

THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

# 2011-12

## ANNUAL REPORT



# VISION

We want to lead in the development of an ethical legal services market which is fairer, more accessible and responsive.

# MISSION

To improve consumer satisfaction with legal services through:

- developing and maintaining effective complaint-handling processes;
- promoting compliance with high professional and ethical standards;
- encouraging an improved consumer focus within the profession to reduce causes for complaint; and
- promoting realistic community expectations of the legal system.

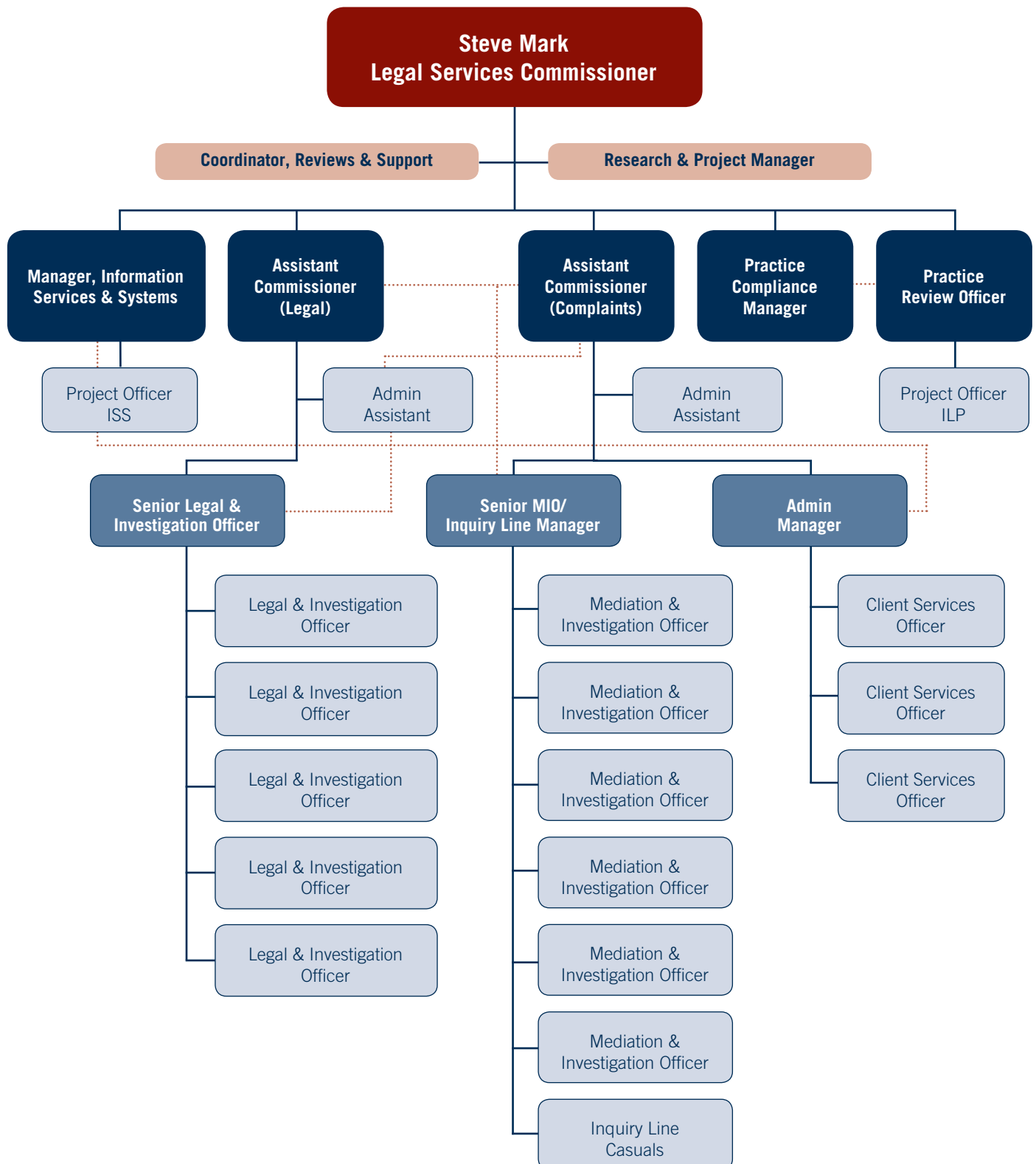
# VALUES

- fairness
- accessibility
- reliability
- problem solving
- education
- teamwork
- social justice
- reform
- empathy



# OFFICE OF THE LEGAL SERVICES COMMISSIONER

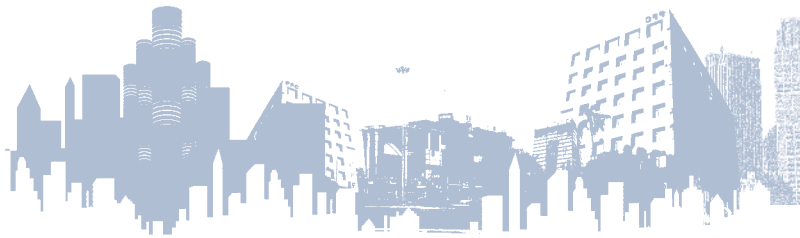
## ORGANISATIONAL CHART



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# COMMISSIONER'S REPORT



Over the last few decades we have witnessed a remarkable change in the way legal services are structured and delivered globally. In Australia, for example, the legal services market today includes traditional legal practices, incorporated legal practices and multidisciplinary practices as well as publicly-listed law practices. Australia also has law practices that outsource their legal and non-legal work both domestically and globally, as well as law practices that undertake legal and non-legal work outsourced to them. Additionally, Australia has a number of law practices that operate virtually, as well as law practices that use social media networking sites to facilitate practice. We have also witnessed a growth in litigation funding.

A similar situation exists overseas. In the United Kingdom, traditional law practices now find themselves operating alongside and in competition with alternative business structures, which, like incorporated legal practices in Australia, permit non-legal practitioner investment. The legal services marketplace in the United Kingdom also includes an array of new law practices offering their services in shopping centres and on websites where you can purchase legal documents and complete them yourself or ask a legal practitioner a question for a nominal amount. A number of law practices in the United Kingdom also outsource their work domestically and internationally. Similar developments are occurring in the United States, although they have not yet embraced the move to alternative business structures.

These changes we are witnessing have been facilitated by three important factors – regulation, technology and cost. Over the last few years we have seen a fundamental shift in the way the legal services market is regulated. Legislation enabling law practices to change their traditional partnership structure has allowed law practices flexibility to create novel structures to suit market needs. The impact of legislation has been augmented by developments in technology that have

made it easier for law practices to operate virtually, using customised software or standardised web 2.0 tools like Skype and online file management applications. The change has also been facilitated by the rising cost of legal services and the attempts of some corporate law practices to mirror their corporate clients in terms of structure, size and service delivery.

As a result of these developments, today's legal practitioner faces a myriad of ethical challenges. The commoditisation of legal practice brings to bear situations for legal practitioners in which competing duties (such as the duty to the court, the administration of justice and the duty to the client) need to be considered and weighed against each other. Whilst these developments have broadened the delivery of legal services and enabled law practices to adapt to market forces, they have also raised concerns that the commoditisation of legal practice will diminish the profession and bring it into disrepute. Commoditisation, it is said, can fuel not only profit but also greed.

In NSW, the ethical challenges posed by the commoditisation of legal practice have been addressed by an effective and responsive regulatory regime. The regime we have established here creates a framework

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for instituting ethical behaviour and upholding the professionalism of legal practitioners. Ours is a model that has been closely monitored and emulated by jurisdictions overseas.

## **TECHNOLOGY AND THE LEGAL PROFESSION**

In last year's Annual Report, I discussed the impact of technology on the practise of law and the growing use of new technologies by law practices. This year we have continued to see an increase in the use of technology to deliver legal services in very innovative ways.

The latest "Web 2.0" resources and other tech tools, like Google Docs, Microsoft Office and Adobe Acrobat have enhanced communication and accessibility for legal practitioners. Similarly, social media sites such as *Facebook* and *Twitter* are providing law practices with innovative means to work more effectively with colleagues and clients. As a result of these new technologies we are seeing law practices engaging in aspects of virtual practice as well as outsourcing legal work.

As a result, communication has become much easier, making legal practitioners output more readily accessible regardless of their physical location. However new technologies present an array of new regulatory, ethical and practice issues. Confidentiality, security and supervision are major concerns. How can legal service delivery be regulated when it is provided virtually and potentially anonymously, crossing state and national borders, with different cultural issues or requirements? What are the ethical considerations or concerns for a law practice engaged in storing confidential data offsite? What potential liability could flow from a security breach? What sorts of processes are presently being used to ensure appropriate supervision of outsourced work? How are staff in remote locations, for example in virtual law practices, presently being supervised? Is the level of supervision appropriate?

The OLSC has been working to answer these questions. As I mentioned in last year's Report, we have been working with Sydney University Law School on the ethical implications of using these new technologies in legal practice. The project has culminated in a comprehensive

paper which is due to be published in a legal journal and in the commencement of a project with the Law Society of NSW to draft a set of guidelines to assist practitioners using these new technologies. The guidelines will cover four broad areas – legal process outsourcing, cloud computing, virtual law practices and the use of social media. It is anticipated that once drafted, the guidelines will be made available for comment and then published.

## **THE NATIONAL LEGAL PROFESSION REFORM PROJECT**

This year, my Office has continued to work towards achieving the harmonisation of legal profession legislation throughout all of the jurisdictions in Australia. On 31 May 2011 a second version of the draft legislation was released. The OLSC undertook a comparative analysis of the first and second draft and then considered the second draft in light of the current legal profession legislation in NSW. Since the draft was released, the OLSC has been working together with the key stakeholders in NSW to ensure that the draft National Law covers all of the provisions found in the current legal profession legislation. This process is ongoing as I write my report.

In addition to the second draft of the National Law, this reporting year also saw the release of the Australian Solicitors Conduct Rules (ASCR) by the Law Council of Australia. The ASCR are designed to replace the existing practitioners conduct rules that operate in respective states and territories in Australia.

The ASCR are not unlike the current rules; however, there are a few key differences. For example, the ASCR, unlike the existing Practice Rules, emphasise that the purpose of the Rules is to assist legal practitioners to act ethically. The requirement to act ethically is further reinforced in Rules 3 and 4 which set out the fundamental ethical duties of legal practitioners. The use of the term "ethical" is novel in conduct rules. It is not found in the current Practice Rules in NSW. The requirement is however supported by the draft National Law which makes reference to ethics in the regulatory objectives.



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## CONFERENCE OF REGULATORY OFFICERS (CORO)

On 13 and 14 October 2011, the OLSC and the Law Society of New South Wales jointly hosted the 2011 Conference of Regulatory Officers (CORO). CORO consists of statutory regulators, law societies, bar associations and admission bodies from each state and territory that are involved in the regulation of the Australian legal profession. The annual Conference provides an opportunity for regulators to meet and discuss emerging issues for the legal profession and developments in regulation. It allows representatives from each state and territory to highlight trends or issues emerging in their jurisdiction, while generating discussion and debate.

The focus of CORO 2011 was to address the future of legal services in an evolving global marketplace. CORO looked at the new and developing technologies and the way in which they impact the legal services marketplace. The Conference featured a number of eminent speakers, including the Hon. Robert McClelland MP, Federal Attorney-General; the Hon. Greg Smith SC, Attorney-General for New South Wales; Mr Laurie Glanfield, Director-General; and Ms Ellyn S. Rosen, Commission Counsel for the American Bar Association Ethics 20/20 Commission.

This year, for the first time, CORO was streamed live through the CORO website ([www.coro.com.au](http://www.coro.com.au)) to the offices of each Australian regulatory body. This allowed regulatory members from across the nation to interact via text message, tweet or email, posing questions to speakers and panelists in real-time.

## COMPLAINT STATISTICS

In 2011-2012 the OLSC received a total of 2758 written complaints, an increase of 197 on the previous year. Of the total written complaints received, 1866 were assessed as consumer disputes and 837 as investigations. Fifty-five complaints were assessed as non-jurisdictional so were sent directly to the Law Society, MARA, OFT or regulators outside NSW. Of those complaints assessed as within jurisdiction,

seventy-nine percent (79%) of those written complaints received were retained and handled by the OLSC. The remaining twenty-one percent (21%) were referred to the professional associations for handling.

Complaints regarding Family/ de-facto matters continue to rise, as do those relating to probate, wills and family provisions. Complaints concerning negligence, communication and overcharging remain the top three areas about which complaints are received, totalling 46% of matters.

The OLSC registered the completion of 2805 written complaints, an increase of 186 on the previous year. Of the total written complaints completed, 1933 were closed as consumer disputes and 815 as investigations. Fifty-seven (57) complaints were non-jurisdictional so were closed and sent directly to Law Society, MARA, OFT or regulators outside NSW. Of those complaints assessed as within jurisdiction, seventy eight and a half percent (78.5%) of written complaints were completed by the OLSC. The professional associations completed the remaining twenty one and a half percent (21.5%).

Sixty two percent (62%) of those complaints retained and handled by the OLSC were completed within three months of receipt. Eighty four percent (84%) were completed within six months, both well over the internal target set.

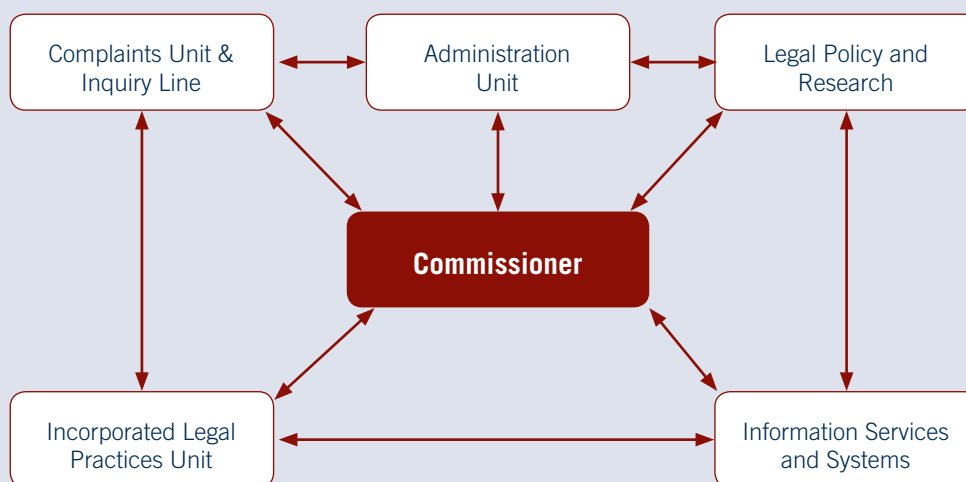
In 2011-2012 the OLSC received 7920 calls from the public on our Inquiry Line, a decrease of 208 on the previous year.

I would like to thank my staff for the incredible amount of hard work and dedication they have shown this reporting year. I find it extraordinary that whilst we only have a small number of staff (30) we are able to work through as many files, seminars and projects as we do.

