



ANNUAL REPORT 2002 – 2003

THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

Office of the Legal Services Commissioner

Annual Report 2002-2003

Vision

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

Mission

To improve consumer satisfaction with legal services through:

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

Values

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

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Commissioner's Report



Steve Mark – Legal Services Commissioner

This year we witnessed a tangible drop in the number of complaints received in this Office. While we have no empirical evidence of the cause of this decrease, anecdotal evidence suggests that it is at least partly due to the educational efforts of this Office, the Law Society and the Bar Association in encouraging improved service delivery by the legal profession. This is a very pleasing result for both the legal profession and the community at large.

Notwithstanding the decrease in the number of complaints and inquiries received, the OLSC dealt with an increased percentage of these complaints, referring fewer to the Law Society and Bar Association.

The number of reprimands issued to legal practitioners rose and we increased the number and improved the content of educational programs delivered at universities, the College of Law, regional Law Societies and community organisations throughout New South Wales.

PROJECT MANAGEMENT METHODOLOGY

We redesigned our internal procedures and developed a new Business Plan centred around a project management methodology allowing much of the work performed by the OLSC to be categorised into projects. Project teams have been assigned to

deliver on these projects and will analyse and improve the systems that the OLSC utilises to meet our organisational objectives. Although still in its early stages, this project management methodology has been an outstanding success, with increased involvement and high morale of all staff. It is also one of the first steps towards identifying improved performance indicators that have a qualitative rather than simply a quantitative basis for determining the outcomes which flow from our efforts.

During the next reporting year we will also be progressing towards certification to QL Gateway to Best Practice Level II, a best practice management program designed for the legal profession.

DISCIPLINARY REGISTER

The disciplinary register which contains information concerning disciplinary action taken by the Legal Services Division of the Administrative Decisions Tribunal or superior courts in the State is now up and running and can be accessed through our website. This is a significant advance and we believe it will have a major impact on assisting consumers of legal services to make informed choices about their lawyers.

CONTRIBUTION TO LAW REFORM

Subsequent to the New South Wales Law Reform Commission's Issues Paper *Complaints Against*

Lawyers: Review of Part 10 of the Legal Profession Act which was published in late 2000, the Attorney General's Department decided to hold a further review and sought submissions from a number of key stakeholders. This Office prepared a major submission to that Review which published its results in October 2002. Subsequent to that Report, we worked with officers of the Bar Association, the Law Society and the Attorney General's Department to develop an extensive list of suggested amendments to the *Legal Profession Act*. At the time of writing this report, the submissions were with the Attorney General for consideration and it is anticipated that an exposure draft of proposed changes to the Act will be circulated within the next reporting year.

INCORPORATED LEGAL PRACTICES

As reported last year, we have worked extensively with the Law Society, the College of Law and LawCover on developing an approach to assist incorporated legal practices to meet their obligations under the provisions of the *Legal Profession Act*. Central to these obligations is the implementation of 'appropriate management systems' to ensure that the practice complies with the Act and the Regulations.

We have identified a number of issues such as communication between practice and client, costs disclosure procedures and conflict of interest which often give rise to complaints under the *Legal Profession Act*. We believe these issues can be addressed through the implementation of 'appropriate management systems' as required by the relevant provisions of the Act and the Regulations. A list of issues and suggested approaches to address those issues has been created. This list will shortly be trialled with a number of incorporated legal practices prior to general distribution. Initial feedback from those that have been shown the materials we have produced has been very positive and we are optimistic that the educational approach we have adopted will assist incorporated legal practices to meet their obligations under the legislation.

CONFLICT OF INTEREST WORKING PARTY

We have also been concerned for some time about complaints we receive involving conflict of interest. This is, of course, a concern not only to this Office but to the legal profession and the general community at large. In an attempt to address this issue directly, I have spoken with the Attorney General who has now requested that I chair a working party to consider the rules relating to conflict of interest and determine their applicability both in terms of the profession's ethical obligations and commercial reality. We are in the process of drafting a discussion paper in this area and

will convene the Working Party early in the next reporting year. The progress of this working party will be reported on in next year's annual report.

EVALUATION AND IMPROVEMENT

During the year, we undertook a second Client Satisfaction Survey following on from the one conducted in 2000. On a pleasing note, this year's survey disclosed an improvement in the satisfaction of both legal practitioners and members of the community with the courtesy and professional approach by members of OLSC staff to their concerns. There was also an increase in the clarity of the correspondence that emanated from this Office. We were pleased to see that of all participants in the co-regulatory system, the OLSC was the greatest source of assistance to complainants.

However, there is much work yet to be done. The survey also disclosed that there is still a great concern from both practitioners and complainants about the time taken to resolve complaints. Further, the survey revealed a common perception among complainants that legal practitioners get preferential treatment or the benefit of the doubt when complaints are made against them. This is particularly so where there is no other evidence other than the complainant's word against the practitioner. Similarly, complainants still express a deep concern and a lack of understanding about the way we handle complaints that allege

negligence. Many of the issues raised can only be addressed by amendment to the *Legal Profession Act* and we have made submissions to the Attorney General in accordance with the concerns expressed.

INTERNAL MONITORING

As part of a study within the Attorney General's Department, the staff members of the OLSC were surveyed to determine their level of satisfaction. I am pleased to state that the results of the survey shows that OLSC staff are highly motivated and feel supported by their organisation in achieving the organisation's objectives. The morale in the organisation is high and it is generally agreed that it is a happy place to work notwithstanding the inherent difficulties experienced due to the nature of complaints-handling work.

I would like to again thank the staff for their commitment, energy and good grace through another very challenging year. I also give my personal thanks to the officers and leadership of the Law Society, the Bar Association and the Attorney General's Department for our continued strong relationship. I look forward to continuing our work together for the ongoing benefit of consumers of legal services in our community.

We look forward to another exciting and challenging year ahead. ■

Steve Mark

Developing and maintaining effective complaint-handling processes

We continued to develop and refine our strategies for dealing with complaints; bringing about practical resolutions where possible and investigating allegations of poor professional conduct where necessary. A plateau in the number of formal complaints suggests that our processes for advising and assisting complainants are increasingly efficient and effective in resolving issues of concern.

COMPLAINTS

The number of calls to our inquiry line and the number of written complaints received in the Office fell during 2002-2003. We took 9840 calls and received 2768 formal written complaints this year. This represents a decrease of 1.6% and 5.5% respectively in comparison to the previous reporting year.

Inquiry line

We are confident that the problem solving approach implemented by staff is helping inquiry line callers to resolve issues of concerns at an early stage, thereby reducing the number of formal complaints. We endeavour to identify the problem and the outcome the caller is seeking and provide information and referrals as appropriate.

In some cases, lodging a formal complaint may not be the best way to resolve their problem and it seems that our advice to consumers to approach their lawyer directly is having a positive impact. In some circumstances we are able to assist practitioners and their

clients to resolve their differences through telephone mediation. Many telephone mediations were conducted during the year resolving straightforward problems quickly and removing the need for formal complaints.

Our experience also indicates that lawyers are gradually becoming more willing to deal with complaints, viewing them as genuine indicators of the status of client relations rather than unjustified interruptions to their work.

Increased efficiency

As part of a co-regulatory system the OLSC deals with complaints in conjunction with the Law Society, the Bar Association and the Office of Fair Trading. While there was a decrease in the number of complaints received during the year, we dealt with a greater number of complaints at the OLSC with the same number of staff. We retained 78% of all complaints received in 2002-2003 and transferred the remaining 22% to the Law Society, the Bar Association and the Office of Fair Trading as appropriate.

This indicates an increase in the numbers of complaints retained by the OLSC.

Even more pleasing was an increase in the numbers of complaints finalised by the OLSC. During the year we finalised 2225 complaints; an increase of 264 over the previous year.

Our aim is to expend our resources on those complaints which, articulated in their fullest terms, involve disputes that might be suitable for mediation or raise concerns about conduct that might warrant disciplinary action. The assessment of each complaint by various levels of staff also ensures that an appropriate approach is selected for the handling of the complaint. In this way we are better equipped to advise complainants early in the process about the likely outcome of their complaints.

Consumer dispute or investigation?

