



# Annual Report **2001-2002**

the office of the LEGAL SERVICES COMMISSIONER

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# Office of the Legal Services Commissioner

## Annual Report 2001-2002

### 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

# Commissioner's Report

*The 2001-2002 year was a period of change, evolution and growth for the OLSC.*

*It was one of our busiest and most fulfilling years to date. We refined and improved our complaint-handling processes, worked with the profession to increase its consumer focus and further enhanced the understanding within the community of how the legal profession and system operate while promoting high ethical standards within the profession.*

## PROGRESS TOWARDS LONGER-TERM CHANGE

Our qualitative achievements are notoriously difficult to measure as they are directed at improving the service delivery by the legal profession while addressing the often unrealistic expectations of consumers. We attempt this in the context of promoting compliance with the *Legal Profession Act 1987* and maintaining the high ethical standards of the profession. Our problem solving approach to complaint-handling coupled with our educational focus, has received approval and support from our stakeholders but has yet to be translated into measurable outcomes by the Office. During the next reporting year, we will attempt a more project-based focus, and will report on this approach in future annual reports. We will also undertake a major customer satisfaction survey to measure ourselves against benchmarks established by our first survey of 2000.

The Office has put a significant portion of its resources and efforts into informing the profession about changes made to the regulatory regime and assisting the profession to meet the new challenges presented.

One example of this has been in relation to the amendments to the *Legal Profession Act*, which came into effect in June 2001 allowing legal practices, including multidisciplinary practices, to incorporate. Approximately 100 small to mid-size firms have already expressed a desire or intention to incorporate. In conjunction with LawCover, the legal profession's professional indemnity insurer, we have run educational sessions for legal practitioners who have either incorporated or have expressed an interest in doing so.

The central element of these educational seminars has been to discuss the duties and responsibilities of the solicitor director required by the legislation. (I have been concerned at the lack of in-depth knowledge of the duties and responsibilities by those intending to incorporate.)

We have also been developing an investigation and review methodology in response to our new role of assisting incorporated practices to comply with their responsibilities under the Act and, in particular, assisting them to have the systems and procedures in place for such compliance. In this regard, we have worked with the Law Society and the College of Law, which have established a best practice program known as *QL Gateway to Best Practice*. The standards and processes established by this program will provide a benchmark for our role as auditors of the new incorporated practices.

A position of Systems Assessment Officer is to be established to focus on conducting reviews of incorporated practices and will join the team in the first half of the next reporting year. A position of Manager, Information Systems and Services, will be created at around the same time to oversee the introduction of a project management methodology to the Office, whereby teams consisting of different branches of the Office at varying levels of seniority will address OLSC structural and procedural issues from a problem solving perspective. Results of these initiatives will be reported in next year's annual report.

Another major achievement for 2001-2002 was our comprehensive submission to the review by the Attorney General's Department of *Part 10* of the *Legal Profession Act 1987*. This review followed the results of an earlier review by the Law Reform Commission and it was intended to complement the earlier review. It is anticipated that this review and any amendments drafted as a consequence, will result in significant change to the *Legal Profession Act 1987*.



NSW Legal Services Commissioner Steve Mark.

## Commissioner's Report (continued)

Amendments to the *Legal Profession Act 1987* early in the reporting year required solicitors and barristers to disclose acts of bankruptcy, tax offences and indictable offences ('notifiable events') and show cause why, despite the commission of a notifiable event, they are still fit and proper to hold a practising certificate. Of all notifications made by legal practitioners, 39 practitioners (3 solicitors and 36 barristers) had their practising certificates cancelled, suspended or conditions attached.

The *Legal Profession Amendment (National Competition Policy Review) Act*, passed in June 2002, provides for the creation of a disciplinary register of actions taken against legal practitioners to be managed by this Office and located on our web site. This will provide consumers with valuable information about the disciplinary history of legal practitioners to assist them in making informed choices in obtaining legal professional assistance or representation.

The Act, expected to be proclaimed early in the next reporting year, will also take further steps towards a National Legal Services Market and allow membership of the Law Society to become voluntary.

The expanded community education program implemented by the OLSC in 2000-2001 continued in this reporting year despite a vacancy in the Education Officer position. Staff presented seminars to law students at undergraduate level in Sydney, Wollongong and the North Coast on the role of the OLSC. As well as providing detail on legal practitioners' rights and responsibilities as outlined in the *Legal Profession Act 1987*, these seminars raised the most common complaints received by the OLSC and discussed how practitioners can improve customer satisfaction and avoid complaints.

As Commissioner, I addressed a number of regional law societies on developments relating to changes to the regulatory regime and provided an overall picture on the types of complaints received from each region together with tips on how to avoid them.

We continued community education efforts directed at key community groups which are often the first point of contact for people in dispute with their legal practitioners, including people from a non-English speaking background. This approach has proved beneficial for us by facilitating a "grass roots" dialogue with the community as well as providing an important opportunity for us to gather feedback on our services and update our referral resources. We will continue to develop this aspect of our role in the coming year.

During the year, we also undertook a complete review of our successful Fact Sheets series on topics commonly raised by consumers and expanded the series by adding a Fact Sheet on costs dispute resolution.

### IMPROVED COMPLAINT-HANDLING PROCESSES

Calls to our telephone inquiry line increased by nearly 10 percent for the year to just under 10,000 and the 2928 written complaints represented an increase of around 11 per cent. Despite these increases, staff worked tirelessly throughout the year to maintain an average turnaround-time of two and half months for resolution of consumer disputes while slightly increasing the percentage of all complaints resolved within six months, from 78 percent to 81 percent. In addition, we referred fewer complaints to the Law Society and the Bar Association for investigation, referring only 27.5 percent in this reporting year as opposed to the 31.6 percent we referred to them in 2000-2001.

We received 103 requests for reviews during the year and completed 83 of them. An additional 17 were completed from previous years.

We increased the number of mediations attempted and successfully resolved during the year. Telephone mediation was attempted by our more experienced staff who used this process to resolve consumer disputes and to improve the communication of legal practitioners with their clients. Telephone mediation also educated the profession about consumer concerns.

Notwithstanding our location in the centre of the Sydney CBD, we still dealt with over 150 new complaint-related enquiries at our enquiry counter and conducted an additional 78 formal interviews with consumers who required assistance to fill out complaint forms or understand documentation from their legal practitioner. The Telephone Interpreter Service was used in more than half of these interviews.

## WORKING COOPERATIVELY WITH THE PROFESSION

The Office was very actively engaged with the professional associations throughout the year, particularly in relation to the new disclosure provisions of the *Legal Profession Act*. I attended the Professional Conduct and Bar Council meetings which dealt with barristers who had disclosed acts of bankruptcy, tax offences or indictable offences, while the Assistant Commissioner (Complaints) and other staff regularly liaised with the Law Society on the same issue.

I continued to participate in Board meetings of the *QL Gateway to Best Practice* program established by the Law Society and the College of Law to improve the management of law firms in NSW with the anticipated result of fewer complaints.

My staff and I continue to have regular meetings with officers of the Law Society and the Bar Association in relation to complaint-handling, system improvement and educational approaches designed to provide real benefits for both consumers of legal services and the legal profession as a whole.

A fresh approach to business planning is under development and in the next reporting year will see an emphasis on developing projects with a view to setting, determining and measuring specific outcomes in relation to key aspects of our regulatory work. One area we will focus on is the requirement that legal practitioners disclose their costs and any significant increase in those costs throughout the handling of a legal matter.

We intend to design these projects so that outcomes can be measured which have relevance to the general community directly rather than only focusing on disciplinary activity as an outcome in itself.

The year ahead promises to be one of the most interesting and challenging yet for the OLSC. The changes to our regulatory powers and the fresh approach to addressing our role, both in terms of its impact on the profession and the community, are exciting and have the potential to have far more pro-active impact than the Office has been able to achieve in the past.

The staff of the OLSC are looking forward to these new developments with great enthusiasm and a wealth of ideas and suggestions.

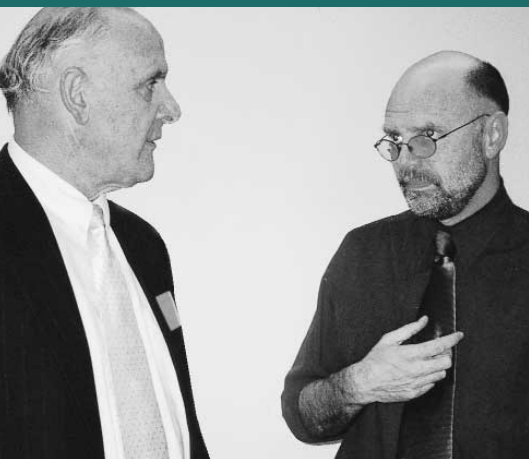
I would like also to give my deep thanks to both the Law Society and the Bar Association of New South Wales for the high degree of cooperation throughout the year. Gratitude and accolades must also, of course, go to OLSC staff for their dedication, commitment and focus, once again throughout an extremely challenging and productive year.

### **Steve Mark** **Legal Services Commissioner**



Left to right: Steve Mark, Terrie Gibson, Director of Professional Conduct, NSW Bar Association and Lorraine Haycock, Professional Conduct Division, NSW Bar Association.

# Developing and maintaining effective complaint-handling processes



Mr Ray Collins (left), Manager of Professional Standards at the Law Society, with the OLSC's Assistant Commissioner (Complaints), Jim Milne.

*It was the most challenging of years for complaint-handling at the OLSC, with significant increases in both written complaints and inquiry line calls.*

*Major staff changes of the preceding year led to an even stronger team. We sharpened our skills and coped exceedingly well with an influx of complaints following the slump in formal complaints experienced during the Olympic games in 2000.*

## RESOLVING CONSUMER DISPUTES

The OLSC successfully resolved 38 per cent of all the complaints we finalised (2758). We were frequently able to identify weaknesses, and even potential disasters, in lawyers' practices and offer positive solutions.

Scores of minor complaints indicated practices struggling financially or administratively. Other complaints resulted from the effect of illness or other personal crises on small firms or sole practitioners. Our approach to these issues was not punitive but rather an attempt to resolve individual complaints to the satisfaction of client and lawyer. We also aimed to prevent further complaints by advising practitioners on effective administrative practices and procedures and providing greater detail on the regulatory system.

Our interaction with a greater number of firms in the coming year will hopefully provide ideas and suggestions to reduce recurrent complaints. We will also continue our practice of personally warning minor repeat offenders and taking more vigorous action if the offences reoccur.

The year ahead will no doubt bring further challenges and improvements. New staff and more focus than ever on improving the analysis of our complaints data will have a major impact as will the progress expected in coordinating the data bases of the Law Society of NSW, the Bar Association and the OLSC. This latter development will most definitely improve our efforts to target practitioners experiencing difficulties with their practices and our identification of issues of concern to legal services consumers.

## INCREASED COMPLAINTS MATCH SOCIETAL TRENDS

The OLSC broke all previous records for the number of written complaints received in 2001-2002.

