

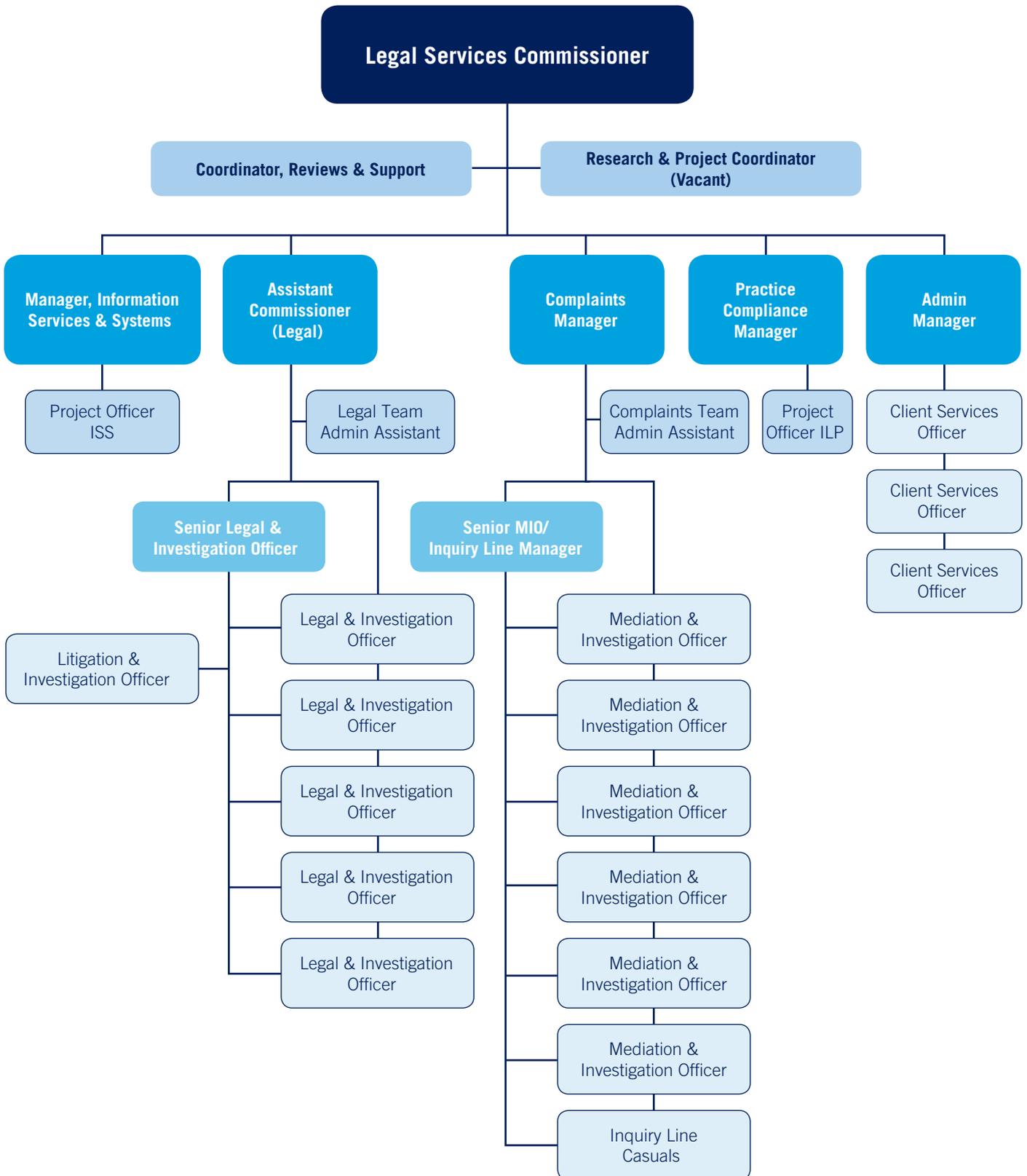


**THE OFFICE OF THE LEGAL SERVICES COMMISSIONER**

**2017-2018**  
**ANNUAL REPORT**

# OFFICE OF THE LEGAL SERVICES COMMISSIONER

## ORGANISATIONAL CHART



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## Chapter 1

# THE COMMISSIONER'S REPORT

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The third anniversary of the operation of the Legal Profession Uniform Law (LPUL) in New South Wales and Victoria was marked on 1 July 2018. The past year has seen the appointment of two new key players in its implementation: Megan Pitt as the new Commissioner for Uniform Legal Services Regulation and Fiona McLeay as the new Victorian Legal Services Commissioner. A co-operative working relationship has been established between the three of us, building on the work done by their respective predecessors. Whilst no additional jurisdictions have joined the LPUL there are encouraging signs, largely due to the energetic efforts made by the new Commissioner for Uniform Legal Services Regulation since her appointment.

In New South Wales an important development has been the establishment of an agreed process among all five agencies involved in the regulation of the legal profession. Senior representatives of the Office of Legal Services Commissioner (OLSC), the Law Society of New South Wales, the New South Wales Bar Association, the Legal Profession Admission Board and the Costs Assessment Scheme conducted under the auspices of the Prothonotary of the Supreme Court of New South Wales have met and discussed their prioritised issues for amendments to the LPUL and the Rules and Guidelines which sit underneath the legislation. It is a distinguishing feature between the local structures for the implementation of the LPUL in Victoria and New South Wales that we retain the avowedly “co-regulatory” approach, whilst the Victorians retain their largely centralised structure with the Victorian Legal Services Board and Commissioner at its core. The process initiated this past year in New South Wales demonstrates that the co-regulatory approach is a viable and productive model of regulation, drawing as it does on the ongoing experiences of various regulators and the two professional bodies. I believe this will act as a demonstration to the other Australian jurisdictions that presently operate a co-regulatory structure that the LPUL is well-suited to such “local architecture” for the regulation of the legal profession.

I congratulate the hard working staff members of the OLSC. Whilst we saw a small increase in the number of complaints received during the year, we achieved an overall reduction in the backlog of open complaints without any increase in staff numbers. Unfortunately our hopes for the overhaul of our Information Technology systems have not come to fruition this year. Although progress was made on securing a commitment to funding the project, unexpected problems arose in the implementation and tendering for the project. We remain hopeful that those issues can be resolved and that we might see the project proceed towards completion by June 2019. Meanwhile the staff of the OLSC will continue to provide an expert and considerate service to concerned members of the public and the profession.

The two senior roles in our office which directly support me have now been formally filled. Samantha Gulliver is our Assistant Commissioner (Legal) and Roger Gimblett is our Complaints Manager. Both have extensive experience in legal regulation and I have greatly appreciated their efforts in the leadership team of the OLSC.

There have been some emerging issues over the past year that called for some mention in this report. The Australian Law Reform Commission released its report into Elder Abuse. We are examining its treatment of issues connected with legal practice and I have been involved in the Law Society's Elder Abuse Working Group since it was created in 2017. This working group is made up of lawyers, health professionals and elderly rights advocates. We are examining some of the legal aspects of concerns regarding abuse of the elderly. This covers a wide range of issues including financial abuse and particularly capacity issues and informed consent. Along with the other working group members, I believe there will be much information, knowledge and data to be gained. This will assist my office and my co-regulators to educate and encourage lawyers to improve and better understand their ethical obligations when providing services to the elderly, particularly in the area of capacity and informed consent as this is an area of increasing complaint to our office.

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Another issue to note is the “#MeToo” campaign and the incidence of sexual harassment across all sections of our society, including the legal profession. This campaign, and a small number of reported instances of such harassment in law firms and at the Bar, have brought to the forefront that the legal regulators and professional associations should be proactive in doing more to improve workplace cultures and, just as importantly, to educate lawyers and the community to report instances of sexual harassment in a safe and non-threatening environment. We shall continue to develop our strategies and engage with all concerned parties to chart the best possible way forward.

Discussion has continued this past year on cyber security and the law, as well as the future ways of practising law. There are ongoing developments in how law practices are protecting client’s confidentiality and dealing with cyber-attacks. For regulators this is a new area of regulation and we need to be aware of the risks involved not only in the loss of clients’ information but also the data security challenges lawyers face in legal practice. Much has been done by Government in ensuring a cyber-aware culture is developing within organisations and we are looking at how to best provide lawyers with guidance as to professional obligations in the new age of electronic transactions and communications.

As the hearings of the Banking and Financial Services Royal Commission have unfolded there has been concern raised about the role of legal advisers involved in some of the practices. The recent yearly survey by the Governance Institute of Australia shows that the general public has a less favourable view of the ethical behaviour of lawyers than the previous year, when an increase in the ethical rating had been reported from the previous year. I believe that there needs to be a better explanation to the public of the actual role of lawyers. To that end, I have commenced public information sessions at larger regional public libraries with the aim of better explaining on whose behalf lawyers work. Another aim is to publicly talk about what it means for society to have a strong and independent legal profession which is appropriately regulated to uphold the rule of law. Our experience in handling all complaints about lawyers in New South Wales is that there are instances of professional misbehaviour by some whom we investigate and prosecute and there is a degree of misconception by some people as to what they might reasonably expect from lawyers. Whilst my office and our co-regulators have been active in the former activity, there remains a good deal to do in the latter.

