



THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

2016-2017

ANNUAL REPORT



OFFICE OF THE LEGAL SERVICES COMMISSIONER

ORGANISATIONAL CHART

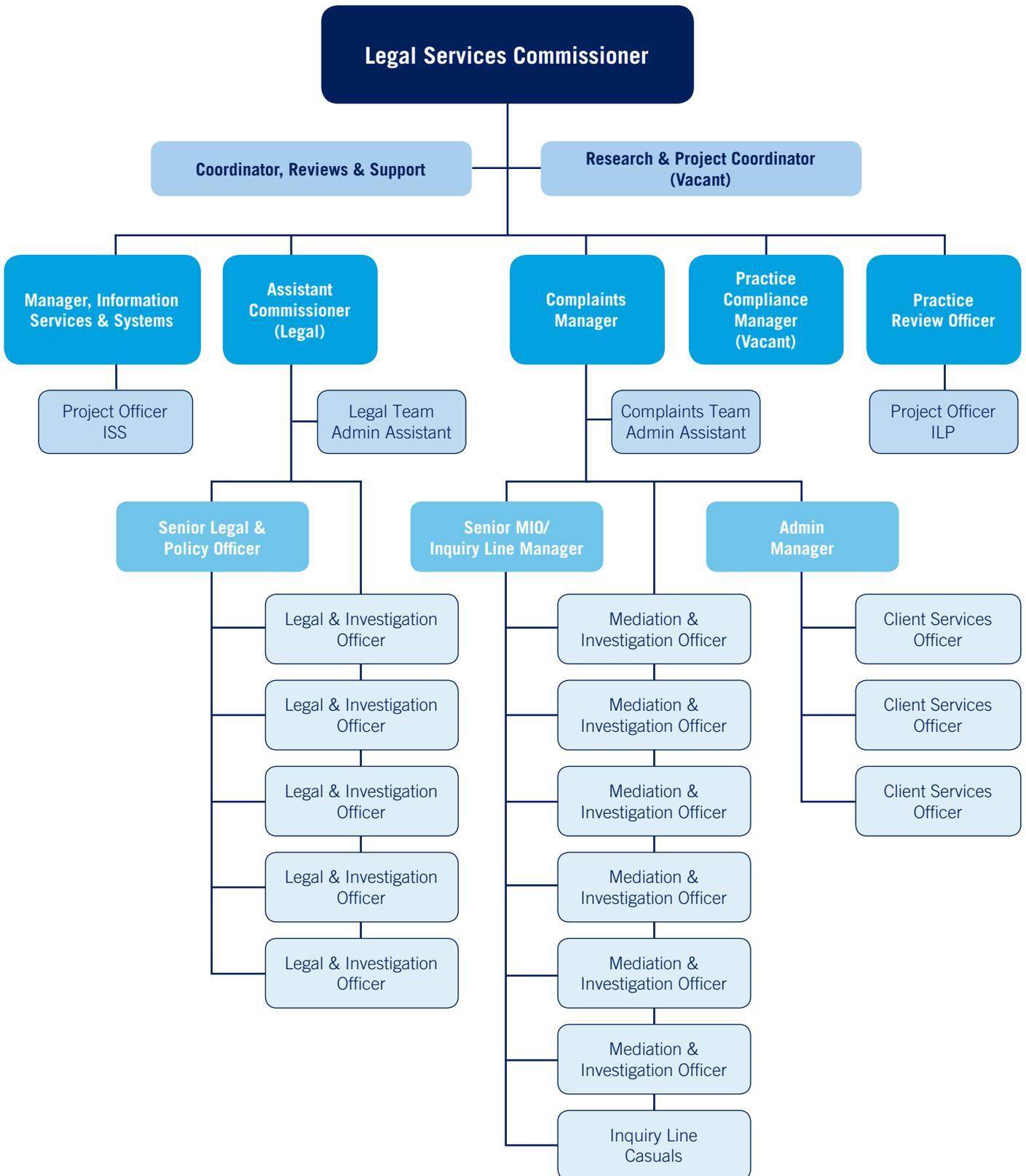


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Chapter 1

THE COMMISSIONER'S REPORT

1 July 2017 marked the second anniversary of the operation of the Legal Profession Uniform Law (LPUL) by which the regulation of the legal profession in both New South Wales and Victoria operates under the one piece of legislation. Whilst there has been no addition to the jurisdictions in Australia participating in this foundational initiative towards a truly national legal profession over this second year, good progress has been achieved in addressing the inconsistencies that have become apparent with the benefit of experience. It remains noteworthy that the two participating states account for 74% of the total number of practising lawyers in Australia.

I am pleased to report that the consultative and policy setting processes established under the LPUL have stood the test of the inevitable differing views on certain issues that arise when two jurisdictions join together after more than a century of independent development and precedent building. The ongoing success is testament to the good will and unwavering commitment of all involved. I especially commend the efforts of my two colleagues, Dale Boucher (Commissioner for Uniform Legal Services Regulation and CEO of the Legal Services Council) and Michael McGarvie (Victorian Legal Services Commissioner and Board CEO). All issues were addressed in a spirit of informed and robust debate, the outcomes of which have been adhered to and championed by all, including any whose views were not preferred in the end. Our two New South Wales based co-regulators, the Law Society of NSW and the NSW Bar Association, have been steadfast in their co-operation and openness to productive, regular communication.

An impressive foundation has already been built that will serve well all future additions to participating jurisdictions to the LPUL, as I remain confident will eventuate.

The operation of an organisation such as the Office of the Legal Services Commissioner (OLSC) is only possible with the consistent, diligent efforts of our staff members. The changes inherent in moving to a new governing act of parliament have been taken in their stride, with a minimum of disruption to the daily complaint handling that is the mainstay of our responsibilities. I am pleased that we have made impressive progress in addressing many of the issues highlighted in the review and report of the Nous Group undertaken last year. In particular, improvements have been endorsed by a subsequent staff survey in the following areas: clarity in the interpretation and implementation of our regulatory responsibilities; transparency in the allocation of higher duties and temporary roles; and consistent leadership by managers to achieve common goals. Further work is required in the better provision of workplace development opportunities to staff and appropriate remedial actions in the infrequent occurrences of under-performance.

There has been some turnover in staff holding pivotal positions, the most significant being the departure of Jim Milne on extended leave since December 2016. We lost several other staff members who each decided the time had come for a change. Presented with a number of vacant positions, we set in place a rotational scheme of interested staff members whilst recruitment processes proceeded as quickly as the departmental processes allow. Whilst less than optimal due to the lack of consistent leadership personnel, it has had the beneficial effect of allowing staff to try their hand at supervisory roles thereby spreading the load and widening the ranks of experience. Through all this, work has proceeded professionally, with marked improvement in consistent application of the legislative directives under which we work, albeit with some slight reduction in the rate of completion of complaint investigations.

During this year we have refined the details of our Project Brief for an overhaul of our Information Technology systems and signed off on it, together with the sign off from the relevant senior departmental officers. Whilst the required capital expenditure funding did not eventuate during the year, there are very good prospects that we will be able to build and install the new system in the first half of 2018. As reported last year, once the new system is up and running it will greatly improve our overall capabilities and especially our ability to report under the LPUL obligations.

We continue to conduct continuing professional development sessions with the legal profession in various locations, both urban and regional. This year we have concentrated on the role of legal ethics as they may be applicable in the ever-changing environment of digital technology and disruption. I believe that the fundamental and historical duties owed by lawyers to both the administration of justice, including the courts, and to their clients can effectively guide lawyers of today and tomorrow through whatever changes are presented by the rapid development of such technology. The importance of lawyers' judgement in the application of any analysis produced by the new technology and of the trust that develops between a lawyer and a client in what are often very high stakes situations for the clients, will only increase in my view. So as to be able to most effectively serve their clients' best interests within the over-riding context of safeguarding the system of justice, I believe that an improvement in the skill of communication, in all its facets, will be required by lawyers in the future. Together with regular up-dating in whatever I.T. capabilities arise relevant to the practice of law, more finely honed communication skills with clients, with courts and with colleagues will provide a sound foundation for the legal profession to adjust to and thrive upon the digital disruption already underway.

