



THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

2010-11

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.

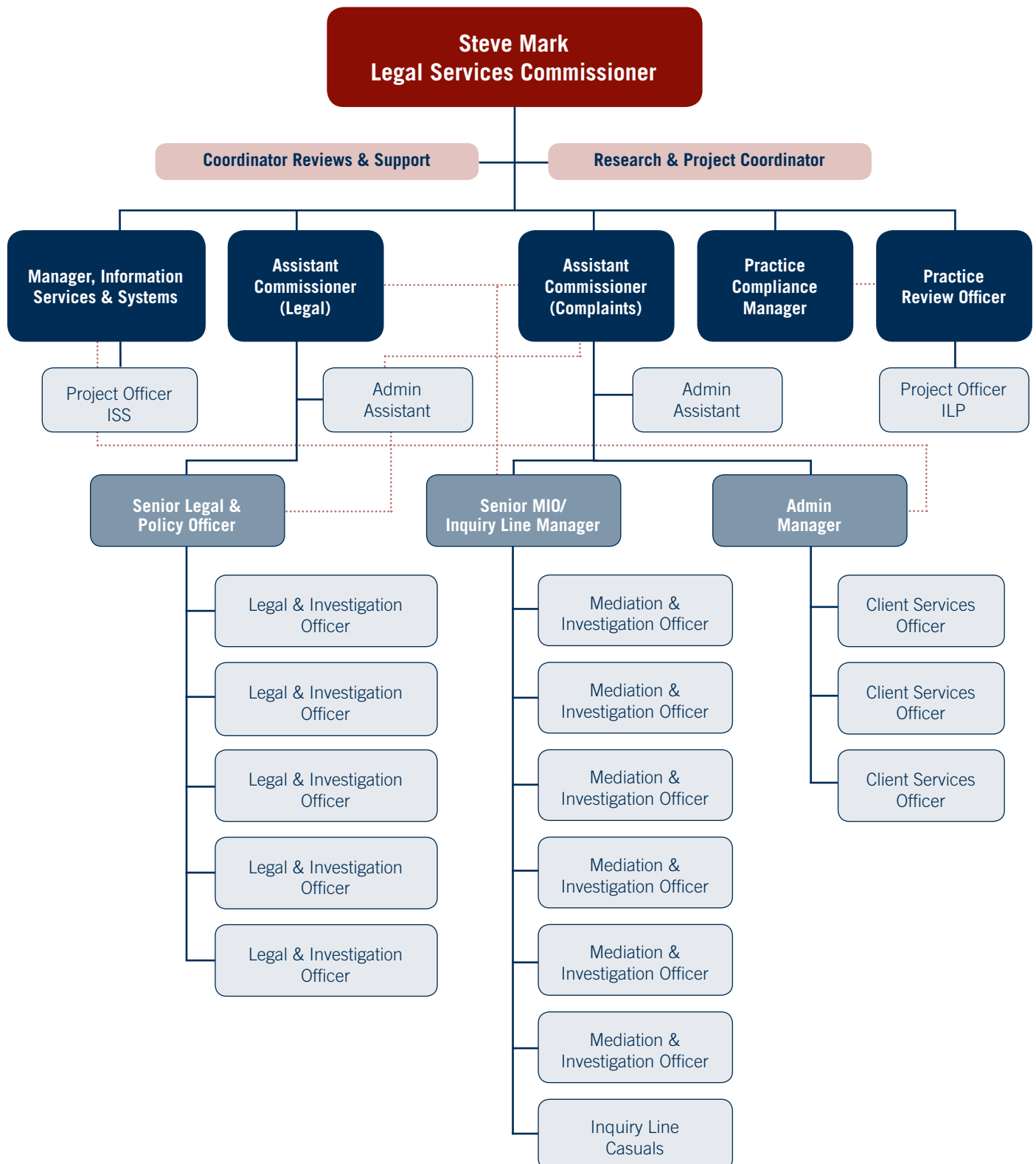
VALUES

- 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



Regulation of the legal profession around the world is in the midst of profound change. In Australia in the next twelve to eighteen months we expect to see the introduction of new national legislation that abandons proscription in favour of principles for the first time in legal profession regulation. The introduction of principles-based or outcomes-focused regulation heralds a new era for regulators of the legal profession, the profession itself and consumers of legal services.

The National Legal Profession Reform Project has gained much momentum in the past twelve months and I am pleased to state that the OLSC has played a role in assisting the Project reach the stage it is at today. Throughout the Project's lifetime the OLSC has made a number of submissions and produced many discussion papers. We have also presented numerous lectures to the profession on the potential impact of the proposed National Law and the effect an outcomes-based regime will have on practice.

At the international level, regulation of the legal profession is also on the move. We have seen the introduction of a new regulatory regime in England and Wales and Scotland in the past few years and it now looks like the United States and Canada may be on the verge of change. I am proud to inform you that the OLSC has once again played a significant role in each of these jurisdictions. We have had numerous discussions with international regulators and have produced papers at their request about their proposals for change. The regulatory regime in NSW and the work of the OLSC continue to be noted and respected by jurisdictions from afar.

THE NATIONAL LEGAL PROFESSION REFORM PROJECT

The process of harmonising legal profession regulation through the National Legal Profession Reform Project continued this year with a second draft National Law and National Rules being released for comment. As I discussed

in last year's Annual Report, the draft National Law and Rules are principles-based and will fundamentally change legal practice and the way the legal profession is regulated. The legal profession will no longer be subject to legislation that is close to one thousand (1,000) pages in length but to legislation that totals just over two hundred (200) pages.

The consequences of having legal profession regulation that is considerably shorter than the legislation which exists today are both positive and negative. For example, an advantage of principles-based legislation is that there is greater flexibility for both the regulator and the regulated in interpreting provisions. A disadvantage of principle-based legislation is the difficulty in interpreting provisions due to insufficient information. The costs provisions in the National Law provide an illustrative example of this tension.

The costs provisions in the draft National Law provide that a law practice must "charge no more than fair and reasonable costs." The National Law states that costs are "fair and reasonable" if they are reasonably incurred and are reasonable in amount and are "proportionate in amount to the importance and complexity of the issues involved in a matter, the amount or value involved in a matter, and whether the matter involved a matter of public interest." The provisions also state that costs are "fair and reasonable" if they "reasonably reflect the level of skill, experience, specialisation and seniority of the lawyers concerned."

While the provisions in the draft National Law provide that costs must be “fair and reasonable” and “proportionate”, they do not explain what these terms actually mean. This will no doubt create a level of uncertainty for the profession and will give rise for the need for guidelines to assist in interpretation. This will provide an opportunity for the regulators and the professional associations to work together through co-regulation in producing guidance to assist the profession.

TECHNOLOGY AND THE LEGAL PROFESSION

In last year’s Annual Report I mentioned that technology was having a significant impact on the practice of law in Australia and overseas. The past year has seen a considerable rise in the uptake of new technologies by Australian legal practitioners.

Virtual law firms or firms reducing reliance on bricks and mortar are growing in popularity both in Australia and overseas. This has been facilitated by cost effective software such as service provider technology (SaaS), enabling legal practitioners to communicate and share documents with clients online. Developments in free software such as *Skype* and *Googledocs* have also made virtual law practice more attractive.

Similarly, legal process outsourcing continues to gain strength in the global legal services marketplace with a considerable number of firms worldwide actively outsourcing legal work from back-office to litigation support. During the past year we have witnessed several Australian firms engage with legal process outsourcing organisations. Outsourcing legal product both locally and overseas is likely to continue to grow significantly in the future.

We have also witnessed some remarkable developments in the use of social media networking by the legal profession this year. *Facebook* has for example, gained popularity amongst law firms as an effective means of both marketing and providing information to clients and prospective employees.

This year saw the emergence of the first Twitter law firm in the United Kingdom that offers legal advice in 140 characters or less for free. The concept of a Twitter law firm joins the growing number of question and answer websites backed by legal practitioners which allow

consumers to post a question and receive an answer for a fee. This year the United States witnessed the use of *Groupon* to sell discounted legal services.

As I mentioned in last year’s Annual Report, whilst the use of these new technologies is valuable, they can pose significant ethical and practical dangers if not approached with care. Confidentiality and security are two primary concerns in this e-landscape. The new technologies and readily accessible e-spaces also pose a risk of creating unintended practitioner-client relationships. Supervision of outsourced legal product as well as distance supervision of legal practitioners or paralegals using new technologies creates many challenges for regulators.

Noting these potential problems, we have been working on a Research Project with the University of Sydney to analyse and better understand the new frontiers of legal practice and the regulatory challenges facing the legal profession. Our aim is to provide guidance for the profession about the ethical use of technology in practice.

COMPLAINT STATISTICS

In 2010-2011 the OLSC received a total of 2561 written complaints. Of the total written complaints received, 1843 were assessed as consumer disputes and 718 as investigations.

Seventy seven percent (77%) of those written complaints received were retained and handled by the OLSC. The remaining twenty three percent (23%) were referred to the professional associations for handling.

The OLSC registered the completion of 2619 written complaints.

The OLSC received 8128 calls from the public on our Inquiry Line.

I am pleased to state that complaints have once again decreased this reporting year as they have in previous years. The continued decrease reflects the OLSC’s vision and aim of reducing complaints against legal practitioners within a framework of consumer protection and protection of the rule of law and increasing professionalism.

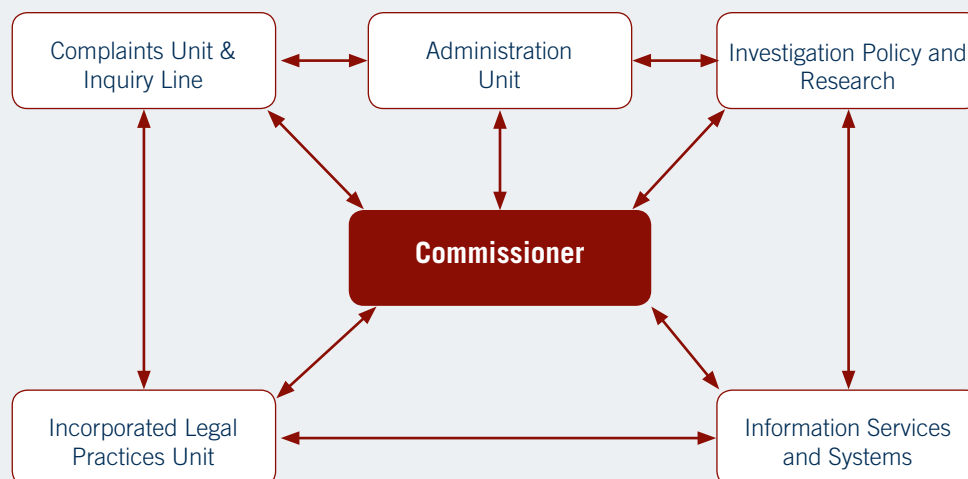
OUTLOOK FOR 2011-2012

The prospect of having a new national regulatory framework is exciting for the OLSC. We are looking forward to the national regulation and being involved in the implementation process. We will also be monitoring the up-take of outsourcing and new technologies and assessing their impact while addressing the regulatory challenges they present.

The OLSC is a small and highly professional office with extremely dedicated and competent staff. I am proud of the work the Office does and the positive impact it has both for the profession and the community generally.

I would also like to take the opportunity to once again thank my colleagues at the New South Wales Bar Association and the Law Society of New South Wales. I would also like to thank the Department of Attorney General and Justice as well as the office of the Attorney-General for all of their assistance.

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 and prosecution.

Incorporated Legal Practices Unit: External auditing of Legal Practices to determine compliance with relevant legislation and risk profiling.

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

When a complainant makes allegations against a legal practitioner supported by cogent evidence that, if proven, could amount to unsatisfactory professional conduct or professional misconduct, that complaint will be investigated by a member of the Legal and Investigation Team. Two hundred and forty three (243) such investigations were completed this reporting year.

Unsatisfactory professional conduct is defined in the LPA 2004 as conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner. It is less egregious conduct than that amounting to professional misconduct. Professional misconduct is also defined in the LPA 2004 and includes unsatisfactory professional conduct, where that conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence and conduct, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

The standard of proof to be applied when determining a complaint is not the normal standard on the balance of probabilities but is that of comfortable satisfaction in line with the *Briginshaw* standard of proof. Often a complaint must be dismissed because the evidence gathered during the course of an investigation does not satisfy the *Briginshaw* standard.

