



**The Office Of The Legal Services Commissioner**

# **2009-10**

## **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:

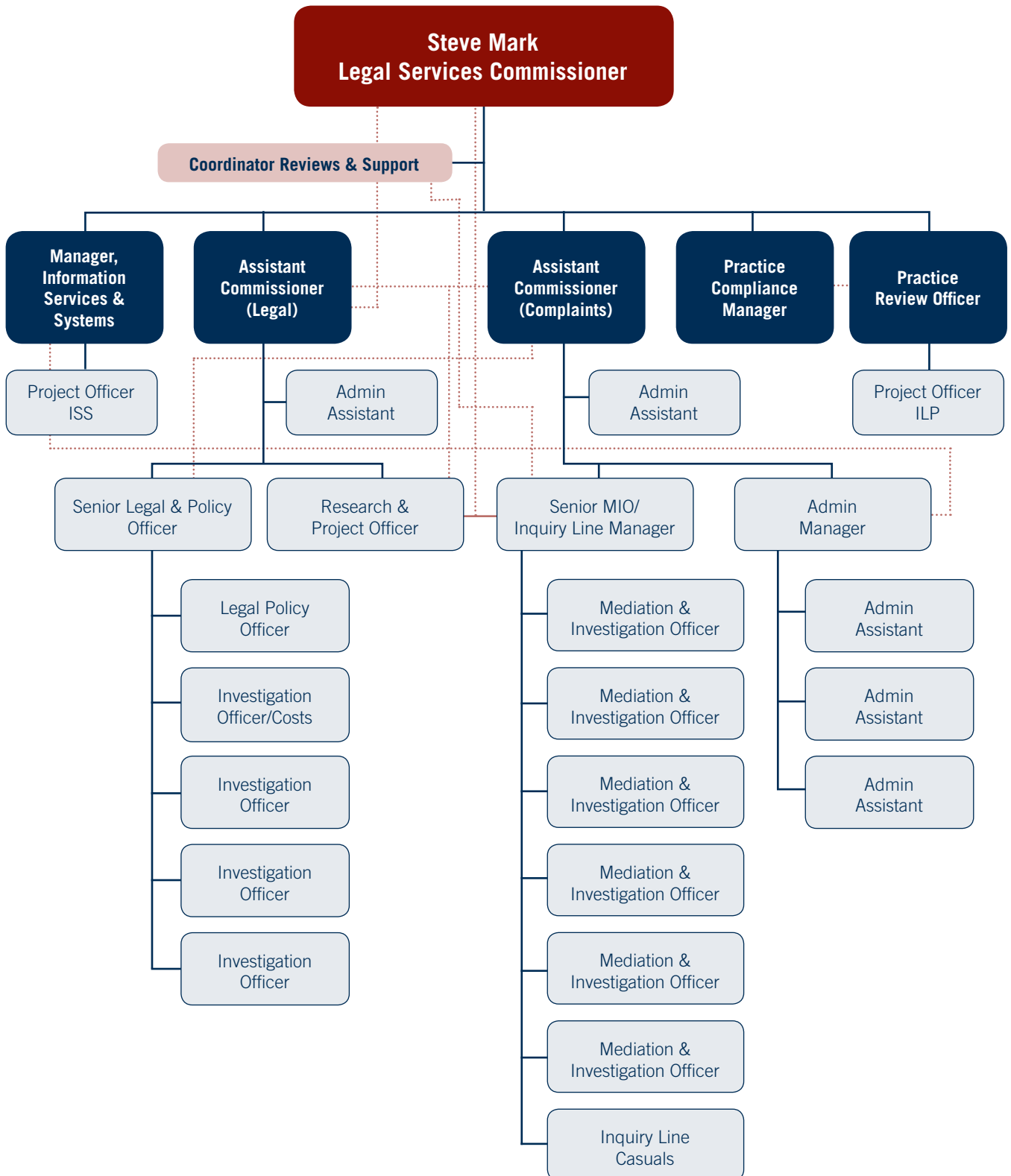
- developing and maintaining effective complaint-handling processes;
- promoting compliance with high professional and ethical standards;
- encouraging an improved consumer focus within the profession to reduce causes for complaint; and
- promoting realistic community expectations of the legal system.

# 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

This reporting year has been marked by two events that will have, in my view, a significant effect on the provision of legal services in Australia and overseas in years to come. The first event occurred on 19 April 2010 in Australia when draft uniform legislation was presented by the National Legal Profession Taskforce to the Council of Australian Governments (COAG) and the Commonwealth Attorney-General. The draft uniform legislation consists of a draft National Law and National Rules for the regulation of the legal profession in Australia. The legislation proposes a national system of regulation to reduce the regulatory burden and minimise compliance costs for firms and lawyers by creating uniform rules of practice across all jurisdictions in Australia.

The second event occurred some months earlier in the United States on 4 August 2009 when the American Bar Association (ABA) established a Commission to review lawyer ethics rules and regulation across the United States in the context of a global legal services market place. The Commission, known as the ABA Ethics 20/20 Commission, has been set up for a period of three years to look at emerging issues in legal practice such as alternative business structures, legal process outsourcing, virtual law firms and the foreign regulation of legal services.

These two events mark a significant attitudinal change for the legal profession domestically and internationally. Both events illustrate a recognition that in order for legal services to survive today the legal services market place must re-evaluate their present position and react according to market forces. In Australia we are doing this by recognising that the regulation of legal practice has exceeded the constraints of a state-based system whilst in the United States there is a growing recognition that consumers are demanding alternative business structures. Both jurisdictions have also recognised the need for greater uniformity in regulation and practice.

The establishment of the Ethics 20/20 Commission in the United States comes as no surprise. For some years now regulators in the United States have been closely watching the Australian legal services market place and, in particular,

the incorporation of legal practices. The Office of the Legal Services Commissioner (OLSC) has had many discussions with the ABA about incorporation and external ownership of law firms. The recent establishment of the Commission signifies a commitment to these discussions.

In addition to our work with the United States, we have also been discussing incorporation and other related issues with the United Kingdom and Scotland. As I have reported previously, in 2008 the United Kingdom passed legislation permitting law firms to adopt alternate business structures. Scotland has since passed similar legislation.

## **NATIONAL LEGAL PROFESSION REFORM PROJECT**

On 30 April 2009, the Council of Australian Governments (COAG) resolved that measures be instituted to reform the regulation of the legal profession. These measures included draft legislation providing uniform laws relating to the legal profession across Australia, the appointment of a specialist taskforce to make recommendations and prepare draft legislation, and the appointment of a consultative group to advise and assist the taskforce. A National Legal Profession Reform Taskforce and Consultative Group was established following COAG's requests.

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Draft uniform legal profession legislation has now been developed by the National Legal Profession Reform Taskforce and presented to COAG with the support of the Attorney-General. The legislation consists of a draft National Law and National Rules. The Taskforce has also prepared a Regulation Impact Statement (RIS) which defines the issues that are being addressed through these reforms and considers the options for addressing those issues. COAG set a three-month consultation period, which closed on 13 August 2010. The Taskforce has received in excess of two hundred submissions.

The draft legislation presents a different regulatory regime. The new legislation has moved away from the traditional framework of proscriptive legislation to an outcomes-based framework. Outcomes-based regulation means moving away from reliance on detailed, prescriptive rules and relying more on high level, broadly-stated rules or principles to set the standards by which regulated practitioners and firms need to practise.

The change to an outcomes-based regulatory regime has a number of potential benefits for the profession, the regulator and consumers. One of the greatest benefits of an outcomes-based regime is flexibility. Principles offer flexibility for both the regulated and the regulator in determining how to comply with the rule. The flexible nature of principles will require greater interaction between the regulator and the profession in developing guidelines in order to achieve the underlying goals of the principles rather than relying on specific proscriptive rules. The flexible nature of principles can also facilitate responsiveness to market innovation and other developments.

The OLSC has played a role in this project making several submissions and recommendations to the Taskforce. We have also produced a number of discussion papers on specific issues in the lead up to the legislation. Our submissions and discussion papers can be found on our website at [http://www.lawlink.nsw.gov.au/lawlink/olsc/ll\\_olsc.nsf/pages/OLSC\\_submissions](http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_submissions) as well as the Commonwealth Attorney-General's website at <http://www.ag.gov.au/legalprofession>.

In addition to our submissions and discussion papers we have also conducted a number of seminars for the profession on the implications of the proposed legislation.

## **TECHNOLOGY AND PRACTICE**

Advances in technology have also fundamentally altered the legal services market place domestically and internationally. Technologies such as e-mail, the Internet and smart phones are transforming legal practice and relationships with clients. The emergence of the virtual law office, that is, a law practice that exists online through

the use of a client portal marks a notable departure from traditional practice. So too does the use of the internet by legal practitioners.

Social networking sites such as Facebook, LinkedIn and Twitter are frequently being used by legal practitioners today to create online profiles that contain personal and professional information, including information about their legal practices. Blogging has also become a popular activity for legal practitioners where legal opinions and information about issues are offered and often used to develop or enhance their reputation as an expert in a specific area. In conjunction with these activities, the use of the internet to advertise legal practices has also been embraced by the legal profession.

Although these activities are of considerable value to the legal services market, they can also give rise to serious ethical concerns. Ensuring client confidentiality is of concern, as is ensuring that websites do not contain information that is either false or misleading. We have been working with the profession to ensure that they are aware of the possibility of such breaches.

## **RELATIONSHIPS WITH REGULATORS**

During this reporting year, the OLSC has focused on strengthening our relationship with other regulators domestically and internationally. The OLSC continues to have regular discussions with the Legal Services Commissioners in Australia and the professional associations about aspects of legal practice. During these discussions, we have raised issues relating to national practice as well as issues relating to technology and practice. The Conference of Regulatory Officers (CORO) continues to play a role in facilitating these discussions.

The OLSC has also continued discussions with international regulators. We continue to assist those jurisdictions seeking advice about alternative business structures and have played a significant role in educating the global profession about professionalism and integrity in practice.

## **COMPLAINTS STATISTICS**

In 2009-2010 the OLSC received less complaints about legal practitioners than in the previous 3 years (2661 compared with 2851 in 2008/09, 2653 in 2007/08, and 2747 in 2006/07). Of the 2661 written complaints received, 1,812 were assessed as consumer disputes and 849 were investigations. Of these complaints, the OLSC dealt with 74.2% of all complaints received. The balance were referred to the Law Society of New South Wales (if the

complaint related to a solicitor) and the New South Wales Bar Association (if the complaint related to a barrister).

The OLSC finalised more complaints than in the previous years, 2792 complaints were completed compared with 2716 in 2008/09 and 2645 in 2007/08.

We received 8708 calls from the public on our Inquiry Line, a decrease in number from the 9122 calls we received last reporting year.

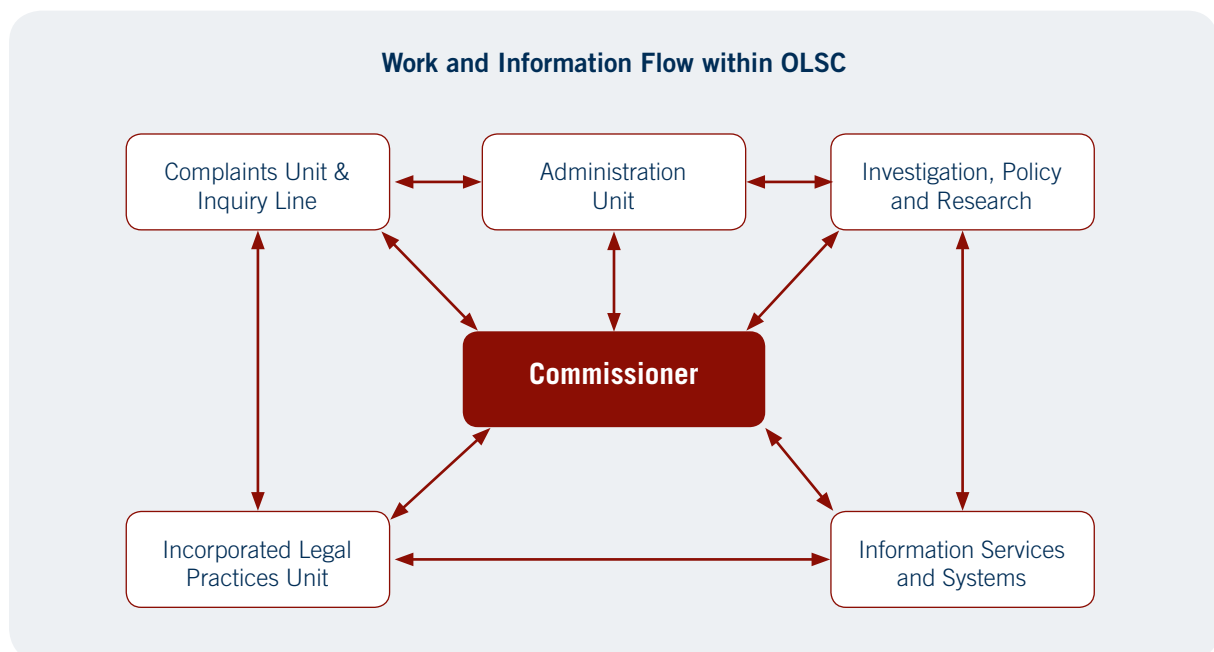
The complaints statistics this reporting year indicate a significant decrease in the number of complaints being made to the OLSC. This is consistent with our stated aim of reducing complaints against legal practitioners and regulating for professionalism.

