



annual report 2003–2004

the office of the legal services commissioner

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## vision

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

## mission

To improve consumer satisfaction with legal services through:

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

## values

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

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# Commissioner's Report

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A review of the complaint numbers over the past few years shows that the level has been maintained with only a very slight increase this year.

This is significant for two reasons. First, while the level of complaints received is constant, the number of legal practitioners in New South Wales has increased: two years ago there were 19,194 lawyers in New South Wales, last year there were 19,961 and in the reporting year there were 21,164, made up of 18,612 solicitors and 2,552 barristers.

Second, statistics from regulatory authorities in other jurisdictions in Australia, as well as New Zealand, the United Kingdom and several of the Canadian jurisdictions, suggests that fewer complaints are lodged against New South Wales legal practitioners than any other of those jurisdictions mentioned.

This is evidence that our educational and problem solving approach appears to be working.

In addition, OLSC staff were able to finalise more complaints this year than the total number received while also achieving a huge reduction in complaints held that are over two years old – from 248 last year to only 42 at the end of this reporting year.

We commenced 235 investigations this year compared with 91 last year. As a result, 4 matters were referred to the Legal Services Division of the Administrative Decisions Tribunal. 43 additional matters were determined to be likely to result in findings of unsatisfactory professional conduct including a small number in which it was determined it was not in the public interest to continue the investigation.

## Project Management Methodology

Last year we redesigned our internal procedures by adopting a business plan using project management methodology. Much of the work performed by the Office was categorised into projects with project teams being responsible for defined outcomes; all staff are members of at least one project team and the results so far have been outstanding.

The project teams have allowed us to restructure and refocus a number of our processes while the team based methodology greatly increased participation of all staff in achieving the objectives of the OLSC.

## Costs Review Panel

Following a speech given earlier this year by Chief Justice, The Honourable Jim Spigelman concerning legal costs, the Premier moved to establish a panel to review the current legal costs system, the calculation of costs and the methods by which costs are presented to a client. I was appointed to this panel along with Mr Laurie Glanfield, Director General of the Attorney General's Department, Mr Ian Harrison SC, President of the NSW Bar Association and Mr Gordon Salier, President of the Law Society of NSW. We are actively engaged in the research, discussion and debate about this extremely important issue and it is anticipated we will report on our findings during the next financial year.

## Incorporated Legal Practices

In our last annual report we discussed the evolution of incorporated legal practices in New South Wales.

We mentioned that in consultation with the Law Society, the College of Law and LawCover (the professional indemnity insurance company for lawyers) we developed a list of issues that ought to be addressed by a legal practice if it is to be seen to have "appropriate management systems" as required by the legislation.



Along with the development of this list we also developed a self-assessment process by which an incorporated legal practice can assess its management systems to determine whether or not they would meet the requirements of the legislation and this Office.

After extensively testing the ten issues to be addressed and the self-assessment itself, we sent out 286 self-assessment forms in February this year to incorporated legal practices that existed at that date.

To our immense satisfaction, 276 completed self-assessment forms were returned – an outstanding response. Not only are we pleased with the number of returns, but also with the positive approach taken by the vast majority of the legal practices responding.

We received honest assessments in which both the strengths and weaknesses of the practice were identified. Where weaknesses or lack of compliance existed, we were able to work with those practices to help them achieve and improve management systems.

Many of the practices found the experience of focusing on their management systems beneficial and a practical step in improving and streamlining their practices. They reported to us that this could result in improved efficiency, higher morale of employees and increased profit margins.

So far this has been a very successful undertaking for the OLSC and we will report further next year on developments.

## Advertising Regulation

We reported last year that a new regulation banning advertising of personal injuries services by legal practitioners came into effect on 23 May 2003.

Since that time I have initiated approximately 75 complaints in relation to advertisements alleged to breach the regulation. At the time of writing this report there are 17 matters in which we are considering prosecution for breaching the regulation.

However, a challenge to the validity of the regulation has been filed in the High Court by the Australian Plaintiff Lawyers Association in conjunction with several law firms.

This challenge, exercising the original jurisdiction of the High Court on Constitutional grounds, is expected to be heard towards the end of the year.

## Educational Work

We have yet again experienced a marked increase in the amount of educational work we provide for the legal profession, students and the community at large.

I had the honour of speaking again this year at the American Bar Association's Annual General Meeting in San Francisco where I gave a paper exploring the question "Is State regulation of the legal profession inevitable?" This engendered lively debate in America and is of no less interest here in Australia.

## Tenth Year Anniversary

The 1st July 2004 will be the 10th anniversary of the operation of the OLSC. In that time we have grown from an office of just seven staff to 21 positions while carving out an important role within the regulatory framework.

While there are many achievements of this office of which I am extremely proud, perhaps the best affirmation of our success is that our model of a co-regulatory approach to regulating the legal profession, once unique in the world, is now being followed in Victoria, Queensland and under active consideration in the United Kingdom. I believe this to be a phenomenal success for a small agency.

Throughout this ten year period I have been extremely honoured to work with many incredibly talented and committed staff and to have developed a strong, positive working relationship with the professional associations, the Attorney General's Department and the Attorney General's Office which has resulted, in my view, in great benefit to the profession and the community at large.

# Promoting Compliance with High Professional and Ethical Standards

## Conduct Issues

### Investigations

The Office of the Legal Services Commissioner (OLSC) receives all complaints that are lodged about legal practitioners in New South Wales but during the reporting year approximately 23% of the complaints were referred to our co-regulators, the Bar Association and Law Society, for investigation or resolution.

Of the 2152 complaints handled by OLSC during the 2003 – 2004 reporting year, 235 were treated as investigations rather than consumer disputes. Accordingly, investigations constituted approximately 12% of the complaints handled at OLSC for the year. Investigations are carried out when the alleged conduct could amount to unsatisfactory professional conduct or professional misconduct if substantiated by this office's investigation.

The number of investigations commenced during the reporting year represents a substantial increase in those commenced in the previous year when only 91 investigation files were opened. Much of this increase can be attributed to the introduction of the Advertising Regulation that became effective on 23 May 2003.

Of the investigation files opened in 2003-4, 106 files were closed within the reporting period, along with 73 files from previous years. Once again this is a substantial increase on previous years and reflects the focus and commitment of our staff. Of the matters finalised during the reporting year, 4 were referred to the Administrative Decisions Tribunal, 15 reprimands were issued, 13 were dismissed because the practitioner had no previous material complaints although a finding of unsatisfactory professional conduct was reasonably likely and 14 were dismissed in the public interest. The balance were dismissed because there was no reasonable likelihood that the Tribunal would make a finding of unsatisfactory professional conduct or professional misconduct.

At the end of the financial year 133 investigation files remained open, with the investigations continuing.

### Reprimands

A reprimand may be offered by the Commissioner to a practitioner in circumstances where he is satisfied that the Legal Services Division of the Administrative Decisions Tribunal would find the practitioner guilty of unsatisfactory professional conduct but not professional misconduct. In cases where it is considered that the likely penalty to flow from the Tribunal would not extend beyond a reprimand, the issue of a reprimand by the Commissioner provides a quick and efficient sanction, saving Tribunal time, OLSC staff time and costs.

In the reporting year the Commissioner issued 15 reprimands. The conduct that was considered would lead to a finding of unsatisfactory conduct included delay (5 reprimands), gross negligence (5 reprimands), costs related issues such as overcharging and failing to disclose costs (3 reprimands) and conduct which was misleading (2 reprimands). Three of the reprimands issued by the Commissioner overturned decisions of the Professional Conduct Committee of the Law Society to dismiss the complaints.

It is also open to the Commissioner to dismiss a complaint although he is satisfied that the Tribunal will make a finding of unsatisfactory professional conduct but not professional misconduct. The only circumstance in which he may do so is when the practitioner is generally competent and diligent and has had no other material complaints made against him or her. In the reporting year, the Commissioner dismissed 13 such complaints. A practitioner can only attract this determination on one occasion and the decision remains permanently on the practitioner's record.

### Administrative Decisions Tribunal

In the reporting year the Commissioner initiated 4 prosecutions in the Tribunal. In the matters of Legal Services Commissioner –v– Browne and Legal Services Commissioner –v– Piper, the Tribunal found the practitioners guilty of professional misconduct in failing to provide documents and information to the OLSC. Both practitioners received a public reprimand. The obligation of all practitioners to respond fully and promptly to all requests for information from the OLSC is emphasised by these decisions. A third matter was referred to the Tribunal in the reporting year and the decision will be reported in the next annual report.

In Legal Services Commissioner –v– Nikolaidis, the allegations went to overcharging and failing to respond to the statutory requests of a costs assessor. After three days of hearing, the Tribunal reserved its decision. At the time of writing the decision has not been handed down. It will be discussed in the next annual report.

## Ethical Matters

### Conflict of Interest

A major concern facing the profession today is the issue of conflicts of interests. With this in mind, under the auspices of the Attorney General, the OLSC established in 2003 a Working Party drawn from a broad range of representatives of the legal profession to consider the issue of conflict of interests. The OLSC typically receives over 100 formal conflict of interest complaints per year, approximately 3% of all complaints. Each year the OLSC Inquiry Line and the Law Society Ethics Department receives hundreds of inquiries from practitioners related to conflict of interests problems.

The working party met under the following terms of reference:

1. To consider the definitions of conflict of interests both perceived and actual and to consider whether the definitions are sufficiently clear and complete.
2. To explore the existing obligations and duties (specifically fiduciary duty, confidentiality and disclosure principle) of legal practitioners with respect to conflict of interests.
3. To explore more transparent and effective ways of identifying and remedying perceived and actual conflict of interests in both litigious and non-litigious matters.
4. To address the concern that existing rules and law relating to conflict of interests have developed without addressing commercial reality.
5. To consider the role of the regulators in relation to conflict of interests.

The Working Party held its first meeting on 17 September 2003. Twenty-two participants attended the first meeting along with four representatives from the Office of the Legal Services Commissioner.

The Working Party was divided into three separate groups exploring the issues relating to perceived conflict of interests, potential conflict of interests, and actual conflict of interests.

In addition, the OLSC is interested in looking at innovations whereby:

- efficiencies could be achieved in the administration of justice by resolving conflict of interests disputes before they reach the court.
- clients could be empowered to better understand the practical realities of conflict of interests and, within their specific capacity, consent to a conflict situation.
- education of the profession can be improved.

In tandem with the activities of the Working Party in this reporting year, the OLSC has undertaken a specific project to develop practical guidelines for the profession for:

- effective “Chinese walls”;
- appropriately obtaining informed consent from clients when acting in a conflict or potentially conflicted circumstance; and
- strengthening ethical rules.

It is anticipated the OLSC will release a conflict of interests paper later this year.

## Expansion of our Regulatory Function

### Incorporated Legal Practices

One of our most innovative and successful projects in many years was undertaken in 2003–4.

When the Legal Profession Act was amended to include incorporated legal practices (ILP), including multi-disciplinary practices (MDP), it meant that not only was New South Wales the first place in the world to allow such amendments, but that the OLSC could now actively assist Incorporated Legal Practices (ILPs) in assessing and, if necessary, improving their business practices.

The Legal Profession Act requires that a solicitor-director of an incorporated legal practice must ensure that appropriate management systems are implemented and maintained (section 47E(3)(a)) to ensure the provision of legal services in accordance with a solicitor’s professional obligations. In 2003, the OLSC collaborated with the Law Society, LawCover and the College of Law to develop an “education towards compliance” strategy in which it was determined that ILPs should address 10 objectives to demonstrate that they have appropriate management systems in place. (see page X) Those objectives address negligence, communication, delay, liens and file transfers, costs disclosures and billing practices, conflicts of interests, records management, undertakings, supervision of practice and staff and trust account requirements.

The need for flexibility in determining the nature of “appropriate management systems” is essential given the vastly differing nature and size of ILPs. Following a pilot project in late 2003, a program of self assessment was put into place that sets benchmarks for ILPs. To satisfy the self assessment program, a management system need not be a formal or accredited program. An orderly or regular procedure or method can satisfy the requirement for appropriate management systems.

The self assessment form was sent to 286 ILPs in February 2004 and 276 had responded by 30 June 2004. Those who have not responded will be subject to audit (review or investigation) by OLSC staff. Other ILPs that will be reviewed include those whose responses indicate that they are non-compliant or partially compliant and who have failed to satisfy the Commissioner that they are attempting to achieve compliance.

Audits of ILPs may also be triggered by the receipt of a material complaint or by an adverse trust account inspector’s report.

The OLSC conducted its inaugural ILP audit in the 2003/2004 year. The audit revealed some management deficiencies and a later trust account inspection of the practice led to the departure of the solicitor-director. At the time of writing a new solicitor-director was being sought for the ILP. Once appointed, the new solicitor-director will be under the close scrutiny of both the Law Society and the OLSC to ensure the ILPs compliance with the both the trust account and ILP provisions of the Act, especially with respect to appropriate management systems. The OLSC will audit this ILP at regular intervals in the 2004/2005 year to ensure its on-going compliance with the ILP provisions.

However, for the overwhelming majority of ILPs which responded, the self-assessment form was seen as a useful tool. Practitioners told us that the form assisted in assessing the way their business was conducted, understanding their strengths and weaknesses in complying with best legal management practices and adopting sound management practices to improve their services delivery and profitability.



