

THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

2015-2016
ANNUAL REPORT

OFFICE OF THE LEGAL SERVICES COMMISSIONER

ORGANISATIONAL CHART

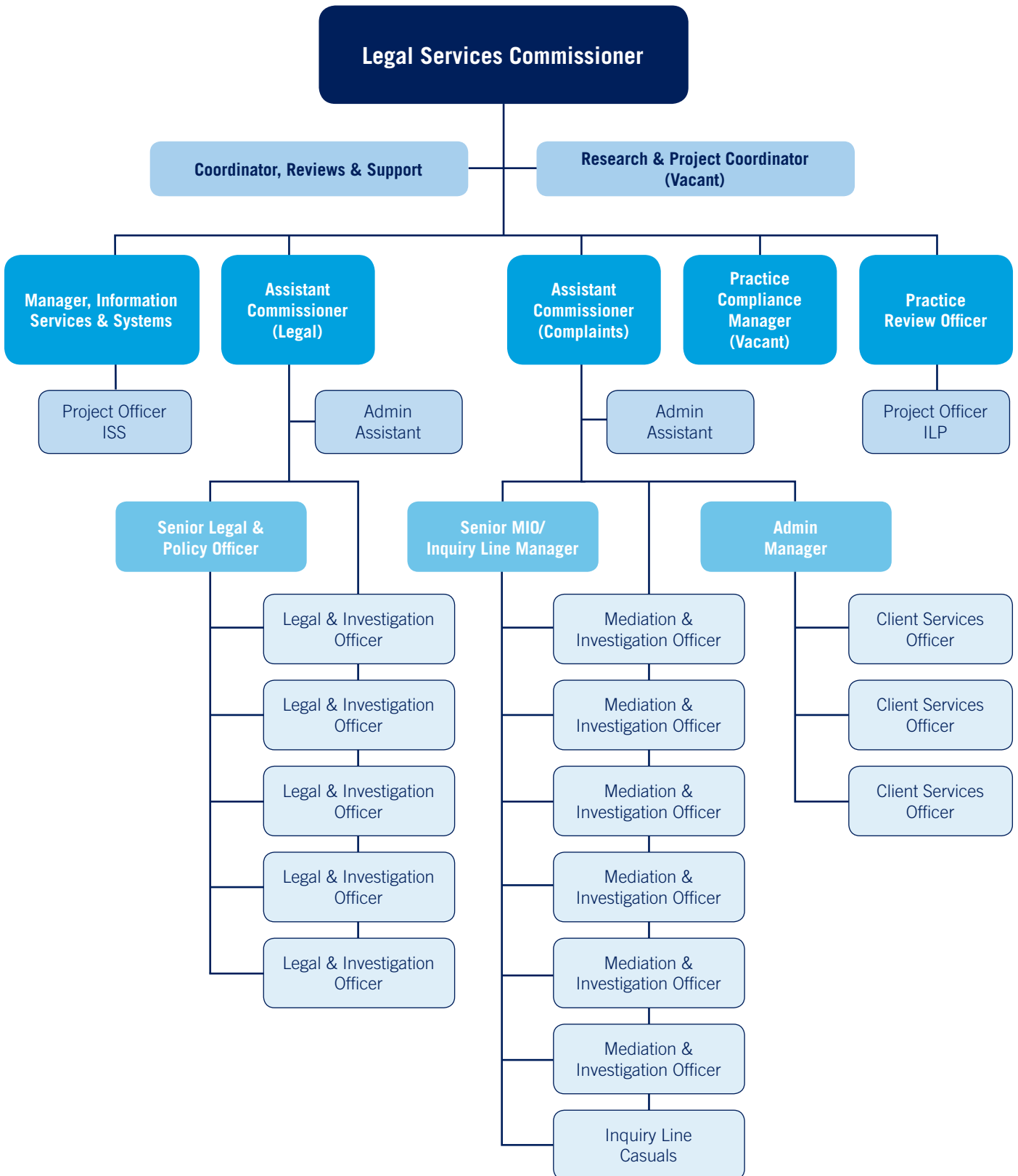


TABLE OF CONTENTS

Chapter 1	The Commissioner's Report	4
Chapter 2	Investigations and Discipline	6
Chapter 3	Consumer Matters and Case Studies	9
Chapter 4	Compliance Audits	17
Chapter 5	The OLSC and the Community	18
Chapter 6	Information Systems and Services	20
Chapter 7	Annual Statistics	21
Chapter 8	Financial Performance	32

Chapter 1

THE COMMISSIONER'S REPORT

The Legal Profession Uniform Law (LPUL) commenced operation on 1 July 2015 in New South Wales and Victoria. The first year of its operation has been successful, with no significant problems in its implementation in place of the previous Legal Profession Act. While the combined, dedicated efforts of all involved achieved as seamless a transition as possible, there were some unforeseen consequences that warrant further attention. I will return to a more detailed account of my perspective of the initial year of the LPUL later in my report.

With the Office of the Legal Services Commissioner (OLSC) operating since 1994, with essentially the same structure and work allocation system, the time was right for a close examination of the work processes and the roles of all our staff. In the first months of 2016, independent external experts from the Nous Group were commissioned to undertake a review. The resulting insightful report is a testament to both the willingness of OLSC staff members to wholeheartedly involve themselves in the process, and the professionalism of the Nous Group reviewers. As a result of the report and its recommendations I have introduced a number of changes to practice, policy and management approaches. In particular, I have sought to address the issues that emerged in the following areas of concern: clarity in the interpretation and implementation of our regulatory responsibilities; transparency in the allocation of higher duties and temporary roles; and consistent leadership by management to achieve common goals. We still have ground to cover and I expect that we will be referring to the report and recommendations for guidance and direction for some time to come.

I outlined in last year's report the pressing need for an enhancement of our Information Technology systems, both hardware and software. We have made good progress towards that end. Our entire stock of desktop personal computers was replaced with up to date units. In the overhaul of our complaint management system and various databases, we have been assisted by expert personnel from the Department's Information Services Branch. Joint examination of each of our work processes has been undertaken with a view to adapting them into an all-inclusive single system. We have signed off on a Business Requirements Overview statement and participated in a competitive Proof of Concept process with two potential providers. The preferred provider has been agreed upon, and a Project Brief finalised and signed. We now await the approval of funding to proceed with the implementation and installation and we are hopeful that will be forthcoming so that the new system will be in operation by March 2017. Once in place, it will significantly improve our overall capabilities, especially regarding our reporting obligations to the Commissioner for Uniform Legal Services Regulation under the LPUL.

The LPUL, in operation since 1 July 2015, preserved and continued the pre-existing co-regulatory framework in New South Wales whereby both the legal professional bodies (the Law Society of NSW and the NSW Bar Association) participate in the regulation of lawyers. To my mind, that is a strength of the NSW experience and I am appreciative of the productive and cordial relationship shared by my office with both professional bodies.

It is also vital that there is a collegiate and consultative relationship between the Victorian Legal Services Commissioner, the Commissioner for Uniform Legal Services Regulation and me so that the task of working towards consistency in the implementation of the LPUL in both states is progressed. I am pleased to report that this is in fact the case. It is no small achievement to meld the regulation of the legal profession in the two most populous states, each with its own proud history and tradition, into a shared and consistent system of regulation. Great steps forward to achieve that goal have been taken during the first twelve months of the LPUL's operation.

Whilst concerns held by some lawyers as to the nature and extent of the cost disclosure obligations imposed by the LPUL remain, there are mechanisms and processes built into the LPUL to continue dialogue towards addressing those concerns. The fundamental principle adopted by the LPUL is one of informed consent by a lawyer's client. That is, that all reasonable steps must be taken to facilitate an understanding of, and agreement to, both the proposed course of action in any matter and the legal costs involved. For some lawyers, that represents a shift in the perception of the relationship with their clients but it is one that is increasingly demanded by clients. There is a great deal of good will and genuine concern for the best interests of clients found throughout the profession. I am confident that this change will become more accepted and, in time, will become entrenched in what is recognised as best practice.

Others raise concerns about the loss of power of regulators to deal with consumer level disputes brought by persons other than the lawyer's clients. This flows from the definition of a consumer matter under the LPUL. For example, in contrast to the now repealed Legal Profession Act, the LPUL removes the capacity of the following types of parties to lodge a consumer level complaint (i.e. less serious complaints that, at their highest, cannot lead to disciplinary action, but may result in measures such as modest compensation orders, or directions to apologise and re-do work): a beneficiary of a will complaining about the lawyer acting for the estate's executor; a party to litigation complaining about the opposing party's lawyer; and, a purchaser in a transaction complaining about a vendor's lawyer. It is important to bear in mind, however, that anyone has the capacity to lodge a complaint of a disciplinary level about any lawyer. The result is a new balance between consumer complaints being confined only to the actual consumers of legal services, whilst the world at large has standing to make complaints about lawyers thought to be seriously transgressing the law or professional standards. It might be said that such a change will result in a better prioritisation of regulators' resources. It might also be said that it will prevent attempts at resolution in some cases where previously it was achieved.

