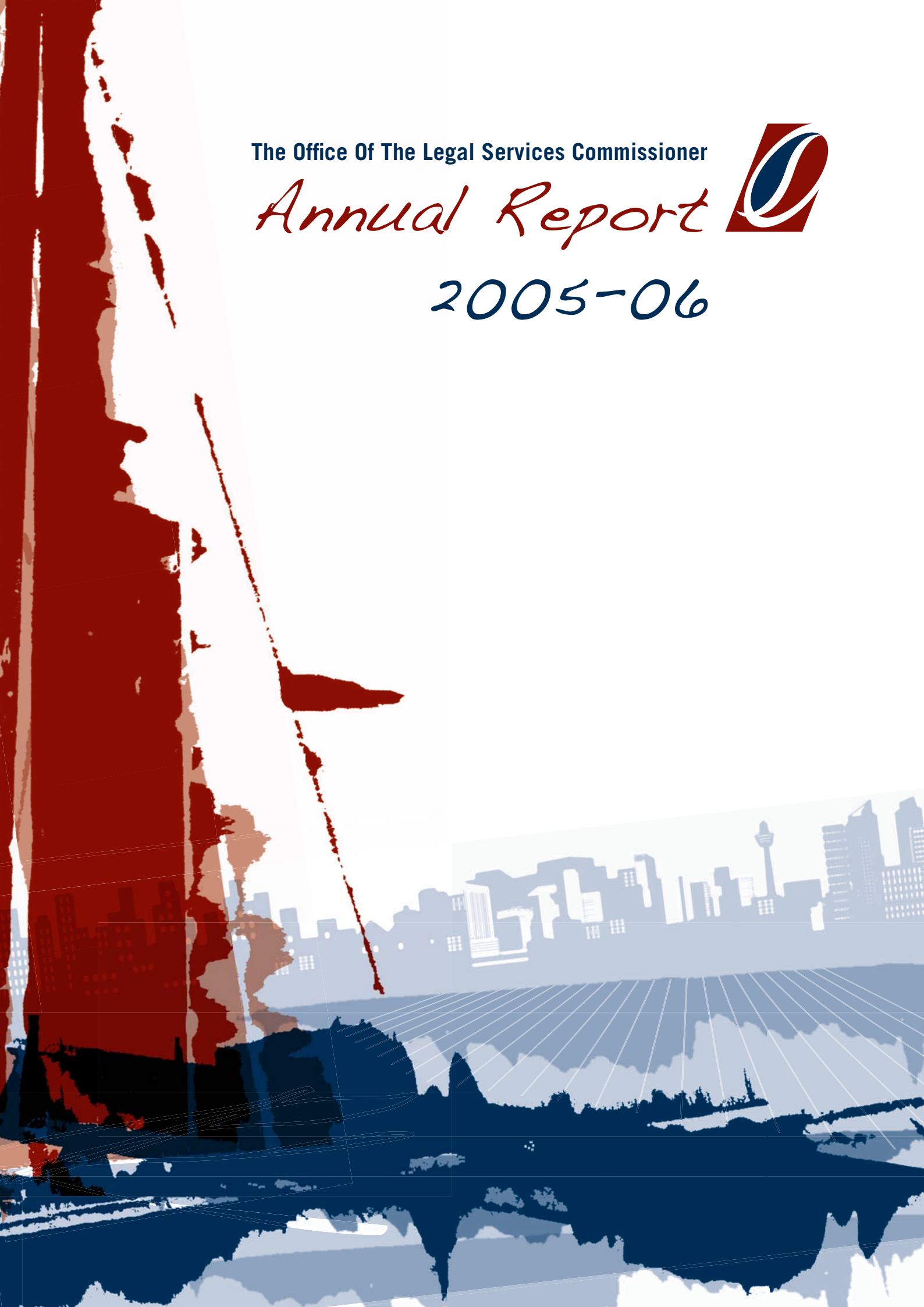


The Office Of The Legal Services Commissioner

*Annual Report*

2005-06



# ANNUAL REPORT

2005-2006

## THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

### *Vision*

We want to lead in the development of an ethical legal services market which is fairer, more 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

## WORK AND INFORMATION FLOW WITHIN OLSC



Spider Network: All units work with each other to determine best practice, ensure information flow and enhance knowledge management to ensure stakeholder satisfaction.

Administration Unit: Administration work for whole of OLSC: calls, messages, correspondence, documents & records management.

Complaints Unit & Inquiry Line: Complaints management, mediation of consumer disputes and investigation of conduct complaints.

Legal Policy and Research: Conducts research, writes legal policy, investigation & complaint handling, reviews decisions of professional bodies, investigates conduct complaints and conducts prosecutions.

Legal Practice Compliance: Oversees the regulation of incorporated legal practices through the application of the self-assessment process and the development of web-based interactive information programs.

Information Services and Systems: Quality systems management, reports, data, information systems and compliance auditing, oversees OLSC reporting requirements, quality management including ISO accreditation and reviews information systems.

Education and Training Unit: Internal staff and external stakeholder training.

Commissioner: Oversees and manages OLSC, media liaison, external relations, policy development and economic management.

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# Commissioner's Report

The New South Wales Office of the Legal Services Commissioner commenced operation 12 years ago. At that time, it was the only office of its kind in the world. It was considered an experiment of “co-regulation”, where an independent statutory authority oversees the regulation of the profession in conjunction with the professional associations, the Law Society and Bar Association.

In the intervening years similar offices have been established in Queensland and Victoria and the United Kingdom has closely followed our model in the recent reform of regulation in that country.

On commencing operation a number of policy decisions were made to set the purpose and direction for the OLSC. Primary amongst these was the commitment to reduce complaints against members of the legal profession through the promotion of high ethical standards, improvement in the way the profession provides its service to the community and the promotion of realistic expectations of the legal process in members of the community.

In the first year of operation we received 2,801 written complaints and 6,700 inquiry calls. This year we received 2,783 written complaints and 8,086 inquiry calls. We are extremely pleased that, notwithstanding the increase in the number of inquiries received by this Office, the number of written complaints has remained virtually static. This is particularly impressive when we consider the increase in the number of the members of the legal profession from about 12,000 to about 20,000 for that period.

It is also extremely pleasing that on the path towards a national legal services market, we have established such close relationships with regulators in the other States. Through the establishment of the Conference of Regulatory Officers (CORO) held each year, regulators, including statutory regulators, Law Societies, Bar Associations, the Law Council of Australia, trust account inspectors and admitting authorities gather to discuss developments, share experiences and attempt to achieve a level of harmonisation of practices as a major plank of an effective national profession.

Agreements have been reached through CORO to address such national issues as the development of continuing professional development guidelines and the introduction of incorporated legal practices in all jurisdictions as agreed by the Standing Committee of Attorneys General. Sensibly, CORO representatives have seen the benefit of attempting to harmonise approaches to regulation which will provide particular benefits to national legal practices, legal practitioners who change jurisdictions and members of the public generally.

In this regard, as a reflection of support for the approach developed by my Office in relation to incorporated legal practices, our program of self-assessment through the ten elements of appropriate management systems is being adopted nationally. Interest in the approach we have taken in relation to incorporated legal practices

has also been closely followed in the United Kingdom. Representatives from the UK have frequently visited our Office and I was invited to present a paper at the Commonwealth Law Conference in London in October 2005 on this subject. Canada has also expressed interest in our approach resulting in the Law Society of Upper Canada sponsoring me to attend their conference in September 2005 to share our experience and approach to incorporated legal practices.

Our interest in management and its impact on the performance of organisations is not exclusive to incorporated legal practices. I am proud to say that the OLSC has this year achieved accreditation to ISO 9001. This process involved a great commitment from all staff and the improvements to our systems have been extensive. I thank the staff for their commitment and acknowledge their enthusiasm and support for this project.

This year also saw the introduction of the new *Legal Profession Act 2004* which came into effect in October 2005. This involved the Office in rewriting virtually all of our brochures, fact sheets and other educational materials as well as running a number of educational programs both in-house and for the legal profession to advise of the changes, new responsibilities and new powers under the Act.

I am very pleased to say that with good planning and the commitment of our staff, as well as the work of officers within the Attorney General's Department, and the Law Society and Bar Association, the transition to the new legislation was relatively smooth.

The OLSC's role in research and policy development continues to expand and we have made significant contributions. Our work on conflict of interest and the Legal Fees Review Panel enabled us to provide input into these difficult policy areas. We are presently engaged in a number of new research initiatives including the development of a paper on legal professional courtesy, a major research project on the effect of advertising on the legal profession and a project in association with the Centre for Applied Philosophy and Public Ethics (CAPPE) to determine the effectiveness of our approach to regulating incorporated legal practices.

These and other areas are discussed in more detail in this report. The work of the OLSC is always exciting and made incredibly rewarding by the dedication and enthusiasm of excellent staff.

We look forward to the 2006/2007 reporting year and the new developments that it will bring.

**Steve Mark**  
**2006**

# CHAPTER 1

## PROMOTING COMPLIANCE WITH HIGH PROFESSIONAL AND ETHICAL STANDARDS

### CONDUCT ISSUES

#### Investigations

In the 2005/2006 reporting year, of the 2783 complaints received, 2012 complaints were handled by the OLSC. The remainder were referred to the Bar Association and Law Society for investigation and resolution. Of the 2012 complaints handled by the OLSC, 306 were dealt with as formal investigations; the remainder were handled as consumer disputes.

A formal investigation takes place in circumstances where the allegations contained in the complaint raise issues of unsatisfactory professional conduct or professional misconduct. Investigations, by their very nature, must be thorough and can be time consuming. Evidence is obtained from the complainant and from the practitioner and, where necessary, from third parties including government and commercial entities. Members of the Legal Team have shown great commitment to these investigations and have worked tirelessly to ensure just and fair outcomes. Of the 306 investigations commenced in the reporting year, 119 have been concluded as well as a further 109 investigations from previous years.

#### Disciplinary Outcomes

The *Legal Profession Act 2004*, which commenced on 1 October 2005, provides for a range of disciplinary outcomes. In circumstances where there is a reasonable likelihood that the disciplinary tribunal, the Legal Services Division of the Administrative Decisions Tribunal, would find that the practitioner had engaged in unsatisfactory professional conduct but not professional misconduct, the matter may be dealt with by the Commissioner by way of a caution or reprimand along with a compensation order or the imposition of a condition on a practicing certificate where appropriate. Under the previous Act only reprimands

and compensation orders were available as disciplinary outcomes.

In the reporting year the Commissioner issued 15 reprimands. Of those 15 reprimands, 6 related to significant delay in the handling of a client's file, three related to failure to communicate with the client on the part of the practitioner, two involved unacceptable discourtesy and of the balance, one related to a failure to account, one involved misleading conduct, one related to a breach of undertaking and one related to prosecuting a matter with no reasonable prospects of success.

One reprimand was accompanied by a compensation order whereby the practitioner paid the sum of \$1,241 by way of compensation to the complainant. The compensation was attributed to the costs the complainant had incurred to remedy issues arising on account of the practitioner's delay. One reprimand was issued following the review of a decision of the Law Society Council to dismiss the complaint.

During the reporting year one caution was issued to a solicitor who, with a previously unblemished record, communicated directly with the client of another practitioner.

In addition to the disciplinary outcomes addressed above, undertakings were provided by a number of practitioners in 61 matters. Almost half of those undertakings were given to the Commissioner in relation to the proper disclosure of costs in accordance with the Act. Additionally, undertakings were given by practitioners in 18 complaints in relation to acting promptly in matters to avoid delay and in 15 complaints in relation to communicating promptly with clients. Practitioners are advised that a breach of an undertaking provided to this office is viewed as professional misconduct and in the event that a breach occurs disciplinary proceedings will be commenced.

### Administrative Decisions Tribunal

In the reporting year three Applications were filed in the Legal Services Division of the Administrative Decisions Tribunal.

The matter of Blackmore involved a failure on the part of the practitioner to provide information requested by this office pursuant to Section 152 of the *Legal Profession Act 1987*. The Tribunal found that Mr Blackmore was guilty of professional misconduct and he was publicly reprimanded and ordered to pay the Commissioner's costs.

In the matter of Piper, the Tribunal found that the practitioner had failed to comply with undertakings provided to the Legal Services Commissioner. The practitioner had undertaken to provide prompt responses to queries from this office. The Tribunal found that Mr Piper was guilty of unsatisfactory professional conduct and he was publicly reprimanded, fined and ordered to pay the Commissioner's costs.

In the matter of Malouf, proceedings were set down for hearing in October. This is the first prosecution under the Advertising Regulations and we look forward to the Tribunal's exposition of the law in this regard.

