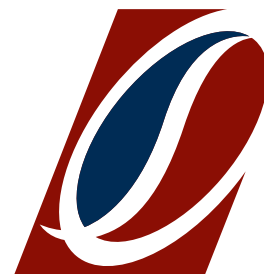




Annual Report 2004-2005

The Office Of The Legal Services Commissioner



OFFICE OF THE LEGAL SERVICES COMMISSIONER ANNUAL REPORT

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
- empathy





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Chapter 1

COMMISSIONER'S REPORT

In the reporting year 2004/2005, the OLSC has again experienced a decrease in the number of written complaints received with the total, 2,694, being our lowest in five years.

We welcome this decrease. While it is not possible to verify the exact reasons for this reduction, I believe it is at least in part due to our educational approach consistent with our long term goal of reducing complaints against legal practitioners. It discloses a growing willingness amongst legal practitioners to address the concerns of their clients and an increased familiarity with the requirements of the Legal Profession Act.

We have commenced our second decade with two welcome changes, both of which will have a long-term impact on our approach to and the effectiveness of the regulatory framework for the legal profession in New South Wales.

In October 2005, the commencement of the new Legal Profession Act (2004) will see our regulatory and disciplinary powers expand considerably. We anticipate this will have a significant impact on our workload and ultimately a positive result for the profession and the community.

We have also created a new unit for the regulation and guidance of incorporated legal practices (ILPs), including multidisciplinary practices (MDPs). A new Practice Compliance Manager and Compliance Project Officer were appointed in April and by the end of this financial year, a number of new processes for the regulation and assistance to

the approximately 500 incorporated legal practices in New South Wales were already being developed and implemented.

Both of these new developments have been addressed in separate chapters in this Report (Chapter 2 and Chapter 4 respectively).

Project Management

The OLSC's project management approach, consisting of eleven different project teams, has been underway for two years. This system of developing, managing and directing the work of the OLSC is driven entirely by staff from initial concept to final outcome.

All of the teams have developed, researched and in many cases, completed major projects in the last year.

The work of two of the teams has led to significant changes to the way the OLSC conducts aspects of its core business. The Inquiry Line team has re-evaluated the method by which we keep our call data. Through consultation and trial and error, the team created an entirely new, and far more accurate database with which we record all our inquiry line data. This has resulted in a greatly improved ability to both report on our work and to monitor trends in the complaints we receive.



The Education and Training team has worked tirelessly to design and implement a plan for the training of staff and of our stakeholders in the provisions of the new Legal Profession Act (2004). This team has also embarked on a study of the training provided to staff to ensure that all staff receive proper training opportunities. Another exciting project for this team is to determine the best way to deliver “emotional intelligence training” to our staff. This training, when coupled with our ongoing training program in relation to mediation skills and dealing with difficult people, is bound to empower staff to better deliver the services of the OLSC while providing a supportive environment for staff and individual staff development.

An additional major project to be undertaken in the coming year will address our procedures for storage and cataloguing of our hard copy complaint files and allow better access to the valuable data collected from them.

The project teams are also an integral part of our approach to continuous improvement and play a central role in our move towards certification under ISO 9001 which we hope to achieve early next year.

Legal Fees Review Panel

In early 2004, the then New South Wales Premier, Mr Bob Carr, established a Legal Fees Review Panel to examine the current legal costs systems, methods for calculations of legal costs, the way in which costs are presented to clients and mechanisms by which objections may be taken to those costs.

The Panel included Mr Laurie Glanfield, the Director General of the Attorney General’s Department, Mr Gordon Salier, then President of the Law Society of New South Wales, Mr Ian Harrison, SC, then President of the New South Wales Bar Association and myself.

The Panel produced a Discussion Paper in late 2004 and took submissions from relevant stakeholders and interested members of the community who responded. At the time of writing this Report, the final draft of a Report from the Panel is being completed for submission to the Attorney General. The results will be reported on in next year’s Annual Report.



Advertising Regulation

Lawyers' advertising was largely deregulated in New South Wales in 1994. However, in the last two years the Government has sought to restrict lawyers' advertising of personal injury services in New South Wales.

These regulations have been challenged in the High Court by the Australian Plaintiff Lawyers Association and several law firms. The High Court heard submissions in October 2004 from the plaintiff and from the representatives of the Attorney General in each State and the Commonwealth as well as representatives from Community Legal Centres.

This case will not only explore the validity of the regulation restricting advertising of personal injury services, but will address some important issues in relation to the regulation of the legal profession in Australia which has now moved to become a national profession. The decision in this matter is expected to be handed down prior to December 2005.

Education

Education is central to all areas of OLSC work. Not only do we work with and provide lectures at the law faculties of many New South Wales universities and the College of Law, but we also approach our core function of complaint handling from a problem solving and educational perspective.

While a minority of the complaints that we receive will ultimately result in disciplinary action by this Office or the Professional Associations (including prosecutions in the Legal Services Division of the Administrative Decisions Tribunal), most provide a vehicle with which legal practitioners can be informed about the concerns their clients have and, more importantly, the opportunity to rectify those concerns and improve their service to the community. In addition, members of the community who lodge complaints are given an opportunity to learn more about the legal process and perhaps have some of their more unrealistic expectations addressed through discussion with OLSC staff.

Co-regulatory framework

In New South Wales the OLSC works with the Law Society and the Bar Association in regulating the legal profession. This model, which has been in existence since 1994, has stood the test of time and is now being followed not only in other Australian jurisdictions, but also internationally.

The Clementi Report (named after Sir David Clementi) on regulation of the legal profession in the United Kingdom has recently been published. Sir David and his staff spent a significant period of time at the OLSC to explore our approach to regulation. As a result, the Clementi Report makes a number of recommendations for changes in the



way the legal profession is regulated in the United Kingdom consistent with the operation of the OLSC. In addition, discussions continue between this Office and representatives of the legal fraternity in Scotland and Canada so that those jurisdictions can better understand our approach to regulation.

What is legal work?

For well over 100 years the question of what work should be reserved for the legal profession has been debated in all Common Law jurisdictions. This debate has intensified in recent years with an increasing focus on economic theory including competition policy.

Our experience of regulating incorporated legal practices, which include approximately 70 multi-disciplinary practices, has led us to the view that there could be great utility focusing not only on regulating lawyers but on regulating legal work regardless of who performed such work – for example, conveyancing and accounting. This issue will be further explored and developed by my Office over the next year and I hope to report on developments in next year's Annual Report.

OLSC success

The success of the OLSC in achieving its targets and developing new and effective areas of policy and practice in the regulation of the legal profession is due entirely to the talent, commitment and ability of our staff.

Not only have we increased our educational and policy profile in the reporting year, but we have resolved more complaints than we received. We also vastly increased the number of conduct investigations conducted and disciplinary actions taken.

I would like to take this opportunity to publicly acknowledge and praise all the staff of the OLSC for their contribution to our success.

Steve Mark
2005

PROMOTING COMPLIANCE WITH HIGH PROFESSIONAL AND ETHICAL STANDARDS



CONDUCT ISSUES

Investigations

When a complaint is received at the Office of the Legal Services Commissioner (OLSC) it is allocated to a staff member as either an investigation or a consumer dispute. Investigations are carried out by the Legal and Policy team when the conduct alleged in the complaint raises issues that could amount to unsatisfactory professional conduct or professional misconduct. If sufficient evidence becomes available for the Commissioner to be satisfied there is a reasonable likelihood that the Legal Services Division of the Administrative Decisions Tribunal would make such a finding, the matter is taken to the Tribunal.

During the reporting year 2694 complaints were received in this office and 649 were referred to the professional associations. Of those retained, 238 were considered to raise issues of conduct that warranted investigation by staff at the OLSC.

Investigations of complaints are generally complex and time-consuming, given that probative evidence needs to be sought from both the complainant and the practitioner and, where appropriate, from others. Bearing in mind the time-consuming nature of investigations, the Legal and Policy team is pleased to report that of the 238 investigations commenced in the reporting year, 131 were concluded. Additionally, a further 95 investigation files from previous years were concluded.

The matters finalised during the year resulted in the Commissioner referring five matters to the Administrative Decisions Tribunal as he was satisfied that there was a reasonable likelihood that the practitioners would be found guilty of professional misconduct. A further 21 practitioners were reprimanded by the Commissioner because he was satisfied there was a reasonable likelihood that they would be found guilty of unsatisfactory professional conduct.

Work continued on 176 investigation files at the end of the reporting year.

There is a continuing upward trend in the number of investigations dealt with at OLSC, the number of investigations concluded within the reporting year, the number of referrals to the Administrative Decisions Tribunal and the number of reprimands issued. The satisfactory conclusion of so many investigation files can be attributed to the focus and commitment of the Legal and Policy team.

The investigation staff at OLSC also dealt with 74 requests for review of decisions made by the Councils of the Law Society and Bar Association. The review of these decisions resulted in the Commissioner overturning the determinations to dismiss the complaint in three matters replacing that determination with the issue of a reprimand to each of the practitioners.

Reprimands

There are some circumstances where the Commissioner is satisfied that a practitioner would be found guilty of unsatisfactory professional conduct but not professional misconduct by the Administrative Decisions Tribunal. In these instances the Commissioner has the power to issue a reprimand rather than to prosecute the practitioner in the Tribunal, thereby providing a quick and efficient sanction that saves Tribunal time, OLSC staff time and a legal practitioner's costs. It is an appropriate sanction in cases where it is considered that the likely penalty to flow from the Tribunal would not extend beyond a reprimand.

Of the 21 reprimands issued by the Commissioner during the reporting year, nine related to delay on the part of the practitioners in advancing their clients' matters. Three further reprimands were issued for negligence on the part of the practitioners and two reprimands were issued to practitioners for breach of undertakings given. The balance of the reprimands issued related to single instances of failure to comply with a cost assessor's request for information, failure to disclose costs, misleading conduct, not following instructions, not complying with court orders, breach

of Rule 19 of the Professional Conduct and Practice Rules (appearing as an advocate in a matter when the practitioner was a material witness) and a breach of Rule A43 of the Professional Conduct & Practice Rules (a practitioner influencing a witness).

The increased number of reprimands issued where practitioners delayed advancing their clients' matters is of concern. A complaint of delay is usually accompanied by a complaint of failure on the part of the practitioner to communicate adequately or in a timely fashion with the complainant. This is a matter that OLSC will address on a policy level during the course of the next reporting year.

