



**THE OFFICE OF THE LEGAL
SERVICES COMMISSIONER**

ANNUAL REPORT

2019-2020

OFFICE OF THE LEGAL SERVICES COMMISSIONER

ORGANISATIONAL CHART

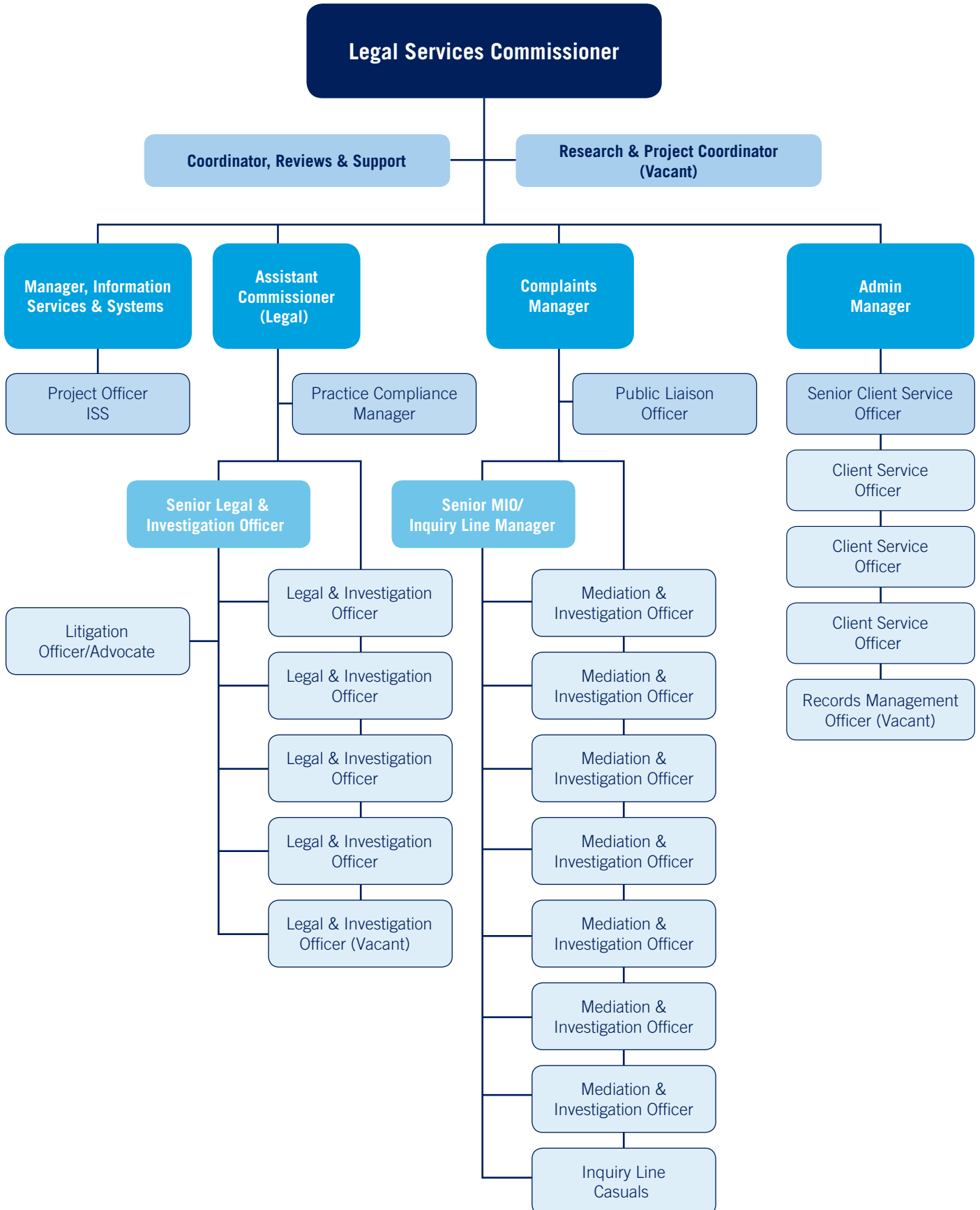


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Chapter 1

COMMISSIONER'S REPORT

The end of calendar year 2019 saw an important milestone in the development of the Legal Profession Uniform Law (LPUL). A yearlong consultative process involving all the legal regulators in New South Wales and Victoria, with input from our Western Australian colleagues, culminated in the approval by the Legal Services Council of a raft of legislative amendments and referral to the Standing Committee of Attorneys-General for approval and implementation. The proposed changes reflect the operational experiences by the regulators of the LPUL since its commencement in July 2015, together with commentary from legal professional bodies, relevant tribunals and government departments. In all, the proposed amendments hold true to the six guiding Objectives of the LPUL whilst improving on its practical implementation as a result of several years' experience with the originating landmark piece of legislation. It was pleasing to see the commitment to collegiality and respectful debate by all involved, in what was an exhaustive process of deliberation and consensus seeking in the context of differing views and understandable preference for local historical traditions. I believe the outcome was a success and demonstrates the viability of the LPUL as a model for a truly national legal profession and its regulation.

The start of calendar year 2020 saw cities blanketed by smoke from devastating bushfires and many regional localities critically impacted. Then Covid-19 struck and the way of life, as well as the way of working, changed dramatically. Our office did well to scramble to a rushed implementation of largely remote working, especially for our case officers. However, we were not well placed as the pandemic hit when we were in the middle of building our new case management IT system. Not only was the development of our new system delayed by the understandable focus on societal and whole of government critical issues, but our existing systems necessitated the continued attendance in our office by a small number of staff including myself even through the initial tight lockdown. I am grateful to our staff members who remained focussed to ensure our operations continued effectively although with an inevitable impact on our timeframes.

Covid-19 affected the lives and livelihoods of both the respondent lawyers and the members of the public with grievances in equally dramatic fashion. I have been pleased with the ongoing dedication to professionalism and proactive approach to the resolution of consumer complaints by the great majority of lawyers. I greatly appreciate the patience and forbearance shown by most of the complainants as we struggled to achieve timely resolution of their concerns. The institution of a dedicated Public Liaison Officer (PLO) role in our team in late 2019 proved to be a valuable resource. Our PLO has played a most constructive role in assisting members of the public to better understand our processes and to overcome individual hurdles to fashioning their concerns into a form that allowed us to conduct meaningful assessment and investigation.

New South Wales was due to host the annual Conference of Regulatory Officers (CORO) in late 2020 and planning had begun in earnest by late January. However, by June, it was evident that such an undertaking was most unlikely to come to fruition and we decided to cancel CORO for 2020. However, with the kind consent from all other jurisdictions, we will retain our chance and we look forward to hosting in 2021.

Whilst work has continued on our much anticipated new case management system, the extent of the project has been trimmed with available resources becoming curtailed. This appears to have dashed the hope for moving to a paperless office, something which the pandemic experience has shown to be all the more necessary for the long term. We hope for the best possible outcome of this project which has been in the pipeline for almost five years now, but I fear, we shall have to settle for a system which will require further enhancement in the future, when government resources become more available.

I have been concerned about the incidence of sexual harassment within the legal profession for two years now, especially the disparity between the documented research showing a high incidence and a paucity of formal complaints received. Our confidential telephone service has continued since its inception in early 2019 and a number of people who have experienced sexual harassment, workplace bullying or other forms of harassment have benefited from the liaison by our trained Personal Conduct Team members. However, those numbers, whilst significantly higher than reports before the start of the telephone service, are low in relation to the incidence which was again highlighted in the Respect@Work report published by the Federal Sex Discrimination Commissioner in April 2019. In June, the news broke regarding the investigation report into the former Justice Dyson Heydon and the forthright public statement by the Chief Justice of the High Court of Australia. The resulting media spotlight on this issue has strengthened the resolve of the leaders of the profession and its regulators to achieve meaningful improvements in the legal profession culture, at all levels. Effective steps are needed so that the incidence of this behaviour, which has been unlawful since 1984, is minimised, as befits a profession whose members pride themselves as proponents of the rule of law. I shall have more to report on this issue in coming years.

John McKenzie

NSW Legal Services Commissioner

Chapter 2

INVESTIGATIONS AND DISCIPLINE

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

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

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

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

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

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

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

Complaints not closed after preliminary assessment may be investigated.

If, after completing an investigation, the Commissioner finds a lawyer has engaged in unsatisfactory professional

conduct, he may determine the matter by making any of the orders specified in LPUL section 299. Orders may include:

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

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

Complaints received

The number of complaints received in the reporting year remained relatively stable. However, the OLSC has noticed an ongoing increase in the complexity of investigations and a sizeable increase in the amount of documentary material submitted with complaints.

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

Complainants commonly complain of discourtesy, unfair tactics, false or misleading affidavits and submissions, and lawyers acting in a conflict of interests, particularly

where work has been done for a couple and the lawyer subsequently represents one person from the couple.

Complaints in relation to deceased estates (covering wills, powers of attorney, probate and family provision claims) are also common. Complaints in this area of law may raise conduct that occurred a number of years ago, or conduct that began years ago but extends into the present. They can be factually complex and require the review of substantial documentary material. They are often emotionally charged. Beneficiaries of deceased estates complain of delay or inaction on the part of the executor and their lawyer, not being kept informed about progress, that instructions were taken when the testator lacked testamentary capacity and excessive costs (especially in the case of a lawyer/executor).

