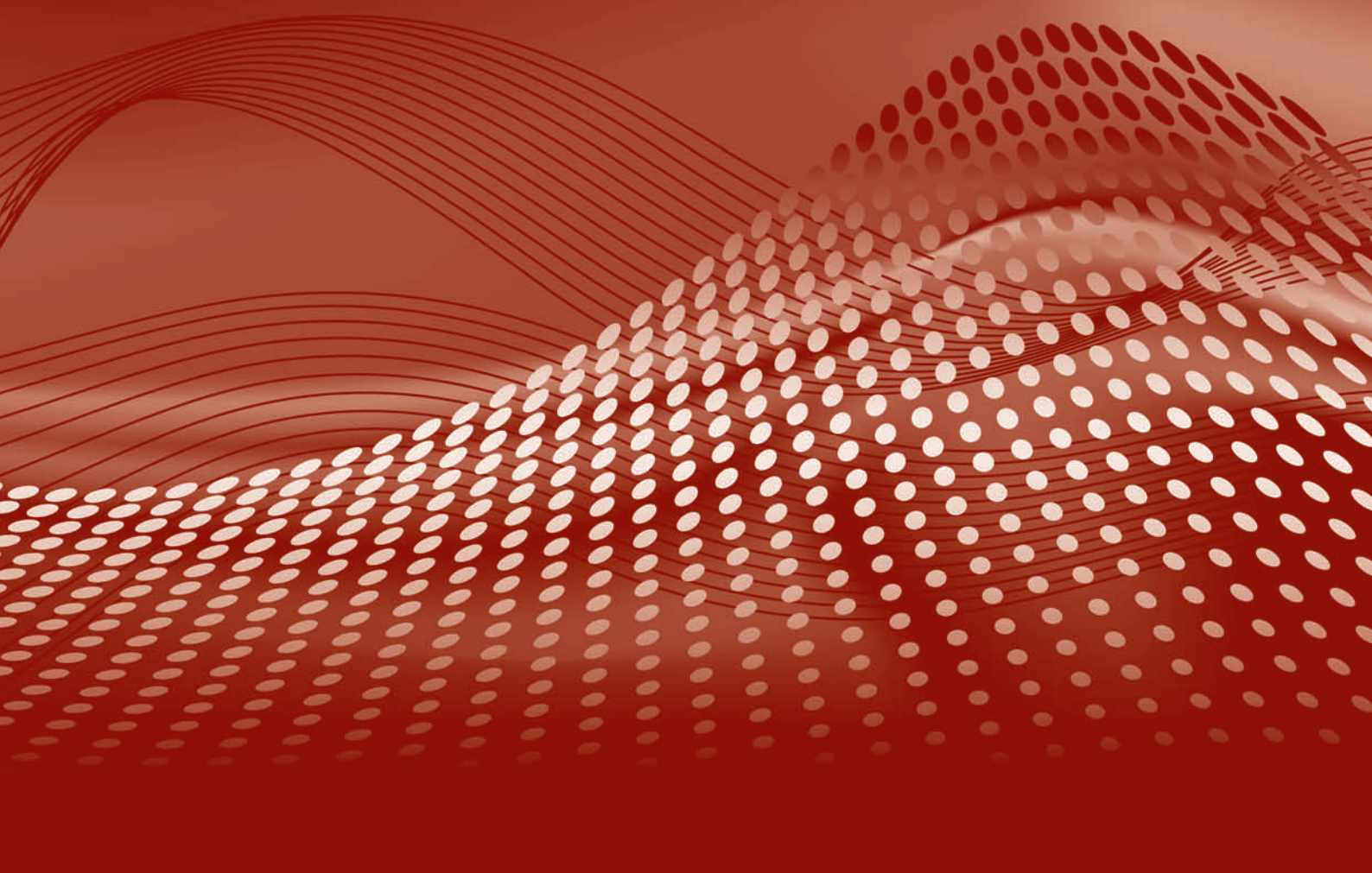




The Office Of The Legal Services Commissioner

# 2007-08 Annual Report



## VISION

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

## MISSION

To improve consumer satisfaction with legal services through:

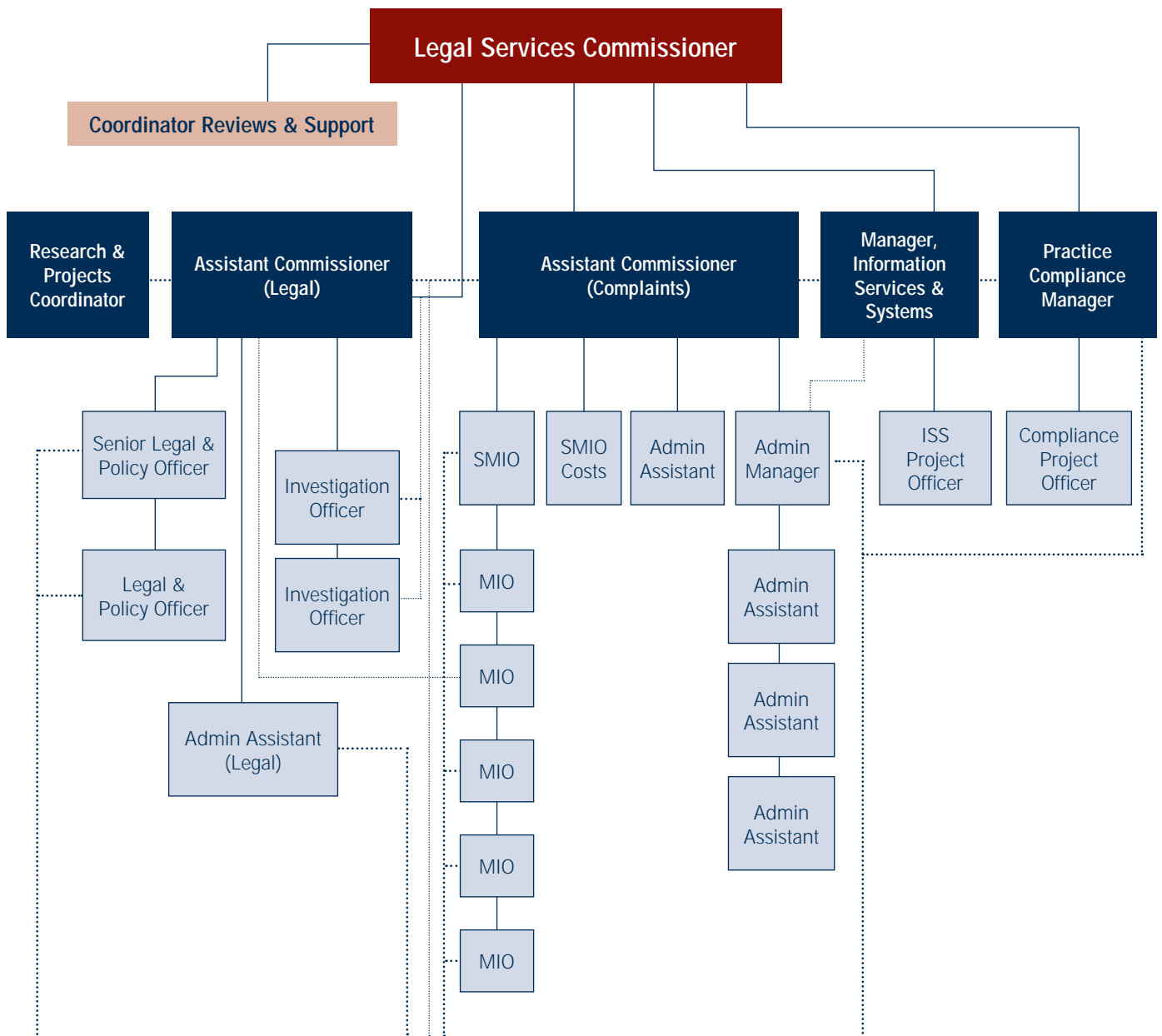
- developing and maintaining effective complaint-handling processes;
- promoting compliance with high professional and ethical standards;
- encouraging an improved consumer focus within the profession to reduce causes for complaint; and
- promoting realistic community expectations of the legal system.

## VALUES

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

# OFFICE OF THE LEGAL SERVICES COMMISSIONER

## ORGANISATIONAL CHART



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# COMMISSIONER'S REPORT

We commenced this reporting year preparing for our office move from the Goodsell Building in Chifley Square, to our new premises at 75 Castlereagh Street, Sydney. The excitement of the office move set the pace for a busy and productive year.

## CHANGING LEGAL SERVICES MARKET

The legal services market in NSW has undergone considerable structural change over the past few years. Legislation enacted in 2001 permitting legal practices to incorporate has resulted in more than 800 firms expressing an interest in incorporating or becoming a publicly listed company. Two firms have listed on the Australian Stock Exchange.

Incorporation of law firms is now allowed in Victoria, Queensland, Western Australia, the Australian Capital Territory and the Northern Territory. Tasmania and South Australia are considering whether to enact similar legislation. Following Australia's lead, the United Kingdom enacted similar legislation permitting alternative business structures this year.

The decision to do so in the UK was based on the belief that alternative business structures could provide benefits for both consumers and legal service providers. The potential benefits include greater choice of lawyer, reduced prices for legal services, better access to justice, improved consumer services, greater convenience and increased consumer confidence. The potential benefits for legal service providers include increased access to finance, better spread of risk and increased flexibility (greater ease in hiring and retaining non-legal staff).

The United States has also displayed an interest in permitting law firms to adopt alternative business structures. Whilst it has not gone as far as enacting legislation to permit such structures, discussion of the possibilities are well underway.

For example, in April 2008 I was invited to speak at a symposium at Georgetown University, entitled "The Future of the Global Law Firm." The symposium addressed the potential significance of changes of law firm ownership and access to capital markets, and the emergence of the publicly traded law firm. I spoke about what we have been doing in Australia in regulating ILPs and publicly listed companies and the benefits and challenges each alternate structure brings. The symposium in effect recognised that external interest in law firms is now a reality.

## IMPAIRED PRACTITIONERS

On 21 May 2007 a prominent barrister in Melbourne died of an overdose of cocaine and heroin. His death prompted much discussion in the media about lawyers and substance abuse. The problem of substance abuse in the legal profession is intimately linked to mental health issues. Research has found that lawyers display higher rates of depressive symptoms when compared with other professionals. According to one study, one-third of lawyers who reported suffering from depressive symptoms self-medicated. The study also revealed that practitioners in the early stages of their legal careers were twice as likely to be depressed than more senior lawyers and that salaried partners are significantly less depressed compared to the total sample.

Impaired practitioners In New South Wales who require assistance with stress-related difficulties have access to two programs – *LawCare* which is run by the Law Society and *BarCare* run by the Bar Association. These programs

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operate on a self-referral basis. Lawyers who choose not to self-refer are left in a dangerous predicament.

Practitioners who exhibit signs of depression can pose a risk to themselves, their families and in particular their clients. The OLSC has produced a discussion paper about this problem. The discussion paper evaluated the current services offered by *LawCare* and *BarCare* and looked at services that are available to impaired practitioners in other jurisdictions in Australia and overseas. The OLSC referred the paper to the Law Society and the Bar Association for discussion. The Law Society and Bar Association are presently working on developing an improved services program to deal with impaired practitioners.