Overall the experience of the first year has been positive. There remain some issues such as those highlighted above that demand ongoing consideration and genuine consultation. I compliment the staff members of the Office of the Legal Services Commissioner who have shown commendable dedication to their tasks during a period of change and on-going challenges. Their commitment to achieving fair and responsible regulation of the legal profession is evident on a daily basis.

John McKenzie
Legal Services Commissioner (NSW)

Chapter 2

INVESTIGATIONS AND DISCIPLINE

The Legal and Investigation Team deals with complaints in which disciplinary matters are raised. The complaints are investigated with evidence obtained from the complainant, the practitioner and, where required, from third parties such as independent witnesses or financial institutions.

At the conclusion of an investigation, a statutory test must be applied.

For complaints made prior to 1 July 2015, the test is found in the *Legal Profession Act 2004* (LPA). The LPA test requires that, in circumstances where there is no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct, were the matter to be referred to the Occupational Division of the NSW Civil & Administrative Tribunal, the complaint must be dismissed. In circumstances where there is a reasonable likelihood of such a finding, the matter may be dealt with summarily by the Commissioner in relation to a likelihood of a finding of unsatisfactory professional conduct, or referred to the Tribunal where there is a likelihood of a finding of professional misconduct.

For complaints made on or after 1 July 2015, the *Legal Profession Uniform Law (NSW)* (LPUL) applies. If, after completing an investigation, the Commissioner finds a lawyer has engaged in unsatisfactory professional conduct, he may determine the matter by making any of the orders specified in section 299 of the LPUL. Orders may include:

- cautioning or reprimanding the lawyer
- requiring an apology from the lawyer
- requiring the lawyer to redo the work that is the subject of the complaint at no cost or at a reduced cost
- requiring the lawyer to undertake training or counselling
- requiring the lawyer to pay a fine or
- imposing conditions on the practising certificate of the lawyer.

If the Commissioner is of the opinion the alleged conduct may amount to professional misconduct, he may initiate and prosecute disciplinary proceedings in the Tribunal.

As has been the case for a number of years, more complaints were lodged in relation to family and de-facto law matters in this reporting year than any other area of law. Complaints arising from probate, wills or family provision claims constitute the second most common area of law to attract complaints.

The most commonly made complaint was negligence, followed by poor communication and then overcharging.

Determinations and disciplinary action

In the reporting year, the Legal and Investigation Team dealt with complaints under both the LPA and LPUL. Table W6 reports on the determinations made, and disciplinary action taken, by the Commissioner. Disciplinary action is published on the Register of Disciplinary Action kept by the Commissioner and is available to access on the OLSC's website.

The Commissioner issued 7 reprimands, 18 cautions and ordered the lawyer to make an apology in 2 matters. Reprimands were issued for acting in a conflict of interests, recklessly drafting documents that were false or misleading, gross delay, lack of competence and diligence, and insulting and offensive communication (where the lawyer had previously been cautioned for such conduct). The cautions related to acting in a conflict of interests, failure to make ongoing costs disclosure, failure to follow the prescribed procedure for withdrawal of trust money for costs, recklessly creating a file note with an incorrect date, lack of competence and diligence, inappropriate communication with an opposing lawyer and the Court, gross delay and breach of confidentiality. The apologies were for insulting, threatening and offensive communication.

Disciplinary proceedings

Disciplinary proceedings against legal practitioners are heard in the Occupational Division of the NSW Civil and Administrative Tribunal.

Decisions were delivered in the following matters in the reporting year:

- **Legal Services Commissioner v Searle**

By consent, the practitioner was found to have engaged in professional misconduct in borrowing money from a client (in breach of Rule 12 of the *Solicitors' Rules*), and for not obtaining her client's authority to borrow \$3,000 (in breach of s255 of the LPA). She was found to have engaged in unsatisfactory professional conduct in establishing a controlled money account for her client in breach of clause 75 of the *Legal Profession Regulation 2005*. The practitioner was reprimanded, fined \$5,000.00 and ordered to pay the Commissioner's costs.

- **Legal Services Commissioner v Ge**

The practitioner, in seeking employment, sent to potential employers, and a recruitment agency, a curriculum vitae that was, to his knowledge, false and misleading in material particulars and a transcript of his academic record which was also, to his knowledge, false and misleading in material particulars. The Tribunal found the practitioner had engaged in professional misconduct and disqualified him from holding any practising certificate for a period of two years. The Tribunal further ordered that any practising certificate then issued be endorsed with a condition that, for a period of 3 years, the practitioner only practise as an employee of a solicitor holding an unrestricted practising certificate. The practitioner was also ordered to pay the Commissioner's costs of and incidental to the disciplinary proceedings.

- **Legal Services Commissioner v Ya Nan Wen**

The practitioner forged his client's signature on an affidavit, falsely witnessed the forged signature and then filed the forged Affidavit in the Local Court. He was found to have engaged in professional misconduct. The Tribunal ordered that his practising certificate be suspended for a period of 3 months, with grant of a further practising certificate subject to successful completion of a course in legal ethics. The practitioner was ordered to pay the Commissioner's costs. A strike off was considered but the Tribunal ultimately decided a less severe order was sufficient given Mr Wen's youth and inexperience.

- **Legal Services Commissioner v Russo**

The Commissioner alleged that the practitioner engaged in breaches of trust account requirements, failed to account for payment of fees, and failed to pay Counsel's fees. The Tribunal found the practitioner had engaged in professional misconduct and ordered that his name be removed from the local Roll. The practitioner has appealed the decision.

- **Legal Services Commissioner v Byrne**

It was alleged the practitioner failed to communicate with his client, failed to obtain his client's instructions and engaged in misleading conduct. The matter was heard together with proceedings brought against the same practitioner by the Law Society of New South Wales. The Tribunal found the practitioner had engaged in professional misconduct and ordered his name be removed from the Roll. The practitioner was ordered to pay the Commissioner's costs of and incidental to the proceedings.

In addition to proceedings brought by the Commissioner, the Legal and Investigation team dealt with an application brought by a practitioner, Salina Sadiq, for a review of the Commissioner's decision to reprimand her for overcharging. This matter is listed for hearing in the Tribunal in November 2016.

The Commissioner reported last year on the matter of *Legal Services Commissioner v Kumar*, noting Mr Kumar had lodged a Special Leave Application in the High Court of Australia seeking to appeal the judgment of the New South Wales Court of Appeal, dismissing his appeal from the Tribunal's decision to strike his name from the Roll. Mr Kumar's special leave application was refused in February 2016.

Reviews

Under the *Legal Profession Act 2004*, the Commissioner had power to review decisions on complaints made by the Law Society of New South Wales and the New South Wales Bar Association. Of the 43 reviews completed during the reporting year, the decision of the Professional Association was confirmed in 39 complaints, and in one matter the Commissioner decided to reinvestigate the complaint to deal with matters either not dealt with or not dealt with fully during the investigation. The Commissioner exercised his discretion in two matters not to conduct a review of the Law Society's decisions. The remaining matter was out of time, therefore, there was no jurisdiction.

Internal reviews

The *Legal Profession Uniform Law (NSW)* makes provision for the Commissioner to conduct an internal review of his own decisions, or where relevant, the decisions of his delegates, the Law Society of New South Wales or the New South Wales Bar Association. The Commissioner may (at his absolute discretion) conduct an internal review of a relevant decision, if he considers it appropriate to do so. On review, the Commissioner must consider whether the decision was dealt with appropriately and whether the decision was based on reasonable grounds, and may confirm the original decision, make a new decision or refer it back to the original decision maker.

During 2015-16, the OLSC has been involved in the development and implementation of policies and procedures with respect to the internal review powers, in close consultation with the Commissioner for Uniform Legal Services Regulation and the Victorian Legal Services Commissioner.

Policy development

The focus of policy development during the reporting year was on interpretation and application of the *Legal Profession Uniform Law (NSW)* (LPUL), which commenced operation on 1 July 2015. The Legal and Investigation team prepared training materials and conducted in-house seminars on the provisions of the LPUL, and continues to provide guidance and legal advice to case officers on its interpretation and application. Over the course of the reporting year, the OLSC held regular internal meetings to discuss issues arising from application of the new provisions. Senior managers attended regular meetings with their counterparts of OLSC's co-regulators, the Law Society of New South Wales and New South Wales Bar Association, and participated in teleconferences and face to face meetings with their Victorian counterparts. The OLSC provided input into Guidelines issued by the Legal Services Council and the Commissioner for Uniform Legal Services Regulation. The OLSC also engaged with the legal profession by way of face to face seminars, webinars and presentations on the LPUL.