Two hundred and eighty six (286) investigations were allocated to the Legal and Investigation Team this reporting year. This is less than in previous years. The reduction in the number of investigations

allocated reflects the OLSC's mission to improve consumer satisfaction with legal services through the encouragement of an improved client focus within the profession.

I am pleased to state that 86.6% of the complaints dealt with this reporting year took less than 6 months to conclude compared to 80.2% in the 2009-2010 year. It is also noteworthy that the number of aged complaints, being complaints more than 12 months old, has significantly reduced during the reporting year.

Disciplinary outcomes

The Commissioner is obliged to commence proceedings where he is satisfied that there is a reasonable likelihood of a finding of professional misconduct were he to refer the matter to the Legal Services Division of the Administrative Decisions Tribunal.

Where the Commissioner is satisfied that there is a reasonable likelihood of a finding of unsatisfactory professional conduct but not professional misconduct, the Commissioner may deal with the matter summarily. In such circumstances the Commissioner may impose:

- a caution;
- a reprimand;
- a compensation order; or
- a practising certificate condition.

In this reporting year, thirteen (13) practitioners were dealt with summarily based upon the likelihood of a finding of unsatisfactory professional conduct. Eleven (11) cautions were issued for conduct including false attestation, breaches of duties to the court and the client, striking a practitioner and misleading conduct.

Reprimands were issued against a practitioner who acted in a conflict of interests as well as a practitioner who had misled or obstructed an investigator.

Additionally, and in support of our vision to strive to lead in the development of an ethical legal services market which is fairer, more accessible and more responsive, twenty-nine (29) practitioners were asked to provide undertakings to this Office in relation to the following matters:

- Communicating courteously with clients;
- Communicating promptly with clients and with this Office;
- Disclosing costs in a timely manner;
- Taking specific immediate action in relation to matters;
- Providing an itemised bill promptly when requested;
- Increasing supervision of employees;
- Identifying self in correspondence in accordance with Rule 41.

Administrative Decisions Tribunal

A number of matters have been ongoing before the Tribunal through this reporting year. The matters of *Legal Services Commissioner v Hagipantelis* and *Legal Services Commissioner v Bryden* continued this year and a hearing date has now been allocated for November 2011. It is anticipated that the matters of *Legal Services Commissioner v Keddle* and *Legal Services Commissioner v Scroope* will be allocated hearing

dates in October 2011. The matter of *Legal Services Commissioner v Thuraiajah* has been heard and the decision has been reserved.

In the matter of *Legal Services Commissioner v Bechara*, the practitioner was found guilty of professional misconduct and on 14 December 2009 the Tribunal ordered that Ms Bechara be publicly reprimanded, fined the sum of \$6,500 and pay the costs of the Commissioner. Ms Bechara appealed that decision. The Court of Appeal dismissed the appeal, upholding the decision of the Tribunal. Ms Bechara subsequently sought special leave to appeal to the High Court but that application was refused on 10 June 2011.

Section 564 of the Act allows for the Tribunal to make orders by consent without conducting or completing a hearing in relation to the complaint. If those proceedings are brought by the Law Society or the Bar Association, the Legal Services Commissioner is also required to consent to the Application. The Legal Services Commissioner was represented in twelve (12) such Applications this reporting year. In one of these applications the Tribunal referred the matter to the Commissioner for the determination of the quantum of a compensation order. Matters dealt with under section 564 produce a significant resource saving for the regulators and for the Tribunal.

A client had engaged a practitioner to assist them in resolving a family law dispute concerning a residence. The client alleged their legal practitioner acted in a conflict of interests. The complainant alleged that the practitioner was living in a de facto relationship with the client's former partner. The complainant also alleged that the practitioner was now acting for the opposing party with whom the practitioner was living. The complainant was concerned about the conflict of interests.

The OLSC put the complainant's concerns to the practitioner. The investigation of this complaint involved the review of extensive submissions and evidence provided by both the complainant and the practitioner. The Commissioner was satisfied that a conflict of interests existed and, should the matter be referred to the Administrative Decisions Tribunal, there was a reasonable likelihood that a finding of unsatisfactory professional conduct would be made. The Commissioner determined that the practitioner should not have accepted the retainer to act in the family law dispute and that the practitioner's continued representation of the opposing party in the face of a conflict of interests was sufficient to satisfy the Commissioner that their conduct is capable of amounting to unsatisfactory professional conduct. The practitioner was reprimanded by the Commissioner.



During this reporting year three (3) Applications were made to the Tribunal by practitioners against determinations made by the Legal Services Commissioner. Two such Applications were made in relation to the Commissioner's determination that he was unable, in the absence of further evidence, to make a determination in relation to the statutory suspension of the practising certificate of two legal practitioners following a show cause event (for example, an event in which a legal practitioner is declared bankrupt or insolvent or is convicted of a serious offence or a tax offence). The third Application related to the Commissioner's decision to deal with a complaint out of time pursuant to section 506 of the Act. All of the Applications brought against the Legal Services Commissioner were unsuccessful.

The Legal Services Commissioner was also joined to civil proceedings in the Supreme Court of New South Wales. The Commissioner has, however, been excused from further attendance in those proceedings.

In the Annual Report of 2007-2008 I reported that an appeal to the Tribunal (*Piscioneri v Legal Services Commissioner*) was withdrawn by the appellant. This was incorrect. The Tribunal affirmed the Commissioner's decision to reprimand the practitioner in that matter.

Reviews

Where a complainant applies within two months of notification of a decision made by the Bar Association or the Law Society, the Commissioner may review the investigation and decision made by that professional body. In this reporting year the Commissioner handled 103 applications for review.

In six reviews the Commissioner directed the Council to reinvestigate the complaint and in two reviews the OLSC reinvestigated the complaint. In one matter that was re-investigated, the decision was changed from a dismissal to a caution.

I am pleased to state that less than 10 percent of the matters reviewed by the OLSC required further action.

POLICY DEVELOPMENT

The Legal and Investigation Team has participated in fortnightly in-house seminars in relation to various areas of the law (see the section on Education and Communication). The Legal and Investigation Team have

also participated in continuing legal education programs offered externally. The Assistant Commissioner (Legal) attends the Cost Assessment Users group meetings and the Administrative Decisions Tribunal users group meetings. This reporting year, as in previous years, the Assistant Commissioner (Legal) presented a number of seminars to the profession, to students at the College of Law and to readers in the New South Wales Bar Association program.

The National Legal Profession Reform Project

A draft bill providing uniform laws regulating the legal profession across Australia was released on 14 May 2010. A further draft was released in December 2010 for comment. In February 2011, the Council of Australian Government (COAG) gave an in-principle agreement to settle the National Legal Profession Taskforce's legislative package by May 2011. The package includes a draft National Legal Profession Law, draft National Rules and a draft Inter-governmental Agreement (IGA). The draft National Law creates a national regulatory scheme for the legal profession through an applied laws scheme.

It is proposed that a Standing Committee of participating Attorneys-General (SCAG) would oversee the framework, and a new National Legal Services Board and National Legal Services Commissioner would be established. Local representatives of the Board and Commissioner would be nominated by each jurisdiction, and would perform a range of functions, such as issuing practising certificates, dealing with complaints, and trust account oversight. The Taskforce's National Law and National Rules represent the latest and most comprehensive attempt to establish a single national regulatory scheme for the legal profession.

The OLSC has made numerous submissions on the initial draft National Law and the draft National Rules as well as the subsequent draft National Law and National Rules released in December 2010.

On each occasion that we made a submission we have indicated our full support for the proposed national system. We have also indicated that we fully support the approach taken in attempting to avoid proscriptive legislation by adopting principles, outcomes or 'outcomes-focused' legislation. In addition we supported the suggested approach of producing a National Law to be passed by one jurisdiction and adopted throughout Australia through the process of mutual recognition. We strongly believe that the time is ripe for one single

consistent approach to regulation of the legal profession to be achieved in Australia.

The OLSC has for many years promoted and worked towards the harmonisation of the practice of regulation in Australia not only through our support of the earlier Model Laws, but also through our support of, and involvement in, CORO (Conference of Regulatory Officers).

Regulatory overlap

Regulatory overlap between different regulatory offices can, if not addressed, cause problems in implementation and practice. In Australia there are a few such instances of regulatory overlap. In the area of immigration law, for example, the Migration Agents Registration Authority (MARA) regulates registered migration agents who may be legal practitioners. The OLSC has met with MARA to discuss regulatory overlap and how it can be addressed. The meeting resulted in an agreement between our Office and MARA to share information where appropriate. The OLSC will soon execute a Memorandum of Understanding (MOU) with MARA.

The MOU states that information should be shared on an ongoing basis where appropriate and that each regulatory body will promptly respond to all requests for information. The MOU further states that if either Office receives information which it believes to be of relevance to each

other in the discharge of each Office's responsibilities each Office should liaise with one another. The MOU also allows each Office to conduct joint investigations where appropriate.

Regulatory overlap has also recently occurred with the introduction in January 2011 of the Australian Consumer Law (ACL) which replaced the existing state-based and Commonwealth consumer protection laws. The Australian Competition and Consumer Commission (ACCC) and the New South Wales Office of Fair Trading (OFT), as marketplace regulators, are responsible for administering the ACL.

The ACL is broad in its effect and covers "any business or professional activity." The ACL applies to legal practitioners. This is the first time legal practitioners have been directly affected. As a general principle, it is possible that conduct of a legal practitioner could be in breach of both the LPA 2004 and the ACL, giving a consumer the option of seeking remedies under the LPA 2004 and the ACL.

The OLSC has commenced working with the OFT in order to ensure an effective regulatory overlap. We are in the process of developing an MOU, similar to that with MARA, that would cover information sharing, joint investigations and continuous communication.

The Commissioner initiated a complaint against a practitioner. The complaint arose as a result of an investigation of a number of prior complaints. It was alleged that the practitioner had attempted to mislead the OLSC about the circumstances in which the practitioner ceased acting for their client and that the practitioner had attempted to mislead the OLSC about when they met the opposing client.

The Commissioner formed the view that the practitioner had intended to mislead the OLSC regarding the circumstances in which they ceased to act for the client, when they met the opposing client, and that they attempted to mislead the OLSC about the nature of their personal relationship with the opposing client.

The Commissioner determined, on the basis of the information before him, that he was satisfied that there was an attempt to mislead and that there was a reasonable likelihood that the practitioner would be found by the Legal Services Division of the Administrative Decisions Tribunal of NSW to have engaged in unsatisfactory professional conduct, but not professional misconduct. The Commissioner determined it was appropriate to take action under section 540 of the Act to summarily conclude the matter. The Commissioner reprimanded the practitioner. The reprimand was published on the Register of Disciplinary Action.



The complainant, a legal practitioner, applied to the OLSA for a review of a decision by the Law Society to dismiss a complaint relating to a physical altercation between two legal practitioners in a local court. The Commissioner was not satisfied that the Law Society's investigation into the physical altercation was sufficiently thorough. The Commissioner disagreed with the decision to dismiss the complaint and decided to re-investigate the complaint.

The practitioner, the subject of the complaint, admitted there had been a 'physical gesture' however submitted it was not one of anger or borne out of malice and equated it to a 'pat on the back'. The Commissioner considered the physical contact in context of the verbal exchange between the two practitioners. Despite the relatively minor nature of the physical contact, a tap on the back of the head, it was determined that regardless of whether deliberate physical contact was motivated by anger, frustration or annoyance, it is not appropriate conduct between legal practitioners in an open and sitting Court. The Commissioner formed the view that there was a reasonable likelihood that the Tribunal would consider such conduct could amount to engaging in unsatisfactory professional conduct.

The Commissioner considered that the practitioner was generally competent and diligent, and the physical act was atypical behaviour and was of a relatively minor nature that did not cause physical injury. The practitioner was cautioned.



CHAPTER 2

COMPLAINTS HANDLING

I am pleased to state that this reporting year the number of complaints dropped from 2661 to 2561. Mediation and Investigation Officers successfully resolved 1235 consumer disputes this reporting year, 65 more than in the last reporting year.

The majority of these matters were resolved by OLSC staff encouraging practitioners to either reduce or waive fees, apologise, or improve their communication techniques.