In keeping with previous years, the majority of complaints received this year were handled as consumer



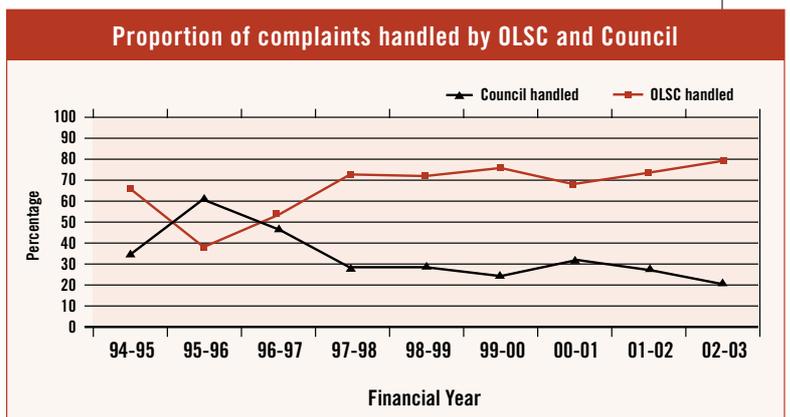
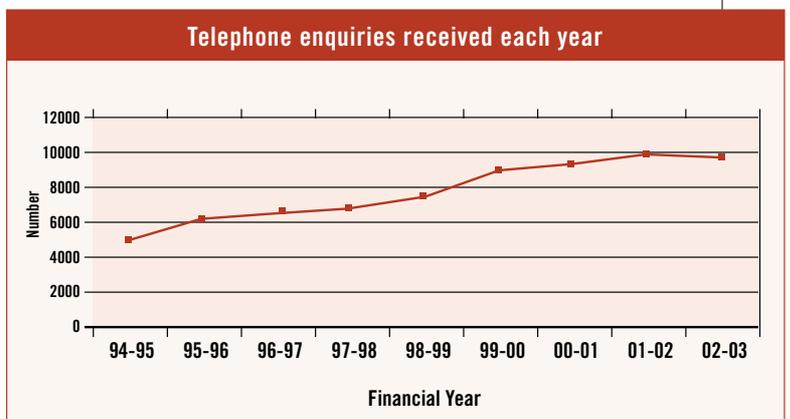
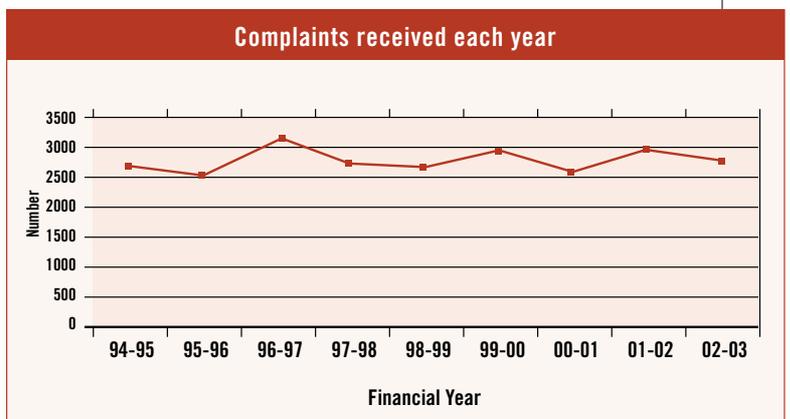
Clockwise from bottom left: Jim Milne (Assistant Commissioner (Complaints)), Jennifer Platt (Law Society of New South Wales), Lynda Muston (Assistant Commissioner (Legal)), Steve Mark (Commissioner) and Ray Collins (Manager, Professional Standards Department, Law Society of New South Wales)

disputes. A 'consumer dispute', according to the *Legal Profession Act*, is any grievance for which a complainant 'seeks redress'.

Where it appears that the conduct in question may warrant disciplinary action, the relevant complaint is classified as an 'investigation'.

Although for some complainants and many lawyers the difference between a consumer dispute and an 'investigation' is difficult to discern, we continue to strive for clarity when explaining complaint-handling processes. We are pleased that our recent survey of stakeholders indicates that our communication is clear and effective.

While most practitioners are keen to co-operate in the complaints process, the resolution of a consumer dispute can be complicated by a practitioner's refusal to respond to our enquiries. In these circumstances, the Commissioner has been called upon to exercise his power under section 152 of the Act to compel a practitioner to respond. A consistent failure to respond to our Office may therefore cause a consumer dispute to be reclassified as an investigation in order for our inquiries to be satisfied and the complaint brought to an appropriate resolution. A failure to respond to a notice pursuant to section 152 may lead to a finding of professional misconduct by the Administrative Decisions Tribunal.





Mediation and Investigation Officers, Elisabeth Knight and Richard Wells

Nature of complaints received

Consistent with previous years, the majority of complaints included allegations of negligence (20.5%), communication (15.8%) and overcharging (10.0%). Also of concern to this Office was the number of complaints alleging failure to disclose costs (4.1%).

Complaints about negligence rarely amount to misconduct. While the disciplinary system will only consider gross negligence as conduct warranting disciplinary action, we continue to provide information to clients about ways to address their concerns about a practitioner they feel has been negligent. The Commissioner has a specific interest in critically reviewing this aspect of the disciplinary system.

Good communication is essential to the client-practitioner relationship. The statistics gathered understate the part poor communication plays in client dissatisfaction since it is often identified only after preliminary inquiries into a complaint have been made. Since the OLSC was established in 1994, we have stressed the need for all lawyers to communicate clearly, regularly and accurately with their clients. We are working to increase practitioners' understanding of the importance of good communication with their clients with the aim of increasing consumer confidence in the profession and reducing the number of complaints about this issue.

Complaints about costs and overcharging often indicate that a practitioner has not provided sufficient information about the way in which the client will be charged. In addition, 4.1% of complaints received this year specifically raised concerns about a practitioner's failure to disclose costs. At the time the OLSC was established, the *Legal Profession Act* made it compulsory for lawyers to disclose their costs in writing to clients. While the majority of practitioners have incorporated the requirements of the provision into their daily work practices, a minority have not. In order to ensure that all practitioners are aware of their legal obligation to disclose costs, we have adopted specific procedures.

When a practitioner's failure to disclose costs appropriately first comes to our attention, the practitioner is notified of the requirements of the Act. This year our procedure was expanded to include a request for an undertaking that the practitioner will adhere to the requirement in the future. This undertaking is enforceable and disciplinary action may be taken if a breach is identified and proven.

CONSULTATION WITH THE PROFESSION

Targeting specific problems

There are about 20,000 solicitors and barristers in NSW. Approximately 20% of all complaints received at the OLSC

concern fewer than 50 individual lawyers.

In 2002-2003 we identified a number of practices and practitioners whose records comprised a large number of complaints. This year we assisted a number of those practitioners in identifying areas of weakness. The practitioners were encouraged to take positive steps to alter their in-house procedures to improve client service and prevent further complaints. We aim to be as open as possible with lawyers who we believe are not delivering reasonable service. Our intervention ranges from a quick telephone call from a Mediation and Investigation Officer to point out an error, to an extensive interview with the Commissioner. It is in the public interest for us to intervene to prevent complaints where possible.

While the OLSC does not have the power to appoint a manager or receiver to a legal practice, we can refer appropriate matters to the Professional Standards Department of the Law Society which does have these powers.

Liaising with the Law Society and the Bar Association

Regular meetings with the Professional Standards Department of the Law Society and frequent communication with the Bar Association continue.

Individual complaints raising unusual or serious issues and

To disclose or not to disclose...

complex investigations are common agenda items for our regular monthly Liaison Committee meeting with the Manager of Professional Standards, Mr Ray Collins, and members of his staff.

Similarly, frequent contact with the officers and executive staff of the Professional Conduct Department at the Bar Association allows regular discourse in relation to the progress of their investigations.

During the year there have been a number of very effective joint meetings with practitioners and complainants to resolve matters of concern. These meetings will most often involve a lawyer being given specific advice about how best to handle a particular issue of complaint.

As part of a co-regulatory system, we must work with the Councils to produce statistics that accurately reflect the number and nature of complaints. In the past year we have discussed at length the need for consistency in our data gathering. Joanne Treacy, Manager Information Services and Systems, is working to standardise the coding of our files and synchronise the closure of files by the relevant bodies.

Information sharing

The various Law Society committees have always been a valuable source of information for OLSC staff. In 2002-2003 we increased our participation with Mediation and Investigation Officer, Elisabeth Knight, attending meetings of a recently created committee examining the issue of client capacity. This is a difficult and sometimes contentious issue which often arises in the course of dealing with wills and probate complaints.

In 2003-2004 we aim to reinstate joint training sessions for Professional Standards Department and OLSC staff to encourage discussion about common issues and in particular to reach mutual understanding of the best ways to improve the handling of consumer disputes.

In 2002-2003, the OLSC liaised closely with the Bar Association in response to the Attorney General's invitation to comment on the report entitled *Further Review of Complaints Against Lawyers*. Our information sharing resulted in a joint submission. While we did not always reach full agreement, the process is exemplary of the spirit of co-operation which has been fostered between the OLSC, the Law Society and the Bar Association.

Taking a straw poll among colleagues is not the best way to determine whether or not written costs disclosure is required – it has been mandatory under Part 11 of the *Legal Profession Act 1987* since 1994.

Unfortunately, failure to disclose costs is still a common reason for complaint to the OLSC.

Darryl's mother, June, died in September 2001 and he had been appointed executor of her estate. The family solicitor, who had drawn up the original will, handled the administration of the estate, taking instructions from Darryl.

The solicitor did not provide written costs disclosure to Darryl. Feeling uneasy about the lack of information about how much he was required to pay, Darryl contacted our Office.

When asked to explain his failure to disclose costs, the solicitor explained it was his understanding that disclosure was not required where the costs are calculated using a scale. He asserted that he had surveyed colleagues and none of them disclosed costs in wills and probate matters. He felt that he was following accepted practice. He was not.

