



**THE OFFICE OF THE LEGAL
SERVICES COMMISSIONER**



ANNUAL REPORT

2020-2021

OFFICE OF THE LEGAL SERVICES COMMISSIONER

ORGANISATIONAL CHART

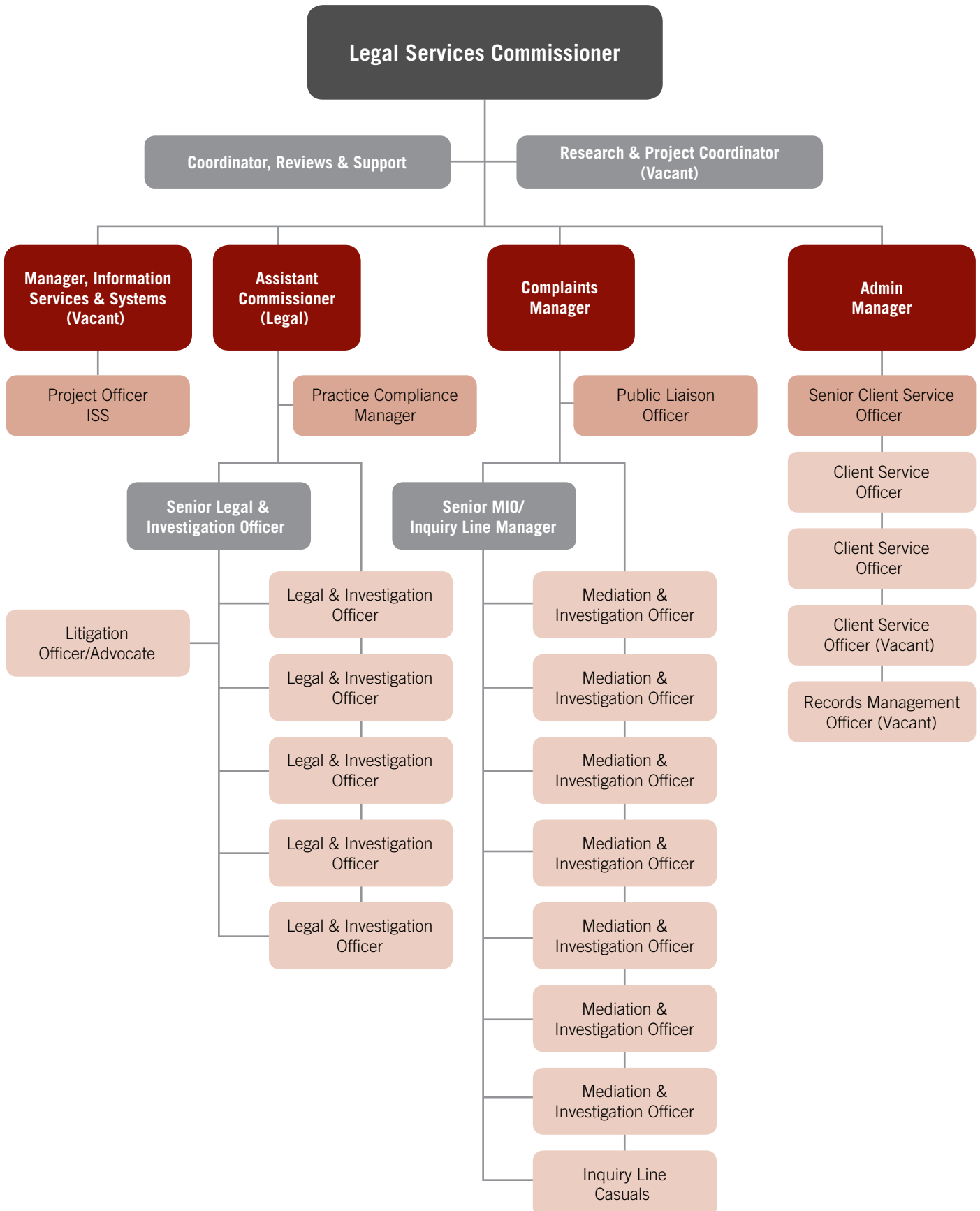


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Chapter 1

COMMISSIONER'S REPORT

The year has been framed by a partial recovery from the initial wave of the COVID-19 pandemic in which operations continued to be largely conducted remotely from the office, and then a resurgence of the pandemic with the onset of the Delta variant, towards the end of this reporting year.

A significant milestone was reached in December 2020 when we went 'live' with the newly developed and much anticipated Complaints Management System (CMS). The testing, training and implementation were all done remotely which added a degree of difficulty to the project. Whilst the new CMS has delivered several welcome advances to the operations of our complaint handling, in particular, the capacity for the public to lodge formal complaints completely online, there are several shortfalls to what we had planned. We are seeking additional funding to complete the enhancements that will deliver better certainty of data and streamlined work processes and we understand that will be approved and the further work completed in the next year.

It was noteworthy that the start of government mandated lockdowns in March 2020 and June 2021 saw a spike upwards of complaints received. Whilst that has been an added difficulty to manage in these stressful times, it has demonstrated that our online complaints function is user-friendly to members of the public. Once we complete the required enhancements, we shall be in a better position to efficiently deal with those upsurges in complaints.

During the year, we were involved in a handful of court / tribunal matters regarding serious disciplinary matters in which the court / tribunal decisions signalled that we needed to re-calibrate the standard of proof to be met in allegations involving deliberate intention of wrong-doing or recklessness in that regard. We have made those adjustments for all future matters and are mindful of the need to follow judicial direction in our ongoing efforts to be a model litigant.

The COVID-19 pandemic has caused delay in both the introduction into legislation of the agreed reforms to the Legal Profession Uniform Law and the completion of legislative steps for Western Australia to join the Uniform Law jurisdiction. Both goals remain ongoing, though without definite timelines.

The efforts of OLSC staff members to adjust and adapt to the sudden demands of pandemic-related lockdowns, whilst at the same time, commence using a comprehensive new online operating system, have been welcome and I pay tribute to their determination and persistence. I am sure we all look forward to better times.

Chapter 2

LEGAL & INVESTIGATION

Reporting year 2020/21 was a year like no other.

From the aftermath of devastating summer bushfires, to the COVID-19 pandemic, to introduction of a new Complaints Management System (CMS) and attendant testing, training and Go Live, to a number of important Court of Appeal judgments with implications for every investigation conducted.

The Legal & Investigation team showed themselves to be adaptable and resilient, making the transition from working predominantly in the office to working predominantly from home with grace and good humour. As well as handling complaints, the team:

- ran matters in the Tribunal, Supreme Court and Court of Appeal, with most hearings conducted by AVL;
- conducted compliance audits remotely and in person;
- dealt with a number of complex, difficult and novel investigations;
- finalised some longstanding CTP fraud complaints;
- assisted in putting in place new arrangements for reporting sexual harassment and other inappropriate personal conduct;
- contributed to the Law Council of Australia's review of the Australian Solicitors' Conduct Rules and other policy development work; and
- provided valuable feedback to the IT Project Team during the design and build of the CMS.

All against the backdrop of the pandemic, home schooling, new technology and the inevitable "technical glitches".

Investigations and Discipline

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

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

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

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

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

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
- Recommending the imposition of conditions on the lawyer's practising certificate

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

Complaints received

The number of complaints received in the reporting year 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, not being given information about estate accounts and excessive costs (especially in the case of a lawyer/executor).

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

Determinations and disciplinary action

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

The Commissioner issued reprimands in relation to 9 complaints, and 10 cautions.

Reprimands were issued for:

- Failing to verify the identity of a client
- Preparing a revocation of a power of attorney, an enduring power of attorney and an appointment of enduring guardian by an aged client without obtaining a medical opinion as to whether the client lacked capacity
- Taking instructions from an aged client who lacked capacity

Cautions related to isolated instances of:

- Failing to respond to a client's email and telephone call
- Delay
- Failure to disclose legal costs
- Sending correspondence that was incorrect and grossly exceeded the client's legal rights and entitlements
- Taking instructions from an elderly, non-English speaking client, and witnessing the execution of their will, without using an interpreter
- Failure to properly supervise

- Breach of Court orders and a Harman undertaking
- Inappropriate verbal communication to a magistrate in the course of criminal proceedings
- Threatening the institution of criminal proceedings against another party if a civil liability to the lawyer's client was not satisfied

Disciplinary proceedings

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

The following proceedings were initiated in the reporting year:

NSW Legal Services Commissioner v Jenna Cullen

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

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

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

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

The lawyer subsequently admitted by entering into an Instrument of Consent pursuant to section 144 of the *Legal Profession Uniform Law Application Act*, that she 'must have' engaged in the conduct set out in Grounds 1 and 2, but submitted that she had no independent recollection.

