



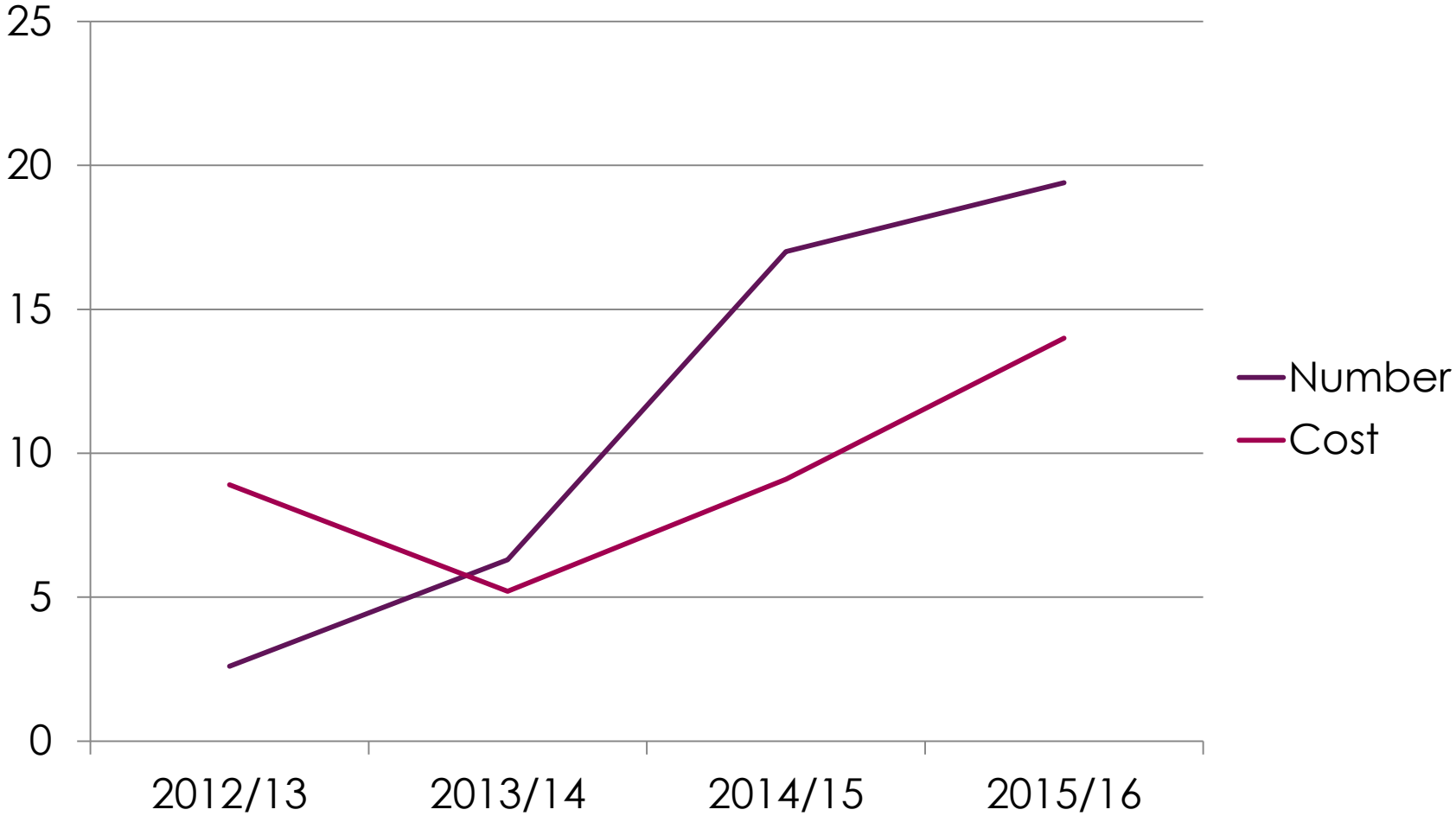
LEGAL
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LIABILITY
COMMITTEE