John McKenzie  
**NSW Legal Services Commissioner**

## Chapter 2

# INVESTIGATIONS AND DISCIPLINE

## Investigations and Discipline

The Legal & Investigation Team deals with complaints in which disciplinary matters are raised.

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

Disciplinary matters are investigated with evidence obtained from the complainant, the lawyer and, if required, from third parties such as independent witnesses or financial institutions.

If, after completing an investigation, the Commissioner finds a lawyer has engaged in unsatisfactory professional conduct, he may determine the matter by making any of the orders specified in section 299 of the *Legal Profession Uniform Law (NSW)* (LPUL). Orders may include:

- Cautioning or reprimanding the lawyer
- Requiring an apology from the lawyer
- Requiring the lawyer to redo the work that is the subject of the complaint at no cost or at a reduced cost
- Requiring the lawyer to undertake training or counselling
- Requiring the lawyer to pay a fine or
- Imposing conditions on the practising certificate of the lawyer.

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

As has been the case for a number of years, more complaints were lodged in relation to family and de-facto law matters in this reporting year than any other area of law. Complaints in relation to probate, wills or family provision claims are also common.

The most commonly made complaint was negligence, followed by poor communication and then overcharging.

On 20 September 2017, NSW Police issued a press release concerning the arrest and charging of a solicitor, Mr Marcel Joukhador, then principal of Thomas Booler Lawyers, in connection with fraudulent activity in the New South Wales Compulsory Third Party insurance scheme, following investigations conducted by the NSW Police CTP Fraud Taskforce. The Legal and Investigation team has been liaising, and continues to liaise, with the Taskforce.

## Determinations and disciplinary action

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

The Commissioner issued 3 reprimands, 12 cautions and ordered the lawyer to make an apology in 1 matter. Reprimands were issued for significant delay, acting in a conflict of interest and misleading the Court and opponent.

The cautions related to isolated instances of:

- Failing to disclose costs
- Carelessly misleading the Court and opponent
- Failing to respond to communications from the opponent's solicitor
- Failing to comply with Court orders
- Acting in a conflict of interest
- Drafting a binding financial agreement to defeat creditors
- Making allegations without a proper factual basis
- Incompetence and lack of diligence
- Failing to comply with a notice from the Commissioner requiring the production of information and documents
- Using inadvertently disclosed, confidential material

The apology was for discourtesy.

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## Disciplinary proceedings

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

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

- **Legal Services Commissioner v Potkonyak**  
(17 May 2017)

As reported last year, in May 2017 George Potkonyak was found to have engaged in professional misconduct in approaching matters under the *Children and Young Persons (Care and Protection) Act 1998 (Care Act)* with a preconceived mindset, without any apparent concern for the underlying interests of the client, or the essential work carried out by the Children's Court under the *Care Act*, and for making scurrilous and ill-considered comments and unfounded criticism of judicial officers and fellow legal practitioners.

The "stage 2" hearing (for dispositive orders) took place on 13 November 2017. On 9 January 2018, the Tribunal ordered Mr Potkonyak's name be removed from the Roll of Lawyers of the Supreme Court of New South Wales with effect seven days from the date of the judgment. Mr Potkonyak appealed the Tribunal's Decision. The appeal was heard on 5 April 2018, the Court reserving its judgment. Judgment had not been delivered as at the end of the reporting year.

- **Legal Services Commissioner v Peter Livers**  
(3 August 2017)

Peter Livers was found guilty of professional misconduct, arising from deliberate acts of dishonesty, or, in the alternative, reckless carelessness in seeking to obtain a grant of funding from the Independent Legal Assistance and Review Service (ILARS) of the WorkCover Independent Review Office (WIRO), including altering the date of an audiogram, amending the client's statement in a misleading way, and preparing and relying on an application for a grant which contained material omissions. The Tribunal concluded Mr Livers misled WIRO by preparing and relying on a funding application which contained material omissions and assertions some of which were false, and that was known to him.

OLSC awaits dispositive orders, following a hearing on penalty on 19 February 2018.

## Internal reviews

The LPUL makes provision for the Commissioner to conduct an internal review of his own decisions or, where relevant, the decisions of his delegates, the Law Society of New South Wales and the New South Wales Bar Association. The Commissioner may (at his absolute discretion) conduct an internal review if he considers it appropriate to do so. On review, the Commissioner must consider whether the decision was dealt with appropriately and whether the decision was based on reasonable grounds, and may confirm the original decision, make a new decision or refer it back to the original decision maker.

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

The Legal and Investigation team continues to deal with applications for review of decisions made by the Law Society of New South Wales and the New South Wales Bar Association under the *Legal Profession Act 2004*.

## Policy development

The Legal and Investigation team considered a Discussion Paper for Review of the Australian Solicitors' Conduct Rules prepared by the Law Council of Australia.

A member of the team attended meetings and briefings with the Office of the Migration Agents Registration Authority (MARA), the Department of Immigration and Border Protection and other Australian legal profession regulators in relation to foreshadowed amendments to the *Migration Act 1958* to transfer regulation of immigration lawyers from MARA to the legal profession regulators, in accordance with recommendations made in the final report of the [2014 Independent Review of the Office of the Migration Agents Registration Authority](#)

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The team continues to provide guidance and legal advice to senior managers and staff on the interpretation and application of the LPUL. The Assistant Commissioner (Legal) meets regularly with the Director of Professional Standards at the Law Society of New South Wales and the Director of Professional Conduct at the New South Wales Bar Association to discuss common issues, and liaises with the Commissioner for Uniform Legal Services Regulation and OLSC's Victorian counterparts as required. She is also a member of the Costs Assessment Rules Committee.

## Staffing

Three roles were filled on an ongoing basis in the reporting year – Senior Legal & Investigation Officer, Practice Compliance Manager and Legal & Investigation Officer – bringing the team up to full strength.

## Chapter 3

# CONSUMER MATTERS AND COSTS DISPUTES

In the 2017-2018 reporting year, we received a total of 2,645 written complaints and registered the total completion of 2,601 written complaints, an increase of 268 from the previous year.

Complaints may be characterised as containing either a consumer matter (including costs dispute) or a disciplinary matter, or both.

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

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

The OLSC must attempt to resolve a consumer matter by informal means. The Commissioner also has power to make a determination under section 290 of the Legal Profession Uniform Law (LPUL), if he is satisfied that it is fair and reasonable in all the circumstances, and/or a binding determination about costs. Often an indication to a lawyer that the Commissioner may consider making a consumer matter or costs determination, in circumstances where it would appear grounds exist to support that, will have the effect of encouraging a lawyer to engage in attempts to informally resolve the complaint.

Where a Mediation and Investigation Officer comes to a view that a complaint may involve a disciplinary matter, issues of potential unsatisfactory professional conduct or professional misconduct must be considered separately from consumer aspects of a complaint.

## Consumer Matters and Costs Disputes

For the 2017 to 2018 reporting year, we received a total of 1,245 consumer matters including a total of 560 costs dispute complaints. 14 matters were not able to be characterised, generally owing to inadequate information being provided with the complaint.

This year, family/defacto matters were the area of law most represented in consumer matters, followed by personal injuries, criminal, other civil matters and conveyancing matters. The lowest was building law.

Once again this year, quality of service: negligence was the most common consumer matter, followed by:

- Communication: poor/ no response
- Costs: overcharged
- Quality of service: delay
- Ethical matters: instructions not followed

The lowest was ethical matters: fraud (not trust fund) and ethical matters: failure to honour undertakings.

The main areas of law the subject of cost disputes were related to family/defacto matters followed by:

- Conveyancing
- Other Civil matters
- Criminal
- Personal Injuries

## Our Role

Once again this year our Mediation and Investigation Officers were in many cases able to supply additional information to complainants that had not previously been made available to them by their lawyers. Whilst the provision of additional information may not always resolve all of the complainant's concerns, it can assist their understanding of why events may have occurred and, in many instances, this may be sufficient to resolve the complaint.

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We have previously had cause to highlight the number of consumer matters related to a perceived failure of communication. In some instances, a client may have unreasonable expectations of the level of contact they will have with their lawyer, in other instances, lawyers fail to provide a basic level of communication or fail to properly explain events to their clients.

Allegations of negligence commonly arise in consumer matters. In some instances, complaints may be able to be resolved to the satisfaction of the parties but there are also instances where such disputes would be more properly referred to the civil Courts.

For the 2017 to 2018 reporting year, 404 of the consumer matters received were either resolved or closed. Where a matter is closed, an explanation is generally provided, although in some instances matters must be closed as the complainant has failed to provide necessary information to deal with the complaint. A small number of consumer matters were closed as not able to be resolved or were outside our jurisdiction. Consumer matters that are resolved may include matters where documents have been transferred, an apology has been offered or legal work has been redone to the satisfaction of the complainant, following the involvement of the OLSC.