Last year's drop in formal written complaints was reversed with an 11 per cent jump to 2928 in the reporting year. The vast majority of complaints was once again about solicitors as opposed to barristers.

Complaints continue to come predominantly from a legal practitioner's clients or by someone, often a lawyer, acting on behalf of those clients.

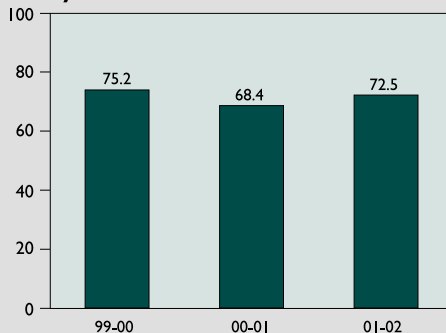
Conveyancing (14.4%), family law (13%) and general civil litigation (12.7%) generated the most complaints. The still-heated housing market and the huge number of transactions carried out in NSW accounts for the continuing high number of complaints about solicitors carrying out conveyancing.

Family law issues in relation to access and property settlements in an adversarial legal system are so volatile that complaints can be expected. The more than 200 complaints about opposing legal practitioners in this area of law reflects the intense emotions involved. Whilst it is exceedingly difficult to demonstrate that a former partner's lawyer is responsible for the allegedly excessive and unreasonable demands often put forward during family court proceedings, it is even harder for OLSC staff to explain the legal difficulties involved to impassioned complainants.

Complaints about personal injuries cases dropped for the third successive year to 11.6 per cent of the total. This year's reduction might well reflect the fundamental changes to this area of law brought about by recent tort law reform.

Our commitment to providing quality customer service was supported by our efforts to expand the knowledge base of staff by encouraging individual staff members to specialise in particular areas of law. We provided training in conveyancing and workers compensation as well as in the often intractable area of wills and probate where many of our more difficult and most inflamed complaints arise.

Percentage of complaints handled by OLSC



The proportion of complaints received and handled by the OLSC in 01-02 increased by 4.1 per cent over the previous year.

Figure 1.

## POOR COMMUNICATION CONTINUES TO TOP LIST

Issues of negligence, poor communication and overcharging once more dominated clients' concerns (45.2 %). The perennial failure of some solicitors and barristers to adequately attend to files and correspondence and the unceasing complaints about poor or non-existent communication logically led clients to also register complaints about the costs of legal services.

Consumers believe that they have a right to question bills that they feel do not reflect the quality of the work carried out. They rightly hold the view that, eight years after the introduction of legislation making it mandatory for them to do so, solicitors should not be failing to disclose potential legal costs. Even more common are complaints about the practitioner's failure to advise of any significant increase in the original estimate of costs.

Despite the increase in complaints received, OLSC staff met the challenge. A total of 2758 complaints were finalised this year, up from 2620 for 2000-2001, but fewer than the number of new files opened in the Office. Notwithstanding the small increase in the number of files on-hand, our turnaround-times for file handling remained much the same as last year with complaints finalised, on average, within 74 days.

Our determination to concentrate on those matters that were serious enough to warrant more detailed inquiries, or better able to be resolved through mediation, also led to us dismissing a greater proportion of matters in the early stages (33% of all complaints completed compared to 26.8 % last year).

We are confident that the appointment of new staff late in the financial year and maintaining a stable team into the new year will allow us to deal with the increase in complaints expected in 2002-2003. A new position of Senior Mediation and Investigation Officer will be filled before the new year, adding to our capacity to monitor staff file loads and deal with more complex inquiries.

Referrals to the Law Society's Professional Standards Department were down by over four per cent on the previous year's figures. A small but significant proportion of the complaints referred to the Law Society concerned disputes between solicitors which we believe are better handled by that body.

## RECORD CALLS TO INQUIRY LINE

This was a make or break year for the inquiry line with new staff and increased callers leading to another record of 9999 calls in 2001-2002, a 9.75 per cent increase over 2000-2001.

The average length of OLSC inquiry line calls continues to be over eight minutes, reflecting the complexity of the cases and often the difficulty involved in explaining issues to distressed callers. It is very important to the Office that people are referred to the correct agency and clear, relevant complaints are received. Our educational programs at universities and the College of Law had the spin-off of students approaching us to join our casual pool of people to staff our inquiry line. These people did an excellent job and this year the number of calls actually lost on the inquiry line fell to 7.85 per cent despite the increased traffic. We will need to be vigilant to ensure that this trend continues.

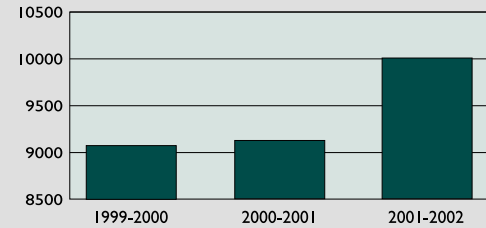
We were also able to tackle an increased number of mediations by telephone by setting aside the time of a single staff member for a brief period. This is a valuable process that involves dealing with minor matters before they become formal complaints. While we can definitely see huge advantages in continuing the informal mediation of matters by telephone it is a resource intensive activity. The Office will explore the possibilities of expanding this effective means of solving legal problems.

Each year the nature of telephone complaints largely matches those received in writing and the 2001-2002 reporting year was no different. Conveyancing concerns made up almost 20 per cent of all those matters raised on the OLSC inquiry line, followed by personal injury and family law matters, which also triggered many calls. Similar to the situation regarding written complaints received by the OLSC, communication-related complaints are the most commonly raised issue on the phone inquiry line and are the most common cause for complaint among all OLSC complainants. Communication is often the root cause of other more specific OLSC data categories such as delay, failure to follow instructions, failing to disclose, quality of service and failure to honour undertakings.

Aside from callers wanting to lodge complaints or seeking information, we took a record number of calls to our general switchboard, testing the capacity of our staff. We are grateful for the patience and the common sense of all our permanent administration staff and a series of outstanding temporary staff members.

We coped extremely well in 2001-2002 with the challenges faced by our inquiry line. We can do even better next year and intend to expand training and support for staff to ensure the trend continues.

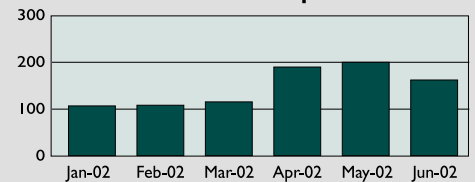
**Inquiry line calls taken at OLSC**



**Calls taken on the inquiry line increased in 01-02 by nearly 10 per cent over the previous year.**

Figure 2.

**Number of counter inquiries at OLSC**



**Front counter inquiries at the OLSC peaked in May.**

Figure 3.



### Negotiating tangible results

People from all walks of life approach the OLSC, either by phone, in writing or in person. The OLSC response is always based on the same principles. We try to resolve the problem which gave rise to the complaint, reduce the likelihood of a recurrence or assess the likelihood of disciplinary action.

"Barbara" came to the front desk to lodge her complaint in person. A solicitor herself, she had instructed a firm in relation to builders' liability insurance.

One month after receiving her instructions, the practitioner advised her he could no longer act for her because the firm acted for the insurer. Barbara asked for the return of the relevant documents which were subsequently delivered by courier to her home — along with an account for nearly \$2200.

Barbara alleged that she should have been advised of the conflict of interest prior to attending the initial meeting. She complained that the practitioner had accepted instructions without full and fair disclosure.

The OLSC successfully negotiated the cancellation of the account.

### MORE PEOPLE SEEN OVER THE COUNTER THAN IN PREVIOUS YEARS

While we have always kept a record of interviews booked by complainants to lodge complaints, since November 2001 we have commenced recording details of all those we dealt with at our front counter:

Despite our Office being on level 15 of the Goodsell Building in the Sydney Central Business District, 1154 individuals approached us between November 2001 and June 2002 with more than five of them 'walking in off the street' each week. A number of these consumers were referred to us by the Law Society of NSW and the Bar Association as all complaints must be made to this Office in the first instance. These unbooked interviews were often lengthy and sometimes difficult.

Counter interviews are dealt with on an ad hoc basis by staff but a Mediation and Investigation Officer is rostered to ensure someone is always available at lunchtime. Similar to the many interviews booked through our inquiry line, those who visit us off the street are often uncertain about using the telephone or perhaps need assistance to complete a complaint form. They are frequently distressed.

One memorable occasion involved the full legal teams on both sides of a Supreme Court matter arriving at the counter with their clients seeking help to resolve disputes over costs. We managed to help resolve the immediate concerns but various complaints ensued.

The newly recorded details of counter activity and the record number of calls to our switchboard confirm that OLSC staff are committed to providing the highest level of service to the public.

### LAW SOCIETY AND BAR ASSOCIATION LIAISON

Our regular monthly meetings with the Law Society Professional Standards Department (PSD) allow for discussion of administrative and complaint-handling issues. The Manager and Administration Manager of the PSD met with the Assistant Commissioner (Legal) and Assistant Commissioner (Complaints) to discuss specific issues relating to complaints and broader policy concerns arising out of complaint-handling.

We discussed a proposal to bring the data bases of the PSD and the OLSC into line to allow the better comparison of statistics. We expect to clarify technical and administrative aspects to the proposal over the next financial year.

The Commissioner and Assistant Commissioners also met regularly with Bar Association officers to discuss initiatives, complaints, educational programs and legislative developments.

We also followed up delayed complaints with the professional councils on a more frequent basis which helped to finalise many outstanding investigations. Liaison with the Law Society and the Bar Association was particularly important on a regular basis with the introduction of disclosure requirements under *Part 3* of the *Legal Profession Act* requiring the notification of bankruptcy, tax and indictable offences.

While we do not always agree with the Law Society and the Bar Association on every issue, our relationship is very positive and the communication and dialogue we enjoy continues to deliver real benefits to both the profession and consumers of legal services.

# Promoting compliance with high professional and ethical standards

*The year in review was one of major legislative amendment and change including progress towards a National Legal Services Market, new powers for the Commissioner and new opportunities for the legal profession.*

*Judicial determinations and corporate events also impacted significantly on the profession.*

## CONDUCT ISSUES

We commenced 19 formal investigations during the year and completed 14 of them. At the end of the reporting year we had 54 open investigation files, 24 of them relating to two separate investigations involving multiple complainants about two practitioners.

The Commissioner is obliged to commence proceedings in the Administrative Decisions Tribunal when he is satisfied that the Tribunal is reasonably likely to make a finding of professional misconduct or unsatisfactory professional conduct. Two such matters were commenced in the reporting year, being *Legal Services Commissioner v Veneris* and *Legal Services Commissioner v Wood*.

The *Legal Services Commissioner v Veneris* matter concerned three complainants who had each lodged complaints about a practitioner's failure to transfer a file, his failure to commence personal injury litigation and misleading his clients. Additionally, during the investigation it became apparent that the practitioner had misled the Commissioner and had failed to comply with a notice to provide information and documents to this Office. Accordingly, the Commissioner initiated these as additional complaints.

