

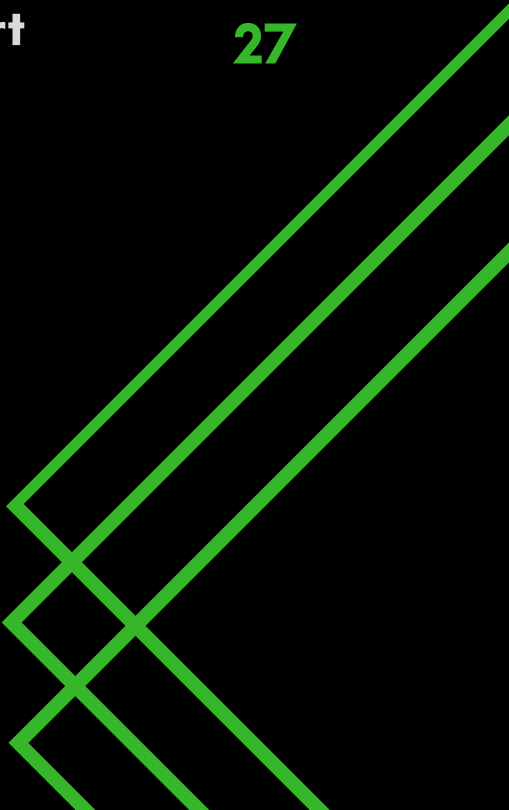


2023 ANNUAL REPORT

**Legal Profession
Conduct Commissioner**

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COMMISSIONER'S REPORT

In accordance with section 90A of the *Legal Practitioners Act 1981*, I present to the Attorney-General and the Chief Justice the ninth annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2023.

Overview

This report relates to the ninth year of the operation of my Office; a year of transition as the inaugural Commissioner retired on 31 July 2022 and I commenced in the role on 1 August 2022.

When my Office was created as the successor to the Legal Practitioners Conduct Board it received all of the open files of the Board. The finalisation of the last of those Board files has been a challenging task for a number of reasons, not the least of which has been ongoing litigation between complainants and practitioners and, in one instance, prolonged proceedings before the Legal Practitioners Disciplinary Tribunal. I am pleased to say that the last of those matters have now been finalised.

I am equally pleased to say that a drive to reduce the number of unresolved complaints received during the early years of my office has also met with considerable success with headway being made into aged complaints. When a new organisation takes on an historical file load, there will always be competing priorities. Where a backlog of complaints has developed but staffing levels remain the same, or reduce, it will inevitably be difficult to prevent the backlog growing let alone to take steps to reduce it. Yet, it would be pointless to focus on finalising aged complaints only for new complaints to age unreasonably; equally, aged files cannot simply be ignored or closed because they are "too old". Over the last 12 months, my staff and I have struck an appropriate balance and total open complaints have fallen. My Office will continue to prioritise the resolution of aged complaints without losing sight of the need to address new complaints in a timely manner.

Receiving complaints, conducting investigations and taking disciplinary action are the statutory functions of my Office. Performing an educational role is not an explicit statutory function. Nevertheless, my Office has historically engaged with the profession providing continuing professional development (**CPD**) seminars intended to inform the profession of the issues that lead to complaints being made. I consider it an important part of my functions to engage with the profession and with those on the cusp of joining the profession, to inform them of conduct I consider unsatisfactory and on ways of dealing with or avoiding complaints and misconduct findings. If, through the provision of CPDs, the number of complaints or disciplinary actions can be reduced then the profession and the South Australian public will be well served.

Over the last 12 months, I have sought to expand upon the delivery of CPDs and other speaking engagements delivered by my Office and to broaden my and my staff's engagement with the profession and with South Australia's three university Law Schools. I, and my staff, have delivered more than a dozen seminars through the Law Society, the Bar Association, professional CPD providers, private Firms and local practitioner groups. I have participated in a recorded interview for the UniSA Law School and have engaged with the Flinders University's Graduate Diploma in Legal Practice program (run by the Leo Cussen Centre for

Law). I also hope to extend my engagement to include the law students at the University of Adelaide in the coming year.

Also, this past year, I have had the great pleasure of seeing launched *Speak safely*, a confidential online portal for the reporting of sexual harassment, bullying and discrimination. This initiative, commenced under Commissioner May, fulfils a recommendation in the Equal Opportunity Commissioner's *Report of the Review of Harassment in the South Australian Legal Profession* for the establishment of an online portal for receiving anonymous informal reports. It is now my task to ensure that everyone in the legal industry (practitioners and non-practitioners alike) and, as far as reasonably practicable, those engaging with the profession are aware of and have trust in *Speak safely* as a means for bringing about cultural change in the legal profession.