This year 277 of the costs disputes received were either closed or resolved with the remainder either remaining open, not resolved or closed as not within our jurisdiction. Complainants may be referred to the Supreme Court Costs Assessment Scheme in circumstances where the totality of the costs involved, or the amount in dispute, may exceed the limits of the OLSC's jurisdiction.

Once again, this reporting year we have had cause to write to lawyers noting inadequacies in their costs disclosure documents which may still refer to the provisions of the *Legal Profession Act 2004* (LPA), or fail to provide clients with a single figure estimate of costs as required under the LPUL. Some lawyers continue to fail in their obligations to keep their clients notified of changes to costs estimates.

One area of concern noted this year has been confusion over whether a first consultation with a lawyer may be at no charge. Difficulties arise where a client 'assumes' that this will be the case or misunderstands the limits of any such offer.

Under the LPUL, consumer matters are defined as relating to the provision of legal services to the complainant. Costs disputes must relate to a person who is liable to pay the legal costs, (other than under a Court or Tribunal order for costs). Owing to these requirements, we have limited jurisdiction in dealing with complaints by third parties such as beneficiaries and opposing parties. Complaints previously classified as consumer disputes in these instances must generally now be considered as disciplinary matters. The great majority of these complaints are ultimately dismissed, particularly complaints about lawyers acting on the 'other side', which are often simply motivated by a misunderstanding of a lawyer's role and duty when representing an opposing party. This is regularly a subject of complaint arising from family law proceedings which are by their nature often fraught and where the role of the opposing party's lawyer can be misinterpreted.

## Personal circumstances

Any engagement in legal proceedings can be stressful, both for clients who find themselves in a strange and complicated environment, and for lawyers who are generally working to deadlines, often in highly pressured circumstances.

The Lawyers Assistance Program at the Law Society, practice management assistance and external counselling are all available for lawyers who may be struggling to cope.

We recognise that contact with the Regulator may exacerbate the stress of practice. It is pleasing that the majority of lawyers contacted by the OLSC take a professional and often proactive approach to resolution of consumer complaints.

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## INQUIRY LINE REPORT 2017-2018

Our Inquiry Line is often the first point of contact for members of the public with the OLSC.

Our Inquiry Line staff provide callers with information about our role and powers, the complaint process, suggestions for potential avenues of resolution of their dispute, and referral to other organisations where appropriate. In some instances all that is required is to equip a caller with further information about how to pursue concerns directly with their lawyer. Other calls will ultimately lead to a formal written complaint against a solicitor or barrister.

In the 2017-2018 reporting year, 6,431 calls were made on the OLSC Inquiry Line an increase of 353 from the previous year.

Callers to the Inquiry Line are invited to participate in a feedback survey to assist in maintaining and improving our level of service. 9.42% of the survey forms issued were completed and sent back to the OLSC for analysis.

Overall, results were extremely positive about the service we provide with 88.1% of callers responding they would recommend us to a friend/relative, 91.5% of respondents agreeing that the information they received was helpful and/or useful and 96.6% of respondents agreeing that staff handling the call treated them in a courteous and professional manner.

For this 2017-2018 reporting year Inquiry Line Survey 27.1% of respondents identified as living with a disability and 5.1% required the services of an Interpreter. The information gathered through the survey is an invaluable measure of our performance and a guide to where improvements can be made.

In addition, further training is being offered to Inquiry Line staff, including visits to other related agencies, with a view to enhancing the quality of this 'front-line' service.

## Assistance for complainants with a special need or disability in the writing of their complaints to the OLSC

The OLSC offers assistance to those complainants with special needs or disabilities in the completion of their written complaints to this office.

There are some in the community who require this assistance due to language barriers or social dislocation, for example those with English as a second language, or from a Non English speaking background. Assistance is also available to complainants who are from an Aboriginal or Torres Strait Islander background.

Other reasons for this assistance may include that complainants are living with a mental health or intellectual issue, a physical disability or are frail/aged with no family or other supports in the community.

The complaints are written in the complainant's own words and provided to the complainant for their perusal and any additions or amendments prior to the complainant signing and returning their complaint to this office for assessment.

During the financial year 50 people of either special needs or with a disability have been assisted either by telephone or in face to face interviews.

When discussing their complaints complainants may reveal vulnerabilities other than those of a legal nature and are referred to other government bodies and organisations and non-government bodies and organisations that may be able to assist them further.

# CASE STUDIES

## Complaint where disclosed estimated total legal costs departed from the final bill and no updated costs estimate had been provided by the law practice

The complainant engaged the services of a law practice to assist her in relation to a Binding Financial Agreement (BFA) in a family law matter.

The complaint involved the conduct of two lawyers (“the lawyers”) from the law practice who assisted the complainant in this matter.

The complainant was provided with a Uniform Standard Disclosure form as prescribed by Schedule 1 of the Legal Profession Uniform Law General Rules on 12 December 2017. This contained an **estimate of total costs of \$3,000.00 excluding GST**. An amount of \$1,500.00 was then initially deposited by the complainant into trust in anticipation of further legal costs.

The complainant later received an email on 22 December 2017 stating that legal costs owing totalled **\$10,472.00**.

The complainant submitted that, whilst she was told that the costs would run over the \$3,000.00 estimated amount, the lawyer did not specify by how much, nor was a further costs estimate provided.

The complainant alleged the law practice:

1. Overcharged;
2. Failed to provide full written costs disclosure; and
3. Failed to provide updated written costs disclosure.

The lawyers’ main submissions were that:

- A senior lawyer of the law practice worked on the matter for over 23 hours, over 7 days, on an urgent basis during the period leading up to Christmas as the complainant was due to depart Australia on 22 December 2017
- The complainant was undercharged for these services, and that the BFA in question was indeed concluded and received by the complainant on 21 December 2017
- The complainant was advised about the complexity of the matter as a result of the opposing party presenting a BFA that was ‘draconian’ in its terms
- The senior lawyer acknowledged that the total legal costs charged had exceeded the original costs estimate and indicated the law practice was open to resolving the matter with the assistance of the OLSC. However, the lawyer submitted that the complainant was warned that the costs would run over the initial estimate

The lawyers offered to reduce the complainant’s costs to \$5,500.00. The complainant made a counter-offer of **\$3,800.00**, agreeing to pay the lawyers a further \$2,300.00 in addition to the \$1,500.00 the complainant had already paid into trust at the start of the retainer. On 1 May 2018, the lawyers accepted the complainant’s counter-offer in full and final settlement of their outstanding fees.

Upon closing the matter, the Commissioner wrote to the lawyers the subject of the complaint and reminded them of their professional obligations regarding costs disclosure, in an effort to ensure that this situation does not arise again.

### Complaint where the disclosed estimated total legal costs departed from final bill

The complainant engaged a law practice to act in relation to a claim for compensation arising from a motor vehicle accident in which he was involved in 2013.

The complainant made a complaint to the OLSC regarding the amount of compensation he received after the law practice's costs had been deducted.

The law practice had disclosed, in a table setting out various possible outcomes, that the costs would amount to between \$35,000.00 and \$60,000.00 if the complainant received an award or verdict between \$50,000.00 and \$150,000.00.

The complainant's substantive matter was determined by the Claims Assessment & Resolution Service (CARS) which awarded him \$130,000.00.

The total legal costs charged by the law practice amounted to \$79,881.15.

Accordingly, the Commissioner formed the preliminary view that the total costs had substantially exceeded the applicable estimate and that there had not been any further disclosure to alert the complainant to this in accordance with section 174 (1)(b) of the Legal Profession Uniform Law (LPUL).

The Commissioner also noted that, had a discount not been applied by the law practice to its fees prior to the complainant lodging the complaint with the OLSC, the increase over the cost previously disclosed to the complainant would have been \$46,652.28.

The law practice argued that it had provided disclosure in circumstances where it was originally believed the complainant's matter was potentially worth \$300,000.00 to \$350,000.00. Therefore, the costs set out on the table for a settlement of this amount would have been accurate had that outcome been achieved. For this reason the law practice considered the costs disclosure was accurate.

It also suggested that Counsel's fees had not been included in the estimate and that the complainant had been verbally informed of **all** costs.

The law practice also indicated that it had been reliant on incomplete information provided to it by the complainant, which had made estimating the costs associated with pursuing his claim difficult.

While having regard to the law practice's view, the matter was ultimately informally resolved primarily on the basis that:

- the law practice had offered the complainant a further refund of \$2,000.00, which was accepted
- the Commissioner had sought and received the lawyer's assurances along with evidence to demonstrate that the law practice had implemented appropriate management systems to help ensure compliance with section 174 of the LPUL regarding costs disclosure in the future
- the failure to disclose costs appeared to be an isolated incident

The Commissioner elected not to use his powers pursuant to section 290 of the LPUL to make a determination against the law practice in this instance.

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### **Complaint where the disclosed estimated total legal costs departed from final bill and arguably where law practice failed to adequately disclose the possible variables that might impact on the total legal costs**

The lawyer was engaged to act in respect of a commercial lease. The final bill, issued in September 2017, far exceeded the initial costs estimate provided on 2 March 2017.