The practitioner ultimately admitted all the allegations and made submissions to the Tribunal in relation to penalty, with the Tribunal reserving its decision. We will report on the decision in next year's annual report.

The *Wood* matter involved the practitioner's failure to respond to a notice issued by the Commissioner to provide documents and information. That matter is part heard at the time of writing.

Our last annual report included reference to the *Legal Services Commissioner v King* involving an action brought by the Commissioner under section 152 of the *Legal Profession Act 1987* against the practitioner who had failed to provide information to the Commissioner and failed to respond to correspondence.

The Tribunal delivered its decision on 11 September 2001, finding the practitioner guilty of professional misconduct, and ordering that he be publicly reprimanded, pay a fine of \$4500 and pay the Commissioner's costs.

There are circumstances in which the Commissioner can use his discretion to dismiss a complaint or issue a reprimand to the practitioner (with the practitioner's consent). Such circumstances arise when the Commissioner is satisfied that there is a reasonable likelihood of the tribunal finding unsatisfactory professional conduct, as opposed to professional misconduct. In these instances the Commissioner balances whether or not to dismiss the complaint where the practitioner is generally competent, diligent and without a complaint record, or to issue a reprimand consented to by the practitioner.

The Commissioner issued five reprimands in the year in review, one of which included a compensation payment to the complainant.

## ETHICAL MATTERS

The Office resolved a number of complaints which raised ethical matters by both complainants and practitioners.

These ethical issues involved us assisting individual firms with the formulation of appropriate costs agreements in class actions and in motor vehicle accident applications, assisting with an increased number of allegations of conflict of interest by practitioners of practitioners, and resolving a number of allegations going to personal conduct, particularly in court.

The watershed decision of Eames J in the Victorian Supreme Court in *McCabe v British American Tobacco Services Australia Limited* has created significant debate both in the media and within the legal profession as to policies of document retention/destruction in circumstances where litigation is anticipated.



The OLSC management team, left to right: Jim Milne, Assistant Commissioner (Complaints), Lynda Muston, Assistant Commissioner (Legal), and Steve Mark, Legal Services Commissioner.

## Promoting compliance with high professional and ethical standards *(continued)*



Senior Legal and Policy Officer, James Lonsdale.

It has also created debate in relation to document warehousing in situations where parties to litigation are unable to access those documents through the normal court process.

The Office will be addressing a number of significant policy questions raised by this case in the coming year.

The collapse of HIH introduced a new raft of ethical problems for the OLSC, particularly those matters where HIH as the insurer for the defendant had no capacity to pay an award nor any capacity to pay a costs order in the plaintiff's favour. Ethical dilemmas arise in this instance when the plaintiff's solicitor seeks their costs from the plaintiff. Particularly where the matter was taken on a "no win-no fee" basis, a plaintiff having to pay all the costs, even with a cost order, seems unfair and raises policy issues that may require legislative intervention.

### LEGISLATIVE CHANGE

#### **Disclosing acts of bankruptcy and indictable offences**

The *Legal Profession Amendment (Disciplinary Provisions) Act 2001* came into effect in July 2001, requiring the mandatory disclosure by practitioners of acts of bankruptcy and convictions for indictable offences or tax offences.

The provisions required that a person applying for a practising certificate or a legal practitioner who holds a practising certificate who commits an act of bankruptcy, or has been found guilty of an indictable offence or a tax offence, must show cause as to why they consider themselves to be a fit and proper person to hold a practising certificate. The Law Society and the Bar Association of New South Wales have three months (extendable to four months by the Legal Services Commissioner) within which to consider the fitness of the individual to hold a practising certificate. The Council has power to refuse to issue, to cancel or to suspend a practising certificate if it considers the act of bankruptcy or other offences were committed in circumstances that showed that the applicant or holder is not a fit and proper person to hold a practising certificate. The Council also has the power to suspend or cancel the certificate where the practitioner has either failed to notify or failed to show cause.

The Commissioner may at any time take over the determination of such a matter and *must* take over a determination if it is not made by the appropriate Council within the required period.

The *Legal Profession Amendment (Disciplinary Provisions) Act 2001* also expanded the functions of the Legal Services Commissioner to include a power to monitor the refusal to issue and the cancellation or suspension of practising certificates by the professional associations, to monitor generally the exercise of the regulatory functions by the Council other than the disciplinary functions and to review the Solicitors' and Barristers' rules.

The new provisions in relation to Solicitors' and Barristers' rules require that the relevant Council must notify the Commissioner and the Legal Profession Advisory Council of any proposed rules. The Commissioner or the Advisory Council then have an opportunity to make representations on the proposed rule.

The Commissioner may also at any time request a Council to review any particular rule and the Commissioner must report to the Attorney General any submissions and recommendations he may make in relation to the rules. The Attorney General may declare any rule inoperative on the report of the Commissioner or the Advisory Council.

#### **Progress towards portable practising certificates**

The *Legal Profession Amendment (National Competition Policy Review) Act 2002* was assented to on 21 June 2002, further progressing NSW towards a National Legal Services Market. The Act is not yet proclaimed. Once proclaimed it will enable freedom of movement of practitioners between states by recognising in NSW practising certificates obtained in all state and territory jurisdictions of Australia and New Zealand.

This Act also requires the creation and maintenance of a public register recording disciplinary action taken against legal practitioners. The Commissioner will make this accessible to the public in electronic and hard-copy form in the next reporting year.

The amendments also abolish compulsory membership of the Law Society from a date to be determined.

### **Restrictions on Advertising Personal Injury Services**

New restrictions on the ways solicitors or barristers can advertise for personal injury services came into effect when the *Legal Profession Amendment (Advertising) Regulation 2002* commenced on 1 April this year.

A breach of the Regulation may comprise professional misconduct, which would invoke *Part 10* of the *Legal Profession Act 1987* and the jurisdiction of the Office of the Legal Services Commissioner (OLSC).

The Regulation means that a legal practitioner must not advertise for personal injury services except by means of a statement setting out only the name and contact details and the legal practitioner's areas of speciality in certain allowable publications and electronic mediums. The Regulation seems to prohibit advertisements offering "no win-no fee", as well as advertisements which unrealistically raise people's hopes or offer financial gain above any regard to a person's genuine need for compensation.

A total ban on advertising for personal injury services on radio or television is imposed by the Regulation.

Advertising for personal injury services in, on, or around hospitals is also prohibited under the Regulation.

### **Incorporated Legal Practices**

The *Legal Profession Amendment (Incorporated Legal Practices) Regulation* came into operation on 1 July 2001. Consequently, legal practices, including multi-disciplinary practices, can now incorporate in NSW.

The amendment provides for the appointment of solicitor directors whose duties and responsibilities include:

- the management of the legal services provided by the incorporated practice;
- implementation and maintenance of appropriate management systems for the provision of legal services by the incorporated practice to ensure that the provision of legal services by the practice meets the professional obligations of solicitors and any other obligations imposed under the *Legal Profession Act 1987*;

- reporting of conduct by another director, or employed solicitor of the incorporated practice, which contravenes professional obligations;
- reporting to the Law Society any professional misconduct of solicitors employed by the practice;
- taking all reasonable action to deal with any professional misconduct or unsatisfactory professional conduct of a solicitor employed by the practice; and
- disclosing to clients of the incorporated practice a description of the legal services and non-legal services (if any) to be provided and advising that legal services are regulated by the *Legal Profession Act* but that non-legal services are not.

The amendment also places a degree of vicarious liability on the solicitor director for any acts of professional misconduct or unsatisfactory professional conduct committed by any solicitor employed by the practice.

Incorporated practices are subject to investigation and review as part of the regulatory framework. The Commissioner and the Law Society have been granted novel powers in relation to regulation of incorporated practices. These include:

- power to examine solicitors and employees of incorporated practices;
- power to inspect records of incorporated practices; and
- power to hold hearings along with the power to summon witnesses and take evidence.

Incorporated practices are also subject to regulation pursuant to the trust account and complaint provisions of the *Legal Profession Act 1987*. Further, there will be regular reviews of compliance by incorporated practices with the provisions of the *Legal Profession Act*.

The OLSC is working to develop procedures for the investigation, review and audit of incorporated legal practices for compliance with the *Legal Profession Act 1987* and the Regulations.

Some of the specific issues the OLSC will examine are the cost disclosure procedures of the practice, methods to avoid conflict of interest, event diaries, supervision of legal and non-legal staff and approaches taken to ensure good communication between the practice and its clients.

## **Nipping the problem in the bud**

An important part of the OLSC's function is its educative role. Its approach is aimed at 'nipping the problem in the bud' and stopping bad practices and/or unrealistic expectations from developing.

The OLSC kept receiving complaints about the same practitioner — in fact seven complaints alone were received over a three-month period.

All complaints included allegations that the solicitor had failed to advise, delayed, failed to carry out instructions and made mistakes.

In addition, all of the complaints expressed concern that the practitioner failed to return phone calls, failed to respond to correspondence and was discourteous when the problems were brought to his attention.

The Commissioner invited the practitioner to attend a meeting to discuss what appeared to be a pattern of conduct, and offered advice as to more effective ways of managing the practice.

The OLSC was also able to give the practitioner some material for future reference such as the brochure, *Responding to Complaints*, which suggests ways of dealing with complaints and resolving them when they arise rather than simply hoping that the complainants will go away if they're ignored or treated discourteously.

No complaints have since been received against this particular practitioner.

## Promoting compliance with high professional and ethical standards *(continued)*



Investigation Officer, Larissa Kotaroff.

This Office has actively encouraged incorporated practices to look carefully at their duties and responsibilities under the new legislation. The Commissioner and Assistant Commissioner (Legal) have participated with LawCover in seminars directed at providing advice and information to practitioners who are considering incorporation or have already incorporated.

The Commissioner's investigation and review powers in relation to incorporated practices will commence in the next reporting year.

### **ADDITIONAL HIGHLIGHTS AND DEVELOPMENTS**

#### **Commissioner intervenes in Supreme Court proceedings**

The Commissioner successfully exercised his power to intervene in Supreme Court proceedings in the matter of the *NSW Bar Association v Cummins*. The matter arose in the exercise of the inherent jurisdiction of the Supreme Court in relation to legal practitioners. A summons was issued by both the practitioner and the Bar Association in relation to the removal of the practitioner's name from the roll of legal practitioners. The Commissioner intervened in order to argue that declarations ought to be made that the practitioner had been guilty of professional misconduct in relation to his non-lodgement of tax returns over a 38 year-period along with a further declaration that he was not a fit and proper person to be on the roll of legal practitioners. Both declarations were made by the court.

#### **Review of Barristers' and Solicitors' Rules**

The Office contributed to the review by Professor Michael Chesterman from the University of New South Wales, of Solicitors' Rules and Barristers' Rules, in particular the differing types of obligation imposed by the Rules, format of the Rules, implications of breaches of the Rules and proper coverage of conduct outside professional contexts. We were pleased to see that many of our suggestions for improved transparency, use of plain English and simplification of the rules found their way into Professor Chesterman's reports.