The Legal and Investigation team continues to liaise with the Taskforce established by NSW Police to investigate fraudulent activity in the New South Wales Compulsory Third Party insurance scheme, reporting suspected offences and making material available to Police as required.

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

Determinations and disciplinary action

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

The Commissioner issued 5 reprimands and 16 cautions, and ordered the lawyer to either redo work at no cost or to waive or reduce their fees in 2 matters.

Reprimands were issued for:

- Failing to properly assess a client's capacity and act in their best interests
- Acting in a conflict of interests
- Lengthy delay in transferring a client's file
- Failing to verify the identity of a client
- Acting without proper instructions
- Failing in duty to the Court by not taking steps to prepare a matter for hearing
- Failing in duty to the Court by failing to file a notice of withdrawal
- Discourtesy

Cautions related to isolated instances of:

- Failing to seek instructions from a client
- Failing to arrange for an agent to attend settlement
- Misleading and deceptive advertising
- Misleading the other party/opponent
- Failing to make proper costs disclosure
- Misleading the OLSC in a complaint investigation
- Breach of confidentiality
- Improper witnessing of a client's document
- Significant delay
- Breach of Court orders
- Offensive language
- Threatening the institution of criminal proceedings against the other party if a civil liability to the lawyer's client were not satisfied

Disciplinary proceedings

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

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

Legal Services Commissioner v Peter Livers

This matter has been ongoing since 2016. On 3 August 2017, Peter Livers was found guilty of professional misconduct, arising from deliberate acts of dishonesty, or, in the alternative, reckless carelessness in seeking to obtain a grant of funding from the Independent Legal Assistance and Review Service (ILARS) of the WorkCover Independent Review Office (WIRO). The Tribunal found that Mr Livers had altered the date of an audiogram, amended his client's statement in a misleading way, and misled WIRO by preparing and relying on a funding application which contained material omissions and assertions some of which were false.

On 7 September 2018, the Tribunal ordered the removal of Mr Livers' name from the Roll of Lawyers.

Mr Livers appealed the decision. His appeal was allowed on 14 December 2018. The Orders of the Tribunal made on 3 August 2017 and 7 September 2018 were set aside and the proceedings remitted to the Tribunal to be determined according to law. Mr Livers' name was reinstated on the Roll of Lawyers pending further Order.

The remitted proceedings were heard on 20 - 21 June and 15 October 2019. On 27 November 2019, the Tribunal found Mr Livers guilty of professional misconduct and stood the proceedings over for a Stage 2 hearing to determine whether and what, if any, protective orders should be made and to determine whether a costs order should be made.

Mr Livers appealed the Tribunal's decision, seeking orders that it be set aside and the disciplinary application dismissed. The appeal was listed for hearing on 10 July 2020. The outcome will be reported next year.

Internal reviews

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

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

Two complainants have commenced judicial review proceedings challenging the Commissioner's decision not to conduct an internal review.

The first of these concluded this reporting year - *Mendonca v Legal Services Commissioner* [2020] NSWCA 84 (Basten JA, Leeming JA, McCallum JA)

Mr Gerard Mendonca requested internal review of a decision by the Council of the Law Society of New South Wales refusing to waive the time requirement on making a complaint, and closing his complaint as made out of time. The Commissioner declined to conduct an internal review of the decision. Mr Mendonca sought judicial review of the Commissioner's decision in the Supreme Court of New South Wales. That summons was dismissed by Wilson J on 16 April 2019.

Mr Mendonca sought leave to appeal from Wilson J's decision. (Leave was required because the proposed appeal did not involve a matter involving \$100,000 or

more). The application for leave to appeal and argument on the proposed appeal were heard concurrently on 18 February 2020. Judgment was delivered on 7 May 2020.

The Court of Appeal held (at paragraphs 30 - 31) that the Commissioner's discretion pursuant to section 313(1) of the Legal Profession Uniform Law is absolute and not circumscribed in any way, there is no duty imposed on the Commissioner to exercise the discretion to conduct an internal review and, therefore, a Court cannot order the exercise of the discretion to conduct an internal review, further that the proposed appeal would not raise any issue of principle or question of public importance, and Mr Mendonca had not established any injustice. Accordingly, the summons for leave to appeal was dismissed, with costs.

This was an important case for the OLSC in that the Court of Appeal considered and confirmed our two step approach to requests for internal review (being firstly to consider whether it is appropriate to exercise the absolute discretion, and then, if so, proceeding to conduct an internal review) and also confirmed the absolute extent of the Commissioner's discretion at the first step (see paragraphs [11], [16], [30] and [31]).

Policy development

The OLSC continued to work with New South Wales co-regulators (the Law Society of New South Wales and the New South Wales Bar Association), our counterparts in Victoria and the Commissioner for Uniform Legal Services Regulation throughout the reporting year to formulate and prioritise proposed amendments to the Legal Profession Uniform Law (LPUL), for consideration by the Legal Services Council. The amendments arise from the regulators' practical experience in interpreting and applying LPUL since 1 July 2015, and are intended to clarify and improve the operation of certain provisions.

The Legal and Investigation team continues to provide guidance and legal advice to senior managers and staff on the interpretation and application of LPUL. The Assistant Commissioner (Legal) meets regularly with the Director, Legal Regulation and the Deputy Director, Investigations at the Law Society of New South Wales and the Director of Professional Conduct at the New South Wales Bar Association to discuss problem lawyers, difficult complaints, complaint handling procedures and other common issues, and liaises with the Commissioner for Uniform Legal Services Regulation and the OLSC's Victorian and Western Australian counterparts as required. She is also a member of the Supreme Court of New South Wales Costs Assessment Rules Committee.

Chapter 3

CONSUMER MATTERS AND COSTS DISPUTES

In the 2019-20 reporting year, the OLSC received a total of 2,705 written complaints and registered the total completion of 2,462 written complaints. This was a pleasing result noting that the impact of Coronavirus (COVID-19) led to some disruption and alterations to work practices in the latter part of the reporting period.

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

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

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

The OLSC must attempt to resolve a consumer matter by informal means. The Commissioner also has power to make a determination under section 290 of the Legal Profession Uniform Law (LPUL), if he is satisfied that it is fair and reasonable in all the circumstances, and/or a binding determination about costs. Often an indication to a lawyer that the Commissioner may consider making a determination in a consumer matter or a costs determination, in circumstances where it would appear grounds exist to support that, will have the effect of encouraging a lawyer to engage in attempts to informally resolve the complaint.

Where a Mediation and Investigation Officer comes to a view that a complaint may involve a disciplinary matter, issues of potential unsatisfactory professional conduct or professional misconduct must be considered separately from consumer aspects of a complaint.

The year under review

For the 2019 to 2020 reporting year, the OLSC received a total of 1,389 consumer matters including a total of 706 costs dispute complaints. 5 matters were not able to be characterised, generally owing to inadequate information being provided with the complaint.

For this reporting year, Family/defacto was the area of law most represented in **consumer matters**, followed by personal injuries, conveyancing, other civil matters and criminal.

Quality of Service: Negligence was the most common consumer matter complaint in this reporting year, followed by:

- Communication: Poor/No response
- Costs: Overcharged
- Quality of Service: Delay
- Documents: Failure to transfer

In 2019/20 Family/ defacto matters were once again the area of law most represented in **cost dispute** complaints followed by other civil matters, commercial/ corporations, probate/ family provisions and conveyancing.

Failure to appropriately disclose costs

The Commissioner has the power to issue a consumer matter caution pursuant to section 290(2)(a) of the LPUL in circumstances where a lawyer has failed to provide adequate costs disclosure. Such failures may also represent unsatisfactory professional conduct or professional misconduct pursuant to section 178 of the LPUL. Consumer matter cautions have been more regularly issued by the Commissioner, reflecting that the costs disclosure regime under the LPUL has now been in place for some 5 years. If there are particular mitigating factors in a failure to disclose costs appropriately, the Commissioner may consider it appropriate to simply remind a lawyer of their obligations, however increasingly such failures will be the subject of a caution pursuant to section 290.

Preliminary view

In this reporting year a number of complaints have come to hand where the client has been surprised to receive an invoice in circumstances where they believed they had only sought a 'preliminary view' from the lawyer. Some of these complaints have involved examples where the client has provided significant documentation for review by the lawyer and has received detailed and specific advice. In such examples, it is difficult to comprehend on what basis a client could be under the impression they would receive such a service free of charge. Nevertheless, where work is done either prior to the issuance of a Costs disclosure document or, in circumstances where the value of the preliminary work falls below the threshold where disclosure is required, lawyers may avoid complaints by ensuring there is an understanding that charges will be incurred for the work regardless of whether a formal on-going retainer is ultimately entered.

Our Role

For the 2019 to 2020 reporting year, 434 of the **consumer matters** received were either resolved or closed. Where a matter is closed, an explanation is generally provided, although in some instances matters must be closed as the complainant has failed to provide necessary information to deal with the complaint. A small number of consumer matters were closed as not able to be resolved or were outside our jurisdiction. Consumer matters that are resolved may include matters where documents have been transferred, an apology has been offered or legal work has been redone to the satisfaction of the complainant, following the involvement of the OLSC.