The Acting Assistant Commissioner (Legal) continues to meet regularly with the Manager of Professional Standards, Law Society of New South Wales, the Director of Professional Conduct, New South Wales Bar Association and the Legal Profession Admission Board.

Chapter 3

CONSUMER MATTERS AND CASE STUDIES

It has been a challenging year for our consumer matter complaints handlers. The commencement of the Legal Profession Uniform Law (discussed elsewhere) has seen significant changes to the tools available to staff to resolve consumer matters, to the assessment and classification of complaints and to the records and statistics we keep.

This has had an understandable impact on complaint numbers, which have increased overall more than 7% to 2,709. It has also meant that there has been a small increase in the time it has taken us to deal with consumer matters and in the number of files on hand.

However, in this difficult environment the consumer matters team completed approximately 1,600 complaints this year, as many as we received. More than 800 of these matters were resolved.

Areas of Law

Once more in 2015-16 there have been no significant changes in the areas of law that people lodge complaints about.

Family law is not just the most volatile area of law, it now makes up 17.8% of all complaints lodged with the OLSC. A significant proportion of these complaints come from opposing parties and there are a far greater proportion of unrepresented litigants lodging complaints in this area.

Complaints in the personal injuries area have increased to 10.9% of all complaints, mainly in relation to CTP claims.

While complaints coming out of strata law are small in number they are frequently difficult matters to deal with, and sometimes as vitriolic as some family and wills and probate matters.

This year we agreed with our co-regulators, the Law Society and the Bar Association in NSW, and the Victorian Legal Services Commissioner on changes to categories in which we record complaints. Next year we should be able to give a wider and more detailed picture of the areas of law complained about.

Nature of complaints

It is often a surprise that more complaints are not made about lawyers' costs. Only 23.4% of all complaints this year raised costs issues directly. It does not follow that clients who were unhappy with the service they received, the result of their case or the legal system in general, did not mention costs. We focussed on what the lawyer had done, or not done, and were often able to negotiate a resolution for the client.

The powers included in the LPUL to make determinations in relation to consumer matters have ensured that we are paying very close attention to those matters of negligence (15.3% of all complaints) where there is demonstrable fault or error that falls short of misconduct.

As we have done with areas of law, in order to provide consistent statistics for the Legal Services Council/ Commissioner for Uniform Legal Services Regulation, and for these reports, we have agreed with our co-regulators on the areas of complaint for future reports.

Resolutions

We resolved a total of 806 complaints in 2015-16. That figure is down significantly on previous years because of the need to adjust our internal policies and processes to the specific requirements of the new legislation.

The resolution of matters included significant reductions in costs, through to apologies, work done to correct mistakes, file transfers and simply re-establishing communication between lawyer and client. Case studies later in this Report provide examples of this work.

What isn't counted in this figure is the work done to gather information to explain to complainants and clients how the legal system works, the obligations of lawyers and why their expectations of lawyers might be unreasonable.

Nor does it cover those complainants who have been referred to another place for advice, to a particular source of information or back to their lawyer to talk things through.

Classifications

Under the LPUL the definition of “consumer matter” complaints by persons other than the client excludes, for example, beneficiaries and opposing parties. This has meant we are now obliged to close a number of complaints where, in the past, we may have been able to make inquiries and resolve concerns. It has also meant that other matters that might previously have been classified as consumer matters must now be classified as disciplinary. The great majority of these complaints are ultimately dismissed after investigation because the behaviour is not serious enough to warrant action at a disciplinary level. For example, beneficiaries complaining about delay in the administration of an estate when where the lawyer’s primary duty is to the executor of the estate.

Powers

There are new powers in the LPUL that allow the Commissioner to make determinations in relation to consumer matters (s290) and in costs disputes (s292).

While the number of determinations is small so far, we anticipate that bringing these powers to the attention of lawyers will often be enough to see more matters resolved without the need to utilise the powers in the LPUL.

Personal circumstances

There is no underestimating the impact that personal circumstances can have on a person’s life – and in particular their working life.

Some lawyers can manage family break up or tragedy, physical or mental illness and financial problems and still cope with a busy, stressful and very important job advising clients about the law. There are other situations where complaints reveal that personal difficulties are having a profound impact on the service a lawyer can deliver.

Some lawyers do not or cannot recognise that stress and hardship are having a severe impact. Others will not have the personal or financial means to deal with the situation.

We acknowledge these difficulties in dealing with complaints. We encourage lawyers in trouble to seek help and we try to limit the damage suffered by clients. That might mean arranging for a file transfer, encouraging an apology and listening to ensure we refer lawyers to the right place for help where that is needed.

That includes the Lawyers Assistance Program at the Law Society of NSW, practice management assistance and external counselling. However, we are still seeing lawyers in trouble fall through the cracks.

Personal injuries

We have seen an increase in the number of squabbles, sometimes very bitter, between personal injury, CTP and workers compensation firms over clients.

A number of firms frequently complain about each other. They allege failure to respond, refusal to release files and sharp dealings by contacting former clients seduced away by the other firm.

We know that retaining clients is vital but some of these exchanges are vitriolic and escalate into allegations of dishonesty.

Standard documents such as the Tripartite Deed are available from the Law Society of NSW to help with file transfers. There are standards of communication and timeliness that need to be met when firms engage in these arguments.

We can advise and sometimes make determinations in relation to these matters. However, an improvement in the civility and consistency of standards by some lawyers involved in such disputes would assist all involved.

Inquiry Line

We encourage members of the public to speak with our Inquiry Line staff if they are considering lodging a written complaint. Inquiry Line staff provide valuable information to callers about our role and the complaints process. They help callers to clarify their concerns and, where appropriate, suggest ways they might be able to resolve their dispute directly with the lawyer. They also provide referrals to other organisations where applicable.

We receive calls from a wide range of individuals who are considering making a complaint about a lawyer. By far the majority of callers are clients or former clients. We also receive calls from opposing parties, friends or relatives on behalf of a client, lawyers, law students, educators and government bodies.

In the 2015-2016 reporting period, we took 7,369 calls. This is an increase of 41 calls over the previous year. The highest portion of calls were general enquiries about the function of the OLSC and the regulatory system (18.6%), while family law issues were raised in 14.9% of calls. This was more than any other specific area of law.

Callers are asked to participate in a survey gauging their satisfaction with the service they received from the Inquiry Line. This reporting year 1,073 surveys were sent out of which 17.2% were completed and returned. The overall results were extremely positive. 72.4% of callers indicated that they would recommend the OLSC to a friend or relative, 70.8% agreed that the information they received was helpful and/or useful and 87.6% agreed that the staff handling the call treated them in a courteous and professional manner.

In the latter part of this reporting year we commenced a “call back” trial. This system means callers do not have to wait in a queue. They can simply leave their contact details for a return call. Staff attempt to return calls as soon as possible, generally within 30 minutes, and urgent calls are given priority. We will continue to closely monitor and improve this system, in accordance with the feedback we receive and available new technology.

Case Studies

The following case studies illustrate the types of costs related complaints the OLSC receives in consumer matters.

Security of costs

In early May 2016, a lawyer approached the OLSC for assistance in communicating with another lawyer who had refused to respond to any of his letters, calls or emails. The lawyer had previously entered into a tripartite agreement to secure the complainant's costs with regard to a particular client.

By the time the complaint was lodged, communications between the lawyers had become increasingly hostile due to the respondent lawyer's perceived refusal to provide basic information. The complainant asked the OLSC to compel the lawyer to respond to his correspondence.

The OLSC had some difficulty in tracking down the lawyer. It appeared that all addresses held on file by the Law Society of NSW were a dead-end. Eventually the lawyer was contacted and it appeared that his refusal to answer the complainant's correspondence was wholly attributable to a misunderstanding. The lawyer had never received any of the correspondence as he had changed offices without informing some of his former clients or the Law Society.

The situation was quickly defused and the lawyer contacted the complainant to discuss the underlying matter.

Lawyers have a duty to communicate in a professional manner and to avoid unnecessary delay where possible. As part of that duty, lawyers should ensure that the details held with the Local Designated Regulatory authority – in this case the Law Society of NSW, are up to date.

Misunderstanding of costs

In May 2016, the complainant approached the OLSC alleging the lawyers acting for him in his employment law matter had been negligent and had overcharged him. The complainant was a self-represented litigant but had employed a lawyer to help him with some legal issues with his employer. He was now facing the prospect of having to defend proceedings and blamed his lawyers for his current predicament.