## COSTS

Two important decisions were handed down by Court of Appeal and the Legal Services Division of the Administrative Decisions Tribunal (the Tribunal) this year in relation to gross overcharging by legal practitioners.

The Court of Appeal held that, in order for a practitioner to be found guilty of professional misconduct for deliberately charging excessive amounts of costs, whether at common law or pursuant to section 208Q(2) of the *Legal Profession Act 1987* it is necessary to prove the practitioner was personally implicated in either knowingly or recklessly overcharging. This finding was made despite the fact that the practitioner had signed both the bill and the covering letter to the client which enclosed it. The Court of Appeal was not satisfied that the practitioner had "knowingly overcharged". It should be noted that the bill itself had actually been prepared by a costs consultant and the work done by a junior solicitor.

In another costs decision, the Tribunal dismissed a complaint alleging that a barrister had run three personal injury actions concurrently and charged each client for each conference and each day in court. The Tribunal also made a finding that a costs assessor could not necessarily be treated as an expert in costs matters.

The consequences of the decisions of the Court of Appeal and the Tribunal are considerable. In most firms it is very common for the principal practitioner to send out letters enclosing bills of costs for matters not personally handled by them. In many firms, bills

are actually prepared by internal or external costs consultants who are not themselves lawyers and may therefore be outside my jurisdiction. A submission has been sent to the Government outlining our concerns.

## ADVERTISING

The OLSC has successfully prosecuted two matters in the Tribunal relating to contraventions of Part 14 of the *Legal Profession Regulation 2002* and Part 18 of the *Workers Compensation Regulation 2003* (the Advertising Regulations).

The Advertising Regulations prohibit the publication of an advertisement by a solicitor or a barrister that includes:

- any reference to or depiction of personal injury or work injury;
- any circumstance, activity or event that suggests personal injury [or work injury] or the possibility of personal injury or work injury;
- and any connection to, or association with, personal injury or work injury or a cause of personal injury or work injury.

In the first matter the Tribunal found the practitioner guilty of professional misconduct for advertising in a variety of media including the firm's own website, the internet, the Yellow Pages Online directory, 2005 Yellow Pages directory, signage outside the practitioner's office and a newspaper. The Tribunal ordered that the practitioner be publicly reprimanded and that he pay a fine of \$20,000. The Tribunal also ordered that the practitioner pay the OLSC's costs. This decision was the first time the Advertising Regulations had been tested in the Tribunal.

In the second matter, the Tribunal found a practitioner guilty of professional misconduct for advertising in the Yellow Pages Online and on the firm's own website by including references to personal injury and work injury. The Tribunal ordered that the practitioner be fined \$10,000 and be publicly reprimanded.

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## **ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (AML/CTF) LEGISLATION**

The Australian Government has recently enacted new anti-money laundering and counter-terrorist financing legislation, which regulates the activities of the financial sector, the gambling sector and bullion dealers. Legislation regulating the legal profession and other classes of professionals has also been drafted but has not yet been enacted.

The implications of the legislation are wide. For the first time in Australia, professionals will find themselves subject to a number of onerous reporting obligations such as undertaking customer identification procedures and reporting suspicious matters – obligations that will radically change the nature of their practice. Legal practitioners and other affected professionals in Australia will have to implement an effective program to ensure they are compliant. This year I presented a number of papers addressing these measures. The OLSC is working with the Law Council of Australia and the regulators in Victoria, Queensland and Western Australia to develop guidelines for the implementation of the AML/CTF legislation, which is expected to be implemented in 2009.

## **STRENGTHENING RELATIONSHIPS**

Over the past year the OLSC has continued to be actively involved with the legal regulatory authorities in other States and Territories in pursuing a truly national legal services market. These relationships have been strengthened by regular meetings throughout the year and by attending the Conference of Regulatory Officers (CORO).

Harmonisation of legal services is beneficial to both the community and the profession. A national legal services market enhances consumer protection and economic efficiency. We are continuing to work together with the legal regulatory authorities as well as the Law Council of Australia in developing proposals to achieve harmonisation.

## **COMPLAINTS STATISTICS**

We received a total of 2653 written complaints this reporting year. Of those written complaints, there were 1686 consumer disputes and 967 investigations opened. Of these complaints the OLSC dealt with 76.7% of all complaints received.

We received 9078 calls from the public on our Inquiry Line, a reduction in number from the 9694 Inquiry Line calls we received last financial year.

These results can be effectively attributed to the hard work of the staff at the OLSC who spend a great deal of time trying to resolve complaints face to face, over the phone or in writing. I would like to take this opportunity to express my sincere thanks to my staff for their extraordinary efforts. I am extremely honoured to work with such talented and committed staff. Thanks and appreciation must also be expressed to the Law Society and Bar Association as well as the Attorney General's Department and Attorney General's Office for the positive working relationships we have developed in striving to achieve our goals.

# PROMOTING COMPLIANCE WITH HIGH PROFESSIONAL AND ETHICAL STANDARDS

## CONDUCT ISSUES

### Investigations

In the 2007 / 2008 reporting year, the OLSC received 2653 written complaints. Of those, 967 raised serious issues of conduct warranting investigation. Of the 967 complaints assessed as investigations, 456 were referred to the Councils for investigation and 511 were investigated in this Office.

Investigations may be both time consuming and complex. Variables such as the number of witnesses, the volume of evidence, and the complexity of that evidence all impact upon the time taken to conclude an investigation. Cooperation from third parties including commercial entities cannot always be guaranteed. Nonetheless, the legal team concluded 532 investigations in the reporting year. This is a significant increase on previous years and evidence of the hard work done by the Legal and Policy team.

During the reporting year a number of large and complex investigations have consumed significant resources in the Legal and Policy team. Those investigations have included complaints where the documentary evidence exceeded fifty archive boxes, where the number of complainants about the one firm exceeded forty, and an investigation into improper borrowings from clients, in which the number of loans exceeded twenty. Nonetheless, the Legal and Policy team at the OLSC has shown great commitment to the conduct of their investigations and has worked tirelessly to ensure just and fair outcomes.

### Disciplinary Outcomes

The *Legal Profession Act 2004 (LPA 2004)* provides for a range of disciplinary outcomes depending upon the nature of the finding.

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

The Commissioner may deal summarily with unsatisfactory professional conduct by way of caution, reprimand, compensation order and / or the imposition of a specified condition on a practitioner's practising certificate.

In circumstances where the Commissioner, in accordance with the statutory test, is satisfied that there is a reasonable likelihood that the practitioner will be found guilty of professional misconduct, he is required to commence proceedings in the Tribunal.

In the reporting year, the Commissioner issued 11 cautions and 15 reprimands to practitioners. In three instances compensation was also ordered.



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The cautions issued related to delaying the progress of a matter (four investigations); not acting in accordance with instructions (three investigations); breaches of confidentiality (two investigations); discourtesy and acting with a conflict of interests. In one matter where a practitioner failed to act in accordance with his instructions, compensation in the sum of \$5000 was also awarded.

Of the 15 reprimands issued, five investigations dealt with significant delay and five investigations dealt with failures to communicate. It is of great concern to the OLSC that failure to communicate with clients forms such a significant proportion of complaints received. In the reporting year allegations of failure to communicate constituted 14.5 % of the complaints received. We continue to encourage practitioners to communicate fully and in a timely manner with their clients. The balance of the reprimands issued included issues such as practising without a certificate, conducting a matter with gross negligence and failing to follow instructions.

Two reprimands were accompanied by compensation orders. One compensation order was in terms of a waiver of fees billed, and the other compensation order included a waiver of fees billed, repayment of \$1,800 paid on account of fees and a waiver of the lien the practitioner was maintaining over the client's file.

## Administrative Decisions Tribunal

**During the reporting year we have had eleven matters before the Tribunal. Those matters that have been finalised by the Tribunal resulted in the following outcomes:**

In *Legal Services Commissioner v McKern*, the solicitor was charged with multiple counts of improperly borrowing money from clients and multiple counts of misleading the Commissioner. The practitioner was struck from the role.

In *Legal Services Commissioner v Malouf*, the matter was heard in October 2006 but the decision was not delivered until September 2007. This was the first prosecution under the prohibition on advertising of personal injury legal services under the Legal Profession Regulation. The Tribunal found the respondent guilty of professional misconduct in respect of each of the five grounds of complaint and he was publicly reprimanded and ordered to pay a fine in the sum of \$20,000.

*Legal Services Commissioner v Keddie* was a further prosecution under the personal injury advertising regulation and, in this matter, the respondent was found guilty of professional misconduct in respect of the two grounds of complaint. He was publicly reprimanded and ordered to pay a fine of \$10,000.

*The complainant wrote to our Office alleging that the practitioner who acted for him in a probate matter had failed to act on instructions and had taken too long to finalise the matter. The complainant also alleged that the practitioner had not communicated effectively with him, in that the practitioner had failed to return numerous telephone calls.*

*The Commissioner wrote to the practitioner on three occasions seeking a response to the complaint. After receiving the third letter, the practitioner contacted the OLSC*

*and gave an oral undertaking that he would provide a response. The practitioner did so and disputed the complaint. He submitted that his actions did not delay the matter and that he had not failed to communicate with the complainant.*

*There were no complicating issues in relation to the administration of the estate. The Commissioner found that the delay of 12 months was not excusable, particularly as the complainant's instructions had been clear and concise. The Commissioner determined that the*

*practitioner's conduct amounted to unsatisfactory professional conduct. The practitioner was reprimanded in relation to his conduct and the reprimand was published on the OLSC disciplinary register.*

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The Commissioner presently has two further advertising regulation breach prosecutions on foot being *Legal Services Commissioner v Hagipantelis* and *Legal Services Commissioner v Bryden*. Both practitioners have sought to dismiss the Commissioner's application on the basis that the regulation is invalid. The practitioners' applications will be heard in December 2008.

In *Legal Services Commissioner v Galitsky*, the Commissioner argued that the practitioner was guilty of professional misconduct on the basis that he had acted for three plaintiffs in circumstances where it had been ordered that the matters be heard together and had charged each client for each day he spent in Court. On the Commissioner's submission, this constituted overcharging. Before the Tribunal the Commissioner relied upon the referral of the costs assessor to this Office and the costs assessor's reasoning for that referral. The Tribunal formed the view that expert evidence was required from someone other than the costs assessor and, accordingly, the Commissioner's application was unsuccessful.

In *Legal Services Commissioner v Bechara*, the application brought was similar in terms to that brought against Mr Galitsky. Ms Bechara was Mr Galitsky's instructing solicitor in the three matters referred to in the preceding paragraph. The Tribunal has not yet heard the matter against Ms Bechara. Following the decision in *Galitsky*, the Commissioner brought an application to adduce additional expert evidence in the *Bechara* matter and that application has been granted.

In *Legal Services Commissioner v Woo* and *Legal Services Commissioner v McCarthy*, the Commissioner brought applications for breaches of section 660 of the *LPA 2004* constituted by a failure to provide documents and information to this Office in accordance with the practitioners' statutory duty to do so. In both cases, the practitioners were publicly reprimanded and fined.

The final matter before the Tribunal during the reporting year was the matter of *Legal Services Commissioner v Jayawardena*. The Commissioner alleged that Mr Jayawardena had misled this Office and misled the Court. The Commissioner's application was joined to a Law Society application and heard with the Law Society application. The Law Society application was successful and Mr Jayawardena was struck from the role for breaching various conditions placed upon his practising certificate.