This year, 414 of the **costs disputes** received were either resolved or closed, with the remainder remaining open. The number of costs disputes closed or resolved represents a significant increase on the figure for the previous year.

Complainants may be referred to the Supreme Court of New South Wales Costs Assessment Scheme in circumstances where the totality of the costs involved, or the amount in dispute, may exceed the limits of the OLSC's jurisdiction. Mediation and Investigation Officers are also obliged to inform complainants of the right to apply for a costs assessment where attempted resolution through the OLSC has been unsuccessful, however, the costs potentially associated with such an application may not be viable in disputes over smaller amounts.

For many people, engagement in legal proceedings can be challenging and confusing. Once again this year our Mediation and Investigation Officers were in many cases able to supply additional information to complainants that had not previously been made available to them by their lawyers. Whilst the provision of additional information may not always resolve all of the complainant's concerns, it can assist their understanding of why events may have occurred and, in many instances, this may be sufficient to resolve the complaint.

Allegations of negligence remain a significant proportion of the consumer matters that come before our office. In some cases, such complaints may be able to be resolved by negotiation to the satisfaction of the parties but there are also instances where such disputes would be more properly referred to the civil courts for determination.

Interaction with the OLSC

OLSC staff are aware that contact with the Regulator may exacerbate the stress of practice and responding to complaints may involve considerable time and effort. This reporting year has also covered the onset of the COVID-19 pandemic and the additional challenges that have resulted. It is pleasing that OLSC staff continue to report that the majority of lawyers contacted by the OLSC maintain a professional and often proactive approach to resolution of consumer complaints.

Inquiry Line 2019-2020

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

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

and exhausted, a caller may be provided with information about the process of submitting a formal written complaint.

Inquiry Line staff assist callers from a broad range of backgrounds and circumstances. Frequently, callers are distressed by the circumstances they find themselves in. Similarly, many are economically or socially disadvantaged, have limited English skills or identify as living with a disability.

In total, for the 2019/2020 reporting year, 5,804 calls were made to the Inquiry Line. At the conclusion of each call, survey forms were sent to callers who indicated an interest in participating in the provision of feedback. Participation in the survey assists in the maintenance and improvement of the Inquiry Line's service, and the information gathered through the survey allows the OLSC to identify and implement improvements to the service where appropriate. From the 5,804 calls made to the Inquiry Line, 1.9% of callers expressed interest in participating in the survey and, of the survey forms issued, 11.5% were then completed and returned.

Overall, results were overwhelmingly positive. 92.3% of callers agreed with the statement that the call was handled promptly, the same percentage of callers agreed with the statement that the information provided was helpful and 100% of callers agreed with the statement that the Inquiry Line Officer was professional and courteous. In addition to this, 84.6% of callers indicated that they would recommend the OLSC's Inquiry Line service to a friend or relative.

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

Over the last reporting year, the OLSC has seen an increase in the number of people, for various reasons, requiring assistance from this office with the writing of their complaints about lawyers practising in New South Wales.

The various reasons that people seek this type of assistance include: physical, mental and intellectual disabilities, coming from a non-English speaking background or where English is a second language, Aboriginal and Torres Strait Islander background, refugees, prisoners, those suffering social dislocation and older people.

As this level of service has been steadily increasing over the years, we now have a Public Liaison Officer who exclusively assists people with the drafting of their complaints.

In the reporting year, 110 people have been assisted with the writing of their complaints, resulting in 41 complaints being lodged with the OLSC.

During the telephone interviews, potential complainants are advised of the OLSC's process of initial or preliminary assessment. They are also informed of the timeframes allowed for the lodging of complaints about costs disputes and where there are allegations of inappropriate, unethical or unprofessional conduct by lawyers.

Often those that are assisted may have other vulnerabilities and needs, other than those of a legal nature. These people are referred to other Government and Non-Government organisations for assistance.

Chapter 4

COMPLIANCE AUDITS

The social distancing requirements, in force as a result of the COVID-19 pandemic, prevented compliance audits from being conducted in the final quarter of the reporting year. During that period, resources were diverted to dealing with the increased number of complaints lodged with the OLSC.

Between July 2019 and February 2020, the Practice Compliance Manager conducted three on-site compliance audits. These audits comprised an initial visit and two follow-up audits. Two further audits were initiated. The on-site stage of one audit was postponed until July 2020. The other audit was conducted, in part, remotely by reviewing file data provided by the principal of the law practice.

The Commissioner issued one management system direction in the reporting year. The direction required the principal to develop appropriate management systems to facilitate supervision of staff, particularly employed lawyers, but also related to costs disclosure, notification of clients' rights to dispute invoices and record management.

Periodic reports continued to be submitted and reviewed each month from law practices where management system directions had been issued both in the current reporting year and the previous year.

The provision of costs disclosure that complies with the legislation and notification of clients' rights in invoices continue to be a significant concern. Where a management system direction is issued in relation to this objective the law practice is required to provide examples of recent costs disclosure and invoices with its monthly periodic reports. By reviewing this information the Commissioner is in a position to ascertain whether compliance has been achieved.

The supervision objective is clearly more nuanced and difficult to evaluate remotely or "on the papers". However, in the subject audit, the law practice was able to provide documents setting out the details of weekly reviews between the principal and the employed lawyer together with copy file notes prepared by the employee. This information together with updated file registers provided each month enabled the Practice Compliance Manager to ascertain that work was being carried out each month by the employed lawyer under the supervision of the principal.

Case study

The Commissioner considered that he had reasonable grounds to conduct a compliance audit of a law practice where two of the recently employed lawyers used to be principals of law practices in their own right. Those law practices had also been audited previously due to concerns raised by the complaint history and lack of appropriate management systems. Ultimately, after the audits, the law practices ceased operation.

Consequently, the Commissioner had concerns regarding the ability of the principal to supervise his employed lawyers who were once principals in their own right. Those concerns proved to be well-founded.

Working through the audit process and after lengthy discussions, the principal concluded that he was not able to accommodate both employed lawyers. The principal focused on key areas of law in which he wanted to build his practice. The employed lawyer who remained with the law practice had experience in those areas. The principal developed a system that facilitated closer supervision and oversight of the work of the employed lawyer to ensure that it complied with all professional obligations particularly in relation to costs.

Chapter 5

THE OLSC AND THE COMMUNITY

As in years past, the NSW Legal Services Commissioner (Commissioner) delivered educational sessions to organisations and law practices with a focus on ethics in the legal profession. The Commissioner's aim is to raise awareness about current issues facing the legal profession and he continues to work closely with co-regulators to improve how regulators interact with the legal profession.

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

On 19 September 2019, the Commissioner met with a study group delegation from the China Law Society. The 2019 study group was interested in gaining an insight into the Commissioner's functions and powers and the way the OLSC works collaboratively with its co-regulators. The study group delegation also met with other regulatory bodies and agencies with a view to better understand how the regulatory system works collaboratively with the licensing body to enhance justice in New South Wales.

Legal Education

Prior to the COVID-19 pandemic, the Commissioner and his staff continued to visit universities, law practices, the College of Law, and regional law societies, to deliver continuing professional development (CPD) seminars. Some of those visited were:

- Clarence River and Coffs Harbour Regional Law Society
- Orana Law Society Annual CPD Conference
- Southern Cross University
- Law Society of New South Wales, Ethics for Civil Litigators
- Law Society of New South Wales, Seminar for Criminal Law, Ethics for Criminal Lawyers
- College of Law, Ethics: Are they relevant in 2020?
- Holding Redlich, Ethics: Are they relevant in 2020?

With the onset of the COVID-19 in the final quarter of 2020, and as with other workplaces around the world, our workplace learning was impacted upon. Many of the seminars that were scheduled to be delivered by the Commissioner were either cancelled or postponed. Universities and law schools had to adapt and transition to a new way of delivering CPD seminars online. The Commissioner presented online CPD seminars via pre-recordings and webinars. These were:

- University of New South Wales, The Ethics of Civil Litigation, The Art of Personal Injury Law, Edge Seminar
- University of Technology Sydney, Ethics for Professional Skills and Business Knowledge

The Commissioner continued his support of the NSW Bar Association during 2019-2020 by contributing to the NSW Bar Practice Course series in co-presenting ethical hypotheticals to new barristers.

Events

On 20 February 2020, the Commissioner participated in the SafeWorkNSW Legal Forum discussing a Regulator's Perspective of Sexual Harassment.

During 2019-2020, the Commissioner continued his participation in the Law Society of New South Wales' Future of Law and Innovation in the Profession (FLIP) series.

- FLIP Conference 2019: The Great Debate Proposition: That the impending "Uberisation" of the legal services market is undesirable for the legal profession in Australia, July 2019
- The FLIP Inquiry Series: Behind the buzz words LawTech, February 2020

On 26 July 2019, the Commissioner participated as a guest speaker at a major reconciliation and empowerment thought leadership event titled, "A Conversation from the Heart", which coincided with NAIDOC Week 2019. The Commissioner's expertise and leadership in this area contributed to the national discussion by seeking to build knowledge and expertise and identify ways of bringing people together.

Sexual harassment

During 2019, the Commissioner continued to engage with the OLSC's Personal Conduct Team and the Document Working Group to improve and broaden the information available on the OLSC website. The updates were aimed at those working in the legal profession wanting to notify the OLSC of instances of sexual harassment and workplace bullying. In particular, 2019 also saw the launch of the Informal Notification forms which allow for members of the profession and the public to notify the OLSC of this kind of conduct informally and anonymously.