The OLSC requested an undertaking from the solicitor in which he agreed to comply with his statutory obligation to disclose the basis of his costs in all matters in which he is retained. If he breaches that undertaking without reasonable excuse he will be prosecuted. Hopefully he will pass on our advice to his colleagues.



Anne Sinclair (Director, Professional Standards, The Bar Association of NSW), Steve Mark (Legal Services Commissioner), Adele Connor (Deputy Director, Professional Standards, The Bar Association of NSW)

Interstate regulation

In the past year we have seen both Queensland and Victoria move towards regulatory systems more closely resembling the co-regulatory arrangement in NSW. At the same time we are witnessing progress towards a broader national regulatory framework that will govern all lawyers in Australia.

We are active participants at the annual *National Conference of Regulatory Officers* where we share information and views on practice and procedure with regulators from other states and with members of

the profession. We share ideas on how best to regulate, educate and improve the profession. We work together towards an overall improvement in the standard of services provided by legal practitioners. Communication between regulators in this regard is particularly important as we work towards a national legal services market.

Project Teams

In the coming year there are a number of specific projects that aim to further enhance the efficiency of our complaint handling processes.

We will update Q-Master, the computer software system that administers our inquiry line system. The proposed changes will allow us to better redirect callers waiting for assistance and to reduce call drop out rates. We will also be updating the 'on-hold' messages to provide current and relevant information to callers waiting in the queue.

Another project team is analysing the ways in which we review our performance internally in order to ascertain methods for increasing the efficiency and effectiveness of our complaint-handling. ■

Serious delays lead to disciplinary action

Complaints are often received from consumers who feel their lawyer has taken too long to finalise or progress their matter. In most cases, there is a legitimate reason for the delay that has not been properly explained to the client. In other cases, the delay is not very long and is remedied when the lawyer is made aware of the problem by our office.

Over a period of time we received several complaints about a particular practitioner. Most of the complaints alleged delay. When we contacted the practitioner he assured us that

although he had been a bit 'snowed under' the matters were now in hand and all was well.

Still more complaints were received and previous complainants contacted the Office again, concerned that things had not improved.

It became clear that the practitioner was not coping with his workload and intervention was required. With the assistance of the Law Society, the practitioner was asked to show tangible signs of improvement in his work practices and to obtain

counselling to work through the difficulties that were affecting his ability to practise law.

The extent of the problems within his office were such that the practitioner eventually accepted three reprimands for gross delay.

We will continue to monitor and support this practitioner to ensure that old habits do not return and any problems that arise are addressed promptly.

Promoting compliance with high professional and ethical standards

During the year in review, we consolidated our investigative function and tackled a range of issues of probity affecting the profession.

Bob Watson – Incorporated Legal Practices Consultant



CONDUCT ISSUES

Investigations

During the reporting year we commenced 91 formal investigations. This is a significant increase from last year and reflects improved resources arising from stability in staff numbers. It also reflects focus and commitment on the part of our staff in relation to maintaining the vision of the OLSC. Of the 91 formal investigations commenced, 35 were concluded during the reporting year. A further 45 investigations, commenced in previous years, were also concluded. At the end of the reporting year we had 85 open investigation files.

Reprimands

The Commissioner issued 27 reprimands in the reporting year for conduct ranging from delay in the handling of files, failing to prepare cases for trial, failing to advise appropriately, failing to comply with court directions, failing to properly supervise staff, acting without instructions and discourtesy and inappropriate communication. 15 of the reprimands related to one

practitioner who had pleaded guilty to an offence under the *Workplace Video Surveillance Act 1998*.

A far greater number of reprimands were issued by the Commissioner in the reporting year compared to previous years. A reprimand is a quick and efficient sanction given that it remains permanently on the practitioner's record and can be considered in the event that another complaint is received about the practitioner. The issue of a reprimand also saves Tribunal time, staff time and costs.

Administrative Decisions Tribunal

In our 2001-2002 annual report, reference was made to two matters that were commenced in the Administrative Decisions Tribunal. They were *Legal Services Commissioner v Veneris* and *Legal Services Commissioner v Wood*.

At the time of last year's annual report the Tribunal had reserved its decision in *Legal Services Commissioner v Veneris*. The practitioner was prosecuted in relation to allegations of failure

to transfer a file, failure to commence personal injury litigation and misleading clients and the Commissioner. This year, the Tribunal found that all allegations were made out and ordered that Mr Veneris' name be struck off the roll of legal practitioners.

In the matter of *Legal Services Commissioner v Wood*, the matter was part heard at the time of last year's report. The Tribunal found that the practitioner was guilty of professional misconduct in that he had failed to respond to a notice issued by the Commissioner to provide documents and information. The practitioner was fined and publicly reprimanded. These orders were made by consent. Such consent orders allowed for the practitioner to provide undertakings to the Tribunal which were tailored to suit the offence. These included an undertaking to no longer practise personal injury law.

Section 152

On a number of occasions during the reporting year the Office utilised its power pursuant to Section 152 of the *Legal Profession Act*. This power



Clockwise from far left: Aideen McGarrigle (Legal and Policy Officer), James Lonsdale (Senior Legal and Policy Officer), Melinda Doggett (Investigation Officer), Maryanna Qiao (Administrative Assistant) and Joanne Treacy (Manager Information Services and Systems) – one of the OLSC project teams.

requires practitioners to provide information and/or documents and to otherwise assist in or co-operate with the investigation of a complaint when so requested by the Commissioner. Judicious use of this power has improved efficiency of investigations and reduced the time required to complete complaints.

ETHICAL MATTERS

Conflict of interest

During the reporting year we have been increasingly concerned about conflict of interest. The notion of conflict includes acting for related parties, acting against a previous client or preferring one's own interest to that of one's client. The concept of confidentiality lies at the heart of conflict of interest.

A working party has been established by the Commissioner to inquire into and review the law and practice relating to conflict of interest with the view to proposing more transparent and effective ways of identifying and remedying perceived and actual conflict in litigious and non-litigious matters. Approved by the Attorney General, the working party, chaired by the Commissioner, aims to address some of the common complaints received by this office and, in particular, those highlighted by the HIH Royal Commissioner Neville Owen, when he commented that legal practitioners were not abiding by professional rules with respect to conflict of interest. We recognise that the changing legal

environment, in particular the increasing mobility of the legal profession and the increasing specialisation of practitioners, has thrown up new ethical dilemmas for the profession when dealing with conflict situations, particularly when a firm acts against a former client. However it is essential that commercial reality and cognate requirements of providing legal services be balanced with good ethical practices. The two are not mutually exclusive. The working party aims to develop recommendations for regulatory change, guidelines for compliance and other educational material.

Complaints about debt collection

In response to an increasing number of complaints about the conduct of legal practitioners acting for debt collection companies, the OLSC prepared policy guidelines to efficiently manage and resolve such complaints.

The policy assists OLSC staff by detailing the regulatory and ethical responsibilities of legal practitioners who act for debt collection companies when dealing with third party debtors. Generally, legal practitioners do not owe duties to such third parties. However, in NSW the Professional Conduct and Practice Rules contain certain rules which have an impact on the way in which legal practitioners deal with third parties such as debtors.

The policy identifies certain key areas of responsibility for legal practitioners when acting for debt collection companies. Most broadly, solicitors are obliged to conduct their dealings with third parties with the same standards of honesty and fairness that are required when dealing with other legal practitioners and the courts. Certain other rules (as well as ethical considerations) make it clear that legal practitioners must not surrender their own integrity or honesty and simply become a mouthpiece for their client. Other regulatory provisions prohibit false or misleading statements being made by legal practitioners as well as precluding harassment.

The OLSC worked with stakeholders such as the Law Society as well as Consumer Credit Legal Centre (NSW) in the development of the policy.

LEGISLATIVE CHANGE

Review of the Legal Profession Act

In addition to the extensive formal submission made by the OLSC in response to the New South Wales Law Reform Commission's review into the operation and performance of Part 10 of the *Legal Profession Act 1987*, the OLSC made further submissions in response to the report entitled *A Further Review of Complaints Against Lawyers*, which was published by the Attorney General's Department.

Appropriate communication between practitioners

Whilst the Law Reform Commission's report focused mainly on the procedural aspects of the operation of Part 10, the Departmental report focused on more substantive issues. Some of the central issues raised in the Departmental report were whether the complaints and disciplinary system operates with the requisite degree of independence and whether there is adequate representation of the interests of consumers, the community and legal practitioners. The report also queried whether there should be amendments to Part 10 to change the statutory definitions of unsatisfactory professional conduct and professional misconduct as well as questioning whether or not the powers to award compensation should be broadened.

The OLSC supported the continuation of the current co-regulatory scheme as it best balances the interests and needs of the range of stakeholders. However, the OLSC strongly supported the expansion of the definitions of unsatisfactory professional conduct and professional misconduct to make it clear that negligence of a certain degree could constitute a conduct issue. In this regard, the OLSC argues that the current definitions are restrictive and exclude from the operation of the Act conduct which is frequently of concern to consumers of legal services. The inclusion of serious neglect within the definitions, as recently approved by the Standing Committee of Attorneys General in its model provisions, is commended.