Professor Chesterman's final report has been referred by the Attorney General to the Professional Councils for implementation.

# Encouraging an improved consumer focus within the profession

*One of the OLSC's core underpinnings is its emphasis on problem solving and this was addressed in a series of presentations and seminars to existing and emerging members of the legal profession throughout the 2001-2002 financial year.*

*OLSC staff presented lectures on ethics and best practice to legal practitioners and those involved in the study of law — all designed to foster commitment amongst the profession to client-centred practice management techniques.*

## MAXIMISING OUTCOMES FOR CONSUMERS AND THE PROFESSION

As a complaint-handling body for consumers of legal services and co-regulatory body for the profession, the OLSC must focus on imparting information, knowledge and skills to both consumers and legal practitioners. The period in review presented us with the opportunity to extend links and create further opportunities for dialogue with both the existing profession and emerging legal practitioners about the practical actions and benefits that ensue from improving consumer focus and service.

Typically, OLSC efforts to encourage an improved consumer focus within the profession involve sharing information. We examine the areas in which our complaints arise, what can be done to resolve them and perhaps more importantly, what practices, systems, protocols and procedures can be implemented to avoid complaints in the future. This is consistent with our long-term objective of reducing complaints received by our Office.

Our efforts to encourage an improved consumer focus within the profession are addressed within the framework of legislative requirements, professional rules of conduct and acceptance of the fact that consumers and legal practitioners bring differing expectations to the lawyer-client relationship with one expecting justice and the other expecting to assist the client through the legal process.

## BROADENING THE OLSC'S REACH

The Commissioner undertook a series of presentations to graduates and practitioners involved in Continuing Legal Education throughout the year at the College of Law, Macquarie University and regional law societies, including the Central Western, City of Sydney and Northern Metropolitan societies.

The Assistant Commissioner (Legal), Assistant Commissioner (Complaints) and Mediation and Investigation Officers participated in the tuition of degree program students at the University of New South Wales, the University of Western Sydney, Southern Cross University, Wollongong and Macquarie Universities.

The OLSC newsletter, *Without Prejudice*, continued to play a major role in encouraging an improved consumer focus within the profession. The August issue articulated to the profession the Commissioner's expanded monitoring role in relation to the issuing of practising certificates and the setting of professional practice rules.

*Without Prejudice* also stimulated debate amongst the profession on the establishment of a public disciplinary register.

The 2001-2002 reporting year saw a concerted effort by the Commissioner to address seminars organised by LawCover on the complexities for incorporated legal practices. The Commissioner also addressed the profession internationally on concepts such as accountability, ethical practice and regulation of the legal profession through trips to Vancouver and Scotland.

## WORKING WITH PRACTITIONERS TO ENCOURAGE BEST PRACTICE

The OLSC drew heavily again on its statistical data when outlining to practitioners the source of complaints and legal matters relating to them, highlighting in the process the important role played by communication both in reducing the likelihood of complaints and improving client service.

The Commissioner continued his attendance at board meetings of the *QL Gateway to Best Practice* initiative of the Law Society of NSW and the College of Law throughout the year. He also continued presenting information to regional law societies on recent developments relating to legislation governing the OLSC and changes to the Commissioner's powers. He provided useful information on the types of complaints received from the regions in question and advised on improving customer service and avoiding complaints.

The OLSC maintained an active role by providing speakers and participants at Continuing Legal Education seminars.



Mediation and Investigation Officers Justin Vaughan (left) and Richard Wells (right) discuss successful problem solving.

## Charging more should be explained to the client

"Mary" sustained various injuries in a motor vehicle accident on 6 October 2000. She subsequently consulted solicitors and was advised that her claim would be dealt with under the Motor Accidents Scheme by the Claims Assessment and Resolution Service (CARS).

The matter was finalised but Mary found that the costs claimed by her solicitors greatly exceeded the maximum amount of costs recoverable from the defendant's insurer and she was liable for the gap.

Mary complained that this had never been explained to her. Under the *Motor Accidents Compensation Act 1999* and accompanying *Motor Accidents Compensation Regulation (No. 2) 1999*, legal practitioners who wish to charge a client more than the maximum amounts prescribed by the Regulation must, in a separate document to their costs agreement/costs disclosure document, specifically advise a client as to their liability to pay the "gap" between the costs payable to their solicitor and maximum costs recoverable from the insurer under the Motor Accidents Scheme.

The OLSC negotiated a reduction in costs in this case and warned the lawyers that a future failure to disclose would lead to disciplinary action.

## Encouraging an improved consumer focus within the profession (*continued*)

Organisational changes to be implemented in the next financial year along with a methodological shift to project teams in the OLSC will see even more practical tools emerge for practitioners, particularly in relation to reducing costs disputes.

### TRAINING EMERGING PRACTITIONERS

University undergraduate law programs sought and received OLSC participation in subjects such as professional conduct and ethics.

Students in these undergraduate programs were provided with OLSC brochures, Fact Sheets and newsletters in addition to an overview of the OLSC, its history and objectives. Distinct from a public relations exercise, participation in university education programs by the OLSC gives students a chronicle from the 'coal-face' of the myriad of complaints received by this Office and provides them with the chance to discuss case examples. It also gives us the chance to hear the views of future practitioners.

Our use of case examples and complaint trends once again proved particularly useful in encouraging preventative thinking in the next generation of legal practitioners. These future lawyers hopefully are more likely to adopt best practice and client-centred management approaches when they practise law. We advised potential lawyers to set time frames for returning phone calls and replies to letters and urged them to regularly update clients about the progress, or lack thereof, of their matter.

The OLSC continued its commitment to providing 'hands-on' experience to law students by way of eight to 16 week professional placements. Final year law students from the University of NSW and the University of Wollongong undertook shifts on the phone inquiry line and dealt with individual files at the Office throughout their placement, gaining an invaluable insight into the many ways in which complaints evolve and can be avoided.

### CONTINUALLY REINFORCING KEY MESSAGES

Reducing complaints by equipping practitioners with the knowledge and skills to avoid them is challenging, but ultimately of mutual benefit to both the profession and consumers.

Staff who deal with practitioners in formal presentations, telephone or face-to-face mediations balance consumer advocacy with

business reality, reinforcing the fact that it is far less expensive to retain existing clients than to find new ones.

Our approach is a problem solving one focused on improvement. It must often be conveyed in a style that clearly illustrates the integration of theory and practice. Complaints cost legal practitioners time, goodwill, professional reputation and money. The OLSC provides practical advice based on real-life experiences to practitioners and students which can, and does, circumvent some of these problems.

Students and practitioners are advised through seminar presentations, brochures, and in virtually all of their dealings with the OLSC, of fundamental tools such as the importance of providing consumers with information on practice policies or information sheets on areas of law.

Procedures for client management are also addressed as are the importance of file tracking systems, clarifying communication and using checklists. Discussion of the need for written costs agreements, effective staff supervision and direction, better internal practice communication and early recognition of potential or perceived conflicts of interest are further examples of the practical tools provided by the OLSC to practitioners committed to improving the consumer focus of their practice.

Consumers will be able to make more informed choices selecting legal practitioners in the year ahead when the disciplinary register, announced with the passing of the *Legal Profession Amendment (National Competition Policy Review) Act 2002*, comes into operation.

The disciplinary register requires a range of 'disciplinary actions' against legal practitioners (such as findings of unsatisfactory professional conduct and professional misconduct, cancellations or suspensions of practising certificates and the appointment of managers or receivers) to be publicly available on the OLSC website.

### EXCHANGING IDEAS WITH THE PROFESSION

*The Commissioner delivered over 20 speeches and presentations in the 2001-2002 period on topics as far-reaching as the incorporation of legal practices, multi-jurisdictional practices and sharing of information about NSW's co-regulatory system with the international legal community.*

## Risk Management

Amendments to the *Legal Profession Act* which allow legal practices (including multidisciplinary legal practices, or MDPs) to incorporate came into effect in June 2001, establishing new powers for the Legal Services Commissioner to regulate incorporated legal practices and MDPs.

Work commenced on developing procedures for the investigation, review and audit of incorporated legal practices for compliance with the *Legal Profession Act 1987*, the *Legal Profession Regulation 1994* and Corporations law.

In conjunction with LawCover the Commissioner devoted considerable effort to ensuring incorporated firms and those considering incorporation correctly understood the ramifications of incorporation, such as those issues relating to the responsibility of solicitor directors.

Firms that had taken advantage of the new laws in many instances had joined with other service providers in MDPs, with these MDPs becoming the legal incorporated entity.

Debate and analysis was both necessary and useful for a full examination of the issues arising in circumstances where the incorporated entity included debt collection agencies, financial advisors, accounting organisations and a wide range of other professional and non-professional services.

The Commissioner identified that many practitioners were lacking 'in-depth' knowledge of their duties as solicitor directors or indeed lacked a full grasping of the ramifications for clients in the event of an incorporated entity failing or being placed into liquidation.

Complex questions of legal professional privilege were explored, especially in relation to multidisciplinary practices where non-lawyers may be involved in client discussions.

The seminars also provided a valuable opportunity for the legal profession to be made aware of the role of the Office of the Legal Services Commissioner in relation to investigating, reviewing and auditing incorporated legal practices to determine levels of compliance with the *Legal Profession Act* and Regulations.

Further work was undertaken in the first half of 2002 to develop best practice standards for incorporated practices. The Commissioner expects to build upon work already achieved in this regard by the College of Law and the Law Society of NSW through the *QL Gateway to Best Practice Program*.

### **Multijurisdictional practices 28th National Conference of the American Bar Association Centre for Professional Responsibility Vancouver**

The benefits of Australia's progress towards a National Legal Services Market were explored by the American Bar Association when it

invited the Commissioner to Vancouver, Canada, to participate in a panel discussion on the topic of multijurisdictional practices.

Invited by the American Bar Association's Centre for Professional Responsibility in conjunction with the Association of Professional Responsibility Lawyers (APRL) and the National Organisation of Bar Council (NOBC), the Commissioner was able to convey his knowledge and give guidance in an international setting about the positive steps being taken towards national uniformity and harmony between Australia's jurisdictions.

The American profession was particularly interested in Australia's progress towards portable practising certificates whereby practitioners registered in any jurisdiction of Australia and New Zealand will be able to practice in any of the jurisdictions.

The Commissioner also referred to developments in complaint-handling processes, such as the development of guidelines for information exchange across Australian jurisdictions, and development of a publicly accessible disciplinary register.

### **Advice on co-regulatory system fed into Scottish Parliamentary inquiry into the Legal Profession**

Professor Alan Paterson, Professor of Law at Strathclyde University Law School in Scotland, paid a visit to the NSW Legal Services Commissioner in July.

