

THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

# 2012-13 ANNUAL REPORT



# VISION

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

# MISSION

To improve consumer satisfaction with legal services through:

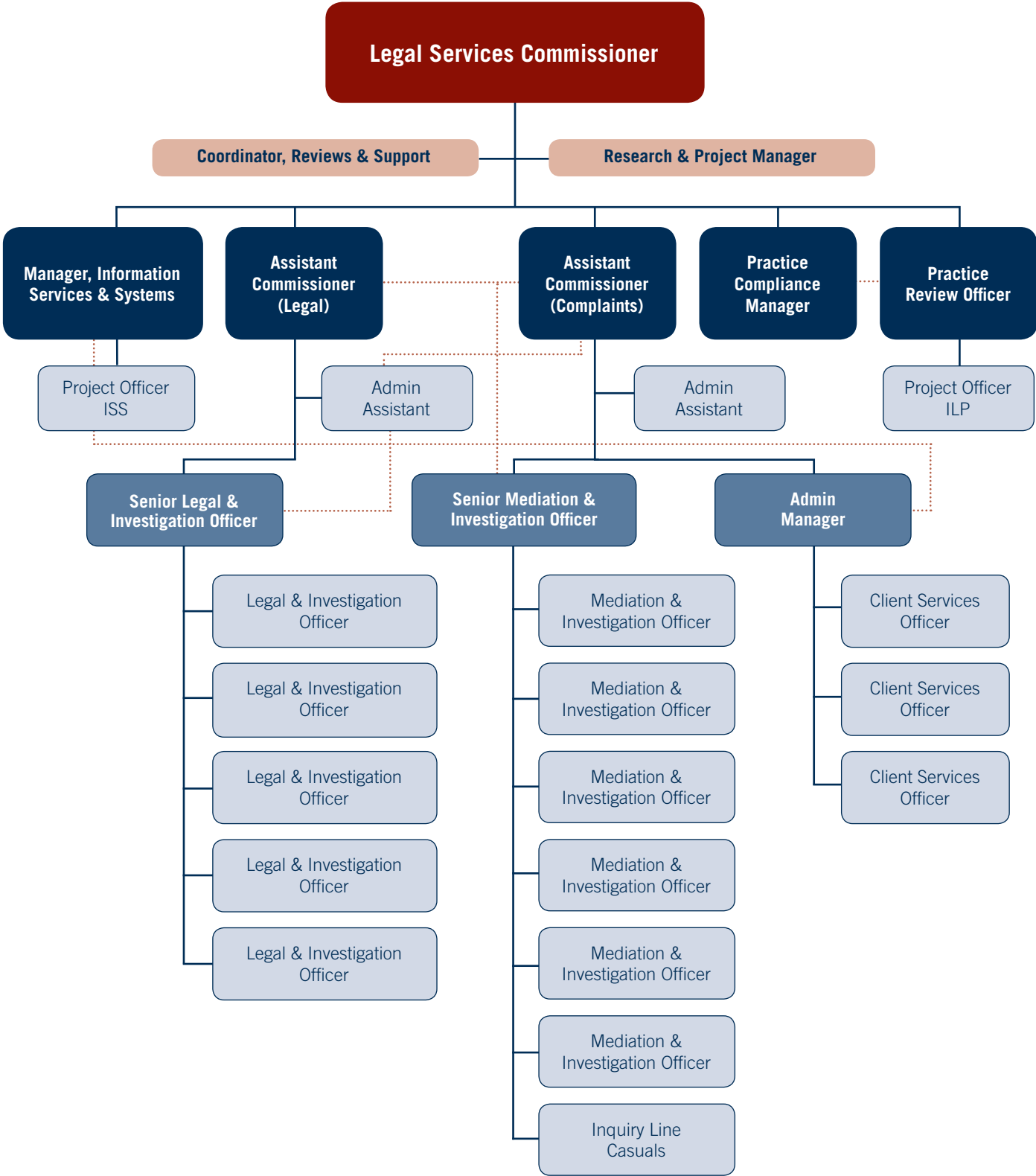
- developing and maintaining effective complaint-handling processes;
- promoting compliance with high professional and ethical standards;
- encouraging an improved consumer focus within the profession to reduce causes for complaint; and
- promoting realistic community expectations of the legal system.

# VALUES

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

# OFFICE OF THE LEGAL SERVICES COMMISSIONER

## ORGANISATIONAL CHART



# CONTENTS

<b>Commissioner's Report</b>		<b>5</b>
<b>Chapter 1</b>	Investigations and Discipline	<b>9</b>
<b>Chapter 2</b>	Complaints Handling	<b>13</b>
<b>Chapter 3</b>	Incorporated Legal Practices	<b>18</b>
<b>Chapter 4</b>	Education and Communication	<b>21</b>
<b>Chapter 5</b>	Research and Projects	<b>27</b>
<b>Chapter 6</b>	Information Systems and Services Report	<b>31</b>
<b>Chapter 7</b>	Financial Performance	<b>35</b>
<b>Chapter 8</b>	Financial Statement	<b>36</b>
	Notes Supporting the Financial Statement	38
<b>Chapter 9</b>	Statistics	<b>40</b>

# COMMISSIONER'S REPORT

This year marked further steps in the lengthy and sometimes difficult progress towards legislation that will bind the legal profession in NSW to a regime that will eventually, we hope, encompass the profession throughout Australia. In 2014 we look forward to the Legal Profession Uniform Law that is due to come into effect in Victoria. That legislation will be mirrored in NSW and will cover a large majority of lawyers in Australia. The practical and comprehensive legislation will improve clarity for practitioners and increase options for consumers.

Broadly, in the last year we were faced with the continued expansion of international firms into the NSW market, issues related to new technology and litigation funding, increasing complaints about wills and estates and continuing disputes about difficult family law matters.

In 2012-2013 the OLSC received a total of 2,685 written complaints, a decrease of 73 on the previous year. Of the total written complaints received, 1,765 were assessed

as consumer disputes and 866 as investigations. Fifty-four complaints were assessed as non-jurisdictional and were sent directly to the Law Society, MARA, OFT or regulators outside NSW. Of those complaints assessed as within jurisdiction, 79% were retained and handled by the OLSC. The remaining 21% were referred to the professional associations.

The OLSC registered the completion of 2,721 written complaints, a decrease of 84 on the previous year. Of the total written complaints completed, 1,849 were closed as consumer disputes and 817 as investigations. Of those complaints assessed as within jurisdiction, 78% of written complaints were completed by the OLSC. The professional associations completed the remaining 22%.

The OLSC received 8,178 calls from the public on our Inquiry Line, an increase of 258 on the previous year.

As always, staff did a remarkable job. They dealt with complaints thoroughly and swiftly. They dealt with complainants and practitioners with empathy.

## STEVE MARK, LEGAL SERVICES COMMISSIONER, 1994-2013

Steve Mark's 19 year term as Legal Services Commissioner ended shortly after the end of the reporting year. To mark his departure he provided an overview of his time as Commissioner that is contained in the following account. We thank Steve for his significant contribution and wish him well.

On 1 July 1994, the Office of the Legal Services Commissioner (OLSC) opened its doors to the public for the first time. That morning, with a staff of one, Steve Mark, the first Commissioner, met the OLSC's first complainant, waiting eagerly to speak to someone that would listen. He has never forgotten that first encounter as he stood in the stark new 'office' with no furniture, no telephone, no computer, no paper or pens. Nineteen years later, as he looks back at the OLSC today, he is proud to see an Office that is seen as a world leader in the regulation of the legal profession with a dedicated

staff committed to the purposes, values and mission of the OLSC.

The past 19 years have been an extraordinary journey for the OLSC and for the former Commissioner. The OLSC was the first. There was no legal regulatory office in Australia or the rest of the world to emulate. The model of co-regulation adopted by NSW, an independent regulator working with the professional associations in providing both the disciplinary regime and the setting of ethical practice standards, was unique. Consequently he

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framed the purpose, vision and mission of the OLSC and how a co-regulatory relationship would work.

As the Commissioner said in many previous Annual Reports and in speeches, the purpose of the OLSC was to reduce complaints against lawyers within a context of consumer protection and promotion of the rule of law, while increasing the professionalism of the legal profession. That purpose has remained unchanged since 1994.

The statement of purpose the Commissioner developed was, by and large, predicated on the findings and recommendations of the NSW Law Reform Commission's Report, "Scrutiny of the Legal Profession – Complaints Against Lawyers", published in 1993. That Report concluded that the system for dealing with complaints did not serve the needs of complainants, the practising profession or the general public. The Law Reform Commission found that the way in which complaints were then handled took too long, investigations were inadequate and complainants felt isolated from the process. This was because of the manner in which complaints were handled. The professional associations set ethical standards and lawyers who did not meet those ethical standards were disciplined by those same associations. Complainants felt their concerns were not fully understood or addressed.

Noting the Law Reform Commission's findings, the Commissioner decided to move away from only disciplining the "bad apples" to a regulatory model that focused on education, mediation of consumer disputes and discipline where appropriate. The Commissioner's approach was clearly reflected in the vision and mission statement drafted all those years ago – to "lead in the development of an ethical legal services market which is fairer, more accessible and responsive", and reduce complaints by:

- Developing and maintaining appropriate complaints handling processes;
- Promoting compliance with high ethical standards;
- Encouraging an improved consumer focus in the profession;
- Developing realistic expectations within the community of the legal system.

This approach recognised that there are multiple aims to an effective regulatory system. These aims include a consumer dimension, with the consequent need to

redress the complaints of dissatisfied users of legal services, a practitioner dimension, ensuring the diligence and competence of individual practitioners and a broader dimension, maintaining high standards of ethics and practise for the profession generally. The philosophy behind this approach was to ensure the OLSC made a lasting and significant contribution to raising standards in the legal services industry and ultimately improving the satisfaction with the services delivered by legal practitioners to the community. The processes, programs and function of the OLSC were built on the purpose, vision and mission.

The OLSC developed a comprehensive education campaign to publicise the purpose, role and function of the OLSC with consumers and practitioners including a series of "Fact Sheets" for consumers of legal services on a range of different topics. The Fact Sheets, were to provide information and address the most commonly asked questions about issues relating to costs, costs disclosure, negligence, liens, conflicts of interests and many other matters. The Fact Sheets have been revised, expanded and are still used today. The educational program was further augmented by educational videos and the publication of many discussion papers on a wide range of topics relating to regulation, ethics and legal practice. Over the years there was also participation in many research projects, using the results to guide policies and processes in regulation.

In addition to developing a strong educational program a mediation framework was also established to deal with consumer disputes. At the time the OLSC was established, the legislation gave it the power to mediate consumer disputes between legal practitioners and complainants. The provisions allowed the OLSC to address situations where allegations could not lead to a disciplinary outcome.

The mediation model instituted has been a great success. Staff of the office have formally and informally mediated many thousands of consumer disputes. They have been able to do this because the mediation process is flexible and accessible. It often starts with a call by a complainant to our Inquiry Line. An OLSC Inquiry Line Officer assesses whether a complainant should be sent a complaint form and whether the complaint is a consumer dispute that can be resolved either informally or formally or whether these concerns can be resolved by supplying detailed information about other options.

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The success of the mediation process is premised on the fact that the process empowers complainants to tell their stories. Many complainants tell the Office that they are intimidated by their lawyer's special knowledge and are unable to question bills or the conduct of their lawyer. The first question our Inquiry Line Officer will ask the complainant is whether s/he has raised their concern with their lawyer. If not, the Inquiry Line Officer can assist the complainant in raising it with the lawyer on their own or with assistance. The purpose of the process is to initiate a conversation about the issue(s) of concern between the complainant and the lawyer before a complaint is formally made.

The process encourages each party to learn from the other about their concerns. It is an effective educational tool. The practical impact of mediation is a better informed client and a lawyer who not only understands the client's needs, but may have retained a client.

The Commissioner's stated purpose in setting up the Inquiry Line was to ultimately reduce the number of written complaints to the OLSC by dealing promptly and thoroughly with complaints, providing support and advice for clients about dealing with their own complaints and prompting practitioners to acknowledge and deal with mistakes and poor service. The success of this approach is reflected in the statistics. Since commencing in 1994 complaints against legal practitioners have remained roughly static at less than 3,000 complaints per year against a rapidly growing legal profession. In the first year of operation the OLSC received 2,801 written complaints and 6,700 inquiry line calls. This year the OLSC received 2,685 written complaints and 8,175 inquiry calls. During that 19-year period the legal profession has grown from about 12,000 legal practitioners to about 27,000 legal practitioners.

These statistics can also be attributed to the way Steve Mark decided to regulate the legal profession in NSW. Unlike most regulators that regulate on a reactive basis, he decided to adopt a proactive regulatory model that started conversations with the profession and consumers of the legal profession to ensure that they were aware of, and understood the paradigm within which lawyers practise. He is rightly proud to say the office has been participating in those conversations for the past 19 years.

The Commissioner has said the OLSC's role as a regulator should be to work with the profession in entrenching an ethical culture and promoting professionalism in legal practice, while reducing complaints. Early on, the Commissioner used the term 'education towards compliance' and this framework is today the dominant paradigm of the OLSC and sits well within the philosophical approach of reducing complaints against lawyers and regulating for professionalism.