In addition, the OLSC supported a proposal that clarified and

strengthened the ability to award compensation in circumstances where mediation has been unsuccessful and the matter is then referred to an arbitrator who may award compensation. The OLSC recommended that Part 10 be re-written to give greater clarity as well as to procedurally streamline the complaints process wherever possible.

The OLSC understands that the Attorney General's Department is still considering the submissions made in response to the issue of its report.

New Advertising Regulation

Further restrictions on the ways that legal practitioners can advertise for personal injury services came into effect on 23 May, 2003. The *Legal Profession Amendment (Personal Injury Advertising) Regulation 2003* replaced the provisions relating to advertising, which were contained in the *Legal Profession Regulation 2002*. The new regulation broadens the scope of the previous restrictions by prohibiting a legal practitioner from publishing an advertisement that makes any reference to (amongst other things) personal injury or any circumstance or event that suggests a cause of personal injury.

A breach of the new regulation constitutes professional misconduct and is an offence, for which a fine may be imposed. Accordingly, legal practitioners who are shown to have breached the new regulation face more severe punishments.

Although more restrictive and severe in terms of sanctions, the new regulation has

Christopher represented a client in a debt recovery matter. The person who owed the purported debt was represented by Michael, another solicitor.

In the course of the retainer, Christopher had cause to write a number of letters to Michael in relation to the matter.

When he did not receive a response to the letters, Christopher telephoned Michael to find out how the matter was progressing. Although Christopher was used to colleagues defending their clients vigorously he was shocked by Michael's hostile behaviour. However, Michael promised to respond and Christopher waited for the response.

Christopher was shocked when copies of these letters were returned to him by Michael by facsimile. These return faxes showed that Michael had scrawled responses to certain statements in Christopher's letter with thick black felt tipped pen. The responses were aggressive and some were obscene.

Christopher wrote to the Law Society asking for some kind of intervention. The matter was referred to our Office as a complaint.

Michael was unable to provide an adequate explanation for his behaviour and indeed said that he felt it was appropriate.

At the completion of the investigation, the Commissioner was satisfied that the Administrative Decisions Tribunal would find the practitioner guilty of unsatisfactory professional conduct. In accordance with section 155 (3)(a) the Commissioner offered the practitioner a reprimand. The practitioner accepted the reprimand and finally acknowledged that his behaviour was inappropriate.

provided for a greater number of exemptions. Generally speaking, these exemptions aim to allow legitimate public comment about personal injury law as well as to facilitate education amongst legal practitioners.

The OLSC has established a working party of stakeholders to deal with issues or concerns practitioners may have in relation to their advertising, in addition to public comment and information releases to the wider community as part of the OLSC's wider educative role.

Document Handling Regulation

The watershed decision of Eames J in the Victorian Supreme Court in *McCabe v British American Tobacco Services Australia Limited* was mentioned in our last annual report. Debate in the media and within the legal profession continues and has recently been further agitated. The issue of document retention/destruction was addressed by a new regulation, introduced initially in New South Wales and subsequently introduced Australia-wide.

The regulation states that a legal practitioner may be guilty of professional misconduct if they advise on or cause a document to be destroyed or moved to a place outside the jurisdiction in circumstances where it is likely that legal proceedings, in which the document may be required, will be commenced and the action results in that document being unavailable or unusable for those proceedings.

The OLSC continues to address the ethical issues raised in relation to document retention/destruction and the warehousing of documents and will report further in the next annual report.

Progress towards portable Practising Certificates

The Legal Profession Amendment (National Competition Policy Review) Act 2002 was assented to on 21 June 2002 and commenced on 4 October 2002. This Act progresses freedom of movement of practitioners between states by recognising in New South Wales practising certificates issued in all state and territory jurisdictions of Australia and New Zealand.

ADDITIONAL HIGHLIGHTS AND DEVELOPMENTS

Conduct in the practice of law

The Commissioner was joined as a defendant in an Administrative Law matter heard in the Supreme Court (*Kawicki v Legal Services Commissioner and Director of Public Prosecutions*).

Mr Kawicki had complained to this Office about the conduct of the Director of Public Prosecutions in providing advice to the Attorney General. The complaint was dismissed on the basis of the Commissioner's finding that the Director, in providing such advice, was performing an administrative function and not acting within the practice of law. Mr Kawicki sought an order setting aside the determination of the Commissioner to dismiss the complaint along with a declaration that the Director's conduct was conduct in the practice of law.

Acting Justice Burchett dismissed Mr Kawicki's action with costs. In so doing he found that the Commissioner was correct in his view that the Director's conduct was not conduct occurring in connection with the practice of law and, further, that the Commissioner's decision not to institute proceedings in the Tribunal with respect to

the plaintiff's complaint was not infected by any error of law. Mr Kawicki has appealed that decision. The OLSC anticipates that the judgment of the Court of Appeal will be available in the next reporting year.

Incorporated Legal Practices (ILPs)

Incorporation of legal practices has been possible in New South Wales since July 2001.

There are now more than 250 ILPs in the state. To address a number of issues that have arisen, a forum of ILP stakeholders was held in March 2003. As a result of this forum, an 'education towards compliance' strategy has been adopted by the OLSC in order to assist solicitor directors with their obligations.

The Legal Profession Act requires that solicitor directors of incorporated legal practices adopt "appropriate management systems". Failure to implement such systems can amount to professional misconduct on the part of a legal practitioner who is a director of an ILP.

However, a definition of 'appropriate management systems' is not provided by the Act. As a result, the OLSC, working in collaboration with the Law Society, LawCover and the College of Law, has developed a list of 10 criteria which we believe should be addressed by 'appropriate management systems'. ILPs will soon be required to self-assess their practices to determine their current level of compliance. ■

Encouraging an improved consumer focus within the profession



In conjunction with continued consultation with the profession, this year the educational reach of the OLSC was extended with a greater number of addresses given, increased dissemination of publications and improved on-line access to information.

LECTURES, SEMINARS AND PUBLIC ADDRESSES

University lectures

The period in review provided an opportunity to increase the number of universities to which seminars were delivered by the Commissioner and other staff of the OLSC. During 2002-2003 there was significant expansion of the university circuit with seminars delivered to law students at University of Western Sydney, University of Technology Sydney, University of New England, Sydney University and Macquarie University, in addition to established seminars at the University of New South Wales. This increase in speaking engagements allowed the Office to further encourage awareness and understanding of the OLSC among prospective members of the legal profession.

Practical Legal Training

The Commissioner delivered numerous talks on ethics, law and justice throughout the year to Practical Legal Training (PLT) students. These lectures incorporate overarching philosophical issues in conjunction with the specific provisions of the *Legal Profession Act 1987* and the rules of practice. Other issues raised in these sessions were the fiduciary relationship between client and practitioner, legal professional privilege, and a legal practitioner's seemingly conflicting duties to the court, client and community.

Both Assistant Commissioners lectured to PLT students on the role and functions of the Office and the mechanics of the disciplinary system.

The educational program to PLT students also expanded considerably in 2002-2003.

For the first time, lectures were presented to PLT students at the University of Technology and the University of Western Sydney. Lectures continued to be presented to students at the College of Law in St Leonards.

Consultation with current members of the profession

Consultation with existing members of the profession continued via seminars and through day-to-day communications with legal practitioners.

The Commissioner and Assistant Commissioner (Legal) continued their contributions at LawCover seminars dealing with risk management for incorporated legal practices. In particular, these contributions related to the duties of solicitor directors, effective management, amalgamated law firms and multi-disciplinary practices. At these

seminars, they spoke broadly about issues relating to disclosure of legal and non-legal work, costs disclosure, conflicts of interest, 'appropriate management systems', delay, supervision, liens, trust accounts and the Commissioner's powers of investigation and review. These seminars also provided the opportunity for the Commissioner to raise issues of leadership, practice planning and client management. The Commissioner was pleased to address questions raised by the sometimes conflicting provisions of the *Corporations Act* and the *Legal Profession Act* in relation to incorporated legal practices.

Importantly, the Commissioner presented an analysis of the possible disciplinary consequences of failing to maintain 'appropriate management systems' within incorporated legal practices. He also addressed a number of issues relating to the concept of legal professional privilege that emerge for multi-disciplinary practices where non-legal services are provided in tandem with more traditional legal advice and representation.

Visits to Regional Law Societies again provided opportunities for the Commissioner and Assistant Commissioner (Legal) to speak with members practising law outside of the Sydney Metropolitan Area.

Following the Commissioner's visits in previous years, OLSC staff visited the New England region of New South Wales in June 2003. This was part of a strategy to widen the educational scope of the OLSC. Jim Milne, Assistant Commissioner (Complaints) and Louise McDermott, Education and Communication Officer, delivered presentations to community sector organisations including the North and North West Community Legal Service, as well as to law students at the University of New England. Ms McDermott and Mr Milne also met with Brian O'Connell, Chamber Magistrate to discuss the role of the Office and the nature of referrals made to and from Chamber Magistrates.

The effect on the OLSC of the Attorney General's plan to provide more departmental services to regional areas is yet to be seen.