## OUTLOOK FOR 2010-2011

Some of the projects that have taken place this year such as the National Reform Project will most likely come to fruition in 2010-2011. I look forward to implementing these projects.

I would like to thank my staff for their hard work throughout the year. My staff at the OLSC have played an integral role in achieving the successes outlined in this report. I am honoured to be able to work with such a talented and dedicated team of people. I would also like to take this opportunity to thank my colleagues at the New South Wales Bar Association and the Law Society of New South Wales. My thanks are also extended to the Department of Justice and the Attorney General and the Attorney General's office.

I am pleased to present the 2009-2010 Annual Report of the Office of the Legal Services Commissioner.



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

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

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

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

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

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

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

# CHAPTER 1

## PROMOTING COMPLIANCE WITH HIGH PROFESSIONAL AND ETHICAL STANDARDS

### CONDUCT ISSUES

#### Investigations

The vision of the OLSC is to strive to lead in the development of an ethical legal services market which is fairer, more accessible and more responsive. It has always been our view that the promotion of compliance with high professional and ethical standards ought result in a reduction of the number of complaints lodged with this office. In the 2009-2010 reporting year the number of investigations conducted has decreased. This is in part due to a reduction generally in the number of complaints made. However, disruptions to staffing and the gravity of some conduct investigated has also contributed to the reduced number of investigations.

In circumstances where a complainant raises allegations of conduct that may result in a finding of unsatisfactory professional conduct or professional misconduct, as defined in the Act, the conduct will be investigated. Our investigations include gathering evidence from the complainant, from the practitioner and from any third party who may have relevant information.

The legal and policy team finalised 334 investigations in the reporting year. Ten of those matters were beyond this office's jurisdiction and 32 matters were not accepted out of time given that it was neither just nor fair to deal with the complaint given the length of the delay and the reason for the delay or the complaint did not contain allegations of professional misconduct that were in the public interest to investigate. Two hundred and twenty three (223) complaints were dismissed upon the basis that there was no likelihood, following investigation, of a finding of unsatisfactory professional conduct or professional misconduct. In such circumstances, the Commissioner is obliged to dismiss the complaint.

The balance of 69 complaints resulted in disciplinary outcomes. Of that number, 7 were referred to the

Tribunal, 22 were concluded summarily by the Commissioner, two had orders of compensation made and 38 were dismissed in the public interest despite the likelihood of the finding of professional misconduct. The 38 complaints dismissed in the public interest were all breaches of the advertising regulation and, in accordance with the Commissioner's educative function, in circumstances where there is a first time breach of the advertising regulations a finding of professional misconduct is made but the complaint is dismissed in the public interest. That is not the case when there is a subsequent breach of the advertising regulation.

Of the investigations conducted in the reporting year there is a noticeable increase in the complexity of the matters complained about and the evidence to be obtained in order to prove those allegations. We have again had recourse to expert forensic accountants and costs consultants. Additionally, the use of computer forensic experts in the future will need to be considered.

#### Disciplinary outcomes

The Commissioner has the power to summarily conclude a matter in circumstances where there is a reasonable likelihood of a finding of unsatisfactory professional conduct but not professional misconduct. In the reporting year the Commissioner issued 15 cautions. Cautions were issued for the following conduct:

- Breach of Rule 34
- Failing to adequately communicate
- Breach of confidentiality (x 2)
- Taking instructions when client had no capacity to provide same (x 2)
- Breach of undertaking (x 2)
- Overcharging
- Misleading conduct (x 2)
- Acting with no prospects of success



- Acting without instructions and with a conflict of interests
- Gross delay
- Breach of Rule 11

During the reporting year the Commissioner issued 7 reprimands. Unlike the issue of a caution, a reprimand is published on the disciplinary register maintained on the Office of the Legal Services Commissioner website. Conduct that resulted in the issue of a reprimand included:

- Failing to disclose costs
- Breach of undertaking
- Gross delay
- Gross negligence (x 2)
- Acting without instructions
- False attestations of documents

Additionally, two compensation orders were made during the reporting year. One compensation order was a refund of fees already paid along with a waiver of the balance of fees arising from a case where gross negligence was displayed by the practitioner. The second compensation order was a waiver of fees and a waiver of a lien in a matter in which delay in progressing the matter was gross.

Along with the issues of cautions, reprimands and compensation orders, the Commissioner has on 34 occasions obtained an undertaking from a practitioner to do or to not do certain acts in the future. A subsequent breach of an undertaking may, of course, result in a finding of professional misconduct.

## Administrative Decisions Tribunal

A number of matters have been commenced in the reporting year in the Legal Services Division of the Administrative Decisions Tribunal and a number of matters, filed in previous years, are not yet concluded.

As reported last year, *Legal Services Commissioner v Bechara [2009] NSWADT 145* was a matter relating to overcharging, with Ms Bechara acting for 3 plaintiffs in circumstances where the court had ordered that the matters be heard together and that evidence in one be evidence in the other. The practitioner charged each client for each day spent in court. The Tribunal issued its decision on penalty on 14 December 2009. The Tribunal found that Ms Bechara was guilty of professional

misconduct and ordered that she be publicly reprimanded, fined the sum of \$6,500 and pay the costs of the Legal Services Commissioner. Ms Bechara appealed that decision and the hearing of the appeal occurred on 31 August 2010. The Court of Appeal has reserved its decision.

In the matters of *Legal Services Commissioner v Hagipantelis* and *Legal Services Commissioner v Bryden* the practitioners brought an interlocutory application to have the Commissioner's application dismissed on the basis that clause 24 of the Legal Profession Regulation 2005 was invalid. The practitioners' application was unsuccessful in the Tribunal and the practitioners appealed against that decision. The appeal was heard on 23 February 2010 and in its judgment on 15 April 2010 the Court of Appeal dismissed the Appeal. The practitioners then sought special leave to appeal to the High Court. That application was dismissed on 1 September 2010. The six Applications (the initiating process in the Tribunal) that are presently before the Tribunal will now proceed to be heard on their merits.

Four matters are presently before the Tribunal in relation to allegations of, inter alia, gross overcharging. Those proceedings were instituted in May 2009 but, at this stage, the Tribunal has not yet allocated a hearing date.

One matter in the Tribunal dealt with a breach of section 660 of the *Legal Profession Act 2004* in that the practitioner had failed to respond to a notice issued by this office requiring documents and information. The Tribunal has reserved its decision in relation to that matter.

The Commissioner has also appeared on a number of occasions on applications before the Tribunal pursuant to section 564 of the Act in which orders are sought to be made by consent. The Tribunal does not rubber stamp such orders but must consider the facts, the evidence in support of those facts and determine whether it too would reach the same conclusion as set out in the instrument of consent. Clearly there is a public interest in shortening hearings in this manner so that resources are properly utilised.

## Reviews

The Commissioner, on the application of a complainant, has the power to review a decision made by Law Society Council or the Bar Association Council. In the reporting year 96 applications for review were received and 71

reviews were completed. Of those 71, 67 resulted in confirmation of the Council decision. In two applications for review the application was received outside the statutory time to request a review and, accordingly, could not be dealt with. A further two reviews were referred back to Council for a re-investigation. An additional review, commenced in the previous reporting year, was re-investigated and the dismissal of the complaint was changed to a reprimand. However, it is satisfying that in our co-regulatory environment consistency between the regulatory authorities is the norm.

## ETHICAL MATTERS AND POLICY DEVELOPMENT

### National Legal Profession Reform

On 30 April 2009 the COAG agreed that draft legislation providing uniform laws regulating the legal profession across Australia be prepared for consideration by the COAG within 12 months.

A Taskforce, including the Director General of the Department of Justice and Attorney General, was established to make recommendations and prepare the draft legislation. A Consultative Group was also appointed to advise and assist the Task Force.

The Taskforce's aim was to deliver a national legal profession through simplified, uniform legislation and rules that include consistent and transparent consumer protection.

This office provided submissions to the Consultative Group throughout the drafting process.

The Taskforce released the Draft Bill on 14 May 2010 for a three-month consultation period. The office has made submissions in relation to the Draft Bill and supports the principles based structure on which it is based in preference to prescriptive legislation. This office supports a national profession with consistent and transparent consumer protection.

### case study

*A client's personal relationship with their spouse ended in acrimonious circumstances. The client engaged the solicitor to negotiate with the former spouse about how property should be divided between them. The client wanted the solicitor to demand from the client's former spouse certain money and property, otherwise the client would report the former spouse to the police for theft. The solicitor wrote to the former spouse and stated, "To resolve these matters, our client proposed that you pay \$20,000, should you not agree, I have been instructed to proceed with making a complaint to the police and you will be charged. This will result in a criminal record which may impact on your earning capacity."*

*The former spouse received this letter and made a complaint to the Legal Services Commissioner.*

*Solicitors' Rule 34.3 prohibits a solicitor threatening the institution of criminal proceedings, in default of a person satisfying a concurrent civil liability.*

*The criminal and civil jurisdictions have a very distinct and separate purpose in our legal system. To threaten the institution of criminal proceedings in default of someone satisfying a concurrent civil liability shows a fundamental misunderstanding of the objectives of both. The civil jurisdiction involves a dispute between two or more parties and the primary remedy is monetary compensation. The criminal jurisdiction involves conduct by a person that the State has deemed to be of such relative seriousness that it can involve consideration of imprisonment. It follows that only law enforcement and criminal prosecution authorities*

*can make a decision on whether to institute criminal proceedings. It is inappropriate to use the criminal jurisdiction as a form of leverage for a civil purpose, hence the reason why this conduct is expressly forbidden by Solicitors' Rule 34.2 and 34.3.*

*When this office sought a response from the solicitor, the solicitor stated that they erroneously let the emotion of their client cloud their professional judgment when drafting the letter. The solicitor accepted the conduct was wrong and in breach of the Solicitors' Rules and drafted a written apology to the former spouse.*

*When deciding on an appropriate penalty, the Commissioner took into account the solicitor's admission and accepted the solicitor's contrition as genuine. The Commissioner decided to caution the solicitor.*

A client was issued a Court Attendance Notice for Driving in a Manner Dangerous to the Public. The informant was an off-duty police officer who allegedly witnessed the client's driving. The client told the solicitor that he intended to plead not guilty. At the time of engaging the solicitor, the client had a conference that only very briefly discussed the circumstances of the incident. After around eight (8) months of adjournments, the matter was set down for hearing. From the initial meeting to the date of the hearing, the solicitor had not arranged a conference with the client. Importantly, detailed circumstances of the events were not obtained from the client and the client was not taken through the contents of the off-duty police officer's statement.

The solicitor arranged to have a conference with the client on the morning of the hearing. However, instead of conferring with the client, the solicitor attended another court to appear for a sick colleague, without informing his client. The client's matter was called by the Court a number of times, but the solicitor was

not present. The solicitor eventually arrived at the Court around midday.

In the hearing, the solicitor only asked 5 - 6 questions of the prosecution witnesses. After the evidence was heard, the Magistrate found the client guilty and sentenced him to six (6) months imprisonment. The client engaged another solicitor and lodged an all grounds appeal to the District Court. The appeal was successful and the conviction was quashed. In the judgment, the Judge made adverse comment about the solicitor's preparation in the Local Court.

