



**THE OFFICE OF THE
NSW LEGAL SERVICES COMMISSIONER**



ANNUAL REPORT

2021-2022

OFFICE OF THE NSW LEGAL SERVICES COMMISSIONER

ORGANISATIONAL CHART

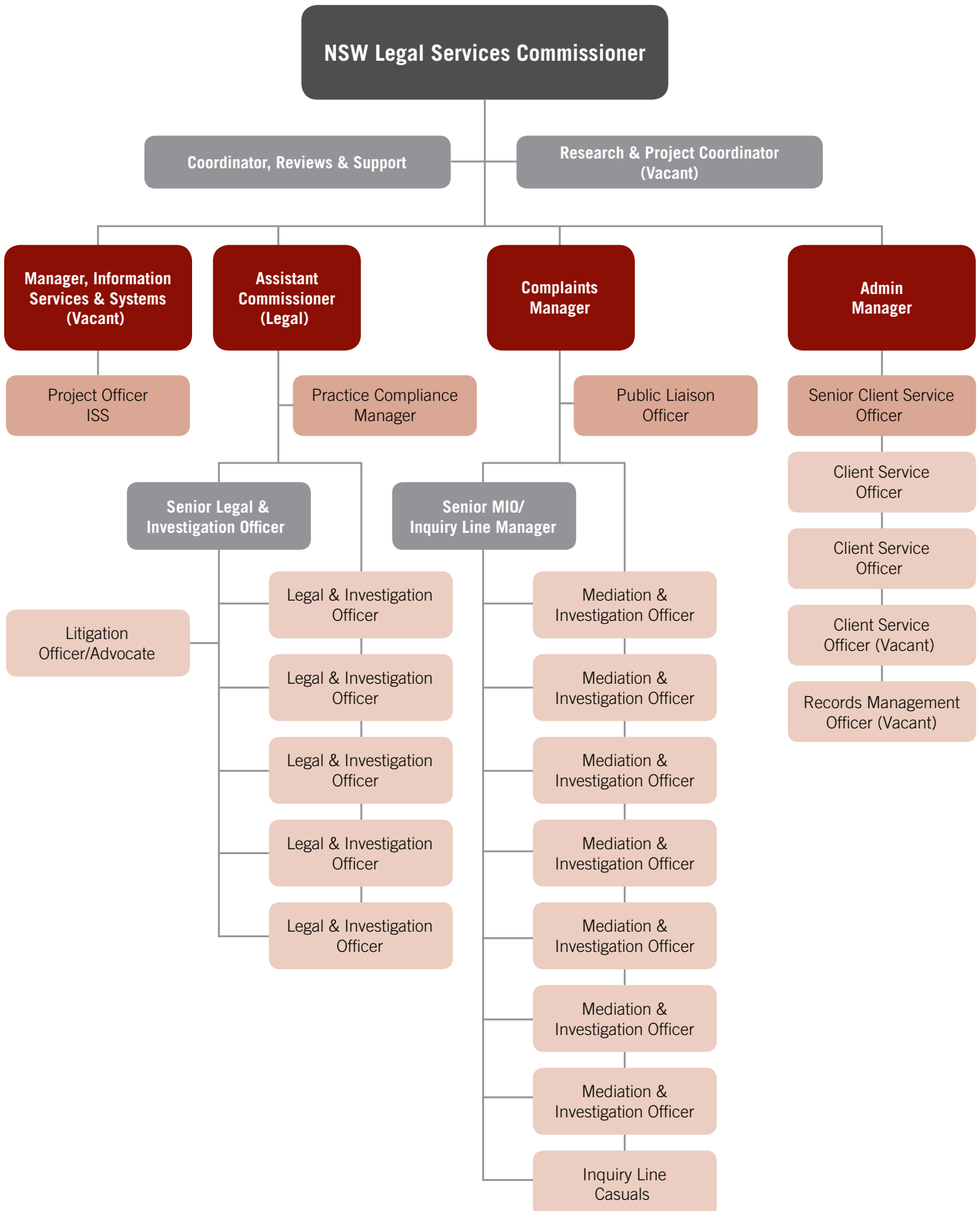


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Chapter 1

COMMISSIONER'S REPORT

COVID – 19 has again cast its spell over this year, with months of lockdowns due to the Delta strain and then rolling uncertainty and cancellations due to the Omicron strain of the virus. We are fortunate that our newly established Complaints Management System (CMS) had been running since late December 2020 and that the much-needed Stage 2 enhancements were under construction and went live in June 2022. This enabled us to continue our all-important work of dealing with complaints received in relation to lawyers despite lockdowns and working from home regimes.

It has not been easy though. As noted in last year's report, with lockdowns came a spike upwards of complaints received. We received an increase of 185 complaints in this reporting year compared to the previous year, which itself saw a rise with the initial lockdowns in 2020. This year's increase represents a level 7% higher than 2020-21; or in other words, more than the annual completion figure of even our most prolific case officers (160-165 per annum). This analysis strongly suggests that our office will require additional funding for at least one extra case officer if the level of complaints continues to plateau at the same high figure that we have observed since the end of the lockdown in late 2021. Whilst the CMS has brought efficiencies to our complaint handling, it is not sufficient to allow us to continue to process complaints received in the timely manner required by the Legal Profession Uniform Law (LPUL).

In relation to our CMS Stage 2, I note there remains one final piece of the jigsaw to complete. Unfortunately, it was not possible to achieve the seamless and accurate transfer of data from the solicitor database curated by the Law Society to our system due to technical difficulties. I am assured that work continues by the Department of Communities and Justice IDS to achieve the desired outcome as it is most important in the advice our office provides to the Attorney-General regarding proposed judicial and statutory officer appointments.

On the broader front of the expansion of the Uniform Law into other jurisdictions, it was heartening to note the official commencement of Western Australia as a Legal Profession Uniform Law (LPUL) Jurisdiction on 1 July 2022. I commend all involved in the delicate task of achieving agreement and the adaptation of some processes that is involved in such an undertaking. The situation is now that over 75% of all lawyers in Australia are regulated under the LPUL.

There was disappointment on the part of the legal regulators working with the LPUL that the amendments to the legislation on which so much work has been spent in recent years remain on the waiting list to be passed by the Victorian Parliament. It is to be hoped that attention will speedily come to this matter once the upcoming elections in that state are finalised so that the operation of this progressive legislation can be optimised.

Whilst I was forced to spend a couple of months away from work during this year whilst addressing some serious health concerns, I am very pleased to report that our office continued in a seamless fashion. That great outcome was in no small part due to the expert and dedicated efforts of my two senior managers: Samantha Gulliver (Assistant Commissioner (Legal)) and Roger Gimblett (Complaints Manager). They were ably supported by the wonderful, ongoing work by each member of our staff who continue to do more with less on a daily basis.

Chapter 2

LEGAL AND INVESTIGATION TEAM

The COVID-19 pandemic continued to disrupt operations in the 2021/22 reporting year, with extended stay at home orders in place in Sydney from June 2021 to October 2021 due to the Delta outbreak, and the Omicron variant circulating widely from the end of 2021/early 2022.

This, combined with the challenges of mastering a new complaints management system, led to some delays in the processing of complaints.

The Legal & Investigation team continued to work predominantly from home, dealing with complaints, conducting investigations and running litigation remotely.

Complaints containing disciplinary matters

The Legal & Investigation Team deals with complaints containing disciplinary matters, and mixed complaints containing both a consumer matter and a disciplinary matter.

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.

In practice, most complaints made by persons other than a client/third party payer, which cannot by definition be “consumer matters” are, on receipt and pending preliminary assessment, classified as containing a disciplinary matter.

The first step in dealing with the complaint is to conduct a preliminary assessment, to identify the allegations being made, assess whether the conduct complained of would, if established, amount to unsatisfactory professional conduct or professional misconduct and assess whether the available material provides a factual basis for the allegations made.

The OLSC is not bound by rules of evidence and may inform itself of any matter in any manner as it thinks fit. Further information may be requested from the complainant, the respondent lawyer or any other person

who may have relevant information. However, OLSC is not required to give a complainant of respondent lawyer an opportunity to be heard or make a submission before determining whether or not to close a complaint.

After preliminary assessment a complaint may be closed without further consideration of its merits, or an investigation may be commenced.

Complaints may be closed for any of the ten reasons set out in section 277 of the *Legal Profession Uniform Law (NSW)* ('LPUL'). By way of example, complaints may be closed as misconceived or lacking in substance if the conduct, as described in the complaint and clarified with the complainant, is not capable of being unsatisfactory professional conduct or professional misconduct, or if the material provided in support of a complaint is insufficient to establish a proper factual basis for the complaint.

Complaints not closed after preliminary assessment may be investigated.

If, after completing an investigation, the Commissioner finds a lawyer has engaged in unsatisfactory professional conduct, he may determine the matter by making any of the orders specified in LPUL section 299. 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, education or counselling
- Requiring the lawyer to pay a fine of up to \$25,000
- Recommending the imposition of conditions on the lawyer's practising certificate.

Alternatively, if the Commissioner is of the opinion that the alleged conduct may amount to professional misconduct, or unsatisfactory professional conduct that 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.

Complaints received

The number of complaints received in the reporting year increased by 185, an increase of nearly 7% on the previous year. In addition, the OLSC has noticed an ongoing increase in the complexity of investigations and a sizeable increase in the amount of documentary material submitted with complaints.

As has been the case for a number of years, more complaints were received in relation to family and de facto law matters than any other area of law. Many of these complaints are made not by the lawyer's client but by the opposing party, and many of the complainants are litigants in person. Often their complaints arise from a misunderstanding of the adversarial system and the role of a lawyer within that system, specifically that they are bound to act on the instructions, and in the best interests, of their own client, which often means putting forward evidence and making submissions that are adverse to the other party.

Complainants commonly complain of discourtesy, unfair tactics, false or misleading affidavits and submissions, and lawyers acting in a conflict of interests, particularly where work has been done for a couple and the lawyer subsequently represents one person from the couple.

Complaints in relation to deceased estates (covering wills, powers of attorney, probate and family provision claims) are also common. Complaints in this area of law may raise conduct that occurred a number of years ago, or conduct that began years ago but extends into the present. They can be factually complex and require the review of substantial documentary material. They are often emotionally charged. Beneficiaries of deceased estates complain of delay or inaction on the part of the executor and their lawyer, not being kept informed about progress, not being given information about estate accounts and excessive costs (especially in the case of a lawyer/executor). Another common complaint, with respect to wills and powers of attorney, is that the person making the will or power of attorney lacked legal capacity to do so.

The most commonly made complaint, across all complaints received, was poor communication, followed by negligence and overcharging.

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 accessible on the OLSC's website.

The Commissioner issued reprimands to 4 lawyers and cautioned 6 lawyers.

Reprimands were issued for:

- Failing to comply with Court orders, including costs orders
- Sexual harassment and / or workplace bullying in breach of Rule 42 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*
- Acting in a conflict of interests
- Breach of confidentiality
- Irresponsible use of Court process and privilege
- Failing to comply with a management system direction in breach of section 257 of the LPUL
- Preparing a Revocation of a power of attorney, an enduring power of attorney and an appointment of enduring guardian by an aged client without obtaining a medical opinion as to whether the client lacked capacity
- Taking instructions from an aged client who lacked capacity

Cautions related to isolated instances of:

- Enforcing or seeking to enforce a prohibited commercial surrogacy agreement
- Failing to comply with Regulations for receipt of trust money
- Failing to respond to correspondence
- Delay
- Failure to transfer client's documents
- Carelessly making a false and/or misleading statement
- Failure to disclose legal costs
- Certifying proceedings had reasonable prospects of success without giving the question proper consideration

Disciplinary proceedings

Disciplinary proceedings initiated against lawyers are heard in the Occupational Division of the NSW Civil & Administrative Tribunal ('Tribunal').