The Commissioner is presently the Respondent in proceedings commenced before the Tribunal by a former practitioner who was issued with a private reprimand by the Commissioner because of her breach of the rule that a practitioner must not appear as an advocate or act or continue to act in a case in which the practitioner has become a material witness and will be required to give evidence material to the determination of contested issues before the Court. The findings by the Commissioner and the reprimand issued are now contested by the practitioner and a hearing date for her appeal was allocated in October.

An appeal has also been lodged by Mr Nikolaidis who was found guilty by the Tribunal in 2005 of failing to comply with a Section 207 Notice issued by a Costs Assessor and of the deliberate charging of excessive amounts of costs. Mr Nikolaidis has appealed the latter finding and a hearing date before the Court of Appeal was allocated in September. We will report on these matters and those other matters still before the Tribunal in our next Annual Report.

The Commissioner was also joined as the Defendant in two matters before the Supreme Court. In the matter of *Stack v the Legal Services Commissioner*, the Plaintiff was seeking relief similar to that sought

by the Australian Plaintiffs Lawyers Association, Maurice Blackburn Cashman Pty Ltd and Robert Whyburn in proceedings commenced in the original jurisdiction of the High Court in 2004. Those proceedings challenged the validity of Advertising Regulations. Judgement was delivered in the High Court matter in December 2005. The Plaintiffs were unsuccessful and the validity of the Regulations was upheld. As a result, the Stack proceedings in the Supreme Court were withdrawn.

In the matter of the *Council of the NSW Bar Association v Li*, the Commissioner intervened in proceedings before the Court of Appeal. The Council of the NSW Bar Association sought leave to appeal from a decision of the Administrative Decisions Tribunal in which their application to dismiss the proceedings was refused. The Bar was granted leave to appeal on the basis that the Commissioner was invited to intervene. The Commissioner accepted that invitation and filed a Notice of Contention in the appeal proceedings. The Commissioner's argument was successful and the Bar's appeal failed.

### Reviews

In circumstances where a complainant is dissatisfied following a decision to dismiss their complaint made by either the Law Society Council or the Council of the Bar Association, the complainant may seek a review of that decision from this office. In the reporting year, 76 such review requests were received. Of the 46 reviews concluded during the reporting period, 38 resulted in confirmation of the decision of Council, three are in the process of being re-investigated by this office and in four reviews the decision was changed. As referred to above, in one such review, a dismissal by Council was thought inappropriate. The Commissioner was satisfied the conduct of the practitioner would amount to unsatisfactory professional conduct. Accordingly, a reprimand was issued.

### Show Cause Events

The *Legal Profession Act 2004* maintains the regime previously established in relation to disclosing Show Cause events to the relevant Council. Show Cause events are defined as becoming bankrupt, being served with a Creditor's Petition, the presentation of a Debtor's Petition, applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, conviction of a serious criminal offence or conviction of a tax offence. The Act provides that such disclosure must occur within seven days after the event. The Council thereafter has three months



in which to determine whether, in light of the Show Cause event and the circumstances surrounding it, the practitioner is a fit and proper person to hold a practicing certificate. The Act provides that the three-month period may be extended by the Commissioner for a further month. In circumstances where the Council is unable to make its determination within that period, the determination is to be made by the Commissioner.

In the last reporting year two such matters were referred to the Commissioner for determination. In what appears to be a somewhat alarming trend, nine such matters have been referred to the Commissioner for determination in the present reporting year. Of those nine matters, four have been dealt with and, in each case, it has been determined that the Practitioner is a fit and proper person to hold a practicing certificate. One further matter is still subject to investigation and it will be concluded in the near future. The four remaining matters involve practitioners who have still provided no response to the information sought. There are a further six matters from previous years where the practitioners have failed to respond.

In circumstances where the Council has been unable to make a determination within the required period and the matter is thereafter referred to the Commissioner, the practitioner is subject to a statutory suspension of his or her practicing certificate. That suspension remains in force until such time as the Commissioner has made his determination or successful application is made to the Tribunal to have the suspension removed.

## **POLICY**

### **Conflict of Interests**

As has previously been reported, a Working Party drawn from a broad range of representatives of the legal profession was established to consider the issue of conflict of interests. From that Working Party, a number of recommendations were made and a position paper drafted. The position paper was widely circulated and responses received. Since the draft report was circulated there have been a number of significant developments including the adoption by the Law Society of New South Wales and the Law Institute of Victoria of a new set of Guidelines for dealing with 'Information Barriers' (formerly known as 'Chinese Walls'), a common technique law firms use to protect confidentiality. These new developments are now being incorporated into the position paper.

### **Legal Fees Review Panel**

The Legal Fees Review Panel was established to examine various aspects of the regulatory regime applicable to legal fees and costs. The panel consisted of the Director General of the Attorney General's Department, Mr Laurie Glanfield, the Commissioner, the then President of the Bar Association, Mr Ian Harrison, and the then President of the Law Society, Mr Gordon Salier. The office provided policy logistical support for the Panel.

Over the last year the OLSC collated responses to the Panel's discussion paper and undertook extensive further research on issues raised through consultation and through the panel's discussions. The final report was presented to the Attorney General in December 2005, together with 37 recommendations for change. Cabinet accepted the report and approved 34 of the recommendations. The Attorney General's Department is now responsible for the implementation of the approved recommendations.

The report was publicly released by the Attorney in May 2006 and can be accessed at [www.lawlink.nsw.gov.au/lpd](http://www.lawlink.nsw.gov.au/lpd).

## **DEVELOPMENTS**

### **Legal Profession Act 2004**

The *Legal Profession Act 2004* commenced operation on 1 October 2005. It repealed in its entirety the former *Legal Profession Act 1987*.

The Act enacts the National Legal Profession Model Bill of which some sections are core and uniform. Other sections are core but not uniform allowing for freedom of drafting and other provisions are simply not core and remain discretionary in the hands of the various States and Territories. At this point, only Victoria and NSW have enacted the Model Bill however progress in all other States and Territories is steady and it is anticipated that at some stage in 2007 all States and Territories will have the Model Bill in place.

Chapter 4 of the Act maintains the current co-regulatory model providing for the referral of complaints, at the Commissioner's discretion, to the Law Society or the Bar Association. Whilst it largely mirrors the divisions of Part 10 of the 1987 Act, there are a number of changes, which include:

- New and expanded definitions of unsatisfactory professional conduct and professional misconduct;
- Expanded jurisdiction in relation to Arbitrators and Costs Assessors;
- The introduction of compulsory mediations;
- Compensation orders which may include orders in relation to waiving or refunding fees and the waiving of liens;
- Expanded powers in relation to the compulsory production of documents;
- Powers to search premises and seize documents;
- Power to immediately suspend practicing certificates; and
- Authority to deal with cross-jurisdictional complaints subject to certain protocols.

By the time of its entry into force, this office had amended its brochures, fact sheets and literature to reflect the new Act. A significant amount of in-house staff training was undertaken to familiarise staff with the Act. The Commissioner and Assistant Commissioner (Legal) presented a number of continuing legal education seminars to the legal profession to ensure that practitioners were familiar with their new obligations under the Act. As a result, the transition to the new Act was seamless and operating under its provisions has been relatively problem free.

## Advertising

As reported last year, the amendment to Part 14 of the *Legal Profession Regulation 2002* and Part 18 of the *Worker's Compensation Regulation 2003*, restricting advertising of personal injury and worker's compensation services, came into effect on 23 May 2003.

Since the last Annual Report, a further 101 complaints have been received or initiated dealing with potential breaches of the Regulations. Of these, 16 have been dismissed due to an absence of wilfulness on the part of the practitioner, 13 have had a finding of professional misconduct made and 25 were dismissed, as no breach existed. In all the matters where there was a breach, the offending advertisement was either removed, discontinued or dropped by the practitioner. The balance of complaints received continue to be investigated.

Proceedings challenging the validity of the advertising regulation were commenced in the original jurisdiction of the High Court by the Australian Plaintiff Lawyers Association, Maurice Blackburn

Cashman Pty Limited and Robert Whyburn. The High Court's decision was handed down on 1 December 2005. By majority (5-2), the constitutional validity of the Regulation was upheld.

As the uncertainty had been removed, the OLSC commenced its first prosecution in the Legal Services Division of the Administrative Decisions Tribunal in April 2006. It is anticipated that a number of further prosecutions for breach of the Regulation will be commenced by the OLSC in the near future.

The staff of the OLSC continue consulting widely with editors, chiefs of staff and advertising managers of various media outlets in New South Wales, the Yellow Pages, a number of large and small plaintiff law firms and regional law societies, particularly in relation to cross-border advertising.

The OLSC has also continued to liaise closely with the Law Society concerning the interpretation of the Regulation and has adopted a collaborative approach in relation to breaches of Advertising Regulations. Consultation and regular meetings with the Law Society on every aspect of the Regulations is ongoing.

## Other Matters

The Assistant Commissioners liaise regularly with the Professional Standards Department of the Law Society and with Professional Conduct Officers at the Bar Association. Such liaison occurs both informally and at monthly meetings. The Assistant Commissioner (Legal) meets regularly with the Heads of Government Department Legal Teams and is also a member of the Costs Assessment Users Group which meets quarterly to discuss issues arising from the Costs Assessment Scheme. She is also involved with the proposed implementation of a NSW Government Solicitors' Induction Program. Both the Commissioner and the Assistant Commissioner (Legal) have made presentations on a regular basis to Law graduates in the College of Law program.

Staff have attended a wide variety of continuing legal education courses including seminars addressing class actions, legal ethics, advocacy skills, legal research and industrial relations law. Additionally, in-house seminars have been held on various areas of the law such as mediation techniques and communication techniques and there has been extensive training in relation to the *Legal Profession Act 2004*.

## **POLICY DEVELOPMENT**

The OLSC was requested to provide assistance in relation to a number of policy issues during the reporting year. They are listed below:

### **Large Law Firm Submission on the Operation of the *Legal Profession Act 2004***

The OLSC was consulted by the Legislation and Policy Division of the Attorney General's Department to comment on the detailed joint submission presented on behalf the 8 largest law firms in NSW shortly after the commencement of the *Legal Profession Act 2004*.

We provided policy analysis and suggested responses on matters relating to proposals to vary the costs disclosure requirements for sophisticated users of legal services, the time limit for seeking formal assessment of lawyer's bills, the application of cooling off periods to retainers for sophisticated clients and the operation of premium fee agreements, including methods of calculating permitted uplift fees.

### **Litigation Funding**

The OLSC prepared a policy outline of current issues raised by third party litigation funding in NSW. The outline identified underlying and sometimes conflicting policy objectives including access to justice, social equity and control of the litigation process. It also addressed practical issues such as the regulation of litigation funding, the marketing and advertising of such services, the proper identification and protection of clients in funded litigation and the scope of the role of non-parties in such litigation.

This area is subject to considerable change and the office continues to monitor developments.

### **Witness Coaching**

We provided advice, in response to a request from the Attorney General's Department, on the origins and policy underpinning the prohibition on coaching witnesses in Court proceedings. The advice also noted the rarity of complaints about such conduct.

## **Advocate's Immunity**

In August 2005 the Director General asked for the Commissioner's comments about a national law reform proposal regarding advocates' immunity which was being considered by the Standing Committee of Attorneys-General. This was prompted by the High Court decision in *D'Orta-Ekenaike v Victoria Legal Aid* in which the court held that an advocate cannot be liable in negligence for work done in court, or work done out of court which is intimately connected with the conduct of a case in court.

The Commissioner noted the role that regulatory bodies in all states and territories play in relation to regulating the conduct of the legal profession. Rather than abolishing the immunity in its entirety, the Commissioner argued that the regulators should also deal with matters of advocates negligence and the award of compensation that may follow.

# CHAPTER 2

## COMPLAINTS HANDLING

We have had a strong and productive year dealing with complaints.

While staff turnover remained an issue in 2005-06 we still managed to complete almost as many consumer disputes as we received. We recruited to fill several vacant positions towards the end of the financial year and this should see a largely stable team and we look forward to a very productive year.

Time frames for completion of files has stretched a little over the reporting year and there has been a small increase in files on hand with the new staff we have recruited. We will be more than able to compensate for this trend by the mid point of the next financial year.

Importantly, 2006-07 will see the position of Senior Mediation and Investigation Officer filled once more. This vital position will spread the load for the Assistant Commissioners and give added support to the Mediation and Investigation Officers.

### WRITTEN COMPLAINTS

Complaints have increased marginally by only 3% since 2004-05. However when considered in light of the growth of the number of practitioners, this rise is insignificant.

Across most criteria complaints have remained constant. Complaints about costs related issues once again made up more than 20% of all those received, with matters of negligence (17%) and ethical matters (13%) remaining consistently high.