I do foreshadow attempts in the coming year to better address the need to provide access to relevant and understandable information on what members of the public can rightly expect of their lawyers. It is apparent that there is a degree of misconception amongst non-lawyers of what a lawyer should and should not do. I shall be approaching some agencies already in the business of providing information to the interested public to see how the OLSC might contribute to a better informed legal clientele.

John McKenzie

Legal Services Commissioner (NSW)

Chapter 2

INVESTIGATIONS AND DISCIPLINE

The Legal & Investigation Team deals with complaints in which disciplinary matters are raised.

A **disciplinary matter** is so much of a complaint about a lawyer or a law practice as would, if the conduct concerned were established, amount to unsatisfactory professional conduct or professional misconduct.

Disciplinary matters are investigated with evidence obtained from the complainant, the lawyer and, if required, from third parties such as independent witnesses or financial institutions.

At the conclusion of an investigation, a statutory test must be applied. For complaints made on or after 1 July 2015, the statutory test is contained in the *Legal Profession Uniform Law (NSW)* (LPUL).

If the Commissioner finds a lawyer has engaged in unsatisfactory professional conduct, he may determine the matter by making any of the orders specified in section 299 of the LPUL. Orders may include:

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

Alternatively, if the Commissioner is of the opinion that the conduct would be more appropriately dealt with by the Tribunal, he may initiate and prosecute disciplinary proceedings in the Occupational Division of the NSW Civil & Administrative Tribunal.

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

The Legal & Investigation team continues to investigate complaints that were made prior to 1 July 2015. For those complaints, the statutory test is found in the *Legal*

Profession Act 2004 (LPA). The LPA test requires that, in circumstances where there is no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct, were the matter to be referred to the Tribunal, the complaint must be dismissed. In circumstances where there is a reasonable likelihood of such a finding, the matter may be dealt with summarily by the Commissioner where there is a likelihood of a finding of unsatisfactory professional conduct, or referred to the Tribunal where there is a likelihood of a finding of professional misconduct.

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

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

The Legal & Investigation team experienced some staff shortages in the reporting year, with the Assistant Commissioner (Legal) on extended leave for most of the year. The Senior Legal & Policy Officer acted in the Assistant Commissioner (Legal) role, with Legal & Investigation Officers rostered to act in the Senior Legal & Policy Officer role. A permanent Assistant Commissioner (Legal) was appointed on 29 May 2017. Recruitment in the next reporting year should bring the team back up to full strength.

Determinations and disciplinary action

Table W6 reports on the determinations made, and disciplinary action taken, by the Commissioner in the reporting year. Disciplinary action is published on the Register of Disciplinary Action kept by the Commissioner and is available to access on the OLSC's website.

The Commissioner issued 4 reprimands, 21 cautions and ordered the lawyer to make an apology in 2 matters.

Reprimands were issued for overcharging, failing to comply with a notice issued by the Commissioner requiring the production of documents/written information and breach of duty to the Court.

The cautions related to isolated instances of:

- Failing to comply with Court orders
- Failing to appear at Court
- Breach of duty to the Court and the administration of justice
- Failing to pay barrister's fees
- Misleading conduct
- Delay
- Acting without instructions or otherwise without proper basis
- Acting in a conflict of interests
- Inappropriate communications with the Court or opponent
- Rudeness and discourtesy

The apologies were for acting in a conflict of interests and offensive language.

Disciplinary proceedings

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

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

- **Legal Services Commissioner v Miskell**
(22 July 2016)
The grounds of the Commissioner's application were failure to comply with a requirement to produce documents and/or provide written information, in breach of section 660 of the *Legal Profession Act 2004* and breach of Rule 43 of the *Solicitors' Rules* with respect to dealing with the regulatory authority. The Tribunal made findings of professional misconduct, reprimanded Mr Miskell, ordered him to pay the Commissioner's costs agreed in the sum of \$2,000, and noted an undertaking made by Mr Miskell.
- **Legal Services Commissioner v Harb**
(16 January 2017)
Mr Harb was found guilty of professional misconduct for failing to disclose the receipt of privileged and/or

confidential information, and failing to destroy and/or return privileged and/or confidential information.

The Tribunal ordered his name be removed from the roll of lawyers and that he pay the Commissioner's costs as agreed or assessed.

- **Legal Services Commissioner v Huggett**
(4 May 2017)
Mr Huggett was found guilty of professional misconduct for attempting to procure a falsely witnessed statutory declaration from his clients. He had sent his clients statutory declarations for execution (required for replacing a lost Certificate of Title) together with a pen and instructions on a post it note that the clients sign the statutory declarations "*in the marked places*" and that "*I will witness your signature when you return them & complete all the balance details – please send the same pen back*". The Tribunal found his behaviour lacked integrity. He was reprimanded, fined \$2,500, ordered to pay the LSC's costs and to undertake a professional education course in ethics and integrity.
- **Legal Services Commissioner v Potkonyak**
(17 May 2017)
Mr Potkonyak was found to have engaged in professional misconduct in approaching matters under the *Children and Young Persons (Care and Protection) Act 1998 (Care Act)* with a preconceived mindset, without any apparent concern for the underlying interests of the client, or the essential work carried out by the Children's Court under the *Care Act*, and for making scurrilous and ill-considered comments and unfounded criticism of judicial officers and fellow legal practitioners. The matter was listed for a "stage 2" hearing (for dispositive orders) on 22 August 2017.
- **Legal Services Commissioner v Paul**
(26 May 2017)
In 2009 Ms Paul, then a solicitor employed by the Office of the Director of Public Prosecutions (NSW) ("ODPP") had carriage of the criminal prosecution of a number of persons for conspiracy to murder. In 2010, the NSW Police sought an immunity from prosecution for one of the accused. The solicitor falsely stated several times to the NSW Police that the Director of the ODPP had supported the indemnity application and had forwarded it to the NSW Attorney General.

The Tribunal's view was that the timely and effective conduct of these serious criminal matters was likely to have been impacted by the solicitor's false statements, and that the false statements jeopardised the integrity of the DPP as a prosecutor and the wider criminal justice system. The Tribunal found Ms Paul's conduct constituted professional misconduct (both statutory and at common law) and ordered, by consent, that her name be removed from the roll of legal practitioners.

External reviews/appeals

- **Sadiq v Legal Services Commissioner**
(13 February 2017)

The Commissioner reported last year that Ms Sadiq had applied for a review of the Commissioner's decision to reprimand her for overcharging.

The matter was heard on 7 November 2016, and the Tribunal delivered its decision on 13 February 2017. The Tribunal set aside the decision of the Commissioner and dismissed the complaint against Ms Sadiq.

- **Russo v Legal Services Commissioner**
(8 November 2016)

The Commissioner reported last year on the matter of *Legal Services Commissioner v Russo*. Mr Russo had appealed the Tribunal's order for the removal of his name from the Supreme Court Roll of legal practitioners (but not the findings of professional misconduct and unsatisfactory professional conduct).

Mr Russo's appeal was allowed and the order made by the Tribunal set aside. In lieu thereof, an order was made that:

- Mr Russo be reprimanded in respect of his professional misconduct and unsatisfactory professional conduct as found by the Tribunal;
- a fine of \$20,000 be imposed.

Mr Russo was ordered to pay the Commissioner's costs of the appeal.

Internal reviews

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

The Commissioner declined to conduct an internal review in the majority of requests received in the reporting year, as on examination most sought to re-agitate issues that had been raised, and addressed, in dealing with the original complaint.

The Legal and Investigation team continues to deal with applications for review of decisions made by the Law Society of New South Wales and the New South Wales Bar Association under the *Legal Profession Act 2004*.

Policy development

The focus of policy development during the reporting year continued to be on interpretation and application of the LPUL, with the Legal and Investigation team providing input into Guidelines issued by the Legal Services Council and the Commissioner for Uniform Legal Services Regulation.

The team also perused and prepared comments on a draft Consultation Paper for Review of the Australian Solicitors' Conduct Rules, prepared by the Law Council of Australia.