The Commissioner decided that the solicitor's conduct in not sufficiently preparing for the client's matter amounted to gross negligence and reprimanded the solicitor, despite the solicitor having no prior adverse disciplinary findings.

The Commissioner was concerned that, despite the evidence, the solicitor maintained throughout the investigation that he was adequately prepared. The Commissioner was also concerned that the solicitor knowingly accepted a concurrent engagement to appear for a colleague, after the

solicitor made a personal assessment of the case load of the Court and decided that it would be otherwise occupied until the solicitor could attend.

The Commissioner's view was that this practice negatively impacts on the efficient administration of justice as it is not the Court's role to list and hear matters at the convenience of individual solicitors who choose to accept concurrent engagements. The Commissioner noted the difference if the solicitor was unintentionally delayed through misadventure or other reasonable personal circumstances.

# CHAPTER 2

# COMPLAINTS HANDLING

While there was a drop in the number of complaints received by the OLSC there was an increase in the number of consumer disputes finalised in the office. For the first time this reporting year, we completed over 1700 files (1736).

That is a very pleasing result given the high turnover of staff through secondments and other absences.

It is fair to say, however, that those additional consumer disputes were often matters that reflected complainants' general frustration with the legal system rather than clearly articulated concerns about the conduct of individual legal practitioners.

Complaints about family law (15.6%), civil cases (17.3%) and wills and probate (11%) matters as usual made up a good proportion of all complaints.

Costs (22.4%), negligence (17.9%) and communication (15.3%) remain the issues most complained about.

## COMMERCIAL AND CORPORATE

Across the year there has been a noticeable jump in complaints about matters categorised as relating to commercial or corporate law. These complaints jumped from 8.9% of all complaints in 2008-09 to 13.1% in 2009-10.

A significant number of these complaints relate to bankruptcies and receiverships that are a somewhat delayed flow-on from the global financial downturn between late 2008 and 2009. It will be interesting to see if these complaints lessen as the financial ship is righted.

## CLIENT AND COMPLAINANT MOBILITY

There has been a continuing reduction (from 38% in 2007-08 to 30.7% in 2009-10) in the proportion of complaints lodged by the current clients of lawyers.

In some ways this change reflects a greater confidence on the part of clients to move their case to another lawyer

### case study

*The OLSC received a complaint from an individual who was claiming copyright over computer software, and sought legal advice in relation to his intellectual property rights.*

*The complainant alleged that the practitioner delayed the matter. The complainant also said that he had attempted to contact the practitioner a number of times to discuss his concerns directly, but that he*

*had received no response. The complainant sought compensation from the OLSC.*

*We contacted the practitioner for his response to the complaint. He apologised for his failure to respond to the emails sent by the complainant, and offered to continue representing the complainant at a reduced fee. Alternatively, if the complainant wished to transfer*

*to another lawyer, he was willing to organise such a transfer at no charge.*

*The complainant remained dissatisfied and sought a full refund of the fees. After negotiations, the practitioner offered \$1386.00. The complainant accepted the offer.*

if they are dissatisfied. It may also reflect an increasing willingness by lawyers who take on new clients to assess the case file and recommend to their clients that a complaint be lodged.

More than 20% of clients don't lodge their complaint until after their lawyer has ceased to act for them. Amongst them are former clients who tell us they feel intimidated at the time by the complexity of the law, the pressure of events and sometimes the demeanour of the lawyer trying, but failing, to fully explain what is happening.

## TACTICAL ADVANTAGE

Our first question of many complainants is, "What do you want achieve by lodging this complaint?" It's a very useful reality check for complainants whose expectations often far exceed what is possible.

But what if the complainant is a lawyer? What if the complaint is lodged as part of a multifaceted campaign to gain even the narrowest advantage in an adversarial case? What if the complaint comes out of a longstanding and very personal local dispute between lawyers? What if the complaint is preceded by veiled, or even direct, threats to lodge a complaint and thus gain the smallest advantage? What if the complaint is lodged simply to make life difficult for the opposing practitioner and client?

Our complaints handlers have become attuned to recognising and subverting such tactics. We can often resolve very minor matters swiftly or dismiss trivial matters with the question, "How does your client benefit from the lodgement of the complaint?" If there is no benefit we move on to matters where our time is more productively spent.

## INSTRUCTIONS

There has been a small but perhaps significant jump in the number and proportion (from 3.9% to 7.1%) of complaints about lawyers not following the instructions of their clients.

These complaints arise chiefly in situations where lawyers don't listen to their clients, where clients fail to clearly explain their intentions or where administrative failures within a firm lead to correspondence or phone calls being ignored. It's all about failed communication, really.

Many of these complaints are dismissed because there is no clear proof the client ever gave the solicitor instructions to, for example, do a further search in a conveyance.

## case study

*A complaint was lodged in relation to a probate matter, in which the complainant expressed concern regarding the legal practitioner's delay in paying her legacy from the deceased's estate.*

*Probate was granted in September 2004. The law firm was instructed in November 2004. A distribution was made to one beneficiary in September 2007, but not to the complainant until January 2009. It was argued by the practitioner that the delay was caused by a number of factors, including the contesting*

*of the will which led to ongoing litigation, delays caused by the executors, and that there appeared to be insufficient cash to pay out both of the monetary legacies.*

*However, a thorough review of the file was carried out by the OLSC which determined that the delay was largely due to inactivity by the practitioner. The firm paid for interest on the amount owing to the complainant, recognising that the delay warranted this course of action.*

*As a result of our involvement, the practitioner sincerely apologised to*

*the complainant. He also indicated that the firm has since ensured the closer supervision of staff and have employed more solicitors in order to prevent such oversights and delays in future matters. The partners of the firm have also conducted performance reviews with all staff members, including a more structured approach to regular file reviews. The practitioner reported that communication between members of staff had improved thanks to the changes made to their systems.*

However, while we assume lawyers keep file notes of conversations we are constantly reminding clients to write down what they instruct their lawyers to do – and write down the lawyer’s advice. In the age of email a great many more clients are doing just that and can produce that evidence in their complaints.

## BLIND SPOTS

When the co-regulatory regime was created via amendment of the *Legal Profession Act* in 1994 it was made compulsory (at section 309) for lawyers to disclose their costs in writing to individual clients if those costs are over \$750.

The Act also allowed, at section 504(1)(d), “any person” to make a complaint.

You’d expect that after 16 years the profession at every level in NSW would have come to terms with these two aspects of the legislation.

It’s not unreasonable to expect all lawyers in the jurisdiction to have an administrative arrangement whereby a standard cost agreement and supporting disclosure documents are produced immediately a retainer is commenced. But that simply isn’t the case. To our great frustration the list of practitioners (and their firms) who have been shown or admitted to failing to disclose their costs continues to grow. We’re pleased with the fact that few practitioners re-offend after a warning, but we are concerned with the growing length of the list.

As offensive and insulting as it might be for some lawyers, the opposing party in a case can complain. In fact, an interested bystander can complain. Anyone can. It’s true that those complaints might be more frequently unfounded and more easily dismissed on the basis that a lawyer’s obligations to opposing parties and third parties are very limited. But these complaints must be considered by the OLSC, sometimes fully investigated and can occasionally lead to significant penalties.

## INTELLIGENCE

Across the 16 years of co-regulation by the OLSC and the Law Society Professional Standards Department there has been constant exchange of information that relates to complaints, lawyers and law firms. The gathering and analysis of that information lies at the heart of many consumer disputes and many investigations.

It is pleasing to see, even after all this time, small but noticeable improvements in the frequency and detail of information exchanged between the two regulators. We are getting better information about particular legal practices, better co-ordinating tactical approaches to lawyers to maximise results of our inquiries and making co-operative visits to firms on occasions.

We are looking forward to our capacity to share even more information when the Law Society Professional Standards Department gains access to our Portal in 2011.

## case study

*The complainant approached the practitioner in relation to the preparation of a lease in her property matter. The complainant alleged that she had been overcharged and lodged an application for costs mediation with the OLSC.*

*The OLSC found that the practitioner had failed to disclose his legal costs*

*in accordance with section 309 of the Legal Profession Act 2004. When this was raised with the practitioner, he acknowledged that this was the case, and that he was prepared to mediate the dispute with the assistance of this office.*

*The complainant indicated that she would be willing to settle the*

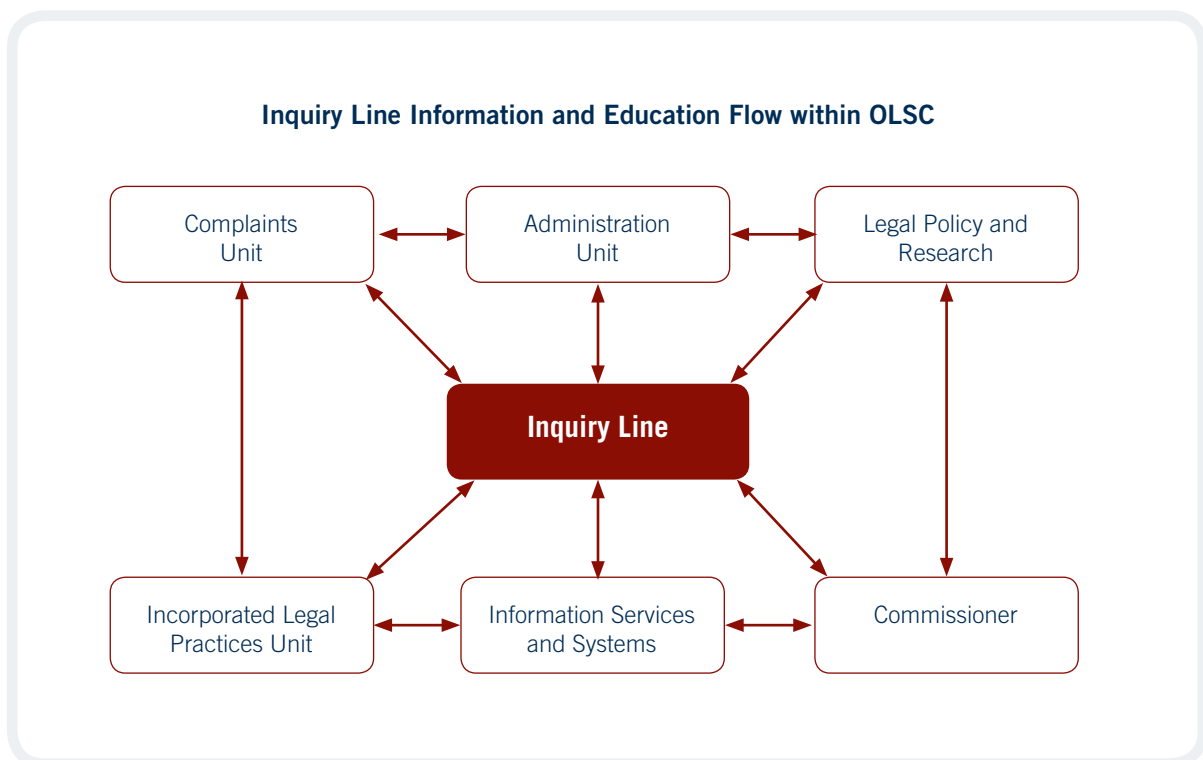
*outstanding invoice on receipt of a payment of \$605.00. The practitioner provided a counter-offer for the complainant’s consideration, in the form of a \$1000 donation to the Compassion Overseas Aid and Development Fund to be put towards assisting victims of the Haiti earthquake, in lieu of his legal fees.*

## INQUIRY LINE

We continue to see the benefits of the problem solving approach when dealing with calls to our inquiry line. Our staff implement an approach when dealing with inquiry line calls that includes appropriate information about the role of the OLSC and the complaints system as well as advice to deal issues before lodging a formal complaint. In some cases, lodging a formal complaint may not be the best way to resolve their problem and it seems that our advice to consumers to approach their lawyer directly is having a positive impact. Our staff take great care to provide callers with information that may assist them to resolve problems with legal practitioners themselves. For example, we advise callers to write to legal practitioners in the first instance to give them an opportunity to address concerns or resolve costs disputes through negotiation. If that method does not solve the problem, we encourage callers to lodge a complaint or an application for costs mediation.