A specialist in the fields of professional responsibility, provision of legal services and the legal profession generally, Professor Paterson advises on professional ethics to the Scottish Conveyancing and Executry Services Board.

He was interested in the co-regulation of lawyers in NSW and was hoping to feed some of this information into a Scottish parliamentary inquiry into regulation of the legal profession.

Professor Paterson's visit resulted in the Commissioner being invited to Scotland to advise the government on operation of the co-regulatory scheme. The Commissioner also held comprehensive discussions with the Scottish Law Society, the Bar Association, leading academics and private practitioners about the intrinsic benefits of such a co-regulatory scheme.

### **Cross-border approaches to ethics encouraged**

The Office continued its expanded community education and communication program, targetting practical problems for the profession.

One such successful program was run in the Albury-Wodonga area in conjunction with the Victorian Legal Ombudsman's Office and assisted practitioners to assess and share different approaches to ethical dilemmas that are particular to practitioners working on both sides of the border.

## Approaching the OLSC early can save time, money and stress

"Jack's" solicitors were handling a medical negligence claim for him.

He had agreed to accept a settlement offer made by the defendant and signed a 'Direction to Pay' directing the insurer to pay the settlement proceeds to his solicitors.

His solicitors subsequently wrote to him confirming how they intended to disburse the settlement proceeds. They proposed paying themselves and Jack's barrister from the settlement monies.

But Jack was not happy with the amount of costs charged and consulted a new solicitor and signed a further 'Direction to Pay' directing the insurer to pay the settlement proceeds to the new solicitor.

Faced with two conflicting directions to pay, the insurer's solicitors decided to approach the Court for a direction as to which solicitor should receive the settlement proceeds.

These promised to be costly proceedings and it was at this point Jack approached the OLSC.

We contacted the legal representatives to ascertain the situation, then explained it to the complainant in detail. Our involvement resulted in him reaching an agreement with the solicitors involved as to how the settlement proceeds should be distributed and withdrawing the conflicting direction to pay.





Mediation and Investigation Officer Elisabeth Knight explains how the legal system operates to a caller on the inquiry line.

## Successful mediation

Formal mediation conducted by OLSC staff over four months was able to ensure party/party costs were finally paid in a personal injury matter that had continued for nearly 10 years.

The matter had dragged on, progressing through arbitration, to re-hearing and appeal to the Supreme Court before finally a new trial was called and \$186,611 was awarded to "William" — of which he received part payment — plus party/party costs.

William complained about the length of time being taken by his solicitors to submit to the defendant the final bill for recovery of party/party costs.

However, OLSC staff discovered that the delay in preparing the bill was only one of the problems. Additional problems included a perception that the insurer was not making reasonable offers and the prepared bill was not in proper form.

We inquired of all parties, including the solicitors who acted for the defendant insurer. The insurer and senior and junior counsel involved were keen to settle the matter.

Trained staff from the OLSC conducted a formal mediation between William's solicitors and counsel in an effort to reach agreement about how the matter should be finalised, including the payment of costs.

The OLSC helped negotiate preparation of the assessable bill which was served on the insurer who then agreed to settle party/party costs.

Costs were finally paid to all counsel and William's solicitors. William also received the balance of his final verdict money.

# Promoting realistic community expectations of the legal system

*The differing expectations clients and lawyers bring to a professional legal relationship is often the cause of a complaint brought to the OLSC.*

*Poor communication has continually been highlighted over the OLSC's eight years as one of the major catalysts in the evolution of a complaint. Similarly, OLSC experience has shown repeatedly that a key aspect to successfully resolving or mediating complaints is the provision of information about the legal system or assisting a complainant to go back to the lawyer for resolution.*

*The year in review saw the OLSC continue the community education and information program undertaken in the previous financial year.*

## CONSTANTLY ENGAGING WITH THE ISSUES

Complaints to the OLSC are sometimes made by legal practitioners but the majority of complaints both over the phone inquiry line and received as formal written complaints are from clients or former clients. It is therefore strategically important for the overall management of complaint-handling that the OLSC devotes time and effort to promoting realistic expectations of the legal profession amongst the broader community as well as an enhanced understanding of its interactions with it.

Staff from the OLSC pursue opportunities to promote realistic expectations in every call to the phone inquiry line. People who arrive at our front desk and participants in our more formal meetings at Community Legal Centres or neighbourhood centres are also given explanations relating to aspects of the legal system, including operation of the *Legal Profession Act 1987*. Complainants and inquiry line callers are all educated to varying extents about the legal processes involved in the progress of their particular legal matter, such as conveyancing matters and consumer entitlements in relation to costs disclosure.

Despite a vacancy in the Education Officer position, the OLSC maintained its focus on the community and education program implemented in the previous reporting year.

## COMMUNITY EDUCATION ACTIVITIES

The number of visits to Community Legal Centres (CLCs) and neighbourhood centres during the year in review was not as high as expected due to the departure of the Education Officer but important liaison occurred nonetheless with community groups such as Lismore Neighbourhood Centre and the Macedonian Australian Welfare Association. The OLSC also worked with CLCs such as Marrickville, Mt Drutt, and the Consumer Credit Legal Centre.

Neighbourhood centres and CLCs are often the first point of contact for disgruntled consumers of legal services and as such play a critical role in OLSC efforts to promote realistic expectations of the legal profession amongst community members.

The visit to Lismore Neighbourhood Centre in October provided the opportunity for neighbourhood centre volunteers to be educated about potential traps that can lead to complaints. Participants were also exposed to the reality behind claims often touted by legal practitioners such as 'first appointment free' where they were advised to check with the legal practice exactly what proportion of time in the first appointment is actually free.

The OLSC provided volunteers with practical tips to guide them through the process prior to commencement of legal action, the processes involved when a legal practitioner has accepted the client's retainer and some of the processes relating to a dispute arising. Practical advice provided by the OLSC included such things as assisting clients with information with which to make decisions. Recognising the invaluable role played by community workers and volunteers in local settings, the OLSC advised staff and volunteers on some simple strategies consumers can employ to reduce the likelihood of conflict or complaints occurring such as keeping copies of personal files, documents and recording meetings and phone calls.

The volunteers and staff were educated about the OLSC's complaint-handling process, with fundamental elements highlighted, such as the need for complainants to provide evidence when making complaints.

Overview and contact detail information was also provided on relevant referral agencies such as financial counsellors and the Legal Aid Commission.

Links were established and information provided throughout the year to a range of community ethnic groups such as the Macedonian Australian Welfare Association of NSW.

Law Access was established during the year combining the resources of the Law Society Community Assistance Service and the Legal Aid Help Line. A small but significant proportion of calls to the Law Access inquiry line relate to the conduct of lawyers. Senior staff provided training sessions for new call centre staff on the role of the OLSC and talked about hints for how to deal with major areas of complaints.

## WORK WITH COMMUNITY LEGAL CENTRES

The OLSC has always considered its relationship with the 38 Community Legal Centres (CLCs) in NSW to be a crucial factor in successfully educating the community about the legal system.

In addition to ensuring Community Legal Centres are provided with the most up to date brochures, Fact Sheets and information about OLSC services and responsibilities, our work with CLCs provides us with an unparalleled opportunity to debate, educate and analyse the roles, rights and responsibilities on both sides of the professional legal relationship. We can also check first-hand on the appropriateness of referrals we have been making and more importantly, receive feedback from CLCs to improve our own service to complainants or potential complainants.

Working with CLCs provides another avenue for the OLSC to contribute to issues of advocacy, policy, law reform, legal rights and education. We are able to build practical contacts and supports for consumers who may benefit from local assistance with writing letters, preparing documentation and filling out particular forms such as costs assessment scheme forms.

Liaison with the Marrickville Community Legal Centre assisted an individual client but also created ongoing cooperation between the OLSC and the Centre in the areas of assistance to complainants from non-English speaking backgrounds.

Our visit to the Consumer Credit Legal Centre was particularly constructive and enabled us to assist them to develop their cost agreement template.

The filling of the Education Officer position will enable us to expand our work with community groups and legal centres and ensure that it becomes a regular and major component of our complaint reduction strategy.

## PUBLICATIONS AND OLSC PROMOTION OF SERVICES

The OLSC Fact Sheets are an invaluable resource in easy-to-read 'plain English' style for community members in understanding what can be expected from our legal system in some of the more common complaint areas, such as costs disclosure, type of costs, costs disputes, negligence, liens, deceased estates and conflict of interests.

Initially developed in consultation with the Law Society, the Bar Association, academics and Community Legal Centres, the existing 12 Fact Sheets were reviewed during the year and an additional one added relating to costs dispute resolution. A new review is currently underway.

The revised Fact Sheets were distributed to community centres, CLCs and libraries.

A vacancy in the Education Officer position from October onwards coupled with an increase of over 11 percent in the number of complaints received by the OLSC, meant that only one issue of our newsletter, *Without Prejudice*, was issued during the reporting year.

Fulfilling its brief of educating the profession and the broader community about elements of the legal services industry with the potential to lead to complaints, *Without Prejudice* featured articles in the August 2001 issue on responding to complaints, legal practice management programs, mediation and pro bono resources.

The OLSC participated in the promotional arm of the Joint Initiative Group, (JIG), a group comprising independent complaint-handling authorities. We provided input into collective activities including the development of a generic pamphlet on making complaints. We regularly shared information with other JIG members on practicalities such as security of complaint-handling reception areas. We also provided our brochures on costs mediations and reviews conducted by the OLSC to JIG promotional stalls held at shopping centres and multicultural festivals throughout the state.

Staff from the OLSC were also involved in assessing a proposal to develop a contact and referral centre for all complaints-handling bodies in NSW. The proposal is on hold at the moment.

The year ahead will provide us with further opportunities to promote realistic, fair and reasonable expectations within the community of the legal profession. A newly appointed Education Officer will be focusing on expanded and more regular visits to community settings and will also focus on using online applications to further disseminate information such as the newsletter and our Fact Sheets.

## The mystery of the invisible lawyer

"Karen" approached a lawyer to have a standard contract drafted for use in her new business.

She received a copy of the contract and was very disappointed with the result. She contacted the lawyer with whom she had initially spoken and he agreed to reduce the fee. Karen felt she had been treated rudely and was still unhappy.

She contacted the firm again to resolve the situation, and possibly obtain a contract she could use in her business.

After several attempts and many unanswered calls, Karen was eventually told by the managing partner to speak to a staff member of the firm in another suburb. After being transferred and put on hold, Karen began to get angry.

Frustrated and upset, Karen complained to the OLSC about the lawyer being rude, poor customer service and high fees.

We contacted the lawyer — who was the managing partner. He explained the situation and confirmed that Karen had approached him to work on a contract for her business. However, he did not do the work on the contract himself but allocated it instead to one of his business law experts who worked in another office of the firm. He had not told Karen this.

The lawyer who had drafted the contract for Karen had it sent to her requesting to be advised of any changes that should be made but she never contacted him, so a bill was prepared and sent.