The complainant had been given a highly detailed Costs Agreement by his lawyer which set out both fixed fees and hourly rates for the work to be undertaken. The complainant had been asked to place \$1,000.00 in trust, and had erroneously assumed that this amount would cover all of his legal fees. In making that assumption, the complainant did not refer to his Costs Agreement or at any point contact the law firm to confirm this was the case.

Following investigation by the OLSC, it was found that after subtracting court costs, the complainant had only been charged for two hours of work by a paralegal, or one hour of work by a Junior Lawyer. This was hardly unreasonable in light of the work performed.

As a product of that investigation however, it was found that the highly detailed Costs Agreement was not strictly compliant with the law. The law practice could most-likely not recover their costs until assessed.

This case contains a number of very important lessons for both clients and lawyers:

- *When provided with a Costs Agreement, a client should always read the agreement in full and ask their lawyer if they have any questions or are uncertain of anything. Care should always be taken to understand the terms of any agreement before entering into it.*
- *Lawyers should always be careful that their Costs Agreement or short-form disclosure is compliant with the LPUL. The OLSC appreciates legal innovation and understands that the changing nature of the legal profession may necessitate changes to standard disclosure from time to time. That said, legal costs disclosure is a highly regulated area, and every effort should be made to ensure that new agreements are compliant with the law.*

Misunderstanding of charging

In early June 2016, the OLSC received a complaint from a client who had paid over \$9,000.00 in legal fees for an award of \$2,000.00 in an employment law matter. The complainant, an accountant, believed that he had never received any disclosure of his lawyer's legal costs. He believed he was now out of pocket over \$7,000.00, and, took a very dim view of the alleged failure of the lawyer to disclose their costs, especially in a situation where he believed they had encouraged litigation in unfavourable circumstances.

After contacting the lawyer involved it was found that, although some of the lawyer's disclosure was questionable, on the whole the law practice had gone to great lengths to dissuade the complainant from litigating with his former employer and had warned him about the possibility of escalating legal costs. Evidence was provided to the OLSC showing that the lawyers believed that litigating the matter would result in a net financial loss and was against the client's best interests. The complainant had decided to take the matter forward on principle against his lawyer's advice.

The lawyer expressed their sympathy that the outcome of the complainant's case had not been more favourable to him but there was no basis for a further discount of their fees. Following closure of this complaint, we liaised with the practice manager to ensure that in future any disclosure that is made by this firm is clear and more succinct.

Initial consultation not always free

In mid-June 2016, the OLSC received an urgent letter from a panicked complainant who was being pursued for outstanding legal costs from her employment law matter. The complainant explained that she had briefly met with her lawyer for an initial consultation, asked for a letter of advice and upon learning that her employer had no case to answer, terminated the employment of that lawyer.

While the complainant had assumed that her initial consultation would be free and that she had severed ties with the lawyer before incurring costs, this proved not to be the case. The complainant's lawyer had never advertised a free consultation, and had undertaken significant research work in providing her with a letter of legal advice. The work that was invoiced had already been heavily discounted.

Despite the complainant's misconceptions as to when a lawyer can and cannot charge for work, the OLSC attempted to resolve the matter informally. Having notified the lawyer of the complainant's personal circumstances and misapprehensions, the OLSC negotiated to have any outstanding costs waived. The lawyer agreed to waive the costs and the OLSC cautioned the complainant against making similar assumptions in the future.

This scenario is unfortunately one that arises all too frequently and two lessons can be learned from such experiences:

- 1. While it may be common business practice, an initial consultation with a lawyer is not always free. Clients should always check the fee for a meeting with the law practice before booking an initial consultation.*
- 2. Lawyers are entitled to charge for any work that is fair, reasonable and proportionate. Just because a case does not go the way a client was expecting does not mean that a lawyer cannot charge for any reasonable work completed in reaching that conclusion. The lawyer in this case was willing to waive his invoice in good faith. However, this result should be viewed as the exception and not the rule.*

Confusing standard costs disclosure

The OLSC received a complaint from a couple who had engaged the services of a local lawyer to assist them with a neighbourhood noise dispute. The lawyer provided their firm's standard form costs disclosure and provided an estimate of costs. The complainants lodged their complaint when the matter proceeded to an uncontested hearing. Much of the work anticipated, and ultimately, the basis for the costs estimate, was not required. They were still charged the full amount estimated.

*Upon receiving the complaint, it was also identified that the costs disclosure used was generally confusing in the particular circumstances of the case. The practice's invoice also contained a notification of client rights under the repealed **Legal Profession Act**.*

The lawyer agreed to refund a portion of the fees charged to the complainants. The practitioner also provided the OLSC with a revised copy of their notice to clients under the LPUL and advised the OLSC of steps the practice will take to resolve the generally confusing nature of their standard costs disclosure.

Empowering complainants to resolve their own costs disputes

A complainant sought the OLSC's assistance in resolving his concerns about the costs he had been charged in his personal injury matter. The case officer had many conversations with the complainant to discuss their concerns and clarify their options. The complainant was also provided with information and an explanation of the criteria for fair and reasonable legal costs to enable them to resolve their costs dispute directly with the firm. With a better understanding of his rights and his lawyer's rights and obligations, the complainant was able to negotiate a satisfactory resolution.

Recovering costs without a costs agreement

A lawyer drafted a Deed of Arrangement ("Deed") for a husband and wife in 2008. In 2015, the lawyer was contacted by the husband's new lawyers who requested a copy of the Deed, apparently for use in family law proceedings. The lawyer contacted the wife to seek her authority to release the Deed. The wife gave her written authority and the lawyer copied the Deed and sent it to the husband's lawyers. The lawyer then charged the wife \$400.00 for locating and providing a copy of the Deed, and related correspondence. There was no costs disclosure in relation to work associated with providing a copy of the Deed to the husband, and no costs agreement entered into. The Commissioner formed the view that it was fair and reasonable in all the circumstances to make an order under section 290(2)(e) that the lawyer cannot recover from the wife the costs incurred in providing a copy of the Deed to the husband.

Work done without instructions

The lawyer charged \$1,500.00 for work done in preparing wills and powers of attorney for a couple. The costs were incurred over a period of 6 days, following receipt of two emails from the couple's financial planner. There ensued further email correspondence, some copied to the couple. However, the lawyer did not contact the couple directly to confirm they wished to retain his services or seek instructions as to their wishes in relation to their wills and powers of attorney. The couple complained the work was done without their instructions. The Commissioner formed the view it was fair and reasonable in all the circumstances to make an order under section 290(2)(e) that the lawyer could not recover costs charged for the work.

Discharge of a lien

The client engaged the lawyer to act for him in relation to his claim for damages for injuries sustained in a motor vehicle accident. The client was the front seat passenger in a vehicle that collided with a cow. He entered into a conditional costs agreement with the law practice, to the effect that costs including disbursements would be payable only upon a successful outcome.

Proceedings were commenced in the District Court of New South Wales. An order was made that the question of liability be heard before damages. The District Court found the client had not established the defendant had breached his duty of care, and concluded that even if there were a breach of a duty of care, causation had not been established.

*The client appealed to the Court of Appeal, and the lawyer continued to act. One of the issues on appeal was whether the accident was a blameless motor accident for the purposes of the **Motor Accidents Compensation Act 1999 (NSW)**. This issue had not been raised at trial and the Court of Appeal refused the client leave to amend the pleadings to raise the blameless accident argument on appeal. In doing so, the Court commented the client had had ample opportunity to raise the blameless accident provisions and did not, despite having revisited his statement of claim in the course of the proceedings. The appeal was dismissed with costs.*

The lawyer wrote to the client noting the client was not in a position to reimburse costs and stated he would close his file. Costs were effectively written off.

A year later the client instructed new lawyers to investigate the prospects of making a claim against the lawyer in professional negligence. The new lawyers requested the client's file. The lawyer responded asserting there were outstanding disbursements in the amount of \$14,000.00. In addition, he estimated professional costs and counsel's fees were over \$100,000 and claimed a lien with respect to costs.

The client sought the assistance of the Commissioner in obtaining his file. Attempts to resolve the matter, for example by using the Law Society's tripartite deed on change of lawyer, proved fruitless as the lawyer insisted on full payment of disbursements.

The Commissioner formed the view it was fair and reasonable in all the circumstances to make a compensation order discharging the (claimed) possessory lien pursuant to LPUL section 290(2)(e), on the basis the client was entirely unsuccessful in his claim, and had no liability to pay any costs.

Resolution of costs disputes

The complainant received a bill from the lawyer for the sum of \$40,783.26 for acting on the purchase of a property that sold for \$260,000.00.