Civil matters (17%) still constitute the largest area of law in which complaints arise. Family law (14%) and commercial (11.5%) matters still register strongly. Conveyancing complaints have continued a downward trend in recent years and now make up only 9% of all complaints. Personal injury matters remain high (12%) despite tort reform reducing the

number of cases before the courts dramatically. Continuing complaints about advertising have buoyed these complaint figures.

### TELEPHONE COMPLAINTS

Based on a skilled and stable Inquiry Line team we have had an good year dealing with people calling our Inquiry Line. Feedback from callers has been excellent.

We took 8086 calls. Callers were on the line an average of over 8 minutes. We are proud that we managed to keep the number of lost calls to an absolute minimum at 2%.

We now have a team of nine students from four different universities. They are gaining valuable experience in legal practice, the workings of bureaucracies, complaints handling and, most importantly, communication. In turn we have a very smart, lively group of individuals who are able to provide invaluable information to those wanting to lodge complaints and add immeasurably to the atmosphere of the office with their enthusiasm.

During this reporting year there were 86 telephone mediations. We are very happy that the number of telephone mediations has increased. These matters are resolved promptly and fairly before they become complaints.

### COURTESY

There is no doubt that clients expect more of lawyers than they do of any other profession other than medicine. That's not surprising. Lawyers are generally expensive, \$300/hour or more, and serious things are at stake: homes, families, and liberty. People frequently talk about the trust and faith they place in their lawyer.

Clients, and increasingly, other lawyers, also expect lawyers to be great communicators. Sometimes they fail. After all, lawyers have difficult, stressful days. Like all of us, they choose the wrong words on occasion. They can be outrageously rude. And, of course, one person's witty jibe is another's insult.

Just how rude would a lawyer need to be before disciplinary action could be taken? The Karageorge case, one of very few in NSW relating directly to courtesy, isn't very helpful. That lawyer's racist, offensive diatribe was unquestionably a disciplinary matter. However, somewhere below that level of offence is a standard that more accurately reflects a professional and community standard for how lawyers should behave.

In the coming year we will be spending more time addressing the concerns of clients who can prove lawyers used obscenities, were unnecessarily overbearing, were culturally insensitive or used racist epithets. As always we will be focusing on each case on its merits, looking at

- the context
- the language
- the audience
- the tone and volume
- the impact on the receiver
- whether there is a pattern of such behaviour

We don't expect a huge increase in cases of rudeness before the Tribunal but we do expect more formal warnings for discourtesy, and hopefully recognition by the profession that rudeness is the worst advertising of all.

## DOCUMENTS

Last year we indicated we were going to chase up more lawyers for losing documents.

Losing files (or having rodents eat them, swept away in a flood or accidentally shredded) is not all that uncommon. Unfortunately, it can happen in any office. For the most part it's something that can't be sheeted home to anyone in particular – and very rarely to a lawyer.

Often clients suspect a lost file is an excuse to cover a more serious wrong. It can be devastating for a former client to discover that the safely stored file can't be found.

Disciplinary action rarely follows but we have pushed hard this year for solicitors to make significantly

greater efforts to replace files that have been lost. As a consequence in a number of cases we have seen lawyers paying for new title deeds, imploring other lawyers to provide copy documents, requesting courts provide old records, spending hundreds of dollars on copying files and, in one case, translating a letter into Japanese to attempt to recover a lost birth certificate.

It is not just a matter of making lawyers feel guilty about losing paperwork and playing on that to get something done. We explore the administrative arrangements of the firm to suggest any reforms they can put in place to prevent files being lost in future.

## REGULAR OFFENDERS

When you consider that there are 21,000 lawyers in NSW it's a striking statistic that 50 lawyers account for 8% of all complaints (over 35,000) ever lodged with the OLSC.

Some of the 50 have been struck off. Others have retired or gone overseas. But what about the others?

Four of the lawyers who received the most complaints work in the area of personal injuries law. They all manage their own firms. This does not mean they are four of the worst lawyers in NSW. When we look at the complaints record of personal injury lawyers we consider a wide range of factors.

- Clients in personal injuries matters are suffering a physical injury that exacerbates any financial, emotional or legal problem they may have.
- Personal injury cases by definition take a long time to complete as the consequences of injuries become more apparent. Often several lawyers are involved, leading to a complaint about the principle.
- Many clients have English as a second language. Settlement negotiations, an explanation of party/party costs are difficult enough but it is so much worse if they have to be conducted in a strange place and in a language the client barely understands.
- Settlement negotiations are extraordinarily stressful. What might seem like a commonplace to and fro between lawyers might seem like unbearable pressure for a client with everything at stake.
- Lawyers seldom understate the potential rewards in such cases. After years of waiting clients will expect to receive the highest figure that they have ever heard in passing regardless of anything

the defendant throws up in defence. Likewise, clients often set unreasonable demands that are frequently not discussed until settlement negotiations start.

- Tort reform has changed the potential payouts in some cases to the extent that everything a client has been told no longer applies.

These (mostly mitigating) factors do not mean that significant issues of complaint do not emerge from complaints about these lawyers and these firms. Lawyers have been reprimanded for blatant failures to progress difficult cases and large bills of costs have been reduced significantly to give to clients something close to what they were promised by overenthusiastic lawyers. In one case we met with a group of lawyers to solve decades old cases where many lawyers were owed fees and a client had seen nothing of judgment monies that had been held for many years.

## PARTY/PARTY COSTS

One of the difficulties faced by legal practitioners is how you explain to a client the concept of party/party costs. A court says you have been granted the costs of your legal action but in fact, you will not have all of your legal bill paid, even when you win. We often wish courts would explain more fully that what a client has been awarded are “reasonable” costs and that will normally mean you will have paid by your opponent only 60 to 85% of all you lawyer’s bills.

The difficulty in explaining what has happened in a case sometimes goes further than that. We have unearthed a worrying trend. There has been a rash of long, difficult personal injuries matters where substantial and unjustified delay in firms pursuing party/party negotiations to recover clients’ costs have occurred. Perhaps the matters went poorly and the clients got bad results. Perhaps firms are faced with cutting their costs, negotiating with barristers and 3<sup>rd</sup> party service providers just to get clients the bare minimum. In many cases the files were handled by a number of lawyers. In one case eight separate practitioners dealt with the one matter. In some cases lawyers simply refuse to complete the party/party negotiations. More than one argued they had no obligation to do so.

Defendants rarely pursue the process and new lawyers are unlikely to be persuaded to take on a party/party negotiation process. Clients often feel trapped, frustrated and angry. We are in the process of pursuing several examples of such delay to bring home to lawyers (and firms) the need to finish

what they have started, no matter how difficult or embarrassing it might be. Managing partners and supervising solicitors are not immune to reprimand for such delays.

## CONVEYANCERS

Since 1997 the OLSC has been dealing with complaints about licensed conveyancers however next year responsibility for dealing with such complaints will have passed to the Office of Fair Trading to be dealt with under the *Conveyancers Licensing Act*.

We have consistently argued that the creation of a separate regime that allows conveyancers to be treated in a different manner to lawyers doing exactly the same work is a recipe for inequality. Notwithstanding these arguments once the amendments to the Conveyancing Act and the new Regulation are in force this will mean that future complaints about conveyancers will be referred to Fair Trading.

We will be preparing a package of material for the Office of Fair Trading summarising the complaints received and dealt with.

# CHAPTER 3

## INCORPORATED LEGAL PRACTICES

The *Legal Profession Act 2004* requires that a solicitor director of an Incorporated Legal Practice (ILP) must ensure that “appropriate management systems” are implemented and maintained. In 2003, the OLSC working collaboratively and with the Law Society, LawCover and the College of Law developed an “education towards compliance” strategy in which it was determined that ILPs should strive to meet ten objectives, known as the “ten commandments”, to demonstrate that the ILP has appropriate management systems in place. Those objectives address negligence, communication, delay, liens and file transfers, costs disclosures and billing practices, conflicts of interests, records management, undertakings, supervision of practice and staff and trust account requirements.

At 30 June 2006, there were 572 Incorporated Legal Practices (ILPs) in New South Wales. Of these, approximately 12% were multi-disciplinary practices (MDPs). The most common non-legal services provided by ILPs are general financial services and specialist taxation advice.

The 2005 – 2006 financial year saw a number of major developments, which impacted ILPs, and our process of regulating them, in New South Wales.

Foremost among these developments was the new *Legal Profession Act 2004*, which came into force on 1 October 2005. While the provisions governing the operation of ILPs, MDPs and the responsibilities of legal practitioner directors and employee solicitors are on substantially the same terms as those contained in the 1987 Act, the profession has had to become accustomed to new terminology (bringing NSW into line with the Model Laws).

The obligation upon legal practitioner directors to implement and maintain appropriate management systems has been carried over to section 140(3) of the *Legal Profession Act 2004*. While the OLSC’s

approach to this concept remains unchanged from previous years, existing management systems were required to evolve to take account of the significant tightening of cost disclosure obligations in the new Act, as well as changes to trust accounting obligations.

Another significant development was the completion of a major research project. The Centre for Applied Philosophy and Public Ethics (an Australian Research Council funded Special Research Centre which is a joint venture between Charles Sturt University, the University of Melbourne and the Australian National University, known as CAPPE), in conjunction with the OLSC, conducted the first major analysis of ILPs in NSW. The study took as its focus a sample of 200 ILPs which had both returned self assessment forms and been the subject of consumer complaint. The study sought to analyse the type, size, geographic location and areas of practice of ILPs generally, and then to specifically examine whether there was a discernable link between the self-assessment process, and the likelihood of complaint.

The research has revealed a correlation between very high levels of stated compliance with the ten commandments, and low levels of complaint. Those ILPs who rated themselves as being non compliant or partially compliant with three or more of the ten commandments had 45% more complaints per solicitor than those ILPs which rated themselves as compliant (or better) in respect of all of the ten commandments.

Most encouragingly from our perspective, the research revealed that 63% of ILPs were prompted to make substantive systems changes as a result of engaging in the self assessment process. This process is therefore more than a tick a box exercise – the CAPPE research shows that the majority of legal practitioners engage in the process seriously and diligently.

Our analysis of the sample of 200 ILPs, while slightly skewed in that it did not include ILPs with no complaint history, nevertheless provides us with an interesting snapshot of ILPs in NSW. Of the 200 ILPs analysed, 36% were sole practices, 25% had two practitioners, 16% had 3 practitioners, 16% had between 4 and 9 practitioners, 5% had between 10 and 19 practitioners and only 2% had 20 or more practitioners. These statistics differ markedly from those held in respect of traditionally structured firms, where the overwhelming majority (84% compared to ILPs 36%) are sole practitioners.

Eighteen percent of legal practitioner directors are female, a figure on par with the number of female partners in traditionally structured firms. Seventy percent of ILPs are located in greater Sydney, with 55% in the Sydney CBD.

It is expected that the final CAPPE report will be published in late 2006.

Finally, but perhaps most significantly, the OLSC has commenced an information technology project which will change the way we communicate with ILPs. The ILP Unit at the OLSC consists of two staff (the Practice Compliance Manager and the Compliance Project Officer), with no administrative support, so it does not take too much imagination to conclude that, even on the most conservative estimates of increases in ILPs, our manual process of self assessment is unsustainable. In fact, if the ILP Unit were to be staffed in relation to the rise in the number of ILPs, that team would very soon outnumber the complaints team and the legal team at the OLSC combined. This is neither possible nor desirable, so we are looking to technology for a way forward.

We are nearing the end of the high level design stage of what we have called our "ILP Portal Project". This portal, or system, is web based, and its primary objective is to automate the OLSC's tracking and analysis of the self-assessment process. As the number of incorporations increases, so too do the regulatory, administrative and educative tasks which fall to the OLSC as regulator. The aim of the system is to reduce the human resources required to discharge these responsibilities by:

- allowing the viewing, completion and submission of the self-assessment form by ILPs to occur online, 24 hours, 7 days;
- allowing the customisation of the self-assessment process to enhance its relevance to ILPs of different types, sizes and locations;
- facilitating the provision of support for the self-assessment process by the OLSC to occur online

(for example, through access to a resource centre containing legislation, journal articles, policy statements, sample documents etc), thereby reducing the demand on OLSC human resources,

- tracking the life cycle of an ILP by collating and indexing information (from receipt of a s137 Notice of Intention to Incorporate through to cessation of provision of legal services) in a searchable database;
- generating reports (both standard and customised) for OLSC statistical purposes – some of these reports (containing washed data only) will be made available to ILPs and other approved parties (for example, the Australian Securities and Investment Commission and the Law Society of New South Wales) online;
- automating standard correspondence;
- generating email alerts to both ILPs and OLSC staff in the event of deviation from the standard self-assessment process, thereby improving monitoring of the process by both legal practitioner directors and OLSC staff;
- providing for the instantaneous, electronic dissemination of information (whether of a regulatory or educative nature) by the OLSC to ILPs (similar to Law Society Caveats);
- providing for the instantaneous, electronic transfer of information (whether of an administrative nature like change of address details or a statutory nature like s139 Notices of Intention to Cease Provision of Legal Services) by ILPs to the OLSC;
- functioning as a profiling tool to assist in the identification of suitable targets for information dissemination or audit by the OLSC, as well as tracking the audit process itself electronically; and
- including a training module to be made available to OLSC staff, and the staff of other regulators.