Purpose

The Legal Profession Conduct Commissioner's role is to regulate the professional conduct of all lawyers in South Australia as well as interstate and Australian-registered foreign lawyers who practise in South Australia and thereby to maintain the integrity of and public confidence in the legal profession in South Australia.

Vision

The Legal Profession Conduct Commissioner strives to be an independent, robust and respected regulator playing a leadership role in ensuring an ethical, accessible and responsive legal profession in South Australia.

Functions

My functions are to receive complaints against legal practitioners (complaints about practitioner conduct and complaints of overcharging by practitioners), to determine which complaints warrant investigation, to investigate those complaints, and to determine whether, in any particular case, there has been misconduct on the part of, and/or overcharging by, the practitioner who is the subject of a complaint.

If I find that there has been misconduct on the part of a practitioner, then I can take disciplinary action against the practitioner myself by exercising one or more of a range of disciplinary powers at my disposal. If I determine that a practitioner's misconduct is particularly serious, such that it warrants a sanction beyond my powers (for example, conduct that in my view warrants the practitioner's name being struck off the Roll), I commence disciplinary proceedings in either the Legal Practitioners Disciplinary Tribunal or the Supreme Court.

If I find that there is overcharging by a practitioner then, in some circumstances, I can make a binding determination as to the amount of the overcharging and, in other circumstances, I can make a (non-binding) recommendation as to what the practitioner's fees should have been.

Complaint numbers

Complaint numbers are set out in detail later in this report.

In summary, in the year to 30 June 2023:

- my Office received 315 complaints;
- the fee was paid for 142 of them and subsequently refunded on 10;
- a reduced fee was paid for 20 of them and subsequently refunded on 1;
- the fee was waived for 134 of them;
- the fee was not required, not paid, the complaint was withdrawn on 19 occasions; and
- In addition, I commenced 35 own initiative investigations.

Total complaint numbers (including own initiative investigations) received by my Office peaked in 2016/17 at 632 complaints. That number has steadily declined to a total 380 complaints received (2021/22) and now 350 this reporting year.

In November 2020, the fee for lodging a written complaint was introduced. The introduction of the fee to lodge a complaint was intended to reduce the number of complaints made by people who were not serious about pursuing a complaint. Despite the introduction of the fee, a large number of complaints continue to be closed under section 77C (ie without considering the merits of the complaint because, for example, the complaint is “vexatious, misconceived, frivolous or lacking in substance”, or the complainant would not engage with the investigator), or with findings of no misconduct. Although these complaints are disposed of comparatively expeditiously, the sheer number of complaints means that a not insignificant amount of the resources of my Office are applied to dealing with what are ultimately unproven or unmeritorious allegations about legal practitioners. This, quite obviously, impacts on the time taken to determine genuine and reasonable complaints and investigations.

In reviewing many of the complaints I have closed under section 77C, I noticed that there is a small but persistent set of complainants who, despite previous determinations in respect of their complaints, continue to lodge complaints with my Office. The majority of these complainants have, under the fee policy introduced by Commission May, had the requirement to pay the fee waived. In March 2023, I implemented a second, reduced fee where a complainant was making subsequent complaints which largely replicated previous, determined complaints and where no new reliable evidence was provided.

It is difficult to assess whether the introduction of the original fee had any impact on the total number of complaints received, given the five year decline in complaint numbers that preceded the fee’s introduction. The breadth of the waiver applied to the requirement to pay a fee, to ensure equitable access, meant that only a relatively small number of potential complainants who might balk at paying the fee were captured. I cannot yet assess whether my introduction of the reduced fee has had any impact on complaint numbers.

Although the introduction of the original fee and now the reduced fee has resulted in some additional, primarily administrative, work in determining whether a fee is applicable in a specific case or whether it ought to be waived based on general principles or the specific circumstances of the complaint/complainant, I am hopeful that the introduction of the fees will reduce the number of frivolous or vexatious complaints.

The amount of \$13,680 (after deducting GST) collected in fees has been remitted to the Fidelity Fund.

Determination numbers

During the reporting period, Commissioner May and I made 426 determinations including 112 that arise from complaints made before 1 January 2020. By way of comparison, 414 determinations were made during 2021/22 year. Importantly, 76 more complaints were determined than commenced during the reporting period.

Sexual Harassment and Workplace Bullying

As indicated above, *Speak safely* has been launched.

Historically, as demonstrated by the Equal Opportunity Commissioner's report, bullying, discrimination and harassment (**BDH**) have been significantly under reported by people working in the legal industry. The introduction of *Speak safely* has seen a modest increase in reporting of BDH to my Office; growing awareness of and trust in *Speak safely* will take time. It is too soon to draw any conclusions, therefore, as to the long term impact the introduction of *Speak safely* may have.