Throughout the year the Personal Conduct Team endeavoured to utilise the skills obtained in training in the calls and inquiries received by telephone and email. Several further training sessions were held with Dr Rebecca Michalak, psychologist, to assist the team to respond in the best manner to notifications of conduct of this kind. Emphasis was placed on ensuring that all callers were respected and treated in the most appropriate manner, understanding the difficult nature of the topics raised by these notifications, and recognising the significant barriers that regularly prevent people in the legal profession from speaking up.

While there were several unexpected setbacks faced by the OLSC and the Personal Conduct Team in early 2020, the 2019-2020 year also saw the team prepare for several projects launching in late 2020. The need for cultural change in the legal profession remained central to the Commissioner's ethics and CPD presentations throughout the year. The Personal Conduct Team endeavoured to ensure this message was received by each person who took the time to call or notify this Office of conduct of this kind in the profession.

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

Staff Training

For the first half of 2019-2020, OLSC staff had the opportunity to participate in internal and external learning and development seminars and programs. Due to the evolving impact of COVID-19, staff training was limited for the remainder of the reporting year. We continue to develop and refine the skills of our staff by encouraging staff to undertake online training to comply with CPD

requirements, and continue to enhance their skills for future development.

During the first half of 2019-2020, we continued to run Lunch & Learn Seminars with topics suggested by OLSC staff members. These seminars were presented by knowledgeable guest speakers and some of the topics covered were:

- Mediation Training
- Australian Human Rights Commission
- Personal Conduct

On 12 November 2019, a number of OLSC staff participated in mediation training conducted by the Australian Disputes Centre ('ADC'). The training was tailored by the ADC to the specific requirements of the OLSC with a view to expanding and refining the mediation skills of participants and improving their ability to resolve consumer complaints as soon as practicable consistent with the requirements of the Legal Profession Uniform Law.

The training focused on both the theory and practice of mediation and participants had the opportunity to consider a variety of case studies and scenarios and ultimately participated, as the mediator, in mock negotiations. Those mock negotiations allowed participants the opportunity to implement the skills acquired and refined during the training in a controlled environment and gave participants the opportunity to receive individual feedback from the ADC.

One of the lunch and learn series was a talk presented by the Director of Education & Partnerships, Australian Human Rights Commission (AHRC), which provided OLSC staff with an insight into the day-to-day work of the AHRC including its obligations under International Treaty and Commonwealth Legislation. Staff learnt about the legal framework which underpins the work completed by the AHRC, the avenues for making complaints to the AHRC under that legislation and also discussed the conciliation process at the AHRC noting the resolution of approximately 90% of complaints to the AHRC at conciliation. Finally the seminar touched on the National Inquiry into Sexual Harassment in the Workplace and the possible implications of that survey on the legal profession.

Another of the lunch and learn series was for training of the Personal Conduct Team where they met with Dr Rebecca Michalak, to further prepare to take calls and complaints regarding inappropriate personal conduct as detailed in Rule 42 of the *Legal Profession Uniform Law*

Australian Solicitors' Conduct Rules 2015 and Rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015*. The team and Dr Michalak worked on the preparation of an informal reporting platform that, when ready, will be launched by the OLSC to allow this Office to capture as much data and information as possible regarding this issue in the legal profession.

The training needs of our Legal & Investigation Officers and our Mediation and Investigation Officers were also addressed by attending seminars and workshops to supplement their knowledge. Some of these included:

- Electronic witnessing of documents, Wills, Powers of Attorneys, and protecting vulnerable clients
- Government Solicitors Conference
- Traps in Wills & Estates
- Privacy Awareness Week 2020 Public Sector Forum
- Conflict of Interests

Also, all OLSC legal officers undertook their mandatory legal education necessary to maintain their practising certificates. Some of the seminars attended by OLSC staff members include:

- Government Solicitors Conference
- Videocast on Contract for sale and purchase of land
- Webinar: Practical considerations for administrative decision makers
- Webinar: Substantive considerations for administrative decision makers
- Webinar: Virtual practice and online Court appearance

Conferences

Conference of Regulatory Officers 2019

This year, the NSW Legal Services Commissioner, the Assistant Commissioner (Legal) and the Complaints Manager attended the annual Conference of Regulatory Officers (CORO) hosted by the Victorian Legal Services Board + Commissioner. CORO was held in Melbourne over two days, 15 and 16 October 2019. The theme of CORO 2019 was "Different Perspectives" focussing on better regulation, sexual harassment and professional suitability. There were diverse and stimulating breakout sessions encouraging interaction and discussion to foster ideas and solutions on how we can improve the regulation of the legal profession to benefit consumers of legal services.

As in previous years, the Commissioner invited expressions of interest from OLSC staff members who had not previously attended the conference to join our senior staff in Melbourne. Five OLSC case officers, including, for the first time, administrative staff, attended the Conference in Melbourne in 2019. The attendance of our case officers provided an opportunity for them to network and meet with their counterparts to share and exchange knowledge and gain solutions on how better to manage and investigate complaints.

Their comments include:

- *"I am grateful for the opportunity to attend CORO 2019 in Melbourne with my fellow colleagues and co-regulators. One of the most memorable aspects of the conference was without a doubt the Welcome to Country performance by Djirri Djirri. It was the perfect way to acknowledge and pay our respects to the Traditional Custodians of the land that we work, live and meet on. The event was a wonderful opportunity for the team to share insights and understanding of how different jurisdictions regulate and contribute to the legal profession."*
- *"The 2 days were well received by all who attended, due in large part to the excellent organisation of the Victorian Legal Services Board + Commissioner. We heard insights and ideas from speakers from across Australia, New Zealand and the UK. Conversations and workshops were engaging, enthusiastic and educational and the 2 days seemed to fly by."*
- *"I was grateful for the opportunity to attend CORO 2019 with my colleagues from the OLSC. It was a wonderful opportunity to get to know some of my OLSC workmates better and to experience a new city together, as well as being exposed to new and different perspectives on regulation of the legal profession. The Victorian Legal Services Board + Commissioner put together an interesting conference with varied workshops and learning opportunities, which included discussions on the obligations of legal regulators to address growing concerns about harassment and sexual harassment in the profession; the use of new technologies to assist regulators and lawyers to work more efficiently; and how regulators can better facilitate access to justice."*

Some of the highlights of CORO 2019 were:

- The Welcome to Country with Djirri Djirri dance troupe – a wonderful way to initiate the conference;
 - The keynote address by Robert Fitzgerald AM – touching on the role of regulators within the justice system and the impact regulators can have on the professions and industries they oversee;
 - The panel discussions on sexual harassment in the legal profession – an opportunity to be exposed to the differing perspectives of legal regulators within and outside the LPUL system;
 - Dinner at Longsong – the invited speakers, Alex Wilson and Julie Condon QC, gave a riveting insight into the role that Australian lawyers can have in international cases and the implications that different legal systems bring to considerations of access to justice;
 - Panel discussion on wellbeing in the legal profession – considerations of the impacts that well-being and a balanced work-life can have on the provision of legal services.”
- “I was fortunate to attend the Conference of Regulatory Officers (CORO) in Melbourne from 14 - 15 October 2019. The theme of the conference was “Different Perspectives” and it certainly offered a fresh perspective on some of the challenges facing regulators of the legal profession. The challenges include dealing appropriately with the mental health and wellbeing of lawyers faced with a serious investigation, as well as the persistent issue of sexual harassment in the profession. CORO 2019 gave me tools and insights which will benefit my career in this field and was overall a wonderful opportunity to meet and collaborate with my fellow regulators”.
 - “I was most honoured to have been included to join the Commissioner, the Assistant Commissioner (Legal) and other colleagues to attend and represent the OLSC at the Conference in October 2019. I found it a most valuable and rewarding experience in many ways. I particularly enjoyed meeting the Regulators from the other jurisdictions and discussing their different approaches to legal regulation. I was very impressed with many of the speakers, and found the panel discussions most enlightening and interesting, especially the discussion on the serious mental health issues affecting many members of the profession. All in all it was a well presented and worthwhile conference.”

Chapter 6

INFORMATION SYSTEMS AND SERVICES

With the impact of COVID-19 during the reporting year, we had to change the way we work so the services of the OLSC could continue to be provided.

The Department of Communities and Justice rolled out technology applications which enabled us to access our operating systems while working remotely, so we could continue our work in investigating and resolving complaints. During this challenging time, the OLSC received more complaint forms and correspondence electronically than in the previous year and in turn the OLSC sent out more outward correspondence by email.

The OLSC continued its Inquiry Line service Monday to Friday 9:00am – 5:00pm, where callers were able to leave a message and one of the Inquiry Line staff would return their calls.

In late 2019, the OLSC took advantage of an opportunity to transfer its holdings of archived files from the Government Records Repository (GRR) to a company named Compu-Stor, at a time when a larger project in transferring archived files to a new facility, was also being carried out by another agency within the Department of Communities & Justice. This offer to the OLSC, of being part of the larger project, has provided significant savings to the OLSC in relation to monthly archiving costs.

Website enhancements

Throughout the year we continued to review, update and enhance the website as it is the main contact point of information for many people and it is important that we continue to have clear, concise and easy to read information and resources available for the community and other agencies.