The lawyer conceded that, although she had no independent recollection of doing so, she "must have" falsely witnessed the purported signature of her client on the Declaration, because:

- at the time of its execution she had not seen the face of her client, the purported declarant;
- she was not present when the client purportedly executed the Part G Declaration; and
- she had not identified her client as the person purportedly making the Part G Declaration by having known him for at least 12 months.

The matter was listed for hearing on 1 July 2021. The outcome will be reported next year.

NSW Legal Services Commissioner v Jia Hong Zou

On 14 January 2021 the Commissioner commenced proceedings in the Tribunal against Ms Zou, seeking a finding, among other orders, that she had engaged in professional misconduct by falsely attesting that she had witnessed her client's signature on an e-affidavit. Ms Zou accepted that she had made the false attestation but did not accept that a finding of professional misconduct should be made – rather, she submitted that her conduct was unsatisfactory professional conduct. As at 30 June 2021 the proceedings were in the process of being prepared for hearing, scheduled for 18 August 2021.

NSW Legal Services Commissioner v Kristy Anne Speirs 2021/00112235

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

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

the “Crown”. It was further alleged that the lawyer knew, or ought reasonably to have known, that the representation was false. The lawyer has denied the conduct.

The matter is listed for hearing on 2 and 3 December 2021.

In the reporting year, decisions were delivered in the following matters:

NSW Legal Services Commissioner -v- Leslie Abboud (2019/0028616)

The Commissioner filed an Application seeking disciplinary findings and orders against Mr Abboud on 13 September 2019.

On 1 February 2021 an Instrument of Consent was filed.

On 23 February 2021 the Tribunal made findings and orders consistent with the Instrument of Consent. The Tribunal found that Mr Abboud had engaged in unsatisfactory professional conduct in relation to Grounds 1 and 2, which alleged that Mr Abboud attempted to improperly influence the evidence of an expert witness (Ground 1), and that he sought to conceal his attempt to improperly influence expert evidence from his opponent and/or attempted to mislead his opponent (Ground 2). The Tribunal ordered that Mr Abboud be reprimanded, that Mr Abboud at his own expense successfully complete a course in legal ethics approved by the Commissioner within 12 months of the date of the orders, achieving a mark of not less than 65% or such equivalent as approved by the Commissioner and that Mr Abboud pay the costs of the Commissioner in the sum of \$15,000, which had been agreed by the parties.

NSW Legal Services Commissioner v Dora Maddock

By Application filed on 22 October 2020, the Commissioner sought disciplinary findings and orders with respect to the lawyer. The Application alleged two grounds of complaint namely: (1) the lawyer falsely attested the purported signature of her client on an enduring power of attorney dated 8 February 2012 and (2) in relation to the enduring power of attorney dated 8 February 2012 purportedly given by her client, the lawyer falsely certified she explained the effect of the enduring power of attorney to the principal before it was signed, the principal appeared to understand the effect of this enduring power of attorney and that she witnessed the signature of the enduring power of attorney by the principal. The Application further alleged that the statements were false as the lawyer had not met the principal, had not witnessed her purported signature on the enduring power of attorney and had not explained the effect of the enduring power of attorney to her.

On 12 November 2020, the lawyer filed a Reply, which admitted both Grounds 1 and 2. The parties subsequently executed an Instrument of Consent, pursuant to section 144 of the *Legal Profession Uniform Law Application Act (NSW)*.

The matter was dealt with ‘on the papers’, the hearing having been dispensed with pursuant to section 144 of the *Legal Profession Uniform Law Application Act (NSW)*.

On 21 April 2021 the following orders were made:

Consequent on the finding of professional misconduct, the Tribunal ordered that:

1. The Respondent lawyer is publicly reprimanded;
2. The Respondent lawyer is to pay a fine of \$2,500 within 60 days of the date of this decision;
3. Should the Respondent lawyer apply for a practising certificate from either the Law Society of New South Wales or the New South Wales Bar Association (or equivalent interstate regulatory authority), she must draw these proceedings to the attention of the relevant authority from which a practising certificate is sought; and
4. The Respondent lawyer is to pay the Applicant Commissioner’s costs agreed in the sum of \$4,500 by monthly instalments of \$200 per month; the first payment to be made within 60 days of the date of the decision and all subsequent payments to be made on or before the first day of each month thereafter until the full amount has been paid.

Legal Services Commissioner v Peter Livers

This matter has been ongoing since 2016. On 3 August 2017, Mr 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 heard on 10 July 2020.

Judgment was delivered on 10 December 2020. The Court of Appeal set aside the decision of the Tribunal made 27 November 2019 and dismissed the application by the Commissioner for disciplinary findings and protective orders. The Commissioner was ordered to pay the applicant's costs of the appeal.

Mr Livers filed a Notice of Motion on 26 April 2021 seeking an order that pursuant to Rule 36.17 of the Uniform Civil Procedure Rules 2005 (the "slip rule"), the Public Purpose Fund pay Mr Livers' costs of the Tribunal proceedings brought against him. The Commissioner consented to the orders sought by Mr Livers in his Notice of Motion.

The Motion will be decided on the papers and 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.

Reviews by NSW Civil and Administrative Tribunal

Herbert Weller v NSW Legal Services Commissioner

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

In the first decision, the Commissioner found Mr Weller had engaged in unsatisfactory professional conduct in preparing a revocation of a power of attorney, an enduring power of attorney and an appointment of enduring guardian by an aged client without obtaining a medical opinion as to whether the client lacked capacity. The Commissioner reprimanded Mr Weller pursuant to s 299(1)(b) of the *Legal Profession Uniform Law (NSW) (LPUL)*, fined him \$2,000.00 pursuant to s 299(1)(f) of the LPUL, and ordered that he waive fees for work performed pursuant to s 299(1)(d) of the LPUL.

In the second decision the Commissioner found Mr Weller had engaged in unsatisfactory professional conduct in taking instructions from an aged client who lacked capacity to become an enduring attorney for a person in an aged care facility; and to commence Supreme Court proceedings for a writ of habeas corpus, that he had failed to act competently or in the best interests of his client; that he had failed to act competently and diligently in the preparation and execution of a revocation of a power of attorney, an enduring power of attorney and an appointment of enduring guardian by an aged client who lacked capacity, and failed to act competently and diligently in the conduct of Supreme Court proceedings. The Commissioner reprimanded Mr Weller pursuant to s 299(1)(b) of the LPUL, fined him \$3,000.00 pursuant to s 299(1)(f) of the LPUL, and ordered that he waive any fees for work performed pursuant to s 299(1)(d) of the LPUL.

On 5 May 2021, the Tribunal made orders in relation to consolidating both cases, the filing and service of evidence and submissions by both parties, and a date for a Directions Hearing, being 4 August 2021, subsequently extended to 6 October 2021 by the parties' application. As at 30 June 2021, the Respondent had filed and served its evidence in the proceedings.

Judicial reviews by the Supreme Court of New South Wales

Last year we reported that two complainants had sought judicial review of decisions by the Commissioner not to conduct an internal review and noted the outcome of the proceedings brought by one of those complainants, Mr Mendonca. The proceedings brought by the second complainant, Haydyn Hastwell, were determined this year.

Legal Services Commissioner ats Haydyn Hastwell

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

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

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

On 29 March 2021, Mr Hastwell filed an application seeking special leave to appeal the Court of Appeal's judgment to the High Court of Australia.

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

The outcome of Mr Hastwell's special leave application will be reported next year.

Another complainant commenced proceedings for judicial review this reporting year. The outcome of his application will be reported in due course.

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 Western Australia, 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). 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.

OLSC also contributed to the Law Council of Australia's review of the Australian Solicitors' Conduct Rules

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

In the 2020-21 reporting year, the OLSC received a total of 2,714 written complaints and registered the total completion of 2,667 written complaints. This represents a slight increase in complaints opened and closed from our last reporting period and is a particularly pleasing result noting that this year saw the combined impacts of the introduction of a new Complaint Management Information System and the ongoing alterations to work practices engendered by the continuing COVID-19 pandemic.

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

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

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

The OLSC must attempt to resolve a consumer matter by informal means. The Commissioner also has power to make a determination under section 290 of the 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. It is sometimes the case that an indication to a lawyer that the Commissioner is giving consideration to 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 2020 to 2021 reporting year, the OLSC received a total of 1,299 consumer matters including a total of 555 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/de-facto was the area of law most represented in **consumer matters** (16.8%), followed by conveyancing (14%), personal injuries (11.8%) other civil matters and criminal.

Quality of Service: Negligence was the most common consumer matter complaint in this reporting year, followed by: Communication, Delay, Overcharging and Instructions not followed.

In 2020/21 Family/ de-facto matters (28.8%) were once again the area of law most represented in **cost dispute** complaints followed by Other Civil matters (10.3%), Commercial/ Corporations, Conveyancing, Criminal & Personal Injuries, Probate/ Family Provisions.

Outcomes

For the 2020 to 2021 reporting year, 444 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, 334 of the **costs disputes** received were either resolved or closed, with the remainder remaining open.

