

The cover features a white background with large, overlapping geometric shapes in shades of light grey and dark red. The shapes are angular and layered, creating a sense of depth and movement. The text is centered in the upper right quadrant.

ANNUAL REPORT

2022 – 2023

Office of the NSW
Legal Services
Commissioner

Organisational Chart

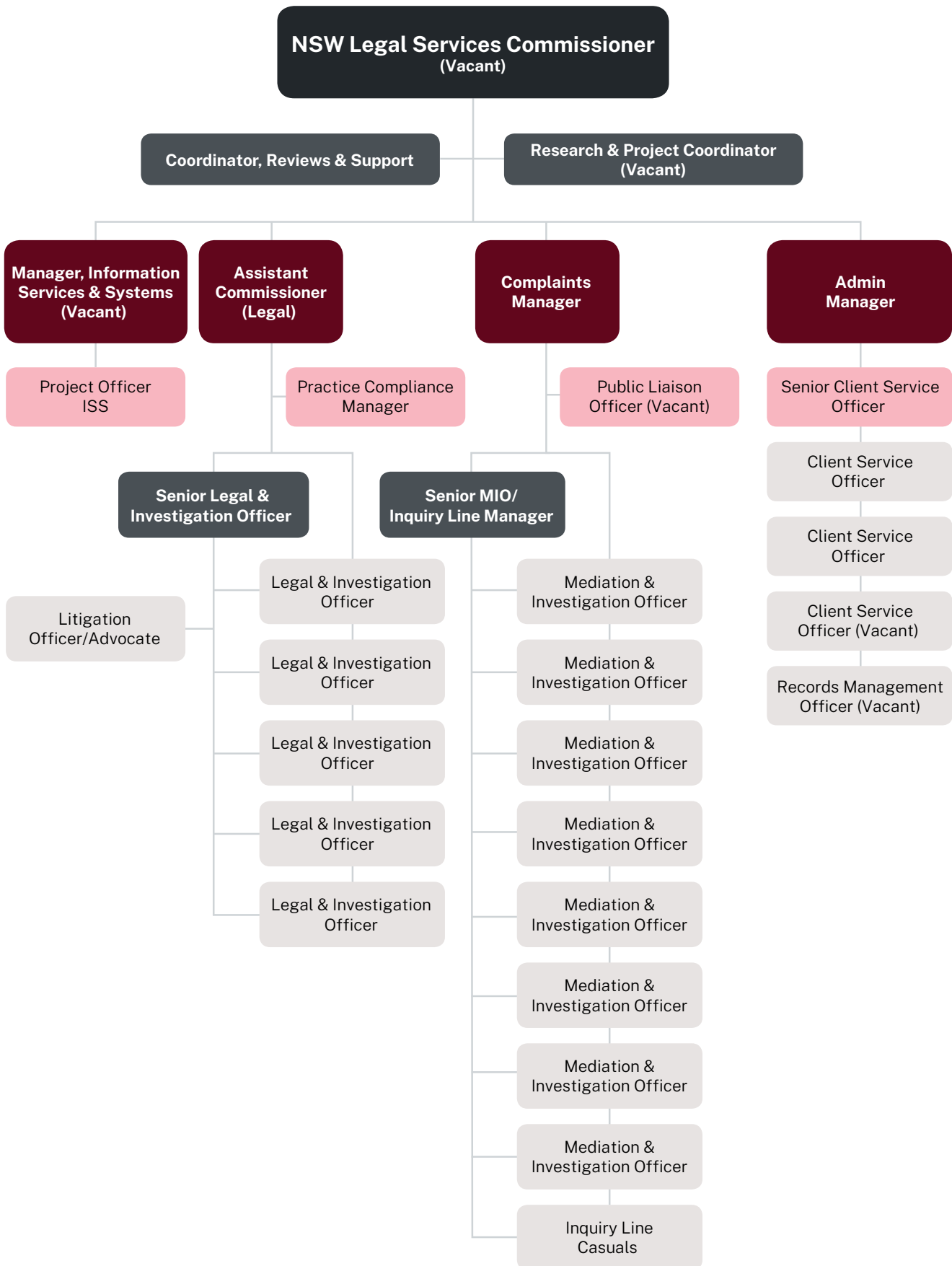


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Chapter 1

Acting Commissioner's Report

The 2022-23 reporting year has been one of change for the OLSC. The lifting of COVID-19 mask mandates in September 2022 and mandatory isolation requirements in October 2022 signalled the start of a new normal, with OLSC settling into a variety of flexible working arrangements. Whilst the World Health Organisation (WHO) declared the global public health emergency over on 5 May 2023, the OLSC continued to experience disruption with a number of staff succumbing to COVID-19 during the course of the reporting year, some more than once.

The number of complaints being processed remained high, with a total of 2,842 complaints received in the 2022-23 financial year. This, coupled with staff movements and shortages, made for high caseloads for individual case officers, with many on the consumer matter/costs disputes team regularly handling a load of 80-100 cases. Despite this, 2,943 complaints were finalised in the reporting year, and the percentage of complaints older than 12 months fell. It is hoped the establishment of an additional Mediation and Investigation Officer role will help reduce individual caseloads to a more manageable level in the next reporting year.

The transition from a paper based complaint system to electronic files, which began in December 2020, is now almost complete, with most complaints lodged via our online complaint portal or by email, and staff working with electronic documents or scanned versions of hard copy correspondence. Having a user friendly online complaint portal and working with electronic documents has brought its own challenges, with the OLSC noting an increase in the amount of material submitted with complaints. Complaints of over 200 pages are not uncommon, and one complainant submitted 10,000 pages of material! Complainants also tend to provide complaint material by way of emails with multiple attachments, or a series of emails with single attachments. One complainant sent his complaint in 92 separate emails. The OLSC continues to work on strategies to assist complainants to clarify their complaints, identify key issues, and pinpoint key documents, and to manage their expectations of the outcomes that can realistically be achieved by way of the complaints process.

Work continued on the project to integrate data from the solicitor database curated by the Law Society of NSW to our Complaints Management System (CMS) but unfortunately could not be completed by the end of the reporting year. It is hoped this important piece of the IT puzzle will be in place by the end of the next reporting year. We also still await passage of 34 proposed "first priority" amendments to the *Legal Profession Uniform Law* which formed part of a raft of proposed amendments first put forward by legal profession regulators in 2018.

The release of ChatGPT during the reporting year sparked discussion on the use of large language models and generative AI, and the changes this might bring to consumers, the legal profession and legal profession regulators. The OLSC will continue to monitor developments in this rapidly changing space, participate in discussions and liaise with our co-regulators, interstate counterparts, the Legal Services Council and the Commissioner for Uniform Legal Services Regulation to ensure the *Legal Profession Uniform Law* and accompanying Uniform Rules remain relevant and fit for their key purpose – to protect clients of law practices and the public generally.

Last but certainly not least, on 31 March 2023 John McKenzie retired after 8 years as NSW Legal Services Commissioner. His tenure saw fundamental changes to legal profession regulation and the working life of the OLSC staff, including:

- The introduction of the Uniform Law, with a resulting need to modify and update our complaint handling process to accord with the new legislation;
- The growth of the #MeToo movement, recognition of the prevalence of sexual harassment in the legal profession and introduction of a dedicated phone line and online platform to receive informal reports of inappropriate personal conduct in a legal workplace, as an alternative to the formal complaint process;
- The introduction of an online complaint portal and electronic case management system replacing the previous paper complaint form and files;
- The COVID-19 pandemic with its rolling lockdowns, restrictions and disruption;
- Transition from working 5 days a week in the Sydney CBD office to hybrid working from the office and from home; and
- A comprehensive review of the Australian Solicitors' Conduct Rules, the first since 2011, which notably resulted in the introduction of Rule 11A concerning conflicts of interest when providing short-term legal assistance services and revision of Rule 42 which proscribes discrimination, sexual and other forms of harassment and workplace bullying.

We thank John for his calm, pragmatic leadership through these turbulent times and wish him a long, happy and healthy retirement.

Samantha Gulliver
Acting Legal Services Commissioner

Chapter 2

Legal and Investigation Team

As the workforce starts to learn to “live with COVID-19” the hybrid model of combining work from home with work at the office has become “the new normal”. Consequently, the Legal & Investigation team continued to work predominantly from home, dealing with complaints, conducting investigations and running litigation remotely, where required.

Complaints containing disciplinary matters

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

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

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

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

The OLSC is not bound by rules of evidence and may inform itself of any matter in any manner as it thinks fit. Further information may be requested from the complainant, the respondent lawyer or any other person who may have relevant information. However, the OLSC is not required to give a complainant or a respondent lawyer an opportunity to be heard or make a submission before determining whether or not to close a complaint.

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

Complaints may be closed for any of the ten reasons set out in section 277 of the *Legal Profession Uniform Law (NSW)* (‘Uniform Law’). 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, they may determine the matter by making any of the orders specified in the Uniform Law section 299.

Orders may include:

- Cautioning or reprimanding the lawyer
- Requiring an apology from the lawyer
- Requiring the lawyer to redo the work that is the subject of the complaint at no cost or at a reduced cost
- Requiring the lawyer to undertake training, education or counselling
- Requiring the lawyer to pay a fine of up to \$25,000
- Recommending the imposition of conditions on the lawyer’s practising certificate.

Alternatively, if the Commissioner is of the opinion that the alleged conduct may amount to professional misconduct, or unsatisfactory professional conduct that would be more appropriately dealt with by the Tribunal, they 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 high with over 2,800 separate written complaints. 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, especially as attachments to emailed complaints.

Consistently for a number of years, more complaints were received in relation to family and de facto law matters than any other area of law at around 22% of all complaints. 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 reasonable 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 in family law matters 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.

Also consistent over recent years, complaints in relation to deceased estates (covering wills, powers of attorney, probate and family provision claims) are common at around 9% of all complaints. Many of these complaints are from beneficiaries of the estate who complain about the lawyer who is either the executor of the estate, or the lawyer who represents the executor of the estate. The issues complained about are typically delay, lack of communication about estate accounts and excessive legal costs. Often complaints arise from a misunderstanding of the rights and entitlements of a residuary beneficiary. The lawyer for the estate acts for the executor, not the residuary beneficiary, and therefore a residuary beneficiary generally does not have a right to information direct from the lawyer.

Another common complaint with respect to wills and powers of attorney is that the person making the will or power of attorney lacked legal capacity to do so. Complainants allege that the lawyer either knew that their client lacked capacity, or did not sufficiently assess their capacity prior to taking instructions.

The most commonly made complaint, across all complaints received was negligence at around 20% of all complaints, 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 to five (5) lawyers and issued cautions to nine (9) lawyers.