Additionally, I want to acknowledge and thank the significant contributions made by the Law Society of NSW and the NSW Bar Association. The relationship between my Office and the professional associations continues to grow from strength to strength each year.

I am looking forward to a productive and interesting year ahead.

## WORK AND INFORMATION FLOW WITHIN OLSC



**Spider Network:** all units work with each other to determine best practice, ensure information flow, and enhance knowledge management to ensure stakeholder satisfaction.

**Administration Unit:** Administration work for whole of OLSC: calls, messages, correspondence, documents & records management.

**Complaints Unit & Inquiry Line:** Complaints management, mediation and investigation of consumer complaints.

**Investigation, Policy and Research:**  
Writes & researches legal policy, investigation & complaint handling.

**Incorporated Legal Practices Unit:**  
External auditing of Legal Practices to determine compliance with relevant legislation.

**Information Services and Systems:**  
Quality systems management: reports, data, information systems, and compliance auditing.

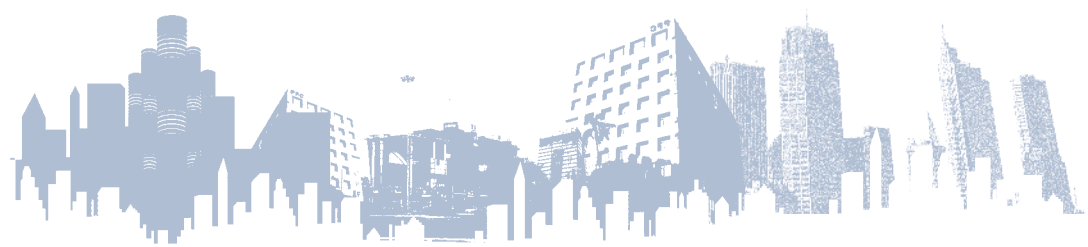
**Commissioner:** Oversees and manages OLSC: media, liaison, delegations, high-level policy and networking.





## CHAPTER 1

# PROMOTING COMPLIANCE WITH HIGH PROFESSIONAL AND ETHICAL STANDARDS



## CONDUCT ISSUES

### Investigations

In what has been a busy year in review, the Legal and Policy team of the OLSC has continued to strive to lead in the development of an ethical legal services market which is fairer, more accessible and more responsive.

When complaints are lodged with this Office, those that raise allegations that may result in a finding of unsatisfactory professional conduct or professional misconduct, as defined in the Legal Profession Act 2004 (NSW) ("*LPA 2004*"), are investigated. The conduct of an investigation includes gathering evidence from the complainant, from the practitioner and from any third party who may have relevant information.

The Legal and Policy team finalised 416 investigations during the year in review.

Matters that resulted in a disciplinary outcome at the OLSC totalled 84 for the reporting year. The disciplinary outcomes included:

- 10 legal practitioners were referred to the Tribunal;
- 33 legal practitioners were disciplined by the Commissioner by way of summary conclusion of the complaint; and
- 41 legal practitioners where there was a likelihood of a finding of professional misconduct but dismissed in the public interest.

Practitioners referred to the Tribunal and disciplined summarily by the Commissioner are addressed below. Those matters dismissed in the public interest were all breaches of the advertising regulations that prohibit the advertising of personal injury legal services. The complaints were dismissed in the public interest on the basis that they were the first complaints about advertising received against those practitioners. The Office has taken

an educative approach in relation to the advertising regulation and only prosecutes those matters where there have been repeated breaches.

Of the balance of matters finalised, 163 were dismissed on the basis that there was no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct were the matter to be referred to the Legal Services Division of the Administrative Decisions Tribunal. This test is established by the *LPA 2004*. The standard of proof in disciplinary matters is high. It is based on the common law Briginshaw test. Each of these matters failed to achieve that standard of proof.

A further 64 investigations were closed on the basis that they were lacking in substance or were frivolous, vexatious or misconceived, where the allegations were the subject of another complaint or where the complainant had failed to provide further particulars.

Seventeen complaints were withdrawn by the complainant prior to conclusion of the investigation. Twelve matters were dismissed without investigation on public interest criteria, predominantly on grounds that the practitioner has already been struck from the roll of practitioners or is suffering from significant ill health and can no longer practise. Seven investigations during the reporting year were suspended pending the outcome of court proceedings. Investigations are suspended in circumstances where the issues to be determined in investigation are the same as issues to be determined by the court.

The *LPA 2004* provides that complaints must be lodged within three years of the conduct that is alleged to have occurred. The Commissioner has a discretion to accept complaints lodged outside the three year limitation period in circumstances where he is satisfied that it is just and fair to do so given the length of the delay and the reasons for it, or where the allegation may result in a finding of

professional misconduct and it is in the public interest to investigate it. In the balance of matters, the complaints were not accepted out of time because neither limb of the statutory test was satisfied.

A significant number of complaints dealt with in the reporting year took less than 6 months to conclude. Additionally, the number of aged complaints being complaints more than 12 months old, has reduced significantly during the reporting year.

## Disciplinary outcomes

The Commissioner may deal summarily with a matter in circumstances where he is satisfied that there is a reasonable likelihood of a finding of unsatisfactory professional conduct were he to refer the matter to the Legal Services Division of the Administrative Decisions Tribunal. In circumstances where he is satisfied that there is a reasonable likelihood of a finding of professional misconduct he must refer the matter to the Tribunal for prosecution.

In the reporting year, the Commissioner dealt with 33 matters summarily. These matters involved the issue of 20 cautions and 13 reprimands. Compensation was ordered in addition to a caution or reprimand in 5 matters.

A caution remains permanently on a practitioner's record but is not further published. A reprimand and a compensation order are both published on the OLSC's Disciplinary Register and remain in the public domain.

Reprimands were issued for the following unethical conduct:

- Failure to register a transfer and pay stamp duty;
- Misleading the court;
- Practising without a practising certificate;
- Rudeness (second offence);
- False attestation;
- Significant delay;
- Breach of undertaking;
- Breach of practising certificate conditions;
- Acting in a conflict of interest.

Cautions were issued for a number of different ethical breaches including:

- Failing to disclose increases in costs;
- Overcharging;

- Acting contrary to practising certificate conditions;
- Acting contrary to instructions;
- Breach of confidentiality;
- Misleading conduct;
- Gross negligence;
- Failure to supervise;
- Breach of rule 8;
- Breach of rule 16;
- Breach of rule 19;
- Breach of rule 34;
- Breach of rule A37;
- Breach of rules A43 and A44.

Compensation was awarded in 5 matters as follows:

- \$2415 to correct and pay penalties following a failure to register a transfer and pay stamp duty;
- \$5657 being a refund of fees charged pursuant to section 14(4) of the Act for practising without a practising certificate;
- \$1614 being a refund of fees charged despite a gross delay;
- \$2176 being the costs for correcting a negligent error;
- \$680 being the costs for correcting a negligent error.

## Administrative Decisions Tribunal

The Office had the conduct of 15 separate matters before the Legal Services Division of the Administrative Decisions Tribunal. Some of these matters were commenced in years prior to this reporting year.

In the matters of *Legal Services Commissioner v Tsalidis* and *Legal Services Commissioner v Sandroussi*, proceedings were commenced for failure by the practitioner to comply with a section 660 Notice. A section 660 Notice is issued when cooperation by a practitioner has not been forthcoming and coercion is required to obtain information from the practitioner in aid of the investigation. Breach of section 660 is deemed to be professional misconduct if done without reasonable excuse. Decisions in both matters are reserved.

In *Legal Services Commissioner v Angelovski*, proceedings were commenced on a number of grounds including failing to attend Court to instruct counsel, failing to act competently and/or diligently, delay, misleading conduct, gross negligence, failure to comply with undertaking and failing to follow instructions. A hearing date has been allocated early in the new year.

In *Legal Services Commissioner v Kumar* the prosecution involved counts of misappropriation, misleading the Commissioner and a court and obstructing an investigator. The hearing has concluded and the decision is reserved.

In *Legal Services Commissioner v Keddle* and *Legal Services Commissioner v Scroope* proceedings were commenced in relation to allegations of overcharging and, in the case of Mr Keddle, an allegation of failing to supervise employed staff. The Tribunal delivered its decision on 4 June 2012 and found both Mr Keddle and his employed solicitor, Mr Scroope, guilty of professional misconduct. Mr Keddle was struck from the roll. Mr Scroope was reprimanded and ordered to pay a fine. Mr Scroope has appealed the decision. Proceedings against the other Keddles' partners were withdrawn because of a lack of nexus with the conduct complained of.

In *Legal Services Commissioner v Bryden* (x 3) and *Legal Services Commissioner v Hagipantelis* (x 3), the Commissioner proceeded with the prosecution of two out of three cases against each practitioner. The grounds of prosecution were breaches of the regulations prohibiting the advertising of legal services for personal injury matters. The Tribunal found both practitioners guilty of professional misconduct in relation to the breaches and its decision on penalty has been reserved.

In *Legal Services Commissioner v Thurairajah* the prosecution grounds were obstructing an investigator and

failing to communicate with the OLSC. The Legal Services Division found the practitioner guilty of professional misconduct and she was reprimanded and fined.

In the matter of *Strikis v Legal Services Commissioner*, the practitioner sought a review of the Commissioner's determination to make a compensation order. The practitioner was unsuccessful and the Tribunal confirmed the order of the Commissioner.

## Reviews

The Commissioner has the power to review a decision of the Law Society or Bar Association on the complainant's application. The Commissioner may also review a decision of the Law Society and Bar Association on his own motion. In the reporting year 75 review requests were dealt with.

In the great majority of cases the decision of the Law Society or Bar Association was confirmed on review and it is pleasing that within our co-regulatory environment such a level of consistency is achieved.

Seven matters were re-investigated following the review and, in one re-investigation, a reprimand was issued when the Commissioner determined that the practitioner had falsely attested an affidavit. The reprimand was substituted for the Law Society decision to dismiss the complaint.

## Case study

*A complainant raised concerns about his legal practitioner who was appearing in Court for him in a commercial matter. The complainant alleged that his matter was continually delayed, and that the delay had resulted in the Court requiring the legal practitioner to file an affidavit to explain why her client's case had been delayed.*

*The legal practitioner swore and filed an affidavit stating that the delay was due to the complainant being in a remote overseas location, where the client had no email or telephone access. The legal practitioner also said that as a result of the complainant being in this remote location she was not able to take any instructions from the complainant at the time.*

*The complainant stated that whilst she was overseas in a somewhat remote area, there was email access, and*

*that she did in fact give instructions to the legal practitioner at the time. The complainant provided copies of emails between her and the legal practitioner that evidenced the ability to take some instructions.*

*We wrote to the legal practitioner advising her of the complaint and asked her to comment. The legal practitioner stated that she meant to say she only had limited email access and that as a result she was unable to obtain "proper" instructions.*

*The Court is strict in its approach to affidavits and expects and demands that each and every statement of an affidavit sworn and filed, has been carefully read and the contents confirmed as being true. This is even more so when a legal practitioner swears an affidavit.*

*Such conduct had the potential to mislead the court and the practitioner was cautioned.*



## POLICY DEVELOPMENT

The Office has continued to make submissions in relation to the National Legal Profession and the National Rules. Further information on these developments is contained elsewhere in this report.

Additionally, the Office has made a significant contribution and multiple submissions to the Chief Justice's review of the Costs Assessment Scheme. A final report has not yet been published.

The Office has also now entered into memoranda of understanding with both the Office of the Migration Agents Regulatory Authority and the Office of Fair Trading. These memoranda ensure exchange of relevant information between the offices.

The Assistant Commissioner (Legal) is a member of the Costs Assessment Users Group which meets quarterly to discuss issues, interpretation and reform of the Cost Assessment Scheme and has regular liaison meetings

with representatives of the Professional Standards Department of the Law Society and Professional Conduct at the NSW Bar Association. A Legal and Investigation Officer sits on the Law Society Ethics Committee that meets monthly.

## EDUCATION

Members of the Legal and Policy Team regularly attend continuing legal education seminars delivered by external agencies and assist in the organisation of in-house seminars from a number of varied legal groups. Members of the team also deliver regular lectures to law students in university law schools.

The Assistant Commissioner (Legal) has delivered a number of seminars on ethics and the complaints and discipline system both to external organisations and to the Bar Association and the Law Society of NSW. She has also contributed chapters to the *Law Handbook* and the *Lawyers Practice Manual*.

### Case study



*A complainant, a concerned member of the public, made a complaint about what they had heard a legal practitioner say about their client to the Magistrate in an open Court.*

*The matter was a minor traffic matter and had just resumed after the luncheon adjournment. The client of the legal practitioner failed to return to Court. When the Magistrate asked the legal practitioner where her client was, the legal practitioner said that her client had left because he did not get along with the Parole officers. The legal practitioner then said "he smokes cannabis, likes it and he's going to continue doing it." The practitioner had also said that she thought that perhaps her client needed to be "locked up to bring him to his senses." The practitioner then sought to withdraw from the case. The Magistrate asked the practitioner if she had been instructed by the client to say what she had said. The practitioner informed the Magistrate that she had not been so instructed.*

*The OLSC wrote to the legal practitioner advising her of the complaint and asked for her comment. The legal practitioner admitted to stating the above but said that she did so to direct the Magistrate towards making an order under section 33, emphasising the client's serious mental illness and his cannabis use.*

*The NSW Conduct Rules provide that a legal practitioner must seek to advance and protect the client's interests to the best of the practitioner's skill*

*and diligence, uninfluenced by the practitioner's personal view of the client or the client's activities.*

*The Commissioner was of the view that the comments made by the legal practitioner were not in the client's interests. The only appropriate submission after the client had failed to appear at Court and the practitioner seeking to withdraw, was to factually and succinctly answer the Magistrate's questions on relevant administrative issues. The practitioner's submission went far beyond the Magistrate's question, as the practitioner disclosed her client's desire and attitude to his drug use and stated her thoughts on whether her client should be "locked up" as it was the only way he could be brought around to his senses.*

*The appropriate course of action would have been for the legal practitioner to seek leave to withdraw, without the disclosure of any adverse information or personal opinion.*

*The Commissioner determined that there was a reasonable likelihood that the practitioner would be found by the Legal Services Division of the Administrative Decisions Tribunal ("the Tribunal"), to have engaged in unsatisfactory professional conduct, but not professional misconduct as defined in the LPA 2004. The legal practitioner was ultimately cautioned under section 540(2)(a) of the LPA 2004 for her conduct.*

## Case Study



### Legal Services Commissioner v Bryden and Hagipantelis (No 2) [2012] NSWADT 12

*The Legal Services Division of the Administrative Decisions Tribunal (the Tribunal) handed down its decision on liability in the above matter on 12 June 2012. The proceedings related to six applications (three against each legal practitioner) which had been before the Tribunal since February 2008. The proceedings had been prolonged by the Respondents making an interlocutory application, in the first instance to the Tribunal, seeking a declaration that regulation 24 of the Legal Profession Regulation 2005 and regulation 75 of the Workers Compensation Regulation 2003 were ultra vires the Legal Profession Act 2004 and the Workplace Injury Management Act and Workers Compensation Act 1998 respectively. The Tribunal found against the Respondents on this issue so they then made an application to the Court of Appeal in similar terms. The Respondents were unsuccessful in the Court of Appeal as well which handed down its judgment on 15 April 2010. The Court of Appeal held that “advertising” fell within the scope of “marketing” and, accordingly, the regulation was within the regulation making power and not ultra vires. The Respondents applied for Special Leave to the High Court but leave was not granted.*