The team continues to provide guidance and legal advice to senior managers and staff on the interpretation and application of the LPUL. The Assistant Commissioner (Legal) continues to attend regular meetings with the Director of Professional Standards at the Law Society of New South Wales and the Director of Professional Conduct at the New South Wales Bar Association, and to liaise with our Victorian counterparts.

Chapter 3

CONSUMER MATTERS AND CASE STUDIES

In the 2016-2017 reporting year, we received a total of 2,579 written complaints and registered the total completion of 2,333 written complaints.

Complaints may be characterised as containing either a consumer matter (including costs dispute) or a disciplinary matter, or both.

A **consumer matter** is so much of a complaint about a lawyer or a law practice as relates to the provision of legal services to the complainant by the lawyer or law practice and as the Commissioner determines should be resolved by the exercise of functions relating to consumer matters.

A **costs dispute** is a consumer matter involving a dispute about legal costs payable on a solicitor-client basis where the dispute is between a lawyer or law practice and a person who is charged with those legal costs or is liable to pay those legal costs (other than under a court or tribunal order for costs), whether as a client of the lawyer or law practice or as a third party payer.

OLSC must attempt to resolve a consumer matter by informal means. The Commissioner also has power to make a determination under Section 290 of the LPUL, if he is satisfied that it is fair and reasonable in all the circumstances, and/or a binding determination about costs.

This has been a year of consolidation for our complaints handling team as we refine our procedures under the *Legal Profession Uniform Law (NSW)* (LPUL).

Consumer matters and costs disputes

For the 2016 to 2017 reporting year, we received a total of 766 consumer matters and a total of 460 costs dispute complaints. 32 matters were not able to be characterised, generally owing to inadequate information being provided with the complaint.

This year, personal injury matters were the area of law most represented in consumer matters, followed by family/defacto, conveyancing, other civil matters, and criminal matters. The lowest was insolvency.

Once again this year, quality of service: negligence was the most common consumer matter, followed by:

- Communication: poor/no response
- Costs: overcharged
- Documents: failure to transfer
- Quality of Service: delay

The lowest was Compliance: failure to comply with Court orders.

The main areas of law the subject of cost disputes were related to family/defacto matters followed by:

- Commercial/corporations and conveyancing
- Other civil matters
- Personal injuries matters
- Probate/family provisions

It is perhaps indicative of the uncertainties inherent in family law matters that disputes in relation to costs arise, however it may also be a message to those who work in this often difficult area, that more care should be taken in relation to costs disclosure and ensuring that clients remain aware of increases in costs as matters progress.

Our role

In many cases this year our Mediation and Investigation Officers were able to supply additional information to complainants that had not previously been made available to them by their lawyers. Whilst the provision of additional information may not always resolve all of the complainant's concerns, it can assist their understanding of why events may have occurred. As noted above, again this year a not insignificant number of consumer matters related to a perceived failure of communication. In some instances a client may have unreasonable expectations of the level of contact they will have with their lawyer, in other instances lawyers fail to provide a basic level of communication or fail to properly explain events to their clients.

For the 2016 to 2017 reporting year, more than half of the consumer matters received were either resolved or closed. Where a matter is closed, an explanation is generally provided, although in some instances matters must be closed as the complainant has failed to provide necessary information to deal with the complaint. A small number of consumer matters were closed as not able to be resolved or were outside our jurisdiction. Consumer matters that are resolved may include matters where documents have been transferred, an apology has been offered or legal work has been redone to the satisfaction of the complainant, following the involvement of the OLSC.

This year nearly half of the costs disputes received were either closed or resolved with the remainder either remaining open, not resolved or closed as not within our jurisdiction. Complainants may be referred to the Costs Assessment Scheme operated at the Supreme Court in circumstances where the totality of the costs involved, or the amount in dispute, may exceed the limits of the OLSC's jurisdiction.

We have, on a number of occasions this reporting year, had cause to write to lawyers noting inadequacies in their costs disclosure documents which may still refer to the provisions of the Legal Profession Act 2004 (LPA), or fail to provide clients with a single figure estimate of costs as required under the LPUL.

Under the LPUL, consumer matters are defined as relating to the provision of legal services to the complainant. Costs disputes must relate to a person who is liable to pay the legal costs, (other than under a Court or Tribunal order for costs). Owing to these requirements, we now have limited jurisdiction in dealing with complaints by third parties such as beneficiaries and opposing parties. Complaints previously classified as consumer disputes in these instances must generally now be considered as disciplinary matters. The great majority of these complaints are ultimately dismissed, particularly complaints about lawyers acting on the 'other side', which are often simply motivated by a misunderstanding of a lawyer's role and duty when representing an opposing party.

Personal circumstances

The law can be stressful both for clients who find themselves in a strange and complicated environment, and for lawyers who are generally working to deadlines, often in highly pressured circumstances.

We acknowledge these difficulties when dealing with complaints. We encourage lawyers in trouble to seek help and we try to limit any resulting consequences suffered by clients.

It is important that lawyers who may be struggling to cope are aware of the existence of the Lawyers Assistance Program at the Law Society New South Wales, practice management assistance and external counselling.

Obviously receipt of a complaint may exacerbate the stress of practice. It is pleasing that the majority of lawyers contacted by the OLSC take a professional and often proactive approach to resolution of complaints.

INQUIRY LINE REPORT 2016-2017

Our Inquiry Line is often the first point of contact for members of the public with us.

Our Inquiry Line staff provides callers with information about our role and powers, the complaint process, suggestions for potential avenues of resolution of their dispute, and referral to other organisations where appropriate. In some instances all that is required is to equip a caller with further information about how to pursue concerns directly with their lawyer. Other calls will ultimately lead to a formal written complaint against a solicitor or barrister.

In the 2016-2017 reporting year, 6,078 calls were made on the OLSC Inquiry Line.

Callers to the Inquiry Line are invited to participate in a feedback survey to assist in maintaining and improving our level of service. 671 survey forms were sent to callers who indicated their interest in being part of the OLSC feedback loop in this financial year. Of these 671 surveys sent, 15 were returned to sender (2.2%), with 84 surveys completed and sent back to the OLSC for analysis (12.5%).

Overall, results were extremely positive about the service we provide with 61.9% of callers responding they would recommend us to a friend/relative, 69% of respondents agreeing that the information they received was helpful and/or useful and 83.4% of respondents agreeing that staff handling the call treated them in a courteous and professional manner.

For this 2016-2017 reporting year Inquiry Line Survey 23.8% of respondents identified as living with a disability and 10.8% did not identify English as the main language spoken in the home.

The information gathered through the survey is an invaluable measure of our performance and a guide to where improvements can be made.

In addition, further training is being offered to Inquiry Line staff, including visits to other related agencies, with a view to enhancing the quality of this 'front-line' service.

Assistance for complainants with a special need or disability in the writing of their complaints to the OLSC

We offer assistance to those complainants with special needs or disabilities in the completion of their written complaints to this office.

There are some in the community who require this assistance due to language barriers or social dislocation, for example those with English as a second language, or those from a non-English speaking background.

Assistance is also available to complainants who are from an Aboriginal or Torres Strait Islander background.

Other reasons for this assistance may include that complainants are living with a mental health or intellectual issue, a physical disability or are frail/aged with no family or other supports in the community.

The complaints are written in the complainant's own words and provided to the complainant for their perusal and any additions or amendments prior to the complainant signing and returning their complaint to this office for assessment.

During the reporting year, 66 people with either special needs or with a disability have been assisted either by telephone or in face to face interviews.

When discussing their complaints complainants may reveal vulnerabilities other than those of a legal nature and are referred to other Government Departments and non-Government Departments and organisations that may be able to assist them further.

Case Study 1

The lawyer was instructed to act on a purchase of an "off the plan" strata unit.

Contracts were exchanged on 5 June 2013 and the property settled on 20 November 2015.