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

NSW Legal Services Commissioner v Jenna Cullen

The Commissioner commenced proceedings against the Respondent lawyer in the Tribunal on 5 November 2020.

The Application alleged the lawyer had engaged in professional misconduct with respect to two grounds of complaint. The first ground alleged the lawyer falsely witnessed the purported signature of her client on a New South Wales Office of State Revenue Purchaser/ Transferee Statutory Declaration made under the *Duties Act 1997 No 123 NSW*. The second ground of complaint alleged the lawyer, in falsely witnessing the purported signature of her client on the New South Wales Office of State Revenue Statutory Declaration, attested that:

- a. she had seen the face of the purported Declarant;
- b. that she was present when the purported Declarant executed the Statutory Declaration; and
- c. that she had identified her client as the Declarant and as the person making the Statutory Declaration by having known him for at least 12 months.

The lawyer's declaration was false. The lawyer had not seen the face of her client, the purported Declarant, the lawyer was not present when her client purportedly executed the Statutory Declaration, and the lawyer had not in fact identified her client as the person purportedly making the Statutory Declaration by having known him for at least 12 months.

The lawyer subsequently admitted by entering into an Instrument of Consent pursuant to section 144 of the *Legal Profession Uniform Law Application Act*, that she 'must have' engaged in the conduct set out in Grounds 1 and 2, but submitted that she had no independent recollection. The lawyer conceded that, although she had no independent recollection of doing so she "must have" falsely witnessed the purported signature of her client on the Declaration, because:

- a. at the time of its execution she had not seen the face of her client, the purported declarant;
- b. she was not present when the client purportedly executed the Part G Declaration; and

- c. she had not identified her client as the person purportedly making the Part G Declaration by having known him for at least 12 months.

Orders were made on 31 August 2021 finding the lawyer guilty of professional misconduct and ordering that she be reprimanded, pay a fine of \$2,500 and pay the Commissioner's costs, as agreed or taxed.

NSW Legal Services Commissioner v Jia Hong Zou

On 14 January 2021 the Commissioner commenced proceedings in the Tribunal against the lawyer, seeking a finding, among other orders, that she had engaged in professional misconduct by falsely attesting that she had witnessed her client's signature on an e-affidavit. The lawyer accepted that she had made the false attestation but did not accept that a finding of professional misconduct should be made – rather, she submitted that her conduct was unsatisfactory professional conduct. On 7 September 2021 the Tribunal determined the lawyer's conduct was unsatisfactory professional conduct under section 296 of the LPUL and ordered that she be reprimanded, pay a fine of \$3,000 and undertake, complete and pass, at her own expense, a course in ethics.

NSW Legal Services Commissioner v Kristy Anne Speirs 2021/00112235

The Commissioner commenced proceedings in the Tribunal on 22 April 2021.

The Application alleged the lawyer had engaged in professional misconduct with respect to two grounds of complaint. The first ground alleged that the lawyer formerly employed by the Office of Director of Public Prosecutions, in respect of a criminal prosecution, misled or attempted to mislead a Police Officer by sending him an email wherein the lawyer indicated that a report seeking authority to obtain an induced statement was with the chambers of the Director of Public Prosecutions. It was further alleged that the lawyer knew, or ought reasonably to have known that the representation was false. The second ground of complaint alleged that the lawyer, during another criminal prosecution, misled or attempted to mislead a Police Officer by sending an email to her wherein the lawyer indicated that a decision to withdraw a charge pursuant to section 112(3) of the *Crimes Act 1900* was made by the "Crown". It was further alleged that the lawyer knew, or ought reasonably to have known that the representation was false.

The lawyer conceded she had made errors and that those errors led to Police Officers being misled. However, she maintained those errors, whilst serious, were made without the intention to mislead. They were made in the

context of a lawyer, who was under very considerable stress in her private and working life, being overwhelmed by her workload and failing to pay close enough attention to the matters in question.

On 10 December 2021 the Tribunal found the lawyer guilty of unsatisfactory professional conduct and ordered she be reprimanded and pay the Commissioner's costs as agreed or assessed.

NSW Legal Services Commissioner v Peter Livers

As previously reported, on 10 December 2020 the Court of Appeal set aside the decision of the Tribunal made 27 November 2019 and dismissed the application by the Commissioner for disciplinary findings and protective orders against Mr Livers.

Mr Livers filed a Notice of Motion on 26 April 2021 seeking an order that pursuant to Rule 36.17 of the *Uniform Civil Procedure Rules 2005* (the "slip rule"), the Public Purpose Fund pay Mr. Livers' costs of the NSW Civil & Administrative Tribunal proceedings brought against him. The Court of Appeal unanimously dismissed the Notice of Motion on 6 August 2021. While differing views were expressed about whether the slip rule was properly invoked by Mr. Livers, the Court held that as a matter of statutory construction, clause 23(5) of Schedule 5 of the *Civil and Administrative Tribunal Act* which provided the basis for any order against the Public Purpose Fund was not met.

Internal reviews

Decisions made by the Commissioner or his delegates, the Council of the Law Society of New South Wales and the Council of the New South Wales Bar Association, are final except that the Commissioner may (at his absolute discretion) conduct an internal review of a decision 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.

Reviews by NSW Civil & Administrative Tribunal

Herbert Weller v NSW Legal Services Commissioner

By Application filed with the Tribunal on 12 December 2020, the respondent lawyer, Mr Herbert Weller, sought a review of two administratively reviewable decisions that were made by the Commissioner on 25 November 2020.

The two disciplinary decisions determined a complaint made by the son of an 88 year old gentleman, Mr CD, a complaint made by Mr EF, and two complaints instigated by the Commissioner.

Mr EF was appointed by Mrs AB as her attorney and guardian in 2015. In 2016 Mr CD appointed his daughter as his attorney and guardian. On 23 May 2017, Mrs AB revoked her power of attorney and executed an enduring power of attorney in which she appointed Mr CD and another person as her attorneys without limitation. The lawyer signed the relevant certification under s 19 of the *Powers of Attorney Act 2003* (NSW).

At that time Mrs AB resided in a nursing home and had been found by a neuropsychologist to have moderately severe Alzheimer's Disease, and Mr CD also resided in a nursing home.

On 8 June 2017, the lawyer filed a summons in the Supreme Court on behalf of CD as first plaintiff seeking a writ of habeas corpus for Mrs AB, or in the alternative, that the first defendant (Mrs AB's aged care facility) or Mr EF (the second defendant) be restrained from detaining Mrs AB.

The complaints by Mr CD's son and Mr EF arose in circumstances where the lawyer was presented with numerous red flags about the capacity of Mrs AB. The Commissioner complaints arose in the same circumstances, but also in light of questions around the capacity of Mr CD. In particular, the lawyer was on notice of the neuropsychologist's findings, before he filed the Supreme Court summons.

In relation to the complaints made by Mr CD's son and Mr EF, pursuant to s 299 LPUL, the Commissioner determined, *inter alia*, that Mr Weller was to be reprimanded and fined \$2,000; and in relation to the Commissioner complaints, the Commissioner determined, *inter alia*, that Mr Weller was to be reprimanded and fined \$3,000.

On 24 June 2022, the Tribunal made orders affirming all of the decisions of the Commissioner dated 25 November 2020, with no order as to costs.

Judicial review by the Supreme Court of New South Wales

NSW Legal Services Commissioner ats Haydyn Hastwell

Mr Hastwell brought judicial review proceedings challenging decisions of the Commissioner to close part of a complaint lodged by Mr Hastwell about the conduct of a solicitor, and not to exercise his absolute discretion to conduct an internal review of that decision. In his judgment delivered 7 August 2020, Campbell J held that the Commissioner's decision was not amenable to certiorari (and judicial review generally) on Mr Hastwell's application, and that in any event, Mr Hastwell had not established any of the grounds he relied upon to challenge the Commissioner's decisions. Mr Hastwell's proceedings for judicial review were dismissed with each party to bear their own costs.

On 5 November 2020 Mr Hastwell filed a Summons seeking leave to appeal from Campbell J's judgment.

On 24 February 2021, the Court of Appeal dismissed Mr Hastwell's Summons. The Court found that Mr Hastwell had failed to put forward an arguable case that Campbell J's conclusion was erroneous, namely that the Commissioner's decision to close part of his complaint was not amenable to certiorari (and judicial review generally) on Mr Hastwell's application. The Court of Appeal also found that Mr Hastwell had failed to advance a basis for challenging authority relied upon by Campbell J in finding that the Commissioner declining to exercise his absolute discretion to conduct an internal review was also not amenable to judicial review on Mr Hastwell's application. The Court found that a third ground in Mr Hastwell's proposed appeal which challenged the role the Commissioner adopted in defending his decisions before Campbell J was misconceived. The Court ordered that Mr Hastwell pay the Commissioner's costs.

On 29 March 2021, Mr Hastwell filed an application seeking special leave to appeal the Court of Appeal's judgment to the High Court of Australia. In the documents comprising his application seeking special leave, Mr Hastwell repeated many of the grounds made in his judicial review proceedings heard by the primary judge and then by the Court of Appeal. Mr Hastwell also sought an extension of time to file his application seeking special leave, as it had been filed outside the appeal limitation period.

On 12 August 2021, the High Court dismissed Mr Hastwell's application. It held that Mr Hastwell required an extension of time to lodge his application, and it would be futile granting Mr Hastwell an extension of time, as his proposed grounds of appeal had no prospects of success.

NSW Legal Services Commissioner ats James Bowers

A complainant, James Bowers, sought judicial review of the Commissioner's decisions to close his complaints pursuant to section 277 and section 290 of the LPUL and declining to exercise his absolute discretion to conduct an internal review of those decisions pursuant to section 313(1) of the LPUL.

In his summons, Mr Bowers sought the following orders:

- (1) an order in the nature of certiorari pursuant to s 69 of the *Supreme Court Act 1970* (NSW) setting aside the decisions of the Commissioner dated 18 November 2020;
- (2) an order in the nature of mandamus pursuant s 69 of the *Supreme Court Act 1970* (NSW) directing the Commissioner to perform his duty pursuant to the Uniform Law; and
- (3) costs.

The Commissioner filed a Notice of Motion seeking summary dismissal of Mr Bowers' summons (or further amended summons) pursuant to rule 13.4(1)(b) of the *Uniform Civil Procedure Rules*, on the basis that the summons disclosed no reasonable cause of action. This Motion and Mr Bowers' Motion to join the lawyers he complained about to the proceedings were heard on 26 August 2021.

Judgment was handed down on 6 October 2021. Bellew J ordered that the proceedings brought by Mr Bowers be dismissed. His Honour also ordered that Mr Bowers' joinder motion be dismissed.

Bellew J noted that the power to dismiss proceedings under rule 13(4) is appropriately exercised only in cases where the claim is so clearly deficient that it would be inappropriate to allow the proceedings to continue and was satisfied that the test had been met. His Honour essentially found that none of the Commissioner's decisions was "*so unreasonable in result that some legal error or misconception must have been involved*".

Finally, His Honour noted the relief sought by Mr Bowers was not available because sections 290 and 313 of the Uniform Law confer a discretion on the Commissioner, as opposed to imposing a duty on him to act in a particular way.

Costs were subsequently awarded to the Commissioner.

On 25 October 2021, Mr Bowers filed a summons seeking leave to appeal from the judgment. The Court of Appeal dismissed his application for leave to appeal, with costs, on 11 March 2022.

