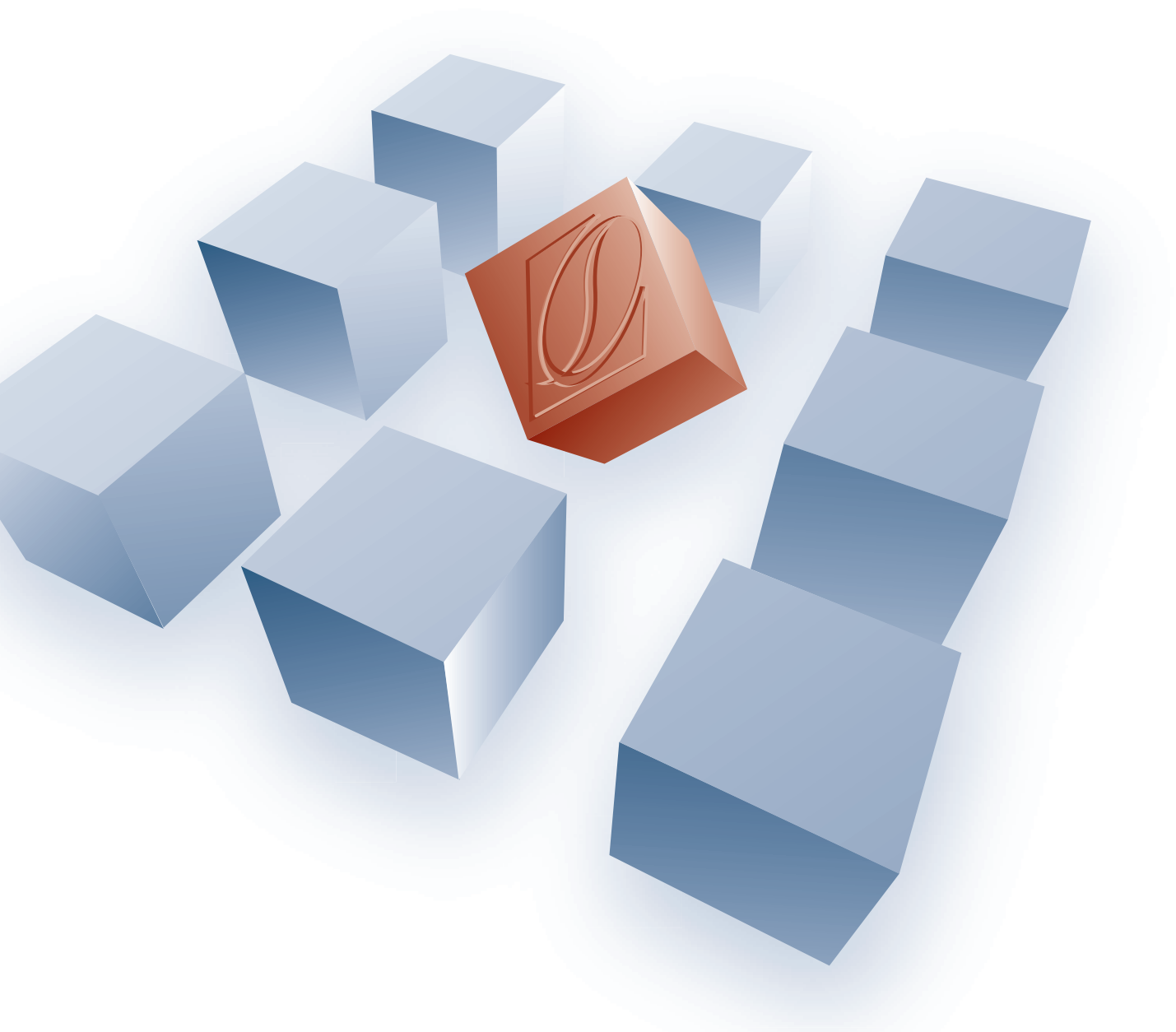


The Office Of The Legal Services Commissioner

2006-07 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.

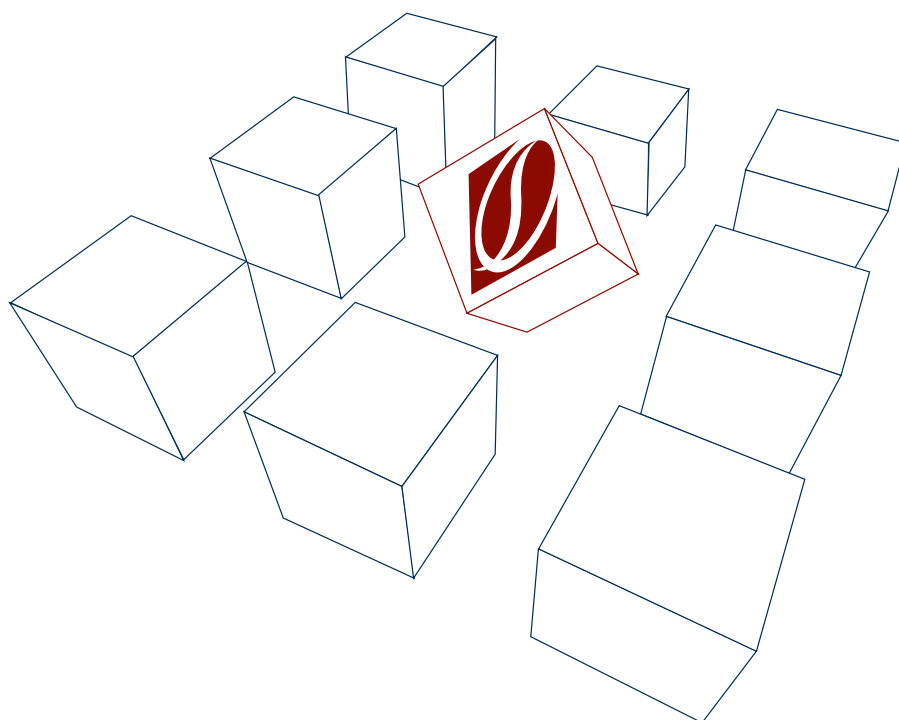
Values

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



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COMMISSIONER'S REPORT

In August 2003 Commonwealth, State and Territory Attorneys-General agreed to endorse a comprehensive regulatory model to remove the existing barriers restricting lawyers from practising in more than one jurisdiction and to harmonise the state and territory laws which regulate the legal profession. Discussions of a national legal services market however began well before this date. Since the mid 1990s regulators, professional associations, admitting authorities and trust account inspectors across Australia have met to discuss, amongst many issues, the prospects of a national legal services market at what is now called the Conference of Regulatory Officers (CORO).

CORO Conference

This year we, together with the Law Society of NSW, planned and hosted the Annual CORO Conference. The theme of the Conference was "Regulation in the Changing Profession" focussing on a national consistency in regulation and harmonisation of laws and regulations.

The Conference, which was held in Sydney over the course of two days featured three guest speakers who presented fascinating papers covering litigation funding, risk profiling and the role of legal education. The Conference also included discussions about the future of regulation of the legal profession both nationally and internationally.

The paper on litigation funding was presented by John Walker, the Managing Director of IMF, an ASX listed Litigation Fund Manager. Financial assistance for the conduct of litigation is a growing practice in Australia. At present there are a wide variety of organisations providing assistance to litigants, from public companies listed on the stock exchange to small lenders and entrepreneurs. According to Mr Walker these organisations invest about \$20 million per year in funding plaintiffs in Australia. IMF, for example, invests about \$12 million per year in the funding of primarily commercial cases.

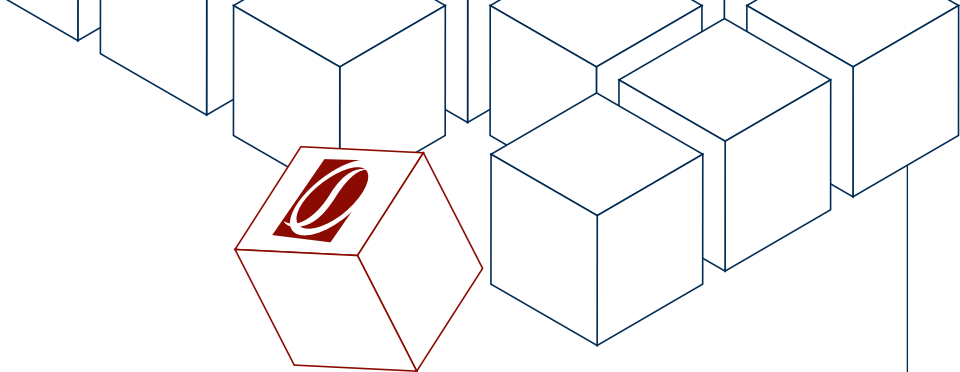
The funding of litigation is inherently and intimately connected with the provision of legal services, and the administration of justice. Litigation funders however tend not to be legal practitioners, and do not engage in legal work. This raises issues for regulators such as the use of litigation funding as a backdoor approach to contingency

funding, potential conflicts of interest problems as well as the question of fiduciary duty and where the duty to the court lies.

The second paper presented by Julian Talbot, an international Risk Management Consultant, discussed risk profiling, the use of a mix of strategic tools to build an understanding of the legal environment and its inherent risks and risk profiling as an effective regulatory tool. According to Talbot, risk profiling will benefit regulators because it will enable them to better target their resources in a wide range of areas including acting on professional misconduct, law firm auditing, dispute resolution and educational campaigns.

Professor Stephen Colbran, Head of the School of Law at the University of New England, presented a paper on the role of legal education in the regulatory process. According to Professor Colbran, the first time lawyers are exposed to discussions about ethics is through legal education. It is thus important that law schools ensure that law students are taught ethics appropriately using practical problem solving examples of the types of ethical issues lawyers face. This is obviously an area where regulators can play an important role and the OLSC is actively engaged in this area.

The Conference ended on a successful note with participants reaching agreement about a number of key issues and the approaches that should be adopted to achieve harmonisation of regulatory approaches. The positions reached included:



1. Agreement for drafting National Guidelines on Continuing Professional Development. The Draft Guidelines will be circulated to all jurisdictions so that they can be discussed more broadly with a view to further development or adoption.
2. Confirmation that the approach we have taken in NSW in regulating incorporated legal practices will be utilised in all jurisdictions where incorporation is allowed. This will allow national firms that become incorporated to face only one regulatory regime.
3. Support for a National Disciplinary Register. I agreed that my Office will try and link our web-based register in NSW to the other disciplinary registers that exist in other jurisdictions.
4. Support for a National register of Practitioners. The Register will enable authorities to determine where practitioners are practising, or eligible to practise.
5. Sharing research projects, proposals and findings. In this regard, I announced that my Office is conducting a research project in conjunction with Australian Lawyers Alliance on the impact of lawyers' advertising.
6. Commendation of the national protocols dealing with issues such as the exchange of information, trust account investigations, and fidelity fund arrangements that were adopted at last year's CORO Conference in Adelaide.

Secondment

This reporting year we participated in the inaugural Australia-China Legal Profession Development program by hosting Ms Fen Zeng, from the Beijing Municipal Lawyers Association. The inaugural program is an initiative of the International Legal Services Advisory Council (ILSAC), and the Chinese Ministry of Justice and implemented by the Attorney General's Department in association with the Law Council of Australia.

Ms Zeng who has a Masters degree in Law was particularly interested in ethics and improving the image of lawyers in China. She was thus keen to study the regulation of the legal profession in Australia. During her three month secondment to our Office Ms Zeng was able to obtain a sound understanding of the way we regulate the legal profession in Australia. Ms Zeng advised us that she will be able to use this knowledge in the work of the

Beijing Municipal Lawyers Association, the professional body in China that regulates over 12,000 lawyers at present, but is growing exponentially. In addition to attending our office Ms Zeng also spent some time at the Law Society of NSW and the NSW Bar Association.

Listing of the first law firm on the Australian Stock Exchange (ASX)

History was made this reporting year with the first fully functioning law firm in Australia, and indeed the rest of the world listing on the ASX. The law firm, Slater & Gordon, had more than 95 million shares on offer and another 12 million non-voting shares.

The listing of a law firm on the stock exchange poses unique concerns and challenges for a regulator of legal services. Of primary concern is the tension between a practitioner's duties owed under the *Legal Profession Act 2004 (LPA 2004)* and the requirements of a director, officer or employee under the *Corporations Act 2001 (Cth) (Corporations Act)*. This tension, addressed further in chapter three of this report, is presently being addressed by my Office.

Overview

Overall this past year has been extremely productive. The highlights included:

- Receiving 2742 written complaints, but finalising 3042, an increase of 450 on the number of complaints finalised in the previous year;
- Dealing with 9694 calls from the public on the OLSC Complaints Inquiry Line, an increase of 1608 calls from the previous year's tally of 8086; and
- Opened 459 investigations and closed 536.

The success of this Office is largely due to the hard work of my dedicated staff who work tirelessly to ensure that enquiries and complaints are dealt with in a timely and professional manner. I would thus like to take this opportunity to publicly thank my staff for their commitment and energy during another very busy year.

I am proud to present the 2006-2007 Annual Report.

PROMOTING COMPLIANCE WITH HIGH PROFESSIONAL AND ETHICAL STANDARDS

CONDUCT ISSUES

Investigations

The reporting year has been one of growth and consolidation. Staff numbers have been stable and the strength and commitment of staff has resulted in a significantly increased number of investigations being handled. More investigations were concluded in comparison to the previous reporting year.