*With the substantive proceedings back on track the matters were originally listed for final hearing in November 2011 however these dates had to be vacated when the Presiding Member had to recuse on the basis of apprehended bias. The matters were ultimately set down in April 2012.*

*The six matters comprised 7 different grounds or incidents of breaches of the NSW advertising regulations. These included breaches on the internet (on the Respondents’ website), newspapers and magazines. One breach related to an advertisement in a Vietnamese newspaper and this was disposed*

*of by consent as it transpired that the translator had unilaterally used phrases which, when translated back into English, breached the NSW advertising regulations, even though the English draft that he had been given to work from did not.*

*Both Respondents were extensively cross-examined and the Tribunal found that neither was an impressive witness. The Tribunal found that the six remaining advertisements contravened the NSW advertising regulations and therefore found that the Respondents were guilty of professional misconduct.*

*The Respondents sought to rely on clause 29(2) of the Legal Profession Regulation 2005 by stating that they had taken all reasonable steps to prevent the advertisements from being published. The “reasonable steps” in their view were the system that they had put in place with the firm’s General Manager checking advertisements before they were published. The Tribunal found that it was not sufficient to rely on a general instruction given to staff as to the need to comply with the NSW advertising regulations. In the Tribunal’s view a system must be in place to ensure that every fresh advertisement published on behalf of the firm is, before publication, scrutinised by a competent person. The Tribunal stated, “only then will it be relevant to conduct an enquiry as to whether the system represented ‘all reasonable steps’”. By 2006, the fact that the Respondents left it entirely to their firm’s General Manager to check advertisements was, in the Tribunal’s view “a gross abdication of their responsibilities and comes nowhere close to constituting ‘all reasonable steps’”.*

*The decision regarding penalty is yet to be handed down.*



## CHAPTER 2

# COMPLAINTS HANDLING



In 1994 when the OLSC first opened its doors, it received a flood of complaints about legal practitioners. In the first year the OLSC received 2,801 written complaints and 6,700 calls to our Inquiry Line. At the time there were 12,000 legal practitioners in NSW. Today there are more than 26,000 solicitors and 3,000 barristers practising in NSW. This reporting year we received 2,758 written complaints and 7,920 calls from the public on our Inquiry Line, notwithstanding the increase in legal practitioners in NSW.

In a year when we dealt with ongoing staff disruptions and an increasing number of complex complaints we also dealt with and closed more consumer disputes than we have ever done at the OLSC. A total of 1,740 consumer disputes were closed in this financial year.

As in previous years issues of negligence (18.1%), communication (15.5%), overcharging (12.2%) and ethical concerns (8.8%) dominated the complaints we received. However, it is still fair to say that every complainant unhappy with the performance of their legal practitioner felt that they had been overcharged to some extent. Underlying communication issues continued to be a feature in complaints.

Family law complaints continued to increase (up to 18.1% this year from 17.5% in 2010-11), emphasising not just the inherent difficulties of cases arising from marriage and partnership break up but the ongoing trauma of child access applications that can go on for years after separation.

Wills and probate complaints (12.4%) have also increased and complaints about civil cases (14.0%) remain high. With our aging population wills and probate issues have prompted some of our most difficult investigations and consumer disputes, see below for more information. Complaints about commercial matters (11.6%) and personal injuries issues (9.4%) remain high despite some respite in the issues that might have prompted these complaints.

While a small proportion of practices and individuals account for a relatively large number of complaints, we are confident that our efforts to work in a more positive manner with these legal practices have an impact on complaints overall.

It has been a gratifying year in which we dealt with complaints promptly, successfully and with skill.

## CONSULTATIONS

There are some law practices that have recognised that increased complaints herald managerial, administrative and perhaps even legal problems. A large number of these practices will take positive steps to address the issues raised in complaints and try to identify the causes.

We had a number of law practices this year asking for meetings to discuss complaints and complaints handling. During these meetings these practices discussed with us the possible causes of the complaints, possible resolutions and the practice's plans to prevent complaints in future. Most of the legal practices we spoke to came armed with propositions about how internal management systems could be tweaked, how staff techniques could be improved, how staff training could be enhanced and how relationships could be improved with this Office.

During these meetings we emphasised the need for quality administrative systems, improved communication and, of course, more responsive and practical solutions in dealing with complaints. We encouraged the need, where resources allow, for practices to identify a particular person we could contact where we receive a significant numbers of complaints about that practice.

Where appropriate we also encouraged practices to set up comprehensive internal complaints handling regimes to address complaints. Our first suggestion to any complainant is try to sort out their problem with the legal practitioner, or with the practice before a formal complaint is lodged with the OLSC.



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## STAFFING

There are a great many indicators as to why a practice or legal practitioner continues to be in trouble and have complaints lodged. The indicators are often complex, sometimes very personal and occasionally mysterious. For example, a law practice with high staff turnover is rarely able to avoid complaints. There are a number of reasons why this is so.

One of the most common indicators is where a staff member leaves. It is inevitable that when a staff member leaves, a new legal practitioner will need to read the file and talk to the client. Of course, good file notes and a commitment to waiving the costs of any work duplicated when a legal practitioner takes over a file will often avoid complaints.

However, it may take more than that to satisfy a client. Long established personal solicitor/client relationships are frequently broken by the departure of a legal practitioner. Practices need to promptly inform clients of what is happening with their legal practitioner and, more importantly, how their file will now be handled. To retain a client and to satisfy their need for continuity and quality service, partners will often need to intervene to reassure clients that their relationship and position will be protected. This is particularly true where the practice claims expertise in an area of law that might not be reflected in the skills and knowledge of the new legal practitioner stepping in to take over the file.

More than that, practices need to pay close attention to why legal practitioners leave. A high turnover of staff is almost always an indicator (and not just in law practices) of some level of staff dissatisfaction. It is a given that unhappy employees will provide a lower level of service and generate more complaints. It is also true that high turnover raises questions about recruitment, supervision and personal support.

One of the best ways to deal with staff turnover is effective communication with staff and clients. Partners, for example, should be asking staff why they are leaving. They need to create an environment in which staff can be honest in their exit interviews, and, as with all complaints, they need to listen (but not uncritically) to what the disaffected have to say.

## CAPACITY

As the average age of our population increases the number of concerning incidents involving legal practitioners' assessment of the capacity of potential and actual clients also increases.

These complaints frequently come out of the complex web of sibling rivalries that families can spin. A typical example is an aggrieved potential beneficiary taking a legal practitioner to see mum or dad in a nursing home and leaving with an altered will. However, it can also be a family member leaving with a changed power of attorney, or, even with a parent in tow.

While the Law Society of NSW Capacity Guidelines contain many warnings about situations in which legal practitioners should assure themselves of their client's capacity to give instructions, we are still getting notable instances of failed assessments. We have this year had several occasions where the NSW Guardianship Tribunal and the courts have overturned powers of attorney, wills and codicils because legal practitioners acted thoughtlessly in preferring their own "medical" assessment of a client or were pressured by insistent relatives.

It is not enough for a legal practitioner to presume their long time client has capacity when confronted with clear medical opinion that is not the case. We are of the view that intermittent familiarity with a client cannot and should not, replace medical opinion arising out of the daily attendance on an aging resident of a nursing home.

It is improper to take instructions from an aged individual surrounded by those family members that might benefit from the changes to a will. It is also improper to take instructions from a nursing home resident when prompted to do so by a long time client seeking to



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overturn an existing power of attorney or affect the power of a financial guardian.

Of course, issues of capacity go beyond concerns about dealing with aging residents of nursing homes. What should legal practitioners do when confronted with situations where clients, or perhaps witnesses, have proven histories of mental illness?

We very firmly believe that, where there is any doubt whatsoever, a legal practitioner should be seeking out medical confirmation of capacity to ensure they don't do more harm than good. There are basic tests of cognition, memory and personality available to legal practitioners that are not being used because legal practitioners think they know better. Sometimes they don't know better and the consequences can be devastating for those aged clients, families and for practitioners.

## FILE STORAGE

Legal practitioners are obliged, pursuant to the NSW Conduct Rules, to keep client files for at least seven years. In reality, many practices will actually keep files for much longer than seven years. The obligation to retain files exists for the protection of the practice as well as to safeguard a client's property.

When a former client requests a file a legal practitioner cannot charge a client for returning the file unless such costs have been disclosed (Rule 8.2.2 of the NSW Conduct Rules). An increasing number of practices are including in the cost agreement a charge for storage, a charge for retrieval and a charge for photocopying the file.

It is our view that file storage should be treated as a disbursement and like all other disbursements, legal practitioners should not be able to make a profit from storage or retrieval charges or for photocopying done for the lawyer's protection.

## OLSC INQUIRY LINE

This reporting year we received 7,920 calls on our Inquiry Line. As in the written complaints we received this year, issues of negligence, communication, overcharging and costs dominated the calls we received on the Inquiry Line.

The OLSC's Inquiry Line is the first point of contact for people wishing to make a complaint about a legal practitioner. As a first point of call we strive to ensure that the officers that take calls are appropriately trained and kept informed about trends and developments in complaints.

NSW OLSC Inquiry Line staff are required to go through our Induction Program. The Program introduces new staff to the role and function of the OLSC, the OLSC's complaints tracking database as well as various OLSC publications. Following this training, new staff are then rostered to sit with an experienced Inquiry Line Officer or Mediation and Investigation Officer to take calls received on the Inquiry Line for a number of shifts, prior to commencing their solo shifts on the roster. The OLSC has instituted this training program to ensure that the Inquiry Line is used effectively and appropriately.

Rather than just being an information conduit like most other telephone services offered by organisations, we encourage Inquiry Officers to perform telephone mediations if they believe that it could prevent a complaint coming into the office. Some examples of when a telephone mediation may be appropriate is when the caller says that they keep trying to contact their practitioner to get an update in their matter but the practitioner will not return their calls, or if the caller says that the practitioner has exercised a lien on their documents despite the fact that they have paid all their accounts. In these examples, a call by the Inquiry Officer to the practitioner to ask them to contact the caller to provide an update on their matter or ask them why they are retaining the documents if the accounts have been paid, may prompt the practitioner to respond to the caller's requests and may prevent a complaint being formally made to the OLSC.

The Inquiry Line continues to be an invaluable tool in assisting the public and profession to resolve complaints.

## Case study



The complainant, a director of a new recruitment company retained a practitioner in January 2011 to provide initial advice about setting up a business. The complainant met with the legal practitioner to discuss the advice in July 2011. During the meeting the complainant presented the legal practitioner with a number of documents he had drafted. One of those documents included a "Terms of Business" document. The complainant advised the legal practitioner that he had adopted/copied the Terms of Business from his former employer. The legal practitioner advised the complainant of the risk of using that document and suggested that it would be better if he (the practitioner) drafted the document. In suggesting so, the legal practitioner advised the complainant that the cost would be \$2,000. The complainant agreed to the arrangement and instructed the legal practitioner to start drafting the documents. After the documents were drafted, the complainant spoke to the legal practitioner requesting the documents be amended.

When the matter was completed the complainant received an invoice from the practitioner for the amount of \$7,797.79. The complainant contacted the practitioner about the invoice as he believed that he would only be charged \$2,000.00. The complainant received no response from the practitioner or the firm about his concerns.

After four weeks the complainant lodged a formal complaint with the OLSC alleging that the firm had failed to communicate about the processes by which

this matter was conducted and that the practitioner had failed to disclose the substantial change in costs. The OLSC contacted the practitioner on behalf of the complainant. The practitioner advised the OLSC that the invoice for \$7,797.79 was for the initial work, as well as additional work he was asked to perform by the complainant, including amendments to the initial documents. After a number of letters to and from the OLSC, the legal practitioner offered to accept a lesser amount of \$7,000.00 inclusive of GST in order to resolve the issue.

The complainant rejected the offer and made a counter-offer to pay half of the total amount of the outstanding invoice in two instalments. The complainant said he would pay \$2,000.00 (GST inclusive) immediately and then \$2,345.77 (GST inclusive) some months later.

The OLSC advised the legal practitioner of the counter-offer and the legal practitioner eventually agreed to accept the amount of \$4,345.77 inclusive of GST.

After the complaint had been resolved, the complainant wrote a letter of thanks to the OLSC expressing satisfaction with the conduct of his matter. The complainant praised the work of the staff member who was handling the matter in achieving a positive outcome. The complainant wrote of the staff member, she was "professional, objective, proactive and responsive at every step."

## Case study



A client complained that a law practice that he had instructed had done no work in his unfair dismissal case. We informed the law practice about the complaint and asked them to comment.

The practice produced an electronic work in progress statement showing telephone calls to the former employer, some emails and a letter to various parties along with discussions with the client. Notwithstanding the work done by the practice, the client then objected to the more than 6 hours of research done by the legal practitioner.

When we asked for more details the practice was unable to show us any evidence of precisely what research was done. There were no hand written or electronic notes and the legal practitioner had long

departed the firm and was unavailable to comment.

While a level of legal research will often be necessary we thought this was too much given we could see no evident benefit for the client. We also thought that if that level of research was necessary so too were the notes or assessment of how that research feeds into the case through the correspondence, questions put to the other side or discussions with the client.

The practice agreed to progress the client's case without charging and to reinforce with their staff the need to keep complete records, not just of the time spent, but of precisely what is done on behalf of clients.