Policy development

The OLSC continued to work with New South Wales co-regulators (the Law Society of New South Wales and the New South Wales Bar Association), our Uniform Law scheme counterparts in Victoria and Western Australia, the Legal Services Council and the Commissioner for Uniform Legal Services Regulation throughout the reporting year including:

- Attending regular meetings of Uniform Law scheme policy officers
- Being part of a working group to progress proposed amendments to the LPUL
- Attending the annual Uniform Law summit
- Responding to inquiries and consultation papers from the Legal Services Council and Commissioner for Uniform Legal Services Regulation as required.

The Legal & Investigation team continues to provide guidance and legal advice to senior managers and staff on the interpretation and application of LPUL. The Assistant Commissioner (Legal), Senior Legal and Investigation Officer and the Practice Compliance manager meet regularly with the Director, Legal Regulation, the Deputy Director, Investigations and Team Leaders, Professional Standards at the Law Society of New South Wales and the Director of Professional Conduct at the New South Wales Bar Association to discuss problem lawyers, difficult complaints, complaint handling procedures and other common issues. The Assistant Commissioner (Legal) is also a member of the Supreme Court of New South Wales Costs Assessment Rules Committee.

CHAPTER 3

CONSUMER MATTERS

The 2021-22 reporting year has been a challenging one with increasing workloads coinciding with staff movement and the ongoing effects of the pandemic. It is pleasing to note that the figures reflect an overall increase in the completion of matters despite these challenges.

In 2021-2022 the OLSC received a total of 2,899 written complaints, an increase of 185 from the previous year. In the same period we registered the completion of 2,839 written complaints, an increase of 172 from the previous year.

Under the legislation 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 lawyer-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.

The 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. An indication to a lawyer that the Commissioner may give consideration to making a determination in a consumer matter or a costs determination, where grounds exist to support that, will often have the effect of encouraging a lawyer to engage in attempts to informally resolve the complaint. Mediation & Investigation staff also encourage complainants to actively participate in the informal resolution process through this Office.

Where a Mediation & Investigation Officer comes to a view that a complaint may involve a disciplinary matter, issues of potential unsatisfactory professional conduct or professional misconduct must be considered separately from consumer aspects of a complaint. The legislation does allow a mechanism for the resolution of consumer matters prior to the consideration of disciplinary aspects of a complaint.

The year under review

Of the total written complaints received, **1,361** were assessed as consumer matters, including a total of **587** cost dispute complaints. Eight complaints could not be classified generally owing to inadequate information being provided with the complaint.

For this reporting year, **Family / Defacto** was the area of law most represented in **consumer matters** (19.1%), followed by **Personal Injuries** (14.9%) and **Conveyancing** (12.8%).

Negligence and **Communication** were the most common issues in consumer matter complaints in this reporting year, followed by **Delay / Quality of service**.

In 2021-22 **Family / Defacto** (28.3%) was the area of law most represented in **cost dispute** complaints followed by **Other Civil** (13.8%) and **Criminal** (9.4%).

Outcomes

For the 2021-2022 reporting year, 422 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, 288 of the **costs disputes** received were either resolved or closed.

Complainants may be referred to the New South Wales Costs Assessment Scheme in circumstances where the totality of the costs involved, or the amount in dispute, may exceed the limits of the OLSC's jurisdiction. This may also be the case where the invoices in question fall outside the time periods allowed for this Office to deal with a costs dispute. Mediation & Investigation Officers are also obliged to inform complainants of the right to apply for a costs assessment where attempted resolution through the OLSC has been unsuccessful. However, the costs potentially associated with such an application may not be viable in disputes about smaller amounts.

This Office acknowledges that for many people, engagement in legal proceedings may not be something they have previously experienced and can be challenging and confusing. Our Mediation & Investigation Officers cannot give legal advice or opinion, but are often able to supply additional procedural or contextual 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 and, in many instances, this may be sufficient to resolve the complaint.

Allegations of negligence remain a significant proportion of the consumer matters that come before our Office. This year saw a number of complaints relating to incorrect or inadequate advice regarding surcharge purchaser duty, which is payable in addition to the usual transfer duty (formerly stamp duty) on purchase of residential property by foreign purchasers. In some cases, complaints containing allegations of negligence may be able to be resolved by negotiation to the satisfaction of the parties but there are also instances where such disputes would be more properly referred to the civil Courts for determination. It is a requirement for lawyers practising in New South Wales to hold insurance in the event of a client making a claim against them alleging professional negligence.

Costs Disclosure

The last year has again presented complaints of instances of inadequate, misleading or non-existent disclosure of costs. As has previously been observed in our Annual Reports, the family law area seems to significantly contribute to complaints in this regard.

In response to a number of these complaints, where a lawyer had failed to provide adequate costs disclosure, the Commissioner utilised the power available to him to issue a consumer matter caution pursuant to section 290(2)(a) of the LPUL. In more serious instances, such failures may also represent unsatisfactory professional conduct or professional misconduct pursuant to section 178 of the LPUL. It is the view of this Office that lawyers should by now be more than familiar with the costs disclosure regime set out under the LPUL and it is pleasing that many matters before this Office in fact reveal regular and appropriate disclosure of likely cost implications for clients. Occasionally there may be particular mitigating factors in a failure to disclose costs appropriately, and in such instances the Commissioner may consider it appropriate to simply remind a lawyer of their obligations. Generally, however, lawyers not meeting their obligations with regard to disclosure should anticipate that they are likely to become the subject of a determination pursuant to section 290.

Communications

It is perennially the case that a significant proportion of the consumer complaints result from issues involving communications.

It is also the case that a small coterie of lawyers magnify the difficulty the clients have had in achieving an appropriate level of communication by subsequently delaying their responses to this Office.

Once again this year we have become aware of instances where lawyers have been dealing with significant issues with their physical health or may be suffering with mental health problems. In other instances there appeared to be no appropriate explanation for the failure to respond to the inquiries of the Regulator. Continued instances of failure to respond may result in a law practice being referred to the Compliance Audit team for consideration to be given to conducting an audit of the practice.

There is no doubt that the lingering effects of the pandemic and the toll of natural disasters within New South Wales have impacted lawyers and law practices. The effects may be felt in delays or difficulty in accessing material. It has also been the observation of Case Officers that a more impatient and aggressive approach may be exhibited by clients or fellow lawyers, perhaps reflecting these recent challenges. The potential impact of anonymous on-line 'reviews' of lawyers and law practices appears to be an increasing concern to many in the profession and this Office has increasingly noted quite heavy-handed responses to actual or anticipated 'reviews' including threats of defamation proceedings.

Noting these challenges, this Office commends the considerable resources offered by the Law Society to lawyers who may be suffering work or life stresses.

Interaction with the OLSC

The staff of this Office are aware that contact with the Regulator may exacerbate the stress of practice and responding to complaints may involve considerable time and effort. Once again it is pleasing to note that the majority of lawyers contacted by the OLSC maintain a professional and often proactive approach to resolution of consumer complaints.

Inquiry Line

The OLSC Inquiry Line is a telephone service that provides members of the public and, at times, the profession, with procedural information about making a complaint to the OLSC. It also provides general information in relation to the role of, and the powers of, the OLSC with respect to the handling and determination of complaints. Where appropriate, Inquiry Line staff can provide general information relating to common complaint scenarios and refer callers to applicable OLSC Fact Sheets that may assist callers to understand common issues. Inquiry Line staff can also offer referrals to other agencies where such agencies are better placed to assist.

At times, calls may simply involve the Inquiry Line staff providing information to the caller about how to raise their concerns directly with the lawyer. In cases, however, where it is not possible or appropriate for a caller to raise a complaint directly with a lawyer, or where such methods of informal resolution have been attempted and exhausted, a caller may be provided with information about the process of submitting a formal written complaint.

In total, for the 2021-2022 reporting year, 5,453 calls were made to the Inquiry Line, an increase of 503 calls from the previous reporting year. At the conclusion of each call, survey forms were sent to callers who indicated an interest in participating in the provision of feedback. Participation in the survey assists in the maintenance and improvement of the Inquiry Line's service, and the information gathered through the survey allows the OLSC to identify and implement improvements to the service where appropriate. From the 5,453 calls made to the Inquiry Line, 1,623 of callers expressed interest in participating in the survey and, of the survey forms issued, 303 were then completed online or sent back to the OLSC for analysis.

Overall, results were overwhelmingly positive. 96.7% of callers agreed with the statement that the call was handled promptly, 95.7% of callers agreed with the statement that the information provided was helpful and 97.7% of callers agreed with the statement that the Inquiry Line staff member was professional and courteous. In addition to this, 96.4% of callers indicated that they would recommend the OLSC's Inquiry Line service to a friend or relative.

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

The OLSC's Public Liaison Officer (PLO) assisted 172 people during the reporting year.

Since the beginning of the COVID-19 pandemic in March 2020, these interviews have been conducted via telephone and this continues today due to the on-going situation with COVID-19 restrictions.

There are many reasons why potential complainants seek assistance from the PLO. These reasons include special needs and disabilities including intellectual, physical, or mental health issues. For others it may be that English is not their first language, they may be suffering social dislocation or logistical issues such as inability to access computers. Other people who may use our service include youth, the aged and infirm, persons of Aboriginal and Torres Strait Islander background, survivors of domestic and family abuse, survivors of child sexual abuse within institutional care, prisoners, and refugees.

There are various areas of the law in which the potential complainants seek assistance, however the bulk of the complaints are in the following areas of law:

- Personal injury
 - MVA
 - Slip & fall
 - Workers Compensation
- Family Law
 - Access to children
 - Property settlement
- Wills & Probate
- Criminal
 - Institutional abuse
 - Familial abuse
 - False arrests
- Immigration
 - Refugees applying for citizenship / permanent residency

Complainants are advised of our process of preliminary assessment of complaints and the timeframes within which they may have their complaints considered. There are times when a complaint is referred to a more appropriate government agency or non-government service for assistance. This form of assistance has an important 'access to justice' aspect for vulnerable complainants to the OLSC.

Chapter 4

COMPLIANCE AUDITS

With Sydney entering a lockdown at the end of June 2021 until mid-October, an increase in the numbers of complaints received at the OLSC, periods of unplanned absences and other personal leave, the resources were not available to conduct any on site audits in the current reporting period.

Remote auditing of electronic files was still possible, and the review continued of periodic reports provided by one law practice that was the subject of a management system direction in the previous reporting period.

The Practice Compliance Manager and Assistant Commissioner (Legal) continued to liaise with the Law Society where there were concerns about Principals who may be unable to fulfil the inherent requirements of an Australian legal practitioner.

The phase 2 enhancements of the OLSC CMS enabled case officers to more easily nominate law practices who may be suitable candidates for compliance audit. It is hoped that this will help to streamline the process of identifying reasonable grounds to conduct a compliance audit in the future.

The compliance audit team attended (remotely) a roadshow hosted by the Australasian Legal Practice Management Association (ALMPA) to review practice management systems (PMS) currently available on the market. The roadshow followed on from a survey conducted by ALMPA of over 240 law practices in both Australia and New Zealand to review the use of PMS. Presentations were given by the providers of 9 different PMS. There was a wide range of functionality available to assist with practice compliance for example: conflict checks, costs disclosure, delay and supervision. Various levels of sophistication and complexity were available to suit a wide range of budgets and practice areas. The presentations provided greater awareness of the options available to Principals to assist in achieving compliance with LPUL and other professional obligations at a very practical level.

Chapter 5

THE OLSC AND THE COMMUNITY

During the 2021–2022 reporting year, OLSC continued to deliver tailored seminars to law practices and organisations focussing on ethics in the legal profession and also to provide a clear understanding of the role of the OLSC. These have been presented more online than face to face in light of the COVID-19 pandemic.