The trouble with family law

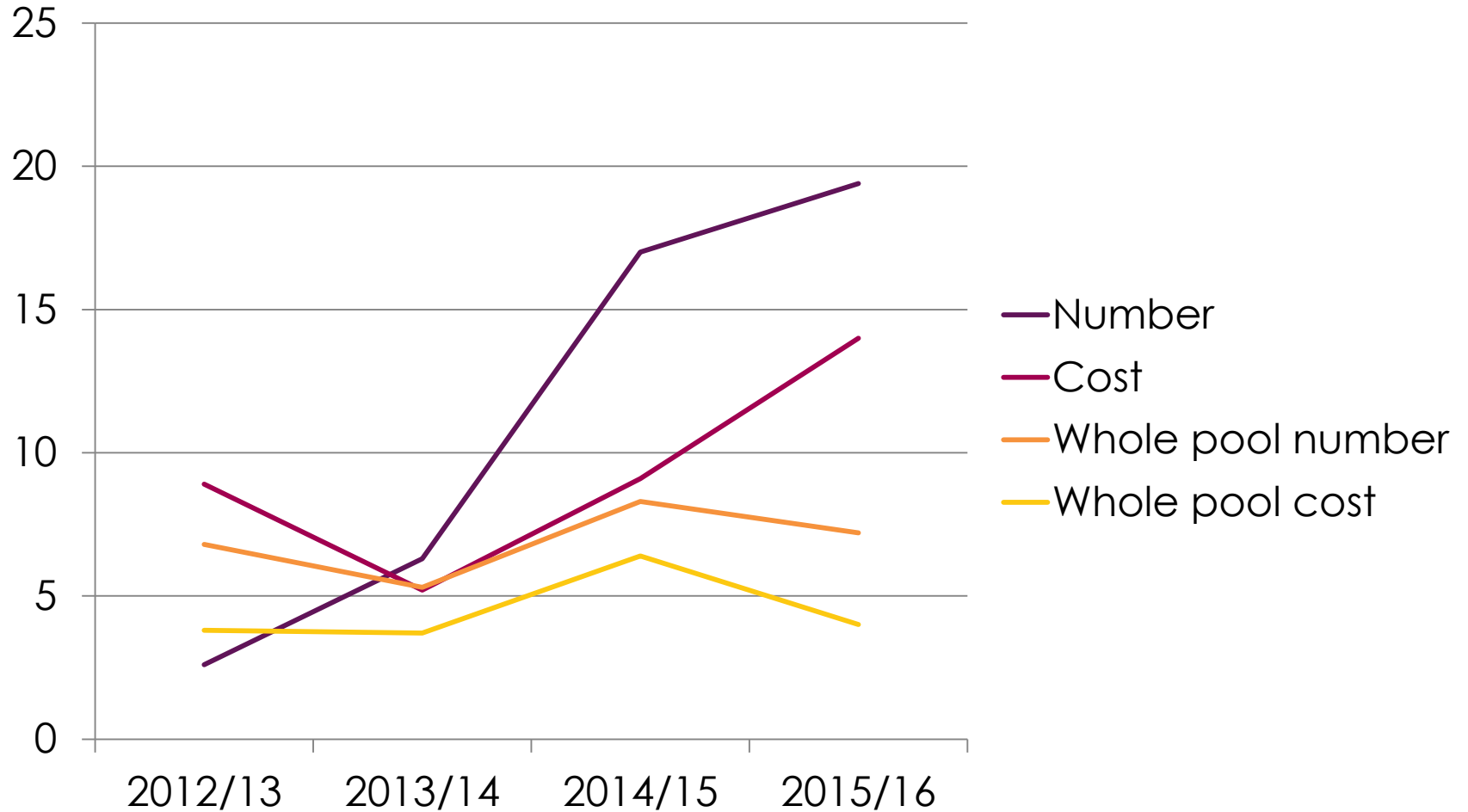
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Regional family law claims by percentage



Regional family law claims + whole pool by percentage



Categories of family law claims

	% by number	% by cost
Property settlements	57.3	34.4
Financial agreements	30.3	64.0
Children's issues	12.4	1.4

Financial agreements – whole pool

Year	Pre- nups (90B)	Post-nups (90C/D)	Total No of claims
2008/09	1	1	2
2009/10	2	2	4
2010/11	2	4	6
2011/12	1	3	4
2012/13	3	3	6
2013/14	3	6	9
2014/15	6	6	12
2015/16*	4	2	6
Total	22	27	49