One of the amendments to the Contract for sale was Clause 31(b)(iii) that provided:

Clause 2.9: this clause is deleted and replaced with:

*If the Vendor instructs the depositholder to do so (which is an absolute right and at the discretion of the Vendor), the depositholder must invest the Deposit (at the risk of the parties who become entitled to it) with a Bank in an interest bearing account in Australia with interest to be reinvested. Interest earned on the investment of the Deposit **belongs to the Vendor** unless this Contract is rescinded by the Purchaser as a consequence of a default by the Vendor in which case half of the interest belongs to the Purchaser and the other half belongs to the Vendor".*

Clause 2.9 ordinarily provides:

*If each party tells the depositholder that the deposit is to be invested, the depositholder is to invest the deposit (at the risk of the party who becomes entitled to it) with a bank, credit union or permanent building society, in an interest bearing account in NSW, payable at call, with interest to be reinvested and pay the interest **to the parties equally**, after deduction of all property government taxes and financial institution charges and other charges.*

The client complained after settlement because she alleged the lawyer failed to advise her about Clause 31(b)(iii) under which she was not entitled to any interest. She suggested that had he done so, she would have been in a position to negotiate with the Vendor to receive interest because she says that other purchasers of that strata plan were able to do so.

In support of her position, she provided an email that suggested that the lawyer was unaware of Clause 31(b)(iii).

The complainant sought to receive at least half the interest that had accrued.

Following lengthy negotiations through OLSC, the lawyer offered \$1000, representing just over half of the half share of the total interest, which the complainant ultimately accepted.

Case Study 2

The complainant engaged the services of the lawyer to assist him in a Workers Compensation Claim. However, after six years the complainant became dissatisfied with the service provided and engaged the services of a new firm to assist him in this regard.

The complainant's new lawyer requested the complainant's file by email dated 13 December 2016. At the time of making the complaint to OLSC on 11 April 2017, the complainant had not received his file despite numerous follow up requests via email and telephone.

The OLSC wrote to the new lawyer on 19 April 2017 attempting informal resolution to resolve the dispute. We received a response on 18 May 2017 advising that the file had been transferred to the complainant's new firm on 27 April 2017.

Case Study 3

The complainant engaged the services of the lawyer to assist him in a family law matter which settled on 20 September 2016. He says he was advised verbally by the lawyer that his file was closed however he was able to leave money in the Trust Account which would be available if he needed the lawyer's assistance at a later date to assist with potential divorce proceedings.

On 8 February 2017 the complainant received a letter from the lawyer reminding him of his obligations under the orders made in September 2016 and noting they had been unsuccessful in contacting him to enquire if he required any further legal assistance.

The complainant then received an invoice dated 10 February 2017 for \$181.50 for work carried out drafting and sending this letter.

In his complaint, the complainant disputed the bill on the basis that he believed the file was closed and he did not authorise any further work to be carried out on the matter. The complainant sought a refund of \$124.52 that was taken from the Trust Account in payment of this invoice.

Following informal resolution with assistance from OLSC an agreement was reached between the complainant and the lawyer to refund the complainant the sum of \$124.52.

Case Study 4

The complainant sought to dispute the costs of the respondent law firm. They had paid an initial consultation fee of \$300.00, and subsequently put \$4,500.00 into trust. Professional fees totalling \$2,858.98 were charged and withdrawn from trust. The complainant alleged that they had been overcharged \$1,154.48. They also alleged that they were misled regarding the sending of a letter to the other party to the matter, and had their request to be provided a copy of the draft affidavit prepared for their matter refused. The respondent offered to resolve the matter by refunding \$155.00, returning all remaining funds held in trust (being \$1,641.02), and providing a copy of the draft affidavit. The complainant accepted the offer provided all documents held by the respondent be transferred to their new lawyer.

Case Study 5

The complainant acted as the Executor of his late father's estate. The respondent lawyer held the will on behalf of the father. The complainant initially requested a final bill for any outstanding fees owed by the estate for work done on his father's behalf. He also requested an estimate of fees to obtain probate and administer the estate. A costs agreement was provided on 30 May 2016. The complainant declined to engage the firm and requested all documents held be provided to him. An invoice was provided on 2 June 2016 totalling \$891.00 on account of services provided to the complainant's late father in 2014. In October 2016 two "draft invoices" were provided to the complainant. In November 2016 correspondence was sent enclosing two invoices. The first totalling \$891.00 as previously provided, the second totalling \$1,471.58 for services provided to the estate including \$712.50 for drafting a standard form costs disclosure that incorrectly referred to the *Legal Profession Act 2004* (NSW). Neither bill provided notification of the clients' rights as required by section 192 of the LPUL. The lawyer was asked to provide documentary proof to support work done on behalf of the father, and also to provide their view as to whether the charges made to the estate totalling \$1,471.58 were fair and reasonable in the circumstances with a view to the Commissioner considering making a determination pursuant to sections 290 and 292. In response the lawyer offered to waive all outstanding fees to resolve the matter, which was accepted by the complainant. The lawyer was reminded to update their costs disclosure to reflect the change in legislation and to comply with the notification requirements under section 192 of the LPUL.

Chapter 4

COMPLIANCE AUDITS

Between July 2016 and May 2017, the Practice Review Officer conducted 5 on-site compliance audits. These audits included practices in the CBD, the outer suburbs of Sydney and country NSW. One audit was a follow-up, one day audit, the other four audits were conducted over a two-day period and included staff interviews and file reviews. One audit led to Management System Directions being issued because insufficient progress had been made in relation to the issues raised in the Compliance Audit Report. Three months later, the principal of the law practice provided a periodic report as required by the Directions. The periodic report satisfied the Commissioner that appropriate steps had been taken to address the issues raised in the Report and the audit process was concluded.

One audit raised an interesting legal issue.

At the end of the audit the Practice Review Officer prepared the Compliance Audit Report. As is normally the case, a copy of the Report was forwarded to the principals of the law practice. This is usually done so that the law practice that has been audited can check the Report for basic mistakes. Once the law practice has provided any comments, the Report is sent to the Law Society of New South Wales pursuant to section 256(3).

In this case, the principals responded with a number of comments about the Report. The principals wanted the Practice Review Officer to amend the Report in line with their comments to such a large extent that the original meaning of the Report would be altered. The Practice Review Officer declined to make such changes to the Report. Subsequently, the principals indicated that they found the Report to be defamatory and suggested that they would consider commencing defamation proceedings.

Initially, it was considered that the staff at the OLSC had the statutory defence of absolute privilege available to them by virtue of the provisions in the *Defamation Act 2005*. However, on closer inspection, that is not in fact the case. The compliance audit function comes within Chapter 4 of the LPUL. Schedule 1, clause 18 of the *Defamation Act 2005* only refers to Chapters 2, 3 and 5 of the LPUL.

Clearly an important aspect of the compliance audit function is the ability to write a frank report noting any areas of non-compliance which in turn may lead to management system directions being issued. This function may be seriously undermined if law practices can object to statements made about areas of non-compliance because they consider them to be defamatory.

Consequently, the Commissioner is considering bringing these issues to the attention of Parliament so that changes to the legislation can be made such that Compliance Audit Reports also attract the defence of absolute privilege.

Chapter 5

THE OLSC AND THE COMMUNITY

The Legal Profession Uniform Law (LPUL) sets out the legislative requirements for the operation of the OLSC and the Commissioner sees education as an important part of the OLSC's objectives. The focus of the Commissioner and his staff is to continue to engage and strengthen relationships with associated educators and raise awareness of the roles, functions and services provided by the OLSC.

Legal conferences

Throughout 2016-2017 the Commissioner and his staff attended various legal conferences and events that play an important role in continual developments and challenges for regulators of the legal profession.

In May 2017, the Commissioner and Samantha Gulliver, the Assistant Commissioner (Legal) (then acting) co-presented a session to Lawcover Claims lawyers and other Lawcover staff on how the OLSC deals with complaints alleging negligence and the determinations the Commissioner can now make under LPUL with a specific focus on compensation orders in consumer matters.

In October 2016, the Commissioner, the Assistant Commissioner (Legal), Samantha Gulliver (previously acting) and the Complaints Manager (previously Assistant Commissioner (Complaints)) Jim Milne attended the Conference of Regulatory Officers (CORO). CORO was hosted by the Law Society of the Australian Capital Territory in Canberra and held on 20 and 21 October 2016 in Canberra.

CORO is an annual event that provides a forum for all regulators of the legal profession in Australia and other interested parties to meet to discuss the developments that have occurred in the various jurisdictions. CORO encourages discussion for the exchange of ideas, opinions and information that the legal profession faces in an ever changing environment.