Administrative Decisions Tribunal

In the last financial year, five Informations were filed in the Administrative Decisions Tribunal. Three of those matters dealt with failure on the part of the practitioner to produce documents and information to the OLSC pursuant to notices issued to them. Two of those matters have been dealt with and in each case a reprimand was issued and a costs order made in the Commissioner's favour. The third matter will be dealt with in the near future. A further matter, in which it is alleged that the practitioner has breached his undertaking provided to this office, will also be heard in the near future.

In the matter of *Legal Services Commissioner v Nikolaidis* the Tribunal found that the practitioner was guilty of deliberate gross overcharging and failing to respond to the statutory request of a costs assessor to provide documents and information. A finding of professional misconduct was made in each matter. The Tribunal has yet to determine what orders it will make in relation to Mr Nikolaidis. Mr Nikolaidis has lodged an appeal in relation to the findings of the Tribunal, but the appeal will not be progressed until such time as the decision of the Tribunal as to penalty has been delivered.

DISCLOSURES

Under the disclosure provisions that specifically deal with a practitioner's disclosure of their bankruptcy, tax offences or criminal charges, there is a

prescribed period in which practitioners must supply all relevant information to the Law Society or Bar Association.

Failure to supply that information within that three month period (with a possibility of a one month extension) will result in the automatic suspension of the practitioner's practising certificate. In the case of a solicitor, there is the automatic appointment of a receiver or manager to the their practice.

When the disclosure has not been made in the allocated period, the Act requires the Law Society or the Bar Association to forward the matter to the Legal Services Commissioner for a decision as to whether the practitioner is a fit and proper person to hold a practising certificate.

Over the last financial year two such cases have been referred to us. One practitioner was able to satisfy the Commissioner that he was a fit and proper person and his practising certificate was restored. The other has not satisfied the Commissioner and therefore remains under the statutory suspension.

ETHICAL MATTERS

Conflict of Interests

Last year we reported that the OLSC has established a working party, drawn from a broad range of representatives of the legal profession, to consider the issue of conflict of interests. The working party's objectives were to enquire into and review the law and practice relating to conflict of interests. The working party met and worked under terms of reference and explored the mechanisms for resolution of such conflicts as they arise in the legal profession.

The working party developed recommendations for review and reform of the area of conflict of interests as a result of its considerations of the terms of reference. This position paper has been widely circulated and responses are presently being collated for a final paper, setting out recommendations for review and reform, to be presented to the Attorney. We will report on this in the next reporting year.

Legal Fees Review Panel

In February 2004 the Premier called for an inquiry to examine the current legal costs system, calculation

of legal costs, the methods by which costs are presented to clients and mechanisms by which objections may be taken to those costs. The inquiry was also to examine alternative billing methods.

The Legal Fees Review Panel was established to explore a range of issues dealing with costing and billing practices of the legal profession. The panel included Mr Laurie Glanfield, Director-General of the Attorney General's Department, Mr Steve Mark, Legal Services Commissioner, Mr Gordon Salier, then President of the Law Society of New South Wales and Mr Ian Harrison, then President of the New South Wales Bar Association.

The panel met and requested the Office of the Legal Services Commissioner to analyse costs complaints received by it and to prepare a discussion paper based upon that analysis. In November 2004, a discussion paper was forwarded to stakeholders, including consumer interest groups and various members of the profession. A number of responses were provided.

The responses were reviewed, further research undertaken and a final position paper from the panel, setting out recommendations for reform, will soon be forwarded to the Government. We will be able to report on the response and possible proposed reforms in the next financial year.

Class Action Complaints

The OLSC has received a number of complaints about a practitioner who solicits work from shareholders in collapsed public companies. His practice is to use the Shareholders' Register to collect the names and addresses of small shareholders to whom he then writes, offering to 'manage' their claims and stating that he has been instructed to commence a class action against various people involved in the failed company and which he believes will be successful. He sends follow-up letters to those who do not respond.

Complainants include people who have taken up the offer for, in their view, no apparent result, individuals who have received the letters of offer and who believe them to be misleading and otherwise improper and a shareholder organisation, on behalf of several members who have received letters, who also believe them to be misleading with no real service provided for the fees charged.

The claims to expertise, the use of the Shareholders' Register to solicit business, what appears to be an absence of accounting for the fees received and the overstatement of the prospects of the proposed action, including the vagueness of the description and other matters, are allegations that we are looking at seriously.

Broader policy issues: include one of the major tensions in class action litigation, the race to sign up clients sufficient to make the action worthwhile; the issue of funding for large groups of people who have suffered losses significant to them but insufficient to justify the cost of legal proceedings individually; and, the general paucity and lack of definition in court rules dealing with class actions with the notable exception of the Federal Court of Australia.

The OLSC is currently considering the regulatory issues involved in class actions in order to develop a position paper in relation to these issues for discussion amongst interested stakeholders in the forthcoming year.

ADDITIONAL HIGHLIGHTS & DEVELOPMENTS

Advertising

The amendment to Part 14 of the Legal Profession Regulations 2002 and Part 18 of the Workers Compensation Regulation 2003, restricting advertising of personal injury services, came into effect on 23 May 2003. A liaison committee was set up between the OLSC and the Law Society to enhance the effectiveness of our educative role and to ensure consistency in approach towards the interpretation of the advertisements, words deemed to breach the regulation used in advertisements and the interpretation of the provisions of the regulation. Consultation with the Law Society on every aspect of the regulation is ongoing.

Staff of the OLSC have also consulted widely with editors, chiefs of staff and advertising managers of various media outlets in New South Wales, many non-English speaking publications, the Yellow Pages, a number of large and small plaintiff law firms and regional law societies, particularly in relation to cross-border advertising.

The regulation of websites has been difficult in relation to national law firms, particularly in view of the decision in **Dow Jones & Company Inc. v Gutnick [2002] HCA 56 (10 December 2002)**. In this decision the High Court found that a website is published where it is downloaded. Cross border advertising involving websites has become quite complex. The Commissioner has initiated 13 complaints for potential breach

Case study

The solicitor acted for a client facing aggravated assault charges. The client instructed the practitioner to enter a guilty plea to the charges and, when the pleas were entered, the presiding magistrate adjourned the case for sentencing and asked that a report regarding the client's suitability for a community-based order be obtained from the probation and parole service.

On being interviewed for the report by a parole officer, the client denied his participation in the offences. This was noted as a relevant sentencing consideration in the report.

On seeing the report, the practitioner confronted his client about his apparent denial of the offences. The client indicated that the report was accurate. However, he subsequently confirmed (in writing) that he did wish to plead guilty to the offences. The solicitor contacted the author of the report and asked her to alter her report in a manner that would downplay his client's denial of the offences although he had pleaded guilty. The parole officer declined to alter her report and reported the matter to her supervisor. The incident became the subject of a complaint to the OLSC in which it was broadly alleged that the solicitor's conduct was in breach of his duties to the court as a criminal advocate.

The solicitor conceded the conduct alleged and accepted a reprimand for breaches of the advocacy rules stipulating that a practitioner should not continue to act for a client who insists on giving evidence denying guilt after having entered a guilty plea and that a practitioner must not suggest to a prospective witness the content of any particular evidence which they should give at any stage in the proceedings.

He admitted that, due to inexperience and his strong sense of loyalty to his client's family, he had failed to properly consider and address the ethical dilemmas posed by his client's inconsistent statements.



of the regulation in relation to website advertising.

Since the introduction of the regulation, 154 complaints have been received or initiated dealing with potential breaches of the regulation. Of these, 40 have been dismissed due to an absence of wilfulness on the part of the practitioner, 48 have had a finding of professional misconduct made and 30 were dismissed following an educative talk with the practitioner (these occurred shortly after the introduction of the regulation). In all of these matters mentioned, the offending advertisement was either removed, discontinued or dropped by the practitioner. The balance of complaints received continue to be investigated.

Further amendment to Part 14 of the Legal Profession Regulation restricting advertising for personal injury services by non-lawyer third parties, came into effect in June 2005 however the OLSC has no power under the Legal Profession Act to investigate the conduct of non-lawyers.

High Court Challenge

As reported last year, proceedings challenging the validity of the advertising regulation were commenced exercising the original jurisdiction of the High Court by the Australian Plaintiff Lawyers Association, Maurice Blackburn Cashman Pty Limited and Robert Whyburn. The matter was heard by the High Court on 5 and 6 October and 7 December

2004. The Solicitor-General for each state and for the Commonwealth intervened and there was representation on behalf of the Community Justice Centres as *amicus curiae*. Judgment has been reserved but it is anticipated that it will be delivered prior to November 2005.

Proceedings commenced by David Maurice Stack of Stacks the Law Firm in the Supreme Court of New South Wales also naming the Commissioner as defendant, addresses identical issues to those matters raised in the High Court proceedings. This matter has been stood-over generally pending the outcome of the High Court proceedings.

Legal Profession Act 2004

Members of the OLSC contributed to the working party established to develop a national legal profession. This has been achieved in part by the introduction of the Legal Profession Act 2004 which adopts national legal profession model provisions developed as a joint initiative between Australian governments through the Standing Committee of Attorneys-General. The OLSC had significant input into the provisions of the Act, which it is anticipated will be proclaimed by October 2005.

The 2004 Act introduces new powers and concepts which will necessitate the introduction of new procedures and precedents at the OLSC. We are well on our way to establishing those procedures and precedents.

The 2004 Act follows the currently fashionable drafting style of Chapter and Division, each dealing with a broad area and with subdivision into more specific parts. The organisation of the Act is basically chronological, dealing first with the requirements of becoming a lawyer, secondly with conducting practice and thirdly with complaints and discipline.

Chapter 4 is the Complaints and Discipline chapter in which major changes include extended definitions of professional misconduct and unsatisfactory professional conduct, extension of jurisdiction to the non-justiciable conduct of arbitrators and costs assessors, compulsory mediation of consumer disputes, the introduction of a new layer of discipline being a caution, the publication of reprimands and reviews of decisions of the Law Society or Bar Association on the Commissioner's own motion.

Chapter 3.2 significantly extends the obligation of cost disclosure and Chapter 6 provides a novel power for the OLSC to conduct a compliance audit of any law practice, its officers and employees to ensure compliance with the requirements of the Act, the Regulations and the Rules. The Office has developed considerable expertise in relation to compliance audits as a result of its implementation of its investigation and review powers under the provisions of the 1987 Act relating to incorporated legal practices. However, the new proposed audit power is to be even broader in scope than that which relates to incorporated legal practices and will require significant consultation prior to implementation.