The Commissioner’s aim remains the same: to raise awareness about current issues facing the legal profession and he continues to work closely with co-regulators to improve how regulators interact with the legal profession.

OLSC staff continued to maintain strong professional relationships with our key stakeholders, co-regulators and our counterparts in other jurisdictions. We consulted with our co-regulators by attending regular meetings, forums, conferences and participating in various committees.

Legal Education

When COVID-19 travel restrictions permitted, the Commissioner and his staff visited universities, law practices, the College of Law, and regional law societies, to deliver continuing professional development (CPD) seminars during 2021-2022. The face-to-face seminars presented by the Commissioner were:

13 August 2021- the Commissioner participated at a full day workshop for final year Southern Cross University law students where he presented and led a discussion on ethics and the role of the OLSC.

29 March 2022 - the Commissioner presented at the UNSW Edge General Practitioner Intensive, Law UNSW Edge. This event was also live streamed from UNSW Kensington.

9 April 2022 - the Commissioner was the keynote speaker at the Charles Sturt University Law Residential School, on the topic “*Legal Ethics in 2022 and into the Future*”. The theme of their plenary program focussed on ethical legal practice and the ethical implications for each of their subject areas. The Commissioner also

covered the ethical implications around bullying and sexual harassment in the legal profession.

The Commissioner and his staff continued their support of the NSW Bar Association, Bar Practice Course, by contributing to their NSW series in co-presenting ethical hypotheticals to new barristers. The Assistant Commissioner (Legal) attended the Bar Readers Course, on behalf of the Commissioner, on 26 May 2022.

Webcasts

During the reporting year, the Commissioner continued to present online CPD seminars via pre-records, webinars and webcasts. These included:

- 21 July 2021 - NSW Public Service Commission Government Legal Graduates Program, Risk Management
- 30 August 2021 - Lawcover Podcast Recording, The Commissioner had a discussion with Julian Morrow about solicitor complaints where they explored the key causes of complaints, how a client relationship can sour, how solicitors can form an appropriate response to a complaint and what a solicitor can do to reduce the likelihood of complaints. This podcast is available at <https://www.lawcover.com.au/complaints-against-solicitors/>
- 8 February 2022 - Law Society of NSW, Professional Development, *Flying solo: sole practitioners*
- 16 March 2022 - Law Society of NSW, *Great tips for Government Solicitors*
- 30 March 2022 - College of Law, *Ethics in 2022*

Sexual harassment

During the period 2021-2022, the OLSC continued to be the frontrunner in implementing new avenues for members of the profession, their employees and public to notify the OLSC of instances of inappropriate personal conduct (e.g. sexual harassment and workplace bullying) within the legal profession.

This included the implementation of a reporter-centric, anonymous online reporting platform (ELKER), the updating of the OLSC website to provide factsheets on formal complaints/ informal reports, information on the processes followed by the OLSC, some possible outcomes of reporting, Notification/ Complaint Forms, and the expansion of our Personal Conduct Team with new members lending invaluable experience with their various expertise.

Our ELKER platform provides a reporting system to allow a reporter to speak up with anonymity about something they might have witnessed as a bystander or experienced firsthand and communicate safely and securely with the OLSC using encrypted messaging services or code names. Its flexible features also allow the OLSC to generate a more efficient case management system based on any notifications and reports received, monitor any emerging trends or concerning behaviours of lawyers or law practices which might then be recommended for compliance auditing purposes.

Throughout the year the Personal Conduct Team continued to undergo regular training to understand how to better deal with the difficult nature of the topics raised by these notifications and recognise the significant barriers that regularly prevent people in the legal profession from speaking up. One such event was the Law Society, Law Inform Training on Sexual Harassment – Changing Workplace Culture which used recorded scenes/ role play in a workplace scenario by professional actors to aid learning and understanding of what constitutes inappropriate conduct, identifying of the various issues within the workplace culture, the role of bystanders/ witnesses, reporting/managing of complaints and how as a profession we can deal with both the aggressor and victim, and the impact of how sexual harassment affects organisations and the legal profession.

A member of our Personal Conduct Team also recently presented at the 2021 Conference of Regulatory Officers on the topic of Jurisdictional initiatives to respond to Sexual Harassment in the Legal Profession and assisted in the drafting of NSW OLSC's submissions to the Australian Human Rights Commission regarding Sexual Harassment in the Workplace and the implications of Non-Disclosure Agreements in the complaints process.

This Office continues to contribute various initiatives in this ever-changing field and is grateful for the information and insight reporters have provided into the culture of inappropriate conduct in workplaces. We continue to

remain of the view that everyone involved in the provision or receipt of legal services is entitled to an environment free from sexual harassment, discrimination, workplace bullying or other inappropriate conduct.

Staff Training

In the last 12 months, we have seen a new style of staff training being undertaken online with a combination of interactive video tutorials and e-learning, to provide a safe way for our staff to continue their professional learning. The OLSC remains focussed on ensuring staff have the skills and knowledge to meet the current challenges facing them with remote working in different locations and keeping communication open between all staff.

OLSC was unable to continue its commitment to the regular delivery of its face to face Lunch and Learn sessions for staff in the challenging COVID-19 environment and they were suspended for the reporting year. It is anticipated that these Lunch and Learn sessions will recommence later in 2022 in a new blended learning environment for staff to develop new skills and further their knowledge in areas of interest.

OLSC staff have access to the Department of Communities & Justice online learning platform to access online courses to develop and enhance their skills.

During the reporting year, OLSC staff completed the mandatory Department of Communities & Justice training modules through the Thrive Learning App:

- DCJ Code of Ethical Conduct, an online e-learning module giving staff guidance on how we are expected to behave at work; and
- DCJ Information Security, assisting staff members in understanding how to keep departmental information secure.

All OLSC legal officers undertook the mandatory legal education necessary to maintain their practising certificates.

The Australasian Legal Practice Management Association hosted a Practice Management Solution Showcase from 15 February – 1 March 2022, attended by the Compliance Audit team. These presentations provided an opportunity to our staff to obtain a better insight, from a compliance audit perspective, into the practice management systems currently available. This training is reported in more detail in the Compliance Audit chapter of this Report.

Staff from both the Legal Team and the Consumer Team were able to access virtually delivered webinars, panel discussions and thought-provoking sessions and watch live online or on-demand seminars at their convenience.

The training needs of our Legal & Investigation Officers and our Mediation & Investigation Officers were further addressed by attending e-Learning seminars and workshops to supplement their knowledge. Some of the knowledge area sessions attended were:

- Sexual Harassment – Changing Workplace Culture – online
- Information and Privacy Commission – new law and functions
- Conveyancing Essentials for practice
- Having challenging conversations: responding to different interpersonal styles
- Potential Liability to third-party opponents of our clients

Members of the OLSC Personal Conduct Team attended a Law Society webinar training seminar on the topic, Sexual Harassment – Changing Workplace Culture. This workshop identified what constitutes inappropriate conduct and explored a range of other related issues. This training is reported in more detail under the Sexual Harassment section.

Between July 2021 and June 2022, staff attended a number of courses, including conveyancing essentials for practice through the NSW Law Society. This course comprised online modules and two live online half-day workshops to cover current practice in this constantly changing area of law. Topics included drafting and interpreting contracts for sale and purchase of land, effecting exchange, transfers, serving and answering requisitions, and working with mortgagees, preparing for settlement, complications with completion and settlement and post-settlement actions. Other courses in the Conveyancing space included the Essential Guide to Buying and Selling webinar which ran for two days in October 2021.

On 7 September 2021, members of the OLSC Legal and Consumer teams participated in the live online streaming event of the Law Society of NSW, Government Solicitors Conference. Staff attended the following sessions:

Practice management and business skills

- Reflections on the virtual courtroom experience during a pandemic
Hosted by the Australasian Institute of Judicial Administration (AIJA)
- Pandemic procurement, programs, policies, processes and parliament – perspectives and predictions
- Robust decision-making
- Optimising governance processes – lessons from recent audits

Substantial law and Professional skills:

- Disaster Law and Governance: The challenge of strategic imagination
- Judicial review where non-statutory functions meet statutory discretions
- Information and Privacy Commission – new law and functions
- Materiality as a criterion of jurisdictional error

Ethics and professional responsibility

- The art of balancing human rights with AI in government decision-making
- When government is your client

Conferences

International Conference of Legal Regulators (ICLR), 29 September 2021

The Commissioner participated in the virtual 10th Annual International Conference of Legal Regulators held in Chicago. This conference was viewed live and in a recorded format. This event consisted of online plenary sessions and breakout sessions to advance the vital work of legal regulators around the world.

The Commissioner participated in the session *Who do we Regulate and Why?* He was a member of a panel that discussed various issues challenging regulators in regulating effectively in a remote work environment. The challenges and opportunities that arise in this environment, include maintaining productivity and efficiency and whether disciplinary investigations and hearings can be conducted effectively online. The panel provided examples of unique solutions to some of these remote regulation challenges facing all regulators in this ever changing world.

Law Society of NSW, 2021 FLIP Conference, 13 October 2021

The Commissioner continued his participation in the NSW Law Society FLIP conferences when he was invited to be the Session Moderator for Professional Competency in the Current Climate: Rules & Ethics Part 1: Technological Competency: data privacy, cyber and AI. The panel discussed and used practical examples to illustrate how to identify and address these risks and develop and maintain business processes and technological competencies compatible with lawyers' professional obligations.

Conference of Regulatory Officers, 8 – 11 November 2021

The Law Society of New South Wales hosted the 2021 Conference of Regulatory Officers ('CORO') on their EventsAIR OnAir platform. This allowed conference registrants to watch on demand post conference as well as allow registrants to purchase post conference.

The Conference program included discussions about legal regulation in a changing world, a panel discussion on emerging issues for professional regulation: has anything changed in a post-COVID world, jurisdictional updates including the status of the Uniform Law, international perspectives on regulatory practice, mental health and sexual harassment responses by the legal profession and the future of national regulation in the legal profession. It also included relevant, interesting and informative sessions particularly around the COVID-19 pandemic.

The Commissioner presented an opening and closing address for the first day of CORO. He also introduced the Opening Keynote speaker for the Day 1 session as well as introducing each of the remaining sessions of Day 1 and moderating the session titled *Emerging issues for professional regulation*.

The Commissioner also pre-recorded the jurisdictional update for New South Wales which was aired during the Conference.

A member of the Personal Conduct Team presented on what the OLSC is doing to address complaints of discrimination, sexual harassment, any other form of harassment and bullying; the limitations that exist

under the Solicitors' Rules and the LPUL to address and investigate these kinds of complaints; and what other initiatives were being undertaken by the OLSC in response to complaints of this kind. This presentation sought to inform other regulatory bodies of the kinds of actions that could be taken by them to address these complaints and investigate this conduct in their jurisdictions, as well as spotlighting case law on the subject. Further, public outcomes of investigations undertaken by the OLSC were also highlighted.

CORO provides a valuable opportunity to network with other national regulators, share knowledge and exchange information with counterparts in other jurisdictions, as well as discuss the emerging challenges that the legal profession continues to face in light of the COVID-19 pandemic. The pandemic has caused law practices to adopt new and innovative ways of delivering their services in a more technological way.

CORO 2021 provided a platform for all regulators to come together and discuss how the regulatory complexities of moving forward, post COVID, has changed the environment for lawyers and law practices and how regulators can best regulate the legal profession with the new risks that digital technological advancements have created.

It is hoped that CORO 2022 will be able to be held in a face-to-face environment in Brisbane later in 2022.