Additionally, the Commissioner has appeared before the Tribunal in relation to applications pursuant to section 564 of the *LPA 2004* whereby matters are dealt with by consent subject to the approval of the Tribunal. In circumstances where the Law Society Council or the Bar Association Council is the applicant, the consent of the Commissioner is also required and the Commissioner, appears before the Tribunal as a matter of courtesy and in the event he can be of assistance to the Tribunal.

The Commissioner has also been respondent to two appeals to the Legal Services Division of the Tribunal being appeals against reprimands issued. In both the matters of *Piscioneri v Legal Services Commissioner* and *Paras v Legal Services Commissioner*, the appeals were withdrawn (the latter on appeal to the Court of Appeal).

The Commissioner was also respondent to matters brought in the Supreme Court by Mr Leon Nikolaidis in relation to practising certificate conditions and by Mr David Brooks in relation to use of documents. Both matters are ongoing.

## Reviews

The legal team completed 56 reviews during the reporting year. Of the 56 completed reviews, dismissal of the complaint was confirmed in 44, in five matters the complaint was reinvestigated, and in three matters the decision was changed from a dismissal to a caution on the basis that the Commissioner was satisfied that the conduct of the practitioner would amount to unsatisfactory professional conduct. The balance of reviews were lodged out of time or jurisdiction had lapsed.

In our co-regulatory environment we draw satisfaction that in only 4.4 % of investigations by Council that have been reviewed, we have considered that the Council was in error in its determination and the Commissioner has changed the determination made by the Council.

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## ETHICAL MATTERS

### Costs Issues

Cost are in dispute in a significant number of complaints received at the OLSC. For that reason, we now consider it appropriate to revisit certain costs issues such as costs disclosure, the basis upon which costs are calculated, the absence of a requirement for disclosure to third party payers, payment of upfront retainer fees and the ongoing difficulties with failing to disclose costs at all and failing to disclose significant increases in costs. Additionally, we consider that it is appropriate to revisit and review the cost assessment process, and to consider the Office's position in relation to allegations of gross overcharging, in light of the decision of the Court of Appeal in *Nikolaidis v Legal Services Commissioner* and the decision of the Administrative Decisions Tribunal in *Legal Services Commissioner v Galitsky*.

We trust a review of these matters will involve all relevant stakeholders. These are also matters that have been raised on the Standing Committees of Attorneys General (SCAG) agenda.

### Anti-Money Laundering

The anti-money laundering legislation will have a significant impact on legal practice and the OLSC is involved in preparing for that impact. The Commissioner has presented a number of papers relating to money laundering, as a step in the process of preparing the profession for the changes the legislation will introduce. We are presently working with the regulators in Queensland, Victoria and Western Australia as well as the Law Council of Australia on drafting implementation guidelines for legal practitioners.

*The complainant was the seventh plaintiff in litigation carried out by the practitioner on behalf of an Owners Corporation and other owners. The action was against the builder of the unit block seeking damages for defective building work. The practitioner accepted instructions to act for the complainant and did so by joining him as a plaintiff to the action. The complainant sought lost rent and repair costs as his unit had been damaged by building defects.*

*The matter had been settled and settlement proceeds were disbursed in their entirety to the first plaintiff (the Owners Corporation). The complainant alleged that the practitioner failed to obtain his instructions in the settlement negotiations, settled the matter without the complainant's instructions and disbursed the settlement monies without contacting the complainant.*

*The practitioner admitted that he had only sought instructions from the first plaintiff and not from any of the other six plaintiffs, including the complainant, when settling the claim. The practitioner said that a breakdown in communication had resulted in these errors. Lastly the practitioner submitted that he was not actually responsible for the errors since he did not have day-to-day carriage of the matters and that another person in his firm did.*

*In correspondence with the Commissioner it was revealed that a paralegal had day to day carriage of the matter. The practitioner was nevertheless responsible for her supervision.*

*The Commissioner determined that the practitioner's conduct amounted to unsatisfactory professional conduct. The Commissioner was of the view that the practitioner*

*should have obtained authority from all of the plaintiffs prior to settling the matter and that he had failed to do so. The practitioner should have communicated with the complainant about his decision. The Commissioner found that it would be reasonably likely that the Tribunal would find the practitioner's failure to obtain the complainant's instructions fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner. The practitioner was cautioned pursuant to section 540(2)(a) of the LPA 2004 and a compensation order was made in the amount of \$5,000.00 to be paid to the complainant.*

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## Review of the Migration Agents Registration Authority (MARA)

In September 2007 the federal Department of Immigration and Citizenship (DIAC) called for submissions regarding its Review of the statutory self-regulation of the migration advice profession. Under the current legislative regime, lawyers who wish to provide certain services with respect to immigration matters must register as migration agents, though migration agents need not necessarily be lawyers. The activities of all migration agents are regulated by MARA. As a result, migration agents who are also lawyers are subjected to dual regulation by the MARA and by the provisions of the *LPA 2004*, as administered by the OLSC.

In his extensive submission to DIAC, the Commissioner made several recommendations as to how the current regulatory arrangements for lawyer/agents could be enhanced, and recommended a range of improvements to MARA's processes. The Commissioner noted that the dual-regulation of lawyer/agents was unnecessary in light of the legislative regime already in place to govern all aspects of legal professional conduct.

## Other matters

The Assistant Commissioners liaise regularly with the Professional Standards Department of the Law Society and with the Professional Conduct Department of the Bar Association. Such liaison occurs both informally and at monthly meetings. The Assistant Commissioner (Legal) meets regularly with the Heads of Government Department Legal Teams and is also a member of the Costs Assessment Users Group, which meets quarterly to discuss issues arising from the Costs Assessment Scheme. Both the Commissioner and the Assistant Commissioner (Legal) have presented seminars on a regular basis to Law Graduates in the College of Law programme.

Staff have attended a wide variety of continuing legal education courses including in-house seminars addressing a variety of areas of the law and formal seminars conducted by a number of commercial providers.

*The Commissioner initiated a complaint pursuant to section 504(1) (c) of the LPA 2004 against the practitioner for acting contrary to his client's instructions and breaching Rule 19 of the Professional Conduct and Practice Rules which provides that a practitioner must not appear as an advocate and must not act in a case in which it is known that the practitioner will be required to give evidence to the determination of a contested issue before the court.*

*The practitioner had failed to pay funds held in his trust account for the*

*purpose of settlement of proceedings in accordance with consent orders and his client's clear instructions. His failure to pay resulted in a rescission of the settlement terms and further litigation, in which it was clear that the practitioner would be called as a witness. Nonetheless, the practitioner continued to act.*

*The Commissioner was satisfied that there would be a reasonable likelihood that the practitioner would be found guilty of unsatisfactory conduct in relation to his failure to act in accordance with client*

*instructions and breaching Rule 19, in the event that the Commissioner were to refer the matter to the Tribunal. In light of the practitioner's subsequent efforts in mitigation, such as personal payment of the additional costs incurred, he was cautioned rather than reprimanded.*

# COMPLAINTS HANDLING

### WRITTEN COMPLAINTS

There has been a small reduction in the total number of complaints received by the OLSC, from 2747 in 2006-07 to 2653 in 2007-08.

Again this year the OLSC itself completed slightly more complaints than we handled.

The OLSC finalised 1544 consumer disputes this reporting year. Hundreds of complaints were closed after reductions or waivers of lawyers' bills and many more after apologies or additional work being done.

The main areas of law complained about (civil proceedings, family law, personal injuries, estates and conveyancing and commercial law), have changed little across the history of the Office and remain much the same this year.

Personal injuries matters remain a significant area of complaint despite changes to tort law that significantly reduced the numbers of cases before the courts.

Complainants almost invariably complain about more than one thing – in some cases their entire experience with the legal system. Issues of negligence make up more than a quarter of all issues of complaint combined with a range of ethical issues such as conflict of interests, misleading conduct, including advertising and personal behaviour. Of course, the costs of lawyers play a part in many of these complaints.

Underlining these issues, as always, is the repeated failure of lawyers to find the time and the skill to communicate regularly, clearly and openly with their clients.

Between 2005/6 and this year the proportion of complaints lodged by current clients of lawyers rose by over 11%. Conversely, complaints by clients after they left their lawyer fell by 7%.

While we can't be sure of the reasons for the change in the statistics we can speculate that clients are becoming more aware that they have a right to complain. They also seem more confident that they can approach the OLSC to negotiate with their lawyer without damaging ongoing relationships.

Our approach has always been to maintain or restore the communication between lawyers and clients where that is practical and possible. We try to be flexible in our approaches responding to the often complex circumstances surrounding each case.

### FACE-TO-FACE

Across the year we met with many lawyers to try and resolve or explore issues raised by complaints. Our investigators visited practices to examine files, introduce themselves and get a feel for how practices were operating. We dropped in to offices to see why our letters and calls weren't being dealt with. We brought clients and lawyers together to look at files, apologise to each other and to mend fences. We also invited lawyers to our Office to talk about complaints that raised issues of practice management and inappropriate personal behaviour.

These interviews, meetings and discussions take time and resources for everyone involved. Some meetings and mediations involve Law Society Professional Standards staff. They are an investment on our part in the career and practice of the lawyer and reflect, like practice reviews of incorporated legal practices, our efforts to reduce or prevent complaints.

These meetings are often associated with the warnings we give to lawyers arising out of misconduct that falls short of the disciplinary standard. The outcomes have been very positive and few practitioners ignore serious issues raised with them face-to-face.

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## CO-OPERATION

As co-regulators, OLSC investigators have always discussed complaints with their counterparts at the Law Society and Bar Association. However, in the past year we have increased our efforts to co-ordinate oversight of those practitioners that have attracted our attention via complaints.

We are paying closer attention to the allocation of investigation files to ensure that, where appropriate, consumer dispute histories can be considered by investigators alongside the evidence related to more serious allegations.

Of course, mediators dealing with consumer disputes at the OLSC maintain contact with the Professional Standards Department examining when the same practitioner or, often, the same firm.

Where issues concerning the handling of trust monies are raised we co-ordinate our efforts with the trust account inspectors at the Law Society. Inspectors don't just examine trust account records they talk to lawyers in their offices, discuss issues with staff and see at first hand how files and phone calls are handled. Their assessments come out of extensive experience and can greatly benefit our inquiries, and our knowledge of even the most minor complaints can give a context to their examination of a practice.

## PARTY/PARTY COSTS

Negotiation in relation to party/party costs can often be a difficult process. In the past where a complaint supported by some evidence of negligence was made, it was possible that a practitioner would accept a fee negotiated with the other side.

Today it has become quite difficult to convince a practitioner even to attempt to negotiate party/party costs. A cynical practitioner might make no attempt whatever to pursue recovery of party/party costs if they calculate that their cut of what is finally recovered will not make it worthwhile. Of course, convincing a new practitioner to take on only party/party costs negotiations is almost impossible. There is simply no money in it.

We take the view that, if costs have been awarded it is the obligation of the practitioner to attempt to recover

party/party costs. It is part of the retainer. Unless a client has had it clearly explained to them and agreed in writing to allow the practitioner to opt out, costs should be recovered by the firm that ran the case.

Furthermore, we take the view that an unreasonable delay in recovering costs, to the detriment of the client can amount to unsatisfactory professional conduct or, at its worst, professional misconduct.