We will report on the developments in this area in the next annual report.

PUBLICATIONS

During the year in review, 5 issues of the OLSC newsletter, *Without Prejudice*, were produced and distributed among the legal profession and throughout the community. This was a significant increase compared to previous years and is attributable to the efforts of Louise McDermott who filled the position of Education and Communication Officer in July 2002.

Without Prejudice addresses current issues of legal reform and provides practical information about issues that commonly cause disputes between practitioners and their client. Articles of particular relevance to practitioners during the year were those that explained new regulations which affect the advertising of legal services and proposed reforms to the *Legal Profession Act 1987*.

In past years, *Without Prejudice* has been distributed directly to



During 2002-2003, Commissioner, Steve Mark delivered a number of addresses and speeches to students and members of the profession.

practitioners and to consumers of legal services through relevant community organisations. While distribution of hard copies will continue, from September 2002 issues of *Without Prejudice* are now also available on-line at www.lawlink.nsw.gov.au/olsc.

EVALUATION AND IMPROVEMENT

Staff of the OLSC have formed a project team to address the educative functions of the Office. Part of the team's focus is to find ways to increase awareness of the OLSC and its functions within the profession as well as to educate legal practitioners about the ways

in which they might better deal with complaints.

Having increased the scope of our contact with the legal profession, we are seeking to ascertain the ways in which we could improve our educative function. In order to do this, we need to analyse and evaluate the effectiveness of our communications with the profession. It is our aim to obtain feedback from all those who participate in our education sessions. The results of these surveys can then be assessed and more effective communication strategies can be developed using that data. ■

And you wonder why lawyers aren't popular ...

An elderly couple, Margaret and Frank, had retained a solicitor to deal with various legal matters over the years.

When Frank died suddenly of a heart attack, Margaret was touched when she received a card and a phone call from the lawyer expressing his sympathy for Margaret and the family.

The solicitor assisted Margaret with the execution of Frank's will and Margaret was happy with the service she received. That is until she received the bill relating to the execution of Frank's will. She was astonished to find that the lawyer had charged for both the telephone call and for the sympathy card he sent when Frank died.

Margaret naturally assumed a mistake had been made and contacted the solicitor. However, he was adamant that he had spent time making the call and sending the card and was entitled to be paid. Margaret made a complaint to our Office.

When we asked the solicitor about the charges he repeated his response about entitlement to charge for time spent. We very quickly and firmly pointed out that while solicitors are entitled to charge for time and disbursements, this entitlement does not extend to tasks that do not relate to the legal services.

The practitioner reduced the bill. Margaret decided it was time to change solicitors provided.

Like all service providers, lawyers should ask themselves, "How would I feel if the same thing happened to me?"

Promoting realistic community expectations of the legal system



Maya Borthwick, Mediation and Investigation Officer provides information and assistance to a complainant

The year in review featured continued improvements to the way in which we inform and liaise with the community. Continued education and increased access to information are crucial in order for the community to develop more realistic expectations of the legal system and the legal practitioners who work within it. The OLSC continues to improve the dissemination of information to the community through one-to-one discussions with people about their complaints, increased distribution of our publications and greater consultation with community groups.

EDUCATING AND INFORMING

One-to-one assistance

The inquiry line plays a major role in our educative function. Any member of the public may call the inquiry line for information about the complaints process and to discuss general concerns about the legal services they are receiving. For most people the inquiry line is their first contact with our office. This year, 9840 calls were received from people with various questions and concerns about legal services.

Inquiry line officers provide information and referrals to allow

people to better equip themselves with the knowledge they require to use legal services in the most effective way. Inquiry line officers provide information about the complaints system and give people an indication of what they should reasonably expect from a legal practitioner.

We continue to encourage face-to-face interviews with those people who may have difficulty expressing their concerns to an inquiry line officer or in writing. This service is offered primarily to people whose first language is not English and may require an interpreter and to people who have disabilities

that may cause communication difficulties. During the year in review more than 1500 people were assisted through interviews and individual assistance received when attending our offices.

Publications

During the year, OLSC fact sheets were reviewed and updated. A number of fact sheets were added to the series in order to provide the community with current information relevant to the OLSC and to legal services generally.

A new fact sheet entitled *What happens when you make a*

Too close for comfort

complaint? was among these additions. This fact sheet explains the processes of the Office, the ways in which complaints may be handled and outlines the usual time frames within which complaints can be resolved. It is an important addition to the fact sheet series because it increases complainants' understanding of the functions and limitations of the Office, thereby fostering more realistic expectations of the outcomes that the OLSC may be able to achieve. Other new fact sheets were developed to explain the various legal costs that are regulated, such as workers' compensation and victims' compensation. The fact sheet on costs in victims' compensation matters was written in collaboration with Victims Services.

Fact sheets are often provided to people calling the inquiry line for initial information or to people who have already lodged complaints but who might benefit from further explanation of the issues affecting them. Our fact sheets are now available on-line at www.lawlink.nsw.gov.au/olsc.

A list of frequently asked questions and answers to those questions is also available on our website. This information was updated to ensure that practitioners and consumers of legal services have access to the most up to date information about the OLSC and the ways in which complaints may be handled and resolved.



Stephen Eccleshall, Mediation and Investigation Officer, assesses a complaint.

The OLSC receives many complaints alleging conflict of interests. These complaints often arise from distressing situations where a solicitor is previously known to a complainant.

A solicitor, Frederick, had been a family friend. He had invested in property with Mary and her husband, Jack and had socialised with them on many occasions.

When the couple broke up, Mary discovered that Frederick was representing Jack. Mary immediately objected, citing their close relationship and the fact that the solicitor had invested in property with the couple. Mary asked Frederick to withdraw. He declined saying there was no legal basis for her allegations of conflict.

Some months later, Mary made an application to the Family Court to prevent Frederick from continuing to act for Jack. The solicitor was required to withdraw from proceedings.

After Frederick ceased to act for Jack, Mary made a complaint to the OLSC. The complaint was investigated but was dismissed since there was no evidence to suggest that any breach of confidentiality had occurred; confidentiality being central to the issue of conflict of interests.

In this situation, as well as causing distress for Mary, Frederick put his own client in a difficult position. When he withdrew from proceedings, several months into the matter, Jack had to instruct a new solicitor. The emotional and economic cost to both parties in this matter was enormous.

The message from the OLSC is that solicitors need to think very carefully when accepting instructions from anyone with whom they have had personal dealings. While there may be no basis for disciplinary action, the solicitor must consider the wider ramifications of his or her decision to act.



Justin Vaughan, Mediation and Investigation Officer

The OLSC has various pamphlets relating to the way in which complaints are handled within the Office. Of our most commonly used pamphlets, one is designed to assist practitioners dealing with complaints and another aims to assist complainants by explaining the functions of the OLSC and ways in which disputes may be resolved independently by practitioners and clients who find themselves in dispute.

Without Prejudice provides information relevant to both practitioners and complainants. It is available to consumers of legal services from our Office or through Community Legal Centres and other community based services. As mentioned in the previous chapter, we have increased the availability of *Without Prejudice* by making it available online and by expanding our mailing list to incorporate more community centres and groups.

Disciplinary register

Section 171LC of the *Legal Profession Act 1987* requires information about disciplinary action taken against practitioners to be made public. The section also requires that the register be made available for public inspection and made available on the Commissioner's website. Accordingly, a disciplinary register was set up during the year and is available on-line. This register does not record complaints about legal practitioners. A record is made only when an action such as a public reprimand, the appointment of a manager or the removal of a practising certificate is taken.

EVALUATING AND IMPROVING

Project Teams

Three teams of staff within the OLSC are reviewing the methods we employ to educate and inform the

public in order to promote realistic expectations of the legal system.

The Education Project Team will evaluate and improve the ways in which we provide information to the community, both in the form of publications and through meetings and seminars with community groups. Improvements in the way staff provide information, particularly to complainants who may have special needs, form part of the responsibilities of another team focussing on training within the Office. A third team will evaluate and find ways to improve our inquiry line to ensure that information and referrals provided are current and will give members of the community an even greater level of customer service. ■

Operating **efficiently and equitably**



*Joanne Treacy – newly appointed
Manager of Information Services
and Systems.*

The OLSC continued to pursue measurable business improvements in 2002-2003 through the application of total quality management systems and enhanced operational processes.

We implemented project management methodology in developing our business plan and established project teams to progressively review and refine our internal systems, policies and procedures and achieve plan objectives. Our commitment to delivering excellent client service and maintaining consumer confidence was forefront in our planning framework.

EVALUATION OF OUR SERVICE

Client survey 2002

The *Legal Profession Act 1987* requires that the OLSC regularly conduct client satisfaction surveys. Our most recent survey was conducted in 2002.

Questionnaires were sent out to complainants and practitioners who had been parties to the investigations and consumer disputes handled by the OLSC, the Law Society and

the Bar Association. Surveys were sent to 550 complainants and 542 practitioners. 312 completed surveys were returned constituting an adjusted return rate of 28.57%.