I am hopeful that my Office's commitment to supporting those reporting BDH, in conjunction with the Law Society of South Australia, will garner the support and trust of those working in the legal industry and that *Speak safely* will play a significant part in driving cultural change in the profession.

Staff

I would like to acknowledge the outstanding job all my staff do in what are, on occasions, very difficult circumstances. Despite a reduction in staff numbers in recent years, output has not reduced. The work this Office does is important, both from the profession's perspective and also from that of the public. In last year's report I said that *our decisions and processes are not always welcomed, either by the complainant or by the practitioner*. At that time I was new to the position of Commissioner and my understanding of the extent and nature of the unwelcome responses my Office receives from unhappy complainants and legal practitioners alike was limited. I am now better versed in the nature of those responses.

A good many of the complaints my Office receives arise from emotionally charged engagements with the legal profession and our adversarial court systems. Complainants regularly complain to my Office seeking remedies that are outside my jurisdiction. Practitioners will, on occasion, demand that I curtail or cease an investigation they consider unwarranted. Even a measured but unfavourable response from my Office may generate significant ill will. Nonetheless, my staff continue to discharge their responsibilities in an exemplary, professional way. I am very grateful for their hard work and dedicated service.

Financial arrangements

My Office is funded from the Fidelity Fund, which is established under the Act and maintained by the Law Society.

At the end of this report are my Office's financial statements for the reporting period, which have been prepared by my Office with the assistance of UHY Sothertons Chartered Accountants, and then audited by UHY Sothertons.

The Attorney-General approved a budget for the reporting period of \$3,477,979 including \$103,128 GST. My Office received payments totalling \$3,458,643 including \$103,128 GST from the Fidelity Fund – with that figure being determined by:

- deducting from the approved budget \$5,000 on account of the interest that Commissioner May anticipated he would earn on those funds (in fact, \$49,041 in interest was earned on those funds); and
- deducting from the approved budget the sum of \$14,336 as the final underspend for 2021FY.

The financial statements for the reporting period show that the total income during the reporting period was \$3,404,556 comprising:

- \$3,355,515 from the Fidelity Fund; and
- \$49,041 earned in interest.

The financial statements for the reporting period show that expenditure during the reporting period was \$3,219,311. After adding back capitalised costs for capital expenditure (ie \$27,251) and deducting non-cash components (ie depreciation of \$57,245), actual cash expenditure was \$3,189,317.

Accordingly, the net result for the reporting period was:

- an underspend by reference to the approved budget of \$229,574; and
- a total operating underspend (by reference to income received in relation to the reporting period) of \$185,244.

As is always the case, the main expenditure of my Office takes the form of salaries for my staff, rent for our office premises, and counsel fees. Counsel fees are the main variable in relation to budget. The overall reduction in the number of proceedings in the Tribunal has, generally, seen a drop in the fees for Counsel incurred by my Office (though any single contested matter can result in significant fees being incurred). In addition, and in a change to the way litigious matters proceeded under my predecessor, I will undertake the Counsel role in litigious matters where I consider it appropriate thereby further reducing likely Counsel fees.

I note that on occasion I will be awarded legal costs in proceedings before the Tribunal and the Supreme Court. Any such award of costs are intended to compensate me for the costs I incur in such litigation. Moneys I recover are returned to the Fidelity Fund. I also receive moneys in the form of fines imposed on practitioners either by me or by the Tribunal or the Supreme Court. Moneys received on account of fines are forwarded to the Treasurer for General Revenue. In the reporting period, in various proceedings, Commissioner May and I recovered \$10,000 in costs awarded and received \$24,950 on account of fines.

For the sake of comparison, and having regard to the reduction in complaint numbers for the year and my lesser staff numbers, I note that the approved budget for 2023/2024 is \$3,635,445 including \$105,025 GST.

Register of Disciplinary Action

Section 89C of the *Legal Practitioners Act 1981* requires the Legal Profession Conduct Commissioner to maintain a public register of practitioners who, after 1 July 2014, are subject to certain types of disciplinary action.

A finding of professional misconduct against a practitioner (whether made by the Supreme Court, the Tribunal, or by me) **must** be displayed on the Register. A finding of unsatisfactory professional conduct **may** be displayed on the Register. The Register shows what order(s) was made – such as whether the practitioner was struck off, suspended from practice, reprimanded, fined or similar. Links to relevant decisions of the Tribunal and to judgements of the Supreme Court are also provided.

The Register is available on my website at www.lpcc.sa.gov.au. I have no doubt that it is a useful resource for members of the public, and hopefully for the profession too.

To finish my report, I would like particularly to thank the Attorney-General for his ongoing support of my Office.