The Commissioner was a co-speaker on the session LPUL in Operation. He also gave an update for New South Wales about the implications of the LPUL in the

day to day running of legal practices during the State by State Roundup session.

The Commissioner extended an invitation to all staff interested in attending CORO to register their expression of interest. This was the first time staff had ever been given the opportunity of attending CORO and there was much interest from case officers. Six case officers were selected to attend CORO. CORO is seen as a very productive and informative event. It is an excellent forum by which the OLSC staff can network with other regulatory staff. One of the important benefits gained by OLSC staff was their liaison, interaction and discussion with other regulatory staff as to the differing approaches taken to matters by the various jurisdictions within the regulatory framework.

Louise Baber, the acting Practice Review Officer, participated in a panel discussing how regulators can use the wealth of data and information they obtain to not only positively influence the behaviours of those they regulate, but also to improve their own management systems and performance as regulators.

CORO also provided an opportunity for staff to discuss the different approaches, perspectives and ideas by the various jurisdictions in relation to professional disciplinary matters. Comments from staff members who attended the 2016 CORO include:

"It was one of the highlights of my career. It was both informative and interesting and provided an excellent opportunity to network with other regulatory authorities from around the country. The subject matter was relevant to my daily work life and helped provide me with the tools I require when dealing with complaints about the legal profession."

"The conference featured very interesting presentations covering issues such as changing legal business structures and cyber security challenges for firms, to practical presentations relating to mental health issues within the profession and unreasonable complainant behaviour in the regulatory environment."

“The opportunity to meet and compare notes with regulators operating in other States was exceptionally valuable.”

“The focus on the practical process of complaint management meant the presentations were relevant and applicable to the roles of our staff.”

As a result of the positive feedback from staff who attended the 2016 CORO, the Commissioner will again invite staff to submit an expression of interest to attend CORO in 2017.

Events

In December 2016, the Commissioner attended the Melbourne Law School Legal Service Forum in Melbourne where the challenges and opportunities the legal profession faces in the next decades of the 21st century were debated. This was a very interesting forum as legal regulators are also facing major challenges in the way they regulate lawyers in an ever changing technological market.

The Commissioner has, for the third year running, participated in the Australian National University College of Law, One day Ethics Roundtable. This year’s roundtable discussion was on reimagining lawyer regulation in light of the realities of practice. These roundtables are an interactive forum of interest to regulators, researchers, academic teachers and lawyers.

The Commissioner met with a visiting Law Professor from Santa Clara University in California and a group of Undergraduates in May 2017. The Undergraduates had completed one year of their post graduate degree and were very interested in learning about the workings of the regulatory system in New South Wales.

In May 2017, the Commissioner attended the 2017 Golden Gavel Competition as a special guest of the NSW Young Lawyers. These events are fun and the Commissioner is very optimistic about the next generation of lawyers, as they are enthusiastic and knowledgeable.

The Commissioner also participated on various government and university panels during 2016/2017. He believes that there are unique benefits of being a panel member in a collegiate environment with specialists who have a strong knowledge base in the legal training and regulatory area. Panels he participated in during the financial year were:

- Public Interest Lawyers Panel at Kingsford Legal Centre, UNSW: where students were given an insight

into how staff deal with complaints about lawyers and how lawyers can avoid a complaint being made about them

- Law Society of New South Wales’ 2016 Government Solicitors Conference: facilitated a panel discussion on how to navigate various agencies’ complaints frameworks
- Australian Academy of Law: discussing ethics in the practice of law: a profession, a business or both?

Legal education

During this financial year, the Commissioner talked to participants attending Continuing Professional Development on a range of topics covering ethics for solicitors under the LPUL including: the Uniform Law so far: Tips on how to avoid complaints; The impact of technology on ethics for lawyers, legal ethics: what are they today, and a discussion of legal ethics in the world of digital disruptors. Some of the organisations attended were:

- Carroll & O’Dea Law Firm
- Southern Cross University
- Marsdens Law Group
- University of New South Wales
- Holding Redlich Law Firm
- College of Law
- Toongabbie Legal Centre
- Banki Haddock Fiora in collaboration with the College of Law
- Law Society of New South Wales

In March 2017, the Commissioner presented a session at a Law Society of New South Wales, CPD sole practitioners one day workshop to raise awareness of the danger zones and professional responsibilities for sole practitioners.

The Commissioner continued to visit regional Law Society seminars and workshops throughout 2016/2017 including:

- Central Coast Law Society
- The Newcastle Law Society
- City of Sydney Law Society

The Commissioner sees his involvement as key to the continued support and development of suburban and especially regional lawyers as they work in remote areas and often only meet once or twice a year.

During 2016/2017, the Commissioner was invited to participate in professional development seminars and workshops for practising lawyers in both private practice and government. The Commissioner's sessions were tailored to benefit lawyers in sole practice, government organisations and Royal Commissions in the strengthening of their knowledge of ethics in the practice of law and their obligations under the LPUL.

The Commissioner also delivered a guest lecture to the in-house legal staff at the Family & Community Services Legal Conference.

Following the success of the Commissioner's session at the 2016 in-house professional development training program at the Royal Commission into Institutional Responses to Child Sexual Abuse, an invitation was again extended to him. The Commissioner was pleased to revisit and to continue to be engaged with lawyers at the Royal Commission.

During 2016-2017, the Commissioner, having an extensive career in criminal law, was invited by LegalAid NSW to present at several of their CPD conferences both in the city and regional areas. Most notably, the Commissioner was also invited to present a session to delegates at the Lismore Legal Aid Criminal Law Conference.

In November 2016, the Commissioner, in conjunction with Legal Aid NSW staff, presented a session at the LegalAid NSW Private Practitioner Seminar in Tamworth and Armidale. The Commissioner spoke to lawyers working in the North & North West region of New South Wales on a wide range of topics ranging from ethics, lawyer responsibilities and conflict of interests which so often can occur in regional areas.

Staff training

In 2016/2017, fifteen Lunch and Learn seminars were organised for OLSC staff. These Lunch and Learn seminars covered a broad range of subject areas of interest to staff, for example:

- Senior Rights Service
- NSW Trustee and Guardian
- E-conveyancing
- Legal Information Access Centre (LIAC)
- Trust Accounts – Law Society of New South Wales
- Practical Aspects of Advocacy
- Ethics

In May 2017, all staff were involved in a half day How to Stay Well at Work seminar. Working in a regulatory environment can be stressful as staff are dealing with people who are unhappy with the work their lawyer has done or not done for them. The facilitator was very experienced in working within the legal profession and the skills and techniques gained by staff enhance the already supportive work environment for all our staff.

A number of staff, including Inquiry Line staff, attended an internal open day at LawAccess NSW. Staff found this visit to be a very constructive and informative session as it gave them a much better understanding of LawAccess processes and what they can do and cannot do. The visit has enhanced the relationship between our respective offices to work constructively with each other to ensure the community are better informed and guided in general legal issues.

In March 2017, staff also had the opportunity of updating their knowledge with the latest developments in terms of the Harman obligation in relation to the production and use of documents.

Staff also attended training in March 2017 in relation to the Commissioner's internal review powers under the Uniform Law, including the application and implementation of policies and procedures with respect to these powers.

Samantha Gulliver, the Assistant Commissioner (Legal) (then acting) presented a refresher session to staff on costs under the LPUL in July 2016. The session highlighted the key provisions and the important changes under the LPUL legislative framework covering disclosure, billing and recovery of legal costs and an overview of the costs assessment process. These sessions are an important aspect of our in-house training program to ensure staff are kept up to date with legislative changes.

Participation in the Elder Law Committee

A staff member was privileged to be accepted on to the Law Society Elder Law Committee. Many interesting and topical subjects have been discussed by this Committee including the Australian Law Reform Commission's Elder Abuse Discussion Paper, the NSW Inquiry into Elder Abuse, the NSW Law Reform Commission review of the *Guardianship Act 1987*, issues relating to Powers of Attorney, intestacy, retirement villages and capacity.