Among the strengths of the OLSC identified by the survey were the courteous and professional manner of staff, the clarity of correspondence and the clarity of verbal explanations provided to practitioners and complainants.

We were pleased to see that the OLSC was the greatest source of assistance to complainants. The survey also identified an increased awareness of the role of the OLSC among the legal profession compared to the previous survey in 2000.

Despite these positive outcomes the survey identified certain weaknesses and areas for improvement. As a result, we hope to find ways to



Sue Sarkis, Administration Manager

improve the timeliness of our complaint handling, to improve the clarity of information about the ways in which complaints are handled and to provide more extensive explanations of the functions and limitations of the Office. The survey showed that where complainants were disappointed with the outcome of their complaints, they were concerned that the Commissioner's determinations in relation to their complaints had not been well enough explained. Both practitioners and complainants complained that the OLSC was biased toward the other group.

The survey has identified a need to continue assisting practitioners to deal with complaints and to improve the consumer focus of their practices. It is also clear that we need to continue to encourage complainants to discuss the concerns with their lawyer before lodging a formal complaint.

In addition, we will review the practices and procedures within the OLSC and liaise with the Law Society and Bar Association to identify areas for improvement.

FINANCIAL PERFORMANCE

The OLSC is a regulatory service provider operating within the structure of the NSW Attorney General's Department. Unlike other departmental agencies funded by State Treasury, the OLSC receives operational funding from the Public Purpose Fund and maintains a recurrent recoupment budget.

In November 2002 the Fund granted a \$0.246m increase to the OLSC's budget to finance the operating costs of four additional positions. The new positions emerged from a review and restructure of our operations in late 2001 to address the challenges brought by amendments to the *Legal Profession Act 1987*. A portion of the expenditure increase was allocated to this year's budget.

The Office applied stringent financial controls during the year and closely monitored financial performance for signs of unfavourable budget trends. We met all of our financial obligations including self-funding the 4% salaries and wages increase, the penultimate in the *Crown Employees (Public Sector Salaries January 2002) Award*.

We met budget expectations in 2002-2003 and achieved an overall expenditure level well below our budget allocation for the year. Details of the OLSC's financial performance including comments on significant budget variances, some resulting from the Department's year end financial processes, are provided in the following financial statement and supporting notes.

HUMAN RESOURCE MANAGEMENT

The OLSC's staff was increased by four positions in 2002-2003 and included: a Manager, Information Services & Systems Gr 9/10; a Systems Assessments Officer Gr 7/8; a Senior Mediation & Investigation Officer

Gr 7/8; and, a Coordinator Review Systems & Support Gr 5/6 (this position is a new position and will replace the position of Executive Assistant Gr 3/4.)

The new positions complement our staffing structure in light of challenges created by amendments to the *Legal Profession Act*, which included extending the powers and responsibilities of the OLSC in the regulatory framework. The additional staff will provide essential specialist support to the Office; they will ensure we meet quality requirements of best practice and they will undertake audits of incorporated legal practices to determine compliance with the *Legal Profession Act*.

As at 30 June 2003, the OLSC comprised 21 permanent full-time positions for administrative and professional staff. Some of these positions were filled by staff working part-time or in a job share arrangement consistent with the Department's policy on flexible work practices.

The Office experienced periodic staff shortages during the year due to staff movements on long term leave or temporary placements elsewhere. We addressed the staffing imbalance by recruiting from within the Department as well as offering casual employment to university law students who were completing their training and would benefit from expanding their

skills-base in a complaint-handling environment.

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

The OLSC promoted staff development opportunities in 2002-2003 and encouraged staff to augment their work skills and career prospects through continual education and training. We established a project team to evaluate the Office's training program and the alignment of staff training needs to operational requirements. During the year, staff attended skills-based training run by the Department as well as external seminars and workshops to learn about legislative initiatives and amendments impacting the OLSC.

INFORMATION SYSTEMS & TECHNOLOGY

In 2002-2003, the OLSC upgraded its personal computers to newer leased models and implemented the programmed installation of Microsoft Windows 2000 operating system.

We decided to defer the installation of our new voice communication system, NEC Q-Master Ex, preferring to wait until the latest

release of the product was available and fully tested by the developer. We anticipate this will occur in the first quarter of the next financial year.

We continued to make improvements to administrative processes and procedures associated with the management of our complaints file database, the Complaints Tracking System (CTS). The CTS stores clients' complaint file details and it is the main research and reporting mechanism used to produce end-of-year statistical reports on the number and type of written complaints handled by the OLSC.

We performed frequent audits of the CTS during the year to ensure the integrity of the database was not compromised and that client complaint details were represented factually. We identified and corrected system inconsistencies as they arose.

In June 2003 we received a visit from a representative of QA Plus Limited, the CTS software developer, who installed a system upgrade of the database. We developed a good working relationship with the consultant from overseas and we will maintain close liaison to facilitate enhanced delivery of our reporting requirements from the system. ■

Financial Statement

2002-2003

	BUDGET \$	SPENT \$	VARIANCE \$	NOTES
Salaries & Wages	1,227,306	1,318,323	-91,017	1
Salary Recoveries	0	-841	841	
Allowances	0	775	-775	
Overtime	5,722	3,274	2,448	
Leave Entitlements	28,461	44,937	-16,476	2
Workers Compensation	7,956	8,047	-91	
Payroll Tax	83,597	105,324	-21,727	3
Fringe Benefits Tax	2,000	152	1,848	
Superannuation	90,224	1,152	89,072	4
Total Employee Related	1,445,266	1,481,143	-35,877	
Advertising & Publicity	5,115	6,593	-1,478	
Bank Charges	102	31	71	
Consultancies	60,399	55,343	5,056	
Contractors	10,139	3,920	6,219	
Electricity & Gas	12,614	11,608	1,006	
Fees	434,309	193,643	240,666	5
Freight & Cartage	1,023	10	1,013	
General Expenses	3,069	906	2,163	
Insurance	2,121	1,184	937	
Interpreters & Translations	4,228	2,914	1,314	
Postal Expenses	22,302	16,367	5,935	
Printing	35,920	27,973	7,947	
Publications	11,253	9,366	1,887	
Rates & Outgoings	8,585	6,813	1,772	
Removal Costs	0	41	-41	
Rent	186,400	182,263	4,137	
Staff Expenses	8,184	12,559	-4,375	
Stores & Stationery	53,403	51,368	2,035	
Telephone	40,121	21,416	18,705	6
Travel	13,460	6,342	7,118	
Lease of Equipment	22,000	23,470	-1,470	
Total Maintenance & Workings	934,747	634,130	300,617	
Maintenance Contracts	48,277	42,010	6,267	
Repairs and Maintenance	1,023	755	268	
Total Maintenance Contracts	49,300	42,765	6,535	
Total Expenses	2,429,313	2,158,038	271,275	
Less: Revenue (Recoupment)	-2,429,313	-2,256,230	-173,083	
Less: Revenue (Other)	0	-18	18	
Net Cost of Services	0	-98,210	98,210	
Depreciation	44,272	26,190	18,082	7
Net Position	44,272	-72,020	116,292	

Notes supporting the 2002-2003 Financial Statement

- 1. Salaries & Wages:** The salaries and wages variation reflects an increased level of recreation leave payments combined with an annual accrual component for recreation leave expense. Also contributing towards this result was the effect of the extra loading payments made to casual staff on top of their normal hourly rate to compensate for non-receipt of benefits such as paid sick leave and paid public holidays. The casual staff were engaged to fill some of the temporary vacancies created as a result of staff secondments to other agencies during the year.
- 2. Leave Entitlements:** This expenditure item includes expense accounts covering monthly provision for long service leave liability as well as payments made in relation to employees' annual leave loading entitlements. A slight budget overrun resulted against this line item at close of the financial year.
- 3. Payroll Tax:** Payroll tax is payable to the Office of State Revenue on salary related payments calculated by the Department's Human Resources and Financial Services. The OLSC's payroll tax budget variation in 2002-2003 reflects an end-of-year financial accounting adjustment to recognise the payroll tax liability on long service leave and recreation leave on costs.
- 4. Superannuation:** The OLSC is involved in two superannuation schemes, the State Superannuation Scheme and the State Authorities Non-Contributory Superannuation Scheme. As at 30 June 2003 the reported debit balance of these funds showed an increase on the debit balance reported as at 30 June 2002. To reflect this movement in the Department's books as part of required year-end financial processes, the OLSC's superannuation account in the ledger was debited with the increase and the superannuation expense credited. The budget variation reflects the credit adjustment.
- 5. Fees:** Budgeted expenditure for *Fees* includes provision for litigation costs incurred to bring matters before the Administrative Decisions Tribunal (ADT) and the Courts. In addition, provision is made for costs associated with the review system and independent review advisors. In 2002-2003, the Office did not incur significant litigation costs in bringing matters before the ADT and the number of review requests was held at the previous year's level.
- 6. Telephone:** The Department's telephone rental expenses and metered call costs are processed centrally and then apportioned to cost centres. In June 2003 the Department effected credit adjustments against the OLSC's telephone expenditure to reverse previous months' accruals which should have been reversed in the following month of the accrual.
- 7. Depreciation:** The budget variation highlights an adjustment to depreciation expense for plant and equipment following a reassessment of residual values of the OLSC's assets. ■