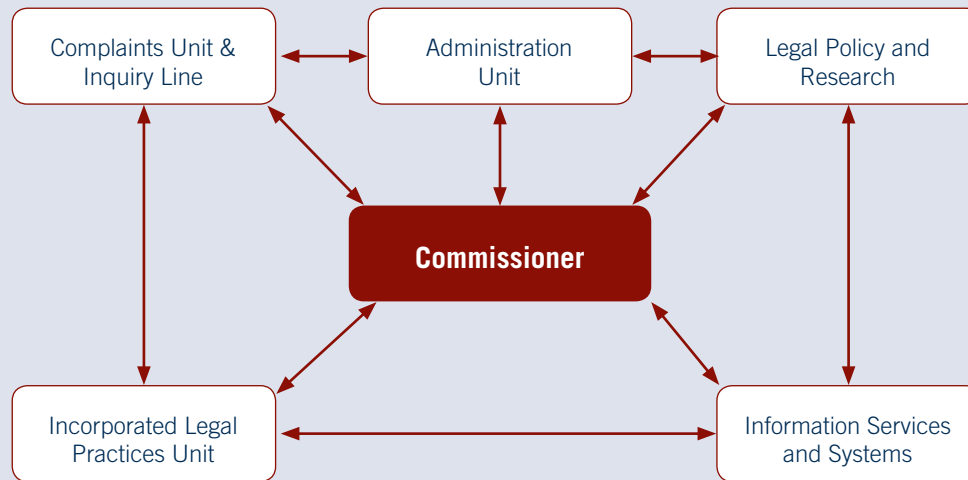
The OLSC's 'conversations' are not just limited to legal practitioners or complainants however. The organisation also engages with a range of organisational stakeholders, including the professional associations, legal profession indemnity insurers and other legal regulators in Australia and overseas on a regular basis about a wide range of issues affecting legal practice. These conversations have allowed the office to better understand the dynamics of the domestic and global legal services marketplace and to keep abreast of practice developments and behaviour.

The regulatory model developed all those years ago has been incredibly robust. Despite significant changes to the legal services market over the last two decades, evidenced by the commoditisation of law, global legal practice, the enactment of new legislation and the rise of new technology, the regulatory model has remained largely unchanged, as this Annual Report demonstrates.

With regard to the many staff the Commissioner worked with he said:

I am humbled by the dedication of OLSC staff, past and present. Over the years I have seen staff come, go and return to the Office to work with the same enthusiasm they presented when they first walked through the Office doors. The dedication and enthusiasm of OLSC staff is astounding. I have been incredibly lucky to work with so many interesting, intelligent and committed staff over the past 19 years. Thank you to each and every one of them. You will not be forgotten.

## WORK AND INFORMATION FLOW WITHIN OLSC



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

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

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

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

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

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

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



## CHAPTER 1

# INVESTIGATIONS AND DISCIPLINE

## CONDUCT ISSUES

### Investigations

During this reporting year we consolidated our investigative function and tackled a range of probity issues affecting the legal profession.

The OLSC in its complaints handling role investigates matters where allegations are raised about conduct of legal practitioners that may amount to unsatisfactory professional conduct or professional misconduct. The Legal and Investigation team conducts the investigations on behalf of the Office and, where appropriate, has carriage of matters before the Legal Services Division of the Administrative Decisions Tribunal (ADT) when prosecutions are commenced and the Supreme Court or the Court of Appeal when appeals are brought against the outcome of those prosecutions.

The process of OLSC investigations includes gathering evidence from the complainant, from the practitioner and from any third party who may have relevant information. The Legal and Investigation team worked consistently hard during the reporting year to achieve results in furtherance of the mission and long-term objectives of the office.

In this reporting year, the Legal and Investigation team concluded 409 complaints in which allegations of unsatisfactory professional conduct or professional misconduct were raised.

Unsatisfactory professional conduct is defined under the *Legal Profession Act 2004* (LPA) as “conduct (whether consisting of an act or omission) occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner”.

Professional misconduct is defined under the LPA as either “unsatisfactory professional conduct which involves a substantial or consistent failure to reach or maintain a reasonable standard or competence and diligence or conduct happening in connection with the practice of law or otherwise that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice”.

In this reporting year 66 complaints resulted in a disciplinary outcome. The details of those complaints are addressed in the section entitled “disciplinary outcomes” in this chapter.

The OLSC dismissed 198 on the basis that an ADT finding of unsatisfactory professional conduct or professional misconduct was unlikely. This is the test established by the LPA, the Act that establishes the Charter of the OLSC. A further 24 complaints were dismissed summarily on the basis that the legal practitioner was already struck from the NSW Roll of Lawyers, had died or the conduct had been the subject of a previous complaint that had been dealt with.

The OLSC dismissed a further 42 complaints on the basis that they were lodged out of time and the Commissioner’s discretion was not exercised in the complainants’ favour. The LPA requires that complaints be lodged within 3 years of the conduct that is alleged to have occurred. The Commissioner, by virtue of the LPA, has discretion to accept complaints beyond that period of time in circumstances where it is just and fair to do so given the delay and the reasons for the delay or where the allegation is one of professional misconduct that it is in the public interest to deal with.

A further 14 complaints were withdrawn by the complainant prior to the conclusion of the investigation.

See Table W6 for full details.

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## DISCIPLINARY OUTCOMES

### (a) Reprimands

During this reporting year the Commissioner issued 8 reprimands. Reprimands were issued for:

- Misleading conduct;
- Breaching duty to the Court;
- Failing to disclose costs;
- Acting with a conflict of interests;
- Breaching an undertaking provided to the Court;
- Swearing a false statutory declaration;
- Employing a prohibited person; and
- Gross failure of duty to clients.

In one matter in which a reprimand was issued compensation was also ordered in the sum of \$2,500 for costs incurred by the complainant in making an application to the Court that the practitioner cease to act because of a conflict of interest. A reprimand was also issued on a file we re-investigated following a review of a Law Society decision to dismiss the complaint.

### (b) Cautions

Summary conclusion is available to the Commissioner by the issue of a caution where appropriate. During this reporting year 23 cautions were issued. Conduct which attracted the issue of a caution included:

- Breaching Bar Rules 35, 36 and 37;
- False declaration as to a caveatable interest;
- Not following instructions;
- Contacting another solicitors client;
- Delay;
- Taking instructions when the client did not have capacity;
- Negligence;
- Breaching confidentiality;
- Improperly exercising a lien;
- Failing to pay the costs of assessment;
- Failing to cooperate with an investigator;
- Rudeness in Court;
- Charging contingency fees;
- Breaching Solicitors Rule 34;
- Breach of section 358 of the LPA;
- Negligence;
- Failing to follow instructions; and
- Making misleading representations.

Of the cautions issued two were the result of re-investigations following reviews of decisions of Councils, one of the Bar Association and one of the Law Society. In each instance Council had dismissed the complaint but, following re-investigation, it was determined that the conduct in the complaint would amount to unsatisfactory professional conduct and a caution was issued in substitution for the dismissal.

Compensation was ordered in 5 of these matters. In two of those matters the compensation order was predicated on an order that a lien be discharged and fees be waived. In another matter involving gross negligence, the legal practitioner was ordered to pay the sum of \$5389.53 by way of compensation to the complainant for the additional costs the complainant incurred as a result of the negligence of the legal practitioner.

In four matters legal practitioners issued with a reprimand or compensation order made an application to the ADT for review of the Commissioner's determination. Three of those matters were withdrawn. The ADT decision in the remaining review is reserved. Notice of the decision will be published in the next annual report.

The Commissioner initiated 34 complaints against legal practitioners for breaches of the advertising regulations prohibiting the advertising of personal injury legal services. The complaints were however dismissed in the public interest. The Commissioner has taken an educative approach to advertising related complaints in circumstances where the complaint is the first occasion that such a breach has been brought to the attention of this office. If a further breach is then found, disciplinary consequences will follow.

## Administrative Decisions Tribunal (ADT)

During this reporting year 6 decisions were handed down by the ADT in relation to proceedings commenced by the Commissioner. These decisions included:

### *Legal Services Commissioner v Tsalidis*

These proceedings related to the failure by Mr Tsalidis to provide information to the OLSC as requested pursuant to a section 660 Notice. A section 660 Notice is issued when cooperation by a legal practitioner has not been forthcoming and coercion is required to obtain information from the legal practitioner in aid of the investigation. Breach of a section 660 Notice is deemed to be professional misconduct if done without reasonable excuse.

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The ADT found that Mr Tsalidis was guilty of professional misconduct and ordered that he be reprimanded, pay a fine of \$12,000 and hold a restricted practising certificate for a period of three years. The Tribunal further ordered that certain conditions be placed on Mr Tsalidis' practising certificate.

#### *Legal Services Commissioner v Angelovski*

Mr Angelovski was charged with a number of counts including multiple breaches of undertakings, misleading the court, misleading the OLSC and gross delay.

The ADT found Mr Angelovski guilty of professional misconduct on some grounds and unsatisfactory professional conduct on others. The ADT ordered that Mr Angelovski be reprimanded, that his right to practice be restricted until 26 March 2017 to that of an employee of a solicitor holding an unrestricted practicing certificate and that he attend personally and complete, to the satisfaction of the Commissioner, various risk management courses. The ADT also made various ancillary orders including payment of the Commissioner's costs.

#### *Legal Services Commissioner v Bryden and Hagipantelis*

In Bryden and Hagipantelis the solicitors were charged with breaches of the advertising regulation in which the advertisement of personal injury legal services is prohibited. These included breaches on the internet (on the legal practitioners firm's website), newspapers and magazines.

The ADT found each practitioner was guilty of professional misconduct. The Tribunal noted that whilst the breaches of the advertising regulations in this case were "very serious", they did not warrant the names of the practitioners being removed from the Roll of Legal Practitioners. The Tribunal instead reprimanded and fined each of the practitioners \$48,000 pursuant to section 562 of the LPA and ordered payment of the OLSC's costs.

#### *Legal Services Commissioner v Kumar*

In this matter the Tribunal determined that Mr Kumar was guilty of professional misconduct on the grounds that he had misappropriated funds from a client, had misled the Commissioner and had obstructed an investigation. We will report on the decision in the next annual report.

#### *Legal Services Commissioner v Sandroussi*

The Commissioner charged Mr Sandroussi with failing to comply with a section 660 Notice. This matter was heard concurrently with a Law Society prosecution. The grounds of the Law Society application alleged that Mr Sandroussi had contravened a condition of his practicing certificate, failed to respond to correspondence and failed to comply with undertakings given to the Law Society of NSW. The Tribunal ordered that Mr Sandroussi's name be removed from the Roll of Legal Practitioners.

Mr Sandroussi has also lodged an appeal against the order of the ADT striking his name from the Roll. We shall report on the outcome of that appeal in the next annual report.

#### *Other matters*

The Commissioner commenced proceedings against Ms Tonette Kelly this reporting year. The proceedings were commenced on allegations that Ms Kelly engaged in misleading and deceptive conduct. A date is yet to be set for the hearing of the matter.

An appeal was lodged by Mr Phillip Scroope against a finding of the ADT that he had engaged in professional misconduct. Mr Scroope's appeal was successful and the Court of Appeal substituted a finding of unsatisfactory professional conduct.

## **Reviews**

The Commissioner has the power to review the decisions of Councils on the complainant's application.

The review function is an important function performed by the Commissioner as it provides an opportunity for consistency of decision-making and harmonisation of approaches in investigation. The figures below indicate that there has been significant consistency across the co-regulatory bodies.

The OLSC reviewed 62 decisions of the Law Society Council or the Bar Association Council on the application of complainants this year. Of these review matters, 54 involved solicitors and 6 involved barristers. The remaining 2 reviews related to practitioners already struck from the Roll. Of the reviews conducted, 53 resulted in a confirmation of the dismissal by Council.

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In two review matters the decision of Council to dismiss was changed and cautions issued in substitution.

Three matters that were re-investigated following review resulted in one reprimand and two cautions. These matters are referred to in “Disciplinary Outcomes” above and the decisions on re-investigation are included at Table W6. The figures on reviews are located Table R2.

## **POLICY DEVELOPMENT**

National legal profession reform continues to remain on the Federal and State government’s agenda and the OLSC made a number of submissions in relation to that reform this year.

The OLSC also made a number of significant submissions on the draft Australian Solicitors Conduct Rules (ASCR) that were published by the Law Council of Australia this year. Our comments found expression in the commentary to the Rules. It is anticipated that the ASCR will become effective in the near future. The OLSC has thoroughly enjoyed being able to contribute to such an important document.

Lastly, the OLSC made a number of submissions and supplementary submissions to the Chief Justice’s Review of the Costs Assessment Scheme in NSW. A final report of the Chief Justice’s Review has now been published but its recommendations have not yet been implemented. We are looking forward to seeing changes to the cost assessment scheme in NSW that will make the scheme more effective and efficient.

The Assistant Commissioner (Legal) meets quarterly with the Government Legal Managers Forum, a group that looks at common legal issues across government. She also meets quarterly with the Costs Assessment Users Group to discuss issues and interpretation involving the Costs Assessment Scheme. She has regular liaison meetings with representatives of the Professional Standards Department of the Law Society and Professional Conduct at the NSW Bar Association and regularly presents seminars to members of the profession.

## CHAPTER 2

# COMPLAINTS HANDLING

### OLSC INQUIRY LINE

The OLSC strongly encourages people wishing to complain about a legal practitioner to first contact our Inquiry Line to discuss their concerns.

OLSC Inquiry line staff are trained to:

- assess whether a potential complaint falls within the OLSC's jurisdiction;
- explain the OLSC's function and processes;
- advise callers how to make a complaint;
- outline possible alternatives for resolving a dispute; and
- where appropriate, refer callers to other agencies and organisations who may be able to assist them.

Inquiry line staff do not provide legal advice, though the majority have completed or are undertaking legal studies. As part of their ongoing training, staff are briefed on new developments in the law and complaint trends to ensure the accuracy and currency of procedural advice given. For each inquiry line shift, a full-time member of staff is available to monitor calls if required, take excess calls and assist the Inquiry Line officer where necessary.

Beyond providing procedural advice, Inquiry Line staff will, in appropriate cases, conduct phone mediations where it appears a caller's concerns can be resolved without resorting to a formal complaint. Such circumstances may include the alleged delays in responding to phone calls and correspondence, or a failure to provide advice or documents within an agreed timeframe.

This reporting year we received 8,178 calls on our Inquiry Line, an increase of 258 on the previous year. As in the written complaints we received this year, issues of negligence, communication and overcharging were most frequently raised in calls received on the Inquiry Line. Just over fourteen per cent (14.7%) of all calls received related to inquiries about the OLSC's processes.