There has been substantial in-house training in relation to the new Act and, additionally, the Commissioner and Assistant Commissioner (Legal) have presented a number of continuing legal education seminars to acquaint practitioners with their new obligations under the Act. Both in-house training and external education will continue into the future.

Other Matters

A representative from the OLSC was a member of the working party established to develop a Model Litigant Policy for the Attorney-General's Department. That policy was launched at the government lawyers' conference in September 2004, at which all of the OLSC Legal Team was present.

The OLSC is represented at the regular meetings held by the Costs Assessment Users' Group so that the position of the consumer can be aired. There is regular liaison with the Professional Standards Department of the Law Society and the Professional Conduct Department of the Bar Association, including regular formalised meetings. The Assistant Commissioner (Legal) meets regularly with the heads of government department legal teams.

Staff have attended a wide variety of continuing legal education courses, in-house seminars on various areas of the law, mediation techniques, communication techniques, dealing with difficult people, along with extensive training in relation to the Legal Profession Act 2004.

Case Study

A young solicitor leading a newly established firm took on Legal Aid work for the first time. The complainant's brother was facing criminal charges, and his case was assigned to the practitioner. The lawyer proposed that the complainant "top up" the legal aid fees by \$5,000, to enable her to provide a "premium service" to his brother. The "premium service" was to involve work for which Legal Aid would not approve payment.

After paying one instalment of \$1,000, the client had misgivings and contacted Legal Aid. Legal Aid warned the practitioner that she was in breach of the terms on which the case had been assigned to her, and reassigned the matter to another solicitor. In view of her youth and inexperience, Legal Aid resolved the matter and she provided an apology.

The complainant expected that Legal Aid would also refund his \$1,000 and he complained to us when he did not receive it. With the consent of the complainant's brother we obtained copies of the practitioner's correspondence with Legal Aid and ascertained that she was responsible for the repayment. In the course of the investigation it also became clear that the practitioner had failed to properly account to her client for the "top up" money.

The practitioner promptly refunded the money to the complainant. Being satisfied that her conduct amounted to unsatisfactory professional conduct, but recognising that it was a result of ignorance and inexperience rather than wilful disregard for the law, the commissioner decided to issue her with a reprimand. She attended personally to receive both the reprimand and counselling regarding her professional conduct.



Chapter 3

COMPLAINTS HANDLING AT THE OLSC

Written complaints

Written complaints to the OLSC fell in 2004-05 from 2806 last year to 2694. Aside from the Olympic Year 2000-2001 this is the lowest level of written complaints received since 1997-98.

We have worked hard to reduce the time it is taking us to finalise consumer disputes. This year almost one quarter of all complaints (24.7%) were finalised within 3 months and 77% were completed within 6 months. The time taken to close a file was reduced from 140 days in 2003-04 to 118 days in 2004-05. We finished slightly more complaints than we received and there was therefore a small reduction in the number of files on hand in this office. (See tables W4-W6)

The nature of complaints to the office and the areas of law to which they relate have not changed fundamentally since the office opened. However, tort reform in NSW is now having an impact on complaints about personal injury law. The numbers of complaints in this area are falling, as are the number of personal injuries matters listed for litigation in the District Court. Numbers are artificially buoyed at present by complaints about misleading advertising of personal injury and compensation services, now unlawful under the Act. Once the advertising complaints are dealt with we expect a dramatic drop in complaints.

Beyond personal injuries complaints, increasing numbers of complainants have raised issues about civil litigation matters (21.1%) while conveyancing (12.2%), family law (13.3%) and commercial (9.6%) matters continue to attract complaints.

With regard to the nature of the complaints themselves, negligence (19.1%), communication (13.7%), costs (a total of 17.4%) and a range of ethical issues (15.2%) – conflict of interests, dishonest conduct, failure to honour undertakings, acting outside, or not at all, on instructions and personal conduct – make up the majority of all complaints to the office.

Over several years the proportion of complaints that stem from lawyers' existing clients has fallen from over 35% in 1999-2000 to 20% this year. The corollary is that the number of complaints lodged by clients about their former lawyers has risen to 30% this year.

This suggests that clients are becoming more mobile. Perhaps they are less willing to negotiate their way through a dispute with their lawyer and more inclined to leave their lawyer for another and lodge a complaint as they do so.

It is not only clients that are less tolerant of lawyers. Lawyers themselves form a small (6%) but ever increasing – and increasingly vocal – group of complainants. Many lawyers express regret at the need to lodge complaints and surprise at the lack of co-operation from their peers.

Complaints handling is a stressful and sometimes very difficult job. This year saw significant staff movements amongst the Mediation and Investigation Officers (MIOs) with long time casual staff winning permanent positions and other MIOs moving on to other jobs within the OLSC and elsewhere.

We have been pleased to keep a core of staff for several years now and value the contribution they make to the lively atmosphere in the office, the training of new staff and ensuring a brisk and successful turnover of files.

Telephone Inquiries

The number of telephone inquiries made to the OLSC has risen for the first time since 1999-2000. We received 9087 calls this year.

The nature of the telephone inquiries, the areas of law from which they arise and the source of the complaints, closely match previous years. They also reflect, for the most part, the statistics captured in relation to written complaints. Once more, costs issues dominate the complaints with almost a third of all callers raising issues related to the cost of legal services.

One measure of the success of any call centre is the number of calls lost or abandoned. This year we created a record by losing only 3.8% of calls. We did this notwithstanding the fact we operated with only one person rostered at any time to our inquiry line with other staff logging on to help when required.

Funding and staffing

We have long been of the view that the work of our Mediation and Investigation Officers handling written complaints is badly affected by the need to do frequent two and four hour inquiry line shifts.

It has meant that phone shift time can seldom be used productively to deal with formal complaints as calls are frequent, unpredictable and often quite stressful.

That has now changed as we successfully submitted for funding to staff our Inquiry Line to allow our permanent staff to concentrate as much as possible on written complaints. The Public Purpose Fund granted us \$50,000 to employ a number of casual workers who will be on the inquiry line from nine to five.

We have mainly sought Inquiry Line staff from amongst law students who approach us in the course of giving lectures at university. Applicants are interviewed, tested and receive intensive training to offer clear, concise advice about how complaints can be handled. There are currently 9 casual staff doing four hour shifts rostered across a two week period.

Some Inquiry Line workers are taking on an increased number of telephone mediations – trying to resolve concerns before formal complaints are made. We hope to further develop our capacity to tackle such calls as our new staff become more experienced.

This doesn't mean full time MIOs and other staff can evade the Inquiry Line altogether. There are still university holidays and those occasions when the queue for the line is overwhelmed and we all need to lend a hand.

Data recording

Every regulatory body relies on a computer based case management (and file tracking) system to record each step of the complaints handling process. At the OLSC we have a case management system tailored to meet our needs for the electronic recording of activities by QA Plus, a Welsh firm. They supplied the software in 2000 and recently flew to Australia to provide upgrades and train staff.

In meeting with staff and watching the way in which the data base is currently used at the OLSC, QA Plus staff could see first hand what aspects of the system were most in need of streamlining.

We now have a revamped case management system with a much improved capacity to generate useful statistics for our Annual Report and to identify trends to enable us to better target issues and utilise appropriate resources.

It has also been a very useful exercise in having our staff become quickly familiar with the new interface and the QA team gain valuable insight into the day-to-day working of the office and how their software functions.

ISSUES

The most important issue for complaint handling in the coming year is the introduction of the new Legal Profession Act 2004. The potential changes to our powers, procedures and day-to-day operation are huge. This will be covered in other sections of this report and for detailed examination in next year's Annual Report.

In the meantime there are other significant issues that we need to address.

Warnings

We first started issuing warnings to practitioners arising out of complaints in late 2001. However, the practice was not vigorously pursued until the last two years. We have issued about 225 warnings – 145 of them in last two years.

Our first concern was that the legal profession had been under an obligation to disclose costs to their clients since 1 July 1994. Unfortunately, by 2005 there were still practitioners who did not do so in every case. We doubted that without other issues of misconduct associated the ADT would reprimand a lawyer for a single instance of failure to disclose. However, a reprimand should be a more likely outcome where we have first warned a lawyer of an indiscretion and that they later infringed.

In circumstance where a lawyer concedes a minor breach of the LPA, rules or regulations or in situations where clear administrative deficiencies need to be remedied we formally notify the practitioner of our concern. We often require an undertaking from the lawyer to comply with their obligations. Failure to honour an undertaking can of itself, of course, amount to misconduct under the Legal Profession Act.

While it is too early to be absolutely certain, this approach appears to be working. We have no clear example of any offending practitioner needing to have the prior warning brought to their attention and no examples of repeat offenders. As a result we

believe that clients are getting a better service as a result of our reminders.

Lost files

Last year we decided to take a firmer line with firms that lose, inadvertently destroy or otherwise dispose of a client's file.

We have examined more than 15 examples of complaints raised about such problems. For the most part lawyers readily admit the error and the overwhelming majority have made a genuine effort to do the right thing and replace documents where it is possible. Searches have been made or paid for, affidavits redrawn, certificates of title paid for and computer hard drives searched for copies of lost letters.

In some instances it has been appropriate for firms to financially compensate clients for their administrative mistakes. All firms have been asked to ensure that steps have been taken to ensure procedures are in place to prevent a recurrence of the problem.

Several complaint files remain open as we monitor long drawn out attempts to recover outstanding documents from government departments or the opposing lawyers. We have had no firm refuse to make an effort to help and we're confident we can ensure firms keep their commitments to do everything possible to make things right for those whose files have been lost. However, we are exploring different educational approaches which might also address this issue.

Compensation

Some practitioners recognise their errors and take prompt practical steps to fix the problem. Some go further than that and offer a level of compensation that goes beyond a waiver of fees or a partial refund of costs.

In 2004-05 eight firms offered compensation ranging from less than \$500 to over \$5000. The offers were all accompanied by letters of apology or at least acknowledgement and, in some cases, by extensive descriptions of administrative steps to prevent recurrence of the problem.





Most of the cases were in the area of conveyancing where errors by paralegals under the supervision of lawyers can occasionally be costly. Penalty interest charged to a client due to an administrative error cost one lawyer almost \$6000. However, the lawyer paid it graciously, aware that the mistake and bad word of mouth could have damaged his suburban practice. In all likelihood word of his prompt and generous response will earn the lawyer more clients.

We believe that positive responses by practitioners to complaints need to be acknowledged and we will continue to report on these cases in our Annual Report in future.