Additionally, the online nature of the system means that it will offer greater convenience of access to ILPs, as well as increasing the relevance of the self-assessment process to firms via customisation (for example, tailoring information depending on size or geographic location of firm).

We anticipate that the detailed design phase of this project will be completed in February 2007, with the construction phase completed in May 2007. Following user acceptance testing and the successful completion of a pilot programme, the system should be available to all ILPs by early 2008.



# CHAPTER 4

## EDUCATION AND COMMUNICATION

One of the most important functions of the OLSC, is the provision of education and training. This function is reflected in sections 688(1) (o) and (p) of the *Legal Profession Act 2004* which provides that the Legal Services Commissioner is responsible for assisting the Bar Council and the Law Society Council in promoting community education about the regulation and discipline of the legal profession and enhancing professional ethics and standards through liaison with legal educators or directly through research, publications and educational seminars. In recognition of this function the OLSC has worked tirelessly this year conducting lectures and seminars and publishing material to assist the general public and the profession on matters relating to the regulation of the legal profession.

### UNIVERSITY LECTURES

This year the staff of the OLSC continued their commitment to presenting lectures to undergraduate and post graduate law students at universities across New South Wales conducting lectures at the University of New South Wales, the University of Technology, Macquarie University, the University of Western Sydney and the University of Wollongong. These lectures continue to be a valuable opportunity for the OLSC to assist future lawyers in understanding the complexities of a legal practice and the ethical dilemmas that arise therein.

In addition to the university lectures, the Commissioner and staff at the OLSC also conducted regular ethics lectures as part of the Professional Responsibility Program for students completing their final training at the College of Law campuses in Sydney City and St. Leonards. The purpose of these lectures is to provide practical training in ethics for students by utilising typical case scenarios confronted by the OLSC.

### OUTREACH – PRESENTATIONS TO THE LEGAL COMMUNITY

Continuing its commitment to promoting community education the Legal Services Commissioner conducted a number of seminars this past year focusing on ethics in the legal profession and the scope of the LPA 2004 and *Legal Profession Regulation 2005*. The Legal Services Commissioner's audience included a broad range of individuals including law firms, crown solicitors, accountants, public servants, young lawyers and university graduates. Presentations included:

CLE Seminar on "Risks and Liabilities for Practitioners", at the University of New South Wales on 28 July 2005. The Commissioner chaired this CLE Seminar and delivered a paper on "Undertakings" to practitioners;

Speech by the Commissioner on the new *Legal Profession Act 2004* to GH Healey, Sydney Office on 30 July 2005;

"Money vs Ethics: a conundrum for the Profession challenged by the rise of incorporated legal practices", a paper delivered by the Commissioner to the Regulation of the Professions Workshop at the Australian National University, Canberra on 5 August 2005;

"Conflicts of Interests for Lawyers Seminar", a paper presented by the Commissioner to the City of Sydney Law Society Seminar on 16 August 2005;

"New *Legal Profession Act 2004* – What does it mean for you?", a CLE seminar delivered by the Commissioner and the Assistant Commissioner (Legal) to practitioners at the College of Law, Sydney on 18 August 2004;

"Settling disputes and shifting away from an adversarial system in workers compensation", joint seminar by the Commissioner and Deputy President

of the Workers Compensation Commission at the 5<sup>th</sup> Annual Law & Finance's Long-Tail Workers Compensation Claims Conference, Sydney on 25 August 2005;

"*Legal Profession Act 2004*: Chapter 4 – Complaints and Discipline", a paper presented by the Commissioner to practitioners at the NSW State Legal Conference Costs Seminar in Sydney on 29 August 2005;

"The New LPA: Costs, Compliance and Trust Accounts", a CLE seminar presented by the Commissioner and the Assistant Commissioner (Legal) to Young Lawyers at the Law Society of New South Wales on 7 September 2005;

"Ethical Dilemmas – a conflict between right and wrong or two rights", keynote address delivered by the Commissioner to the 6<sup>th</sup> Australian Residential Tenancies Conference at Darling Harbour on 21 October 2005;

"Ethics and Engagement", seminar presented by the Commissioner to the Crown Solicitors Annual Policy Day at Sydney on 16 December 2005;

"The Profession – Where is it headed?", discussion with other panel members for Deloittes & The Accounting Foundation of the University of Sydney at Deloittes Office, Sydney on 14 March 2006;

"Professional Structures, Services Trusts and Incorporation – What does it mean for your Legal Practice?", CLE Seminar presented by the Practice Compliance Manager at the College of Law on 29 March 2006;

Occasional Address delivered by the Commissioner to graduating students of the University of Southern Cross, Lismore on 21 April 2006;

"Incorporated Legal Practices", evening seminar presented by the Commissioner to QL members at the QL Members Information Session in Sydney on 14 June 2006;

"Ethical Dilemmas and Political Processes in Social Justice", keynote speech by the Commissioner for the Social Justice in the New Millennium Conference, Department of TAFE, Freshwater Campus on 20 June 2006;

"Obligations, Responsibilities and Duties under the LPA 2004", College of Law seminar presented by the Assistant Commissioner (Legal) on 29 June 2006.

## STAFF TRAINING

In June 2005, the Director General of the Attorney General's Department announced a \$5.5m Training Initiative for all staff employed by the Department. Included in that program was a commitment to provide each staff member with at least two days of work related training in 2005-2006. The OLSC fulfilled its staff training commitment this year by offering staff the opportunity to seek both external and internal training in a wide variety of areas to enhance their personal and professional ability. Eager to pursue further training OLSC each staff member undertook an average of 7 hours of external training and 6 hours of internal training. This will be substantially increased in the coming year.

Noting the importance of staff training the OLSC also reinstated their education alliance with the Law Society of New South Wales this year and agreed to conduct a series of regular joint seminars for OLSC and Law Society staff on topics of interest. Such topics included the dismissal of complaints on the basis of being frivolous and vexatious; rudeness; the use of emails in the handling of complaints; the role of mediation and investigation officers; the role of professional standards investigators; costs agreements; solicitors who embark on relationships with clients outside the boundaries of the practice of law and Law Cover.

## PUBLICATIONS – INTERNAL AND EXTERNAL

The OLSC publishes 18 facts sheets to assist the general public as well as practitioners in understanding and dealing with the complaints handling process. The facts sheets which are written in "plain English" cover a broad range of topics and include information on the most common types of complaints such as costs disclosure, file ownership, deceased estates, conflicts of interest, liens, settlement and cost dispute resolution. In September 2005 all of the facts sheets were amended to ensure that the information contained therein was consistent with the new *Legal Profession Act 2004*. Each fact sheet is available in hard copy from the OLSC or via our website at [www.lawlink.nsw.gov.au/olsc](http://www.lawlink.nsw.gov.au/olsc)

In addition to the Fact Sheets the OLSC also publishes four general brochures to assist complainants in understanding the procedures and process involved in making a complaint, and the role of the OLSC. The four brochures are also available in hard copy or via the OLSC website.

Several papers delivered by the Commissioner during 2005-2006 were published for the benefit of the public and the profession. These papers included:

“Costs & the New LPA – Summary and analysis of Chapter 4 of the LPA (2004)”, paper by Lynda Muston, Assistant Commissioner (Legal) and presented by the Commissioner at the NSW State Legal Conference on 29 August 2005;

“The New LPA: Costs, Compliance and Consequences”, paper by the Commissioner published for the CLE Seminar for Young Lawyers at the Law Society of NSW on 7 September 2005; and

“New Structures for Legal Practices and the Challenges they Bring for Legal Regulators, paper by the Commissioner and Molly Hutcherson, published for the Commonwealth Law Conference, London, 11-15 September 2005.

## VISITS

This year the OLSC further strengthened its international and domestic relations with other regulatory offices being invited to attend and speak at conferences in the United Kingdom, Canada, Brisbane and Adelaide. Each of these conferences presented a unique opportunity for the OLSC to demonstrate how the office has grown over the past twelve years to become an important leader in successfully regulating the legal profession in New South Wales. The conferences also provided the OLSC with an opportunity to discuss its experience in regulating incorporated legal practices.

In September 2005 the Commissioner attended the Commonwealth Law Conference in London and delivered a paper entitled “*Incorporated Legal Practices including Multidisciplinary Partnerships – A Regulators Experience of these Entities in New South Wales.*” The process of regulating legal practices is relatively new in the United Kingdom and the Commissioners paper generated an enormous amount of interest amongst the 2000 members of the international legal fraternity, representing a total of sixty countries.

In September 2005 the Commissioner also attended a conference hosted by the Law Society of Upper Canada in Ontario, Canada. The Commissioner delivered the keynote address where he spoke about the creation and role of the OLSC and the importance of defining “Legal Work.”

Domestically, the Commissioner attended a number of important meetings in Queensland and Adelaide including a forum hosted by the Queensland Legal Services Commissioner and the Socio-Legal Research Centre, Griffith Law School on “Lawyers Work and Lawyers Conduct.” The forum, held in November 2005, explored the possibility of collaboration especially in the area of research for improving legal practice standards in the legal profession.

Following the forum the Commissioner together with the Assistant Commissioner, (Legal) and the Assistant Commissioner (Complaints) attended the Annual Conference of Regulatory Officers (CORO) in Adelaide. The OLSC played an important role at the conference being asked to conduct two informative sessions for participants. Both the Commissioner and the Assistant Commissioner (Legal) were joint facilitator’s of the “National Practice Project Implementation and Issues” session of the conference which addressed issues such as complaints and discipline, ILPs including compliance audits, costs, foreign lawyers, trans-Tasman issues and “fit & proper” issues relating to practicing certificate renewals.

The CORO Conference provided a valuable opportunity to network with other national regulators and discuss important issues of concern. This year the conference was again a success producing two important outcomes. Firstly, the regulators in each jurisdiction agreed that they will all adopt the self-assessment management system for ILPs developed by the OLSC and secondly, a working party would be established to develop guidelines for continuing professional development programs.

# CHAPTER 5

## RESEARCH & PROJECTS

A new position of Research and Projects Coordinator was created in January this year to assist the OLSC and its staff in conducting both general and in-depth research on matters affecting the regulation of the legal profession. In addition to coordinating and conducting research projects, the Coordinator was also appointed to establish and maintain research partnerships and joint venture projects with educational institutions and other relevant organisations.

The position was created because of a concern by the Commissioner that, unlike the United States or the United Kingdom, there is very little practical or theoretical research conducted in Australia on ethics and the regulation of the profession. The position was created in accordance with section 688(1)(p) of the *Legal Profession Act 2004*, which provides that the OLSC assist the Councils in the enhancement of professional ethics and standards, through for example, liaison with legal educators or directly through research, publications or educational seminars.

### IN-HOUSE RESEARCH REQUESTS

Since assuming the role the Research Coordinator has received numerous requests from staff seeking research on matters that have arisen out of the investigation of complaints. Such research has included as follows:

- the definition of “regulated property”, constituted by “trust money” and “trust property” as referred to in section 611 of the *Legal Profession Act 2004*;
- the impact of the draft Anti-Money Laundering and Counter-Terrorism Financing AML/CTF Bill and AML/CTF Rules on legal practitioners in Australia;
- the validity of the *Best Practice Protocol for the Conduct of Legal Practices and Solicitors (Employee and Partners and Directors) Leaving Firms or Incorporated Legal Practices* in light of *AMP Services v Manning NSD 983 of 2004*;
- the restrictions of the use of the trademarks register contained within Trademarks Act;
- the general procedure/law in extradition proceedings;
- whether conduct by a solicitor acting as an executor is conduct occurring in ‘connection with the practice of law’;
- the implications for Australian legal practitioners of the Australia-United States Free Trade Agreement;
- the legality of a client recording his/her conversation with his/her practitioner; and
- the standard of courtesy expected of practitioners below which disciplinary sanctions will apply.

## JOINT RESEARCH PROJECTS

This year the OLSC has been involved in two major research projects that are being conducted as joint ventures with other institutions.

Firstly, the OLSC has been working with the Centre for Applied Philosophy and Public Ethics (CAPPE) to research incorporated legal practices. The advent in New South Wales of incorporated legal practices that are also multi-disciplinary practices represents the response of both the profession and the legislature to the changing legal services market. These innovatively structured practices are capable of delivering more streamlined, whole-of-transaction services to clients, and (potentially) greater profit to those who own them. However, they also present new ethical dilemmas for the profession and its regulators due to the increasing pressure for law firms to operate as businesses, as opposed to the traditional view of law as a profession.