Karen had only dealt with the managing partner so the business lawyer working on her contract was never informed of the problem.

We spoke to all parties involved and arranged for Karen to speak directly with the business lawyer handling her contract so she could get a contract she could use. She agreed that she would need to pay an extra fee for the subsequent work and was happy to do this.

She also received an apology for the poor communication.

# Operating efficiently and equitably



Francesca Christie, a member of the OLSC administration team.

*In 2001-2002 the OLSC maintained its focus on providing a quality systems approach in the management and delivery of its operations. Good management of resources enabled us to streamline our processes to achieve sustainable improvements in client service, productivity and importantly, in raising consumer confidence.*

## FINANCE

The OLSC is a regulatory service provider operating within the framework of the NSW Attorney General's Department. Unlike other departmental agencies funded by State Treasury, the OLSC receives operational funding from the Public Purpose Fund and maintains a recurrent recoupment budget.

We met all our financial obligations in 2001-2002, including the challenge of self-funding the unfunded proportion of the Crown Employees (Public Sector Salaries January 2002) Award.

The application of effective financial controls and monitoring budget cash flows meant the OLSC managed to contain its overall expenditure to a level well below its budget allocation for the year. Details of the OLSC's financial performance are provided in the following financial statement and supporting notes.

## COMPUTING

The OLSC continued during the year to review and make refinements to established administrative processes and procedures associated with the management of its complaints file database, the Complaints Tracking System (CTS).

The CTS stores and retrieves data relating to clients' complaint files. It is also the main research and reporting mechanism used to produce the required end-of-year statistical reports about the number and type of written complaints we handle.

We performed frequent audits of the CTS during the year to ensure the integrity of the database was not compromised and that client complaint details were represented factually. We identified and corrected system inconsistencies as they arose.

Also, as part of our ongoing strategy to ensure staff are equipped with up-to-date technologies leading to administrative efficiencies and improved customer service, we embarked on two major projects late in 2001, the upgrade of the Office's computers to newer leased models with capacity to accommodate the installation of Microsoft Windows 2000 operating system, and to upgrade our existing voice communication system NEC Q-Master to a Windows 2000 version, NEC Q-Master Ex. We anticipate both projects will be implemented in the first half of the next reporting year.

## HUMAN RESOURCE MANAGEMENT

As at 30 June 2002, the OLSC maintained 18 permanent full-time positions for administrative and professional staff on its establishment. Some of these positions were filled by staff working part-time or in job share arrangements, consistent with the Attorney General's policy on flexible work practices.

The Office experienced normal periods of staffing shortages during the year due to staff either taking leave or departing the OLSC for promotional opportunities elsewhere. One of the strategies we adopted to meet this challenge was through a program of utilising university law students who were completing their training and would benefit from broadening their skills-base in a complaint-handling environment.

The new staff completed a period of in-house induction training before being rostered as telephone inquiry officers disseminating information to consumers calling our inquiry line.

Our commitment towards staff development through continual education and training was maintained in 2001-2002. Staff were given opportunity to attend training courses designed to enhance their work skills and career prospects, and in some instances staff attended seminars and workshops to receive instruction about a newly implemented piece of legislation that had ramifications on the operations of the OLSC.

A review and restructure of OLSC operations in late November 2001 to address the challenges created by recent amendments to the *Legal Profession Act 1987*, including extending the powers and responsibilities of the OLSC in the regulatory framework, means some additional staff can be expected to join the Office in the next financial year.

The new positions that we are considering include: a *Manager, Information Services and Systems (Gr 9/10)* who will ensure the Office meets quality requirements of best practice; a *Systems Assessment Officer (Gr 7/8)* who will conduct audits of incorporated legal firms to determine compliance with the *Legal Profession Act*; and a *Senior Mediation and Investigation Officer (Gr 7/8)* to assist the Assistant Commissioner (Complaints) in supervising the team of mediation and investigation officers.

## Relationships do survive complaint process

A solicitor's response to a complaint made to the OLSC was a timely reminder that concerns about the conduct of service on the part of solicitors can be both justified and useful in shaping and improving the service offered by the legal profession in NSW.

Two siblings, "Barry" and "Sue", approached the OLSC about a solicitor who had not responded to their requests for an update on their challenge under the *Family Provision Act* to their father's will.

The solicitor responded with an update after several months of inquiries outlining the history of delay arising out of the failure of the executors of the estate to respond and concerns about the possible success of the matter before the court.

There was no evidence that the solicitor had clearly informed his clients of the problems in pursuing the matter and his views of their possibility of success.

In the final paragraph of his correspondence to this Office the solicitor stated "[W]e confirm that because of your involvement we have no intention whatsoever now of having anything further to do with this matter."

The Commissioner wrote to the solicitor firmly pointing out that while a practitioner may withdraw from a matter with good cause, the client had every right to raise the complaint as a consequence of the lack of communication, noting also that consumer disputes can be resolved with solicitor client relationships being maintained in the face of concerns about service. The relationship was resumed.

Lodging a complaint will of course impact on the way solicitors and clients relate to each other but this must be balanced against an acceptance that exploration of solicitors' conduct can be both justified and useful in shaping and improving the legal profession in NSW.

# Financial Statement 2001-2002

	BUDGET	SPENT	VARIANCE	NOTES
	\$	\$	\$	\$
Salaries & Wages	1,077,216	1,129,413	(52,197)	1
Salary Recoveries	0	23,112	(23,112)	2
Allowances	0	213	(213)	
Overtime	5,722	1,553	4,169	
Leave Entitlements	24,570	30,012	(5,442)	
Workers Compensation	5,700	4,864	836	
Payroll Tax	74,475	73,892	583	
Fringe Benefits Tax	2,000	257	1,743	
Superannuation	76,540	74,538	2,002	
<b>Total Employee Related</b>	<b>1,266,223</b>	<b>1,337,854</b>	<b>(71,631)</b>	
Advertising & Publicity	5,115	7,014	(1,899)	
Bank Charges	102	27	75	
Consultancies	5,399	364	5,035	
Contractors	65,139	0	65,139	3
Electricity & Gas	12,614	11,779	835	
Fees	471,352	168,688	302,664	4
Freight & Cartage	1,023	0	1,023	
General Expenses	3,069	1,746	1,323	
Insurance	2,121	1,143	978	
Interpreters & Translations	4,228	4,466	(238)	
Out-of-Pocket Expenses	0	32	(32)	
Postal Expenses	22,302	13,554	8,748	
Printing	40,920	23,628	17,292	5
Publications	11,253	10,466	787	
Rates & Outgoings	8,585	6,536	2,049	
Removal Costs	0	735	(735)	
Rent	151,400	182,263	(30,863)	6
Staff Expenses	8,184	8,827	(643)	
Stores & Stationery	53,403	25,495	27,908	7
Telephone	40,121	37,136	2,985	
Travel	38,460	14,582	23,878	8
Lease of Equipment	12,000	14,001	(2,001)	
<b>Total Maintenance &amp; Workings</b>	<b>956,790</b>	<b>532,482</b>	<b>424,308</b>	
Maintenance Contracts	58,277	28,820	29,457	9
Repairs and Maintenance	1,023	1,345	(322)	
<b>Total Maintenance Contracts</b>	<b>59,300</b>	<b>30,165</b>	<b>29,135</b>	
<b>Total Expenses</b>	<b>2,282,313</b>	<b>1,900,501</b>	<b>381,812</b>	
Less: Revenue (Recoupment)	(2,282,313)	(2,095,380)	(186,933)	
Less: Revenue (Other)	0	(1,376)	1,376	
<b>Net Cost of Services</b>	<b>0</b>	<b>(196,255)</b>	<b>196,255</b>	
Depreciation	53,682	45,353	8,329	
<b>Net Position</b>	<b>53,682</b>	<b>(150,902)</b>	<b>204,584</b>	

# Notes supporting the 2001-2002 Financial Statement

1. **Salaries & Wages:** Factors contributing to this outcome include a higher than anticipated provision for recreation leave expense, and a period where the level of casual staff usage exceeded saving offsets normally achieved in the intervening period pending permanent filling of vacant positions.
2. **Salary Recoveries:** Following resolution of a disputed salary claim involving the Department and another NSW government organisation concerning a former OLSC employee's alleged period of secondment in 1999, the Department agreed to retract and withdraw the disputed invoice. Consequently a journal adjustment to overturn the original salary recoupment transaction was effected in May 2002.
3. **Contractors:** Funding provision for this item remained at a level similar to that of the previous financial year. The budget allocation caters for contractor expenses associated with the implementation of major project works in software development and quality service improvements. The Office did not engage contractor services during the year and as a result, a sizeable budget saving ensued.
4. **Fees:** The fees line item includes provision for litigation costs incurred to bring matters before the Administrative Decisions Tribunal (ADT) and the Courts. In addition, this line item covers the costs of the review system and independent review advisors. Significant savings were achieved mainly through a reduction in the number of review requests received and by the Public Purpose Fund covering the costs of a major legal case.
5. **Printing:** A budget saving in printing costs was achieved in 2001-2002 by continuing the practice of publishing the annual report on the OLSC website rather than issuing hard copies of the report. Savings also were achieved through closer control of the publication process concerning the production of OLSC newsletters, pamphlets and Fact Sheets.
6. **Rent:** The Office incurs a monthly rent fee for leased floor space in the Goodsell Building. In 2001-2002 accumulated rent expenditure exceeded the budget forecast largely due to an unforeseen increase in the annual rent fee negotiated between the Department and the lessor.
7. **Stationery:** The stores and stationery budget allocation also includes funding for capital equipment. In this financial year no significant capital equipment was purchased, resulting in a significant saving in this line item.
8. **Travel:** The Office's executive staff had occasion to undertake overseas, interstate and intrastate trips during the year to attend conferences and seminars, however, overall travel-related expenditure was contained below budget level.
9. **Maintenance Contracts:** The budget allocation for this item includes provision for renewal of an annual support agreement to maintain the OLSC database system (CTS). It also makes provision for maintenance agreements to support additional software systems acquisitions during the year.

