Question:** Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?*

Please Circle: Yes No

Results



Respondents	Yes	No
Students (216)	75.9%	24.1%
Lawyers (235)	83.4%	16.6%
Members of the public (57)	73.7%	26.3%
Regulators (32)	84.4%	15.6%
Total for all respondents	79.4%	20.6%

Comment:

There is a significant difference between the responses. **The large majority of all groups found the conduct to be problematic, but the members of the public and students were more varied in their responses.**

SCENARIO EIGHT

A practitioner acts for the wife in a matrimonial property settlement. The father of the wife loaned funds to the wife and her husband to purchase the matrimonial home.

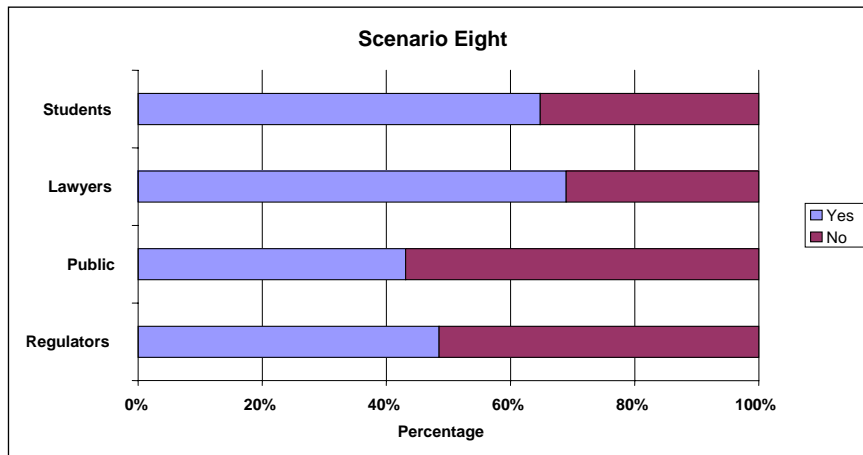
The Family Court orders that the matrimonial home be sold and that the sum of \$15,000 be paid to the wife's father from the proceeds of the sale of the home and for the balance of sale proceeds to be paid as 60% to the wife and 40% to the husband. The Order does not direct the practitioner to make the payment to the wife's father - it merely provides for the payment to be made from the sale proceeds.

The wife instructs the practitioner to pay her the money that is payable to her father on the basis that she will then pay her father. The practitioner complies with the wife's instructions and she then neglects to pay her father.

Question: *Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?*

Please Circle: Yes No

Results



Respondents	Yes	No
Students (213)	64.8%	35.2%
Lawyers (232)	69.0%	31.0%
Members of the public (58)	43.1%	56.9%
Regulators (33)	48.5%	51.5%
Total across all respondents	63.2%	36.8%

Comment:

There is significant difference between students and lawyers on the one hand and members of the public and regulators on the other – a much larger majority of lawyers and students found the conduct to be problematic. **The majority of students and lawyers – about two-thirds - found this conduct problematic, but fewer than half the regulators and members of the public.**

SCENARIO NINE

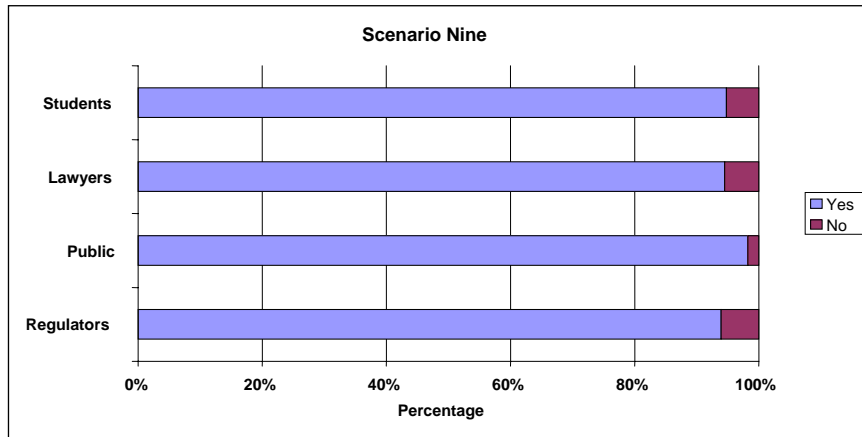
A practitioner acts for the vendor in a real estate property conveyance. The purchaser is self-represented. The transaction was settled on the basis of an undertaking by the practitioner to locate and forward to the purchaser the Certificate of Title, apparently held by the practitioner in safe custody.