## Ten Areas to be Addressed to Demonstrate Compliance with “Appropriate Management Systems”

1. Negligence – (providing for competent work practices)
2. Communication (providing for effective, timely and courteous communication)
3. Delay (providing for timely review, delivery and follow up of legal services)
4. Liens/file transfers (providing for timely resolution of document/file transfers)
5. Cost disclosure/billing practices/termination of retainer (providing for shared understanding and appropriate documentation on commencement and termination of retainer along with appropriate billing practices during the retainer)
6. Conflict of interests (providing for timely identification and resolution of “conflict of interests”, including when acting for both parties or acting against previous clients as well as potential conflicts which may arise in relationships with debt collectors and mercantile agencies, or conducting another business, referral fees and commissions etc)
7. Records management (minimising the likelihood of loss or destruction of correspondence and documents through appropriate document retention, filing, archiving etc and providing for compliance with requirements regarding registers of files, safe custody, financial interests)
8. Undertakings (providing for undertakings to be given, monitoring of compliance and timely compliance with notices, orders, rulings, directions or other requirements of regulatory authorities such as the OLSC, courts, costs assessors)
9. Supervision of practice and staff (providing for compliance with statutory obligations covering licence and practising certificate conditions, employment of persons and providing for proper quality assurance of work outputs and performance of legal, paralegal and non-legal staff involved in the delivery of legal services)
10. Trust account regulations (providing for compliance with Section 61 of the Legal Profession Act and proper accounting procedures)

Extract from the Self Assessment Form sent to ILPs:

### Suggestions concerning the elements of “appropriate management systems” for incorporated legal practices in nsw

Section 47E(3)(a) of the Legal Profession Act 1987 requires solicitor directors of incorporated legal practices (ILPs) to ensure that “appropriate management systems” are implemented and maintained to ensure that the provision of legal services by ILPs comply with the requirements of the Act and Regulations. Failure to comply can amount to professional misconduct. The Office of the Legal Services Commissioner (OLSC) and the Council of the Law Society of NSW (LSC) each has power under the Act (s47O and s47P) to investigate or review ILPs in connection with the provision of legal services.

While the legislation does not define “appropriate management systems”, OLSC, working collaboratively with LSC, LawCover and the College of Law, has adopted an “education towards compliance” strategy to assist ILPs. This document deals with the ten areas (reflected in the Objectives column in this document) that OLSC suggests should be addressed in considering “appropriate management systems”.

To enable solicitor directors to assess the systems in place in their practices when considering these “appropriate management systems”, it might be helpful to use the ratings shown below. All examples provided in this document are suggestions only because ILPs vary in terms of size, work practices and nature of operations and thus no “one size fits all”. Solicitor directors are encouraged to contact the OLSC or the Law Society of NSW for any clarification needed or additional examples.

Self-assessment rating	Code	Explanation
Non-Compliant	NC	Not all Objectives have been addressed.
Partially Compliant	PC	All Objectives have been addressed but the management systems for achieving these Objectives are not fully functional.
Compliant	C	Management systems exist for all Objectives and are fully functional.
Fully Compliant	FC	Management systems exist for all Objectives and all are fully functional and all are regularly assessed for effectiveness.
Fully Compliant Plus	FC Plus	All Objectives have been addressed, all management systems are documented and all are fully functional and all are assessed regularly for effectiveness plus improvements are made when needed.

Objective	Key concepts to consider when addressing the objective	Examples of possible evidence or systems most likely to lead to compliance	Action to be taken by ILP (if needed)
Competent work practices to avoid NEGLIGENCE	Fee earners practise only in areas where they have appropriate competence and expertise.	A written statement setting out the types of matters in which the practice will accept instructions and that instructions will not be accepted in any other types of matters.	
Partially Compliant	All fee earners have a good grasp of issues involved in running a practice and serving clients.	Written records of attendance at CLE programs indicating some attendance at programs concerning practice management, staff management and risk management.	
Compliant	The solicitor directors meet on a regular basis to review the performance of the practice or, in the case of sole practitioner practices, meetings are held regularly with staff.	Minutes/notes recording the decisions taken at meetings and the actions taken.	
Fully Compliant	Solicitor director(s) regularly consider and review workloads, supervision, methods of file review, and communication with clients.	Written records including file registers, number of files assigned to each fee earner, dates and methods of file review.	
Fully Compliant Plus	Solicitor directors ensure that legal services are always delivered at a consistently high standard.	Up to date precedents covering relevant practise areas are available and used, the practice has appropriate resources for legal research in the areas in which it accepts instructions (whether subscriptions to loose leaf services, up to date text books, training in internet based research) and the work of all employed solicitors and paralegals is properly supervised.	

## Comments Received from ILPs re Self-Assessment Process

“Thank you for the opportunity to take part in this valuable initiative. It was very useful for us to do and gave us some ideas for improvement”

“May I comment on your self-assessment document by saying that I consider it to be exceptionally well drafted and thought out. Congratulations to the many who obviously had an input into the document.

“We have appreciated the opportunity to review our systems and will be implementing improvements where necessary”

“There is no doubt that these questions do turn one’s mind to improving one’s business model.”

“Found the questionnaire very useful: well thought out and has helped ...”

“I am quite familiar with risk management/prevention having completed all 4 modules of the Law Cover program a few years ago. I believe some guidance in recording in a structured manner, management (particularly risk prevention) systems used in the context of sole practice (sole solicitor director) would be assistance to us and other small practices”

“The assessment provided interesting and informative reading. Our practice appreciates the need for systems and processes to provide efficient and effective service to clients and will continue over the next 12 months to implement and improve our systems with reference to the examples provided in the assessment”

“We advise that the practice is currently undergoing a thorough review of its policies and procedures as part of a business/management coaching exercise and it is expected that systems will heretofore be dramatically improved”

“The appropriate elements set out in the form provided us with an excellent “check list” for appropriate practices and management forms”

“Generally we were impressed with the concepts outlined in the self assessment questionnaire. We are currently preparing a management plan modelled on these concepts. We will send you a copy of the Management Plan once it is prepared.”

“Since receipt of your letter to partake this task, the firm has revised all areas of practice and utilised the Best Practice Gateway Training Manual as a platform. Documents created...have reflected and enhanced existing systems while addressing the areas that are non-compliant. It is expected that within the next few months all systems will be fully functional and assessment procedures arranged to monitor effectiveness and create progress improvements as required.”

“We are using this as a foundation for planning when we have non-legal staff, so our practice management is constantly under development”

“The review process involved in completing the self assessment was valuable and will result in some useful changes to our management systems”

“As a general comment, the process has been very useful for us and the main effect is I believe to highlight the need for consolidation of our various policies and procedures. In this respect the Quality Assurance Committee which comprises me and 3 principals will have further discussions as to how best to consolidate these. “

“The self-assessment document provided a useful framework for reviewing and documenting the firm’s management systems”

“I have found the assessment a very useful exercise and welcome this initiative.”

“I found the form useful in guiding me in management of the practice”

“I am a sole practitioner. I would like to thank the Commissioner for creating the Appropriate Management Systems and guidelines. I have found this exercise to be very helpful to my practice. This has helped me to review my practice and implement changes according to the guidelines. I am also interested in attending the ILP course by the College of Law. I am making enquiries to enrol in the next listed course date.”

“Today, I attended the Engagement Management seminar put on by LawCover. I found it very useful and it has further opened my eyes to improving my own practice. If it had not been for the self assessment forwarded by you I would not have looked at this part of my practice with critical eyes and I would probably would not have attended this course”

“I wish to take this opportunity to thank you for your assistance whilst I operated as an ILP and commend the work of the Legal Services Commissioner in relation to appropriate management systems. I hope that the appropriate management systems work will one day extend to all practitioners in partnership and ILP structures alike.”

## Disclosure of Bankruptcy, Tax Offences and Indictable Offences

Disclosure by practitioners of bankruptcy, tax offences and indictable offences is at first instance to the Law Society or Bar Association. The Act provides that there will be a statutory suspension of the practitioner's practising certificate if a determination going to fitness to practice is not made within three months, with provision for the Commissioner to extend that time by a further month. The fitness to practice determination must then be made by the Commissioner or by the Supreme Court. Seven such matters have been referred to the Commissioner and he has determined fitness to practice in four of them. The others await evidence from the practitioners or further external reports.

## Additional Highlights and Developments

### Advertising

The Advertising Regulation came into effect on 23 May 2003. Since then, 75 complaints have been initiated by the Commissioner relating to potential breaches of the Regulation in print, television and radio media and 6 complaints have been initiated for potential breach of the Regulation in relation to website advertising. Five further complaints have been initiated in relation to misleading advertising contrary to the Act.

In the period immediately following the commencement of the Regulation the OLSC played a more educative role. Many complaints were resolved following an educative talk with the practitioner involved and an undertaking given by the practitioner to withdraw the offending advertisement immediately. Further complaints were dismissed because there was no culpability on the part of the practitioner and others were dismissed because it was in the public interest to do so.

At the time of writing no matters have been referred to the Tribunal but, in the case of 17 investigations and in accordance with the requirements of procedural fairness, the Commissioner has sought submissions as to why he should not be satisfied that the conduct amounts to professional misconduct.

The OLSC has liaised closely with the Law Society concerning the interpretation of the Regulation since its inception. A committee was established at the onset of the Regulation to ensure that advice given by the Law Society to its members was consistent with the view of this Office in terms of the scope and effect of the Regulation.

### High Court Challenge

The validity of the Advertising Regulation is the subject of a challenge exercising the original jurisdiction of the High Court. The Commissioner was named as the defendant in these proceedings commenced by the Australian Plaintiff Lawyers Association, Maurice Blackburn Cashman Pty Limited and Robert Whyburn. The State of NSW has now been added as the second defendant and it is understood that a number of other states, the Commonwealth and the Community Legal Centres may intervene. The matter has been set down for hearing before the High Court on 5 and 6 October 2004. The outcome will be reported next year.

### Regulation of arbitrators, costs assessors and other quasi-judicial decision makers

The OLSC has consulted with the Attorney General's Legislation & Policy Division to confirm that the co-regulators of the legal profession have jurisdiction in terms of discipline and complaints over the conduct of:

- persons making quasi-judicial decisions;
- arbitrators;
- cost assessors;

and others, providing they fall under the definition of "legal practitioner" in the Legal Profession Act. Currently, practitioners performing non-judicial decision-making and arbitration do not clearly fit within the disciplinary framework of the Legal Profession Act. Their conduct is not examined by the NSW Judicial Commission because the definition of "judicial officer" in the Judicial Commission Act 1986 precludes it. The OLSC considers it prudent policy to include these legal practitioners within the existing disciplinary framework of the Legal Profession Act because they fall clearly within the wide spectrum of the legal profession and because the conduct of those individuals should not go unscrutinised.

The OLSC proposed that the merits of any decision by a practitioner acting in a quasi-judicial or decision making role would not be examinable but issues of conduct would be examined. The OLSC has had informal discussions with the Law Society and the Bar Association about the proposed clarification. The Attorney General's Department advise the proposal is under consideration and a response is expected in the near future.

## Mandatory Professional Indemnity Insurance for Migration Agents

In June 2004 the OLSC provided comment to the Federal Department of Immigration in response to a discussion paper proposing mandatory professional indemnity insurance for migration agents onshore. The OLSC supported the proposal noting it was demonstrably in the public interest for migration agents to have mandatory professional indemnity insurance. The OLSC has an interest in professional indemnity insurance for migration agents because the vast majority of legal practitioners in the migration advice industry are also registered migration agents. Typically, practitioners providing “immigration legal assistance” provide “immigration assistance” as well.

We informed the Department of our view that adequate current insurance arrangements existed for NSW barristers and solicitors who are also migration agents. There appeared no legitimate rationale for requiring those with adequate insurance arrangements to hold more than one type of insurance.

## Licensed Conveyancers

During the year a draft bill was circulated that changed the regulatory regime for licensed conveyancers. That bill was passed by Parliament but has not yet entered into force.

Licensed conveyancers have been covered by Part 10 of the Legal Profession Act since 1997. Complaints about conveyancers are currently dealt with by the OLSC and the Office of Fair Trading (OFT), through their Real Estate Investigations Branch.

That will change when the new Act is proclaimed in the near future. Regulation of conveyancers will be entirely the responsibility of the Office of Fair Trading.

The Commissioner and senior OLSC staff met with the OFT and were part of consultation on the new Act. We have taken the view throughout these negotiations that the day-to-day work of conveyancers does not differ from the conveyancing work carried out by lawyers. We have consistently said that the same strict standards of conduct should be applied to them. While the new legislation does not exactly mirror the Legal Profession Act it essentially preserves the fundamental standards of professional and personal behaviour that we have been fighting for.

We will watch the new regime with interest.

## Family Court Rules

In August 2003, the Family Law Section of the Law Council of Australia sought the Commissioner’s comments on the new draft “Best Practice Guidelines for Lawyers Doing Family Law Work”. Given the large volume of complaints received on the OLSC Inquiry Line about lawyers in family law, the OLSC dedicated considerable time to comment on ways in which we believe family law practitioners could improve their work practices. For example, the OLSC suggested that lawyers request first time clients to prepare a chronology for them of the family events so that the lawyer is provided with a snapshot of the history of the parties. Such chronology assists clients to think logically about historical matters and reduces the time and costs spent by a client with a lawyer in explaining the client’s history. Other suggestions for the practices of family lawyers included returning telephone calls within 24 hours, responding to correspondence within four working days and encouraging clients to keep their own files of relevant correspondence in date order.