As can be seen from the inquiry line statistics, we have reviewed the data collection processes over the past year by eliminating redundant code descriptors and creating new codes that more accurately reflect the types of calls to the inquiry line. There are now specific categories for general law, supervision, advertising, OLSC processes and referral requests. The caller categories have also been expanded to include students/educators. While most inquiry line callers are clients seeking advice about their rights in dealing with alleged breaches by legal practitioners of their statutory obligations and advice about costs disputes, many callers are not clients and their inquiries relate to the legal system in general.

The positive response to our inquiry line satisfaction survey continues to assist us in providing practical and appropriate advice to callers. Callers' willingness to participate in the survey continues to provide valuable commentary on our client service standards.



# CHAPTER 3

## INCORPORATED LEGAL PRACTICES

As at 23 August 2010 there are 945 approved incorporated legal practices (ILPs) in New South Wales. One hundred and ten ILPs are awaiting approval from the Law Society of NSW. Since inception the number of ILPs has grown at a steady rate and now makes up for approximately one fifth of legal practices in New South Wales. Of those ILPs, the majority are in suburban Sydney, followed by Sydney City and there are just over 200 ILPs in rural New South Wales.

The majority of ILPs are either sole practitioners or firms with 3-10 partners. Several large national firms have also incorporated. There are about 30 multidisciplinary practices in New South Wales.

### PRACTICE REVIEWS

The OLSC conducted four formal very detailed practice reviews of incorporated and non-incorporated legal practices over the last financial year. New South Wales is currently the only jurisdiction in Australia that is permitted to conduct a review on any type of practice regardless of entity status.

The OLSC continues to monitor and regulate ILPs via the self-assessment process which commenced in 2004.

ILPs consistently provide positive feedback on the self-assessment process. Practitioners report that the experience is useful, beneficial and worthwhile. A number of practitioners have told us that the self-assessment process has resulted in their practices being better managed and that they experience less stress and more profit.

We have found that whilst some practices may have initially been nervous about the self-assessment or practice review process, they understood its function and purpose and were ultimately very accommodating. This is largely because we take a positive, non-adversarial

approach to the practice review and at all times emphasize that we are assisting and working with the ILPs, notwithstanding their awareness that a review can lead to disciplinary consequences. The OLSC approach is centered on transparency. In our practice reviews we send each ILP a copy of the OLSC practice review workbook, which contains the questions that we will ask. This gives the firm time to prepare and formulate the answers to the questions and also to obtain copies of any documents that we might request at the review.

Once the self-assessment process has been completed, we continue to assist ILPs where required or requested. Staff at the OLSC often provide legal practitioner directors with telephone assistance and guidance.

### OVERSEAS INTEREST IN ALTERNATIVE BUSINESS STRUCTURES (ABS)

There has been an increase in inquiries from our overseas colleagues this year about alternative business structures for legal practices. As was reported in last year's annual report, the United Kingdom has enacted legislation which will allow law firms to adopt alternative legal practice structures. The United Kingdom legislation will come into effect in 2011 and regulators have expressed interest in our model. The United States has expressed a similar interest in alternative business structures and ABS are currently the focus of the American Bar Association's 20/20 Commission on Ethics.

The ILP unit was visited by colleagues from the United Kingdom and the United States. In February 2010, Don Hilliker, a member of the American Bar Association Ethics 20/20 Commission, spoke to several ILPs as well as OLSC staff about alternative business structures and outcomes-based regulation. In March 2010 the President and Chief Executive Officer of the Solicitors Regulatory Authority in the United Kingdom made



similar inquiries during their visit to Sydney. They were particularly interested in the methodology and triggers behind conducting practice reviews, the self-assessment process and the online portal project.

In the last financial year, the Council of Australian Governments released the National Legal Profession Reform Bill, rules and consultation package for a three-month consultation period. The new legislation reflects the move towards acceptance of alternative business structures as well as the extension of the power to audit traditionally structured practices. This mirrors the current situation in New South Wales.

## THE LEGAL PRACTICE MANAGEMENT AND AUDIT SYSTEM

The Legal Practice Management and Audit System (LPMAS) Project, informally known as the "Portal Project", is at the final stage of construction. It is expected that the resulting application will be rolled out internally in October 2010, with a launch to the profession and other external stakeholders to follow in early 2011.

This project, a collaborative effort between ISB, the OLSC, the Law Society of New South Wales and other stakeholders, will deliver an application which will automate a large number of manual processes within the Office.

Additionally, the LPMAS application comprises:

- an easily searchable and maintainable database of legal practices (both incorporated and traditionally structured);
- a function to aid in information exchange between the OLSC and other stakeholders including legal practitioners and practices, the Law Society of NSW and interstate regulators;
- a facility to merge legal practice data, legal practitioner data, OLSC complaints data, Law Society complaints data and information from the public Disciplinary Register, thereby allowing more effective and comprehensive reporting and risk profiling by the OLSC;
- an information and educational repository to support legal practices in improving their management systems;
- a function to automate aspects of the OLSC's appraisal of a practice management system self-assessment and OLSC's audit processes; and
- a comprehensive set of operational and management reporting tools.

We are very excited to be nearing the completion of this long-standing project and are indebted to both the Information Services Branch and our Vendor, Cirrus Technologies, for their invaluable expertise and assistance.

### case study

*The OLSC conducted a practice review of a traditionally structured legal practice as the sole-practitioner principal of that practice had an exceptionally high number of complaints made about him. A representative from the Professional Standards Department of the Law Society of New South Wales and an independent consultant joined the Practice Review Officer for the review.*

*While the OLSC originally set aside a number of days to conduct the practice review, it was apparent on entry that the practice was in*

*such disarray that it would not be necessary to spend more than a couple of hours there. It was abundantly clear that basic practice management systems, detailed documented policies and processes were absent in the legal practice. There appeared to be minimal infrastructure and basic organisation was lacking. Further it was evident that the principal had difficulty managing even the small number of open files he had.*

*In the OLSC, the Law Society and the consultant's view, the principal was not cognisant of his ethical*

*and professional obligations and there was a substantial risk that complaints would continue to be made by the principal's clients and that breaches of the Act, the Rules and the Regulations would persist.*

*Subsequent to the practice review, a section 61 notice (amending, suspending, cancelling local practising certificate) was served on the principal by the Law Society of NSW. As a result of that notice, the practitioner has closed his practice, no longer works as a principal and must work under the supervision of another practitioner.*

*The OLSC conducted a practice review of an ILP following the legal practitioner director's repeated failure to communicate with the OLSC and a failure to complete a self-assessment form despite numerous requests. This raised serious concerns about the implementation and maintenance of appropriate management systems pursuant to section 140(3) of the Legal Professional Act 2004 (the Act).*

*Consequently it was determined that a practice review of the ILP's management systems was appropriate. The practice review was conducted to provide the OLSC with an overview of the ILP and an independent assessment of the systems currently in place.*

*The purpose of the practice review was to identify whether the ILP was complying with the Act, the*

*Legal Profession Regulation 2005 (the Regulation) and the Revised Professional Conduct and Practice Rules 1995 (the Rules) and evaluate whether the legal practitioner director was systematically addressing the requirements of section 140(3) of the Act together with other professional obligations.*

*The legal practitioner director, although initially reluctant, was communicative and accommodating throughout the practice review and was readily available during the course of the practice review, which took two days to complete. All professional and support staff who were interviewed engaged and cooperated in the process.*

*The review established that while there were some practice management systems in place, the ILP was not compliant with several of*

*the appropriate management systems objectives and the legal practitioner director had improvements to make before compliance could be achieved, specifically in relation to records management, conflict of interests, communication/delay and supervision of staff. The OLSC made recommendations that the legal practitioner director streamline processes, maximise the utility of those already in existence and improve the application of the ILP's procedures and processes. Accordingly, a follow up practice review will be conducted at the ILP six months after the date of the original review to monitor the ILP's progress. The follow-up practice review is to take place in November 2010.*

# CHAPTER 4

## EDUCATION AND COMMUNICATION

One of the most important functions of the Office of the Legal Services Commissioner is the provision of education and training. The Legal Services Commissioner is responsible for assisting the Bar Council and the Law Society Council in promoting community education about the regulation and discipline of the legal profession and enhancing professional ethics and standards through liaison with legal educators or directly through research, publications and educational seminars. These responsibilities reflect the Office's stated purpose which is to reduce complaints against legal practitioners within a context of consumer protection and support for the rule of law.

The OLSC engaged in a wide range of educational initiatives to assist the general public and the profession on matters relating to the regulation of the legal profession. Such initiatives included our publications, presentations by staff at universities and speaking engagements by the Commissioner and OLSC staff at conferences.

### UNIVERSITY LECTURES

Staff at the OLSC presented 18 lectures at universities in NSW to undergraduate and post-graduate law students. OLSC staff presented lectures at the University of New South Wales, the University of Sydney, 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 and clarity. More than 98% of students who took part in our external education survey commented that the lectures were "interesting", 97% commented that the lectures were "relevant" and 96% of students believed that the lectures enhanced their understanding of lawyers' roles and responsibilities. These lectures continue to be a valuable opportunity to

assist future lawyers in understanding the complexities of legal practice and ethical dilemmas that arise therein.

In addition to the university lectures, the Commissioner and Assistant Commissioner (Legal) conducted 13 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). The purpose of these lectures is to provide practical training by utilising common case scenarios confronted by the OLSC.

### OUTREACH – PRESENTATIONS TO THE LEGAL COMMUNITY

The Legal Services Commissioner presented a number of seminars and papers this year focusing on ethics, professionalism and practice. The Legal Services Commissioner's broad audience included law firms, young lawyers, university graduates, crown solicitors and public servants. Such seminars and papers included:

*Ethics and Risk Management: How to Reduce Complaints* paper presented by the Commissioner at the CLE/CPD seminar Ethics for Lawyers at UNSW Centre for Continuing Legal Education on 18 August 2009.

*Conflicts of Interests: Challenges for the Government Lawyer* paper presented by the Commissioner at the Fifth Annual Public Sector In House Counsel Conference in Canberra on 27 – 28 August 2009.

*Ethics in Litigation and Court Proceedings* paper presented by the Commissioner at the Inaugural Australian Young Lawyers Conference in Perth on 18 September 2009.

*Ethics in Practice* paper presented by the Commissioner at the Legalwise Seminar in Sydney on 22 September 2009.

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*Lawyers Ethics – Values or Rule Based?* paper presented by the Commissioner at the CLE seminar at the Law Society of NSW on 22 September 2009.

*Ethical Considerations for Costs and Conflicts of Interest* paper presented by the Assistant Commissioner (Legal) at the Annual Northern Beaches Solicitors Association Continuing Legal Education Conference on 25 September 2009.

*Competing Duties – Ethical Dilemmas in Practice* paper presented by the Commissioner to the Newcastle Law Society on 19 October 2009.

*Walking the Ethical Tightrope: Balancing the Responsibilities of In-House Counsel to Key Stakeholders* a paper presented by the Commissioner at the New Rule 42 for In-House Counsel seminar on 12 November 2009.

*Ethics and Professional Responsibility* paper presented by the Commissioner to Community Legal Centre Staff at the Community Legal Centres NSW Legal Training Day on 25 November 2009.

*Ethics and Risk Management – How to Reduce Complaints* paper presented by the Commissioner at the University of New South Wales Ethics for Lawyers Seminar on 27 November 2009.

*Law Firm Structure, the Conundrum of Costs and National Regulation of the Profession – Views from the Regulator* presented by the Commissioner to the Managing Partners Group at the Law Society of New South Wales on 30 November 2009.

*Ethics – Bright Lines and Shades of Grey* paper presented by the Commissioner at the NSW Young Lawyers CLE Seminar Series on 7 December 2009.

*Ethical Considerations for Costs and Conflicts of Interests* a paper presented by the Assistant Commissioner (Legal) at the Parramatta & District Law Society in Sydney on 8 December 2009.

*Reshaping Security With Culture* paper presented by the Commissioner at the ASIS International Fourth Asia-Pacific Conference in Sydney on 3 February 2010.

*Developing an Ethical Business Culture* module presented by the Commissioner at the Corporate and Government Lawyers Practice Management Course on 5 February 2010.