The statistics for complaints received at the OLSC change little from year to year. This reporting year was no different.

Costs (totalling 20.1%), negligence (19.2%), communication (17.3%) and other ethical matters (19.5%) remain the issues most complained about this reporting year.

Complaints received this year concerned matters in family law (17.5%), civil (14.4%), wills and probate (11.4%), commercial/corporate law (11.3%) and conveyancing (8.9%).

I am pleased to state that more than 65% of all complaints were finalised within 3 months.

EXPLANATIONS

One of the most common roles of Mediation and Investigation Officers at the OLSC is explaining to complainants why they did not get “justice.” In doing so Mediation and Investigation Officers are really explaining to the client why their expectations were not met. Often we are able to provide sufficient information to relieve a complainant’s misapprehensions, misunderstandings and fears.

In most cases Mediation and Investigation Officers will approach complainants, courts and other organisations for information. This often involves reviewing vast case files and subsequent submissions from both complainants and practitioners. Many clients come to the law with little or no knowledge of the legal system. Many

have strong feelings about how they should be treated by legal practitioners and courts but find that their understanding and expectations do not match the reality.

The efforts of Mediation and Investigation Officers in taking the time to explain the situation to complainants is an extremely positive exercise. In any one year, between 10 and 15% of complaints are dismissed or resolved by gathering information, careful explanation, and referral to appropriate agencies or bodies – sometimes without drawing the legal practitioner into the process.

CAPACITY

While the number of complaints that relate to the capacity of clients to give instructions is small, they inevitably arise in situations where there is a great deal at stake – emotionally, and often financially.

A recent complaint to the OLSC illustrates this increasing problem. A legal practitioner with over 40 years experience said to our staff during a mediation, when faced with an allegation that he did not ascertain the capacity of his client to give competent instructions, “I’ve know my client for over 30 years, I should know whether they have capacity to instruct me!”

The legal practitioner said this despite having several medical opinions on file that his client was suffering from dementia and did not have capacity.

We are aware that personal relationships, long-term friendships and personal judgements can sometimes obscure the need for legal practitioners to formally account for their actions with regard to the estates of their clients. Legal practitioners should be well aware that competing interests on the death of a client are potentially explosive. It does not take much for a beneficiary to see partiality in the actions of a legal practitioner, particularly when that legal practitioner may benefit themselves via costs charged in relation to their role as executors.

The Law Society of New South Wales provides a set of guidelines and a kit to help practitioners better judge whether their client has capacity. Legal practitioners are encouraged to read the guidelines and follow them closely.

COMPLAINTS ABOUT FAMILY LAW MATTERS

Of legal matters giving rise to complaints, a considerable number (17.5%) are attributed to family/defacto law matters. Many of these complaints are made by opposing clients. This is not surprising as family law disputes are often fuelled by emotion. In this emotionally charged jurisdiction, legal practitioners should take care to explain to their own clients that the opposing legal practitioners are more likely than not to say or do things that go against the client's interests and that, in most cases, such action is done in accordance with instructions of their own client.

We have and will continue to address this issue with both the profession and the community through our education campaign in the next reporting year.

CONVEYANCING/SUPERVISION

Many firms specialise in conveyancing transactions. Of the firms that do, many employ paralegals and

conveyancers. This situation can raise concerns about effective supervision, particularly where the firm handles large numbers of conveyancing transactions.

Many elements of a conveyance are procedural or are prescribed. Therefore, practices and processes can be put in place by firms to streamline the handling of client matters. Whilst streamlined practices may be beneficial for the firm and client in terms of efficiency, it can make supervision of matters extremely difficult. It is difficult to oversee process and identify flaws when volume is high and timetables are tight.

The OLSC has received a number of complaints this reporting year of unchecked correspondence, unsupervised communication and poor advice being given by conveyancing clerks, secretarial staff and junior legal practitioners.

When problems arise, time frames suddenly change, banks delay and loans don't materialise, someone needs to be available to provide direction and make decisions. In some law firms the legal practitioner's capacity to step in and take responsibility is limited particularly in firms where conveyancing is only one strand of legal work amongst others. When this occurs and matters do not run according to plan a complaint will invariably be made to the OLSC.

We encourage law firms to implement a comprehensive framework for supervision. We have spent a considerable

A complaint raised concerns about the amount of money owing to the legal practitioner, and the amount held in trust for a long period.

This was a complex family law matter with considerable emotional impact. There had been urgent court matters and a client unafraid to press his legal practitioner to action. Additionally, the legal practitioner and client had previously known each other. The legal practitioner's invoices lacked detail but the legal practitioner insisted there was substantial unbilled work performed and that any itemised account would increase costs.

Our efforts to resolve the complaint and get fulsome explanations from legal practitioner and client were fraught. There were more than 85 contacts between our staff, the legal practitioner and the client. Points were made, refuted and accepted on both sides. We tried to maintain a balance between two individuals now thoroughly frustrated and unhappy with how each person had behaved.

Ultimately, after protracted negotiations the legal practitioner agreed to refund more than \$7000 from money held in trust and the complaint was resolved. It is likely that this matter would have been litigated, or might even be still going, if we hadn't intervened.



amount of time this year assisting legal practitioners to develop better administrative practices and closer supervisory relationships. This is one aspect of our strategy to assist practitioners in improving their professionalism with a view to reducing complaints.

DEBT COLLECTION

The situation is not so different in the area of debt collection. Large, sometimes national, debt collection firms employ lawyers, and sometimes law firms, deal exclusively with the debt collector.

This reporting year we have had a number of examples of correspondence being sent on legal letterhead drafted by employees of debt collection companies and not checked or monitored by the law firm.

Standard letters of demand are often based on a schedule provided to the legal practitioner by the company to whom the debt has, often, been sold. A standard letter of demand may not, therefore, consider all of the myriad complexities associated with how the debt arose.

We are concerned where a law firm's letterhead used by an unauthorised person from the debt collection agency could be seen to intimidate.

What if there is a mistake? What if the debt collector fails to inform the law firm of a late payment or a dispute over the debt? To what extent is the legal practitioner responsible for dealing with any complaints that arise? These are the type of questions that can arise where the supervisory structure in debt collection matters is inadequate.

Legal practitioners need to have in place clear communication mechanisms with debt collectors to guarantee complaints are dealt with promptly and practically. They need to ensure they can be contacted via the letterhead on the correspondence seeking repayment rather than funnelling callers back through the debt collector. They also need to ensure that correspondence consists not of standard paragraphs but precise and accurate indications of what is expected and clear directions to the respondents to satisfy the debt.

COSTS INCREASES

The OLSC continues to receive a significant number of complaints alleging failure to disclose costs.

In addition to providing initial costs disclosures, the LPA 2004 requires legal practitioners to disclose a substantial change for example by either providing regular bills indicating where costs are up to or proper notification of costs increases and explanations for why the costs may be increasing.

Ongoing costs disclosure is not only required by statute but it is also good business practice. Communicating with clients on a regular basis regarding how much is being charged is a difficult but necessary conversation and will, if effective, avoid a complaint being made to the OLSC.

We appreciate that a discussion about costs cannot always be exact, as it can be impossible to predict matters that may affect costs. However, a conversation about the fact that costs may escalate because of certain factors is not impossible.

A doctor was in dispute with the medical centre that employed him. He complained that in-house legal counsel for his employer was giving him inappropriate advice about medical and workplace issues.

We explained that it was apparent that the legal practitioner was acting as instructed by the client and it was up to the doctor to lodge a defence to these matters. An additional issue arose when the legal practitioner wrote on the letterhead of a firm that seemed to be unrelated to the employer.

It became apparent that the letterhead belonged to a wholly owned subsidiary of her employer. We pointed out to the legal practitioner that writing to an opposing client making threats of legal action on inaccurate letterhead was potentially misleading.

The legal practitioner altered the letterhead and apologised to the opposing client in order to resolve the complaint.



Saying nothing about increasing costs creates profound difficulties for the client and will almost always result in a complaint.

OLSC INQUIRY LINE

We receive an average of 33 telephone inquiries per day. Each call usually lasts between 5 and 10 minutes. Many callers raise complex issues and are often agitated because of a recent negative experience with a legal practitioner.

The Inquiry Line remains one of this Office's most useful resources not only for the service it provides to consumers and practitioners but also as a means of tracking complaint trends. As in past years, the nature of telephone inquiries, the areas of law from which they arise and the source of the complaints tend to reflect the statistics for written complaints. That is, legal costs and satisfactory communication with legal practitioners continue to dominate as sources of concern by consumers.

We continue to see encouraging results from the tri-annual Inquiry Line surveys. Callers are not only willing to participate in the written surveys, 75% would

recommend the OLSC to a friend or relative and 94% agree that they received a courteous and professional service from Inquiry Line staff.

Our Inquiry Line officers are trained to provide clear advice to callers about the complaint handling system while encouraging a problem solving approach. While providing information about the statutory obligations of legal practitioners to callers, we also provide practical advice about possible ways to attempt resolution of disputes with legal practitioners before lodging a complaint. For example, a typical Inquiry Line caller may want the OLSC to order their solicitor to respond to telephone calls promptly and reduce his or her bill. In usual circumstances, we would advise the caller to first contact the solicitor directly setting out their concerns and requesting specific information. This approach not only allows the caller to identify the important issues but also provides the legal practitioner with an opportunity to address the concerns or resolve the costs dispute directly with the client. In many instances Inquiry Line staff are able to contact the practitioner themselves and assist the parties to reach a resolution of the dispute.

A complaint was lodged with this Office requesting an investigation into a legal practitioner's conduct who had acted for a client whose capacity was an issue. The complaint, initiated by the daughter of the client, alleged that the practitioner had arranged to revoke an existing Enduring Power of Attorney in favour of another individual and had assisted the client in creating a new power and drafting a new will. The client's pension had been suspended due to confusion regarding who legitimately acted under the Power of Attorney, resulting in late payments on the client's mortgage and other bills.

The complainant alleged that the legal practitioner did not effectively ascertain the capacity of his client to instruct. The OLSC put the allegations to the practitioner and asked him to provide detailed information about the steps the practitioner took to establish the client had the capacity to give instructions. The practitioner provided our Office with the required information.

After assessing the evidence and submissions provided by both the complainant and the practitioner, the Commissioner determined that the practitioner's conduct in taking those instructions was contrary to the Client Capacity Guidelines issued by the Law Society and was conduct that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner. The Commissioner issued the practitioner with a caution.



CHAPTER 3

INCORPORATED LEGAL PRACTICES

As at 30 June 2011 there were 1078 approved ILPs (and 1185 ILPs in total) in New South Wales. The number of ILPs has grown at a steady rate and now constitute approximately 25% of legal practices in New South Wales.

The self-assessment process continues to be an effective and efficient means by which to monitor and regulate ILPs in New South Wales. The process continues to receive positive feedback from practitioners, particularly on the benefits of the self-assessment process in improving management. For example, one legal practitioner director of a recently incorporated firm wrote to us after having been through the self-assessment process stating that she considered it *“an excellent performance review system”* and that it *“enabled a productive assessment of future growth and direction for the firm”* by prompting her to consider *“how to obtain future business goals whilst observing professional obligations and practice standards”*. I am pleased to say that this type of comment is not infrequent.

Another legal practitioner director wrote to us after having gone through the self-assessment process, as follows:

“[W]e have found your letter and the self-assessment document helpful and stimulating, and are conducive to the continuous improvement of our fledgling incorporated legal practice.”

This positive feedback demonstrates the continuing realisation of the OLSC’s vision to promote compliance with high professional and ethical standards through a cooperative and development focused approach to regulation. This approach will be continued with the introduction of the Legal Practice Management and Audit System (LPMAS) to the profession.

This year has seen an increase in the number of practice reviews conducted by the OLSC on ILPs. We have also exercised our power to review non-incorporated practices more frequently.

In conducting practice reviews, representatives of the OLSC are able to ascertain the influences and pressures brought to bear on practitioners in firms across a range

of different structures and specialities. We use these observations to inform the approach and content of future reviews and associated material in an effort to make the process as relevant and therefore beneficial to each ILP as possible.

Increased energy has also been directed towards the ongoing functions of follow up activities in relation to practice reviews conducted in the past in order to ensure that the improvements identified in the original report are implemented effectively.

In the coming year our practice review program will be rolled out to a wider range of non-incorporated practices.