Annual Report Statistics 2002-2003

Phone Enquiries

P1 Legal matters raised in calls

	Percentage		
	00-01	01-02	02-03
Conveyancing	17.4	19.9	17.8
Family	15.8	15.0	15.2
Personal injuries	10.9	13.1	11.9
Civil	11.7	10.2	9.9
Probate/wills/family provisions	9.0	8.3	8.8
Workers compensation	7.4	7.4	7.5
Commercial / corporations law	7.3	5.8	6.7
Criminal law	5.1	3.5	4.0
Victims compensation	2.6	1.9	2.2
Other	12.8	14.9	15.8

P2 Nature of phone enquiry*

	Percentage*		
	00-01	01-02	02-03
Communication	16.0	18.3	18.7
General cost complaint/query	17.2	18.0	18.4
Negligence	14.9	12.9	11.8
Delay	7.8	10.0	9.4
Overcharging	7.7	9.7	9.4
Quality of service	3.9	4.6	8.2
Ethical matters	8.8	8.2	6.0
Costs disclosure	4.6	3.2	3.3
Document transfer / liens	2.8	2.5	2.9
Trust fund matters	3.0	2.5	2.0
Conflict of interests	2.4	1.9	2.0
Instructions not followed	3.1	2.4	1.9
Misleading conduct	2.2	1.6	1.4
Document handling	1.9	1.2	1.4
Pressure to settle	1.1	0.7	1.1
Failure to honour undertakings	1.2	0.9	0.7
Compliance matters	0.2	0.8	0.7
Fraud (not trust fund)	0.7	0.6	0.5

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

P3 Practitioners mentioned on inquiry line

	Percentage		
	00-01	01-02	02-03
Solicitor	94.5	96.2	94.3
Barrister	2.9	1.3	1.8
Licensed conveyancer	0.5	0.5	0.7
Other	2.1	2.0	3.1

P4 Source of calls to the OLSC inquiry line

	Percentage		
	00-01	01-02	02-03
Client	73.3	69.5	67.5
Friend/relative	7.9	8.1	8.8
Previous client	2.1	4.9	6.9
Opposing client	6.3	6.3	5.5
Beneficiary/executor/administrator	2.4	2.5	2.0
Solicitor on another's behalf	1.9	1.0	1.9
Non-legal service provider	1.7	1.6	1.6
Solicitor on own behalf	0.7	1.0	1.5
Unrepresented client	0.6	0.7	0.4
Barrister on another's behalf	0.6	0.1	0.2
Barrister on own behalf	0.1	0.1	0.1
Other	2.3	4.2	3.6

P5 Outcomes of calls to the inquiry line			
	Percentage		
	00-01	01-02	02-03
Provided information about the legal system	26.9	28.2	31.0
Recommended direct approach to lawyer about concerns	25.3	20.4	20.5
Provided complaint form	24.4	22.9	17.9
Provided referral for legal advice or other assistance	9.4	11.2	13.3
Caller indicated intention to send in complaint	3.3	3.9	6.5
Provided information about the OLSC and LPA to a legal practitioner	2.0	4.7	3.2
Provided referral to the NSW Supreme Court Assessment Scheme	3.0	2.9	2.0
Listened to caller's concerns	1.3	1.6	1.8
Conducted telephone mediation	1.0	1.8	0.9
Explained that concerns are outside jurisdiction of OLSC	1.6	0.1	0.7
Scheduled interview for caller	0.4	0.6	0.4
Other	1.0	1.7	1.9

Annual Report Statistics 2002-2003

Written Complaints

W1 Legal matters arising from complaints received in 2002-2003			
	Percentage of complaints		
	00-01	01-02	02-03
Conveyancing	12.8	14.4	13.8
Civil	12.1	12.7	13.4
Personal injuries	13.7	11.6	12.9
Family / de facto	13.1	13.0	12.2
Commercial / corporations law	10.2	8.5	11.0
Probate / wills / family provisions	9.0	8.0	7.6
Criminal	6.6	4.9	5.1
Workers compensation	4.7	5.6	4.8
Leases / mortgages / franchises	4.1	3.6	3.8
Industrial law	2.2	1.5	1.6
Professional negligence	1.7	1.9	1.4
Land and environment	1.8	1.0	1.1
Immigration	0.8	0.6	0.9
Victims compensation	1.3	0.6	0.5
Other	5.8	12.2	9.9

W2 Nature of complaints received in 2002-2003				
	Percentage*			
	00-01	01-02	02-03	
Negligence	19.6	17.8	20.5	
Communication	13.1	16.5	15.8	
Ethical matters	7.2	9.4	10.7	
Overcharging	11.7	10.9	10.0	
Misleading conduct	6.1	7.0	7.1	
Delay	8.1	7.8	6.3	
General cost complaint / query	7.9	7.6	6.2	
Trust fund	3.4	1.1	5.1	
Cost disclosure	3.3	3.3	4.1	
Document transfer / liens	4.5	3.8	3.5	
Instructions not followed	3.6	5.2	3.3	
Conflict of interests	2.9	2.7	2.8	
Quality of service	4.1	3.3	1.7	
Failure to honour undertakings	1.6	1.2	1.2	
Pressure to settle	1.4	1.0	1.1	
Document handling	0.9	1.1	0.8	
Fraud (not trust fund)	0.6	0.4	0.5	
Compliance matters	0.1	0.1	0.3	

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

W3 Type and source of complaints received in 2002-2003

	Number of complaints				TOTAL	Percentage		
	Solicitor*	Barrister	LConv**	Other***		00-01	01-02	02-03
Client	823	73	12	22	930	36.3	35.3	33.6
Previous client	514	15	3	9	541	19.5	17.6	19.5
Opposing client	318	24	2	7	351	13.2	14.6	12.7
Unrepresented client	20	0	0	0	20	0.3	0.6	0.7
Client's friend / relative	93	1	0	0	94	2.1	1.8	3.4
Solicitor on another's behalf	186	5	3	6	200	5.2	5.2	7.2
Solicitor on own behalf	122	10	2	2	136	3.9	4.8	4.9
Barrister on another's behalf	3	0	0	1	4	0.1	0.0	0.1
Barrister on own behalf	25	1	0	1	27	0.9	1.3	1.0
Non-legal service provider	81	2	0	6	89	2.5	2.7	3.2
Beneficiary/executor/administrator	94	1	0	0	95	2.8	3.8	3.4
Legal Services Commissioner	12	1	1	1	15	0.3	0.6	0.5
Law Society	101	0	0	4	105	3.5	4.5	3.8
Bar Association	2	15	0	0	17	0.5	0.5	0.6
Other ****	116	18	2	8	144	8.8	6.7	5.2
TOTAL	2510	166	25	67	2768			

* Includes former solicitors and legal practitioners

** Licensed Conveyancer

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

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

Annual Report Statistics 2002-2003

Written Complaints *(continued)*

W4 Summary of complaints received and / or finalised, 2002-2003										
COMPLAINTS RECEIVED IN 2002-2003	Solicitor	Barrister	LConv*	Other**	Total 00-01	00-01 %	Total 01-02	01-02 %	Total 02-03	02-03 %
Complaint handling by OLSC										
Complaint handling ongoing at OLSC	326	19	1	2	415	15.7	458	16.0	348	12.6
Suspended at OLSC***	18	0	0	0	24	0.9	34	2.0	18	0.7
Complaint handling completed at OLSC	1013	32	1	16	819	31.1	885	31.0	1062	38.4
Complaint dismissed by OLSC	631	59	3	38	544	20.6	747	26.0	731	26.4
OLSC subtotal	1998	110	5	56	1802	68.4	2124	72.5	2159	78.0
Complaint handling by Professional Councils										
Complaint handling ongoing at Council	304	35	16	7	483	18.3	456	15.6	362	13.1
Suspended at Council***	1	0	0	0	30	1.1	4	0.1	1	0.0
Complaint handling completed at Council	86	5	1	3	117	4.4	83	2.8	95	3.4
Complaint dismissed by Council	132	17	2	0	203	7.7	261	8.9	151	5.5
Council subtotal	523	57	19	10	833	31.6	804	27.5	609	22.0
TOTAL COMPLAINTS RECEIVED 2002-2003	2511	167	24	66	2635		2928		2768	
COMPLAINTS FINALISED IN 2002-2003										
Complaint handling finalised by OLSC										
Complaint handling completed at OLSC	1210	38	4	15	1098	41.9	1048	38.0	1267	43.7
Complaint dismissed at OLSC	834	81	5	38	701	26.8	913	33.1	958	33.1
OLSC subtotal	2044	119	9	53	1799	68.7	1961	71.1	2225	76.8
Complaint handling finalised by Councils										
Complaint handling completed at Council****	164	10	2	11	238	9.1	185	6.7	187	6.5
Complaint dismissed by Council	429	43	5	8	583	22.3	612	22.2	485	16.7
Council subtotal	593	53	7	19	821	31.3	797	28.9	672	23.2
TOTAL COMPLAINTS FINALISED 2002-2003	2637	172	16	72	2620		2758		2897	

* Licensed Conveyancer

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

*** Suspended files are files that cannot be finalised but on which no progress is likely for some time, for example, a file may be suspended if a complainant has asked for an investigation to be postponed until a related matter before the courts is finalised. Previously these types of files were grouped with other 'open' files.