Meetings

On 6 October 2021, the Commissioner participated in an online stakeholder roundtable on the Review of the Model Defamation Provisions (the Defamation Review) Stage 2 Part B as it relates to statutory absolute privilege for reports of criminal and unlawful conduct made to certain entities.

Samantha Gulliver, the Assistant Commissioner (Legal), attended the 2022 Uniform Law Summit in Perth on 1 June 2022, on behalf of the Commissioner. The Legal Practice Board of Western Australia and Legal Profession Complaints Committee also participated in this Summit in anticipation of them joining in the Uniform Law scheme with New South Wales and Victoria on 1 July 2022.

Chapter 6

INFORMATION SERVICES AND SYSTEMS

As mentioned in the Commissioner's Report, this year saw further progress towards the upgrade of our information technology systems which continued to keep our office operational and enabled staff to work remotely and stay in communication with each other, their teams and supervisors throughout the continuing COVID-19 pandemic.

With COVID-19 still having an impact during the reporting year, we continued to improve flexibility for staff with remote working. If staff preferred to come into the office one or two days a week additional flexibility was given by adjusting their start and finish times for travelling on public transport, ensuring social distancing was adhered to and additional hygiene measures in place. While staff enjoy the autonomy of remote working, the flexibility of returning to a COVID-19 safe work environment has had a positive impact on our staff.

During the reporting year, our monthly staff meetings recommenced with the implementation of the MS Teams video conferencing system allowing us to have all staff participate in these virtual meetings. This allowed staff to reconnect with each other and the office.

Over the last twelve months, the OLSC has seen a growth in the number of emails being received in the general email inbox with a number of larger size documents. This growth has posed a number of challenges to the resources available to the OLSC staff. Over the next year, we will review our processes and systems for additional resources that may be available for improvements to our productivity and timeliness in 2022-2023. The Department has provided a number of licences to enable OLSC Admin staff to access the "Kiteworks" application for the transfer of large documents to complainants, lawyers and our co-regulators in a safe and secure environment.

Complaints Management System (CMS)

As reported in last year's Annual Report, the online complaint portal has made it easier for complainants to lodge complaints by access to the online complaint form.

Approximately 49.94% of all complaints received between 1 December 2020 to 30 June 2021, were made via the portal. This increased to 62.41% in this reporting year, and we expect it to continue to grow in 2022-2023.

OLSC staff continue to review the portal complaint form for improvements and enhancements to it. During the reporting year, OLSC staff consulted with the Department's IDS staff to update the content of the portal complaint form as well as modify the process in a more streamlined way.

Following the delivery of the CMS to the OLSC in December 2020, there was scope for functionality items to be enhanced for efficiencies and more streamlined complaint handling processes.

Funding for the Stage 2 enhancements was approved in the second half of 2021 for completion by end of June 2022. This project was managed by IDS staff of the Department for the build, testing and activation stages. The IDS Project Team worked through the functionality issues in tandem with the OLSC CMS Working Group to focus on the key requirements. These enhancements were to stabilise and improve functionality of the CMS. The date of implementation of the Stage 2 enhancements was set for 30 June 2022 and the new enhancements went live on 20 June 2022.

OLSC staff have now been using the CMS for around 18 months, and during this time, they have raised functionality issues in addition to those highlighted by the original IT project team that were included in Stage 2 enhancements. These were the drivers for the efficiency improvements in the complaint handling area of the CMS.

The major improvements included:

- Email/calendar integration to provide OLSC staff the ability to better manage and process incoming and outgoing emails
- Automated notifications and alerts sent to OLSC staff when new correspondence has been uploaded, reassigned to another case officer or requires action
- Timeline and activities enhancements to accommodate changes to the activities data so it can be displayed in chronological order.
- Register of Disciplinary Action enhancements now includes a print view option and greater ease of functionality for various mandatory fields.

A further enhancement at the case closure stage was the implementation of an additional option for case officers to nominate a lawyer or law practice for an audit by the Compliance Audit Team.

The OLSC Sharepoint CMS fact sheets concerning functionality improvements were published by the IDS Project Team.

Further work is still to be completed on the data transfer via an approved cyber security method. This will be further reported next year.

During the reporting year, we maintained our previous Complaints Tracking System (CTS) for its historical data. In the next twelve months, OLSC senior staff will be considering the feasibility of cancelling the CTS licence with the service provider as the system is surplus to our needs and the storage of the historical data will have been investigated.

Website enhancements

Throughout the reporting year, the publication section of our website was updated with a revised and accessible PDF Complaint Form and fact sheets in line with the increased indexed costs amounts for the year 2022 -2023. OLSC staff continue to monitor and update our publication material for consumers and the legal profession.

Chapter 7

STATISTICS

Inquiry Line

In 2021-2022 financial year 5,453 calls were made to the OLSC Inquiry Line, an increase of 503 from the previous year.

P1 Legal matters raised in calls

| | 2021-2022 | 2020-2021 | 2019-2020 |
|-------------------------------------|-----------|-----------|-----------|
| OLSC General Query* | 29.6 | 17.0 | 19.6 |
| Family/ Defacto | 14.3 | 14.6 | 14.5 |
| Other Civil | 10.8 | 12.9 | 14.9 |
| Wills/ Power of Attorney | 8.8 | 3.6 | - |
| Conveyancing | 7.1 | 8.3 | 7.2 |
| Criminal | 4.2 | 3.8 | 4.1 |
| Personal Injuries | 4.2 | 5.5 | 6.2 |
| Other | 3.7 | 12.4 | 6.5 |
| Probate/ Family Provisions | 3.6 | 9.0 | 13.2 |
| General Law/ Legal Profession Query | 2.8 | 1.8 | 2.8 |
| Workers Compensation | 2.2 | 2.1 | 1.8 |
| Commercial/ Corporations | 1.9 | 2.6 | 3.3 |
| Leases/ Mortgages/ Franchises | 1.5 | 1.6 | 1.3 |
| Land and Environment | 1.0 | 0.9 | 2.1 |
| Employment Law | 0.8 | 1.0 | 0.4 |
| Building Law | 0.8 | 0.4 | - |
| Immigration | 0.7 | 0.9 | 1.1 |
| Professional Negligence | 0.7 | 0.7 | 0.6 |
| Strata Bodies/ Corporates | 0.6 | 0.1 | - |
| Victim's Compensation | 0.6 | 0.9 | 0.3 |
| Insolvency | 0.2 | 0.0 | - |

* OLSC General Query: includes Complaint enquiries, General enquiries, OLSC Website, Statistics & Publications

P2 Nature of phone enquiry

| | 2021-2022 | 2020-2021 | 2019-2020 |
|--------------------------------|-----------|-----------|-----------|
| Communication | 20.8 | 15.3 | 14.6 |
| Negligence | 13.1 | 12.5 | 9.8 |
| OLSC Process* | 11.1 | 16.1 | 17.0 |
| Ethical matters | 9.9 | 7.9 | 7.5 |
| General Cost Complaint/ query | 9.7 | 7.7 | 12.3 |
| Overcharging | 9.7 | 14.8 | 12.3 |
| Delay | 6.2 | 4.7 | 5.0 |
| Misleading Conduct | 3.5 | 4.1 | 4.5 |
| Instructions not Followed | 3.5 | 3.0 | 3.3 |
| Conflict of Interests | 2.6 | 2.1 | 2.5 |
| Costs Disclosure | 2.6 | 2.5 | 3.8 |
| Document Transfer/ Liens | 1.4 | 1.3 | 1.8 |
| Trust fund matters | 1.4 | 1.6 | 1.7 |
| Compliance matters | 1.2 | 0.3 | 0.3 |
| Document Handling | 1.0 | 1.3 | 0.9 |
| Fraud (not trust fund) | 0.8 | 1.3 | 0.8 |
| Pressure to Settle | 0.5 | 0.6 | 0.6 |
| Failure to honour Undertakings | 0.4 | 0.1 | 0.1 |
| Referral Requests | 0.3 | 2.2 | 0.9 |
| Capacity | 0.1 | 0.3 | - |
| Supervision | 0.0 | 0.1 | 0.1 |
| Advertising | 0.0 | 0.1 | 0.1 |

* OLSC Process: includes Complaint enquiries, General enquiries, OLSC Website, Statistics & Publications

P3 Practitioners mentioned on Inquiry Line

| | 2021-2022 | 2020-2021 | 2019-2020 |
|-----------|-----------|-----------|-----------|
| Solicitor | 90.7 | 91.0 | 93.7 |
| Other* | 7.0 | 7.4 | 4.6 |
| Barrister | 2.3 | 1.6 | 1.6 |

* Other: includes Licensed Conveyancer, Judge/ Magistrate, Executor, Interstate Practitioner, Paralegal/ Clerk & Support staff

P4 Source of calls to the OLSC inquiry line

| | 2021-2022 | 2020-2021 | 2019-2020 |
|--------------------------------------|-----------|-----------|-----------|
| Client | 62.8 | 46.9 | 56.2 |
| Opposing Client | 8.9 | 6.7 | 5.6 |
| Other* | 8.3 | 10.0 | 5.0 |
| Friend/ Relative | 6.0 | 6.9 | 5.0 |
| Previous Client | 4.7 | 8.6 | 2.7 |
| Beneficiary/ Executor/ Administrator | 4.3 | 4.8 | 3.6 |
| Solicitor on Own behalf | 2.0 | 11.1 | 12.9 |
| Solicitor on another's behalf | 1.6 | 2.2 | 2.6 |
| Non-legal Service Provider | 1.2 | 2.4 | 6.0 |
| Barrister on Own behalf | 0.2 | 0.2 | 0.2 |
| Barrister on another's behalf | | 0.2 | 0.2 |

* Other: includes Unrepresented Client, Government Agency, Witnesses, Judges, Quasi-judicial Officers & Non-identified source of calls

P5 Outcomes of calls to the Inquiry Line

| | 2021-2022 | 2020-2021 | 2019-2020 |
|--|-----------|-----------|-----------|
| Provided complaint form | 39.0 | 16.4 | 7.0 |
| Caller indicated intention to send in complaint | 14.3 | 21.8 | 20.0 |
| Referred to OLSC website | 12.3 | 19.4 | 27.5 |
| Other* | 6.8 | 10.6 | 1.2 |
| Listened to caller's concerns | 6.4 | 10.2 | 17.9 |
| Recommended direct approach to lawyer about concerns | 5.2 | 6.5 | 7.3 |
| Provided information about the legal system | 5.2 | 5.9 | 9.0 |
| Provided referral for legal advice or other assistance | 4.5 | 4.7 | 6.7 |
| Explained that concerns are outside jurisdiction of OLSC | 2.7 | 1.8 | 1.8 |
| Scheduled interview for caller | 1.4 | 0.6 | 0.0 |
| Referred to other agencies | 1.4 | 1.1 | - |
| Provided referral to Costs Assessment | 0.8 | 1.0 | 1.4 |

* *Other: includes General*

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 2021-2022 the OLSC **received** a total of 2,899 written complaints, an increase of 185 from the previous year. Of the total written complaints received, 1,361 were assessed as consumer matters, 1,528 as disciplinary matters and 2 as mixed matters. On receipt 8 complaints could not be classified as a consumer matter or disciplinary matter. Of those complaints assessed as within jurisdiction, 77.6% of those written complaints received were retained and handled by the OLSC. The remaining 22.4% were referred to the professional associations for handling.

The OLSC registered the **completion** of 2,839 written complaints, an increase of 172 from the previous year. Of the total written complaints completed, 250 complaints were resolved following informal resolution, 75 complaints were determined by OLSC/ Council and 2,345 complaints were closed. 169 complaints were closed on the basis OLSC had no power to deal with them and/ or were sent directly to NSW Police or regulators outside NSW. Of those complaints assessed as within jurisdiction, 78.4% of written complaints were completed by the OLSC. The professional associations completed the remaining 21.6%.