Complaints that raise issues of conduct will be subject to investigation. Some investigations are straightforward and readily concluded within a reasonable time frame. Other investigations are more complex in nature and require the cooperation of multiple third parties. They can take a significant time to complete.

In the reporting year, 459 investigations were opened by officers of the Legal and Policy team. In that 12 month period, of those opened, 277 investigation files were concluded by way of dismissal on the basis that the Commissioner could not be satisfied in accordance with the statutory test that there was a reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct by the Legal Services Division of the Administrative Decisions Tribunal. A further 34 were dismissed in the public interest on the basis that there was a reasonable likelihood that the practitioner would be found guilty of unsatisfactory professional conduct but the nature of the conduct fell into the lower end of the scale of culpability, the practitioner had a clear complaint record and was considered to be generally competent and diligent.

A further 59 complaints opened in the period were not accepted out of time. In circumstances where the conduct complained of occurred more than three years prior to lodgement of the complaint, submissions are sought as to why the complaint should be dealt with. The Commissioner retains a discretion to deal with out of time complaints where there are valid reasons for the delay and it is just and fair to do so or where the allegations go to professional misconduct and it is in the public

interest to do so. Those that are not accepted fail to satisfy either limb.

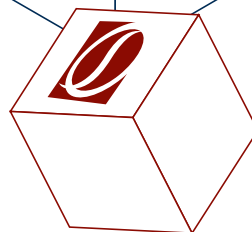
The types of matters that attracted disciplinary consequences are addressed below.

Disciplinary Outcomes

The *LPA 2004* contains definitions of unsatisfactory professional conduct and professional misconduct. Common law notions of professional misconduct are retained. Unsatisfactory professional conduct goes to issues of competence and diligence whereas professional misconduct goes to significant breaches of ethical standards and honesty (including such breaches outside the practice of law) as well as serious and repeated failures of competence and diligence.

The Commissioner has the capacity to deal summarily with conduct offences in circumstances where he is satisfied that the conduct would amount to unsatisfactory professional conduct only. In such circumstances he has the power to issue a caution, generally in circumstances where a practitioner has not been the subject of a previous disciplinary finding. He may also issue a reprimand to a practitioner, which is available publicly on the Disciplinary Registrar maintained by the OLSC. Orders of compensation may also be made in circumstances where there is a reasonable likelihood that the practitioner would be found guilty of unsatisfactory professional conduct and there has been a direct loss to the complainant as a result of that conduct.

In the reporting year, 19 reprimands were issued. The reprimands traversed numerous examples of unsatisfactory professional conduct including failures to communicate, delays by practitioners in the progress of a matter, issues of competence and diligence, acting with a conflict of interest, minor misleading conduct, releasing funds without effective authority, bringing the administration of justice into disrepute, discourtesy and failing to prepare properly. Compensation orders accompanied three reprimands in the sums of \$4200, \$7175 and \$175.



An additional 17 cautions were issued during the reporting year dealing variously with the failure to disclose costs, failing to properly witness a document, abuse of process, failing to advise, failing to follow instructions, acting with a conflict of interest, acting without instructions, overcharging, discourtesy and delay. In one matter in which a caution was issued, compensation in the sum of \$3424 was ordered.

Administrative Decisions Tribunal

During the reporting year the Commissioner commenced or ran six matters before the Legal Services Division of the Administrative Decisions Tribunal.

In the matter of *McCarthy*, the Tribunal found that the practitioner was guilty of professional misconduct in relation to his failure to respond to the OLSC and his breach of an undertaking provided to the Office. Mr McCarthy was fined and publicly reprimanded.

In the matter of *Flynn*, the Tribunal found the practitioner guilty of professional misconduct in relation to the false attestation of documents, acting

with a conflict of interests and removing monies from trust without effective authority. Mr Flynn was found guilty of unsatisfactory professional conduct in relation to a charge of acting without instructions. He was fined and publicly reprimanded.

The matters of *Bechara*, *Galitsky* and *McKern* will be heard in the course of the 2007-2008 year and will be reported on in the next annual report.

The matter of *Malouf* was heard in October 2006. This was the first prosecution under the regulations that prohibit the advertising of legal services for personal injuries matters. The Tribunal has not yet delivered its decision.

In addition to the six prosecutions commenced, the Commissioner was joined as respondent by two practitioners who had been reprimanded and sought a review of that decision from the Tribunal. Both practitioners were unsuccessful in their applications and the reprimands remain in place. One of those practitioners has appealed the decision of the Tribunal to the Court of Appeal. It is unlikely to be heard before next year.

Case study

The Commissioner initiated a rudeness complaint against a solicitor following a letter from a barrister. The barrister indicated that the solicitor had breached Rule 25 of the Professional Conduct and Practice Rules by leaving two abusive messages on his mobile telephone. The barrister, having transcribed the messages, wished to notify the OLSC of the solicitor's behaviour but did not wish to take the matter further. Accordingly, the Commissioner initiated a complaint pursuant to his powers under the Act.

The solicitor admitted to the conduct in question, apologised for his actions and put forward mitigating and extenuating factors in relation to the incident.

The Commissioner noted the practitioner's obligation to promote and maintain proper standards of professionalism at all times, especially when dealing with other practitioners. Being satisfied that his conduct amounted to unsatisfactory professional conduct but recognising the solicitor's apology, contrition and regret in relation to the conduct and the mitigating factors that were provided as an explanation for his behaviour, the Commissioner decided to issue the solicitor with a reprimand.

In the last annual report it was noted that Mr Nikolaidis, who had been found guilty by the Tribunal in 2005 for failing to comply with the section 207 Notice issued by a costs assessor and of the deliberate charging of excessive amounts of costs, had appealed the Tribunal decision to the Court of Appeal. The Court of Appeal handed down its decision on 8 June 2007. Mr Nikolaidis was successful in relation to the finding of deliberate charging of excessive amounts of costs. The majority judgment was based on the fact that Mr Nikolaidis had not signed the bill which was the subject of the proceedings, even though Mr Nikolaidis at the time was a sole practitioner. We are presently exploring the impact of the decision on various complaints we are dealing with in relation to overcharging.

The Commissioner was joined as defendant in a further matter in which a dissatisfied complainant sought orders from the Administrative Decisions Tribunal pursuant to the Anti-Discrimination Act. That matter was struck out.

Reviews

The Commissioner continues to regularly exercise his review powers under Part 4.6 of the Act.

The number of requests for the review of a co-regulator's investigation and/or the determination of a complaint was similar this year to that received in the last reporting period. (71 as compared to 76 in 2005-2006).

As in past years, the review outcomes in respect of most of these requests have resulted in the confirmation of the co-regulator's decision. From this we draw satisfaction that our co-regulators are maintaining a high standard in their investigation of complaints. Nonetheless, there are occasions when we have re-investigated matters on review, referred the matter back to the co-regulator for re-investigation or referred the matter to mediation. On one occasion during the reporting year the Commissioner issued a reprimand following the review of the dismissal of a complaint.

Looking beyond the statistics, the review process continues to provide opportunities for us to engage in meaningful discussion with our co-regulators about approaches to complaint investigation. It also enables us to identify and address ancillary issues such as costs dispute mediation and minor breaches

of the costs disclosure laws and to point to issues which, rather than warranting a reinvestigation, justify the opening of a fresh, separate complaint.

ETHICAL MATTERS

Provision of Legal Services by Industrial Organisations

The Commissioner was asked to review and comment upon a request for legislative amendment made by a membership based industrial organisation, which sought registration as an incorporated legal practice. The internal governance structures of the organisation did not meet the present requirements for incorporated legal practice and in particular did not permit the appointment of the required solicitor director. The organisation sought exemption from this requirement.

The Commissioner prepared a formal submission on the policy intent of the requirement for a solicitor director and advised that this was a central protection for both clients and the community in general which should not be watered down. Recommendations were provided in relation to alternative methods of meeting the organisation's requirements.

Litigation Funding

With the continuing contraction of legal aid and increasing demand for access to financial support for the conduct of civil litigation the question of the policy framework within which funding can and should be provided to potential litigants is assuming an increasing significance.

In September 2006 the Commissioner provided a detailed submission in response to the Standing Committee of Attorneys-Generals' *Discussion Paper on Litigation Funding*. The submission canvassed and analysed the considerable variety of funding models presently available in the market, and considered the potential for development of further refinements and alternatives. The development of the law in this area was considered, particularly the decision of the High Court of Australia in *Campbells Cash & Carry Pty Ltd v. Fostif Pty Ltd* [2006] HCA 41.

The Commissioner expressed his concern about the possible effects of the interpolation of third parties into the traditional lawyer/client relationship, particularly in the area of the protections afforded

to consumers through long established rules of professional conduct and ethics.

The Commissioner continues to monitor developments in this rapidly changing field.

Information sharing with foreign regulators

The Free Trade Agreement with the United States has driven demand for increased access to the American legal services market by Australian lawyers and, to a lesser extent, for similar access to the Australian market for American lawyers.

Since both countries are federations of states, each with their own regulatory regimes for legal professional practice, this presents a considerable regulatory challenge. The ability to share disciplinary information and better harmonise regulatory regimes

will be a necessary underpinning for any such developments.

The OLSC and the Commissioner have been involved in detailed liaison with the Law Council of Australia and the Department of Foreign Affairs about possible approaches to the sharing of disciplinary and other information with American regulators, particularly in Delaware and Georgia. Detailed policy submissions have been prepared and reviewed and the OLSC has submitted two alternative draft protocols for initial consideration by other potential parties.

Discussions will continue throughout the coming year.

Case study

Acting in a bankruptcy matter, a practitioner sent a letter of demand to D on behalf of his client. The final two paragraphs of the letter read:

Our client is currently considering whether or not to renew the approach she made in 2001 to the Police in relation to your behaviour. Our client regards your conduct in obtaining \$25,000 from her and refusing to return same, as constituting criminal conduct for which Police action is warranted. Specifically she regards your actions as constituting fraudulent appropriation, misappropriation of funds, fraudulent misappropriation, obtaining money by deception, causing payment by false pretences and/or inducement to enter certain arrangements by misleading statements.

If you wish to make any proposal to our client prior to her taking the steps referred to herein, then we await your response within the next fourteen (14) days.

D complained that the practitioner, by making the above statements, had breached Rule 34 of the Revised Professional Conduct and Practice Rules 1995 which states that a practitioner must not, in any communication with another person on behalf of a client threaten the institution of criminal proceedings against the other person in default of the person's satisfying a concurrent civil liability to the practitioner's client.

The practitioner, in responding to the allegation, asserted that he was merely pointing out his client's entitlement to raise matters of concern with police and that the action contemplated by his client was her renewal of her earlier complaint to police about the matter not the institution of proceedings.

The Commissioner took the view that the only available inference that could be drawn was that a failure by D to provide an acceptable proposal within the stipulated time would result in the practitioner's client making a further complaint to police.

The Commissioner pointed to authority in NSW Bar Association v Maddocks (NSWCA 1988 unreported; BC8801576) in which a threat to report to police an allegation of insurance fraud had been found to satisfy the threat component of the test in Rule 34 to support his view that the Rule had not been interpreted so literally as to strip it of its intent.

The outcome of the complaint was that the practitioner, was found to have acted in a manner that was likely to amount to unsatisfactory professional conduct. Since the practitioner had no adverse complaint history he was cautioned.

Information Sharing with Commonwealth Authorities

The Commissioner welcomes recent amendments to the *Legal Profession Regulation 2005*, which commenced on 1 July 2007 to enable the sharing of information with Commonwealth authorities.

Prior to these amendments the OLSC was able to share information with interstate authorities, and those in New Zealand, about any matter arising under the Act or a corresponding law. The OLSC can now share information with Commonwealth bodies such as the Migration Agents Registration Authority, the Australian Securities and Investments Commission, the Australian Taxation Office, the Australian Prudential Regulatory Authority, the Australian Crime Commission, the Australian Competition and Consumer Commission and the Australian Transaction Reports and Analysis Centre.

The Commissioner anticipates that these amendments will allow for the more efficient investigation of complaints where the conduct complained of also falls within the jurisdiction of a Commonwealth authority.

Advertising

As reported last year, the amendment to Part 14 of the *Legal Profession Regulation 2002* and Part 18 of the *Worker's Compensation Regulation 2003* (the advertising regulations), restricting advertising of personal injury and worker's compensation services, came into effect on 23 May 2003.

Since the last Annual Report, a further 63 complaints have been received or initiated dealing with potential breaches of the advertising regulations. Of these, 19 have been dismissed due to an absence of wilfulness on the part of the practitioner, 12 have had a finding of professional misconduct made and eight were dismissed, as no breach existed. In all the matters where there was a breach the offending advertisement was either removed, discontinued or dropped by the practitioner. The balance of complaints received continue to be investigated.

Proceedings challenging the validity of the advertising regulation were commenced exercising the original jurisdiction of the High Court by the Australian Plaintiff Lawyers Association, Maurice Blackburn Cashman Pty Limited and Robert Whyburn. The High Court's decision was handed down on 1 September 2005. By majority (5-2), the constitutional validity of the Regulation was upheld.

Case study

The complainant paid \$1500 in advance to a solicitor to represent him in the Local Court in relation to a traffic offence. The solicitor provided a document saying that he would handle the case for \$1500.

The solicitor did not arrive at Court and the client had to act for himself. The matter was heard in the lawyer's absence with a favorable outcome for the complainant. The complainant sought a refund of \$1200 of the legal costs paid.

The solicitor asserted that he was late through no fault of his own and that he had attempted to contact his client but was unsuccessful.