THE LEGAL PRACTICE MANAGEMENT AND AUDIT SYSTEM (LPMAS)

The LPMAS is a bespoke software application which is the result of a collaborative effort between Information Services Branch (ISB), the OLSC, the Law Society of New South Wales and other stakeholders.

It automates a large number of manual processes within the Office. The LPMAS application comprises:

- an easily searchable and maintainable database of legal practices (both incorporated and traditionally structured);
- a function to aid in information exchange between the OLSC and other stakeholders including legal practitioners and practices, the Law Society of NSW and interstate regulators;
- a facility to merge legal practice data, legal practitioner data, OLSC complaints data, Law Society complaints data and information from the public Disciplinary Register, thereby allowing more effective and comprehensive reporting and risk profiling by the OLSC;
- an information and educational repository to support legal practices in improving their management systems;

- a function to automate aspects of the OLSC's appraisal of a practice management system self assessment and OLSC's audit processes; and
- a comprehensive set of operational and management reporting tools.

Risk Profiling

Risk profiling is a term that has gained increasing currency over the last decade or so, but in reality it is something most regulators of the legal profession have been doing on an ad hoc basis for a good deal longer. The LPMAS formalises the OLSC risk profiling activities by collating data from a number of different sources and automating the calculations associated with risk profiling.

Our approach to risk profiling seeks to draw in all the information about a practice which is available and relevant, and to accord it the appropriate weighting. Factors such as:

- complaint history (including pattern and nature of complaints);
- adverse trust account inspection reports;
- notifications of bankruptcy, criminal conviction or other "show cause" events;
- failure to respond to our Office's correspondence in a timely fashion;
- ratio of senior to junior practitioners;
- anecdotal information (where appropriate);
- demographic factors

may all be relevant to the consideration of whether resources ought to be allocated to intervention in a

particular practice. The data which populates LPMAS comes from four main sources:

1. the Law Society of NSW Registry and Professional Standards Department – this includes basic identifying information such as practising certificate number and mailing address as well as more detailed trust accounting and complaint information;
2. the OLSC's Complaints Tracking System (CTS) – CTS is used to track all complaints received by this Office, including those which are referred to the Law Society as our co-regulator;
3. the public Disciplinary Register – this is a web-based register of public disciplinary findings in the jurisdiction, maintained by the OLSC in accordance with our statutory obligation; and
4. relevant information which is not drawn from one of the above sources and which is entered by users directly into the application.

The LPMAS risk-profiling mechanism will produce a list of practices which meet the profile criteria and will rank them in descending order according to the numerical score each receives. The numerical score is not in itself significant, and is relevant only insofar as it relates to the scores of other firms (that is, whether it is higher or lower than the scores of other practices which also meet the profile criteria).

The primary purpose of undertaking risk profiling is to enable us to proactively respond to indications of potential non-compliance, such as the non-renewal of a practising certificate, the failure to respond to our Office in relation to a complaint or high staff turnover. With the introduction of a program of risk profiling, we hope to steadily increase

The OLSC attempted to conduct a practice review of a traditionally structured legal practice due to an increasing number of complaints being made about the sole practitioner principal of that practice. These complaints had been made by both members of the public and other members of the profession alleging ineffective communication, delay, a failure to provide accounts and a failure to pay third party providers.

The OLSC was unable to access the legal practice to conduct the practice review as the principal continually provided excuses as to why the OLSC could not attend on scheduled dates. These included sickness, the pressures of work, family commitments and court attendance.

As a result of the continued postponement by the legal practitioner and an increase in the number of similar and significant complaints being made about him, the Commissioner directed the Law Society to suspend the practitioner's practising certificate considering him not to be a fit and proper person. The Commissioner also initiated a complaint about the practitioner for obstructing an investigator and misleading the Commissioner. The matter is to be heard in the Legal Services Division of the Administrative Decisions Tribunal in the near future.



the proportion of audit targets which are identified proactively. The impact of this will be threefold. Firstly, our limited resources can be deployed efficiently where they are most needed. Secondly, our early and targeted intervention in “at risk” practices will hopefully reduce both the number and severity of compliance breaches and practice failures by treating their preconditions. Thirdly, by focusing our regulatory activities where they are most

needed, we reduce the regulatory burden on the firms that are performing well.

LPMAS was rolled out internally at the end of this financial year and has already resulted in significant time and cost savings within the Office. A launch to external stakeholders, including legal practitioners, is expected to follow in early 2012.

The OLSC conducted a practice review of a traditionally structured practice following a consistent number of complaints being made about the sole-practitioner principal. The complaints alleged failures to account for trust monies, failures to disclose or provide accounts in detail and failures to communicate effectively.

While the OLSC originally set aside a number of days to conduct the practice review, it was apparent on entry that the practice was in such disorder that a longer review would be necessary. It was abundantly clear that basic practice management systems, detailed documented policies and processes weren't in place at the legal practice. There appeared to be minimal infrastructure and basic organisation was lacking.

The OLSC determined that it could not be established that the principal was cognisant of his ethical and professional obligations or that he was responsive to the changing demands of running a practice over time. There was a very real risk that complaints would continue to be made by the principal's clients and that breaches of the Act, the Rules and the Regulations would persist. The OLSC identified that the legal practice needed to address the requirements under the Act, the Rules and the Regulations and dramatically improve its procedures and processes.

Following the practice review we provided a detailed report to the Law Society of New South Wales. The Law Society then conducted a review of the firm's trust accounts. The Law Society of New South Wales immediately suspended the practitioner's practising certificate for failing to account and misappropriation. The practitioner has also had his application for his 2011/2012 practising certificate refused.



The OLSC conducted a practice review of an ILP as a result of the legal practitioner director failing to adequately complete a self-assessment form in the manner prescribed, despite several requests from the OLSC to do so. 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 pursuant to section 140(3) of the Act. Consequently it was determined that a practice review of the ILP's management systems was appropriate.

Following the practice review, the OLSC identified that the ILP had actually established practice management systems and that there were documented policies and processes in existence. There was 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.

The legal practitioner director was reminded about the importance of responding to both the OLSC and the Law Society in relation to their enquiries and to be mindful of the limitations of the practices' current systems in the event the practice experienced growth in the future, as foreshadowed by the director.



CHAPTER 4

EDUCATION AND COMMUNICATION

EDUCATION AND COMMUNICATION

One of the key functions of the Office of the Legal Services Commissioner is the provision of education and training. Through the provision of education and training, the Office of the Legal Services Commissioner fulfils its stated purpose of reducing complaints against legal practitioners within a context of consumer protection and support for the rule of law.

The OLSC's educational activities encompass a wide range of initiatives. Such initiatives allow the OLSC to assist the general public and the profession in matters relating to the regulation of the New South Wales legal profession. Initiatives for the legal profession and wider legal community include OLSC publications, presentations by staff at universities as well as speaking engagements by the Commissioner and OLSC staff at conferences.

UNIVERSITY LECTURES

During the past year, staff of the OLSC have presented a large number of lectures at universities throughout New South Wales to both undergraduate and post-graduate law students. These lectures were presented at Macquarie University, the University of New South Wales, the University of Newcastle, the University of Technology, the University of Western Sydney, Southern Cross University, the University of New England, Wollongong University and the University of Sydney.

The lectures have been well received. Students and faculty members commented that the lectures were particularly relevant and insightful. Numerous students commented that the educational lectures provided them with insight into the regulation of legal practitioners and the ethical issues that arise for legal practitioners through the provision of engaging, practical and useful examples and scenarios.

More than 96.5% of students participating in the external education survey reported that the educational sessions were 'relevant' and 'helpful'. 97.5% of students reported that the university lectures were 'interesting' and enhanced their understanding of a legal practitioners roles and responsibilities in legal practice.

These presentations allow the OLSC to engage with future practitioners, providing a valuable opportunity to assist them in understanding the complexities of legal practice and the ethical issues that arise.

OUTREACH – PRESENTATIONS TO THE LEGAL COMMUNITY

The Commissioner presented a number of papers and seminars this year to the wider legal community, which includes law firms, young lawyers, university graduates, crown solicitors and public servants. These presentations focused on ethics, professionalism and practice. These seminars and papers included:

Ethics and Professional Responsibility: Regulating for Professionalism and an Ethical Culture seminar presented by the Commissioner at Clayton Utz in Sydney on 15 July 2010.

Ethics and Professionalism paper presented by the Commissioner at Southern Cross University on the Gold Coast on 22 July 2010.

New Directions in the Regulation of the Legal Profession – Implications for In-house Counsel seminar presented by the Commissioner at the 6th Annual Public Sector In-House Counsel Conference 2010 in Canberra on 29 July 2010.

Principal for a Day seminar presented by the Commissioner at Elderslie High School in Narellan on 16 August 2010.

Ethics and Professional Responsibility: Rule 42
'Regulating for Professionalism and an Ethical Culture
seminar presented by the Commissioner at the University
of New England via videoconference on 19 August 2010.

Suitability, Eligibility and Fitness To Practice Forum
moderated by the Commissioner at the Conference of
Regulatory Officers (CORO) 2010 hosted by the Legal
Services Board in Melbourne on 26 and 27 August 2010.

Regulating for Professionalism and an Ethical Law Firm
Culture seminar presented by the Commissioner at
Carroll & O'Dea in Sydney on 31 August 2011.

Ethical and Professional Issues for Government Lawyers
seminar presented by the Commissioner to the NSW
Law Society's 2010 Government Solicitors Conference in
Sydney on 1 September 2010.

Regulating for Professionalism and an Ethical Culture
seminar presented by the Commissioner for AMP
Financial Services - Legal in Sydney on 7 September
2010.

Trends in Ethical Issues Raised in Complaints seminar
presented by the Commissioner at the Legalwise Seminar
in Sydney on 16 September 2010.

Towards a National Profession seminar presented by
the Commissioner to the City of Sydney Law Society in
Sydney on 6 October 2010.

Delegation of Thai Judges: (An overview of the OLSC)
seminar presented by the Commissioner at the UNSW
Law Faculty Centre for Continuing Legal Education in
Sydney on 14 October 2010.

Professional, Ethical and Viable – Minimising Risk in
Legal Practice seminar presented by the Commissioner
for the Newcastle Law Society in Newcastle on 22
October 2010.

Towards a National Profession paper presented by the
Commissioner at the North Metropolitan Law Society
Dinner Meeting in Chatswood in 26 October 2010.

CLE: Secret Weapon for Success and Satisfaction in Law,
or Just Another Compliance Event? Seminar presented
by the Commissioner as a panel member of the CLEAA
Conference 2010 Good Learning Forum in Milsons Point
on 28 October 2010.

Whatever Happened to the Public Interest seminar
presented by the Commissioner at Politics in the Pub at
the Gaelic Club Surry Hills on 5 November 2010.

Ethics and Professionalism in-house seminar by the
Commissioner at the Crown Solicitors Office in Sydney on
9 November 2010.

Hypotheticals and Ethics seminar presented by the
Commissioner and the Research and Project Coordinator
at the 2010 Annual Assembly Conference of NSW Young
Lawyers in Sydney on 13 November 2010.

Ethics and Professionalism seminar presented by the
Commissioner and the Research and Project Coordinator
at the Albury and District Law Society in Albury on 17
November 2010.

The Ethics of Leadership seminar presented by the
Commissioner at the Legalwise Seminar in Sydney on 24
November 2010.

Professional Ethical and Viable Minimising Risk in Legal
Practice seminar presented by the Commissioner at the
Liverpool and Fairfield Law Society in Liverpool on 26
November 2010.

Rule 42 and the National Legal Profession Reform
Project talk presented by the Commissioner at the
Nepean Hawkesbury Regional Law Society Members
Breakfast in Penrith on 26 November 2010.

Ethics and Responsibility: The Three C's –
Communication, Conflicts and Costs paper presented
by the Assistant Commissioner (Legal) at the Legalwise
Seminar in Sydney on 26 November 2010.

Paper presented by the Commissioner at the Australasian
Security and Intelligence Associations' Combined
Seminar in Canberra on 7 December 2010.

Quality Systems and the New Regulatory Framework for
Legal Practices: What Does it Mean for the Business of
Law? Seminar presented by the Commissioner at the QL
Member Event in Sydney on 9 December 2010.