The joint CAPPE project involves establishing an electronic database derived from existing complaints data and a set of self-assessment forms provided by incorporated legal practices as part of an OLSC self-assessment process for incorporated legal practices. The project also involves developing an instrument to interrogate this database and undertaking a quantitative analysis of the data.

Secondly, the OLSC has been working together with the Australian Lawyers Alliance on developing a research project focusing on the effectiveness of advertising for the legal profession. The purpose of the project is to look at the techniques of advertising utilised by the legal profession and assess whether these techniques are valuable. The project will also look at the amount of time and money law firms spend on developing their advertising programs. The methodology for this project will include both qualitative and quantitative research. This is the first project of its kind to be conducted in Australia and the first project to be conducted specifically in relation to advertising. It is hoped that this research will provide some valuable research on the use of advertising by the legal profession.

# CHAPTER 6

## INFORMATION SYSTEMS AND SERVICES REPORT

There have been many changes within the Information Systems and Services area in the 2005-2006 financial year. These include changes in staffing, technology, the reporting of information and knowledge management. The Inquiry Line has been improved with a new interface that is more user-friendly, new databases have been designed to capture the varying information needs of the OLSC, and reviews of practices, projects and processes have occurred. The OLSC Quality Management System has been formalised, and the OLSC achieved certification to ISO 9001:2000 a long-standing goal.

### OLSC PROJECTS REVIEW

The OLSC introduced project methodology in the 2003 fiscal year to complement and define the annual Business Plan. This allowed much of the work performed within the OLSC to be categorised into projects to improve the systems utilised to meet organisational objectives.

A decision was made in September 2005 to evaluate these projects and the methodology employed for ongoing usefulness and currency.

The following projects were run 2003-2005 and were analysed in this review:

- Consistency of data (CTS Database)
- Key Performance Indicators / Quality Indicators
- Policies/Procedures/Directories
- Training – Overall Program for Office
- Records Management
- Review of Internal Systems
- ISO 9001 (Previously Law 9000)
- Inquiry Line

This project review was done in two stages. Project plan documentation was independently audited and reviewed. All staff involved were then interviewed on

a confidential basis as to their views on the current projects, how they worked, whether they were useful, what projects staff would like to see available and how they thought projects could be best run in the future.

It was found that the projects as a whole were seen as useful and necessary by staff and there is a real commitment to the ongoing process of continued improvement. OLSC staff saw the value of using project methodology and were keen to ensure projects work to OLSC's and stakeholders advantage. It was also found that a number of projects that had been run previously were completed, or had been incorporated into 'normal' business practice, that some of these projects were no longer seen as viable, whilst others were noted as still useful to meet OLSC's organisational objectives.

A number of key points came out of this review that have been incorporated into the new revised project structure:

- Four overarching project teams have been introduced; each project team will be made up of the Executive team and key staff member(s) appointed by the Commissioner.
- These four overarching project teams will have a number of working parties attached to them. These working parties will be action orientated with clear outcomes and objectives.
- A six-month cycle has been established within which to review the progress of established working parties. These working parties may continue beyond this timeframe or be finalised within this timeframe.
- At the review of each cycle, dependant on the organisational objectives and needs of OLSC, staff may have the opportunity to work on different projects and with different staff members.

- All staff will be surveyed once a year to determine which working parties are of interest, and/ or are seen to complement and support the processes and roles within the OLSC. Staff will be encouraged to sign up for a least one, but no more than two, working parties per six-month cycle. The overarching project teams under which these individual working parties fall will then use this list as a guide for establishing the next working party cycle.
- Project teams and related working parties may have areas that overlap. This can be used to OLSC's advantage in that specific aspects and findings from one working party cycle can be revisited with a different focus within another project team's working party.
- Clear working party, decision-making and reporting structures have been defined to support the new projects structure; to ensure that there are clear outcomes and objectives set and clear process for decisions made.
- The Manager, Information Services and Systems (MISS) role will concentrate on the minute taking, data and resources, so that all working parties can concentrate on outcomes. The MISS will also operate as a resource for the project teams and working parties but not as a team leader, and will attend the appropriate project team meetings, and meetings of all working parties to provide support and feedback.

As ISO 9001:2000 accreditation was seen to be of vital importance to the OLSC this became the major focus for the remaining months of the 2005-2006 financial year. All staff were involved with this project, and certification to the ISO 9001:2000 standard was achieved on the first audit. This was an achievement in itself and a credit to all staff who committed themselves to the process.

Following is the structure for the revised OLSC Projects. These projects will be used as the basis for the OLSC's business planning and ongoing process improvements for the financial year 2006-2007.

### Project Team 1: Information Sharing/ Knowledge Management Project

Areas of Improvement: Information turnaround and currency. Consistency of Information. Increased knowledge sustainability and accessibility.

Rationale: This Project will ensure better access to information for all staff and related stakeholders; sustainability of information stored, currency of information sourced and ensure knowledge management principles are enhanced.

**Related Working Parties:**

- OLSC Intranet/Electronic knowledge register
- OLSC Internet
- ILP Internet/ Intranet/ Database
- Shared Network Drive Review
- Physical File Management
- Complaints Tracking System

### Project Team 2: Staff Training & Education Project

Areas of Improvement: Enhanced staff training. Consistency of Information. Stakeholder Feedback.

Rationale: This Project will focus on enhancing OLSC's current staff training, ensuring better service delivery to stakeholders, and staff training needs being met.

**Related Working Parties:**

- Internal Staff Training/ Lunchtime Sessions
- External Staff Training
- Stakeholder Training, Education and Communication

### Project Team 3: Quality & Compliance Management Project

Areas of Improvement: Compliance. Continual improvement. Consistency of Information.

Rationale: This Project will focus on enhancing compliance and ensuring a continual improvement philosophy is established, to provide better service delivery to stakeholders and ensure OLSC needs are met.

**Related Working Parties:**

- ILP compliance
- Internal Systems Reviews
- Key Performance Indicators

### Project Team 4: Staff Development Project (Survival Enhancement Tactics)

Areas of Improvement: Enhanced staff knowledge. Consistency of Information. Staff Feedback. Enhanced Communication and Information Sharing.

Rationale: This Project will focus on enhancing OLSC staff communication and information sharing, ensuring more cohesion and staff support needs being met.

**Related Working Parties:**

- Internal Communication (debriefing, sharing solutions, business planning)
- Case studies (as a tool for learning)
- Elements of Law (costs, family law, changes to the Act)
- Complaint and complainant trends



## ISO ACCREDITATION

The OLSC decided to obtain certification to ISO 9001:2000 to achieve a formal external recognition of the OLSC as a professional, efficient and well-managed entity with evidence of its commitment to continuous improvement. It was noted that certification would also enhance the credibility of the OLSC in the eyes of the legal profession, especially incorporated legal practices who are regulated by the OLSC and are required by legislation to implement “appropriate management systems”. SAI-Global was chosen to be the external certifying and auditor body.

Whilst initial work had begun in 2004, preparations for ISO accreditation started in earnest in November 2005 with a preliminary audit that highlighted specific areas that could be improved upon. The OLSC certification to ISO 9001:2000 became the major project focus for the 2005-2006 financial year with all staff involved in the process.

The process of gaining accreditation was the result of an intensive programme with collaboration by all staff. Specific areas of management process and procedures were written up and fine-tuned by the appropriate managers, with the help of all staff within comprehensive group discussions.

Group discussions enabled staff to propose new methods, make suggestions for improvement and introduce procedures and policies for changing areas of need. This in turn enabled a much better flow of information in the office, resulting in the designing of a Quality Systems Manual to support the management and design of policies, procedures and decision-making processes.

The OLSC gained accreditation to ISO 9001:2000 in April 2006 with the support of all staff. Whilst refining our processes and procedures it also enhanced our internal communication and information flow.

The OLSC is committed to improving the quality of the services we offer. Our aim is to use a philosophy of continuous improvement, concentrating on areas of identified problem or required minimum standard. It is to also review everyday practice to ensure efficiency and effectiveness. In line with our role, vision, mission, and values, the OLSC has set a number of objectives to ensure we continually monitor and improve in the area of customer service and satisfaction.

These are:

- To deliver our existing services in a consistent, reliable fashion while meeting and exceeding our stakeholders' needs
- To ensure the core processes run smoothly and efficiently, with minimal non-compliance whilst ensuring maximum customer satisfaction and maximum staff morale
- To align the Quality Management System to the OLSC's Business Plan, which uses project methodology, each year to set new projects to form its business plan to improve areas identified in performance monitoring and other new business initiatives
- To conform with centralised Human Resources, Information Technology, Asset Management and all other policies and procedures of the AGD.
- To maintain the OLSC Quality Systems Manual, incorporating policies, working procedures, flow charts and general administrative requirements, together with standard documents and forms to ensure accessibility and currency of information provided.
- To obtain and maintain ISO 9001 certification.

This is an ongoing process, with a need to ensure we keep improving our standards and reviewing our processes regularly. It is not an easy task, but one that the OLSC is committed to, to ensure we continually improve in the area of customer service and satisfaction for all stakeholders.

Without the wholehearted dedication and hard work of the staff, and the ongoing commitment from senior management the OLSC could not have achieved certification on the first audit. The benefits gained are not only in the certification, but also in terms of improved staff morale, cultural change with enhanced information flow and a continually improving workplace performance.

# CHAPTER 7

## FINANCIAL PERFORMANCE

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

The OLSC maintained close monitoring of its financial performance in 2005-2006 to ensure a satisfactory budget outcome at close of the reporting year.

During the year we regularly reviewed our business centre's budget performance to detect and correct unfavourable budget trends within our control and as they arose. We effectively contained our overall operating costs while meeting all of our financial commitments which included capital expenses of \$0.061m incurred in the procurement of new office computers as replacement assets on termination of leasing and in settlement of balance payable following upgrade to our telephone system.

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

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 MANAGEMENT

As at 30 June 2006 the OLSC establishment comprised 25 permanent full time positions for administrative and professional staff and one full time

equivalent position maintained by a team of rostered casuals on the OLSC Inquiry Line.

Our Inquiry Line funding allowed us to continue to offer casual employment to university law students who were in the final stages of their training and who were interested in gaining valuable work experience with a regulatory service provider. The temporary staff completed in-house induction training before being rostered as telephone inquiry officers distributing information to clients calling the Inquiry Line.

The OLSC experienced a degree of staff shortage during 2005-2006 largely as a result of staff taking long term leave or exiting the organisation to undertake employment elsewhere. We filled the position vacancies through normal recruitment processes including hiring recruitment agency contractors to provide temporary office support in base grade administrative positions.

### TRAINING & DEVELOPMENT

The OLSC is committed to consistently delivering valued professional service to the community. We encourage our staff to regularly update their knowledge base and work skills by embracing a program of continual education and training.

Staff training this year continued to focus on the new legislation. During the year OLSC staff attended a series of in-house training courses designed to foster familiarity and understanding of the new *Legal Profession Act 2004* and its application.

In addition to learning about the new Act, OLSC staff participated in a number of external courses covering topics with special relevance to their career development. For instance, our Assistant Commissioners received training in *Manage the Media* interview skills, and our Legal and Policy

Officer registered for a workshop on *Industrial Relations & the Law*.

The training needs of our complaints handling staff were similarly addressed. During the year our Investigation Officers as well as our Mediation and Investigation Officers attended seminars and workshops to supplement their knowledge of issues such as *Costs, Solicitor Advocacy, and Shareholder Activism*.

## **INFORMATION TECHNOLOGY**

### **OLSC Inquiry Line**

The OLSC implemented plans last financial year for the purchase and installation of a new PABX including an upgraded version of our existing telephone queuing system, NEC Q-Master. The new telephone system has enhanced features and facilities to meet the growing needs of our staff and provide for a more effective service to our Inquiry Line clients.

The new PABX and upgraded Q-Master desktop system, including 10 additional software licenses, were funded from capital expenditure. The supplier NEC accepted 90% of the total purchase price for the new PABX hardware last financial year. The OLSC transacted full settlement of balance payable for the new PABX including the extra licenses, following system implementation in November 2005.

### **OLSC Complaints Database**

The OLSC has installed a complaints tracking system called QA Plus which is maintained by software developer QA Plus Ltd in the United Kingdom. In mid 2005 we arranged with the developer to perform an upgrade to the database system involving a number of system enhancements.

The system upgrade required professional services from QA Plus as well as refresher training for OLSC staff. Also, we purchased 10 additional software licences from the developer to accommodate increases in our staffing since the database system was originally installed.

The OLSC complaints database is undergoing a program of constant monitoring and review to identify areas for further system improvements in data processing and statistical reporting. We maintain close liaison with the software developer in addressing our findings.