Anthony Keane

Legal Profession Conduct Commissioner

30 October 2023



PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

Staff Members - as at 30 June 2023

Title	Name	Commenced (with Board / Commissioner)
Commissioner	Anthony Keane	August 2022
Solicitor (costs)	Rebecca Birchall	September 2005
Solicitor / Conciliator	Paul Blackmore	April 2013
Solicitor	Philippa Branson	March 2011
Solicitor	Kathryn Caird	August 2012
Solicitor	Mark Heitmann	October 2018
Solicitor	Sharon Hurren	April 2007
Solicitor	John Keen	January 2017
Solicitor	Nadine Lambert	June 2007
Solicitor	Debra Miels	October 2010
Solicitor	Priya Subramaniam	October 2018
Conciliator	Amelia Taeuber	March 2010
Systems Manager	Bart Fabrizio	March 2010
Paralegal	Yvette Manocchio	October 1997
Admin Officer	Robyn Hurni	November 2011
Admin Officer	Rose Kilgus	June 2016
Admin Officer	Lee Moulden	August 2012
Admin Officer	Pat Porter	August 2006
Admin Officer	Zali Slattery	February 2022



INVESTIGATIONS BY THE COMMISSIONER

Complaint / Investigation process

The Legal Profession Conduct Commissioner is obliged to investigate any valid complaint they receive about a practitioner, and must investigate a practitioner's conduct if they are directed to do so by the Attorney-General or the Law Society. Even without a complaint or a direction, the Legal Profession Conduct Commissioner may decide to make an "Own Initiative Investigation" into a practitioner's conduct if they have reasonable cause to suspect misconduct. I will make an Own Initiative Investigation following a report from the Law Society under section 14AB, or a referral from the Judiciary or the Police, as well as in other circumstances in which I receive sufficient information to determine that I have reasonable cause to suspect misconduct.

To constitute a valid complaint, a complaint must be in writing, and sufficiently detailed (in terms of describing the alleged conduct the subject of the complaint) so that the Legal Profession Conduct Commissioner can decide whether to investigate. The Legal Profession Conduct Commissioner cannot treat an anonymous complaint as a formal complaint – any complaint is required by the Act to identify the complainant.¹ I will only investigate a complaint if the issues raised in the complaint can properly and fairly be put to the practitioner for a response. In some cases, further information will be required from a complainant before a decision can be made as to whether the complaint is a valid complaint and whether it warrants investigation.

Section 77B(3c) provides that a complaint must be made to the Legal Profession Conduct Commissioner within 3 years of the conduct complained of, or such longer period as the Legal Profession Conduct Commissioner may allow.

Although the Act provides that complaints meeting the requirements of section 77B(3c) must be investigated, section 77C gives the Legal Profession Conduct Commissioner the capacity to close a complaint at any stage without having to (further) consider its merits. Some of the circumstances in which I may do so are where:

- the complaint is vexatious, misconceived, frivolous or lacking in substance; or
- the subject matter of the complaint has been or is already being investigated, whether by me or by another authority; or
- the subject matter of the complaint is the subject of civil proceedings (and there is no disciplinary matter involved); or
- I am satisfied that it is otherwise in the public interest to close the complaint.

¹ For this reason I speak of reports when referencing *Speak safely* as, generally, the person reporting practitioner conduct via the portal wishes to remain anonymous.

The Legal Profession Conduct Commissioner has wide powers when investigating a complaint – with the most commonly used being the power to:

- require a practitioner to produce any specified document, to provide written information, or to otherwise assist in, or cooperate with, the investigation; and
- require any other person (which may include a non-practitioner) to allow access to documents relating to the affairs of a practitioner.

Despite having a professional obligation to be open and frank in their dealings with my Office, and to respond within a reasonable time to any requirement from my Office for comment or information, not all practitioners are as prompt in responding to my Office as they should be. A small few fail to engage with my Office at all.

During the reporting period, I issued 3 formal notices to practitioners under clause 4(1) of Schedule 4 requiring the production of documents and the provision of information as a result of their failure to respond. Two of those notices were complied with.

Once an investigation is complete, the Legal Profession Conduct Commissioner then makes a determination in relation to the practitioner's conduct. The Legal Profession Conduct Commissioner can decide either that:

- there is no misconduct (or no or insufficient evidence of misconduct) on the part of the practitioner; or
- they are satisfied that there is evidence of misconduct on the part of the practitioner.

If satisfied that there is evidence of misconduct:

- the Legal Profession Conduct Commissioner can take disciplinary action against the practitioner myself under section 77J – eg by reprimanding the practitioner, ordering the practitioner to apologise for the misconduct, ordering the practitioner to pay a fine, imposing conditions on the practitioner's practising certificate, suspending the practitioner's practising certificate etc – although sometimes this can only do so with the consent of the practitioner; or
- if the Legal Profession Conduct Commissioner considers that they cannot adequately deal with the misconduct under section 77J, then they must lay a charge against the practitioner before the Tribunal (unless they decide that it is not in the public interest to do so).