## Other Matters

In the previous annual report the case of *Kawicki –v– Legal Services Commissioner and Director of Public Prosecutions* was mentioned. Mr Kawicki was unsuccessful at first instance in seeking a declaration from the Supreme Court that the Commissioner’s decision to dismiss a complaint about the Director of Prosecutions was incorrect. Mr Kawicki’s appeal was also unsuccessful. The Court of Appeal held that the Commissioner’s decision to dismiss Mr Kawicki’s complaint was not a decision based upon irrelevant considerations and was not infected by reviewable error.

# Complaints Handling

A total of 2806 formal complaints were made to the OLSC in the last financial year. We received 8800 calls to the Inquiry Line

In the last reporting year a number of staff took maternity or extended leave for 12 months. Between September and December 2003 two other part time and full time staff left the office and a number of cases were reallocated to other officers.

We were able to fill these positions with great candidates very quickly; a new position, Senior Mediation and Investigation Officer (MIO), saw the appointment of an excellent candidate with comprehensive commercial legal experience. The number of complaints that were closed slowed for the few months while new staff adapted to their roles but by year's end the team was working cohesively and that temporary lapse had been more than overcome.

The Senior MIO will deal with many of those files where additional work has to be done after an initial determination by the Commissioner and as well as taking practical responsibility for management and training of staff on our Inquiry Line.

## Written Complaints

It seems that the number of formal complaints to the OLSC have reached a plateau with this year's total of 2806, only a slight increase on 2768 received in 2003/04.

Most other indicators show the office coping well with the level of complaints received. We completed 2829 matters, slightly more than we received.

While our capacity to finalise matters suffered due to staff disruption we reduced the number of files managed in this office that are over 2 years old from 248 in 2001/02 to 42 this year; the number of files over twelve months old have also been reduced markedly. We can never guarantee that longer investigations or disputes won't stretch out but we have made efforts to weed out intractable cases and press for solutions, referred matters to the Tribunal or made the tough decision to close the files.

There has been little change from previous years in the nature of complaints received with issues of negligence (18.9%), communication (14.6%) and costs (a total of 17.3% across several categories of complaint) once again dominating. Broader ethical issues now make up 14.3% of all complaints, an increase since 2001/02 of almost 5%.

Despite changes to legislation that resulted in a reduction in the number of personal injuries cases before the District Court, the proportion of complaints about this area of law continued to increase to comprise 14.6% of all complaints. This can be explained this year by a raft of complaints about the advertisements of solicitors potentially made illegal by changes to lawyers' advertising laws. Civil litigation complaints (mainly debt recovery and AVO proceedings), family law and conveyancing again figured highly as areas of law about which complaints were made.

## Telephone Inquiries

We received 8800 calls to the Inquiry Line in 2003/04. This is a substantial 16% fall from 9840 last year.

One reason for the drop in inquiry lines calls is the further development of the Law Access call line that incorporates the old Legal Aid Help Line and the Law Society Community Assistance program. Callers seeking direct legal assistance may be foregoing the need to approach our Inquiry Line if their immediate legal problem is being solved by the advice offered by Law Access.

With limited staff resources for our Inquiry Line, we have always been aware of the need to keep the drop out or abandonment rate of calls as low as possible. We have managed to reduce the drop out calls to 5.7% for the year, down from almost 9% last year, and in June 2004 the rate was an excellent 2.1%.

Statistics show that the nature of complaints to the Inquiry line parallels those that we receive in writing. While costs issues are far more frequently raised (a total of 32.1%) on the phone, communication and negligence issues are also common. Conveyancing and family law top the polls as far as telephone inquiries are concerned.

## Issues

The OLSC tries to have an impact on areas of complaint that seem to have more general importance or that throw up particularly difficult or important issues. Some of these issues are:

### Cost Disclosure

Ten years after amendments to the Legal Profession Act made it mandatory for legal professionals to disclose their costs in writing to clients there are still a minority of lawyers that don't seem to think it is essential.

We take the view that the Administrative Decisions Tribunal will not necessarily find a lawyer guilty for failing to disclose alone, particularly if they have a good disciplinary record and have a reasonable administrative system in place to ensure clients are notified of estimated costs and/or hourly rates.

With that in mind the OLSC has been issuing warnings to lawyers who have breached the disclosure requirement. We keep a record of these warnings and tell offenders that if they re-offend we will move towards prosecuting them. To reinforce our views we ask lawyers to provide an undertaking that in future they will abide by the requirements of the legislation.

### Lost Files

Lawyers occasionally lose files. This might be due to an administrative error, carelessness, an office move, Australia Post or, as one lawyer claimed, rats eating them. In most cases there are sensible explanations. In others there is no defensible reason why the file was lost. In some cases (the loss of a will for instance) the consequences for clients can be horrendous.

However, it would be very unusual for the loss of a file alone to amount to misconduct. It's often an administrative problem for non-legal staff. In unusual circumstances, perhaps the partner of a firm with no proper administrative arrangements and a history of lost papers might find themselves in trouble.

We think firms can do better in their efforts to deal with lost files.

A search by the firm is good, but when that fails we expect some effort to be made to reconstitute files. If fault or negligence has caused the file to be lost, we seek assistance in the replacement of medical reports, Certificates of Title, liaison with the other side to put files back together or some other practical solution.

Files must be retained for clients for at least 6 years and it is the lawyer's responsibility to properly maintain them during that period.

## File Transfers

When a client retains a law firm, there is no guarantee that the case will be handled by the same lawyer from beginning to end. That is particularly true in long civil litigation. File transfers happen frequently.

If a solicitor leaves a firm, clients should be notified of the departure and the file should be allocated to a new lawyer. This is the responsibility of a partner, or perhaps the Managing Partner. The firm should arrange for the new lawyer to be introduced to clients without delay and there should be minimal – or preferably no – costs incurred by the client for the new solicitor to bring themselves up to speed. That is what is meant to happen. The number of complaints we get when lawyers move on suggests that it often doesn't happen.

It can take weeks, and sometimes months, for the client to be told the file has been transferred – in all likelihood to someone they have never heard of and almost certainly never met. That is rude and is certainly poor service. Then there are the delays that often occur because there is no one available to pick up the case or the new lawyer is busy with their own cases. This delay and inattention can be catastrophic for clients. Filing dates can pass, matters can be struck out and the rights of clients can be lost.

Clearly, in extreme cases, issues of misconduct can arise. But from a disciplinary point of view who is responsible for the delay or mishandling? We can't blame someone for moving to a better job, even if we hope they take the time to inform their clients of the possible impact. We also can't blame an incoming lawyer for delay and mishandling of a matter before they became involved. Perhaps no single practitioner handled the file for long enough to be disciplined for mismanagement of the file. But that doesn't mean the client has to tolerate the repercussions of the firm's neglect.

In some circumstances we can examine the role of the partner if the client files are not quickly assessed and a lawyer assigned to deal with them. We are committed to thoroughly examining the history of a client's experience with the firm. In the coming year we will be looking closely at the failure of responsible partners to adequately supervise files, the client/solicitor relationship and employed solicitors.

## Party-party Costs

Party/party costs are costs which the Court orders an opposing party to pay or which that other party has agreed to pay as part of the terms of settlement of a court case.

In personal injury and workers compensation matters, the losing party's insurance company will normally pay party/party costs. These costs are intended to reimburse the successful party for legal costs that they may owe or have paid to their own solicitors. Unfortunately their own costs are almost always larger than that the amount recovered from the opposing side and this can lead to a great deal of confusion for a client.

Historically, there has rarely been a question. At the end of a case lawyers settled or finalised a matter in court and went on to recover party/party costs for the client.

However, there have been an increasing number of complaints about substantial delay, or in some cases the point blank refusal of lawyers to negotiate recovery of party/party costs after they have finished cases.

It is unacceptable for party/party negotiations in straightforward personal injury matters to not have been progressed for months, or in some extreme cases, years. However difficult a client may have been and however time consuming a case may have been, there is seldom justification for finishing a case and refusing to recover costs for the client. If a case ran for years and the party/party negotiations are likely to yield little more than the sum already deducted by a lawyer, that does not mean a client can be abandoned. How ethical is it to do a costs benefit analysis at the end of the case and refuse to negotiate on behalf of the client?

Lawyers should be making their intentions with regard to party/party costs recovery known in their costs agreements if they don't intend to "finish" a matter. They should recognise that it is extremely difficult for a client to convince a new lawyer to take on only recovery of party/party costs.

Failure to negotiate or extensive delays are simply unacceptable



## Cost Increases

As well as insisting that lawyers disclose their costs the Legal Profession Act also requires (at s177(3)) that they must disclose “any significant increase” in the estimate of those costs.

Of course, this is often much easier said than done. No amount of experience will allow a solicitor to estimate with pinpoint accuracy the costs in lengthy contested litigation.

That might not be an issue if the firm is aware of the client's financial circumstances, communicates regularly and clearly with the client and brings them up to date with progress and the implications of the actions of the other side. Regular billing is one way, not necessarily the best way, of keeping a client up to date. But even regular billing does not always occur.

Many practitioners don't give priority to informing clients when costs have escalated. This can be both difficult and time consuming to explain. Many clients feel that where costs are not contained their own lawyer must be at fault.

In addition, clients don't always make their position on costs clear. Lawyers aren't always told about the capacity of a client to pay or other factors that might influence whether a case continues. Sometimes clients' instructions to pursue or continue a case are based on emotional reasons or matters of “principle”. Cases often proceed despite the best advice of diligent lawyers.

However, there is a point in some cases where a solicitor must take responsibility for saying that the case is no longer financially viable: they must allow clients to make a commercial decision. When costs in a \$30,000 debt recovery matter pass \$20,000 with no end in sight, when the other side's expert report signals thousands of dollars of expenditure to counter it, a lawyer should not only notify of rising costs but put in writing some indication of whether the final settlement can come close to the client's expectations, or even cover costs. Does a lawyer have a responsibility to press a client to settle a family law case; or to finalise an estate matter when there is a threat that the proceeds will be eaten away by the legal costs? We believe so.

Of course, demonstrating that a failure to bring a case to a conclusion is worthy of disciplinary action is another thing. It can be a fine judgement indeed about when a case is no longer worthwhile pursuing from a financial viewpoint. But the OLSC believes the bar has to be raised. Practitioners should measure what is in the clients' best interests. In the coming year we will be looking more closely at this issue.

# How a Complaint is Handled

All complaints lodged under the Legal Profession Act must be made in writing. A complaint must identify the complainant and the legal practitioner against whom the complaint is made, and describe the alleged conduct of the legal practitioner. In addition, we always ask that the complainant indicate what sort of resolution or outcome they seek.

When a complaint is received at the OLSC it is entered into our database, a hard copy file is created which contains a print out of the legal practitioner's details (including records of any previous complaints), any prior complainant records and the file passed on to one of our two Assistant Commissioners for assessment and allocation.

Based on the information from the complainant an Assistant Commissioner assesses the complaint and decides whether it should be approached as a more minor consumer dispute or investigated as a serious complaint. Of course, this assessment can change as more information is gathered.

About 25% of all complaints are forwarded to the Law Society or Bar Association for investigation or to be dealt with as a consumer dispute. We retain virtually all of the consumer dispute complaints and a significant percentage of the conduct investigations.

For those complaints that are to be retained at the OLSC, the Assistant Commissioner drafts a memo offering advice about how the matter should be approached either in terms of resolution or investigation and allocates the file to either a Mediation & Investigation Officer or a specialist investigation officer if the matter has been identified as warranting formal investigation from the outset. Complainants receive an acknowledgement letter that includes the name of the officer handling the case.

Consumer disputes may not involve allegations of misconduct as defined by the Legal Profession Act but can cover a broad range of concerns about poor communication, costs disputes, failure to transfer files, delays and rudeness.

More serious complaints may involve allegations that the practitioner has misled the Court, committed a defalcation in relation to their trust account or have been either grossly negligent or incompetent. These are treated as formal investigations.

Generally the first step taken in relation to a consumer dispute is to either contact the complainant for additional information or clarification of the complaint, or where the matter is clear, approach the practitioner either by telephone or in writing for a reply and their views on how the complaint might best be resolved. In matters where there is urgency or the matter is

straightforward, we will use the phone. The practitioner will be given a specific period in which to respond. When the practitioner's response arrives OLSC staff assess it and where necessary seek additional information or clarification.

We either facilitate communication between the parties or attempt to negotiate a resolution of the problem ourselves. This can take the form of "shuttle diplomacy" where we take one party's views to the other seeking their response and then back to the first party until the issues are clarified and understood and a resolution is hopefully obtained. We also use trained mediators to run formal sessions where confidential agreements are reached.

Obviously every case that comes before the OLSC is different, but most consumer disputes can be resolved within three months. The resolution can include the practitioner agreeing to a reduction in fees, improving their means and process of communication with the client, expediting the handling of a matter or transferring the file to another practitioner. Resolution can also be achieved through the complainant being informed about why the situation that they have complained about has occurred and giving them detailed information about how the legal system works.