Reprimands were issued for conduct including:

- Acting without authority and/or proper instructions
- Misleading or attempting to mislead the Tribunal
- Failure to appropriately respond to the Administrative Appeals Tribunal
- Failure to appear at Court without reasonable excuse
- Misleading the client about the status of a costs assessment
- Sexual harassment and workplace bullying

Cautions were issued for conduct including:

- Inappropriate social media posts about an opposing party
- Inappropriate comment to a Police Prosecutor in Court premises
- Failure to inform an opposing party of an adjournment application to the Court
- Inappropriate publication of personal information in a Google review
- Failure to provide the client a copy of their legal file
- Failure to respond accurately or in a timely manner to correspondence from an opposing lawyer
- Failure to advise the client in a timely manner of the status of their proceedings
- Delay in progressing a client's probate proceedings
- Breach of undertaking
- Inappropriate submissions to the Court in family law proceedings
- Discourteous and threatening correspondence to an opposing lawyer

CASE STUDY

Complaint involving inappropriate communication on a social media website resulting in a finding of unsatisfactory professional conduct and an order cautioning the lawyer

The lawyer had represented a client in a criminal law matter, related to ongoing family law proceedings, where police were prosecuting the male client, and the female witness against him was his former partner. The day after the hearing, the lawyer published a number of posts on a social media website, in a discussion with his friends/contacts, where he used inappropriate language in describing the former partner / complainant. The complainant was made aware of these posts by a third party who saw them on the lawyer's public social media feed/timeline. The complainant stated that she felt bullied, intimidated, and was concerned it would happen again should the lawyer represent that client in a future matter involving

her. There was in fact an ongoing matter coming up for hearing. Upon being notified of the complaint, the lawyer was immediately apologetic, said he thought the posts would be limited to his group/followers, not publicly available, and not intended to be read by the complainant. He further submitted that he did not intend to intimidate her or prejudice her in future proceedings. The lawyer completed various courses in ethics and digital media, has promised that the conduct will not be repeated, and proposed to withdraw from representing that client in the upcoming matter. On this basis, the Commissioner made a finding of unsatisfactory professional conduct and cautioned the lawyer.

Disciplinary proceedings

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

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

NSW Legal Services Commissioner v Sandra Lal

On 6 June 2022, the Commissioner commenced proceedings in the Tribunal against the lawyer. The application alleged the lawyer engaged in professional misconduct by intentionally making false representations on three (3) separate occasions, in correspondence to a third party. The false representations were that her spouse was a client of her employer (a law practice), in relation to a claim against the third party by her spouse, whilst the lawyer knew that her spouse was not a client of her employer. The lawyer subsequently entered into an Instrument of Consent pursuant to section 144 of the *Legal Profession Uniform Law Application Act 2014*.

On 6 October 2022, a hearing took place before the Tribunal, in which the lawyer gave sworn evidence. On 15 November 2022, consistent with the Instrument of Consent, the Tribunal found the lawyer guilty of professional conduct, reprimanded her, required her to undertake further legal education and required her to pay the costs of the proceedings.

Internal reviews

Decisions made by the Commissioner or their delegates, the Council of the Law Society of New South Wales and the Council of the New South Wales Bar Association, are final except that the Commissioner may (at their absolute discretion) conduct an internal review of a decision if they consider it appropriate to do so. On review, the Commissioner must consider whether the decision was dealt with appropriately and whether the decision was based on reasonable grounds, and may confirm the original decision, make a new decision or refer it back to the original decision maker.

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

Reviews by NSW Civil & Administrative Tribunal

No lawyers challenged the Commissioner's decision in the reporting year and therefore there were no applications for review in the NSW Civil & Administrative Tribunal.

CASE STUDY

Complaint involving inappropriate communication on Court premises resulting in a finding of unsatisfactory professional conduct and an order cautioning the lawyer

The lawyer represented a client in a lengthy and complex criminal law matter before the Local Court. The opposing lawyer was the police prosecutor. Over the course of the proceedings, there were many robust exchanges between the lawyer and the prosecutor, both in Court and during recess in the Court premises. In one such exchange, during a brief recess where the Magistrate left the bench, but whilst all parties and members of the public were in the Court room, the lawyer called the prosecutor a "corrupt police officer". This exchange was recorded by the Court audio monitors. The prosecutor

made a complaint to the OLSC and the complaint was investigated. It was the Commissioner's view that it was inappropriate that the lawyer use such a pejorative term, and unnecessarily inflammatory. The Commissioner was concerned that the comment was made in a Court room, albeit not whilst the Magistrate was present. Ultimately the lawyer expressed regret and offered an apology to all concerned. On this basis, the Commissioner made a finding of unsatisfactory professional conduct and cautioned the lawyer.

Judicial review by the Supreme Court of New South Wales

NSW Legal Services Commissioner vs Farshad Amirbeaggi

Mr Amirbeaggi brought judicial review proceedings challenging two decisions of the Commissioner: firstly, a decision to caution Mr Amirbeaggi for breach of rule 4.1.2 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Solicitors' Rules) and, secondly, a decision to reduce legal costs charged by him to the relevant client from \$5,005 to \$3,000.

The complainant lodged a complaint with the OLSC on 14 July 2020. The complaint was assessed as being a consumer matter including a costs dispute. After seeking submissions from both the complainant and Mr Amirbeaggi, the Commissioner was satisfied that it was fair and reasonable in all the circumstances to resolve the complaint by making a determination under section 290 of the Uniform Law. Mr Amirbeaggi was also cautioned in relation to a text message that he sent to the complainant, the content of which was considered to be unnecessary and inappropriate and therefore in breach of Rule 4.1.2 of the Solicitors' Rules. However, the Commissioner was satisfied that the conduct was not so serious to reach the threshold of unsatisfactory professional conduct. This led to the caution being made pursuant to section 290(2) (a) of the Uniform Law. The costs dispute aspect of the complaint was determined pursuant to section 292 of the Uniform Law and the amount payable by the complainant to Mr Amirbeaggi was \$3,000 inclusive of GST.

On 13 October 2021 Mr Amirbeaggi filed a summons for judicial review in the Supreme Court. On 29 July 2022 Mr Amirbeaggi also applied to the Commissioner for internal review of the above determinations pursuant to section 313 of the Uniform Law.

Mr Amirbeaggi challenged the decision to impose a caution under the Uniform Law section 290 for jurisdictional error and/or error on the face of the record on three grounds, namely:

- (a) that statutory preconditions to the exercise of the power were not considered nor met;
- (b) that the Commissioner failed to act according to the intent and purpose of the Uniform Law and failed to take into account relevant considerations; and
- (c) that the exercise of discretion was "erroneous and unreasonable".

In relation to the statutory precondition (set out in section 286) the Court was satisfied that the complainant had attempted to resolve the dispute with Mr Amirbeaggi before lodging the complaint with the OLSC. The Court was not unduly concerned that the Commissioner's reasons did not overtly or expressly refer to consideration of the issue under section 286 of the Uniform Law particularly as Mr Amirbeaggi had not referred to section 286 or any concerns in relation to its provisions in any of his submissions.

In relation to the relevant considerations, Mr Amirbeaggi submitted that the Commissioner did not attempt to mediate (pursuant to section 288) or settle the dispute (pursuant to section 289). Mr Amirbeaggi characterised this as a failure to perform his statutory duty. The Court did not consider any of these steps to be a prerequisite to making a determination under section 290 of the Uniform Law. Despite that, the Court considered that the Commissioner had made attempts to informally resolve the dispute at various stages up to and including notifying Mr Amirbeaggi of the preliminary decision. Given Mr Amirbeaggi's intransigence, the Court considered it was reasonable of the Commissioner not to give any consideration to formal mediation.

In relation to unreasonableness, the Court found that it was "plainly open to the Commissioner to be satisfied that Mr Amirbeaggi's text message and subsequent correspondence was unnecessarily and inappropriately discourteous". Therefore, the Court concluded, it was open to the Commissioner to determine that imposition of a caution was in all the circumstances fair and reasonable."

Mr Amirbeaggi challenged the Commissioner's determination in relation to the issue of costs on the ground that it was affected by error on the face of the record and/or jurisdictional error, saying it was unreasonable, based upon a wrong principle, was informed by extraneous or irrelevant matters and did not take into account a material consideration, in particular:

- (a) it was made without reference to the terms of the retainer between the complainant and Mr Amirbeaggi and thus failed to take into account a relevant consideration, and
- (b) it was an arbitrary determination without reference to the time spent by Mr Amirbeaggi in undertaking the work and the nature, scope and complexity of the work.

The Court considered that the Commissioner's reasons had clearly referred to the factors listed in section 200 of the Uniform Law and that the ultimate decision was "entirely rational" and one which was "entirely open to the Commissioner".

Consequently, the Court considered that Mr Amirbeaggi had failed to establish any grounds for judicial review and the summons was dismissed with costs.

Policy development

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

- Attending regular meetings of Uniform Law scheme policy officers
- Being part of a working group to progress proposed amendments to the Uniform Law
- Attending the annual Uniform Law Summit
- Responding to inquiries and consultation papers from the Legal Services Council and Commissioner for Uniform Legal Services Regulation as required. In this regard, submissions have been made to the Review of the Costs Disclosure Thresholds in the Uniform Law, for example

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

Case officers also met with departmental policy officers from the National Defamation Reform team to discuss extending the scope of the defence of absolute privilege to reports received by the OLSC particularly in relation to allegations of bullying and sexual harassment.

CASE STUDY

A NSW Legal Services Commissioner initiated complaint following a referral from a Senior Member of the Administrative Appeals Tribunal resulting in a finding of unsatisfactory professional conduct and an order reprimanding the lawyer

The lawyer was instructed to act for a client whose visa application had been refused by a delegate of the Department of Home Affairs. The lawyer's client instructed him to apply for a merits review of the decision with the Administrative Appeals Tribunal (the Tribunal). The lawyer advised his client that any of her close relatives who were domiciled in Australia could initiate the review application on her behalf. The client advised the lawyer to insert her brother as the review applicant on the application to the Tribunal, advising the lawyer she would obtain his consent. The lawyer lodged the review application naming the brother on the form, without having any instructions directly from him to do so.

The lawyer's client subsequently advised the lawyer she no longer wished to pursue the review

application. The lawyer sought to withdraw the application on behalf of the brother, again without having any instructions from him or having been retained by him. The Tribunal became aware that the brother had no knowledge of the application and sought a response from the lawyer. The lawyer failed to respond to the Tribunal over a period of 8 months. A Senior Member of the Tribunal referred the lawyer's conduct to the OLSC and the Commissioner initiated a complaint against the lawyer on the basis of the referral.