W1 Legal matters giving rise to complaints received in 2021-2022

| | Agency Handling Complaint | | | | |
|-------------------------------|---------------------------|-------------|------------|-----------|-----------|
| | OLSC | Council | 2021-2022* | 2020-2021 | 2019-2020 |
| Family/ Defacto | 18.8 | 3.8 | 22.6 | 21.3 | 19.5 |
| Other Civil | 12.7 | 7.3 | 20.0 | 16.3 | 16.3 |
| Probate/ Family Provisions | 7.3 | 1.9 | 9.3 | 9.7 | 9.9 |
| Criminal | 7.1 | 1.7 | 8.8 | 7.5 | 7.8 |
| Conveyancing | 6.9 | 1.5 | 8.4 | 8.9 | 8.2 |
| Personal Injuries | 6.5 | 0.5 | 7.0 | 6.4 | 7.9 |
| Commercial/ Corporations | 4.0 | 2.3 | 6.2 | 8.5 | 8.9 |
| Wills/ Power of Attorney | 3.1 | 0.8 | 3.9 | 4.3 | 5.5 |
| Employment Law | 1.9 | 0.9 | 2.7 | 3.1 | 3.3 |
| Workers Compensation | 2.0 | 0.2 | 2.2 | 3.3 | 3.0 |
| Leases/ Mortgages/ Franchises | 1.6 | 0.5 | 2.0 | 3.0 | 1.9 |
| Strata bodies/ Corporates | 1.6 | 0.3 | 1.9 | 1.9 | 2.1 |
| Building Law | 1.1 | 0.3 | 1.4 | 1.5 | 2.2 |
| Immigration | 1.3 | | 1.3 | 1.3 | 0.9 |
| Land and Environment | 0.7 | 0.2 | 0.9 | 0.7 | 1.0 |
| Insolvency | 0.3 | 0.2 | 0.6 | 0.3 | 0.4 |
| Professional Negligence | 0.4 | 0.1 | 0.5 | 1.4 | 0.7 |
| Victim's Compensation | 0.3 | 0.0 | 0.4 | 0.4 | 0.4 |
| Total % | 77.6 | 22.5 | | | |

* 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 2021-2022

| | Agency Handling Complaint | | | | |
|-------------------------------|---------------------------|-------------|------------|-----------|-----------|
| | OLSC | Council | 2021-2022* | 2020-2021 | 2019-2020 |
| Communication | 15.4 | 2.8 | 18.2 | 17.5 | 18.4 |
| Negligence | 16.4 | 1.7 | 18.1 | 18.2 | 16.1 |
| Overcharging | 12.0 | 0.3 | 12.3 | 12.4 | 14.9 |
| Misleading Conduct | 5.7 | 4.0 | 9.6 | 7.7 | 7.2 |
| Ethical Matters | 5.6 | 3.9 | 9.5 | 8.2 | 6.9 |
| Delay | 5.7 | 0.4 | 6.1 | 5.8 | 5.1 |
| Instructions Not Followed | 4.3 | 0.5 | 4.8 | 4.8 | 4.7 |
| General Cost Complaint/ Query | 3.8 | 0.8 | 4.6 | 6.4 | 7.4 |
| Conflict of Interest | 1.9 | 1.6 | 3.5 | 3.6 | 2.5 |
| Cost Disclosure | 2.6 | 0.1 | 2.7 | 4.1 | 4.7 |
| Trust Fund | 1.3 | 1.3 | 2.6 | 3.1 | 3.8 |
| Document Transfer/ Liens | 2.3 | 0.1 | 2.4 | 2.3 | 2.3 |
| Compliance Matters | 1.1 | 0.8 | 1.9 | 1.9 | 1.5 |
| Fraud (Not Trust Fund) | 0.5 | 0.6 | 1.1 | 1.1 | 1.3 |
| Capacity | 0.5 | 0.3 | 0.7 | 0.7 | 0.8 |
| Document Handling | 0.6 | 0.1 | 0.6 | 0.8 | 0.8 |
| Pressure to Settle | 0.6 | | 0.6 | 0.7 | 0.7 |
| Undertakings | 0.1 | 0.2 | 0.3 | 0.3 | 0.5 |
| Advertising | 0.0 | 0.1 | 0.2 | 0.2 | 0.2 |
| Supervision | 0.1 | 0.0 | 0.1 | 0.2 | 0.2 |
| Total % | 80.5 | 19.6 | | | |

* 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 2021-2022

| | Number of complaints | | | | 2021-2022 | 2020-2021 | 2019-2020 |
|---|----------------------|------------|-----------|-------------|------------|-----------|-----------|
| | Solicitor* | Barrister | Other** | TOTAL | | | |
| Client | 1299 | 83 | 4 | 1386 | 47.8 | 47.0 | 52.1 |
| Opposing Client | 719 | 31 | 6 | 756 | 26.1 | 22.7 | 20.8 |
| Beneficiary/ Executor/ Administrator | 168 | 1 | | 169 | 5.8 | 4.8 | 5.2 |
| Other *** | 120 | 9 | | 129 | 4.4 | 4.4 | 4.8 |
| Previous Client | 108 | 2 | | 110 | 3.8 | 5.4 | 3.0 |
| Solicitor on Own behalf | 77 | 7 | | 84 | 2.9 | 3.8 | 2.8 |
| Solicitor on another's behalf | 78 | 2 | | 80 | 2.8 | 3.7 | 3.3 |
| Client's Friend/ Relative | 63 | 2 | | 65 | 2.2 | 3.2 | 3.3 |
| Unrepresented Client | 34 | 3 | | 37 | 1.3 | 1.5 | 1.2 |
| Non-legal Service Provider | 34 | 2 | | 36 | 1.2 | 1.2 | 1.1 |
| Barrister on Own behalf | 16 | 4 | | 20 | 0.7 | 1.0 | 1.0 |
| Commissioner | 8 | | | 8 | 0.3 | 0.3 | 0.3 |
| Law Society | 7 | | | 7 | 0.2 | 0.4 | 0.6 |
| Barrister on another's behalf | 4 | 1 | | 5 | 0.2 | 0.3 | 0.3 |
| Bar Association | | 4 | | 4 | 0.1 | 0.3 | 0.0 |
| Cost Assessor | 3 | | | 3 | 0.1 | 0.0 | 0.2 |
| TOTAL | 2738 | 151 | 10 | 2899 | 100 | | |

* Includes former solicitors and law practices.

** Includes licensed conveyancers, magistrate and interstate practitioners.

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

W4 Age of complaints remaining open or suspended on 30 June 2022 and being handled by the OLSC

| Year opened | Open at 30 June 2022 | Open at 30 June 2021 | Open at 30 June 2020 |
|--------------|----------------------|----------------------|----------------------|
| 2021-2022 | 922 | | |
| 2020-2021 | 117 | 847 | |
| 2019-2020 | 40 | 121 | 875 |
| 2018-2019 | 10 | 35 | 79 |
| 2017-2018 | 3 | 44 | 73 |
| 2016-2017 | 4 | 19 | 23 |
| 2015-2016 | 2 | 11 | 4 |
| 2014-2015 | 2 | 2 | 3 |
| 2013-2014 | 6 | 6 | 7 |
| 2012-2013 | 2 | 2 | 2 |
| 2011-2012 | 0 | 0 | 0 |
| 2010-2011 | 0 | 0 | 1 |
| 2009-2010 | 2 | 2 | 0 |
| 1994-2009 | 0 | 0 | 0 |
| TOTAL | 1110 | 1089 | 1067 |

* 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 handled by the OLSC in 2021-2022

| | Days* |
|---|-------|
| Average time to complete complaints received and completed/ resolved in 2021-2022 | 93.4 |
| Average time to complete complaints received in any year but completed/ resolved in 2021-2022 | 295.9 |
| Average time taken to dismiss complaints received in 2021-2022 | 77.9 |
| Average time to dismiss complaints received in any year but dismissed in 2021-2022 | 432.0 |

* Averages rounded to 1 decimal point

W6 All Complaints finalised in 2021-2022

All OLSC Complaints Resolved

| | Solicitor* | Barrister | Other** | TOTAL |
|---|------------|-----------|----------|------------|
| Complaints resolved informal resolution | 246 | 3 | 1 | 250 |
| Subtotal resolved at the OLSC | 246 | 3 | 1 | 250 |

ALL OLSC Complaints Closed

| | Solicitor* | Barrister | Other** | TOTAL |
|--|-------------|-----------|-----------|-------------|
| Disciplinary action: Reprimand/ Fine/ Waive or reduce fees | 7 | 0 | 0 | 7 |
| Determination: Caution & Apology | 5 | 1 | 0 | 6 |
| Consumer matter Determination | 14 | 0 | 0 | 14 |
| NCAT disciplinary proceedings | 3 | 0 | 1 | 4 |
| Subtotal determined by OLSC | 29 | 1 | 1 | 31 |
| Withdrawal of a complaint at OLSC | 220 | 4 | 4 | 228 |
| Misconceived/ Lacking in substance | 661 | 24 | 3 | 688 |
| Time requirement not waived | 61 | 5 | 0 | 66 |
| Complainant No/ Inadequate response to request info | 123 | 3 | 0 | 126 |
| Duplicate complaint | 30 | 2 | 0 | 32 |
| Closed Civil proceedings on foot | 30 | 1 | 0 | 31 |
| Closed No further investigation except CM | 187 | 13 | 0 | 200 |
| Closed in Public interest | 106 | 0 | 9 | 115 |
| Not Resolved after informal resolution | 305 | 12 | 2 | 319 |
| Appeal closed by OLSC | 3 | 0 | 5 | 8 |
| Subtotal closed by OLSC | 1726 | 64 | 23 | 1813 |
| Total OLSC Complaints Completed | 2001 | 68 | 25 | 2094 |

All Non Jurisdictional Complaints

| | Solicitor* | Barrister | Other** | TOTAL |
|--|------------|-----------|----------|------------|
| Closed No power to investigate | 76 | 8 | 4 | 88 |
| Refer to NSW Police or other | 77 | 1 | 3 | 81 |
| Total Non Jurisdictional Complaints | 153 | 9 | 7 | 169 |

All Council Complaints Closed

| | Solicitor* | Barrister | Other** | TOTAL |
|---------------------------------------|------------|-----------|----------|-----------|
| Disciplinary action: Reprimand/ Fine | 16 | 3 | 4 | 23 |
| Determination: Caution & Apology | 10 | 8 | 0 | 18 |
| NCAT disciplinary proceedings | 2 | 1 | 0 | 3 |
| Subtotal determined by Council | 28 | 12 | 4 | 44 |

| | Solicitor* | Barrister | Other** | TOTAL |
|---|-------------|------------|-----------|-------------|
| Withdrawal of a complaint at Council | 29 | 4 | 0 | 33 |
| Misconceived/ Lacking in substance | 88 | 7 | 0 | 95 |
| Time requirement not waived | 17 | 2 | 1 | 20 |
| Complainant No/ Inadequate response to request info | 23 | 9 | 2 | 34 |
| Duplicate complaint | 43 | 0 | 1 | 44 |
| Closed No further investigation except CM | 257 | 24 | 9 | 290 |
| Closed in Public interest | 12 | 2 | 2 | 16 |
| Subtotal closed by Council | 469 | 48 | 15 | 532 |
| Total Council Complaints Completed | 497 | 60 | 19 | 576 |
| Total finalised by OLSC | 2001 | 68 | 25 | 2094 |
| Total Non Jurisdictional Complaints | 153 | 9 | 7 | 169 |
| Total finalised by Council | 497 | 60 | 19 | 576 |
| TOTAL | 2651 | 137 | 51 | 2839 |

* Includes former solicitors and law practices.