## Case study



*A woman held Power of Attorney and Enduring Guardianship for her aunt for several years. During the period in which she held Power of Attorney and Enduring Guardianship the complainant became aware that her aunt's son was attempting to obtain the title deeds and sell the aunt's house.*

*She spoke to her aunt's legal practitioner about the son's intentions and instructed him to draft a document relating to her concerns. A few days later the lawyer wrote to the woman advising her that the son had contacted him but he had not revealed the woman's concerns. He invited her to come in for an interview.*

*On the day that the woman was due to meet with the legal practitioner he cancelled the meeting saying the son was coming in to the firm that afternoon to speak to another partner in the firm about the Power of Attorney. The same day, the son, together with the other partner went to the aunt in hospital, took instructions from her revoking the complainant's Power of Attorney and Enduring Guardianship and drafted new documents appointing the son as the new Power of Attorney and Enduring Guardian. She alleged that her aunt lacked the capacity to give such instructions. She also alleged that there was a conflict of interest because the son had instructed a lawyer in the same firm.*

*The complainant applied to the Guardianship Tribunal and then lodged a complaint with this Office about the actions of the partner.*

*We asked the partner to provide information in response to the complaint and in particular the steps he took to establish that his client had capacity. In his response he said that he took the appropriate steps to ascertain capacity but that he did not obtain a medical certificate in relation to his client's capacity because he*

*formed the view that she "was lucid and had capacity to enter into the documentation..." He said he did not believe any conflict of interest arose.*

*We suspended the complaint awaiting the Guardianship Tribunal's determination in relation to the capacity of the aunt and the validity of the documents.*

*Notwithstanding our letter and the forthcoming Tribunal hearing, the legal practitioner proceeded to forward the new Power of Attorney to another lawyer seeking the aunt's Certificate of Title. The lawyer did not act on this request.*

*The Guardianship Tribunal made a determination that the aunt was incapable of managing her financial affairs and ordered that the Public Guardian and another relative be appointed to manage her affairs, and the complainant be an alternative guardian should the other guardian not be available.*

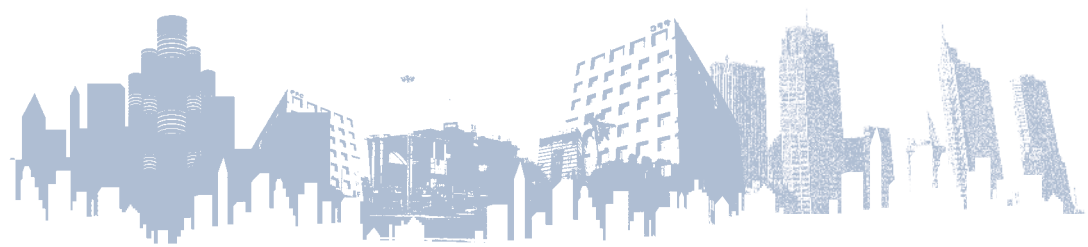
*We informed the partner we considered his conduct in writing to the new legal practitioner and ignoring the role of the Guardianship Tribunal and a warning from our office might be found by the Legal Services Division of the Administrative Decisions Tribunal to be unsatisfactory professional conduct.*

*He responded that at all times he was of the view that the aunt had capacity and he was acting on the instructions of persons who were the properly appointed guardians.*

*The Commissioner determined that there was a reasonable likelihood that the Legal Services Division of the Administrative Decisions Tribunal would consider that the conduct of the legal practitioner amounted to unsatisfactory professional conduct and issued a caution to the practitioner.*

## CHAPTER 3

# INCORPORATED LEGAL PRACTICES



As at 30 June 2012 there were over 1,200 ILPs in New South Wales. This practice structure continues to make up approximately one fifth of the overall practice population. There are approximately 20 multi-disciplinary practices in existence. As I reported in last year's Annual Report, the number of ILPs has grown at a steady rate since the legislation permitting incorporation was introduced in NSW, more than 10 years ago.

Of the approximate 1,200 ILPs in existence, 567 are located in the suburbs, 402 are located within the Sydney CBD, 290 are located in rural NSW and 22 ILPs are located interstate.

### Practice Reviews

Nine practice reviews were conducted at both incorporated legal practices and traditionally structured practices over this financial year. Some of these reviews consisted of follow up and return visits. These reviews take a considerable amount of planning and preparation.

Practice reviews may occur for a number of reasons but will often be triggered by a certain event. These events can include, for example, an increase in the number of complaints made against a practice. Sometimes it is the law practice itself that requests a practice review, perhaps after the legal practitioner directors have engaged in the self-assessment process or been in contact with the OLSC in regard to taking steps to reduce the number of complaints they receive about their practice.

The OLSC does not conduct follow up practice reviews as a matter of course. If, for example, the practice is able to demonstrate that it has management systems appropriate to its size and areas of practice and that there has been a decrease in the number of complaints following the initial review, a follow up review may

not be necessary. Most often a follow up review is conducted by the OLSC to assess the implementation of its recommendations and examine any other relevant changes to the practice that may have arisen following the initial practice review.

This reporting year, for example, the OLSC conducted a practice review of a city-based incorporated legal practice due to the number of complaints that had been made about one of its legal practitioner directors. The review was conducted by two members of the OLSC, an external consultant and a trust account inspector of the Law Society.

The review consisted of an extensive interview and discussion with both directors of the ILP about appropriate management systems and how this related to the systems that were in place within the practice at the time. Those systems and a sample of the ILP's files were reviewed and an interview with the junior solicitor was also conducted. During the review, discussion led by the trust account inspector centred on retainer agreements with clients and accounting for money received by the ILP.

Following the review, the OLSC made a series of recommendations and highlighted areas for the ILP to consider in the practice review report. These related to improving client communication and records management, reducing delay and responding to requests from the OLSC about complaints in a timely and thorough manner. A separate report and follow up action was generated by the Law Society.

Approximately 6 months later, the OLSC conducted a follow up review to evaluate whether improvements had been made at the ILP since the last practice review. At the follow up review, it was noted that although complaints continued to be made about the



legal practitioner director of the ILP, during the time that passed between reviews, some steps had been taken to improve the management systems within the ILP and to address the issues raised by the OLSC.

Consequently a further series of recommendations were made and areas for improvement identified. At the time of writing, further time is needed in order to monitor the efficiency and effectiveness of the implementation of these systems and to ascertain whether these systems will have an impact on the nature and number of complaints made about the ILP. The OLSC will continue to monitor the ILP and work with it in order to reduce the number of complaints made about the ILP.

## OLSC Support

This reporting year, the OLSC continued to provide assistance to legal practitioner directors needing support with the implementation and maintenance of appropriate management systems. The OLSC provides assistance either by telephone support or through face-to-face meetings. The purpose of the support is to complement the execution of the self-assessment document and assist with relevant procedures.

The support we provide is very much appreciated. It is not unusual for the OLSC to receive letters or telephone calls from legal practitioner directors thanking us for assisting them in complying with their legislative requirements.

In providing such support we are also able to gain a greater understanding of the types of difficulties legal practitioner directors encounter both with the self-assessment process and more general concerns

arising from operating an ILP in what is an increasingly competitive legal services marketplace.

## The Self-Assessment Process

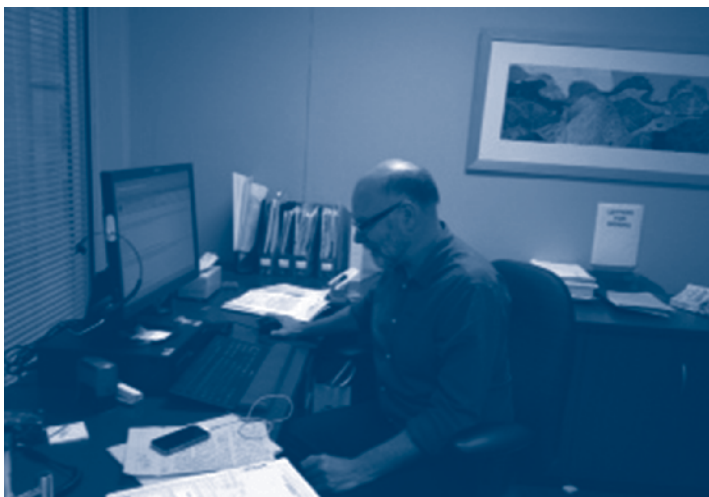
The self-assessment process is now in its eighth year of operation. Since its inception in 2004, the self-assessment form has been issued and completed by approximately 1,800 ILPs.

As I have stated in previous Annual Reports, the process appears to be well-regarded by ILPs. We continue to receive positive feedback from legal practitioner directors commenting on the self-assessment process. On some occasions we also receive feedback suggesting measures to improve the self-assessment process. These comments, both positive and negative, do not go unnoticed. We are always interested to hear how the self-assessment process can be improved and how we can better assist ILPs who are about to go or who have gone through the process.

Noting the benefits of such comments, this reporting year we decided to commence a research project that will allow practices to provide us with their views about the regulatory regime instituted for ILPs and in particular the self-assessment process. To conduct this project and ensure an appropriate level of independence, we asked Professor Susan Saab Fortney, Howard Lichtenstein Distinguished Professor of Legal Ethics, Maurice Deane School of Law at Hofstra University, New York and a well-known empiricist, to work with us in drafting a survey instrument to be sent to legal practitioner directors that will allow them to comment on all aspects of the process. We also asked Professor Fortney to conduct qualitative

interviews with ILPs wishing to discuss the process to enable us to understand their situations in greater detail.

Professor Fortney has now commenced working on this project with us. In order to assist Professor Fortney we conducted an initial interrogation of OLSC data that recorded all of the ILPs that had previously completed the self-assessment form. Those ILPs that had previously completed the self-assessment form within a selected time frame were then asked to complete another self-assessment form. Returned forms were reviewed and evaluated by the OLSC before they were entered into the Legal Practice Management Audit System





(LPMAS). Participants will be asked to complete a survey and a random selection of directors will then be invited to participate in interviews with Professor Fortney.

The OLSC looks forward to considering the results of such an important study and implementing any recommendations and suggestions arising from it.

## LEGAL PRACTICE MANAGEMENT AUDIT SYSTEM (LPMAS)

LPMAS is a bespoke web-based portal, which has been designed for the purpose of, among other things, assessing self-assessment compliance amongst ILPs. In the last financial year it was reported that LPMAS was rolled out internally and that it has already resulted in significant time and cost savings within the Office. OLSC staff continue to use LPMAS on a daily basis for search functionality, monitoring and examining data

about practices and practitioners and for confirming information held by the Registry of the Law Society of NSW. In addition, the ILP unit uses LPMAS to document self-assessment information, record audit material and store audit reports and conduct risk profiling.

The final phase of roll out in the financial year 2012/13 has so far included extensive user management testing and will shortly progress to engaging a pilot group of legal practices which will be selected to test LPMAS' functionality for external users, before being rolled out to the profession in early 2013.

### Case study



*The OLSC conducted a practice review of a traditionally structured practice following a consistent number of complaints about the practice and members of its professional staff. The complaints predominantly raised concerns about poor communication, ethical matters and issues pertaining to quality of service delivery. Given the frequency and nature of these complaints, the OLSC was concerned that the practice was not meeting the requirements of the Act, the Solicitor's Rules or the Regulation.*

*The first visit to the practice occurred in July 2011 and was then followed by two further visits to follow up on actions that were being taken to address the concerns raised and the recommendations made by the OLSC in the practice review report.*

*The practice implemented a series of new systems to improve storage, file handling and disclosure arrangements. It also employed the services of a full*

*time office manager to streamline the processes, oversee the introduction of new practice management software and further improve client management procedures.*

*Upon the third visit by the OLSC it was evident that a number of these changes had been implemented and the principal noted an improvement in control over the affairs of the practice and staff, greater clarity in their roles and benefits from newly installed software.*

*The principal's willingness to take steps to change, evidence of the systems being implemented and anecdotal improvements in staff morale are positive signs that the improvements have been made. The OLSC will continue to monitor the practice with the expectation that this will ultimately translate in to a reduction in complaints about the practice.*

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## Case study



*The OLSC conducted a practice review of an ILP as a result of the legal practitioner director failing to certify compliance with appropriate management systems pursuant to section 140(3) of the LPA 2004, a process which is normally fulfilled by way of completing a self-assessment form within the prescribed timeframe. Despite several requests from the OLSC for the principal to do so, completion of the form did not occur.*

*The failure to adequately complete a self-assessment form and the lack of communication on the legal practitioner director's part raised concerns about the implementation and maintenance of appropriate management systems at the ILP pursuant to the Act. In order to satisfy the Commissioner that the requirements of the Act had been met, it was determined that a practice review of the ILP's management systems was appropriate.*

*The review was conducted and involved lengthy discussions with the sole legal practitioner director. Following the practice review, the OLSC identified evidence of systems being in place to meet the ILP's needs, which were limited and relatively specialised by virtue of the ILP's size and scope of work. Some recommendations arose out of the review with the intention of bolstering those systems already in existence within the ILP. These were immediately adopted by the practice where practicable.*

*In light of this and given that the ILP had not previously had any complaints made about it to the OLSC, it was determined that no follow up practice review was required. However, the legal practitioner director was asked to complete a self-assessment form. The legal practitioner director was also reminded about the importance of responding to both the OLSC and the Law Society in relation to their enquiries in a timely manner in order to avoid unnecessary intervention.*

## Case study



*A practice review was conducted at the offices of a traditionally structured practice as the principal had a series of complaints made about his conduct over the years. As the practice was not an ILP, the objective of the review was to assess whether the legal practice had appropriate processes and systems in place to fulfil the practice's professional obligations under the Act, the Rules and the Regulations and to ultimately reduce the number of complaints about the practice and the principal.*

*The principal and staff that were interviewed were co-operative, communicative and accommodating throughout the practice review, which took two days to complete.*

*At the conclusion of the review, some areas for consideration and improvement were presented to the principal. The principal was also advised to take steps to streamline processes and maximise the utility of those already in existence. Following the practice review the principal also had a meeting with the Assistant Commissioner, Complaints about how to successfully reduce the number of complaints being made about his practice.*

*The combination of the practice review process and the principal's willingness to engage in it and commitment to making improvements has seen a significant reduction in the number of complaints made about the practice and the principal.*

## CHAPTER 4

# EDUCATION AND COMMUNICATION



This reporting year, the OLSC has continued to engage with the profession and the general community through the provision of education and training. The OLSC has sought to do so by utilising a wide variety of education and training techniques including seminars, publications, tailored training sessions at law practices, research and conversations.

### UNIVERSITY LECTURES

As in previous years, the OLSC delivered a series of lectures to undergraduate and post-graduate law students in universities across New South Wales. These universities included the University of New South Wales, University of Sydney, the University of Wollongong, the University of Technology, the University of Newcastle, Southern Cross University and Macquarie University. The content of these lectures focused on the role and functions of the OLSC, the legislation that governs the legal profession and examples of the types of complaints we receive.

In addition the OLSC delivered lectures to students completing their practical legal training at the College of Law. In these lectures, students are confronted with a series of scenarios that legal practitioners commonly face in practice. Each scenario contains a number of ethical dilemmas. The scenarios are presented in the form of hypotheticals and students are asked how they would deal with them in practice. For example, students are asked how they would deal with certain costs arrangements or how they would deal with a conflict of interest.

### OUTREACH – PRESENTATIONS TO THE LEGAL COMMUNITY

A core objective of the OLSC is to educate and inform the profession and the general community about the role of the OLSC and developments in regulation. In order to achieve this role the OLSC presents lectures to law practices as well as lectures for Continuing Professional Development (CPD) events. The seminars presented are tailored to the needs of the particular law practice or the CPD event but will invariably discuss a range of issues about the complaints process, what legal practitioners can do to reduce complaints made against them, the common mistakes legal practitioners make and how they can avoid making them.

This year, the OLSC took a fresh approach to presenting seminars by changing the standard method of delivering lectures (a speech) to hypothetical scenarios. The hypothetical scenarios are more interactive, more visual and challenge the audience to question morality, ethics and values. This new approach has been well received.