Several months after settlement, the purchaser contacted the practitioner enquiring as to the whereabouts of the certificate. The practitioner advised she could not locate the certificate and would obtain a replacement. Over the following 12 months, despite repeated requests by the purchaser, the practitioner had not obtained a replacement certificate. When she finally did, she rendered an account to the purchaser for the work involved in obtaining the replacement.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (211)	94.8%	5.2%
Lawyers (236)	94.5%	5.5%
Members of the public (57)	98.2%	1.8%
Regulators (33)	93.9%	6.1%
Total for all respondents	95.0%	5.0%

Comment

There is no significant difference between the groups. **The vast majority of all four groups of respondents found the conduct problematic.**

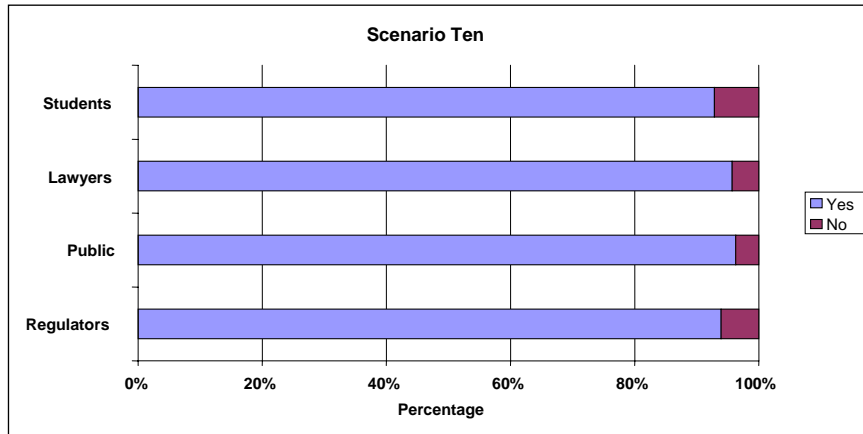
SCENARIO TEN

A practitioner neglects to register a mortgage to secure a loan by their client Ms Blue to Mr Brown. Mr Brown later borrows another sum from a loan company and a mortgage is registered in favour of the loan company in priority to Ms Blue's (unregistered) mortgage. When the secured property is subsequently sold, the remaining proceeds from the sale are insufficient to discharge Ms Blue's mortgage.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (210)	92.9%	7.1%
Lawyers (234)	95.7%	4.3%
Public (27)	96.3%	3.7%
Regulators (33)	93.9%	6.1%
Total for all respondents	94.4%	5.6%

Comment

There is no significant difference between the groups. **The vast majority of respondents in all four groups found this conduct problematic.**

SCENARIO ELEVEN

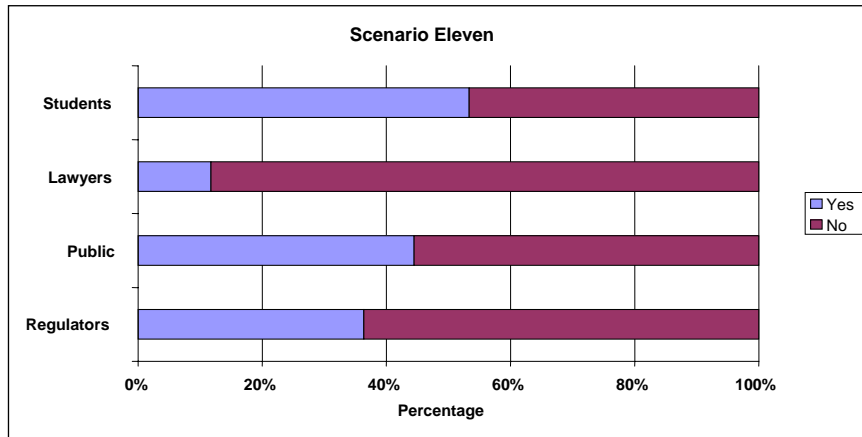
A practitioner acts for Mr and Mrs Smith, who are sole shareholders and directors of their \$2 company C Pty Ltd, and who are taking a lease of a commercial property. The lease documents are sent to the practitioner by the landlord's solicitors, Firm Green. The practitioner has received leases for corporate tenants from Firm Green before, and the leases have always included the documents needed for the directors personally to guarantee payments to be made by the corporate tenants under their leases. The documents for C Pty Ltd did not include a directors' guarantee.