The Commissioner told the practitioner that it was incumbent upon him to ensure that he allowed sufficient time to allow for unforeseen contingencies and that it would have been much better for the solicitor to call the court registry, rather than his client, to request that the matter be stood down in the list.

The lawyer claimed he had done considerable work. The OLSC argued that though some of the lawyer's work was used by the client in his defence, the most important aspect of the lawyer's representation was his appearance in court.

After some negotiation, the solicitor agreed to refund \$800 to the client and he provided an undertaking to disclose his costs in accordance with the LPA 2004.

As the uncertainty had been removed, the OLSC commenced its first prosecution in the Legal Services Division of the Administrative Decisions Tribunal in April 2006. The matter was heard in October 2006. The OLSC is currently waiting for the Tribunal to deliver its decision in this matter. Subject to that decision, it is anticipated that a number of further prosecutions for breach of the Regulation will be commenced by the Commissioner in the near future.

The staff of the OLSC continue to consult widely with editors, chiefs of staff and advertising managers of various media outlets in New South Wales, the Yellow Pages, a number of large and small plaintiff law firms and regional law societies, particularly in relation to cross-border advertising.

The OLSC has also continued to liaise closely with the Law Society concerning the interpretation of the Regulation and has established a collaborative approach in relation to breaches of advertising regulations. Consultation and regular meetings with the Law Society on every aspect of the regulation are ongoing.

The OLSC placed a reminder in the weekly Monday Briefs email sent by the Law Society to all of their members advising practitioners that they should ensure that their advertisements do not breach the advertising regulations.

Other Matters

Staff have attended a wide variety of Continuing Legal Education Courses during the reporting year and additionally took part in an intensive mediation training course in-house.

The Assistant Commissioner (Legal) meets regularly with the Heads of Government Department Legal Teams and also meets quarterly with the Costs Assessment Users Group to discuss issues arising from the Costs Assessment Scheme. She has presented a number of seminars in relation to regulation of the profession. The Assistant Commissioners regularly liaise with the Professional Standards Department of the Law Society and with the Professional Conduct Department at the Bar Association.

Case study

The practitioner acted for the complainant in unsuccessful proceedings before the NSW Industrial Relations Commission. Upon the completion of those proceedings the practitioner advised the complainant to appeal. The complainant then sought the advice of a barrister who was of the view that the proceedings had been commenced in the wrong jurisdiction.

The complainant contacted the OLSC seeking a refund of 75% of the costs he had paid to the practitioner in relation to the unsuccessful proceedings. The OLSC contacted the practitioner, seeking to facilitate a resolution to the complaint. In response to this, the practitioner contacted the complainant and offered to settle the matter on mutually agreeable terms.

The complainant was refunded an amount of \$10,200 which was in excess of the 75% claimed and, on this basis, asked that his complaint against the practitioner be withdrawn. Whilst it is within the Commissioner's power not to accept the withdrawal of a complaint where he is satisfied that the circumstances warrant further investigation, it was determined that the terms of the settlement between the complainant and the practitioner represented a satisfactory outcome in this matter and the Commissioner determined to accept the complainant's request that his complaint be withdrawn.

COMPLAINTS HANDLING

Written Complaints

This reporting year the OLSC received a total of 2747 written complaints (this includes both consumer disputes and investigations). This is slightly less than the number of complaints we received in the previous reporting year of 2783. Through the hard work of staff we were able to finalise 3042 written complaints, an increase of 450 on the number of complaints finalised in the previous year.

Mediation & Investigation Officers handled 1580 consumer disputes. 1066 of these were resolved through dispute resolution, and three were resolved through formal mediation. 107 consumer disputes were dismissed by the OLSC and 404 consumer disputes are still active with dispute resolutions in progress or complaint handling suspended.

Seventy-three complaints were deemed outside the OLSC's jurisdiction. These include complaints about government agencies, judicial officers, licensed conveyancers and others who do not hold certificates to practise law in NSW.

Civil matters (16.1%) continued to constitute the largest area of law in which complaints arise. Family law (15.9%) was once again the second highest area of law, followed by commercial matters (10.9%). Complaints about personal injury matters notably decreased by 2% this reporting year to 9.6%. This decrease is possibly due to the reforms to personal injury law, which have had a considerable effect on personal injury litigation.

In relation to the nature of complaints we received, costs were once again the most complained about issue comprising just over 23.7% of all complaints. Complaints about negligence (16.4%) and communication (14.8%) followed.

Telephone Complaints

This reporting year the number of calls to the Inquiry Line increased significantly. We received 9694 calls from the public, an increase of 1608 calls from the previous year's tally of 8086. This has been an extraordinary effort considering that there is only one Inquiry Line Officer and one permanent staff

Case study

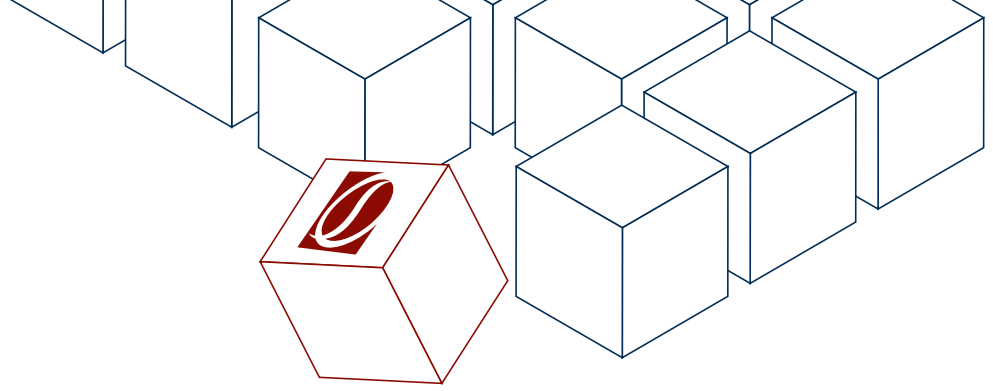
The OLSC attempted to mediate a costs dispute between a complainant and his solicitor who disputed approximately \$20,000 in costs. The complainant believed that the solicitor should never have taken on his case if there was a chance that he would not win.

The solicitor wanted to pursue outstanding payment from the complainant but agreed to not issue a Statement of Claim until after the dispute was mediated by the OLSC.

The complainant was advised that the OLSC does not have the power to determine whether costs charged are fair or reasonable or compel the practitioner to reduce or waive their costs. We do however offer an opportunity to negotiate and resolve issues in dispute in a confidential process.

We also explained that the result of a case can never be guaranteed and lawyers most often charge for their time.

Though the practitioner offered to reduce the costs to \$10,000 during the mediation process, the complainant believed he should not be charged at all because he had been unsuccessful. When no agreement could be reached at mediation he made an application to the Costs Assessment Scheme to have his costs assessed on this basis. The Costs Assessment Scheme made a binding determination that the practitioner's costs should only be minimally reduced. This meant the complainant could have negotiated a far more beneficial result in the OLSC mediation.



member who acts as a 'back-up' to answer the calls at any one time. This year the Inquiry Line officers answered 73.9% of the complaints whilst the permanent 'back-up' staff answered 26.1%.

The type of legal matter most commonly complained about by callers to the Inquiry Line Officers this year was family law, making up a total of 18.2% of the calls received. The second most common legal matter was conveyancing, which comprised 13.6% of the total calls this year. This was closely followed by complaints we describe as 'other civil' – being any type of legal matter that is not included in our mainstream categories, i.e. commercial, motor vehicle, probate/wills etc. Family law matters continue to be a difficult and highly emotional area for clients.

The most common area of concern reported to the Inquiry Line by callers is that of overcharging. This made up 15.1% of all calls received this year. Overall costs were raised as an issue in 43.3% of calls.

The most common outcome of a call made to the Inquiry Line this year was providing the caller with

information about the legal system. This made up 33.9% of all calls received this year. Our Inquiry Line Officers were therefore able to provide a significant number of complainants with legal information, which assisted them in understanding the legal system and the nature of their complaint. As a result of our efforts 22.2% of callers felt sufficiently armed with information and indicated they would go back to their lawyer rather than lodge a formal complaint.

This year the Inquiry Line Officers performed over 230 telephone mediations. We are pleased that in less complex matters it is often possible for an Inquiry Line Officer to resolve a dispute before it is formalised by way of a complaint to this Office.

Apologies

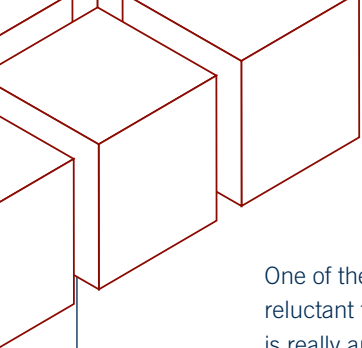
Complaints are made to this Office for many different reasons but underlying the majority of them is a need for validation and acknowledgement of the complainant's concerns by the practitioner. We often hear complainants say that if their practitioner had apologised to them they would not have had to contact our Office.

Case study

The complainant received an account for costs of approximately \$2,000. This account was not paid and the solicitor obtained a judgment debt from the Local Court.

The complainant asked the OLSC if we were able to mediate this costs dispute. The complainant acknowledged that prior to the judgment debt being obtained he should have either paid his account, raised his concerns with the practitioner or attended the Local Court to dispute the amount. He submitted it was not paid because he felt he received poor advice.

During the telephone mediation the OLSC put the complainant's concerns to the practitioner. He was informed that the complainant realised he had many previous opportunities to raise his concerns but that he had failed to do so. The parties were able to reach an agreement through the mediation process that the judgment debt was to be paid through a part payment plan. Both parties were satisfied with the outcome.



One of the main reasons why practitioners are reluctant to apologise is the concern that an apology is really an admission of liability. The OLSC does not however necessarily take this view. Our office is focused on resolving disputes between clients and practitioners and takes the view that an apology can heal conflicts and create better relationships between clients and legal practitioners. Most importantly an apology could prevent a complainant pursuing their dispute.

File Transfers

We are continuing to receive many complaints alleging that practitioners are being un-cooperative and are failing to transfer a former client's file to their new practitioner. This practice of holding onto a file and claiming a lien over the documents as security for costs is becoming increasingly common amongst practitioners but there are other ways to secure costs.

Costs can be adequately secured by three-way agreements between the client, the old solicitor and the new solicitor. These three-way agreements are often referred to as 'tripartite deeds'. In the tripartite deed the client promises to ensure the monies owing to the old solicitor, as agreed or assessed, will be paid at the end of the matter; the new practitioner promises to inform the old solicitor of the progress of the matter; and the old solicitor agrees to hand over

the file. A precedent tripartite deed is available from the Law Society of New South Wales.

In addition to a tripartite deed, costs can also be secured by asking the new practitioner to provide an undertaking that s/he will pay the disbursements when the file is transferred. Care must be taken to state that it is the client's undertaking not the new practitioner's undertaking, unless the new practitioner wishes to make it their own.

Practitioners act for clients to assist them in their legal problems. Failing to transfer a file to another practitioner despite repeated requests to do so does not assist in the administration of justice and brings the profession into disrepute. Moreover claiming a lien is a barrier to the client pursuing an action, and if the client can't pursue their action they won't be able to pay any fees.

Communication

Effective communication continues to be one of the greatest challenges for the legal profession. The OLSC receives many complaints from aggravated clients alleging that their practitioner has failed to communicate effectively with them. In fact communication, or the lack of it, is a factor that is evident in almost every complaint we receive. The most common complaints we receive concern a

Case study

A client accused a solicitor of rudeness and discourtesy, breach of confidentiality and intimidation. The solicitor had acted for the client in a criminal appeal matter and was awaiting payment. The client alleged that the solicitor approached her at her place of work and verbally abused and intimidated her and later breached her confidence with respect to an unrelated matter.

When confronted with the allegations the solicitor admitted that he had verbally abused his client and made racist and inappropriate comments. The solicitor maintained that he was provoked, as a cheque in consideration of the work that he had completed for his client had been rejected upon presentation. The solicitor stated that this, coupled

with stress in other matters caused him to lose his self-control. The solicitor submitted that his comments were unprofessional and that this was wrong of him and that he was willing to provide an apology to his client for what he said.

The Commissioner noted the solicitor's obligation to promote and maintain proper standards of professionalism at all times, especially when dealing with a client. Being satisfied that his conduct amounted to unsatisfactory professional conduct, but recognising the practitioner's contrition, admission and the extenuating circumstances, the Commissioner decided to issue the solicitor with a reprimand. The complaints of intimidation and breach of confidence were dismissed.

failure to return calls or respond to letters/emails, and a failure to keep clients informed about the progress of their case. Many of these complaints are the result of a frustrated client who feels that their expectations are not being adequately met.

One of the best ways to ensure that a client's expectations are being met is to actively listen. Effective communication is not just about speaking to a client, it is also about actively listening: that is, reaching out to clients and reflecting to that person that what he or she has had to say has been understood. We often forget that it is a two-way process. This is especially important when English is not the complainant's first language or with complainants who have literacy problems.

Effective two-way communication that involves active listening is valued by clients because it improves the exchange of information and is essential to the development of trust and mutual respect.

Supervision

We received several complaints this reporting year alleging that practitioners were failing to supervise their staff. The complaints relate to the supervision of both legal and non-legal employees.

It is not unusual these days, particularly with the number of firms incorporating, for a practitioner to be responsible for more than one office in more than one location. The pressure to supervise more than one office can often be a difficult task for practitioners as workloads continue to increase.