## FILE TRANSFERS

Clients frequently want to move to a new practitioner. Actually doing so can be a difficult process. Many of the larger firms have been able to agree that the later firm will recover monies paid as disbursements by its predecessor. Many of the smaller firms are now insisting all disbursements should be paid by the incoming firm. Taking on a client and putting up the funds for medical and other reports without seeing the file can be a real risk for a small firm.

We are thus noticing a trend that sees clients finding it increasingly hard to find a practitioner to take on a part-finished matter. This is particularly true in the country and outer suburbs where the choice of practitioner may be limited. Staying, unhappily, with the current practitioner is sometimes the best option, and we will say this to a complainant where appropriate.

In addition to this problem, we have also noticed that some practitioners have refused to transfer a file because they are offended that their client has decided to leave them. In other instances some practitioners may also resent any other practitioners accepting their former clients and will refuse to give up the files.

The Law Society has long advocated the use of their tripartite deed to ease the movement of files from one practitioner to another. The document works well but we are increasingly seeing firms rewrite the document substantially or insist on tough clauses that mean major arguments ensue.

We successfully negotiate the transfer of the great majority of these files. We try to focus practitioners on the, often desperate, needs of the client and the fact that only a successful conclusion will see everyone paid. We suggest they behave, as they would wish to be treated when they look to have a matter transferred to them.

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We have a good idea of the psychology of file transfers, the financial imperatives involved and the needs of the legal system. Our Mediation and Investigation Officers have the necessary skills to resolve most cases.

## INQUIRY LINE

It has been a productive and innovative year on the Inquiry Line. This year we received 9078 calls from the public. This was 616 calls down from the last financial year. The most common legal matter raised was family law. This has been consistently the case over the last three years. The next most common area complained about was conveyancing. These results have been consistent over the past three years. Communication again was raised this year as the most common problem for complainants closely followed by cost queries and negligence.

The outcomes of the calls largely involved referring complainants for legal advice, followed by providing our complaint form so the complainant could make a formal complaint.

We created and launched a new Inquiry Line Data Register, which enabled us to record more meaningful data from callers. In addition to the details recorded about the type of practitioner, the source of the call, the issues of the call and the action taken by the OLSC in relation to the call, with the caller's consent we are also

able record the caller's post-code and language spoken/ ethnicity. The recording of such information assists us in profiling our service users, which can in turn help us identify areas for the potential education of consumers and practitioners, further meeting the needs of callers to our service.

Our Customer Satisfaction Survey was also launched in April this year to coincide with the new Inquiry Line Data Register. The aim is to measure the satisfaction of the callers. The Survey is sent to callers who register their details with us during a call. Callers were asked to rate such statements as '[s]taff explained clearly how they could assist the caller' and '[t]he information the caller received was helpful and/or useful' on a scale from strongly agree, agree, strongly disagree, neutral or not answered/ not applicable. We recently received the results from the first survey and the result was overwhelmingly positive. Over 85% of respondents strongly agreed or agreed that we provided clear explanations about how we could assist them. Over 77% of respondents strongly agreed or agreed that the information provided by the OLSC was helpful and/ or useful.

*The complainant was issued with a tax invoice for the sum of \$440 immediately after attending an initial consultation at the practitioner's office. Although the complainant paid for the consultation, he asked the OLSC if we were able to mediate the issue of the practitioner's costs. The complainant submitted that \$440 was too high for the amount of work done during the course of the*

*consultation and for the time taken for providing legal advice.*

*The OLSC put the complainant's concerns to the practitioner. The practitioner, without admission, and as a goodwill gesture agreed to refund the complainant \$100. When this offer was put back to the complainant he said he found it "underwhelming" and that "nothing short of a complete refund*

*would be acceptable under the circumstances". The complainant asked the OLSC to assist him in mediating the complaint. In mediation the complainant submitted a counter offer, which was accepted by the practitioner. The practitioner refunded the complainant half the legal fees paid, without any admission of liability.*

# INCORPORATED LEGAL PRACTICES

By virtue of sections 140(3) and 670 of the *LPA 2004*, the OLSC has the role of auditing incorporated legal practices (ILPs) to determine compliance with the relevant legislative obligations. The test for compliance is found in part in section 140(3), which provides that a Legal Practitioner Director (LPD) must ensure that “appropriate management systems” are implemented and maintained by the ILP. A failure to do so is capable of being professional misconduct.

All ILPs are required to self-assess their management systems and rate their compliance with ten objectives in a Self-Assessment Document. Each of these areas (colloquially known as the ‘ten commandments’) are essentially a systemisation of ethical conduct. Each of the ‘ten commandments’ refers to certain behaviours which, if followed, will result in greater consumer protection and satisfaction and effect cultural change.

To enable LPDs to assess their management systems, the OLSC developed a standard self-assessment document. This document is sent to all ILPs shortly after commencement. The self-assessment document is completed and then returned to the OLSC. Once received, the OLSC assesses the document for compliance and undertakes an audit (practice review) where necessary.

## THE OLSC’S POWER TO CONDUCT AN AUDIT (PRACTICE REVIEW)

The OLSC’s audit powers are found in section 670 of the *LPA 2004*. The audit powers apply to all law practices within New South Wales, including ILPs. The OLSC’s audit powers under the Act complement the provisions of the Act that relate to the powers entrusted to the Law Society’s Trust Account Inspectors and the financial audits required by the *Corporations Act 2001*. The OLSC

has recently adopted the term “practice review” rather than audit when discussing the power under section 670 of the *LPA 2004* because a “practice review” has no implied financial connotations.

The practice review of the ILP’s management systems occurs with minimum disruption to normal business activity. The Legal Practitioner Director (LPD) is asked to ensure that suitable facilities are made available, for the ILP’s staff to be available for short interviews, and for client files to be easily accessible. Even if full compliance is evident, it does not preclude the OLSC from conducting further practice reviews of the ILP’s management systems to ensure on-going compliance.

Practice reviews are trigger-based and the triggers are not limited solely to a formal complaint. The benefit of this approach is that the OLSC can focus on entrenching and promoting ethical behaviour while encouraging the profession to remain a true profession as well as performing as a business. In adopting this approach the OLSC is fostering a positive cultural change, which will in turn hopefully effect a corresponding positive behavioural change.

The triggers that prompt the OLSC to conduct a practice review of an ILP may for example include if ILP fails to return a completed self-assessment form or if the LPD fails to warrant that the practice complies with the requirement to establish and maintain appropriate management systems or the LPD reports ratings less than compliant. Other triggers may also include evidence that the LPD has misled the Commissioner with respect to appropriate management systems or where the objectives remain rated ‘less than compliant’ or an LPD or non LPD or a solicitor employee is listed in a cost warning or conflict of interests database or the monthly Law Society or NSW Professional Conduct Committee Reports or the latest Law Society Inspection Itinerary.



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The triggers that prompt the OLSC to conduct a practice review of an ILP may also prompt the OLSC to conduct a practice review of a non-incorporated legal practice.

The ultimate objective in reviewing any law practice, regardless of whether it is an ILP or a traditional partnership, is better practice management and compliance with the Act. A practice review supports the provision of high quality, ethical legal services in practices and improves the process for regulating and improving ethical behaviour. Further, it encourages consistency and certainty to ensure higher levels of consumer protection and provide greater visibility of the compliance. Practice reviews also allow the OLSC to monitor compliance of practices with their professional and ethical responsibilities and improve reporting and accountability by practices to the OLSC. After a practice review has been conducted, regulatory and educational information can be provided to practitioners.

Objectives of a practice review that are specific to ILPs include confirmation that appropriate management systems have been implemented and maintained by the ILP in accordance with section 140(3) of the *LPA*

*2004*. A practice review of an ILP also allows the OLSC to ascertain whether any significant changes in management, organisation, policies, procedures, techniques or technologies are adversely affecting the management systems or welfare of the ILP in general, and provide relevant guidance, explanations and examples of how similar matters and concerns have been dealt with by other ILPs. Further information on suitable and necessary training for staff or the LPD and further information on relevant objectives and key components in the self-assessment form can be provided.

After a practice review has been completed, the OLSC where necessary can initiate a complaint; provide further assistance to help a practice comply; conduct follow up practice reviews refer the ILP to another agency i.e. ASIC, Law Society, Police or take no further action. In certain circumstances, the Commissioner may make an application pursuant to s153 of the *LPA 2004* to ban the ILP.

Since 1 January 2008 the OLSC has conducted five formal practice reviews on ILPs pursuant to sections 670 and 140 of the *LPA 2004* as well as a number of

*The complainant was the Chairman of the Owners' Corporation of a strata building. The practitioner was experienced in strata law. The Owners' Corporation engaged the practitioner to advise them in relation to a proposed licence agreement for a developer of adjacent land to swing a crane over and otherwise have minor access to the Owners' Corporation's land. However, it soon became apparent that the developer wanted much more than this, including the right to drive rock anchors under the Owners' Corporation's building. The complainant was authorised to give instructions to the practitioner on behalf of the Owner's Corporation.*

*The practitioner wrote to the opponent's solicitors alleging trespass and stating that appropriate action would be taken to prevent further trespass. The practitioner did not have instructions from the complainant to write to the opponent's solicitors regarding the trespass. The practitioner was instructed by one of the lot holders of the Owners' Corporation to write to the opposing solicitor.*

*The Commissioner determined that the practitioner's conduct fell short of appropriate professional standards by misrepresenting to the opponent's solicitor the instructions that she had. Specifically the Commissioner decided that the conduct was likely to*

*be found by the Tribunal to constitute unsatisfactory professional conduct. The Commissioner cautioned the practitioner for her conduct. The Commissioner reminded the practitioner that it is a fundamental principle underpinning the Solicitors Revised Professional Conduct and Practice Rules that practitioners deal with each other with the same degree of fairness and honesty that they are required to apply in their dealings with the courts.*

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less formal reviews. All of the ILPs have responded positively to the reviews. The OLSC decided that it would be beneficial for all concerned if we sent the ILPs a copy of the OLSC practice review workbook, which contains questions that we ask, before the review occurred. This gives the ILPs time to prepare, formulate the answers to the questions and also obtain copies of any relevant documents. The positive reaction to our reviews is largely because we take an affirmative, non-adversarial approach to the review and at all times emphasise that we are assisting and working with the ILPs, not against them.

## THE PORTAL PROJECT

As the number of firms electing to incorporate continues to grow, the OLSC is implementing a number of strategies to improve our efficiency and effectiveness in relation to the management of ILPs. Specifically, the OLSC has worked closely with the Information Services Branch of the Attorney-General's Department to design and develop a web-based portal for assessing compliance amongst ILPs. This portal is known as the Legal Practice Management and Audit System (LPMAS).

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

The LPMAS Project was significantly extended during the last financial year in order to permit practice reviews of traditional firms and ILPs alike. This represents a considerable expansion of scope, and as a result, the LPMAS Project is not expected to be completed until early 2009.

*The complainant contacted the OLSC about the conduct of her practitioner who had not paid the complainant deposit monies in the amount of \$21,000. The deposit monies had been owed to the complainant because she had rescinded a contract relating to the sale of her property in Queensland. The complainant contacted the practitioner about the delay and was advised that the delay was due to the deposit monies being held in Queensland. The practitioner arranged for the Queensland solicitors to release the deposit monies to the complainant. The complainant was grateful that the matter had been resolved.*

# EDUCATION AND COMMUNICATION

## CHAPTER 4

Sections 688(1)(o) and (p) of the *LPA 2004* provide that the Legal Services Commissioner is responsible for assisting the Bar Council and the Law Society Council in promoting community education about the regulation and discipline of the legal profession and enhancing professional ethics and standards through liaison with legal educators or directly through research, publications and educational seminars.