The practitioner arranged for C Pty Ltd to execute the lease, and returned the documents to Firm Green without mentioning a directors' guarantee. Within a fortnight, Firm Green returned C Pty Ltd's copy of the lease, duly signed by the landlord, to the practitioner. There was still no mention of a directors' guarantee. Note: It is the Smiths' practitioner's conduct that you are assessing here.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (195)	53.3%	46.7%
Lawyers (230)	11.7%	88.3%
Public (27)	44.4%	55.6%
Regulators (33)	36.4%	63.6%
Total for all respondents	32.0%	68.0%

Comment

There is a significant difference between the responses across the groups. A small minority of the students found the conduct to be problematic but fewer than half the members of the public, only a third of the regulators and only a small minority of lawyers. **The majority of respondents in three out of four groups found the conduct non-problematic.**

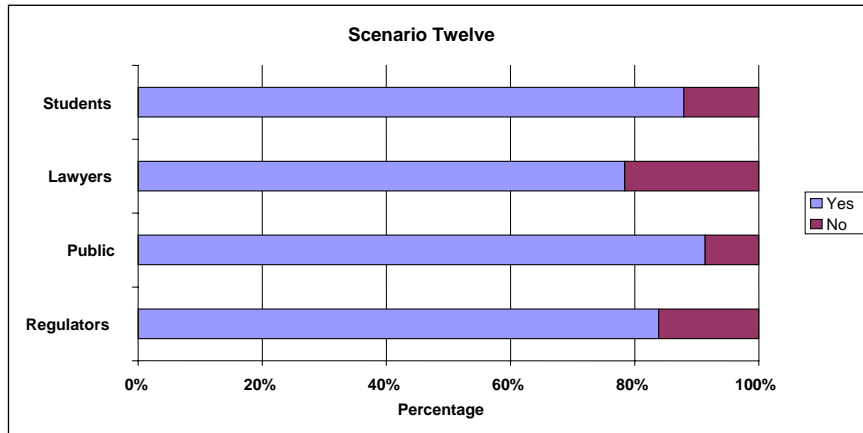
SCENARIO TWELVE

Ms Redd signs a client agreement with a practitioner in respect of the purchase of a commercial property. The practitioner advises Ms Redd that the cost estimate for the matter is \$5,000. At the conclusion of the transaction Ms Redd receives a bill for \$11,000 without receiving any prior communications about costs and with no explanation as to why the final bill is more than twice the estimated cost.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (207)	87.9%	12.1%
Lawyers (227)	78.4%	21.6%
Members of the public (58)	91.4%	8.6%
Regulators (31)	83.9%	16.1%
Total for all respondents	83.9%	16.1%

Comment

There is no significant difference between the groups. The vast majority of all four groups found the conduct to be problematic although the lawyers were more varied in their responses. **The majority of all four groups found this conduct problematic.**