Complaints about failure to supervise are particularly difficult to establish. The evidence needed to prove that a practitioner has failed to supervise is not easy to obtain. Proof has become even harder in light of a recent decision by the New South Wales Supreme Court of Appeal in *Leon Nikolaidis v Legal Services Commissioner* [2007] NSWCA 130. In this case the Court held that in order for a legal practitioner to be guilty of professional misconduct for deliberately charging excessive amounts of costs, whether at common law or pursuant to section 208Q(2) of the LPA 2004, it is necessary to prove the practitioner was personally implicated in either knowingly overcharging or was reckless as to whether or not excessive costs had been charged.

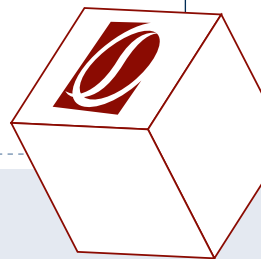
The decision in *Nikolaidis* has a number of profound implications for the OLSC. The Commissioner is presently looking at the Tribunal's decisions and its implications.

Case study

The complainant, who had limited English language skills, approached the OLSC for assistance in recovering funds retained by the practitioner following completion of a claim in the Victims Compensation Tribunal (VCT). The complainant had been awarded nearly \$27,000.00 in compensation, which the practitioner was retaining in trust.

We made inquiries of the practitioner and the VCT to establish the amounts awarded for compensation and for (regulated) costs and disbursements, which ultimately resulted in the payment of \$25,000.00 to the complainant. However, the practitioner retained the balance on account of a doctor's medical report fees. The practitioner was unable to confirm if

these fees had been paid and, if so, by whom. He further claimed he had performed additional legal services not covered by the VCT Award so that he was, in any event, entitled to retain moneys in trust to cover the costs of such additional services. After protracted correspondence with the practitioner, and having made inquiries of both the doctor and the complainant, we were able to show the practitioner that the doctor's fees had been paid by the complainant, and to persuade him to withdraw his outstanding account, resulting in his paying all remaining moneys held in trust to the complainant. The complainant thus ultimately received the full amount of compensation awarded by the VCT.



INCORPORATED LEGAL PRACTICES

OLSC statistics reveal that a steady stream of NSW firms have been incorporating since 2001. The total number of incorporated legal practices (ILPs) in NSW, as at 30 June 2007, is 733.

Based on last year's Law Society figures, there were 4278 firms in NSW (including both traditionally structured firms and ILPs) as at December 2006. Assuming little movement in this figure, we can estimate that ILPs now compose about 18% of all firms in NSW (up from 16% in January 2007). We understand that this figure is similar for other states that have now legislated to allow for the incorporation of legal practices.

It is expected that by 2010 there will be approximately 1200 ILPs in NSW alone.

The ILP Portal

By virtue of sections 140(3) and 670 of the LPA 2004, the OLSC has the role of auditing ILPs to determine compliance with the legislative obligations, which apply. The test for compliance is found in part in s 140(3), which provides that a legal practitioner director must ensure that "appropriate management systems" are implemented and maintained by the ILP. A failure to do so is capable of being professional misconduct.

All ILPs are required to self-assess their management systems and rate their compliance with the following ten objectives in a Self-Assessment Document:

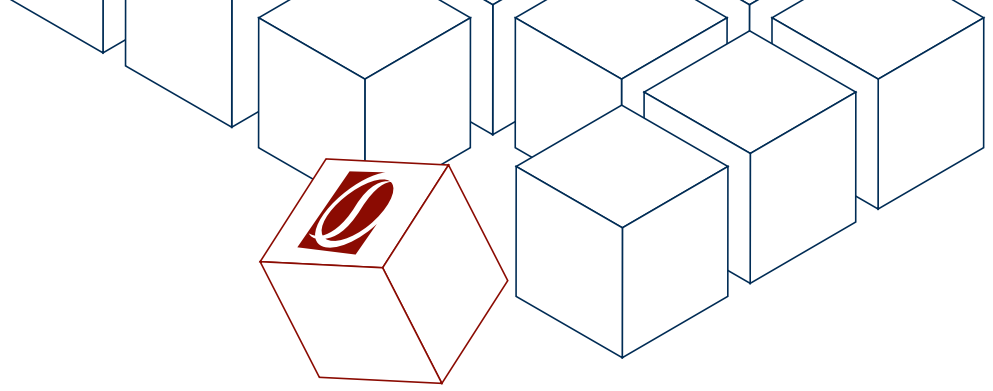
- Negligence – providing for competent work practices.
- Communication – providing for effective, timely and courteous communication.
- Delay – providing for timely review, delivery and follow up of legal service.
- Liens/file transfers – providing for timely resolution of document/file transfers.
- Cost disclosure/billing practices/ termination of retainer – providing for shared understanding and appropriate documentation on commencement

and termination of retainer along with appropriate billing practices during the retainer.

- Conflicts of interests – providing for timely identification and resolution of conflicts of interests, including when acting for both parties or acting against previous clients as well as potential conflicts which may arise in relationships with debt collectors and mercantile agencies, or conducting another business, referral fees and commissions etc.
- Records management – minimising the likelihood of loss or destruction of correspondence and documents through appropriate document retention, filing, archiving etc and providing for compliance with requirements regarding registers of files, safe custody and financial interests.
- Undertakings – providing for undertakings to be given, and compliance monitored and timely compliance with notices, orders, rulings, directions or other requirements of regulatory authorities such as the OLSC, courts and costs assessors.
- Supervision of practice and staff – providing for compliance with statutory obligations covering licence and practising certificate conditions, employment of persons and providing for proper quality assurance of work outputs and performance of legal, paralegal and non-legal staff involved in the delivery of legal services.
- Trust account regulations – providing for compliance with Section 253 of the LPA 2004 and proper accounting procedures.

These areas (colloquially known as the 'ten commandments') are essentially a systemisation of ethical conduct. Each of the 'ten commandments' refers to certain behaviours which, if followed, will result in greater consumer protection and satisfaction and, where necessary, effect cultural change.

To enable legal practitioner directors to assess their management systems, the OLSC developed a standard self-assessment document. This document is sent to all ILPs shortly after commencement. The self-assessment document is completed and



then returned to the OLSC. Once received the OLSC assesses the document for compliance and undertakes audits where necessary pursuant to section 670 of the Act. In addition to these tasks the OLSC also provides support in achieving compliance. As the number of law firms that incorporate increases, so too does the number of regulatory, administrative and educative tasks which fall to the OLSC as regulator.

The self-assessment process has been adopted nationally.

The OLSC has commenced a project to improve our efficiency and effectiveness in relation to the management of ILPs. The OLSC has worked closely with the Information Services Branch at the Attorney-General's Department to design and develop a web-based portal for assessing compliance amongst ILPs. The main objectives of the portal are to:

- Enable the electronic submission of administrative and regulatory information by ILPs to the OLSC;
- Track the life cycle of an ILP by collating and indexing data in a searchable database;
- Allow the viewing, completion and submission of the self-assessment form and any supporting documentation online by an ILP;
- Automate the self-assessment process including validation of information submitted by ILPs;
- Enable the generation of standard and customised correspondence;
- Automate the tracking of the self-assessment process;
- Provide standard and customised reports for the OLSC and online distribution to other approved external parties such as ILPs, the Law Society, government agencies and interstate regulators;
- Provide tracking of the assessment process electronically, including generating email alerts in the self-assessment process to improve monitoring of the process by both legal practitioner directors and OLSC staff;

- Provide risk profiling to assist in the identification of suitable targets for information dissemination or audit by the OLSC;
- Enable the statistical analysis of ILP data using OLAP ('online analytical processing') tools;
- Provide customisations of and alternate paths through the self-assessment and display different types of information that is relevant to ILP profiles;
- Enable electronic distribution of regulatory and educational information by the OLSC to ILPs and other interested parties; and
- Facilitate the adoption of good business practices and appropriate management systems through analysis of data submitted by ILPs.

We have been working together with Queensland and Victoria in developing the portal to ensure that information can be shared between jurisdictions and systems are harmonised. One of our main objectives is to ensure that a practice that exists in more than one jurisdiction will have only one system to comply with.

The design phase of the Portal Project is complete and we are now in the construction phase. Following user acceptance testing and the successful completion of a pilot programme, the system should be available to all ILPs by 2008.

The Power to Audit a Legal Practice

The OLSC's audit powers extend not only to ILPs but also to all law practices within NSW. Audits are a necessary part of the OLSC's regulatory powers.

The ultimate objective with respect to auditing any law practice, regardless of status, is better practice management and compliance with the LPA 2004. The OLSC is able to audit a practice's systems files and, where ILPs are concerned, behaviour that is reflected in a returned self-assessment form.

Accordingly there are two types of audit that can occur. The first is based on a broad power to audit any law practice regardless of entity status to ensure

compliance with the *LPA 2004*, the Rules and Regulations ('a compliance audit'). The second is an audit of an ILP, which is broken into two components – compliance of the ILP with the requirements of Part 2.6 of the *LPA* and management of the provision of legal services ('an ILP audit').

An ILP audit looks at whether a legal practitioner director has implemented and maintained an appropriate management system as required by section 140(3) of the *LPA 2004*. A compliance audit is not as specific; it refers to compliance with the *LPA 2004*, the Regulations and the Professional Conduct and Practice Rules and is not limited to management systems.

Once an ILP audit has been completed, recommendations, suggestions, guidelines and templates can be provided to the practitioner in order to assist in making improvements. A follow-up visit by the OLSC is made (where appropriate) to check whether matters raised have been adequately addressed. If matters have not been addressed an auditor's report may be taken into account in connection in any disciplinary proceedings taken against the legal practitioner director pursuant to s670(6) of the *LPA 2004*.

Examples of when it may be appropriate for the OLSC to conduct an ILP audit include, for example, when:

1. the Legal Practitioner Director (LPD) has warranted the ILP is fully compliant in all areas however a number of different complaints have been made to the OLSC about the ILP. An audit could identify that the ILP is not fully compliant in all the key areas and a further complaint, resulting in disciplinary action could be initiated by the OLSC.
2. the LPD has returned the self-assessment form and has rated the practice as wholly or partially non-compliant. This raises significant concerns about the practice and the implementation of the relevant systems.
3. the LPD has rated the practice as fully compliant, but a Trust Account inspection indicates that the practice was not compliant with the trust account objective as set out in the ten commandments. This may raise concerns about other systems that the LPD has warranted as compliant.

The Listing of Law Firm Slater & Gordon on the Australian Stock Exchange (ASX)

Since 2001 when the ILP amendments to the *Legal Profession Act 1987* came into effect, law firms have had the opportunity to list on the ASX. It has taken until this reporting year some time for law firms to take this step.

In March 2004, Noyce Legal, a Sydney based law firm, listed the banking and finance division of its practice on the ASX. Noyce Legal did not, however, list the whole firm, but incorporated the division which specialised in residential mortgage processing, into National Lending Services Ltd and sold all of its shares to listed consumer finance website Infochoice.

Three years later, on 21 May 2007, incorporated legal practice, Slater & Gordon became the first law firm in the world to list. The firm has more than 95 million shares on offer and another 12 million non-voting shares.

While it may be the first, Slater & Gordon will most likely not be the last law firm to float. Integrated Legal Holdings (ILH), a Western Australian based law firm listed on the ASX on 17 August this year. ILH offered lawyers and non-lawyers an opportunity to invest in their firm via an IPO offering of 24 million shares at 50 cents each. A number of other firms and consortia have had informal discussions with the OLSC concerning possible listing.

Public listing poses unique concerns and challenges for a regulator of legal services. Of primary concern is the tension between a practitioner's duties owed under the *LPA 2004* and the requirements of a director, officer or employee under the *Corporations Act 2001 (Cth)* (*Corporations Act*). As both a publicly listed company and an ILP, the directors of Slater & Gordon will owe duties under the *Corporations Act* to their shareholders, which may conflict with the duties they owe as legal practitioners to the court and their clients under the *LPA 2004*. An example of such inconsistency could be as basic as settling major litigation in accordance with the lawyer's duty to the court and the client but thereby causing a detriment to the corporation because of the diminution in fees earned.

Slater & Gordon recognised this potential conflict and, in consultation with the OLSC, included recognition of the primacy of a practitioner's

duty to the Court in statements in its Prospectus, Shareholders Agreement and other relevant listing documentation. Slater & Gordon agreed to include the following proviso in its prospectus prior to listing on the ASX:

The constitution states that where an inconsistency or conflict arises between the duties of the company (and the duties of the lawyers employed by the company), the company's duty to the Court will prevail over all the duties and the company's duty to its clients will prevail over the duty to shareholders.

The OLSC is presently holding discussions with the NSW State Government about the operation of the *Corporations Act (Cth)* and whether there is a need to introduce a displacement provision under that Act in relation to the *LPA 2004*.

The listing of law firms also raises the issue as to whether law firms actually have any goodwill. Ascertaining the true worth of a law firm is very challenging. Slater & Gordon managed to convince prospective investors that they indeed have goodwill due to their significant market standing (branding) but it is doubtful that there are many law firms that would be able to demonstrate such standing in Australia.

Slater & Gordon are a niche national firm that has built up a powerful profile in the Australian legal market. Slater & Gordon's prospectus states that they are one of the most recognisable names in Australia and that a study commissioned in 2004 found that general public awareness of the Slater & Gordon name was 60% nationally and 83% in Melbourne.¹

There are very few firms in Australia that have built up such a brand.