### UNIVERSITY LECTURES

This reporting year, as in years past the OLSC participated in an extensive education program presenting lectures to undergraduate and post graduate law students at universities across New South Wales. OLSC staff presented twenty lectures at universities in NSW including the University of New South Wales, the University of Technology, Macquarie University, the University of Newcastle and the University of Western Sydney. The lectures were well received with many students commenting on their relevance to their studies. This sentiment is reflected in the results of our external education survey which was conducted from August 2007 to May 2008. The OLSC lectures were seen as helpful by 95.8% of participants of the survey whilst 92.6% of participants also believed the lectures to be both interesting and relevant.

In addition to the university lectures, the Commissioner and staff also conducted ethics lectures as part of the Professional Responsibility Program for students completing their final training at the College of Law campuses in Sydney City and St. Leonards as well as ethics lectures at LawCover, Law Access and the Ministry of Justice in the United Kingdom.

### OUTREACH – PRESENTATIONS TO THE LEGAL COMMUNITY

The Commissioner presented papers this reporting year to a diverse audience on a wide range of topics. These included the following:

*Analysing Alternatives to Time-Based Billing & the Australian Legal Market*, paper delivered by the Commissioner to the Lexis Nexis Finance Essentials for Practice Management Conference in Sydney on 18 July 2007.

*Notes on the listing of law firms in New South Wales and on the incorporation of law firms*, paper presented for discussion to the Joint NOBC, APRL and ABA Centre for Responsibility Panel in San Francisco on 11 August 2007.

*OLSC update*, address by the Commissioner to the Law Society Regulatory Conference at the Sir Stamford Hotel, Sydney on 27 September 2007.

*How will small firms be affected by the national legal profession regulation and its aim of harmonising law, rules and regulations?*, seminar presented by the Commissioner to the City of Sydney Law Society Inc at the Sydney Mechanics School of Arts, Sydney on 2 October 2007.

*The corporatisation of law firms – conflicts of interests for publicly listed firms*, paper presented by the Commissioner to the Australian Lawyers Alliance National Conference in Hobart on 13 October 2007.

*A truly National Profession: what's left to do?*, joint seminar presented by the Commissioner and the Legal Services Commissioner of Victoria to the Australian Legal Practice Management Association Legal Management Summit in Melbourne on 26 October 2007.

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*The impact of the Anti-Money Laundering Legislation on the legal profession and other service industries*, paper presented by the Commissioner at the Anti-Money Laundering Conference 2007 in Sydney on 30 October 2007.

*ILPs: new approaches to regulating ethics in the legal profession?*, participation by the Commissioner in an open forum at the Conference of Regulatory Officers in Brisbane on 1 November 2007.

*Aspects of Regulation*, seminar participation by the Commissioner and the Assistant Commissioner (Legal) at the Law Society of New South Wales Planning Conference 2007 in Leura on 16 November 2007.

*Legal Ethics – What not to do*, seminar presented to the 8<sup>th</sup> Annual Family Law Intensive in Sydney on 9 February 2008.

*What is the impact on Australian culture of the introduction of numerous laws which impact on civil liberties and some might say our national identity?*, paper presented by the Commissioner to the 6<sup>th</sup> Annual National Security Conference in Sydney on 6 March 2008.

*The future of the global law firm – views from an Australian Regulator*, paper presented to the Future

of the Global Law Firm Symposium at the Georgetown University Law centre in Washington on 17 April 2008.

*Beyond the lowest common denominator – are we there yet?*, joint presentation by the Commissioner and the Senior Policy Officer to the NSW Young Lawyers Mid Year Assembly in Kiama on 2 May 2008.

Participation by the Commissioner in the Professions Regional Initiative, Rural Professions Summit at Armidale on 9 May 2008.

Participation by the Commissioner as a high school principal at the Principal for a Day, Department of Education & Training Community Forum, Cabramatta High School on 28 May 2008.

*Where to from here*, participation by the Commissioner in plenary session at the Conference of Regulatory Officers 2008 in Darwin on 12 June 2008.

*Ethics and the Legal Profession*, seminars presented by the Commissioner and the Assistant Commissioner (Legal) at the College of Law on 8 August 2007, 19 September 2007, 3 October 2007, 14 November 2007, 5 December 2007, 29 January 2008, 2 April 2008, 22 April 2008 and 18 June 2008.

*A practitioner was acting for a wife in a family law property settlement. As part of the retainer, the former matrimonial home was being sold. The practitioner was aware that the former husband had threatened and harassed the client by calling her mobile. He was also aware that as a result of the abuse the complainant was forced to change her number.*

*The practitioner received a telephone call from a gentleman purporting to be a real estate agent. The person said that he needed to get in touch with the complainant urgently regarding a possible purchaser.*

*The alleged real estate agent asked the practitioner for the complainant's number. The practitioner gave him the complainant's new number. The complainant subsequently began receiving threatening and harassing calls from her former husband.*

*The Commissioner determined that the practitioner's conduct in giving the complainant's phone number to a stranger over the phone was conduct that amounted to a breach of the complainant's confidentiality. The Commissioner was of the view that the practitioner should have attempted to contact the*

*complainant personally to ask her whether he could give her number to anyone. The Commissioner was satisfied that it was reasonably likely the Tribunal would find the practitioner guilty of unsatisfactory professional misconduct. However, the Commissioner decided the practitioner was otherwise competent and diligent and issued a caution rather than a reprimand or initiate proceedings.*

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## STAFF TRAINING

All OLSC staff participated in both external and internal training this reporting year, as required by the Attorney General's Department. The training program offered to OLSC staff included face-to-face learning, E-Learning, seminars/conferences and workplace learning. It covered a wide array of subjects such as Locus software, legal professional privilege, drafting effective legal documents, effective communication in difficult situations, policy and procedure writing, writing submissions and briefing notes, wills and succession Law update, risk management, dealing with difficult people and finance for the non-financial manager. Staff at the OLSC were also given the opportunity to attend a series of lunch time seminars with presentations by external organisations such as the Workers Compensation Commission, LawCover, and the Motor Accidents Authority.

Twenty-seven staff members including legal and non-legal staff participated in over 1100 hours of training. The training mainly consisted of on the job workplace training (469.5 hours) followed by attendances at seminars and conferences (369.5 hours). The training has been an invaluable exercise for the OLSC and staff have commented on the necessity and relevance of external and internal training.

## PUBLICATIONS – INTERNAL AND EXTERNAL

The OLSC publishes 18 fact sheets to assist the general public as well as practitioners in understanding and dealing with the complaints handling process. The fact sheets which are written in plain English cover a broad range of topics including information on the most common types of complaints such as costs disclosure, file ownership, deceased estates, conflicts of interest, liens, settlement and cost dispute resolution. Each fact sheet is available in hard copy from the OLSC or via our website at [www.lawlink.nsw.gov.au/olsc](http://www.lawlink.nsw.gov.au/olsc). The fact sheets are amended from time to time where necessary. This reporting year the fact sheet, *What happens when you complain to the OLSC*, as well as several of the fact sheets relating to costs were amended ensuring that each reflects the current state of practice in NSW.

In addition to the fact sheets the OLSC also publishes brochures to assist complainants in understanding the procedures and process involved in making a complaint, and the role of the OLSC. These are also available in hard copy or via the OLSC website.

The OLSC also published five issues of our newsletter, *Without Prejudice*. *Without Prejudice* is becoming increasingly popular in the legal and non-legal community. Its popularity is largely due to the wide-ranging and informative topics covered. This reporting year for example the newsletter covered topics such as dealing with practitioners suffering from substance abuse and mental illness, the cost disclosure responsibilities of solicitors acting as executors, the dangers of email, new regulatory legislation in the United Kingdom, National Continuing Professional Development (CPD) Guidelines, and litigation funding.

The OLSC also produced two major research papers this reporting year. The first of these papers dealt with substance abuse and mental illness in the legal profession. The problem of substance abuse is intimately linked to mental health issues. According to research from *beyondblue*, a national organisation working to address issues associated with depression and related substance misuse disorders in Australia, 50% of people with depression self-medicate with drugs and alcohol. For professionals this statistic is considerably higher. The paper analysed the current services available to impaired practitioners in NSW as well as the services available in other professions both in Australia and overseas. The paper noted that, whilst NSW does have an effective program in place to deal with impaired practitioners, the program could be enhanced to ensure better effectiveness.

The second major research paper focused on the current state of the costs assessment scheme in NSW. The paper is part of an ongoing OLSC project which is evaluating the cost of legal services in NSW. The paper that was completed this reporting year looked at the current costs assessment scheme and compared it to the cost assessment schemes in other jurisdictions both in Australia and overseas. Work on this project is continuing.

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## VISITS

The Commissioner attended and presented a paper at a symposium at Georgetown University in Washington, D.C. entitled "The Future of the Global Law Firm".

The symposium brought together scholars from a range of disciplines, legal practitioners, regulators, consultants and experts from professional service firms from the United States, the United Kingdom, Canada and Australia to discuss the future of the global law firm market. The Commissioner was asked to present a paper on the potential significance of changes in law firm ownership and access to capital markets and the emergence of the publicly traded law firm.

The paper generated much interest in what we have been doing in Australia in relation to ILPs and public listing. Following the success of our regulatory regime, as well as new legislation enacted in the United Kingdom to permit outside ownership, the United States has recently begun to support external equity ownership in law firms. The paper is to be published in a forthcoming edition of the Georgetown Journal of Legal Ethics.

Domestically, the Commissioner attended and spoke at a number of important meetings and conferences in Melbourne, Hobart, Canberra, and Armidale. These conferences and meetings provide an invaluable opportunity for the Commissioner to discuss the OLSC's function and update both the legal and non-legal community on the current regulatory environment.

The Commissioner, together with the Assistant Commissioner (Legal) and the Assistant Commissioner (Complaints), also attended the 2007 Annual Conference of Regulatory Officers (CORO) in Brisbane and the 2008 CORO Conference in Darwin.

The theme of the 2007 CORO Conference was to enhance harmonisation of regulation in Australia. It allowed for a state by state review of developments that have occurred within the various jurisdictions. During the conference, the Commissioner spoke to an open forum on the topic "ILPs: new approaches to regulating ethics in the legal profession?"

The theme of the 2008 CORO Conference was "The National Legal Profession – The State of Play". The conference discussed the future directions of the National Legal Services Project and considered other major issues relating to the legal profession. The conference also provided a forum to discuss major issues that have occurred within the various jurisdictions. The Commissioner presented an update to conference participants on ILPs and the Portal project.

*Practitioner A was acting in a matter pursuant to a grant of legal aid. A dispute arose between him and Practitioner B over that grant. Practitioner B complained to the Legal Aid Commission by email and copied the email to Practitioner A who replied to that email in the "heat of the moment" in a discourteous way. The email contained highly derogatory, personal comments about the character of Practitioner B. Practitioner B complained to the OLSC. The Commissioner determined that this conduct amounted to a breach of Rule 25 of the Revised Practice and Conduct Rules and the practitioner was cautioned. The practitioner's contrition and apology were factors in the Commissioner's decision not to reprimand or initiate proceedings in the Tribunal.*

# RESEARCH AND PROJECTS

## CHAPTER 5

The research and projects agenda increased significantly this reporting year in both subject matter and volume. In-house research has been conducted on a wide range of matters central to the operation of the legal profession as well as on matters that are incidental, yet important to practitioners.