### **OLSC Computers**

The OLSC conducted a review of its computer leasing in May 2005 as part of the Department's desktop replacement plan following NSW Treasury directive that agencies were to discontinue leasing IT equipment and in future purchase this equipment from capital expenditure.

The review identified the Office maintained computer leasing agreements that were due to expire in July 2005. In order to replace the leased equipment, we made arrangements through the Department's Information Services Branch for the purchase and installation of 29 new IBM Thinkcentre personal computers. The cost of the new asset purchase was met from capital expenditure.

# CHAPTER 8

## NOTES SUPPORTING THE FINANCIAL STATEMENT

### FINANCIAL STATEMENT

#### *Notes supporting the 2005-2006 Financial Statement*

- 1. Salaries & Wages:** The Salaries & Wages variation reflects a year-end adjustment applied by the Department to account for the annual accrual component for recreation leave expense. The OLSC has no control over the Department's year-end financial processes.
- 2. Superannuation:** The OLSC has members in the State Authorities Superannuation Scheme and the State Authorities Non-Contributory Superannuation Scheme. The Superannuation expense variation reflects end of year adjustments that derive from movement on the prepaid superannuation balances of these funds. The Department is obliged to reflect this movement in its books as part of required year-end financial processes. The prepaid superannuation adjustment is in the nature of a non-cash transaction and is not included as part of the recoupment figure from the Public Purpose Fund.
- 3. Fees:** The Fees budget includes provision for litigation costs incurred to bring matters before the Administrative Decisions Tribunal (ADT) and the Courts. In addition, provision is made for costs associated with the review system and independent review advisors. In 2005-2006, the OLSC experienced a moderate increase in litigation costs in bringing matters before the ADT. However, the number of review requests was contained at around the same level as that of the previous year.

As well as making provision for legal fees, the Fees budget reserves funding for the occasional hiring of recruitment agency contactors to fill temporary vacancies in administrative and clerical support positions. In 2005-2006 the Office had need to hire agency contractors to fill administrative positions while nominal staff were on long term leave or secondment.

## FINANCIAL STATEMENT 2005-2006

	Budget \$	Spent \$	Variance \$	Notes
Salaries & Wages	1,767,896	1,743,746	24,150	1
Allowances	0	4,071	-4,071	
Overtime	5,722	2,922	2,800	
Leave Entitlements	82,170	77,995	4,175	
Workers Compensation	10,106	10,149	-43	
Payroll Tax	109,397	112,886	-3,489	
Fringe Benefits Tax	2,000	729	1,271	
Superannuation	132,402	102,736	29,666	2
<b>Total Employee Related</b>	<b>2,109,693</b>	<b>2,055,234</b>	<b>54,459</b>	
Advertising & Publicity	5,115	4,401	714	
Bank Charges	102	130	-28	
Consultancies	5,000	0	5,000	
Contractors	47,225	41,560	5,665	
Electricity & Gas	12,614	19,066	-6,452	
Fees	208,440	248,951	-40,511	3
Freight & Cartage	1,023	40	983	
General Expenses	3,069	1,028	2,041	
Insurance	2,121	1,687	434	
Interpreters & Translations	4,228	8,868	-4,640	
Postal Expenses	20,302	12,152	8,150	
Printing	42,920	41,579	1,341	
Publications	11,253	7,432	3,821	
Rates & Outgoings	8,585	8,277	308	
Rent	264,203	266,907	-2,704	
Staff Expenses	18,184	12,387	5,797	
Stores & Stationery	63,403	64,422	-1,019	
Telephone	24,121	17,507	6,614	
Travel	23,460	16,955	6,505	
Lease of Equipment	17,000	12,262	4,738	
<b>Total Maintenance &amp; Workings</b>	<b>782,368</b>	<b>785,611</b>	<b>-3,243</b>	
Maintenance Contracts	43,277	35,915	7,362	
Repairs and Maintenance	1,023	0	1,023	
<b>Total Maintenance Contracts</b>	<b>44,300</b>	<b>35,915</b>	<b>8,385</b>	
<b>Total Expenses</b>	<b>2,936,361</b>	<b>2,876,760</b>	<b>59,601</b>	
Less: Revenue (Recoupment)	-2,936,361	-2,975,344	38,983	
<b>Net Cost of Services</b>	<b>0</b>	<b>-98,584</b>	<b>98,584</b>	
Depreciation	38,954	44,433	-5,479	
<b>Net Position</b>	<b>38,954</b>	<b>-54,151</b>	<b>93,105</b>	

## CAPITAL EXPENDITURE 2005-2006

	Budget \$	Spent \$	Variance \$	Notes
Voice Communications Software (Q-Master system – balance payable to NEC)	8,000	13,350	-5,350	
Voice Communications Equipment (additional licences)	4,000	3,679	321	
<b>Total Voice Communications</b>	<b>12,000</b>	<b>17,029</b>	<b>-5,029</b>	
Computer Equipment (29 new PCs – replacement on termination of lease)	49,440	44,411	5,029	
<b>Total Computer Equipment</b>	<b>49,440</b>	<b>44,411</b>	<b>5,029</b>	
<b>Total Capital Expenditure</b>	<b>61,440</b>	<b>61,440</b>	<b>0</b>	

# CHAPTER 9

## STATISTICS ANNUAL REPORT STATISTICS 2005-2006

### PHONE ENQUIRIES

#### P1 Legal matters raised in calls

	Percentage of calls		
	03-04	04-05	05-06
Family	17.5	18.6	19.4
Conveyancing	17.6	13.8	13.6
Civil	8.9	10.7	10.8
Probate/wills/family provisions	9.9	9.7	10.4
Commercial/corporations law	7.3	8.0	9.2
Personal injuries	11.0	9.2	6.3
Criminal law	4.8	5.1	6.2
Workers compensation	7.6	6.6	5.6
Victims compensation	1.7	1.4	2.1
Other	13.6	16.9	16.4

#### P2 Nature of phone enquiry

	Percentage of calls		
	03-04	04-05	05-06
Communication	14.9	11.0	23.3
General cost complaint/query	18.9	16.0	16.4
Negligence	13.5	11.8	10.6
Ethical matters	9.1	11.7	9.8
Costs disclosure	3.2	4.8	8.0
Quality of service	6.6	9.4	6.5
Overcharging	10.0	12.0	6.0
Delay	8.2	7.8	4.9
Conflict of interests	2.1	2.4	2.2
Document transfer/liens	3.0	2.9	2.1
Misleading conduct	1.9	1.4	2.1
Trust fund matters	2.8	2.3	2.0
Document handling	1.5	2.3	1.9
Instructions not followed	2.1	2.2	1.8
Pressure to settle	1.1	1.0	0.8
Failure to honour undertakings	0.4	0.4	1.0
Fraud (not trust fund)	0.4	0.4	0.3
Compliance matters	0.2	0.3	0.2

### P3 Practitioners mentioned on inquiry line

	Percentage of calls		
	03-04	04-05	05-06
Solicitor	94.6	92.0	92.7
Barrister	2.4	2.1	2.0
Licensed Conveyancer	0.7	0.6	0.6
Other	2.3	5.3	4.7

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

	Percentage of calls		
	03-04	04-05	05-06
Client	69.2	63.7	65.7
Friend/relative	10.3	9.0	7.9
Opposing client	6.3	6.7	6.4
Previous client	5.2	6.8	6.1
Beneficiary/executor/administrator	2.0	2.0	2.4
Solicitor on another's behalf	1.7	1.7	2.0
Solicitor on own behalf	0.8	1.2	1.6
Unrepresented client	0.2	0.7	1.5
Non-legal service provider	1.2	1.1	1.3
Barrister on own behalf	0.0	0.3	0.1
Barrister on another's behalf	0.1	0.1	0.1
Other	3.1	6.8	4.9

### P5 Outcomes of calls to the inquiry line

	Percentage of calls		
	03-04	04-05	05-06
Provided information about the legal system	31.9	26.0	24.6
Provided referral for legal advice or other assistance	10.7	11.0	20.4
Provided complaint form	17.1	17.8	15.2
Recommended direct approach to lawyer about concerns	21.1	18.7	13.3
Caller indicated intention to send in complaint	6.9	8.7	9.9
Provided referral to the NSW Supreme Court Costs Assessment Scheme	3.5	4.6	3.5
Listened to caller's concerns	2.0	2.1	2.6
Explained that concerns are outside jurisdiction of OLSC	0.9	1.7	2.0
Provided information about the OLSC and LPA to a legal practitioner	1.6	2.0	1.5
Conducted telephone mediation	0.9	0.6	1.0
Scheduled interview for caller	0.4	0.4	0.3
Other	3.0	5.7	5.8



## WRITTEN COMPLAINTS

### W1 Legal matters arising from complaints received in 2005-2006

	Percentage of complaints		
	03-04	04-05	05-06
Civil	15.0	21.1	17.2
Family/defacto	11.5	13.3	14.1
Personal Injuries	14.6	10.2	11.6
Commercial/corporations law	10.7	9.6	11.5
Conveyancing	11.5	12.2	9.2
Probate/wills/family provisions	7.1	7.3	7.9
Other	8.0	5.2	7.2
Criminal	6.8	6.1	6.5
Workers Compensation	4.9	4.6	4.0
Leases/mortgages/franchises	3.3	3.7	3.3
Industrial Law	2.4	2.8	2.2
Land and Environment	1.7	0.8	1.9
Professional Negligence	1.2	1.7	1.3
Immigration	0.5	1.3	1.2
Victims Compensation	0.8	0.4	0.9

### W2 Nature of complaints received in 2005-2006

	Percentage of complaints		
	03-04	04-05	05-06
Negligence	18.9	19.1	17.1
Communication	14.6	13.7	14.8
Ethical matters	14.3	15.2	13.8
Overcharging	8.9	10.4	10.5
Misleading conduct	6.4	7.2	7.4
General cost complaint/query	4.8	5.9	6.0
Delay	6.7	5.7	5.8
Trust fund	6.0	5.5	5.5
Cost disclosure	3.7	3.7	4.5
Instructions not followed	4.1	3.1	4.0
Conflict of interests	2.4	2.5	2.7
Document transfer/liens	3.1	2.5	2.1
Quality of service	1.1	0.8	1.3
Compliance matters	0.4	0.9	1.3
Failure to honour undertakings	1.6	1.3	1.0
Document handling	0.8	0.8	0.8
Fraud (not trust fund)	0.8	1.0	0.7
Pressure to settle	1.4	0.8	0.6

### W3 Type and source of complaints received in 2005-2006

	Solicitor*	Barrister	LConv**	Other***	TOTAL	03-04	04-05	05-06
Bar Association	0	8	0	0	8	0.3	0.1	0.3
Barrister on another's behalf	1	4	0	0	5	0.04	0.0	0.2
Barrister on own behalf	60	0	0	1	61	0.9	2.4	2.2
Beneficiary/executor/ administrator	105	1	0	2	108	3	3.5	3.9
Client	660	51	9	22	742	27.2	20.0	26.7
Commissioner	142	1	0	5	148	0	3.7	5.3
Cost Assessor	1	0	0	0	1	0	0.1	0.0
Client's friend / relative	70	3	0	3	76	3.4	3.1	2.7
Law Society	111	0	0	5	116	6.1	5.0	4.2
Non-legal service provider	63	3	0	3	69	2.3	3.0	2.5
Opposing client	368	30	2	8	408	11.9	12.8	14.7
Previous client	576	38	2	24	640	24.1	30.5	23.0
Solicitor on another's behalf	156	8	0	2	166	7.3	5.3	6.0
Solicitor on own behalf	113	15	0	1	129	5	5.9	4.6
Unrepresented client	14	0	0	1	15	0.4	0.5	0.5
Other ****	79	4	1	7	91	4.6	4.0	3.0
<b>TOTAL</b>	<b>2519</b>	<b>166</b>	<b>14</b>	<b>84</b>	<b>2783</b>			