The most common types of inquiries about our processes included questions about how to make a complaint as well as general questions about our website, statistics and publications.

Since 2008, callers to the Inquiry Line have been asked to participate in a survey group which allows us to monitor caller satisfaction and further enhance our service. This reporting year, 726 surveys were sent to those who agreed to be part of the survey group. This year we experienced a slight decline in the number of completed surveys returned. We are currently examining ways we may be able to increase this participation rate.

Of the surveys we received completed, just over twenty one per cent (21.5%) of respondents identified as living with a disability and 11% did not identify English as the language predominately spoken in the home. Approximately 7.7% of respondents were under the age of 36 years, with 49.2% being women.

Overall, results were extremely positive about the service OLSC performs with 75.4% of callers responding they would recommend the OLSC to a friend/relative, 76.2% of respondents agreeing that the information they received was helpful and/or useful and 92.3% of respondents agreeing that staff handling the call treated them in a courteous and professional manner.

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### Comments about the Inquiry Line

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*"It's a great service which has been very helpful in mediating with the professional who's difficult to deal with. I'm very thankful to the office and its staff."*

*"I thank your staff for guiding me; I have resolved my case with the solicitor and already paid him."*

*"Staff listened and showed genuine interest concerning my inquiry."*

*"Excellent service."*

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## CONSUMER DISPUTES

Mediation and Investigation Officers completed 1,669 matters in 2012-13. The figure, like complaints to the OLSC overall, is down on last year.

In 70% of cases a resolution of some sort was achieved. We contacted the legal practitioners and complainants in the vast majority of these cases. We gathered information, obtained explanations, gently pushed practitioners to communicate more frequently, extracted promises and assurances and in a substantial proportion of matters had bills waived or reduced (sometimes substantially), negotiated a payment plan or made arrangements for work to be done.

Family law remains the area that attracted the most complaints (17.8%) this reporting year with civil matters (14.7%) still prominent, and wills and probate complaints (13.3%) continuing to rise as a proportion, as they have for several years.

Negligence (17.5%), communication (15.5%) and overcharging (12.6%) remain the issues most complained about. Sometimes a complaint will encompass all of these issues, and more. Those complaints do not just reflect frustration and anger with legal practitioners, but are reflective of the sometimes insurmountable difficulties individuals face in dealing with the judicial system as a whole.

More than 90% of consumer disputes were finalised within 6 months. The number of current files fell slightly.

Complaints handling can be a taxing job. However, we are graced by the skills, knowledge and experience of the OLSC's Mediation and Investigation Officers, some of whom have worked at the OLSC for more than 10

years. We are also privileged to have the energy and enthusiasm of other staff who started working for us only this year. This combination of old and new staff is governed by the co-operation, skill and support our small team offers. We are very grateful for that.

## Beneficiaries

We have always taken the view that beneficiaries to an estate should be offered a level of communication that allows them to understand how the estate is progressing; and an accounting at the end that explains how the executor has satisfied their obligations to the estate. Given that all beneficiaries come to an estate shrouded by grief, and sometimes anger, it is appropriate that they should receive basic information about how estates are progressing.

Unfortunately, beneficiaries are not always afforded that service, especially where a legal practitioner is acting for an executor. This is most common where there is a family dispute, sometimes going back decades. In these situations legal practitioners acting for executors can, through their own attitudes and positions or the combative nature of their clients, be put in very difficult situations. We receive many complaints each year about significant failures in communicating with beneficiaries, lengthy unexplained delays and legal costs that halve already tiny estates.

We are aware of the heightened emotions that can arise in these matters and the difficulty for legal practitioners to remain dispassionate. We advise legal practitioners to follow certain steps, including:

- Respond promptly to (reasonable) requests for information;

### Case study

*A practitioner received a grant of Legal Aid to assist a client who was unable to fund representation. On the practitioner's application, the Court postponed payment of a hearing allocation fee until the conclusion of the proceedings as the client was, at that time, unable to pay it.*

*The matter was settled in the client's favour on the morning of the hearing. Given the client's financial status urgent arrangements were made for the payment of funds to her which did not account for the postponed hearing allocation fee.*

*Subsequently, the Court sought payment of the allocation fee and the practitioner contacted their client asking for payment. At this point, the client lodged a complaint with the OLSC.*

*During the mediation of the complaint, the practitioner agreed to make an application to the Court, pro bono, to have the postponed fee waived in light of the client's financial circumstances. The application was granted and the client was not required to pay the fee.*



- Set viable time frames for action on estates, including managing the timetables of reluctant executors;
- Make every effort to suggest solutions and mediate problems when they arise;
- Attempt to ensure that wherever possible emotional responses by clients are carefully considered and reconsidered; and
- Warn clients of the possible consequences of certain actions (such as family provisions claims) on an estate.

## Legal practitioners as executors of estates

In theory, legal practitioners should be the perfect executors of deceased estates; logical, removed from the events and very aware of what needs to be done to dispose of assets swiftly. The complaint records, however, suggests things are often otherwise. In fact, after almost 20 years of complaints about the handling of estates it's hard not to conclude that some legal practitioners should think very carefully before accepting appointments as executors.

Our experience in dealing with complaints where legal practitioners act as executors of an estate tends to reveal two diametrically opposed positions taken by those legal practitioners. On the one hand, some legal practitioners believe that their role in estates is tantamount to a public service. These lawyers will not claim commission and will work selflessly without charge over many years in trying circumstances. But, on the other hand, some legal practitioners appear to have legal practices that consist largely of a treasure trove of wills held in the hope that on

the death of a previous or current client they will get the estate work.

Some beneficiaries see lawyers in circumstances where the lawyer also holds Power of Attorney for the deceased and are now paying themselves, sometimes over many years, to document assets and referee disputes within the family. Because they are, in effect, their own clients, lawyers in such circumstances can be seen by beneficiaries as beyond the law and to be manipulating the estate for their own ends.

This situation can be further exacerbated by the fact that, strictly speaking, the conduct of a legal practitioner acting solely as an executor, and not as a legal practitioner may be outside the jurisdiction of the OLSC.

## Strata

We have always been aware of the potential for powerful emotional forces to be unleashed in the handling of estates and family law matters. However, we have underestimated the power of those forces arising from legal practitioners acting in relation to strata disputes.

This reporting year we have received an increasing number of complaints where legal practitioners have acted for clients in relation to strata disputes. The increase has forced us to create a category of complaint to cover concerns raised about legal practitioners called upon to act for bodies corporate, strata committees and individual unit holders.

These matters often involve disgruntled flat dwellers fighting the body corporate over proposed expenditure, arguing over arrears for repairs or over meeting

### Case study

*The practitioner held documents belonging to the complainants who had instructed him on a number of matters over several years. There were no outstanding fees in relation to any of the files.*

*The complainants decided to engage a new representative and instructed them to obtain their documents from the former lawyer. They provided a written authority to have the files transferred.*

*The former lawyer declined to provide the files and sought, instead, updated contact details for the clients so he could discuss the matter with them directly.*

*Upon being contacted by the OLSC, the former lawyer asserted his ownership over the files and insisted that the written authority provided by the complainants was not sufficient to warrant transferring their documents to the new practitioner. He was advised that the authority was sufficient and that he had no legitimate claim to the documents being sought. He then transferred the files to the new practitioner immediately.*



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procedures and minutes of those meetings. The costs of legal practitioners called in by a committee can often be tacked on to existing arrears thus drawing them into an existing dispute. Exactly who is giving instructions can also be at issue. In some circumstances the legal practitioner may be a resident. This all takes place in a situation where the protagonists often see each other daily and grievances fester over time.

Over the next twelve months the OLSC will focus on these complaints and look for details that might allow us to advise legal practitioners and clients about how such matters might be dealt with appropriately.

### **‘We Won’t Act!’**

A large number of cost agreements state that the legal practitioner will not continue to act for his/her client if bills are not paid on time. Some cost agreements state that no work will be performed until money is in trust. We are also aware that at some initial interviews clients are told that work will not commence on their matter until a signed cost agreement is returned.

However, many of the contested invoices that are sent to us by complainants reveal that lawyers will do work, and charge for it, even if the conditions they set for clients aren’t complied with.

The OLSC receives a large number of complaints each year which involve complainants being charged for attending an initial meeting when they were informed by their legal practitioner that they will not be charged. The legal practitioner will often assert that the meeting went well beyond the allocated 30 or 60 minute said to be free to the client.

A cost agreement will often be forwarded soon after. If the client decides not to pursue the case due to that initial advice, or the price is prohibitive, they can still find themselves billed – sometimes many months later – for any minutes beyond the prescribed time, follow up calls to see if they wish to retain the firm and even for calls to dispute a later bill.

We mediate many such bills each year. We consistently tell lawyers that clients can reasonably expect that even if valuable work has been done, if a lawyer sets a condition under which work will commence that should govern when charging commences.

### **Leave your documents**

There will be many cases in which a legal practitioner will need original documents (wills, certificates of title for instance) and copies of documents recording the history of a matter. There are other circumstances in which a law firm will happily offer to securely retain a client’s original papers at their request. The legal practitioner will almost always retain those documents in an orderly fashion without incident. There are also circumstances in which a lawyer will claim a rightful lien over the documents if costs are unpaid.

However, certain law firms have a practice of retaining all legal documents brought in by a client, whether they are central to the case or not. There is in most circumstances no need to retain a certificate of title if advice is being sought in relation to an estate. A passport or a birth certificate to prove identity can be sighted and copied rather than left with a law practice. A certificate of title with family or historic significance can be reproduced for a file.

We do not think it is unfair for lawyers to maintain liens for unpaid costs, but there have been an increasing number of complaints about clients being persuaded to leave documents “just in case”. Some documents being held by legal practitioners bear no relationship to the case on foot. We have discovered that certain firms with a history of cost disputes and a clientele of limited means are more likely to want to retain client documents than other firms. We’re not sure the presumptions lying behind the retention of documents “just in case” are always fair.



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## Disbursements

Legal practitioners have always charged clients for the associated expenditure of managing legal cases. They charge for photocopying, faxes, experts' reports and other expenses to third parties during carriage of the matter.

The OLSC has always taken the view that, with some exceptions, legal practitioners should seek to recover roughly what they expend and absorb other costs (such as insurance, fittings, other sundries) as overheads of a legal practice.

However, we are aware that some legal practitioners attempt to simplify their charges for what we call 'disbursements' by charging a fixed fee to cover a range of administrative and other costs. While barristers and experts costs will always need to be separately listed, we question the ethics of asking a client to pay, say, \$100 for disbursements in a small matter. Whether this is fair

will depend on the type of matter. That fee could, for example, be a gross understatement of the real cost. Imagine a significant litigated matter where photocopying runs into thousands of dollars. Alternatively, think of drafting a will, writing a letter or two. The \$100 charge might seem excessive in that instance.

The OLSC strongly believes that the costs should have a defensible rationale. They should never appear arbitrary. Complaints will inevitably arise if clients are unable to see a basis for the charge. The problems associated with disbursements may be overcome if legal practitioners take time to explain the basis for the charges, and to ensure, if they are to be adjusted depending on the case, it is made clear. It should always be accepted that profit should never be made from disbursements.

### Case study

*The complainants were from a family of long-term clients of the practitioner's firm, having instructed the firm on a range of matters over a forty five-year period. They gave instructions with respect to a conveyance which was handled by practitioners they had not dealt with before.*

*They complained that they were given inconsistent information throughout the conveyance, incorrect settlement figures and had been overcharged.*

*Upon receipt of the complaint, the General Manager of the firm reviewed the client's file and discussed it with the staff who worked on the conveyance. The firm acknowledged the complainants had been inadvertently overcharged \$250 and refunded that amount. They also made a further payment of \$250 in recognition of errors which had been made prior to settlement and apologised to the complainants who were satisfied with the outcome of the matter and remained clients of the firm.*



## CHAPTER 3

# INCORPORATED LEGAL PRACTICES

As at 30 June 2013 there were approximately 1,380 incorporated legal practices (ILPs) in New South Wales. This practice structure continues to make up approximately one quarter of the overall practice population. There were 33 multi-disciplinary practices in existence at that time. As reported in last year's Annual Report, the number of ILPs has grown at a steady rate since the legislation permitting incorporation was introduced in NSW, more than 10 years ago.

Of the 1,380 ILPs in existence, about half are located in the suburbs, 430 are located within the Sydney CBD, 290 are located in rural NSW and 29 ILPs are located interstate.

### THE SELF-ASSESSMENT PROCESS

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

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

### PRACTICE REVIEWS

By agreement with the Law Society of New South Wales, the OLSC has assumed the role of auditing law practices. The OLSC's power to audit law practices derives from section 670 of the LPA. The OLSC audits law practices to ensure compliance with the LPA, the Legal Profession Regulation 2005 (the Regulations) and the Revised Professional Conduct and Practice Rules 1995 (the Solicitors' Rules). In the case of ILPs, the OLSC specifically audits compliance with section 140 of the LPA as it relates to the implementation of appropriate management systems. We refer to audits as practice reviews.

Between November 2012 and June 2013 six practice reviews were conducted on both incorporated legal practices and traditionally structured law practices.

Practice reviews may also be triggered by, for example, an increase in the number of complaints made against a practice, bad publicity or, in the case of ILPs, by failure to confirm that appropriate management systems are in place by completing the self-assessment form. Sometimes it is the law practice itself that requests a practice review, perhaps after the legal practitioner directors have engaged in the self-assessment process or have been in contact with the OLSC with regard to taking steps to reduce the number of complaints they receive about their practice. The ultimate objective with respect to conducting a practice review is to improve practice management and achieve compliance with the LPA, the Regulations and the Solicitors' Rules.

Although practice review activities are tailored to each practice, the following steps are generally taken:

- Opening interview – At the start of the practice review the Practice Review Officer explains the agenda for the audit and answers any questions from the principals of the law practice.