In addition to the general in-house research requests, the OLSC has been involved in three major joint research projects with other institutions in preparing Australian Research Council (ARC) linkage grants. The OLSC has been asked to join each of the three projects as a 'partner organisation', which means that, if the applications are successful, we will provide assistance in the form of partial funding and allocation of staff and resources.

Legal education and research have an important role to play in the establishment of a law-abiding society. A healthy regard for the professionalism of the legal fraternity enhances our community's faith in the legal system and reaffirms faith in the concept of the rule of law. The OLSC's commitment to excellence in legal education and research is an important component and ingredient of a vibrant and a just society which we seek.

### IN-HOUSE RESEARCH REQUESTS

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

- The impact on legal ethics of the corporatisation of the legal services marketplace on legal ethics;
- Incorporation in NSW and the regulatory challenges it presents to the OLSC;
- The public listing of law firms in NSW and the regulatory challenges it presents to the OLSC;
- An evaluation of the impact of the *Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF) legislation* on the legal profession;
- The impact of the AML/CTF legislation on Australian society and culture;
- Whether a solicitor who acts as an executor or trustee is acting in the practice of law?;
- Substance abuse and mental health issues in the legal profession in NSW;
- Technology and compliance auditing and the future of legal regulation;
- Ethics and the practices of large law firms;
- The introduction of new legislation in the United Kingdom – The *Legal Services Act (2007) (United Kingdom)*;
- Managing the use of email to communicate with clients;
- The impact of the introduction of new National Continuing Professional Development (CPD) Guidelines for the legal profession;
- The impact of litigation funding on the legal services marketplace in Australia.

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## JOINT RESEARCH PROJECTS

### The professions and capital markets: ethics, business integrity and regulation

The OLSC has been working with the Centre for Applied Philosophy and Public Ethics (CAPPE) in preparing a grant application to research the pressing ethical problems confronting the operation of capital markets in Australia and examine the adequacy of the regulatory apparatus and integrity systems.

In order for markets to function effectively there needs to be confidence in institutions and the regulatory apparatus. There must also be a relationship of trust between market participants and intermediaries. Such trust is, however, today in short supply and there is little confidence in the financial market. The research project submits that the erosion of confidence requires a fundamental reassessment of the form and substance of regulatory frameworks and integrity systems. The research project will look at the professions – specifically, the accounting and legal professions, investment bankers and financial planners – and investigate the ethical and compliance challenges for each.

The research will focus on the surveillance and external 'gate-keeping' role performed by the legal and accounting professions as participants in the administration of justice. It will examine the tension between these professional roles within the overall integrity system for capital markets and the provision of corporate services to those same markets. The research will also focus on the extent, nature and adequacy of oversight provided by key regulators of capital markets and professionals.

### Incorporation of law firms

The OLSC has recently been working with the University of Western Sydney to prepare an Australian Research Council (ARC) grant application. The planned research project will study the impacts of the incorporation of law firms upon regulation, governance and the organisation of legal services. The Legal Policy Institute in England, the Center for the Study of Professional Firms Management in Canada and Slater and Gordon Lawyers are also partners in the research application.

The main aims of the research are to:

- analyse the impacts of incorporation upon legal services and regulators;
- trace major institutional changes in legal services and provide feedback on its impact to policymakers, regulators, and the profession; and
- compare findings with England and Canada with due regard to the international aspects of legal competition and provide feedback on this to Australian policymakers, regulators, and the professions.

The project will build on pilot research conducted by the Professional Services Research group at the University of Western Sydney earlier this year. That study focused on western Sydney and investigated the impacts of incorporation through case studies in smaller and mid-sized firms that had incorporated. The study found positive impacts from incorporation in terms of management systems and succession planning. It also found that there were a range of impacts flowing from the unbundling of the different roles of a partner. The ARC grant will enable this research to be extended and continued at the national level.

The research will be conducted through a combination of two national surveys of law firms and in-depth case studies of law firms. The case studies will include firms of different sizes and business models. The OLSC will be closely involved in the project and will provide advice and information to support the research into regulatory issues.

If the funding application is successful, the research project will run for three years from 2009.



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## Ethical Infrastructure in Large Law Firms: How Values, Policies and Behaviour Interact

As reported in last year's Annual Report, we are continuing our work with Monash University, the University of Melbourne, the University of Queensland and the University of Adelaide to study the ethical structures, attitudes and behaviours of lawyers in large law firms. The aims and objectives of the study are to:

- Identify how large law firms try to support or encourage ethical practice among individual employed lawyers and work teams within the firm, and what countervailing pressures they face that might diminish ethical practice.
- Evaluate the effectiveness of different mechanisms that law firms use to support or encourage ethical practice at the individual level.

- By concentrating on a number of important ethical areas, identify and evaluate how a range of mechanisms including professional regulation and discipline, professional education and professional liability insurance, including risk management, might best be aimed at promoting ethical practice within large law firms, and by extension all law firms.

Interestingly, no research of this type has ever been published in Australia before.

It is hoped the project will help identify what 'appropriate management systems' and other mechanisms are required for ethical practice in law firms, and will develop legal and enforcement strategies for making sure these are put in place.

The application seeks funding for a period of four years.

*The complainant wrote to our Office concerning a lengthy delay in obtaining settlement monies from her practitioner in the amount of \$17,115.00, awarded to her after a motor vehicle accident. The complainant also wrote that she felt that she had been charged excessively. The OLSC initially attempted to resolve the matter through written communication, but it became clear that the dispute required face-to-face mediation. Both the practitioner and the complainant agreed to attend the mediation and*

*the complaint was successfully resolved with the complainant receiving the full amount of the settlement monies.*

*The mediation conference enabled both parties to discuss the issues in the complaint at length. During the mediation it became apparent that the delay in forwarding the settlement monies was because of a misunderstanding between the practitioner and the complainant. Apparently the complainant did not understand that she needed to provide further instructions*

*concerning party/party costs to receive the rest of her settlement monies. The issue of costs was also resolved during the face-to-face mediation.*

# INFORMATION SYSTEMS AND SERVICES REPORT

There have been a number of changes within the Information Systems and Services (ISS) unit in the 2007-2008 financial year. The most notable changes being the introduction of a full time Information Systems and Services Project Officer, and the relocation of the OLSC. Other changes included the design of a number of new internal databases and resulting datasets to enhance capture of data, and the creation of more detailed reports to support the changing information needs of the OLSC. A number of new projects were completed and the ongoing reviews of practices, projects and processes occurred. The OLSC has also again achieved re-certification to ISO 9001:2000.

## ISO RE-CERTIFICATION

The OLSC achieved re-certification to ISO 9001: 2000 in April 2008 with the support of all management and staff. The OLSC originally gained certification to ISO 9001: 2000 in 2005-2006, to ensure there was a formal external recognition of the OLSC as a professional, efficient and well-managed entity with evidence of our commitment to continuous improvement.

The OLSC is committed to improving the quality of the services we offer. Our aim is to use a philosophy of continuous improvement, concentrating on areas of identified concern and required minimum standards. We also review everyday practice to ensure efficiency and effectiveness. In line with our role, vision, mission, and values, the OLSC has set a number of objectives to ensure we continually monitor and improve in the area of customer service and satisfaction.

These are:

- To deliver our existing services in a consistent, reliable fashion while meeting and exceeding our stakeholders' needs;
- To ensure the core processes run smoothly and efficiently with minimal non-compliance whilst ensuring maximum customer satisfaction and maximum staff morale;
- To align the Quality Management System to the OLSC's Business Plan, which uses project methodology each year to set new projects to form its business plan to improve areas identified in performance monitoring and other new business initiatives;
- To observe centralised Human Resources, Information Technology, Asset Management and all other policies and procedures of the AGD;
- To maintain the OLSC Quality Systems Manual, incorporating policies, working procedures, flow charts and general administrative requirements, together with standard documents and forms to ensure accessibility and currency of information provided; and
- To maintain ISO 9001 certification.

As with all continuous quality programs, this is an ongoing process, with the need to ensure we keep improving our standards and reviewing our processes regularly. It is not an easy task, but one to which the OLSC is committed to ensure we continually improve in the area of customer service and satisfaction for all stakeholders. The benefits gained are not only in the certification, but also in terms of improved staff morale, cultural change with enhanced information flow and a continually improving workplace performance.

## OLSC PROJECTS

The OLSC introduced project methodology in the 2003 fiscal year to complement and define the annual Business Plan. This allowed much of the work performed within the OLSC to be categorised into projects to improve the systems utilised to meet organisational objectives. In the review undertaken in 2005-2006 we found that the projects as a whole were

seen as useful and necessary by staff and that there was a real commitment to the ongoing process of continued improvement.

Below are the projects undertaken for this 2007-2008 financial year. These projects were used as the basis for OLSC's business planning and ongoing process improvements.

### Project Team 1: Information Sharing/ Knowledge Management Project

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

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

Related Working Party	Objective
Shared Network Drive	Review and redesign of Shared Network Drive to enhance accessibility & currency of information.
Complaints Tracking System (CTS)	Review of current CTS to enable program changes to enhance design & data extraction to enhance reporting.
Inquiry Line & Mediation Register	Design of an Inquiry Line & Mediation Register to enhance data capture and reporting.
Conduct Register	Design of a Practitioner Conduct Register to enhance data capture and reporting.

### Project Team 2: Staff Training & Education Project

Areas of Improvement: Enhanced staff training. Consistency of Information. Stakeholder Feedback.

Rationale: This Project will focus on enhancing OLSC's current staff training, ensuring better service delivery to stakeholders, and staff training needs being met.

Related Working Party	Objective
Internal Staff Training/ Lunchtime Sessions	Design ongoing schedule of lunchtime training sessions. Training provided this year included sessions on: Workers' Compensation Commission, <i>LawCover</i> , Motor Accidents Authority, Legal professional privilege, Mandatory Rule 176 – OHS, Discrimination, EEO, new equipment and Smart Board training.
External Stakeholder Training	Design ongoing schedule of training sessions with educational bodies: Training provided so far to College of Law, University of New South Wales, University of Wollongong, UTS, UWS and others.
External Stakeholder Feedback	Design of specific feedback/ satisfaction surveys to ensure OLSC continuously improving service to meet stakeholder needs. Surveys undertaken: Inquiry & Mediation Line, educational institution training, and induction training.

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### Project Team 3: Quality & Compliance Management Project

Areas of Improvement: Compliance. Continual improvement. Consistency of Information.

Rationale: This Project will focus on enhancing compliance and ensuring a continual improvement philosophy is established, to provide better service delivery to stakeholders, and ensure OLSC needs are met.

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

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

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

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

Related Working Party	Objective
Pre-service Information & Induction Manual	Design of an OLSC specific Induction Manual to enhance better access and useability of information for new staff and to ensure better transition of new staff into OLSC roles.
Elements of Law Training	Ensure staff are aware of current legislative requirements and provide relevant training structure.
Complaint and complainant trends	Review and redesign of datasets to enhance data minding, trending capabilities and reports to ensure the resulting information is useful to meet OLSC overall objective to develop ethical standards for the profession and provide education both to the profession and to members of the community about the legal process.