Where a matter has been referred to the Law Society or the Bar Association for formal investigation and as a result of that investigation the complaint is either dismissed or a reprimand given, the individual who lodged the complaint can seek a review of that decision by the Commissioner.

Where a complaint is retained by the OLSC for formal investigation, the file is initially handled by the Assistant Commissioner (Legal) who may refer it to a staff member for investigation.

These investigations can take many months and involve an enormous amount of paperwork and effort. Finally, a decision must be made about whether disciplinary action can be taken. The professional councils or the Commissioner must institute proceedings in the Tribunal if satisfied there is a reasonable likelihood that the legal practitioner will be found guilty by the Tribunal of unsatisfactory professional conduct or professional misconduct.

A lawyer can be referred to the Administrative Decisions Tribunal, reprimanded or the matter can be dismissed.

Where a matter has been referred to the Tribunal, the Tribunal has a range of powers which vary from dismissal to reprimand, fines, imposition of conditions on a practitioner's ability to practise, the suspension of a practising certificate and finally the removal of a practitioner's practising certificate. These powers relate only to employed solicitors and not to barristers.

# Office of the Legal Services Commissioner Inquiry Line, Can I Help You?

The Inquiry line is one of the core functions of the OLSC. Each year we receive about 9,000 calls from clients and practitioners, the calls are taken in rostered shifts by both Mediation and Investigation Officers, legal and policy staff and a small dedicated group of casual staff (mostly undergraduate or post graduate law students).

It is always our aim to resolve disputes as quickly as possible, therefore callers with complaints about costs or delays are encouraged and coaxed as to how best to put their grievances to their practitioner. If there is no response from the practitioner the complainant is free to lodge the complaint with the OLSC, but happily some less serious complaints can be resolved by the parties through the provision of our guidance and assistance.

If the matter is relatively straightforward, officers taking calls can undertake phone mediation, phoning the practitioner and checking on a file transfer or encouraging a call to the complainant who might be frustrated at a lack of communication.

Where appropriate, callers are referred to our website where they can access OLSC fact sheets which provide information on a range of common complaint issues and learn more about the complaint process. They are also able to download complaint forms.

The average time for phone calls is about nine minutes but obviously more complex legal matters can take much longer. In some instances callers have been instructing their practitioners through a court matter for several years and a degree of detail is required before the OLSC officer can offer practical advice.

The OLSC is a complaints handling body, not a legal advice service. Callers to the inquiry line often ask for guidance in their matters but staff are not permitted to give legal advice irrespective of their legal qualifications or experience. The advice offered on the inquiry line is within the confines of the Legal Profession Act, the Solicitors Rules and legal practitioners' ethical responsibilities. Consequently, some callers are redirected to community legal centres or LawAccess, a free telephone service which offers legal advice in certain circumstances. In some instances callers are encouraged to seek advice from another solicitor.

While the majority of calls to the OLSC inquiry line are made by clients, practitioners also make inquiries. Practitioners are encouraged to call the inquiry line if they need advice or guidance on ethical matters or if they have serious concerns about the conduct of other practitioners. .

Not only does the inquiry line offer the public an effective and quick assessment of problems they are having with their solicitor but it gives the OLSC a very clear understanding of the issues that solicitors and barristers need to discuss with their clients. The vast majority of calls concern, in one way or another, the costs of legal services and so the OLSC has structured a lot of its educative material around the importance of good communication and explanation of costs and fee structures.

The inquiry line also functions as a filter, allowing staff to provide assistance where necessary in minor matters and encouraging people to lodge complaints in cases where serious matters and allegations are raised.

It also offers invaluable training to both new staff members and most importantly to the casual staff, many of whom are studying law and working towards practising law.

# Annual Report Statistics 2003–2004

## Phone Enquiries

### P1 Legal matters raised in calls

	01–02	Percentage <sup>*</sup> 02–03	03–04
Conveyancing	19.9	17.8	17.6
Family	15.0	15.2	17.5
Personal injuries	13.1	11.9	11.0
Probate/wills/family provisions	8.3	8.8	9.9
Civil	10.2	9.9	8.9
Workers compensation	7.4	7.5	7.6
Commercial/corporations law	5.8	6.7	7.3
Criminal law	3.5	4.0	4.8
Victims compensation	1.9	2.2	1.7
Other	14.9	15.8	13.6

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

### P2 Nature of phone enquiry<sup>\*</sup>

	01–02	Percentage <sup>*</sup> 02–03	03–04
General cost complaint/query	18.0	18.4	18.9
Communication	18.3	18.7	14.9
Negligence	12.9	11.8	13.5
Overcharging	9.7	9.4	10.0
Ethical matters	8.2	6.0	9.1
Delay	10.0	9.4	8.2
Quality of service	4.6	8.2	6.6
Costs disclosure	3.2	3.3	3.2
Document transfer/liens	2.5	2.9	3.0
Trust fund matters	2.5	2.0	2.8
Conflict of interests	1.9	2.0	2.1
Instructions not followed	2.4	1.9	2.1
Misleading conduct	1.6	1.4	1.9
Document handling	1.2	1.4	1.5
Pressure to settle	0.7	1.1	1.1
Failure to honour undertakings	0.9	0.7	0.4
Fraud (not trust fund)	0.6	0.5	0.4
Compliance matters	0.8	0.7	0.2

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

### P3 Practitioners mentioned on inquiry line

	01–02	Percentage 02–03	03–04
Solicitor	96.2	94.3	94.6
Barrister	1.3	1.8	2.4
Licensed conveyancer	0.5	0.7	0.7
Other	2.0	3.1	2.3

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

	01–02	Percentage <sup>*</sup> 02–03	03–04
Client	69.5	67.5	69.2
Friend/relative	8.1	8.8	10.3
Opposing client	6.3	5.5	6.3
Previous client	4.9	6.9	5.2
Beneficiary/executor/administrator	2.5	2.0	2.0
Solicitor on another's behalf	1.0	1.9	1.7
Non-legal service provider	1.6	1.6	1.2
Solicitor on own behalf	1.0	1.5	0.8
Unrepresented client	0.7	0.4	0.2
Barrister on another's behalf	0.1	0.2	0.1
Barrister on own behalf	0.1	0.1	0.03
Other	4.2	3.6	3.1

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

### P5 Outcomes of calls to the inquiry line

	01–02	Percentage 02–03	03–04
Provided information about the legal system	28.2	31.0	31.9
Recommended direct approach to lawyer about concerns	20.4	20.5	21.1
Provided complaint form	22.9	17.9	17.1
Provided referral for legal advice or other assistance	11.2	13.3	10.7
Caller indicated intention to send in complaint	3.9	6.5	6.9
Provided referral to the NSW Supreme Court Assessment Scheme	2.9	2.0	3.5
Listened to caller's concerns	1.6	1.8	2.0
Provided information about the OLSC and LPA to a legal practitioner	4.7	3.2	1.6
Conducted telephone mediation	1.8	0.9	0.9
Explained that concerns are outside jurisdiction of OLSC	0.1	0.7	0.9
Scheduled interview for caller	0.6	0.4	0.4
Other	1.7	1.9	3.0

# Annual Report Statistics 2003–2004

## Written Complaints

### W1 Legal matters arising from complaints received in 2003–2004

	Percentage of complaints		
	01–02	02–03	03–04
Civil	12.7	13.4	15.0
Personal injuries	11.6	12.9	14.6
Family/de facto	13.0	12.2	11.5
Conveyancing	14.4	13.8	11.5
Commercial/corporations law	8.5	11.0	10.7
Probate/wills/family provisions	8.0	7.6	7.1
Criminal	4.9	5.1	6.8
Workers compensation	5.6	4.8	4.9
Leases/mortgages/franchises	3.6	3.8	3.3
Industrial law	1.5	1.6	2.4
Land and environment	1.0	1.1	1.7
Professional negligence	1.9	1.4	1.2
Victims compensation	0.6	0.5	0.8
Immigration	0.6	0.9	0.5
Other	12.2	9.9	8.0

### W2 Nature of complaints received in 2003–2004

	Percentage*		
	01–02	02–03	03–04
Negligence	17.8	20.5	18.9
Communication	16.5	15.8	14.6
Ethical matters	9.4	10.7	14.3
Overcharging	10.9	10.0	8.9
Delay	7.8	6.3	6.7
Misleading conduct	7.0	7.1	6.4
Trust fund	1.1	5.1	6.0
General cost complaint/query	7.6	6.2	4.8
Instructions not followed	5.2	3.3	4.1
Cost disclosure	3.3	4.1	3.7
Document transfer/liens	3.8	3.5	3.1
Conflict of interests	2.7	2.8	2.4
Failure to honour undertakings	1.2	1.2	1.6
Pressure to settle	1.0	1.1	1.4
Quality of service	3.3	1.7	1.1
Document handling	1.1	0.8	0.8
Fraud (not trust fund)	0.4	0.5	0.8
Compliance matters	0.1	0.3	0.4

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

### W3 Type and source of complaints received in 2003–2004

	Number of complaints				Total	Percentage		
	Solicitor*	Barrister	LConv**	Other***		01–02	02–03	03–04
Client	693	49	11	10	<b>763</b>	35.3	33.6	27.2
Previous client	621	37	6	11	<b>675</b>	17.6	19.5	24.1
Opposing client	296	27	3	9	<b>335</b>	14.6	12.7	11.9
Unrepresented client	10	1	0	0	<b>11</b>	0.6	0.7	0.4
Client's friend/relative	84	9	1	2	<b>96</b>	1.8	3.4	3.4
Solicitor on another's behalf	196	8	1	0	<b>205</b>	5.2	7.2	7.3
Solicitor on own behalf	127	8	1	3	<b>139</b>	4.8	4.9	5.0
Barrister on another's behalf	1	0	0	0	<b>1</b>	0.0	0.1	0.04
Barrister on own behalf	25	0	0	0	<b>25</b>	1.3	1.0	0.9
Non-legal service provider	61	2	1	0	<b>64</b>	2.7	3.2	2.3
Beneficiary/executor/administrator	85	0	0	0	<b>85</b>	3.8	3.4	3.0
Legal Services Commissioner	95	3	0	0	<b>98</b>	0.6	0.5	3.5
Law Society	172	0	0	0	<b>172</b>	4.5	3.8	6.1
Bar Association	0	9	0	0	<b>9</b>	0.5	0.6	0.3
Other****	107	12	0	9	<b>128</b>	6.7	5.2	4.6
<b>Total</b>	<b>2573</b>	<b>165</b>	<b>24</b>	<b>44</b>	<b>2806</b>			

\* Includes former solicitors and legal practitioners

\*\* Licensed Conveyancer

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

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

# Annual Report Statistics 2003–2004

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## Written Complaints

### W4 Summary of complaints received and/or finalised, 2003–2004

Complaints received in 2003–2004	Solicitor	Barrister	LConv*	Other**	Total 01–02	01–02 %	Total 02–03	02–03 %	Total 03–04	03–04 %
<b>Complaint handling by OLSC</b>										
Complaint handling ongoing at OLSC	672	40	3	1	458	16.0	348	12.6	716	25.5
Suspended at OLSC***	12	0	0	0	34	2.0	18	0.7	12	0.4
Complaint handling completed at OLSC	722	16	5	5	885	31.0	1062	38.4	748	26.7
Complaint dismissed by OLSC	582	54	5	35	747	26.0	731	26.4	676	24.1
<b>OLSC subtotal</b>	<b>1988</b>	<b>110</b>	<b>13</b>	<b>41</b>	<b>2124</b>	<b>72.5</b>	<b>2159</b>	<b>78.0</b>	<b>2152</b>	<b>76.7</b>
<b>Complaint handling by Professional Councils</b>										
Complaint handling ongoing at Council	367	43	10	3	456	15.6	362	13.1	423	15.1
Suspended at Council****	20	0	0	0	4	0.1	1	0.0	20	0.7
Complaint handling completed at Council	87	2	0	0	83	2.8	95	3.4	89	3.2
Complaint dismissed by Council	111	10	1	0	261	8.9	151	5.5	122	4.3
<b>Council subtotal</b>	<b>585</b>	<b>55</b>	<b>11</b>	<b>3</b>	<b>804</b>	<b>27.5</b>	<b>609</b>	<b>22.0</b>	<b>654</b>	<b>23.3</b>
<b>TOTAL COMPLAINTS RECEIVED 2003–2004</b>	<b>2573</b>	<b>165</b>	<b>24</b>	<b>44</b>	<b>2928</b>		<b>2768</b>		<b>2806</b>	
<b>Complaints finalised in 2003–2004</b>										
<b>Complaint handling finalised by OLSC</b>										
Complaint handling completed at OLSC	1086	28	11	6	1048	38.0	1267	43.7	1131	40.0
Complaint dismissed at OLSC	885	82	11	48	913	33.1	958	33.1	1026	36.3
<b>OLSC subtotal</b>	<b>1971</b>	<b>110</b>	<b>22</b>	<b>54</b>	<b>1961</b>	<b>71.1</b>	<b>2225</b>	<b>76.8</b>	<b>2157</b>	<b>76.2</b>
<b>Complaint handling finalised by Councils</b>										
Complaint handling completed at Council	176	20	3	39	185	6.7	187	6.5	238	8.4
Complaint dismissed by Council	372	47	11	4	612	22.2	485	16.7	434	15.3
<b>Council subtotal</b>	<b>548</b>	<b>67</b>	<b>14</b>	<b>43</b>	<b>797</b>	<b>28.9</b>	<b>672</b>	<b>23.2</b>	<b>672</b>	<b>23.8</b>
<b>Total complaints finalised 2003–2004</b>	<b>2519</b>	<b>177</b>	<b>36</b>	<b>97</b>	<b>2758</b>		<b>2897</b>		<b>2829</b>	

\* Licensed Conveyancer

\*\* "Other" includes interstate legal practitioners, law clerks, non-legal service providers and practitioner who have been struck off the roll. Former solicitors are included as solicitors.