*Trends in Litigation, Dispute Resolution Trends in the Shadow of Galanter and Trends in Precedent Development* paper presented by the Commissioner at the CCH Australia Publishing Editorial Workshop on 16 February 2010.

*National Legal Profession Taskforce* paper presented by the Commissioner at the NSW Public Sector Legal Managers Forum on 18 February 2010.

*Practice Management – Costs for the Legal Profession* paper presented by the Commissioner at the Australian Lawyers Alliance Queensland State Conference on 20 February 2010.

*Walking the Ethical Tightrope: Balancing the Responsibilities of In-House Counsel to Key Stakeholders* paper presented to the Australian Corporate Lawyers Association (ACLA) on 3 March 2010.

*Ethics, the National Profession and Future Practices* talk presented by the Commissioner to the Law Society of New South Wales Trust Accounts Department on 12 March 2010.

*Ethics* seminar presented to the Southern Tablelands Law Society in Canberra on 12 March 2010.

*Legal Ethics*, educational session presented by the Commissioner to the Combined Community Legal Centres New South Wales Legal Training Day on 16 March 2010.

*Risk Management* training session presented by the Commissioner at Argyle Lawyers Pty Ltd on 17 March 2010.

*Ethics and Professional Responsibilities for Lawyers*, paper presented by the Commissioner at the University of New South Wales Faculty of Law CLE/CPD seminar on 18 March 2010.

*Walking the Ethical Tightrope: Balancing the Responsibilities of In-House Counsel to Key Stakeholders*, paper presented by the Commissioner at the New Challenges Faces by In-House Counsel LegalWise Seminar in Sydney on 19 March 2010.

*Legal costs*, paper presented by the Assistant Commissioner (Legal) to the New South Wales Bar Association on 22 March and 27 February 2010.

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*Ethics* paper presented by the Commissioner and the Assistant Commissioner (Legal) at LawAccess on 23 March 2010.

*Hypothetical for Barristers* seminar presented by the Commissioner and the Research and Projects Coordinator at the CPD Seminar New South Wales Bar Association on 24 March 2010.

*Best Practice, Regulation, Risk and Practice Management – an Integrated Approach*, roundtable discussion for practice management training at the College of Law attended by the Commissioner and the Research and Projects Coordinator on 24 March 2010.

The Office of the Legal Services Commissioner, discussion by the Commissioner to the Australia-China Legal Profession Development Program on 25 March 2010.

*Time Costing and Fixed Fee Billing*, paper presented by the Commissioner at the AUSTLAW Seminar on 26 March 2010.

*Legal Ethics and Professional Responsibility* seminar presented by the Commissioner at the CFMEU C&G Division on 26 March 2010.

*The Three C's – Costs, Conflicts and Communication*, presented by the Assistant Commissioner (Legal) to Young Lawyers on 30 March 2010.

*Security, Governance and the Impact of Culture*, paper presented by the Commissioner at the OSAC Meeting in Canberra on 11 May 2010.

*Ethics Hypothetical* presented by Assistant Commissioner (Legal) to the New South Wales Bar Association readers program on 27 May 2010.

*Regulating and Deregulating Lawyers in the 21<sup>st</sup> Century*, paper presented to the University of London's Institute of Advanced Legal Studies, the University of Westminster School of Law, and the Cleveland State University College of Law in London on 3 – 4 June 2010.

*The Legal Profession Act, the Reform, and How it Relates to Government Lawyers* paper presented by the Commissioner at the Law Institute of Victoria Government Lawyers Conference in Melbourne on 18 June 2010.

Ethics and the Legal Profession, seminars presented by the Commissioner and the Assistant Commissioner (Legal) at the College of Law on 5 August 2009, 29 September 2009, 10 November 2009, 1 December 2009, 4 February 2010, 9 February 2010, 23 March 2010, 20 March 2010, 18 May 2010.

In addition to these seminars the Commissioner presented numerous seminars to the profession in fulfilment of Rule 42 of the *Revised Professional Conduct and Practice Rule 1995*. These seminars were conducted for individual law firms, community legal centres and Commonwealth and NSW government departments.

## STAFF TRAINING

All OLSC staff are required by the DJAG to participate in work-related training. The OLSC fulfilled its staff training commitment this year by offering both in-house and external training to OLSC staff.

Twenty-eight staff members including legal and nonlegal staff participated in over 698.5 hours of training. The training mainly consisted workplace training (205.3 hours), followed by attendances at seminars and conferences (271 hours). The training has been invaluable and OLSC staff members have commented positively on both the internal and external training programs.

Training options included face-to-face learning, e-learning, seminars/conferences and workplace learning. A diverse range of topics were covered this year including Conflict Resolution Skills, A New Approach to Negotiation Skills, Persuasive Communication Skills for the Legal Profession, National Profession, Offender Rehabilitation, Writing for Results, Regulation 176, The Power of the Apology to Resolve Complaints and Disputes, Commercial and Corporate Practice and Administrative Law.

## PUBLICATIONS – INTERNAL AND EXTERNAL

The OLSC publishes fact sheets to assist the general public and practitioners in understanding and dealing with the complaints handling process. Eighteen fact sheets are available. The fact sheets are written in plain English and cover a diverse range of topics. Such topics include information about 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).

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. The brochures are also available in hard copy or via the OLSC website.

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This reporting year the OLSC published 6 issues of our newsletter, *Without Prejudice*. The newsletter discusses a range of issues pertaining to legal practice. This reporting year the newsletter covered topics such as complaints against law firms, the concept of proportionality and the cost of justice, outcomes-based regulation, innovative billing and regulation for professionalism.

The OLSC has had 4 papers/articles externally published this year.

The 2009 *Journal of the Professional Lawyer*, a publication of the Center for Professional Responsibility of the American Bar Association published a paper presented by the Commissioner which he had delivered in May 2009 in the United States. The title of the publication is "Views from an Australian Regulator". The publication discusses incorporation and public listing in Australia and their regulatory implications.

The *University of Queensland Law Journal* published a paper by the Commissioner and the Research & Projects Coordinator titled Compliance Auditing of Law Firms: A Technological Journey to Prevention. The paper, which had been presented at the Third International Legal Ethics Conference in July 2008 discusses how technology assists regulation.

The *Journal of Law and Society* published a joint paper by the Commissioner, the Research & Projects Coordinator and Dr Christine Parker on the self-assessment process of incorporated legal practices. The publication titled "Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW", discusses the effect of the self-assessment process on incorporated legal practices in NSW.

A paper presented by the Commissioner in November 2008 on anti-money laundering and the professions was published in a book *MONEY LAUNDERING, TAX EVASION & TAX HAVENS*. The Commissioner's paper discussed the regulatory implications of the anti-money laundering legislation for the professions.

These papers are available on the OLSC website at [http://www.lawlink.nsw.gov.au/lawlink/olsc/ll\\_olsc.nsf/pages/OLSC\\_speeches](http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches).

## VISITS

### International

In June 2010 the Commissioner was invited to present a paper with Gary Tamsitt, Associate Professor and Director, Legal Workshop, College of Law of the Australian National University (ANU), Canberra at a conference in the United Kingdom. The conference "Regulating and Deregulating Lawyers in the 21<sup>st</sup> Century" was hosted by the Institute of Advanced Legal Studies, University of London. The Commissioner's trip was funded by the Australian National University.

The Commissioner and Associate Professor Tamsitt presented a paper entitled "Preserving the ethics and integrity of the legal profession in an evolving market". The paper discussed the legislative changes that have occurred in NSW in relation to alternative business structures and the OLSC's regulatory approach. The paper documents how the OLSC's approach has helped preserve the ethics and integrity of the legal profession. The paper compares this approach with the regulatory approach currently being taken alternative business structures in the United Kingdom.

In addition to attending the conference, the Commissioner spent several days with the legal regulators in the United Kingdom. The Commissioner attended the offices of the Law Society of the United Kingdom and Wales. The Commissioner met with the President of the Law Society and the Chief Executive Officer, attended the reference group on regulatory reform meeting and addressed the Council of the Law Society. The Commissioner also attended the offices of the Solicitors Regulation Authority and the Legal Services Board and spoke to the Executive and staff of those offices about their function and purpose.

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## Domestic

On 11-12 August 2009 the Commissioner and the Research & Projects Coordinator travelled to Canberra and attended a series of meeting with the Dean of the Law School at the Australian National University (ANU) and academic staff. The purpose of the meetings was to facilitate collaborative research between the OLSC and ANU. A number of possible research projects were discussed. Whilst in Canberra, the Commissioner presented an ethics lecture for ANU law students.

On 27-28 August 2009 the Commissioner presented a paper at the 5th Annual Public Sector In-House Counsel Conference in Canberra. The title of the paper was *"Conflicts of Interest: Challenges for the Government Lawyer"*. The Commissioner analysed the ethical duties of legal practitioners in Australia and the regulatory framework applicable to in-house and government practitioners. The Commissioner noted the differences in the regulatory framework and questioned why some in-house counsel and government lawyers are not required to hold a practising certificate. The Commissioner also discussed the model litigant policy and questioned why the policy is only applicable to government lawyers. The Commissioner argued that the regulatory framework that is applicable to private lawyers should also be applicable to public lawyers and in-house counsel, and the regulatory framework that is applicable to public lawyers (such as the *Model Litigant Policy*) should also be applicable to private lawyers and in-house counsel.

On 16-17 September 2009 the Commissioner and the Assistant Commissioner (Legal) attended the 2009 Conference of Regulatory Officers (CORO) in Perth. The theme of the 2009 Conference was *"Finding a Balance"*. The Conference featured a number of distinguished speakers and regulators from England, Wales and Canada. Following the CORO Conference, the Commissioner presented a paper at the 36th Australian Legal Convention in Perth. The focus of the paper was ethics in litigation and court proceedings. The paper discussed four case studies each of which outlined particular ethical dilemmas for legal practitioners in litigation and court proceedings. The case studies included the ethics of courtesy, the ethics of candour, the ethics of following client instructions and the ethics of court process. The Commissioner argued that good

ethical practice in litigation and court proceedings involves rules and moral activism. That is, legal practitioners who follow the rules and apply morally reflective decision-making will be less likely to have a client lodge a complaint against them.

On 20 February 2010 the Commissioner presented a paper at the Australian Lawyers Alliance Queensland State Conference at the Gold Coast. The address entitled *"Practice Management – Costs for the Legal Profession"* covered a range of current issues including the COAG National Legal Profession Reform Project, outcomes-based regulation, costs, the concept of 'fair, reasonable and proportionate' in relation to costs, and COAG's proposed legislative principles for costs.

On 5 May 2010 the Commissioner and the Research and Projects Coordinator attended two discussion forums at ANU. The first forum concerned ethics, psychology and lawyer behaviour in large law firms and discussed issues such as the nature of behavioural patterns in organisational settings and the importance of establishing and implementing an effective ethical culture. The second forum concerned the regulation of the legal profession across jurisdictions and discussed various issues including outcomes-focused regulation, alternative business structures (including legal practices and multidisciplinary practices), complaints against firms, risk profiling and legal education. Professor Mitt Regan, Co-Director of the Centre for the Study of the Legal Profession at Georgetown University in the United States presided over the two forums. The forums were extremely beneficial and interesting. There was much discussion during and after each forum about the regulatory and ethical issues raised. The OLSC will be working together with the forum attendees to develop and research these regulatory and ethical issues.

A selection of the papers presented by the Commissioner are available on the OLSC's website at [http://www.lawlink.nsw.gov.au/lawlink/olsc/ll\\_olsc.nsf/pages/OLSC\\_speeches](http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches).

# CHAPTER 5

## RESEARCH AND PROJECTS

The OLSC has continued to develop its research profile this reporting year. Once again, in-house research has been conducted on a diverse range of matters, some of which is related to specific complaints and others, covered more general topics such as ethics, regulation and professionalism.

The OLSC also received several research requests from external bodies seeking information about the role and function of the OLSC and the regulation of ILPs. The OLSC has continued to work in collaboration with tertiary institutions on various research projects. These projects have enabled the OLSC to develop ideas and clarify its regulatory techniques. The OLSC has welcomed the opportunity to work together with academics and looks forward to future collaborative projects.

### IN-HOUSE RESEARCH REQUESTS

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

An analysis of principles-based regulation and prescriptive-based regulation.