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. This may also be the case where the invoices in question fall outside the time periods allowed to this Office to deal with a costs dispute. 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.

Over previous reports we have recognised that 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.

As has been noted above, 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. It is noted that lawyers are required to hold insurance in the event of a client making a claim against them alleging professional negligence.

Failure to appropriately disclose costs

As may be discerned from the Case Studies in this Report, the last year has again involved complaints of instances of inadequate or non-existent disclosure of costs. Once again, the family law area seems to significantly contribute to complaints in this regard.

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 lawyers should by now be more than familiar with the costs disclosure regime set out under the LPUL. 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.

Communications

Once again, this year a significant proportion of the consumer complaints have dealt with communication issues. With a small number of consumer complaints these communication issues have extended to staff of this Office having difficulty obtaining responses. In one or two instances it was revealed that the lawyers in question were dealing with significant issues with their physical health, including hospitalisation for serious illness and in others it has become clear that the lawyer may be suffering with mental health problems. It has been pleasing that in some instances fellow lawyers have volunteered to assist this Office at the request of, and on behalf of, their colleagues – including with resolving simple matters by transfer of a file or provision of documentation. In particular for sole lawyers this underscores the desirability of putting a plan in place in advance to cater for the event that you become incapacitated. This Office also commends the considerable resources offered by the Law Society to lawyers who may be suffering work or life stresses.

In a separate comment upon communication issues we continue to note that email and text messaging can lead lawyers to a degree of informality that can, in some instances, result in communications that are unprofessional and unbecoming. Some late-night texts and emails, whether to clients or opposing representatives, that have come before this Office would better to have not been sent. Out of hours communications with clients can also create ongoing expectations that may be unrealistic and are certainly challenging to the maintenance of a healthy work/life balance. Setting boundaries and reasonable expectations with regard to communications with clients may well avoid complaints to this Office.

Interaction with the OLSC

This reporting year has covered the continuing uncertainty of the COVID-19 pandemic and the additional challenges that have resulted. OLSC staff are aware that, at the best of times, contact with the Regulator may exacerbate the stress of practice and responding to complaints may involve considerable time and effort. The last year has definitely seen an increase in stress within the community which impacts upon both lawyers and clients and the staff of our Office working in what can be a highly charged complaint handling environment. It is pleasing that in general 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 2020-2021

The OLSC 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 role of and the powers of the OLSC with respect to the handling and determination of complaints. Where appropriate, Inquiry Line staff can provide general information relating to common complaint scenarios and refer callers to applicable OLSC Fact Sheets that may assist callers to understand common issues. Inquiry Line staff can also offer referrals to other agencies where such agencies are better placed to assist.

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

In December 2020, the OLSC implemented a new complaints management system including an online complaints portal. The portal allows complainants to lodge complaints online and creates another process by which complaints can be made to the OLSC, in addition to the previous methods of completing a paper-based form or downloading and manually completing a PDF form from our website. The new complaints management system has greatly improved the service offered by Inquiry Line Officers, as it has not only streamlined and

improved the inquiry processes but allows Inquiry Line Officers to immediately email callers with direct links to our online complaints portal.

In total, for the 2020/2021 reporting year, 4,950 calls were made to the Inquiry Line, a decrease of 854 calls from the previous reporting year. At the conclusion of each call, survey forms were sent to callers who indicated an interest in participating in the provision of feedback. Participation in the survey assists in the maintenance and improvement of the Inquiry Line's service, and the information gathered through the survey allows the OLSC to identify and implement improvements to the service where appropriate. From the 4,950 calls made to the Inquiry Line, 9.1% of callers expressed interest in participating in the survey and, of the survey forms issued, 22.6% were then completed online or sent back to the OLSC for analysis.

Overall, results were overwhelmingly positive. 94.1% of callers agreed with the statement that the call was handled promptly, 96.1% of callers agreed with the statement that the information provided was helpful and 98% of callers agreed with the statement that the Inquiry Line Officer was professional and courteous. In addition to this, 96.1% 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

During 2020-2021, the OLSC's Public Liaison Officer (PLO) assisted people with the drafting of their complaints. There are many reasons why people request the assistance of the PLO with the writing of their complaints.

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

Within the past reporting year 93 people were assisted by the PLO, resulting in 40 complaints being lodged with the OLSC.

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

Complainants are advised of our process of preliminary assessment of complaints and the timeframes within which they may have their complaints considered. There are times when a complaint is referred to a more appropriate government agency or non-government service for assistance.

This form of assistance has an important 'access to justice' aspect for vulnerable complainants to the OLSC.

Chapter 4

COMPLIANCE AUDITS

The restrictions in place as a result of the ongoing COVID-19 pandemic continued to present logistical challenges for conducting on site compliance audits this year. As previously, resources were pivoted towards the increased complaints lodged with the OLSC. Additionally, as noted elsewhere in Chapter 6, the OLSC was in the final stages of developing and rolling out its new IT/ Complaints Management System during the first half of this financial year. The Practice Compliance Manager was actively involved in UAT training and testing before “go live” in December 2020.

Four law practices were contacted for audit in the financial year 20/21. An initial onsite audit and follow up audit was completed of one law practice which resulted in a management system direction being issued in relation to the discrete issue of client notifications on invoices. After providing one periodic report with multiple examples of the correct notification being included on all invoices, the audit case was closed.

An audit of another law practice was conducted partly on-site with the Principal in the city office and partly remotely with supervised, employed solicitors in the regions. Given concerns regarding a range of issues including supervision; record management; delay; client confidentiality; costs disclosure and invoices, a management system direction was issued to the law practice. The Principal is continuing to provide periodic reports on a monthly basis. These reports are reviewed by the Practice Compliance Manager and feedback provided to the Principal. The Principal is encouraged to liaise with the Regulatory Compliance Unit at the Law Society for assistance in developing and implementing appropriate management systems.

The audit of a third law practice was conducted remotely given that it was scheduled to take place just as the Sydney outbreak was developing in June 2021.

The Practice Compliance Manager was able to interview the Principal and three employees. Key documents were scanned and provided for review electronically. Comments were provided on issues arising from that document review such as the need to provide a single figure estimate, rather than a range, in costs disclosure. Further documents were submitted electronically by the law practice for review. It is hoped that an onsite visit to the law practice can be arranged once community transmission of COVID-19 has been brought under control and the lockdown is lifted.

A fourth law practice withdrew its co-operation with the audit process at short notice. Information has been sought remotely but without substantial success. The status of the Principal’s practising certificate is unclear.

A follow-up audit was conducted of a boutique city law practice that had been identified for audit in the previous financial year. As the issues raised by the audit had been successfully addressed by the Principal, that audit case was closed.

The Commissioner has initiated a complaint about another law practice that had been identified for audit in the previous financial year which had not provided documents as requested or in accordance with a management system direction.

Generally, the provision of costs disclosure that complies with the legislation and notification of clients’ rights in invoices continue to be areas of concern. With the prolongation of the pandemic and with junior solicitors continuing to work remotely, supervision is also a significant issue. Given the provisions of sections 34 and 35 of the LPUL it is incumbent on Principals to have robust systems in place to practically supervise junior lawyers who are working remotely and also to be able to demonstrate that such supervision is occurring.

Chapter 5

THE OLSC AND THE COMMUNITY

Over the last 12 months, we have seen a dramatic change in the way the Commissioner and his staff delivered tailored seminars 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.

Legal Education

When travel restrictions were lifted and face to face meetings could again be held in a safe and socially distanced environment, the Commissioner and his staff recommenced their visits to universities, law practices, the College of Law, and regional law societies, to deliver continuing professional development (CPD) seminars during 2020-2021. Some of those visited were:

- Blue Mountains Regional Law Society, Ethics in 2021
- Holding Redlich, Ethics in 2021
- UNSW Edge, How to manage anxious clients to avoid an increase in complaints during this uncertain time
- Criminal Law Conference, Byron Bay
- Northern Beaches Family Lawyers, Ethics in 2021

The Commissioner presented online CPD seminars via pre-recordings and webinars. These were:

- College of Law, Ethics in 2021
- University of New South Wales, Ethics, Edge Seminar
- City of Sydney Law Society, Ethics in 2021,
- Public Service Commission Graduate Program, Risk Management
- Southern Cross University, Professional Conduct Program, Ethics in 2021

On 23 October 2020, the Commissioner participated in the Law Society of New South Wales' Rural Issues Day 2020 in the panel session, Navigating hardship and the impact of recent crises on rural legal practice, where panel members discussed the legal issues that directly impact rural legal practices.

The Commissioner continued his support of the NSW Bar Association during 2020-2021 by contributing to the NSW Bar Practice Course series in co-presenting ethical hypotheticals to new barristers.

Webinars

With limited face to face seminars, webinars continued for many universities and organisations. We at the OLSC have found that webinars have proved to be a great educational tool both for presenters and for participants. As most webinars are recorded, staff who have been unable to watch the webinar live can view in their own time.