Following an investigation, the lawyer conceded the conduct and provided an apology. The Commissioner ultimately determined the complaint by making a finding that the lawyer engaged in unsatisfactory professional conduct and made an order reprimanding the lawyer.

Chapter 3

Consumer Matters

The 2022-23 reporting year has been another busy one for the consumer team with the effects of staff movement, unavoidable recruitment delays and the lingering effects of COVID-19 and other illness leading to higher than usual complaint numbers for case officers.

The general complexity of matters seems to be increasing and staff are often required to deal with matters involving significant documentation.

In 2022-23 the OLSC **received** a total of 2,842 written complaints, a decrease of 57 from the previous year. The OLSC registered the **completion** of 2,943 written complaints, a not insignificant increase of 104 from the previous year.

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

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

A **costs dispute** is a consumer matter involving a dispute about legal costs payable on a lawyer-client basis where the dispute is between a lawyer or law practice and a

person who is charged with those legal costs or is liable to pay those legal costs (other than under a court or tribunal order for costs), whether as a client of the lawyer or law practice or as a third party payer.

The OLSC must attempt to resolve a consumer matter by informal means. The Commissioner also has power to make a determination under section 290 of the Uniform Law, if satisfied that it is fair and reasonable in all the circumstances, and/or a binding determination about costs. As has been noted in previous Annual Reports, giving an indication to a lawyer that the Commissioner may give consideration to making a determination in a consumer matter or a costs determination, where grounds exist to support that, will often have the effect of encouraging a lawyer to engage in attempts to informally resolve the complaint. Mediation & Investigation staff also encourage complainants to actively participate in the informal resolution process through the OLSC.

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

CASE STUDY

Complaint involving a failure to provide written costs disclosure and agreed refund resulting in a consumer matter caution, an order to reduce fees and a compensation order

The complainant complained about the costs and conduct of his previous legal representative in a criminal matter. This included allegations that the lawyer did not provide a costs estimate and failed to provide a partial refund of \$770.00 in accordance with an agreement to do so.

During the informal resolution process, the lawyer conceded that no written costs disclosure had been provided to the complainant. The lawyer maintained on several occasions that there was no delay in providing the partial refund as he still intended to provide it, however declined to stipulate a date by which he would do so.

The Commissioner considered that there was insufficient evidence of overcharging to order the solicitor to provide the full refund requested by the complainant. Nonetheless, the Commissioner considered that there was sufficient evidence to

conclude that the solicitor failed to comply with his costs disclosure obligations pursuant to section 174(1)(a) of the Legal Profession Uniform Law (Uniform Law). Further, the Commissioner concluded that the solicitor had failed to provide the agreed refund in all the circumstances.

The Commissioner determined to make three orders pursuant to section 290 of the Uniform Law to resolve this matter. The lawyer was cautioned in relation to his failure to provide written costs disclosure and agreed refund in a timely manner. The lawyer was also ordered to reduce his fees and provide compensation to the complainant in accordance with the agreed refund.

The year under review

Of the total written complaints received, 1,360 were assessed as consumer matters, 1,467 as disciplinary matters and 7 as mixed matters. On receipt 8 complaints could not be classified as a consumer matter or disciplinary matter. In the 2022-23 financial year, from the consumer matters received, we assessed a total of 588 as **cost dispute** complaints.

For this reporting year Family and De facto matters were again the areas of law most represented in consumer matters (19.9%), followed by Other Civil matters (15.5%) Criminal (10.5%) Personal Injuries (10.2%) and Conveyancing (10%).

Breaking down the main issues in Consumer matters, these were Negligence (31.8%) Communication (22.8%) Overcharging (10.9%) and Delay (9.3%).

In 2022-23 Family and De facto matters were also the areas of law most represented in cost disputes (26.7%) followed by Other Civil matters (14.1%) Criminal (10.5%) Personal Injuries (8%) and Probate/ Family Provision (7.7%).

Outcomes

For the 2022-23 reporting year, 343 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, 260 of the **costs disputes** received were either resolved or closed.

Complainants may be referred to the New South Wales Costs Assessment Scheme in circumstances where the totality of the costs involved, or the amount in dispute, may exceed the limits of the OLSC's jurisdiction. This may also be the case where the invoices in question fall outside the time periods allowed for the OLSC to deal with a costs dispute.

CASE STUDY

Complaint involving a building law matter resulting in resolution

The complainant retained the lawyer in December 2022 to assist with a building dispute. The lawyer provided the complainant an initial cost agreement with a fixed cost of approximately \$8,000.

The first invoice was issued in February for approximately \$5,000 which the complainant paid willingly. The second invoice as well as a revised cost agreement was issued in March. The revised cost agreement totalled approximately \$41,000 and the second invoice, which also included unbilled charges for the period of the first invoice, totalled approximately \$31,000. The complainant disputed the lawyer's costs on the basis that they exceeded the amount in the original cost agreement without the lawyer providing an updated costs agreement as soon as practicable after there was a significant change to the original disclosed amount.

The OLSC assisted the parties to informally resolve the dispute. The lawyer was asked to respond to the complaint and indicate how they had complied with their disclosure obligations under the Uniform Law. The lawyer accepted that the updated costs agreement was not provided to the complainant as soon as practicable after there was a significant change to the legal costs payable, and noted they had provided offers to the complainant to reduce the invoice prior to the complaint being lodged with the OLSC.

The OLSC liaised with the complainant and the lawyer, exchanging offers to settle the dispute. Ultimately, in order to resolve the dispute, the lawyer offered to waive the invoice, and the complainant accepted the proposal.

Mediation & Investigation Officers are also obliged to inform complainants of the right to apply for a costs assessment where attempted resolution through the OLSC has been unsuccessful. However, the costs potentially associated with such an application may not be viable in disputes about smaller amounts.

The OLSC acknowledges that for many people, engagement in legal proceedings may not be something they have previously experienced and can be challenging and confusing. Our Mediation & Investigation Officers cannot give legal advice or opinion, but are often able to supply additional procedural or contextual information to complainants that had not previously been made available to them by their lawyers. Whilst the provision of additional information may not always resolve all of a complainant's concerns, it can assist their understanding of why events may have occurred and, in many instances, this may be sufficient to resolve the complaint.

Allegations of negligence remain a significant proportion of the consumer matters that come before the OLSC. In some cases, complaints containing allegations of negligence may be able to be resolved by negotiation to the satisfaction of the parties but there are also instances where such disputes would be more properly referred to the civil Courts for determination. It is a requirement for lawyers practising in New South Wales to hold insurance in the event of a client making a claim against them alleging professional negligence.

Costs Disclosure

It is unfortunate that each year we note that the OLSC continues to receive complaints of instances of inadequate, misleading or non-existent disclosure of costs, despite the current disclosure regime having now been in place for some 8 years.

As has previously been observed in our Annual Reports, the family law area seems to significantly contribute to complaints in this regard, this year representing over a quarter of cost disputes. While it may be the case that family lawyers cannot always predict the direction that a matter may go in, that it may require urgent and/or unforeseen action or that anticipated resolutions may break down, it would seem from the complaints to the OLSC that there is a deficiency in communicating the cost implications when such changes occur. We encourage all lawyers working in this challenging area of law to regularly review their cost disclosure regimes to ensure that clients are being provided with accurate and timely information about cost implications.

Increasingly where the OLSC identifies a failure to provide adequate costs disclosure, the Commissioner will utilise the power to issue a consumer matter caution pursuant to section 290(2)(a) of the Uniform Law. In more serious instances, such failures may also constitute unsatisfactory professional conduct or professional misconduct pursuant to section 178 of the Uniform Law.

CASE STUDY

Complaint involving a costs dispute resulting in a resolution

The complainant instructed the lawyer in a workers compensation matter. The complainant alleged that he had been overcharged by the lawyer and that the lawyer failed to provide an adequate level of service. The complainant held concerns about the level of communication he received from the firm, and he was unhappy that his matter had been transferred to different lawyers within the firm.

The complainant argued that he could not afford to pay costs of \$9,709.15, as he was behind in his mortgage repayments and working part time due to his injury.

The lawyer maintained that the complainant was updated on his matter throughout and that he had been provided with an itemised account. However, the matter ultimately resolved when the lawyer decided not to seek recovery of the outstanding costs in light of the complainant's difficult financial circumstances.

Judicial consideration of the Consumer Matter powers

This reporting year saw an application for a review of determinations made by the then Commissioner pursuant to the consumer matter powers contained within the Uniform Law.

In the matter of *Amirbeaggi v NSW Legal Services Commissioner* [2023] NSWSC 555, the solicitor sought judicial review of the decision to caution him pursuant to section 290(2)(a) for a breach of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) r 4.1.2 (which relevantly provides that a solicitor must be courteous in all dealings in the course of legal practice), and the decision (pursuant to the Uniform Law, section 292) to reduce the legal costs charged by him to the relevant client from \$5,005 to \$3,000.

In relation to the consumer caution for discourtesy His Honour held: *'... it seems to me that it was plainly open to the Commissioner to be satisfied that Mr Amirbeaggi's text of 9 July and subsequent correspondence was unnecessarily and inappropriately discourteous. So holding, and imposing a very modest sanction for it, serves the proper purpose of maintaining the reputation of the profession, by "calling out" discourteous behaviour.'*

And further

'In such circumstances, practitioners are expected to show moderation and restraint. I do not accept that the pressures of modern practice are such that it is acceptable for practitioners to be other than courteous to their clients.'

In terms of the determination as to costs, the Court held:

'The decision was not made without reference to the terms of the retainer; it plainly had regard to the rates chargeable -and to the provisions for termination-contained in it. Nor was it "arbitrary"; it had regard to the time spent by Mr Amirbeaggi and the nature, scope and complexity of the work, but it disallowed part of what he claimed, because it was effectively wasted.'

The result was a pleasing endorsement of the approach taken by the OLSC in the matter and the decision also provided some procedural comment that will be valuable going forward.

Communications

As can be seen from the statistics, a significant proportion of the consumer complaints result from issues involving communication.

We have previously observed that a small number of lawyers each year magnify the difficulties that have led to a complaint, by subsequently delaying their responses to the OLSC.

Sometimes we become aware of instances where lawyers have been dealing with significant issues with their physical health or may be suffering with mental health problems. In other instances, there may be no obvious explanation for the failure to respond to the inquiries of the Regulator. Continued instances of failure to respond may result in a law practice being referred to the Compliance Audit team for consideration to be given to conducting an audit of the practice. In more serious instances, continued failure to respond or supply relevant information may raise questions as to whether the lawyer should maintain a right to practice.

CASE STUDY

Complaint involving a costs dispute in a family law matter resulting in resolution

The complainant instructed the lawyer in a family law matter. The complainant alleged that the lawyer had charged excessive costs of \$81,365.35 and that the lawyer delayed the case and failed to follow the complainant's instructions in relation to the processing of the divorce.