The complainant had been told that the fees would be between \$1,500.00 and \$1,800.00. When OLSC contacted the lawyer, he confirmed that he advised his fees would be approximately \$1,500.00 to \$1,800.00 on the basis that the work involved in the transaction would not be complicated. He explained that the matter was far from straight forward for a number of reasons. Those reasons included:

- 1. negotiating special conditions dealing with the structural repair of the building,*
- 2. the amendment of the strata plan to incorporate into the strata a lot being purchased by the complainant that was part of the common property, and*
- 3. dealing with disputes that arose as a result of further amendments the vendor sought to make to the strata plan.*

First instructions were received in February 2014, the property settled on 15 October 2014 and the bill was dated January 2016. Following OLSC's intervention, the parties settled the matter pursuant to a Deed of Agreement for the sum of \$18,000.00. The lawyer subsequently undertook to "use his best endeavours" to ensure that the firm comply with its costs disclosure obligations in all matters in which the firm is retained in the future.

Chapter 4

COMPLIANCE AUDITS

Between October 2015 and April 2016, the Practice Review Officer conducted five on-site compliance audits after the Commissioner found that “reasonable grounds” to do so existed. The OLSC looks at complaints received and any conduct brought to our attention in determining whether there are reasonable grounds.

These audits included practices in the CBD as well as in the outer suburbs of Sydney. Two of the audits were short, one-day follow-up audits after full, two-day audits had been conducted previously. Both of these audits led to Management System Directions being issued because insufficient progress had been made in relation to the issues raised in the Compliance Audit Report. This was the first time that Management System Directions were issued under the new legislation/LPUL. The principal of one law practice has responded to the Management System Directions by indicating that he will sell his law practice. The other law practice has failed to provide a periodic report and the Commissioner is considering what disciplinary action may be taken.

The other three audits took place over two days. While no serious concerns were raised by these audits interesting issues arose regarding the new cost disclosure requirements under LPUL, in particular in relation to the client providing “informed consent” about the proposed course of action for the matter and the costs to be incurred. The audits also highlighted the requirement for law practices to clearly set out the time frames for disputing invoices and alerting clients to the 60 day limit for making a complaint containing a costs dispute.

A “desk-top” audit of a law practice was conducted about the discrete issue of costs disclosure. The law practice provided sample costs disclosure material from each of the areas of law in which it provides advice. Again, the notion of “informed consent” proved to be a challenge. There was a wide divergence between the level of detail recorded in file notes of lawyers’ discussions with clients to demonstrate that informed consent had been obtained. The law practice is now considering a suggestion from the OLSC to use a standard checklist of key points to discuss with the client, to be kept on the matter file.

Chapter 5

THE OLSC AND THE COMMUNITY

The OLSC continues to play a vital role in working and engaging with the legal community in both regional and city areas. During 2015-2016, the Commissioner continued to visit regional Law Society members and participated in seminars and workshops on a range of topics that lawyers face in their day to day practices. The regional Law Societies visited by the Commissioner were:

- Central West Law Society
- Clarence River Law Society
- Orana Law Society
- Blue Mountains Law Society
- Mid North Coast Law Society
- Shoalhaven & District Law Society
- Newcastle Law Society
- Riverina Law Society
- Far North Coast Law Society
- Far South Coast & Monaro Law Society

We see these opportunities as playing a vital role in encouraging dialogue between regulators and the legal community.

Legal Conferences and Events

On 14 August 2015, John McKenzie, the NSW Legal Services Commissioner and Lynda Muston, the Assistant Commissioner (Legal) participated in a specialist seminar, and co-presented a session, to Occupational Division Legal Services List Members of the NSW Civil & Administrative Tribunal, on the new Legal Profession Uniform Law (LPUL). They discussed and explained the requirements of the new legislation and the impact of those changes.

The Commissioner was a guest at the Annual National Costs Law Conference in Melbourne on 19 February 2016. With the introduction of the LPUL and the complexities of the costs regime under the new Law, the conference brought together costs experts with comprehensive experience to assist and educate practitioners.

With the Commissioner's background as a criminal lawyer, he was invited to present a CLE session at the Reasonable Cause Criminal Law Conference in Sydney on 19 March 2016. The conference covered issues facing criminal lawyers both in court and in practice. The Commissioner discussed issues arising out of complaints about criminal lawyers and how to avoid the pitfalls. Profits from the Conference go to an Australian run charity, Sunrise Cambodia.

In November 2015, the Commissioner, Assistant Commissioner (Legal) and Jim Milne, the Assistant Commissioner (Complaints) attended the Conference of Regulatory Officers (CORO). The Conference was hosted by The Law Society of Tasmania and was held on 5 and 6 November 2015 in Hobart.

Since its commencement we have seen CORO develop into a constructive platform for dialogue in a rapidly changing regulatory arena. The Commissioner chaired a session on the Legal Profession Uniform Law in Operation – an Update, while the Assistant Commissioner (Complaints) co-presented a session discussing supervision and what it means, including observations on the difficulty of giving guidance on requirements for proper supervision. The Assistant Commissioner (Legal) also gave an update for New South Wales on the implementation of the LPUL during the State by State Round Up.

The Commissioner supports education programs for young lawyers. This year he was invited to present the After Dinner Address at the Annual Government Solicitors Conference held on 1 September 2015, and again attended the NSW Young Lawyers Golden Gavel competition in May 2016.

On 22 March 2016, Samantha Gulliver, the Acting Assistant Commissioner (Legal) presented a session at the State Legal Conference covering the Complaints Process and Disciplinary Matters. She explained the OLSC's processes for handling complaints containing disciplinary matters and the impact the LPUL has had on our processes.

The Acting Assistant Commissioner (Legal) also presented a session to costs assessors at the Annual Costs Assessors Seminar. She discussed the recent developments and changes surrounding costs under the LPUL, and the Commissioner's new powers for making determinations about costs.

Legal Education Providers

We continued our tradition in 2015-2016 of presenting lectures to law students at the University of New South Wales, the University of Newcastle and the University of Technology Sydney, as part of their Lawyers, Ethics and Justice study courses. These lectures give students a practical view of our regulatory responsibilities and the professional obligations they will face as future lawyers in an ever changing legal practice environment. The feedback received from these students is very positive and interesting. The sessions have also prompted some students to reflect on their future ethical responsibilities and how they might apply their knowledge and act ethically in real-life situations. The students attending these courses are at varying stages of their study.

With the introduction of the LPUL on 1 July 2015, staff have been invited to participate in CPD sessions discussing the scope and implications of the new requirements of the LPUL. It is envisaged that we will continue to present a range of these sessions over the coming year to corporate lawyers, small law firms, government lawyers and law students.

On 24 March 2016, the Commissioner presented a CPD session to staff at the Royal Commission into Institutional Responses to Child Sexual Abuse. We saw this inaugural invitation as an important opportunity to engage with legal practitioners involved in such work. The session covered ethics for solicitors under the LPUL.

The Commissioner and the Acting Assistant Commissioner (Legal) presented seminars at the College of Law on Ethics and Professional Responsibility, providing practical tips and insights into costs and communication. They drew attention to the Costs Estimates Guidelines issued by the Legal Services Council and Commissioner for Uniform Legal Services Regulation. These Guidelines are issued to local regulatory authorities to assist them in interpreting and applying the LPUL.

With the College of Law's new e-learning platform, the Acting Assistant Commissioner (Legal) participated in a live webinar, delivered to a wide audience of practitioners to satisfy their CPD requirements. The topic covered tips and insights on costs and communication under LPUL. The webinar was recorded for future use by the College of Law.

Staff training

During the financial year, OLSC staff attended high quality and informative in-house training sessions on the new legislation, and the NSW Legal Profession Uniform Law Application Act.

As complaints received cover a wide range of issues, it is necessary for staff to have an indepth understanding of the new legislative requirements governing how we handle and investigate complaints. These training sessions have been very interactive and informative and have given staff confidence in understanding and interpreting the LPUL. We will continue to update staff over the coming year in relation to the LPUL.

Training seminars offered internally also included presentations from representatives of LawCover, First State Super and The Procure Group. Staff also viewed the Marie Jepson Memorial Fund Foundation DVD and a Video on the *Harman* Principle.

Nikki Strong-Harris, Mediation and Investigation Officer, attended specific training seminars for property and conveyancing updates with the College of Law, UNSW, Law Society of New South Wales and LawCover. Staff members also attended training on specific areas of law such as administrative law, practice management, public law, civil litigation, ethics, family law and costs.