Hypothetical seminar presented by the Commissioner
and the Research and Project Coordinator at the Far
South Coast and Monaro Law Society in Bateman's Bay
on 10 December 2010.

Ethics and Professionalism seminar presented by the
Commissioner at the Far West Law Society Annual
Meeting in Broken Hill on 16 December 2010.

Robust Communication between Lawyers: Where is
"the line" and how do you know when a practitioner has
crossed it? And what steps can be taken when it occurs?
Paper presented by the Commissioner and the Research

and Project Coordinator at the NSW Crown Solicitors Office in Sydney on 23 February 2011.

Hypotheticals seminar presented by the Commissioner and the Research and Project Coordinator for Legal Aid in Sydney on 24 February 2011.

The Ethics of Leadership seminar presented by the Commissioner and the Research and Project Coordinator at the Legalwise Seminars in Sydney on 9 March 2011.

Outsourcing, Virtual Law Firms, Social Networking Services – Issues for Regulating Legal Practices in the 21st Century seminar presented by the Commissioner and the Research and Project Coordinator at Clayton Utz in Sydney on 10 March 2011.

Ethics and Professional Responsibilities: Solicitors Undertakings: Dangers and Safeguards seminar presented by the Commissioner at the Television Education Network's NSW Solicitors' Compulsory CPD Intensive in Sydney on 11 March 2011.

Looking Behind Client Instructions: Ethical Issues in-house seminar presented by the Commissioner and the Research and Project Coordinator at McDonald Johnson Lawyers in Newcastle on 14 March 2011.

Legal Ethics – Hypothetical seminar presented by the Commissioner and the Research and Project Coordinator at the Thomson Reuters' Sydney CLE Seminar in Sydney on 18 March 2011.

Complaints about Lawyers: What Really Happens at the OLSC paper presented by the Commissioner and the Research and Project Coordinator at Voss Events in Sydney on 24 March 2011.

Ethics and Professional Responsibility: The Ethical Legal Practice – Raising the Bar seminar presented by the Commissioner and the Research and Project Coordinator at the UNSW Law Faculty Centre for Continuing Legal Education Rule 42 Mandatory Annual Compliance for Practitioners in Sydney on 25 March 2011.

Complaints about Lawyers: What Really Happens at the OLSC paper presented by the Commissioner and the Research and Project Coordinator at Voss Events in Canberra on 31 March 2011.

Minimising Complaints and Maximising Your Ethical Standards paper presented by the Commissioner and the Research and Project Coordinator at Lexis Nexis Practice Management Conference in Darling Harbour on 24 May 2011.

The OLSC received a complaint from an individual in relation to a family law property settlement. The complainant alleged that the practitioner had advised her that legal services for the property settlement matter would amount to approximately \$1,200. The complainant was shocked to receive a bill for \$6,040. The complainant contacted the OLSC and was extremely distressed. The complainant alleged that she had never received a written costs agreement or been notified that the initial amount quoted would be more. During discussions with the OLSC, the complainant also expressed dissatisfaction with the services of the practitioner.

We contacted the practitioner and put the complainant's concerns to him. The practitioner acknowledged that he had failed to disclose the increase in costs. The practitioner reluctantly advised the OLSC that he would be willing to negotiate the bill in dispute.

We advised the complainant that the practitioner was willing to negotiate the bill. Following lengthy discussions with our Office, the complainant offered to pay \$3000 to settle the outstanding bill. The practitioner accepted the amount, plus \$150 for disbursements. Upon resolution we received a complimentary email from the complainant praising the OLSC and in particular the Mediation and Investigation Officer involved for being "extremely helpful and understanding."



Case study

Ethics and the Criminal Lawyer paper presented by the Commissioner and the Research and Project Coordinator at the Legal Aid Annual Criminal Law Conference in Darling Harbour on 2 June 2011.

Ethics: An Overview of the OLSC seminar presented by the Commissioner and the Research and Project Coordinator at Consolidated Lawyers in Sydney on 30 June 2011.

In addition to these papers and seminars, the Commissioner, the Assistant Commissioner (Legal) and the Research and Projects Coordinator presented numerous seminars to the legal profession in fulfilment of Rule 42 of the *Revised Professional Conduct and Practice Rules 1995*. These seminars were conducted for individual law firms, community legal centres and Commonwealth and NSW government departments.

STAFF TRAINING

All OLSC staff are required by the Department of Attorney General and Justice (DAGJ) to participate in work-related training. This year the OLSC fulfilled its staff training commitment through in-house and external training.

Thirty (30) members including legal and non-legal staff participated in 980 hours of work-related training. The training primarily consisted of internal training (340 hours), followed by attendances at seminars and conferences (243 hours) and external training (397 hours).

OLSC staff were trained in e-learning, face-to-face learning, seminars and conferences, as well as workplace learning. The scope of the training included a diverse range of topics, such as cultural diversity, managing complaints and feedback, the right to information, an essential guide to family law, consumer law and policy, the Administrative Decisions Tribunal, ILP Audits and Practice Management, regulatory methods and workers compensation.

PUBLICATIONS – INTERNAL AND EXTERNAL

The OLSC publishes fact sheets in order to assist both practitioners and the general public in understanding and dealing with the complaints handling process. There are 18 fact sheets available. Each fact sheet is written in plain English, and concisely covers a specific topic. Such topics include information about the OLSC complaints handling process, costs disputes, regulated costs, negligence, conflicts of interest, settlement, file ownership and hiring a legal representative. Each fact sheet is available in hard copy from the OLSC or via our website at www.lawlink.nsw.gov.au/olsc.

The OLSC also publishes a number of brochures to further assist complainants in understanding the process and procedures involved in making a complaint, as well as the role of the OLSC. These brochures are also available in hard copy from the OLSC or via the OLSC website.

This reporting year the OLSC published 5 issues of our newsletter, *Without Prejudice*. The newsletter discusses an array of issues pertaining to legal practice and the legal profession. This reporting year the newsletter considered topics such as practising in a virtual world, solicitor's undertakings, new technologies and social networking sites, liens, and the ethical obligations of legal practitioners.

The OLSC has contributed to two external publications this year. The Assistant Commissioner (Legal) wrote four chapters in the *Law Handbook: Your Practice Guide to the Law in NSW*, published by Redfern Legal Centre. The chapters covered consumers, the legal system, assistance with legal problems, and complaints. The Assistant Commissioner (Legal) also wrote a chapter on legal practice in the *Lawyers Practice Manual NSW*.

OLSC WEB SITE

This reporting year the OLSC's website has undergone a significant upgrade to ensure that it is more user-friendly and comprehensive. Complainants, legal practitioners and users of the website are able to leave feedback via the use of surveys so the Office is able to ascertain where improvements need to be made on the website and with our general service delivery.

All relevant publications, fact sheets, brochures and complaint forms are available via the Publications page on the OLSC website. The Coordinator of Reviews and Support is responsible for the updating of all web material.

VISITS

International

In August 2010 the Commissioner attended the American Bar Association (ABA) Annual Meeting where he presented two lectures, gave evidence before the ABA's Ethics 20/20 Commission and attended a range of other meetings.

The Commissioner participated as a panellist at the ABA CLE Centre Showcase entitled "The Impact of Technology and Globalization on Ethics for the 21st Century Lawyer." The Commissioner presented a paper on the philosophical approach of our Office towards the regulation of the legal profession in NSW. The paper discussed the concepts of professionalism in practice, regulating for professionalism and preserving ethics and integrity through regulation. The paper also discussed the changing legal marketplace in NSW and the development of alternative business structures. The paper focused on how our Office has been able to facilitate ethical practice in light of considerable change. The panel also included a discussion about several other emerging practices that present potential ethical challenges for legal practitioners including virtual law offices and legal process outsourcing.

The Commissioner was a panellist at the National Conference of Bar Presidents (NCBP) Joint Workshop entitled, "Keeping Pace with the Evolving Practice of Law". The workshop was attended by about 100 state and local bar presidents, presidents-elect and executive directors who wanted to hear about developments in legal practice. The Commissioner presented a PowerPoint presentation that detailed the work of the OLSC, the legal services marketplace in NSW, alternative business structures, incorporated legal practices, and the regulatory regime in NSW.

The Commissioner was called to give evidence before the ABA Ethics 20/20 Commission. The 20/20 Commission was formed in 2009 to review lawyer ethics rules and regulation across the United States in the context of a global legal services marketplace. The Commissioner's

testimony followed Jonathan Goldsmith, the Secretary General of the Council of Bars and Law Societies of the European Union (CCBE), and Des Hudson, Chief Executive of the Law Society of England & Wales. Each speaker was asked to discuss the regulatory framework in their jurisdiction and the status of the legal services marketplace which they regulate.

The Commissioner spoke in detail about the purpose of a regulatory framework and the philosophy behind our approach in NSW. The Commissioner was then asked a number of questions by members of the Commission concerning complaints against non-lawyers in ILPs, regulating "legal work", the self-assessment process, proposed remedies of regulating entities, harmonisation of the regulatory regime in Australia and the National Legal Reform Project. Most of the questions were directed at assessing whether the U.S. could follow the path that Australia is presently going down to achieve a harmonious regulatory regime.

Domestic

On 22 July 2010 the Commissioner presented two lectures at Southern Cross University in Lismore. The first lecture was presented to students of the University who are in the process of completing their Bachelor of Laws. The Commissioner discussed the role of the OLSC and outlined common ethical dilemmas that are experienced by legal practitioners. Following this discussion the Commissioner presented an MCLE lecture on "Ethics and Professional Responsibility" to local practitioners. The Commissioner discussed the OLSC's philosophy and the purpose of regulation, good ethical practice and moral activism. The Commissioner also updated practitioners on the status of the National Legal Profession Reform Project.

On 29 July 2010 the Commissioner presented a paper at the 6th Annual Public Sector In-House Counsel Conference in Canberra on "New Directions in the Regulation of the Legal Profession." The Commissioner discussed the National Legal Profession Reform Project, the move from proscriptive based regulation to outcomes based regulation and how the change will impact on public sector in-house lawyers.

On 26-27 August the Commissioner, the Assistant Commissioner (Legal) and the Research & Projects Coordinator attended the 2010 Conference of Regulatory Officers (CORO) in Melbourne, Victoria. The theme of this

year's conference was "Local, National, Global: Crossing Boundaries". The Conference focused on the National Legal Profession Reform Project as well as topics that are currently relevant to legal practice domestically and internationally such as suitability and fitness to practice as a legal practitioner and continuing legal education. The Conference also featured a session on legal process outsourcing.

Once again the Conference provided a valuable opportunity for regulators and professional associations around Australia to discuss our practices, policies and procedures in relation to the regulation of the Legal Profession. We were able to explore emerging issues and share experiences with one another.

This reporting year the Commissioner and the Research and Projects Coordinator conducted a number of seminars to regional law societies in fulfilment of Rule 42 of the *Revised Professional Conduct and Practice Rules 1995*. Seminars were conducted for the the Liverpool and Fairfield Law Society in Liverpool on 26 November 2010; the Nepean Hawkesbury Regional Law Society Members Breakfast in Penrith on 26 November 2010; the Albury and District Law Society in Albury on 17 November 2010 and the Far West Law Society Annual Meeting in Broken Hill on 16 December 2010.

The Assistant Commissioner (Legal) presented a number of seminars to barristers at the request of the New South Wales Bar Association. These seminars covered topics such as the National Legal Profession Reform Project, Ethics and Practice and Ethics in Litigation.

The practitioner had acted for the complainants in the conveyance of a residential property. The property had a right of way allowing access to the rear of the property the complainants believed was part of the transaction. Upon settlement the clients were advised by the vendor that the right of way did not belong to them nor did they have an entitlement to it. The complainants lodged a complaint with this Office alleging negligence.

The complainants alleged that the practitioner had given them poor legal advice and had failed to effectively communicate with them about the mistake. They asked to be compensated \$25,000 for the mistake.

When the allegations were put to the legal practitioner he said that he did raise the issue of the right of way with the complainants during a telephone conversation. He said that he advised the complainants that the right of way disclosed in the survey was not registered on the title and that the survey being used in the contract was not the most current. He said that the complainants were not interested in hearing about this problem and were in a rush to buy the property. The practitioner had no contemporaneous notes of the conversation.

In relation to the allegation about failing to effectively communicate the mistake the practitioner said that the complainants never phoned or contacted him to discuss the matter.