The complainant submitted that the lawyer failed to advise the opposing party to curtail correspondence and failed to address derogatory emails that her former partner had posted on social media despite her requests that he deal with that matter. The complainant also alleged that the lawyer spoke to her in a rude and demeaning manner.

Whilst the lawyer denied the allegations relating to his conduct and level of service, he agreed to negotiate his costs in the interests of informally resolving the dispute. The OLSC assisted the parties to informally resolve the dispute and the complainant ultimately agreed to accept the lawyer's offer to reduce the costs to \$58,650.09. The matter was resolved on that basis.

In dealing with complainants and lawyers, case officers deal with people who are unhappy because they have a complaint or may be unhappy because a complaint has been made against them. Once again this year, staff have reported impatient and aggressive approaches that may be reflective of particular challenges, whether related to cost of living issues or lingering stresses from the pandemic. Needless to say, staff of the OLSC are not required to put up with instances of abuse or threatening behaviour and it is pleasing that, despite an apparent increase in these reports, most people dealing with the OLSC do so in a respectful and courteous manner.

Once again, the OLSC commends the considerable resources offered by the Law Society to lawyers who may be suffering work or life stresses.

Inquiry Line

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

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

In total, for the 2022-23 reporting year, 4,929 calls were made to the Inquiry Line, a decrease of 524 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 4,929 calls made to the Inquiry Line, 1,615 callers expressed interest in participating in the survey and, of the survey forms issued, 281 were then completed online or sent back to the OLSC for analysis.

Overall, results were overwhelmingly positive. 96.8% of callers agreed with the statement that the call was handled promptly, 94.00% of callers agreed with the statement that the information provided was helpful and 97.5% of callers agreed with the statement that the Inquiry Line staff member was professional and courteous. In addition to this, 92.5% of callers indicated that they would recommend the OLSC's Inquiry Line service to a friend or relative.

Assistance provided to complainants with a special need or disability in preparing their written complaints to the OLSC

The OLSC's Public Liaison Officer (PLO) assists a large number of people each year.

Interviews to prepare written complaints during this reporting year continued to be conducted via telephone reflecting the on-going situation with COVID-19 related work practice changes.

There are many reasons why potential complainants seek assistance from the PLO. Potential complainants may need assistance due to an intellectual or physical disability. The potential complainant may also suffer from mental health issues or illiteracy. For others it may be that English is not their first language and they require the assistance of an interpreter which can be organised by the OLSC. They may also be suffering from social isolation or other logistical issues such as an inability to access/use computers. Potential complainants who seek assistance from the PLO also may include the elderly, survivors of domestic and family abuse, survivors of child sexual abuse within institutional care and refugees.

There are various areas of the law in which potential complainants seek assistance from the PLO, however, the majority of the complaints appear to be coming from the following areas of law:

- Personal injury Law
- Family Law
- Immigration Law

When the PLO provides assistance, the potential complainants are given general advice about the OLSC's complaint handling process including the preliminary assessment of complaints and the timeframes within which to make their complaints. Sometimes complainants are referred to a more appropriate government agency or non-government service to seek special assistance relevant to their needs.

CASE STUDY

Complaint involving a costs dispute in a family law matter resulting in resolution

The complainant engaged the services of a solicitor to assist her with a family law matter.

The complainant alleged that there was poor communication between the parties resulting in her withdrawing her instructions in November 2022. A few weeks later the law firm issued her with an invoice in the amount of \$3,821. The invoice was for services rendered in the last month that the solicitor had carriage of her matter.

The OLSC then wrote to the solicitor requesting a response to the complaint. The solicitor apologised for the delay, which was attributed to high caseloads and staff shortages associated with COVID-19 as well as the after-effects of case back log from the pandemic.

The solicitor proposed waiving the amount in dispute. The complainant accepted the solicitor's explanation, and she was also satisfied with the outcome. The complaint was closed on the basis that it had been resolved.

CASE STUDY

Complaint involving an estate planning matter resulting in resolution

The complainant contacted a law firm via telephone in January 2023 with an initial inquiry regarding estate planning for himself and his wife. The initial phone inquiry was about 30 minutes in duration, with a follow up call the next day also 30 minutes long.

The complainant decided not to proceed with instructing the solicitor. However, he was surprised to receive an invoice in the amount of \$575.00. The complainant said that he was astonished as there was no mention of costs/fees, and he assumed that the phone consultations were free of charge.

The OLSC then wrote to the lawyer requesting a response to the complaint. The lawyer agreed to reduce his professional fees by half. The lawyer also informed the OLSC that moving forward he would clearly mention to prospective clients that he does not offer free consultations in order to avoid miscommunication as well as for transparency regarding his professional fees.

The complainant was satisfied that a compromise had been reached and paid the reduced invoice.

CASE STUDY

Complaint involving a failure to adequately disclose costs resulting in resolution

The complainant instructed the law practice in a motor vehicle accident claim. The law practice issued an invoice in the sum of \$20,049.20. The complainant alleged that the law practice failed to adequately disclose costs and failed to contract out of regulated costs. Therefore, the complainant asserted that the law practice was only entitled to be paid regulated costs in accordance with the legislation in the sum of \$3,940.20.

The OLSC assisted the parties with attempts at informally resolving the dispute. The parties were

unable to come to an agreement. The Commissioner then issued a preliminary view to make an order cautioning the lawyer for their failure to adequately disclose costs and an order to reduce the legal costs to the regulated amount.

Both parties made submissions and the complainant again proposed to pay the law practice regulated costs to resolve the matter. Ultimately, the law practice accepted this proposal to resolve the complaint and the complaint was closed on this basis.

CASE STUDY

Complaint involving inappropriate publication of information resulting in a finding of unsatisfactory professional conduct

The complainant complained about the conduct of a lawyer in responding to his Google review. This included an allegation that the lawyer published private and confidential information disclosed to him in a professional capacity by the complainant as a prospective client. The complaint was initially characterised as a consumer matter and subsequently re-characterised as a disciplinary matter.

In responding to the complaint, the lawyer conceded that he did not have the consent of the complainant to disclose his information on a publicly accessible website and expressed regret over the specific words used in his response. The lawyer otherwise maintained that his response was appropriate in the circumstances and declined to engage in attempts to resolve the matter informally.

Prior to the final determination of the matter, the Commissioner advised the lawyer of his preliminary view that the lawyer had not provided a cogent explanation for publishing the complainant's information and the alleged conduct was of

sufficient seriousness as to amount to unsatisfactory professional conduct as defined by section 296 of the Uniform Law. Whilst the Commissioner acknowledged that he did not have the powers to order the lawyer to remove his response; the lawyer was encouraged to do so in all the circumstances. The lawyer declined to do so.

Ultimately, the Commissioner determined that, by publishing confidential information disclosed to him by a prospective client on a publicly accessible website, the lawyer had engaged in unsatisfactory professional conduct as defined by section 296 of the Uniform Law. The Commissioner considered that the lawyer's response to the complaint indicated that he did not have full insight into his professional obligations of confidentiality or sufficient understanding of the seriousness of his conduct. Pursuant to section 299(1)(a) of the Uniform Law, the Commissioner determined to caution the lawyer.

CASE STUDY

Complaint involving a family law matter resulting in resolution

The complainant retained the lawyer to assist with a family law matter. The complainant was provided with a cost agreement and disclosure statement and monthly invoices during the matter. The complainant then terminated the engagement and lodged a complaint with the OLSC alleging the lawyer had provided poor quality service and had overcharged them.

The OLSC wrote to the lawyer requesting a response to the

complaint. The lawyer responded, disputing the quality of service allegations and noting that the processes taken were required under the Family Court Practice Directions, and were billed appropriately.

The lawyer offered to reduce the outstanding invoice by approximately \$1,300 if the bill was paid within 14 days. The complainant accepted that offer and paid the lawyer the reduced invoice to resolve the dispute.

CASE STUDY

Complaint involving a failure to disclose costs resulting in resolution

The complainant sought assistance from the lawyer for his employment law matter. The complainant then received an invoice for approximately \$4,000.00 which he says was unexpected as he did not provide instructions to the lawyer. The complainant suggested he had never received a costs agreement or an estimate of costs. The complainant indicated he had tried to resolve the matter with the lawyer however his calls were not returned.

The OLSC then assisted the parties to resolve the dispute and wrote to the lawyer requesting a response to the complaint. The lawyer indicated that while he did not agree with some parts of the complaint, he accepted that he did not disclose costs to the complainant and that the complainant had tried to resolve the dispute before contacting the OLSC.

In order to resolve the dispute the lawyer offered to waive the invoice. The complainant agreed to resolve the dispute on this basis.

CASE STUDY

Complaint involving a failure to provide an updated estimate of costs resulting in resolution

The complainant retained the lawyer to assist them with their family law matter. The complainant and lawyer had entered into a costs agreement which included an agreement for invoices to be provided monthly. Monthly invoices were not provided despite the complainant's requests, and the complainant ultimately received an invoice totalling approximately \$26,000.00. The complainant requested an itemised invoice and received an itemised invoice totalling approximately \$28,000.00.

The complainant attempted to resolve the dispute with the lawyer prior to contacting the OLSC however was unsuccessful. The complainant lodged the complaint with the OLSC alleging that the lawyer had overcharged him, did not comply with the agreement to provide monthly invoices and did not provide an updated costs estimate.

The OLSC proceeded to assist the parties to resolve the dispute and wrote to the lawyer requesting a response. The parties were informed that if a resolution was unable to be achieved the Commissioner would be unable to make a costs determination as the costs in dispute exceeded the monetary threshold. The lawyer was also informed that it did not appear he had complied with Regulation 74 of the *Legal Profession Uniform General Rules 2015* in that there did not appear to be an appropriately worded disclosure that the total amount of the legal costs in an itemised bill may be higher than the amount in the lump sum bill. The lawyer and the complainant both made various offers to resolve the dispute, with the complainant agreeing to pay \$24,000.00 to resolve the dispute.

CASE STUDY

Complaint involving allegations of professional negligence resulting in resolution

The complainant instructed the law practice in relation to a property settlement. The complainant alleged that the law practice failed to account for joint funds that had been previously released to the opposing party in the final distribution. As a result, the complainant claimed that she had suffered a loss in the sum of \$21,500.

The OLSC proceeded with attempts to assist the parties to informally resolve the dispute. The complainant proposed that the law practice compensate her for this loss by waiving the outstanding legal fees in the sum of \$16,500 and reimbursing her a sum of \$5,000. The lawyer accepted the offer on a commercial basis to resolve the complaint.