Chapter 6

INFORMATION SYSTEMS AND SERVICES

The Information Services and Systems unit continues to maintain the various databases presently being used by staff to ensure all in-house systems are functional and operational to safeguard the input of correct data.

Quality Systems Manual

Work continued on reviewing and updating the Quality Systems Manual and its various modules in the reporting year. Regular updating of our Quality Systems Manual ensures that consistent, reliable, relevant and current information is always available to staff.

Data sharing

Following successful implementation of Stage 1 of the data sharing project, attention turned to developing Stage 2 in January 2017. As part of the initial scoping for Stage 2, a round table meeting was held, chaired by the Commissioner for Uniform Legal Services Regulation. Representatives from OLSC, the Law Society of NSW, the NSW Bar Association and the Legal Profession Admission Board in NSW attended as well as the Victorian Legal Services Board + Commissioner, Victorian Legal Admissions Board and Law Institute in Victoria.

It was noted how each organisation could contribute to the data required to fulfil the project objectives. These objectives were identified as being:

1. To collect, integrate, analyse and report on data provided by the local regulatory authorities in respect of Chapters 2, 3, 4, 6 and 7 of the LPUL to monitor how the legislation is operating against key objectives set out in sections 394(2) and 398(2); and
2. To expand and improve the analytics and reports on Chapter 5 from stage 1 and introduce enhanced error checking during data loading.

The main contributors in NSW to Stage 2 of the project will be the Admission Board, the Law Society of NSW and the NSW Bar Association. The OLSC will continue to provide data in relation to complaints relating to costs and costs disclosure. Stage 2 also includes the compliance audit function which is operated by the OLSC in NSW. Information relating to compliance audits conducted by the OLSC will be provided to the Commissioner for Uniform Legal Services Regulation.

Stage 2 of the project has also seen the start of a public, online Australian Legal Profession Register. It is envisaged that there will be two “settings”, namely one for public access and one for regulator-only access. This will enable both members of the public and regulators to gain access to information about lawyers in Victoria and NSW more easily. A legal opinion is being sought in relation to the privacy legislation in each State to assist with identifying the level of detail to be included in both “settings”.

The year ahead

As at the reporting date, we are still awaiting funding approval for the OLSC’s new case management system which will streamline and digitise our existing systems into a comprehensive single platform. The Commissioner continues to liaise with the Department’s IT project team and it is hoped that funding will be approved soon. We will report further on this next year.

Callers after being assisted by staff on our Inquiry Line service are invited to participate in the OLSC’s Inquiry Line Survey. This survey has been in use for a number of years and it is now time for it to be reviewed. We are looking at simplifying the survey by making it more streamlined and user-friendly. We will report back next year on the new Inquiry Line Survey.

Chapter 7

ANNUAL STATISTICS

Inquiry Line

In 2016-2017 financial year 6,078 calls were made to the OLSC Inquiry Line, a decrease of 1,291 from the previous year.

P1 Legal matters raised in calls

	2016-2017	2015-2016	2014-2015
OLSC General Query*	16.9	18.6	14.9
Family/ Defacto	13.1	14.9	14.9
Other Civil	12.7	10.0	9.0
Probate/ Wills/ Family Provisions	12.3	12.1	11.1
General Law/ Legal Profession Query	10.3	5.7	8.2
Conveyancing	9.2	8.9	9.9
Personal Injuries	5.4	5.3	5.1
Criminal	4.2	5.5	4.5
Other	3.9	4.3	4.6
Commercial/ Corporations	3.6	4.3	4.7
Workers Compensation	2.6	2.7	3.7
Land and Environment	1.8	2.3	4.4
Leases/ Mortgages/ Franchises	1.5	2.1	1.1
Immigration	0.8	0.8	0.9
Industrial law	0.8	0.9	0.7
Victim's Compensation	0.7	1.2	1.0
Professional Negligence	0.4	0.6	0.6

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

P2 Nature of phone enquiry

	2016-2017	2015-2016	2014-2015
OLSC Process*	14.4	13.9	18.0
Communication	13.2	12.5	15.5
Overcharging	12.2	13.6	13.0
Negligence	12.1	10.1	10.2
Ethical matters	9.6	10.5	5.4
General cost complaint/query	9.6	8.1	8.0
Delay	5.5	7.0	6.7
Misleading conduct	5.2	4.7	5.2
Instructions not followed	4.6	4.9	4.6
Costs disclosure	3.5	4.3	3.6
Conflict of interests	2.4	2.4	2.6
Document transfer/ liens	2.2	2.2	2.1
Trust fund matters	1.6	1.5	1.1
Referral requests	1.1	1.6	1.4
Fraud (not trust fund)	0.9	0.8	0.4
Document handling	0.7	0.7	0.7
Pressure to settle	0.6	0.6	0.7
Failure to honour undertakings	0.1	0.1	0.3
Compliance matters	0.1	0.1	0.2
Advertising	0.1	0.2	0.1
Supervision	0.1	0.2	0.1

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

P3 Practitioners mentioned on inquiry line

	2016-2017	2015-2016	2014-2015
Solicitor	93.0	92.2	91.0
Other*	4.9	5.5	6.6
Barrister	1.8	2.0	2.0
Licensed Conveyancer	0.3	0.3	0.4

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

P4 Source of calls to the OLSC inquiry line

	2016-2017	2015-2016	2014-2015
Client	66.5	66.6	67.7
Opposing client	7.8	6.7	6.4
Friend/relative	6.0	8.3	9.2
Beneficiary/executor/administrator	3.7	2.9	2.6
Other*	3.7	3.4	3.3
Solicitor on own behalf	3.5	3.5	2.7
Previous client	3.0	2.2	1.3
Unrepresented client	3.0	3.2	2.9
Solicitor on another's behalf	1.6	1.7	2.2
Non-legal service provider	0.7	0.8	1.1
Barrister on own behalf	0.2	0.3	0.2
Student/ Educator	0.2	0.2	0.1
Barrister on another's behalf	0.1	0.1	0.2
Government Agency	0.1	0.1	0.2

* *Other: includes calls relating to Witnesses, Judges/ Judicial Officers, Government Agency, Student/ educator & Non-identified source of calls.*

P5 Outcomes of calls to the inquiry line

	2016-2017	2015-2016	2014-2015
Caller indicated intention to send in complaint	25.6	25.6	30.5
Provided information about the OLSC*	23.9	19.1	18.7
Listened to caller's concerns	15.7	14.3	11.5
Recommended direct approach to lawyer about concerns	10.0	13.8	9.7
Provided information about the legal system	7.2	8.2	7.3
Provided referral for legal advice or other assistance	6.8	6.3	6.9
Provided complaint/ cost mediation form	4.2	7.0	7.4
Explained that concerns are outside jurisdiction of OLSC	3.0	2.9	4.0
Provided information about the OLSC and LPA to a legal practitioner	1.0	1.2	2.0
Provided referral to the NSW Supreme Court Costs Assessment Scheme	0.8	0.9	1.5
Other	0.4	0.6	0.4
Scheduled interview for caller	0.1	0.1	0.1
Conducted telephone mediation	0.0	0.0	0.2

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

Written complaints

Please note the *Legal Profession Uniform Law (NSW)* applies to complaints made on or after 1 July 2015. This Office also continues to deal with complaints made under the *Legal Profession Act 2004*.

In 2016-2017 the OLSC **received** a total of 2,579 written complaints, a decrease of 130 from the previous year. Of the total written complaints received, 1,229 were assessed as consumer matters and 1,318 as disciplinary matters. On receipt 32 complaints could not be classified as a consumer matter or disciplinary matter. Of those complaints assessed as within jurisdiction, 74.8% of those written complaints received were retained and handled by the OLSC. The remaining 25.2% were referred to the professional associations for handling.

The OLSC registered the **completion** of 2,333 written complaints, a decrease of 165 from the previous year. Of the total written complaints completed, 258 complaints were resolved following informal resolution, 86 complaints were determined by OLSC/ Council and 1,854 complaints were closed. 135 complaints were closed on the basis OLSC had no power to deal with them and/ or were sent directly to NSW Police, MARA, OFT or regulators outside NSW. Of those complaints assessed as within jurisdiction, 79.1% of written complaints were completed by the OLSC. The professional associations completed the remaining 20.9%.