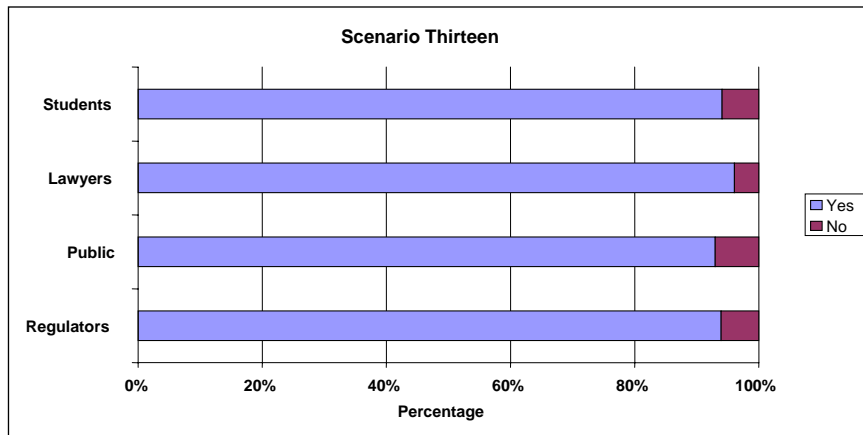
SCENARIO THIRTEEN

A practitioner receives instructions to act for Ms White. The practitioner has not provided a client agreement to Ms White. At the conclusion of the matter the practitioner renders an account for \$7,500 in the form of a lump sum. The account is challenged by Ms White in the Solicitors Complaints Tribunal. The account is reduced to \$4,000. The cost assessor calculates the assessments in accordance with the appropriate scale. The practitioner refuses to refund the difference.

Question: *Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?*

Please Circle: Yes No

Results



Respondents	Yes	No
Students (203)	94.1%	5.9%
Lawyers (230)	96.1%	3.9%
Members of the public (57)	93.0%	7.0%
Regulators (33)	93.9%	6.1%
Total for all respondents	94.8%	5.2%

Comment

There is no significant difference between the groups. **The vast majority of all four groups found the conduct problematic.**

SCENARIO FOURTEEN

Practitioner A acts for Mrs Davis and Practitioner B acts for Mr Davis in a family law matter. Practitioner A sells most of his other client files to practitioner B and, to help transfer files to practitioner B, becomes a consultant to B's firm.

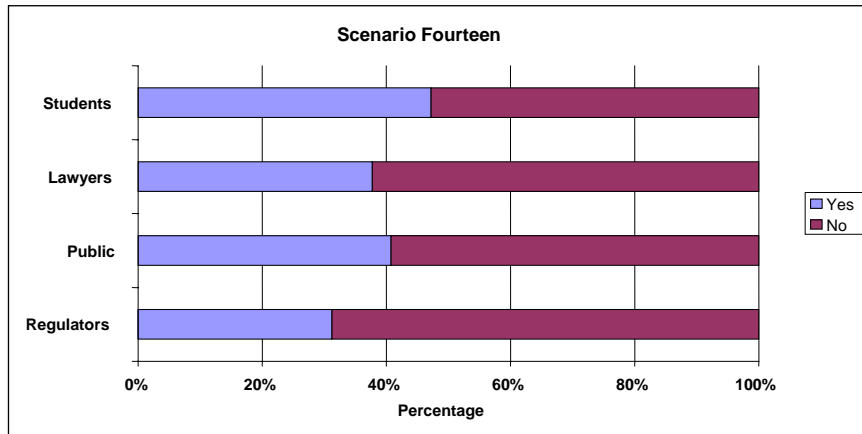
Practitioner A retains his own practice and a small number of files including the matter concerning Mrs Davis. In anticipation of this "merger", practitioner B advises Mr Davis to retain other solicitors and practitioner B terminates the retainer, forwarding all documents to the new solicitor. Practitioner A continues to represent Mrs Davis and Mr Davis's new solicitors object.

During the time that practitioner A was a consultant, and still representing Mrs Davis, he was rarely at practitioner B's office and had no access to any systems which might contain confidential information relating to Mr Davis. Further, practitioner B had instructed his staff not to discuss anything concerning Mr Davis with or in front of practitioner A.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (195)	47.2%	52.8%
Lawyers (220)	37.7%	62.3%
Members of the public (27)	40.4%	59.3%
Regulators (32)	31.3%	68.8%
Total for all respondents	41.4%	58.6%

Comment

There is a difference between the responses across the groups – slightly fewer than half the students but smaller minorities of lawyers, members of the public and regulators found the conduct to be problematic. **The majority of respondents in all groups find the conduct non-problematic, although in two of the four groups it is a small majority.**

SCENARIO FIFTEEN

Mr Black lost his driver's licence as a result of an accumulation of points. He instructed his practitioner to lodge an appeal against the loss of his licence. Mr Black paid the sum of \$600 into the trust account as a retainer. The appeal must be lodged in 28 days.