Capacity

While the 200 complaints we receive each year about wills and probate matters are only a small percentage (7.6% this year) of our total, they generate a great deal of emotion. That emotion often arises from the way relatives relate to other family members and the influence aging family members have over often valuable estates.

The Law Society issued guidelines in 2004 suggesting to lawyers how they should deal with the very difficult task of judging the capacity of their clients to give instructions. Obviously, great care should be taken. Lawyers should take heed of medical and other advice about a client's capacity.

They also need to be alive to the likelihood that their conduct will be closely scrutinised by envious and angry beneficiaries who believe that their share of the estate will be diminished by legal costs.

It would seem obvious that there will be suspicion if a lawyer attends a nursing home out of hours on behalf of a client and obtains a signature of an aged parent whose capacity may be under question on a new will that bequeaths substantial property to their client.

However, we have had several startling examples of lawyers ignoring or being unaware of the guidelines and suffering the consequences. One lawyer spoke on at least two occasions with nurses who informed him that his new client was suffering from dementia. Notwithstanding that information he proceeded with the help of the aged client's son to redraft a power of attorney to the detriment of the elderly woman's daughter.

We at the OLSC do not claim to be able to assess whether or not an individual is capable of giving instructions. Lawyers often say, "It was my belief that the client had the capacity to instruct me." No doubt in most cases that belief is honestly held. However, to ignore significant professional advice about a client's incapacity, be it medical or psychiatric, is fraught with danger. There are professionals better placed than lawyers to closely observe the behaviour of individuals and better able to assess the capacity of clients – whatever lawyers might say. A lawyer's failure to seek or act on other professional advice as to the capacity of a client may lead to extensive civil litigation, negligence action and of course, disciplinary action by this Office.

In the coming year we intend to hold lawyers more firmly to account against the existing guidelines. They have now been circulating for more than 12 months. Where there is any doubt, practitioners should get an independent medical report. It is advisable for practitioners to question nursing home staff, any appropriate doctor or family friends about the capacity of the individual in question. Failure to do so, or ignoring such advice just because it might conflict with the views of a client, particularly where that client might well benefit from a proposed change to a will or power of attorney is obviously fraught with danger for the practitioner.

Family Law

It is our experience that many clients in relation to family law proceedings believe that the other side's lawyer is a grasping, lying individual determined to run up large costs, refuses to mediate or resolve issues between the parties and who makes outrageous claims about them in court or in affidavits.

For the most part these assertions are quickly countered by the lawyer's claim that they are only acting on their client's instructions. It is fair to say that these complaints seldom go far. It is exceedingly difficult to demonstrate that a lawyer has overstated their client's entitlements or deliberately left out vital information on, say, the undocumented assets of a client. The files of the opposing lawyer are often privileged. Unless verbatim instruction notes are kept it is almost impossible to prove that an outrageous claim put to the other side was not based on a genuine assessment by the lawyer of the client's claims.

However, there is a lingering doubt in a limited number of cases that lawyers are making little or no attempt to explore the veracity of client's instructions about exactly how impecunious they are or exactly what they own. There is also some evidence that lawyers are not explaining to their clients that the Family Court requires a genuine effort to resolve matters amicably through mediation or negotiation before lengthy and expensive litigation starts.

We appreciate that family law matters often proceed amidst a cloud of bitterness and regret and that instructions are sometimes given in anger. But we expect lawyers to analyse and question clients, explain how the Family Court processes work and refrain from pedantic point taking where a solution is in sight. We can't tell lawyers how to run their cases or what to say to their clients, but we can on occasion explore files with greater thoroughness and test family lawyers with regard to how they take and act on their client's instructions.

Case Study

A practitioner was accused of lack of courtesy in a family law matter. He was the legal representative for the other side and it was alleged that he used language which was offensive to the complainant and his mother who was present at the time.

The practitioner was extremely cooperative with this Office from the outset.

In his response he acknowledged that he "overreacted to the situation" and offered an unreserved apology "for the outburst" and stated that "it was unwarranted under any circumstances".

It was the Commissioner's view that his conduct would amount to unsatisfactory professional conduct and the practitioner was advised of this and of the standards of communication expected from all practitioners. However, given the solicitor's complaint-free history prior to this complaint and his unreserved and immediate apology, the Commissioner found him guilty of unsatisfactory professional conduct but dismissed the complaint.

Case Study

The practitioner was retained to assist and advise a woman in relation to a contractual dispute with her former employer. She complained that the Practitioner was initially helpful and attentive, but that as the matter progressed his attitude became hostile and unco-operative.

By the time the Complainant approached this office, the relationship had broken down and the practitioner was threatening to commence proceedings in the Local Court to recover unpaid fees. The complainant asked us to try and settle the practitioner's claim for \$1500 in outstanding costs and to obtain the release of her file.

We contacted the Practitioner and discussed several options for settlement of the matter, and within a week we negotiated a settlement for \$700. The file was duly handed over and a happy Complainant even sent the mediation officer a thank you card.

Chapter 4

INCORPORATED LEGAL PRACTICES



The Legal Profession Act (LPA) 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 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.

The necessity for flexibility was obvious given the vastly differing nature of ILPs and, accordingly, a mandatory “best practice” program was not established. Rather, following a pilot project in late 2003, a program of self assessment was put into place that sets benchmarks which are measurable. To satisfy the self assessment program, a management system need not be a formal or established scheme or arrangement. An orderly or regular procedure or method can satisfy the definition of management systems.

Of course, the solicitor director and employed solicitors owe the normal duties in relation to professional obligations, trust funds, legal fees and other costs, solicitors fidelity fund and indemnity insurance, and members of the ILP who hold practicing certificates are still subject to the provisions of the LPA generally. ILPs, legal practitioner directors, officers and employees may also be subject to conduct investigations by the Law Society or by the OLSC.

As at 30 June 2005, there were 452 ILPs in New South Wales. Of these, approximately 55 were multi-disciplinary (MDPs). The majority of ILPs were previously existing traditionally structured law firms. A significant proportion of these were in fact sole practitioner firms.

There are a number of innovatively structured ILPs in existence. These include franchises, clusters (where individual ILPs join to form a larger, single ILP) and “complete service” firms.

Complete service firms, which are MDPs, operate almost exclusively in the area of real estate and conveyancing, and the provision of financial services. For example, we are aware of one MDP whose members include development managers (who source potential real property acquisitions); marketers (who market the development opportunity to potential investors); real estate agents; financial and tax advisers (who assist clients to structure their investment); finance brokers (who assist the client to obtain the requisite finance) and legal practitioners (who document the whole transaction, including drafting heads of agreement where the investor is a syndicate comprised of a number of natural persons and/or distinct corporate entities). This MDP is a “one stop shop” for high-end investors in commercial and/or industrial property in Australia.

There are a number of smaller MDPs that provide a range of non-legal services to clients. These include partnerships between lawyers and accountants, debt collectors, architects, tax agents, management consultants, corporate trainers, town planners, human resources consultants, financial planners and advisors, and, in one case, an entertainment agent.

One ILP is publicly listed on the Australian Stock Exchange.

Of the first tranche of 300 ILPs reported on in the last reporting period, approximately 100 are no longer incorporated entities. In part, a lack of planning, an incomplete understanding of the requirements of incorporation and an erroneous belief that incorporation is a panacea for those traditionally structured firms experiencing cash flow problems can explain these failures. It is not a panacea, and those firms which are not already cash flow positive are unlikely to become so simply via the process of incorporation. However, in many cases, practitioners simply found that a corporate structure did not deliver the financial and other benefits hoped for, and a decision was made to return to a traditional structure.

We have also witnessed several collapses where lawyers went into partnership with other service providers who were the principal financiers of the conglomerate. One such example involved a partnership between a real estate agency, an accounting firm and a legal practice.

The accounting firm was the principal provider of funds for the start-up ILP. The intention was that the ILP would provide cut-price legal advice and conveyancing services to the real estate arm of the business. It was also envisaged that the ILP would provide legal services external to the group, thus generating further profit for the group. In practice, however, it soon became apparent to the solicitor director of the ILP that, in order to provide legal services to the real estate agency, he had to lower his fees to commercially unviable levels as he had to compete with the licensed conveyancers which the real estate agency had hitherto engaged.

Moreover, the start-up funds provided to the legal practice by the accountancy firm were insufficient to implement the “appropriate management systems” required by the LPA and the Legal Profession



Regulations. This funds shortage extended even to an inability on the part of the ILP to purchase a filing system, and when we audited the practice, the files were literally piled on top of each other in corridors.

Needless to say, we were receiving consumer complaints on an almost daily basis about a failure on the part of the legal practitioners to action files, return telephone calls, or to facilitate the transfer of files when inevitably disgruntled clients decided to take their business elsewhere. Additionally, the trust account inspectors, when conducting their first inspection (a routine matter when a new firm is established), became concerned at the chaotic manner in which it appeared the practice was conducting business, and formally expressed their concerns to this Office.

It was against this backdrop that my Office conducted its first audit of the ILP. We met with the solicitor director and a number of his staff, and discussed what the implementation of “appropriate management systems” might mean in the context of his firm.

Over a two month period, we worked very closely with the solicitor director to assist him to put in place “appropriate management systems”. A filing and storage system was installed, enabling the ILP’s

files to be easily located and, perhaps more importantly, to be segregated from the files of the real estate and accountancy arms of the business; policies relating to the timely transfer of files were implemented and a policy in relation to the raising of invoices was established. The net result was that billings of the practice increased by 40% and the solicitor director was very appreciative of our intervention.

However, it was clear to my Office, and the solicitor director himself, that more work was required in order for the ILP to meet its legislative responsibilities. In particular, there was a pressing need for trust accounting software to be purchased as the ad hoc manner in which trust funds were dealt with was creating a high-risk situation for the practice. While the solicitor director acknowledged this need, the funds required for the purchase of suitable software were not forthcoming from the accountancy firm.

It was at this point that the accountancy arm of the group called in the loan to the legal practice. With no means to repay the loan as well as funding the significant outlay required to purchase a software system to enable it to meet its legislative responsibilities with respect to trust accounting, the ILP was unable to comply with the requirement to implement and maintain “appropriate management

systems". The solicitor director had his practising certificate cancelled because he was constrained financially by the accountancy arm of the practice from delivering his obligations under the Act. This ultimately resulted in the failure of the entire group as the ILP could not continue to operate without a solicitor director.