The information available on our Inappropriate Personal Conduct page of our website was enhanced to include further information about the process of making an informal report or notification and explaining how we deal with disciplinary complaints.

Complaints Management System

Throughout 2019-2020, we continued with our planned development of a new comprehensive Complaints Management System. This new system is being developed by the Department's Information & Digital Services project staff in consultation with a group of key nominated OLSC staff members.

Much work has been done on building the new system and OLSC staff members have played a significant role in putting forward suggestions for improvement on functionality and useability of the new system throughout the build, in this reporting year. As our staff have been involved in the testing at different intervals of the build, they have been able to highlight areas for improvement and/or raise concerns requiring clarification. As we are moving from standalone databases to a single comprehensive database, it is critical that the new Complaints Management System delivers improved efficiencies through automation and cross referencing with our co-regulators.

We will report back in next year's report.

Chapter 7

ANNUAL STATISTICS

Inquiry Line

In 2019-2020 financial year 5,804 calls were made to the OLSC Inquiry Line, a decrease of 490 from the previous year.

P1 Legal matters raised in calls

	2019-2020	2018-2019	2017-2018
OLSC General Query*	19.6	20.9	16.9
Other Civil	14.9	13.9	12.7
Family/ Defacto	14.5	14.3	13.2
Probate/ Wills/ Family Provisions	13.2	11.5	11.7
Conveyancing	7.2	8.3	10.2
Other	6.5	7.9	5.9
Personal Injuries	6.2	5.6	4.6
Criminal	4.1	4.3	4.2
Commercial/ Corporations	3.3	4.1	3.7
General Law/ Legal Profession Query	2.8	2.2	7.9
Land and Environment	2.1	1.6	1.7
Workers Compensation	1.8	2.0	2.7
Leases/ Mortgages/ Franchises	1.3	1.3	1.3
Immigration	1.1	0.6	0.8
Professional Negligence	0.6	0.3	0.3
Industrial law	0.4	0.8	1.0
Victim's Compensation	0.3	0.4	1.2

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

P2 Nature of phone enquiry

	2019-2020	2018-2019	2017-2018
OLSC Process*	17.0	14.4	13.4
Communication	14.6	14.2	12.7
Overcharging	12.3	12.9	11.2
General cost complaint/query	12.3	10.0	11.0
Negligence	9.8	12.8	13.1
Ethical matters	7.5	7.2	10.1
Delay	5.0	4.7	4.1
Misleading conduct	4.5	6.7	6.7
Costs disclosure	3.8	3.9	3.0
Instructions not followed	3.3	2.7	3.7
Conflict of interests	2.5	2.7	2.4
Document transfer/ liens	1.8	2.1	2.2
Trust fund matters	1.7	1.9	1.7
Document handling	0.9	0.8	1.0
Referral requests	0.9	0.9	1.4
Fraud (not trust fund)	0.8	0.8	0.9
Pressure to settle	0.6	0.7	0.8
Compliance matters	0.3	0.2	0.2
Failure to honour undertakings	0.1	0.1	0.2
Advertising	0.1	0.0	0.1
Supervision	0.1	0.2	0.3

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

P3 Practitioners mentioned on Inquiry Line

	2019-2020	2018-2019	2017-2018
Solicitor	93.7	92.4	92.0
Other*	4.3	5.3	5.7
Barrister	1.6	1.8	1.6
Licensed Conveyancer	0.3	0.4	0.7

* Other: includes calls relating to Judge/ Magistrate, Legal Firm, Executor, Multiple type of Lawyer, Paralegal/ Clerk and Support staff

P4 Source of calls to the OLSC Inquiry Line

	2019-2020	2018-2019	2017-2018
Client	56.2	66.8	64.8
Solicitor on own behalf	12.9	2.5	3.6
Non-legal service provider	6.0	0.9	1.0
Opposing client	5.6	8.1	7.4
Friend/ relative	5.0	6.4	7.3
Other*	3.8	4.6	4.2
Beneficiary/ executor/ administrator	3.6	4.3	4.1
Previous client	2.7	2.1	3.0
Solicitor on another's behalf	2.6	2.3	1.4
Unrepresented client	1.1	1.5	2.5
Barrister on own behalf	0.2	0.1	0.4
Barrister on another's behalf	0.2	0.1	0.1
Government Agency	0.1	0.2	0.2
Student/ Educator	0.1	0.1	0.1

* Other: includes calls relating to Witnesses & non-identified source of calls

P5 Outcomes of calls to the Inquiry Line

	2019-2020	2018-2019	2017-2018
Provided information about the OLSC*	27.5	16.7	20.9
Caller indicated intention to send in complaint	20.0	23.9	27.0
Listened to caller's concerns	17.9	15.6	13.7
Provided information about the legal system	8.3	10.2	9.8
Recommended direct approach to lawyer about concerns	7.3	13.0	9.9
Provided complaint/ cost mediation form	7.0	6.7	4.7
Provided referral for legal advice or other assistance	6.7	7.7	7.2
Explained that concerns are outside jurisdiction of OLSC	1.8	2.9	4.0
Provided referral to the NSW Supreme Court Costs Assessment Scheme	1.4	1.6	1.4
Other	1.1	0.4	0.3
Provided information about the OLSC and LPUL to a lawyer	0.7	1.2	1.0
Conducted telephone mediation	0.1	-	-
Scheduled interview for caller	0.0	0.1	0.1

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

Written complaints

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

In 2019-2020 the OLSC **received** a total of 2,705 written complaints, an increase of 117 from the previous year. Of the total written complaints received, 1,389 were assessed as consumer matters and 1,311 as disciplinary matters. On receipt 5 complaints could not be classified as a consumer matter or disciplinary matter. Of those complaints assessed as within jurisdiction, 81.5% of those written complaints received were retained and handled by the OLSC. The remaining 18.5% were referred to the professional associations for handling.

The OLSC registered the **completion** of 2,462 written complaints, an increase of 101 from the previous year. Of the total written complaints completed, 291 complaints were resolved following informal resolution, 82 complaints were determined by OLSC/ Council and 1,957 complaints were closed. 132 complaints were closed on the basis OLSC had no power to deal with them and/ or were sent directly to NSW Police or regulators outside NSW. Of those complaints assessed as within jurisdiction, 85.8% of written complaints were completed by the OLSC. The professional associations completed the remaining 14.2%.

W1 Legal matters giving rise to complaints received in 2019-2020

	Agency Handling Complaint				
	OLSC	Council	2019-2020*	2018-2019	2017-2018
Family/ Defacto	16.9	2.6	19.5	21.7	18.8
Other Civil	11.2	5.1	16.3	16.3	17.2
Probate/ Family Provisions	8.9	1.0	9.9	7.5	8.2
Commercial/ Corporations	5.9	3.0	8.9	8.5	7.7
Conveyancing	6.9	1.3	8.2	9.6	8.1
Personal Injuries	7.3	0.6	7.9	9.2	9.9
Criminal	6.0	1.8	7.8	8.7	10.3
Wills/ Power of Attorney	4.8	0.7	5.5	4.0	5.5
Industrial law	2.7	0.6	3.3	3.2	3.0
Workers Compensation	2.7	0.3	3.0	2.2	1.9
Building Law	2.0	0.1	2.2	0.9	0.6
Strata bodies/ corporates	1.7	0.4	2.1	1.6	2.0
Leases/ Mortgages/ Franchises	1.5	0.4	1.9	2.1	2.3
Land and environment	0.8	0.2	1.0	1.3	1.0
Immigration	0.7	0.1	0.9	1.7	2.0
Professional Negligence	0.6	0.1	0.7	0.7	0.7
Victim's Compensation	0.4		0.4	0.5	0.4
Insolvency	0.3	0.1	0.4	0.3	0.4
Total %	81.3	18.4			

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

W2 Nature of complaints received in 2019-2020

	Agency Handling Complaint				
	OLSC	Council	2019-2020*	2018-2019	2017-2018
Communication	15.6	2.8	18.4	15.8	14.3
Negligence	14.5	1.6	16.1	17.8	17.7
Overcharging	14.5	0.4	14.9	13.5	13.9
General Cost Complaint/ Query	6.4	1.0	7.4	6.9	6.0
Misleading Conduct	4.3	2.9	7.2	9.0	9.1
Ethical Matters	4.8	2.1	6.9	9.5	8.5
Delay	4.8	0.3	5.1	4.6	4.7
Cost Disclosure	4.6	0.1	4.7	4.7	4.6
Instructions Not Followed	4.2	0.5	4.7	4.7	4.9
Trust Fund	1.7	2.1	3.8	3.9	4.8
Conflict Of Interest	1.7	0.8	2.5	3.0	2.7
Document Transfer/ Liens	2.2	0.1	2.3	1.8	2.4
Compliance Matters	0.8	0.7	1.5	1.4	1.8
Fraud (Not Trust Fund)	0.8	0.5	1.3	0.7	1.1
Document Handling	0.7	0.2	0.8	0.6	1.1
Capacity	0.6	0.2	0.8	0.6	0.7
Pressure To Settle	0.6	0.1	0.7	0.7	1.0
Undertakings	0.3	0.1	0.5	0.4	0.3
Supervision	0.2	0.0	0.2	0.3	0.4
Advertising	0.1	0.1	0.2	0.2	0.2
Total %	83.4	16.6			

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

W3 Type and source of complaints received in 2019-2020

	Number of complaints			2019-2020	2018-2019	2017-2018
	Solicitor*	Barrister	TOTAL			
Client	1338	70	1408	52.1	52.6	51.6
Opposing client	525	38	563	20.8	21.4	18.2
Beneficiary/ Executor/ Administrator	139	2	141	5.2	3.6	4.8
Other **	123	6	129	4.8	4.5	5.1
Solicitor on another's behalf	86	4	90	3.3	4.0	2.5
Client's friend / relative	85	3	88	3.3	3.7	3.1
Previous client	76	5	81	3.0	2.4	3.7
Solicitor on own behalf	74	3	77	2.8	2.5	2.5
Unrepresented client	31	2	33	1.2	1.4	1.3
Non-legal service provider	29		29	1.1	1.2	1.7
Barrister on own behalf	24	2	26	1.0	0.5	0.9
Law Society	16		16	0.6	1.4	1.8
Commissioner	8	1	9	0.3	0.3	0.3
Barrister on another's behalf	8	1	9	0.3	0.2	0.3
Cost Assessor	5	0	5	0.2	0.1	0.2
Bar Association		1	1	0.0	0.3	0.2
TOTAL	2567	138	2705	100		

* Includes former solicitors, lawyers and law practices.