Recent developments in the Anti-Money laundering and Counter-Terrorist Financing (AML/CTF) legislation debate and its impact on the legal profession.

An analysis of the philosophy of legal ethics.

An analysis of the Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2009 (Qld).

An analysis of Lord Jackson's report on Civil Litigation costs in the United Kingdom and possible implications for Australia.

Time costing and fixed fee billing and alternative billing methods.

Embedding positive and ethical law firm culture.

Legal professional privilege in relation to in-house counsel.

Recent developments in the COAG National Legal Reform Project.

Conflicts of interests for in-house counsel.

The regulatory framework in relation to complaints against law firms.

The concept of proportionality and the costs of justice.

Legislative obligations of billing clients.

The implications of looking behind a client's instructions.

Ethics in litigation and court proceedings.

Effective supervision of staff in a legal practice.

The ethics of a technology-based law practice.

A global comparison of Continuing Professional Development (CPD) requirements for the legal profession.

An evaluation of non-lawyer ownership in the United Kingdom.

An assessment of the costs disclosure and costs assessment scheme.

### EXTERNAL RESEARCH REQUESTS

In June 2009 we were asked to write several articles for the Australian Financial Review concerning proportionality, costs and deliberate overcharging.

In December 2009 we received a request from Bob Hilliker and Professor Ted Schneyer, members of the American Bar Association Ethics 20/20 Commission on the framework for regulating incorporated legal practices in NSW. We provided information to present to the 20/20 Ethics Commission public hearing on alternative business structures.



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In March 2010 we received a request from Professor Laurel S. Terry, Professor of Law, Penn State Dickinson School of Law, about regulatory objectives in Australia. Professor Terry was conducting a research study on the specification of regulatory objectives in legislation. We provided Professor Terry with a discussion paper on regulatory objectives in NSW and Australia.

In June 2010 we received a request from the American Bar Association's Ethics 20/20 Commission for continued assistance with their inquiry into alternative business structures and litigation funding. We provided a series of papers to the Commission for their consideration.

## **JOINT RESEARCH PROJECTS**

### **Australian Research Council (ARC) Grant Applications**

As reported in last year's annual report we have been participating in three ARC grant applications for funding to conduct collaborative research projects with universities. The first grant application was with the Centre for Applied Philosophy and Public Ethics (CAPPE) for funding to research pressing ethical problems confronting the operation of capital markets in Australia and examine the adequacy of the regulatory apparatus and integrity systems. The second grant application was with the University of Western Sydney for funding to study the impacts of the incorporation of law firms upon regulation, governance and the organization of legal services. The third application was 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.

I am pleased to report that we were successful in securing funding for the first grant application with CAPPE. The OLSC together with the University of New South Wales, the Australian National University, the Australian Securities and Investments Commission (ASIC) and Ernst and Young were awarded funding to research the critical ethical and compliance challenges facing the three major professional groups relevant to financial regulation (lawyers, auditors and investment bankers). The project will evaluate the efficacy of the regulation of these professional groups (and other key

actors) and the duties to which they are subject. The aim of the projects to develop an integrated set of institutional strategies and processes to address the ethical and compliance problems analysed. Funding has been secured for three years.

In relation to the second ARC application by the University of Western Sydney and the OLSC, a decision was made not to pursue funding for the project. It became apparent during the application process that the proposed research project to study the impact of incorporation could be achieved through other means. We are now working on devising a research strategy to facilitate this project.

The third proposed research project which focused on the ethics of large law firms was put on hold during this reporting year. We intend to pursue the application for funding at the end of 2010.

### **Conference of Regulatory Officers (CORO) website**

As I have reported in previous annual reports, the OLSC is a member of the Conference of Regulatory Officers (CORO). CORO is an organisation which formally meets once a year to discuss issues relevant to the regulation of the legal profession such as the harmonisation of the legal profession, the development of continuing professional development guidelines, the development of a national disciplinary register and the development of national regulatory protocols. In addition to the formal meeting CORO members hold informal discussions on a regular basis. Members of CORO include all of the legal regulators in Australia and New Zealand.

This reporting year the OLSC worked together with CORO members to further develop the CORO website and its role in relation to the regulation of the national legal profession. The website includes information about CORO's current projects as well as about past and future conferences. The website can be accessed at <http://www.coro.com.au/>.

# CHAPTER 6

## INFORMATION SYSTEMS AND SERVICES REPORT

This financial year the Information Systems and Services (ISS) Unit concentrated efforts in six areas.

- Database Reviews: for enhanced data collection and business reporting;
- OLSC Internal Projects Coordination;
- Stakeholder Surveys: using stakeholder feedback for enhanced service;
- Staff Information Sessions;
- LPMAS Project; and
- ISO 9001 Re-certification.

### DATABASE REVIEWS: FOR ENHANCED DATA COLLECTION AND BUSINESS REPORTING

This financial year the ISS Unit undertook major reviews of the Inquiry Line Register, Conduct Register and the Complaints Tracking System (CTS) to ensure the consistency of data collected and streamlining of coding. The ISS Unit concentrated on further enhancing these datasets to improve the capacity, consistency and

capture of data, and to support the creation of more detailed reports to reflect the changing information needs of the OLSC. This has resulted in an increased ability to use the data currently available to manage and resolve complaints, determine trends and to enhance our ability to respond to queries from government bodies.

### OLSC INTERNAL PROJECTS COORDINATION

The OLSC introduced project methodology in the 2003 fiscal year to complement the OLSC organisational objectives. Each year a management review is undertaken in an effort to streamline and consolidate overarching project teams to ensure that current and future OLSC business needs are being met. This allows much of the work performed within the OLSC to be categorised into projects, which a variety of staff from all areas work on to improve the systems utilised to meet organisational objectives.

Below are the projects undertaken for the 2009-2010 financial year. These projects were used as the basis for OLSC's business planning and on-going 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: These Projects will ensure better access to information for all staff and related stakeholders, sustainability of information stored, currency of information sourced and the enhancement of knowledge management principles.

#### Related Working Parties and Objectives

Complaints Tracking System (CTS)

Coding Update and Review:

- To further enhance the coding options, accessibility and reporting functionality within QA Plus/ CTS.

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Report Enhancement:

- To ensure better access to information for managers for management complaints and of staff teams, usability of information, and currency of information sourced.

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System Upgrade:

- To test the CTS system upgrade, to further enhance the accessibility and functionality of the CTS.

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Enquiry Line & Mediation Register:

- To further enhance the coding options, accessibility and reporting functionality of the Enquiry Line and Phone Mediation Register.

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Conduct Register:

- To further enhance the accessibility and reporting functionality of the Conduct Register using staff feedback.

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

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

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

#### **Related Working Parties and Objectives**

Internal Staff Training/ Lunchtime Sessions:

To ensure enhanced internal based staff training, consistency of staff knowledge and focused training sessions.

Stakeholder Satisfaction Survey Project:

To ensure stakeholder satisfaction needs are recorded and met. To produce reports that enable improved reporting functionality enhanced information & data sharing regarding stakeholder needs and experience of OLSC.

### **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 and Objective**

ISO 9001 Accreditation:

To ensure certification and accreditation of OLSC to ISO 9001 and to maintain formal external recognition of OLSC as a professional, efficient, well managed entity.

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## **Stakeholder Surveys: Using Stakeholder Feedback for Enhanced Service**

In an effort to improve our service and to ensure the needs of stakeholders are identified and being met, the ISS Unit has a number of established surveys aimed at those accessing the OLSC service. The surveys undertaken and analysed include those targeting: callers to the Inquiry Line, OLSC website users, complainants who have a formal written complaint lodged with the OLSC, practitioners who are contacted regarding complaints, tertiary students and OLSC staff.

Results so far have been overwhelmingly positive (in all areas), and a number of changes have been put in place from feedback received to ensure even better access to services for all stakeholders.

## **Staff Information Sessions**

This financial year the ISS Unit acquired the overall project management of internal based staff information and training. The Unit undertook a major review of internal training to ensure on-going job based targeted training for all staff. All staff were surveyed to ensure individual training needs were been met, and a calendar

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was set-up to ensure on-going training in communication techniques and changes in areas of law was provided to ensure continued clear communication and currency of information provided. Sessions are now held twice a month; sessions undertaken so far include Trust Accounts, State Super, using OLSC Internal Registers/ Databases, Law Cover, dealing with Costs Complaints, the Costs Assessment Scheme, a refresher on Telephone Skills For Dealing With Difficult People and an update on COAG Reform.

## LPMAS Project

The ISS Unit has been working with the ILP Unit on the LPMAS Portal Project, in particular within complaints and data management, reporting functionality and user testing. This project has the potential to change the way the OLSC interacts with and responds to the information needs of practitioners and legal practices, both incorporated and traditionally structured.

## ISO Re-certification

In April 2010 the OLSC was again re-certified to ISO 9001: 2000 standard, with the support of all management and staff. The OLSC originally gained certification in 2005-2006, in an effort to ensure there was a formal external recognition of the OLSC as a professional, efficient well managed entity.

The OLSC aim is to use a philosophy of continuous improvement, concentrating on areas of identified problem or required minimum standard and to review everyday practice to ensure efficiency and effectiveness.

As with all continuous quality programs, this is an on-going process with the need to ensure we improve our standards and review our processes regularly. It is not an easy task, but one to which the OLSC is committed to ensure continual improvement in the area of customer service and satisfaction for all stakeholders.

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 DJAG;
- 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.

# CHAPTER 7

## FINANCIAL PERFORMANCE

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

Through its commitment to on-going implementation of business improvement and cost saving initiatives the OLSC managed its approved budget in 2009-2010 and delivered a good budget outcome at close of the reporting year.

During the year we applied tighter management and control of our approved funded establishment which involved reviewing our staffing establishment as part of the Department's ongoing review of employee-related expenditure to determine the alignment of business centres' establishments to budget allocations. We managed position vacancies and workforce profiles to reflect a long-term view of our establishment.

We closely analysed and monitored monthly budget variances by major expenditure line item and provided management explanations to significant variances within our control. The OLSC had no control over the Department's year end financial adjustments and their impact on our overall budget performance result. The Department is obliged to reflect these adjustments in the OLSC's financial records to comply with Treasury requirements.

We performed monthly and quarterly reviews of our recurrent operating budget and capital expenditure with a view to identifying significant expenditure trends likely to impact our financial performance for the year. We undertook rolling forecasts on identified expenditure trends including imposing effective control measures to manage these trends and ensure they aligned with our allocated budget at year end.

Also, in addition to receiving normal operational funding, in 2009-2010 the OLSC received \$1,007,641 from the PPF to apply towards capital costs incurred in implementing the final phase of the LPMAS Project – Stage 3 the Build/Test/Install stage. The OLSC spent \$602,110 on the portal project this year and has arranged to defer payment on the balance of available 2009-2010 PPF funds for completing the project to 2010-2011.

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 2010 the OLSC's approved establishment comprised 30 permanent and temporary full-time positions for administrative and professional staff and one full-time equivalent position maintained by a team of rostered casuals on the OLSC Inquiry Line.

The OLSC experienced an increased level of staff movement in full-time establishment positions in 2009-2010 which resulted in a number of position vacancies being created during the year.

The staff movements were unforeseen and related to circumstances where some employees gained employment elsewhere and resigned from the Office; some for career development, commencing long-term secondments with other departments or organisations while others elected for temporary transfer to part-time hours to meet family responsibilities.

These staff changes and the unavoidable timing difference involved in finalising recruitment, selection processes and filling position vacancies meant some positions remained vacant for a period of time during the reporting year.