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*In the midst of a personal injury case the client, a teenage girl, passed away. Long delays then occurred in finalising the case and the client's mother complained to our Office.*

*We explored the complaint in writing but given that the matter was a sensitive and emotionally distressing it became clear that face-to-face mediation was needed. Communication between the parties had reached an impasse and both*

*expressed a desire to continue the professional relationship. The complainant did not wish to obtain new representation when the matter was so close to settlement.*

*The mediation conference allowed the lawyer to fully explain his sincere attempts to progress the case. It became apparent that it was not the practitioner that was the cause of the delay but rather the insurance company seeking further particulars.*

*The complainant was satisfied that the practitioner was acting in her best interests. The practitioner advised her that she could call him or visit his office any time to seek a progress report. The complainant felt the mediation process allowed her to express her concerns more discretely.*

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*The complainant wrote to the OLSC alleging that the practitioner had overcharged him in the practitioner's handling of the complainant's common law claim. The dispute concerned the practitioner charging \$20,000 in solicitor/client costs. The complainant, in particular, disputed the photocopying costs, the courier costs and a stand-by-fee for a medial*

*expert. The complainant alleged that the costs were excessive and that he was not going to pay them.*

*An OLSC Mediation and Investigation Officer conducted shuttle negotiation between the complainant and the practitioner over a period of four months. The matter was resolved successfully with the practitioner agreeing to reimburse*

*the complainant \$19,000. The practitioner, after looking at the bill of costs agreed that the complainant had been charged excessively.*

# FINANCIAL PERFORMANCE

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

The OLSC maintained its established program of regular and comprehensive examination of its financial performance in 2007-2008 as part of complying with its financial obligations and accountabilities and to deliver a good budget outcome at close of the reporting year.

We applied appropriate monitoring systems and processes during the year involving detailed analysis of monthly cash flows and budget movements. As a result, we were able to capture and reverse at the outset any potentially unfavourable budget trends that were within our control.

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

In addition to receiving normal operational funding, this year the OLSC received an amount of \$0.429m from the Public Purpose Fund representing unspent and deferred income carried forward for the OLSC from financial year 2006-2007.

A significant portion of the deferred money was utilised this year to fund capital costs incurred in implementing Stage 2 (the Detailed Design Stage) of the Incorporated Legal Practices (ILP) Portal Project.

The ILP Portal Project is being implemented in stages in collaboration with representatives from the Department's Information Services Branch and key staff from the OLSC. The last phase of the Project, Stage 3, encompassing construction, testing and deployment is next to be progressed.

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

## HUMAN RESOURCES

As at 30 June 2007, the OLSC establishment was 28 full-time and part-time positions including administrative and professional staff and one full time equivalent position maintained by a team of rostered casuals on the OLSC Inquiry Line.

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

The OLSC experienced a near full complement of staff in 2007-2008 with few staff shortages. Position vacancies arising out of staff absences on short-term leave were filled by either permanent staff on higher duties or by Inquiry Line casuals providing temporary office support in base grade administrative positions.

# NOTES SUPPORTING THE 2007-2008 FINANCIAL STATEMENT

## CHAPTER 8

- 1. Payroll Tax:** *The OLSC's payroll tax budget variation in 2007-2008 highlights an end-of-year financial accounting adjustment put through by the Department to recognise the payroll tax liability on long service leave on costs. The OLSC has no control over the Department's year-end financial processes.*
- 2. Superannuation:** *The OLSC has members in both the State Authorities Superannuation Scheme and the State Authorities Non-Contributory Superannuation Scheme. The Superannuation budget variation reflects end-of-year adjustments that derive from movement on the prepaid superannuation balances of these funds. The Department is obliged to reflect this movement in its books as part of required year-end financial processes. The prepaid superannuation adjustment is in the nature of a non-cash transaction and is not included as part of the recoupment figure from the Public Purpose Fund.*
- 3. Fees:** *The Fees budget includes provision for litigation costs incurred by the OLSC in bringing matters before the Administrative Decisions Tribunal and the Courts. The fees budget also reserves funds for costs associated with the review system and the engagement of independent review advisors. In 2007-2008 the OLSC experienced moderate reductions in litigation costs and review requests.*
- 4. Rent:** *The OLSC relocated to new leased premises at 75 Castlereagh Street, Sydney in February 2008. As a result of a timing issue involving the Department needing to secure the Castlereagh Street premises for the OLSC earlier in order to match the timing of the Department's move to Parramatta Justice Precinct, the OLSC had to pay approx 2.5 months rent for the new accommodation while simultaneously paying rent in Goodsell. The rent budget overrun reflects the impact of this rent duplication as well as the effect of the subsequent increased monthly rent charges applying at the new site.*

## FINANCIAL STATEMENT 2007-2008

	Budget \$	Spent \$	Variance \$	Notes
Salaries & Wages	2,189,915	2,198,347	(8,432)	
Allowances	0	8,426	(8,426)	
Overtime	5,951	138	5,813	
Leave Entitlements	84,958	93,459	(8,501)	
Workers Compensation	10,910	9,590	1,320	
Payroll Tax	136,077	148,245	(12,168)	1
Fringe Benefits Tax	2,000	796	1,204	
Superannuation	167,218	284,095	(116,877)	2
<b>Total Employee Related Payments</b>	<b>2,597,029</b>	<b>2,743,096</b>	<b>(146,067)</b>	
Advertising & Publicity	3,115	2,067	1,048	
Bank Charges	102	104	(2)	
Consultancies	1,000	0	1,000	
Contractors	4,225	0	4,225	
Electricity & Gas	12,614	13,535	(921)	
Fees	111,940	95,591	16,349	3
Freight & Cartage	0	15	(15)	
General Expenses	1,092	590	502	
Insurance	2,121	1,428	693	
Interpreters & Translations	4,228	5,517	(1,289)	
Postal Expenses	15,302	14,276	1,026	
Printing	27,920	34,697	(6,777)	
Publications	7,253	6,449	804	
Rates & Outgoings	8,585	8,298	287	
Rent	264,203	355,275	(91,072)	4
Staff Expenses	18,184	24,774	(6,590)	
Stores & Stationery	22,403	25,578	(3,175)	
Telephone	12,121	11,376	745	
Travel	17,459	16,878	581	
Lease of Equipment	1,000	1,202	(202)	
<b>Total Other Operating Expenses</b>	<b>534,867</b>	<b>617,650</b>	<b>(82,783)</b>	
Maintenance Contracts	35,277	35,103	174	
Repairs and Maintenance	1,023	0	1,023	
<b>Total Maintenance</b>	<b>36,300</b>	<b>35,103</b>	<b>1,197</b>	



	Budget \$	Spent \$	Variance \$	Notes
Depreciation & Amortisation	55,126	87,894	(32,768)	
<b>Total Expenses</b>	<b>3,223,322</b>	<b>3,483,743</b>	<b>(260,421)</b>	
Less: Revenue (Recoupage)	(3,168,196)	(3,268,276)	100,080	
<b>Net Cost of Services</b>	<b>55,126</b>	<b>215,467</b>	<b>(160,341)</b>	
Less Non Cash Items: Depreciation & Amortisation	(55,126)	(87,894)	32,768	
<b>Net Position</b>	<b>0</b>	<b>127,573</b>	<b>(127,573)</b>	

## CAPITAL EXPENDITURE 2007-2008

	Deferred PPF	Spent PPF	Variance
	2006-07 \$	2007-08 \$	\$
Plant & Equipment	30,018	30,018	0
Computer Software/Systems	298,947	298,947	0
<b>Total Capital Expenditure</b>	<b>328,965</b>	<b>328,965</b>	<b>0</b>

# ANNUAL REPORT STATISTICS

## 2007-2008

### PHONE INQUIRIES

#### P1 Legal matters raised in calls

	05-06	06-07	07-08
Family	19.4	18.2	17.1
Other	16.4	16.4	16.7
Conveyancing	13.6	13.6	14.0
Probate/wills/family provisions	10.4	11.4	12.7
Civil	10.8	12.2	11.2
Commercial/corporations law	9.2	9.2	9.6
Criminal law	6.2	5.8	6.5
Personal injuries	6.3	5.5	6.1
Workers compensation	5.6	5.3	4.6
Victims compensation	2.1	2.5	1.4

#### P2 Nature of phone inquiry

	05-06	06-07	07-08
Communication	23.3	22.1	21.2
General cost complaint/query	16.4	17.4	17.0
Negligence	10.6	12.4	12.2
Ethical matters	9.8	8.6	8.5
Overcharging	6.0	7.8	8.5
Costs disclosure	8.0	8.7	7.7
Delay	4.9	4.9	5.7
Quality of service	6.5	4.2	3.9
Instructions not followed	1.8	2.6	2.5
Document transfer/liens	2.1	2.0	2.5
Misleading conduct	2.1	1.8	2.3
Conflict of interests	2.2	1.9	2.2

Trust fund matters	2.0	1.9	2.1
Document handling	1.9	1.2	1.1
Failure to honour undertakings	1.0	0.8	1.1
Pressure to settle	0.8	0.7	0.7
Fraud (not trust fund)	0.3	0.7	0.6
Compliance matters	0.2	0.2	0.3

### P3 Practitioners mentioned on Inquiry Line

	05-06	06-07	07-08
Solicitor	92.7	94.4	93.4
Barrister	2.0	2.2	2.6
Licensed Conveyancer	0.6	0.6	0.4
Other	4.7	2.8	3.7

### P4 Source of calls to the OLSC Inquiry Line

	05-06	06-07	07-08
Client	65.7	69.1	69.4
Friend/relative	7.9	7.2	6.7
Government Agency *	-	2.7	6.1
Opposing client	6.4	6.6	5.7
Beneficiary/executor/administrator	2.4	2.7	3.0
Solicitor on own behalf	1.6	2.0	2.6
Solicitor on another's behalf	2.0	2.0	2.3
Previous client	6.1	2.4	1.2
Non-legal service provider	1.3	1.9	1.1
Unrepresented client	1.5	2.7	0.9
Barrister on own behalf	0.1	0.3	0.5
Other	4.9	0.2	0.4
Barrister on another's behalf	0.1	0.1	0.2

\* New Category added in 2006-2007. In previous years was included in Other.