Chapter 4

Compliance Audits

With working life slowly returning to normal following the COVID-19 pandemic (albeit a 'new' normal involving many law practices embracing flexibility in hybrid office/home work arrangements), in the current reporting period the compliance audit team was pleased to be able to return to conducting on-site audits of law practices. Three law practices were audited in-person, and one law practice audit was commenced remotely due to its regional location (with a view to continuing the audit in-person, if required, at a later time). As a result of the audits, the Commissioner issued management system directions to two law practices, followed by monitoring and provision of periodic reports by the practices to evidence action taken to achieve compliance with professional obligations, as well as conducting two follow-up audits on-site at those practices to further ascertain the extent of compliance.

As a result of the Practice Compliance Manager and Assistant Commissioner (Legal) liaising with the Law Society regarding two lawyers who were unable to fulfil the requirements of Principal of their respective practices, their practising certificates were varied to employee only. In one case, the lawyer had persistently failed to achieve compliance with a Management System Direction (issued in the previous reporting period) and in the other case there was a demonstrable persistent failure to attend to various obligations of a Principal (including failure to cooperate in arranging a compliance audit of the law practice).

The Practice Compliance Manager facilitated a roundtable discussion attended by leaders in equivalent compliance roles from all state and territory legal regulatory bodies held in October, where information, experiences and approaches to auditing were successfully shared between the jurisdictions. In particular, discussion focussed on appropriate management systems, remote audits in lockdown and post-pandemic, management system direction monitoring and enforcement, as well as methods for monitoring the effectiveness of audits. Following positive responses from attendees, a further roundtable discussion was held in February.

The compliance audit team continued to keep a close eye on trends and innovations in delivery of legal services, including NewLaw initiatives and AI-supported practices, as well as the broad effects of law practices utilising remote or hybrid working arrangements post-pandemic, and any consequences from a compliance perspective.

Chapter 5

The OLSC and the Community

The Commissioner's aim during 2022-23 remained the same: to raise awareness about current issues facing the legal profession and to continue to work closely with co-regulators to improve how regulators interact with the legal profession.

The OLSC continued to deliver tailored seminars to law practices and organisations focussing on ethics in the legal profession and a better understanding of the role of the OLSC. Now that we are on the other side of COVID-19, the Commissioner has seen organisations adapt their training sessions more and more to online seminars rather than in face to face environments.

With the emerging trend of AI in legal technology and legal practices, the OLSC has been actively involved with the Centre for Legal Innovation's generative AI in legal practice initiative by participating in round table discussions with lawyers, legal educators, students and regulators to name a few. With AI changing the practice of law for lawyers, we as regulators will play an integral role in regulating lawyers with their ethical responsibilities in the day to day practice of law. We will also be interested to see the extent to which members of the public with a legal problem make use of the technology, and any issues that may arise from that.

The 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 and conferences. The Acting Commissioner is a member of the Supreme Court Costs Assessment Rules Committee.

Legal Education

With universities, law practices and other organisations transitioning to more online training sessions, the Commissioner and his staff delivered only a limited number of presentations in a face to face environment.

The Commissioner and his staff continued their support of the NSW Bar Association, Bar Practice Course, by contributing to their NSW series in co-presenting ethical hypothetical scenarios to new barristers. The Commissioner participated in this series on 21 September 2022 and Samantha Gulliver, as Acting Commissioner, presented at the next series on 25 May 2023.

On 5 September 2022, John McKenzie, then NSW Commissioner participated in the Law Society of NSW 2022 Solicitors Conference panel session, *Tell Me Why I Don't Like Mondays - Preparing for the Unexpected* panel session webinar.

On 5 May 2023, the Acting Commissioner attended the Crown Solicitor's Office CPD Seminar "Key Privacy Law Decisions impacting NSW Government Agencies" where she gained an overview of the latest privacy law decisions and their impact on the interpretation of the data protection principles and the litigation of privacy cases in NCAT.

Sexual harassment

During 2022, the Commissioner continued to engage with the OLSC's Personal Conduct Team to reflect on and improve our existing processes and current reporting avenues. The Personal Conduct Team is currently in the process of updating our website, fact sheets and existing reporting avenues. The updates are aimed at improving accessibility for members of the profession and public to notify the OLSC of instances of sexual harassment and workplace bullying.

Since the implementation of the anonymous online reporting platform (Elker) in 2022, the Personal Conduct Team has focused on monitoring the informal reporting process, identified issues and is in the process of implementing solutions to improve the reporting experience. In January 2023, enhancements were implemented to create greater awareness around the importance of retaining the Elker Key, which is a code allowing an individual to access their private report at any given time. The Personal Conduct Team continues to liaise with the Elker team to analyse and add features to create a better environment for reporters to communicate safely and securely with the team.

It has been a year of significant change, in particular with the Respect@Work Act coming into force in 2023. The Act implements several recommendations of the AHRC's National Inquiry into Sexual Harassment in Australian Workplaces 2020. Most significantly, the Act introduces a new positive duty on employers to take reasonable and proportionate steps to eliminate sexual harassment, an express prohibition against hostile workplace environments, and lowers the threshold for sex-based harassment. This is a landmark shift away from a responsive culture to one that is proactive in nature. The OLSC is continuing to monitor these developments and the new obligations placed on employers.

The Personal Conduct Team acknowledges that there are significant barriers that regularly prevent people from speaking up about their experiences and that it is often a difficult decision to make the first step of speaking to someone about them. Throughout the year, the Personal Conduct Team had further training sessions with psychologists on trauma-informed disclosure and relevant self-care practices to assist the team with communicating with reporters in a sensitive and appropriate manner.

Emphasis was placed on ensuring that callers felt safe and respected and free to speak about their concerns.

The Personal Conduct Team also works closely with our co-regulators at the Law Society of NSW and the NSW Bar Association. The Commissioner shares statistics confidentially with our co-regulators in order to better understand trends and existing patterns of conduct within the legal profession. During 2022, the Commissioner had discussions with our regulatory counterparts in other jurisdictions about our respective reporting processes in a bid to share knowledge and also learn from other jurisdictions about how we may better improve the existing reporting processes.

The Acting 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

The OLSC staff have adapted well to the new hybrid way of participating in Departmental training sessions to improve their skills and knowledge base. During 2022-23, staff accessed virtually delivered webinars, panel discussions and thought-provoking sessions and watched on-demand and recorded seminars at their convenience.

With many training sessions being recorded, staff are able to undertake their training at a more convenient time for them as well as revisit sessions at a later time to review or refresh their skills on a particular topic of interest.

MS Teams has been an essential tool for staff engaged in remote learning and working and has been embraced by all staff. MS Teams meetings and chats encourage greater collaboration and communication and improve collegiality across all the OLSC teams when working remotely.

During the reporting year, the OLSC continued to hold monthly staff meetings where staff participate either in a group setting with strict COVID-19 practices or via MS Teams. These meetings allow staff to reconnect with each other, provide updates and share information between the teams.

All the OLSC legal officers attended CPD courses to maintain their mandatory legal education necessary for the renewal of their practising certificates.

Inhouse training is provided to all new Mediation & Investigation Officers and Legal & Investigation Officers by the Senior Legal & Investigation Officer. Training focuses on the *Legal Profession Uniform Law (NSW)* and its associated legislation, and how that relates to the role of the OLSC and its processes to give new recruits a better understanding of the complaint and investigative processes.

This training also improves their ability to focus on the relevant issues in managing complaints and the complexities of dealing with complaints. All new complaint handling staff are continually supported by experienced officers who provide guidance and share their experiences so they may develop their knowledge and skills in a challenging complaint handling environment.

During 2022-23, the OLSC staff completed the mandatory Department of Communities & Justice (DCJ) training modules through the Thrive Learning App to ensure that they keep up to date with their obligations in the following areas:

- DCJ Conflicts of Interest to learn how to identify and manage conflicts of interest in the workplace
- DCJ Cyber Security Awareness Essentials (2023) with the aim to ensure staff are aware of their responsibilities and security behaviours and practices they have to comply with to ensure the Department's information is secure
- Privacy and you (2022) about information privacy in the Department

The OLSC staff also accessed some of the Department of Communities & Justice online courses via the learning platform to enhance their knowledge and skills in:

- Preventing Workplace Bullying
- Records Management - The Basics
- The importance of direct conversations
- DCJ Code of Ethical Conduct
- Cyber Security 2023 – The rise of Artificial intelligence (AI) webinar which looked at the rise of Artificial Intelligence, the recent developments in AI around security/privacy concerns, and practices to assist in keeping our business and personal situations safe.

Staff members also attended the “Acknowledge This! Acknowledge of Country” training session presented by “Acknowledge This!”. It was a highly informative session which explored forming genuine connections to each other, Country, and culture. It was a casual and conversational style session with a lot of interaction. Staff were encouraged to research our local areas, languages, peoples, and histories to assist with developing our own individual Acknowledgements.

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

- Risk Briefings, Traps in Family law and Traps in Property Conveyancing, Lawcover
- Federal Circuit & Family Court of Australia Case Management and Processes,
- Essentials for Government Lawyers Mandatory rule 6.1, LawInform, Law Society of NSW

Practice management attended a seminar, delivered as part of the Law Society's tech tools series, on the topic of legal process automation and how law firms and in-house legal departments are using automation to deliver better, cheaper and faster legal services.

The seminar included an expert panel discussion, case study and tech tool demonstrations on how legal professionals can use automation to focus less on administrative, routinised, repetitive tasks and more on solving complex legal matters and adding real value, as well as the consequent benefits of improved legal services delivery, higher compliance and risk management as well as gaining access to additional data sets.

The Practice Compliance Manager facilitated a roundtable discussion attended by leaders in equivalent compliance roles from all state and territory legal regulatory bodies held in October, where information, experiences and approaches to auditing were successfully shared between the jurisdictions. In particular, discussion focussed on appropriate management systems, remote audits in lockdown and post-pandemic, management system direction monitoring and enforcement, as well as methods for monitoring the effectiveness of audits. Following positive responses from attendees, a further roundtable discussion was held in February.

In June 2023, the Acting Practice Compliance Manager attended a roundtable discussion organised by the Centre for Legal Innovation, together with representatives from nearly all Australian regulatory bodies, Law Societies and Bar Associations, regarding the impact of generative AI in legal practice and its regulation. Information, experiences and regulatory responses to AI in legal practice were successfully shared between the jurisdictions. Topics of interest included: the benefits and drawbacks of AI with its capacity for adding efficiency and productivity, weighed against the requirement for thorough accuracy verification and risks of inadvertent disclosure of confidential information; the capacity of current regulatory landscapes, and regulators, to be responsive to the pace of technological development and consequent disruption in modes of delivery for legal services; and, lawyers' technological competence considerations in relation to provision of guidance by regulatory bodies.