The OLSC presented over 60 seminars this year. Some of these seminars included as follows:

*Southern Cross University, School of Law & Justice seminar presented by the Commissioner and the Research & Project Coordinator at Lismore, 14 July 2011.*

*Video recording for the Television Education Network Channel on Solicitors' Undertakings – Dangers & Safeguards – Questions & Answers, 8 August 2011.*

*University of Wollongong's 20<sup>th</sup> Anniversary lecture presented by Commissioner and the Research & Project Coordinator at Wollongong, 29 August 2011.*

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*Multi-Ethical Tasking for In-House & Government Lawyers*, Sydney In-House & Government Legal Counsel Conference, presented by the Commissioner and the Research & Project Coordinator, Sydney, 14 September 2011.

*Ethics Seminar*, NSW Bar Association, presented by the Assistant Commissioner (Legal), Sydney, 27 October 2012.

*Role of the Legal Profession in Assisting Clients who are Under Investigation: What are the Legal and Ethical Limits?* the Financial Crime Risks, Globalisation and the Professions Conference presented by the Commissioner at the Business School, the University of Sydney, 2 November 2011.

*Technology – The Ethical Implications of Using New Technology in Legal Practice*, presented at the Legalwise In-House Counsel Conference by the Commissioner and the Research & Project Coordinator, Sydney, 23 November 2011.

Radio 2GB live interview, *Legal Matters* with Tim Shaw, 22 January 2012.

A series of CPD seminars for the New South Wales Bar Association presented by the Commissioner and the Research & Project Coordinator in Orange, Newcastle and North Coast (Ballina), February and March 2012.

*Ethics & Professional Responsibilities: Identifying & Managing Conflicts of Interest*, Television Education Network seminar presented by the Commissioner and the Research & Project Coordinator, Sydney, 27 March 2012.

*Ethics & Professional Responsibility*, ACLA NSW Corporate Counsel Day presented by the Commissioner and the Research & Project Coordinator, Sydney, 27 March 2012.

*Ethics, Communications and Culture in Firms*, UNSW CLE program presented by the Commissioner and the Research & Project Coordinator, Sydney, 30 March 2012.

*Sydney CLE Conference*, Thomson Reuters, presented by the Commissioner and the Research & Project Coordinator, Sydney, 30 March 2012.

*Commercialisation of Legal Practice*, Commonwealth Law Association Regional Conference presented by the Commissioner, Sydney, 21 April 2012.

*Technology, The Legal Profession and Rural Practitioners: Practising Law in a Digital World*, 2<sup>nd</sup> National Rural and Regional Law & Justice Conference, University of New England, presented by the Commissioner and the Research & Project Coordinator, Coffs Harbour, 19 – 20 May 2012.

*Ethical Challenges & Global Practice: What Lies Ahead*, LexisNexis Practice Management NSW presented by the Commissioner and the Research & Project Coordinator, Sydney, 22 May 2012.

*Technology & Legal Practice*, Legalwise Seminars presented by the Commissioner and the Research & Project Coordinator, Sydney, 31 May 2012.

The Macquarie University Client Interview Competition Grand Final Sydney, 4 June 2012.

## STAFF TRAINING

As in previous years the OLSC is committed to ensuring that its staff undertake a range of educational programs to allow appropriate development. OLSC staff attended education programs in-house as well as externally this year. Programs held internally included seminars on:

- the role and function of Legal Aid NSW;
- training on the OLSC's Portal;
- a seminar on the role and function of Kingsford Legal Centre;
- a seminar on the role and function of the Motor Accidents Authority;
- a seminar on the role and function of the Migration Agents Registration Authority;
- a seminar from the Chief Trust Account Inspector at the Law Society of NSW;
- a seminar on the operation of OH&S legislation in NSW and a seminar by the Registrar of the Family Court of Australia.

Staff attending external training programs covered topics such as:

- writing for decisions, workplace discrimination and harassment;
- drafting documents for use in court;
- managing complaints and feedback;
- the 2011 Government Lawyers Conference;
- the 2011 CORO Conference;
- drafting affidavits;
- examinations under the Corporation Act;
- understanding financial statements;
- litigation funding and governance and sustainability.

This reporting year staff spent approximately 1000 hours on training in total. Of the total hours spent on training, 368.5 hours was spent on internal training courses, 378 was spent on attending conferences or delivering seminars and 259 hours was spent on attending external training sessions.

## PUBLICATIONS – INTERNAL AND EXTERNAL

During the reporting period, the OLSC published the 2010-2011 *Annual Report* and two issues of our newsletter, *Without Prejudice*. We also revised our 18 facts sheets, which cover a broad range of topics and information for the public and the legal profession. The OLSC also published a number of important and timely papers on matters currently affecting the regulation of the legal profession.

The OLSC published two papers in an international law journal with Professor Laurel Terry, Harvey A. Feldman Distinguished Faculty Scholar and Professor of Law at Penn State Dickinson School of Law on the concept of regulatory objectives in legislation and the challenges facing contemporary legal regulators. The two papers are entitled, “Adopting Regulatory Objectives for the Legal Profession” and “Trends and Challenges in Lawyer Regulation: The Impact of Globalisation and Technology”,

and are published in the May 2012 edition of the *Fordham Law Review*.

The OLSC published three articles in the New South Wales Law Society Journal in April, May and June 2012 on issues relating to technology and its use by the legal profession. The three articles were entitled, “Outsourcing Issues for Legal Practice”, “Social Media Issues for Legal Practice” and “Cloud Computing Issues for Legal Practice.”

The OLSC also published one article on the University of New South Wales Centre for Law, Markets & Regulation Portal. The article added to a running debate on an appropriate model for the regulation of financial markets. The article was entitled, “The Oxford Project – A Regulator Responds”.

The OLSC’s publications are available in hard copy from the OLSC or via our website at [http://infolink/lawlink/olsc/ll\\_olsc.nsf/pages/OLSC\\_speeches](http://infolink/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches)

### Case study

*A complainant alleged he had been overcharged by his legal practitioner who had acted for him in relation to three criminal matters. The complainant was concerned that he had been overcharged because he believed his matters were actually funded by Legal Aid. We contacted the legal practitioner who advised that whilst she had acted for the complainant in three separate matters, only one was partially funded by Legal Aid. However, in a show of good faith, in light of the complainants’ dissatisfaction and*

*in an acknowledgement that better communication about costs could have prevented the complaint, the legal practitioner offered to refund \$3,315.50 in resolution of the matter. The complainant accepted the legal practitioner’s offer. We closed this file on the basis that there were no issues regarding the practitioner’s professional conduct and that the costs dispute was resolved to the mutual satisfaction of the parties.*



### Case study

*A complaint was lodged with the OLSC about the contents of a letter written by a legal practitioner. The legal practitioner who wrote the letter was representing himself in proceedings against the complainant. The letter contained very offensive swear words used to describe third parties.*

*The OLSC wrote to the legal practitioner about the complaint and asked for his comments. The legal practitioner responded to the OLSC stating that the language he used in the letter was trivial in nature, and was a result of his underlying frustration about the matter. The practitioner stated that the language was satirical in nature. The legal practitioner did*

*however accept that the words stated were abhorrent and repugnant and he apologised for using them.*

*The Commissioner’s view was that the use of such words was inappropriate in a formal letter to an opposing party in litigation by a legal practitioner.*

*As the legal practitioner had been previously cautioned for the use of rude and offensive language, the legal practitioner was reprimanded for this repeated conduct under section 540(2)(b) of the LPA 2004. The reprimand is listed publicly on the OLSC Disciplinary Register.*



## VISITS

### International

During this reporting year, the Law School of Fordham University in New York City extended an invitation to the Commissioner and the Research & Project Coordinator to participate in a Colloquium on Globalisation and the Legal Profession. Attending this Colloquium were participants who were internationally renowned for their expertise and knowledge in the field of ethics and regulation of the legal profession.

This Colloquium was a closed conference focusing on the purpose and function of regulation for the legal profession. The Commissioner and the Research & Project Coordinator presented the papers they had drafted on the concept of regulatory objectives in legislation and the challenges facing contemporary legal practitioner regulators with Professor Terry.

In January-April 2012 the Commissioner and the Research & Projects Coordinator participated in a number of virtual seminars and discussion groups with people involved in the LawWithoutWalls Project. These seminars and discussions were conducted through technology, Adobe Connect, allowing cross-jurisdictional discussions that could be viewed simultaneously online.

### Domestic

On 6 March 2012, the Commissioner attended and participated in a Forum in Melbourne on issues relating to alternatives to the billable hour. The Forum, entitled "Firms of the Future", was presented by Ron Baker, a value billing expert. The Forum was primarily based on two of Ron Baker's books, *The Firm of the Future: A Guide for Accountants, Lawyers, and Other Professional Services* (2003) and *Implementing Value Pricing-A Radical Business Model for Professional Firms* (2011). The Forum discussed how the legal profession could move away from the billable hour to alternative billing models that ensure greater certainty and value.

On 28 May 2012, the Commissioner participated in a Roundtable Discussion at Melbourne Law School on the impact of the Australian Consumer Law on the legal profession. The Roundtable Discussion, hosted by the Civil Justice Research Group, looked at whether the Australian Consumer Law gives regulators greater powers, how to enforce consumer guarantees, and what is the situation relating to advocates immunity in light of the Australian Consumer Law. The Roundtable also looked at how information can be shared between regulators to ensure that there is no regulatory overlap.

### Case study

*The complainant retained a lawyer to act for him in a medical negligence claim against a hospital. In the middle of the matter the complainant terminated the retainer with the practitioner and sought advice from a larger firm.*

*The matter settled for the sum of almost \$1.9m. The amount was paid into the large firm's trust account.*

*Prior to the matter settling the first practitioner sent an invoice to the complainant for the amount of \$132k. Of that amount \$107k was for professional costs and the remaining \$25k was for disbursements.*

*The complainant initially contacted the OLSC alleging overcharging on the part of the first lawyer*

*and was referred to the New South Wales Supreme Court Cost Assessment Scheme for an assessment of whether the costs were fair and reasonable. The complainant decided not to have the bill assessed and approached the large firm with the first legal practitioner's bill. When the large firm advised her that she would be charged for their attempts to negotiate the bill, she came back to the OLSC.*

*Over a protracted period we negotiated with the first lawyer about his costs and the service he delivered. He agreed the service was less than adequate and finally reduced his fees by over \$30k.*





## CHAPTER 5

# RESEARCH AND PROJECTS



The OLSC continues to be committed to conducting research on the legal profession and related regulatory issues. The purpose of conducting such research is to ensure that we can better understand the market within which we operate and ensure that our regulatory framework is both relevant and responsive.

This year we have continued to foster good relations with the profession and academic institutions, domestically and globally. We have also established good working relationships with the research departments of other legal regulatory bodies around the world and hope to conduct joint projects in common areas of interest in the near future.

### IN-HOUSE RESEARCH

This reporting year, research was conducted on the following topics at the request of OLSC staff:

- The effect of the Australian Consumer Law on the legal profession in NSW and Australia;
- The role of corporate counsel as the moral compass of tomorrow;
- An analysis of the draft Australian Solicitors Conduct Rules and their impact on legal practitioners;
- The impact of the *Legal Services Bill 2011* (Ireland) and the proposed regulatory regime in Ireland;
- The framework for assessing competence and professionalism for legal practitioners in Australia and overseas;
- Creating a new regulatory paradigm for the regulation of third party litigation funders;
- The role of regulators in private enforcement;
- The use of undertakings by legal practitioners;
- The incidence of regulatory overlap – how to ensure uniformity in approach;

- An analysis of the criminal offence provisions under legal profession legislation in Australia;
- An analysis of cases in the CTTT involving legal practitioners and/or legal services;
- Strengthening the competence and ethics of legal practitioners new to practice;
- The listing of Slater & Gordon and the difference in corporate regulatory approach between England and Australia;
- The increasing mergers of UK practices with Australian practices and the potential/necessity of information sharing between respective regulators;
- Mandatory continuing legal education – an evaluation of jurisdictional approaches;
- Trends in disciplinary matters including conduct type, area of law, prosecutions etc;
- Maintenance/improvement of standards within the legal profession;
- The institutional separation of disciplinary matters from consumer matters;
- An analysis of the regulatory regime in Canada.

### EXTERNAL RESEARCH

During the reporting year, the OLSC continued to work on a number of major research projects in collaboration with the profession, academics and other regulators. These projects included as follows:

#### *a. Regulatory Objectives and Regulatory Challenges*

As I reported in last year's Annual Report, in March 2010 we received a request to participate in a research project with Professor Laurel Terry, Harvey A. Feldman Distinguished Faculty Scholar and Professor of Law at Penn State Dickinson School of Law. The project involved researching and producing two papers for publication

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in an academic journal on the concept of regulatory objectives in legislation and the challenges facing contemporary legal practitioner regulators. The papers were completed in April 2012.

The first paper on regulatory objectives entitled “Adopting Regulatory Objectives for the Legal Profession”, analyses various regulatory objectives that have been adopted or proposed for legal profession regulation. In Australia for example, the proposed Legal Profession National Law, states that the objectives of the legislation are to promote the administration of justice and an efficient and effective Australian legal profession, by:

- (a) Providing and promoting national consistency in the law applying to the Australian legal profession; and
- (b) Ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; and
- (c) Enhancing the protection of clients of law practices and the protection of the public generally; and
- (d) Empowering clients of law practices to make informed choices about the services they access and the costs involved; and
- (e) Promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and
- (f) Providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.

The inclusion of these objectives is a first for Australian legal profession regulation but is by no means a first for other jurisdictions overseas. Regulatory objectives are included in legal profession legislation in the United Kingdom, Canada, New Zealand and Denmark and are being considered for inclusion in Ireland and India. The United States has not yet considered the need for regulatory objectives.

The paper places the use of regulatory objectives and purpose statements in legal practitioner regulation in a broader context by describing some of the recent profession-specific and non-profession-specific regulatory reform initiatives. The paper argues that there is much to be gained from the inclusion of regulatory objectives in legislation and recommends that jurisdictions that have not yet adopted regulatory objectives for the legal profession do so.

The second paper on regulatory challenges entitled “Trends and Challenges in lawyer Regulation: The Impact of Globalization and Technology”, identifies six different types of challenges facing contemporary legal practitioner

regulators and analyzes some of the regulatory trends that seem to be emerging in response to these issues. These six challenges include the following:

- (1) *Who* should regulate the legal profession? For example, should there be a self-regulatory system or a co-regulatory system? Alternatively, are legal practitioners simply service providers, the regulation of whom should be included in general societal regulations?
- (2) *Who* or *what* should be regulated? Should regulators continue to focus on regulating legal practitioners or should they be attempting to regulate those who provide “legal services,” whoever they happen to be?
- (3) *When* should regulation occur: ex ante or ex post?
- (4) *Where* should regulation occur? Our traditional system of legal practitioner regulation and enforcement is geography-based, but this regulatory system does not really match the reality in which legal practice is increasingly virtual.
- (5) *How* should regulation occur? For example, should regulation differ depending on the size or sophistication of the client? Should a regulator use a rules-based approach or an outcomes-based approach?
- (6) *Why* should regulation occur?