The Commissioner viewed a one-hour webinar, *Fostering Everyday Respect - Male Champions of Change* – NSW Government with the NSW Public Service Commission for leaders fostering everyday respect. The Commissioner gained shared perspectives from a range of public and private sector leaders on practical strategies employed to better understand and foster everyday respect by creating a respectful and inclusive work environment.

In October 2020, the Commissioner viewed the repeated Professional Standards Forum, *Putting the Consumer First in Ethics: the role of a consumer ethics framework in delivering focused professional and occupational services webinar*. The forum discussed the opportunities and challenges in successfully regulating for ethical behaviours that are consumer focused as well as looking at strategies and techniques for bringing codes of ethics to life as a regulatory tool to protect consumers.

The Commissioner continued his work of the preceding 12 months on furthering better reporting mechanisms for sexual harassment in the legal profession. He also kept abreast of developments occurring in this area in the legal profession by viewing the following webinars:

- On 8 July 2020, the Commissioner participated in the Law Council of Australia's virtual national roundtable to discuss sexual harassment in the legal profession and strategies to address this complex and pervasive issue. Attendees included the Sex Discrimination Commissioner, representatives from regulators of the legal profession, women lawyers' associations, law students and university representatives and Law Council's constituent bodies.
- On 21 July 2020, the Commissioner viewed the free UNSW livestream one-hour session, *Above the Law – New forms of accountability for sexual misconduct*, presented by the Australian Human Rights Institute and UNSW Law. This webinar generated discussion as to finding a way through to a more ethical legal profession, how we can break open the structures of the legal profession that insulate it from the regulatory eye and more importantly, focus on mechanisms for accountability, and how to initiate cultural change.
- On 22 September 2020, the Commissioner took part in the Women Lawyers NSW, all male review panel, webinar: *Elimination of Sexual Harassment in the Legal Profession*. The panel discussed the culture and structures that permitted this culture to occur in the past and continue, and what needs to be done to deter and eliminate this conduct moving forward.
- On 7 October 2020, the Commissioner viewed the webinar, *Addressing Sexual Harassment at Work with Kate Jenkins, co-sponsored by ANU College of Law, The Global Institute for Women's Leadership and ANU Gender Institute*. The conversation discussed how Australia and Australians can effectively address sexual harassment in our workplaces and promote positive change.
- 4 November 2020, the Commissioner participated in the *Future of Cyber Civility Technology & Incivility in the Workplace*, expert panel discussion webinar, cohosted by Clarence Workplaces for Lawyers. The expert panel members discussed ways of addressing sexual harassment in the legal profession and online incivility in the legal profession.

Sexual harassment

During the 2020 -2021 period the Commissioner continued to engage with the OLSC's Personal Conduct Team, implementing new avenues for members of the profession and public to notify the OLSC of instances of sexual harassment and workplace bullying. This included

the creation of a dedicated telephone line and voicemail service to streamline inquiries and reporting to the OLSC. The OLSC website was also updated, streamlining access to information regarding these topics, and aiming to facilitate the use of the OLSC website. In particular, the 2020-2021 period also saw the placement of the Commissioner's statement regarding the OLSC's position of sexual harassment and workplace bullying in the legal profession on the OLSC website, articulating the views of the OLSC and addressing the need for cultural change in the legal profession in NSW.

Throughout the year the Personal Conduct Team continued to emphasise that all callers to the OLSC 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. 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. Further training was undertaken, and the team was expanded to include new members in light of the increasing number of reports being received. 2020-2021 saw a significant increase in the number of calls and reports received by the OLSC. Work also continued on future projects, which will be launched in the near future.

While the OLSC and the Personal Conduct Team continued to deal with several setbacks faced by the OLSC throughout this period the need for cultural change in the legal profession remained central to the Commissioner's ethics and CPD presentations throughout the year. The Commissioner gave several presentations, through the University of New South Wales and the University of Technology Sydney, regarding sexual harassment and workplace bullying, including participating in a panel discussion with other prominent members of the profession. These presentations, along with the many other Continuing Professional Development presentations given by the Commissioner throughout this period, continued to shine a spotlight on the significance of these issues and the obligations that the legal profession has to address them.

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

In the last 12 months, we have seen a new style of staff training being undertaken online with a combination of interactive video tutorials and text-based learning, to provide us with a safe way of continuing professional learning.

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

During the reporting year, OLSC staff completed the mandatory Department of Communities & Justice training modules for 2020-2021:

- Privacy and You
- DCJ Information Security

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

OLSC Staff from both the Legal and Consumer Teams attended live online, on demand conferences and webinars throughout the course of the 2020/2021 year including the live online streaming of the Law Society of NSW, Government Solicitors Week (formerly known as Government Solicitors Conference) on 7-11 September 2020. OLSC staff were able to access five days of virtually delivered webinars, panels and thought-provoking sessions, to watch live online or on-demand at their convenience.

The Legalwise Property Law conference was attended on demand - a comprehensive program that provided updates on the latest in strata matters, the FIRB government reform, developments concerning residential apartments and developers, NSW Land Tax and Stamp duty and Cladding litigation updates. Other training opportunities included the CPD Conference for NSW Government Solicitors that provided 6 sessions to further enhance staff understanding of topics such as legal professional privilege and professional responsibility, advice writing, automated decision making, workplace health and safety in the COVID-19 pandemic and Cyber law and privacy. Such training helps our staff to further develop and refine their skills to comply with CPD requirements and enable staff to stay up to date with legal developments in relevant areas of laws.

Some of the topics in various knowledge areas OLSC staff viewed were:

- Substantive law
 - Managing sensitive information during litigation
 - Issue of Legal Professional Privilege with respect to secrecy including information Security and Parliamentary and Statutory enquiries
- Practice Management and Business skills
 - The Future of Government Lawyers

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

- LawCover, Claims prevention roadshow
- Conveyancing essentials in practice
- Property Law Conference
- Complaint Handling for senior staff

Conferences

Conference of Regulatory Officers 2019

The 2019 Conference of Regulatory Officers was to be hosted and held in Sydney, however, due to COVID-19 pandemic and the travel restrictions that were in place the latter half of 2019, the organisers made the decision to cancel the 2019 Conference.

The CORO Conference provides a forum for all regulators of the legal profession in Australia and other interested parties to come together to discuss the developments that have occurred in the various jurisdictions and encourages discussion for the exchange of ideas, opinions and information about challenges that the legal profession faces in an ever changing environment.

CORO provides an opportunity for delegates to share knowledge and exchange information with counterparts in other jurisdictions, and more importantly, it provides a venue where relationships are strengthened and new acquaintances are made, expanding the network of like-minded peers in the regulatory arena.

It is hoped that Sydney will again have the opportunity to host CORO, in a face to face environment, in October 2021.

Chapter 6

INFORMATION SYSTEMS AND SERVICES

With COVID-19 still having an impact during the reporting year, we continued to improve staff's flexibility of remote working and/or coming into the office by adjusting the start and finish times of staff travelling on public transport, ensuring social distancing was adhered to while in the office and additional hygiene measures were also put in place. Staff enjoyed the autonomy of remote working so they could work in an efficient and secure environment in providing our services productively and efficiently.

The Department of Communities and Justice provided OLSC staff with wireless technology, updated software and laptops which greatly assisted them in being able to continue to work anywhere. This enables staff to have access to all our operating systems so their work in investigating complaints can continue to assist them in achieving outcomes for their complainants.

Another technological assistance for staff has been the roll out of the Telstra Business Connect on the Departmental laptops. This has greatly assisted staff working remotely with the improved efficiencies and the feeling of connectiveness. With all staff not being present in the office at the same time this posed problems with knowledge sharing and exchanging ideas in person or to overhear how others are going with things. We ensured that supervisors and case officers stayed connected to each other with regular, either virtually or in person (restrictions adhered to), catch ups to ensure their well-being, encourage motivation and discuss whether there are any improvements that can be made to support and assist them in better remote working situations.

With these new developments in technology and improved efficiencies in the face of lockdowns, we have been able to continue to deal with the increased number of complaints received and handle the volume of incoming emails.

Some of the other technological advancements to assist staff to work remotely include:

- Staff have been provided with a secondary monitor for use at homes
- MS Teams is used by all staff to communicate with other team members and hold meetings
- An improved system of answering and transferring phone calls has enabled staff to work remotely
- Outlook notifications of voicemail messages is accessible for staff working remotely with a MP3 voicemail message
- A Lenovo ThinkSmart hub has been set up enabling all staff to participate in staff meetings

Website enhancements

We have seen a change in the way people use our services and during 2020-2021 we ensured that the website was updated with current and accurate information and publications.

The OLSC website provides information on its functions, services and how to make a complaint about a lawyer in New South Wales. There are a series of fact sheets on our website to assist complainants with information on various topics for example, liens, costs disputes and negligence.