This proved a valuable example of the importance of solicitor directors having both management and some measure of financial control over the ILP, as well as offering a dire warning to lawyers intending to go into business with non-lawyers who have an incomplete understanding of the vitality of "appropriate management systems" to the survival of the ILP, and/or do not appreciate the complexities inherent in the often competing duties a solicitor director owes to court, client and shareholder.

Our approach to regulating ILPs – self-assessment of compliance with "appropriate management systems" as based on the "ten commandments" – represents a systematisation of ethical conduct. Each of the "ten commandments" refers to a behaviour or set of behaviours and, if followed, the result is ethical conduct. In this way, we are contributing to and witnessing the continual development of professional ethics in an area (small practices) that has traditionally been the source of complaints.

Moreover, with the enacting of legislation permitting incorporation of legal practices in all Australian jurisdictions by mid 2006, I believe we will see an increase in the number of firms, particularly larger firms, electing to incorporate. This is so because, in New South Wales, the larger commercial firms tend to be national, and have thus far been prevented from taking up the ILP model as they are financially merged in Australia-wide partnerships. The removal of this barrier via the enactment of identical legislation in all Australian jurisdictions will, I believe, make incorporation an attractive option to many of the larger national firms.

Case Study

The Complainant was a farmer who had a difficult, and ultimately abortive, land transaction. He complained that his lawyer had written to inform him that she would warn other practitioners and local business people that the complainant was a troublesome and difficult customer. We spoke to the practitioner, who conceded that her letter may have caused offence and expressed her wish to resolve the matter as soon as possible. The practitioner arranged to meet with the complainant and discuss their mutual frustrations. The complainant advised us the day after the meeting that he was exceptionally pleased with the outcome, particularly the apology which the practitioner had provided. The complainant continues to instruct the practitioner in his other legal matters.

Case Study

This complaint was made against a barrister who agreed to assist the complainant to defend a claim in the Local Court. The complainant was being sued for the payment of course fees for an HSC tutoring course for her son; in her defence and in a cross-claim, the complainant alleged the course was defective. The barrister was the third practitioner to be involved in the matter.

The complainant was unsuccessful in her defence and cross-claim. She blamed the barrister for her loss, citing failure to call witnesses and to cross-examine properly. Aside from the course fees the complainant also had to pay the plaintiff's legal fees and the barrister rendered a bill for nearly \$10,000 for the time spent preparing and attending at Court. The complainant came to the OLSC seeking a mediation of the costs, as she said she did not have the energy to go to Costs Assessment.

The barrister denied the allegations of negligence, but saw that a compromise could be entered into. He therefore elected to waive his bill of costs in its entirety. The complainant was very satisfied with this outcome.

EDUCATION AND COMMUNICATION



One of the OLSC's key values is education. We understand that in our effort to lead in the development of an ethical legal services market, we must take every opportunity to educate the client and practitioner alike in the application of our legislation and the expectations of ethics of practitioners by the community and contained in the Legal Profession Act 2004.

The Education Unit also meets the training needs for OLSC staff.

University lectures

Over the last year the OLSC has continued its involvement with the law faculties in many NSW universities. We have presented lectures to both undergraduate and post graduate law students at the University of NSW, Macquarie, Newcastle, Wollongong, University of Technology and the University of Western Sydney.

As well as these lectures, the Commissioner gives regular lectures on Ethics at the College of Law to students taking their final steps towards legal practice.

After the amendments to the LPA were proclaimed in December 2004, requests for information and addresses about the scope of the new act have been continual. It is envisaged that over the next year, the OLSC will undertake a range of community consultations in relation to the new Act and the operation of the OLSC.

Outreach – presentations to the legal community

As part of a series of seminars on the new Act, both the Commissioner and Assistant Commissioner Lynda Muston, along with Fiona Cameron (Senior Policy Officer, NSW Attorney General's Department), and Peter Johnstone (Partner, Blake Dawson Waldron), presented a Continuing Legal Education seminar that was organised through NSW Young Lawyers in June this year. The lecture addressed Chapter 4 of the Legal Profession Act 2004 – Complaints and Discipline.

Other presentations by the Commissioner over the past year include:

- “Conflict of Interest and Legal Ethics,” a paper delivered at The Seventh Pacific Rim Legal Conference, Heron Island, on 1 October 2004
- Independent Regulators and Complaint Handlers’ Meeting and Conference of Regulatory Officers, Auckland, New Zealand, 20 October 2004 – 22 October 2004. The Commissioner led Session 8 on 22 October 2004, titled “Ethical issues – how regulators can better handle conflicts of interest.”
- A monthly lecture on “Misconduct” as part of the Professional Responsibility Program for law students, College of Law, St Leonards

- “Regulation of the Profession.” Joint Seminar with Anne Sinclair, Director, Professional Conduct, The New South Wales Bar Association, 12 October 2004
- “Avoiding professional complaints and their impacts and ramifications on lawyers, accountants and legal advisers,” Meeting of Small Business Networking Group, held at the office of Cohen & Krass, Lawyers and Accountants, 24 November 2004
- Member of judging panel for Law Week debate entitled “More Laws Mean Less Justice,” 17 May 2005, State Library of New South Wales. Moderator of the debate: Dr Tom Altobelli (University of Western Sydney). Participants included Patrick Fair and Kara Greiner.
- “The New Legal Profession Act: Costs, Compliance and Consequences,” Joint Seminar with Lynda Muston (Assistant Commissioner), as part of the NSW Young Lawyers Continuing Legal Education Seminar Series, The Law Society of New South Wales, 27 June 2005

Staff training

There are eleven OLSC staff project teams, one of which plans continually for staff training needs. The nature of the OLSC's work means that one of the most important areas of training concentrates on dealing with people. Over the years staff have completed courses in cultural and differently abled sensitivity, dealing with difficult people and courses that engender skills in assisting complainants with mental illnesses.

We have also acknowledged the growing need for senior staff to gain a practical knowledge of the media. Both assistant commissioners have attended courses in intensive media training.

External Publications

The Commissioner has also submitted the following articles to law journals:

- “The cost of justice or justice in costs: The experience of the OLSC in handling costs complaints,” in “Forum: Stopping the Clock? The Future Of The Billable Hour,” *The University of New South Wales Law Journal*, August 2004, pp. 21-24

- “From Tear Gas to Administrative Law,” in *The Essential Careers in Law Guide 2004, The University of New England Law Students’ Society, September, 2004, pp.42-43*
- (with Georgina Cowdroy) “Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales,” in *Penn State International Law Review, The Dickinson School of Law of the Pennsylvania State University, volume 22, Number 4, Spring 2004, pp. 671-693*

Internal Publications

The OLSC offers sixteen different fact sheets available free of charge on-line and in hard copy. The fact sheets deal with the most common areas of complaints including liens, costs, file ownership, negligence and other specific areas of law. There are also fact sheets that explain our complaints process and offer advice for choosing a practitioner.

Our most commonly distributed publications are our complaint forms and the introductory brochure **Complaints about the Legal Profession**. Many enquiry line callers are sent a copy of the complaint form and our general brochure, **Complaints About the Legal Profession**, which assists complainants in understanding our processes once their complaint is lodged.

Our quarterly newsletter, **Without Prejudice**, has taken a slightly different direction this year. While we still aim to keep practitioners informed and up to date with the Legal Professions Act and relevant developments in this OLSC’s processes,

we also seek to address other areas of concerns in practitioners’ working lives. The June edition of **Without Prejudice** included a feature on substance abuse in the profession. About four hundred copies of each edition of **Without Prejudice** are mailed to practitioners, legal centres and university law faculties and other academics.

The broad range of amendments to the LPA means that all of our fact sheets and brochures will need to be re-written. This onerous task will be shared amongst the OLSC’s Legal and Policy and Education Unit and will be allocated a particularly fast turnaround to meet the expected high demand.

Visits

The OLSC’s unique role in regulating the legal profession means that similar overseas bodies want to draw on the experience and information that we have available. In 2004 –2005 the Commissioner was consulted by the following groups:

- Sir David Clementi, The Review of the Regulatory Framework for Legal Services in England and Wales, 24 September 2004.
- The Right Honourable Lord Phillips of Worth Matravers, Master of the Rolls and Chairman of the Civil Justice Council [England], to discuss legal regulation, 29 October 2004.
- Mr Rae Mazengarb, Director of Regulatory Services, New Zealand Law Society, 19 November 2004.



Information technology

Improvement of the OLSC's IT infrastructure has been high on the agenda throughout the reporting year.

The first part of the year represented a planning phase, with a particular focus on the development of our telephone system and Complaints Tracking System (CTS) database system upgrades.

The upgrades to our telephone system will include improvements in staff accessibility, and distribution of inquiry calls across staff in the office. Our new dedicated PABX system was purchased recently and is scheduled for implementation early in 2006. The office Administration Manager and members of the OLSC Inquiry Line Project Team will analyse the capabilities of the new telephone system, develop policies for its implementation and report to the Commissioner in the ensuing months.

During the early part of the year, the OLSC Manager of Information Systems and Services conferred with our CTS system supplier, QA Plus, about proposed upgrades to the software. Chief among these upgrades is additional reporting functions which will allow us to better analyse the data stored in our database.

An on-site visit was conducted by QA Plus staff in June 2005, and the new version of the software was installed on OLSC staff PCs. Upgrades were also performed on the database server. QA Plus and OLSC staff worked closely with Attorney-General's Department Information Technology Support (ITS) staff to upgrade and test the software. We are satisfied that the upgrade was a success. There was no loss of functionality or adverse effect on staff productivity, and the reliability and speed of the system was greatly improved. At the end of June 2005, the upgraded functionality is still being tested by OLSC staff.

The lease on our office PCs will expire early in the new reporting year. In line with NSW State Government policy, the OLSC is required to purchase new computer equipment. The installation of the new PCs will allow ITS to ensure that each machine has identical specifications for both hardware and software. The new PCs represent an upgrade to the existing PC specifications, and provide certain productivity and ergonomic benefits. OLSC staff will work closely with ITS staff and our software suppliers in the lead-up to the installation of the new PCs.

In 2006 we will assess our broader IT needs along with other resources such as printers, photocopiers and network connections.