\*\*\* Suspended files are files that cannot be finalised but on which no progress is likely for some time, for example, a file may be suspended if a complainant has asked for an investigation to be postponed until a related matter before the courts is finalised.

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



## Written Complaints

W5 Status at 30 June 2004 of complaints received in 2003–2004

Status	Solicitor	Barrister	LConv <sup>*</sup>	Other <sup>**</sup>	Total
<b>Complaint handling in progress</b>					
Dispute resolution in progress	529	35	3	1	568
Out of time assessment in progress	16	0	0	0	16
Investigation in progress	127	5	0	0	132
Complaint handling suspended	12	0	0	0	12
<b>Subtotal open, active at OLSC</b>	<b>684</b>	<b>40</b>	<b>3</b>	<b>1</b>	<b>728</b>
Dispute resolution in progress	20	0	3	0	23
Investigation in progress	347	43	7	3	400
Complaint handling suspended <sup>#</sup>	20	0	0	0	20
<b>Subtotal open, active at Council</b>	<b>387</b>	<b>43</b>	<b>10</b>	<b>3</b>	<b>443</b>
<b>Subtotal, open complaints</b>	<b>1071</b>	<b>83</b>	<b>13</b>	<b>4</b>	<b>1171</b>
<b>Complaint handling finalised</b>					
Dispute resolution completed	716	15	5	5	741
Resolved through formal mediation	2	1	0	0	3
Practitioner referred to Tribunal <sup>***</sup>	0	0	0	0	0
Practitioner reprimanded by LSC <sup>##</sup>	4	0	0	0	4
<b>Subtotal finalised by OLSC</b>	<b>722</b>	<b>16</b>	<b>5</b>	<b>5</b>	<b>748</b>
Dispute resolution completed	66	0	0	0	66
Resolved through formal mediation	1	0	0	0	1
Practitioner referred to Tribunal <sup>***</sup>	16	1	0	0	17
Practitioner reprimanded by Council <sup>##</sup>	4	1	0	0	5
<b>Subtotal finalised by Council</b>	<b>87</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>89</b>
Tribunal finding of UPC/PM unlikely <sup>****</sup>	320	33	2	12	367
Likely UPC but generally competent	5	0	0	0	5
Complaint not accepted out of time	46	2	0	1	49
Withdrawn, particulars not supplied, procedural	158	12	3	2	175
Outside OLSC jurisdiction	39	7	0	20	66
Public interest	14	0	0	0	14
<b>Subtotal dismissed by OLSC</b>	<b>582</b>	<b>54</b>	<b>5</b>	<b>35</b>	<b>676</b>
Tribunal finding of UPC/PM unlikely	61	6	1	0	68
Likely UPC but generally competent	2	1	0	0	3
Withdrawn, particulars not supplied, procedural	48	3	0	0	51
Public interest	0	0	0	0	0
<b>Subtotal dismissed by Council</b>	<b>111</b>	<b>10</b>	<b>1</b>	<b>0</b>	<b>122</b>
<b>Subtotal, complaints finalised</b>	<b>1502</b>	<b>82</b>	<b>11</b>	<b>40</b>	<b>1635</b>
<b>Total handled by OLSC</b>	<b>1988</b>	<b>110</b>	<b>13</b>	<b>41</b>	<b>2152</b>
<b>Total handled by Council</b>	<b>585</b>	<b>55</b>	<b>11</b>	<b>3</b>	<b>654</b>
<b>Total</b>	<b>2573</b>	<b>165</b>	<b>24</b>	<b>44</b>	<b>2806</b>

\* Licensed Conveyancer

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

\*\*\* Administrative Decisions Tribunal

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

# Includes where investigator/receiver/manager has been appointed

## Number of complaints that result in a reprimand, not number of practitioners reprimanded

# Annual Report Statistics 2003–2004

## Written Complaints

### W6 All complaints finalised 2003–2004

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Complaints finalised	Solicitor	Barrister	LConv*	Other**	Total
Dispute resolution completed	1068	27	11	6	1112
Resolved through formal mediation	2	1	0	0	3
Practitioner referred to Tribunal <sup>#</sup>	2	0	0	0	2
Practitioner reprimanded by LSC	14	0	0	0	14
<b>Subtotal finalised by OLSC</b>	<b>1086</b>	<b>28</b>	<b>11</b>	<b>6</b>	<b>1131</b>
Dispute resolution completed	101	1	2	0	104
Resolved through formal mediation	6	0	0	0	6
Practitioner referred to Tribunal	50	12	1	38	101
Practitioner reprimanded by Council <sup>##</sup>	19	7	0	1	27
<b>Subtotal finalised by Council</b>	<b>176</b>	<b>20</b>	<b>3</b>	<b>39</b>	<b>238</b>
Tribunal finding of UPC/PM unlikely	488	50	7	14	559
Likely UPC but generally competent	13	0	0	0	13
Complaint not accepted out of time	65	5	0	1	71
Withdrawn, particulars not supplied, procedural	250	17	4	2	273
Outside OLSC jurisdiction	53	10	0	31	94
Public interest	16	0	0	0	16
<b>Subtotal dismissed by OLSC</b>	<b>885</b>	<b>82</b>	<b>11</b>	<b>48</b>	<b>1026</b>
Tribunal finding of UPC/PM unlikely	253	37	10	1	301
Likely UPC but generally competent	7	2	0	1	10
Withdrawn, particulars not supplied, procedural	90	8	1	0	99
Public interest	22	0	0	2	24
<b>Subtotal dismissed by Council</b>	<b>372</b>	<b>47</b>	<b>11</b>	<b>4</b>	<b>434</b>
<b>Total handled by OLSC</b>	<b>1971</b>	<b>110</b>	<b>22</b>	<b>54</b>	<b>2157</b>
<b>Total handled by Council</b>	<b>548</b>	<b>67</b>	<b>14</b>	<b>43</b>	<b>672</b>
<b>Total</b>	<b>2519</b>	<b>177</b>	<b>36</b>	<b>97</b>	<b>2829</b>

\* Licensed Conveyancer

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

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

## Number of complaints that result in a reprimand, not number of practitioners reprimanded

## Written Complaints

### W7 Duration of file handling at the OLSC

Of complaints finalised in 2003–2004, time taken for complaints handling

	Percentage of files closed within following periods*		
	01–02	02–03	03–04
0–30 days	25.4	22.6	17.9
1–3 months	32.9	34.4	33.3
3–6 months	23.0	20.4	24.6
6–9 months	8.5	10.9	10.8
9–12 months	3.6	4.1	5.0
Over 12 months	6.6	7.5	8.4

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

### W8 Age of complaints remaining open or suspended on 30 June 2004 and being handled by the OLSC

Year opened	Open at 30 June 02	Open at 30 June 03	Open at 30 June 04
2003–2004	0	0	728
2002–2003	0	374	64
2001–2002	492	134	36
2000–2001	302	42	14
1999–2000	199	16	5
1998–1999	36	4	2
1997–1998	7	5	2
1996–1997	6	4	1
1995–1996	0	0	0
1994–1995	0	0	0
<b>Total</b>	<b>1029</b>	<b>579</b>	<b>852</b>

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

	Days*
Average time to complete complaints received and completed/resolved in 2003–2004	82.5
Average time to complete complaints received in any year but completed/resolved in 2003–2004	140.8
Average time taken to dismiss complaints received in 2003–2004	98.6
Average time to dismiss complaints received in any year but dismissed in 2003–2004	180.6

\* Averages rounded to 1 decimal point

# Annual Report Statistics 2003–2004

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## R1 Status at 30 June 2004 of review requests received in 2003–2004

Reviews in progress	Solicitor	Barrister	LConv*	Other*	Total	percentage
In progress at OLSC	2	4	0	0	6	8.8
Being reviewed by consultant	5	2	1	0	8	11.8
Consulting with Council prior to finalising	5	0	0	0	5	7.4
<b>Total remaining open</b>	<b>12</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>19</b>	<b>27.9</b>
<b>Reviews completed</b>						
Dismissal confirmed	38	3	1	0	42	61.8
Out of time, no jurisdiction	3	2	0	0	5	7.4
Review request withdrawn	0	0	0	0	0	0.0
Reprimand confirmed	0	0	0	0	0	0.0
Reinvestigated by OLSC	1	0	0	0	1	1.5
Reinvestigated by Council	0	0	0	0	0	0.0
Decision changed	1	0	0	0	1	1.5
Other	0	0	0	0	0	0.0
<b>Total completed</b>	<b>43</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>49</b>	<b>72.1</b>
<b>Total received</b>	<b>55</b>	<b>11</b>	<b>2</b>	<b>0</b>	<b>68</b>	<b>100.0</b>

\* Licensed Conveyancer

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

## R2 Reviews in progress and finalised in 2003–2004 – received all years

Reviews in progress	Solicitor	Barrister	LConv*	Other**	Total	percentage
In progress at OLSC	2	4	0	0	6	6.7
Being reviewed by consultant	5	2	1	0	8	9.0
Consulting with Council prior to finalising	2	1	0	0	6	6.7
<b>Total remaining open</b>	<b>12</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>20</b>	<b>22.5</b>
<b>Reviews completed</b>						
Dismissal confirmed	50	7	1	0	58	65.2
Out of time, no jurisdiction	3	2	0	0	5	5.6
Review request withdrawn	0	0	0	0	0	0.0
Reprimand confirmed	0	0	0	0	0	0.0
Reinvestigated by OLSC	3	0	0	0	3	3.4
Reinvestigated by Council	2	0	0	0	2	2.2
Decision changed	1	0	0	0	1	1.1
Other	0	0	0	0	0	0.0
<b>Total completed</b>	<b>59</b>	<b>9</b>	<b>1</b>	<b>0</b>	<b>69</b>	<b>77.5</b>
<b>Total handled</b>	<b>71</b>	<b>16</b>	<b>2</b>	<b>0</b>	<b>89</b>	<b>100.0</b>

\* Licensed Conveyancer

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

# Tribunal Proceedings

## T1 Complaints referred to the Administrative Decisions Tribunal, 2003–2004\*

Reason	Solicitor	Barrister	LConv <sup>*</sup>	Clerk/Associate	Total
Unsatisfactory Professional Conduct (UPC)	0	3	0	0	3
Professional Misconduct (PM)	34	5	1	0	40
PM and UPC	1	2	0	0	3
Prohibited employment***	0	0	0	3	3

\* Data provided by Administrative Decisions Tribunal

\*\* Licensed Conveyancer

\*\*\* Legal Profession Act 1987 (LPA) s48I and s48K orders

## T2 Outcomes of Tribunal Proceedings 2003–2004\*

Outcome	Number
Reprimanded	10
Removed from roll	6
Dismissed after hearing	3
No jurisdiction/withdrawn	2
S48I	2
Removed from roll and compensation ordered	1
Reprimanded and fined	1
Restricted practising certificate	1
Restricted practising certificate and suspended from practice	1
Late application to Tribunal refused	1
S48J	1
S48K	1
<b>Total</b>	<b>30</b>

\* Data provided by Administrative Decisions Tribunal

\*\* Legal Profession Act 1987 (LPA) S48I, S48J and S48K orders

### Please note:

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

# Case Studies

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There are recurring themes in the complaints and calls – costs is the most common complaint (or part of a complaint) followed by communication and negligence. The areas in which we receive most complaints are civil litigation, family law and personal injuries.

While the Legal Profession Act, Solicitor's and Barrister's Rules and legal precedent offer some guidance in assessing the validity of a complaint, we also get a wide range of complaints that require understanding and a liberal application of common sense.

## Trust Accounts

Joseph Blough was awarded almost \$25,000 by the Consumer Trading and Tenancy Tribunal and this money was held in his solicitor's office trust account. Solicitor W attempted to pay Mr Blough the \$15,000 balance that was due to him after cutting his bill to about \$10,000. But Mr Blough refused to instruct Solicitor W to withdraw money from his trust account because he believed the \$10,000 bill was inflated.

A solicitor is allowed to withdraw money from a trust account to pay for their costs and to reimburse expenses they have paid or still have to pay on their client's behalf, but only if they follow the correct procedure. Before a solicitor can take money out of the trust account, he must have disclosed information about his costs to his client. Solicitor W was unable to supply this Office with a copy of a costs agreement. If no costs agreement was entered into, Solicitor W has not made disclosure as required and he cannot withdraw money from his trust account unless he has his bill assessed by the Supreme Court Costs Assessment Scheme.