- Practice Review Plan – A detailed interview with directors/principals is undertaken to gather information based upon the questions set out in the practice review plan. A copy of the plan is given to the practice prior to conducting the practice review.
- Practice orientation – The auditors will ask to be shown the layout of the practice and location of the staff within it.
- File review – A review of client files is conducted to determine the extent of compliance with the LPA 2004, the Regulations and the Solicitors' Rules.
- Staff interviews – Short interviews are conducted with employed solicitors and other staff to ascertain compliance with the LPA 2004, the Regulations and the Solicitors' Rules.
- Closing interview – The Practice Review Officer provides a brief overview and initial feedback on the findings from the audit.
- Practice Review Report – After attending the practice, the Practice Review Officer prepares a report and sends it to the practice for comments and follow-up action. At the end of the compliance period a decision is made whether to conduct a follow-up audit.

A follow-up audit may be conducted to check that measures have been implemented to address issues raised in the report

## Case study

*In this reporting year, the OLSC conducted a practice review of a traditionally structured regional law practice that was attracting a significant number of complaints. Given the frequency and the nature of the complaints, the OLSC was concerned that the law practice was not meeting the requirements of the LPA, the Regulations and the Solicitors' Rules. There was also concern that the complaints were linked to the long-term health issues of one of the law practice's principals and that the principal's prolonged absence from the law practice was not being managed adequately.*

*The Practice Review Plan was sent to the law practice at least one month before the review was due to take place. In the answers that the principals completed and returned to the OLSC it became clear that there were some fundamental gaps in the law practice's policies and procedures, most notably in the area of costs disclosure.*

*During the practice review at the offices of the law practice, the staff from the OLSC were able to discuss the various elements of the Practice Review Plan with the principals of the practice. The Practice Review Officer and the Compliance Project Officer brought to the principals' attention the need to consistently provide costs disclosure to clients and provided the principals with precedent documents to assist in developing that procedure.*

*After spending two days at the law practice and discussing the practice's internal policies and procedures it became clear that, while each member of staff had a clear idea of what his or her role was within the practice, they did not necessarily have a clear understanding of what their colleagues did. The recommendation was made that the law practice should document its internal policies and procedures so that this could be used as a central resource to which all members of staff could refer. Following the recommendation from the OLSC, the law practice worked with the Law Society to develop an office manual.*

*The practice review also facilitated a discussion between the principals regarding what should happen in light of the long-term ill-health of one of them. It was eventually agreed that the principal should resign from the practice and that his share would be purchased by another employed solicitor.*

*Since the practice review was conducted, no further complaints have been lodged with the OLSC about the law practice.*



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## OLSC SUPPORT

This reporting year, the OLSC continued to provide assistance to legal practitioner directors needing support with the implementation and maintenance of appropriate management systems. The OLSC provides assistance either by way of telephone support or through face-to-face meetings. The purpose of the support is to complement the execution of the self-assessment form and relevant procedures. The support the OLSC provides is very much appreciated. It is not unusual for the OLSC to receive letters or telephone calls from legal practitioner directors thanking the OLSC for assisting them in complying with their legislative requirements.

In providing such support we are also able to gain a greater understanding of the types of difficulties legal practitioner directors encounter, both with the self-

assessment process and more generally arising from operating an ILP in what is an increasingly competitive legal services marketplace.

The OLSC is conscious of the need to improve its ongoing support and assistance to ILPs. As stated in the last annual report, we had commenced work on a research project with Professor Susan Saab Fortney, Howard Lichtenstein Distinguished Professor of Legal Ethics, Maurice Deane School of Law at Hofstra University, New York and a well-known empiricist, to develop a survey instrument to be sent to legal practitioner directors of ILPs in NSW asking them to comment on the self-assessment process. The results of the study are discussed in Chapter 5 of this Report.

### Case study

*Following a trust account inspection of an incorporated legal practice, the Trust Account Inspector of the Law Society referred his concerns to the OLSC regarding the ILP's time recording and billing practices. The ILP had already come to the attention of the OLSC as a result of a number of complaints mostly relating to costs. With this background, the OLSC contacted the ILP in question to arrange a practice review. The ILP decided to obtain new time recording and accounting software and a period of grace was allowed for the ILP to install the software and to begin using it. A practice review was arranged but it soon became apparent that not enough data had been entered into the new software for a full analysis to be made.*

*The practice review continued as planned and enabled the staff from the OLSC to discuss other key issues such as costs disclosure and the relatively high turnover of staff at the ILP.*

*It was clear that the ILP was going through a period of change and, therefore, to allow time for the situation to stabilise, a further follow-up review was arranged for 6 months later. During the follow-up review it became clear that the concerns originally raised by the Trust Account Inspector had been addressed, however, the OLSC continues to have concerns that costs disclosure is not being made consistently in new matters. Consequently a further review will be necessary to chart the practice's progress in relation to this issue.*



## CHAPTER 4

# EDUCATION AND COMMUNICATION

The OLSC's education campaign is delivered through our core function of complaint handling and also through the numerous lectures, seminars and conferences staff at the OLSC attend and deliver each year. In some years it is not unusual for the OLSC to present between 70 and 100 lectures to university students, law graduates at the College of Law, law firms and Continuing Professional Development (CPD) seminars and conferences.

The educational program is supplemented by a strong publications portfolio. The OLSC produces an abundance of written material for consumers of legal services and the profession on a range of issues relating to legal practice. This material consists of our newsletter, *Without Prejudice*, our fact sheets (which now total seventeen), our Annual Report, our OLSC brochures and the many papers we publish on legal practice. We aim to provide material, which helps lawyers gain a better understanding of the issues that often lead to complaints. In these publications we offer practical tips on avoiding complaints and often include information for consumers on how to get the most from their relationship with their lawyer.

### UNIVERSITY LECTURES

Continuing our tradition of presenting lectures to under-graduate and postgraduate university students across NSW, this reporting year OLSC staff delivered lectures to law students at UNSW, the University of Sydney, the University of Western Sydney, the University of Technology, Macquarie University, the University of Wollongong and the University of Newcastle. The lectures largely focus on the role of the OLSC and the types of complaints we receive. In some instances we present students with ethical hypotheticals and ask them what they would do.

OLSC staff thoroughly enjoy presenting these lectures each year, as do the students. We periodically survey the students to ensure that our presentations are relevant and helpful. During the period 1 January to 31 December

2012, 233 survey forms were handed out to students at UNSW. The responses were extremely positive about the lectures and their impact on students. 96.9% of students indicated that the OLSC's lectures are helpful and 95.5% of students also reported that the lectures 'enhanced the understanding of lawyer's roles and responsibilities'.

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#### Student responses as to whether the lecture enhanced the understanding of lawyer's roles and responsibilities:

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- A great explanation of the expectations of lawyers from clients perspectives, reasonable or not.
- As a Victorian it was useful to get an interstate perspective.
- Common causes of complaints to the OLSC are identified, now have knowledge that there are other of complaints.
- Complaint process and what occurs in practice.
- Detailed anecdotes about their actual experiences not merely discussion of acts.
- Examples of bad/ unethical behaviour/ practices of legal professional illustrate the circumstances which the OLSC investigate.
- Explained thoroughly the process for lodging complaints, the life of a complaint, most impart the way the OLSC people has to change lawyer behaviour regard to it.
- Explains lawyer ethical dilemmas.
- Eye opened to the complaints that come through.
- Gave enlightening details as to how exactly the OLSC operates.
- Gave me insight onto what repercussions there are for malpractice.
- Gave useful examples.
- Good overview of the role of the OLSC as a regulatory body.
- Good practical perspective.

- Good to show how the complaint system works in practice and made more relevant with personal case notes.
- Had gauge of how many complaints there are & how many see action taken.
- Hands on/ experienced presenters, excellent use of anecdotes/ honesty to engage students.
- Hearing real life examples.
- Helpful in terms of statistics & nameless examples (real) given, did not know that a lawyers can make complaints, interesting.

The Legal Services Commissioner and the Research and Projects Manager also delivered a lecture each month to students enrolled in the Practical Legal Training Program at the College of Law. The lecture delivered to students at the College of Law primarily focuses on ethical issues relating to legal practice. Students in this lecture are confronted with a series of ethics related hypotheticals and are asked to consider how they would deal with each ethical dilemma if they were in practice. It is a challenging and interactive exercise for students as they confront each issue. We work together with the students in teasing out the ethical dilemmas and finding suitable solutions.

## OUTREACH – PRESENTATIONS TO THE LEGAL COMMUNITY

The OLSC continued the tradition of delivering lectures to a wide range of audiences this year. We have always held the belief that education is integral to an effective and successful practice. Presentations included as follows:

Delegation from the Courts of Thailand, lecture presented by the Commissioner, Sydney, 2 July 2012.

*Ethics and Professional Responsibility* presented by the Commissioner and the Research and Project Coordinator, University of NSW, CLE program, Sydney, 26 July 2012.

Complaints handling “Think Tank”, attended by the Commissioner and the Research and Project Coordinator, LawCover, Sydney, 16 August 2012.

*Multi-ethical tasking for in-house and government lawyers* presented by the Commissioner and the Research and Project Coordinator at the Sydney Legal Counsel Conference, Sydney, 14 September 2012.

Rotary lecture presented by the Commissioner, Warrabee, 14 August 2012.

*Current trends in unethical behaviour* presented by the Commissioner at The Law Society of NSW Ethics Forum, Sydney, 13 & 14 August 2012.

*Ethical dilemmas* presented by the Commissioner and the Research and Project Coordinator at the Faculty of Law, University of Wollongong, 30 August 2012.

*Legal ethics: Beyond a rules based approach* presented by the Commissioner and the Research and Project Coordinator at the Supreme Court of NSW Tipstaves’ and Researchers’ Conferences, Sydney, 7 September 2012.

*Emerging priorities in public sector legal services procurement reform – implications for the future of litigation and dispute management and Could I, Would I, Should I: Ethics for government lawyers* presented by the Commissioner and the Research and Project Coordinator at the 3<sup>rd</sup> Annual Public Sector Litigation and Dispute Management Forum, Canberra, 11 September 2012.

Regulating Culture: Compliance, risk management and accountability in the aftermath of LIBOR Workshop attended by the Commissioner, Sydney, 26 October 2012.

*Ethics and Professional responsibility* presented by the Commissioner and the Research and Project Coordinator at the Department of Finance & Services Land & Housing Corporation Legal Forum, Sydney, 2 November 2012.

Conference of Regulatory Officers, attended by the Commissioner and the Assistant Commissioners, Brisbane, 8 & 9 November 2012.

*Ethical issues* presented by the Commissioner and the Research and Project Coordinator at Legal Aid NSW, Sydney, 17 October 2012.

*Update from the OLSC: Current trends in complaints and the transition to a National Profession* presented by the Commissioner and the Research and Project Coordinator at Stacks The Law Firm, Sydney, 13 October 2012.

*Cloud Computing and Outsourcing Guidelines* presented by the Commissioner and the Research and Project Coordinator at the Central West Law Society Annual CLE Day, Orange, 9 November 2012.

*Hypothetical session focussing on litigation and court proceedings* presented by the Commissioner and the Research and Project Coordinator at the Commonwealth Office of Director of Public Prosecutions, Sydney, 28 November 2012.

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*Summer Course Law Lawyers and Society* presented by the Research and Project Coordinator at the Faculty of Law, University of NSW, Sydney, 11 December 2012.

Seminar presented by the Commissioner to the Benevolent Society Clerks, Sydney, 30 January 2013.

*Ethics & Practice* presented by the Commissioner and the Research and Project Coordinator at Clayton Utz In-house Seminar, Sydney, 21 February 2013.

*Legal Practice in the E-World* presented by the Commissioner and the Research and Project Coordinator at McCabes In-house Seminar, Sydney, 5 March 2013.

Ethical Hypothetical presented by the Commissioner and the Research and Project Coordinator at Carroll & O'Dea In-House Seminar, Sydney, 12 March 2013.

*Model Litigants* presented by the Commissioner and the Research and Project Coordinator at Crown Solicitors In-House Seminar, Sydney, 12 December 2012 and 27 February 2013.

*Conflicts of Interest* presented by the Commissioner and the Research and Project Coordinator at Crown Solicitors In-House Seminar, Sydney, 11 February 2013 and 14 March 2013.

*Appropriate Workplace Behaviour* presented by the Commissioner and the Research and Project Coordinator at McCabes CLE Seminar, Sydney, 20 March 2013.

*Ethics & Practice* hypothetical session presented by the Commissioner and the Research and Project Coordinator at Thomson Reuters, Sydney, 21 March 2013.

*Ethics & Risk Management MCLE Seminar* presented by the Commissioner and the Research and Project Coordinator at The Newcastle Law Society Inc, Newcastle, 22 March 2013.

*Ethics & Professional Responsibility* presented by the Commissioner and the Research and Project Coordinator at UNSW CLE, Sydney, 28 March 2013.

*Dealing with Ethical Dilemmas* presented by the Commissioner and the Research and Project Coordinator at University of Wollongong Law, University of Wollongong, 11 April 2013.

*Delegation from Courts of Thailand* lecture presented by the Commissioner, Sydney, 29 April 2013.

*Ethics* seminar presented by the Commissioner and the Research and Project Coordinator at Macquarie University, North Ryde, 17 May 2013.

*Ethics of Cloud Computing* presented by the Research and Project Coordinator at the Community Legal Centres NSW, Surry Hills, 21 May 2013.

*The Macquarie University Client Interview Competition Grand Final*, Sydney, 6 June 2013.

## STAFF TRAINING

We also acted to satisfy our obligations to our staff to provide relevant training. The agenda for our in-house staff training is developed by all staff at the OLSC. At the beginning of each year staff are asked the areas in which they would like to receive further training and a list is drawn from those suggestions.