*as at 8 May
2015

Financial agreements – whole pool



Mistakes in financial agreements 2012/13 to 2015/16

Financial agreement allegations	Number of claims
No or inadequate advice	14
Errors or omissions in agreement	7
No valuation	3
Failing to ascertain liabilities and warn about financial obligations	2
No certificate (other party)	4
Office administration error	1
Personal cost order	1
Other	1

Top regional mistakes for 2012/13 to 2015/16

	Mistakes by cost
1	No or inadequate advice on agreement
2	No independent legal advice certificate
3	Failure to ascertain liabilities/warn about financial obligations
4	Other
5	Superannuation slip ups
6	Dissatisfied litigant
7	Errors or omissions in agreements
8	Failure or delay in lodging applications/orders/child support agreement

No or inadequate advice on agreements

Quiz:

When just advising a client on a financial agreement:

- A. you don't have to be a family law expert
- B. you only need to understand contract law
- C. you need to understand what rights the client is giving up under the Family Law Act.

No or inadequate advice on agreements

Quiz:

How close to the wedding is it alright to have people sign a financial agreement?

- A. 3 months
- B. 1 month
- C. 2 weeks
- D. 1 week
- E. 2 days
- F. 1 day

No or inadequate advice on agreements

Quiz:

Sufficient evidence of your advice when advising a client on a financial agreement is:

- A. the certificate you sign
- B. the ticks next to each clause
- C. your contemporaneous file note of the conference
- D. a letter confirming your advice.

No or inadequate advice on agreements

Quiz:

Your file note should record:

- A. the date and time taken
- B. who was present
- C. a summary of your advice
- D. a summary of your client's responses
- E. all of the above.

No or inadequate advice on agreements

- Renard v Geach [2013] FCCA 617
- The amended financial agreement trap - Parker v Parker [2012] FamCAFC 33

No independent legal advice certificates

Quiz:

If the other party is unrepresented:

- A. you can prepare the financial agreement and act for both parties if they agree
- B. you can send the financial agreement to the other party and it is up to them what they do with it
- C. you need to advise your client orally and in writing that the agreement will not be enforceable if the other party does not get advice and a certificate from their own lawyer.

Failure to ascertain liabilities or warn about financial obligations

- Guarantees or mortgages not properly addressed.
- Rely on client's instructions.
- No or inadequate explanation of the risk.
- No advice about CGT.

Superannuation slip-ups

Quiz:

When you have a super splitting order:

- A. you only need to write and tell the super fund
- B. the party whose super it is must tell the super fund
- C. you have to serve a sealed order on the super fund
- D. you can serve a copy of the order on the super fund.

Dissatisfied litigants

The complaints include:

- the evidence used was wrong
- the practitioner failed to prepare the matter adequately for trial
- having to pay the costs of an adjournment and
- the costs incurred by the client's own practitioner were too high.

Dissatisfied litigants

- Don't take the client on at the last minute.
- Require money in trust if you are going to act so you have money to prepare for trial
- Clearly articulate the basis on which you will continue to act including that the client gives you requested instructions and information within a reasonable/appropriate time
- Consider how to communicate with the client in a way they will hear
- Give advice early enough to allow your client the opportunity to consider their options

Errors or omissions in agreements

Quiz:

Family law financial agreements are:

- A. just like any contract – anyone can prepare one
- B. not that hard to draw if the parties agree what they want
- C. technical and require significant family law expertise to draw.

Errors or omissions in agreements

- The wrong form of agreement.
- The wrong property split.
- Non-disclosure.
- No valuations.

Errors or omissions in orders

- Typos or oversights.
- Ambiguity.
- Mistakes in formula or amounts to be paid.
- Failure to address all the tax implications.

Failure or delay in lodging applications, orders and child support agreements

- The client promises information but does not deliver it and the lawyer has not made the deadline clear.
- Negotiations with the other side are drawn out and no one keeps an eye on the deadline.
- The Child Support Agency refuses to accept child support agreement and then there is delay in renegotiating the agreement.