Other learning and development opportunities for staff included:

- on the job training following the implementation of our new Genesys phone system
- training sessions for the new reporting codes under the LPUL, introduced to ensure all relevant data is collected
- Departmental online and face to face training sessions to keep up to date with new systems and procedures introduced across the Department of Justice.

Chapter 6

INFORMATION SYSTEMS AND SERVICES

As mentioned in the Commissioner's Report, this year saw further progress towards significant upgrade of our information technology equipment and systems.

Upgrades of Software and Hardware

During 2015-2016, we reviewed our telephone communication needs as a result of the installation of an upgraded operating system, Windows 7. The Genesys system, being more compatible with our new operating systems, was integrated into our upgraded computer systems. The transition went smoothly and there was minimal disruption. The Genesys system is fully supported by Information Technology Services within the Department of Justice.

The user acceptance testing of our customised in-house systems was completed for our Inquiry Line Register, conduct (ROAR) register, education, presentation and training register and the OLSC survey register to ensure those systems were compatible with the new operating system. The testing was successfully completed and our in house programs upgraded for compatibility.

Quality Systems Manual

Our Quality Systems Manual was updated last year by the Information Services & Systems Unit to incorporate changes following the introduction of the LPUL in July 2015. The changes were to existing policies, procedures, standard documents and forms. The manual continues to be a working document for all staff and available in soft or hard copy.

Data Sharing

The Commissioner for Uniform Legal Services Regulation convened a working group comprising representatives from NSW Bar Association, the Law Society of NSW, the OLSC and Victorian Legal Services Board and Commissioner to set up a LPUL Database, hosted by the NSW Law Society.

A round-table discussion set out the project goals and time frames. The first step was for local regulatory

authorities in each State to standardise and align their coding and methods of reporting. Once this was achieved a series of telephone conferences took place between representatives from the NSW regulatory authorities and the Victorian Legal Services Board + Commissioner to reach conformity. Despite the tight time frames, good progress was made and each local regulatory authority provided statistical data relating to Chapter 5 of the LPUL (Dispute Resolution and Professional Discipline) for the database, by the beginning of July 2016.

Standardisation of documents

During 2015-16, the Commissioner established a working party of experienced OLSC staff to standardise the OLSC's documents, including precedents for correspondence, fact sheets and other material, for use in key stages of its work – ranging from preliminary assessment, resolution, investigation and determination of complaints, to the conduct of disciplinary proceedings. The working party's aim was to gather the knowledge and experience of the OLSC's staff and produce a suite of documents that would assist in efficient and effective communication with the profession, members of the public and other stakeholders. Under the guidance of senior managers and subject to the Commissioner's approval, the standardised documents were settled for adoption by the OLSC.

IT Review

As foreshadowed in last year's Annual Report, we have begun a review of our Complaints Tracking System and the various in-house record management systems.

The Commissioner has agreed to and signed off on the Business Requirements Overall Document. We have participated in the Proof of Concept process, with two competing suppliers, and decided on our preferred supplier. The Project Brief, setting out the scope of the project and associated costs, has also been signed off and we are presently awaiting a funding decision.

Chapter 7

ANNUAL STATISTICS

Inquiry Line

In 2015-2016 the OLSC received 7,369 calls from the public on our Inquiry Line, an increase of 41 from the previous year.

P1 Legal matters raised in calls

	2015-2016	2014-2015	2013-2014
OLSC General Query*	18.6	14.9	15.0
Family/Defacto	14.9	14.9	16.8
Probate/Wills/Family Provisions	12.1	11.1	11.5
Other Civil	10.0	9.0	7.6
Conveyancing	8.9	9.9	9.9
General Law/Legal Profession Query	5.7	8.2	6.4
Criminal	5.5	4.5	6.0
Personal Injuries	5.3	5.1	6.1
Commercial/Corporations	4.3	4.7	6.7
Other	4.3	4.6	3.9
Workers Compensation	2.7	3.7	3.4
Land and Environment	2.3	4.4	2.7
Leases/Mortgages/Franchises	2.1	1.1	1.0
Victim's Compensation	1.2	1.0	1.1
Industrial Law	0.9	0.7	0.7
Immigration	0.8	0.9	0.8
Professional Negligence	0.6	0.6	0.6

* 'OLSC General Query' includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics and Publications

P2 Nature of phone enquiry

	2015-2016	2014-2015	2013-2014
OLSC Process*	13.9	18.0	17.5
Overcharging	13.6	13.0	14.0
Communication	12.5	15.5	14.4
Ethical Matters	10.5	5.4	6.3
Negligence	10.1	10.2	10.6
General Cost Complaint/Query	8.1	8.0	8.8
Delay	7.0	6.7	6.3
Instructions Not Followed	4.9	4.6	3.3
Misleading Conduct	4.7	5.2	5.1
Costs Disclosure	4.3	3.6	2.7
Conflict of Interests	2.4	2.6	2.4
Document Transfer/Liens	2.2	2.1	2.5
Referral Requests	1.6	1.4	2.1
Trust Fund Matters	1.5	1.1	1.4
Fraud (Not Trust Fund)	0.8	0.4	0.5
Document Handling	0.7	0.7	0.8
Pressure to Settle	0.6	0.7	0.8
Supervision	0.2	0.1	0.0
Advertising	0.2	0.1	0.1
Compliance Matters	0.1	0.2	0.1
Failure to Honour Undertakings	0.1	0.3	0.3

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

P3 Practitioners mentioned on inquiry line

	2015-2016	2014-2015	2013-2014
Solicitor	92.2	91.0	92.6
Other*	5.5	6.6	5.5
Barrister	2.0	2.0	1.6
Licensed Conveyancer	0.3	0.4	0.3

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

P4 Source of calls to the OLSC inquiry line

	2015-2016	2014-2015	2013-2014
Client	66.6	67.7	69.0
Friend/Relative	8.3	9.2	8.7
Opposing Client	6.7	6.4	6.5
Solicitor on Own Behalf	3.5	2.7	2.7
Other*	3.4	3.3	2.5
Unrepresented Client	3.2	2.9	3.7
Beneficiary/Executor/Administrator	2.9	2.6	2.5
Previous Client	2.2	1.3	1.4
Solicitor on Another's Behalf	1.7	2.2	1.2
Non-Legal Service Provider	0.8	1.1	1.1
Barrister on Own Behalf	0.3	0.2	0.2
Student/Educator	0.2	0.1	0.2
Government Agency	0.1	0.2	0.3
Barrister on Another's Behalf	0.1	0.2	0.1

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

P5 Outcomes of calls to the inquiry line

	2015-2016	2014-2015	2013-2014
Caller indicated intention to send in complaint	25.6	30.5	26.3
Provided information about the OLSC*	19.1	18.7	14.2
Listened to caller's concerns	14.3	11.5	10.2
Recommended direct approach to lawyer about concerns	13.8	9.7	11.0
Provided information about the legal system	8.2	7.3	6.6
Provided complaint/cost mediation form	7.0	7.4	13.8
Provided referral for legal advice or other assistance	6.3	6.9	10.1
Explained that concerns are outside jurisdiction of OLSC	2.9	4.0	3.8
Provided information about the OLSC and LPA to a legal practitioner	1.2	2.0	1.5
Provided referral to the NSW Supreme Court Costs Assessment Scheme	0.9	1.5	1.6
Other	0.6	0.4	0.3
Scheduled interview for caller	0.1	0.1	0.1
Conducted telephone mediation	0.0	0.2	0.5

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

Written Complaints

Please note the *Legal Profession Uniform Law (NSW)* applies to complaints made on or after 1 July 2015, and has replaced the *Legal Profession Act 2004*. The Uniform Law has brought substantial changes to the regime for dealing with complaints.

In 2015-2016 the OLSC received a total of 2,709 written complaints, an increase of 204 from the previous year. Of the total written complaints received, 1,526 were assessed as consumer matters and 1,055 as disciplinary matters. On receipt 128 complaints could not be classified as a consumer matter or disciplinary matter. Of those complaints assessed as within jurisdiction, 80% of those written complaints received were retained and handled by the OLSC. The remaining 20% were referred to the professional associations for handling.

The OLSC registered the completion of 2,498 written complaints, a decrease of 113 from the previous year. Of the total written complaints completed, 826 complaints were resolved following informal resolution, 118 complaints were determined by OLSC/Council and 1,407 complaints were closed. 147 complaints were closed on the basis OLSC had no power to deal with them and/ or were sent directly to Law Society, MARA, OFT or regulators outside NSW. Of those complaints assessed as within jurisdiction, 82.6% of written complaints were completed by the OLSC. The professional associations completed the remaining 17.4%.