** Includes licensed conveyancers, magistrate and interstate practitioners.

W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2021-2022

Percentage of files closed within following periods*

| | 2021-2022 | 2020-2021 | 2019-2020 |
|----------------|-----------|-----------|-----------|
| 0-30 days | 17.0 | 12.2 | 12.6 |
| 1-3 months | 24.3 | 29.9 | 30.5 |
| 3-6 months | 25.0 | 27.0 | 27.5 |
| 6-9 months | 13.6 | 14.7 | 13.8 |
| 9-12 months | 7.4 | 6.6 | 6.9 |
| Over 12 months | 12.8 | 9.5 | 8.7 |

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

R2 Reviews in progress and finalised in 2021-2022 - received all years

| | Solicitor | Barrister | OTHER | TOTAL | Percentage |
|---|------------|-----------|----------|------------|-------------|
| Reviews in progress | | | | | |
| Internal review application under LPUL | 55 | 7 | 2 | 64 | 27.0 |
| Total remaining open | 55 | 7 | 2 | 64 | 27.0 |
| Reviews completed | | | | | |
| Discretion declined for review under LPUL | 151 | 16 | 6 | 173 | 73.0 |
| Total completed | 151 | 16 | 6 | 173 | 73.0 |
| Total handled | 206 | 23 | 8 | 237 | 100 |

NSW Civil and Administrative Tribunal

For matters filed and disposed of by NCAT in 2021-2022 refer to NCAT's annual report.

CHAPTER 8

FINANCIAL PERFORMANCE FOR 2021-2022

The OLSC operates within the organisational framework of the NSW Department of Communities and Justice. Unlike most other Departmental agencies funded by State Treasury, the OLSC receives operational funding from the Public Purpose Fund.

2021-2022 saw a lower level of annual expenditure than was forecast. This lower expenditure is largely attributable to the ongoing effects of the COVID-19 pandemic, and the technological impact of the electronic Complaints Management System (CMS) first rolled out to the Office in December 2020, which continues to revolutionise our office procedures.

Among the many improvements to OLSC operation brought about by the OLSC CMS software was the replacement of hard copy correspondence and case files with electronic documentation and correspondence as the standard operating format for this Office.

Accounts that have experienced lower than forecast expenditure due to COVID-19 and OLSC CMS include:

Travel – The financial year saw a decrease in the number of conferences and live events formerly attended by OLSC staff. This was a direct result of the ongoing COVID-19 pandemic and resulted in low expenditure from our *Travel* budget.

Electricity – OLSC electricity costs, paid from our Utilities account, have been positively impacted due to ongoing work from home arrangements.

Postal expenses – Annual *Postal Expenses* have seen a significant reduction corresponding to the increased use of electronic correspondence.

Printing – The reduction of spending from our *Printing* account is another direct consequence of the OLSC CMS system and the resultant move to electronic files and documentation.

Stationery – The diminished use of hard copy case files and correspondence by the OLSC has resulted in a reduced need for stationery items, including the regular

quantities of A4 printing paper formerly purchased annually with funding from our *Stores / Operating Supplies* budget.

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

The OLSC establishment continues to sit at thirty permanent full time administrative and professional staff, and one full time equivalent position for rostered casual employees working on the OLSC Inquiry Line.

The OLSC managed its human resources operations carefully during the year, delivering a good outcome in relation to Employee Related Payments.

2021-2022 saw three ongoing members of OLSC staff resign their roles to pursue careers outside of the Department. The resultant role vacancies were filled promptly through open merit recruitment and the sourcing of staff from existing talent pools. A further two internal temporary members of staff were transitioned to ongoing positions as a result of prior successful recruitment / talent pool membership.

The year also saw some staff movement in relation to maternity leave entitlements, with two members of staff commencing extended periods of maternity leave, and one staff member returning to work after a 12-month combination of maternity leave and leave without pay.

All maternity leave vacancies are backfilled with temporary occupants.

The number of rostered casual staff working on the OLSC Inquiry Line was kept constant, with outgoing staff members swiftly replaced with new members.

At the close of the financial year the OLSC staffing situation remains stable, with all viable roles held by ongoing or temporary occupants.

FINANCIAL STATEMENT 2021-2022

| | Budget | Actual | Variance | Notes |
|---|--------------------|--------------------|----------------|-------|
| | \$ | \$ | \$ | |
| Public Purpose Fund Recoupments (Budget) | (5,068,355) | (5,067,888) | (467) | |
| Other Revenue | - | - | - | |
| TOTAL REVENUE | (5,068,355) | (5,067,888) | (467) | |
| Salaries & Wages | 3,227,528 | 2,710,894 | 516,634 | 1 |
| Leave Entitlements (Rec Leave, Mat Leave, Annual Leave Loading & LSL) | 27,019 | 472,888 | (445,868) | 2 |
| Workers Compensation | 32,397 | 24,559 | 7,838 | |
| Payroll Tax | 148,954 | 164,977 | (16,023) | |
| Fringe Benefits Tax | 3,111 | - | 3,111 | |
| Superannuation | 231,294 | 249,621 | (18,326) | |
| Allowances | 47,246 | 46,314 | 932 | |
| EMPLOYEE RELATED PAYMENTS Excl Crown Liabilities | 3,717,551 | 3,669,252 | 48,298 | |
| Advertising | - | 266 | (266) | |
| Cleaning | 23,475 | 22,508 | 966 | |
| Fees | 71,157 | 34,807 | 36,350 | 3 |
| General Expenses | 3,543 | 2,836 | 707 | |
| Insurance | 1,407 | 127 | 1,281 | |
| Computer Service Costs | - | (2,185) | 2,185 | |
| Legal Costs | 203,603 | 164,726 | 38,877 | |
| Operating Lease Rental Expenses | 668,325 | 567,063 | 101,262 | 4 |
| Postal Expenses | 30,406 | 16,284 | 14,122 | |
| Printing | 25,782 | 3,173 | 22,609 | |
| Publications | 10,038 | 9,370 | 667 | |
| Staff Related Costs | 31,790 | 19,210 | 12,580 | |
| Stores / Operating Supplies | 15,221 | 4,680 | 10,541 | |
| Telephone | 45,448 | 77,466 | (32,019) | 5 |
| Travel | 21,172 | 1,084 | 20,088 | 6 |
| Utilities | 36,750 | 57,423 | (20,673) | 7 |
| Finance Costs | 4,792 | - | 4,792 | |
| OTHER OPERATING EXPENSES | 1,192,909 | 978,840 | 214,070 | |
| Maintenance Contracts | 40,982 | - | 40,982 | 8 |
| IT Software Maintenance | 116,444 | 101,573 | 14,871 | 9 |
| MAINTENANCE | 157,426 | 101,573 | 55,853 | |
| TOTAL EXPENSES Excl Crown Liabilities & Depreciation | 5,067,886 | 4,749,665 | 318,221 | |
| Net Cost of Services Excl Crown Liabilities & Depreciation | (470) | (318,223) | 317,753 | |

FINANCIAL STATEMENT 2021-2022

Add Non Cash Items:

| | | | | |
|--|----------------|------------------|----------------|----|
| Crown Liabilities (<i>LSL Liability Assumed by Crown</i>) | 80,933 | 7,444 | 73,489 | 9 |
| Depreciation & Amortisation | 357,846 | 1,043 | 356,803 | 10 |
| Net Cost of Services Inc Crown Liabilities & Depreciation | 438,310 | (309,736) | 748,046 | |

NOTES SUPPORTING THE 2021-2022 FINANCIAL STATEMENT

Employee Related Payments

- Salaries & Wages:** The OLSC's *Salaries & Wages* budget contains provision for annual salary payments to employees assigned to ongoing, temporary and casual roles in the OLSC establishment. The large, positive variance for *Salaries & Wages* is the result of a funding realignment by DCJ finance during budget preparations. The apparent excess funding is actually the budget required to meet forecast *Leave Entitlements* expenses.
- Leave Entitlements:** The OLSC's *Leave Entitlements* budget meets the costs of recreation leave, annual leave loading and long service leave entitlements of OLSC employees. During 2021-2022, funding to meet the forecast demands of leave entitlements was built into the *Salaries & Wages* budget (see above). The positive variance of the *Salaries & Wages* budget and the negative variance of the *Leave Entitlements* budget are the result of this allocation of Employee Related Payment accounts.
- Operating Lease Rental Expenses:** The OLSC incurs a monthly rental fee for leased floor space in the Sydney CBD. The *Operating Lease Rental Expenses* budget provides for the monthly payment of rent and the associated cost of leasing a parking space at our CBD office location. As part of our recent lease renewal, an incentive of \$567,187 was negotiated to be applied across the whole term of the lease. In April 2022 the backdated incentive of 8 months, totalling \$110,671 was applied, resulting in the significant variation for this budget item.
- 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 OLSC *Telephone* budget was adversely impacted by incorrect billing applied by IDS during May and June 2022, resulting in a negative end of year variance. The incorrect charges will be reimbursed to the OSLC during FY23.

Other Operating Expenses

- Fees:** The OLSC *Fees* budget maintains funds for various types of fees expenditure including interpreter fees and the fees of miscellaneous experts from whom the OLSC seeks advice. During 2021-2022 the *Fees* budget met costs relating to the adoption of an online reporting platform, and professional fees relating to the renegotiation of our CBD office lease. The OLSC otherwise saw reduced expenditure from its *Fees* budget during the year, resulting in the favourable variance for this account.
- Travel:** The OLSC's *Travel* budget maintains funds for travel costs incurred by the Commissioner and staff to attend interstate and intrastate official business, training and conferences. 2021-2022 saw a continuation of the trend established the previous financial year whereby the impact of COVID-19 resulted in a significant decrease in face-to-face conferences and events. Minimal travel by OLSC staff during the year has resulted in significant underspending from this budget account.
- Utilities:** The OLSC's *Utilities* budget includes provision for monthly payment of electricity and rates/outgoing expenses. The *Utilities* budget variance reflects adjustments prepared by the Department in 2021-2022.

-
- 8. Maintenance Contracts:** The OLSC's budget for *Maintenance Contracts* provides for maintenance and support costs associated with the QA Plus database. Annual support and maintenance fees for QA Plus covering the period 1/7/22 to 30/6/22 were paid in the final period of FY21. Accordingly, FY22 saw no invoices from the company, resulting in zero expenditure from this budget account.
 - 9. IT Software Maintenance:** The OLSC's budget for *IT Software Maintenance* meets support and maintenance costs charged by the Department's IDS under service level agreement. FY22 saw the first full 12 months of support and maintenance costs relating to the OLSC Complaints Management System (CMS). Annual CMS related fees have stabilised at a lower rate than forecast, resulting in a favourable variance for this budget item.

Non Cash Items

- 10. 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.
- 11. 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 Department is obliged to make these adjustments as part of Treasury requirements.

CASE STUDIES

Complaint involving a failure to transfer a water access licence in the purchase of a property

In early 2017, this Office received a complaint by a joint purchaser of a property that related to water access. The property settled in September 2016. The purchaser alleged that his lawyer had failed to transfer the water access licence into the purchaser's name. Upon contacting the lawyer, the OLSC was advised that the vendor company had not disclosed in the Contract for Sale that a water access licence existed on the property. When we contacted the vendor's solicitor, we were advised that her client, the vendor, had provided instructions that the vendor was not aware of any "rights, licenses, easements, covenants or restrictions as to use other than those disclosed in the Contract". Subsequently, the vendor company became de-registered by ASIC.