The next 27 days pass during which time Mr Black receives no communication from his practitioner. As a result Mr Black makes a number of attempts to contact his practitioner without success. In the afternoon of the 28th day, Mr Black is contacted by his practitioner who has

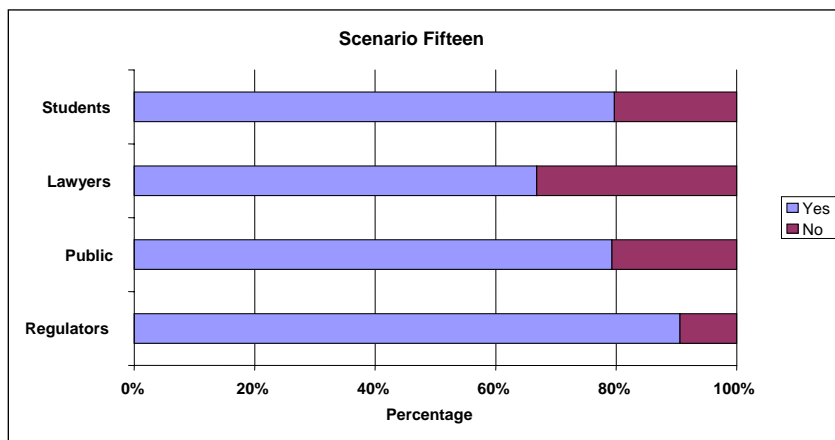
prepared the appeal documents. The practitioner tells Mr Black that he must meet him at the court as soon as possible so that the documents can be signed and lodged prior to the deadline.

Mr Black had to cancel appointments and travel as a matter of urgency to sign the documentation which was then lodged. Disgruntled by the way in which the matter had been handled, Mr Black terminated his retainer and made a complaint to the Queensland Law Society.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (207)	79.7%	20.3%
Lawyers (226)	66.8%	33.2%
Members of the public (58)	79.3%	20.7%
Regulators (32)	90.6%	9.4%
Total for all respondents	74.8%	25.2%

Comment:

There is a significant difference between the responses across the groups – more than three in four of the students and of members of the public but only two in three of the lawyers found the conduct problematic, with a higher majority of Regulators considering the conduct problematic.

The majority of all four groups found this conduct problematic.

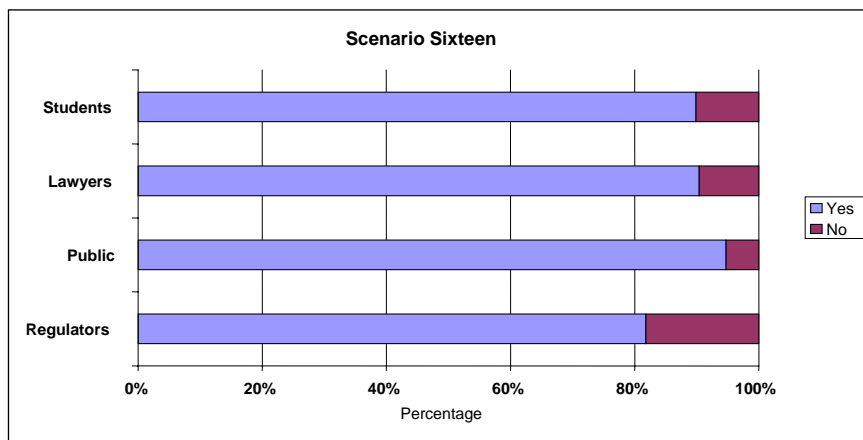
SCENARIO SIXTEEN

A practitioner employs Ms Smith as an articulated clerk. During the course of her employment Ms Smith is subjected to verbal abuse and bullying behaviour by the practitioner, her employer. During one incident at an after work function, the practitioner, when intoxicated, calls Ms Smith stupid and pushes her over.

Question: Does the practitioner's conduct fall short of the standard of competence and diligence that I am entitled to expect of a reasonably competent Australian legal practitioner?

Please Circle: Yes No

Results



Respondents	Yes	No
Students (207)	89.9%	10.1%
Lawyers (229)	90.4%	9.6%
Members of the public (57)	94.7%	5.3%
Regulators (33)	81.8%	18.2%
Total for all respondents	90.1%	9.9%

Comment

There is no significant difference between the groups. The vast majority of all four groups found the conduct to be problematic.

THANK YOU very much for completing this survey.