# CHAPTER 8

## NOTES SUPPORTING THE 2009-2010 FINANCIAL STATEMENT

### EMPLOYEE RELATED

- 1. Salaries & Wages:** The OLSC's *Salaries & Wages* budget comprises salary payments to employees occupying permanent and temporary positions in the OLSC establishment. The OLSC experienced an increased level of staff movement in its establishment positions in 2009-2010; some employees resigned from the Office, some accepted long term secondment to other agencies, while others sought temporary transfer from full-time to part-time hours to meet family responsibilities. The *Salaries & Wages* budget variation reflects the impact of these staff changes and the resultant timing difference involved between finalising recruitment and selection processes and filling position vacancies as they arose during the year.
- 2. Leave Entitlements:** The OLSC's *Leave Entitlements* budget includes provision for recreation leave expense and accrual, annual leave loading and long service leave entitlements of OLSC employees. The *Leave Entitlements* budget variation is largely attributable to a non-adjustment to recreation leave accrual at year end. The Department did not accrue any recreation leave for the OLSC as at 30 June 2010. Any adjustments to recreation leave provisions will be corrected by the Department in 2010-2011.
- 3. Payroll Tax:** The OLSC's *Payroll Tax* budget contains provision for payroll tax payable on salary related payments of OLSC employees. The budget variation reflects a year end adjustment prepared by the Department to recognise the payroll tax liability relating to employees' leave entitlements.
- 4. Superannuation:** The OLSC's *Superannuation* budget includes superannuation entitlements of OLSC employees. The budget variation highlights a year end adjustment to superannuation expense relating to employee's leave on costs. The adjustment

is prepared by the Department as part of year end procedures for leave and related on costs adjustments.

### OTHER OPERATING

- 5. Contractors:** The OLSC's *Contractors* budget foreshadowed increased level of contractor usage in 2009-2010 to support the OLSC's on-going program of ILP reviews. Although the OLSC maintained its planned program of ILP reviews this year with some reviews involving the engagement of professional services for audits of major and complex ILPs, the total amount spent on contractors was below that originally anticipated in the budget.
- 6. Fees:** The OLSC's *Fees* budget includes provision for legal fees incurred by the OLSC in bringing matters before the Administrative Decisions Tribunal (ADT) and the Courts. The *Fees* budget also maintains funds for costs associated with the complaints review system and the engagement of independent reviewer advisors. In 2009-2010 the OLSC initiated a number of significant investigations into the conduct of legal practitioners and firms with some matters resulting in Tribunal proceedings. The substantial saving in budgeted *Fees* expenditure this year is mainly due to credit adjustments made to the OLSC's legal fees account to offset income. During the year the OLSC received: (i) \$45k from legal practitioner *G Malouf* following ADT Decision regarding payment of costs to the Legal Services Commissioner; and (ii) \$124k from the Public Purpose Fund following approval for the Commissioner to seek separate costs reimbursement from the Fund for legal fees incurred in the course of managing the an investigation and a complaint about legal practitioner.

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- 7. Rates & Outgoings:** The OLSC's *Rates & Outgoings* budget makes provision for cleaning contractors' costs relating to OLSC's leased premises including miscellaneous charges for common services such as lift maintenance, building electricity costs, etc. This year's budget overrun follows increased contractor costs during the year. The OLSC budget will be adjusted in 2010-2011 to take into account the increased costs.
  - 8. Rent:** The OLSC's *Rent* budget anticipated an increase to monthly rent payments in 2009-2010 in relation to OLSC's leased premises. The predicted increase did not eventuate and a moderate saving in *Rent* expenditure resulted at close of the financial year.
  - 9. Stores & Stationery:** The budget result reflected in OLSC's *Stores & Stationery* for 2009-2010 follows some process improvements made this year to OLSC's inventory management and purchasing. The improvements involved more effective use of the Department's electronic procurement system *Smartbuy*.
  - 10. Travel:** The budget saving reported in OLSC's *Travel* this year is largely attributable to a lower incidence of interstate travel for conference attendance. The saving also includes a travel costs reimbursement received from the American Bar Association following the Commissioner's attendance at a Chicago conference in May last year.
  - 11. Maintenance Contracts:** The OLSC's budget for *Maintenance Contracts* anticipated additional maintenance contract costs in 2009-2010 to support the OLSC's new LPMAS Portal during the year. However as at 30 June 2010 user acceptance testing for the new system was not yet finalised which meant installation of the new Portal had to be deferred to 2010-2011. As a result the maintenance support agreement for the new Portal was not taken up and a budget saving ensued this year for this item.

## DEPRECIATION & AMORTISATION

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

## CAPITAL EXPENDITURE

- 13. Computer Software/Systems:** In 2009-10 the OLSC received \$1,007,641 from the Public Purpose Fund to meet in year capital costs associated with the development and implementation of the final phase of the LPMAS Portal Project – Stage 3 (the Build/Test/Install stage). Project costs this year totalled \$602,110 and the OLSC has arranged to defer payment on the balance of available capital funds for completing the project to 2010-11.

## FINANCIAL STATEMENT 2009-2010

	Budget \$	Spent \$	Variance \$	Notes
Salaries & Wages	2,377,958	2,216,232	161,726	1
Allowances	2,612	3,797	(1,185)	
Overtime	5,951	-	5,951	
Leave Entitlements (Recreation Leave, Annual Leave Loading & LSL)	291,671	91,167	200,504	2
Workers Compensation	10,910	10,428	482	
Payroll Tax	160,089	139,023	21,066	3
Fringe Benefits Tax	2,000	1,388	612	
Superannuation	208,029	183,080	24,949	4
<b>Total Employee Related Payments</b>	<b>3,059,220</b>	<b>2,645,115</b>	<b>414,105</b>	
Advertising & Publicity	5,115	2,698	2,417	
Bank Charges	102	80	22	
Contractors	76,225	31,971	44,254	5
Electricity & Gas	12,614	12,149	465	
Fees	274,940	58,403	216,537	6
General Expenses	4,092	-	4,092	
Insurance	2,121	1,337	784	
Interpreters & Translations	8,228	4,033	4,195	
Motor Vehicle Levy	2,000	1,911	89	
Postal Expenses	20,302	21,184	(882)	
Printing	32,920	30,802	2,118	
Publications	11,253	7,969	3,284	
Rates & Outgoings	8,585	19,220	(10,635)	7
Rent	330,019	314,300	15,719	8
Staff Expenses	18,184	16,880	1,304	
Stores & Stationery	33,403	17,102	16,301	9
Telephone	24,121	21,260	2,861	
Travel	23,459	6,367	17,092	10
<b>Total Other Operating Expenses</b>	<b>887,683</b>	<b>567,666</b>	<b>320,017</b>	



	Budget \$	Spent \$	Variance \$	Notes
Maintenance Contracts	113,277	32,349	80,928	11
Repairs and Maintenance	1,023	109	914	
<b>Total Maintenance</b>	<b>114,300</b>	<b>32,458</b>	<b>81,842</b>	
Depreciation & Amortisation	21,672	83,325	(61,653)	12
Other Services - Interest Paid	-	8	(8)	
<b>Total Expenses</b>	<b>4,082,875</b>	<b>3,328,572</b>	<b>754,303</b>	
<b>Less: Revenue (Recoupment)</b>	<b>(4,061,203)</b>	<b>(3,244,716)</b>	<b>(816,487)</b>	
Less: Other Revenue	-	(531)	531	
<b>Net Cost of Services</b>	<b>21,672</b>	<b>83,325</b>	<b>(61,653)</b>	
<b>Less Non Cash Items: Depreciation &amp; Amortisation</b>	<b>(21,672)</b>	<b>(83,325)</b>	<b>61,653</b>	
<b>Net Position</b>	<b>-</b>	<b>-</b>	<b>-</b>	

## CAPITAL EXPENDITURE 2009-2010

	Budget \$	Spent \$	Variance \$	Notes
Computer Software/Systems	1,007,641	602,110	405,531	13
<b>Total Capital Expenditure</b>	<b>1,007,641</b>	<b>602,110</b>	<b>405,531</b>	

# CHAPTER 9

## ANNUAL REPORT STATISTICS 2009-2010

### INQUIRY LINE

Please note a major review was undertaken in 2009-2010 of the OLSC Inquiry Line, which resulted in better consistency of data collected and streamlining of coding. As a result data in some areas has significantly changed due to improvements in the way information is recorded.

#### P1 Legal matters raised in calls

	2007-2008	2008-2009	2009-2010
Family/ Defacto	17.1	18.9	17.0
Other Civil	11.2	11.7	13.5
Conveyancing	14.0	11.6	12.9
Probate/ Wills/ Family Provisions	12.7	11.6	10.8
Other*	8.4	12.2	9.7
Commercial/ Corporations	9.6	8.5	9.1
Criminal	6.5	5.8	6.4
Personal Injuries	6.1	6.0	5.8
Workers Compensation	4.6	3.7	3.8
Leases/ Mortgages/ Franchises	2.4	2.8	2.1
OLSC General Query**	-	-	2.1
Land and Environment	2.9	2.4	2.0
Industrial law	1.6	1.5	1.3
General Law/ Legal Profession Query***	-	-	1.3
Victim's Compensation	1.4	1.4	1.1
Professional Negligence	0.8	1.3	0.9
Immigration	0.7	0.5	0.5

\* Pre 2009-2010: 'Other' included calls regarding Legal Referral Services, OLSC processes, general legal queries and OLSC data requests.

\*\* New area added to accurately capture types of calls received: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications.

\*\*\* New area added to accurately capture types of calls received.

## P2 Nature of phone enquiry

	2007-2008	2008-2009	2009-2010
Communication	21.2	20.6	16.4
General cost complaint/query	17	17.5	14.0
OLSC Process*	-	2.7	13.6
Negligence	12.2	11.6	11.7
Overcharging	8.5	9.8	10.7
Ethical matters	8.5	9.2	6.9
Delay	5.7	5.2	4.8
Instructions not followed	2.5	2.1	3.8
Referral requests**	-	-	3.7
Costs disclosure	7.7	5.8	3.4
Misleading conduct	2.3	2.9	2.7
Conflict of interests	2.2	2.4	2.0
Document transfer/liens	2.5	2.5	1.6
Trust fund matters	2.1	1.8	1.4
Document handling	1.1	1.1	0.9
Failure to honour undertakings	1.1	0.8	0.7
Pressure to settle	0.7	0.8	0.7
Fraud (not trust fund)	0.6	0.6	0.5
Compliance matters	0.3	0.3	0.3
Advertising**	-	-	0.2
Supervision**	-	-	0.1
Quality of service***	3.9	2.2	-

\* 'Non- Conduct' renamed & absorbed into 'OLSC Process' due to increase in types of calls received: includes calls relating to Complaint Enquiries, General & Referral Enquiries, OLSC Website, Statistics & Publications.

\*\* New areas added to accurately capture types of calls received.

\*\*\* 'Quality of Service' has been absorbed into 'Negligence' & 'Supervision' due to increase in types of calls.

## P3 Practitioners mentioned on inquiry line

	2007-2008	2008-2009	2009-2010
Solicitor	93.4	94.3	93.4
Barrister	2.6	2.6	3
Other*	3.7	2.6	2.8
Licensed Conveyancer	0.4	0.6	0.9

\* 'Other' includes Judge/ Magistrate, Legal Firm, Executor, Multiple Type of Practitioner and Paralegal/ Clerk/ Support Staff.

## P4 Source of calls to the OLSC inquiry line

	2007-2008	2008-2009	2009-2010
Client	69.4	66.9	66.4
Friend/relative	6.7	6.7	7.0
Opposing client	5.7	6.7	6.3
Unrepresented client	0.9	2.1	3.9
Solicitor on own behalf	2.6	2.5	3.8
Previous client	1.2	2.0	3.4
Solicitor on another's behalf	2.3	1.7	2.0
Other*	0.4	0.4	1.9
Government Agency	6.1	6.8	1.8
Beneficiary/executor/administrator	3.0	2.4	1.8
Non-legal service provider	1.1	1.3	1.0
Barrister on own behalf	0.5	0.6	0.3
Student/ Educator**	-	-	0.3
Barrister on another's behalf	0.2	0.1	0.2

\* 'Other' includes Witnesses, Judges/ Judicial officers, Quasi-judicial officers, Professional Councils, Cost Assessors & non-identified source of calls.

\*\* New area added to accurately capture types of calls received.

## P5 Outcomes of calls to the inquiry line

	2007-2008	2008-2009	2009-2010
Caller indicated intention to send in complaint	14.1	20.1	22.8
Provided complaint form	17.7	18.3	17
Recommended direct approach to lawyer about concerns	15.9	14.3	16.5
Provided referral for legal advice or other assistance	22.9	19.2	13
OLSC Process*	-	-	9
Listened to caller's concerns	3.4	4.8	7.4
Provided information about the legal system	10	7.7	5.2
Provided information about the OLSC and LPA to a legal practitioner	1.2	2.1	2.4
Provided referral to the NSW Supreme Court Costs Assessment Scheme	2.4	3.3	2.4
Explained that concerns are outside jurisdiction of OLSC	1.4	1.6	1.9
Other	7.6	6.5	1.4
Conducted telephone mediation	2.9	1.4	0.9
Scheduled interview for caller	0.5	0.5	0.1

\* New area added to accurately capture types of calls received: includes calls relating to Complaint Enquiries, General Enquiries, OLSC Website, Statistics & Publications.