The paper argues that these six questions must be asked by regulators in order to ensure that the regulatory framework within which they operate is relevant and responsive.

The papers in their draft form were presented in October 2011 at The Louis Stein Center for Law and Ethics at Fordham University in New York and published in the May 2012 edition of the Fordham Law Review.

#### *b. Appropriate Management Systems and the Self-Assessment Process*

The OLSC has been working with Professor Susan Saab Fortney, Howard Lichtenstein Distinguished Professor of Legal Ethics, Maurice Deane School of Law at Hofstra University, New York to develop a project that will assess the current regime for regulating incorporated legal practices. The intention of the project is to build on the work that had already been completed by Dr Christine Parker on complaints and incorporated legal practices.

The project with Professor Fortney, still in its early stage of development, will focus on the requirement for incorporated legal practices to establish and implement appropriate management systems and the self-assessment process. The project will be asking ILPs their opinion of the self-assessment process, which has now been in existence for more than eight years, and where

they believe it could be improved. A survey is currently being drafted that will cover these questions. In addition to a survey we are also planning to interview incorporated legal practices to gain further insight.

### *c. The Public Ownership of Law Firms Ten Years On*

This year marks the tenth year in which law practices have been permitted to incorporate in New South Wales and the fifth year since the Australian law practice Slater & Gordon listed on the Australian Stock Exchange. Throughout this time, we have watched the incorporated legal services marketplace flourish. Slater & Gordon have expanded and developed their legal practice to become the largest personal injury law practice in Australia. Despite these positive experiences, many jurisdictions around the world still remain hesitant about embracing the concept of private ownership of law practices. This hesitation is changing, however, with the new wave of alternative business structures (ABS) infiltrating the legal services marketplace in the United Kingdom.

There are now thirty ABS registered in the United Kingdom with a further one hundred awaiting registration from the Solicitor's Registration Authority (SRA). One of the thirty ABS is Slater & Gordon who purchased Russell Jones & Walker, a mid-size UK personal injury practice in April 2012. In announcing their purchase, Slater & Gordon advised that they will be taking their hierarchical statement of duties that sees their primary duty to the Court, their secondary duty to the client and their tertiary duty to shareholders, to the UK.

Slater & Gordon's purchase of a law practice in the United Kingdom raises a number of questions for regulators and the profession. What does the future hold for publicly listed law practices? Will the commoditisation of law risk bringing the profession into disrepute? What does public ownership mean for regulators? What is the impact of public ownership on employees of publicly listed practices? What is the impact of public ownership on clients of publicly listed practices?

## Case study



*The complainant instructed a legal practitioner to appear for her in family law proceedings following the breakdown of her de-facto relationship. At the first meeting, the complainant said that when she raised the question of fees, the legal practitioner told her not to worry about them until settlement of the Family Law proceedings. She said the lawyer gave her no estimate of costs of the proceedings.*

*Three months after the case began she received an invoice for \$5,667.24. That invoice was sent to the complainant's old address, despite the fact that she had given the legal practitioner her new address. It was not itemised. The complainant requested an itemised invoice. A few weeks later, she received an itemised invoice for \$8,765.46 but the accompanying letter said \$6,000 would be accepted if paid within 14 days.*

*The complainant contacted the legal practitioner and expressed dissatisfaction with the invoice and offered to settle the bill for \$3,000. The lawyer rejected the offer but said she would now accept \$7,000 if paid*

*within 14 days. The client disagreed and said she would lodge an application for costs mediation with the OLSC. The legal practitioner advised that if full payment of the original bill were not received she would now proceed with enforcement. The complainant contacted the OLSC asking us to mediate her dispute saying she was disappointed the practitioner terminated negotiations and relied on the original invoice immediately an application for costs mediation had been lodged with this office.*

*We contacted the legal practitioner who said the complainant had been provided with a cost disclosure agreement and claiming she did not tell the complainant not to worry about the costs.*

*We negotiated raising the lack of an estimate and the confusion over when the bill needed to be paid. The practitioner, in good faith, agreed to accept \$6,000.00 in full and final settlement and offered to accept payment over time. The client accepted the offer.*

The OLSA has been considering these questions during this reporting year. We have done so by conducting a research study on Slater & Gordon, interviewing 40 members of staff at their head office Melbourne. The study elicited information about the impact and effect of Slater & Gordon's journey since listing on the ASX.

The preliminary results of the study are to be presented at the Fifth International Legal Ethics Conference in Banff, Canada in July 2012.

#### *d. Technology and the Legal Profession*

As I reported in last year's Annual Report the OLSA had been working with Professor Rita Shackel, Professor of Law at the University of Sydney, on a research project, which was looking at the impact of technology on the legal profession. The research examined technological developments and their impact on the legal profession, both in respect of changing legal practice and the need for regulation to consider how these technological developments are changing the market and legal profession.

The joint research project examined the use of social networking media, the rise of virtual law practices both internationally and within Australia, and the increasing use of off shoring or outsourcing of legal processes and practices. The research revealed that there is a need for regulators to be responsive to these developments and ensure that existing regulatory instruments are adapted to address the challenges and concerns raised by an increasingly borderless and e-based legal services market and profession.

Noting the need for regulators to assist, the OLSA together with the Law Society of NSW drafted a series of guidelines and published articles in the Law Society Journal about the use of these new technologies and issues for the profession to consider in their use. The articles were published in the April, May and June edition of the Law Society Journal.

Guidelines on legal process outsourcing, cloud computing, virtual law practices and social media will be presented to the profession for consideration before they are published.

#### *e. Australian Research Council (ARC) Grant*

As reported in last year's Annual Report we have been participating in an ARC research project with the University of New South Wales on pressing ethical problems confronting the operation of capital markets in Australia. The project, now in its third year examines the adequacy of the regulatory apparatus and integrity systems in the financial marketplace.

This year's major Workshop focused on public and private enforcement and in particular, the role of regulators and class actions. The Workshop considered the growing use of private enforcement in the form of class actions that are often backed by litigation funding in Australia. Whilst governments have traditionally sought to promote class actions as a way to achieve access to justice, their current use as a mechanism of achieving deterrence is questionable. The Workshop looked at the class action from the perspective of the "private attorney general" and considered how it should interact with public regulators like the Australian Securities and Investments Commission and the OLSA.

### **Case study**

*A client lodged a complaint that his legal practitioner had advised him to swear an affidavit even though the affidavit was incomplete. The complainant asserted that after he had sworn the affidavit and the legal practitioner had witnessed his signature, further work was carried out on his affidavit without the complainant's knowledge and agreement, and the affidavit was then filed with the Court containing errors.*

*The OLSA informed the legal practitioner about the complaint and asked him to comment. The legal practitioner denied all of the allegations made by the complainant in the complaint. The OLSA investigated the matter further contacting the junior solicitor who*

*had drafted the complainant's affidavit and was employed by the legal practitioner the subject of the complaint. The recollection of the then junior solicitor supported a number of key assertions made by the complainant.*

*The Commissioner was satisfied that the solicitor purported to witness the complainant swearing his affidavit when in fact the affidavit was incomplete, the solicitor knew that it was incomplete and changes were made to the affidavit after the complainant had sworn that the affidavit was true and correct. The Commissioner reprimanded the solicitor for falsely witnessing the complainant's affidavit.*



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*f. LawWithoutWalls*

The OLSC participated in an exciting and innovative university program hosted by the University of Miami called “LawWithoutWalls”. LawWithoutWalls is a part-virtual, educational collaboration created by the University of Miami School of Law. It brings together a trans-disciplinary group of people and institutions from around the world to engage on the burning issues facing the legal profession, collaboratively solve legal problems, and develop the skillsets needed to thrive in the new, global legal marketplace.

LawWithoutWalls requires teams of students to develop a Project of Worth that creatively solves its identified problem. Students are assisted by an Academic Mentor, a Practitioner Mentor, a Subject Expert Advisor, an Entrepreneur Advisor, and an Alumni Advisor, all of whom virtually guide the students and ensure that the Projects of Worth are creative, feasible, and valuable to an identified target audience. As a key component to LawWithoutWalls, students participate in Virtual Thought Leader Sessions wherein experts from around the world: 1) share their multidisciplinary perspectives on the needed changes in legal education and practice; and 2) teach professional, team building, idea generation, and entrepreneurial skills.

The Commissioner was the subject expert advisor to a group of students whose project of worth was entitled “Publicly Held Law Firms in the UK and Australia: The Big Bang or the Big Bust?” The Research & Projects Coordinator was a Practitioner mentor for a team of students whose project of worth was “Virtual Legal Education: Can Law Schools Span the Distance?”



## CHAPTER 6

# INFORMATION SYSTEMS AND SERVICES REPORT



This financial year, the Information Systems and Services (ISS) Unit has concentrated on the review and enhancement of long-term projects, and refinement of OLSC practices and processes. The ISS Unit has continued to work closely with the ILP Unit in finalising the rollout of the LPMAS Project. Aspects of this project are now under the ISS Unit. New data projects have begun, reporting refined and new staff training sessions sourced. The OLSC has also achieved re-certification to ISO 9001:2000.

## OLSC PROJECTS

In 2003 the OLSC introduced project methodology to complement the organisational objectives. Each year a management review is undertaken in an effort to streamline and consolidate overarching project teams to ensure that current and future OLSC business needs are met. This allows much of the work performed within the OLSC to be categorised into projects, which a variety of staff from all areas work on to improve the systems, thus meeting organisational objectives.

### Information Sharing/ Knowledge Management Project

<b>Project Rationale:</b>	<ul style="list-style-type: none"><li>To ensure better access to information for all staff and related stakeholders; sustainability of information stored, currency of information sourced and ensure knowledge management principles are enhanced.</li></ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"><li>Information turnaround and currency</li><li>Consistency of Information</li><li>Increased knowledge sustainability and accessibility</li></ul>

### RELATED WORKING PARTIES

#### CTS Database Upgrade:

<b>Activity Undertaken:</b>	<ul style="list-style-type: none"><li>A review was undertaken of the Complaints Tracking System (CTS) Database to ensure the sustainability and accuracy of information stored. This has led to a system upgrade to enhance the useability of the CTS.</li></ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"><li>Better access to information</li><li>Enhanced sustainability of information stored</li><li>Knowledge management principles are improved.</li></ul>

#### CTS Data Maintenance:

<b>Activity Undertaken:</b>	<ul style="list-style-type: none"><li>A CTS Data review was undertaken to ascertain the accuracy and currency of information stored to ensure optimal coding options, accessibility and reporting functionality from QA Plus/ CTS. This has led to enhancement of and useability of the data stored in CTS.</li></ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"><li>Improved access to information extracted from the CTS for ongoing reporting purposes, and use in the LPMAS.</li><li>Currency of information extracted from the CTS for ongoing reporting purposes optimised, and use in the LPMAS.</li></ul>



Stakeholder Satisfaction Survey Project:	
<b>Activity Undertaken:</b>	<ul style="list-style-type: none"> <li>A review was undertaken of all stakeholder surveys to ensure information needs are met. These include: Inquiry Line callers, Website users, Complainants who have a formal written complaint lodged, Practitioners who are contacted regarding complaints, and OLSC Staff.</li> </ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>Feedback used to ensure stakeholder needs are met.</li> <li>Improved information extracted from surveys for ongoing reporting purposes.</li> </ul>
Project Team 2: Staff Training & External Education Project	
<b>Project Rationale:</b>	<ul style="list-style-type: none"> <li>Enhancement of OLSC's current staff training, student training needs and ensuring better service delivery to stakeholders</li> </ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>Enhanced staff training</li> <li>Enhanced student training</li> <li>Consistency of Information</li> <li>Stakeholder Feedback</li> </ul>
RELATED WORKING PARTIES	
Internal Staff Training Sessions:	
<b>Activity Undertaken:</b>	<ul style="list-style-type: none"> <li>An annual review was undertaken to ensure that ongoing job based targeted training for all staff has been met. Staff were surveyed and training in communication techniques and changes in areas of law was provided</li> </ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>Better access to current information</li> <li>Improved training</li> <li>Broad range of topics covered as nominated by staff</li> </ul>
Stakeholder Satisfaction Survey Project (Students):	
<b>Activity Undertaken:</b>	<ul style="list-style-type: none"> <li>A review was undertaken of the student stakeholder surveys to ensure information needs are met</li> </ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>Feedback from surveys used to ensure student training needs are met</li> <li>Improved information from surveys for ongoing reporting purposes</li> </ul>
Project Team 3: Quality & Compliance Management Project	
<b>Project Rationale:</b>	<ul style="list-style-type: none"> <li>Enhancement of compliance and ensuring a continual improvement philosophy is established, to provide better service delivery to stakeholders, and ensure OLSC needs are met</li> </ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>Compliance &amp; continual improvement</li> <li>Consistency of Information, processes and procedures</li> </ul>
RELATED WORKING PARTIES:	
ISO 9001 Accreditation:	
<b>Activity Undertaken:</b>	<ul style="list-style-type: none"> <li>Annual review of OLSC's certification and accreditation to ISO 9001 was undertaken by SAI Global</li> </ul>
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>Better access to information and procedures</li> <li>Improved training</li> <li>Enhanced consistency of Information, processes and procedures</li> <li>Enhanced efficiency</li> <li>Continual improvement</li> <li>Formal external recognition as a professional, efficient, well managed entity.</li> </ul>

## LPMAS PORTAL

The ISS Unit has continued working with the ILP Unit on the completion of the LPMAS Portal, in particular within complaints and data management, and reporting functionality. The LPMAS Portal will change the way the OLSC interacts with and responds to the information needs of practitioners and legal practices, both incorporated and traditional structures. It will improve communication and change the way we interact with the profession as a whole. The ISS Unit is undertaking the ongoing role of administration of the LPMAS Portal on rollout.

## ISO RE-CERTIFICATION

The OLSC's aim is to use a philosophy of continuous improvement, concentrating on areas of identified problem or required minimum standard. It is to also review everyday practice to ensure efficiency and effectiveness. In February 2012, the OLSC recertified to ISO 9001: 2000, with the support of all management and staff. The OLSC originally gained certification in 2005-2006 in an effort to ensure there was a formal external recognition of the OLSC as a professional, efficient and well-managed entity with evidence of its commitment to continuous improvement.

This is an ongoing process, with the need to ensure we keep improving our standards and reviewing our processes regularly. The OLSC is committed to this

process, to ensure we continually improve in the area of customer service and satisfaction for all stakeholders. In line with our role, vision, mission, and values, the OLSC has set a number of objectives to ensure we continually monitor and improve in the area of customer service and satisfaction.

These are:

- To deliver our existing services in a consistent, reliable fashion while meeting and exceeding our stakeholders' needs;
- To ensure the core processes run smoothly and efficiently, with minimal non-compliance whilst ensuring maximum customer satisfaction and maximum staff morale;
- To align the Quality Management System to the OLSC's Business Plan, which uses project methodology, each year to set new projects to form its business plan to improve areas identified in performance monitoring and other new business initiatives;
- To observe centralised Human Resources, Information Technology, Asset Management and all other policies and procedures of the AGD;
- To maintain the OLSC Quality Systems Manual, incorporating policies, working procedures, flow charts and general administrative requirements, together with standard documents and forms to ensure accessibility and currency of information provided; and
- To maintain ISO 9001 certification.