\* Includes former solicitors and legal practitioners

\*\* Licensed Conveyancer

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

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

## W4 Summary of complaints received and/or finalised in 2005-2006

	Solicitor	Barrister	LConv*	Other**	Total 03-04	03- 04 %	Total 04- 05	04-05 %	Total 05-06	05-06 %
<b>COMPLAINTS RECEIVED IN 2005-2006</b>										
<b>Complaint handling by OLSC</b>										
Complaint handling ongoing at OLSC	635	33	2	18	<b>716</b>	25.5	<b>595</b>	22.1	<b>688</b>	24.72
Suspended at OLSC***	10	0	0	0	<b>12</b>	0.4	<b>11</b>	0.4	<b>10</b>	0.36
Complaint handling completed at OLSC	774	24	2	13	<b>748</b>	26.7	<b>842</b>	31.3	<b>813</b>	29.21
Complaint dismissed by OLSC	451	51	0	35	<b>676</b>	24.1	<b>597</b>	22.2	<b>537</b>	19.30
<b>OLSC subtotal</b>	<b>1870</b>	<b>108</b>	<b>4</b>	<b>66</b>	<b>2152</b>	<b>76.7</b>	<b>2045</b>	<b>75.9</b>	<b>2048</b>	<b>73.59</b>
<b>Complaint handling by Professional Councils</b>										
Complaint handling ongoing at Council	428	47	9	12	<b>423</b>	15.1	<b>421</b>	15.6	<b>496</b>	17.82
Suspended at Council****	7	0	0	0	<b>20</b>	0.7	<b>16</b>	0.6	<b>7</b>	0.25
Complaint handling completed at Council	90	2	0	0	<b>89</b>	3.2	<b>76</b>	2.8	<b>92</b>	3.31
Complaint dismissed by Council	124	9	1	6	<b>122</b>	4.3	<b>136</b>	5.0	<b>140</b>	5.03
<b>Council subtotal</b>	<b>649</b>	<b>58</b>	<b>10</b>	<b>18</b>	<b>654</b>	<b>23.3</b>	<b>649</b>	<b>24.1</b>	<b>735</b>	<b>26.41</b>
<b>TOTAL COMPLAINTS RECEIVED 2005-2006</b>	<b>2519</b>	<b>166</b>	<b>14</b>	<b>84</b>	<b>2806</b>		<b>2694</b>		<b>2783</b>	
<b>COMPLAINTS FINALISED IN 2005-2006</b>										
<b>Complaint handling finalised by OLSC</b>										
Complaint handling completed at OLSC	1049	40	3	19	<b>1131</b>	40	<b>1147</b>	43.2	<b>1111</b>	42.86
Complaint dismissed at OLSC	692	69	2	38	<b>1026</b>	36.3	<b>943</b>	35.5	<b>801</b>	30.90
<b>OLSC subtotal</b>	<b>1741</b>	<b>109</b>	<b>5</b>	<b>57</b>	<b>2157</b>	<b>76.2</b>	<b>2090</b>	<b>78.6</b>	<b>1912</b>	<b>73.77</b>
<b>Complaint handling finalised by Councils</b>										
Complaint handling completed at Council	178	7	3	2	<b>238</b>	8.4	<b>154</b>	5.8	<b>190</b>	7.33
Complaint dismissed by Council	421	41	11	17	<b>434</b>	15.3	<b>414</b>	15.6	<b>490</b>	18.90
<b>Council subtotal</b>	<b>599</b>	<b>48</b>	<b>14</b>	<b>19</b>	<b>672</b>	<b>23.8</b>	<b>568</b>	<b>21.4</b>	<b>680</b>	<b>26.23</b>
<b>TOTAL COMPLAINTS FINALISED 2005-2006</b>	<b>2340</b>	<b>157</b>	<b>19</b>	<b>76</b>	<b>2829</b>		<b>2658</b>		<b>2592</b>	

\* Licensed Conveyancer

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

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

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

## W5 Status at 30 June 2006 of complaints received in 2005-2006

Status	Solicitor	Barrister	LConv*	Other**	TOTAL
<b>COMPLAINT HANDLING IN PROGRESS</b>					
Dispute resolution in progress	457	25	2	13	497
Out of time assessment in progress	17	2	0	1	20
Investigation in progress	161	6	0	4	171
Complaint handling suspended	10	0	0	0	10
<b>Subtotal open, active at OLSC</b>	<b>645</b>	<b>33</b>	<b>2</b>	<b>18</b>	<b>698</b>
Dispute resolution in progress	15	0	1	2	18
Investigation in progress	413	47	8	10	478
Complaint handling suspended #	7	0	0	0	7
<b>Subtotal open, active at Council</b>	<b>435</b>	<b>47</b>	<b>9</b>	<b>12</b>	<b>503</b>
<b>SUBTOTAL, OPEN COMPLAINTS</b>	<b>1080</b>	<b>80</b>	<b>11</b>	<b>30</b>	<b>1201</b>
<b>COMPLAINT HANDLING FINALISED</b>					
Dispute resolution completed	771	24	2	13	810
Resolved through formal mediation	1	0	0	0	1
Practitioner referred to Tribunal***	0	0	0	0	0
Practitioner reprimanded by LSC##	2	0	0	0	2
<b>Subtotal finalised by OLSC</b>	<b>774</b>	<b>24</b>	<b>2</b>	<b>13</b>	<b>813</b>
Dispute resolution completed	76	0	0	0	76
Resolved through formal mediation	1	0	0	0	1
Practitioner referred to Tribunal***	10	1	0	0	11
Practitioner reprimanded by Council##	3	1	0	0	4
<b>Subtotal finalised by Council</b>	<b>90</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>92</b>
Tribunal finding of UPC/PM unlikely****	277	31	0	11	319
Likely UPC but generally competent	5	0	0	0	5
Complaint not accepted out of time	34	8	0	3	45
Withdrawn, particulars not supplied, procedural	95	8	0	2	105
Outside OLSC jurisdiction	28	4	0	19	51
Public interest	12	0	0	0	12
<b>Subtotal dismissed by OLSC</b>	<b>451</b>	<b>51</b>	<b>0</b>	<b>35</b>	<b>537</b>

Status	Solicitor	Barrister	LConv*	Other**	TOTAL
Tribunal finding of UPC/PM unlikely	71	4	0	4	79
Likely UPC but generally competent	0	1	0	0	1
Withdrawn, particulars not supplied, procedural	52	4	1	2	59
Public interest	1	0	0	0	1
<b>Subtotal dismissed by Council</b>	<b>124</b>	<b>9</b>	<b>1</b>	<b>6</b>	<b>140</b>
<b>SUBTOTAL, COMPLAINTS FINALISED</b>	<b>1439</b>	<b>86</b>	<b>3</b>	<b>54</b>	<b>1582</b>
<b>Total handled by OLSC</b>	<b>1870</b>	<b>108</b>	<b>4</b>	<b>66</b>	<b>2048</b>
<b>Total handled by Council</b>	<b>649</b>	<b>58</b>	<b>10</b>	<b>18</b>	<b>735</b>
<b>TOTAL</b>	<b>2519</b>	<b>166</b>	<b>14</b>	<b>84</b>	<b>2783</b>

\* Licensed Conveyancer

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

\*\*\* Administrative Decisions Tribunal

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

# Includes where investigator / receiver / manager has been appointed

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

## W6 All complaints finalised 2005-2006

Complaints finalised	Solicitor	Barrister	LConv*	Other**	TOTAL
Dispute resolution completed	1031	38	3	19	1091
Resolved through formal mediation	1	0	0	0	1
Practitioner referred to Tribunal#	5	0	0	0	5
Practitioner reprimanded by LSC	12	2	0	0	14
<b>Subtotal finalised by OLSC</b>	<b>1049</b>	<b>40</b>	<b>3</b>	<b>19</b>	<b>1111</b>
Dispute resolution completed	115	0	1	0	116
Resolved through formal mediation	2	0	0	0	2
Practitioner referred to Tribunal	45	4	2	2	53
Practitioner reprimanded by Council##	16	3	0	0	19
<b>Subtotal finalised by Council</b>	<b>178</b>	<b>7</b>	<b>3</b>	<b>2</b>	<b>190</b>
Tribunal finding of UPC/PM unlikely	407	44	0	11	462
Likely UPC but generally competent	9	2	0	0	11
Complaint not accepted out of time	48	9	0	5	62
Withdrawn, particulars not supplied, procedural	177	10	0	3	190
Outside OLSC jurisdiction	30	4	2	18	54
Public interest	21	0	0	0	21
<b>Subtotal dismissed by OLSC</b>	<b>692</b>	<b>69</b>	<b>2</b>	<b>37</b>	<b>800</b>
Tribunal finding of UPC/PM unlikely	272	31	7	12	322
Likely UPC but generally competent	7	1	1	0	9
Withdrawn, particulars not supplied, procedural	104	8	3	3	118
Public interest	38	1	0	3	42
<b>Subtotal dismissed by Council</b>	<b>421</b>	<b>41</b>	<b>11</b>	<b>18</b>	<b>491</b>
<b>Total handled by OLSC</b>	<b>1741</b>	<b>109</b>	<b>5</b>	<b>56</b>	<b>1911</b>
<b>Total handled by Council</b>	<b>599</b>	<b>48</b>	<b>14</b>	<b>20</b>	<b>681</b>
<b>TOTAL</b>	<b>2340</b>	<b>157</b>	<b>19</b>	<b>76</b>	<b>2592</b>

\* Licensed Conveyancer

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

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

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

### W7 Duration of file handling at the OLSC

Of complaints finalised in 2005-2006, time taken for complaints handling

Percentage of files closed within following periods*			
	03-04	04-05	05-06
0-30 days	17.9	24.8	20.4
1-3 months	33.3	29.7	28.2
3-6 months	24.6	22.8	22.4
6-9 months	10.8	8.6	13.8
9-12 months	5.0	5.7	0.6
Over 12 months	8.4	8.4	9.2

\* 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 2006 and being handled by the OLSC

Year opened	Open at 30 June 04	Open at 30 June 05	Open at 30 June 06
2005-2006			440
2004-2005		623	123
2003-2004	728	144	86
2002-2003	64	45	10
2001-2002	36	9	4
2000-2001	14	6	2
1999-2000	5	5	1
1998-1999	2	4	0
1997-1998	2	3	0
1996-1997	1	1	0
1995-1996	0	0	0
1994-1995	0	0	0
<b>TOTAL</b>	<b>852</b>	<b>840</b>	<b>667</b>

\* 2005-2006 statistics understated due to technical difficulties in complaints tracking system. Problems will be rectified for 2006-2007 Annual Report.

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

Of complaints handled in 2005-2006, time taken to finalise

	Days*
Average time to complete complaints received and completed / resolved in 2005-2006	97.5
Average time to complete complaints received in any year but completed / resolved in 2005-2006	139.8
Average time taken to dismiss complaints received in 2005-2006	98
Average time to dismiss complaints received in any year but dismissed in 2005-2006	168.5

\* Averages rounded to 1 decimal point

## REVIEWS

### R1Status at 30 June 2006 of review requests received in 2005-2006

	Solicitor	Barrister	LConv*	Other**	Total	Percentage
<b>Reviews in progress</b>						
In progress at OLSC	15	1	0	0	16	21.05
Being reviewed by consultant	10	3	0	0	13	17.11
Consulting with Council prior to finalising	1	0	0	0	1	1.32
<b>Total remaining open</b>	<b>26</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>30</b>	<b>39</b>
<b>Reviews completed</b>						
Dismissal confirmed	31	7	0	0	38	50.00
Out of time, no jurisdiction	0	0	1	0	1	1.32
Review request withdrawn	0	0	0	0	0	0.00
Reprimand confirmed	0	0	0	0	0	0.00
Reinvestigated by OLSC	3	0	0	0	3	3.95
Reinvestigated by Council	0	0	0	0	0	0.00
Decision changed	3	1	0	0	4	5.26
Other	0	0	0	0	0	0
<b>Total completed</b>	<b>37</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>46</b>	<b>61</b>
<b>Total received</b>	<b>63</b>	<b>12</b>	<b>1</b>	<b>0</b>	<b>76</b>	<b>100</b>

\* Licensed Conveyancer

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



## R2 Reviews in progress and finalised in 2005-2006 – received all years

	Solicitor	Barrister	LConv*	Other**	Total	Percentage
<b>Reviews in progress</b>						
In progress at OLSC	16	1	0	0	17	15.04
Being reviewed by consultant	12	3	0	0	15	13.27
Consulting with Council prior to finalising	1	0	0	0	1	0.88
<b>Total remaining open</b>	<b>29</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>33</b>	<b>29</b>
<b>Reviews completed</b>						
Dismissal confirmed	51	16	1	0	68	60.18
Out of time, no jurisdiction	0	0	1	0	1	0.88
Review request withdrawn	0	0	0	0	0	0.00
Reprimand confirmed	0	0	0	0	0	0.00
Reinvestigated by OLSC	7	0	0	0	7	6.19
Reinvestigated by Council	0	0	0	0	0	0.00
Decision changed	3	1	0	0	4	3.54
Other	0	0	0	0	0	0
<b>Total completed</b>	<b>61</b>	<b>17</b>	<b>2</b>	<b>0</b>	<b>80</b>	<b>71</b>
<b>Total handled</b>	<b>90</b>	<b>21</b>	<b>2</b>	<b>0</b>	<b>113</b>	<b>100</b>

\* Licensed Conveyancer

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

## TRIBUNAL PROCEEDINGS

### T1 Complaints referred to the Administrative Decisions Tribunal in 2005-2006\*

Reason	Solicitor	Barrister	LConv**	Clerk / Associate	TOTAL
Unsatisfactory Professional Conduct (UPC)		1			1
Professional Misconduct (PM)	5				5
PM and UPC		1			1
Prohibited employment***	1			2	3
Disciplinary Action	13	3	1		17
Review	1		1		2

\* Data provided by Administrative Decisions Tribunal

\*\* Licensed Conveyancer

\*\*\* Legal Profession Act 1987 (LPA) s48I and s48K orders and/or Legal Profession Act 2004 (LPA) s17 (3)

### T2 Outcomes of Tribunal Proceedings in 2005-2006\*

Outcome	Number
Reprimanded and fined	11
Removed from roll	7
Reprimanded	5
Dismissed after hearing	3
Withdrawn dismissed	3
Reprimanded and fined, Suspended from practice	2
Reprimanded and fined, Legal Education Course	1
s48I and s48K Orders (convicted persons)**	2
<b>TOTAL</b>	<b>34</b>

\* Data provided by Administrative Decisions Tribunal

\*\* Legal Profession Act 1987 (LPA) s48I and s48K orders and/or Legal Profession Act 2004 (LPA) s17 (3)

Please Note:

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

# Case Studies

## Failure to follow instructions – conveyancing

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The complainant alleged that the practitioner had failed to follow his instructions whilst acting for him in a conveyancing transaction involving the subdivision and transfer of a title of a block of land in 1988. Seven years afterwards the title had still not been registered and transferred. As a result of the practitioner's failure to follow the complainant's instructions the complainant alleged that was forced to engage another practitioner to complete the transaction.