This reporting year staff were exposed to a wide range of in-house lectures. Programs held internally included as follows:

- Corruption Awareness & Workplace Expectations
- Dignity and Respect – Appropriate Workplace Behaviour
- Managing Unsatisfactory Performance
- Performance Management – the performance discussion
- Performance Management – Addressing under-performance
- Understanding the Grievance Process
- Understanding Unsatisfactory Performance
- Managing Conflicts of Interest in the Public Sector
- Managing Fraud and Corruption
- Risk Management Awareness
- Workplace Discrimination and Harassment – Email and Internet at Work

In addition to these internal lectures staff are also given the opportunity to attend external education programs. Staff attending external programs this reporting year were trained in the areas of risk management, change management, communication, conveyancing innovation and enterprise and dealing with individuals with a mental illness.

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OLSC staff this year spent just over 1081.8 (187.3 days) on training. Of the total hours spent on training, 340 hours were spent on internal training courses, 422 hours (70.4 days) were spent on external training programs and just over 319 hours (55.8 days) were spent on attending conferences or delivering seminars.

## **PUBLICATIONS – INTERNAL AND EXTERNAL**

During this reporting year the OLSC published our 2011-2012 Annual Report and two issues of our newsletter, *Without Prejudice*. We revised our facts sheets to ensure that each fact sheet presents comprehensive and up to date information on the topic covered. We also published a number of papers on several topics relating to regulation, ethic and the practise of law.

The OLSC's publications are available in hard copy from the OLSC or via our website at [http://www.olsc.nsw.gov.au/olsc/lsc\\_publications.html](http://www.olsc.nsw.gov.au/olsc/lsc_publications.html)

The OLSC published two papers in international law journals this year. The first paper discusses the results of a research project we conducted with Professor Susan Saab Fortney, Howard Lichtenstein Distinguished Professor of Legal Ethics, Maurice Deane School of Law at Hofstra University, New York. This project, which is discussed in more detail in the following chapter on research and projects, was established to obtain information about the relationship between self-assessment and the ethical norms, systems, conduct and culture in firms through surveys and interviews of ILPs. The results of the survey were published this reporting year in a paper written by Professor Fortney and the Research and Projects Manager and entitled, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation." This paper was published on 22 January 2013 on SSRN and is due to be published in the next edition of the *St Thomas Law Review*. For a copy of the paper on SSRN see [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2205301](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2205301)

The second publication entitled, "Regulation of legal services in the e-world: a need to short circuit hot spots in ethics and novel practices?" discussed the regulation of technology. It was published in the *International Journal of the Legal Profession* on 8 March 2013. This paper was jointly written by the then Legal Services Commissioner, the former Research and Projects

Manager and Dr Rita Shackel, Associate Dean (Learning and Development) and Senior Lecturer at the Faculty of Law, University of Sydney.

The OLSC also published an article for an international Symposium in the United Kingdom on legal education and training. The Symposium, organised by the Solicitors Regulation Authority, was established to discuss the changing market for legal services; the future role of regulation; and the educational requirements for the providers of legal services including competencies, routes to qualification, future roles and social mobility issues. The Legal Services Commissioner was a keynote speaker and presented a paper entitled, "Regulation of the Legal Professions – The Australian Experience with Particular Focus on New South Wales." The paper was published in the Symposium materials.

The OLSC published one article on the website of the Centre for Law, Markets and Regulation (CLMR) at the University of New South Wales. The article added to a running debate on appropriate models for regulating financial services. The article was entitled, "Regulating Culture: Information Sharing & Collective Understanding." The article was published on CLMR's website on 31 October 2012

## **WEBSITE**

A major task for the OLSC was the re-development of our website. Staff at the OLSC have worked tirelessly over the past several months revising the structure and content of the OLSC website. We are committed to providing the general public with a website that is informative and user friendly. In order to achieve this staff spent time liaising with the Information Services Branch of the Attorney General's Department, who were tasked with building our website, to discuss the functionality and design of the site. Once we had established a model staff set about drafting the content for the new website.

Staff determined that the new OLSC website should retain all of the information that existed on the old website but the information should be expanded to make it easier for people to understand the role and function of our office, the complaints handling process, our research and the educational services we offer.

On 22 May 2013 we launched our new website. The new website address is <http://www.olsc.nsw.gov.au/>



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## VISITS

### International

This reporting year, the then, Legal Services Commissioner and the Research and Project Coordinator were invited to attend and present papers at several international conferences in July 2012.

On 6 July 2012 the Legal Services Commissioner presented a paper entitled, "Regulation of the Legal Professions – The Australian Experience with Particular Focus on New South Wales" to a conference in Dublin Ireland. The conference, "Regulatory Reform for a 21<sup>st</sup> Century Legal Profession" provided an opportunity for lawyers, consumers and other stakeholders to share, first hand, international experience in implementing the modernisation and reform of legal services in other common law countries and to share some of the lessons that have been learned along the way. This Conference fed into the ongoing consideration of the Legal Services Regulation Bill 2011 which is set to modernise the provision of legal services in Dublin. The Legal Services Commissioner was asked to present a paper on the co-regulatory model in NSW.

Whilst in Dublin the Legal Services Commissioner and the Research and Project Coordinator met with the Minister for Justice and the Presidents of the Bar Association and Law Society of Ireland to discuss the proposed regulatory model and the Legal Services Regulation Bill 2011. We continue to liaise with the Minister and the legal profession in Dublin about the Bill which, that at the time of writing this report has still not been enacted.

Following the Dublin conference the Legal Services Commissioner presented a paper to the Legal Education and Training Review (LETR) Symposium on 10 July 2012 in Manchester. The LETR is a joint project of the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS). The Review has been established to conduct an evidence-based examination of education and training requirements across regulated and non-regulated legal services in England and Wales. The Symposium provided an opportunity for practitioners, education and training providers, consumers, regulators and commentators to come together to discuss the main issues addressed by the Review. The Legal Services Commissioner

was invited to address the LETR together with other international experts on the new regulatory context for the future practice of law. Whilst there, the Legal Services Commissioner and the Research and Project Coordinator met with the SRA and the Review's research consortium to discuss the parameters and international effect of the Review.

At the conclusion of the Symposium the Legal Services Commissioner and the Research and Project Coordinator travelled to London where they were invited to meet with the SRA, the Legal Services Board and the Law Society of England and Wales to discuss international developments and joint research projects. Following these meetings the Legal Services Commissioner and the Research and Project Coordinator travelled to Banff to present two papers to the International Legal Ethics Conference V.

The International Legal Ethics Conference is an important event for the OLSC to attend. The conference provides an opportunity to discuss education and research with attendees from around the world. The majority of research projects conducted by the OLSC and the education and training we provide are all premised on discussions we have had at International Ethics Conferences. Travel to these conferences was funded externally from the Department, from the various organisations themselves and personally.

In September 2012 the Legal Services Commissioner and the Research and Project Coordinator travelled to London to attend the inaugural International Conference of Legal Regulators. The Conference was established as an acknowledgement of the increasingly international nature of legal practice and the need for information exchange amongst legal regulators. An invitation was extended to key legal regulatory and academics around the world to attend and participate at the inaugural conference. Both the Legal Services Commissioner and the Research and Project Coordinator were invited to present papers at the Conference. The Legal Services Commissioner presented a paper on proactive regulation and spoke about the types of proactive tools available to regulators and how to measure the success of such a model. The Research and Project Coordinator presented a paper on tools for setting and monitoring standards in regulation. Travel to these conferences was funded externally from the Department, from various organisations themselves and personally.

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## Domestic

The Legal Services Commissioner, the Assistant Commissioner (Legal) and the Assistant Commissioner (Complaints) attended the 2012 Conference of Regulatory Officers in Brisbane on 8 & 9 November. The Conference, hosted by the Queensland Legal Services Commission, the Queensland Law Society, the Bar Association of Queensland and Legal Practitioners' Admissions Board, featured a variety of presentations and workshops on issues relating to administrative decision making and writing; managing difficult complaint handling behaviour; best practice information on complaint handling, trust account inspections, investigations and disciplinary proceedings and important developments in the areas of admissions and lawyer discipline.

### Case study

*The client claimed that the solicitor had not disclosed his costs to her and then overcharged when she did receive the bill.*

*In his defence, the solicitor provided a copy of a generic cost agreement and indicated that this costs agreement was displayed in the waiting room of his office. While we could not establish whether or not a document naming the client and providing the specifics of the case was ever sent to the complainant,*

*it was revealed that the generic document on display in the firm and being provided to clients was considerably out of date. It named the wrong piece of legislation, the wrong interest rates and provided inaccurate information. Ultimately, there was significant negotiation around the costs and the client was refunded \$3,600. In addition, the practitioner made the required alterations to his costs agreement and to the material displayed in his waiting room.*



## CHAPTER 5

# RESEARCH AND PROJECTS

The erosion of traditional barriers to global practice over the last few decades has resulted in Australian lawyers being exposed to a range of new and diverse practices that are not addressed in current legislation or regulations. The OLSC has thus broadened its research portfolio this reporting year to ensure that legal practice issues that have arisen internationally are addressed in NSW.

### IN-HOUSE RESEARCH

A wide variety of research requests emanated from OLSC staff this reporting year. Such requests included as follows:

- An analysis of how legal services are and can be regulated when they are provided virtually and potentially anonymously, crossing state and national borders, with different cultural issues or requirements;
- An evaluation of the ethical considerations or concerns for a law practice engaged in storing confidential data offsite;
- An analysis of the sorts of processes that are presently being used to ensure appropriate supervision of outsourced work;
- An evaluation of the ethical implications of using cloud computing service providers in legal practice;
- An analysis of the global legal services marketplace and the commoditisation of law;
- An evaluation of the use of internal complaints management systems within law firms;
- An analysis of costs disclosure provisions in other jurisdictions;
- An evaluation of the ethical implications of using legal process outsourcing in the provision of legal services;
- An assessment of the public sector legal procurement reforms binding government lawyers;
- The development of a framework to deal with mentally ill clients;
- An evaluation of the ethical implications of legal practitioners using social media;
- An analysis of the concept of a “fit and proper” person at common law;
- An analysis of the role lawyers played in the global financial crisis and LIBOR;
- An evaluation of the ethical implications of legal practitioners using metadata;
- An analysis of the Legal Education and Training Review in the United Kingdom in advancing their stated regulatory objectives;
- An analysis of the listing of Slater & Gordon on the Stock Exchange and the difference in corporate regulatory approaches between England and Australia;
- An evaluation of the increasing mergers of UK firms with Australian firms and the potential/necessity for information sharing between respective regulators;
- An evaluation of mandatory continuing legal education in Australia and overseas;
- The institutional separation of disciplinary disputes from consumer matters in designing a regulatory framework;
- Regulating culture: information sharing & collective understanding;
- The regulation of third party litigation funding in Australia;
- The evolution of the virtual law office; and
- An analysis of the cost of legal regulation in Australia through practising certificate fees.

### EXTERNAL RESEARCH

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

#### Australian Research Council (ARC) Grant

As we have reported in previous Annual Reports, the OLSC has been participating in an ARC research project with the Centre for Law, Markets and Regulation (CLMR)

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at the University of New South Wales. The project, now in its third and final year has been examining the adequacy of the regulatory apparatus and integrity systems in the financial marketplace and in particular, capital markets.

Over the past three years the Project has organised a number of key workshops in which the OLSC has played a major role. This year's workshop took place on 13-14 May 2013. The workshop titled "Capital markets, corporations and the Asian Century" examined the dynamics of financial regulation with particular emphasis on the evolution of Chinese corporate and securities law and corporations.

Professor Justin O'Brien, the lead researcher of the ARC project opened the workshop and was followed by an interesting and provocative mix of academics and lawyers from Hong Kong University, the University of Bristol, King & Wood Mallesons, the University of Michigan and Emory University. Each of the presenters explored the implications of state capital and Chinese corporate law for future Anglo-American practice and policy. Presenters canvassed issues relating to the nature and purpose of financial and related regulation, the normative underpinning of regulatory structure and the accountability of regulators, the nature and role of enforcement and the nature of western engagement with Asian models of the corporation and markets.

Following the success of this workshop CLMR organised a workshop for July 2013 to continue discussions amongst participants even though the ARC Project had officially ended. There was a unanimous view in the room that discussions must continue. We have been invited to present the keynote address at this upcoming workshop.

The final task for the Project is the publication of a book. The Office has been asked to write a chapter to be included in the book about our experiences in regulating the legal profession. We are now working on that chapter.

The ARC Project has been an incredible opportunity to collaborate with UNSW and lead a dynamic and thought provoking study into financial regulation and capital markets. The OLSC's role as the regulator of the legal profession has been enriched by working with regulators of other disciplines as we all seek to better current regulatory models.

## **Appropriate Management Systems (AMS) and the Self-Assessment Process**

In the last annual report we reported that the OLSC had commenced working on a research project to assist the current regime for regulating incorporated legal practices (ILPs). The intention of the project was to build on the work that the OLSC had previously published on ILPs with Dr Christine Parker. At the time the last Annual Report was published we had been working with Professor Susan Saab Fortney, Howard Lichtenstein Distinguished Professor of Legal Ethics, Maurice Deane School of Law at Hofstra University, New York and a well-known empiricist, to develop a survey instrument to be sent to legal practitioner directors of ILPs in NSW. We have continued working on that project this financial year.

The purpose of the project was to obtain information about the relationship between self-assessment and the ethical norms, systems, conduct and culture in firms. To obtain this information we conducted a mixed method study, combining a survey and interviews. For the surveys we invited legal practitioner directors of ILPs with two or more legal practitioners to complete an online questionnaire. The questionnaire obtained objective data on approaches and experiences related to the Self-Assessment Process and AMS, as well as respondents' views on the effects of the Self-Assessment Process and recommendations for improving the Self-Assessment Process. Some inquiries covered issues related to the ethical infrastructure, culture, and regulation of law firms.

The questionnaire consisted of 31 items, many with subparts. In addition to closed-ended questions, a number of questions allowed respondents to provide text entries. The final section invited comments and longer text entries. The survey was administered using Qualtrics, a web-based system that generates invitations to participate in the on-line survey. The system records results on an anonymous basis.