W1 Legal matters giving rise to complaints received in 2015-2016

	Agency Handling Complaint				
	OLSC	Council	2015-2016*	2014-2015	2013-2014
Family/Defacto	15.6	2.2	17.8	17.0	16.0
Other Civil	10.0	4.0	14.0	12.7	15.2
Probate/Wills/Family Provisions	9.9	2.1	12.0	12.7	13.2
Personal Injuries	10.9	0.9	11.8	8.8	7.8
Conveyancing	8.4	1.7	10.1	10.1	9.1
Commercial/Corporations	5.8	3.4	9.2	10.9	10.6
Other	5.2	3.1	8.3	9.2	7.9
Criminal	5.6	1.0	6.6	8.0	7.4
Industrial Law	2.4	0.4	2.8	2.6	2.3
Workers Compensation	1.8	0.2	2.0	1.2	2.4
Leases/Mortgages/Franchises	1.3	0.2	1.4	1.4	2.5
Strata Bodies/Corporates	0.9	0.6	1.4	1.8	1.4
Professional Negligence	1.1	0.1	1.2	1.3	1.7
Immigration	0.7	-	0.7	1.5	0.6
Land and Environment	0.4	0.1	0.5	0.7	1.1
Victim's Compensation	0.1	-	0.2	0.1	0.8
TOTAL %	80.1	20.0			

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

W2 Nature of complaints received in 2015-2016

	Agency Handling Complaint				
	OLSC	Council	2015-2016*	2014-2015	2013-2014
Negligence	13.0	2.3	15.3	17.7	15.8
Communication	12.8	2.2	15.0	15.5	15.7
Overcharging	12.7	1.2	13.9	11.5	12.6
Misleading Conduct	6.6	3.7	10.3	8.1	8.5
Ethical Matters	6.2	2.9	9.0	10.1	9.5
Instructions Not Followed	4.5	1.2	5.7	5.9	4.5
Cost Disclosure	4.7	0.5	5.2	4.4	4.6
Trust Fund	2.6	2.2	4.8	4.3	5.7
Delay	4.2	0.6	4.7	5.2	5.2
General Cost Complaint/Query	3.2	1.0	4.3	5.1	5.0
Document Transfer/Liens	2.6	0.2	2.8	2.3	2.7
Conflict Of Interest	1.6	1.0	2.6	2.6	2.5
Compliance Matters	0.6	1.0	1.5	2.4	2.7
Capacity	0.8	0.4	1.2	0.6	0.7
Fraud (Not Trust Fund)	0.7	0.3	1.0	1.1	0.7
Pressure To Settle	0.7	0.1	0.8	1.0	0.8
Document Handling	0.6	0.1	0.7	0.9	1.0
Undertakings	0.2	0.4	0.6	0.4	0.7
Advertising	0.3	0.1	0.3	0.5	0.6
Supervision	0.1	0.1	0.1	0.2	0.4
TOTAL %	78.7	21.5			

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

W3 Type and source of complaints received in 2015-2016

	Number of Complaints						
	Solicitor*	Barrister	Other**	TOTAL	2015-2016	2014-2015	2013-2014
Bar Association	0	6	0	6	0.2	0.4	0.4
Barrister on another's behalf	2	0	0	2	0.0	0.0	0.0
Barrister on own behalf	28	3	0	31	1.1	0.9	0.9
Beneficiary/Executor/Administrator	133	0	0	133	5.0	6.3	6.3
Client	706	38	18	762	28.1	23.1	23.1
Commissioner	36	1	1	38	1.4	1.5	1.5
Client's friend/relative	110	1	1	112	4.1	3.9	3.9
Law Society	46	0	2	48	1.8	3.4	3.4
Non-legal service provider	33	0	1	34	1.3	2.0	2.0
Opposing client	520	14	14	548	20.2	16.4	16.4
Previous client	551	28	11	590	21.7	25.1	25.1
Solicitor on another's behalf	108	4	4	116	4.3	6.1	6.1
Solicitor on own behalf	102	7	8	117	4.3	4.5	4.5
Unrepresented client	17	1	2	20	0.7	1.7	1.7
Cost Assessor	2	2	0	4	0.1	0.2	0.2
Other ***	133	12	3	148	5.5	4.7	4.7
TOTAL	2,527	117	65	2,709			

* Includes former solicitors, legal practitioners and legal practices.

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

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

W4 Age of complaints remaining open or suspended on 30 June 2016 and being handled by the OLSC

Year opened	Open at 30 June 2016	Open at 30 June 2015	Open at 30 June 2014
2015-2016	557		
2014-2015	53	446	
2013-2014	28	72	443
2012-2013	19	23	72
2011-2012	11	17	21
2010-2011	5	7	12
2009-2010	3	3	4
1994-2009	0	0	0
TOTAL	676	568	552

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

W5 Average time taken to finalise a complaint at the OLSC of complaints handled in 2015-2016

	Days*
Average time to complete complaints received and completed/resolved in 2015-2016	46.7
Average time to complete complaints received in any year but completed/resolved in 2015-2016	88.6
Average time taken to dismiss complaints received in 2015-2016	54.0
Average time to dismiss complaints received in any year but dismissed in 2015-2016	102.4

* Averages rounded to 1 decimal point

W6 All Complaints finalised in 2015-2016

All OLSC Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	784	15	7	806
Subtotal resolved at the OLSC	784	15	7	806

ALL OLSC Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Compensation order	4	0	0	4
Disciplinary action: Reprimand	7	0	0	7
Determination: Caution & Apology	18	2	0	20
NCAT disciplinary proceedings	8	0	0	8
Subtotal determined by OLSC	37	2	0	39
Withdrawal of a complainant at OLSC	50	2	0	52
Complaints dismissed by OLSC	222	9	5	236
Misconceived/Lacking in substance	382	23	6	411
Time requirement not waived	30	3	0	33
Complainant No/Inadequate response to request info	50	3	1	54
Duplicate complaint	4	0	0	4
Closed Civil proceedings on foot	5	0	0	5
Closed No further investigation except CM	173	8	2	183
Closed in Public interest	36	0	0	36
Not Resolved after informal resolution	75	0	1	76
Investigation suspended pending court proceedings	2	0	0	2
Appeal closed by OLSC	2	0	0	2
Costs Recovery at OLSC	2	0	0	2
Referred for Compliance Audit	1	0	0	1
Subtotal closed by OLSC	1034	48	15	1097
Total OLSC Complaints Completed	1855	65	22	1942

All Non Jurisdictional Complaints

	Solicitor*	Barrister	Other**	TOTAL
Closed No power to investigate	66	3	7	76
Refer to NSW Police or other	13	0	2	15
Refer to Council	5	0	5	10
Refer to MARA & OFT***	32	0	7	39
Refer to other States	2	0	5	7
Total Non Jurisdictional Complaints	118	3	26	147

All Council Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	19	1	0	20
Subtotal resolved at Council	19	1	0	20

ALL Council Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Practitioner disciplined by Council#	17	6	0	23
NCAT disciplinary proceedings	51	4	1	56
Subtotal determined by Council	68	10	1	79
Withdrawal of a complainant at Council	53	2	2	57
Complaints dismissed by Council	41	1	0	42
Misconceived/Lacking in substance	22	7	0	29
Time requirement not waived	6	0	0	6
Complainant No/Inadequate response to request info	3	0	0	3
Duplicate complaint	2	0	0	2
Closed No further investigation except CM	112	15	3	130
Closed in Public interest	26	1	1	28
Not Resolved after informal resolution	5	0	0	5
No Further action at Council	8	0	0	8
Subtotal closed by Council	278	26	6	310
Total Council Complaints Completed	365	37	7	409
Total finalised by OLSC	1855	65	22	1942
Total Non Jurisdictional Complaints	118	3	26	147
Total finalised by Council	365	37	7	409
TOTAL	2338	105	55	2498

* Includes former solicitors, legal practitioners and legal practices.

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

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

Disciplinary or other action

W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2015-2016

Percentage of files closed within following periods*

	2015-2016	2014-2015	2013-2014
0-30 days	37.7	39.3	40.0
1-3 months	32.2	32.9	30.4
3-6 months	17.6	15.6	15.4
6-9 months	5.5	4.6	6.3
9-12 months	2.4	2.5	2.7
Over 12 months	4.6	5.1	5.2

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

R2 Reviews in progress and finalised in 2015-2016 – received all years

	Solicitor	Barrister	Other*	TOTAL	Percentage
Reviews in progress					
In progress at OLSC	8	2	0	10	14.9
Consulting with Council prior to finalising	1	0	0	1	1.5
Internal review application under LPUL	2	0	0	2	3.0
Total remaining open	11	2	0	13	19.4
Reviews completed					
Dismissal confirmed	39	10	1	50	74.6
Out of time, no jurisdiction	1	0	0	1	1.5
Reinvestigated by OLSC	1	0	0	1	1.5
Discretion declined for review under LPUL	2	0	0	2	3.0
Total completed	43	10	1	54	80.6
TOTAL handled	54	12	1	67	100.0

Please note the total reviews including 4 internal reviews under LPUL.