The first issue that had to be considered by the Commissioner was whether or not the complaint could be dealt with 'out of time' under one of the statutory exceptions in s137(2) of the *Legal Profession Act 1987* since complaints lodged more than three years after the event are, prima facie, out of jurisdiction. The complainant submitted that since he had only recently learned that the registration had not been completed he should be entitled to make the out of time complaint. The practitioner declined to submit otherwise. The Commissioner determined that the complaint could be dealt with out of time pursuant to s137(2)(a) having regard to the reasons for the delay in lodging it.

As to the actual complaint the practitioner (after repeated requests by the Commissioner for a response) submitted that he was retained to act only in relation to the subdivision and not the transfer, despite his own contemporaneous correspondence proving otherwise. The practitioner also denied allegations that he had attempted to mislead the second practitioner appointed and the complainant by denying his involvement in the original transaction.

The Commissioner did not accept the practitioner's submissions and formed the view that the practitioner's unexplained failure to finalise the transaction in 1988 together with the practitioner's less than frank replies to the second practitioner hired by the complainant constituted conduct which offered a reasonable likelihood that the Tribunal would find the practitioner guilty of unsatisfactory professional conduct. The Commissioner then reprimanded the practitioner pursuant to s155(3)(a) and required that the practitioner pay the complainant compensation in the amount of \$1,200.00. That amount represented the additional legal costs incurred by the complainant in engaging a second practitioner.

After a further delay of some seven weeks despite regular reminders, the Commissioner finally received a cheque from the practitioner.

## Communication

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The complainant, an elderly pensioner living in New Zealand, held shares in a listed company which went into liquidation. The complainant subsequently received a number of letters from a practitioner inviting the complainant to register his interest in participating in a class action against various people involved with the collapse. The complainant decided to do so, and sent a cheque for his registration fee to the practitioner. Over the course of the ensuing year the complainant heard nothing from the practitioner despite attempting to email and write to the practitioner.

The OLSC contacted the practitioner and obtained updates on the progress of the matter and explanations for the failure to keep the complainant informed. The practitioner was counseled on his obligations to supervise the contractors responsible for his direct mailing campaigns and on the need to ensure appropriate office management systems were in place.

Having received the updates, and considered his position, the complainant decided that he had not been properly informed of the nature of the action, and requested a refund of his registration fee, which was paid to him after further intervention from this office.

## **Conflict of interest**

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The practitioner acted for the complainants in relation to the sale of their property and in preparing wills and powers of attorney. Approximately seven years later the practitioner acted against the complainants in a debt recovery matter.

The complainants wrote to the OLSC alleging that the practitioner was acting in a conflict of interest situation and that he had refused to return their certificate of title to them which was in his possession. The complainants sought the OLSC's assistance to retrieve their title and have the practitioner cease acting against them.

The practitioner was advised of the complaint and responded promptly. The practitioner acknowledged that he should have refused his current client's instructions but noted that he did not believe that he held any confidential information about his former client which related to the current proceedings. In any event the practitioner referred his current client to another solicitor. The practitioner also advised that he had immediately returned the complainant's certificate of title to the complainants. Accordingly, the outcome that the complainants had sought was achieved.

## **Advertising**

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The Commissioner initiated a complaint in accordance with, then section 134 of the *Legal Profession Act 1987* against a firm of practitioners that they had breached the advertising regulations by advertising personal injury services in the 2005 Yellow Pages.

The Commissioner wrote to the firm advising them that they had breached Part 14 of the *Legal Profession Regulation 2002* and Part 18 of the *Workers Compensation Regulation 2003* which provides that a practitioner must not publish any advertisement which promotes the availability of a practitioner to provide legal services for personal injury or any circumstances in which personal injury might occur.

The practitioners advised the OLSC that they were unaware at the time of the initial publication of their advertisement that they would be in breach of the regulations. According to the practitioners, as soon as they realized that the advertisement was in breach of the Regulations they took action to remedy the problem. The practitioners submitted that any breach was both innocent and unintentional. The practitioners thus submitted that the Commissioner should not institute disciplinary proceedings but should dismiss the complaint.

Noting the practitioners' submissions the Commissioner dismissed the complaint on the basis that the practitioners were unaware that they would be in breach of the regulations; the practitioners took immediate action to remedy and alter the advertisement and the practitioners provided to the OLSC a copy of the amended advertisement in the current Yellow Pages. The Commissioner then reminded the practitioners of the need to be vigilant in ensuring that all advertising complies with the regulations and of the need as practitioners for taking responsibility for their own actions comply with all applicable laws.

## Advertising

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The OLSC received a number of complaints in relation to an advertisement by a city practitioner in a country edition of the Yellow Pages that contained the statement “DON'T BE DISADVANTAGED LIVING IN THE COUNTRY”.

The complainants, who were country practitioners, found the advertisement offensive to country practitioners and misleading. The complainants alleged that the advertisement was in breach of section 84(2) of the *Legal Profession Act 2004* which provides that an advertisement must not be “false, misleading or deceptive,” or “in contravention of the *Trade Practices Act 1974 (NSW)* or the *Fair Trading Act 1987 (Cth)*. According to section 84(3) of the LPA 2004, a contravention of section 84(2) is capable of being professional misconduct or unsatisfactory professional conduct.

Although the advertisement clearly offended the complainants and was demeaning to all country solicitors the OLSC determined that the advertisement was not prima facie, “false, misleading or deceptive” and did not contravene either the *Trade Practices Act 1974 (NSW)* or the *Fair Trading Act 1987 (Cth)*. The city practitioner was however reminded about Part 6 of the *NSW Law Society Guidelines for Solicitor's Advertising*, which states that care must be taken in respect to comparative advertising. The practitioner was also reminded of the need to refrain from publicly making disparaging or derogatory comments about other practitioners in their professional calling.

## Failure to disclose

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The complainant was unhappy with the costs he had been charged by the lessor's solicitor for work done in relation to assignment of a lease. The OLSC advised the practitioner that the *Legal Profession Act 2004* includes an expanded definition of “client” so as to include a person who is legally liable to pay for the services even if the services are not provided to or for that person. Thus the costs disclosure provisions contained in Part 3.2, Division 3 of the Act required disclosure to be made to the complainant lessee before, or as soon as practicable after, the law firm was retained. It appeared this had not been done.

The effect of a failure to disclose is that the client need not pay the costs unless they have been assessed. However, the lessee had already paid the costs in full in this instance so as to enable the transaction to be completed. The OLSC noted it was still open to the lessee to apply for costs assessment, and that given the apparent lack of costs disclosure, the costs of any assessment would be payable by the law firm.

The practitioner offered a refund of a substantial proportion of the costs paid, which the lessee was happy to accept.

## Delay

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The complainants rented a shop selling children's clothes. They complained to this Office about the practitioner, who was the legal representative of their landlord.

The complainants' lawyer had returned the lease documents and cheques to the practitioner twenty months prior to lodging the complaint with this Office.

The complainants had written to the practitioner over a fourteen-month period requesting the return of the registered lease or a progress report on the registration. The practitioner failed to respond to the correspondence.

After the intervention of this Office, the lease was registered. The practitioner was issued with a reprimand under s155(3)(a) of the *Legal Profession Act* for the twenty-month delay in registering the lease and the failure to respond to a fellow practitioner over a fourteen-month period.

## Failure to respond

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In 2002 the complainant instructed her practitioner in relation to her medical negligence matter. The complainant provided the information requested by the practitioner. The practitioner told the complainant that he had briefed a barrister in relation to the matter. However, in his response to this Office he was not able to provide any evidence to support this assertion.

According to the practitioner the barrister did not receive the brief. The practitioner did not seek an explanation from the barrister for the delay in his response to the brief.

In his response to this Office, the practitioner asserted that he had suffered periods of ill health. However he did not provide any evidence that he had advised his client of this. Over the ensuing three years the complainant sought progress reports and left telephones messages which were not returned by the practitioner.

The practitioner received a reprimand under s155(3)(a) of the LPA 1987, for the delay in dealing with the matter and the failure to communicate with his client.

## Rudeness

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The complainants alleged that the practitioner had been rude and discourteous in his communications often using inappropriate and threatening language. The discourteous communications were contained in numerous emails and faxes, sent to the complainants by the practitioner demanding that outstanding costs be paid. Several of these emails or faxes used intimidating language such as capital letters as well as personal insults. Such language included for example an email sent to one of the complainants in the following terms:

*"I am now certain that you ... are both certifiably insane.  
I was all that was keeping you both, in reality here...and all that was keeping the wolfs from you...  
You are not rational enough to appreciate that,  
And I frankly feel very, very sorry for you,...your ex-friend and very ex-solicitor."*

And another email as follows:

*"I do not accept the absurd and derisory installment offer, as my recently faxed and posted reply clearly indicated. Pretending that I ever would or did this is just further illustrative or (sic) YOUR collective dementia. You will BOTH be bankrupt and homeless long before you will get to make any payments, I have often warned you that you are BOTH kiddies at play in this whole insolvency/professional debt avoidance game, and that you are way out of your depth!! If this does not show you are both Mad (sic), what would ?? This is my very final communication with you both, and personally, is to the effect that for the sake of your families you should both seek medical and psychiatric help and support, as the end game on your whole criminal enterprise there is nigh!"*

The practitioner submitted that he was neither rude nor discourteous and did not intimidate the complainants. According to the practitioner, his communications were merely "throw-away lines" and "just humorous little quips." The practitioner submitted that he had always communicated with the complainants in this manner and that for the 15 years he had been their practitioner the complainants had never taken offence. The practitioner did however acknowledge that he perhaps should not have continued to communicate with the complainants in this manner after the complainants had terminated their relationship with the practitioner.

The Commissioner determined that the practitioner's behavior fell short of acceptable professional behavior becoming of a solicitor and brought into question the reputation of the legal profession. The Commissioner held that the practitioners behavior amounted to unsatisfactory professional conduct and the practitioner was reprimanded pursuant to sec 155(3)(a) of the Act.

## Misleading

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A complaint was initiated by the Legal Services Commissioner in accordance with section 134 of the *Legal Profession Act 1987* against the practitioner, a barrister, that the barrister deliberately breached Advocacy Rule 25 of the *New South Wales Barristers Rules (Barristers' Rules)* which provides that a barrister must inform the court of any binding authority or any authority which the barrister believes is directly in point against the client's case. The Legal Services Commissioner alleged that the practitioner misled the court during a criminal trial whilst he was appearing for the accused in that the practitioner made arguments regarding the question of the accused's capacity to form an intention to commit the offence as a consequence of the accused's intoxication when the practitioner knew or should have known that section 428D of the *Crimes Act 1900* prevents the defence of intoxication being invoked in relation to the offence with which the accused was charged.

The practitioner rejected the complaint alleging that he breached Rule 25 of the Barristers' Rules. The practitioner submitted that section 428D was not relevant and that there was thus no reason for him to raise the actual or potential applicability of section 428D. The practitioner submitted that he did not therefore breach any conduct rules.

The OLSC undertook an examination of the relevant criminal rules as well as the Barristers' rules. In conducting the examination the OLSC concluded that failing to draw the courts attention to the provisions of section 428D fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner. The practitioner was reprimanded pursuant to section 155(3)(a) of the *Legal Profession Act 1987*.



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