W1 Legal matters giving rise to complaints received in 2016-2017

	Agency Handling Complaint				
	OLSC	Council	2016-2017*	2015-2016	2014-2015
Family/ Defacto	15.9	3.0	18.9	17.8	17.0
Other Civil	9.2	7.9	17.1	14.0	12.7
Personal Injuries	10.4	1.7	12.1	11.8	8.8
Probate/ Family Provisions	7.2	1.6	8.8	12.0	12.7
Commercial/ Corporations	5.7	3.1	8.8	9.2	10.9
Conveyancing	7.2	1.6	8.8	10.1	10.1
Criminal	5.9	2.2	8.1	6.6	8.0
Wills/ Power of Attorney	2.9	0.4	3.4	-	-
Industrial law	2.4	0.9	2.8	2.8	2.6
Workers Compensation	1.8	0.3	2.2	2.0	1.2
Leases/ Mortgages/ Franchises	1.6	0.4	2.0	1.4	1.4
Strata bodies/ corporates	1.5	0.3	1.8	1.4	1.8
Immigration	1.2	0.3	1.5	0.7	1.5
Land and environment	0.8	0.5	1.3	0.5	0.7
Professional Negligence	0.3	0.4	0.7	1.2	1.3
Insolvency	0.3	0.2	0.5	-	-
Building Law	0.2	0.2	0.4	-	-
Victim's Compensation	0.3	0.1	0.4	0.2	0.1
TOTAL %	74.8	25.1			

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

W2 Nature of complaints received in 2016-2017

	Agency Handling Complaint				
	OLSC	Council	2016-2017*	2015-2016	2014-2015
Negligence	14.6	3.5	18.2	15.3	17.7
Communication	12.3	2.7	15.0	15.0	15.5
Overcharging	12.8	1.3	14.1	13.9	11.5
Ethical Matters	5.0	3.7	8.7	9.0	10.1
Misleading Conduct	3.6	4.1	7.7	10.3	8.1
Cost Disclosure	4.7	0.6	5.3	5.2	4.4
General Cost Complaint/ Query	3.9	1.1	5.0	4.3	5.1
Instructions Not Followed	3.7	1.3	5.0	5.7	5.9
Trust Fund	2.0	2.2	4.2	4.8	4.3
Delay	3.6	0.4	4.0	4.7	5.2
Document Transfer/ Liens	2.9	0.3	3.2	2.8	2.3
Conflict of Interest	1.9	0.9	2.8	2.6	2.6
Compliance Matters	0.6	1.5	2.1	1.5	2.4
Fraud (Not Trust Fund)	0.8	0.5	1.3	1.0	1.1
Pressure to Settle	0.9	0.1	1.2	0.8	1.0
Document Handling	0.5	0.2	0.7	0.7	0.9
Undertakings	0.2	0.5	0.7	0.6	0.4
Capacity	0.4	0.2	0.6	1.2	0.6
Supervision	0.3	0.3	0.3	0.1	0.2
Advertising	0.1	-	0.1	0.3	0.5
TOTAL %	74.8	25.4			

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

W3 Type and source of complaints received in 2016-2017

	Number of Complaints						
	Solicitor*	Barrister	Other**	TOTAL	2016-2017	2015-2016	2014-2015
Client	1054	61	14	1129	43.8	28.1	23.1
Opposing client	430	24	7	461	17.9	20.2	16.4
Previous client	244	8	3	255	9.9	21.7	25.1
Solicitor on another's behalf	133	8	3	144	5.6	4.3	6.1
Other ***	109	10	3	122	4.7	5.5	4.7
Beneficiary/ Executor/ Administrator	102	2	0	104	4.0	5.0	6.3
Law Society	92	0	0	92	3.6	1.8	3.4
Solicitor on own behalf	77	6	0	83	3.2	4.3	4.5
Client's friend / relative	70	5	0	75	2.9	4.1	3.9
Non-legal service provider	31	0	1	32	1.2	1.3	2.0
Barrister on own behalf	26	4	1	31	1.2	1.1	0.9
Commissioner	15	1	0	16	0.6	1.4	1.5
Unrepresented client	14	1	0	15	0.6	0.7	1.7
Bar Association	0	9	1	10	0.4	0.2	0.4
Barrister on another's behalf	6	2	1	9	0.3	0.0	0.0
Cost Assessor	1	0	0	1	0.0	0.1	0.2
TOTAL	2404	141	34	2579			

* Includes former solicitors, legal practitioners and legal practices.

** Includes complaints against licenced conveyancers, non-legal service providers, migration agents, deceased practitioners and practitioners who have been struck off.

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

W4 Age of complaints remaining open or suspended on 30 June 2017 and being handled by the OLSC

Year opened	Open at 30 June 2017	Open at 30 June 2016	Open at 30 June 2015
2016-2017	634		
2015-2016	53	557	
2014-2015	20	53	446
2013-2014	16	28	72
2012-2013	12	19	23
2011-2012	2	11	17
2010-2011	2	5	7
2009-2010	2	3	3
1994-2009	0	0	0
TOTAL	741	676	568

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

W5 Average time taken to finalise a complaint at the OLSC of complaints handled in 2016-2017

	Days*
Average time to complete complaints received and completed / resolved in 2016-2017	72.3
Average time to complete complaints received in any year but completed / resolved in 2016-2017	224.9
Average time taken to dismiss complaints received in 2016-2017	60.8
Average time to dismiss complaints received in any year but dismissed in 2016-2017	130.8

* Averages rounded to 1 decimal point

W6 All Complaints finalised in 2016-2017

All OLSC Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	250	2	3	255
Subtotal resolved at the OLSC	250	2	3	255

ALL OLSC Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Disciplinary action: Reprimand	4	0	0	4
Determination: Caution & Apology	21	2	0	23
NCAT disciplinary proceedings	13	0	0	13
Subtotal determined by OLSC	38	2	0	40
Withdrawal of a complainant at OLSC	66	1	2	69
Complaints dismissed by OLSC	20	1	0	21
Misconceived/ Lacking in substance	658	27	8	693
Time requirement not waived	55	4	0	59
Complainant No/ Inadequate response to request info	101	3	0	104
Duplicate complaint	9	0	0	9
Closed Civil proceedings on foot	11	0	0	11
Closed No further investigation except CM	177	5	2	184
Closed in Public interest	23	2	0	25
Not Resolved after informal resolution	176	2	2	180
Investigation suspended pending court proceedings	83	0	0	83
Appeal closed by OLSC	4	0	0	4
Costs Recovery at OLSC	2	0	0	2
Subtotal closed by OLSC	1385	45	14	1444
Total OLSC Complaints Completed	1673	49	17	1739

All Non Jurisdictional Complaints

	Solicitor*	Barrister	Other**	TOTAL
Closed No power to investigate	98	4	9	111
Refer to NSW Police or other	15	2	4	21
Refer to MARA & OFT***	2	0	0	2
Refer to other States	1	0	0	1
Total Non Jurisdictional Complaints	116	6	13	135

All Council Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	3	0	0	3
Subtotal resolved at Council	3	0	0	3

ALL Council Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Disciplinary action: Reprimand	8	2	0	10
Determination: Caution & Apology	13	6	0	19
NCAT disciplinary proceedings	12	5	0	17
Subtotal determined by Council	33	13	0	46
Withdrawal of a complainant at Council	61	3	1	65
Complaints dismissed by Council	2	0	0	2
Misconceived/ Lacking in substance	132	16	1	149
Time requirement not waived	14	3	0	17
Complainant No/ Inadequate response to request info	14	3	0	17
Duplicate complaint	2	0	0	2
Closed No further investigation except CM	114	5	2	121
Closed in Public interest	27	0	1	28
Not Resolved after informal resolution	2	0	0	2
No Further action at Council	7	0	0	7
Subtotal closed by Council	375	30	5	410
Total Council Complaints Completed	411	43	5	459
Total finalised by OLSC	1673	49	17	1739
Total Non Jurisdictional Complaints	116	6	13	135
Total finalised by Council	411	43	5	459
TOTAL	2200	98	35	2333

* Includes former solicitors, legal practitioners and legal practices.