If I take disciplinary action myself under section 77J, then I am conscious of the need for parity and consistency with other similar decisions.

In some limited circumstances, if the Legal Profession Conduct Commissioner takes the view that a practitioner should be struck off the Roll, then they may be able to institute proceedings directly in the Supreme Court without first having to lay a charge before the Tribunal.

Number of formal complaints

The following number of complaints have been received over the last 9 years:

	Complaints (including intake and pre-intake files)	Intake files	Pre-intake files
2014/15	505		
2015/16	616		
2016/17	632		
2017/18	551	57	
2018/19	525	45	
2019/20	471	69	
2020/21	409	56	20
2021/22	380	33	24
2022/23	350	36	17

For these purposes, a “complaint” comprises the following:

- a complaint made by the client of the practitioner complained of;
- a complaint made by a third party (see immediately below); and
- an Own Initiative Investigation.

A third party complaint is one where the complaint is made by someone other than the practitioner’s client. Common examples are:

- a person complains about the conduct of the practitioner who is acting for the person’s spouse in their family law proceedings; and
- a beneficiary of a deceased estate complains about the conduct of the practitioner who is acting for the executor of that estate.

A pre-intake file is one in which the complainant hasn’t yet paid the necessary fee to lodge the complaint, and where a fee waiver application hasn’t yet been made or is still to be decided. An intake file is a file that had passed the pre-intake stage but had not been converted to new investigation files by the end of the reporting period.

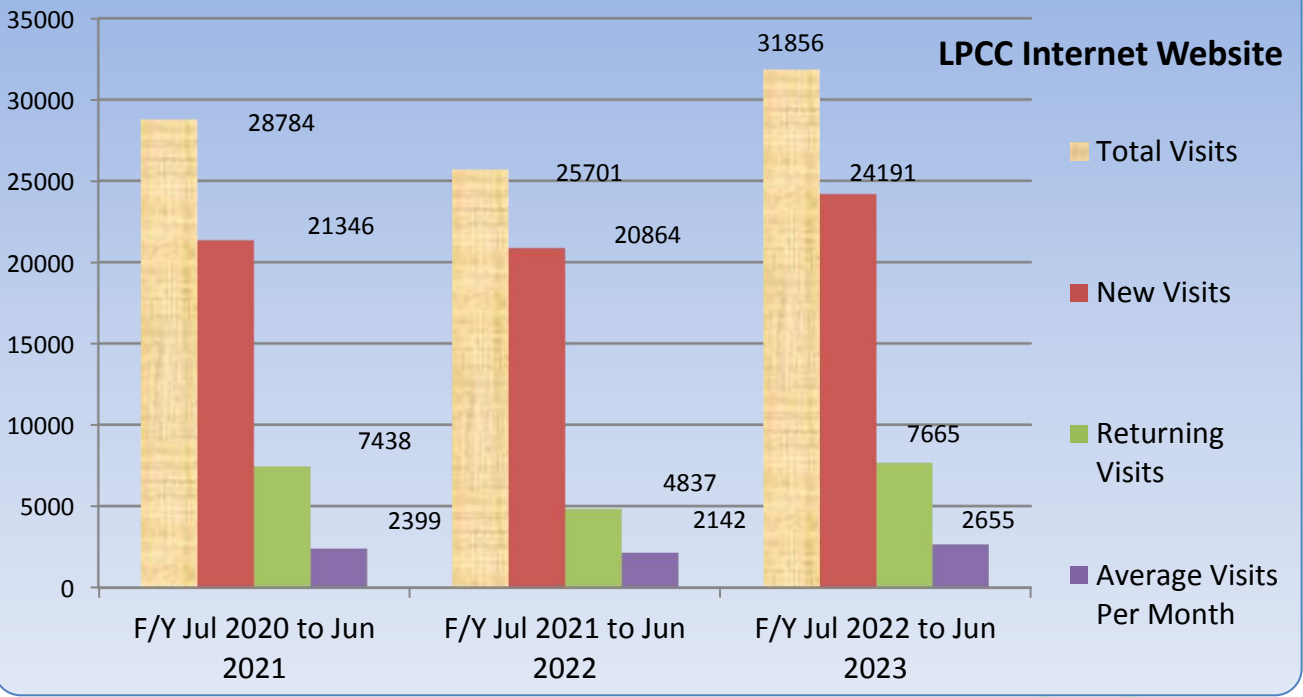
Website – the last 3 years

The Legal Profession Conduct Commissioner website remains the source of a large proportion of complaints received with many clients lodging complaints on a pro forma complaint form.