The target group for the survey was ILPs with two or more solicitors. The law practice must have been incorporated between January 1, 2007 and January 1, 2011. The procedure was designed to narrow responses to those directors who had completed the self-assessment process for their firms. A total of 141 of 356 directors completed the on-line questionnaire, amounting to an overall response rate of 39.6%.

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The second phase of the study involved interviews of a smaller number of directors in ILPs with two or more directors. We emailed the designated directors to ask them to be interviewed. We continued to systematically pull names and invite respondents until we had over forty individuals who agreed to be interviewed. Interview questions allowed for directors to discuss issues covered in the questionnaire.

The interviews provided an opportunity to explore in more detail the directors' experiences with implementing AMS and completing the Self-Assessment Process. Although each interview followed a four-page interview template, the session allowed for follow-up discussion of issues and concerns that arose during the interview. Rather than using information drawn from the interviews, this article focuses on survey data. A subsequent article will discuss data obtained from the interviews and specifically address possible steps to improve the regulation of ILPs and the self-assessment process.

At the time of writing this Report the results of the survey only have been analysed and published. A second paper is due to be published detailing the results of the interviews.

The results of the survey were extremely interesting. The research indicates that the self-assessment process had prompted a large majority of firms (84%) to revise and change their management and risk management systems. Beyond revising existing firm systems, policies or procedures, 47% reported that their firms actually adopted new systems, policies, or procedures. Large percentages also indicated that their firms strengthened firm management (42%) and devoted more attention to ethics initiatives (29%). Significantly lower percentages sought guidance from the OLSC (13%) or another person/organization. Only 6% hired consultants to assist in developing policies and procedures.

Lower percentages of respondents reported that they believed that the Self-Assessment Process impacted on consideration of ethics issues. Forty-eight percent of respondents indicated that they agreed with the following statement: "The Self-Assessment Process prompted firm directors to reflect on ethical conduct." Similarly, 44% of respondents indicated that they agreed or strongly agreed with the following statement: "The Self-Assessment Process enhanced my awareness of ethics issues." Twenty-three percent indicated that they disagreed (17%) or strongly disagreed (6%) with the statement. These results are consistent with other findings that suggest that larger percentages of directors

perceive that the Self-Assessment Process and AMS requirements impact "client service matters" more than general ethics concerns.

The survey results also reveal that the majority of respondents recognize the value of requiring firms to implement and maintain AMS and self-assess their management systems. Respondents representing firms of all sizes reported that the Self-Assessment Process had a positive effect on different aspects of firm practice, most notably firm management and risk management, followed by a positive impact on client service issues.

The research suggested that traditionally structured "partnership" law practices would clearly benefit from the implementation of AMS. This is a view that we share. In fact, the report went so far as to say that the research findings "make a strong case for enacting legislation that imposes the AMS requirement on all law practices, regardless of their structure". The research conducted also highlighted the benefits of taking a proactive approach to regulation, stating that the findings should "inspire regulators to consider proactive partnerships with lawyers, rather than resorting to the traditional paradigm of reactive complaints-driven regulation of firms". This conclusion accords with the OLSC's view that a multifaceted approach to regulation should be taken.

The findings provide great encouragement for the OLSC to continue to engage legal practices in the self-assessment process, to retain a proactive approach to the regulation of legal practices and to work collaboratively to achieve ethical outcomes through regulatory activities.

## **LawWithoutWalls**

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

LawWithoutWalls requires teams of students to develop a Project of Worth that creatively solves its identified problem. Students are assisted by an Academic Mentor, a Practitioner Mentor, a Subject Expert Advisor, an

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

The Commissioner was a Practitioner Mentor to a group of students whose Project of Worth was entitled “The Increasing Importance of Corporate Compliance: More Jobs For Law Grads or Another Threat to Lawyers’ Monopoly?” The Research & Projects Coordinator was a Practitioner mentor for a team of students whose project of worth was “The Law School Law Firm: Can and Should Law Schools be Legal Service Providers?”

The Projects of Worth generated extremely interesting discussions amongst students and mentors and culminated in thoughtful presentations by students on each topic.

## Client Capacity

We have begun work this year on a new research project that focuses on the conduct of legal practitioners who act for clients where capacity is an issue.

The OLSC has seen a gradual increase in complaints about wills and probate matters over the last few years. A proportion of these complaints relate to legal practitioners failing to adequately assess the capacity or competence of their clients. In 2003 the Law Society published guidelines for practitioners who are acting for clients where capacity is an issue. The guidelines provide legal practitioners with some guidance as to how they should act but it has become clear that the guidelines may need to be strengthened.

One of the most common problems in relation to capacity occurs where a legal practitioner fails to ascertain the capacity of his/her client because the practitioner has “known” that client for many years. In such cases, personal relationships, long-term friendships and personal judgements may obscure the need for legal practitioners to seek an assessment of capacity. The OLSC has established a working relationship with Lise Barry, Senior Lecturer at Macquarie University Law School to analyse the complaints we receive at the OLSC that raise capacity as an issue.

## Case study

*During the course of mediating a consumer dispute it became apparent to the OLSC that a substantial factor contributing to the concerns raised by the complainant related to poor communication between the practitioner and their client. This had left the complainant uncertain about what action, if any, the practitioner would continue to take on the complainant’s behalf, having achieved a favourable verdict in court.*

*When further interrogated by the OLSC, specific shortcomings in the management systems at the practice regarding communication were identified. These shortcomings were brought to the practitioner’s attention who was then asked to address each of those areas promptly and to provide the clarification the complainant needed in order to finalise their matter.*

*As a result of the OLSC’s involvement in this matter, the practitioner took a number of practical steps to improve their systems for communicating with clients.*

*These steps included amending the retainer agreements given to clients at the start of a matter to disclose the practice’s preferred means of communicating with clients and to alert them to the potential difficulties of communicating via other means. The practitioner also implemented new electronic storage technology and installed a secure mailbox at their place of practice to help them to maintain records in accordance with their obligations under Rule 8 of the Revised Professional Conduct and Practice Rules 1995. In addition to these measures, the practitioner was reminded to clearly explain to clients the scope of the work they will conduct at all relevant stages in a matter, not only when their services are first engaged.*

*It is anticipated that these changes will deliver benefits to both the practitioner and their clients and reduce the likelihood of similar concerns regarding communication arising in the future.*



## CHAPTER 6

# INFORMATION SYSTEMS AND SERVICES REPORT

The Information Systems and Services (ISS) unit has gone through a number of changes in the 2012-2013 financial year. These include taking over the administration and final stage rollout of the OLSC (Legal Practice Management Audit System) LPMAS Portal and the introduction into the Unit of a temporary full time LPMAS Client Officer. In addition to taking over the management of the OLSC Portal this financial year the ISS Unit has also concentrated on the ongoing refinement of OLSC practices and processes, the enhancing of data sets and reporting, refining stakeholder feedback and sourcing of new staff information sessions.

Another major change for the Unit was the decision to no longer undertake certification and accreditation to ISO 9001. The OLSC has been ISO 9001 accredited since 2006. Whilst originally this improved office processes, the OLSC is now at a stage where formal accreditation is no longer deemed necessary or advantageous. The OLSC will continue to concentrate on reviewing everyday practice to ensure efficiency and effectiveness as the concept of continuous quality improvement has been embedded into the culture of the office. For instance, our Manual and all other publications will continue to be reviewed annually, or more frequently as required. We are now at a stage where we are looking to benchmark with a like organisation to ensure ongoing peer review.

## 2012-2013 PROJECTS

The OLSC has been using project methodology since 2003 to complement overall organisational objectives with much success. Each year a review is undertaken in an effort to streamline and consolidate projects to ensure that current and future OLSC business needs are been met.

### Improving Services

**Project Rationale:** To ensure better access to information and enhanced service delivery for all stakeholders. To ensure OLSC's ongoing processes are optimised and business needs are met.

### Stakeholder Satisfaction Survey Project:

**Activity Undertaken:** A review was undertaken of all stakeholder surveys to ensure information needs are met. Surveys reviewed included Inquiry Line callers, Website users, complainants who have a formal written complaint lodged about them, practitioners who are contacted regarding complaints, and OLSC Staff.

**Areas of Improvement:**

- Feedback used to ensure stakeholder needs are met and improvements made where needed.
- Improved information extracted from surveys for ongoing reporting purposes.

### Ongoing Quality Improvement:

**Activity Undertaken:** Review to ensure all policies and process continue to be relevant. Ongoing assessments on information sourced and used in provision of service delivery.

**Areas of Improvement:**

- Better access to information and procedures
- Improved training.
- Enhancement of consistency of Information, processes and procedures.
- Enhanced efficiency.
- Continual improvement.

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## IMPROVING OLSC STAKEHOLDER SERVICES

The OLSC remains committed to ensuring we continually improve our practices and processes. Areas such as office procedures and stakeholder service and satisfaction were again the focus for the 2012-2013 financial year.

In line with our role, vision, mission, and values, the OLSC has set four objectives to ensure we continually monitor and improve in the areas of office practices and processes, stakeholder service and satisfaction. These objectives are:

- To deliver our existing services in a consistent, reliable fashion while meeting and exceeding our stakeholders' needs;
- To ensure the core processes run smoothly and efficiently, with minimal non-compliance whilst ensuring maximum stakeholder satisfaction and maximum staff morale;

- To set new projects to improve areas identified in performance monitoring and other new business initiatives;
- To maintain the highest standards in documentation and information management to ensure accessibility, relevancy and currency of information provided to both staff and stakeholders.

The ISS Unit has continued work on refining a number of surveys aimed at stakeholders accessing the OLSC service. The OLSC remains committed to ensuring all stakeholder access points/areas are managed optimally to satisfy stakeholder needs. Ongoing surveys include those targeted at callers to the Inquiry Line; OLSC website users; complainants who have lodged a formal written complaint with the OLSC; practitioners who are contacted regarding complaints; university and higher education students; and OLSC Staff. Results to date from these surveys have been overwhelmingly positive and a number of changes have been put in place from feedback received to ensure even better access to services for all stakeholders.

### Staff Training & Information

**Project Rationale:** Ongoing enhancement of OLSC's current staff information and training to ensuring better service delivery to stakeholders.

#### Internal Staff Training Sessions:

**Activity Undertaken:** An annual review was undertaken to ensure that ongoing job based targeted training for all staff was been met. Staff were surveyed and training in communication techniques and changes in areas of law was provided.

**Areas of Improvement:**

- Better access to current information
- Improved training
- Broad range of topics covered as nominated by staff
- Better service delivery to stakeholders.

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## STAFF INFORMATION SESSIONS

The ISS Unit continued its management of internal staff information sessions to ensure that ongoing job based targeted training for all staff was been met. All staff are surveyed annually and a monthly calendar is set-up to enhance practical training in communication techniques and ensure information on like services for referral and changes in areas of law are provided. These information sessions have proved invaluable in ensuring that staff remain aware of departmental and service changes, best practice, referral agencies, current changes to the law and in optimising information provision to stakeholders.

Information/ Knowledge Management	
<b>Project Rationale:</b>	To ensure better access to information for all staff; to enable better decision making, enhance sustainability, currency of information sourced and stored, and ensure knowledge management principles are enhanced.
Information Systems Reviews:	
<b>Activity Undertaken:</b>	A review was undertaken to ascertain the accuracy and currency of information stored to ensure optimal coding options, accessibility and reporting functionality from the Inquiry Line, Conduct Register and Case Tracking System (CTS).
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>• Improved consistency and capture of information from the CTS, Inquiry Line and Conduct Register resulting in enhanced decision making.</li> <li>• Improved accuracy and currency of information extracted from the CTS, Inquiry Line and Conduct Register for ongoing reporting purposes.</li> <li>• Improved consistency and accuracy of information extracted from the CTS and Conduct Register for use in the OLSC Portal and Business Objects Universe.</li> </ul>
OLSC Portal Final Stage:	
<b>Activity Undertaken:</b>	Final stage testing and enhancement of OLSC Portal to ensure system goes live in 2013-2014 financial year. Design of Business Objects Universe that enables access for reporting on all data sourced from the LPMAS, CTS, Conduct Register and Law Society.
<b>Areas of Improvement:</b>	<ul style="list-style-type: none"> <li>• Improved access to information to enable better decision making.</li> <li>• Ease of access for practitioners submitting self-assessments and trending improvements in their management systems.</li> <li>• Enhance sustainability and currency of information sources and stored.</li> <li>• Better access to information to ensure optimised reporting and research.</li> <li>• Better access to information to enhance risk management.</li> </ul>

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## Enhancement of Data Sets and Reports

In the 2012-2013 financial year the ISS Unit undertook reviews of all internal information systems to ensure the ongoing enhancement of data sets to improve the capacity, consistency and capture of data and to increase the sustainability and accuracy of information stored. These reviews have ensured the OLSC can now better trend and resolve complaints through enhanced information. Key performance indicators have also been perfected to ensure better ongoing measurement and our ability to respond to queries from government bodies has been further optimised. With the introduction of the OLSC's new business objects data warehouse the ISS Unit will have the capability to design and further fine tune a range of reports to support the changing information needs of the OLSC.

## OLSC PORTAL

In the 2012-2013 financial year the ISS Unit took over the management and final stage of roll-out of the OLSC Portal. The Unit has continued to work closely with a range of OLSC staff, the NSW Law Society, the Department of Attorney General and Justice (DAGJ) and our vendor, Cirrus Technologies, to ensure that the Portal meets all stakeholder needs. The OLSC Portal will go live to the public in the 2013-2014 financial year.

The introduction into the unit of a temporary full time LPMAS Client Officer has ensured a smooth rollout of the system to internal users who are already using the system. In 2013-2014 once the OLSC Portal goes live the Client Officer will provide direct assistance via telephone and email to registered users who encounter difficulties while registering or when using the system. Registrations will be open to all other Australian regulators, the Law Society, DAGJ and practitioners.