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

W4 Age of complaints remaining open or suspended on 30 June 2020 and being handled by the OLSC

Year opened	Open at 30 June 2020	Open at 30 June 2019	Open at 30 June 2018
2019-2020	875		
2018-2019	79	775	
2017-2018	73	129	675
2016-2017	23	38	73
2015-2016	4	7	10
2014-2015	3	5	7
2013-2014	7	7	12
2012-2013	2	2	3
2011-2012	0	0	0
2010-2011	1	1	1
1994-2010	0	0	0
TOTAL	1067	964	781

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

W5 Average time taken to finalise a complaint at the OLSC of complaints handled in 2019-2020

	Days*
Average time to complete complaints received and completed / resolved in 2019-2020	114.2
Average time to complete complaints received in any year but completed / resolved in 2019-2020	204.1
Average time taken to dismiss complaints received in 2019-2020	88.9
Average time to dismiss complaints received in any year but dismissed in 2019-2020	155.2

* Averages rounded to 1 decimal point

W6 All Complaints finalised in 2019-2020

All OLSC Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	282	9	0	291
Subtotal resolved at the OLSC	282	9	0	291

ALL OLSC Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Disciplinary action: Reprimand/ Fine/ Waive or reduce fees	8	0	0	8
Determination: Caution & Apology	16	0	0	16
Consumer matter Determination	13	1	0	14
Compensation order	5	1	0	6
NCAT disciplinary proceedings	5	0	0	5
Subtotal determined by OLSC	47	2	0	49
Withdrawal of a complaint at OLSC	178	6	0	184
Misconceived/Lacking in substance	504	17	0	521
Time requirement not waived	88	4	0	92
Complainant No/Inadequate response to request info	111	6	0	117
Duplicate complaint	25	1	0	26
Closed Civil proceedings on foot	22	1	0	23
Closed No further investigation except CM	216	8	0	224
Closed in Public interest	25	1	0	26
Not Resolved after informal resolution	416	19	0	435
Investigation suspended pending court proceedings	7	1	0	8
Appeal closed by OLSC	2	0	0	2
Subtotal closed by OLSC	1594	64	0	1658
Total OLSC Complaints Completed	1923	75	0	1998

All Non Jurisdictional Complaints

	Solicitor*	Barrister	Other**	TOTAL
Closed No power to investigate	92	2	3	97
Refer to NSW Police or other	32	3	0	35
Total Non Jurisdictional Complaints	124	5	3	132

All Council Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Disciplinary action: Reprimand/ Fine	8	2	0	10
Determination: Caution & Apology	2	4	0	6
NCAT disciplinary proceedings	17	0	0	17
Subtotal determined by Council	27	6	0	33

	Solicitor*	Barrister	Other**	TOTAL
Withdrawal of a complaint at Council	36	6	0	42
Misconceived/Lacking in substance	79	6	0	85
Time requirement not waived	8	2	0	10
Complainant No/Inadequate response to request info	32	1	0	33
Duplicate complaint	1	0	0	1
Closed as made a Recommendation	2	0	0	2
Closed No further investigation except CM	85	13	1	99
Closed in Public interest	24	3	0	27
Subtotal closed by Council	267	31	1	299
Total Council Complaints Completed	294	37	1	332
Total finalised by OLSC	1923	75	0	1998
Total Non Jurisdictional Complaints	124	5	3	132
Total finalised by Council	294	37	1	332
TOTAL	2341	117	4	2462

* Includes former solicitors, lawyers and law practices.

** Includes complaints about non-legal service providers & lawyers that have been struck off

W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2019-2020

Percentage of files closed within following periods*

	2019-2020	2018-2019	2017-2018
0-30 days	12.6	12.8	20.3
1-3 months	30.5	33.3	35.4
3-6 months	27.5	27.3	23.5
6-9 months	13.8	13.6	10.4
9-12 months	6.9	6.0	4.4
Over 12 months	8.7	7.1	6.1

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

R2 Reviews in progress and finalised in 2019-2020 - received all years

	Solicitor	Barrister	TOTAL	Percentage
Reviews in progress				
Internal review application under LPUL	55	5	60	18.6
Total remaining open	55	5	60	18.6
Reviews completed				
Discretion declined for review under LPUL	245	16	261	80.8
Decision to make new decision under LPUL	1	0	1	0.3
Decision to refer back to maker under LPUL	1	0	1	0.3
Total completed	247	16	263	81.4
Total handled	302	21	323	100

NSW Civil and Administrative Tribunal

For matters filed and disposed of by NCAT in 2019-2020 refer to NCAT's annual report.

Chapter 8

FINANCIAL PERFORMANCE 2019-2020

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

The OLSC regularly monitored its financial performance during 2019-2020 to achieve a satisfactory budget outcome at close of the reporting year. The positive net cost of services figure is particularly noteworthy given that the OLSC was required to meet escalated operating costs throughout the year with an operating expenditure budget \$66K less than our 2018-2019 provision. The reduced operating expenditure budget was the result of a Department-wide drive for efficiency dividends.

Notwithstanding the challenges that this year has posed, we are pleased to report that our Net Cost of Services for the year is positive, due to our close monitoring and successful under-expenditure on Employee Related Expenses (ERE) and Maintenance.

Despite the challenge to our budget by some items of operating expenditure that were beyond our organisational control, such as Rent and Legal Fees, the OLSC met all its financial obligations and, due to our successful management of ERE and Maintenance expenses, managed to deliver a successful, overall budget performance result.

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

Funding for CTP Insurance Fraud Investigations

In 2019-2020, the OLSC continued to use the special funding allocation provided by the Public Purpose Fund to pay the salary costs of staff involved in the investigation of lawyers arising from police inquiries into compulsory third party (CTP) insurance fraud. Salary costs for a full time investigator during the financial year amounted to \$58,776. The expenditure and balance of the related funding is detailed in the accompanying financial statement and supporting notes.

Human Resources

The OLSC establishment continues to sit at 30 permanent full time administrative and professional staff and one full time equivalent position for rostered casual employees working on the OLSC Inquiry Line.

2019-2020 saw a small amount of staff movement, with two full time members of staff resigning to follow other career paths. One vacant OLSC role was advertised and filled via open merit recruitment.

The Commissioner continued the practise of providing development opportunities to members of OLSC staff, by allowing various staff to act in higher duty roles on a temporary basis.

At the close of the reporting year there were 6 vacant roles on the OLSC establishment, with a number of those roles being performed by temporary occupants. Recruitment processes are scheduled to fill two vacant roles with ongoing occupants early into the new financial year, with other role vacancies being considered for recruitment later, based on operational and financial expediency.