# Appendix

## PHONE INQUIRIES

- P1. Legal Matters raised in calls to the OLSC inquiry line
- P2. Nature of phone inquiry
- P3. Practitioners mentioned on OLSC inquiry line
- P4. Source of calls to the OLSC inquiry line
- P5. Outcomes of calls to the OLSC inquiry line

## WRITTEN COMPLAINTS

- W1. Legal matters arising from complaints received in 2001-2002
- W2. Nature of complaints received in 2001-2002
- W3. Type and source of complaints received in 2001-2002
- W4. Summary of complaints received and/or finalised, 2001-2002
- W5. Status at 30 June 2002 of complaints received in 2001-2002
- W6. All complaints finalised 2001-2002, opened all years
- W7. Duration of file handling at OLSC
- W8. Age of complaints remaining open or suspended on 30 June 2002 and being handled by the OLSC
- W9. Average time taken to finalise a complaint at OLSC

## REVIEWS AND TRIBUNAL PROCEEDINGS

- R1. Status at 30 June 2002 of review requests received in 2001-2002
- R2. Status at 30 June 2002 of review requests received any year
- T1. Complaints referred to the Administrative Decisions Tribunal 2001-2002
- T2. Outcomes of Tribunal proceedings 2001-2002

# Phone Inquiries 2001-2002

## P1. Legal matters raised in calls

	Percentage		
	01 - 02	00 - 01	99 - 00
Conveyancing	19.9	17.4	17.4
Family	15.0	15.8	16.7
Personal injuries	13.1	10.9	11.3
Civil	10.2	11.7	12.8
Probate/wills/family provisions	8.3	9.0	9.5
Workers compensation	7.4	7.4	7.4
Commercial/corporations law	5.8	7.3	5.8
Criminal Law	3.5	5.1	4.5
Victims compensation	1.9	2.6	3.8
Other	14.9	12.8	10.9

## P3. Practitioners mentioned on inquiry line

	Percentage		
	01 - 02	00 - 01	99 - 00
Solicitor	96.2	94.5	95.4
Barrister	1.3	2.9	2.8
Licensed conveyancer	0.5	0.5	0.4
Other	2.0	2.1	1.4

## P4. Source of calls to the OLSC inquiry line

	Percentage		
	01 - 02	00 - 01	99 - 00
Client	69.5	73.3	71.0
Friend/relative	8.1	7.9	8.2
Opposing client	6.3	6.3	6.2
Previous client	4.9	2.1	4.3
Beneficiary/executor/administrator	2.5	2.4	2.0
Non-legal service provider	1.6	1.7	1.4
Solicitor on another's behalf	1.0	1.9	2.5
Solicitor on own behalf	1.0	0.7	0.6
Unrepresented client	0.7	0.6	0.6
Barrister on own behalf	0.1	0.1	0.2
Barrister on another's behalf	0.1	0.6	0.9
Other	4.2	2.3	2.1

## P2. Nature of phone inquiry

	Percentage*		
	01 - 02	00 - 01	99 - 00
Communication	18.3	16.0	18.2
General cost complaint/query	18.0	17.2	19.3
Negligence	12.9	14.9	12.9
Delay	10.0	7.8	6.4
Overcharging	9.7	7.7	6.5
Ethical matters	8.2	8.8	7.5
Quality of service	4.6	3.9	3.7
Costs disclosure	3.2	4.6	4.3
Trust fund matters	2.5	3.0	2.3
Document transfer/liens	2.5	2.8	3.6
Instructions not followed	2.4	3.1	2.2
Conflict of interests	1.9	2.4	3.0
Misleading conduct	1.6	2.2	2.9
Document handling	1.2	1.9	2.4
Failure to honour undertakings	0.9	1.2	1.0
Compliance matters	0.8	0.2	2.1
Pressure to settle	0.7	1.1	0.9
Fraud (not trust fund)	0.6	0.7	0.6

\* Percentage of issues raised, not percentage of calls. Callers often raise more than one issue in one phone call

## P5. Outcomes of calls to the OLSC inquiry line

	Percentage*		
	01 - 02	00 - 01	99 - 00
Provided information about the legal system	28.2	26.9	24.1
Complaint form sent	22.9	24.4	23.0
Advised/assisted the caller to go back to the lawyer	20.4	25.3	24.3
Referred elsewhere, e.g. Legal Aid, Community Legal Centre	11.2	9.4	11.8
Provided information about the OLSC and LPA to a legal practitioner	4.7	2.0	1.1
Caller will send in complaint	3.9	3.3	4.1
Referred to the NSW Supreme Court Costs Assessment Scheme	2.9	3.0	4.9
Will attempt to mediate by phone	1.8	1.0	1.2
Just listened to their story (that's what they really wanted)	1.6	1.3	0.9
Caller will come in for an interview	0.6	0.4	0.3
Call outside the scope of the LPA, e.g. not a lawyer	0.1	1.6	2.3
Other	1.7	1.0	2.4

\* Percentage of outcomes of calls, not percentage of calls. Calls often have more than one outcome, for example an inquiry officer may advise the caller to ask the lawyer certain questions as well as sending a complaint form to return if not satisfied with the lawyer's response.



# Written Complaints 2001-2002

## W1. Legal matters arising from complaints received in 2001-2002

	Percentage of complaints		
	01 - 02	00 - 01	99 - 00
Conveyancing	14.4	12.8	14.3
Family/de facto	13.0	13.1	13.6
General civil	12.7	12.1	10.8
Personal injuries	11.6	13.7	14
Commercial/corporations law	8.5	10.2	8.4
Probate/wills/family provisions	8.0	9.0	7.9
Workers compensation	5.6	4.7	6.8
Criminal	4.9	6.6	5.4
Leases/mortgages/franchises	3.6	4.1	5.1
Professional negligence	1.9	1.7	1.1
Industrial law	1.5	2.2	2.5
Land and environment	1.0	1.8	1.7
Immigration	0.6	0.8	1.6
Victims compensation	0.6	1.3	1.8
Miscellaneous	12.2	5.8	5.1

## W2. Nature of complaints\* received in 2001-2002

	01 - 02	00 - 01	99 - 00
Negligence	17.8	19.6	12.5
Communication	16.5	13.1	12.4
Overcharging	10.9	11.7	9.3
Ethical matters	9.4	7.2	9.4
Delay	7.8	8.1	8.7
General cost complaint/query	7.6	7.9	12.6
Misleading conduct	7.0	6.1	6.8
Instructions not followed	5.2	3.6	3.1
Document transfer/liens	3.8	4.5	4.6
Cost disclosure	3.3	3.3	4
Quality of service	3.3	4.1	1.6
Conflict of interests	2.7	2.9	2.7
Failure to honour undertakings	1.2	1.6	1.8
Document handling	1.1	0.9	1.2
Trust fund	1.1	3.4	6.1
Pressure to settle	1.0	1.4	1.2
Fraud (not trust fund)	0.4	0.6	0.8
Compliance matters	0.1	0.1	0.8

\* Percentage of issues raised, not percentage of complaints. Some complaints raise more than one issue.

### W3.Type and source of complaints received in 2001-2002

Complainant	Number of complaints				TOTAL	Percentage		
	Solicitor*	Barrister	LConveyancer**	Other***		01-02	00-01	99-00
Client	917	72	16	28	1033	35.3	36.3	35.3
Previous client	481	25	3	5	514	17.6	19.5	18.9
Opposing client	384	28	3	13	428	14.6	13.2	11.8
Unrepresented client	16	1	0	1	18	0.6	0.3	1.4
Client's friend/relative	50	3	0	1	54	1.8	2.1	3.8
Solicitor on another's behalf	137	9	2	4	152	5.2	5.2	7.7
Solicitor on own behalf	126	6	3	5	140	4.8	3.9	3.9
Barrister on another's behalf	0	0	0	0	0	0.0	0.1	0.0
Barrister on own behalf	35	2	0	0	37	1.3	0.9	0.9
Non-legal service provider	74	2	1	3	80	2.7	2.5	4.0
Beneficiary/executor/administrator	109	1	0	0	110	3.8	2.8	2.5
Legal Services Commissioner	17	0	0	0	17	0.6	0.3	1.4
Law Society	131	0	0	2	133	4.5	3.5	2.3
Bar Association	0	16	0	0	16	0.5	0.5	0.0
Other****	156	25	5	10	196	6.7	8.8	5.7
<b>TOTAL</b>	<b>2633</b>	<b>190</b>	<b>33</b>	<b>72</b>	<b>2928</b>			

\* Includes former solicitors.

\*\* Licensed Conveyancer

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

\*\*\*\* Other complainants includes government agencies, witnesses, judge/quasi-judicial officer and costs assessors.

## W4. Summary of complaints received and/or finalised, 2001-2002

See tables W5 and W6 for further detail.

COMPLAINTS RECEIVED IN 2001-2002	Solicitor	Barrister	LConveyancer*	Other**	Total 01-02	%01-02	Total 00-01	%00-01	Total 99-00	%99-00
<b>Complaint handling by OLSC</b>										
Complaint handling ongoing at OLSC	406	39	7	6	<b>458</b>	16.0	<b>415</b>	15.7	<b>745</b>	25.7
Suspended at OLSC***	31	3	0	0	<b>34</b>	2.0	<b>24</b>	0.9		
Complaint handling completed at OLSC	841	23	8	13	<b>885</b>	31.0	<b>819</b>	31.1	<b>928</b>	32.0
Complaint dismissed by OLSC	642	53	9	43	<b>747</b>	26.0	<b>544</b>	20.6	<b>510</b>	17.6
<b>OLSC subtotal</b>	<b>1920</b>	<b>118</b>	<b>24</b>	<b>62</b>	<b>2124</b>	72.5	<b>1802</b>	68.4	<b>2183</b>	75.2
<b>Complaint handling by Professional Councils</b>										
Complaint handling ongoing at Council	385	58	5	8	<b>456</b>	15.6	<b>483</b>	18.3	<b>475</b>	16.4
Suspended at Council***	4	0	0	0	<b>4</b>	0.1	<b>30</b>	1.1		0.0
Complaint handling completed at Council	81	0	2	0	<b>83</b>	2.8	<b>117</b>	4.4	<b>68</b>	2.3
Complaint dismissed by Council	243	14	2	2	<b>261</b>	8.9	<b>203</b>	7.7	<b>175</b>	6.0
<b>Council subtotal</b>	<b>713</b>	<b>72</b>	<b>9</b>	<b>10</b>	<b>804</b>	27.5	<b>833</b>	31.6	<b>718</b>	24.8
<b>TOTAL COMPLAINTS RECEIVED 2001 - 2002</b>	<b>2633</b>	<b>190</b>	<b>33</b>	<b>72</b>	<b>2928</b>		<b>2635</b>		<b>2901</b>	

## COMPLAINTS FINALISED IN 2001-2002

<b>Complaint handling finalised by OLSC</b>										
Complaint handling completed at OLSC	999	28	8	13	<b>1048</b>	38.0	<b>1098</b>	41.9	<b>1278</b>	44.4
Complaint dismissed by OLSC	785	70	10	48	<b>913</b>	33.1	<b>701</b>	26.8	<b>830</b>	28.8
<b>OLSC subtotal</b>	<b>1784</b>	<b>98</b>	<b>18</b>	<b>61</b>	<b>1961</b>	71.1	<b>1799</b>	68.7	<b>2108</b>	73.2
<b>Complaint handling finalised by Councils</b>										
Complaint handling completed at Council****	166	13	2	5	<b>185</b>	6.7	<b>238</b>	9.1	<b>136</b>	4.7
Complaint dismissed by Council	532	52	6	22	<b>612</b>	22.2	<b>583</b>	22.3	<b>634</b>	22.0
<b>Council subtotal</b>	<b>698</b>	<b>64</b>	<b>8</b>	<b>27</b>	<b>797</b>	28.9	<b>821</b>	31.3	<b>770</b>	26.8
<b>TOTAL COMPLAINTS FINALISED 2001-2002</b>	<b>2482</b>	<b>162</b>	<b>26</b>	<b>88</b>	<b>2758</b>		<b>2620</b>		<b>2878</b>	

\* Licensed Conveyancer

\*\* 'Other' includes legal practitioners, clerks, non-legal service providers and struck off practitioners. Former solicitors are included as solicitors.