Also in June, the Acting Commissioner attended a Leaders in Law Roundtable discussion with members from the Law Society, Legal Services Council and the Law Council of Australia concerning the free trade agreement between Australia and the United Kingdom specifically trade in relation to professional services and mobility of lawyers between the two countries.

Conferences

On 5 September 2022, members of the Legal & Investigation Team and the Consumer Team joined in the Law Society of NSW Solicitors Conference. Staff attended the plenary session "The Trusted Legal Profession"

- Tell me why I don't like Mondays – preparing for the unexpected, a panel discussion

Other panel sessions attended were:

Stream 1: The Legal Professional: Gain personal and professional development capabilities to ensure you and the legal community thrives

- Thriving as High performance Hybrid Teams
- Client Engagement: Building trust online
- Staying well in the Law
- Trusted legal profession
- Online dispute resolution

Stream 2: – The Legal Profession: Issues and trends impacting today's legal profession

- Building Trust after COVID-19: lawyers' relationships with clients and colleagues in the online/hybrid world
- Online Dispute Resolution
- Rural Conveyancing update
- Conducting investigations under the GSE Act

Conference of Regulatory Officers, Brisbane 3 to 4 November 2022

The Queensland Legal Services Commission, Queensland Law Society and Bar Association of Queensland jointly hosted the 2022 Conference of Regulatory Officers (CORO) in Brisbane. The theme of the Conference was "The Great Adaptation" and for the first time in 3 years the gathering was held in a face to face environment.

The Commissioner asked for expressions of interest from staff to attend CORO and four case officers attended the conference along with senior staff members.

The scope of the conference was expanded to encourage more exploration of regulatory trends and the effects of the way technology is re-engineering the way legal services are being delivered in the everyday running of legal practices.

The conference program included a range of sessions and one of particular interest to our staff was about the meaning of the adaptability quotient and how regulators can adapt to changing environments to provide a positive supporting role to lawyers in delivering legal services to their clients in a changing world of flexibility and technology.

The conference also hosted a session, “Ethical Pursuit” in a CPD trivia style session discussing ethical and professional responsibility issues. For CORO organisers, this was a first for such a session to be included in a CORO program and participants found it engaging and fun.

Case officers who attended CORO said:

‘CORO was a great experience meeting and networking with fellow regulators from across Australia. It was a privilege to be able to travel interstate to attend the conference with fellow colleagues from the OLSC. CORO was an eye-opening experience coming to the understanding that all regulatory officers across the country experience similar challenges, and the conference provided an opportunity for everyone to come together and discuss those challenges. It was also fascinating to hear from a wide array of speakers and become involved in discussions about what is happening in the regulatory landscape right now, as well to brainstorm how the legal landscape is adapting to the ever-changing legal landscape.’

‘The Conference program had an overarching theme about the relationship between technology and the legal profession and the challenges it brings about for legal regulation. There were wide ranging discussions about diversity in the legal profession, the associated challenges with the increased use of technology in legal services, and importance of mental health, and the similar challenges faced by counterparts in other jurisdictions.’

As a member of the PCT team, I found discussions with the New Zealand Law Society particularly informative. We had the opportunity to share knowledge and discuss our approaches to complaints about sexual harassment with their Chief Legal Counsel.’

‘I had been with the OLSC 6 months when I was provided the opportunity to attend the National Conference of Regulatory Officers (CORO) 2022 in Brisbane. Primarily, I was thrilled to learn that I work for an organisation that encourages and facilitates professional growth; and even more excited to attend a conference that brought together the Regulatory Officers from all over Australia. The two day event centred on the theme ‘The Great Adaptation’, and included lecturers, round table discussions, and panel talks on topics that are relevant to the industry and the legal profession as a whole. In line with the theme ‘The Great Adaptation’, technology and its role in the legal profession was the dominant topic; and it was fascinating to explore how legal practices are using technology to their advantage, adapting to today’s client demands. This topic,

and others such as legal ethics, and inappropriate conduct in the legal profession, were tied back into a discussion about regulation perceptions, reflections and challenges beyond 2022. I especially enjoyed this as it outlined the ways in which the regulatory bodies address current and ongoing issues that intersect with our roles as Regulatory Officers and that of the legal profession in general. Overall, the experience was highly rewarding and provided many opportunities for individuals to share their knowledge. I would gladly attend again in the future!’

‘CORO 2022 was a forum to reflect collaboratively on emerging and future developments in the regulatory space and across the legal profession. This year, some topics of discussion included: the benefits and challenges of new legal technologies and cross-jurisdiction service delivery for consumers and regulators; the role and appropriate consideration of wellbeing and mental health within regulatory work; and the continued challenges to increased diversity and the reporting of inappropriate personal conduct within the profession.’

We are grateful for the opportunity to share and learn from the knowledge and experiences of our counterparts in other jurisdictions. The discussions regarding inappropriate personal conduct were particularly pertinent for the members of our Personal Conduct Team in attendance.’

Meetings/Forums

On 2 August 2022, the Commissioner, John McKenzie, and the Legal Services Commissioner Megan Pitt, met with Emeritus Professor Ron Paterson, who chairs the Independent Review of the Regulation of Lawyers & Legal Services in New Zealand.

On 21 November 2022, the Commissioner, Assistant Commissioner (Legal) and Complaints Manager attended an initial consultation meeting with the Commissioner for Uniform Legal Services Regulation and Dr Matthew Butlin concerning the Review of the Costs Disclosure Thresholds in the Uniform Law being conducted by the Legal Services Council.

Chapter 6

Information Services and Systems

The OLSC continues to improve workplace performance by regularly reviewing staff needs and our processes. The benefits gained are improved staff morale and while it is not an easy task, we strive to continue for improvements with our complaints management system (CMS).

Adobe Pro

With the OLSC migrating to the CMS software and our files being electronic, a heavy reliance was needed on the use of PDF documentation. Historically, the OLSC held three Adobe Pro DC licences but with our files becoming electronic and a heavy reliance on the use of PDF documentation, a further nine licences were obtained for all the Legal and Investigation Team and Administrative staff members. Following a review of the heavy usage of this PDF software by the legal and administrative staff, it was agreed that further seven licences would be obtained for the Mediation and Investigation team members as it was demonstrated there was a legitimate business need for this software. The OLSC is able to fund the annual cost of Adobe Pro DC licences for all staff by utilising the 30k annual licence fees we no longer pay to the QA Plus company, as our association with that service provider ceased in June 2022.

OLSC Branding

In late 2021, and in line with NSW Government branding guidelines, the OLSC submitted a branding exemption submission to the Department of Customer Service (DCS), and in the first quarter of 2022, the OLSC was categorized as an Independent in the brand-exemption categories as determined by DCS. The independent logo for the OLSC is now a written standardised text logo and there has been a change in corporate colours. The OLSC staff worked with DCJ Design Team in managing the transition and implementation of the new guidelines. Letterhead and publication material have been updated and work continues with updating the website, the online complaint portal and the Register of Disciplinary Action to comply with the new guidelines. Our new logo aligns us with our counterparts in the other Uniform Law jurisdictions.

Complaints Management System (CMS)

The Complaints Management System was upgraded in the last reporting year and we continue to review the CMS for further enhancements to improve staff efficiencies in their day to day tasks.

As reported last year, further work continues in the Phase 3 project on the data transfer via an approved cyber security method.

The Law Society-OLSC integration was scoped to be a lift & shift of current integration functionality to a platform that meets current security requirements of both the Law Society and OLSC, and is fully supported by Information and Digital Services Operations (IDS). Development has been ongoing during FY23.

The project was impacted by a longer than expected time to develop and set up new solutions to accommodate secure file transfer within strict Cyber Security requirements.

The development team recently re-baselined the project schedule to reflect the delays. The newly approved completion date is 30 December 2023, however, alteration of the delivery date incurs no additional cost outlay to the OLSC. We will report further next year.

Approximately 63.7% of all complaints were made via the portal for the 2022-23 financial year. This is an increase of 1.57% from the previous reporting year.

The OLSC consistently evaluates our CMS to improve the day-to-day management of storing and tracking documents. A further step for improvement would be the integration of a document management system add-on which would allow for the automatic generation of electronic briefs as part of case management. This would increase the efficiency of the OLSC Officers in dealing with matters as part of preliminary assessment, investigation, audit, review and litigation. We will continue to work with our Department's IDS team on the possibility of a further enhancements project for the CMS, incorporating such an add-on.

Website enhancements

During 2022-23, we continued to maintain and update the publication section of our website with a revised Complaint Form and fact sheets in line with the indexed costs amounts for the year 2023-24. In the last quarter of 2023, the Department's digital experience team began initial communication with us as part of their digital experience program of migrating our website from SharePoint 2013 content management system to Adobe Enterprise Manager content management system. We will be working with the Department's digital experience team in reviewing the structure and re-design of the OLSC website. We will report back next year.

Chapter 7

Statistics

Inquiry Line

In 2022-23 financial year 4,929 calls were made to the OLSC Inquiry Line, a decrease of 524 from the previous year.