A new feature of our website is the online portal complaint (ecomplaints) which has made it easier for complainants to make and lodge a complaint about a lawyer.

During the year work continued on improving the website pages for Inappropriate Personal Conduct. Fact sheets on topics for Informal Reporting and Formal Complaints were produced and uploaded onto our website for people in the legal profession. Work continues to be done to further refine to ensure clear and precise information is accessible.

In the next reporting year, we intend to undertake a full review of the content of the OLSC website to identify areas that require updating, removal and/or improvement. It is hoped that this review will result in a more user-friendly and streamlined experience for browsers.

Complaints Management System

On 7 December 2020, the OLSC saw the roll out of its new digital Complaints Management System (CMS). This system was developed by the Department's Information & Digital Services Project staff in consultation with a group of key nominated OLSC staff members.

Our new CMS has made it possible for consumers to complete their complaint form online as well as attach documents to support their complaint. Once the complaint form is completed and submitted via the Complaint Portal, a confirmation email with their case number is sent to their email address for future reference. We have seen a rise in the number of complaints received in this office since the new complaints management system was rolled out.

During the COVID-19 induced turmoil, we saw the roll out of the CMS at an optimal time as this system allowed us to access the system remotely so our work could continue with improved efficiencies through digital automation, where the previous Complaints Tracking System did not have those features.

The DCJ Project Team, at handover of the CMS to the OLSC, highlighted enhancements that were a high priority to be made to the system. The most important enhancement highlighted for CMS was for it to be fully integrated with Outlook. This enhancement alone will make the day to day data management tasks for case officers and all staff more efficient and secure.

The OLSC has applied for funding for this and other enhancements highlighted by the DCJ Project Team leader last year and we are awaiting a final decision to be made as to our funding request. We will report back next year on whether funding was approved and the enhancements completed.

In the next reporting year, it is hoped that the CMS will undergo future enhancements to provide staff with improved functionality features to assist them with the handling of increased workloads.

There is also still work to be done to further improve the new CMS system by refining its stability and productivity performance. It is envisaged that in the coming years, this system can be built on to improve its overall functionality and reliability to be a fully digital complaint management system.

After considering the various consequences and risks of abandoning our previous Complaints Tracking System (QA+), it was decided by OLSC senior staff that the old system with its historical data, will be maintained for a further 12 months. This will allow us time to investigate how best to archive this historical data.

Chapter 7

STATISTICS

Inquiry Line

In 2020-2021 financial year 4,950 calls were made to the OLSC Inquiry Line, a decrease of 854 from the previous year.

P1 Legal matters raised in calls

	2020-2021	2019-2020	2018-2019
OLSC General Query*	17.0	19.6	20.9
Family/ Defacto	14.6	14.5	14.3
Other Civil	12.9	14.9	13.9
Other	12.4	6.5	7.9
Probate/ Family Provisions	9.0	13.2	11.5
Conveyancing	8.3	7.2	8.3
Personal Injuries	5.5	6.2	5.6
Criminal	3.8	4.1	4.3
Wills/ Power of Attorney	3.6	-	-
Commercial/ Corporations	2.6	3.3	4.1
Workers Compensation	2.1	1.8	2.0
General Law/ Legal Profession Query	1.8	2.8	2.2
Leases/ Mortgages/ Franchises	1.6	1.3	1.3
Employment Law	1.0	0.4	0.8
Victim's Compensation	0.9	0.3	0.4
Immigration	0.9	1.1	0.6
Land and Environment	0.9	2.1	1.6
Professional Negligence	0.7	0.6	0.3
Building Law	0.4	-	-
Strata Bodies/ Corporates	0.1	-	-
Insolvency	0.0	-	-

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

P2 Nature of phone enquiry

	2020-2021	2019-2020	2018-2019
OLSC Process*	16.1	17.0	14.4
Communication	15.3	14.6	14.2
Overcharging	14.8	12.3	12.9
Negligence	12.5	9.8	12.8
Ethical Matters	7.9	7.5	7.2
General Cost Complaint/ Query	7.7	12.3	10.0
Delay	4.7	5.0	4.7
Misleading Conduct	4.1	4.5	6.7
Instructions not Followed	3.0	3.3	2.7
Costs Disclosure	2.5	3.8	3.9
Referral Requests	2.2	0.9	0.9
Conflict of Interests	2.1	2.5	2.7
Trust Fund Matters	1.6	1.7	1.9
Document Transfer/ Liens	1.3	1.8	2.1
Fraud (not trust fund)	1.3	0.8	0.8
Document Handling	1.3	0.9	0.8
Pressure to Settle	0.6	0.6	0.7
Capacity	0.3	-	-
Compliance Matters	0.3	0.3	0.2
Advertising	0.1	0.1	0.0
Supervision	0.1	0.1	0.2
Undertakings	0.1	0.1	0.1

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

P3 Practitioners mentioned on Inquiry Line

	2020-2021	2019-2020	2018-2019
Solicitor	91.0	93.7	92.4
Other*	7.4	4.3	5.3
Barrister	1.6	1.6	1.8

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

P4 Source of calls to the OLSC inquiry line

	2020-2021	2019-2020	2018-2019
Client	46.9	56.2	66.8
Solicitor on own behalf	11.1	12.9	2.5
Other*	10.0	5.0	6.3
Previous client	8.6	2.7	2.1
Friend/ Relative	6.9	5.0	6.4
Opposing client	6.7	5.6	8.1
Beneficiary/ Executor/ Administrator	4.8	3.6	4.3
Non-legal service provider	2.4	6.0	0.9
Solicitor on another's behalf	2.2	2.6	2.3
Barrister on own behalf	0.2	0.2	0.1
Barrister on another's behalf	0.2	0.2	0.1

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

P5 Outcomes of calls to the Inquiry Line

	2020-2021	2019-2020	2018-2019
Caller indicated intention to send in complaint	21.8	20.0	23.9
Referred to OLSC website	19.4	27.5	16.7
Provided complaint form	16.4	7.0	6.7
Other*	10.6	1.2	0.4
Listened to caller's concerns	10.2	17.9	15.6
Recommended direct approach to lawyer about concerns	6.5	7.3	13.0
Provided information about the legal system	5.9	9.0	11.4
Provided referral for legal advice or other assistance	4.7	6.7	7.7
Explained that concerns are outside jurisdiction of OLSC	1.8	1.8	2.9
Referred to other agencies	1.1	-	-
Provided referral to Costs Assessment	1.0	1.4	1.6
Scheduled interview for caller	0.6	0.0	0.1

* *Other: includes General*

Written complaints

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

In 2020-2021 the OLSC **received** a total of 2,714 written complaints, an increase of 9 from the previous year. Of the total written complaints received, 1,301 were assessed as consumer matters, 1,405 as disciplinary matters and 3 as mixed matters. On receipt 5 complaints could not be classified as a consumer matter or disciplinary matter. Of those complaints assessed as within jurisdiction, 79.3% of those written complaints received were retained and handled by the OLSC. The remaining 20.7% were referred to the professional associations for handling.

The OLSC registered the **completion** of 2,667 written complaints, an increase of 205 from the previous year. Of the total written complaints completed, 242 complaints were resolved following informal resolution, 74 complaints were determined by OLSC/ Council and 2,241 complaints were closed. 110 complaints were closed on the basis OLSC had no power to deal with them and/ or were sent directly to NSW Police or regulators outside NSW. Of those complaints assessed as within jurisdiction, 78.6% of written complaints were completed by the OLSC. The professional associations completed the remaining 21.4%.