The OLSC wrote to Solicitor W, asking him if he intended to have his bill assessed. If Solicitor W has his bill assessed, he will then be entitled to withdraw money from the trust account for costs and disbursements, to the amount the assessor decides is fair and reasonable, and pay the balance without his client's permission.

This Office cannot force Mr Blough to give Solicitor W authority to release money from his trust account. We can go through the options for the client and attempt to negotiate an agreement with the lawyer over costs. We can also set out to the lawyer their obligations and options. However, once an assessment is made by the Supreme Court, Solicitor W no longer requires Mr Blough's permission to withdraw money from the trust account.

In this case the lawyer and the client couldn't agree on a fair figure, or to a mediated settlement and the bill went to assessment. Finally, after several months of dispute Mr Blough got \$9500 – less than the lawyer's earlier offer.

It is the lawyer's job to comprehensively explain the legal process but our staff spend a lot of time explaining what clients can expect and giving them information to make informed decisions. We can only do what we can. In this case the complainant recognised our efforts to explain the situation and thanked us for our efforts despite the result.

## Personal Injury

Complainants often ask how long it will take us to investigate and resolve their matter. Invariably we respond, "that depends on the complexity of your matter." Some cases are simple; others, like Jenny's, are very convoluted.

Jenny complained about 3 lawyers who had successively acted for her in relation to personal injuries claims. P1 had settled her claim on her instructions in June 2000. Jenny, with P2's assistance, had sought assessment of P1's costs resulting in a costs certificate directing P1 to refund Jenny approximately \$3000. P2, however, ceased to act before recovering these monies for Jenny. Around this time Jenny suffered a further accident and commenced a further claim with the assistance of P3. This claim was settled but Jenny did not receive part of her settlement monies and experienced difficulties discussing the matter with P3. She complained about all 3 lawyers and about her whole experience with the legal system.

Jenny's complaint raised the issue of debt owed by P1, P2's failure to recover the debt and the delay in settlement monies being received from P3. We discovered:

- P1 had not paid the debt as no proceedings had been brought against him. By mediation, the OLSC prompted and then monitored P1's payment of his debt to Jenny, who was thus saved the cost and inconvenience of commencing legal action.
- P2's decision to cease to act was based on Jenny's confusion and hesitation about what she could do. P2 had tried without success to get clear instructions from his client and appeared to be justified in ceasing to act. We explained this at length to Jenny.
- It transpired that Jenny had not received a cheque issued by P3 (for approximately \$3000) and P3 re-issued the cheque and offered to resolve other outstanding concerns Jenny had regarding her subsequent claim.

When summarised like this it sounds simple but it took us almost 6 months to unravel Jenny's complaints and to resolve the many aspects of it. When it was resolved we received a thank you from Jenny, who conceded that she had learnt a great deal about the legal system.

## Criminal

Gina, after having her sentence appeal rejected as 'out of time', complained that her advocate had failed to advise her of the strict limitation period (3 months) applying to criminal appeals from the Local Court to the District Court.

Our inquiries confirmed:

- Gina had been recently convicted in the District Court and was serving a sentence when she appeared in the Local Court to be sentenced for other offences. Solicitor N was her advocate.
- As Gina had appealed to the Court of Criminal Appeal against the severity of her existing sentence she had sought advice from N about deferring sentencing in the Local Court matters until that appeal had been determined. Solicitor N applied for an adjournment but the magistrate declined to adjourn. Gina subsequently received fresh sentences that ran concurrently with her existing sentence and which did not extend her overall sentence.
- On receiving the sentences, Gina questioned the magistrate as to whether she would need to await the outcome of her pending appeal before deciding whether to appeal the new sentences. The magistrate said she should wait which, in the circumstances, was not necessarily the best advice. Solicitor N remained silent rather than properly advising Gina in the courtroom or after sentencing of the strict limitation period for an appeal to the Local Court decision.

Solicitor N had not been asked by Gina to advise on the issue directly – mainly because Gina didn't know there was a limit. The lawyer did not inform her and the limitation period expired.

When we examined the case it appeared that due to the structure of Gina's sentences, an appeal was most unlikely to succeed.

Nevertheless, Solicitor N accepted that he should have been more diligent in ensuring that Gina was properly advised as to her appeal rights. He apologised to Gina for his lapse and we made a note of this acknowledgement in our records.

Gina was informed of her right to pursue a complaint about the magistrate with another agency.

## Excess Charges

The OLSC received a complaint from Kerry about tardy service by Solicitor A, who then charged in excess of \$2,000 for a transaction which did not proceed. Kerry stated that she was quoted a flat fee of \$1,200 for costs to completion of the matter. Further concerns arose about lack of communication and inconsistencies in the trust account statements. Following mediation by OLSC the solicitor agreed to refund the majority of the costs and the matter was resolved. In the final response, Kerry said “wow.....I can’t thank you enough for your assistance in this matter. Thank you, very, very much!”

## Family Law

Complaints made to the OLSC cover the spectrum of NSW law but some of the most difficult are those made by clients involved in Family Law matters.

Family Law is federal legislation. Provided the practitioner has disclosed the charges and given the client the costs guideline, complaints about costs can rarely be handled through us. The complaints about Family Law that are handled by the OLSC frequently involve allegations about the inequity of the family law system in general, the unprincipled behaviour of the opposing legal representatives, the failure to put assertions about former partners to the court, and complaints about advocates acting for children of the marriage.

There are no misgivings in this office about the difficulty and anxiety associated with Family Law cases. The powerful emotions at play and the level of the stakes in a family break-up mean these are some of the most difficult complaints for our staff to deal with.

### One

Solicitor C estimated, in writing, \$1500 for a Family Law matter. He ended up charging around \$3000 and he failed to disclose significant increases of costs. The complainant told us that when he failed to pay the bill Solicitor C instituted proceedings in the Local Court to recover costs.

The complainant was also able to point to a number of relatively minor service issues across the period of the case. The OLSC phoned Solicitor C and after discussing the quality of his service and pointing out his obligations under the Legal Profession Act, he subsequently reduced his costs to about \$2000.

A failure to disclose an increase in costs can be professional misconduct. In this case, as there were no other relevant complaints, we noted our records for future reference.

### Two

Mr J had been through a difficult divorce during which his wife relocated interstate with their six month old baby. The case was heard in Sydney and Melbourne and required Mr J to juggle work commitments with the property settlement hearings.

He complained to us about the final bill from a large established practice, maintaining negligence because the Barrister had not been properly briefed and a relocation order not executed.

The law firm was conciliatory and more than willing to resolve this issue with mediation. After discussion with the OLSC and the client a substantial reduction of fees – \$26,000 – was offered.

### Three

Solicitor M acted for the wife in a Family Law matter that settled out of court. One of the Orders stated that the wife receive half of the husband’s superannuation. The wife contacted the OLSC to complain that Solicitor M failed for nearly 12 months to recover the money for her.

The OLSC called Solicitor M who admitted that she was partly to blame because of her confusion about new Family Law Rules relating to superannuation. The delay was compounded by a slow response from the other party in the matter. By the time the money had finally been recovered the wife had lost about \$600 in interest.

Solicitor M agreed to pay half of the interest and said she would try to pursue the other side for the other half. They refused but Solicitor M eventually paid the whole amount. The wife was very pleased with this resolution.

## Separate Representatives

### One

A woman complained that the lawyer appointed as separate representative for her 10 year old child in a custody dispute was favouring her estranged husband.

The allegation was based on proposals put to the court by the child’s representative that increased access for the father and put conditions on the mother’s travel with her daughter.

We explained at length, but with only partial success, that the representative must come to their own independent conclusions about what is best for the child even if that conflicts with a mother’s opinion. We also explained that we could not substitute our view of the facts for those of the lawyer.



However, we closely examined the file and discovered there was considerable correspondence and contact between the separate representative and the father and his representatives compared with the contact made with the complainant. We discussed this issue with the lawyer who agreed that there could be a perception of favouritism in the unbalanced communication and said it was due to the complainant's abrasive manner. The lawyer accepted a reprimand and agreed to spend more time explaining her advice and committed to regular communication to at keep the mother in the picture.

### Two

A complainant pointed out that Solicitor J had acted as her family's lawyer for many years but chose to act only for her ex-husband when they separated. She alleged there was a conflict of interest.

We contacted the lawyer who admitted he'd been pressured by his client, who was also a social acquaintance, to stay on as his lawyer. We impressed upon him the possibility of a real conflict arising from his knowledge of the family's affairs.

Solicitor J withdrew from the case and apologised.

## Property, Leases, Franchises

### One

Luke retained Solicitor T in October 2003 to act and advise on a franchise agreement. Luke argued that an amount of \$2,131.00 charged by Solicitor T was excessive and unreasonable because the solicitor had acted contrary to instructions to arrange for a deed of consent (to lease premises) to be sent to the franchiser pending signature of the actual lease. This was contrary to the franchiser's requirements to first obtain the deed of consent. Solicitor T sent only the lease and not the deed of consent, which resulted in unnecessary costs to Luke and the loss of the franchise agreement. Luke was unable to commence trading for some weeks. OLSC sought Solicitor T's response and after some correspondence agreed to reduce costs to \$1,065. Luke paid this amount and the matter was resolved.

### Two

Solicitor E acted for Tara in relation to the purchase of a new property off the plan. We learned from Tara that Solicitor E had acted for around 60 clients in relation to this one development project and that she had been referred to the lawyer by the agent. Tara complained about additional costs of around \$500 for work carried out that seemed to have no bearing on her purchase.

It was discovered that the additional work related to problems that affected only a limited number of the 60 purchasers, but many of them had been charged.

Solicitor E offered to waive all professional costs (around \$1500) and transfer the file to any new solicitor retained by Tara. He also made sure other clients were not being charged unnecessarily.

## File Transfer

### One

Albie complained about Solicitor F who, despite repeated requests, had failed to transfer his file for three months. The OLSC contacted Solicitor F and, after a discussion about this delay, received an undertaking from her to transfer the file. Albie notified us that his file was transferred within twenty four hours and added that he was most grateful for efforts by the OLSC.

### Two

Theresa complained that Solicitor P did not correctly adjust a special levy pursuant to a certificate issued under section 109 of the Strata Schemes Management Act 1996 when acting for Theresa in the purchase of her property.

The OLSC made inquiries of both Solicitor P and the vendor's representative. Both practitioners stated that the certificate issued under section 109 did not refer to levies outstanding. However one of the issues arising out of the OLSC's inquiries was that Solicitor P had not communicated with Theresa to advise of this nor had she done anything to pursue her concerns with the strata managers. Theresa was being excluded from owners' corporation meetings as a result of not paying the levies. With OLSC intervention, Solicitor P finally contacted the strata managers who in turn advised that they would not be pursuing payment of the levies in question.

## Wills and Probate

By far the most common complaint concerning wills and probates is the time taken for an estate to be administered. Because a change of practitioner in the midst of finalising an estate can complicate and delay things even further, we often try to encourage the lawyer, and the executors and beneficiaries, to communicate more clearly and act more swiftly to progress cases.

### One

Diane is the daughter of Ernest, an elderly gentleman living in a nursing home. The practitioner had been approached by Sonja, an (estranged) daughter of Diane and instructed to visit her grandfather, Ernest, in the nursing home.

On his arrival the practitioner was alerted by a nurse at the reception desk that Ernest was not always reliable in his recollections. The solicitor proceeded to take instructions to revoke a power of attorney in favour of Ernest's daughter Diane. As he left the nursing home the practitioner was once again advised that Ernest was confused and suffered from dementia.

The practitioner asserted that he had made inquiries of Ernest and was satisfied that he had the capacity to give instructions. Ernest subsequently told his daughter that he understood he was signing a document entitling him to more activities in the nursing home – in particular outings to parks. Diane accrued considerable legal costs in an attempt to resolve the ensuing distress caused to her and to her father.

We contacted the lawyer who said he had made his own judgment about whether Ernest could give instructions. Of course, we were not in a position to refute the claim that Ernest was aware of the consequences when he agreed to change the power of attorney.

The Law Society of New South Wales has issued Guidelines to assist practitioners in taking instructions from clients who may appear to lack capacity. In the case mentioned above the more prudent approach would have been an independent medical assessment of Ernest's capacity to give instructions.

We strongly advise practitioners to follow the recommendations in order to avoid any doubt as to client capacity. In this instance we noted our records to ensure any further complaints about the practitioner do not indicate a pattern of conduct that might cause future problems.

## Two

Two legal practitioners were co-executors of the estate of Ronald, a farmer, who died more than four years ago.

The executors, Mr Tavistock and Mr Mills, a local lawyer, agreed that they would apply to the Probate Registry for commission.

The complainant, Mr Tavistock, had now retired. Over four years his co-executor, Mr Mills had sent correspondence to Mr Tavistock apologising for the delay and assuring him that he would prepare the relevant accounts and make the application. However he did not take any action.

Mr Mills acknowledged in his response to this Office that the delay may have had its foundation in personal differences between him and Mr Tavistock. These differences had arisen through the lawyer's many involvements over more than 20 years in local politics and prominent local court actions.

He undertook to handle the matter with expedition, and did so, finalising the matter within a few weeks, providing a written apology and promising to keep old histories out of any future legal contact between them.

## Proof

One of the most frequently heard complaints on the inquiry line is "My solicitor charged me all this money but they didn't do anything!"