Following negotiations the practitioner offered the complainants \$5,000 to settle the matter. After a lengthy mediation process the practitioner agreed to settle the matter for the sum of \$7,500; an agreement that avoided perhaps lengthy litigation and struck a fair balance between the positions of the practitioner and the complainants.



CHAPTER 5

RESEARCH AND PROJECTS

The OLSC has significantly increased its research and projects portfolio this reporting year. A substantial body of in-house research has been conducted on a wide range of matters which relate to both the legal profession generally, as well as in relation to more specific complaints.

The OLSC has again received a number of formal and informal research requests from external organisations seeking information about the role and powers of the OLSC as well as the regulation of ILPs and legal services generally in New South Wales and Australia.

The OLSC has also been involved in a major joint research project funded by an Australian Research Council Linkage Grant with the University of New South Wales, Ernst & Young and ASIC. The research project is entitled “The Future of Financial Regulation: Embedding Integrity through Design.”

IN-HOUSE RESEARCH REQUESTS

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

- Comparative analysis of the Australian Solicitors Conduct Rules (June 2011) and the Legal Profession National Rules – Solicitors Rules (May 2010);
- Ethics for the Commercial Lawyer;
- Technology and Legal Practice – Hypothetical and ethical dilemmas;
- Australian Consumer Law – Competition and Consumer Act 2010 (Cth);
- Research into the implications of the reforms of the competition law for legal practitioners, in particular, the impact on practitioners in New South Wales;
- The fiduciary obligations of a legal practitioner;
- Outsourcing, virtual law firms and social networking services – regulating for legal practice in the 21st century;
- An analysis of robust communication between legal practitioners;
- An analysis of the dangers and safeguards of solicitors’ undertakings;
- An examination of the impact of outsourcing/off shoring on the legal profession and the implications for legal practice;
- Ethics and professional responsibility as they relate to communication, costs and conflicts;
- Conflicts of interests for legal practitioners;
- Recent developments in the COAG National Legal Reform Project;
- Ethics in legal aid practice;
- Ethics in criminal law practice;
- Minimising risks in legal practice;
- Minimizing complaints and maximising ethical standards in legal practice;
- Addressing and overcoming conflicts of interests as a government lawyer;
- Criminal penalties proscribed within the LPA 2004;
- An analysis of adopting regulatory objectives for the legal profession;
- An overview of penalty units within legislation related to regulation of the legal profession;
- Listing and outsourcing in relation to ILPs;
- An examination of re-organising legal practice and the provision of legal services.

EXTERNAL RESEARCH REQUESTS

During the reporting year, the OLSC continued to receive requests regarding external research.

In March 2010 we received a request for further research from Professor Laurel Terry, Harvey A. Feldman Distinguished Faculty Scholar and Professor of Law at Penn State Dickinson School of Law following a brief the OLSC had produced regarding regulatory objectives in Australia. As noted in our 2009-2010 Annual Report, we provided Professor Terry with a discussion paper on regulatory objectives in NSW and Australia. Professor Terry invited the OLSC to continue this collaboration and produce an academic paper for an upcoming conference in New York.

This research request has led to a major joint project which will culminate in the presentation of a paper in October 2011 at The Louis Stein Center for Law and Ethics at Fordham University in New York. The paper will also be published in the Fordham Law Review.

The paper, once completed, will provide a discussion about six different types of challenges facing contemporary lawyer regulators. These six challenges include (1) who should be regulating the legal profession; (2) what it is that should be regulated; (3) when regulation should occur: ex ante or post hoc;

(4) where regulation should occur; (5) how regulation should occur; and (6) why regulation should occur. The final challenge, 'why regulation should occur' will be addressed in a second paper to be presented and published at Fordham University.

During this reporting year the OLSC also collaborated with Professor Rita Shackel, Professor of Law at the University of Sydney, on a research project focusing the impact of technology on the legal profession. The research has been examining 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.

In a rapidly evolving legal services marketplace, practitioners are adopting and incorporating new technologies in legal work. This has a number of professional and regulatory implications for the legal profession.

The joint research project specifically examines these implications within the framework of the use of social networking media, the rise of virtual law firms both internationally and within Australia, and the increasing use of off-shoring or outsourcing of legal processes and practices.

A complaint was lodged alleging overcharging, failure to disclose a substantial increase in costs, delay and failing to act on instructions. The complainant had retained the practitioner to recover a debt on behalf of his company. The complainant paid \$18,000 in legal fees.

Following engagement the practitioner took steps over the next few months to enter judgment against the debtor but was unsuccessful. The practitioner sent an email to the complainant advising of the searches she had carried out and informing the client that no property could be identified in the debtor's name. The practitioner asked the complainant whether he would like the search continued but she did not follow up when she did not receive a reply. The lawyer put the file away without telling the client she was going to do nothing. The complainant alleged that the practitioner's actions delayed the recovery requested \$8,200.00 as a refund.

The practitioner, after much discussion with our Office agreed to reimburse \$500.00. The complainant rejected this offer. After several more discussions the complainant accepted an offer of \$2,000.00.



This project argues 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.

Australian Research Council (ARC) Grant

As reported in last year's Annual Report we have been participating in an ARC research project which focuses on pressing ethical problems confronting the operation of capital markets in Australia and examines the adequacy of the regulatory apparatus and integrity systems. The Project was initially being hosted by CAPPE at The Australian National University but has since been taken over by the University of New South Wales. The Project held a number of workshops this reporting year which the Commissioner and the Research and Projects Coordinator attended.

On 16 November 2010, the Commissioner presented a paper at a round-table discussion and spoke about the fiduciary obligations of legal practitioners and community obligations. The round-table discussion examined numerous issues including the limits of disclosure with respect to financial advice, the nature of fiduciary duty, paradigms of international regulatory reform and building financial integrity systems.

On 29 April 2011, the Commissioner attended a workshop on the future of prudential regulation in superannuation. This workshop further forayed the plethora of issues related to addressing ethical concerns of capital markets through improved regulatory instruments and mechanisms. The workshop explored the role of standards-making powers in regulation of the superannuation system.

A complaint was lodged with this Office relating to a commercial law dispute. The complainant alleged that the practitioner had failed to provide any cost disclosure documents, had failed to follow orders made by the Supreme Court and had failed to follow instructions. The complainant also alleged that the practitioner had improperly claimed a lien over the complainant's file and had terminated the retainer without reason.

The practitioner admitted he had not disclosed his costs and that he had claimed a lien over the complainant's file but disagreed with the other allegations. The practitioner stated that he had experienced some difficulties in acting for the complainant because of language barriers and this had probably affected the outcome of the matter. While there was no strong evidence of substantial negligence we were able to negotiate the transfer of the file and advise the lawyer about procedures to ensure he properly disclosed his costs in future.

The OLSC recommended that the practitioner utilise the Law Society's compliance analysis review program to ensure compliance with the relevant statutory requirements in relation to costs. The practitioner ultimately employed a practice manager to implement the compliance analysis review program and gave written assurances to the office about future disclosures of costs.



Conference of Regulatory Officers (CORO) Website and Conference

This reporting year the OLSC continued to help develop CORO.

CORO consists of member state regulators, including legal ombudsman such as the OLSC, as well as Conduct Boards, Bar Associations and Law Societies, from Australia and New Zealand. CORO members meet on an annual basis to discuss issues relevant to the regulation of the legal profession.

In October 2011, the NSW OLSC will jointly host the 2011 CORO Conference. The conference will cover a wide range of existing and emerging issues relating to regulation of the profession, including discussion of the National Legal Profession legislation.

The OLSC has spent a large amount of time this reporting year working on CORO's website in order to ensure it can be effectively used in relation to the regulation of the legal profession. The website includes information about CORO, current projects and past and present conferences. The website can be accessed at <http://www.coro.com.au/>.

An application for Cost Dispute Mediation was lodged with this Office. The complainant had engaged the practitioner to assist in resolving a dispute between neighbours relating to a shared fence and was charged \$3,110.00. The applicant did not pay the bill and alleged that the practitioner had failed to return telephone calls, acted without instructions and had overcharged in relation to research performed.

The practitioner said that the client was extremely difficult and had refused to on numerous occasions to listen to the advice he had been given. The practitioner also stated that the applicant insisted he follow his instructions even though they were incorrect in law.

We explained to the lawyer that any unexplained increase in costs greatly increased the chances of a complaint being lodged and we explained to the client that the lawyer was ethically bound to give him his best advice, whether the client liked it or not. The practitioner agreed to not pursue payment of the bill.



CHAPTER 6

INFORMATION SYSTEMS AND SERVICES REPORT

The OLSC introduced a project methodology in the 2003 fiscal year to complement our organisational objectives. Each year a management review is undertaken in an effort to streamline and consolidate these projects to ensure that current and future OLSC business needs are being met. All OLSC staff contribute to the projects on a regular basis.

Ongoing work with a number of long-term projects has continued in this 2010-2011 financial year, and reviews of practices, projects and processes have occurred. New database/ dataset projects have begun, new staff training sessions have been sourced and the OLSC has again achieved re-certification to ISO 9001:2000. As with all continuous quality programs, this is an ongoing process, with the need to ensure we keep improving our standards and reviewing our processes regularly. It is not an easy task, but one to which the OLSC is committed to ensure we continually improve in the area of customer service and satisfaction for all stakeholders.

This financial year the Information Systems and Services (ISS) Unit concentrated efforts in the following areas:

STAFF INFORMATION SESSIONS

The ISS Unit continued its overall project management of internal based staff information and training. An annual review was undertaken again to ensure that ongoing job-based targeted training for all staff was met. This year's annual review of staff information sessions consisted of staff surveys and the creation of a calendar to ensure training in communication techniques and changes in areas of law is provided. Information sessions undertaken for the 2010-2011 financial year were diverse and included ILP Audits & Practice Management, the Health Care Complaints Commission (HCCC), the LPMAS System, Law Access, Making a Will, Family Law &

Complaints Handling, Ombudsman's Office, Workers Compensation, the ADT, Right to Information with the Office of the Information Commissioner, Coroners Court, Library Services Training: Navigating LexisNexis for Legal Research, Director of Public Prosecutions (DPP), Family Law Registrar, an Independent Child Lawyer, Community Justice Centres, Wills/ Probate Practitioner, and refreshers on OLSC Data Systems.

LPMAS PROJECT

The LPMAS Portal Project will change the way the OLSC interacts with and responds to the information needs of practitioners and legal practices. The ISS Unit has continued its involvement working with the ILP Unit on the completion of the LPMAS Portal Project. The ISS unit has assisted with complaints and data management as well as reporting functionality.

ISO 9001: 2000 RE-CERTIFICATION

The OLSC first gained ISO 9001 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. ISO 9001 re-certification also allows us to review everyday practice to ensure efficiency and effectiveness. I am pleased to state that since 2005 we have continued to gain ISO 2001 re-certification. In April 2011 the OLSC was again recertified to ISO 9001: 2000 standard, with the support of all management and staff.

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 that 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 DAGJ;
- 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.

DATASET REVIEWS

The ISS Unit again undertook reviews of the Inquiry Line Register, Conduct Register and the Complaints Tracking System (CTS) to further enhance these datasets to improve the capacity, consistency and capture of data. We also commenced a project to create enhanced reporting to support the changing information needs of the OLSC. Enhanced reporting mechanisms assists the OLSC in managing trends and resolving complaints as well as increasing our ability to respond to queries from government bodies.

CTS DATABASE UPGRADE

The ISS Unit undertook a review of the CTS Database to ensure the sustainability and accuracy of information stored. This led to a system upgrade to further enhance the functionality of the CTS. This upgrade will ensure better access to information, enhanced sustainability of information stored and ensures knowledge management principles are improved.

STAKEHOLDER FEEDBACK

In an effort to improve our service and to ensure stakeholders' needs are identified and being met, the ISS Unit has a number of established surveys aimed at those accessing the OLSC service. These surveys focus on callers to the Inquiry Line, users of the OLSC website, complainants who have a formal written complaint lodged with the OLSC, practitioners who are contacted regarding complaints, University and Higher Education Students and OLSC Staff.

Results so far have been overwhelmingly positive (in all areas), and a number of changes have been put in place from feedback received to ensure even better access to services for all stakeholders.

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 (PPF).