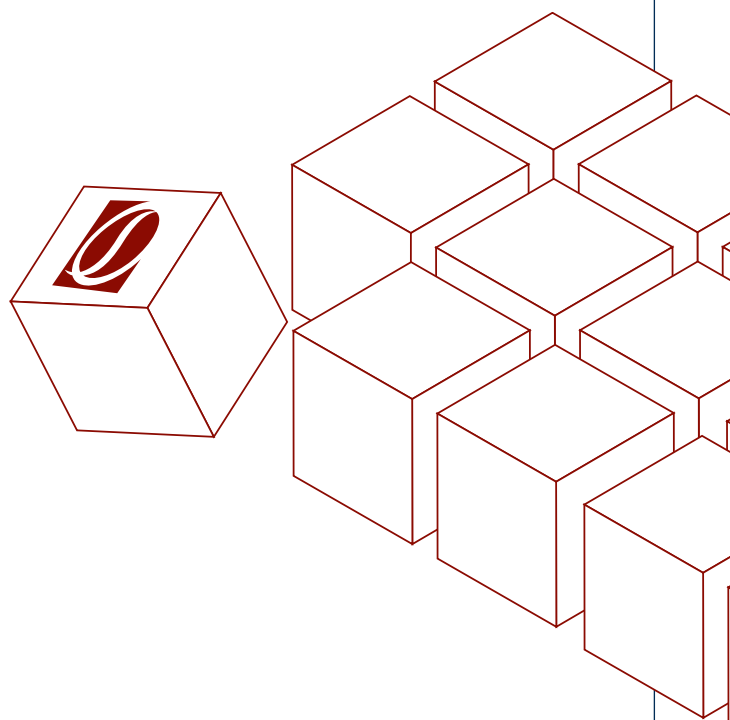
Another interesting issue is the value of investing in a firm that decides to list. The question of whether people would actually be interested in investing in a listed law firm is still open. The stock market as we know it is a highly volatile and sensitive arena. So too are many law firms. Law firms are in a constant state of change with staff moving across firms and increasing attrition rates amongst employees.

Interestingly, Slater & Gordon did not seek to raise their capital directly from the market. They went to institutional investors and staff. It is also interesting to note that Slater & Gordon's Prospectus states as one of the investment risks the potential attrition of clients in addition to the possible attrition of senior practitioners and other legal staff.

Listing also raises concerns about its use as an exit strategy for partners/legal practitioner directors. Listing on the stock market could be a way for partners and LPD's of an incorporated legal practice to make money if they decide to leave the practice. Once money has been made in listing and the directors have left it is questionable whether there would be any value left for subsequent directors/ shareholders.

The Slater & Gordon Prospectus attempts to allay some of these concerns by having staged processes by which the founding directors are required to stay for between three to six years to get the full economic value of their shareholding.

These are issues the OLSC will keep under close scrutiny. We will continue to report on any future developments.



1 Slater & Gordon Prospectus at p.10

EDUCATION AND COMMUNICATION

Education is a key priority for the OLSC. Our educational approach includes our bi-monthly publication, *Without Prejudice*, our facts sheets, extensive lectures by staff to undergraduate and Practical Legal Training (PLT) classes at several universities and the Commissioner's speeches, which raise issues concerning ethics and legal practice and open lines of discussion amongst practitioners and consumers of legal services.

The Commissioner's educative responsibilities are set out in sections 688(1) (o) and (p) of the *LPA 2004* which provides that the Legal Services Commissioner is responsible for assisting the Bar Council and the Law Society Council in promoting community education about the regulation and discipline of the legal profession and enhancing professional ethics and standards through liaison with legal educators or directly through research, publications and educational seminars. These responsibilities tie in closely with the Office's mission to reduce complaints against legal practitioners.

University Lectures

Over the past reporting year, OLSC staff members and the Commissioner addressed undergraduate law students at universities across New South Wales as well as postgraduate students enrolled in PLT Courses at various institutions including the College of Law about the understanding of, and commitment to, ethical behaviour and professional responsibilities in legal practice. These presentations incorporate pressing philosophical issues currently facing regulators, such as the listing of law firms on the stock exchange, as well as traditional topics such as the fiduciary relationship between client and practitioner, legal professional privilege and conflicts of interest. During these presentations students are presented with a number of ethical problems and issues that the OLSC commonly deals with and are asked how they would approach these issues. Discussion of these ethical problems encourages students to understand and explore the ethical dilemmas that arise in legal practice. Students are provided with our brochures and facts sheets as well as copies of *Without Prejudice*, and are given

an opportunity to ask questions about the policies and procedures adopted by the OLSC. We provide practical advice about dealing with, and avoiding, complaints and use illustrative case studies based on actual complaints.

Outreach – Presentations to the Community

The OLSC aims to reach as many groups and individuals as possible by addressing a wide range of audiences through a comprehensive speaking program. The following is a summary of the Commissioner's speaking engagements for the reporting period. Once again the Commissioner's audience consisted of a diverse range of individuals including law firms, accountants and students:

Incorporated Legal Practices, paper delivered by the Commissioner to the Australian Legal Practices Management Association Meeting at the Law Society of New South Wales, Sydney on 12 July 2006.

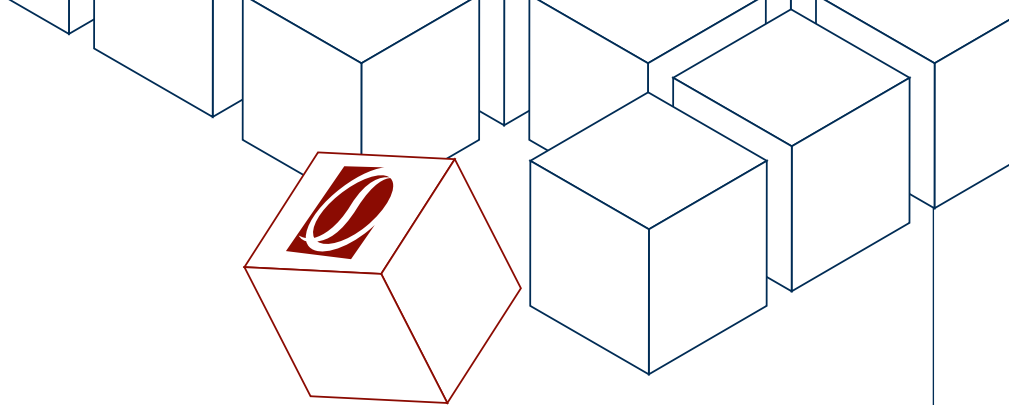
Stable of Thoroughbreds or Herding Cats? Management of a Legal Regulator's Office, a paper delivered by the Commissioner for a Panel Discussion at the National Organisation of Bar Council Annual Meeting in Hawaii on 3 August 2006.

New Directions for Your Legal Practice, a seminar presented by the Practice Compliance Manager at the College of Law City, St James Centre, Sydney on 22 August 2006.

Information Barriers – No More Chinese Walls, a CLE Seminar presented by the Commissioner at The Law Society of New South Wales, Sydney on 19 September 2006.

Authentic Leadership, Talking is Tough, a paper presented at the New South Wales Court Registrars Conference, Citigate Sebel, Sydney on 26 September 2006.

The Office of the NSW Legal Services Commissioner, a discussion with the School of Law & Justice, Southern Cross University, Lismore on 27 September 2006.



Professional Structures, a seminar presented by the Practice Compliance Manager for the Professional Standards Regulatory Conference of the Law Society of New South Wales, at the Observatory Hotel, Sydney on 11 October 2006.

Courtesy in the Profession, a paper presented by the Assistant Commissioner (Legal) to the Conference of Regulatory Officers at the New South Wales Law Society, Sydney on 10 November 2006.

Notes on Conveyancing and Conflicts of Interest, a CLE presentation for the Southern Tableland Solicitor's Association at the Briars Inn, Moss Vale on 17 November 2006.

Incorporation, a seminar presentation by the Practice Compliance Manager to the Far North Coast Law Society, Kingscliff on 7 December 2006.

Ethics, Regulation and the Legal Profession, a seminar delivered by the Commissioner to the DJC Lawyers Inaugural Conference at The Sebel, Manly Beach on 10 February 2007.

The Law Firm Business Model: What Next?, a paper presented at the Australasian Legal Business/Axxia Roundtable at The Sydney Hilton, Sydney on 12 February 2007.

Money Laundering and Trust – What Role for Lawyers?, a paper delivered at the Marcus Evans Anti-Money Laundering Conference at the Mecure Hotel, Sydney on 6 March 2007.

INFOSEC: A Commitment to Assurance, a paper delivered to the Biennial Security Seminar, Thales Australia Security Conference at The Crown Plaza, Darling Harbour on 29 March 2007.

Profit v Ethics in the Legal Profession: a Conundrum or Is It Just Greed? The Views of a Regulator, a paper presented to Macquarie University 2007 Law Seminar Series, Macquarie University on 3 May 2007.

Incorporation and Multidisciplinary Practice – New structures for the Legal Profession, a presentation for the Australian Financial Review Legal Reform Summit at The Radisson Plaza Hotel, Sydney on 15 May 2007.

Ethics and the Legal Profession, seminars presented by the Commissioner at the College of Law, St. Leonards on 9 August 2006; 20 September 2006; 4 October 2006; 8 November 2006; 6 December 2006; 31 January 2007; 28 March 2007; 24 April 2007; 16 May 2007 and 6 June 2007.

Publications

During the reporting period, the OLSC published the 2005-2006 *Annual Report* and three issues of our newsletter, *Without Prejudice*. We also revised our 18 facts sheets which cover a broad range of topics and information for the public and the legal profession.

Without Prejudice raises current issues of legal reform and provides general information about matters that affect the legal profession. The three newsletters published this reporting year covered a wide array of topics including national continuing professional development guidelines, standards of civility and professionalism, the benefits of internal staff training, the incorporated legal practices portal project, disciplining course of conduct complaints and the listing of Australian law firm Slater & Gordon on the ASX.

The OLSC also published two very important and timely papers on matters currently affecting the regulation of the legal profession. The first of these papers focused on civility and professionalism in the legal profession. Over the past few years the OLSC has become increasingly concerned about the number of complaints alleging rudeness and discourtesy by practitioners. The OLSC experience reveals that the perception of rudeness and bad manners results in many complaints despite there being a positive obligation on all practitioners in Australia to ensure that their communications are courteous and that each practitioner avoids offensive or provocative language or conduct. This paper, which was written with the assistance of the other States and Territories in Australia, addressed the importance of maintaining civility in the legal profession and the standard of courtesy that should apply to all communications with clients, other practitioners, court officers and members of the public.

The second paper focused on money laundering. Money laundering is a real threat to 21st century society. Like terrorism, money laundering has the potential to cause significant social and political damage to the global community. This paper explored the Australian Government's responses to combating organised crime including the new anti-money laundering legislation. The paper further discussed the implications for the professions of the anti-money laundering legislation, and in particular, the implications of the obligations for legal practitioners.

The OLSC's publications are available in hard copy or via our website at http://infolink/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches

Staff Training

This reporting year every member of staff in the OLSC attended a compulsory series of in-house training workshops focussing on communication, negotiation and mediation skills. The workshops were designed to build-up and enhance skills in decision-making, managing conflict and problem solving. The workshops were also designed to provide staff with an opportunity to share their skills with colleagues. Topics for discussion included legal consumer expectations of the OLSC and how those expectations can be better managed and the options for resolving problems effectively.

During the year staff also attended a joint workshop with staff from the Law Society of New South Wales as part of our education alliance program. The purpose of the workshop was to generate discussion amongst staff about common topical issues that each office deals with on a regular basis. The workshop focused this year on 'course of conduct' complaints, that is, frequent inquiries or complaints about practitioners, which individually could not result in disciplinary action but demonstrate a distinct pattern of inappropriate conduct. The workshop discussed how each office should deal with such complaints. Future joint workshops with the Law Society of New South Wales are being organised.

In addition to the joint workshop with the Law Society of New South Wales staff members also attended various Continuing Legal Education (CLE) seminars as well as departmental courses focusing on such topics as corporate insolvency, succession and deceased estates, and assertive communication skills.

Staff undertook an average of 5 hours of external training and 21.5 hours of internal training.

Visits

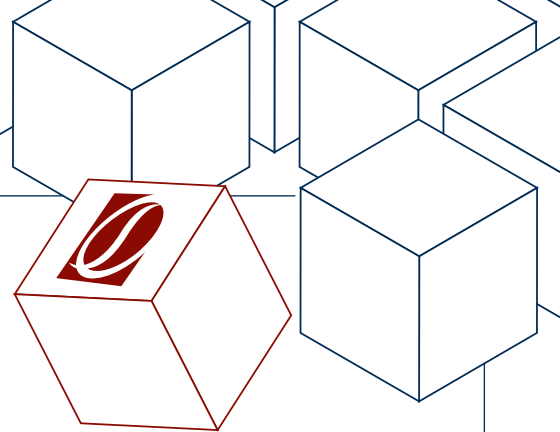
The Commissioner travelled to the United States from 26 July to 4 August 2006 to attend the American Bar Association Annual Meeting (ABA), the Association of Professional Responsibility Lawyers Annual Meeting (APRL) and the National Organisation of Bar Counsel (NOBC) Conference. These legal conferences provide a forum for lawyers to come together to discuss American and global developments with a view to increasing the legal knowledge and expertise of delegates. The conferences afford the opportunity of strengthening former associations as well as developing new ones.