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

W5 Status at 30 June 2002 of complaints received in 2002-2003					
Status	Solicitor	Barrister	LConv*	Other**	TOTAL
COMPLAINT HANDLING IN PROGRESS					
Dispute resolution in progress	260	15	1	1	277
Out of time assessment in progress	18	0	0	0	18
Investigation in progress	48	4	0	1	53
Complaint handling suspended	18	0	0	0	18
Subtotal open, active at OLSC	344	19	1	2	366
Dispute resolution in progress	26	1	7	1	35
Investigation in progress***	278	34	9	6	327
Complaint handling suspended #	1	0	0	0	1
Subtotal open, active at Council	305	35	16	7	363
SUBTOTAL, OPEN COMPLAINTS	649	54	17	9	729
COMPLAINT HANDLING FINALISED					
Dispute resolution completed	1005	32	1	16	1054
Resolved through formal mediation	4	0	0	0	4
Practitioner referred to Tribunal****	0	0	0	0	0
Practitioner reprimanded by LSC	4	0	0	0	4
Subtotal finalised by OLSC	1013	32	1	16	1062
Dispute resolution completed	72	0	1	3	76
Resolved through formal mediation	2	0	0	0	2
Practitioner referred to Tribunal	11	1	0	0	12
Practitioner reprimanded by Council	1	4	0	0	5
Subtotal finalised by Council	86	5	1	3	95
Tribunal finding of UPC/PM unlikely*****	406	41	3	9	459
Likely UPC but generally competent	3	0	0	0	3
Complaint not accepted out of time	36	3	0	0	39
Withdrawn, further particulars not supplied	145	14	0	2	161
Outside OLSC jurisdiction	38	1	0	26	65
Public interest #	3	0	0	1	4
Subtotal dismissed by OLSC	631	59	3	38	731
Tribunal finding of UPC/PM unlikely	80	13	2	0	95
Likely UPC but generally competent	3	1	0	0	4
Withdrawn, further particulars not supplied	47	3	0	0	50
Public interest #	2	0	0	0	2
Subtotal dismissed by Council	132	17	2	0	151
SUBTOTAL, COMPLAINTS FINALISED	1862	113	7	57	2039
Total handled by OLSC	1988	110	5	56	2159
Total handled by Council	523	57	19	10	609
TOTAL	2511	167	24	66	2768

* Licensed Conveyancer

** "Other" includes interstate legal practitioners, clerks, non-legal service providers and struck off practitioners

*** Includes where investigator / receiver / manager has been appointed

**** Administrative Decisions Tribunal

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

New category

Annual Report Statistics 2002-2003

Written Complaints *(continued)*

W6 All complaints finalised 2002-2003					
Complaints finalised	Solicitor	Barrister	LConv*	Other	TOTAL
Dispute resolution completed	1172	38	4	15	1229
Resolved through formal mediation	5	0	0	0	5
Practitioner referred to Tribunal #	6	0	0	0	6
Practitioner reprimanded by LSC	27	0	0	0	27
Subtotal finalised by OLSC	1210	38	4	15	1267
Dispute resolution completed	91	1	1	4	97
Resolved through formal mediation	8	0	0	0	8
Practitioner referred to Tribunal	36	3	1	7	47
Practitioner reprimanded by Council	29	6	0	0	35
Subtotal finalised by Council	164	10	2	11	187
Tribunal finding of UPC/PM unlikely	471	49	3	8	531
Likely UPC but generally competent	4	0	0	0	4
Complaint not accepted out of time	56	5	0	0	61
Withdrawn, further particulars not supplied	209	25	0	2	236
Outside OLSC jurisdiction	58	2	0	26	86
Public interest #	36	0	2	2	40
Subtotal dismissed by OLSC	834	81	5	38	958
Tribunal finding of UPC/PM unlikely	328	39	3	4	374
Likely UPC but generally competent	8	1	0	0	9
Withdrawn, further particulars not supplied**	83	2	2	4	91
Public interest #	10	1	0	0	11
Subtotal dismissed by Council	429	43	5	8	485
Total handled by OLSC	2044	119	9	53	2225
Total handled by Council	593	53	7	19	672
TOTAL	2637	172	16	72	2897

* Licensed Conveyancer

New category

W7 Duration of file handling

Of complaints received and finalised in 2002-2003, time taken for complaints handling

	Percentage of files closed within following periods*		
	00-01	01-02	02-03
0-30 days	25.0	25.4	22.6
1-3 months	33.3	32.9	34.4
3-6 months	20.1	23.0	20.4
6-9 months	9.6	8.5	10.9
9-12 months	3.6	3.6	4.1
Over 12 months	8.5	6.6	7.5

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

W8 Age of complaints remaining open or suspended on 30 June 2003 and being handled by the OLSC

Year opened	Open at 30 June 01	Open at 30 June 02	Open at 30 June 03
2002-2003	0	0	374
2001-2002	0	492	134
2000-2001	439	302	42
1999-2000	371	199	16
1998-1999	53	36	4
1997-1998	7	7	5
1996-1997	9	6	4
1995-1996	2	0	0
1994-1995	0	0	0
TOTAL	880	1029	579*

* Special efforts have been made in 2002-2003 to ensure that files finalised, but not closed, in earlier years were properly recorded on the database.

W9 Average time taken to finalise a complaint at the OLSC

	Days*
Average time to complete complaints received and completed / resolved in 2002-2003	83.0
Average time to complete complaints received in any year but completed / resolved in 2002-2003	125.0
Average time taken to dismiss complaints received in 2002-2003	78.6
Average time to dismiss complaints received in any year but dismissed in 2002-2003	152.3

* Averages rounded to 1 decimal point

Annual Report Statistics 2002-2003

Reviews

R1 Status at 30 June 2003 of review requests received in 2002-2003

	Solicitor	Barrister	LConv*	Other	Total	Percentage
Review in progress						
In progress at OLS	6	1	0	0	7	8.2
Being reviewed by consultant	7	1	0	0	8	9.4
Consulting with Council prior to finalising	1	0	0	0	1	1.2
Total remaining open	14	2	0	0	16	18.8
Review completed						
Dismissal confirmed	62	7	0	0	69	81.2
Out of time, no jurisdiction	0	0	0	0	0	0.0
Review request withdrawn	0	0	0	0	0	0.0
Reprimand confirmed	0	0	0	0	0	0.0
Reinvestigated by OLS	0	0	0	0	0	0.0
Total completed	62	7	0	0	69	81.2
Total received	76	9	0	0	85	100.0

* Licensed Conveyancer

R2 Reviews in progress and finalised in 2002-2003 – received all years

	Solicitor	Barrister	LConv*	Other	Total	Percentage
Review in progress						
In progress at OLS	11	1	0	0	12	8.2
Being reviewed by consultant	7	1	0	0	8	5.5
Consulting with Council prior to finalising	5	0	0	0	5	3.4
Total remaining open	23	2	0	0	25	17.1
Review completed						
Dismissal confirmed	102	12	0	0	114	78.1
Out of time, no jurisdiction	0	1	0	0	1	0.7
Review request withdrawn	1	0	0	0	1	0.7
Reprimand confirmed	3	0	0	0	3	2.1
Reinvestigated by OLS	2	0	0	0	2	1.4
Total completed	108	13	0	0	121	82.9
Total handled	131	15	0	0	146	100.00

* Licensed Conveyancer

Annual Report Statistics 2002-2003

Tribunal Proceedings

T1 Complaints referred to the Administrative Decisions Tribunal, 2002-2003*

Reason	Solicitor	Barrister	LCConv**	Clerk / Associate	TOTAL
Unsatisfactory Professional Conduct (UPC)	0	0	0	0	0
Professional Misconduct (PM)	9	3	1	0	13
PM and UPC	0	1	0	0	1
Prohibited employment***	0	0	0	4	4

* Data provided by Administrative Decisions Tribunal

** Licensed Conveyancer

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

T2 Outcomes of Tribunal Proceedings 2002-2003*

Outcome	Number
No jurisdiction/withdrawn	7
Dismissed after hearing	3
Removed from roll	9
Removed from roll and fined	1
Removed from roll and compensation ordered	4
Suspended from practice, reprimanded and legal education course	1
Fined	1
Legal education course	1
Legal education course and fined	1
Reprimanded	6
Reprimanded and fined	6
Reprimanded, fined and legal education course	1
Reprimanded and compensation ordered	3
s48I and s48K Orders (convicted persons)**	1
TOTAL	45

* Data provided by Administrative Decisions Tribunal

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

Please Note:

1. *Statistics may differ slightly from Law Society and Bar Association data due to different office procedures, codes and data definitions used by the three organisations.*
2. *Names of some tables have been improved to more accurately indicate nature of data they contain.*

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