The initial estimate was for the sum of \$1,650.00 (including GST) and the final bill exceeded \$4,500.00 but reduced to \$3,795.00 before the complainant approached the OLSC.

Following negotiations through the OLSC, the lawyer accepted \$2,800.00 in final settlement of the September invoice.

### **Complaint where a complaint involved a costs dispute directly between a client and barrister**

The complainant was involved in a family law dispute. She had initially engaged the services of a law practice to assist her in that regard however due to a conflict of interest, the law practice had ceased to act for her. She claimed the law practice then advised her to contact the barrister briefed in her matter for what she thought was a referral to another law practice.

The complainant submits that when she initially contacted the barrister it was a casual conversation and there was no mention that he was charging her for his time during the phone call. It appears that the parties then proceeded to speak on a number of occasions about the complainant's family law matter. The complainant alleges during this time, the barrister did not inform her of his costs until the end of the final phone call. She claims she was shocked by this and advised him that she did not wish for him to act for her. She then received an invoice shortly after in the sum of \$2,299.00.

The complainant disputed the invoice on the basis that she genuinely thought that the first phone call was for a referral to another law practice and, due to the casual nature of the calls, thought that he was assisting her as a gesture of goodwill.

Following informal resolution with assistance from the OLSC an agreement was reached for the complainant to pay \$500.00 in full satisfaction of the bill in dispute.

### **Complaint where the lawyer did not provide a Cost Agreement and the cost was double the estimate provided**

The complainant engaged the lawyer to act for her in family law and property settlement proceedings. The complainant submitted a complaint to the OLSC and stated that she was not given a copy of the Cost Agreement and was not informed of the lawyer's hourly rates. She alleged that she was advised that her matter would cost approximately \$3,000.00 and disputed the invoice she received in the sum of \$6,000.00.

Upon investigation it appeared that there was an administrative error on the part of the lawyer when issuing the Costs Agreement. The lawyer did not notice that the complainant had not signed the Cost Agreement or that the Cost Agreement was missing on the complainant's file.

The lawyer explained that the reason for the increase in the fees was because of complications that arose in the course of the matter including difficulties in locating and serving documents on the complainant's ex-partner.

The OLSC assisted the parties to informally resolve the costs dispute. The lawyer provided a refund to the complainant in the amount of \$1,000.00.

### Complaint involving a costs dispute where the total legal costs charged exceeded the original estimate provided by the law practice in its Costs Agreement

The complainant engaged the services of the lawyer to assist him in a building dispute against his local council.

The complainant alleged that the lawyer's legal fees significantly exceeded the estimate originally provided in the Costs Agreement. The Costs Agreement estimated that the total legal costs to proceed to final hearing would be \$36,000.00. The complainant said he heavily relied on this estimate in order to determine whether he could afford to proceed with this action against his local council.

However, some two weeks prior to the final hearing date, the lawyer revised his estimate by increasing the total legal costs by \$20,000.00 in order for the matter to proceed to hearing. As a result of this increase in estimated legal fees, the complainant determined he could not afford to continue with the proceedings and gave instructions to discontinue his matter.

The complainant disputed the lawyer's final bill in the sum of \$12,174.59 on the basis that he had already paid \$25,086.10 in legal fees in circumstances where the matter had not yet proceeded to final hearing.

Following informal resolution with assistance from the OLSC an agreement was reached between the complainant and lawyer for the complainant to pay \$5,500.00 as full and final settlement of the invoice in dispute.

### Complaints where significant discounts have been provided

The complainant submitted a complaint to the OLSC in his personal capacity as the director of a commercial company.

The lawyer was initially engaged to resolve various contractual disputes between the company and its stakeholders. The complainant alleged that the lawyer did not provide ongoing cost disclosure, did not follow his instructions and did not act in his best interests (by incurring unnecessary legal expenses).

The majority of the invoices in dispute fell outside of the time limits of the OLSC. There were a number of invoices that fell within the 'discretionary period' pursuant to section 272(2) of the LPUL. Only one invoice totalling \$3,000.00 fell within the time limits of the OLSC. The total amount in dispute was approximately \$42,500.00 of which the complainant had paid \$20,000.00. (All figures approximate and rounded up)

Notwithstanding the above, with the cooperation of the parties, the OLSC managed to assist in informally resolving the matter. The lawyer provided a significant discount of \$12,000.00 and the outstanding fees of \$22,000.00 were resolved with the complainant only paying \$10,000.00.

This matter involved Supreme Court proceedings and an interstate complainant who engaged the lawyer to act for her in a family provision claim against the Estate of her late father. It appears that the complainant was successful in receiving a lump sum provision of \$350,000.00 but alleged that the legal fees of \$50,000.00 charged by her lawyer were excessive. The OLSC informally resolved the costs dispute on the basis that the lawyer offered a significant discount of \$20,000.00, which was accepted by the complainant.

The complainant engaged the lawyer to act for him in family law and property settlement proceedings. The complainant submitted a complaint to the OLSC disputing the invoice for \$13,732.50, alleging that the lawyer had misappropriated settlement funds and provided poor quality service due to a lack of communication and delay.

The OLSC addressed the concerns raised by the complainant, clarified the circumstances of the matter to the satisfaction of the complainant and assisted the parties in informal resolution pursuant to which the lawyer provided a significant discount of \$4,732.50.

### **Complaint where the lawyer charged for a “free” initial consultation**

The complainant initially approached the lawyer to seek legal advice about a joint business venture. The complainant was under the impression that he would not be charged for the first consultation as the meeting was to assess if the lawyer had the capacity to take on his matter. The complainant submits that he did not provide any instructions to the lawyer, did not sign any Cost Agreement and was not informed at any stage that there would be fees charged. The complainant disputed the invoice for \$350.00 which he received after the meeting.

The OLSC assisted the parties to informally resolve the complaint. A compromise for the bill to be reduced by half was accepted by the parties.

### **Complaint where the parties managed to resolve the cost dispute and the lawyer continued acting for the complainant**

The complainant submitted a complaint to the OLSC on behalf of his daughter who had engaged the services of the lawyer in relation to her family law matter. The complainant was a third party payer pursuant to section 171 of the LPUL.

The OLSC assisted the parties to informally resolve the complaint and a discount of \$1,000.00 was agreed to by the parties. The complainant was satisfied with the cost dispute resolution and indicated that he would like the lawyer to continue acting for his daughter in the ongoing family law matter.

### **Complaint involving a costs dispute between clients and solicitor**

The complainant and his wife engaged the services of the lawyer to draft their wills. Two bills in the sum of \$1,320.00 and \$275.00 were issued to the complainant and his wife. The complainant disputed the fees charged for drafting the wills on the basis that no costs disclosure had been provided.

The lawyer explained that both the complainant and his wife had given instructions jointly, and that the work carried out for each will amounted to \$725.00 plus GST. The lawyer submitted that as the matters were complex and as both the complainant and his wife had given the same instructions, more time was recorded working on one matter to avoid duplication. The lawyer explained that no costs disclosure was provided because the law practice did not intend to charge the complainant and his wife more than \$750.00 each to complete the work.

Following informal resolution with assistance from the OLSC, an agreement was reached for the lawyer to finalise the wills at no further cost.

## Chapter 4

# COMPLIANCE AUDITS

Between July 2017 and May 2018, the Practice Compliance Manager conducted two on-site compliance audits and three remote or “desk-top” audits, on the papers. These audits included practices in the CBD, the outer suburbs of Sydney and country NSW. Both of the on-site audits took place over one day. In both cases, the law practice took steps to address the concerns raised in the Compliance Audit Report and no management system directions were issued. Similarly, in the desk-top audits, concerns raised regarding costs disclosure and billing processes were addressed through correspondence and liaising with the law practice.

### Data Sharing

The OLSC continues to work proactively with the Legal Services Council and the Commissioner for Uniform Legal Regulation to provide information regarding the *Legal Profession Uniform Law*. There has been further refinement regarding the information provided by the OLSC about complaints relating to costs and costs disputes, including a more detailed breakdown of the amount of costs in dispute.

## Chapter 5

# THE OLSC AND THE COMMUNITY

### The Office of the Legal Services Commissioner

The OLSC views education as a vital component of its service not only to lawyers but more importantly to consumers of legal services. The OLSC is guided by section 24 of the Legal Profession Uniform Law Application Act 2014 in assisting our co-regulators in promoting community education about the regulation and discipline of the legal profession. In addition to community education, the focus of the Commissioner is to continually strive to enhance the professional and ethical standards of lawyers through the collegiate relationships that staff of the OLSC have fostered with legal educators.

### Legal Conferences

During 2017-2018, the Commissioner and his staff attended various conferences and events for the continued development of the legal profession, and to address the challenges for regulators of the profession.

In April 2018, the Commissioner presented a session at the Lawcover Claims Panel Conference to Lawcover in-house solicitors, other Lawcover staff and their panel firm partners. The session covered the types of complaints received and handled by the OLSC as well as the Commissioner's powers under the LPUL.