The APRL Conference focused on ethical decision-making, including professional conduct, risk management issues, and fundamental ethical tensions that arise in law practices, including discussion of opinions pertaining to ethical issues in the areas of malpractice, bar admission and legal regulations. The NOBC conference focused on the management of law practices, human resource issues in law firms, understanding and coping with burnout amongst legal professionals, and the advertising of legal services. The Commissioner was invited to speak on a discussion panel at the NOBC Conference entitled "Memorial Management Series: Resorting the Humans" where he discussed the challenges of managing a regulatory office and the axioms of lawyer management.

Domestically, the Commissioner travelled to Brisbane on 22 September where he conducted a seminar for the Law Faculty at Queensland University of Technology on the ILP 'ten commandments.' The Commissioner was asked to present the seminar as part of the basis for a book that is currently being drafted on ethics by the University.

The Commissioner, Assistant Commissioners and senior staff attended the Annual Council of Regulatory Officers (CORO) Conference, which was organised by the OLSC this reporting year and held in Sydney.

RESEARCH & PROJECTS



Section 688(1)(p) of the *LPA 2004* provides that the OLSC assist the Councils in the enhancement of professional ethics and standards through, for example, liaison with legal educators or directly through research, publications or educational seminars. The OLSC is able to achieve this obligation successfully through the work of the Research & Projects Coordinator.

Last year the Commissioner reported that the OLSC had created a new position to assist the OLSC and its staff in conducting both general and in-depth research on matters affecting the regulation of the legal profession. In addition to coordinating and conducting research projects, the Coordinator was also appointed to establish and maintain research partnerships and joint venture projects with educational institutions and other relevant organisations.

This year the Research & Projects Coordinator's role expanded to include the publication of our annual report and our bi-monthly newsletter *Without Prejudice*.

In-House Research Requests

During this reporting year the Research & Projects Coordinator conducted research at the request of the Commissioner, the Assistant Commissioner (Legal), the Assistant Commissioner (Complaints) and general staff on the following subject areas:

- An evaluation of the role of trust account inspectors in Australian jurisdictions and whether any State or Territory in Australia or anywhere else in the world established a computer-based system for assessing trust accounts;
- The standard of courtesy expected of practitioners below which disciplinary sanctions will apply;
- The philosophical underpinnings and ethical reasons for the new anti-money laundering legislation and the effect of the legislation on the legal profession;
- The concept of an 'audit' and the power of the OLSC to conduct an audit pursuant to section 670 of the LPA;
- An evaluation of the types of conduct that amount to breaches of unsatisfactory professional misconduct and professional misconduct under the LPA 2004;
- An evaluation of rule 5 of the draft United Kingdom Code of Conduct on 'Business management in England and Wales';
- An evaluation of the undergraduate courses offered by universities in New South Wales concerning legal ethics and professional conduct;
- Complaints in relation to conveyancing and conflicts of interest;
- An evaluation of the Law Institute of Victoria's draft Continuing Professional Development Rules 2007 and the draft Continuing Legal Education Rules 2007 of the Victorian Bar Inc;

Case study

The complainant alleged that the practitioner's communication was rude, threatening and otherwise inappropriate. The language used in an email to the complainant described him in the following terms.

"EVIL F_ SONS OF B_"

The practitioner agreed that the language was inappropriate for a solicitor and was likely to cause

offence but that he was generally competent and diligent in the way he conducted his practice. The practitioner also asserted that the predicament he was in justified the use of the language.

The Commissioner agreed that the practitioner was generally competent and diligent but that this behaviour was likely to amount to unsatisfactory professional conduct. The practitioner was cautioned under sec 540(2)(a) of the Act.

- Course of conduct complaints and repeat offenders;
- Impaired practitioners; substance abuse and mental illness in the legal profession;
- The concept of value billing and an evaluation of the use in Australia by law firms of alternatives to the billable hour.

Joint Research Projects

Advertising and the legal profession

The OLSC is continuing to work together with the Australian Lawyers Alliance on a research project focusing on the effectiveness of advertising for the legal profession. As reported in last year's annual report this is a long-term project that will focus on the legal profession's use of advertising and the profession's attitudes toward different methods of advertising. The methodology for this project will include both qualitative and quantitative research.

During this reporting year we wrote several productive research papers focusing on the use of advertising in the legal profession. These research papers were then used to develop a questionnaire

asking practitioners to answer questions about the advertising practices. The questionnaire seeks information from practitioners about their advertising budgets, the types of advertising they use, how much of the budget is spent on advertising, and whether they personally believe that advertising benefits their firm. The questionnaire also seeks to gain information about the use of websites as an advertising mechanism.

The OLSC is in the process of engaging the services of an independent research company to distribute the questionnaire and undertake an analysis of the responses.

Ethics and large law firms

The OLSC has also been working with a team of academics from the University of Melbourne, Monash University, the University of Adelaide and Queensland University in preparing an Australian Research Council (ARC) linkage application to obtain funding for a major research project on the ethical practices of large law firms. The OLSC was asked, and has agreed to be a partner organisation to the project.

Case study

The complainant retained the practitioner to lodge appeals in two matters that had previously been determined by the Victims Compensation Tribunal. The practitioner charged the complainant \$4000 for the two matters, which was below the estimate of \$5000 he had provided in his costs agreement. Since the complainant and the firm were based in the country, the practitioner maintained that he had been required to travel to Sydney to visit the Tribunal in his preparation of the complainant's appeals.

The complainant contacted the OLSC because he felt he had been overcharged. He was unaware that professional costs in both applications and appeals to the Victims Compensation Tribunal are regulated and awarded pursuant to the Victims Support and Rehabilitation Act 1996.

Upon receiving the complaint, the Office wrote to the practitioner requesting his justification for charging the complainant above the \$825 that had been awarded by the Tribunal for both appeal matters. He stated that he had charged the complainant in accordance with his costs agreement and that he had been required to advise the complainant as to whether he had reasonable prospects on appeal. When the practitioner advised the complainant that he thought his prospects were good, he was then instructed to proceed. The appeals were successful.

The practitioner argued that, had his advice to the complainant been that success upon appeal was unlikely, he would have been entitled to charge his client the full amount since the Tribunal would not have been in a position to award costs.

The Commissioner maintained that the Victims Support and Rehabilitation Act 1996 did not entitle the practitioner to rely on his costs agreement and that under this Act, he was not legally entitled to charge the complainant above the amount awarded by the Tribunal despite whether the work the practitioner completed justified the rendered costs. The practitioner disagreed.

The Commissioner found that there was a reasonable likelihood that the practitioner would be found guilty of unsatisfactory professional conduct and, as such, issued him a caution pursuant to Section 540(2) (a) of the LPA 2004. In addition, the practitioner was issued a compensation order to repay the complainant.

Ethical practice by large law firms is particularly important for the delivery of impartial advice, fair pricing and to ensure community confidence in the rule of law. Large law firm lawyers are retained to advise on all major business activities. While they act as gatekeepers on issues of legality and ethics and assist business activity for good and ill, the governance and ethics of law firms themselves are poorly understood and rarely discussed publicly. There has been little research in Australia, and even internationally, of how large law firms actually operate. The aim of the research project is to investigate how the educational and regulatory framework affecting large firm lawyers might be improved.

This project will provide information about the policies, structures and management practices of large commercial law firms as they relate to ethical issues and the extent to which those policies, structures and practices are implemented. The project will also provide information about the impact of large law firms on attitudes, habits and practices of individual lawyers. It will also examine how ethical regulation and disciplinary liability might be better designed and managed to improve ethical practices amongst commercial lawyers. This project will also help identify what 'appropriate management systems' and other mechanisms are required for ethical practice in law firms, and will develop legal and enforcement strategies for making sure these are put in place in incorporated law firms and law firms generally.

It is envisaged that the project will take four years to complete and will include qualitative research through semi-structured interviews with the managing partners or directors of the 30 largest law firms by number of practising certificates in New South Wales, Victoria and Queensland. Other proposed research activities include:

- formal interviews with each of the three Legal Services Commissioners to gauge what they expect in relation to large law firms' ethics and how they enforce those expectations;
- formal interviews with the three state Professional Indemnity Insurers on any observed connections between claims histories and conduct complaints or costs disputes;
- interviews with government clients, that is, the bureaucrats in charge of law firm outsourcing policy and the panel managers of law firm outsourcing contracts for each of the federal government and the three state governments; and
- interviews with in-house counsel from five of the largest corporations in Australia – focusing on a range of industry areas.

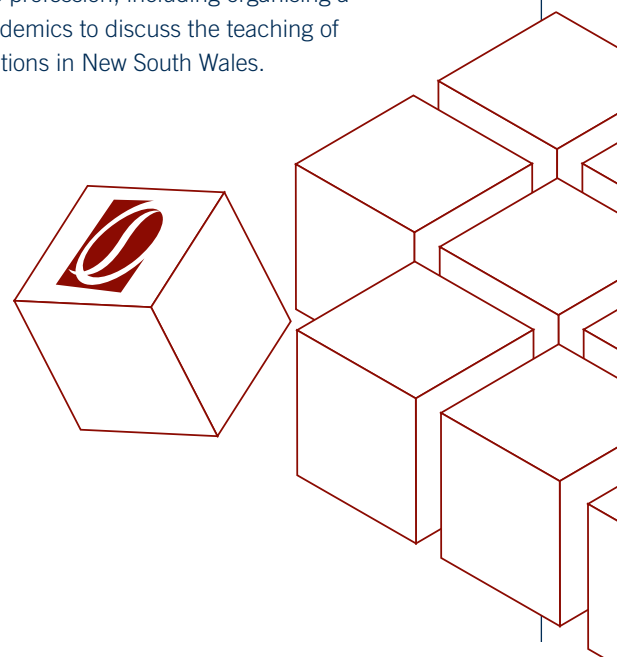
Mental illness and Substance Abuse

The death of a Melbourne QC, Peter Hayes, on 21 May 2007 following his ingestion of cocaine and heroin prompted much discussion in the media about legal practitioners and substance abuse. It also provided an impetus for the OLSC to revisit the issue of substance abuse in the legal profession as well as other issues relating to the impairment of legal practitioners, including alcohol abuse, depression, mental illness and addictive behavior. We are currently investigating the feasibility of a range of options that can be adopted both within and outside the regulatory regime to reduce the impact of impaired legal practitioners on clients, the impaired individuals and the profession as a whole.

Costs and Costs Assessment

We are currently developing a draft discussion paper on costs assessment and the legislative provisions relating to gross overcharging following the Court of Appeal's decision in the matter of *Nikolaidis*.

In addition to these projects, the OLSC is also working on developing research projects with the University of Armidale and Macquarie University on a range of issues affecting the profession, including organising a symposium for academics to discuss the teaching of ethics at law institutions in New South Wales.



INFORMATION SYSTEMS AND SERVICES REPORT

There have been many changes within the Information Systems and Services area in the 2006-2007 financial year. These include changes in technology and the increased use of data mining to ensure the reporting of current and relevant information to enhance knowledge management. New databases and datasets were designed to capture the varying information needs of the OLSC. The revised project structure was realised and ongoing reviews of practices, projects and processes have occurred. The OLSC has also achieved re-certification to ISO 9001:2000.

ISO Re-certification

The OLSC gained re-certification to ISO 9001: 2000 in April 2007 with the support of all staff.

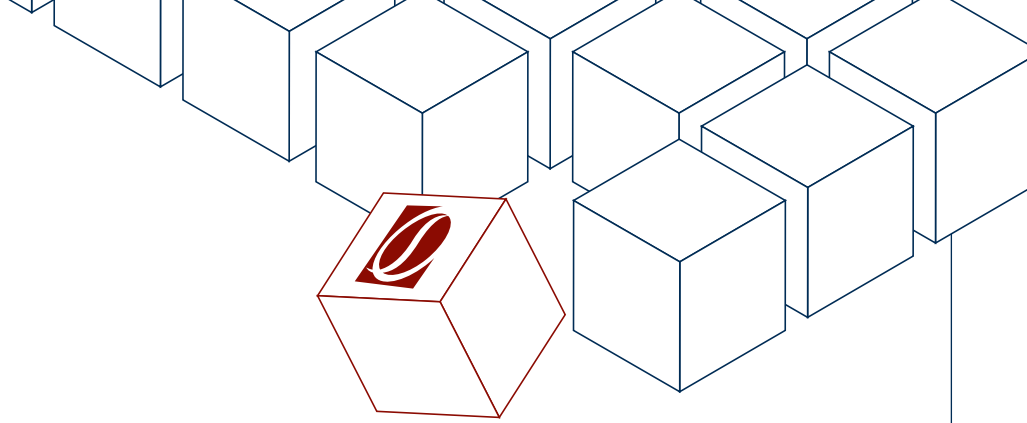
The OLSC formally decided to obtain certification to ISO 9001: 2000 in 2005-2006 so that there was a formal external recognition of the OLSC as a professional, efficient and well-managed entity with evidence of its commitment to continuous improvement. It was noted certification would also enhance the credibility of the OLSC in the eyes of the legal profession, especially incorporated legal practices who are co-regulated by the OLSC and are required by legislation to implement “appropriate management systems”.

The OLSC is committed to improving the quality of the services we offer. Our aim is to use a philosophy of continuous improvement, concentrating on areas of identified problem or required minimum standard. It is also to review everyday practice to ensure efficiency and effectiveness. 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 AGD;
- To maintain the OLSC Quality Systems Manual, incorporating policies, working procedures, flow charts and general administrative requirements, together with standard documents and forms to ensure accessibility and currency of information provided; and
- To maintain ISO 9001 certification.

This is an ongoing process, with a need to ensure we keep improving our standards and review 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. The benefits gained are not only in the certification, but also in terms of improved staff morale, cultural change with enhanced information flow and a continually improving workplace performance.