P1 Legal matters raised in calls

	2022-2023	2021-2022	2020-2021
OLSC General Query*	31.9	29.6	17.0
Family/ Defacto	14.4	14.3	14.6
Other Civil	9.4	10.8	12.9
Wills/ Power of Attorney	9.0	8.8	3.6
Criminal	5.0	4.2	3.8
Conveyancing	4.6	7.1	8.3
Probate/ Family Provisions	4.6	3.6	9.0
Other	3.8	3.7	12.4
Personal Injuries	3.4	4.2	5.5
Workers Compensation	2.3	2.2	2.1
Commercial/ Corporations	2.2	1.9	2.6
General Law/ Legal Profession Query	1.7	2.8	1.8
Leases/ Mortgages/ Franchises	1.3	1.5	1.6
Victim's Compensation	1.1	0.6	0.9
Building Law	1.0	0.8	0.4
Immigration	1.0	0.7	0.9
Employment Law	1.0	0.8	1.0
Strata Bodies/ Corporates	0.9	0.6	0.1
Land and Environment	0.8	1.0	0.9
Professional Negligence	0.8	0.7	0.7
Insolvency	0.0	0.2	0.0

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

P2 Nature of phone enquiry

	2022-2023	2021-2022	2020-2021
Communication	21.6	20.8	15.3
Negligence	11.4	13.1	12.5
Overcharging	11.1	9.7	14.8
General Cost complaint/ query	10.6	9.7	7.7
OLSC Process*	9.6	11.1	16.1
Ethical matters	8.8	9.9	7.9
Delay	6.3	6.2	4.7
Instructions not followed	4.6	3.5	3.0
Costs disclosure	3.1	2.6	2.5
Misleading conduct	3.0	3.5	4.1
Conflict of interests	2.2	2.6	2.1
Compliance matters	2.1	1.2	0.3
Document transfer/ liens	1.7	1.4	1.3
Trust fund matters	1.2	1.4	1.6
Pressure to settle	0.8	0.5	0.6
Document handling	0.7	1.0	1.3
Fraud (not trust fund)	0.6	0.8	1.3
Failure to honour undertakings	0.6	0.4	0.1
Capacity	0.1	0.1	0.3
Advertising	0.0	0.0	0.1
Supervision	0.0	0.0	0.1
Referral requests	-	0.3	2.2

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

P3 Practitioners mentioned on inquiry line

	2022-2023	2021-2022	2020-2021
Solicitor	93.0	90.7	91.0
Other*	5.0	7.0	7.4
Barrister	2.1	2.3	1.6

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

P4 Source of calls to the OLSC inquiry line

	2022-2023	2021-2022	2020-2021
Client	63.4	62.8	46.9
Opposing client	8.8	8.9	6.7
Other*	6.5	8.3	10.0
Friend/ relative	6.4	6.0	6.9
Beneficiary/ executor/ administrator	6.1	4.3	4.8
Previous client	3.0	4.7	8.6
Solicitor on own behalf	2.4	2.0	11.1
Solicitor on another's behalf	1.7	1.6	2.2
Non-legal service provider	1.4	1.2	2.4
Barrister on own behalf	0.2	0.2	0.2
Barrister on another's behalf	0.1	-	0.2

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

P5 Outcomes of calls to the inquiry line

	2022-2023	2021-2022	2020-2021
Provided complaint form	43.4	39.0	16.4
Referred to OLSC website	15.1	12.3	19.4
Caller indicated intention to send in complaint	12.6	14.3	21.8
Listened to caller's concerns	6.4	6.4	10.2
Provided information about the legal system	4.5	5.2	5.9
Other results	6.8	6.8	10.6
Provided referral for legal advice or other assistance	3.2	4.5	4.7
Recommended direct approach to lawyer about concerns	3.1	5.2	6.5
Explained that concerns are outside jurisdiction of OLSC	3.1	2.7	1.8
Scheduled interview for caller	1.5	1.4	0.6
Provided referral to Costs Assessment	0.5	0.8	1.0
Referred to other agencies	0.4	1.4	1.1

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 2022-23 the OLSC **received** a total of 2,842 written complaints, a decrease of 57 from the previous year. Of the total written complaints received, 1,360 were assessed as consumer matters, 1,467 as disciplinary matters and 7 as mixed matters. On receipt 8 complaints could not be classified as a consumer matter or disciplinary matter. Of those complaints assessed as within jurisdiction, 77.5% of those written complaints received were retained and handled by the OLSC. The remaining 22.5% were referred to the professional associations for handling.

The OLSC registered the **completion** of 2,943 written complaints, an increase of 104 from the previous year. Of the total written complaints completed, 202 complaints were resolved following informal resolution, 90 complaints were determined by OLSC/ Council and 2,459 complaints were closed. 192 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, 75.2% of written complaints were completed by the OLSC. The professional associations completed the remaining 24.8%

W1 Legal matters giving rise to complaints received in 2022-2023

	Agency Handling Complaint		2022-2023	2021-2022	2020-2021
	OLSC	Council			
Family/ Defacto	18.8	3.5	22.3	22.6	21.3
Other Civil	13.8	7.8	21.6	20.0	16.3
Probate/ Family Provisions	7.5	1.4	8.9	9.3	9.7
Criminal	6.8	1.8	8.6	8.8	7.5
Commercial/ Corporations	4.7	1.8	6.5	6.2	8.5
Conveyancing	5.7	0.8	6.4	8.4	8.9
Personal Injuries	5.1	0.7	5.9	7.0	6.4
Employment Law	2.7	0.9	3.7	2.7	3.1
Wills/ Power of Attorney	2.5	1.0	3.4	3.9	4.3
Workers Compensation	2.4	0.6	3.0	2.2	3.3
Strata bodies/ Corporates	1.5	0.5	1.9	1.9	1.9
Immigration	1.6	0.3	1.9	1.3	1.3
Building Law	1.2	0.6	1.8	1.4	1.5
Leases/ Mortgages/ Franchises	1.2	0.4	1.7	2.0	3.0
Victim's Compensation	0.7	-	0.7	0.4	0.4
Land and Environment	0.4	0.3	0.7	0.9	0.7
Professional Negligence	0.4	0.2	0.6	0.5	1.4
Insolvency	0.3	0.2	0.5	0.6	0.3
Total %	77.5	22.5			

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

W2 Nature of complaints received in 2022-2023

	Agency Handling Complaint				
	OLSC	Council	2022-2023	2021-2022	2020-2021
Negligence	18.7	1.7	20.4	18.1	18.2
Communication	15.2	2.6	17.9	18.2	17.5
Overcharging	12.9	0.2	13.1	12.3	12.4
Misleading Conduct	5.7	4.5	10.1	9.6	7.7
Ethical Matters	4.7	3.3	8.0	9.5	8.2
Delay	5.5	0.5	6.0	6.1	5.8
Instructions Not Followed	4.2	0.7	4.9	4.8	4.8
General Cost Complaint/ Query	3.1	1.1	4.2	4.6	6.4
Cost Disclosure	3.1	0.1	3.2	2.7	4.1
Conflict of Interest	1.6	1.1	2.8	3.5	3.6
Trust Fund	1.0	1.2	2.2	2.6	3.1
Compliance Matters	0.9	1.1	2.0	1.9	1.9
Document Transfer/ Liens	1.4	0.1	1.6	2.4	2.3
Fraud (Not Trust Fund)	0.6	0.6	1.2	1.1	1.1
Pressure to Settle	0.7	0.1	0.8	0.6	0.7
Capacity	0.3	0.3	0.7	0.7	0.7
Document Handling	0.4	0.1	0.5	0.6	0.8
Advertising	0.1	0.2	0.2	0.2	0.2
Supervision	0.1	0.1	0.2	0.1	0.2
Undertakings	0.1	0.0	0.1	0.1	0.3
Total %	80.3	19.6			

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

W3 Type and source of complaints received in 2022-2023

	Number of complaints				2022-2023	2021-2022	2020-2021
	Solicitor*	Barrister	Other**	TOTAL			
Client	1249	66	8	1323	46.6	47.8	47.0
Opposing client	647	42	4	693	24.4	26.1	22.7
Previous client	179	6	1	186	6.5	3.8	5.4
Beneficiary/ Executor/ Administrator	150	2	-	152	5.3	5.8	4.8
Other ***	106	7	2	115	4.0	4.4	4.4
Client's friend / relative	75	4	-	79	2.8	2.2	3.2
Solicitor on another's behalf	68	8	-	76	2.7	2.8	3.7
Solicitor on own behalf	65	4	2	71	2.5	2.9	3.8
Non-legal service provider	51	1	1	53	1.9	1.2	1.2
Barrister on own behalf	26	11	-	37	1.3	0.7	1.0
Unrepresented client	32	2	1	35	1.2	1.3	1.5
Law Society	6	-	-	6	0.2	0.2	0.4
Barrister on another's behalf	4	1	-	5	0.2	0.2	0.3
Bar Association	-	5	-	5	0.2	0.1	0.3
Commissioner	3	-	-	3	0.1	0.3	0.3
Cost Assessor	3	-	-	3	0.1	0.1	0.0
TOTAL	2664	159	19	2842	100		

* Includes former solicitors and law practices.

** Includes licensed conveyancers, magistrate and interstate practitioners.

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

W4 Age of complaints remaining open or suspended on 30 June 2023 and being handled by the OLSC

Year opened	Open at 30 June 2023	Open at 30 June 2022	Open at 30 June 2021
2022-2023	900		
2021-2022	120	922	
2020-2021	41	117	847
2019-2020	18	40	121
2018-2019	4	10	35
2017-2018	1	3	44
2016-2017	2	4	19
2015-2016	1	2	11
2014-2015	0	2	2
2013-2014	0	6	6
2012-2013	2	2	2
2010-2012	0	0	0
2009-2010	0	2	2
1994-2009	0	0	0
TOTAL	1089	1110	1089

* 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 2022-2023

	Days*
Average time to complete complaints received and completed/ resolved in 2022-2023	115.2
Average time to complete complaints received in any year but completed/ resolved in 2022-2023	308.4
Average time taken to dismiss complaints received in 2022-2023	59.7
Average time to dismiss complaints received in any year but dismissed in 2022-2023	364.7

* Averages rounded to 1 decimal point.

W6 All Complaints finalised in 2022-2023

All OLSC Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	197	3	2	202
Subtotal resolved at the OLSC	197	3	2	202

All OLSC Complaints Closed

Disciplinary action: Reprimand/ Fine/ Waive or reduce fees	4	1	0	5
Determination: Caution & Apology	8	0	1	9
Consumer matter Determination	14	0	0	14
Compensation order	3	0	0	3
NCAT disciplinary proceedings	1	0	0	1
Subtotal determined by OLSC	30	1	1	32
Withdrawal of a complaint at OLSC	166	15	0	181
Misconceived/ Lacking in substance	690	38	4	732
Time requirement not waived	75	8	0	83
Complainant No/ Inadequate response to request info	111	0	0	111
Duplicate complaint	30	2	0	32
Closed Civil proceedings on foot	24	0	0	24
Closed No further investigation except CM	175	7	1	183
Closed in Public interest	56	4	1	61
Not Resolved after informal resolution	411	14	2	427
Appeal closed by OLSC	1	0	1	2
Subtotal closed by OLSC	1739	88	9	1836
Total OLSC Complaints Completed	1966	92	12	2070

All Non Jurisdictional Complaints

Closed No power to investigate	98	3	8	109
Refer to NSW Police or other	79	2	2	83
Total Non Jurisdictional Complaints	177	5	10	192

	Solicitor*	Barrister	Other**	TOTAL
All Council Complaints Closed				
Disciplinary action: Reprimand/ Fine	16	4	1	21
Determination: Caution & Apology	7	8	1	16
NCAT disciplinary proceedings	17	4	0	21
Subtotal determined by Council	40	16	2	58
Withdrawal of a complaint at Council	29	7	0	36
Misconceived/ Lacking in substance	29	7	1	37
Time requirement not waived	12	4	0	16
Complainant No/ Inadequate response to request info	20	6	0	26
Duplicate complaint	10	0	1	11
Closed No further investigation except CM	439	35	11	485
Closed in Public interest	8	1	3	12
Subtotal closed by Council	547	60	16	623
Total Council Complaints Completed	587	76	18	681
Total finalised by OLSC	1966	92	12	2070
Total Non Jurisdictional Complaints	177	5	10	192
Total finalised by Council	587	76	18	681
TOTAL	2730	173	40	2943

* 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 2022-2023

Percentage of files closed within following periods*			
	2022-2023	2021-2022	2020-2021
0-30 days	22.9	17.0	12.2
1-3 months	19.8	24.3	29.9
3-6 months	23.3	25.0	27.0
6-9 months	14.9	13.6	14.7
9-12 months	8.4	7.4	6.6
Over 12 months	10.7	12.8	9.5

* 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 2022-2023 - received all years

	Solicitor	Barrister	Others	Total	Percentage
Reviews in progress					
Internal review application under LPUL	55	11	0	66	28.7
Total remaining open	55	11	0	66	28.7
Reviews completed					
Discretion declined for review under LPUL	141	19	2	162	70.4
Decision to confirm original decision	1	0	0	1	0.4
Decision to refer back to maker	1	0	0	1	0.4
Total completed	143	19	2	164	71.3
Total handled	198	30	2	230	100

NSW Civil and Administrative Tribunal

For matters filed and disposed of by NCAT in 2022-23 refer to NCAT's annual report.