The Client Officer will be the main liaison between the OLSC and practitioners in assisting the smooth transition from paper-based self-assessment to online

self-assessment processes when the Portal goes live. Working closely with the OLSC Practice Compliance Officer, the ISS Manager and ISB, the LPMAS Client Officer will be responsible for processing incoming 'system access' requests, user management and providing technical assistance with the process of completing and submitting the online self-assessment forms.

The Portal enables the OLSC access to real-time data which will enhance decision-making to improve complaint turnaround times. This will enable improvements to the flow of information in relation to consumer disputes and investigations and ensure better communication with practitioners and practices across NSW. This system will change the way the OLSC interacts with and responds to the information needs of practitioners and legal practices both incorporated and traditionally structured. This system will also strengthen partnerships and relationships with like organisations and other regulators.

The OLSC Portal will enable better tracking of information, data storage, management of assessments and practice reviews and will enhance reporting functionality. The system will also facilitate the use of risk profiling algorithms to design targeted educational campaigns to improve the profession, enable refinement of practice reviews and identify areas for new research.

The OLSC Portal will help improve the way the OLSC works and assist us in meeting the challenges and changing needs associated with legal practice in NSW now and in the future.

## CHAPTER 7

# FINANCIAL PERFORMANCE

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

In 2012-2013 the OLSC continued its program of improved financial management through implementation of business improvement and cost saving initiatives.

The OLSC closely scrutinised its financial performance during the year. This involved monthly monitoring and review of its approved operating budget including comprehensive examination of all expenditure line item budget variances for both discretionary and non-discretionary items.

We investigated avenues to deliver savings within our allocated budget where possible.

We performed monthly detailed variance analysis and provided rolling forecasts of significant expenditure trends including managing these trends to align with our full year budget at year-end.

Our budget management strategy ensured we achieved our overall budget allocation at close of the financial year.

Some items of operating expenditure however were beyond our organisational control.

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

## CAPITAL EXPENDITURE

In addition to receiving normal operational funding, in 2012-2013 the OLSC received approx \$50k from the Public Purpose Fund to meet capital costs associated with the design, testing and roll-out of the new OLSC LPMAS Gateway application.

The OLSC finalised all Gateway project works this year without exceeding its funding allocation.

## HUMAN RESOURCES

There was a slight change to the OLSC's approved establishment in 2012-2013 which at the start of the year comprised 30 full time equivalent positions – 29 positions for permanent full time administrative and professional staff and one full time equivalent position for rostered casuals on the OLSC Inquiry Line.

During the year the OLSC was granted approval and additional PPF funding to create one full time equivalent temporary position titled LPMAS Client Officer, Clerk Gr 3-4 for 12 months. The new temporary position was implemented in mid March 2013 and will provide essential frontline support to incorporated legal practices interfacing the OLSC's new LPMAS Gateway application in the course of completing web-based self-assessment forms.

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

## CHAPTER 8

# THE 2012-2013 FINANCIAL STATEMENT

## FINANCIAL STATEMENT 2012-2013

	Budget	Spent	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments	(4,385,085)	(4,145,658)	(239,427)	
Other Revenue	–	(7)	7	
<b>TOTAL REVENUE</b>	<b>(4,385,085)</b>	<b>(4,145,665)</b>	<b>(239,420)</b>	
Salaries & Wages	2,697,541	2,557,230	140,311	<b>1</b>
Allowances	1,571	718	853	
Leave Entitlements (Recreation Leave, Annual Leave Loading & LSL)	315,593	337,604	(22,011)	<b>2</b>
Workers Compensation	18,462	17,112	1,350	
Payroll Tax	175,797	164,681	11,116	<b>3</b>
Fringe Benefits Tax	1,193	668	525	
Superannuation	220,509	260,939	(40,430)	<b>4</b>
<b>TOTAL EMPLOYEE RELATED PAYMENTS (Excl Crown Liabilities)</b>	<b>3,430,666</b>	<b>3,338,952</b>	<b>91,714</b>	
Advertising & Publicity	5,115	5,757	(642)	
Bank Charges	67	14	53	
Contractors	50,000	5,912	44,088	<b>5</b>
Electricity & Gas	13,305	15,950	(2,645)	
Fees	201,716	146,498	55,218	<b>6</b>
Freight & Cartage	20	–	20	
Insurance	1,446	1,181	265	
Interpreters & Translations	7,304	3,308	3,996	
Motor Vehicles	2,399	273	2,126	
Postal Expenses	22,411	21,340	1,071	
Printing	32,920	22,267	10,653	<b>7</b>
Publications	9,140	9,625	(485)	
Rates & Outgoings	54,180	50,429	3,751	
Rent	328,682	317,411	11,271	<b>8</b>
Staff Expenses	23,184	18,493	4,691	
Stores & Stationery	25,452	15,430	10,022	<b>9</b>

Telephone	13,153	12,660	493
Travel	20,496	17,776	2,720
<b>TOTAL OTHER OPERATING EXPENSES</b>	<b>810,990</b>	<b>664,324</b>	<b>146,666</b>
Maintenance Contracts	143,089	136,787	6,302
Repairs and Maintenance	340	–	340
<b>TOTAL MAINTENANCE</b>	<b>143,429</b>	<b>136,787</b>	<b>6,642</b>
<b>TOTAL EXPENSES (Excl Depreciation &amp; Crown Liabilities)</b>	<b>4,385,085</b>	<b>4,140,063</b>	<b>245,022</b>
Profit/Loss on Sale of Assets	–	331	(331)
<b>Net Cost of Services Before Depreciation &amp; Crown Liabilities</b>	<b>–</b>	<b>(5,271)</b>	<b>5,271</b>
<b>Add Non Cash Items:</b>			
Depreciation & Amortisation	361,672	358,117	3,555
Crown Liabilities (LSL Liability Assumed by Crown)	79,962	–	79,962
			<b>10</b>
<b>Total Net Cost of Services</b>	<b>441,634</b>	<b>352,846</b>	<b>88,788</b>

## CAPITAL EXPENDITURE 2012-2013

	Allocation	Spent	Variance
	\$	\$	\$
Computer Software/Systems	49,736	47,085	2,651
<b>Total Capital Expenditure</b>	<b>49,736</b>	<b>47,085</b>	<b>2,651</b>

# NOTES SUPPORTING THE 2012-2013 FINANCIAL STATEMENT

- 1. Salaries & Wages:** The OLSC's *Salaries & Wages* budget contains provision for annual salary payments to employees occupying permanent and temporary positions in the OLSC approved establishment. In 2012-2013 the OLSC's budget was increased by \$77k to accommodate full year salary and on-costs of a newly created temporary position, LPMAS Client Officer, Clerk Gr 3-4 for 12 months. The new position, which became operative in mid March 2013, incurred approx 3.5 months of its full year budgeted costs at 30 June and the *Salaries & Wages* budget variance reflects this. Also, during the year some staff availed periods of extended leave without pay creating additional salary savings.
- 2. Leave Entitlements:** The OLSC's *Leave Entitlements* budget reserves funds for recreation leave, annual leave loading and long service leave entitlements of OLSC employees. The *Leave Entitlements* budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.
- 3. Payroll Tax:** The OLSC's *Payroll Tax* budget provides for payroll tax payable to the Office of State Revenue on OLSC salary related payments. The *Payroll Tax* budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.
- 4. 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.

## OTHER OPERATING

- 5. Contractors:** The OLSC's *Contractors* budget includes provision for the engagement of professional services to support the OLSC's ongoing development of the LPMAS as well as our ongoing program of audits of major and complex ILPs). In 2012-2013 the OLSC engaged contractors to conduct a research project on the ILP self assessment form and to develop draft guides in relation to virtual law practices and social media for lawyers. There was minimal requirement, however, to hire contractors to support our audit program and the *Contractors* budget variance reflects the resultant cost saving achieved.
- 6. Fees:** The OLSC's *Fees* budget maintains funds for various types of fees expenditure including legal fees incurred in bringing matters before the Administrative Decisions Tribunal and the Courts as well as costs associated with the complaints review system and the engagement of independent reviewer advisors. In 2012-2013 the OLSC initiated a number of major investigations into the conduct of legal practitioners and firms with some matters resulting in Tribunal proceedings. The *Fees* budget variance which highlights significant cost savings includes credit adjustments made to the OLSC's legal fees account to offset income. During the year the OLSC received: approx \$16k from the bankrupt estate of Russell Keddie and approx \$5k from the bankrupt estate of Tony Barakat following ADT decisions concerning payment of costs to the Legal Services Commissioner in matters relating to the Keddie disciplinary proceedings; and \$8k by way of payment of costs in proceedings withdrawn by consent re ADT matters *Bryden & Anor v LSC*.

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7. **Printing:** The OLSC's *Printing* budget includes funds for the production of OLSC's annual report, bi-monthly newsletter 'Without Prejudice', publications and office stationery. In 2012-2013 the OLSC took measures to reduce its printing costs by vastly reducing the number of print runs of its hardcopy annual report. This document including all other OLSC publications can be accessed electronically on the OLSC website. The *Printing* budget variance highlights the result of OLSC's cost saving initiative.
  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 OLSC budgeted for an increase in monthly rent payments in 2012-2013 however the predicted rent rise did not eventuate and the *Rent* budget variance reflects the resulting cost saving achieved in this expenditure line item.
  9. **Stores & Stationery:** The OLSC's *Stores & Stationery* budget contains provision for monthly costs of office consumables requisitions and any ad hoc computer equipment purchases during the year. The *Stores & Stationery* budget variance highlights cost savings achieved as a result of the OLSC's continued improvements to its inventory management and purchasing processes in 2012-2013.

## NON CASH ITEM

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

## CHAPTER 9

# OLSC ANNUAL STATISTICS 2012-2013

### INQUIRY LINE

In 2012-2013 the OLSA received 8,178 calls from the public on our Inquiry Line, an increase of 258 on the previous year.

#### P1 Legal matters raised in calls

	2012-2013	2011-2012	2010-2011
Family/ Defacto	18.6	16.9	17.4
OLSC General Query*	13.8	10.6	9.6
Probate/ Wills/ Family Provisions	12.0	12.5	11.4
Conveyancing	10.4	11.4	12.9
Other Civil	9.9	12.6	12.3
Commercial/ Corporations	9.1	8.4	10.3
Personal Injuries	5.4	5.1	5.1
Criminal	5.3	6.0	6.0
Workers Compensation	4.2	4.2	3.6
General Law/ Legal Profession Query	3.4	2.2	3.5
Other	2.9	4.6	2.4
Victim's Compensation	1.1	1.5	1.6
Industrial law	1.0	1.0	.7
Land and Environment	0.8	0.8	.9
Leases/ Mortgages/ Franchises	0.8	0.8	.7
Professional Negligence	0.8	0.5	.6
Immigration	0.6	0.9	.8

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



## P2 Nature of phone enquiry

	2012-2013	2011-2012	2010-2011
Overcharging	14.9	15.7	13.3
OLSC Process*	14.7	16.5	15.1
Communication	13.7	14.4	12.4
Negligence	12.0	10.7	10.4
General cost complaint/query	9.7	10.8	11.0
Ethical matters	6.8	5.7	7.1
Delay	5.8	5.0	6.2
Misleading conduct	4.7	3.3	3.8
Instructions not followed	4.0	4.1	3.9
Costs disclosure	3.0	3.4	3.6
Conflict of interests	2.3	2.2	2.4
Document transfer/liens	2.2	2.5	2.2
Referral requests	1.9	1.7	3.0
Trust fund matters	1.7	1.3	2.1
Document handling	1.1	1.0	1.0
Pressure to settle	0.5	0.6	0.8
Fraud (not trust fund)	0.5	0.5	0.7
Compliance matters	0.3	0.2	0.1
Failure to honour undertakings	0.2	0.3	0.4
Advertising	0.2	0.2	0.2
Supervision	0.1	0.0	0.1

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

## P3 Practitioners mentioned on inquiry line

	2012-2013	2011-2012	2010-2011
Solicitor	92.3	90.8	91.1
Other*	5.0	6.8	6
Barrister	2.5	2.1	2.5
Licensed Conveyancer	0.3	0.3	0.5

\* 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

	2012-2013	2011-2012	2010-2011
Client	69.0	63.6	62.0
Friend/relative	8.8	7.8	9.9
Opposing client	5.8	6.4	6.3
Solicitor on own behalf	3.4	4.0	4.7
Other*	2.8	4.6	3.2
Unrepresented client	2.3	1.1	2.7
Beneficiary/executor/administrator	2.2	3.6	2.3
Previous client	2.1	4.9	5.4
Solicitor on another's behalf	1.4	1.8	1.4
Non-legal service provider	1.4	1.1	0.9
Government Agency	0.3	0.3	0.4
Barrister on another's behalf	0.3	0.1	0.1
Student/ Educator	0.2	0.1	0.3
Barrister on own behalf	0.1	0.5	0.4

\* 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

	2012-2013	2011-2012	2010-2011
Caller indicated intention to send in complaint	24.9	24.5	24.4
Provided complaint/ cost mediation form	19.6	14.5	14.9
Recommended direct approach to lawyer about concerns	12.5	16.3	17.6
Provided information about the OLSC*	9.8	14.6	13.2
Provided referral for legal advice or other assistance	9.4	8.8	9.4
Listened to caller's concerns	8.3	6.3	7
Provided information about the legal system	5.2	5.3	4.8
Explained that concerns are outside jurisdiction of OLSC	3.8	3.2	2.4
Provided referral to the NSW Supreme Court Costs Assessment Scheme	3.0	2.5	2.5
Provided information about the OLSC and LPA to a legal practitioner	2.5	2.8	2.6
Conducted telephone mediation	0.6	0.6	0.8
Other	0.3	0.5	0.2
Scheduled interview for caller	0.1	0.1	0.1

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

## WRITTEN COMPLAINTS

In 2012-2013 the OLSC received a total of 2,685 written complaints, a decrease of 73 on the previous year. Of the total written complaints received, 1765 were assessed as consumer disputes and 866 as investigations. Fifty-four complaints were assessed as non-jurisdictional so were sent directly to the Law Society, MARA, OFT or regulators outside NSW. Of those complaints assessed as within jurisdiction, 79% of those written complaints received were retained and handled by the OLSC. The remaining 21% were referred to the professional associations for handling.