OLSC Projects

The OLSC introduced project methodology in the 2003 fiscal year to complement and define the annual Business Plan. This allowed much of the work performed within the OLSC to be categorised into projects to improve the systems utilised to meet organisational objectives.

In the review undertaken in 2005-2006 it was found that the projects as a whole were seen as useful and necessary by staff and that there was a real commitment to the ongoing process of continued improvement.

This review changed the structure of OLSC projects system to introduce four overarching project teams that have a number of working parties attached to them. All staff are now surveyed once a year to determine what working parties are of interest, and/ or are seen to complement and support the processes and roles within the OLSC.

Below are the projects undertaken for this 2006-2007 financial year using the new revised structure. These projects were used as the basis for OLSC's business planning and ongoing process improvements.

Project Team 1: Information Sharing/ Knowledge Management Project

Areas of Improvement: Information turnaround and currency. Consistency of Information. Increased knowledge sustainability and accessibility.

Rationale: This Project will ensure better access to information for all staff and related stakeholders; sustainability of information stored, currency of information sourced and ensure knowledge management principles are enhanced.

Related Working Party	Objective
Shared Network Drive Review	Review and identify areas of change to enhance accessibility & currency of information.
ILP Internet/ Intranet/ Database	Design of a Database to suit ILP Unit research needs for collation and information trending.
ILP Administration Register	Design of an Administrative Database to suit ILP Unit administrative needs.
Complaints Tracking System	Review of current CTS to enable program changes to enhance design & data extraction.
Inquiry Line & Mediation Register	Design of an Inquiry Line & Mediation Register to suit the Inquiry Line needs.

Project Team 2: Staff Training & Education Project

Areas of Improvement: Enhanced staff training. Consistency of Information. Stakeholder Feedback.
Rationale: This Project focuses on enhancing OLSC's current staff training, ensuring better service delivery to stakeholders, and staff training needs being met.

Related Working Party	Objective
Internal Staff Training/ Lunchtime Sessions	Design ongoing schedule of lunchtime training sessions; Training provided so far includes Trust Inspections & the LPA2004, Investigation & Decision Making Skills Case Clinic, Victims Compensation: Changes to the Act, Costs Case Clinic, APRA: its role & regulation.
External Stakeholder Training	Design ongoing schedule of training sessions with Educational Bodies: Training provided so far to College of Law, University of New South Wales, University of Wollongong

Project Team 3: Quality & Compliance Management Project

Areas of Improvement: Compliance. Continual improvement. Consistency of Information.
Rationale: This Project focuses on enhancing compliance and ensuring a continual improvement philosophy is established, to provide better service delivery to stakeholders, and ensure OLSC needs are met.

Related Working Party	Objective
ISO 9001	Continued certification of OLSC to ISO 9001
Internal Systems Reviews	Undertake ad hoc (proactive & reactive) audits to ensure OLSC systems are managed appropriately and to ensure continuous improvement.

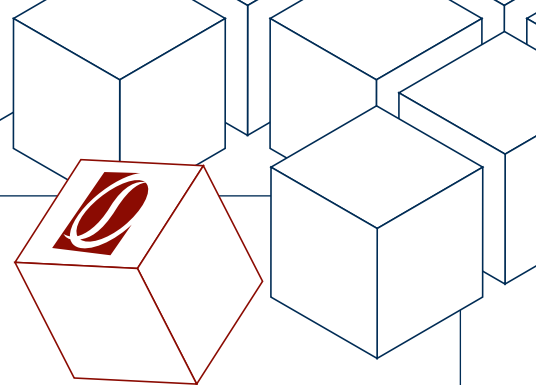
Project Team 4: Staff Development Project (Survival Enhancement Tactics)

Areas of Improvement: Enhanced staff knowledge. Consistency of Information. Staff Feedback. Enhanced Communication and Information Sharing.

Rationale: This Project focuses on enhancing OLSC staff communication and information sharing, ensuring more cohesion and staff support needs being met.

Related Working Party	Objective
Mediation & Communication Training	Enhance the practical dispute resolution/complaints handling abilities of individual staff and OLSC as a whole
Elements of Law Training	Ensure staff are aware of current legislative requirements and provide relevant training structure.
Complaint and complainant trends	Review of datasets to enhance data mining and trending capabilities to ensure the resulting information is useful to meet OLSC overall objective to develop ethical and practice standards for the profession and provide education both to the profession and to members of the community about the legal process

FINANCIAL PERFORMANCE



The OLSC operates within the organisational framework of the NSW Attorney General's Department. However, unlike most other Departmental agencies funded by State Treasury, the OLSC receives operational funding from the Public Purpose Fund and maintains a recurrent recoupment budget.

The OLSC closely monitored its financial performance in 2006-2007 to ensure a satisfactory budget outcome at end of the reporting year. We regularly reviewed our performance against budget during the year to detect early signs of adverse budget trends within our control. We undertook detailed analysis of budget movements and, where warranted, we implemented improvement strategies to reverse any unfavourable budget results as they arose.

As a result of our vigilance and improved practices, we effectively contained our overall operating costs while meeting our financial commitments.

The OLSC had no control however over the Department's year-end financial processes and their impact on our overall budget performance result. The adjustments were in the nature of non-cash transactions and as such did not form part of the recoupment figure from the Public Purpose Fund. The Department is obliged to reflect the adjustments in the OLSC's financial records to comply with Treasury requirements.

In addition to receiving normal operational funding, this year OLSC received approx \$0.373m from the Public Purpose Fund to offset capital costs associated with implementing the Incorporated Legal Practices (ILP) Portal Project.

The ILP Portal Project is being implemented in collaboration with specialist external contractors, representatives from the Department's Information Services Branch and key staff from the OLSC. Stage 1 of the project is finalised and involved the preparation of technological systems specifications and business case analysis. Stage 2 is being

progressed and addresses the more complex aspects of the project: the design, construction and user acceptance testing of the ILP Portal.

Capital costs expended so far for the ILP Portal Project total \$0.124m. Arrangements have been made to defer payment on the balance of available capital funds for finalising the project to 2007-08.

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

As at 30 June 2007 the OLSC comprised 26 permanent full time positions for administrative and professional staff and one full time equivalent position maintained by a team of rostered casuals on the OLSC Inquiry Line.

Our Inquiry Line funding allowed us to continue to offer casual employment to university law students who were in the final stages of their training and who were interested in gaining valuable work experience with a regulatory service provider. The temporary staff completed in-house induction training before being rostered as telephone inquiry officers distributing information to clients calling the Inquiry Line.

The OLSC received additional funding from the Public Purpose Fund this year to support the temporary appointment of a Special Investigation Officer Gr 7-8 to conduct large-scale investigations.

In contrast to previous years, the OLSC employed and retained a full complement of staff in 2006-2007 with very minimal staff shortages. Any position vacancies arising out of staff absences on short-term leave were filled by permanent staff through higher duties arrangement or by inquiry line casuals providing temporary office support in base grade administrative positions.

NOTES SUPPORTING THE FINANCIAL STATEMENT

Financial Statement

- 1. Superannuation:** The OLSC has members in the State Authorities Superannuation Scheme and the State Authorities Non-Contributory Superannuation Scheme. The Superannuation expense variation reflects end of year adjustments that derive from movement on the prepaid superannuation balances of these funds. The Department is obliged to reflect this movement in its books as part of required year-end financial processes. The prepaid superannuation adjustment is in the nature of a non-cash transaction and is not included as part of the recoupment figure from the Public Purpose Fund.
- 2. Fees:** The Fees budget includes provision for litigation costs incurred to bring matters before the Administrative Decisions Tribunal (ADT) and the Courts. In addition, provision is made for costs associated with the review system and independent review advisors. In 2006-2007, the OLSC experienced a slight increase in litigation costs in bringing matters before the ADT, however, the number of review requests was contained at around the same level as that of the previous year. As well as making provision for legal fees, the Fees budget reserves funding for the occasional hiring of recruitment agency contactors to fill temporary vacancies in administrative and clerical support positions. In 2006-2007 the Office had need to fill administrative positions to cover staff on leave, however, this year the vacancies were filled internally by inquiry line casuals in lieu of agency contractors.
- 3. Stores & Stationery:** The OLSC achieved a moderate saving in the Stores and Stationery budget due to a reduced level of stores and stationery procurement in 2006-07.
- 4. Telephone:** The Department's telephone rental expenses and metered calls costs are processed centrally and then apportioned to individual cost centres. In 2006-07 the OLSC realised moderate budget saving in the Telephone account as a result of adjustments effected by the Department.
- 5. Capital Expenditure – Plant & Equipment:**
In 2006-07 the OLSC made arrangements to use Public Purpose Funds to purchase two new Sharp Multi Function Devices comprising combination printer and copier with scanning and fax features. Payment on the first MFD was made in August 2006 while payment on the second MFD had not yet been finalised at close of the financial year. In anticipation of meeting purchase costs payable for the second MFD, the OLSC arranged to defer payment of available capital funds for plant and equipment to 2007-08.
- 6. Capital Expenditure – Computer Software/ Systems:** The OLSC received capital funding from the Public Purpose Fund in 2006-07 to offset capital costs associated with implementing the ILP Portal Project.

Capital costs expended so far for the project total \$0.124m. The OLSC has arranged to defer payment on the balance of available capital funds for finalising the project to 2007-2008.

FINANCIAL STATEMENT 2006-2007

	Budget \$	Spent \$	Variance \$	Notes
Salaries & Wages	1,991,581	1,997,831	(6,250)	
Allowances	7,000	6,195	805	
Overtime	5,951	1,334	4,617	
Leave Entitlements	88,292	89,513	(1,221)	
Workers Compensation	10,910	11,705	(795)	
Payroll Tax	134,077	141,662	(7,585)	
Fringe Benefits Tax	2,000	1,154	846	
Superannuation	144,218	56,536	87,682	1
Total Employee Related Payments	2,384,029	2,305,930	78,099	
Advertising & Publicity	5,115	2,411	2,704	
Bank Charges	102	80	22	
Consultancies	5,000	0	5,000	
Contractors	47,225	37,810	9,415	
Electricity & Gas	27,614	25,838	1,776	
Fees	209,940	180,621	29,319	2
Freight & Cartage	1,023	0	1,023	
General Expenses	3,069	896	2,173	
Insurance	2,121	1,350	771	
Interpreters & Translations	4,228	8,904	(4,676)	
Postal Expenses	20,302	11,143	9,159	
Printing	32,920	27,705	5,215	
Publications	11,253	5,984	5,269	
Rates & Outgoings	8,585	8,896	(311)	
Rent	264,203	265,596	(1,393)	
Staff Expenses	18,184	14,502	3,682	
Stores & Stationery	33,403	21,583	11,820	3
Telephone	24,121	12,933	11,188	4
Travel	23,460	21,867	1,593	
Lease of Equipment	3,000	2,299	701	
Total Other Operating Expenses	744,868	650,418	94,450	

	Budget \$	Spent \$	Variance \$	Notes
Maintenance Contracts	38,277	33,549	4,728	
Repairs and Maintenance	1,023	0	1,023	
Total Maintenance	39,300	33,549	5,751	
Depreciation & Amortisation	46,574	70,793	(24,219)	
Total Expenses	3,214,771	3,060,690	154,081	
Less: Revenue (Recoupment)	(3,168,197)	(3,168,030)	(167)	
Net Cost of Services	46,574	(107,340)	153,914	
Less Non Cash Items: Depreciation & Amortisation	(46,574)	(70,793)	24,219	
Net Position	0	(178,133)	178,133	

CAPITAL EXPENDITURE 2006-2007

	Budget \$	Spent \$	Variance \$	Notes
Plant & Equipment	30,002	14,802	15,200	5
Computer Software/Systems	372,620	124,050	248,570	6
Total Capital Expenditure	402,622	138,852	263,770	

ANNUAL REPORT STATISTICS

PHONE ENQUIRIES

P1 Legal matters raised in calls

	04-05	% of calls	
		05-06	06-07
Family	18.6	19.4	18.2
Conveyancing	13.8	13.6	13.6
Civil	10.7	10.8	12.2
Probate/wills/family provisions	9.7	10.4	11.4
Commercial/corporations law	8.0	9.2	9.2
Criminal law	5.1	6.2	5.8
Personal injuries	9.2	6.3	5.5
Workers compensation	6.6	5.6	5.3
Victims compensation	1.4	2.1	2.5
Other	16.9	16.4	16.4

P2 Nature of phone enquiry

	04-05	% of calls	
		05-06	06-07
Communication	11.0	23.3	22.1
General cost complaint/query	16.0	16.4	17.4
Negligence	11.8	10.6	12.4
Costs disclosure	4.8	8.0	8.7
Ethical matters	11.7	9.8	8.6
Overcharging	12.0	6.0	7.8
Delay	7.8	4.9	4.9
Quality of service	9.4	6.5	4.2
Instructions not followed	2.2	1.8	2.6
Trust fund matters	2.3	2.0	1.9
Conflict of interests	2.4	2.2	1.9
Document transfer/liens	2.9	2.1	2.0
Misleading conduct	1.4	2.1	1.8
Document handling	2.3	1.9	1.2
Failure to honour undertakings	0.4	1.0	0.8
Pressure to settle	1.0	0.8	0.7
Fraud (not trust fund)	0.4	0.3	0.7
Compliance matters	0.3	0.2	0.2

P3 Practitioners mentioned on inquiry line

	04-05	% of calls 05-06	06-07
Solicitor	92.0	92.7	94.4
Barrister	2.1	2.0	2.2
Licensed Conveyancer	0.6	0.6	0.6
Other	5.3	4.7	2.8

P4 Source of calls to the OLSC inquiry line

	04-05	% of calls 05-06	06-07
Client	63.7	65.7	69.1
Friend/relative	9.0	7.9	7.2
Opposing client	6.7	6.4	6.6
Beneficiary/executor/administrator	2.0	2.4	2.7
Unrepresented client	0.7	1.5	2.7
Government Agency *	-	-	2.7
Previous client	6.8	6.1	2.4
Solicitor on another's behalf	1.7	2.0	2.0
Solicitor on own behalf	1.2	1.6	2.0
Non-legal service provider	1.1	1.3	1.9
Barrister on own behalf	0.3	0.1	0.3
Barrister on another's behalf	0.1	0.1	0.1
Other	6.8	4.9	0.2

* New Category for 2006-2007, in previous years was included in Other.