In September 2017, members of the OLSC with current practising certificates attended the Law Society of NSW Government Solicitors Conference. The team members attended individual-interested streams. One stream of particular interest was the E-contracts and digital signatures seminar. This area is increasing due to the technological advancements being adopted by lawyers as paperless contractual systems become more and more accepted as binding. This is an area of regulation that is of importance to the OLSC as we are in a fast changing technological phase.

In October 2017, the Commissioner and the Assistant Commissioner (Legal), Samantha Gulliver attended the Conference of Regulatory Officers (CORO) in Adelaide, together with three case officers from the OLSC. CORO was hosted by the Law Society of South Australia and the Legal Profession Conduct Commissioner.

The theme of CORO 2017 was the future of law and the significant changes currently being experienced or foreshadowed for future generations. A diverse array of speakers from within the legal profession, regulatory authorities, private organisations and eminent speakers in specialised areas led the sessions.

CORO is seen by all regulatory authorities as an important annual event for all regulatory bodies to come together to discuss and debate emerging trends in today's legal practice so regulators can work together in providing consistency and support to lawyers and firms.

Building on the success of last year's Conference of Regulatory Officers, the Commissioner again extended to case officers the opportunity of submitting an expression of interest to attend CORO in Adelaide on 26-27 October 2017. Three case officers were chosen to attend CORO and their comments include:

*"My attendance at CORO was a highly valuable, inspiring and interesting experience. It was a privilege to participate in the exchange of information and ideas, and discussion of the latest developments, pertaining to legal regulatory work being done around Australia and New Zealand."*

*"I was impressed by the range of topics that were discussed at CORO, including having the opportunity to discuss research being conducted by regulators in different jurisdictions on a range of regulatory matters to improve standards in the profession."*

*It was also helpful to hear the perspectives, and the experiences of staff at different regulators generally on matters also faced in this jurisdiction. Having face to face discussions can be the best way to discuss these matters."*

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*I would recommend attendance at CORO.”*

*“I found CORO 2017 to be a very informative and collegiate experience! It was valuable to meet colleagues from other states who understand the issues we face day to day in our work, and to be able to attend the fascinating presentations about matters that affect how we regulate the profession and how we assist the public. I appreciate having had the opportunity to be a part of the Conference, as it gave me a new perspective on the role of our office in the regulatory environment more generally.”*

The Commissioner attended and participated in the 2017 International Bar Association National Conference in Sydney. The Commissioner’s inaugural participation as a panellist with international speakers in the regulatory field focused on new regulatory mechanisms and proactive management based regulation in light of the uniform approach being taken to legal regulation in Australia. The subject matter discussed by the panel was “What does the future hold for regulation of the profession? Trends and Challenges”. The Commissioner’s participation in such an international conference firmly positioned the regulation of the legal profession in New South Wales as an example of progressive development in this important area.

## Events

During 2017-2018, the Commissioner attended and participated in a variety of panel discussions where viewpoints and opinions were discussed exploring the trends in complaints and keeping abreast of the technological changes facing lawyers in the day to day running of a lawyer’s practice. Panels participated in during the financial year were:

- Sole Practitioners 1 day workshop, Professional Responsibility Panel discussion & Question and Answer panel member, Law Society of New South Wales
- Law Society’s Annual Medical and Legal panel discussion on the topic of complaint patterns for medical and legal practitioners including discussion of the latest research

## Legal Education

During 2017-2018 the Commissioner continued his engagement with the legal profession, government departments and universities where he was invited to chair and present at a series of workshops and continuing professional development seminars.

With more webinars and podcasts being provided by universities, law firms and the College of Law, this financial year saw a slight reduction in the number of face to face presentations.

Presentations by the Commissioner and his staff on promoting the ethical obligations of lawyers to consumers of legal services and the role of the OLSC continued during 2017-2018 and these included:

- *Professional Conduct Workshop*, Southern Cross University, School of Law & Justice
- *Chair: Mandatory Rule 6.1 Seminar*, Faculty of Law, Centre for Continuing Legal Education UNSW, Professional Skills Ethics & Professional Responsibility
- *Legal Ethics: What are they today?*
  - Southern Tablelands Law Society, CPD Seminar
  - College of Law
  - UNSW Faculty of Law, CPD seminar
  - Holding Redlich
  - The College of Law 2018 Specialist Legal Conference
- *Ethical Dilemmas for Government Lawyers*, Department of Defence Legal
- *Legal Ethics*, Summer Course, UNSW Law Faculty
- Byron Bay Criminal Law Day, Lismore Legal Aid
- Lawcover Board Members
- *The NSW Legal Regulatory System*, Newcastle University and Notre Dame University

## Staff training

Throughout 2017-2018, the OLSC arranged a diverse range of Lunch and Learn seminars for its staff. The main objective for these seminars is to promote a supportive working environment by encouraging and enhancing staff development, skills and knowledge across a broad range of related subject areas, for example:

- Legal Aid Grants
- Costs Assessment
- Cybercrime
- Wills & Probate
- Trust Accounts
- Access applications under the Government Information (Public Access) Act (GIPAA)
- Lawcover

A particular focus of the Commissioner is for OLSC staff to attend various educational seminars featuring experts on subject matter relevant to the work they do. Examples of such seminars are:

- Defamation Law: Issues for the public sector
- Property Law – Law Society
- Regulating legal information as opposed to legal advice – Law Society
- Constitutional & Administrative Law Seminar – Crown Solicitor's Office
- In-House Government Lawyer's Forum
- Legal Tech Summit
- How to avoid #Me Too becoming# You Too

The Assistant Commissioner (Legal) and the Practice Compliance Manager attended a training session offered by the Law Society of NSW, Professional Conduct Advisory Panel (PCAP). PCAP helps lawyers who may be facing a complaint to understand the regulatory process and also assists them in interacting with regulators. The support lawyers receive from PCAP contributes to the efficient and expedient handling of complaints.

## Participation in the Elder Law Committee

An OLSC staff member continues to sit on the Law Society Elder Law Committee. Topics discussed this year included making consequential amendments to the *Succession Act 2006* following the passing of Commonwealth same sex marriage legislation; Elder Abuse; the role of an Attorney and access to documents such as the Principal's will; superannuation death benefits; reviewing the Australian Solicitors' Conduct Rules; and solicitors acting as Executors.

## Chapter 6

# INFORMATION SYSTEMS AND SERVICES

The Information Systems and Services Unit continues to offer improvements to the in-house systems to assist OLSC achieve and maintain its operational efficiencies as well as data sharing with its co-regulators and reporting to the Commissioner for Uniform Legal Services Regulation (Uniform Commissioner).

During 2017-2018, the Commissioner undertook a review of the Functional Retention and Disposal Authority (FRDA) under the provisions of the *State Records Act 1998* with a view to adopting a strategy to reduce the number of archived paper files based on their retention and disposal lifecycle. Having considered relevant provisions of the Legal Profession Uniform Law (LPUL) and the guidelines of the FRDA no recommendations were made for the disposal of any archive file held at Government Records Repository.

### Data sharing

As reported in 2016-2017, the OLSC played a significant role in the data sharing project run by the Uniform Commissioner during Stage 1. However, as the project progresses to Stage 2, the involvement of the OLSC is less as Stage 2 concerns the licensing and admission of lawyers, the main contributors to the project being the Legal Profession Admission Board, the Law Society of NSW and the NSW Bar Association.

During 2017-2018, the Commissioner complied with the Legal Services Council Guideline and Commissioner for Uniform Legal Services Regulation Guideline and Direction 01/2016 on Costs estimates by providing quarterly reports on complaints concerning disclosure of estimates. This Guideline and Direction promotes inter-jurisdictional consistency in the application of the Legal Profession Uniform Law and the Uniform Rules and keeps the Council informed of any matter concerning the interpretation of the requirement of section 174(1)(a) and (b) to provide an estimate.

Towards the end of 2016-2017, a dedicated team of OLSC staff involved in the management of the Inquiry Line reviewed the question wording and the number of questions of the Inquiry Line survey. To assist the OLSC in improving its service to meet the expectations and needs of callers to the OLSC Inquiry Line, a shorter and more simplified and open ended question Inquiry Line Survey was created.

### The year ahead

The Commissioner continues to strive to have a new case management system implemented to create a comprehensive single platform for OLSC staff. The new case management system will provide more informative reports to identify trends in the types of complaints received about lawyers to ensure that the OLSC continues to lead in enhancing the protection of consumers of legal services.

## Chapter 7

# ANNUAL STATISTICS

### Inquiry Line

In 2017-2018 financial year 6,431 calls were made to the OLSC Inquiry Line, an increase of 353 from the previous year.