W1 Legal matters giving rise to complaints received in 2020-2021

	Agency Handling Complaint				
	OLSC	Council	2020-2021*	2019-2020	2018-2019
Family/ Defacto	18.3	3.0	21.3	19.5	21.7
Other Civil	11.0	5.3	16.3	16.3	16.3
Probate/ Family Provisions	8.2	1.5	9.7	9.9	7.5
Conveyancing	7.4	1.5	8.9	8.2	9.6
Commercial/ Corporations	5.7	2.8	8.5	8.9	8.5
Criminal	6.0	1.5	7.5	7.8	8.7
Personal Injuries	5.7	0.7	6.4	7.9	9.2
Wills/ Power of Attorney	3.3	1.0	4.3	5.5	4.0
Workers Compensation	3.2	0.1	3.3	3.0	2.2
Employment Law	2.4	0.8	3.1	3.3	3.2
Leases/ Mortgages/ Franchises	2.1	1.0	3.0	1.9	2.1
Strata Bodies/ Corporates	1.4	0.6	1.9	2.1	1.6
Building Law	1.3	0.2	1.5	2.2	0.9
Professional Negligence	1.0	0.3	1.4	0.7	0.7
Immigration	1.2	0.1	1.3	0.9	1.7
Land and Environment	0.6	0.1	0.7	1.0	1.3
Victim's Compensation	0.4	-	0.4	0.4	0.5
Insolvency	0.1	0.1	0.3	0.4	0.3
Total %	79.3	20.6			

* 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 2020-2021

	Agency Handling Complaint				
	OLSC	Council	2020-2021*	2019-2020	2018-2019
Negligence	16.5	1.6	18.2	16.1	17.8
Communication	14.5	3.0	17.5	18.4	15.8
Overcharging	12.1	0.2	12.4	14.9	13.5
Ethical Matters	4.9	3.3	8.2	6.9	9.5
Misleading Conduct	4.4	3.4	7.7	7.2	9.0
General Cost Complaint/ Query	5.3	1.1	6.4	7.4	6.9
Delay	5.4	0.5	5.8	5.1	4.6
Instructions not Followed	4.3	0.5	4.8	4.7	4.7
Cost Disclosure	3.9	0.2	4.1	4.7	4.7
Conflict of Interest	2.4	1.2	3.6	2.5	3.0
Trust Fund	1.3	1.7	3.1	3.8	3.9
Document Transfer/ Liens	2.2	0.1	2.3	2.3	1.8
Compliance Matters	1.0	0.8	1.9	1.5	1.4
Fraud (Not Trust Fund)	0.5	0.6	1.1	1.3	0.7
Document Handling	0.6	0.2	0.8	0.8	0.6
Pressure to Settle	0.6	0.1	0.7	0.7	0.7
Capacity	0.4	0.3	0.7	0.8	0.6
Undertakings	0.2	0.1	0.3	0.5	0.4
Advertising	0.1	0.1	0.2	0.2	0.2
Supervision	0.1	0.1	0.2	0.2	0.3
Total %	80.7	19.1			

* 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 2020-2021

	Number of complaints				2020-2021	2019-2020	2018-2019
	Solicitor*	Barrister	Other**	TOTAL			
Client	1216	55	4	1275	47.0	52.1	52.6
Opposing client	588	24	3	615	22.7	20.8	21.4
Previous client	146	1	-	147	5.4	3.0	2.4
Beneficiary/ Executor/ Administrator	128	2	1	131	4.8	5.2	3.6
Other ***	108	10	1	119	4.4	4.8	4.5
Solicitor on own behalf	94	10	-	104	3.8	2.8	2.5
Solicitor on another's behalf	95	6	-	101	3.7	3.3	4.0
Client's Friend / Relative	83	2	1	86	3.2	3.3	3.7
Unrepresented client	37	4	-	41	1.5	1.2	1.4
Non-legal service provider	33	-	-	33	1.2	1.1	1.2
Barrister on own behalf	25	2	-	27	1.0	1.0	0.5
Law Society	10	-	-	10	0.4	0.6	1.4
Barrister on another's behalf	8	1	-	9	0.3	0.3	0.2
Commissioner	8	-	-	8	0.3	0.3	0.3
Bar Association	-	7	-	7	0.3	0.0	0.3
Cost Assessor	1	-	-	1	0.0	0.2	0.1
TOTAL	2580	124	10	2714			

* Includes former solicitors and law practices.

** Includes licensed conveyancers, magistrate and interstate practitioners.

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

W4 Age of complaints remaining open or suspended on 30 June 2021 and being handled by the OLSC

Year opened	Open at 30 June 2021	Open at 30 June 2020	Open at 30 June 2019
2020-2021	847		
2019-2020	121	875	
2018-2019	35	79	775
2017-2018	44	73	129
2016-2017	19	23	38
2015-2016	11	4	7
2014-2015	2	3	5
2013-2014	6	7	7
2012-2013	2	2	2
2011-2012	0	0	0
2010-2011	0	1	1
2009-2010	2	0	0
1994-2009	0	0	0
TOTAL	1089	1067	964

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

W5 Average time taken to finalise a complaint handled by the OLSC in 2020-2021

	Days*
Average time to complete complaints received and completed/ resolved in 2020-2021	116.5
Average time to complete complaints received in any year but completed/ resolved in 2020-2021	311.4
Average time taken to dismiss complaints received in 2020-2021	91.5
Average time to dismiss complaints received in any year but dismissed in 2020-2021	281.0

* Averages rounded to 1 decimal point

W6 All Complaints finalised in 2020-2021

All OLSC Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	239	3	0	242
Subtotal resolved at the OLSC	239	3	0	242

ALL OLSC Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Disciplinary action: Reprimand/ Fine/ Waive or reduce fees	7	0	0	7
Determination: Caution & Apology	10	0	0	10
Consumer matter Determination	10	0	0	10
NCAT disciplinary proceedings	8	0	0	8
Subtotal determined by OLSC	35	0	0	35
Withdrawal of a complaint at OLSC	177	10	0	187
Misconceived/ Lacking in substance	469	29	1	499
Time requirement not waived	101	12	0	113
Complainant No/ Inadequate response to request info	100	1	0	101
Duplicate complaint	24	1	0	25
Closed as made a Recommendation in relation to lawyer's practising certificate	1	0	0	1
Closed Civil proceedings on foot	40	1	0	41
Closed No further investigation except CM	210	4	0	214
Closed in Public interest	55	0	0	55
Not Resolved after informal resolution	470	13	0	483
Investigation suspended pending court proceedings	10	0	0	10
Appeal closed by OLSC	4	0	0	4
Costs Recovery at OLSC	1	0	0	1
Subtotal closed by OLSC	1662	71	1	1734
Total OLSC Complaints Completed	1936	74	1	2011

All Non Jurisdictional Complaints

	Solicitor*	Barrister	Other**	TOTAL
Closed No power to investigate	56	1	1	58
Refer to NSW Police or other	45	2	5	52
Total Non Jurisdictional Complaints	101	3	6	110

All Council Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Disciplinary action: Reprimand/ Fine	14	4	0	18
Determination: Caution & Apology	12	3	0	15
NCAT disciplinary proceedings	4	2	0	6
Subtotal determined by Council	30	9	0	39

	Solicitor*	Barrister	Other**	TOTAL
Withdrawal of a complaint at Council	68	5	0	73
Misconceived/ Lacking in substance	110	12	0	122
Time requirement not waived	17	3	0	20
Complainant No/ Inadequate response to request info	34	3	0	37
Duplicate complaint	34	1	0	35
Closed as made a Recommendation in relation to lawyer's practising certificate	1	0	0	1
Closed No further investigation except CM	158	32	0	190
Closed in Public interest	29	0	0	29
Subtotal closed by Council	451	56	0	507
Total Council Complaints Completed	481	65	0	546
Total finalised by OLSC	1936	74	1	2011
Total Non Jurisdictional Complaints	101	3	6	110
Total finalised by Council	481	65	0	546
TOTAL	2518	142	7	2667

* Includes former solicitors and law practices.

** Includes licensed conveyancers, magistrate and interstate practitioners.

W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2020-2021

Percentage of files closed within following periods*

	2020-2021	2019-2020	2018-2019
0-30 days	12.2	12.6	12.8
1-3 months	29.9	30.5	33.3
3-6 months	27.0	27.5	27.3
6-9 months	14.7	13.8	13.6
9-12 months	6.6	6.9	6.0
Over 12 months	9.5	8.7	7.1

* 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 2020-2021 - received all years

	Solicitor	Barrister	OTHER	TOTAL	Percentage
Reviews in progress					
Internal review application under LPUL	67	11	0	78	29.7
Total remaining open	67	11	0	78	29.7
Reviews completed					
Discretion declined for review under LPUL	168	15	0	183	69.6
Decision to make new decision under LPUL	2	0	0	2	0.8
Total completed	170	15	0	185	70.3
Total handled	237	26	0	263	

NSW Civil and Administrative Tribunal

For matters filed and disposed of by NCAT in 2020-2021 refer to NCAT's annual report.

CHAPTER 8

FINANCIAL PERFORMANCE 2020-2021

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 ended the 2020-2021 financial year with a significant, positive net cost of services figure. A number of factors contributed to this outcome, including low expenditure from some budget accounts such as *Travel* (due to the impact of COVID-19) and certain Fees, and the receipt of a number of reimbursements in relation to Telephone and Legal Costs which were applied to our cost centre and served to offset expenditure.

Minimal expenditure from the large annual provision for *Depreciation and Amortisation* also impacted the end of year net cost of services figure.

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 2020-2021, the OLSC continued its investigation of lawyers involved in compulsory third party (CTP) insurance fraud.

During 2020-2021 the funding was used to offset the salary and on-costs of a full time Grade 4 Legal Officer who worked on the investigations for a full six month period.

An internal member of OLSC staff, at Clerk Grade 6 level, also worked on the investigations throughout the year on a part time basis, with that officer's salary and on-costs also being met by the funding.

The expenditure and balance of the related funding is detailed in the accompanying financial statement and supporting notes.