\*\*\* 'Suspended' files are files that can not be finalised but on which no progress is likely for some time, for example, a file may be suspended if a complainant has asked for an investigation to be postponed until a related matter before the courts is finalised. Previously these types of files were grouped with other 'open' files.

\*\*\*\* Files referred to an investigator or manager appointed by council are treated as suspended and therefore as completed.

## W5. Status at 30 June 2002 of complaints received in 2001-2002

Status	Solicitor	Barrister	LConveyancer*	Other**	TOTAL
<b>COMPLAINT HANDLING IN PROGRESS</b>					
Dispute resolution in progress	372	28	7	6	413
Out of time assessment in progress	5	3	0	0	8
Investigation in progress	29	8	0	0	37
Complaint handling suspended	31	3	0	0	34
<b>Subtotal open, active at OLSC</b>	<b>437</b>	<b>42</b>	<b>7</b>	<b>6</b>	<b>492</b>
<hr/>					
Dispute resolution in progress	19	2	1	1	23
Investigation in progress***	370	56	4	7	437
<b>Subtotal open, active at Council</b>	<b>389</b>	<b>58</b>	<b>5</b>	<b>8</b>	<b>460</b>
<hr/>					
<b>SUBTOTAL, OPEN COMPLAINTS</b>	<b>826</b>	<b>100</b>	<b>12</b>	<b>14</b>	<b>952</b>
<hr/>					
<b>COMPLAINT HANDLING COMPLETED</b>					
Dispute resolution completed	836	23	8	13	880
Resolved through face-to-face mediation	2	0	0	0	2
Practitioner referred to ADT****	2	0	0	0	2
Practitioner reprimanded by LSC	1	0	0	0	1
<b>Subtotal finalised by OLSC</b>	<b>841</b>	<b>23</b>	<b>8</b>	<b>13</b>	<b>885</b>
<hr/>					
Dispute resolution completed	52	0	2	0	54
Resolved through formal mediation	12	0	0	0	12
Practitioner referred to ADT	9	0	0	0	9
Practitioner reprimanded by Council	8	0	0	0	8
<b>Subtotal finalised by Council</b>	<b>81</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>83</b>
<hr/>					
Finding of UPC/PM by ADT unlikely*****	433	37	6	4	480
Likely UPC but generally competent	3	0	0	0	3
Out of time	29	2	0	0	31
Withdrawn, further particulars not supplied	147	12	0	2	161
Outside OLSC jurisdiction	30	2	3	37	72
<b>Subtotal dismissed by OLSC</b>	<b>642</b>	<b>53</b>	<b>9</b>	<b>43</b>	<b>747</b>
<hr/>					
Finding of UPC/PM by ADT unlikely	136	11	2	1	150
Likely UPC but generally competent	7	0	0	0	7
Withdrawn, further particulars not supplied	100	3	0	1	104
<b>Subtotal dismissed by Council</b>	<b>243</b>	<b>14</b>	<b>2</b>	<b>2</b>	<b>261</b>
<b>SUBTOTAL, COMPLAINTS FINALISED</b>	<b>1807</b>	<b>90</b>	<b>21</b>	<b>58</b>	<b>976</b>
<hr/>					
<b>Total handled by OLSC</b>	<b>1920</b>	<b>118</b>	<b>24</b>	<b>62</b>	<b>2124</b>
<b>Total handled by Council</b>	<b>713</b>	<b>72</b>	<b>9</b>	<b>10</b>	<b>804</b>
<b>TOTAL</b>	<b>2633</b>	<b>190</b>	<b>33</b>	<b>72</b>	<b>2928</b>

\* Licensed Conveyancer

\*\* 'Other' includes legal practitioners, clerks, non-legal service providers and struck off practitioners. Former solicitors are included as solicitors.

\*\*\* Includes where investigator/receiver/manager have been appointed.

\*\*\*\* Administrative Decisions Tribunal

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

## W6. All complaints finalised 2001-2002, opened all years

Complaints finalised	Solicitor	Barrister	LConveyancer*	Other	TOTAL
Dispute resolution completed	991	28	8	13	1040
Resolved through formal mediation	3	0	0	0	3
Practitioner reprimanded by LSC	5	0	0	0	5
<b>Subtotal finalised by OLSC</b>	<b>999</b>	<b>28</b>	<b>8</b>	<b>13</b>	<b>1048</b>
Dispute resolution completed	84	1	2	2	89
Resolved through formal mediation	15	0	0	0	15
Practitioner referred to ADT	38	8	0	3	49
Practitioner reprimanded by Council	29	3	0	0	31
<b>Subtotal finalised by Council</b>	<b>166</b>	<b>12</b>	<b>2</b>	<b>5</b>	<b>185</b>
<b>Complaints dismissed</b>					
Finding of UPC/PM by ADT unlikely	500	48	7	1	556
Likely UPC but generally competent	2	0	0	0	2
Complaint not accepted out of time	43	5	0	0	48
Withdrawn, further particulars not supplied	198	15	0	6	219
Outside OLSC jurisdiction	42	2	3	41	88
<b>Subtotal dismissed by OLSC</b>	<b>785</b>	<b>70</b>	<b>10</b>	<b>48</b>	<b>913</b>
Finding of UPC/PM by ADT unlikely	400	43	6	19	468
Likely UPC but generally competent	8	0	0	0	8
Withdrawn, further particulars not supplied**	124	9	0	3	136
<b>Subtotal dismissed by Council</b>	<b>532</b>	<b>52</b>	<b>6</b>	<b>22</b>	<b>612</b>
<b>Total handled by OLSC</b>	<b>1784</b>	<b>98</b>	<b>18</b>	<b>61</b>	<b>1961</b>
<b>Total handled by Council</b>	<b>698</b>	<b>64</b>	<b>8</b>	<b>27</b>	<b>797</b>
<b>TOTAL</b>	<b>2482</b>	<b>162</b>	<b>26</b>	<b>88</b>	<b>2758</b>

\* Licensed Conveyancer

\*\* Some complaints were withdrawn or dismissed for technical reasons, then new complaints made on the same grounds.

## W7. Duration of file handling at OLSC

Of complaints finalised at the OLSC, time taken for complaint handling

	Percentage of files closed within following periods*		
	01 - 02	00 - 01	99 - 00
0 - 30 days	25.4	25.0	26.8
1 - 3 months	32.9	33.3	26.2
3 - 6 months	23.0	20.1	20.8
6 - 9 months	8.5	9.6	8.5
9 - 12 months	3.6	3.6	5.4
Over 12 months	6.6	8.5	12.4

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

## W9. Average time taken to finalise a complaint at the OLSC

Days\*

Average time to complete complaints received and completed/resolved in 2001-2002	74
Average time to complete complaints received in any year but completed/resolved in 2001-2002	121
Average time to dismiss complaints received in 2001-2002	73
Average time to dismiss complaints received in any year but dismissed in 2001-2002	127

\* Averages rounded to nearest decimal point

## W8. Age of complaints remaining open or suspended on 30 June 2002 and being handled by the OLSC

Year opened	Open at 30 June 02	Open at 30 June 01	Open at 30 June 00
2001 - 2002	492	0	0
2000 - 2001	302	439	0
1999 - 2000	199	371	745
1998 - 1999	36	53	84
1997 - 1998	7	7	32
1996 - 1997	6	9	12
1995 - 1996	0	2	3
1994 - 1995	0	0	1
TOTAL	1029	880	877

# Reviews

## R1. Status at 30 June 2002 of review requests received in 2001-2002

	Solicitor	Barrister	LConveyancer*	Total	Percentage
<b>Review in progress</b>					
In progress at OLSC	10	0	0	10	9.7
Being reviewed by Consultant	9	0	0	9	8.7
Consulting with Council prior to finalising	1	0	0	1	1.0
<b>Total remaining open</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>20</b>	<b>19.4</b>
<b>Review completed</b>					
Dismissal confirmed	62	10	1	73	70.9
Out of time, no jurisdiction	3	2	0	5	4.8
Review request withdrawn	2	0	0	2	1.9
Reprimand confirmed	1	0	0	1	1.0
Reinvestigated by OLSC	1	1	0	2	1.9
<b>Total completed</b>	<b>69</b>	<b>13</b>	<b>1</b>	<b>83</b>	<b>80.6</b>
<b>Total received</b>	<b>89</b>	<b>13</b>	<b>1</b>	<b>103</b>	<b>100.0</b>

## R2. Status at 30 June 2002 of review requests received any year

	Solicitor	Barrister	LConveyancer*	Total	Percentage
<b>Review in progress</b>					
In progress at OLSC	11	3	0	14	9.9
Being reviewed by Consultant	20	4	0	24	16.9
Consulting with Council prior to finalising	4	0	0	4	2.8
<b>Total remaining open</b>	<b>35</b>	<b>7</b>	<b>0</b>	<b>42</b>	<b>29.6</b>
<b>Review completed</b>					
Dismissal confirmed	84	5	1	90	63.4
Reprimand confirmed	2	0	0	2	1.4
Out of time, no jurisdiction	3	3	0	6	4.2
Review request withdrawn	2	0	0	2	1.4
<b>Total finalised</b>	<b>91</b>	<b>8</b>	<b>1</b>	<b>100</b>	<b>70.4</b>
<b>Total received any year</b>	<b>126</b>	<b>15</b>	<b>1</b>	<b>142</b>	<b>100.0</b>

\* Licensed Conveyancer

# Tribunal Proceedings

## T1. Complaints referred to the Administrative Decisions Tribunal, 2001-2002\*

	Solicitor	Barrister	Clerk/ Associate	TOTAL
Unsatisfactory Professional Conduct (UPC)	0	0	0	0
Professional Misconduct (PM)	23	6	0	29
PM and UPC	4	4	0	8
Prohibited employment**	0	0	1	1

\* Data provided by Administrative Decisions Tribunal

\*\* Legal Profession Act S48I and S48K orders

## T2. Outcomes of Tribunal proceedings 2001-2002\*

No jurisdiction/withdrawn	7
Dismissed	0
Dismissed - S 155A of the LPA	0
Proceedings permanently stayed	0
Removed from roll	11
Suspended from practice	0
Restricted practising certificate and fined	1
Restricted practicing certificate and reprimanded	2
Reprimanded and fined	2
Reprimanded and suspended	1
Reprimanded	2
S48I and S48K Orders (convicted persons)**	0
<b>TOTAL</b>	<b>26</b>

\* Data provided by Administrative Decisions Tribunal

\*\* Legal Profession Act S48I and S48K orders



# Notes

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