P5 Outcomes of calls to the inquiry line

	04-05	% of calls	
		05-06	06-07
Provided referral for legal advice or other assistance	11.0	20.4	24.6
Provided information about the legal system	26.0	24.6	20.6
Provided complaint form	17.8	15.2	14.4
Recommended direct approach to lawyer about concerns	18.7	13.3	13.5
Caller indicated intention to send in complaint	8.7	9.9	11.6
Conducted telephone mediation	0.6	1.0	2.9
Provided referral to the NSW Supreme Court Costs Assessment Scheme	4.6	3.5	2.3
Listened to caller's concerns	2.1	2.6	1.8
Explained that concerns are outside jurisdiction of OLSC	1.7	2.0	1.4
Provided information about the OLSC and LPA to a legal practitioner	2.0	1.5	0.8
Scheduled interview for caller	0.4	0.3	0.3
Other	5.7	5.8	5.9

WRITTEN COMPLAINTS

W1 Legal areas giving rise to complaints opened in 2006-2007

	04-05	% of complaints	
		05-06	06-07
Civil	21.1	17.2	16.1
Family/defacto	13.3	14.1	15.9
Commercial/corporations law	9.6	11.5	10.9
Conveyancing	12.2	9.2	10.2
Other	5.2	7.2	9.7
Personal Injuries	10.2	11.6	9.6
Probate/wills/family provisions	7.3	7.9	8.2
Criminal	6.1	6.5	6.2
Workers Compensation	4.6	4.0	4.2
Leases/mortgages/franchises	3.7	3.3	2.9
Industrial Law	2.8	2.2	1.8
Land and Environment	0.8	1.9	1.5
Professional Negligence	1.7	1.3	1.4
Immigration	1.3	1.2	0.8
Victims Compensation	0.4	0.9	0.8

W2 Nature of allegation in complaints opened in 2006-2007

	04-05	% of complaints 05-06	06-07
Negligence	19.1	17.1	16.4
Communication	13.7	14.8	14.8
Ethical matters	15.2	13.8	13.4
General cost complaint/query	5.9	6.0	9.2
Overcharging	10.4	10.5	9.1
Misleading conduct	7.2	7.4	6.3
Cost disclosure	3.7	4.5	5.4
Delay	5.7	5.8	5.3
Trust fund	5.5	5.5	4.6
Instructions not followed	3.1	4.0	4.2
Document transfer/liens	2.5	2.1	2.9
Quality of service	0.8	1.3	2.5
Conflict of interests	2.5	2.7	2.1
Failure to honour undertakings	1.3	1.0	1.0
Document handling	0.8	0.8	0.8
Pressure to settle	0.8	0.6	0.8
Fraud (not trust fund)	1.0	0.7	0.7
Compliance matters	0.9	1.3	0.5

* Percentages may not add up to 100% due to the nature of changes within data categorisation.

W3 Practitioner type and Source of complaints opened in 2006-2007

Source of Complaint	Type of Practitioner # of complaints				TOTAL	% of complaints		
	Solicitor*	Barrister	LConv**	Other***		04-05	05-06	06-07
Bar Association	0	1	0	1	2	0.1	0.3	0.1
Barrister on another's behalf	4	0	0	1	5	0.0	0.2	0.2
Barrister on own behalf	60	1	0	0	61	2.4	2.2	2.2
Beneficiary/executor/administrator	64	0	0	3	67	3.5	3.9	2.4
Client	868	68	16	21	969	20.0	26.7	35.3
Commissioner	105	6	0	0	111	3.7	5.3	4
Cost Assessor	1	1	0	0	2	0.1	0.0	0.1
Client's friend / relative	68	4	0	0	72	3.1	2.7	2.6
Law Society	95	0	0	1	96	5.0	4.2	3.5
Non-legal service provider	61	4	0	0	65	3.0	2.5	2.4
Opposing client	337	19	0	11	367	12.8	14.7	13.4
Previous client	495	37	1	14	547	30.5	23.0	19.9
Solicitor on another's behalf	151	12	2	5	170	5.3	6.0	6.2
Solicitor on own behalf	75	5	1	4	85	5.9	4.6	3.1
Unrepresented client	13	0	0	1	14	0.5	0.5	0.5
Other ****	90	14	0	6	110	4.0	3.0	4
TOTAL	2487	172	20	68	2747	2694	2783	

* Includes former solicitors and legal practitioners

** Licensed Conveyancer

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

**** Includes complaints by government agencies, witnesses, and judges/quasi-judicial officers.

W4 Comparison of complaints open and closed in each of the past three years

	# of complaints		
	04-05	05-06	06-07
COMPLAINTS OPENED			
Complaint handling by OLSC	2045	2048	2171
Complaint handling by Professional Councils	649	735	576
TOTAL COMPLAINTS OPENED	2694	2783	2747
COMPLAINTS CLOSED			
Complaint handling closed by OLSC	2090	1912	2352
Complaint handling closed by Professional Councils	568	680	690
TOTAL COMPLAINTS CLOSED	2653	2592	3042

W5 All complaints closed in 2006-2007

Complaints closed	# of complaints				TOTAL
	Solicitor	Barrister	LConv*	Other**	
Dispute resolution completed	1359	48	4	27	1438
Resolved through formal mediation	3	0	0	0	3
Practitioner referred to Tribunal#	5	1	0	1	7
Practitioner disciplined by LSC	35	1	0	0	36
Subtotal closed by OLSC	1402	50	4	28	1484
Dispute resolution completed	136	1	2	3	142
Resolved through formal mediation	2	1	0	0	3
Practitioner referred to Tribunal	44	4	1	1	50
Practitioner disciplined by Council##	23	6	0	0	29
Subtotal closed by Council	205	12	3	4	224
Tribunal finding of UPC/PM unlikely	399	44	0	15	458
Likely UPC but generally competent	0	1	0	0	1
Withdrawn, particulars not supplied, procedural	143	12	0	2	157
Public interest	34	0	0	0	34
Subtotal dismissed by OLSC	576	57	0	17	650
Complaint not accepted out of time	76	12	1	2	91
Outside OLSC jurisdiction	61	6	31	29	127
Subtotal not accepted by OLSC (1)	137	18	32	31	218
Tribunal finding of UPC/PM unlikely	328	33	2	4	367
Likely UPC but generally competent	2	0	0	1	3
Withdrawn, particulars not supplied, procedural	83	4	0	2	89
Public interest	4	2	0	1	7
Subtotal dismissed by Council	417	39	2	8	466
Total handled by OLSC	2115	125	36	76	2352
Total handled by Council	622	51	5	12	690
TOTAL	2737	176	41	88	3042

* Licensed Conveyancer

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

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

Number of complaints that result in discipline, not number of practitioners disciplined

(1) New category to differentiate between OLSC complaints dismissed and those not accepted

W6 Duration of file handling at the OLSC

Of complaints closed in 2006-2007, time taken for complaints handling

	Percentage of files closed within following periods*		
	04-05	05-06	06-07
0-30 days	24.8	20.4	20.8
1-3 months	29.7	28.2	29.6
3-6 months	22.8	22.4	22.8
6-9 months	8.6	13.8	9.9
9-12 months	5.7	6	4.6
Over 12 months	8.4	9.2	12.3

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

W7 Age of complaints remaining open or suspended on 30 June 2007 and being handled by the OLSC

Year opened	Open at 30 June 05	Open at 30 June 06	Open at 30 June 07
2006-2007	-	-	403
2005-2006	-	440	88
2004-2005	623	123	49
2003-2004	144	86	18
2002-2003	45	10	4
2001-2002	9	4	1
2000-2001	6	2	0
1999-2000	5	1	1
1998-1999	4	0	0
1997-1998	3	0	0
1996-1997	1	0	0
1995-1996	0	0	0
1994-1995	0	0	0
TOTAL	840	667	564

W8 Average time taken to finalise a complaint at the OLSC

	04-05	Days* 05-06	06-07
Average time to complete complaints opened and resolved in 2006-2007	83.9	97.5	78.2
Average time to complete complaints opened in any year but resolved in 2006-2007	118	140	138
Average time taken to dismiss complaints opened in 2006-2007	94.2	98	74.1
Average time to dismiss complaints opened in any year but dismissed in 2006-2007	187	168.5	221

* Average number of days rounded to 1 decimal point

REVIEWS

R1Status at 30 June 2007 of review requests received in 2006-2007

	Solicitor	Barrister	LConv*	Other**	Total	Percentage
Reviews in progress						
In progress at OLSC	2	3	0	0	5	7.0
Being reviewed by consultant	18	2	0	0	20	28.2
Consulting with Council prior to finalising	1	0	0	0	1	1.4
Total remaining open	21	5	0	0	26	37
Reviews completed						
Dismissal confirmed	41	3	0	0	44	62.0
Out of time, no jurisdiction	1	0	0	0	1	1.4
Review request withdrawn	0	0	0	0	0	0.0
Reprimand confirmed	0	0	0	0	0	0.0
Reinvestigated by OLSC	0	0	0	0	0	0.0
Reinvestigated by Council	0	0	0	0	0	0.0
Decision changed	0	0	0	0	0	0.0
Other	0	0	0	0	0	0.0
Total completed	42	3	0	0	45	63
Total received	63	8	0	0	71	100

* Licensed Conveyancer

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

R2 Reviews in progress and closed in 2006-2007 – received all years

	Solicitor	Barrister	LConv*	Other**	Total	Percentage
Reviews in progress						
In progress at OLSC	2	3	0	0	5	4.7
Being reviewed by consultant	18	3	0	0	21	19.8
Consulting with Council prior to finalising	1	0	0	0	1	0.9
Total remaining open	21	6	0	0	27	25
Reviews completed						
Dismissal confirmed	65	7	0	0	72	67.9
Out of time, no jurisdiction	1	0	0	0	1	0.9
Review request withdrawn	0	0	0	0	0	0.0
Reprimand confirmed	0	0	0	0	0	0.0
Reinvestigated by OLSC	4	0	0	0	4	3.8
Reinvestigated by Council	1	0	0	0	1	0.9
Decision changed	1	0	0	0	1	0.9
Other	0	0	0	0	0	0.0
Total completed	72	7	0	0	79	75
Total handled	93	13	0	0	106	100

* Licensed Conveyancer

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

TRIBUNAL PROCEEDINGS

T1 Complaints referred to the Administrative Decisions Tribunal in 2006-2007*

Reason	Solicitor	Barrister	Clerk / Associate	TOTAL
Appeal Against Reprimand/ Compensation Order ***	2	1		3
Approval of Lay Associate s17(4)			3	3
Approval of Lay Associate s17 (3)			3	3
Prohibited employment**			1	1
Disciplinary Action	25	5		30
TOTAL	27	6	7	40

* All data provided by Administrative Decisions Tribunal

** Legal Profession Act 2004 (LPA) s18

*** Legal Profession Act 2004 (LPA) s540

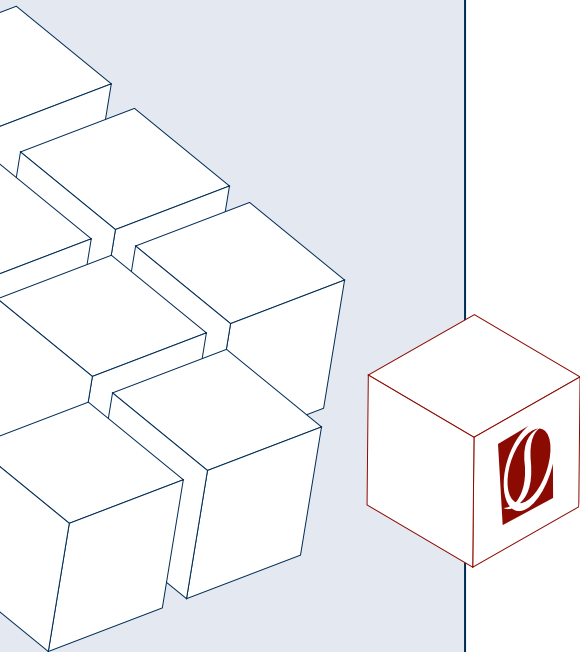
T2 Outcomes of Tribunal Proceedings in 2006-2007*

Outcome	Number
Reprimanded and/or fined	5
Removed from roll	6
Reprimanded	2
Dismissed after hearing	1
Withdrawn	2
Consent Order	1
Application granted	2
TOTAL	19

* All 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. Formatting and naming conventions used in some tables has been improved to indicate more accurately the nature of data they contain.
3. One table has been removed, as the information contained within no longer proved useful and is recreated in another table.



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