Human Resources

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

There were a number of positive changes to the way OLSC staff worked during the financial year. All full time, ongoing members of staff were issued with laptops in October 2020, dramatically increasing their mobility and the flexibility of available working arrangements. Use of laptops by OLSC staff proved particularly useful during critical COVID-19 lockdown periods, at which time staff were able to work from home in instances where their duties allowed it.

Remote working conditions for staff were further improved with the rollout of a new Complaints Management System for use by the OLSC, enabling many formerly paper-based processes to be performed electronically.

There was some movement of staff during the financial year, with two, long-serving, full-time members of staff resigning from their roles to retire from the workforce. Their vacant roles were filled expeditiously via open merit recruitment. One member of staff commenced a period of paid maternity leave, followed by some months of elective unpaid leave. Her role has been backfilled with a temporary occupant until her return.

The team of casuals who staff the OLSC Inquiry Line saw a greater amount of movement, with a number of team members resigning to pursue other career options, and replacement team members engaged promptly to ensure adequate staff resources for rostering.

FINANCIAL STATEMENT 2020-2021

	Budget	Actual	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments (Budget)	(4,957,597)	(5,032,141)	74,544	
Other Revenue	-	-	-	
TOTAL REVENUE	(4,957,597)	(5,032,141)	74,544	1
EMPLOYEE RELATED PAYMENTS Excl Crown Liabilities	3,626,879	3,627,589	(710)	2
Advertising	-	171	(171)	
Cleaning	23,071	21,254	1,817	
Fees	69,934	8,955	60,979	3
General Expenses	3,482	3,508	(26)	
Insurance	1,407	134	1,273	
Computer Service Costs	-	2,185	(2,185)	4
Legal Costs	203,603	(90,328)	293,931	5
Operating Lease Rental Expenses	656,832	643,410	13,422	
Postal Expenses	29,882	26,910	2,972	
Printing	25,339	16,517	8,822	
Publications	9,863	9,596	267	
Staff Related Costs	31,243	24,044	7,199	
Stores / Operating Supplies	14,958	11,336	3,622	
Telephone	44,667	27,606	17,061	6
Travel	20,808	643	20,165	7
Utilities	36,117	41,559	(5,442)	
Finance Costs	4,792	-	4,792	
OTHER OPERATING EXPENSES	1,175,998	747,497	428,501	
Maintenance Contracts	40,277	61,200	(20,923)	8
Scheduled Maintenance	-	-	-	
IT Software Maintenance	114,441	60,743	53,698	9
MAINTENANCE	154,718	121,943	32,775	
TOTAL EXPENSES Excl Crown Liabilities & Depreciation	4,957,595	4,497,029	460,566	
Net Cost of Services Excl Crown Liabilities & Depreciation	(2)	(535,112)	535,110	
Add Non Cash Items:				
Crown Liabilities (<i>LSL Liability Assumed by Crown</i>)	78,959	32,416	46,543	10
Depreciation & Amortisation	357,846	185	357,661	11
Net Cost of Services Inc Crown Liabilities & Depreciation	436,803	(502,511)	939,314	

CTP Investigation Funding 2020-2021

	Allocation at 1/7/2020	Actual	Balance Remaining	Notes
	\$	\$	\$	
CTP Investigations	(235,527)	136,751	(98,776)	
TOTAL CTP EXPENDITURE	(235,527)	136,751	(98,776)	12

NOTES SUPPORTING THE 2020-2021 FINANCIAL STATEMENT

Total Revenue

- Public Purpose Fund Recoupments:** The OLSC receives annual operational funding from the Public Purpose Fund. The Public Purpose Fund also meets the costs of the NSW Legal Services Commissioner, by means of reimbursement, in relation to NCAT or Court proceedings and appeals. The *Total Revenue* variance is the result of an invoice the Department issued to the Public Purpose Fund during 2020-2021 seeking reimbursement of legal costs totalling \$74,544, which were subsequently paid into the OLSC annual funding revenue account.

Employee Related Payments

- Employee Related Payments:** The OLSC's budget for *Employee Related Payments* contains provision for annual salary payments to employees occupying roles in the OLSC approved establishment, and payment of on-costs including Leave Entitlements, Workers Compensation Insurance Premiums, Superannuation, Payroll and Fringe Benefits Tax. The *Employee Related Payments* variation reflects an increased level of extended and maternity leave payments, and payments to casual staff engaged to fill vacancies created as a result of staff movements throughout the year.

Other Operating Expenses

- Fees:** The OLSC *Fees* budget maintains funds for various types of fees expenditure including interpreter fees and the fees of miscellaneous experts from whom the OSLC seeks advice. This account formerly also met legal costs incurred in bringing matters before the Occupational Division of the NSW Civil & Administrative Tribunal and the Courts, however from the commencement of the 2019-2020 financial year legal costs were met from a separate account, with budget realignment taking place to ensure the required account balances. The significant variation for the Fees in 2020-2021 reflects a lower than forecast rate of non-legal fees expenditure during the financial year.
- Computer Service Costs:** *Computer Service Costs* are an expense related to the support of the new Complaints Management System (CMS) software newly in use by the OLSC. CMS related computer service costs from external vendors are met from this account, and were not provided for at the time of 2020-2021 budget preparations.
- 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. During 2020-2021 expenditure was offset by the receipt of reimbursed legal costs totalling \$74,389. Additionally, in June 2020 the Department's Accounts Receivable credited the OLSC Legal Costs account with an unidentified \$200,000. The OLSC reported the misdirected amount, however insufficient time remained to effect reallocation of the funds before closure of the financial year. The extremely favourable Legal Costs budget variance is the result of the combined total of expected reimbursements and the additional, unidentified \$200k.

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- 6. Telephone:** The OLSC's *Telephone* budget includes provision for monthly telephone rental expenses and metered call costs in addition to data service charges in connection with the fibre communications network. The OLSC transitioned to a new phone platform during 2020-2021 with the cost of handset replacement being met by the Department's capital expenditure budget. The reimbursement of \$49,502 to our telephone budget in August 2020, representing incorrect phone charges applied to our cost centre in late FY20, has resulted in the favourable variation for this budget item.
 - 7. Travel:** The OLSC's *Travel* budget maintains funds for travel costs incurred by the Commissioner and staff to attend interstate and intrastate official business, training and conferences. Due to the impact of COVID-19 during the reporting year, members of OLSC staff attended conferences and training by electronic means, resulting in zero expenditure from this budget account.
 - 8. Maintenance Contracts:** The OLSC's budget for *Maintenance Contracts* includes provision for maintenance support costs associated with the OLSC's Complaints Tracking System (\$30,600 pa payable annually to the developer QA Plus Ltd). QA Plus Ltd was late in delivering its annual invoice for the 2019-2020 financial year, resulting in the need for two annual invoices being paid from the 2020-2021 budget. The full year variance for this item is the result of both payments from this account.
 - 9. IT Software Maintenance:** The OLSC's budget for *IT Software Maintenance* meets support and maintenance costs charged by the Department's IDS under service level agreement. Mid-way through the 2020-2021 financial year, a new electronic Complaints Management System (CMS) designed and built for the OLSC was rolled out, with new licensing, maintenance and support costs commencing from that time. The six month, rather than twelve month application of the new charges this financial year has resulted in the favourable variance for this budget item.

Non Cash Items

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

CTP Investigation Funding

- 12. CTP Investigation Funding:** The *CTP Investigation Funding* table summarises expenditure during 2020-2021 from a special allocation the OLSC requested from the Public Purpose Fund to meet the salary and on-costs of staff required to conduct investigations about lawyers involved in compulsory third party (CTP) insurance fraud. The 2020-2021 financial year saw an increase in work on CTP related investigations, requiring one full time grade 4 Legal Officer engaged for 6 months, and one grade 6 Clerk performing part time duties throughout the year. The CTP funding variance column indicates the remaining available balance of funding after full FY21 expenditure.

CASE STUDIES

Complaint involving a failure to comply with disclosure obligations resulting in a Binding Costs Determination

The complaint involved a consumer matter costs dispute regarding the provision of services over three days. The complainant sought initial advice from the lawyer regarding a commercial dispute. Contact was made between the complainant and the lawyer on a Friday and a first conference was set for the Tuesday. Following that first conference the complainant determined not to proceed with the matter and the lawyer issued an invoice for \$5,500.00 for work which was purported to have been completed in this matter. This invoice was disputed by the complainant.

As the complaint was unable to be resolved, a binding costs determination was made reducing costs to what could reasonably be said to have been accrued by the lawyer at the first conference. This determination was made on the basis that no costs disclosure, beyond advice regarding the hourly rate of the lawyer and his associate, had been provided to the complainant; there was no indication that the complainant had been advised that work had been completed prior to this first conference; there was no indication that the complainant had been advised, at that first conference, of the costs that were purported to have been accrued; and that the costs charged under the disputed invoice could not be, on balance, proportionate or reasonably incurred in accordance with section 172(1) of the Legal Profession Uniform Law. Costs were ultimately reduced to \$3,000 inclusive of GST.