FINANCIAL STATEMENT 2019-2020

	Budget	Actual	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments (Budget)	(4,480,498)	(4,347,355)	(133,143)	
Other Revenue	-	-	-	
TOTAL REVENUE	(4,480,498)	(4,347,355)	(133,143)	
Salaries & Wages	2,700,536	2,627,430	73,106	1
Leave Entitlements (<i>Recreation Leave, Annual Leave Loading & LSL</i>)	312,233	347,840	(35,607)	
Workers Compensation	32,538	23,444	9,094	
Payroll Tax	174,664	180,262	(5,598)	
Fringe Benefits Tax	3,841	164	3,677	
Superannuation	247,376	230,684	16,692	
Allowances	67,231	47,613	19,618	
EMPLOYEE RELATED PAYMENTS Excl Crown Liabilities	3,538,419	3,457,439	80,980	
Cleaning	57,718	17,301	40,417	
Fees	68,901	28,336	40,565	
General Expenses	1,420	3,620	(2,200)	
Insurance	1,386	-	1,386	
Legal Costs	30,025	144,084	(114,059)	2
Operating Lease Rental Expenses	350,143	611,359	(261,216)	3
Postal Expenses	25,175	27,380	(2,205)	
Printing	24,965	16,168	8,797	
Publications	9,707	9,561	146	
Staff Related Costs	23,482	17,612	5,870	
Stores / Operating Supplies	10,739	22,302	(11,563)	4
Telephone	36,183	63,126	(26,943)	5
Travel	20,500	11,965	8,535	
Utilities	17,549	43,986	(26,437)	6
Finance Costs	-	4,393	(4,393)	7
OTHER OPERATING EXPENSES	677,893	1,021,192	(343,299)	
Maintenance Contracts	39,682	30,600	9,082	
Scheduled Maintenance	326	-	326	
IT Software Maintenance	112,750	66,599	46,151	

FINANCIAL STATEMENT 2019-2020 *continued*

	Budget	Spent	Variance	Notes
	\$	\$	\$	
MAINTENANCE	152,758	97,199	55,559	8
TOTAL EXPENSES Excl Crown Liabilities & Depreciation	4,369,070	4,575,829	(206,759)	
Net Cost of Services Excl Crown Liabilities & Depreciation	(111,428)	228,474	(339,902)	
Add Non Cash Items:				
Crown Liabilities (<i>LSL Liability Assumed by Crown</i>)	78,959	50,026	28,933	9
Depreciation & Amortisation	357,846	7,088	350,758	10
Net Cost of Services Inc Crown Liabilities & Depreciation	325,377	285,588	39,789	11

CTP Investigation Funding 2019-2020

	Allocation at 1/7/2019	Actual	Balance Remaining	Notes
	\$	\$	\$	
CTP Investigations	(294,303)	58,776	(235,527)	
TOTAL CTP EXPENDITURE	(294,303)	58,776	(235,527)	12

NOTES SUPPORTING THE 2019-2020 FINANCIAL STATEMENT

Employee Related Payments

1. Salaries & Wages: The OLSC's budget for *Salaries & Wages* contains provision for annual salary payments to employees occupying ongoing, temporary and casual roles in the OLSC approved establishment. In 2019-2020 the OLSC experienced a degree of staff movement among some of its permanent full time positions, due mainly to circumstances involving staff resignations and staff performing in temporary acting assignments. The staff changes and the associated timing differences involved in finalising recruitment to fill position vacancies saw some positions remain vacant for short periods of time during the year. The Salaries & Wages budget variance reflects the impact of the staff changes and the salary savings derived from the creation of temporary position vacancies during the year.

Other Operating Expenses

2. Legal Costs: The OLSC's *Legal Costs* budget maintains funds for various types of legal expenditure, primarily litigation costs incurred in bringing matters before the Occupational Division of the NSW Civil & Administrative Tribunal and the Courts. In 2019-2020 the OLSC paid large legal bills in proceedings before the Occupational Division of the NSW Civil & Administrative Tribunal, Supreme Court of NSW and the Court of Appeal. The *Legal Costs* budget variance is the result of a reduced operating expenditure budget, with cuts imposed by the Department in an attempt to meet budget efficiency targets and unexpected litigation brought by two complainants seeking judicial review of decisions made with respect to their complaints.

3. Operating Lease Rental Expenses: The OLSC incurs a monthly rental fee for leased floor space in the Sydney CBD. The *Operating Lease Rental Expenses* budget provides for the monthly payment of rent and the associated cost of leasing a parking space at our CBD office location. After a problematic financial performance in relation to this budget item in 2018-2019, due to a backdated rental increase, the OLSC hoped to see better performance this year, and closely monitored its rent related expenditure.

During 2019-2020 accumulated rent related expenditure again exceeded budgetary provision due to the OLSC receiving the same budget for rent as that received in 2018-2019, adjusted only by 2.5% to account for inflation. The resultant, unfavourable variance for this budget item reflects the outcome of this budget shortfall.

- 4. Stores / Operating Supplies:** The OLSC's *Stores / Operating Supplies* budget contains provision for the cost of office stationery and any ad hoc computer equipment purchases during the year. The unfavourable budget variance reflects billings by IDS for IBM SPSS and Microsoft charges, and on the unanticipated need by the OLSC to replace the multimedia projector and screen used for meetings and staff training.
- 5. Telephone:** The OLSC's *Telephone* budget includes provision for monthly telephone rental expenses and metered call costs in addition to data service charges in connection with the fibre communications network. The unfavourable *Telephone* budget variance is largely due to charges of \$23,540 which were incorrectly allocated to our cost centre by the Department in June 2020, and which will be reimbursed to the OLSC in FY21.
- 6. Utilities:** The OLSC's *Utilities* budget includes provision for monthly payment of electricity and rates/ outgoing expenses. During 2019-2020 the Utilities budget item was also used by the Department to pay the management fees applicable to the OLSC's rent related accounts.
- 7. Finance Costs:** Commencing December 2020 the Department began charging the OLSC a monthly adjustment fee of \$399.37, which was backdated to the commencement of the financial year. This monthly fee represents make good / restoration expenses for leased premises. The OLSC's annual budget contained no provision for this expenditure.

Non Cash Items

- 8. Crown Liabilities (LSL Liability Assumed by Crown):** *Crown Liabilities* is a non-cash item and as such does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The Crown Liability for LSL budget reflects the Crown's assumption of the Department's long service leave liability for Departmental officers. The Department is obliged to make this provision as part of Treasury requirements.
- 9. Depreciation & Amortisation:** *Depreciation* expense is a non-cash item and does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The Department is obliged to make these adjustments as part of Treasury requirements.

CTP Investigation Funding

- 10. CTP Investigation Funding:** The *CTP Investigation Funding* table summarises expenditure during 2019-2020 from a special allocation the OLSC requested from the Public Purpose Fund to meet salary expenses of staff required to conduct investigations about lawyers involved in compulsory third party insurance fraud. The 2019-2020 financial year saw slow but steady progress of CTP related investigations, with related salary costs paid from the appropriation. The CTP funding variance column indicates the remaining balance of funding after expenditure that will be carried over to the 2020-2021 financial year.

CASE STUDIES

Complaint resulting in a binding costs determination

This complaint was a costs dispute which resulted in a binding determination being made in relation to the costs in dispute. While the costs charged in this matter were low, the complainant asserted that some of those costs were not payable as they related to charges for work completed prior to the execution of the costs agreement. The lawyer was of the view that engagement of legal services had occurred prior to the signing of the costs agreement when the complainant engaged the services of the lawyer in their capacity as the principal of a different business, in this case as a real estate agent.

A binding costs determination was made, after the costs dispute could not be resolved between the parties, on the basis that the engagement of a lawyer on the basis of their employment in another profession does not create a lawyer-client relationship and that the engagement of a lawyer can only occur in circumstances where it is evident that the services to be provided will be legal services.

Complaint involving a failure to adequately disclose costs

This complaint was informally resolved by this Office. The complainant was the new legal representative of a minor who had previously been represented in a motor vehicle accident claim by the lawyer subject of the complaint. The complaint related to the costs charged by the lawyer in this matter, specifically when considering that it appeared the lawyer had not appropriately contracted out of regulated costs and that the costs charged significantly exceeded the costs that could be charged according to the regulated costs schedule. There were also further allegations raised regarding the estimate of costs provided by the lawyer – a sum between \$2,500 and \$50,000 – which did not, in the view of this Office, comply in any meaningful way with the obligations detailed in section 174(1) of the Legal Profession Uniform Law. After these deficiencies were pointed out to the lawyer a resolution was reached between the parties for the payment of the regulated fees in this matter.

Complaint involving a dispute about a Will

In this complaint, the complainant was the Executor of an Estate. The original Will was held by a large firm who had ceased operating prior to the Executor requiring the original Will. The original Will was held in an offsite storage facility, which had an ongoing dispute with the former firm, resulting in the complainant being unable to access the original Will. The complainant required the Will in order to proceed with the administration of the Estate; however he was unable to obtain assistance from the solicitor or from the storage facility.

The complainant sought the assistance of this Office. This Office was able to contact the lawyer, who then took steps in relation to the dispute with the storage facility. The original Will was obtained, and it was posted to the complainant's new lawyers who were acting for the Estate. Steps were then able to be taken to proceed with administration of the Estate, and the complainant considered the matter resolved.

Complaint involving a delay in provision of an updated costs estimate

The complainant was involved in a family law matter. The lawyer subject to the complaint was acting as the complainant's representative in this matter. The complainant disputed an invoice for approximately \$6,000.00 on the basis that there appeared to be errors in some of the work completed, and that the lawyer had failed to provide her with an updated estimate of costs. This Office attempted to informally resolve the costs dispute.

In responding to the complaint, the lawyer suggested that an updated estimate of costs had actually been provided. This Office referred the lawyer to section 174(1)(b) of the *Legal Profession Uniform Law* noting that an updated estimate of costs should be provided as soon as practicable. Both parties ultimately agreed that while an updated estimate was provided, there was a somewhat lengthy delay in providing the updated estimate once the matter became litigated. In consideration of this, the lawyer offered to refund \$2,000.00 to the complainant. The lawyer and complainant agreed to informally resolve the matter on this basis.

Complaint involving a cost dispute where the lawyer failed to provide a written costs agreement

The complainant engaged the services of a lawyer in a family law matter. The complainant alleged that the lawyer failed to provide her with a costs agreement and on this basis, disputed the lawyer's bill in the sum of \$6,600.

The lawyer explained that he did not provide a written costs agreement at the outset of the matter as he was unsure how much work would be required. The lawyer stated that the complainant was provided with verbal updates during the matter when additional work was necessary.