In order to obtain legal title for the purchasers of the property and transfer the water entitlement, significant steps were taken by the purchasers' solicitor (with the cooperation of the vendor's solicitor), with the oversight of the OLSC, including consideration as to the possibility of reinstating the company or requesting NSW Land Titles to register the property into the purchasers' names.

As all attempts to contact the Directors of the former vendor company were unsuccessful, the purchasers' solicitor was able to apply to ASIC to have the company reinstated for the purpose of transferring the water access licence, upon receiving statutory declarations from the purchasers. In 2022, confirmation was received from NSW Land Registry Services that the purchasers had become registered on title to the water access licence. Despite the time delays, we considered the ultimate outcome a successful resolution of the problem and the complaint.

Complaint involving allegations of a failure to communicate, progress the matter or transfer a client file resulting in a consumer matter determination

The complainant had retained the lawyer to assist her in 2016 as she was the Executor of a family member's Estate. In her complaint, she alleged that the lawyer had failed to communicate with her or progress the matter, and then failed to transfer the file to her new lawyer.

This Office attempted to informally resolve the complaint with the lawyer. Despite resolving the transfer of file issue, the lawyer's delay in progressing the matter and their explanations for their conduct were concerning. This was because it was evident that the lawyer failed to realise that the application for Probate had been requisitioned for quite some time and did not respond to repeated contact by the complainant.

The Commissioner ultimately determined to resolve this consumer complaint by making a determination under section 290(2)(a) of the Legal Profession Uniform Law to caution the lawyer for a breach of Rule 4.1.2 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules. The Commissioner considered that the lawyer had not delivered legal services as diligently or as promptly as reasonably possible.

Complaint involving a costs dispute for planning law work resulting in a Binding Costs Determination

The complainant had retained a firm to assist her as she wanted to object to a development consent determination in her area. The complainant disputed the lawyer's costs on the basis that he had initially given incorrect advice prior to Counsel being briefed and providing an opinion. The complainant also considered that the lawyer had not done any work when briefing Counsel.

Efforts by this Office to resolve the costs dispute informally were not successful, primarily because the parties had made various offers regarding the legal costs that had been rejected prior to the complaint being made.

The Commissioner made a Binding Costs Determination pursuant to section 292 of the Legal Profession Uniform Law to resolve the costs dispute. He considered that the legal costs for the work done by the lawyer in briefing Counsel were fair and reasonable in all the circumstances, but not the charges for the incorrect initial advice. The determination specified that the amount payable by the complainant be reduced by \$1,000.00.

Complaint involving allegations of negligence

The complainant instructed the lawyer in a property law matter. The complainant alleged that the lawyer had failed to accurately adjust the settlement figures to reflect a deposit of \$1,750 they had previously paid. The complainant also noted that there was a discrepancy regarding the water rates and council rates that were paid at settlement.

The complainant advised that the solicitor had attempted to contact the Vendor's lawyer to organise a reimbursement with little success. The matter was ultimately resolved by the lawyer agreeing to pay a sum of \$2,500 to resolve the complaint.

Complaint involving a failure to comply with disclosure obligations resulting in a consumer matter determination

The complainant instructed the lawyer in relation to a personal injuries claim. The lawyer issued a costs agreement on 13 November 2017 which included an estimate of \$14,300 - \$30,800. The lawyer submitted they had provided an updated estimate by email dated 19 June 2020.

An itemised invoice was issued on 11 September 2020 in the sum of \$99,306.73. The complainant disputed the invoice on the basis that the lawyer had acted negligently, and appropriate costs disclosure was not provided. The OLSC attempted to assist the parties to informally resolve the dispute, however an agreement could not be reached.

The Commissioner noted that there was no evidence before him that the lawyer had provided any written updated estimates between May 2019 and June 2020. He determined that the lawyer had failed to provide the complainant with written updated costs disclosure and pursuant to section 290(2)(a) of the Legal Profession Uniform Law, the lawyer was cautioned for their failure to comply with their cost disclosure obligations.

Complaint involving a delay in transferring client documents resulting in a consumer matter determination

The complainant complained about the services of her previous solicitor in an Estate matter. This included an allegation that the solicitor failed to release the complainant's file and original documents held by the lawyer. During the informal resolution process, the solicitor denied that he had the complainant's original documents in his possession but agreed to release the remainder of the complainant's file. The solicitor released these documents to this Office five months following his initial agreement to release them.

Ultimately, the Commissioner considered there was insufficient evidence on file to indicate that the solicitor held the original documents in his possession. However, the Commissioner found that the solicitor breached Rule 14 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules, in that he delayed releasing the complainant's file for a period of one year and five months. Pursuant to section 290(2)(a) of the Legal Profession Uniform Law, the lawyer was cautioned for a failure to comply with his obligations to release the complainant's documents in a reasonable timeframe.

Complaint involving a failure to provide the complainant with updates or progress the matter resulting in a consumer matter determination

The complainant engaged the solicitor's services in relation to a prospective personal injury claim in 2015. The complaint involved an allegation that the solicitor delayed providing the complainant with an explanation or update as to the progress of her matter despite her repeated requests.

Despite extensive attempts by this Office to resolve the complaint, the parties were unable to reach an agreement. Ultimately, the Commissioner found that the solicitor delayed in providing any substantive or specific updates to the complainant as to the progress of her matter between March 2016 and early October 2020, a period of approximately four years and seven months.

Accordingly, the Commissioner found that the solicitor had breached Rules 4.1.3 and 7.1 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules. Pursuant to section 290(2)(a) of the Legal Profession Uniform Law, the solicitor was cautioned for a failure to comply with her obligations to deliver legal services as promptly as reasonably possible and to provide clear and timely advice to allow the complainant to make informed choices about her matter.

Complaint involving a costs dispute in a personal injury matter

The complainant engaged the solicitor to represent him in a motor vehicle accident claim. The complainant alleged that the solicitor had overcharged as the legal costs were above the maximum legal costs recoverable under the Motor Accidents Compensation Regulation 2015 (NSW).

During the informal resolution process, the solicitor apologised to the complainant directly and conceded making an inadvertent error in calculating the legal costs. The solicitor then reduced the costs in accordance with the Motor Accidents Compensation Regulation 2020 (NSW).

This Office then requested a breakdown of the solicitor's calculations as it appeared that some of the legal costs were incurred prior to the commencement of the 2020 Regulation. In reply, the solicitor acknowledged this issue and issued an amended invoice reducing their costs in accordance with the rates contained in the 2015 Regulation.

The matter was resolved on the basis that the complainant accepted the amended invoice, and the solicitor paid the balance of the settlement monies to the complainant.

Complaint involving a failure to disclose costs

The complainant engaged the services of the lawyer to represent him in a property matter. At the conclusion of the matter, the complainant was issued an invoice for approximately \$1,500.00. The complainant alleged they did not receive any disclosure regarding the costs that would be payable. The complainant lodged a complaint with this Office seeking that the invoice be withdrawn.

This Office proceeded to attempt to informally resolve the complaint. The lawyer was asked to respond to the complaint and indicate how they had complied with their disclosure obligations under the Legal Profession Uniform Law. The lawyer accepted that no costs disclosure was provided however suggested that the reason as to why this occurred was because the matter was urgent. This was disputed by the complainant. In order to resolve the dispute, the lawyer offered to waive the invoice. The complainant accepted the lawyer's proposal, and considered the complaint resolved.

Complaint involving a failure to comply with an obligation to wait 30 days before commencing proceedings to recover legal costs

The complainant engaged the lawyer to assist with a conveyancing matter. After approximately one month of the lawyer acting for the complainant, the complainant terminated the retainer on the basis that they considered the lawyer had failed to undertake any work on their matter.

The complainant subsequently received an invoice for approximately \$600. On the same date, the lawyer commenced recovery action against the complainant regarding this invoice. The complainant then made a complaint seeking for the invoice to be withdrawn.

Upon receipt of the complaint, this Office wrote to the lawyer referring him to section 194(2) of the Legal Profession Uniform Law, which provides that a law practice must not commence to recover legal costs until at least 30 days had passed since the date on which the person was given the bill. Noting this, the lawyer indicated he would not file for default Judgment until after this Office had finalised the matter. The lawyer indicated that they were unaware of their obligations and accepted that they had failed to comply. The lawyer agreed to refund the complainant the full costs paid totalling \$1,100.00. When closing the file, the Commissioner formally reminded the lawyer of the obligations under section 194(2) of the Legal Profession Uniform Law.

Complaint involving allegations of delay and poor communication

The complainant engaged the services of a solicitor in 2019 to assist him with a family law matter with a foreign national. The ex-spouse had relocated back to her home country during the initial COVID-19 outbreak. Due to government lockdowns in their respective countries, the ex-husband was frustrated that there were delays and/or little activity in progressing his divorce.

A complaint was received by this Office in April 2022. The ex-husband sought our assistance as he had not heard from his solicitor in approximately eighteen months.

Following informal resolution by this Office, the solicitor apologised for the delay. The solicitor proposed that moving forward any professional service fees and additional administrative costs incurred would be waived. The complainant accepted the solicitor's apology, and he was also satisfied with the proposal regarding future costs.

Complaint involving an allegation of negligence

The complainant (represented in the complaint by their parent) engaged the services of the lawyer regarding a criminal matter. The representative alleged that successful grounds for an appeal were not mentioned in an advice document provided by the lawyer. On this basis, the representative sought a refund of payment made for legal services rendered due to the lawyer's alleged negligence.

This Office proceeded to attempt to informally resolve the complaint. The lawyer provided reasons as to why they believed the complaint did not have merit, however advised that they were willing to consider a compromise of their legal fees in order to resolve the complaint. The lawyer subsequently offered a refund of fees if the complaint was withdrawn.

This offer was communicated to, and accepted by, the complainant's representative, who then provided confirmation that they were in receipt of payment and that they wished the complaint to be withdrawn. The Commissioner then determined to close the complaint on this basis.

Complaint involving an allegation of poor service

The complainant engaged the services of the lawyer regarding an income protection claim matter. The complainant alleged that they were not kept properly informed over the course of their matter, and that they were provided with incorrect advice. On these grounds, the complainant sought assurances that they would not have to pay an invoice issued by the lawyer.

This Office proceeded to attempt to informally resolve the complaint. The initial response by the lawyer indicated they believed the complaint was without merit, but that the disputed invoice in question had already been withdrawn. After this Office communicated comments on their response by the complainant, the complainant received written assurances from the lawyer that they were not pursuing payment of the invoice.

The complainant indicated that these assurances were sufficient to resolve the complaint. The Commissioner then determined to close the complaint on the basis that it had been resolved.

Complaint involving an allegation of negligence

The complainant engaged the services of a solicitor to represent her in a conveyancing matter in which she was the purchaser of a block of land.

The complainant alleged that the solicitor, amongst other things, acted negligently by failing to arrange for the payment of stamp duty to Revenue NSW. That payment was meant to be made within three months of the exchange of contracts, which had occurred in April 2021. The complainant asserted that she had no knowledge of this payment, and that she had not received any information or documentation from the solicitor advising payment was required.

The complainant complained that she was liable to pay interest as that payment to Revenue NSW became overdue. It was noted that the scope of works set out in the solicitor's costs agreement stated that he would 'ensure stamp duty documentation is in order for settlement'.

In his response to the complaint, the solicitor; agreed not to charge the complainant any fees in relation to the matter, reimbursed her for the interest she had to incur due to the late payment of stamp duty, provided a detailed explanation of the reasons for the error (which was due to a technical issue after a change in record-keeping software systems had occurred), and submitted that the firm was reviewing its systems in light of the complaint.

This Office considered the matter to be resolved, and the complaint was closed.

The Office of the NSW 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@justice.nsw.gov.au

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