Complaint involving a failure to provide updated costs disclosure

This complaint involved a costs dispute. The lawyer had issued an invoice to the complainant for the sum of approximately \$30,000. The initial estimated costs in this matter were between \$4,000.00 - \$6,000.00. No updated written estimate of costs had been provided at any time nor had costs disclosure been provided for the work to be completed by third parties, including overseas law firms, in this matter.

Ultimately the complaint was informally resolved between the parties and costs were reduced to \$6,000 plus GST and \$4,500 plus GST for a secondary matter.

Complaint involving a failure to issue an invoice

The complainant engaged the services of the lawyer in a debt recovery matter in July 2019.

The complainant paid for the legal services in cash but was not issued with a receipt.

In early February 2021, the lawyer informed the complainant that he could no longer continue the case due to declining health.

The complainant tried unsuccessfully for 3 months to contact the lawyer in order to obtain an invoice. The complainant sought this Office's assistance on 15 May 2021.

After contact from this Office an invoice was provided 3 weeks later.

Complaint involving concerns of poor service

The complainant engaged the services of the lawyer for advice and representation in a family law matter in 2019.

On 26 July 2019 the law firm provided the complainant with a cost agreement and a disclosure document.

In February 2020, the law firm's retainer was terminated due to the complainants' dissatisfaction with the services provided by the firm.

A complaint was received by this Office on 8 July 2020 which contained a costs dispute citing that the fees incurred were excessive and unreasonable. The total amount outstanding was \$44,172.83 inclusive of the law firm's cost and disbursements and the barrister's fees.

The law firm proposed to reduce their fees by \$8,000, which was conditional on payment by equal instalments over a period of 6 months. In addition, the law firm was willing to liaise with the barrister in order to obtain a reduction of these fees.

On 21 July 2021, after several counter proposals and assistance by this Office, the law firm agreed to an additional reduction in fees to \$7,035.90. This equated to a total reduction of \$15,053.90 or a discount of 19%, which the complainant accepted.

The law firm provided a Deed of Release that the complainant agreed to sign. The complainant was happy with the outcome and the complaint was closed on the basis that it had resolved.

Complaint involving poor quality of service

The lawyer acted for the complainant in regard to an employment dispute. The complainant alleged that the lawyer did not discuss the costs and also raised issues regarding the quality of service they received.

Through the informal resolution process the complainant and the lawyer were able to agree on an amount that both parties considered fair and reasonable in all of the circumstances. The complainant indicated that they could not afford to pay the costs up front and requested that the costs be paid in accordance with a payment plan.

This Office assisted the parties to agree on a reasonable plan to pay the costs. The Commissioner determined to close the complaint on the basis that it had been resolved.

Complaint involving a failure to comply with disclosure obligations resulting in a Binding Costs Determination

The lawyer acted for the complainant and their partner to prepare various documents including Wills and Powers of Attorney. The work took place over a long period of time and the complainant alleged that they did not receive an estimate of costs for all of the documents that were to be prepared. The complainant disputed the invoice on the basis that the costs were excessive, and that appropriate costs disclosure had not been provided. This OLSC attempted to assist the parties to informally resolve the dispute however an agreement could not be reached.

The Commissioner then considered whether any further action in relation to the matter would be appropriate. In considering all the information before him the Commissioner made a Binding Costs Determination to reduce the invoice in dispute from \$5,689.00 to \$4,312.00. The Commissioner's decision reflected that only a verbal estimate had been provided in regard to some of the documents and that the lawyer had failed to comply with their disclosure obligations pursuant to section 174(1)(a) of the Legal Profession Uniform Law. The Commissioner took into account that work had been completed in relation to the matter and there was not a dispute as to the quality of work.

Complaint involving allegations of unprofessional and inefficient service

The complainant had retained the firm to assist him with the administration of a family member's Estate. He alleged the service provided by the lawyer had not been professional or efficient in a number of respects and was seeking a reduction in the fees charged. The complaint was not made in time to be dealt with as a costs dispute, however, the conduct aspects were put to the firm in an attempt to resolve the matter informally.

The firm responded very promptly indicating that the lawyer had left the firm. The firm admitted that it had not advised the complainant of the lawyer's departure, apologised for that and the failure to return emails and calls. The firm provided evidence that the outstanding work had in fact been completed and offered to reduce its fees, which the complainant accepted to resolve the complaint informally.

Complaint involving a costs dispute for conveyancing work

The complainant had retained the firm to assist her when she and her family members purchased a number of off-the-plan properties in the same development. The complainant disputed the lawyer's costs on the basis that the lawyer did not keep adequate records of correspondence from the vendor's lawyer regarding relevant insurance and the sunset date for the development. The complainant alleged that this generated unnecessary work which the complainant was charged for.

The complaint was put to the lawyer who offered a small reduction in her fees. The complainant rejected that offer and provided a counteroffer to be put to the lawyer. The lawyer rejected the counteroffer but did offer a further reduction of her fees. After careful consideration of the material on the file, the complainant was encouraged to give serious consideration to the lawyer's second offer. The complainant ultimately accepted that offer and the complaint was resolved informally.

Complaint involving an alleged failure to follow instructions

The complainant engaged the lawyer to redraft an agreement and alleged that the lawyer failed to follow his written and verbal instructions. The complainant sought a full refund of the costs paid on the basis that the agreement produced was not suitable for his intended and stated purposes.

The lawyer was of the view that the firm produced different versions of the agreement for the complainant's input and received no feedback of the complainant's apparent dissatisfaction. The lawyer maintained that the firm did work beyond the scope of the Cost Agreement and declined to provide a full refund. Following informal resolution with assistance from this Office, an agreement was reached between the lawyer and the complainant for the lawyer to provide a partial refund of \$600 to resolve the matter.

Complaint involving allegations of negligence

The complainant instructed the lawyer in relation to the sale of a property. The property was held in equal shares by three individuals. The complainant alleged that the firm failed to distribute the settlement monies in accordance with previously agreed percentages. The complainant advised that she had to engage new lawyers to file a Statement of Claim to rectify the situation.

The complainant sought compensation for her legal fees associated with rectifying the error and accrued interest, a sum of approximately \$5,000.

The lawyer accepted that their employee made an error in calculating the settlement figures and apologised for the inconvenience. The lawyer noted that the complainant had already successfully recovered a portion of her legal fees as well as accrued interest. The lawyer proposed to compensate the complainant the balance of her claim, a sum of approximately \$2,500. This was accepted by the complainant.

Complaint involving allegations of negligence

The complainants instructed the lawyer in a property law matter. The complainants alleged that the lawyer failed to inform them that they would be liable to pay Surcharge Purchaser Duty. The complainants received a Notice from NSW Revenue seeking payment of the Surcharge Purchaser Duty as well as interest accrued. The complainants sought a full refund of their legal fees as well as compensation for the interest accrued.

The lawyer proposed to compensate the complainant the interest accrued. The complainants maintained that they were seeking both a refund of their legal fees as well as compensation for the interest accrued.

Following informal resolution with assistance from this Office, an agreement was reached between the lawyer and the complainants for the lawyer to provide a full refund of their legal fees as well as compensation for the interest accrued, totalling a sum of approximately \$1,800.

Complaint involving allegations of negligence

The complaint involved a conveyancing matter where the complainant alleged that the lawyer was negligent in filling out the address for the serving of notices. As a result, the complainant did not receive any Strata notices, the Strata Company had an incorrect address on record, and ultimately a Statement of Claim was filed against the complainant for the outstanding Strata levies.

The matter was complicated by the fact that the complainant did not speak English as a first language, had incorrectly identified the subject lawyer and that settlement had occurred more than 2 years prior to the complaint being made.

This Office identified the lawyer with carriage of the complainant's matter and liaised with the Principal of the firm. The matter was ultimately resolved by the Principal agreeing to pay not only the outstanding strata levies but also an additional amount of approximately \$800 to the complainant for the inconvenience that he had experienced due to this error.

Complaint involving an alleged failure to provide an updated estimate

The complainant instructed the lawyer in a prolonged family law matter. The complainant disputed the lawyer's legal costs on the basis that the Cost Agreement provided an estimate of total legal costs of \$20,000 - \$30,000, however, the legal fees escalated to \$100,000.

The matter was complicated by the fact that the complainant and the lawyer were initially business associates, had the same circle of friends and had previously failed to negotiate as to the costs.

The Commissioner ultimately determined that the lawyer had failed to provide the complainant with written updated cost disclosure and pursuant to section 290(2)(a) of the Legal Profession Uniform Law, the lawyer was cautioned for his failure to comply with his cost disclosure obligations.

The Office of the Legal Services Commissioner

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

Tel: (02) 9377 1800

Fax: (02) 9377 1888

Toll free: 1800 242 958

Email: olsc@justice.nsw.gov.au

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