** Other includes licensed conveyancers, non-legal service providers, migration agents, deceased practitioners and practitioners who have been struck off.

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

W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2016-2017

Percentage of files closed within following periods*

	2016-2017	2015-2016	2014-2015
0-30 days	25.3	37.7	39.3
1-3 months	36.1	32.2	32.9
3-6 months	16.8	17.6	15.6
6-9 months	7.4	5.5	4.6
9-12 months	3.1	2.4	2.5
Over 12 months	11.4	4.6	5.1

* 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 2016-2017 – received all years

	Solicitor	Barrister	TOTAL	Percentage
Reviews in progress				
In progress at OLSC	3	0	3	3.3
Internal review application under LPUL	14	3	17	18.9
Total remaining open	17	3	20	22.2
Reviews completed				
Dismissal confirmed	12	5	17	18.9
Discretion declined for review under LPUL	42	7	49	54.4
Decision to confirm original decision under LPUL	3	0	3	3.3
Decision to refer back to maker under LPUL	1	0	1	1.1
Total completed	56	12	70	77.8
TOTAL handled	75	15	90	100.0

NSW Civil and Administrative Tribunal

For matters filed and disposed of by NCAT in 2016-2017 refer to NCAT's annual report.

Chapter 8

FINANCIAL STATEMENT

FINANCIAL STATEMENT 2016-2017

	Budget	Actual	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments (Budget)	(3,946,577)	(4,317,961)	371,384	1
Other Revenue	-	(10,000)	10,000	
TOTAL REVENUE	(3,946,577)	(4,327,961)	381,384	
Salaries & Wages	2,427,789	2,261,143	166,646	2
Allowances	1,414	49,541	(48,127)	3
Leave Entitlements (<i>Recreation Leave, Annual Leave Loading & LSL</i>)	284,034	263,948	20,086	
<i>Workers Compensation</i>	-	(1,900)	1,900	
Payroll Tax	158,217	141,861	16,356	
Fringe Benefits Tax	1,074	-	1,074	
Superannuation	198,458	217,785	(19,327)	4
Redundancy	-	165,284	(165,284)	5
EMPLOYEE RELATED PAYMENTS Excl Crown Liabilities	3,070,985	3,097,662	(26,676)	
Advertising & Publicity	4,603	3,978	626	
Bank Charges	60	-	60	
Contractors	10,000	-	10,000	
Electricity & Gas	16,474	21,143	(4,668)	
Fees	169,423	176,352	(6,929)	6
Freight & Cartage	18	-	18	
Insurance	1,301	2,715	(1,413)	
Interest Paid	-	22	(22)	
Interpreters & Translations	6,574	4,386	2,187	
Motor Vehicles	2,159	-	2,159	
Postal Expenses	22,670	24,858	(2,188)	
Printing	23,435	14,230	9,205	
Publications	6,226	9,335	(3,109)	
Rates & Outgoings	54,180	49,530	4,650	
Rent	328,682	348,129	(19,447)	7
Staff Expenses	20,866	16,914	3,951	

FINANCIAL STATEMENT 2016-2017 *continued*

	Budget	Actual	Variance	Notes
	\$	\$	\$	
Stores & Stationery	20,407	14,456	5,951	
Telephone	13,153	57,730	(44,577)	8
Travel	15,350	8,224	7,126	
Transcription Services	-	296	(296)	
OTHER OPERATING EXPENSES	715,581	752,297	(36,716)	
Maintenance Contracts	143,089	128,421	14,668	
Repairs and Maintenance	306	-	306	
MAINTENANCE	143,395	128,421	14,974	
VSS - 2000 Act Compensation	-	882	(882)	
OTHER SERVICES PROTECTED	-	882	(882)	
TOTAL EXPENSES Excl Crown Liabilities & Depreciation	3,929,961	3,979,261	(49,300)	
Net Cost of Services Excl Crown Liabilities & Depreciation	(16,616)	(348,700)	332,084	
Add Non-Cash Items:				
Crown Liabilities (<i>LSL Liability Assumed by Crown</i>)	-	8,597	(8,597)	9
Depreciation & Amortisation	369,668	26,478	343,190	10
Net Cost of Services Incl Crown Liabilities & Depreciation	353,052	(313,625)	666,677	

NOTES SUPPORTING THE 2016-2017 FINANCIAL STATEMENT

Employee Related Payments

- Budget:** The OLSC maintains a recurrent recoupment budget and receives operational funding from the Public Purpose Fund (PPF). In 2016-2017 the OLSC sought, and was granted, a payment from the PPF of \$388k to accommodate full year salary and on-costs for an estimated 6 legal and administrative roles. These roles, the first of which will commence with the 2017-2018 financial year, are required to manage an expected increase in investigations being handled by the OLSC. The variance in budget reflects this extra-budgetary augmentation.
- Salaries & Wages:** The OLSC's budget for *Salaries & Wages* contains provision for annual salary payments to employees assigned to ongoing, temporary and casual roles in the OLSC establishment. Ongoing extended leave arrangements and staff resignations saw role vacancies created during 2016-2017. The *Salaries & Wages* budget variance reflects the salary savings derived as a result of role vacancies.
- Allowances:** The OLSC's *Allowances* budget provides for allowance payments to OLSC staff performing the First Aid Officer role for the Office. During 2016-2017 the allowances budget was also the source of all loading payments for casual staff. The budget variance highlights these additional costs.
- Superannuation:** The OLSC's *Superannuation* budget provides for superannuation entitlements of OLSC employees. The *Superannuation* budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.
- Redundancy:** During 2016-2017 the OLSC made a redundancy payment of \$165,248 to the outgoing Assistant Commissioner (Legal), for which there was no provision in the budget. Under GSE guidelines, the former Senior Officer role was replaced with a role of Senior Executive grading, with the substantive role occupant opting out of re-application. The redundancy costs were borne by the OLSC. The Employee Related Payments variance reflects the impact of this unbudgeted expenditure.

Other Operating Expenses

- Fees:** The OLSC's Fees budget maintains funds for various types of fees expenditure including legal fees incurred in bringing matters before the NSW Civil and Administrative Tribunal and the Courts. In 2016-2017 the OLSC initiated a number of investigations into the conduct of lawyers and firms with some matters resulting in Tribunal proceedings. The Fees budget variance includes credit adjustments that were made to the OLSC's legal fees account to offset income. During the year the OLSC recovered Commissioner's costs totalling \$6959.
- Rent:** The OLSC's *Rent* budget makes provision for monthly rent payments the Department prepares for payment to the landlord of OLSC's leased accommodation in the CBD. The *Rent* budget variance reflects adjustments prepared by the Department in 2016-2017.
- Telephone:** The OLSC's *Telephone* budget includes provision for monthly telephone rental expenses and metered call costs in addition to data service charges in connection with the fibre communications network. The costs and charges are processed by the Department and apportioned to cost centres. The *Telephone* budget's variance reflects costs apportioned to the OLSC during 2016-2017. The 2016-2017 telephone charges are currently under review and it is expected that adjustments made regarding these expenses will be reflected in the end of year financial statement for 2017-2018.

Non Cash Items

- Crown Liabilities (LSL Liability Assumed by Crown):** Crown Liabilities is a non-cash item and as such does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The *Crown Liability for LSL* budget reflects the Crown's assumption of the Department's long service leave liability for Departmental officers. The Department is obliged to make this provision as part of Treasury requirements.
- Depreciation & Amortisation:** *Depreciation* expense is a non-cash item and does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The *Depreciation* budget variance resulted from an adjustment prepared by the Department to take into account the amortisation expense of OLSC's intangible software assets. The Department is obliged to make this adjustment as part of Treasury requirements.



The Office of the Legal Services Commissioner

Level 9, 75 Castlereagh Street, Sydney NSW 2000
GPO Box 4460, Sydney NSW 2001
DX 359 Sydney

Tel: (02) 9377 1800

Fax: (02) 9377 1888

Toll free: 1800 242 958

Email: olsc@agd.nsw.gov.au

Web: <http://www.olsc.nsw.gov.au/>

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FSC® Certified mixed source paper.
(ecoDesign ecoPrint FSC® Cert no. C092723)*