Case Study

A complaint about the practitioner's conduct of a conveyance was dismissed by the Commissioner. In accordance with our usual practice, a copy of the Commissioner's letter to the complainant explaining the dismissal was provided to the practitioner. The practitioner then called the office to inform us that he intended to bill the complainant for the cost of responding to the complaint. When the case officer informed him that practitioners cannot charge clients for work they are not instructed to perform, the practitioner replied that he had a provision in his costs agreement entitling him to charge for responding to complaints which are found to be "unfounded or unreasonable". When the practitioner stated his intention to render a bill to the complainant, the Commissioner initiated a complaint against the practitioner under s134 (2)(b) of the *Legal Profession Act 1987*. After speaking at length with the Assistant Commissioner (Legal), the practitioner provided us with a written acknowledgement that he is not entitled to charge for work done without specific instructions from a client.

PROJECT TEAMS



Since 2003 the OLSC has used project management methodology as our basis for business planning and process improvement. The project teams have seen the OLSC successfully utilising an innovative structure for meeting set goals and improving office operations.

The projects included in the OLSC 2004-2005 Business Plan are:

Project	Project Goals
Consistency of Data	<ul style="list-style-type: none"> To have available, usable and useful data To produce statistics consistent with those of the professional associations To allow easy access to data for scheduled and ad hoc reports.
Education of profession, students and community	<ul style="list-style-type: none"> To develop and maintain an expanded and more comprehensive education strategy that will further promote compliance and high ethical standards amongst the profession and encourage more realistic expectations of the legal system in the community.
Training	<ul style="list-style-type: none"> Develop a comprehensive plan for education within the OLSC with the view to implementing an excellent training and education system.
Records Management	<ul style="list-style-type: none"> Elimination of misfiles within the OLSC Compliance with AGD requirements and standards Update of OLSC policy & procedures for records management
Review of internal systems	<ul style="list-style-type: none"> Analyse system thinking and its value in an organisational context Develop a consistent approach across the office in relation to the use of systems Improvements in relation to identified inefficiencies.
Policies, Procedures and Directories	<ul style="list-style-type: none"> Review of the system for storing, locating and managing all documents created by the OLSC and documents produced by other organisations that seek the OLSC's input. Identify and progress key policies for the effective operation of the office and develop office capacity to initiate and respond to regulatory policy issues.
Performance Management	<ul style="list-style-type: none"> To ensure consistent use of the Performance Management process and file review process Maintain high morale of the OLSC by ensuring the Performance Management process gives an opportunity for input and feedback by staff Seek training and development opportunities for staff to allow for an on-going flexible process in Performance Management and File Review.
Inquiry Line	<ul style="list-style-type: none"> Review of inquiry line functions and systems supporting those functions, and evaluation of whether the existing systems meet the OLSC's requirements Identify and implement ways in which existing systems can be improved Design and implement new systems where applicable, to meet or exceed OLSC and AGD requirements.
Incorporated Legal Practices	<ul style="list-style-type: none"> Implementation and promotion of a workable program for reviewing management systems of ILPs in accordance with the <i>Legal Profession Act</i> 1987.
Key Performance Indicators/ Qualitative indicators.	<ul style="list-style-type: none"> To enable the OLSC to measure societal expectations of what the OLSC does, the impact of various aspects of OLSC work and the impact of changes made to OLSC work practice.
Certification of OLSC to Law 9000 – Certification to ISO 9001:2000	<p>To enable OLSC to achieve certification to an internationally recognised standard by:</p> <ul style="list-style-type: none"> Implementing effective complaint-handling processes to encourage an improved consumer focus within the legal profession to reduce causes for complaints Conducting lectures, seminars, public addresses and educational material to promote realistic community expectations of the legal system Maintaining an effective co-regulatory relationship with the professional associations for the regulation of the legal profession.



The projects were initially implemented across the 2003-2004 financial year. Some were completed as planned, while others have been carried over to 2004-2005, again as planned, because of their complexity or the work required for the projects. The goals of others have evolved and expanded to meet the changing expectations of the OLSC process.

The many achievements realised in the implementation of the projects have brought us the following major improvements:

- Continued improvement of hard record filing system
- Training needs being met
- On-going use of performance indicators for

Inquiry Line and complaints handling systems allowing internal reporting and further quantity improvement

- Enhancement of the program for the education of the community and profession
- Improved understanding of data collection systems of the OLSC's co-regulators
- Greater consistency of complaints data between co-regulators
- Further development of the electronic complaints tracking system and improved extraction of data
- Successful trial of a new inquiry line database
- Improved data integrity as shown by regular data integrity checks
- Improved application of performance management within the office.

Specific teams have also identified other goals and noted further achievements as the groups evolve and expand their roles.

The Training Team has implemented a regular consultation with staff to establish a staff "wish list" of training needs which is then discussed with consideration to the current trends and requirements of complaint handling and mediation. This team has also updated the OLSC's induction manual and is currently formulating the OLSC's training policy for 2006.

The Policies, Procedures and Directories team have the ongoing challenge of implementing procedures for storage and access of all OLSC documents. When the new Act comes into effect in late 2005 all OLSC templates and publications will need to be revised or rewritten. Staff training in the use of the new templates means that this team will be working closely with the Training Team.

The Inquiry Line Team covers one of the most important areas of the OLSC core business. 2004-05 marked the second active year of the Inquiry Line team, and the phased introduction of new systems to improve the service delivered by OLSC staff. Since its inception, the Inquiry Line Project Team has had a specific task to increase the awareness of OLSC staff to the fundamental importance of superior service delivery at the initial inquiry stage. Improvements in this area can be benchmarked by the call

abandonment rates, wait times for callers and the data retention rate of incoming calls. Each of these statistics showed a marked improvement over the previous reporting year, indicating that the message of the Inquiry Line Project Team has been conveyed to OLSC staff.

While rapid service delivery is vital, it is also necessary to recognise that staff skills must be kept fresh and relevant. The Inquiry Line Project Team anticipates the need to conduct training in various areas and will consult with the Training Team over the next year. The creation of an Inquiry Line-specific document, such as an extensive training manual, is also on the agenda for the next reporting year.

In late 2004, members of the Inquiry Line Project Team were involved in strategic planning for the hiring and training of a dedicated cohort of casual Inquiry Line staff. This step was taken after an analysis of staff workloads and rostering arrangements with the view to ensure training of Inquiry Line casual staff. Our team members were also involved with the subsequent preparation of submissions to the Public Purpose Fund, putting forward the case for this staffing arrangements, and seeking further funding. The submissions were ultimately successful.

In keeping with previous OLSC policy, the new inquiry line staff members were generally selected from the capable and enthusiastic students we met at our various seminars at NSW law faculties and who expressed to us an interest in working for the OLSC. Again, Inquiry Line Project Team members were involved in the selection process, which was conducted with vigour in early 2005. All of our Inquiry Line casuals have proved to be immensely capable individuals, and we anticipate their continuing development.

The Inquiry Line Project Team has also been leading the way in terms of technological developments.

First and foremost among these developments is the anticipated introduction of a new PABX system, which introduces many new features. The progress of this part of the project has largely been driven by the Administration Manager and the Commissioner. The Inquiry Line Project Team is likely to have a



more active role in the planning and implementation of the new telephone system in the coming months.

Second, the Inquiry Line Project Team, and in particular, Richard Wells, has been developing a new interface for the collection of call data, and the subsequent collation and statistical analysis of that data. The client input section of this software has reached a stable level, and is being tested by several users as at the time of writing, with an anticipated roll-out date in August. Testing has been ongoing since February 2005. It is hoped that the use of the new interface will see the disparity between calls received and calls recorded drop from the present rate of approximately 8%, to 1 or 2% overall.

The back-end to this application will collate the data collected by the staff and extract statistical data which presently has to be processed manually. The uniform format of data entered by the client interface will aid this process enormously. This part of the application is still being developed and tested.

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 regularly monitored its financial performance during 2004-2005 to achieve a satisfactory budget outcome at close of the reporting year. We applied stringent budgetary measures where necessary to capture and correct unfavourable budget trends within our control. We ensured we contained our operating costs while meeting all of our financial commitments.

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

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

The OLSC establishment grew by an additional four new positions during the year and as at 30 June 2005 held 25 permanent full-time positions for administrative and professional staff.

The new and/or upgraded positions have been allocated because of the increased workloads flowing from amendments to the Legal Profession Act and the regulation which bans personal injury advertising.

In November 2004 the OLSC received funding from the Public Purpose Fund to create four additional positions:

- a Resource & Projects Coordinator Gr 9/10
- an Investigation Officer Gr 7/8
- a Mediation & Investigation Officer Gr 5/6
- a Compliance Project Officer Gr 3/4.

The OLSC was also granted additional funding for the staffing of our Inquiry Line by a team of rostered casuals, as well as to upgrade an existing position of Senior Mediation & Investigation Officer from Gr 7/8 to 9/10, and replace the position Systems Assessment Officer Gr 7/8 with a Practice Compliance Manager DPO 4/5.

As in previous financial years, the office experienced moderate levels of staff shortage during 2004-2005, resulting from staff taking long term leave or pursuing employment opportunities elsewhere. The vacancies were filled through normal recruitment methods. Our Inquiry Line funding allowed us to offer casual employment to university law students who were completing the final stages of their training and would benefit from exposure to the processes of 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 OLSC Inquiry Line.

TRAINING & DEVELOPMENT

In our commitment to consistently deliver valued professional service to the community, we encouraged staff to regularly update their knowledge base and work skills by embracing a program of continual education and training.

Staff training this year centred on the amended legislation. During the year staff attended a series of training courses designed to foster familiarity and understanding with the Legal Profession Act 2004.

Two staff members were also nominated as First Aid officers and undertook the St John's Ambulance First Aid course.

External seminars and courses taken by staff include media training for the Assistant Commissioners and best legal practice management for our Systems Manager. The Investigation Officers and Mediation and Investigation Officers took refresher courses in such diverse areas as Wills and Probate, Costs, Family Law, Litigation and Contracts.

A complete overhaul of our computer shared drive was instigated with a staff seminar on the updated and user-friendly electronic storage system we now use.

INFORMATION TECHNOLOGY

OLSC Inquiry Line: In an effort to adequately meet the needs of our Inquiry Line, the OLSC reviewed its voice communication systems during the year and implemented plans for the purchase and installation of a new PABX and an upgraded version of its existing NEC Q-Master telephone queuing system. The new telephone system is due for installation in the 2nd quarter of next financial year and will include enhanced features and facilities and will provide for a more effective Inquiry Line.

OLSC Database: The OLSC arranged with software developer QA Plus Limited to purchase an upgraded version of the OLSC complaints tracking system (QA Plus). The database software upgrade was tested and installed in June 2005 by a QA Plus Ltd representative with assistance from the Department's IT Services group. The system upgrade will provide for improved database manoeuvrability for complaints data processing and deliver more meaningful reports for statistical reporting purposes.