## P5 Outcomes of calls to the Inquiry Line

	05-06	06-07	07-08
Provided referral for legal advice or other assistance	20.4	24.6	22.9
Provided complaint form	15.2	14.4	17.7
Recommended direct approach to lawyer about concerns	13.3	13.5	15.9
Caller indicated intention to send in complaint	9.9	11.6	14.1
Provided information about the legal system	24.6	20.6	10.0
Other	5.8	5.9	7.6
Listened to caller's concerns	2.6	1.8	3.4
Conducted telephone mediation	1.0	2.9	2.9
Provided referral to the NSW Supreme Court Costs Assessment Scheme	3.5	2.3	2.4
Explained that concerns are outside jurisdiction of OLSC	2.0	1.4	1.4
Provided information about the OLSC and LPA to a legal practitioner	1.5	0.8	1.2
Scheduled interview for caller	0.3	0.3	0.5

## WRITTEN COMPLAINTS

### W1 Legal matters giving rise to complaints received in 2007-2008

	05-06	06-07	07-08
Civil	17.2	16.1	20.6
Family/defacto	14.1	15.9	15.1
Personal Injuries	11.6	9.6	10.0
Probate/wills/family provisions	7.9	8.2	10.0
Conveyancing	9.2	10.2	9.0
Commercial/corporations law	11.5	10.9	8.6
Other	7.2	9.7	6.9
Criminal	6.5	6.2	6.4
Workers Compensation	4.0	4.2	4.1
Leases/mortgages/franchises	3.3	2.9	3.1
Land and Environment	1.9	1.5	2.0
Industrial Law	2.2	1.8	1.5
Professional Negligence	1.3	1.4	1.4
Victims Compensation	0.9	0.8	0.8
Immigration	1.2	0.8	0.7

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## W2 Nature of complaints received in 2007-2008

	05-06	06-07	07-08
Negligence	17.1	16.4	16.9
Ethical matters	13.8	13.4	15.5
Communication	14.8	14.8	14.5
Overcharging	10.5	9.1	10.3
General cost complaint/query	6.0	9.2	8.3
Misleading conduct	7.4	6.3	6.5
Cost disclosure	4.5	5.4	4.9
Delay	5.8	5.3	4.8
Trust fund	5.5	4.6	4.4
Instructions not followed	4.0	4.2	3.9
Document transfer/liens	2.1	2.9	2.9
Quality of service	1.3	2.5	2.4
Conflict of interests	2.7	2.1	1.6
Document handling	0.8	0.8	0.9
Pressure to settle	0.6	0.8	0.6
Compliance matters	1.3	0.5	0.6
Fraud (not trust fund)	0.7	0.7	0.5
Failure to honour undertakings	1.0	1.0	0.5

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### W3 Type and source of complaints received in 2007-2008

	Solicitor*	Barrister	Other**	TOTAL	05-06	06-07	07-08
Bar Association	0	11	0	11	0.3	0.1	0.4
Barrister on another's behalf	3	3	0	6	0.2	0.2	0.2
Barrister on own behalf	54	4	0	58	2.2	2.2	2.2
Beneficiary/executor/ administrator	96	0	3	99	3.9	2.4	3.7
Client	910	67	30	1007	26.7	35.3	38.0
Commissioner	86	8	0	94	5.3	4.0	3.5
Client's friend / relative	62	4	3	69	2.7	2.6	2.6
Law Society	103	0	1	104	4.2	3.5	3.9
Non-legal service provider	58	1	3	62	2.5	2.4	2.3
Opposing client	347	29	7	383	14.7	13.4	14.4
Previous client	396	22	8	426	23.0	19.9	16.1
Solicitor on another's behalf	136	2	3	141	6.0	6.2	5.3
Solicitor on own behalf	92	5	2	99	4.6	3.1	3.7
Unrepresented client	6	1	0	7	0.5	0.5	0.3
Other ***	74	12	1	87	3.0	4.0	3.3
<b>TOTAL</b>	<b>2423</b>	<b>169</b>	<b>61</b>	<b>2653</b>			

\* Includes former solicitors and legal practitioners

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

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

## W4 All Complaints finalised in 2007-2008

### All OLSC Consumer Disputes

	Solicitor	Barrister	Other*	TOTAL
Dispute resolution completed	1260	57	16	1333
Resolved through formal mediation	2	0	0	2
<b>Subtotal completed by OLSC</b>	<b>1262</b>	<b>57</b>	<b>16</b>	<b>1335</b>
Withdrawn, particulars not supplied, procedural	139	10	1	150
<b>Subtotal dismissed by OLSC</b>	<b>139</b>	<b>10</b>	<b>1</b>	<b>150</b>
Outside OLSC jurisdiction	30	4	25	59
<b>Subtotal not accepted by OLSC (1)</b>	<b>30</b>	<b>4</b>	<b>25</b>	<b>59</b>
<b>Total OLSC Consumer Disputes Finalised</b>	<b>1431</b>	<b>71</b>	<b>42</b>	<b>1544</b>

### All OLSC Investigations

	Solicitor	Barrister	Other*	TOTAL
Practitioner referred to Tribunal#	11	0	0	11
Practitioner disciplined by LSC##	15	0	0	15
Disciplined by LSC with compensation ordered##	3	0	0	3
<b>Subtotal with disciplinary outcome by OLSC</b>	<b>29</b>	<b>0</b>	<b>0</b>	<b>29</b>
Tribunal finding of UPC/PM unlikely	335	45	11	391
Likely UPC but generally competent	0	0	0	0
Public interest	22	1	0	23
<b>Subtotal dismissed by OLSC</b>	<b>357</b>	<b>46</b>	<b>11</b>	<b>414</b>
Complaint not accepted out of time	71	15	3	89
<b>Subtotal not accepted by OLSC (1)</b>	<b>71</b>	<b>15</b>	<b>3</b>	<b>89</b>
<b>Total OLSC Investigations Finalised</b>	<b>457</b>	<b>61</b>	<b>14</b>	<b>532</b>

### All Council Consumer Disputes

	Solicitor	Barrister	Other*	TOTAL
Dispute resolution completed	115	2	0	117
Resolved through formal mediation	0	0	0	0
<b>Subtotal completed by Council</b>	<b>115</b>	<b>2</b>	<b>0</b>	<b>117</b>
Withdrawn, particulars not supplied, procedural	80	7	2	89
<b>Subtotal dismissed by Council</b>	<b>80</b>	<b>7</b>	<b>2</b>	<b>89</b>
<b>Total Council Consumer Disputes Finalised</b>	<b>195</b>	<b>9</b>	<b>2</b>	<b>206</b>

## All Council Investigations

	Solicitor	Barrister	Other*	TOTAL
Practitioner referred to Tribunal#	56	5	0	61
Practitioner disciplined by Council##	18	0	0	18
Disciplined by Council with compensation ordered	1	0	0	1
<b>Subtotal with disciplinary outcome by Council</b>	<b>75</b>	<b>5</b>	<b>0</b>	<b>80</b>
Tribunal finding of UPC/PM unlikely	246	27	5	278
Likely UPC but generally competent	1	0	0	1
Public interest	3	1	0	4
<b>Subtotal dismissed by Council</b>	<b>250</b>	<b>28</b>	<b>5</b>	<b>283</b>
<b>Total Council Investigations Finalised</b>	<b>325</b>	<b>33</b>	<b>5</b>	<b>363</b>
<b>Total Complaints handled by Council</b>	<b>520</b>	<b>42</b>	<b>7</b>	<b>569</b>
<b>Total Complaints handled by OLSC</b>	<b>1888</b>	<b>132</b>	<b>56</b>	<b>2076</b>
<b>TOTAL</b>	<b>2408</b>	<b>174</b>	<b>63</b>	<b>2645</b>

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

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

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

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

## W5 Duration of file handling at the OLSC

Of complaints finalised in 2007-2008, time taken for complaints handling

	Percentage of files closed within following periods*		
	05-06	06-07	07-08
0-30 days	20.4	20.8	23
1-3 months	28.2	29.6	34.9
3-6 months	22.4	22.8	23.4
6-9 months	13.8	9.9	7.6
9-12 months	6.0	4.6	4.3
Over 12 months	9.2	12.3	6.8

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



## W6 Age of complaints remaining open or suspended on 30 June 2008 and being handled by the OLSC

Year opened	Open at 30 June 06	Open at 30 June 07	Open at 30 June 08
2007-2008			572
2006-2007	-	403	77
2005-2006	440	88	37
2004-2005	123	49	15
2003-2004	86	18	3
2002-2003	10	4	0
2001-2002	4	1	1
2000-2001	2	0	0
1999-2000	1	1	0
1998-1999	0	0	0
1997-1998	0	0	0
1996-1997	0	0	0
1995-1996	0	0	0
1994-1995	0	0	0
<b>TOTAL</b>	<b>667</b>	<b>564</b>	<b>705</b>

\* Variations may be noted due to a number of complaint files being reopened due to additional information obtained. Data has been checked, verified and is accounted for.

## W7 Average time taken to finalise a complaint at the OLSC

Of complaints handled in 2007-2008, time taken to finalise

	Days*
Average time to complete complaints received and completed / resolved in 2007-2008	72.3
Average time to complete complaints received in any year but completed / resolved in 2007-2008	108.4
Average time taken to dismiss complaints received in 2007-2008	73.7
Average time to dismiss complaints received in any year but dismissed in 2007-2008	167.1

\* Averages rounded to 1 decimal point

## REVIEWS

### R1 Duration of review handling at the OLSC

Of reviews finalised in 2007-2008, time taken for review handling

Percentage of files closed within following periods*	
	07-08
0-3 months	16.1
3-6 months	53.6
6-9 months	25.0
9-12 months	1.8
Over 12 months	3.6

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

NB. New Report 2007-2008

### R2 Reviews in progress and finalised in 2007-2008 – received all years

	Solicitor	Barrister	Other**	Total	Percentage
<b>Reviews in progress</b>					
In progress at OLSC	2	0	0	2	2.94
Being reviewed by consultant	8	1	0	9	13.24
Consulting with Council prior to finalising	0	1	0	1	1.47
<b>Total remaining open</b>	<b>10</b>	<b>2</b>	<b>0</b>	<b>12</b>	<b>18</b>
<b>Reviews completed</b>					
Dismissal confirmed	35	9	0	44	64.71
Out of time, no jurisdiction	1	1	0	2	2.94
Review request withdrawn	1	0	0	1	1.47
Reprimand confirmed	0	1	0	1	1.47
Reinvestigated by OLSC	5	0	0	5	7.35
Reinvestigated by Council	0	0	0	0	0.00
Decision changed	2	1	0	3	4.41
Other	0	0	0	0	0.0
<b>Total completed</b>	<b>44</b>	<b>12</b>	<b>0</b>	<b>56</b>	<b>82</b>
<b>Total handled</b>	<b>54</b>	<b>14</b>	<b>0</b>	<b>68</b>	<b>100</b>

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

## TRIBUNAL PROCEEDINGS

### T1 Complaints referred to the Administrative Decisions Tribunal in 2007-2008\*

Reason	Solicitor	Barrister	Clerk / Associate	TOTAL
Reprimand/compensation order ***	2	0	0	2
Show Cause s.75	1	0	0	1
Approval of lay associate s17 (3)	0	0	1	1
Prohibited employment**	0	0	0	0
Disciplinary action	29	6	0	35
<b>TOTAL</b>				

\* Data provided by Administrative Decisions Tribunal

\*\* Legal Profession Act 2004 (LPA) s18

\*\*\* Legal Profession Act 2004 (LPA) section 540

### T2 Outcomes of Tribunal Proceedings in 2007-2008\*

Outcome	Number
Reprimanded	18
Fined	12
Removed from roll	5
Consent Order	5
Conditions imposed on practising certificate	4
Practising Certificate suspended or cancelled	3
Dismissed after hearing	3
Withdrawn	1
Application granted	1
Compensation	1
Undertake and complete course of further legal education	1
Application refused	1
Suspended	1
<b>TOTAL</b>	<b>56</b>

\* Data provided by Administrative Decisions Tribunal

Please Note:

1. Statistics may differ slightly from Law Society and Bar Association data due to different office procedures, codes and data definitions that are used by the three organisations. Also the Councils can reduce two complaints to one or can split one complaint into multiple issues.
2. Names of some tables have been improved to indicate more accurately the nature of data they contain.

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