#### P1 Legal matters raised in calls

	2017-2018	2016-2017	2015-2016
OLSC General query*	16.9	16.9	18.6
Family/ Defacto	13.2	13.1	14.9
Other Civil	12.7	12.7	10.0
Probate/ Wills/ Family provisions	11.7	12.3	12.1
Conveyancing	10.2	9.2	8.9
General Law/ Legal Profession query	7.9	10.3	5.7
Other	5.9	3.9	4.3
Personal Injuries	4.6	5.4	5.3
Criminal	4.2	4.2	5.5
Commercial/ Corporations	3.7	3.6	4.3
Workers Compensation	2.7	2.6	2.7
Land and Environment	1.7	1.8	2.3
Leases/ Mortgages/ Franchises	1.3	1.5	2.1
Victim's Compensation	1.2	0.7	1.2
Industrial Law	1.0	0.8	0.9
Immigration	0.8	0.8	0.8
Professional Negligence	0.3	0.4	0.6

\* OLSC General query: includes calls relating to Complaint enquiries, General enquiries, OLSC Website, Statistics & Publications.

## P2 Nature of phone enquiry

	2017-2018	2016-2017	2015-2016
OLSC Process*	13.4	14.4	13.9
Negligence	13.1	12.1	10.1
Communication	12.7	13.2	12.5
Overcharging	11.2	12.2	13.6
General Cost complaint/ Query	11.0	9.6	8.1
Ethical matters	10.1	9.6	10.5
Misleading Conduct	6.7	5.2	4.7
Delay	4.1	5.5	7.0
Instructions not followed	3.7	4.6	4.9
Costs Disclosure	3.0	3.5	4.3
Conflict of Interests	2.4	2.4	2.4
Document Transfer/ Liens	2.2	2.2	2.2
Trust Fund matters	1.7	1.6	1.5
Referral requests	1.4	1.1	1.6
Document Handling	1.0	0.7	0.7
Fraud (not Trust Fund)	0.9	0.9	0.8
Pressure to Settle	0.8	0.6	0.6
Supervision	0.3	0.1	0.2
Failure to honour Undertakings	0.2	0.1	0.1
Compliance matters	0.2	0.1	0.1
Advertising	0.1	0.1	0.2

\* *OLSC Process: includes calls relating to Complaint enquiries, General enquiries, OLSC Website, Statistics & Publications.*

### P3 Practitioners mentioned on inquiry line

	2017-2018	2016-2017	2015-2016
Solicitor	92.0	93.0	92.2
Other*	5.7	4.9	5.5
Barrister	1.6	1.8	2.0
Licensed Conveyancer	0.7	0.3	0.3

\* Other: includes calls relating to Judge/ Magistrate, Legal Firm, Executor, Multiple Type of Practitioner, Paralegal/ Clerk and Support staff.

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

	2017-2018	2016-2017	2015-2016
Client	64.8	66.5	66.6
Opposing Client	7.4	7.8	6.7
Friend/ Relative	7.3	6.0	8.3
Other*	4.2	3.7	3.4
Beneficiary/ Executor/ Administrator	4.1	3.7	2.9
Solicitor on own behalf	3.6	3.5	3.5
Previous Client	3.0	3.0	2.2
Unrepresented Client	2.5	3.0	3.2
Solicitor on another's behalf	1.4	1.6	1.7
Non-legal service provider	1.0	0.7	0.8
Barrister on own behalf	0.4	0.2	0.3
Government Agency	0.2	0.1	0.1
Student/ Educator	0.1	0.2	0.2
Barrister on another's behalf	0.1	0.1	0.1

\* Other: includes calls relating to Witnesses, Judges/ Judicial officers, Quasi-judicial officers, Professional Councils, Cost Assessors & non-identified source of calls.

## P5 Outcomes of calls to the inquiry line

	2017-2018	2016-2017	2015-2016
Caller indicated intention to send in complaint	27.0	26.9	25.6
Provided information about the OLSC*	20.9	23.9	19.1
Listened to caller's concerns	13.7	15.7	14.3
Recommended direct approach to lawyer about concerns	9.9	10.0	13.8
Provided information about the legal system	9.8	7.2	8.2
Provided referral for legal advice or other assistance	7.2	6.8	6.3
Provided complaint/ cost mediation form	4.7	4.2	7.0
Explained that concerns are outside jurisdiction of OLSC	4.0	3.0	2.9
Provided referral to the NSW Supreme Court Costs Assessment Scheme	1.4	0.8	0.9
Provided information about the OLSC and LPA to a legal practitioner	1.0	1.0	1.2
Other	0.3	0.4	0.6
Scheduled interview for caller	0.1	0.1	0.1
Provide cost mediation form	0.0	-	-
Conducted telephone mediation	0.0	0.0	0.0

\* *Provided information about the OLSC: includes calls relating to Complaint enquiries, General enquiries, OLSC Website, Statistics & Publications.*

## Written complaints

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

In 2017-2018 the OLSC **received** a total of 2,645 written complaints, an increase of 66 from the previous year. Of the total written complaints received, 1,245 were assessed as consumer matters and 1,386 as disciplinary matters. On receipt 14 complaints could not be classified as a consumer matter or disciplinary matter. Of those complaints assessed as within jurisdiction, 80% of those written complaints received were retained and handled by the OLSC. The remaining 20% were referred to the professional associations for handling.

The OLSC registered the **completion** of 2,601 written complaints, an increase of 268 from the previous year. Of the total written complaints completed, 267 complaints were resolved following informal resolution, 103 complaints were determined by OLSC/ Council and 2,082 complaints were closed. 149 complaints were closed on the basis OLSC had no power to deal with them and/ or were sent directly to NSW Police or regulators outside NSW. Of those complaints assessed as within jurisdiction, 77.5% of written complaints were completed by the OLSC. The professional associations completed the remaining 22.5%.

### W1 Legal matters giving rise to complaints received in 2017-2018

	Agency Handling Complaint				
	OLSC	Council	2017-2018*	2016-2017	2015-2016
Family/ Defacto	16.3	2.5	18.8	18.9	17.8
Other Civil	11.4	5.8	17.2	17.1	14.0
Criminal	8.1	2.2	10.3	8.1	6.6
Personal Injuries	9.0	0.9	9.9	12.1	11.8
Probate/ Family provisions	7.2	1.0	8.2	8.8	12.0
Conveyancing	7.1	1.0	8.1	8.8	10.1
Commercial/ Corporations	4.9	2.9	7.7	8.8	9.2
Wills/ Power of Attorney	4.8	0.6	5.5	3.4	-
Industrial Law	2.5	0.5	3.0	2.8	2.8
Leases/ Mortgages/ Franchises	1.9	0.4	2.3	2.0	1.4
Strata bodies/ Corporates	1.6	0.4	2.0	1.8	1.4
Immigration	0.8	1.2	2.0	1.5	0.7
Workers Compensation	1.8	0.1	1.9	2.2	2.0
Land and Environment	0.9	0.1	1.0	1.3	0.5
Professional Negligence	0.6	0.1	0.7	0.7	1.2
Building Law	0.5	0.1	0.6	0.4	-
Victim's Compensation	0.4	-	0.4	0.4	0.2
Insolvency	0.2	0.2	0.4	0.5	-
<b>TOTAL %</b>	<b>80.0</b>	<b>20.0</b>			

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

## W2 Nature of complaints received in 2017-2018

	Agency Handling Complaint				
	OLSC	Council	2017-2018*	2016-2017	2015-2016
Negligence	15.0	2.7	17.7	18.2	15.3
Communication	12.3	2.0	14.3	15.0	15.0
Overcharging	13.4	0.6	13.9	14.1	13.9
Misleading Conduct	6.2	2.8	9.1	7.7	10.3
Ethical matters	5.7	2.8	8.5	8.7	9.0
General Cost Complaint/ Query	5.0	1.0	6.0	5.0	4.3
Instructions not Followed	4.3	0.7	4.9	5.0	5.7
Trust Fund	2.2	2.6	4.8	4.2	4.8
Delay	4.2	0.4	4.7	4.0	4.7
Cost Disclosure	4.4	0.2	4.6	5.3	5.2
Conflict of Interest	1.9	0.8	2.7	2.8	2.6
Document Transfer/ Liens	2.2	0.2	2.4	3.2	2.8
Compliance matters	0.8	1.0	1.8	2.1	1.5
Document Handling	0.9	0.2	1.1	0.7	0.7
Fraud (Not Trust Fund)	0.8	0.3	1.1	1.3	1.0
Pressure to Settle	0.9	0.1	1.0	1.2	0.8
Capacity	0.6	0.1	0.7	0.6	1.2
Supervision	0.3	0.1	0.4	0.3	0.1
Undertakings	0.1	0.3	0.3	0.7	0.6
Advertising	0.1	0.1	0.2	0.1	0.3
<b>TOTAL %</b>	<b>81.3</b>	<b>19.0</b>			

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

### W3 Type and source of complaints received in 2017-2018

	Number of complaints						
	Solicitor*	Barrister	Other**	TOTAL	2017-2018	2016-2017	2015-2016
Client	1300	46	19	1365	51.6	43.8	28.1
Opposing Client	456	21	5	482	18.2	17.9	20.2
Other ***	124	11	1	136	5.1	4.7	5.5
Beneficiary/ Executor/ Administrator	126	2	0	128	4.8	4.0	5.0
Solicitor on another's behalf	105	2	3	110	4.2	5.6	4.3
Previous Client	96	1	0	97	3.7	9.9	21.7
Client's Friend/ Relative	80	0	1	81	3.1	2.9	4.1
Solicitor on own behalf	62	4	0	66	2.5	3.2	4.3
Law Society	47	0	0	47	1.8	3.6	1.8
Non-legal service provider	45	1	0	46	1.7	1.2	1.3
Unrepresented Client	32	2	0	34	1.3	0.6	0.7
Barrister on own behalf	22	2	0	24	0.9	1.2	1.1
Commissioner	9	0	0	9	0.3	0.6	1.4
Barrister on another's behalf	6	3	0	9	0.3	0.3	0.0
Bar Association	0	6	0	6	0.2	0.4	0.2
Cost Assessor	5	0	0	5	0.2	0.0	0.1
<b>TOTAL</b>	<b>2515</b>	<b>101</b>	<b>29</b>	<b>2645</b>			

\* Includes former solicitors, legal practitioners and legal practices.