NOTES SUPPORTING THE 2004-2005 FINANCIAL STATEMENT

- 1. Salaries & Wages:** The *Salaries & Wages* variation reflects a year-end adjustment by the Department to account for the annual accrual component for recreation leave expense. The OLSC has no control over the Department's required year-end financial processes.
- 2. Leave Entitlements:** The *Leave Entitlements* allocation includes monthly provision for Long Service Leave liability. The budget outcome represents the accumulated effect of lower than anticipated monthly accruals for LSL expense.
- 3. 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 recouped from the Public Purpose Fund.
- 4. 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 2004-2005, the Office did not incur significant litigation costs in bringing matters before the ADT and the number of review requests was maintained at around the same level as that of the previous year.
- 5. Stores & Stationery:** The *Stores* allocation includes funding provision for the purchase of a new PABX and Q-Master telephone system upgrade for the OLSC. However because these items are deemed assets and not operating expenses, the purchases were costed to the OLSC's capital expenditure accounts and not Stores where the budget is maintained. The budgeting anomaly resulted in the reported variance.
- 6. Capital Expenditure:** (See Note 5).

FINANCIAL STATEMENT 2004-2005

	Budget \$	Spent \$	Variance \$	Notes
Salaries & Wages	1,531,487	1,555,020	-23,533	1
Allowances	1,000	531	469	
Overtime	5,722	1,729	3,993	
Leave Entitlements	67,537	50,380	17,157	2
Workers Compensation	9,106	9,093	13	
Payroll Tax	100,772	104,229	-3,457	
Fringe Benefits Tax	2,000	2,871	-871	
Superannuation	122,579	85,509	37,070	3
Total Employee Related	1,840,203	1,809,362	30,841	
Advertising & Publicity	5,115	8,698	-3,583	
Bank Charges	102	80	22	
Consultancies	8,000	2,477	5,523	
Contractors	57,538	50,710	6,828	
Electricity & Gas	21,614	22,635	-1,021	
Fees	194,940	181,785	13,155	4
Freight & Cartage	1,023	15	1,008	
General Expenses	3,069	896	2,173	
Insurance	2,121	1,787	334	
Interpreters & Translations	6,228	5,845	383	
Postal Expenses	16,302	12,091	4,211	
Printing	32,920	31,385	1,535	
Publications	11,253	7,066	4,187	
Rates & Outgoings	8,585	7,461	1,124	
Rent	244,390	242,159	2,231	
Staff Expenses	22,184	20,502	1,682	
Stores & Stationery	139,403	43,670	95,733	5
Telephone	16,448	15,203	1,245	
Travel	23,460	21,321	2,139	
Lease of Equipment	22,000	19,513	2,487	
Total Maintenance & Workings	836,695	695,299	141,396	
Maintenance Contracts	48,277	40,445	7,832	
Repairs and Maintenance	1,023	150	873	
Total Maintenance Contracts	49,300	40,595	8,705	
Total Expenses	2,726,198	2,545,256	180,942	
Less: Revenue (Recoupment)	-2,726,198	-2,613,993	-112,205	
Net Cost of Services	0	-68,737	68,737	
Depreciation	26,905	22,597	4,308	
Net Position	26,905	-46,140	73,045	
	Budget	Spent	Variance	
CAPITAL EXPENDITURE 2004-2005	\$	\$	\$	Notes
Voice Communications Software	0	38,705	-38,705	
Voice Communications Equipment	0	33,111	-33,111	
Total	0	71,816	-71,816	6

ANNUAL REPORT STATISTICS 2004-2005



Phone Enquiries

P1 Legal matters raised in calls

	02-03	Percentage of calls 03-04	04-05
Family	15.2	17.5	18.6
Conveyancing	17.8	17.6	13.8
Civil	9.9	8.9	10.7
Probate/ wills/ family provisions	8.8	9.9	9.7
Personal injuries	11.9	11.0	9.2
Commercial/ corporations law	6.7	7.3	8.0
Workers compensation	7.5	7.6	6.6
Criminal law	4.0	4.8	5.1
Victims compensation	2.2	1.7	1.4
Other	15.8	13.6	16.9

P2 Nature of phone enquiry

	02-03	Percentage of calls 03-04	04-05
General cost complaint/ query	18.4	18.9	16.0
Overcharging	9.4	10.0	12.0
Negligence	11.8	13.5	11.8
Ethical matters	6.0	9.1	11.7
Communication	18.7	14.9	11.0
Quality of service	8.2	6.6	9.4
Delay	9.4	8.2	7.8
Costs disclosure	3.3	3.2	4.8
Document transfer/liens	2.9	3.0	2.9
Conflict of interests	2.0	2.1	2.4
Trust fund matters	2.0	2.8	2.3
Document handling	1.4	1.5	2.3
Instructions not followed	1.9	2.1	2.2
Misleading conduct	1.4	1.9	1.4
Pressure to settle	1.1	1.1	1.0
Failure to honour undertakings	0.7	0.4	0.4
Fraud (not trust fund)	0.5	0.4	0.4
Compliance matters	0.7	0.2	0.3

P3 Practitioners mentioned on inquiry line

	Percentage of calls		
	02-03	03-04	04-05
Solicitor	94.3	94.6	92.0
Barrister	1.8	2.4	2.1
Licensed Conveyancer	0.7	0.7	0.6
Other	3.1	2.3	5.3

P4 Source of calls to the OLSC inquiry line

	Percentage of calls		
	02-03	03-04	04-05
Client	67.5	69.2	63.7
Friend/relative	8.8	10.3	9.0
Previous client	6.9	5.2	6.8
Opposing client	5.5	6.3	6.7
Beneficiary/ executor/ administrator	2.0	2.0	2.0
Solicitor on another's behalf	1.9	1.7	1.7
Solicitor on own behalf	1.5	0.8	1.2
Non-legal service provider	1.6	1.2	1.1
Unrepresented client	0.4	0.2	0.7
Barrister on own behalf	0.1	0.0	0.3
Barrister on another's behalf	0.2	0.1	0.1
Other	3.6	3.1	6.8

P5 Outcomes of calls to the inquiry line

	Percentage of calls		
	02-03	03-04	04-05
Provided information about the legal system	31.0	31.9	26.0
Recommended direct approach to lawyer about concerns	20.5	21.1	18.7
Provided complaint form	17.9	17.1	17.8
Provided referral for legal advice or other assistance	13.3	10.7	11.0
Caller indicated intention to send in complaint	6.5	6.9	8.7
Provided referral to the NSW Supreme Court Costs Assessment Scheme	2.0	3.5	4.6
Listened to caller's concerns	1.8	2.0	2.1
Provided information about the OLSC and LPA to a legal practitioner	3.2	1.6	2.0
Explained that concerns are outside jurisdiction of OLSC	0.7	0.9	1.7
Conducted telephone mediation	0.9	0.9	0.6
Scheduled interview for caller	0.4	0.4	0.4
Other	1.9	3.0	5.7

Written Complaints

W1 Legal matters arising from complaints received in 2004-2005

	Percentage of complaints		
	02-03	03-04	04-05
Civil	13.4	15.0	21.1
Family/ defacto	12.2	11.5	13.3
Conveyancing	13.8	11.5	12.2
Personal Injuries	12.9	14.6	10.2
Commercial/ corporations law	11.0	10.7	9.6
Probate/ wills/ family provisions	7.6	7.1	7.3
Criminal	5.1	6.8	6.1
Other	9.9	8.0	5.2
Workers Compensation	4.8	4.9	4.6
Leases/ mortgages/ franchises	3.8	3.3	3.7
Industrial Law	1.6	2.4	2.8
Professional Negligence	1.4	1.2	1.7
Immigration	0.9	0.5	1.3
Land and Environment	1.1	1.7	0.8
Victims Compensation	0.5	0.8	0.4

W2 Nature of complaints received in 2004-2005

	Percentage of complaints		
	02-03	03-04	04-05
Negligence	20.5	18.9	19.1
Ethical matters	10.7	14.3	15.2
Communication	15.8	14.6	13.7
Overcharging	10.0	8.9	10.4
Misleading conduct	7.1	6.4	7.2
General cost complaint/ query	6.2	4.8	5.9
Delay	6.3	6.7	5.7
Trust fund	5.1	6.0	5.5
Cost disclosure	4.1	3.7	3.7
Instructions not followed	3.3	4.1	3.1
Conflict of interests	2.8	2.4	2.5
Document transfer/liens	3.5	3.1	2.5
Failure to honour undertakings	1.2	1.6	1.3
Fraud (not trust fund)	0.5	0.8	1.0
Compliance matters	0.3	0.4	0.9
Document handling	0.8	0.8	0.8
Quality of service	1.7	1.1	0.8
Pressure to settle	1.1	1.4	0.8

W3 Type and source of complaints received in 2004-2005

	Solicitor*	Barrister	LConv**	Other***	TOTAL	02-03	03-04	04-05
Bar Association	0	4	0	0	4	0.6	0.3	0.1
Barrister on another's behalf	1	0	0	0	1	0.1	0.04	0.0
Barrister on own behalf	44	21	0	0	65	1	0.9	2.4
Beneficiary/executor/ administrator	94	0	0	1	95	3.4	3	3.5
Client	489	25	9	15	538	33.6	27.2	20.0
Commissioner	91	6	1	2	100	0	0	3.7
Cost Assessor	2	1	0	0	3	0	0	0.1
Client's friend / relative	74	3	0	6	83	3.4	3.4	3.1
Law Society	133	0	0	2	135	3.8	6.1	5.0
Non-legal service provider	77	4	0	0	81	3.2	2.3	3.0
Opposing client	307	23	1	13	344	12.7	11.9	12.8
Previous client	740	44	11	26	821	19.5	24.1	30.5
Solicitor on another's behalf	132	5	5	1	143	7.2	7.3	5.3
Solicitor on own behalf	140	14	3	2	159	4.9	5	5.9
Unrepresented client	14	0	0	0	14	0.7	0.4	0.5
Other ****	87	9	4	8	108	5.2	4.6	4.0
TOTAL	2425	159	34	76	2694			

* 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, judge/quasi-judicial officer and costs assessors.