### Case study

*A complainant alleged he had been overcharged by his legal practitioner whom he had instructed to advise about the prospects of pursuing a matter. The complainant alleged that he only had one meeting with the legal practitioner and that after the meeting he received an invoice in the amount of \$330.00. The complainant alleged that at no point during that meeting were fees ever discussed.*

*The complainant expressed concern as he believed his first visit was free and was simply to establish if his case had any prospects of success. He did not have sufficient funds to attend to this account but put forward an offer of settlement of \$100.00.*

*We explained to the complainant that the legal practitioner was under no obligation to disclose his costs because disclosure is only required where costs are likely to exceed \$750.00. We also explained to the complainant that legal practitioners are entitled to charge for their time spent on a matter and that not all legal practitioners offer first visits free of charge.*

*We discussed the matter with the legal practitioner, who recognised that any efforts to recover these costs through recovery proceedings would not be cost-effective or expeditious. The legal practitioner agreed to accept the complainant's offer of \$100.00 and we successfully resolved this complaint.*



## CHAPTER 7

# FINANCIAL PERFORMANCE



The OLSC operates within the organisational framework of the NSW Department of Attorney General and Justice. The Office maintains a recurrent recoupment budget and receives operational funding from the Public Purpose Fund.

In 2011-2012 the OLSC continued to focus attention on sourcing new opportunities for implementing further improvements to its business operations and the management of its resources. Where possible we implemented better work practices and cost saving initiatives, the scope of which extended to processes designed to strengthen our budget management and financial performance.

Our improved budget management strategy ensured we would not exceed our overall budget allocation at year-end. During the year we took special precaution and ensured that:

- Our human resources establishment correctly aligned with our approved budget for employee-related expenditure;
- We closely monitored our monthly budget performance for early detection of favourable and unfavourable expenditure trends;
- We managed our monthly cash flow effectively with particular emphasis on the management of discretionary items of expenditure; and
- We regularly reviewed our operating expenditure including detailed analysis of significant budget variances within our control.

Some items of operating expenditure were beyond our organisational control. We had no control over the Department's year-end financial adjustments and their impact on our overall budget performance result. The Department is obliged to reflect these adjustments in the OLSC's financial records to comply with Treasury requirements.

Details of the OLSC's financial performance including comments on significant budget variances, are provided in the following financial statement and supporting notes.

## HUMAN RESOURCES

The OLSC's approved establishment did not alter in 2011-2012. Our Office maintained a total 30 full time equivalent positions, 29 positions for permanent full time administrative and professional staff and one full time equivalent position for rostered casuals on the OLSC Inquiry Line.

Similar to previous years, the OLSC again encountered a level of staff turnover in some of its permanent full time positions. The staff movements involved staff resignations, secondments and career breaks resulting in position vacancies being created during the year. The lag in completing recruitment processes and filling the position vacancies netted salary savings at the close of the financial year.

## CHAPTER 8

# NOTES SUPPORTING THE 2011-2012 FINANCIAL STATEMENT



### EMPLOYEE RELATED

- 1. Salaries & Wages:** The OLSC's *Salaries & Wages* budget contains provision for annual salary payments to employees occupying permanent and temporary positions in the OLSC approved establishment. The OLSC experienced some staff turnover in 2011-2012 and position vacancies were created during the year. The *Salaries & Wages* budget variance reflects the salary savings derived in interim of finalising recruitment processes and filling the position vacancies.
- 2. Leave Entitlements:** The OLSC's *Leave Entitlements* budget reserves funds for recreation leave, annual leave loading and long service leave entitlements of OLSC employees. The *Leave Entitlements* budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.
- 3. Payroll Tax:** The OLSC's *Payroll Tax* budget provides for payroll tax payable to the Office of State Revenue on OLSC salary-related payments. The *Payroll Tax* budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.

### OTHER OPERATING

- 4. Contractors:** The OLSC's *Contractors* budget includes provision for the engagement of professional services to support the OLSC's ongoing development of the Legal Practice Management and Audit System (LPMAS) as well as our ongoing program of audits of major and complex Incorporated Legal Practices (ILPs). In 2011-2012 the OLSC engaged contractors to develop a User Guide for the LPMAS but there was

minimal requirement to hire contractors to support our audit program. The *Contractors* budget variance reflects the ensuing cost saving achieved in this expenditure line item.

- 5. Fees:** The OLSC *Fees* budget maintains funds for various types of fees expenditure including legal fees incurred in bringing matters before the Administrative Decisions Tribunal and the Courts as well as costs associated with the complaints review system and the engagement of independent reviewer advisors. In 2011-2012 the OLSC initiated a number of major investigations into the conduct of legal practitioners and practices with some matters resulting in Tribunal proceedings. The *Fees* budget variance, which highlights significant cost savings, includes credit adjustments made to the OLSC's legal fees account to offset income. During the year the OLSC received: \$14,500 from *Bryden's Legal Services Pty Ltd* following a decision by the Court of Appeal and the High Court regarding payment of costs to the Legal Services Commissioner; and approx \$42,000 from the Public Purpose Fund following approval for the Commissioner to seek separate costs reimbursement from the Fund for legal fees incurred in the course of managing the *Keddies* investigation.
- 6. Rates & Outgoings** The OLSC's *Rates & Outgoings* budget includes provision for cleaning contractors' costs and miscellaneous charges for common services such as lift maintenance, building electricity costs, etc. in connection with the OLSC's leased premises in the Sydney CBD. The *Rates & Outgoings* budget variance reflects further outgoings adjustments prepared by the Department in 2011-2012 in settlement of outgoings underpayments owed to the landlord for OLSC's leased premises.

- 7. Rent:** The OLSC's *Rent* budget makes provision for monthly rent payments the Department prepares for payment to the landlord of OLSC's leased accommodation in the CBD. The OLSC budgeted for an increase in monthly rent payments in 2011-2012; however, the predicted rent rise did not eventuate and the *Rent* budget variance reflects the resulting cost saving achieved in this expenditure line item.
- 8. Staff Expenses:** The OLSC's *Staff Expenses* budget contains provision for costs associated with staff training and development, staff renewal of their solicitor's practising certificate and staff attendance at seminars and conferences. In 2011-2012 the OLSC incurred normal staff expenses as well as some additional costs as part of hosting the CORO Conference in Sydney last year. The *Staff Expenses* budget variance reflects these increased costs.
- 9. Telephone:** The OLSC's *Telephone* budget includes provision for monthly telephone rental expenses and metered call costs in addition to data service charges in connection with the fibre communications network. The costs and charges are processed by the Department and apportioned to cost centres. The *Telephone* budget variance reflects cost savings achieved in 2011-2012 following a change to the Department's telephone service provider during the year.

## NON CASH ITEMS

- 10. Depreciation & Amortisation:** *Depreciation* expense is a non-cash item and as such does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The *Depreciation* budget variance resulted from an adjustment prepared by the Department to take into account the amortisation expense of OLSC's intangible software assets.
- 11. Crown Liabilities (LSL Liability Assumed by Crown):** Crown Liabilities is a non-cash item and does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The *Crown Liability for LSL* budget reflects the Crown's assumption of the Department's long service leave liability for Departmental officers. The Department is obliged to make this provision as part of Treasury requirements.



## FINANCIAL STATEMENT 2011-2012

	Budget	Spent	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments	(4,399,808)	(4,230,926)	(168,882)	
Other Revenue	-	(8)	8	
<b>Total Revenue</b>	<b>(4,399,808)</b>	<b>(4,230,934)</b>	<b>(168,874)</b>	
Salaries & Wages	2,608,574	2,593,415	15,159	<b>1</b>
Allowances	2,612	792	1,820	
Overtime	5,951	-	5,951	
Leave Entitlements ( <i>Recreation Leave, Annual Leave Loading &amp; LSL</i> )	310,719	265,754	44,965	<b>2</b>
Workers Compensation	10,910	19,287	(8,377)	
Payroll Tax	165,940	200,900	(34,960)	<b>3</b>
Fringe Benefits Tax	2,000	213	1,787	
Superannuation	227,733	222,548	5,185	
<b>Total Employee Related Payments (Excl Crown Liabilities)</b>	<b>3,334,439</b>	<b>3,302,909</b>	<b>31,530</b>	
Advertising & Publicity	5,115	110	5,005	
Bank Charges	102	38	64	
Contractors	76,225	40,349	35,876	<b>4</b>
Electricity & Gas	12,614	13,473	(859)	
Fees	274,940	178,176	96,764	<b>5</b>
Freight & Cartage	-	20	(20)	
General Expenses	4,092	-	4,092	
Insurance	2,121	1,220	901	
Interest Paid	-	10	(10)	
Interpreters & Translations	8,228	4,819	3,409	
Motor Vehicles	2,000	2,229	(229)	
Postal Expenses	20,302	22,820	(2,518)	
Printing	32,920	28,441	4,479	
Publications	11,253	8,705	2,548	
Rates & Outgoings	45,184	59,295	(14,111)	<b>6</b>
Rent	330,019	314,300	15,719	<b>7</b>
Staff Expenses	18,184	28,285	(10,101)	<b>8</b>
Stores & Stationery	33,403	24,240	9,163	
Telephone	24,121	10,345	13,776	<b>9</b>
Travel	23,459	19,520	3,939	



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<b>Total Other Operating Expenses</b>	<b>924,282</b>	<b>756,395</b>	<b>167,887</b>	
Maintenance Contracts	140,064	132,907	7,157	
Repairs and Maintenance	1,023	-	1,023	
<b>Total Maintenance</b>	<b>141,087</b>	<b>132,907</b>	<b>8,180</b>	
<b>Total Expenses (Excl Depreciation &amp; Crown Liabilities)</b>	<b>4,399,808</b>	<b>4,192,211</b>	<b>207,597</b>	
<b>Less: Revenue (Recoupment)</b>	<b>(4,399,808)</b>	<b>(4,230,926)</b>	<b>(168,882)</b>	
Less: Other Revenue	-	(8)	8	
<b>Net Cost of Services Before Depreciation &amp; Crown Liabilities</b>	<b>-</b>	<b>(38,723)</b>	<b>38,723</b>	
<b>Less Non Cash Items:</b>				
Depreciation & Amortisation	61,672	324,398	(262,726)	<b>10</b>
Crown Liabilities (LSL Liability Assumed by Crown)	79,962	-	79,962	<b>11</b>
<b>Net Position</b>	<b>141,634</b>	<b>285,675</b>	<b>(144,041)</b>	

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## CHAPTER 9

# ANNUAL REPORT STATISTICS 2011-2012



## INQUIRY LINE

In 2011-2012 the OLSC received 7,920 calls on our Inquiry Line, a decrease of 208 on the previous year.

### P1 Legal matters raised in calls

	2011-2012	2010-2011	2009-2010
Family/ Defacto	16.9	17.4	17.0
Other Civil	12.6	12.3	13.5
Probate/ Wills/ Family Provisions	12.5	11.4	10.8
Conveyancing	11.4	12.9	12.9
OLSC General Query*	10.6	9.6	2.1
Commercial/ Corporations	8.4	10.3	9.1
Criminal	6.0	6.0	6.4
Personal Injuries	5.1	5.1	5.8
Other	4.6	2.4	9.7
Workers Compensation	4.2	3.6	3.8
General Law/ Legal Profession Query	2.2	3.5	1.3
Victim's Compensation	1.5	1.6	1.1
Industrial law	1.0	0.7	1.3
Immigration	0.9	0.8	0.5
Land and Environment	0.8	0.9	2.0
Leases/ Mortgages/ Franchises	0.8	0.7	2.1
Professional Negligence	0.5	0.6	0.9

\* OLSC General Query: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications

## P2 Nature of phone enquiry

	2011-2012	2010-2011	2009-2010
OLSC Process*	16.5	15.1	13.6
Overcharging	15.7	13.3	10.7
Communication	14.4	12.4	16.4
General cost complaint/query	10.8	11.0	14.0
Negligence	10.7	10.4	11.7
Ethical matters	5.7	7.1	6.9
Delay	5.0	6.2	4.8
Instructions not followed	4.1	3.9	3.8
Costs disclosure	3.4	3.6	3.4
Misleading conduct	3.3	3.8	2.7
Document transfer/liens	2.5	2.2	1.6
Conflict of interests	2.2	2.4	2.0
Referral requests	1.7	3.0	3.7
Trust fund matters	1.3	2.1	1.4
Document handling	1.0	1.0	0.9
Pressure to settle	0.6	0.8	0.7
Fraud (not trust fund)	0.5	0.7	0.5
Failure to honour undertakings	0.3	0.4	0.7
Advertising	0.2	0.2	0.2
Compliance matters	0.2	0.1	0.3
Supervision	0.0	0.1	0.1

\* OLSC Process: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications

## P3 Practitioners mentioned on inquiry line

	2011-2012	2010-2011	2009-2010
Solicitor	90.8	91.1	93.4
Other*	6.8	6	2.8
Barrister	2.1	2.5	3
Licensed Conveyancer	0.3	0.5	0.9

\* Other: includes calls relating to Judge/ Magistrate, Legal Firm, Executor, Multiple Type of Practitioner, Paralegal/ Clerk and Support Staff.

## P4 Source of calls to the OLSC inquiry line

	2011-2012	2010-2011	2009-2010
Client	63.6	62.0	66.4
Friend/relative	7.8	9.9	7.0
Opposing client	6.4	6.3	6.3
Previous client	4.9	5.4	3.4
Other*	4.6	3.2	1.9
Solicitor on own behalf	4.0	4.7	3.8
Beneficiary/executor/administrator	3.6	2.3	1.8
Solicitor on another's behalf	1.8	1.4	2.0
Unrepresented client	1.1	2.7	3.9
Non-legal service provider	1.1	0.9	1.0
Barrister on own behalf	0.5	0.4	0.3
Government Agency	0.3	0.4	1.8
Student/ Educator	0.1	0.3	0.3
Barrister on another's behalf	0.1	0.1	0.2

\* Other: includes calls relating to Witnesses, Judges/ Judicial officers, Quasi-judicial officers, Professional Councils, Cost Assessors & non-identified source of calls.