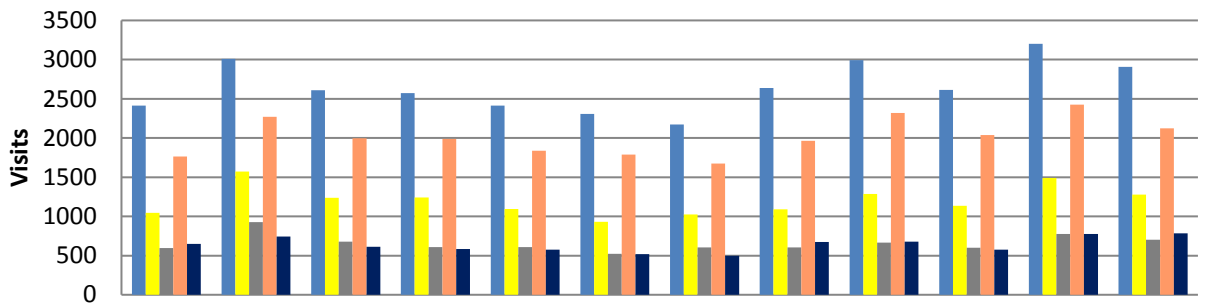
The number of people accessing information on the Legal Profession Conduct Commissioner website has increased significantly over the years. The number of website visits in the reporting period, follows the general trend of increasing visits. The 2021/22 year appears to be anomalous and, I suspect, was significantly influenced by the Covid-19 pandemic.

The following charts show the number of local, Australian and worldwide visitors to my website over the last 3 years. Total visits for the year are down slightly from last year, as are average visits per month.²

² Every year I will receive complaints from overseas and where the complainant does not realise that I am in South Australia.



Financial Year 2022/2023 - Monthly Statistics



	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23
Total Visits	2412	3011	2609	2572	2413	2309	2174	2638	2994	2615	3201	2908
Total Vists from Australia	1047	1574	1238	1240	1096	932	1024	1092	1288	1135	1489	1277
Total visits from Adelaide	594	928	677	607	607	521	603	605	664	599	776	702
New Visitors	1764	2269	1998	1988	1839	1789	1675	1963	2318	2039	2424	2125
Returning Visitors	648	742	611	584	574	520	499	675	676	576	777	783

Nature of matters complained of / investigated

Areas of law	Complaints	Percentage of total complaints
Family	66	18.9%
Estate Administration	43	12.3%
Criminal	28	8.0%
Civil Litigation	22	6.3%
Administrative	19	5.4%
Legal Practice	16	4.6%
Other	16	4.6%
Commercial	16	4.6%
Workers Compensation	15	4.3%
Personal Injury	14	4.0%
Industrial	11	3.1%
Real Property	10	2.9%
Will Preparation	7	2.0%
Building Disputes	7	2.0%
Bankruptcy	4	1.1%
Failure to comply with LPCC requirements	3	0.9%
Migration	3	0.9%
General	3	0.9%
SACAT	3	0.9%
Debt Collection	2	0.6%
Company	2	0.6%
Consumer Law	2	0.6%
Criminal injuries	2	0.6%
Outside of practice	1	0.3%
Not Disclosed	1	0.3%
Conveyancing	1	0.3%
Defamation	1	0.3%
Cost recovery / adjudication	1	0.3%
Tax / revenue	1	0.3%
Not recorded	35	10.0%

Some complaints extend to more than one area of law.

Comparison of complaints for last two years from top five areas of law

Area of Law	2021/22		2022/23	
	Complaints		Complaints	
Family	94	24.7%	66	18.9%
Estate Administration	28	7.3	43	12.3%
Criminal	32	8.4%	28	8.0%
Civil Litigation	64	16.8%	22	6.3%
Administrative			19	5.4%
Legal Practice	21	5.5%		
Total of top five		62.7%		50.9%

As has been consistently the case for many years, family law was the area of practice that generated the most complaints, by quite a considerable margin. The number of complaints relating to estate administration continues to rise and will likely remain high given the

increased ageing of our population and the scourge of dementia. The decline in complaints arising from civil litigation is less explicable unless the impact of Covid-19 on the civil courts has resulted in a short term downturn.