A self-employed businessman approached Solicitor Z about a possible breach of contract in a tender. Solicitor Z believed the case was substantial and took instructions to file the case in the local court as a civil action. They agreed on a cost and the client paid the full fee upfront.

The client called the solicitor's office four times over the ensuing months but his calls were not returned. He approached our office twelve months to the day that he had instructed his solicitor to lodge the matter in court.

The OLSC was able to speak with the solicitor and learnt that the client's file had been misplaced for several months. The practitioner explained that he had since instigated a more effective filing system and advised that although he had refunded a part of the fee, he had recovered the file and still had time to file the matter for the client.

The client advised the OLSC he no longer wanted Solicitor Z to handle his case. We advised that solicitor had done a fair bit of work of work on the matter but the client was not interested. He had paid for the matter to be lodged in court and saw no evidence of that; therefore, as far he was concerned, nothing had been done.

We wrote back to the solicitor and explained the client's position. Solicitor Z protested and explained he had done a lot of research into the relevant legislation and deserved to be compensated for that work.

Lack of communication between client and solicitor frequently results in this kind of dispute. Clients want tangible proof of the work they believe they pay for – the case to be heard in court, contracts exchanged and so forth. Unless a practitioner explains the work involved in matter, they cannot expect the client to appreciate the work involved. If the solicitor had been courageous enough to own up to the fact the file had been misplaced, reconstituted the file and proceeded within a reasonable time frame there might not have been a problem.

In this instance the lawyer had wasted any credit he had with the client. The instructions had not been carried out and the client no longer had any interest in the matter being lodged in court. We impressed upon the solicitor the very poor level of service to his client and the solicitor agreed to refund the rest of the fee.

## Phone Mediations

One of the main purposes of the inquiry line is to inform members of the public of the nuances of the legal system and to identify genuine complaints.

It also – occasionally – allows us to intervene in a matter before it becomes a formal complaint against a practitioner.

### One

Mavis had just purchased a home in a small country town and instructed a local solicitor to handle the conveyancing. After contracts were exchanged and she had settled in her new home, Mavis continued to receive rates notices for the previous tenants. It transpired that the practitioner had inadvertently sent the rates cheque to the previous tenants instead of the Council.

The practitioner promised to rectify this matter but he was dogged by a series of complex matters and poor health. Mavis's request slipped to low priority. She finally called the OLSC to lodge a complaint.

Before we sent her a complaint form we called the practitioner who was at home recovering from minor surgery. He was able to instruct his accounting staff to pay the outstanding bill and Mavis was notified the next day that the matter was now closed. She was very relieved.

### Two

And despite the passion and indignation of some callers, it doesn't always transpire that the solicitor has made a mistake or has been negligent.

Mike called the enquiry line to complain about the length of time his late mother's practitioner (and executor) had taken in administering her estate. He was also angry that his calls to the practitioner had not been returned; he told the OLSC that he was ready to drive 300 miles to see the practitioner himself. He knew that the estate had been finalised and was waiting for his bequest to be paid to him.

When the OLSC called the practitioner we learnt that Mike was one of four beneficiaries; the deceased's will stated the money was to be given to Mike who, as the oldest sibling, was supposed to distribute it evenly amongst his brothers and sisters. Another sibling had already contacted the solicitor and detailed a long term falling-out between Mike and his siblings. There was concern in the family that Mike would not be distributing the money to anyone in the near future.

In respect of the practitioner's behavior, the OLSC could see no evidence of delay or negligence. The practitioner explained that Mike had been very impatient about getting the money for a long time and that she had worked hard to keep him informed of the

matter's progress. The OLSC called Mike to assure him that there was no demonstrable delay or negligence, and that he would have a cheque soon.

The practitioner subsequently advised the other siblings that civil action may encourage Mike to share the legacy

## Reprimands

### One

An elderly overseas visitor fell in a country supermarket. She approached a local lawyer.

After many fruitless phone calls and letters to the lawyer, made all the harder because by now the client was several thousand kilometres away, a complaint was lodged. By this time it was almost 2 years since the accident. The case became statute barred.

We had great trouble getting information from the lawyer but he finally acknowledged that he had obtained counsel's advice – quite early in the process – and it had not been favourable to his client's case. Instead of swiftly and clearly communicating with his client he did nothing. He relied on the client's difficulty in contacting him from overseas to reduce the pressure to tell the truth.

While we cannot compensate the client for her injury we obtained a refund of all monies paid, some small monetary compensation for the delay and lack of communication and reprimanded the lawyer – you could say for his lack of courage.

### Two

Cost assessors are bound by s208Q of the Legal Profession Act to refer matters to us if they believe there has been gross overcharging by lawyers or misleading conduct in the course of a cost assessment.

During the year several reprimands were issued as a result of these notifications.

In one case the costs were reduced on assessment form about \$90,000 to a little over \$40,000. The extra charges included work over and above that should have been needed as well double billing. On examining the file we discovered that a junior lawyer's work had gone unchecked. The supervising lawyer was reprimanded for unsatisfactory professional conduct, rather than something more serious as the overcharging was not considered to be wilful.

That was not the case for another lawyer who's charges were reduced by almost 80%. He also failed to provide information to the cost assessor over a long period of time. There were no excuses and his conduct was seen as wilful and he was brought before the Tribunal and found guilty of professional misconduct.

# Education and Communication

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As a result of our daily contact with consumers of legal services, the OLSC has accumulated a great deal of practical information concerning their needs and aspirations to pass on to those practising law as well those who intend to practise. Our educational outreach program has expanded over the last year during which we have given lectures and seminars for the profession and to more universities, increased our mailing list for publications and updated our website.

## Publications

The OLSC aims not only to resolve disputes between client and practitioner but to inform the legal consumer of their rights and obligations when using a lawyer.

We publish 16 different fact sheets and 3 brochures that explain the methods by which we handle and resolve complaints. The fact sheets cover a broad range of topics:

- What happens when you complain to the OLSC
- Costs Disclosure
- Types of Costs
- Regulated Costs – Workers Compensation
- Regulated Costs – Civil Liability Act (Personal Injury Claims)
- Regulated Costs – Victims Compensation
- Regulated Costs – Family Law matters
- Regulated Costs – Motor Accident Compensation
- Costs Disputes
- Costs Dispute Resolution
- Negligence
- Liens
- Conflict of Interests
- Settlement
- File Ownership and Handling
- Hiring a Legal Practitioner
- Opposing Legal Representatives

The fact sheets provide information on legal issues for both practitioners and complainants. As the law is amended and expanded, so are the fact sheets to ensure that all information is accurate and relevant.

The OLSC produces the quarterly newsletter Without Prejudice. This publication is available online and hard copies are sent to practitioners and academics who wish to keep abreast of our work in the area of complaint handling policy development and legislative reform.

The Commissioner and policy staff have continued to present papers and contribute to law journals. Highlights this year include “The Cost of Justice – The experience of the OLSC in Handling Costs Complaints” (UNSW Law Journal, Faculty of Law, Sydney), and a paper presented to the Pacific Rim Conference, 27 September 2003 – “Is State Regulation of the Legal Profession Inevitable?” In addition, the Commissioner gave 31 speeches and presentations covering a wide range of issues from the operation of our office, conflict of interests, regulation of incorporated legal practices and promoting high ethical standards in the legal profession.

## Lectures, Seminars and Public Addresses

The majority of law faculties in New South Wales universities have integrated lectures presented by OLSC staff into their Ethics or Law, Lawyers and Society curriculum. The learning process is rewarding for staff and students alike: students are able to consider both points of law and the ethical challenges they will face as lawyers, while OLSC staff can offer practical information about the nature of the complaints we handle – and advise these lawyers of the future how they can avoid complaints being made against them.

In the past year OLSC staff have presented more than 50 lectures to undergraduate, post graduate students and those participating in practical legal training at the UNSW, Macquarie University, University of Newcastle, University of Technology Sydney, the University of New England, the University of Wollongong and the University of Western Sydney.

For the first time, the role of the OLSC has been included in the course for paralegals at Sydney TAFE; Assistant Commissioner Jim Milne spoke to students about the Legal Profession Act and the processes of our office.

The Commissioner speaks regularly to students completing their training at the NSW College of Law and gave 10 such lectures in this reporting year. This specific lecture challenges the recent graduate to think about how they will practise law and takes them outside the realm of textbook legislation to consider the ethics and philosophy of the practice of law.

## Content of Lectures

University students are usually familiar with the Legal Profession Act but understandably have little experience of its practical application.

The lectures give students an excellent insight into the kinds of issues that are important to clients and as well as a practical understanding of how complaints are handled.

Since a high proportion of complaints made to the OLSC centre on matters that could have been sorted out between the client and the practitioner in the early stages of their relationship, it is important to explain what kinds of pitfalls prospective practitioners can avoid. By offering these first hand examples to students we are able to help them identify aspects of legal practice they won't find in text books – communicating with clients, dealing with clients who speak English as a second language, negotiating costs and billing arrangements – while also discussing the very fine and often unclear line between professional conduct and personal conduct.

## Sharing the Knowledge

The OLSC is an independent body, working in a co-regulatory relationship with the Law Society and the Bar Association with the aim of upholding the high standards of the legal profession and its service to the community through our complaints handling function and educational programs.

This co-regulatory relationship was unique in the world when it was forged in 1994; now Queensland and Victoria are adopting a similar model. In the United Kingdom, where the regulatory system is under extensive review, the NSW model of regulation is under serious consideration.

Because of our longstanding co-regulatory relationship, the OLSC is able to offer a valuable and singular perspective in its presentations and lectures. Highlights of the 31 talks given by the Commissioner this year include the graduation speech for law students at the University of Western Sydney, a discussion paper on Value Based Billing for Law Week at the State Library and an address to the NSW Young Lawyers Annual Assembly. The Commissioner also spoke at the American Bar Association Annual Meeting in San Francisco, where our model of regulation always generates a great deal of interest and animated discussion.

## Looking Ahead

The role of the OLSC makes our base in the CBD of Sydney essential. However, while our close proximity to the legal community and business district serves much of our core business, we know that the practice of law does not stop at the Great Dividing Range.

The Commissioner regularly pays visits to regional law societies. In the past year he has met with practitioners and law societies in Taree, the far North Coast of NSW and Dubbo. These meetings are an informal opportunity to exchange information and offer us at the OLSC an opportunity to understand the issues and challenges that are faced by regional practitioners.

Over the next year policy and education staff are planning visits to more regional centres in order to renew contact with legal community centres and local practitioners.

This outreach aims not only to inform local solicitors and barristers of our services and legislative requirements but to make sure locals can access our information through their local community legal centres and – most importantly – that they know how to contact us.

## Image, Coverage

The OLSC provides a free service and therefore does not generate its own income; nor is it funded from Treasury budget allocations. Our budget is directed from the Public Purpose Fund (PPF).

The PPF is administered under the Legal Profession Act 1987. Interest on investments made under section 65 of the Act, interest accruing on general trust accounts under section 69E and any such other amounts payable to the PPF under this act are credited to the PPF. The three Trustees of the PPF, who are appointed by the Attorney General, have the management and control of the fund. The Trustees make payments from the PPF for purposes referred to under section 69G, 69I, in accordance with an order of the Tribunal under section 171E(2) and any costs or expenses incurred in collecting interest payable to the PPF and in managing or administration of the fund.

We are accountable directly to the trustees of the PPF and the Attorney General on how that money is spent

The OLSC is not an advocate for complainants or solicitors – overseeing and administering the Legal Profession Act means that we have a duty to provide the best possible service to both parties and we approach our role with a problem-solving methodology.

Despite the fact the OLSC spends no resources on media imaging, journalists still appreciate the value of an unbiased and impartial opinion. The Commissioner is frequently approached to comment on areas of legal policy and ethics as well as specific cases involving lawyers who have been before the disciplinary tribunal.

# Adapting and Improving

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Last year the OLSC introduced project management methodology as our basis for business planning and process improvement. This initiative has resulted in the OLSC successfully utilising a structured mechanism for meeting set goals and improving office operations.

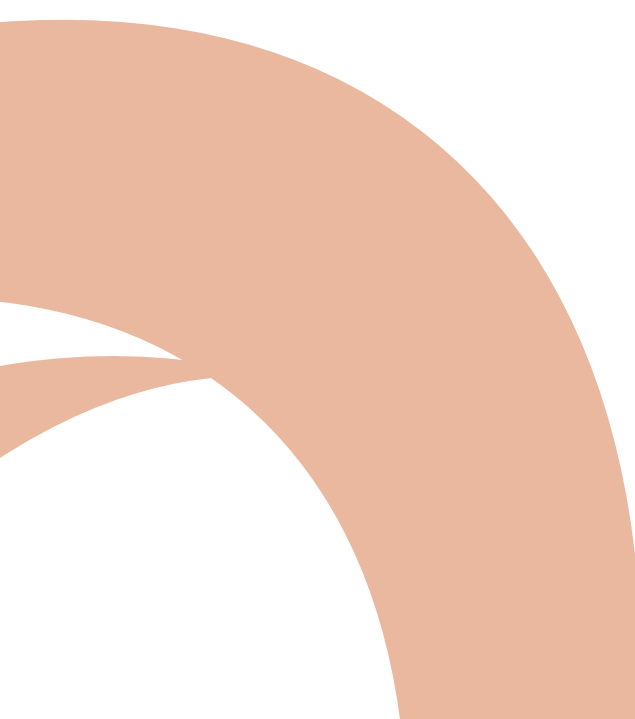
In order for our project management methodology to be successful, all staff were given training in the principles and tools of project management. Staff were instrumental in choosing the projects that were to be incorporated into the business plan so that the projects met not only the needs of the Office but those of complainants and practitioners as well.