Following informal resolution with assistance from this Office, an agreement was reached between the lawyer and the complainant for the lawyer to refund a sum of \$3,300 to resolve the matter.

Complaint involving a failure to disclose costs

The complainant initially engaged the lawyer to carry out notarial work. The complainant alleged that the lawyer failed to provide a written costs disclosure for further work he did on the complainant's behalf that went beyond the scope of the original notarial work. As such, the complainant believed that the lawyer's bill for \$2,501.60 should be reduced.

The lawyer argued that the complainant had requested that he carry out the additional work, and did not present any concerns about the quality of the work. The lawyer also said the complainant was given a verbal indication of the costs and disbursements involved. The lawyer said he disclosed to the complainant that the cost for the initial notarial work would be \$128 plus GST, and he correctly asserted that he was not obliged to provide a written costs disclosure at that time, because he did not foresee the costs of the notarial work increasing beyond that amount. The complainant instructed the lawyer to carry out further tasks on his behalf at separate points in time, and the lawyer in his response to this Office described the work in three discrete parts. As a result, the lawyer was of the view that he was not required to provide written costs disclosure for each portion of work.

Nevertheless, this Office formally reminded the lawyer of his professional costs disclosure requirements under section 174 of the *Legal Profession Uniform Law (LPUL)*. As the costs in dispute fell outside the 60 day timeframe within which this Office can deal with a costs dispute, the Commissioner received submissions from both parties as to whether it would be fair and reasonable for him to exercise his discretion to waive the time requirement. The Commissioner ultimately exercised his discretion to waive the time requirement in this costs dispute. The lawyer accepted the complainant's offer to pay him \$1,427 towards his costs and disbursements in lieu of the invoiced amount, and the complaint was resolved.

Complaint involving concerns about inadequate service

The complainant alleged that the lawyer overcharged him for the level of service he provided in relation to the complainant's dispute with a third party regarding a Veterinary services account. The complainant alleged that the lawyer did not reply to the opposing party with his proposed counter-offer and that, as a result, he was disadvantaged at the mediation because he was not aware that the opposing party had not received his counter-offer. As a result of those concerns, the complainant disputed the lawyer's bill for \$5,340.20 on the basis that those costs were in line with the lawyer's written estimate for costs up to and including a hearing in the Local Court, which did not occur.

The lawyer said he advised the complainant that he would only send a Calderbank letter ('the letter') in reply to an offer of settlement if the complainant confirmed his instructions for him to do so in writing. However, the lawyer asserted that the complainant did not provide his written instructions in that regard prior to the mediation despite the lawyer having attempted to contact him about it on numerous occasions. The lawyer maintained that, in any case, the complainant was not disadvantaged in any way at the mediation or as a result of the letter not being sent prior to it, as the amount he agreed to pay the plaintiff at mediation was the same as the offer that would have been put forward in the letter. The lawyer believed the complainant achieved a very good outcome at the mediation.

Nevertheless, in order to resolve this dispute, the Principals of the lawyer's firm agreed to negotiate their costs in an attempt to finalise the matter. The complainant then confirmed to his Office that he had spoken with the Principals, the outcome of which was that the firm agreed to reduce the costs to settle the dispute, and the matter was resolved.

Complaint involving a failure to comply with cost disclosure obligations

The complainant submitted a complaint about the conduct of his lawyer in his family law matter where he alleged that the fees of \$5,000 were excessive given the work performed.

Upon investigation of the matter, the case officer noted the following:

- The lawyer failed to provide a single lump sum figure estimate and his Cost Agreement instead provided a cost estimate range.
- The lawyer failed to provide itemised invoices outlining the work performed despite the complainant's repeated requests.
- The lawyer failed to provide evidence of the work he had completed in relation to drafting an Amended Affidavit or account for the majority of the fees that he had billed the complainant.
- The lawyer appeared to have breached his disclosure obligations pursuant to sections 174 and 178 of Legal Profession Uniform Law.

The lawyer initially offered to refund the complainant \$1,000 to resolve the matter but later increased his proposal to \$3,000 in light of the above issues. This proposal was accepted by the complainant. The lawyer was also reminded by this Office of his cost disclosure obligations to ensure compliance with the legislation in all future matters.

Complaint involving a delay to transfer a file

The complaint arose from a file transfer issue. The Complainant requested the file to be transferred to him however he asserted that different reasons were provided to him by the lawyer as why there was a delay in providing him with the file including that the file was at archives.

This Office wrote to the lawyer to ascertain what occurred and the lawyer confirmed that the file was at archives and that the firm had posted the file to the Complainant. The lawyer offered to apologise to the Complainant. The Complainant agreed to resolve the matter by accepting the lawyer's apology and explanation for the delay.

Complaint involving an allegation of negligence in a conveyancing matter

The complainant had retained the lawyer to represent him and his mother in the joint purchase of a property in NSW. He alleged that the lawyer had failed to invest the 10% deposit, which meant that they had lost interest on their deposit investment. This Office put the complaint to the lawyer who agreed that he had made a mistake, apologised and reimbursed the amount that the complainant would have received in interest had the deposit been properly invested.

Complaint involving an allegation of delay resulting in penalty interest

The complainants engaged the lawyer to act for them on the purchase of a property on the Central Coast. Upon settlement, the complainants received the settlement statement and found that they had been charged penalty interest. They disputed this. When this office contacted the lawyer and explained the complainants' concerns, he acknowledged that his conduct had resulted in a delay, which had attracted penalty interest. In light of this, he agreed to refund the full penalty interest in the sum of \$752.12 to the complainants.

Failure to provide an updated costs estimate resulting in a consumer caution

Complaint related to the engagement of the lawyer in 2016. While the majority of the allegations raised in this matter were dismissed, the allegations pertaining to costs disclosure were found to have merit. The lawyer in this matter had provided an initial costs agreement and estimate of costs, however had failed to provide an updated estimate of costs throughout the matter. The initial estimate of costs provided was \$2,585.00 and final costs charged were \$26,231.10. The lawyer accepted that there was no evidence that he had provided the complainant with updated estimates of costs in writing. In light of the information in this matter the lawyer was cautioned pursuant to section 290(2) (a) of the *Legal Profession Uniform Law (NSW)* [LPUL] on the basis that he had not complied with his obligations pursuant to section 174(1)(b) of the LPUL to provide an updated costs estimate to the complainant.

Failure to comply with cost disclosure obligations resulting in a consumer caution

The complainant engaged the lawyer to represent her in relation to a family law matter. The complaint contained a costs dispute regarding a bill issued by the lawyer in the sum of \$52,000. The complainant disputed the bill on the basis that the lawyer's legal costs significantly exceeded the estimate of \$35,000 that was disclosed in the initial Costs Agreement.

Upon investigation of the matter, the case officer noted the following:

- The initial Costs Agreement provided by the lawyer did not comply with the Legal Profession Uniform Law ('LPUL') in that the lawyer failed to outline the scope of work performed, failed to inform the complainant of her rights in the event of a costs dispute and failed to provide details specifying the person responsible for the work or the corresponding hourly rate.
- It appeared that the fees charged by the lawyer were not fair, reasonable and proportionate to the work performed and the invoice issued by the lawyer significantly exceeded the estimate provided in the Costs Agreement.
- The lawyer failed to provide ongoing written costs disclosure to the complainant. The first indication that the complainant was aware of the increase in fees was in an invoice provided approximately one year and eight months after the initial Costs Agreement. The complainant did not receive any interim invoices or ongoing costs disclosure.
- The lawyer did not provide the complainant with a reasonable timeframe or opportunity to dispute the legal fees before forwarding it to a debt collection agency which then commenced proceedings against the complainant.

While it was not appropriate for this Office to determine the costs dispute, noting that the amount in dispute was outside the monetary limits of this Office and the parties elected to have the costs assessed through the Supreme Court of New South Wales, this Office could still consider the lawyer's conduct in relation to the allegation of a failure to disclose costs. The Commissioner determined that the lawyer had not complied with sections 174 and 180 of the LPUL and as a result, determined that the lawyer should be cautioned pursuant to section 290(2)(a) of the LPUL.

Failure to disclose costs in writing resulting in a Binding Costs Determination

In this complaint, the complainant alleged that the lawyer only provided a verbal estimate of costs of \$4,000.00 - \$5,000.00 for a probate matter. The complainant alleged that the lawyer did not provide any written costs agreement or costs disclosure. On this basis, the complainant disputed a bill totalling approximately \$9,000.00.

This Office attempted to informally resolve the complaint as a first step. While it was agreed that an estimate of \$4,000.00 - \$5,000.00 was provided verbally in conference at the beginning of the matter, the lawyer was unable to provide any evidence that costs had been disclosed in writing at all, or that an updated estimate was provided once the costs exceeded the estimate. The only written information regarding costs was provided to the complainant after the work had been completed, and after the complainant disputed the costs directly with the lawyer.

As the complaint was unable to be informally resolved, the Commissioner made a binding costs determination pursuant to section 292 of the *Legal Profession Uniform Law*. The regulated costs, together with disbursements and the transmission application fee totalled \$5,800.00, and a binding costs determination was made for this amount. While this amount exceeded the estimate, the Commissioner determined that this amount was fair and reasonable in the circumstances.

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