## WRITTEN COMPLAINTS

### W1 Legal matters giving rise to complaints received in 2009-2010

	2007-2008	2008-2009	2009-2010
Civil	20.6	22.5	17.3
Family/defacto	15.1	16.5	15.6
Commercial/corporations law	8.6	8.9	13.1
Probate/wills/family provisions	10.0	11.0	11.0
Personal Injuries	10.0	10.2	9.4
Conveyancing	9.0	7.7	8.6
Criminal	6.4	6.3	8.2
Other	6.9	5.6	6.6
Leases/mortgages/franchises	3.1	3.3	2.7
Workers Compensation	4.1	2.6	2.3
Industrial Law	1.5	1.8	1.7
Land and Environment	2.0	1.7	1.5
Victim's Compensation	0.8	0.4	0.9
Immigration	0.7	0.6	0.5
Professional Negligence	1.4	1.0	0.5

### W2 Nature of complaints received in 2009-2010

	2007-2008	2008-2009	2009-2010
Negligence	16.9	16.0	17.9
Communication	14.5	14.8	15.3
Overcharging	10.3	10.9	11.3
Ethical matters	15.5	16.6	9.0
Misleading conduct	6.5	7.1	7.8
Instructions not followed	3.9	3.9	7.1
General cost complaint/query	8.3	6.9	6.2
Trust fund	4.4	3.6	5.2
Cost disclosure	4.9	5.6	4.9
Delay	4.8	4.9	4.8
Conflict of interests	1.6	2.0	2.5
Document transfer/liens	2.9	2.5	2.1
Compliance matters	0.6	0.8	1.1
Advertising*	-	-	1.0
Document handling	0.9	0.9	1.0
Fraud (not trust fund)	0.5	0.6	0.8
Failure to honour undertakings	0.5	0.6	0.7
Pressure to settle	0.6	0.3	0.7
Supervision*	-	-	0.4
Quality of service**	2.4	2.2	-

Please note a major review in 2009-2010 was undertaken in this category, which resulted in better consistency of data collected and streamlining of coding. As a result data in some areas has significantly changed due to improvements in the way information is recorded.

\* New areas added to accurately capture types of complaints received.

\*\* 'Quality of Service' has been absorbed into 'Negligence' & 'Supervision' due to review of coding.

### W3 Type and source of complaints received in 2009-2010

#### Number of complaints

	Solicitor*	Barrister	Other**	TOTAL	2007-2008	2008-2009	2009-2010
Bar Association	0	3	0	3	0.4	0.4	0.1
Barrister on another's behalf	2	6	0	8	0.2	0.2	0.3
Barrister on own behalf	39	5	0	44	2.2	1.5	1.7
Beneficiary/ Executor/ Administrator	101	0	5	106	3.7	4.4	4.0
Client	767	37	13	817	38.0	35.1	30.7
Commissioner	82	2	0	84	3.5	3.6	3.2
Client's friend / relative	83	4	3	90	2.6	2.6	3.4
Law Society	106	0	5	111	3.9	4.8	4.0
Non-legal service provider	75	1	0	76	2.3	2.3	2.9
Opposing client	415	29	8	452	14.4	14.8	17.0
Previous client	494	40	9	543	16.1	16.9	20.4
Solicitor on another's behalf	110	4	0	114	5.3	5.3	4.3
Solicitor on own behalf	78	9	2	89	3.7	3.7	3.3
Unrepresented client	20	1	1	22	0.3	0.8	0.8
Cost Assessor	6	0	0	6	-	0.2	0.2
Other ***	89	3	4	96	3.3	3.5	3.6
<b>TOTAL</b>	<b>2467</b>	<b>144</b>	<b>50</b>	<b>2661</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 by government agencies, witnesses, and judge/quasi-judicial officer.

### W4 All Complaints finalised in 2009-2010

#### All OLSC Consumer Disputes

	Solicitor	Barrister	Other*	TOTAL
Dispute resolution completed	1124	34	12	1170
<b>Subtotal completed by OLSC</b>	<b>1124</b>	<b>34</b>	<b>12</b>	<b>1170</b>
Complaint closed by OLSC	446	30	9	485
Withdrawn by complainant at OLSC	29	2	1	32
<b>Subtotal closed by OLSC</b>	<b>475</b>	<b>32</b>	<b>10</b>	<b>517</b>
Unable to be resolved at the OLSC	12	0	0	12
<b>Subtotal Not resolved at the OLSC</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>12</b>
Outside OLSC jurisdiction	24	2	11	37
<b>Subtotal not accepted by OLSC (1)</b>	<b>24</b>	<b>2</b>	<b>11</b>	<b>37</b>
<b>Total OLSC Consumer Disputes Finalised</b>	<b>1635</b>	<b>68</b>	<b>33</b>	<b>1736</b>

### ALL OLSC Investigations

	Solicitor	Barrister	Other*	TOTAL
Practitioner referred to Tribunal#	7	0	0	7
Practitioner disciplined by OLSC##	20	2	0	22
Compensation ordered by OLSC##	2	0	0	2
Likely UPC/PM dismissed in Public Interest	38	0	0	38
<b>Subtotal completed by OLSC</b>	<b>67</b>	<b>2</b>	<b>0</b>	<b>69</b>
Tribunal finding of UPC/PM unlikely	155	9	1	165
Summary Dismissal in the Public Interest	2	0	0	2
Investigation closed by OLSC	35	9	2	46
Withdrawn by complainant at OLSC	10	0	0	10
<b>Subtotal closed by OLSC</b>	<b>202</b>	<b>18</b>	<b>3</b>	<b>223</b>
Outside OLSC jurisdiction	8	1	1	10
Investigation not accepted out of time	27	4	1	32
<b>Subtotal not accepted by OLSC (1)</b>	<b>35</b>	<b>5</b>	<b>2</b>	<b>42</b>
<b>Total OLSC Investigations Finalised</b>	<b>304</b>	<b>25</b>	<b>5</b>	<b>334</b>

### All Council Consumer Disputes

	Solicitor	Barrister	Other*	TOTAL
Dispute resolution completed	100	0	1	101
<b>Subtotal completed by Council</b>	<b>100</b>	<b>0</b>	<b>1</b>	<b>101</b>
Complaint closed by Council	53	7	5	65
Withdrawn by complainant at Council	101	0	0	101
<b>Subtotal closed by Council</b>	<b>154</b>	<b>7</b>	<b>5</b>	<b>166</b>
Unable to be resolved at Council	5	0	2	7
<b>Subtotal Not resolved at Council</b>	<b>5</b>	<b>0</b>	<b>2</b>	<b>7</b>
<b>Total Council Consumer Disputes finalised</b>	<b>259</b>	<b>7</b>	<b>8</b>	<b>274</b>

## ALL Council Investigations

	Solicitor	Barrister	Other*	TOTAL
Practitioner referred to Tribunal#	63	5	2	70
Practitioner disciplined by Council##	34	9	0	43
Disciplined by Council with compensation ordered##	0	0	0	0
Likely UPC/PM dismissed in Public Interest	5	3	0	8
<b>Subtotal completed by Council</b>	<b>102</b>	<b>17</b>	<b>2</b>	<b>121</b>
Tribunal finding of UPC/PM unlikely	279	35	6	320
Summary Dismissal in the Public Interest	4	3	0	7
<b>Subtotal closed by Council</b>	<b>283</b>	<b>38</b>	<b>6</b>	<b>327</b>
<b>Total Council Investigations Finalised</b>	<b>385</b>	<b>55</b>	<b>8</b>	<b>448</b>
<b>Total handled by Council</b>	<b>644</b>	<b>62</b>	<b>16</b>	<b>722</b>
<b>Total handled by OLSC</b>	<b>1939</b>	<b>93</b>	<b>38</b>	<b>2070</b>
<b>TOTAL</b>	<b>2583</b>	<b>155</b>	<b>54</b>	<b>2792</b>

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

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

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

(1) Category to differentiate between OLSC complaints dismissed and those not accepted.

## W5 Duration of file handling at the OLSC

Of complaints finalised in 2009-2010, time taken for complaints handling

	Percentage of files closed within following periods		
	2007-2008	2008-2009	2009-2010
0-30 days	23.0	22.8	24.6
1-3 months	34.9	32.1	32.1
3-6 months	23.4	26.4	23.5
6-9 months	7.6	9.1	9.2
9-12 months	4.3	3.1	3.9
Over 12 months	6.8	6.5	6.7



## W6 Age of complaints remaining open or suspended on 30 June 2010 and being handled by the OLSC

Year opened	Open at 30 June 2008	Open at 30 June 2009	Open at 30 June 2010
2009-2010			516
2008-2009		483	43
2007-2008	572	61	21
2006-2007	77	26	9
2005-2006	37	10	7
2004-2005	15	10	4
2003-2004	3	1	0
2002-2003	0	0	0
2001-2002	1	0	0
2000-2001	0	0	0
1999-2000	0	0	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>705</b>	<b>591</b>	<b>600</b>

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

Of complaints handled in 2009-2010, time taken to finalise

	Days*
Average time to complete complaints received and completed / resolved in 2009-2010	75
Average time to complete complaints received in any year but completed / resolved in 2009-2010	119
Average time taken to dismiss complaints received in 2009-2010	69
Average time to dismiss complaints received in any year but dismissed in 2009-2010	143

\* Averages rounded to 1 decimal point.

## R1 Duration of review handling at the OLSC

Of reviews finalised in 2009-2010, time taken for review handling

	Percentage of files closed within following periods*		
	2007-2008	2008-2009	2009-2010
0-3 months	16.1	45.8	52.0
3-6 months	53.6	45.8	35.0
6-9 months	25	5.1	11.7
9-12 months	1.8	1.7	1.4
Over 12 months	3.6	1.7	0.0

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

## R2 Reviews in progress and finalised in 2009-2010 – received all years

	Solicitor	Barrister	Other*	Total	Percentage
<b>Reviews in progress</b>					
In progress at OLSC	5	4	0	9	9.4
Being reviewed by consultant	13	2	0	15	15.6
Consulting with Council prior to finalising	1	0	0	1	1.0
<b>Total remaining open</b>	<b>19</b>	<b>6</b>	<b>0</b>	<b>25</b>	<b>26.1</b>
<b>Reviews completed</b>					
Dismissal confirmed	50	16	1	67	69.8
Out of time, no jurisdiction	2	0	0	2	2.1
Review request withdrawn	0	0	0	0	0.00
Reprimand confirmed	0	0	0	0	0.00
Reinvestigated by OLSC	0	0	0	0	0.00
Reinvestigated by Council	2	0	0	2	2.1
Decision changed	0	0	0	0	0.00
Other	0	0	0	0	0.00
<b>Total completed</b>	<b>54</b>	<b>16</b>	<b>1</b>	<b>71</b>	<b>74.0</b>
<b>Total handled</b>	<b>73</b>	<b>22</b>	<b>1</b>	<b>96</b>	<b>100</b>

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

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

## TRIBUNAL PROCEEDINGS

### T1 Complaints referred to the Administrative Decisions Tribunal in 2009-2010\*

Reason	Solicitor	Barrister	Clerk / Associate	TOTAL
Reprimand/ Compensation Order s540	0	0	0	0
Approval of Lay Associate s17(3)	0	0	4	4
Prohibited employment s18	0	0	1	1
Disciplinary Action	33	7	0	40
<b>TOTAL</b>				<b>45</b>

\* Data provided by Administrative Decisions Tribunal

### T2 Outcomes of Tribunal Proceedings in 2009-2010\*

Outcome	Number
Reprimanded	13
Fined	9
Removed from roll	3
Conditions imposed on practising certificate	9
Practising Certificate cancelled	1
Practising Certificate suspended	1
Undertake and complete course of further Legal Education	5
Approval of lay associate: Application granted	2
Withdrawn	1
Compensation	1
<b>TOTAL</b>	<b>45</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. A number of matters have more than one outcome.

## **The Office of the Legal Services Commissioner**

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