The final steps undertaken to help ensure the success of the projects were:

- staff choosing the project teams they wished to work on and the team leader with whom they wished to work
- the development of plans for the projects by the team members.

These plans were then brought together to form the OLSC business plan for 2003–2004.

The projects included in the OLSC 2003–2004 Business Plan were:



Project	Project Goals
<b>Consistency of Data</b>	<ul style="list-style-type: none"> <li>■ To have access to usable and useful data</li> <li>■ To produce statistics that are consistent with the professional associations</li> <li>■ To provide easy access to data for scheduled and ad hoc reports.</li> </ul>
<b>Education of profession, students and community</b>	<ul style="list-style-type: none"> <li>■ An expanded and more comprehensive education strategy that will further promote compliance and high ethical standards amongst the profession and encourage more realistic expectations of the legal system in the community.</li> </ul>
<b>Policy</b>	<ul style="list-style-type: none"> <li>■ Identify and progress key policies for the effective operation of the office and develop office capacity to initiate and respond to regulatory policy issues.</li> </ul>
<b>Training</b>	<ul style="list-style-type: none"> <li>■ Develop a comprehensive plan for education within the OLSC with the view to implementing an excellent training and education system.</li> </ul>
<b>Records Management</b>	<ul style="list-style-type: none"> <li>■ Elimination of misfiles within the OLSC</li> <li>■ Compliance with AGD requirements and standards</li> <li>■ The update of OLSC specific policy &amp; procedures for records management</li> <li>■ Quality comprehensive records.</li> </ul>
<b>Review of internal systems to improve efficiency and effectiveness</b>	<ul style="list-style-type: none"> <li>■ Understanding of system thinking and its value in an organisational context</li> <li>■ Consistent approach across the office in relation to the use of systems</li> <li>■ Improvements in relation to identified inefficiencies</li> <li>■ Continuous improvement in systems and morale</li> <li>■ Fuller understanding by staff of all systems.</li> </ul>
<b>Performance Management</b>	<ul style="list-style-type: none"> <li>■ Consistent use of the Performance Management process</li> <li>■ Consistent use of the file review process</li> <li>■ Encourage high morale of the OLSC by ensuring the Performance Management process gives an opportunity for input and feedback by staff</li> <li>■ Give training and development opportunities to staff to allow for an on-going flexible process in Performance Management and File Review</li> </ul>
<b>Inquiry Line</b>	<ul style="list-style-type: none"> <li>■ Review of inquiry line functions, and systems supporting those functions, and evaluation of whether the existing systems meet the OLSC's requirements</li> <li>■ Identify and implement ways in which existing systems can be improved to meet or exceed OLSC and AGD requirements</li> <li>■ Design and implement new systems, where applicable, to meet or exceed OLSC and AGD requirements</li> </ul>
<b>Incorporated Legal Practices</b>	<ul style="list-style-type: none"> <li>■ Implementation and promotion of a workable program for reviewing management systems of ILPs in accordance with the Legal Profession Act 1987.</li> </ul>

The plans for the projects were developed so that they could be changed if the needs of the office changed or the results of implementation required a change in direction. For example, the Flexible Service Delivery program, an initiative of the AGD related to disability services, was added to the scope of the Training project for implementation; within months the OLSC saw improvement in equitable access to the services we offer.

The projects were implemented across the 2003–2004 financial year. Some were completed as planned and some have been carried over to 2004–2005, again as planned, because of their complexity and / or the work required for the projects.

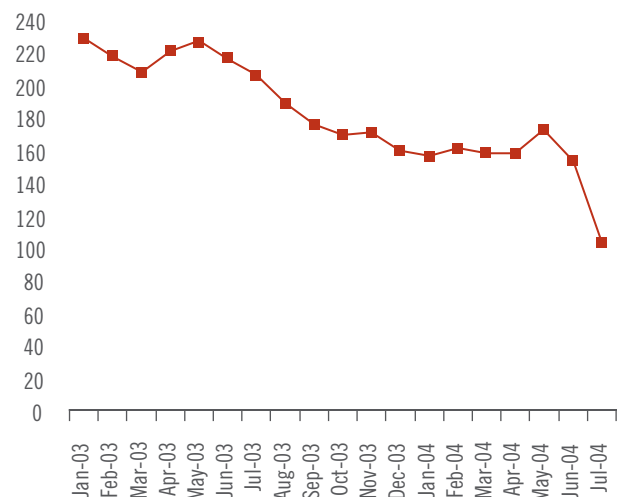
The many achievements realised in the implementation of the projects have brought us the following major improvements:

- Update of hard record filing system
- Update of policies and procedures
- Training needs being met
- Improved systems
- Development of performance indicators for Inquiry line and complaints handling systems allowing internal reporting and further improvement
- Enhancement of the program for the education of the community and profession
- Improved understanding of systems of the OLSC's co-regulators to improve data consistency
- Improved consistency of complaints data with co-regulators eg a new date system has minimised the number of complaints held in different financial years. Past data problems were due to diverse office procedures
- Further development of the electronic complaints tracking system and improved extraction of data
- Improved data integrity as shown by regular data integrity checks
- Improved application of performance management within the office
- A trialed, functional audit program for Incorporated Legal Practices.

There were also a number of perceivable benefits from the implementation of project methodology itself:

- Increased staff involvement in quality improvement and activities beyond complaints handling
- Development of staff skills eg project management, team management
- Increased communication between staff
- Improved performance eg a decrease in the number of old complaints still open within the OLSC (see Figure X)

#### Complaints handled by OLSC older than 12 months (including reviews)



- An increased number of performance indicators the office utilises internally to monitor performance and improvement
- A greater understanding of where future improvements can be implemented
- A more complete implementation of the OLSC business plan than in past years with greater staff involvement.

The trial of project methodology over the past year was exceptionally encouraging and the projects will be continued into 2004–2005. The Training, Review of Internal Systems, Consistency of Data, Records Management and Inquiry Line projects have been carried over as the original plans outlined that they would take greater than one year to implement.



In addition, three new projects have been undertaken:

**Policies, Procedures and Directories** – A review of the system for storing, locating and managing all documents created by the OLSC, or documents produced by other organisations that seek the OLSC's input.

**Key Performance Indicators/Qualitative indicators** – Aims to enable the OLSC to measure societal expectations of what the OLSC does, the impact of various aspects of OLSC work and the impact of changes made to OLSC work practice.

**Certification of OLSC to ISO 9001:2000** – This project will see OLSC achieve certification to an international recognised standard. The scope of the certification will be:

- The provision of effective complaint-handling processes encouraging an improved consumer focus within the legal profession to reduce causes for complaints,
- The provision of lectures, seminars and public addresses and educational material to promote realistic community expectations of the legal system, and
- Maintaining an effective co-regulatory relationship with the professional associations for the regulation of the legal profession

Implementation of this quality management system within OLSC will produce ongoing continuous improvement in our policies and procedures. Certification to ISO 9001 will also enhance our credibility in the eyes of the legal profession, especially incorporated legal practices, which are required to implement "appropriate management systems" in accordance with the Legal Profession Act (s47E(3)(a)).

# Administration

## Operating Efficiently and Equitably

The OLSC operates within the organisational framework of the NSW Attorney General's Department. However, unlike other Departmental agencies funded by State Treasury, the OLSC receives operational funding from the Public Purpose Fund and maintains a recurrent recoupment budget.

The OLSC continually monitored its financial performance during 2003-2004 for a satisfactory budget outcome at close of the reporting year. Where necessary we applied stringent budgetary measures to capture and correct unfavourable budget trends within our control. We contained our operating costs while meeting all of our financial commitments including self-funding the 5% salaries and wages increase, the final in the Crown Employees (Public Sector Salaries January 2002) Award.

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

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



## Human Resource Management

As at 30 June 2004, the OLSC establishment comprised 21 permanent full-time positions for administrative and professional staff.

Similar to previous financial years, the Office experienced moderate levels of staff shortage during 2003-2004 resulting from staff movement on long term leave or to pursue employment opportunities elsewhere. We filled the vacancies through normal recruitment methods, including recruiting from within the Department as well as offering casual employment to university law students who were completing the final stages of their training and would benefit from exposure to processes inherent to a regulatory service provider.

The temporary staff completed in-house induction training before being rostered as telephone inquiry officers disseminating information to clients calling the OLSC inquiry line, or placed in the role of mediation and investigation officer managing complaint files.

In our commitment to consistently deliver valued professional service to the community, we encouraged staff to regularly update their knowledge base and work skills by embracing a program of continual education and training.

During the year we sent staff to various training courses designed to enhance job performance as well as seminars and workshops for instruction in new legislation and legislative amendments affecting the OLSC. Some of the legal training courses attended by staff include Changes to the Law in Power of Attorney, Issues In Legal Costing, Affidavits Workshop and The New Family Law Legislation and Rules. Courses in Time and Stress Management, Writing in Plain English and Project Management not only improve job performance but ensure staff are abreast of current business trends and protocols.

In conjunction with the Department's flexible service delivery training program, all staff attended mandatory training in disability awareness including a practical skills workshop to look at ways in improving access to OLSC services for people with disabilities. The training was conducted following local community consultation.

# Notes Supporting the 2003–2004 Financial Statement

## Salaries and Wages

The salaries and wages variation highlights a year-end adjustment to account for the annual accrual component for recreation leave expense.

## Superannuation

The OLSC has members in the following superannuation schemes: the State Authorities Superannuation Scheme and the State Authorities Non-Contributory Superannuation Scheme. The budget overrun in superannuation expense reflects end of financial year adjustments that derive from movement on the prepaid superannuation balances of these funds. The Department is obliged to reflect this movement in its books as part of required year-end financial processes. The prepaid superannuation adjustment is in the nature of a non-cash transaction and is not recouped from the Public Purpose Fund.

## Fees

The Fees budget includes provision for litigation costs incurred to bring matters before the Administrative Decisions Tribunal (ADT) and the Courts. In addition, provision is made for costs associated with the review system and independent review advisors. In 2003–2004, the Office did not incur significant litigation costs in bringing matters before the ADT and the review costs were considerably less than those experienced in the previous year.

## Printing

The cost saving realised against the Printing budget reflects our ongoing monitoring of printing costs associated with the production of OLSC publications such as the annual report, newsletters, pamphlets and fact sheets, to ensure expenditure is always maintained within approved budget level.

# Financial Statement 2003–2004

	Budget \$	Spent \$	Variance \$	Notes
Salaries & Wages	1,535,487	1,564,778	-29,291	1
Allowances	0	2,407	-2,407	
Overtime	5,722	1,621	4,101	
Leave Entitlements	67,537	64,198	3,339	
Workers Compensation	9,106	7,852	1,254	
Payroll Tax	94,772	103,631	-8,859	
Fringe Benefits Tax	2,000	0	2,000	
Superannuation	112,579	207,245	-94,666	2
<b>Total Employee Related</b>	<b>1,827,203</b>	<b>1,951,732</b>	<b>-124,529</b>	
Advertising & Publicity	5,115	5,894	-779	
Bank Charges	102	106	-4	
Consultancies	70,000	74,697	-4,697	
Contractors	7,538	0	7,538	
Electricity & Gas	12,614	15,766	-3,152	
Fees	166,940	107,860	59,080	3
Freight & Cartage	1,023	0	1,023	
General Expenses	3,069	966	2,103	
Insurance	2,121	1,674	447	
Interpreters & Translations	4,228	5,089	-861	
Postal Expenses	20,302	13,762	6,540	
Printing	32,920	21,486	11,434	4
Publications	11,253	9,290	1,963	
Rates & Outgoings	8,585	6,926	1,659	
Rent	184,390	189,751	-5,361	
Staff Expenses	18,184	16,197	1,987	
Stores & Stationery	33,403	26,346	7,057	
Telephone	24,121	13,742	10,379	
Travel	23,460	14,520	8,940	
Lease of Equipment	22,000	20,062	1,938	
<b>Total Maintenance &amp; Workings</b>	<b>651,368</b>	<b>544,134</b>	<b>107,234</b>	
Maintenance Contracts	48,277	38,782	9,495	
Repairs and Maintenance	1,023	120	903	
<b>Total Maintenance Contracts</b>	<b>49,300</b>	<b>38,902</b>	<b>10,398</b>	
<b>Total Expenses</b>	<b>2,527,871</b>	<b>2,534,768</b>	<b>-6,897</b>	
Less: Revenue (Recoupment)	-2,527,871	-2,456,226	-71,645	
<b>Net Cost of Services</b>	<b>0</b>	<b>78,542</b>	<b>-78,542</b>	
Depreciation	32,121	26,429	5,692	
<b>Net Position</b>	<b>32,121</b>	<b>104,971</b>	<b>-72,850</b>	

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ISSN: 1440 – 2769 (print)  
ISSN: 1447 – 8005 (online)