Nature of allegations made

Nature of allegation	On complaint
Poor Handling	102
Overcharging	95
Delay	31
Other	31
Inappropriate Behaviour	23
Conflict of Interest	22
Breach of ASCR's	22
Acting W/O Instructions	20
Misrepresentation	18
Misleading The Court	17
Acting Against Instructions	17
Lack of Communication	15
Rudeness / lack of respect	13
Fail to Comply with Instructions	11
Incompetence	11
Negligence	10
Trust Regulatory Breach	8
Dishonesty	8
Misleading another party	8
Breach of LPA (not Schedule 3)	7
Capacity issues	7
Making an unsubstantiated allegation	7
MCPD	5
Breach of Court Order	4
Legal aid related	4
Bullying (workplace)	3
Criminal Offence (Not Theft)	3
Bullying (client)	3
Discrimination (workplace)	3
Breach of LPA (Schedule 3)	2
Terminating instructions	2
Retention of Documents	2
Theft/Fraud	2
Breach of Undertaking	2
Breach of LPCC Order	2
Failure to Pay Third Party	2
Failure to assess capacity	2
Discrimination (client)	2
Breach of Confidentiality	1
No cost advice	1
Breach of PC condition	1
Insufficient accounts	1
Legal advice	1
Not recorded	35

In the reporting period 333 new investigation files were opened (not including pre-intake files). A total 551 allegations were made as set out in the above table, across those files. The top three allegations ie, poor handling, overcharging and delay, are unchanged and amounted to 228 of the 551 or 41% of all allegations made. My impression is that these complaints largely arise from practitioners taking on more work than they can reasonably manage at any one time which adversely impacts their capacity to meet client expectations for the timely and efficient handling of matters.

Profile of practitioners being complained about

Complaints by type of practice for the last two reporting periods

Type of practice	20221/2022		2022/20023	
	Number of Complaints		Number of Complaints	
Director incorporated practice	92	24.2%	119	34.0%
Employee	78	20.5%	78	22.3%
Sole practitioner	77	20.2%	57	16.3%
Non-practising	38	10%	22	6.3%
Partner	33	8.6%	22	6.3%
Barrister	16	4.2%	15	4.3%
Government employee (including Legal Services Commission)	15	3.9%	13	3.7%
Corporate practitioner	3	0.7%	9	2.6%
Interstate practitioner	11	2.8%	7	2.0%
Judiciary	6	1.5%	1	0.3%
Unknown/Other	11	2.8%	7	2.0%
Total	380		350	

Complaints by Gender

Gender (2022/23)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	226	64.5%	2123	45.7%
Women	118	33.7%	2525	54.3%
Firm / unknown	6	1%	N/A	N/A
Total	350		4648	

For the sake of comparison, the same table in 2020/21 was as follows:

Gender (2021/22)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	234	61.5%	2115	46.4%
Women	142	37.3%	2443	53.5%
Firm	4	1%	N/A	N/A
Total	380		4,558	

Comparison of practitioners who received a complaint by post-admission experience

Length of time in practice	2017	2018	2019	2020	2021	2022	2023
Less than 5 years	48	28	25	35	31	18	30
	7.6%	5.7%	5.2%	8.7%	7.6%	4.7%	8.5%
5–10 years	92	62	70	36	48	59	36
	14.6%	12.5%	14.6%	9%	11.7%	15.5%	10.2%
10–15 years	78	73	62	78	62	65	47
	12.3%	14.8%	13.9%	19.4%	15.2%	17.1%	13.4%
More than 15 years	378	299	297	232	244	222	222
	59.8%	60.5%	61.9%	57.7%	59.6%	58.4%	63.4%
Not admitted, not identified or a firm	36	32	26	21	24	16	15
	5.7%	6.5%	5.4%	5.2%	5.9%	4.2%	4.3%
Total	632	494	480	402	409	380	350

Comparison of practitioners who received a complaint by years of admission

Admission Years	Practice Experience	No. of Practitioners	% of Practising Profession	No. of Complaints	% of total Complaints
1960 -1969	54 - 63 years	21	0.5%	2	0.6%
1970-1974	49 - 53 years	62	1.3%	5	1.4%
1975-1979	44 - 47 years	164	3.5%	28	8.0%
1980-1984	39 - 43 years	177	3.8%	23	6.6%
1985-1989	34 - 38 years	211	4.5%	16	4.6%
1990-1994	29 - 33 years	203	4.4%	22	6.3%
1995-1999	24 - 28 years	319	6.9%	29	8.3%
2000-2004	19 - 23 years	589	12.7%	51	14.6%
2005-2009	14 - 18 years	657	14.1%	62	17.7%
2010-2014	9 - 13 years	695	15.0%	44	12.6%
2015-2019	4 - 8 years	838	18.0%	44	12.6%
2020-2021	2 - 3 years	457	9.8%	9	2.6%
2022-2023	< 1 year	255	5.5%	0	0.0%
Unknown				15	4.3%
				350	

I note, as Commissioner May has previously noted, that despite there being approximately equal gender diversity in the profession now, for the fourth year running nearly two-thirds of all complaints have been against male practitioners. It is unclear just what, if anything, can be drawn from that statistic: gender parity in the profession is a relatively new phenomenon and, I expect, is a result of there being many more junior female practitioners. As practitioners who have been in practise for more than 15 years are disproportionately the subject of complaint it is possible that the overrepresentation of male practitioners as the subject of complaints can, at least in part, be attributed to the lack of gender parity at the more senior end of the profession.