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

NSW Civil and Administrative Tribunal

For matters filed and disposed of by NCAT in 2015-2016 refer to NCAT's annual report.

Chapter 8

FINANCIAL PERFORMANCE

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

The OLSC successfully managed its overall expenditure in 2015-2016, applying appropriate monitoring systems and processes during the year to observe monthly cash flow and budget movements. Monthly financial reporting and analysis enabled the early identification and avoidance of any potentially unfavourable budget trends within our control.

Owing to our prudent monitoring of expenditure, we were able to ensure delivery of a good budget outcome at close of the financial year.

Human Resources

As at 30 June 2016, the OLSC's approved establishment comprised 30 permanent and temporary full-time roles for administrative and professional staff and one full-time equivalent position maintained by a team of rostered casuals on the OLSC Inquiry line.

There were a number of role vacancies and staff changes during the financial year. Most position vacancies arising out of staff resignation or absences due to recreation or long service leave were filled by permanent staff through higher duties arrangements or by inquiry line casuals providing temporary office support in varying clerk grade positions.

Employee related payments were higher than expected due to the disbursement of an unbudgeted redundancy payment early in the financial year, however this did not cause the OLSC to exceed its budgetary allocation.

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

FINANCIAL STATEMENT 2015-2016

	Budget	Spent	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments	(3,946,577)	(3,842,396)	(104,181)	
Other Revenue	-	882	(882)	
TOTAL REVENUE	(3,946,577)	(3,841,514)	(105,063)	
Salaries & Wages	2,427,788	2,261,837	165,951	1
Allowances	1,414	7,908	(6,494)	2
Overtime	-	1,236	1,236	
Leave Entitlements (<i>Recreation Leave, Annual Leave Loading & LSL</i>)	284,034	303,798	(19,764)	3
Workers Compensation	16,616	18,036	(1,420)	
Payroll Tax	158,217	163,990	(5,773)	
Fringe Benefits Tax	1,074	(12)	1,086	
Superannuation	198,458	250,358	(51,900)	4
Redundancy	-	35,000	(35,000)	5
EMPLOYEE RELATED PAYMENTS Excl Crown Liabilities	3,087,601	3,042,151	45,450	
Advertising & Publicity	4,604	-	4,604	
Bank Charges	60	-	60	
Contractors	10,000	-	10,000	6
Electricity & Gas	16,475	12,746	3,729	
Fees	169,424	83,003	86,421	7
Freight & Cartage	18	67	(49)	
Insurance	1,301	2,402	(1,101)	
Interpreters & Translations	6,574	3,211	3,363	
Motor Vehicles	2,159	-	2,159	
Postal Expenses	22,670	20,203	2,467	
Printing	23,435	10,547	12,888	
Publications	6,226	9,069	(2,843)	
Rates & Outgoings	54,180	39,106	15,074	
Rent	328,682	313,209	15,473	8
Staff Expenses	20,866	14,280	6,586	9
Stores & Stationery	20,407	16,263	4,144	
Telephone	13,153	10,256	2,897	
Travel	15,350	10,535	4,815	
Transcription Services	-	147	(147)	

FINANCIAL STATEMENT 2014-2015 *continued*

	Budget	Spent	Variance	Notes
	\$	\$	\$	
OTHER OPERATING EXPENSES	715,584	545,044	170,540	
Maintenance Contracts	143,089	126,436	16,653	10
Repairs and Maintenance	306	-	306	
MAINTENANCE	143,395	126,436	16,959	
TOTAL EXPENSES Excl Crown Liabilities & Depreciation	3,946,580	3,713,631	232,949	
Add Non-Cash Items:				
Crown Liabilities (<i>LSL Liability Assumed by Crown</i>)	71,966	-	71,966	11
Depreciation & Amortisation	369,669	16,978	352,691	12
Net Cost of Services Incl Crown Liabilities & Depreciation	441,635	16,978	424,657	

NOTES SUPPORTING THE 2015-2016 FINANCIAL STATEMENT

Employee Related Payments

- Salaries & Wages:** The OLSC's budget for *Salaries & Wages* contains provision for annual salary payments to employees assigned to ongoing, temporary and casual roles in the OLSC establishment. Staff resignations and varying leave arrangements during the year resulted in some position vacancies. The recruitment and selection processes involved in filling vacant positions saw some positions remain vacant for lengthy periods of time. Positions vacated temporarily due to long service or maternity leave were filled either by permanent OLSC staff acting on higher duties arrangements or by OLSC casual staff engaged specifically to fill the vacancies. The *Salaries & Wages* budget variance reflects the impact of the staff changes, with any salary savings derived from the creation of temporary position vacancies during the year offset by our need to engage casual staff to fill those vacancies.
- Allowances:** The OLSC's *Allowances* budget provides for allowance payments to OLSC staff performing the First Aid Officer role and payments of higher duties allowance to staff temporarily assigned to fill vacant higher grade roles. The Allowances budget variance highlights these costs. It is notable that the variance is significantly reduced from that of the 2014-2015 financial year due to the cessation of higher duties allowance payments to OLSC executive staff temporarily assigned to the Legal Services Commissioner role pending the permanent filling of the position late in the last financial year.
- Leave Entitlements:** The OLSC's *Leave Entitlements* budget reserves funds for recreation leave, annual leave loading and long service leave entitlements of OLSC employees. The 2015-16 *Leave Entitlements* budget variation reflects elevated periods of long service leave taken by staff, and year-end adjustments the Department prepares as part of year-end procedures required by Treasury.
- Superannuation:** The OLSC's *Superannuation* budget provides for superannuation entitlements of OLSC employees. The *Superannuation* budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.

5. Redundancy: While there was no provision in the 2015-2016 budget, the OLSC made a single Court ordered payment of \$35k to settle the redundancy of a former staff member. The Employee Related Payments budget variance is reflective of the full amount of this expense.

Other Operating Expenses

6. Contractors: The OLSC's *Contractors* budget includes provision for the engagement of professional services to support OLSC business operations. The OLSC did not engage contractors in 2015-2016 and the *Contractors* budget variance reflects the resultant cost saving for this expenditure item.

7. Fees: The OLSC's *Fees* budget maintains funds for various types of fees expenditure including legal fees incurred in bringing matters before the NSW Civil and Administrative Tribunal and the Courts. In 2015-2016 the OLSC initiated several major investigations into the conduct of legal practitioners and firms with some matters resulting in Tribunal proceedings. The *Fees* budget variance includes credit adjustments that were made to the OLSC's legal fees account to offset income.

During the year the OLSC recovered the Commissioner's costs from the following practitioners:

Denis Anderson; Chris Ge; Tonette Kelly; Deborah Jean Searle; Mikelis Strikis; Ya Nan Wen; Charles Tsalidis and Lupco Angelovski totalling \$44,442.20.

8. Rent: The OLSC's *Rent* budget makes provision for monthly rent payments the Department prepares for payment to the landlord of OLSC's leased accommodation in the CBD. The *Rent* budget variance reflects adjustments prepared by the Department in 2015-2016.

9. Expenses: The OLSC's *Staff Expenses* budget reserves funds for costs associated with staff attendance at seminars and conferences as part of training and development, as well as fees reimbursement to eligible staff renewing their solicitor's practising certificate for job requirements. In 2015-2016 the OLSC conducted mainly in-house staff training at minimal cost.

10. Maintenance Contracts: The OLSC's budget for *Maintenance Contracts* includes provision for maintenance support costs associated with the OLSC's Complaints Tracking System (\$30,600 pa payable annually to the developer QA Plus Ltd) and the OLSC's Legal Practice Management & Audit System (\$7,904.39 payable monthly to the Department's Information Services Branch (ISB) through service level agreement). The balance disbursed represents the fixed term licence fee for subscription and support from IBM SPSS.

Non-Cash Items

11. Crown Liabilities (LSL Liability Assumed by Crown): Crown Liabilities is a non-cash item and as such does not form part of the OLSC's recoupment figure from the Public Purpose Fund. *The Crown Liability for LSL* budget reflects the Crown's assumption of the Department's long service leave liability for Departmental officers. The Department is obliged to make this provision as part of Treasury requirements.

12. Depreciation & Amortisation: *Depreciation* expense is a non-cash item and does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The *Depreciation* budget variance resulted from an adjustment prepared by the Department to take into account the amortisation expense of OLSC's intangible software assets. The Department is obliged to make this adjustment as part of Treasury requirements.

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