W4 Summary of complaints received and / or finalised in 2004-2005

	Solicitor	Barrister	LConv*	Other**	Total 02-03	02-03 %	Total 03-04	03-04 %	Total 04-05	04-05 %
COMPLAINTS RECEIVED IN 2004-2005										
Complaint handling by OLSC										
Complaint handling ongoing at OLSC	549	29	1	16	348	12.6	716	25.5	595	22.1
Suspended at OLSC***	11	0	0	0	18	0.7	12	0.4	11	0.4
Complaint handling completed at OLSC	792	29	10	11	1062	38.4	748	26.7	842	31.3
Complaint dismissed by OLSC	495	59	4	39	731	26.4	676	24.1	597	22.2
OLSC subtotal	1847	117	15	66	2159	78	2152	76.7	2045	75.9
Complaint handling by Professional Councils										
Complaint handling ongoing at Council	364	33	16	8	362	13.1	423	15.1	421	15.6
Suspended at Council****	16	0	0	0	1	0	20	0.7	16	0.6
Complaint handling completed at Council	74	0	1	1	95	3.4	89	3.2	76	2.8
Complaint dismissed by Council	124	9	2	1	151	5.5	122	4.3	136	5.0
Council subtotal	578	42	19	10	609	22	654	23.3	649	24.1
TOTAL COMPLAINTS RECEIVED 2004-2005	2425	159	34	76	2768		2806		2694	

COMPLAINTS FINALISED IN 2004-2005

Complaint handling finalised by OLSC

Complaint handling completed at OLSC	1082	41	13	11	1267	43.7	1131	40	1147	43.2
Complaint dismissed at OLSC	813	81	6	43	958	33.1	1026	36.3	943	35.5
OLSC subtotal	1895	122	19	54	2225	76.8	2157	76.2	2090	78.6

Complaint handling finalised by Councils

Complaint handling completed at Council	141	7	3	3	187	6.5	238	8.4	154	5.8
Complaint dismissed by Council	361	38	8	7	485	16.7	434	15.3	414	15.6
Council subtotal	502	45	11	10	672	23.2	672	23.8	568	21.4
TOTAL COMPLAINTS FINALISED 2004-2005	2397	167	30	64	2897		2829		2658	

* Licensed Conveyancer

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

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

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

W5 Status at 30 June 2005 of complaints received in 2004-2005

Status	Solicitor	Barrister	LConv*	Other**	TOTAL
COMPLAINT HANDLING IN PROGRESS					
Dispute resolution in progress	403	19	1	11	434
Out of time assessment in progress	23	3	0	1	27
Investigation in progress	123	7	0	4	134
Complaint handling suspended	11	0	0	0	11
Subtotal open, active at OLSC	560	29	1	16	606
Dispute resolution in progress	38	1	1	0	40
Investigation in progress	326	32	15	8	381
Complaint handling suspended #	16	0	0	0	16
Subtotal open, active at Council	380	33	16	8	437
SUBTOTAL, OPEN COMPLAINTS	940	62	17	24	1043
COMPLAINT HANDLING FINALISED					
Dispute resolution completed	783	29	10	11	833
Resolved through formal mediation	0	0	0	0	0
Practitioner referred to Tribunal***	2	0	0	0	2
Practitioner reprimanded by LSC##	7	0	0	0	7
Subtotal finalised by OLSC	792	29	10	11	842
Dispute resolution completed	59	0	1	1	61
Resolved through formal mediation	3	0	0	0	3
Practitioner referred to Tribunal***	12	0	0	0	12
Practitioner reprimanded by Council##	0	0	0	0	0
Subtotal finalised by Council	74	0	1	1	76
Tribunal finding of UPC/PM unlikely****	300	49	0	6	355
Likely UPC but generally competent	3	1	0	0	4
Complaint not accepted out of time	31	3	0	1	35
Withdrawn, particulars not supplied, procedural	102	4	2	2	110
Outside OLSC jurisdiction	42	2	2	30	76
Public interest	8	0	0	0	8
Subtotal dismissed by OLSC	486	59	4	39	588

Tribunal finding of UPC/PM unlikely	92	7	0	1	100
Likely UPC but generally competent	2	0	0	0	2
Withdrawn, particulars not supplied, procedural	32	2	2	0	36
Public interest	7	0	0	0	7
Subtotal dismissed by Council	133	9	2	1	145
SUBTOTAL, COMPLAINTS FINALISED	1485	97	17	52	1651
Total handled by OLSC	1838	117	15	66	2036
Total handled by Council	587	42	19	10	658
TOTAL	2425	159	34	76	2694

* Licensed Conveyancer

** "Other" includes interstate legal practitioners, law clerks, non-legal service providers and practitioner 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 in 2004-2005

Complaints finalised	Solicitor	Barrister	LConv*	Other**	TOTAL
Dispute resolution completed	1061	41	13	11	1126
Resolved through formal mediation	0	0	0	0	0
Practitioner referred to Tribunal#	2	0	0	0	2
Practitioner reprimanded by LSC	19	0	0	0	19
Subtotal finalised by OLSC	1082	41	13	11	1147
Dispute resolution completed	76	0	1	1	78
Resolved through formal mediation	4	0	0	0	4
Practitioner referred to Tribunal	31	3	1	2	37
Practitioner reprimanded by Council##	30	4	1	0	35
Subtotal finalised by Council	141	7	3	3	154
Tribunal finding of UPC/PM unlikely	464	64	2	8	538
Likely UPC but generally competent	6	1	0	0	7
Complaint not accepted out of time	52	4	0	2	58
Withdrawn, particulars not supplied, procedural	176	9	2	2	189
Outside OLSC jurisdiction	48	3	2	31	84
Public interest	45	0	0	0	45
Subtotal dismissed by OLSC	791	81	6	43	921
Tribunal finding of UPC/PM unlikely	283	30	4	5	322
Likely UPC but generally competent	11	0	0	0	11
Withdrawn, particulars not supplied, procedural	65	7	4	1	77
Public interest	24	1	0	1	26
Subtotal dismissed by Council	383	38	8	7	436
Total handled by OLSC	1873	122	19	54	2068
Total handled by Council	524	45	11	10	590
TOTAL	2397	167	30	64	2658

* Licensed Conveyancer

** "Other" includes interstate legal practitioners, law clerks, non-legal service providers and practitioner 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 2004-2005, time taken for complaints handling

	Percentage of files closed within following periods*		
	02-03	03-04	04-05
0-30 days	22.6	17.9	24.8
1-3 months	34.4	33.3	29.7
3-6 months	20.4	24.6	22.8
6-9 months	10.9	10.8	8.6
9-12 months	4.1	5.0	5.7
Over 12 months	7.5	8.4	8.4

* 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 2005 and being handled by the OLSC

Year opened	Open at 30 June 03	Open at 30 June 04	Open at 30 June 05
2004-2005			623
2003-2004	0	728	144
2002-2003	374	64	45
2001-2002	134	36	9
2000-2001	42	14	6
1999-2000	16	5	5
1998-1999	4	2	4
1997-1998	5	2	3
1996-1997	4	1	1
1995-1996	0	0	0
1994-1995	0	0	0
TOTAL	579	852	840

* Some slight variations may be noted due to issues within our CTS Register. Data has been checked, verified and is accounted for.

W9 Average time taken to finalise a complaint at the OLSC

	Days*
Average time to complete complaints received and completed / resolved in 2004-2005	83.9
Average time to complete complaints received in any year but completed / resolved in 2004-2005	118.1
Average time taken to dismiss complaints received in 2004-2005	94.2
Average time to dismiss complaints received in any year but dismissed in 2004-2005	186.8

* Averages rounded to 1 decimal point

Reviews

R1 Status at 30 June 2005 of review requests received in 2004-2005

	Solicitor	Barrister	LConv*	Other**	Total	Percentage
Reviews in progress						
In progress at OLSC	1	1	0	0	2	2.70
Being reviewed by consultant	23	8	1	0	32	43.24
Consulting with Council prior to finalising	2	0	0	0	2	2.70
Total remaining open	26	9	1	0	36	48.6
Reviews completed						
Dismissal confirmed	28	6	0	0	34	45.95
Out of time, no jurisdiction	0	0	0	0	0	0.00
Review request withdrawn	1	0	0	0	1	1.35
Reprimand confirmed	0	0	0	0	0	0.00
Reinvestigated by OLSC	1	0	0	0	1	1.35
Reinvestigated by Council	0	0	0	0	0	0.00
Decision changed	2	0	0	0	2	2.70
Other	0	0	0	0	0	0
Total completed	32	6	0	0	38	51.4
Total received	58	15	1	0	74	100.0

* Licensed Conveyancer

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

R2 Reviews in progress and finalised in 2004-2005 – received all years

	Solicitor	Barrister	LConv*	Other**	Total	Percentage
Reviews in progress						
In progress at OLSC	1	1	0	0	2	1.77
Being reviewed by consultant	23	8	1	0	32	28.32
Consulting with Council prior to finalising	5	1	0	0	6	5.31
Total remaining open	29	10	1	0	40	35.4
Reviews completed						
Dismissal confirmed	53	13	0	0	66	58.41
Out of time, no jurisdiction	1	0	0	0	1	0.88
Review request withdrawn	1	0	0	0	1	0.88
Reprimand confirmed	0	0	0	0	0	0.00
Reinvestigated by OLSC	1	0	1	0	2	1.77
Reinvestigated by Council	0	0	0	0	0	0.00
Decision changed	3	0	0	0	3	2.65
Other	0	0	0	0	0	0
Total completed	59	13	1	0	73	64.6
Total handled	88	23	2	0	113	100.0

* Licensed Conveyancer

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

Tribunal Proceedings

T1 Complaints referred to the Administrative Decisions Tribunal in 2004-2005*

Reason	Solicitor	Barrister	LConv**	Clerk / Associate	TOTAL
Unsatisfactory Professional Conduct (UPC)	1	1	0	0	2
Professional Misconduct (PM)	27	2	2	0	31
PM and UPC	1	3	0	0	4
Prohibited employment***	0	0	0	2	2

* Data provided by Administrative Decisions Tribunal

** Licensed Conveyancer

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

T2 Outcomes of Tribunal Proceedings in 2004-2005*

Outcome	Number
Reprimanded and fined	13
Reprimanded	10
Dismissed after hearing	9
Removed from roll	9
Suspended from practice	2
Fined	2
s48I and s48K Orders (convicted persons)**	2
Removed from and compensation ordered	1
No jurisdiction / withdrawn	0
TOTAL	48

* Data provided by Administrative Decisions Tribunal

** Legal Profession Act 1987 (LPA) S48I and S48K orders

Please Note:

1. Statistics may differ slightly from Law Society and Bar Association data due to different office procedures, codes and data definitions 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.



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