\*\* Includes complaints against licenced conveyancers, non-legal service providers, deceased practitioners and practitioners that have been struck off.

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

#### W4 Age of complaints remaining open or suspended on 30 June 2018 and being handled by the OLSC

Year opened	Open at 30 June 2018	Open at 30 June 2017	Open at 30 June 2016
2017-2018	675		
2016-2017	73	634	
2015-2016	10	53	557
2014-2015	7	20	53
2013-2014	12	16	28
2012-2013	3	12	19
2011-2012	0	2	11
2010-2011	1	2	5
2009-2010	0	2	3
1994-2009	0	0	0
<b>TOTAL</b>	<b>781</b>	<b>741</b>	<b>676</b>

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

#### W5 Average time taken to finalise a complaint at the OLSC of complaints handled in 2017-2018

	Days*
Average time to complete complaints received and completed/ resolved in 2017-2018	86.4
Average time to complete complaints received in any year but completed/ resolved in 2017-2018	167.0
Average time taken to dismiss complaints received in 2017-2018	71.3
Average time to dismiss complaints received in any year but dismissed in 2017-2018	126.8

\* Averages rounded to 1 decimal point

## W6 All Complaints finalised in 2017-2018

### All OLSC Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	262	3	0	265
<b>Subtotal resolved at the OLSC</b>	<b>262</b>	<b>3</b>	<b>0</b>	<b>265</b>

### ALL OLSC Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Compensation order	1	0	0	1
Disciplinary action: Reprimand	3	0	0	3
Determination: Caution & Apology	13	0	0	13
NCAT disciplinary proceedings	3	0	0	3
<b>Subtotal determined by OLSC</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>20</b>
Withdrawal of a complaint at OLSC	100	1	1	102
Complaints dismissed by OLSC	3	1	0	4
Misconceived/ Lacking in substance	643	18	3	664
Time requirement not waived	90	3	2	95
Complainant No/ Inadequate response to request info	169	6	4	179
Duplicate complaint	9	0	0	9
Closed Civil proceedings on foot	22	0	0	22
Closed No further investigation except CM	269	12	1	282
Closed in Public interest	37	0	1	38
Not Resolved after informal resolution	211	1	1	213
Investigation suspended pending court proceedings	4	0	0	4
Costs Recovery at OLSC	4	0	0	4
<b>Subtotal closed by OLSC</b>	<b>1561</b>	<b>42</b>	<b>13</b>	<b>1616</b>
<b>Total OLSC Complaints Completed</b>	<b>1843</b>	<b>45</b>	<b>13</b>	<b>1901</b>

### All Non Jurisdictional Complaints

	Solicitor*	Barrister	Other**	TOTAL
Closed No power to investigate	119	7	6	132
Refer to NSW Police or other	15	0	1	16
Refer to other States	1	0	0	1
<b>Total Non-Jurisdictional Complaints</b>	<b>135</b>	<b>7</b>	<b>7</b>	<b>149</b>

### All Council Complaints Resolved

	Solicitor*	Barrister	Other**	TOTAL
Complaints resolved informal resolution	2	0	0	2
<b>Subtotal resolved at Council</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>2</b>

## ALL Council Complaints Closed

	Solicitor*	Barrister	Other**	TOTAL
Disciplinary action: Reprimand	10	2	1	13
Determination: Caution & Apology	12	9	1	22
NCAT disciplinary proceedings	44	4	0	48
<b>Subtotal determined by Council</b>	<b>66</b>	<b>15</b>	<b>2</b>	<b>83</b>
Withdrawal of a complaint at Council	96	5	1	102
Complaints dismissed by Council	3	0	0	3
Misconceived/ Lacking in substance	121	19	2	142
Time requirement not waived	10	4	0	14
Complainant No/ Inadequate response to request info	31	2	0	33
Duplicate complaint	15	0	0	15
Closed No further investigation except CM	107	18	0	125
Closed in Public interest	14	10	2	26
No Further action at Council	5	0	1	6
<b>Subtotal closed by Council</b>	<b>402</b>	<b>58</b>	<b>6</b>	<b>466</b>
<b>Total Council Complaints Completed</b>	<b>470</b>	<b>73</b>	<b>8</b>	<b>551</b>
<b>Total Finalised by OLSC</b>	<b>1843</b>	<b>45</b>	<b>13</b>	<b>1901</b>
<b>Total Non-Jurisdictional Complaints</b>	<b>135</b>	<b>7</b>	<b>7</b>	<b>149</b>
<b>Total Finalised by Council</b>	<b>470</b>	<b>73</b>	<b>8</b>	<b>551</b>
<b>TOTAL</b>	<b>2448</b>	<b>125</b>	<b>28</b>	<b>2601</b>

\* Includes former solicitors, legal practitioners and legal practices.

\*\* Other includes licensed conveyancers, non-legal service providers, deceased practitioners and practitioners who have been struck off.

## W7 Duration of file handling at the OLSC

Time taken for complaints received in all years and finalised in 2017-2018

### Percentage of files closed within following periods\*

	2017-2018	2016-2017	2015-2016
0-30 days	20.3	25.3	37.7
1-3 months	35.4	36.1	32.2
3-6 months	23.5	16.8	17.6
6-9 months	10.4	7.4	5.5
9-12 months	4.4	3.1	2.4
Over 12 months	6.1	11.4	4.6

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

## R2 Reviews in progress and finalised in 2017-2018 – received all years

	Solicitor	Barrister	Others	TOTAL	Percentage
<b>Reviews in progress</b>					
In progress at OLSC	1	0	0	1	0.3
Internal review application under LPUL	32	6	0	38	12.3
<b>Total remaining open</b>	<b>33</b>	<b>6</b>	<b>0</b>	<b>39</b>	<b>12.6</b>
<b>Reviews completed</b>					
Dismissal confirmed	2	1	0	3	1.0
Discretion declined for review under LPUL	244	17	5	266	86.1
Decision to refer back to maker under LPUL	1	0	0	1	0.3
<b>Total Completed</b>	<b>247</b>	<b>18</b>	<b>5</b>	<b>270</b>	<b>87.4</b>
<b>Total Handled</b>	<b>280</b>	<b>24</b>	<b>5</b>	<b>309</b>	<b>100</b>

## NSW Civil and Administrative Tribunal

For matters filed and disposed of by NCAT in 2017-2018 refer to NCAT's annual report.

## Chapter 8

# FINANCIAL PERFORMANCE 2017-2018

The OLSC operates within the organisational framework of the NSW Department of Justice. The Office maintains a recurrent recoupment budget and receives operational funding from the Public Purpose Fund.

The OLSC regularly monitored its financial performance during 2017-2018 to achieve a satisfactory budget outcome at close of the reporting year. We ensured containment of our operating costs while meeting all of our financial commitments.

Employee related payments exceeded budgetary predictions during 2017-2018 but were offset by considerable savings made in relation to other operating expenditure, where our careful monitoring of monthly expenditure enabled early detection and correction of negative budget trends.

Some items of operating expenditure were beyond our organisational control. We had no control over the Department's allocation of shared expenses in relation to telephone/data expenses, or the Department's year-end financial adjustments and their impact on our overall budget performance result.

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

### Special PPF Funding for CTP Insurance Fraud Investigations

In 2016-2017, the Legal Services Commissioner sought approval to create temporary legal and administrative roles to assist with compulsory third party (CTP) fraud investigations. A request for funding of the required roles by the Public Purpose Fund was accepted and the OLSC received an allocation of \$388k to meet related salary and on-costs expenses. During 2017-18 the first investigative role commenced for a period of 6 months. Further CTP related investigative staff will be engaged over the coming financial year. The expenditure and balance of the related funding is detailed in the accompanying financial statement and supporting notes.

### Human Resources

A total of 18 variations in OLSC role occupancy were created by staff movements during the financial year. Most role vacancies were filled by expeditious open merit recruitment. Some recruitment attempts were unsuccessful, resulting in certain key roles remaining temporarily unfilled. To address the resultant, unavoidable staffing shortfall, the Legal Services Commissioner appointed casual staff to act in some vacant roles on a temporary basis.