The OLSC registered the completion of 2,721 written complaints, a decrease of 84 on the previous year. Of the total written complaints completed, 1,849 were closed as consumer disputes and 817 as investigations. Of those complaints assessed as within jurisdiction, 78% of written complaints were completed by the OLSC. The professional associations completed the remaining 22%.

### W1 Legal matters giving rise to complaints received in 2012-2013

	Agency Handling Complaint				
	OLSC	Council	2012-2013*	2011-2012	2010-2011
Family/ Defacto	15.5	2.3	17.8	18.1	17.5
Other Civil	10.9	3.8	14.7	14.0	14.4
Probate/ Wills/ Family Provisions	12.0	1.3	13.3	12.4	11.4
Commercial/ Corporations	7.1	3.2	10.3	11.6	11.3
Other	5.3	4.4	9.7	14.0	9.6
Personal Injuries	8.1	1.0	9.1	9.4	8.2
Conveyancing	5.8	1.4	7.2	7.4	8.9
Criminal	5.5	1.5	7.0	7.7	7.6
Workers Compensation	2.5	0.3	2.8	3.0	3.2
Leases/ Mortgages/ Franchises	1.9	0.5	2.4	3.0	2.7
Industrial law	1.4	0.6	2.0	2.6	2.3
Professional Negligence	1.2	0.1	1.3	1.1	0.8
Land and environment	0.9	0.2	1.1	1.4	0.6
Strata bodies/ corporates**	0.6	0.1	0.7	-	-
Immigration	0.4	0.0	0.4	0.9	1.1
Victim's Compensation	0.3	0.0	0.3	0.3	0.4
<b>Total %</b>	<b>79.4</b>	<b>20.7</b>			

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

\*\* New category introduced in the 2012-2013 financial year.

## W2 Nature of complaints received in 2012-2013

Agency Handling Complaint					
	OLSC	Council	2012-2013*	2011-2012	2010-2011
Negligence	15.1	2.4	17.5	18.1	19.2
Communication	13.6	1.9	15.5	15.5	17.3
Overcharging	11.9	0.7	12.6	12.2	11.5
Misleading Conduct	5.2	2.8	8.0	8.6	9.0
Ethical Matters	5.8	2.1	7.9	8.8	7.2
Instructions Not Followed	4.8	1.2	6.0	6.7	6.5
General Cost Complaint/ Query	3.6	2.2	5.8	5.3	4.9
Trust Fund	2.5	2.4	4.9	5.0	5.1
Delay	4.4	0.5	4.9	5.1	5.5
Cost Disclosure	4.2	0.5	4.7	4.0	3.7
Document Transfer/ Liens	2.6	0.2	2.8	2.9	2.3
Conflict Of Interest	1.8	0.7	2.5	2.4	2.5
Compliance Matters	0.9	1.1	2.0	1.1	1.5
Undertakings	0.2	0.8	1.0	0.9	0.6
Document Handling	0.8	0.2	1.0	0.7	0.9
Advertising	0.8	0.0	0.8	1.0	0.6
Pressure To Settle	0.7	0.1	0.8	0.9	0.7
Fraud (Not Trust Fund)	0.3	0.3	0.6	0.7	0.6
Capacity**	0.4	0.0	0.4	-	-
Supervision	0.1	0.2	0.3	0.3	0.3
<b>Total %</b>	79.7	20.3			

\* 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.

\*\* New category introduced in the 2012-2013 financial year.

### W3 Type and source of complaints received in 2012-2013

	Number of complaints						
	Solicitor*	Barrister	Other**	TOTAL	2012-2013	2011-2012	2010-2011
Bar Association	0	7	1	8	0.3	0.3	0.1
Barrister on another's behalf	1	1	0	2	0.0	0.2	0.3
Barrister on own behalf	42	1	0	43	1.6	1.6	1.7
Beneficiary/ Executor/ Administrator	162	1	1	164	6.1	5.3	4.6
Client	696	38	9	743	27.7	29.4	30.5
Commissioner	86	4	2	92	3.4	1.7	1.8
Client's friend / relative	79	5	1	85	3.2	3.9	3.5
Law Society	85	0	4	89	3.3	2.5	3.5
Non-legal service provider	76	2	2	80	3.0	2.2	2.6
Opposing client	418	22	10	450	16.8	17.6	15.7
Previous client	537	34	9	580	21.6	19.2	21.0
Solicitor on another's behalf	144	5	4	153	5.7	5.9	6.8
Solicitor on own behalf	80	2	1	83	3.1	5.4	3.9
Unrepresented client	4	1	1	6	0.2	0.5	0.4
Cost Assessor	1	0	1	2	0.1	0.0	0.1
Other ***	95	7	3	105	3.9	4.2	3.7
<b>TOTAL</b>	<b>2506</b>	<b>130</b>	<b>49</b>	<b>2685</b>			

\* Includes former solicitors and legal practitioners

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

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

#### W4 Age of complaints remaining open or suspended on 30 June 2013 and being handled by the OLSC

Year opened	Open at 30 June 2013	Open at 30 June 2012	Open at 30 June 2011
2012-2013	504		
2011-2012	53	511	
2010-2011	18	41	492
2009-2010	7	20	80
2008-2009	0	4	16
2007-2008	0	3	16
2006-2007	0	0	6
2005-2006	0	0	7
2004-2005	0	0	4
<b>TOTAL</b>	<b>582</b>	<b>579</b>	<b>621</b>

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

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

Of complaints handled in 2012-2013, time taken to finalise

	Days*
Average time to complete complaints received and completed / resolved in 2012-2013	47.5
Average time to complete complaints received in any year but completed / resolved in 2012-2013	87.2
Average time taken to dismiss complaints received in 2012-2013	55.7
Average time to dismiss complaints received in any year but dismissed in 2012-2013	117.2

\* Averages rounded to 1 decimal point

## W6 All Complaints finalised in 2012-2013

### All OLSC Consumer Disputes

	Solicitor*	Barrister	Other**	TOTAL
Dispute resolution completed	1165	37	7	1209
<b>Subtotal concluded by OLSC</b>	<b>1165</b>	<b>37</b>	<b>7</b>	<b>1209</b>
Consumer Dispute closed by OLSC	375	30	8	413
Withdrawn by complainant at OLSC	29	0	0	29
Unable to be resolved at the OLSC	18	0	0	18
<b>Subtotal closed at the OLSC</b>	<b>422</b>	<b>30</b>	<b>8</b>	<b>460</b>
<b>Total OLSC Consumer Disputes Completed</b>	<b>1587</b>	<b>67</b>	<b>15</b>	<b>1669</b>

### ALL OLSC Investigations

	Solicitor*	Barrister	Other**	TOTAL
Practitioner referred to Tribunal	1	0	0	1
Practitioner disciplined by OLSC#	25	1	0	26
Disciplined by OLSC with compensation ordered#	5	0	0	5
Likely UPC/PM dismissed in Public Interest	34	0	0	34
<b>Subtotal determined by OLSC</b>	<b>65</b>	<b>1</b>	<b>0</b>	<b>66</b>
Tribunal finding of UPC/PM unlikely ***	182	14	2	198
Summary Dismissal in the Public Interest	15	4	5	24
Investigation closed by OLSC	32	5	9	46
Withdrawn by complainant at OLSC	14	0	0	14
Investigation suspended pending court proceedings	9	1	0	10
Investigation awaiting Tribunal findings	0	0	0	0
Tribunal Decision Delivered	6	0	0	6
Appeal closed by OLSC	2	0	1	3
<b>Subtotal closed by OLSC</b>	<b>260</b>	<b>24</b>	<b>17</b>	<b>301</b>
Investigation not accepted out of time	38	2	2	42
<b>Subtotal not accepted by OLSC</b>	<b>38</b>	<b>2</b>	<b>2</b>	<b>42</b>
<b>Total OLSC Investigations Completed</b>	<b>363</b>	<b>27</b>	<b>19</b>	<b>409</b>

### All Non Jurisdictional Complaints

	Solicitor*	Barrister	Other**	TOTAL
Refer to Council	4	0	1	5
Refer to MARA & OFT****	20	2	7	29
Refer to other States	19	0	2	21
<b>Total Non-Jurisdictional Complaints</b>	<b>43</b>	<b>2</b>	<b>10</b>	<b>55</b>

### All Council Consumer Disputes

	Solicitor*	Barrister	Other**	TOTAL
Dispute resolution completed	56	1	0	57
Resolved through formal mediation	0	0	0	0
<b>Subtotal concluded by Council</b>	<b>56</b>	<b>1</b>	<b>0</b>	<b>57</b>
Consumer Dispute closed by Council	36	1	0	37
Withdrawn by complainant at Council	70	3	2	75
Unable to be resolved at Council	11	0	0	11
<b>Subtotal closed by Council</b>	<b>117</b>	<b>4</b>	<b>2</b>	<b>123</b>
<b>Total Council Consumer Disputes Completed</b>	<b>173</b>	<b>5</b>	<b>2</b>	<b>180</b>

### ALL Council Investigations

	Solicitor*	Barrister	Other**	TOTAL
Practitioner referred to Tribunal	25	0	5	30
Practitioner disciplined by Council#	27	4	0	31
Likely UPC/PM dismissed in Public Interest	1	0	2	3
<b>Subtotal determined by Council</b>	<b>53</b>	<b>4</b>	<b>7</b>	<b>64</b>
Tribunal finding of UPC/PM unlikely***	255	27	0	282
Summary Dismissal in the Public Interest	9	0	31	40
No Further Action at Council	20	0	2	22
<b>Subtotal closed by Council</b>	<b>284</b>	<b>27</b>	<b>33</b>	<b>344</b>
<b>Total Council Investigations Completed</b>	<b>337</b>	<b>31</b>	<b>40</b>	<b>408</b>
<b>Total finalised by OLSC</b>	<b>1950</b>	<b>94</b>	<b>34</b>	<b>2078</b>
<b>Total Non-Jurisdictional Complaints</b>	<b>43</b>	<b>2</b>	<b>10</b>	<b>55</b>
<b>Total finalised by Council</b>	<b>510</b>	<b>36</b>	<b>42</b>	<b>588</b>
<b>TOTAL</b>	<b>2503</b>	<b>132</b>	<b>86</b>	<b>2721</b>

\* Includes former solicitors and legal practitioners

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

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

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

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



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## W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2012-2013

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

	2012-2013	2011-2012	2010-2011
0-30 days	35.0	28.3	31.6
1-3 months	35.1	33.7	34.6
3-6 months	16.3	21.7	20.4
6-9 months	5.6	7.8	6.5
9-12 months	3.3	3.1	2.6
Over 12 months	4.7	5.3	4.2

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

## R1 Duration of review handling at the OLSC

Of reviews finalised in 2012-2013, time taken for review handling

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

	2012-2013	2011-2012	2010-2011
0-3 months	40.0	29.8	37.3
3-6 months	35.4	49.4	40.0
6-9 months	16.9	11.7	20.0
9-12 months	4.6	9.1	0.0
Over 12 months	3.1	0.0	2.7

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

## R2 Reviews in progress and finalised in 2012-2013 – received all years

	Solicitor	Barrister	Other*	Total	Percentage
<b>Reviews in progress</b>					
In progress at OLSC	4	1	0	5	6.6
Being reviewed by consultant	8	1	0	9	11.8
Consulting with Council prior to finalising	0	0	0	0	0.0
<b>Total remaining open</b>	<b>12</b>	<b>2</b>	<b>0</b>	<b>14</b>	<b>18.4</b>
<b>Reviews completed</b>					
Dismissal confirmed	46	5	2	53	69.7
Out of time, no jurisdiction	0	0	0	0	0.0
Review request withdrawn	1	0	0	1	1.3
Reprimand confirmed	0	0	0	0	0.0
Reinvestigated by OLSC	2	0	0	2	2.6
Reinvestigated by Council	3	0	0	3	4.0
Decision changed	1	1	0	2	2.6
Other	1	0	0	1	1.3
<b>Total completed</b>	<b>54</b>	<b>6</b>	<b>2</b>	<b>62</b>	<b>81.6</b>
<b>Total handled</b>	<b>66</b>	<b>8</b>	<b>2</b>	<b>76</b>	<b>100.0</b>

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

## T1 Complaints referred to the Administrative Decisions Tribunal in 2012-2013\*

Reason	Solicitor	Barrister	Clerk / Associate	TOTAL
Disciplinary Action	16	0	0	16
Reprimand/ Compensation Order s540	5	0	0	5
Approval of Lay Associate s17(3)	0	0	3	3
Approval of Lay Associate s17(4)	0	0	1	1
Prohibited employment s18	0	0	5	5
Review s75	2	0	0	2
Removal of Suspension of Practising Certificate	1	0	0	1
<b>TOTAL</b>	<b>24</b>	<b>0</b>	<b>9</b>	<b>33</b>

\* Data provided by Administrative Decisions Tribunal

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## T2 Outcomes of Tribunal Proceedings in 2012-2013\*

Outcome	Number
Reprimanded	21
Fined	15
Removed from roll**	23
Conditions imposed on practising certificate	9
Dismissed after hearing	2
Undertake and complete course of further Legal Education	1
Withdrawn	2
Application granted (prohibit employment)	2
Approval of lay associate: Application granted	1
<b>TOTAL</b>	<b>76</b>

\* Data provided by Administrative Decisions Tribunal

\*\* This number indicates number of complaint files associated with a practitioner whose name was removed from the roll, not number of practitioner's removed.

Please Note:

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

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