## P5 Outcomes of calls to the inquiry line

	2011-2012	2010-2011	2009-2010
Caller indicated intention to send in complaint	24.5	24.4	22.8
Recommended direct approach to lawyer about concerns	16.3	17.6	16.5
Provided information about the OLSC*	14.6	13.2	9
Provided complaint/ cost mediation form	14.5	14.9	17
Provided referral for legal advice or other assistance	8.8	9.4	13
Listened to caller's concerns	6.3	7	7.4
Provided information about the legal system	5.3	4.8	5.2
Explained that concerns are outside jurisdiction of OLSC	3.2	2.4	1.9
Provided information about the OLSC and LPA to a legal practitioner	2.8	2.6	2.4
Provided referral to the NSW Supreme Court Costs Assessment Scheme	2.5	2.5	2.4
Conducted telephone mediation	0.6	0.8	0.9
Other	0.5	0.2	1.4
Scheduled interview for caller	0.1	0.1	0.1

\* Provided information about the OLSC: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications

## WRITTEN COMPLAINTS

### W1 Legal matters giving rise to complaints received in 2011-2012

Agency Handling Complaint					
	OLSC	Council	2011-2012*	2010-2011	2009-2010
Family/ Defacto	15.6	2.5	18.1	17.5	15.6
Other Civil	10.2	3.8	14.0	14.4	17.3
Other	4.2	2.9	14.0	9.6	6.6
Probate/ Wills/ Family Provisions	10.6	1.8	12.4	11.4	11.0
Commercial/ Corporations	8.3	3.3	11.6	11.3	13.1
Personal Injuries	8.1	1.3	9.4	8.2	9.4
Criminal	6.4	1.3	7.7	7.6	8.2
Conveyancing	6.2	1.2	7.4	8.9	8.6
Workers Compensation	2.7	0.3	3.0	3.2	2.3
Leases/ Mortgages/ Franchises	2.4	0.6	3.0	2.7	2.7
Industrial law	1.7	0.9	2.6	2.3	1.7
Land and environment	1.1	0.3	1.4	0.6	1.5
Professional Negligence	0.9	0.2	1.1	0.8	0.5
Immigration	0.9	0.0	0.9	1.1	0.5
Victim's Compensation	0.3	0.0	0.3	0.4	0.9
<b>Total counts</b>					
<b>Total %</b>	<b>79.6%</b>	<b>20.4%</b>	<b>100.0%</b>		

\* 2011-2012 Percentages broken down into Agency Handling Complaint for better data clarity. Previous years data is for TOTAL complaint percentage received.

## W2 Nature of complaints received in 2011-2012

Agency Handling Complaint					
	OLSC	Council	2011-2012*	2010-2011	2009-2010
Negligence	16.0	2.1	18.1	19.2	17.9
Communication	12.3	3.2	15.5	17.3	15.3
Overcharging	11.5	0.7	12.2	11.5	11.3
Ethical Matters	6.2	2.6	8.8	7.2	7.8
Misleading Conduct	5.4	3.2	8.6	9.0	4.8
Instructions Not Followed	5.3	1.4	6.7	6.5	5.2
General Cost Complaint/ Query	3.0	2.3	5.3	4.9	7.1
Delay	4.6	0.5	5.1	5.5	9.0
Trust Fund	2.9	2.1	5.0	5.1	0.7
Cost Disclosure	3.5	0.5	4.0	3.7	4.9
Document Transfer/ Liens	2.7	0.2	2.9	2.3	6.2
Conflict Of Interest	1.7	0.7	2.4	2.5	2.1
Compliance Matters	0.4	0.7	1.1	1.5	1.0
Advertising	1.0	0.0	1.0	0.6	0.4
Pressure To Settle	0.7	0.2	0.9	0.7	0.8
Undertakings	0.5	0.4	0.9	0.6	1.1
Document Handling	0.6	0.1	0.7	0.9	1.0
Fraud (Not Trust Fund)	0.4	0.3	0.7	0.6	0.7
Supervision	0.2	0.1	0.3	0.3	2.5
<b>Total %</b>	<b>78.8%</b>	<b>21.2%</b>			

Please note numbers for the following are collected from analysis of the complaints received (up to 5 options per complaint) so do not tally with overall total numbers received

\* 2011-2012 Percentages broken down into Agency Handling Complaint for better data clarity. Previous years data is for TOTAL complaint percentage received.



### W3 Type and source of complaints received in 2011-2012

Number of complaints							
	Solicitor*	Barrister	Other**	TOTAL	2011-2012	2010-2011	2009-2010
Bar Association	0	8	0	8	0.29	0.1	0.1
Barrister on another's behalf	4	1	0	5	0.18	0.3	0.3
Barrister on own behalf	43	1	1	45	1.63	1.7	1.7
Beneficiary/ Executor/ Administrator	147	0	0	147	5.33	4.6	4.0
Client	756	45	10	811	29.41	30.5	30.7
Commissioner	46	1	1	48	1.74	1.8	3.2
Client's friend / relative	96	9	3	108	3.92	3.5	3.4
Law Society	69	0	0	69	2.50	3.5	4.0
Non-legal service provider	58	3	0	61	2.21	2.6	2.9
Opposing client	450	31	4	485	17.59	15.7	17.0
Previous client	500	25	5	530	19.22	21.0	20.4
Solicitor on another's behalf	156	7	2	165	5.98	6.8	4.3
Solicitor on own behalf	141	4	4	149	5.40	3.9	3.3
Unrepresented client	12	1	0	13	0.47	0.4	0.8
Cost Assessor	1	0	0	1	0.04	0.1	0.2
Other ***	103	7	3	113	4.10	3.7	3.6
<b>TOTAL</b>	<b>2582</b>	<b>143</b>	<b>33</b>	<b>2758</b>			

\* Includes former solicitors and legal practitioners

\*\* Includes complaints against law clerks, departmental staff, licenced conveyancers, non-legal service providers, judicial appointments, migration agents, interstate legal practitioners, deceased practitioners and practitioners that have been struck off.

\*\*\* Includes complaints from government agencies and other state agencies, witnesses, and judge/quasi-judicial officer.

#### W4 Age of complaints remaining open or suspended on 30 June 2012 and being handled by the OLSC

Year opened	Open at 30 June 2012	Open at 30 June 2011	Open at 30 June 2010
2011-2012	511		
2010-2011	41	492	
2009-2010	20	80	516
2008-2009	4	16	43
2007-2008	3	16	21
2006-2007	0	6	9
2005-2006	0	7	7
2004-2005	0	4	4
2003-2004	0	0	0
2002-2003	0	0	0
2001-2002	0	0	0
2000-2001	0	0	0
1999-2000	0	0	0
1998-1999	0	0	0
1997-1998	0	0	0
1996-1997	0	0	0
1995-1996	0	0	0
1994-1995	0	0	0
<b>TOTAL</b>	<b>579</b>	<b>621</b>	<b>600</b>

\* Variations may be noted due to files being reopened. Data has been checked, verified and is accounted for.

#### W5 Average time taken to finalise a complaint at the OLSC

Of complaints handled in 2011-2012, time taken to finalise

	Days*
Average time to complete complaints received and completed / resolved in 2011-2012	60.6
Average time to complete complaints received in any year but completed / resolved in 2011-2012	107.9
Average time taken to dismiss complaints received in 2011-2012	67.5
Average time to dismiss complaints received in any year but dismissed in 2011-2012	134.7

\* Averages rounded to 1 decimal point

## W6 All Complaints finalised in 2011-2012

### All OLSC Consumer Disputes

	Solicitor*	Barrister	Other**	TOTAL
Dispute resolution completed	1300	46	11	1357
<b>Subtotal concluded by OLSC</b>	<b>1300</b>	<b>46</b>	<b>11</b>	<b>1357</b>
Consumer Dispute closed by OLSC	314	23	7	344
Withdrawn by complainant at OLSC	30	0	0	30
Unable to be resolved at the OLSC	8	0	1	9
<b>Subtotal closed at the OLSC</b>	<b>352</b>	<b>23</b>	<b>8</b>	<b>383</b>
<b>Total OLSC Consumer Disputes Completed</b>	<b>1652</b>	<b>69</b>	<b>19</b>	<b>1740</b>

### ALL OLSC Investigations

	Solicitor*	Barrister	Other**	TOTAL
Practitioner referred to Tribunal	10	0	0	10
Practitioner disciplined by OLSC#	28	0	0	28
Disciplined by OLSC with compensation ordered	5	0	0	5
Likely UPC/PM dismissed in Public Interest	41	0	0	41
<b>Subtotal determined by OLSC</b>	<b>84</b>	<b>0</b>	<b>0</b>	<b>84</b>
Tribunal finding of UPC/PM unlikely ***	153	9	1	163
Summary Dismissal in the Public Interest	7	4	1	12
Investigation closed by OLSC	57	5	2	64
Withdrawn by complainant at OLSC	17	0	0	17
Investigation suspended pending court proceedings	7	0	0	7
Investigation awaiting Tribunal findings	4	0	0	4
Tribunal Decision Delivered	7	0	0	7
<b>Subtotal closed by OLSC</b>	<b>252</b>	<b>18</b>	<b>4</b>	<b>274</b>
Investigation not accepted out of time	51	6	1	58
<b>Subtotal not accepted by OLSC</b>	<b>51</b>	<b>6</b>	<b>1</b>	<b>58</b>
<b>Total OLSC Investigations Completed</b>	<b>387</b>	<b>24</b>	<b>5</b>	<b>416</b>

### All Non Jurisdictional Complaints

	Solicitor*	Barrister	Other**	TOTAL
Refer to Council	5	0	1	6
Refer to MARA & OFT****	33	2	2	37
Refer to other States	12	2	0	14
<b>Total Non Jurisdictional Complaints</b>	<b>50</b>	<b>4</b>	<b>3</b>	<b>57</b>

### All Council Consumer Disputes

	Solicitor*	Barrister	Other**	TOTAL
Dispute resolution completed	70	0	1	71
Resolved through formal mediation	1	0	0	1
<b>Subtotal concluded by Council</b>	<b>71</b>	<b>0</b>	<b>1</b>	<b>72</b>
Consumer Dispute closed by Council	36	4	0	40
Withdrawn by complainant at Council	59	6	1	66
Unable to be resolved at Council	15	0	0	15
<b>Subtotal closed by Council</b>	<b>110</b>	<b>10</b>	<b>1</b>	<b>121</b>
<b>Total Council Consumer Disputes Completed</b>	<b>181</b>	<b>10</b>	<b>2</b>	<b>193</b>

### ALL Council Investigations

	Solicitor*	Barrister	Other**	TOTAL
Practitioner referred to Tribunal	67	0	2	69
Practitioner disciplined by Council#	39	11	0	50
Likely UPC/PM dismissed in Public Interest	12	2	0	14
<b>Subtotal determined by Council</b>	<b>118</b>	<b>13</b>	<b>2</b>	<b>133</b>
Tribunal finding of UPC/PM unlikely***	222	31	5	258
Summary Dismissal in the Public Interest	4	0	2	6
No Further Action at Council	1	0	1	2
<b>Subtotal closed by Council</b>	<b>227</b>	<b>31</b>	<b>8</b>	<b>266</b>
<b>Total Council Investigations Completed</b>	<b>345</b>	<b>44</b>	<b>10</b>	<b>399</b>
<b>Total finalised by OLSC</b>	<b>2039</b>	<b>93</b>	<b>24</b>	<b>2156</b>
<b>Total Non Jurisdictional Complaints</b>	<b>50</b>	<b>4</b>	<b>3</b>	<b>57</b>
<b>Total finalised by Council</b>	<b>526</b>	<b>54</b>	<b>12</b>	<b>592</b>
<b>TOTAL</b>	<b>2615</b>	<b>151</b>	<b>39</b>	<b>2805</b>

\* Includes former solicitors and legal practitioners

\*\* 'Other' includes interstate legal practitioners, licensed conveyancers, law clerks, non-legal service providers and practitioners who have been struck off the roll.

\*\*\* Unsatisfactory Professional Conduct (UPC); Professional Misconduct (PM)

\*\*\*\* Migration Agents Registration Authority (MARA); Office of Fair Trading (OFT)

# Number of complaints that result in a disciplinary action, not number of practitioners disciplined

## W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2011-2012

### Percentage of files closed within following periods\*

	2011-2012	2010-2011	2009-2010
0-30 days	28.3	31.6	24.6
1-3 months	33.7	34.6	32.1
3-6 months	21.7	20.4	23.5
6-9 months	7.8	6.5	9.2
9-12 months	3.1	2.6	3.9
Over 12 months	5.3	4.2	6.7

\* Percentages have been rounded to one decimal place resulting in the total possibly being plus or minus 0.1%

## R1 Duration of review handling at the OLSC

Of reviews finalised in 2011-2012, time taken for review handling

### Percentage of files closed within following periods\*

	2011-2012	2010-2011	2009-2010
0-3 months	29.8	37.3	52.0
3-6 months	49.4	40.0	35.0
6-9 months	11.7	20.0	11.7
9-12 months	9.1	0.0	1.4
Over 12 months	0.0	2.7	0.0

\* Percentages have been rounded to one decimal place resulting in the total possibly being plus or minus 0.1%

## R2 Reviews in progress and finalised in 2011-2012 – received all years

	Solicitor	Barrister	Other**	Total	Percentage
<b>Reviews in progress</b>					
In progress at OLSC	5	2	0	7	7.87
Being reviewed by consultant	11	1	0	12	13.48
Consulting with Council prior to finalising	1	0	0	1	1.12
<b>Total remaining open</b>	<b>17</b>	<b>3</b>	<b>0</b>	<b>20</b>	<b>22.5</b>
<b>Reviews completed</b>					
Dismissal confirmed	49	11	0	60	67.42
Out of time, no jurisdiction	1	0	0	1	1.12
Review request withdrawn	1	0	0	1	1.12
Reprimand confirmed	0	0	0	0	0.00
Reinvestigated by OLSC	7	0	0	7	7.87
Reinvestigated by Council	0	0	0	0	0.00
Decision changed	0	0	0	0	0.00
Other	0	0	0	0	0.00
<b>Total completed</b>	<b>58</b>	<b>11</b>	<b>0</b>	<b>69</b>	<b>77.5</b>
<b>Total handled</b>	<b>75</b>	<b>14</b>	<b>0</b>	<b>89</b>	<b>100.0</b>

\*\* “Other” includes interstate legal practitioners, licensed conveyancers, law clerks, non-legal service providers and practitioner who have been struck off the roll.

## T1 Complaints referred to the Administrative Decisions Tribunal in 2011-2012\*

Reason	Solicitor	Barrister	Clerk / Associate	TOTAL
Reprimand/ Compensation Order s540	1	0	0	1
Approval of Lay Associate s17(3)	0	0	2	2
Prohibited employment s18	0	0	1	1
Application under s70 (3)	2	0	0	2
Disciplinary Action	27	4	0	31
<b>TOTAL</b>	<b>30</b>	<b>4</b>	<b>3</b>	<b>37</b>

\* Data provided by Administrative Decisions Tribunal



## T2 Outcomes of Tribunal Proceedings in 2011-2012\*

Outcome	Number
Fined	15
Reprimanded	14
Removed from roll	7
Conditions imposed on practising certificate	7
Undertake and complete course of further Legal Education	6
Application granted	4
Dismissed after hearing	3
Compensation	1
Withdrawn	1
Application refused	1
Approval of lay associate: Application granted	2
<b>TOTAL</b>	<b>61</b>

\* Data provided by Administrative Decisions Tribunal

Please Note:

1. Statistics may differ slightly from Law Society and Bar Association data due to different office procedures, codes and data definitions that are used by the three organisations. Also the Councils can reduce two complaints to one or can split one complaint into multiple issues.
2. A number of matters have more than one outcome

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