Ongoing vacancies are the subject of upcoming recruitment with the intention of filling most outstanding vacancies during the new financial year.

During the year, the Department's Digital Technology Services (DTS) sought the permission of the Legal Services Commissioner to modify part of our CBD office space, thereby providing office accommodation for four members of DTS staff. The Commissioner agreed to the project, and building works were carried out during the financial year, at no cost to the OLSC. This shared office arrangement will bring a proportion of financial benefit to the OLSC when shared operating expenditure such as rent, electricity and telecommunications/data expenditure is apportioned.

The addition of DTS staff to our workplace does not alter the OLSC Establishment.

## FINANCIAL STATEMENT 2017-2018

	Budget	Actual	Variance	Notes
	\$	\$	\$	
Public Purpose Fund Recoupments (Budget)	(4,030,639)	(3,934,058)	(96,581)	
Other Revenue	-	-	-	
<b>TOTAL REVENUE</b>	<b>(4,030,639)</b>	<b>(3,934,058)</b>	<b>(96,581)</b>	
Salaries & Wages	2,431,027	2,300,964	130,062	1
Allowances	1,416	60,291	(58,875)	2
Leave Entitlements ( <i>Recreation Leave, Annual Leave Loading &amp; LSL</i> )	284,413	318,993	(34,580)	3
Workers Compensation	-	18,207	(18,207)	4
Payroll Tax	158,428	162,222	(3,793)	5
Fringe Benefits Tax	1,075	3,960	(2,885)	6
Superannuation	198,723	240,401	(41,678)	7
<b>EMPLOYEE RELATED PAYMENTS Excl Crown Liabilities</b>	<b>3,075,081</b>	<b>3,105,037</b>	<b>(29,956)</b>	
Advertising & Publicity	4,603	-	4,603	
Bank Charges	60	-	60	
Contractors	10,000	-	10,000	
Electricity & Gas	16,474	17,742	(1,267)	
Fees	169,423	86,295	83,128	8
Freight & Cartage	18	-	18	
Insurance	1,301	971	330	
Interpreters & Translations	6,574	2,952	3,622	
Motor Vehicles	2,159	-	2,159	
Postal Expenses	22,670	24,331	(1,661)	
Printing	23,435	12,131	11,304	
Publications	6,226	9,209	(2,983)	9
Rates & Outgoings	54,180	42,521	11,659	
Rent	328,682	294,982	33,699	
Staff Expenses	20,866	15,284	5,582	
Stores & Stationery	20,407	8,859	11,548	
Telephone	13,153	29,906	(16,753)	10
Travel	15,350	6,516	8,834	
Transcription Services	-	9	(9)	
<b>OTHER OPERATING EXPENSES</b>	<b>715,581</b>	<b>551,709</b>	<b>163,872</b>	
Maintenance Contracts	143,089	131,991	11,098	11
Repairs and Maintenance	306	-	306	

## FINANCIAL STATEMENT 2017-2018 *continued*

	Budget	Spent	Variance	Notes
	\$	\$	\$	
<b>MAINTENANCE</b>	<b>143,395</b>	<b>131,991</b>	<b>11,404</b>	
VSS - 2000 Act Compensation	-	(882)	882	
<b>OTHER SERVICES PROTECTED</b>	<b>-</b>	<b>(882)</b>	<b>882</b>	
<b>TOTAL EXPENSES Excl Crown Liabilities &amp; Depreciation</b>	<b>3,934,058</b>	<b>3,787,855</b>	<b>146,202</b>	
<b>Net Cost of Services Excl Crown Liabilities &amp; Depreciation</b>	<b>(96,582)</b>	<b>(146,203)</b>	<b>49,621</b>	
<b>Add Non Cash Items:</b>				
Crown Liabilities ( <i>LSL Liability Assumed by Crown</i> )	73,765	6,855	66,910	12
Depreciation & Amortisation	369,668	23,285	346,383	13
<b>Net Cost of Services Inc Crown Liabilities &amp; Depreciation</b>	<b>346,852</b>	<b>(116,062)</b>	<b>462,914</b>	

## CTP Investigation Funding 2017-2018

	Allocation	Spent	Variance	Notes
	\$	\$	\$	
CTP Investigations	388,000	76,602	311,398	14
<b>TOTAL CAPITAL EXPENDITURE</b>	<b>388,000</b>	<b>76,602</b>	<b>311,398</b>	

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## NOTES SUPPORTING THE 2017-2018 FINANCIAL STATEMENT

### Employee Related Payments

- 1. Salaries & Wages:** The OLSC's budget for *Salaries & Wages* contains provision for annual salary payments to employees assigned to ongoing, temporary and casual roles in the OLSC establishment.
- 2. Allowances:** The OLSC's *Allowances* budget provides for expenditure including higher duties allowance, and payments to OLSC staff performing the First Aid Officer role. During 2017-2018 the *Allowances* budget was also the source of all loading payments made to casual staff on top of their normal hourly rate to compensate for non-receipt of benefits such as paid sick leave and paid public holidays. Provision for casual loading payments was incorporated into the *Salaries and Wages* budget for 2017-2018, however coding changes within the Department resulted in loading payments being made from the *Allowances* budget, for which there was no provision, contributing to the resultant budget variance.
- 3. Leave Entitlements:** This expenditure item includes expense accounts covering monthly provision for long service leave liability as well as payments made in relation to employees' annual leave loading entitlements. Sick leave is also an expense paid from the *Leave Entitlements* budget.
- 4. Workers Compensation:** The *Workers Compensation* budget provides for payment of workers compensation insurance premiums for OLSC staff. No funding for payment of these costs was allocated during 2017-2018 budget preparations. The negative variance highlights this funding deficiency. Budget preparations ensure adequate allocation of funding for this item during the 2018-2019 financial year.
- 5. Payroll Tax:** Payroll tax is payable to the Office of State Revenue on salary related payments calculated by the Department's Human Resources and Financial Services.
- 6. Fringe Benefits Tax:** The Department of Justice is responsible for the annual preparation and submission of a consolidated Fringe Benefits Tax return to the Australian Taxation Office. The OLSC's FBT variance represents Fringe Benefits Tax incurred in relation to parking space arrangements which form part of the Office's CBD lease.

- 7. Superannuation:** The OLSC's Superannuation budget provides for superannuation entitlements of OLSC employees. The Superannuation budget variance reflects year-end adjustments the Department prepares as part of year-end procedures required by Treasury.

### Other Operating Expenses

- 8. Fees:** The OLSC's *Fees* budget maintains funds for various types of expenditure including legal fees, records archiving costs and secure destruction of documents. In 2017-2018 the OLSC paid several large legal bills in proceedings before the Tribunal and the Courts. The *Fees* budget variance includes credit adjustments that were made to the OLSC's legal fees account to offset income. During the year the OLSC recovered Commissioner's costs totalling \$103,629.
- 9. Publications:** The OLSC's *Publications* budget includes provision for the purchase of books, newspapers and subscription fees for online legislation resources. The *Publications* budget variance reflects inadequate provision to meet annual requirements. This underfunding has been addressed by budgetary realignment as a part of budget preparations for 2018-2019.
- 10. Telephone:** The OLSC's *Telephone* budget includes provision for monthly telephone rental expenses and metered call costs in addition to data service charges in connection with the fibre communications network. The costs and charges are processed by the Department and apportioned to cost centres. The *Telephone* budget's negative variance reflects an unbudgeted increase in costs apportioned to the OLSC during 2017-2018.
- 11. Maintenance Contracts:** The OLSC's budget for *Maintenance Contracts* includes provision for maintenance support costs associated with the OLSC's Complaints Tracking System (\$30,600 pa payable annually to the developer QA Plus Ltd) and the OLSC's Legal Practice Management & Audit System (\$99,660 pa payable monthly to the Department's Digital and Technology Services Branch (DTS) through service level agreement).

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## Non Cash Items

### 12. Crown Liabilities (LSL Liability Assumed by Crown):

*Crown Liabilities* is a non-cash item and as such does not form part of the OLSC's recoupment figure from the Public Purpose Fund. *The Crown Liability for LSL* budget reflects the Crown's assumption of the Department's long service leave liability for Departmental officers. The Department is obliged to make this provision as part of Treasury requirements.

### 13. Depreciation & Amortisation: *Depreciation* expense is a non-cash item and does not form part of the OLSC's recoupment figure from the Public Purpose Fund. The *Depreciation* budget variance results from adjustments prepared by the Department to take into account the amortisation expense of OLSC's intangible assets. The Department is obliged to make these adjustments as part of Treasury requirements.

### 14. CTP Investigation Funding: The *CTP Investigation Funding* table summarises expenditure during 2017-2018 of a \$388k allocation from the Public Purpose Fund. This funding was granted to accommodate salary and on-costs for legal and administrative roles to conduct investigations in relation to Compulsory Third Party insurance fraud.

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