In 2010-2011 the OLSC continued its strategy of on-going implementation of business improvement and cost saving initiatives. This strategy had a positive effect. Our overall expenditure not exceeding our budget allocation at close of the financial year.

As part of our financial management we closely monitored our budget performance and cash flow during the year. We completed monthly and quarterly reviews of our operating expenditure against our budget for significant variances. We examined budget variances by major expenditure line items placing special emphasis on the management and control of our business centre's monthly staffing costs to ensure alignment with our approved funded establishment at year-end.

Our frequent and comprehensive analysis of significant budget variances in areas concerning employee related payments and other major operating expenditure meant we could forecast both favourable and unfavourable trends of expenditure during the year and manage those trends within our control.

The OLSC has no control however over the Department's year-end financial adjustments and their effect 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.

In addition to receiving normal operational funding in 2010-2011 the OLSC had deferred income of \$405,531 carried forward from last financial year to meet capital costs incurred in finalising the last phase of the LPMAS Project – Stage 3 the Build/Test/Install stage. The OLSC completed all facets of the Project this year reporting a slight variance to its funding allocation at 30 June 2011.

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

There was no change to the number of positions constituting the OLSC approved establishment. In 2010-2011 our staffing structure remained a total 30 full time equivalent positions; 29 permanent full time positions for administrative and professional staff and one full time equivalent position for rostered casuals on the OLSC Inquiry Line.

There was change however to a few of our positions staffing profiles.

In late October 2010, six positions performing a legal and investigation function within the Office were reclassified from "Clerk" to "Legal Officer" status by the Department. One position was reclassified from Senior Legal & Policy Officer, Clerk Gr 9/10 to Senior Legal & Policy Officer, Legal Officer Gr IV and five positions were reclassified from Investigation Officer, Clerk Gr 7/8 to Legal & Investigation Officer, Legal Officer Gr III.

The new positions are the outcome of a Department evaluation of the previous positions' job descriptions and formalise the requirement for position holders to possess necessary legal qualifications in order to perform the role. The new positions attract higher remuneration and the OLSC was able to absorb the increased salaries in its establishment budget this year. The OLSC will request additional funding from the PPF to support the new positions' full year salary costs in our budget for 2011-2012.

Similar to previous years, in 2010-2011 the OLSC again experienced some staff movement in its permanent full time establishment positions. The staff movements were largely attributable to circumstances involving staff resignations in pursuit of other employment opportunities, staff secondments to other organisations both within and outside the Department for career development and staff transfers from full-time to part-time hours for family commitments. The staff changes and the associated timing difference involved in finalising recruitment and selection processes and filling position vacancies resulted in some positions remaining vacant for short periods of time during the year.

CHAPTER 8

NOTES SUPPORTING THE 2010-2011 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. In 2010-2011 the OLSC experienced a degree of staff movement in some of its permanent full time positions and this was mainly due to circumstances involving staff resignations, staff secondments and staff transfers from full time to part time hours. The staff changes and the associated timing difference involved in finalising recruitment and selection processes and filling position vacancies saw some positions remain vacant for short periods of time during the year. The *Salaries & Wages* budget variance reflects the impact of the staff changes and the salary savings derived from the creation of temporary position vacancies during the year.
2. **Leave Entitlements:** The OLSC's *Leave Entitlements* budget reserves funds for recreation leave expense and accrual, 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. **Superannuation:** The OLSC's *Superannuation* budget provides for superannuation entitlements of OLSC employees. The *Superannuation* budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.
4. **Contractors:** The OLSC's *Contractors* budget includes provision for the engagement of professional services to support the OLSC's ongoing program of audits of major and complex Incorporated Legal Practices (ILPs). The OLSC maintained its planned level of

ILP reviews in 2010-2011 however we had minimal requirement to engage contractors for our audit program this year. The *Contractors* budget variance reflects the ensuing cost saving achieved in this expenditure line item.

OTHER OPERATING

5. **Fees:** In addition to maintaining funds for various other types of fees expenditure the OLSC's *Fees* budget includes provision for legal fees incurred by the OLSC in bringing matters before the Administrative Decisions Tribunal (ADT) and the Courts as well as costs associated with the complaints review system and the engagement of independent reviewer advisors. In 2010-2011 the OLSC initiated a number of significant investigations into the conduct of legal practitioners and firms with some matters resulting in Tribunal proceedings. The *Fees* budget variance is largely attributable to a component of credit adjustments that were made to the OLSC's legal fees account to offset income. During the year the OLSC received: \$20,000 from legal practitioner *Brett William Hurley* following an ADT Decision regarding payment of costs to the Legal Services Commissioner; and \$72,000 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 CBD. The *Rates & Outgoings* budget variance reflects increased monthly outgoings costs this year including

\$42,000 outgoings adjustments backdated over two financial years. The adjustments were prepared by the Department in settlement of outgoings underpayments owed to the landlord State Property Authority. The OLSC's *Rates & Outgoings* budget for 2011-2012 will be updated to take into account the increased monthly outgoings costs.

7. **Rent:** The OLSC's *Rent* budget anticipated an increase in monthly rent payments to maintain the OLSC's leased accommodation in 2010-2011. The predicted rent rise did not eventuate and the *Rent* budget variance reflects the resulting cost saving achieved in this expenditure line item.
8. **Stores & Stationery:** The OLSC's *Stores & Stationery* budget contains provision for monthly costs of office consumables requisitions and any ad hoc computer equipment purchases during the year. The *Stores & Stationery* budget variance highlights cost savings achieved as a result of the OLSC's continued improvements to its inventory management and purchasing processes in 2010-2011.
9. **Travel:** The OLSC's *Travel* budget includes provision for travel expenses arising from intrastate and interstate conference attendance by the Legal Services Commissioner and staff. During the year the OLSC closely monitored its monthly travel expenditure and ensured only necessary travel costs were incurred. The *Travel* budget variance reflects the outcome of the OLSC's cost saving measures and includes a travel costs reimbursement received from the American Bar Association following the Commissioner's attendance at a law conference in San Francisco in August 2010.
10. **Maintenance Contracts:** The OLSC's budget for *Maintenance Contracts* includes provision for maintenance support costs associated with the OLSC's Complaints Tracking System (\$30,600 pa payable annually to the developer QA Plus Ltd) and the OLSC's Legal Practice Management & Audit System (\$82,294 pa payable monthly to the Department's Information Services Branch (ISB) through service level agreement). The OLSC paid the full budgeted amount of maintenance costs for our complaints database in August 2010. However in respect to our LPMAS the OLSC only commenced

incurring monthly maintenance charges in January 2011 when ISB activated the service level agreement. The delayed SLA implementation date resulted in a six months saving in budgeted LPMAS maintenance costs this year. Also this financial year, the OLSC incurred maintenance costs for our telephone queuing system Q-Master (\$17,500 pa payable quarterly to ISB through service level agreement). These additional charges were not in our budget allocation this year but will be incorporated in our maintenance contracts budget for 2011-2012.

DEPRECIATION & AMORTISATION

11. *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.

FINANCIAL STATEMENT 2010-2011

	Budget	Spent	Variance
	\$	\$	\$
Salaries & Wages	2,479,355	2,413,435	65,920
Allowances	2,612	1,381	1,231
Overtime	5,951	0	5,951
Leave Entitlements (<i>Recreation Leave, Annual Leave Loading & LSL</i>)	295,357	280,877	14,480
Workers Compensation	10,910	16,745	-5,835
Payroll Tax	166,397	165,012	1,385
Fringe Benefits Tax	2,000	823	1,177
Superannuation	216,349	203,566	12,783
Contractors	76,225	602	75,623
Total Employee Related Payments (Excl Crown Liabilities)	3,255,156	3,082,441	172,715
LSL Liability Assumed by Crown	0	869	-869
Total Crown Liabilities	0	869	-869
Total Employee Related Payments (Incl Crown Liabilities)	3,255,156	3,083,310	171,846
Advertising & Publicity	5,115	3,029	2,086
Bank Charges	102	110	-8
Electricity & Gas	12,614	11,873	741
Fees	274,940	211,906	63,034
General Expenses	4,092	0	4,092
Insurance	2,121	1,123	998
Interest Paid	0	17	-17
Interpreters & Translations	8,228	4,123	4,105
Motor Vehicle Levy	2,000	2,091	-91
Postal Expenses	20,302	21,549	-1,247
Printing	32,920	32,198	722
Publications	11,253	8,322	2,931
Rates & Outgoings	8,585	83,844	-75,259
Rent	330,019	314,300	15,719
Staff Expenses	18,184	23,515	-5,331
Stores & Stationery	33,403	18,784	14,619
Telephone	24,121	19,861	4,260
Travel	23,459	12,273	11,186
Total Other Operating Expenses	811,458	768,918	42,540

	Budget	Spent	Variance
	\$	\$	\$
Maintenance Contracts	113,277	93,308	19,969
Repairs and Maintenance	1,023	0	1,023
Total Maintenance	114,300	93,308	20,992
Depreciation & Amortisation	61,672	255,513	-193,841
Total Expenses	4,242,586	4,201,049	41,537
Less: Revenue (Recoupment)	-4,180,914	-4,158,443	-22,471
Less: Other Revenue	0	-7	7
Net Cost of Services	61,672	42,599	19,073
Less Non Cash Items:			
Depreciation & Amortisation	-61,672	-255,513	193,841
Crown Liabilities	0	-869	869
Net Position	0	-213,783	213,783

CAPITAL EXPENDITURE 2010-2011

	Allocation	Spent	Variance
	\$	\$	\$
Computer Software/Systems	405,531	412,372	-6,841
Total Capital Expenditure	405,531	412,372	-6,841

CHAPTER 9

ANNUAL REPORT STATISTICS

2010-2011

INQUIRY LINE

P1 Legal matters raised in calls

	2010-2011	2009-2010	2008-2009
Family/ Defacto	17.4	17.0	18.9
Conveyancing	12.9	12.9	11.6
Other Civil	12.3	13.5	11.7
Probate/ Wills/ Family Provisions	11.4	10.8	11.6
Commercial/ Corporations	10.3	9.1	8.5
OLSC General Query**	9.6	2.1	
Criminal	6.0	6.4	5.8
Personal Injuries	5.1	5.8	6.0
Workers Compensation	3.6	3.8	3.7
General Law/ Legal Profession Query***	3.5	1.3	
Other*	2.4	9.7	12.2
Victim's Compensation	1.6	1.1	1.4
Land and Environment	0.9	2.0	2.4
Immigration	0.8	0.5	0.5
Leases/ Mortgages/ Franchises	0.7	2.1	2.8
Industrial law	0.7	1.3	1.5
Professional Negligence	0.6	0.9	1.3

* Pre 2009-2010: 'Other' included calls regarding Legal Referral Services, OLSC General Queries, General Legal Queries and OLSC Website, Statistics & Publications.

** 2009-2010 New area added due to increase in types of calls received: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications

*** 2009-2010 New area added due to increase in types of calls received.

P2 Nature of phone enquiry

	2010-2011	2009-2010	2008-2009
OLSC Process*	15.1	13.6	2.7
Overcharging	13.3	10.7	9.8
Communication	12.4	16.4	20.6
General cost complaint/query	11.0	14.0	17.5
Negligence	10.4	11.7	11.6
Ethical matters	7.1	6.9	9.2
Delay	6.2	4.8	5.2
Instructions not followed	3.9	3.8	2.1
Misleading conduct	3.8	2.7	2.9
Costs disclosure	3.6	3.4	5.8
Referral requests**	3.0	3.7	-
Conflict of interests	2.4	2.0	2.4
Document transfer/liens	2.2	1.6	2.5
Trust fund matters	2.1	1.4	1.8
Document handling	1.0	0.9	1.1
Pressure to settle	0.8	0.7	0.8
Fraud (not trust fund)	0.7	0.5	0.6
Failure to honour undertakings	0.4	0.7	0.8
Advertising**	0.2	0.2	-
Compliance matters	0.1	0.3	0.3
Supervision**	0.1	0.1	-
Quality of service***	-	-	2.2

* 2009-2010 'Non- Conduct/ Other' renamed & absorbed into 'OLSC Process' due to analysis of types of calls received: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications

** 2009-2010 New area added due to increase in types of calls received

*** 2009-2010 'Quality of Service' has been absorbed into 'Negligence' & 'Supervision' due to increase in types of calls

P3 Practitioners mentioned on inquiry line

	2010-2011	2009-2010	2008-2009
Solicitor	91.1	93.4	94.3
Other*	6	2.8	2.6
Barrister	2.5	3	2.6
Licensed Conveyancer	0.5	0.9	0.6

* 'Other' includes Judge/ Magistrate, Legal Firm, Executor, Multiple Type of Practitioner, Paralegal/ Clerk and Support Staff.