Chapter 8

Financial Performance for 2022-23

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.

2022-23 saw a second consecutive year of lower than forecast expenditure by the OLSC from its approved annual budget.

While the positive variance outcome for *Employee Related Payments* were mostly due to role vacancies and unavoidable delays in securing new talent, the favourable variances for *Other Operating Expenses* and *Maintenance* were largely caused by an ongoing shift in workplace technology which has resulted in significant changes to the OLSC processes and procedures that are proving highly cost effective.

Since the rollout of the OLSC CMS case management system in December 2020, and the simultaneous creation of a mobile workforce with the implementation of Laptop usage by staff, the OLSC adopted a 'paperless' system of operation, with a focus on electronic rather than paper-based case files, and electronic rather than physical correspondence. This has resulted in an annual increase in cost efficiency.

Savings resulting from the use of electronic case files during 2022-23 include:

- **Stores / Operating Supplies** – Electronic case management has reduced expenditure on supplies such as stationery.
- **Printing** – OLSC letterhead paper and envelope print jobs have decreased significantly. Some expensive printing lines, such as case file folders, have been permanently discontinued.
- **Postage** – Postage costs continue to decrease annually due to increased delivery of correspondence via email. DX services have been discontinued due to low usage.
- **Electricity** – The use of electronic files has allowed for increased flexibility of work locations for staff, resulting in a reduction in the OLSC electricity costs.
- **Maintenance** – Costs have been reduced due to the OLSC CMS replacing the QA Plus database, formerly incurring annual support and maintenance fees of \$30,600 PA.

One annual budgetary provision showing a positive variance unrelated to the change in technology is the OLSC *Legal Costs* budget, which saw minimal expenditure during the financial year. Despite low expenditure from this budget account during 2022-23, it is necessary for the OLSC to maintain a substantial *Legal Costs* budget annually to ensure funding is available to meet the statutory functions of the OLSC in bringing disciplinary matters before the NSW Civil and Administrative Tribunal

(NCAT) and the Courts, and defending applications for administrative review, judicial review and appeals against NCAT decisions. Our low expenditure on *Legal Costs* during the year in focus is not anticipated to affect budget forecasting for the upcoming financial year.

The combined impact of cost savings due to changes in technology, added to the large *Legal Costs* and Non-Cash budget variances has resulted in a much higher than usual net cost of services outcome for the 2022-23 financial year.

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

Human Resources

The OLSC Establishment saw plenty of activity during 2022-23, with a great deal of movement among both casual and full-time staff resulting in the need for recruitment to backfill role vacancies.

Seven casual members of staff resigned from the OLSC through the course of the financial year, with six replacement staff members successfully onboarded by 30 June.

Three of our full-time employees also resigned from their roles including the Legal Services Commissioner himself, who retired at the end of March 2023. The vacant role of Commissioner, currently held by a temporary occupant, was advertised during the second half of the financial year with recruitment ongoing as at 30 June 2023.

2022-23 also saw a permanent change to the OLSC staffing roster with an additional role added to its approved Establishment. The role, a much-needed Clerk Grade 5/6, 'Mediation and Investigation Officer' (MIO) was filled by open merit recruitment, with the new staff member commencing in March 2023. The MIO role forms part of the OLSC Complaints Unit and provides critically needed support to that team in handling the large number of annual complaints about lawyers received by the OLSC.

The new MIO role raises the number of the OLSC staff on the Establishment to thirty-one (31) ongoing administrative and professional staff, and one full time equivalent position for rostered casual employees working on the OLSC Inquiry Line.

During 2022-23, various factors slowed the progress of backfilling vacant roles, including the inability of established talent pools to furnish needed candidates, and the late withdrawal from the recruitment process by otherwise selected candidates. This resulted in unavoidable timing differences between role vacancies and occupation of roles, with vacant roles temporarily backfilled by existing staff members and resulting in an underspend in Employee Related Expenditure throughout the financial year.

Financial Statement 2022-2023

	Budget	Actual	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments (Budget)	(5,347,348)	(5,251,552)	(95,796)	
Other Revenue	-	-	-	
TOTAL REVENUE	(5,347,348)	(5,251,552)	(95,796)	
EMPLOYEE RELATED PAYMENTS Excl Crown Liabilities	3,897,480	3,710,233	187,247	1
Cleaning	23,472	19,734	3,738	
Fees	71,880	35,279	36,601	2
General Expenses	3,600	4,274	(674)	
Insurance	1,164	991	173	
Legal Costs	321,588	20,603	300,985	3
Operating Lease Rental Expenses	528,936	525,438	3,498	
Postal Expenses	31,104	13,982	17,122	4
Printing	25,787	4,991	20,796	5
Publications	10,092	10,492	(400)	
Staff Related Costs	32,004	25,998	6,006	
Stores / Operating Supplies	14,964	5,656	9,308	
Telephone	53,952	8,222	45,730	6
Travel	21,492	8,771	12,721	
Utilities	52,008	36,819	15,189	8
Finance Costs	4,792	-	4,792	
OTHER OPERATING EXPENSES	1,196,835	721,249	475,586	
Maintenance Contracts	31,056	-	31,056	8
IT Software Maintenance	126,180	100,270	25,910	9
MAINTENANCE	157,236	100,270	56,966	
TOTAL EXPENSES Excl Crown Liabilities & Depreciation	5,251,551	4,531,752	719,799	
Net Cost of Services Excl Crown Liabilities & Depreciation	(95,797)	(719,800)	624,003	
Add Non Cash Items:				
Crown Liabilities (LSL Liability Assumed by Crown)	82,956	(4,592)	87,548	9
Depreciation & Amortisation	357,851	24,854	332,997	10
Net Cost of Services Inc Crown Liabilities & Depreciation	345,010	(699,538)	1,044,548	

Notes supporting the 2022-23 financial statement

1. Employee Related Payments: The *Employee Related Expenses* budget variation reflects the impact of unforeseen staff movements in temporary and permanent OLSC establishment positions during the year, and timing differences experienced by the OLSC in finalising recruitment and selection processes to coincide with the staff changes. Difficulties in securing quality candidates to fill vacant roles created unavoidable recruitment lag, resulting in a moderate saving in the OLSC's annual *Employee Related Expenses* budget.

Other Operating Expenses

2. Fees: The OLSC *Fees* budget maintains funds for various types of fees expenditure including interpreter fees and the cost of professional services engaged by the OLSC. During 2022-23 the *Fees* budget met ongoing costs relating to the Elker reporting platform, and professional fees relating to the training of staff members constituting the 'OLSC Personal Conduct Team' who assist victims of bullying and/or sexual harassment in the legal workplace. The OLSC otherwise saw lower than forecast expenditure from its *Fees* budget during the year, resulting in the favourable variance for this item.

3. 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 NSW Civil and Administrative Tribunal and the Courts. The OLSC saw significant under-expenditure from its *Legal Costs* budget during 2022-23. The minimal expenditure is largely attributable to the small number of disciplinary proceedings being run at NCAT, and the absence of Court of Appeal, administrative review and judicial review matters on foot during the year in focus. Additionally, the 'in-house' handling of NCAT related advocacy rather than the briefing of external Counsel resulted in a low number of Counsel fees which, together with the offset impact of costs payments received by the OLSC has resulted in a substantial positive variance for this budget item.

4. Postal Expenses: The OLSC's *Postal Expenses* budget provides for payment of Australia Post PO Box charges, Document Exchange (DX) Box charges, courier fees, and postage for all the OLSC correspondence.

2022-23 saw a reduction in the amount spent on *Postal Expenses*. The lower expenditure was due to increased use of electronic documentation by the OLSC including delivery of written correspondence by email, and the reduced use of couriers.

The financial year also saw the permanent closure of our DX box in November 2022 due to low usage, with subsequent quarterly savings contributing to the positive variance for our *Postal Expenses* budget.

5. Printing: The increasing use of electronic files and documentation during the 2022-23 financial year has greatly reduced the Office's printing requirements, resulting in a positive variance for this item. Electronic case management has eliminated the need for physical file cover production, and reduced use of the OLSC letterhead paper stock has dramatically decreased the frequency of stationery printing orders. Costs were further reduced by continuing the practice of publishing only a small quantity of the OLSC annual report (our largest printing expense) in black and white, with the report also being made available on the OLSC website rather than in hard copy format for general distribution. A review of future *Printing* budget requirements will be conducted during budget preparations for the upcoming year.

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 extremely favourable end of year variance for this budget item is due to credit adjustments totalling \$30,364 that were provided by the Department to correct overcharging from this account that occurred during the previous financial year. Without the cited adjustments, a more moderate variance of \$15,366 was delivered.

7. Utilities: The OLSC's *Utilities* budget includes provision for monthly payment of electricity and rates/outgoing expenses. The *Utilities* budget variance in 2022-23 reflects annual electricity costs significantly below forecast levels.

8. Maintenance Contracts: The OLSC's budget for *Maintenance Contracts* provides for payment of maintenance and support costs associated with the QA Plus database, a case management system supported by the company QA Plus Ltd. After the recent successful transition by the OLSC to using the DCJ maintained and supported CMS database, it was determined by the Legal Services Commissioner that the use of QA Plus was now obsolete. Our ongoing engagement of QA Plus Ltd for maintenance and support was terminated effective 30 June 2022. The *Maintenance Contracts* variance illustrates the untouched account funding that was approved prior to the termination of the company's services.

Non Cash Items

9. 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.

10. 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 this provision as part of Treasury requirements.

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