P4 Source of calls to the OLSC inquiry line

	2010-2011	2009-2010	2008-2009
Client	62.0	66.4	66.9
Friend/relative	9.9	7.0	6.7
Opposing client	6.3	6.3	6.7
Previous client	5.4	3.4	2.0
Solicitor on own behalf	4.7	3.8	2.5
Other*	3.2	1.9	0.4
Unrepresented client	2.7	3.9	2.1
Beneficiary/executor/administrator	2.3	1.8	2.4
Solicitor on another's behalf	1.4	2.0	1.7
Non-legal service provider	0.9	1.0	1.3
Government Agency	0.4	1.8	6.8
Barrister on own behalf	0.4	0.3	0.6
Student/ Educator**	0.3	0.3	-
Barrister on another's behalf	0.1	0.2	0.1

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

** 2009-2010 New area added due to increase in Student/ Educator calls received.

P5 Outcomes of calls to the inquiry line

	2010-2011	2009-2010	2008-2009
Caller indicated intention to send in complaint	24.4	22.8	20.1
Recommended direct approach to lawyer about concerns	17.6	16.5	14.3
Provided complaint/ cost mediation form	14.9	17	18.3
Provided information about the OLSC*	13.2	9	-
Provided referral for legal advice or other assistance	9.4	13	19.2
Listened to caller's concerns	7	7.4	4.8
Provided information about the legal system	4.8	5.2	7.7
Provided information about the OLSC and LPA to a legal practitioner	2.6	2.4	2.1
Provided referral to the NSW Supreme Court Costs Assessment Scheme	2.5	2.4	3.3
Explained that concerns are outside jurisdiction of OLSC	2.4	1.9	1.6
Conducted telephone mediation	0.8	0.9	1.4
Other	0.2	1.4	6.5
Scheduled interview for caller	0.1	0.1	0.5

* 2009-2010 New area added due to increase in types of calls received: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications

WRITTEN COMPLAINTS

W1 Legal matters giving rise to complaints received in 2010-2011

Agency Handling Complaint					
	OLSC	Council	2010-2011 *	2009-2010	2008-2009
Family/ Defacto	14.9	2.6	17.5	15.6	16.5
Other Civil	10.4	4.0	14.4	17.3	22.5
Probate/ Wills/ Family Provisions	10.0	1.4	11.4	11.0	11.0
Commercial/ Corporations	7.3	4.0	11.3	13.1	8.9
Other	5.5	4.1	9.6	6.6	5.6
Conveyancing	7.5	1.4	8.9	8.6	7.7
Personal Injuries	6.7	1.5	8.2	9.4	10.2
Criminal	6.2	1.4	7.6	8.2	6.3
Workers Compensation	2.7	0.5	3.2	2.3	2.6
Leases/ Mortgages/ Franchises	2.2	0.5	2.7	2.7	3.3
Industrial law	1.9	0.4	2.3	1.7	1.8
Immigration	1.0	0.1	1.1	0.5	0.6
Professional Negligence	0.5	0.3	0.8	0.5	1.0
Land and environment	0.4	0.2	0.6	1.5	1.7
Victim's Compensation	0.3	0.1	0.4	0.9	0.4
Total counts	1984	577	2561		
Total %	77.5%	22.5%	100.0%		

* 2010-2011 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 2010-2011

Agency Handling Complaint					
	OLSC	Council	2010-2011*	2009-2010	2008-2009
Negligence	16.4	2.8	19.2	17.9	16.0
Communication	14.3	3.1	17.3	15.3	14.8
Overcharging	10.7	0.8	11.5	11.3	10.9
Misleading Conduct	5.4	3.6	9.0	4.8	4.9
Ethical Matters	4.7	2.5	7.2	7.8	7.1
Instructions Not Followed	5.0	1.6	6.5	5.2	3.6
Delay	4.8	0.7	5.5	9.0	16.6
Trust Fund	2.2	2.9	5.1	0.7	0.3
General Cost Complaint/ Query	2.8	2.2	4.9	7.1	3.9
Cost Disclosure	3.2	0.5	3.7	4.9	5.6
Conflict Of Interest	1.9	0.5	2.5	2.1	2.5
Document Transfer/ Liens	2.1	0.2	2.3	6.2	6.9
Compliance Matters	0.5	1.0	1.5	1.0	-
Document Handling	0.7	0.2	0.9	1.0	0.9
Pressure To Settle	0.5	0.2	0.7	0.8	0.6
Fraud (Not Trust Fund)	0.4	0.2	0.6	0.7	0.6
Undertakings	0.2	0.4	0.6	1.1	0.8
Advertising**	0.6	0.0	0.6	0.4	-
Supervision**	0.3	0.1	0.3	2.5	2.0
Quality of Service***	76.4	23.6	-	-	2.2

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

* 2010-2011 Percentages broken down into Agency Handling Complaint for better data clarity. Previous years data is for TOTAL complaint percentage received.

** 2009-2010 New Areas added due to increase in types of complaints received

*** 2009-2010 'Quality of Service' has been absorbed into 'Negligence' & 'Supervision' due to review of coding

W3 Type and source of complaints received in 2010-2011

Number of complaints							
	Solicitor*	Barrister	Other**	TOTAL	2010-2011	2009-2010	2008-2009
Bar Association	0	3	0	3	0.1	0.1	0.4
Barrister on another's behalf	3	5	0	8	0.3	0.3	0.2
Barrister on own behalf	43	0	1	44	1.7	1.7	1.5
Beneficiary/ Executor/ Administrator	118	0	0	118	4.6	4.0	4.4
Client	728	45	7	780	30.5	30.7	35.1
Commissioner	46	1	0	47	1.8	3.2	3.6
Client's friend / relative	85	4	0	89	3.5	3.4	2.6
Law Society	87	0	2	89	3.5	4	4.8
Non-legal service provider	64	1	1	66	2.6	2.9	2.3
Opposing client	363	26	13	402	15.7	17.0	14.8
Previous client	504	25	8	537	21.0	20.4	16.9
Solicitor on another's behalf	167	5	1	173	6.8	4.3	5.3
Solicitor on own behalf	94	6	1	101	3.9	3.3	3.7
Unrepresented client	9	1	0	10	0.4	0.8	0.8
Cost Assessor	2	0	0	2	0.1	0.2	0.2
Other ***	81	6	5	92	3.7	3.6	3.5
TOTAL	2394	128	39	2561			

* Includes former solicitors and legal practitioners

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

*** Includes complaints against government agencies, witnesses, and judge/quasi-judicial officer.

W4 Age of complaints remaining open or suspended on 30 June 2011 and being handled by the OLSC

Year opened	Open at 30 June 2011	Open at 30 June 2010	Open at 30 June 2009
2010-2011	492		
2009-2010	80	516	
2008-2009	16	43	483
2007-2008	16	21	61
2006-2007	6	9	26
2005-2006	7	7	10
2004-2005	4	4	10
2003-2004	0	0	1
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
TOTAL	621	600	591

* 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 2010-2011, time taken to finalise

	Days*
Average time to complete complaints received and completed / resolved in 2010-2011	63
Average time to complete complaints received in any year but completed / resolved in 2010-2011	95.8
Average time taken to dismiss complaints received in 2010-2011	51.3
Average time to dismiss complaints received in any year but dismissed in 2010-2011	105.4

* Averages rounded to 1 decimal point

W6 All Complaints finalised in 2010-2011

All OLSC Consumer Disputes

	Solicitor	Barrister	Other*	TOTAL
Dispute resolution completed	1179	48	8	1235
Subtotal concluded by OLSC	1179	48	8	1235
Consumer Dispute closed by OLSC	361	22	7	390
Withdrawn by complainant at OLSC	34	0	0	34
Unable to be resolved at the OLSC	7	0	0	7
Subtotal closed at the OLSC	402	22	7	431
Outside OLSC jurisdiction	38	1	10	49
Subtotal not accepted by OLSC	38	1	10	49
Total OLSC Consumer Disputes Completed	1619	71	25	1715

ALL OLSC Investigations

	Solicitor	Barrister	Other*	TOTAL
Practitioner disciplined by OLSC##	13	0	0	13
Likely UPC/PM dismissed in Public Interest	18	0	0	18
Subtotal determined by OLSC	31	0	0	31
Tribunal finding of UPC/PM unlikely	108	4	1	113
Summary Dismissal in the Public Interest	2	0	0	2
Investigation closed by OLSC	34	3	0	37
Withdrawn by complainant at OLSC	12	2	0	14
Investigation suspended pending court proceedings	6	4	0	10
Subtotal closed by OLSC	162	13	1	176
Outside OLSC jurisdiction	6	0	1	7
Investigation not accepted out of time	26	1	2	29
Subtotal not accepted by OLSC	32	1	3	36
Total OLSC Investigations Completed	225	14	4	243

All Council Consumer Disputes

	Solicitor	Barrister	Other*	TOTAL
Dispute resolution completed	92	3	0	95
Subtotal concluded by Council	92	3	0	95
Consumer Dispute closed by Council	57	9	0	66
Withdrawn by complainant at Council	64	1	1	66
Unable to be resolved at Council	16	0	1	17
Subtotal closed by Council	137	10	2	149
Total Council Consumer Disputes Completed	229	13	2	244

ALL Council Investigations

	Solicitor	Barrister	Other*	TOTAL
Practitioner referred to Tribunal#	41	7	2	50
Practitioner disciplined by Council##	27	5	0	32
Likely UPC/PM dismissed in Public Interest	1	0	0	1
Subtotal determined by Council	69	12	2	83
Tribunal finding of UPC/PM unlikely	295	34	3	332
Summary Dismissal in the Public Interest	2	0	0	2
Subtotal closed by Council	297	34	3	334
Total Council Investigations Completed	366	46	5	417
Total finalised by Council	595	59	7	661
Total finalised by OLSC	1844	85	29	1958
TOTAL	2439	144	36	2619

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

Some complaints that have had proceedings for the ADT instituted are still open and therefore included in the open complaints.

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 2010-2011

Percentage of files closed within following periods*			
	2010-2011	2008-2009	2009-2010
0-30 days	31.6	22.8	24.6
1-3 months	34.6	32.1	32.1
3-6 months	20.4	26.4	23.5
6-9 months	6.5	9.1	9.2
9-12 months	2.6	3.1	3.9
Over 12 months	4.2	6.5	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 2010-2011, time taken for review handling

Percentage of files closed within following periods*

	2010-2011	2009-2010	2008-2009
0-3 months	37.3	52.0	45.8
3-6 months	40.0	35.0	45.8
6-9 months	20.0	11.7	5.1
9-12 months	0.0	1.4	1.7
Over 12 months	2.7	0.0	1.7

* 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 2010-2011 – received all years

	Solicitor	Barrister	Other**	Total	Percentage
Reviews in progress					
In progress at OLSC	8	1	0	9	8.7
Being reviewed by consultant	15	2	0	17	16.5
Consulting with Council prior to finalising	0	0	0	0	0.0
Total remaining open	23	3	0	26	25.2
Reviews completed					
Dismissal confirmed	53	9	0	62	60.2
Out of time, no jurisdiction	4	1	0	5	4.8
Review request withdrawn	1	0	0	1	1.0
Reprimand confirmed	1	0	0	1	1.0
Reinvestigated by OLSC	2	0	0	2	1.9
Reinvestigated by Council	6	0	0	6	5.8
Decision changed	0	0	0	0	0.0
Other	0	0	0	0	0.0
Total completed	67	10	0	77	74.7
Total handled	90	13	0	103	100

** “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 2010-2011*

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

* Data provided by Administrative Decisions Tribunal

T2 Outcomes of Tribunal Proceedings in 2010-2011*

Outcome	Number
Reprimanded	20
Fined	10
Removed from roll	7
Conditions imposed on practising certificate	1
Dismissed after hearing	3
Undertake and complete course of further Legal Education	4
Approval of lay associate: Application granted	1
Approval of lay associate: Application withdrawn	1
TOTAL	47

* 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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