CASE MANAGEMENT

Files opened and current numbers

Comparison of opened and closed investigation files for the last four reporting periods

Status of file	2019/20	2020/21	2021/22	2022/23
New files opened	471	389	356	333
Current investigations as at 30 June	863	631	591	530

Comparison of current files by category for the last four reporting periods

Category	30 June 2020	30 June 2021	30 June 2022	30 June 2023
Investigation*	863	631	591	530
Tribunal	33	28	28	27
Supreme Court	28	24	14	6
High Court	2	4	0	0
Total	926	687	633	563

* Includes completed investigations where determinations have been made but administrative tasks are yet to be completed.

All new complaints are opened initially as pre-intake files. Once the fee has either been paid or waived, they become intake files. Those that are obviously formal complaints are converted immediately into investigation files. Any matter that I must make a decision to investigate (eg a complaint that is made more than 3 years after the conduct complained of, or a matter about which I must decide to make an Own Initiative Investigation) is only converted to an investigation file once I have made the relevant decision.

Following an investigation, if I resolve to lay a charge against a practitioner in the Tribunal for misconduct, the investigation file is closed and a new file is opened for the Tribunal proceedings.

We also have different categories of files for Supreme Court proceedings – which include:

- appeals (either by me or by the relevant practitioner) against a Tribunal decision;
- applications for suspension and/or strike off; and
- proceedings in relation to show cause events.

While the number of Tribunal files, that is files relating to charges or applications in the Tribunal has remained static that is, in large part, due to the slow resolution of matters by the Tribunal. Only 5 litigation files were opened and charges were laid against only 3 practitioners during the reporting period.

Determinations made

Commissioner May and I made a total of 414 Determinations during the reporting period, comprising the following:

- 55 Determinations that there was no misconduct (or no or insufficient evidence of misconduct) on the part of the relevant practitioner;
- 283 Determinations (68.4%) to close the complaint under section 77C – and, of those matters that were so closed:
 - 39 of them were closed without commencing an investigation; and
 - 34 of them were overcharging complaints;
- 31 Determinations that there was unsatisfactory professional conduct on the part of the relevant practitioner, as a result of which I took disciplinary action under section 77J(1);
- 9 Determinations that there was professional misconduct on the part of the relevant practitioner, as a result of which I took disciplinary action under section 77J(2);
- 5 Determinations that there was misconduct on the part of the relevant practitioner, as a result of which he determined to lay a charge in the Tribunal (one of which was as a result of the practitioner not consenting to his Determination under section 77J(2)); and
- 30 Determinations and Reports relating to overcharging (which are expanded on immediately below).

In relation to Own Initiative investigations previously commenced, Commissioner May or I decided to take no further action in respect of 19 investigations.

In relation to the overcharging complaints (other than those closed under section 77C), the Commissioner May and I made:

- 1 Determination that there was overcharging by the practitioner;
- 30 reports under section 77N in relation to matters in which I made no finding of overcharging; and
- 15 reports under section 77N in which he recommended that the practitioner/firm reduce its fees and/or refund an amount.

In respect of the 31 occasions in which Commissioner May or I was satisfied that there was evidence of unsatisfactory professional conduct on the part of the practitioner, the following disciplinary action was taken under section 77J(1):

- reprimanded 28 practitioners;
- ordered 12 practitioners to undertake certain training, education or counselling, or to be supervised;
- ordered 11 practitioners to make an apology;
- ordered 8 practitioners to pay a fine; and
- ordered 1 of those practitioners to make a specified payment or do or refrain from doing a specific act.

In respect of the 9 occasions in which Commissioner May or I was satisfied that there was evidence of professional misconduct on the part of the practitioner but which did not warrant the laying of a charge, the following disciplinary action was taken under section 77J(2):

- reprimanded 8 practitioners;
- ordered 3 of those practitioners to make an apology;
- ordered 4 practitioners to pay a fine;
- ordered that conditions be imposed on the practising certificates of 7 of those practitioners; and
- ordered 1 of those practitioners to make a specified payment or do or refrain from doing a specific act.

Decisions in relation to intake files

During the reporting period, the Commissioner May and I made a total of 45 decisions on intake files finalising them without treating them as formal complaints. We did so for the following reasons:

- 8 decisions that there was not reasonable cause to suspect that the relevant practitioner had been guilty of misconduct, such that he could not make an own initiative investigation under section 77B(1);
- 4 decisions that the complaint did not satisfy the requirements of section 77B(3a) – that is, because they did not identify the complainant and/or identify the legal practitioner about whom the complaint was being made and/or describe the alleged conduct the subject of the complaint;
- 25 decisions that the complaint was not made within the 3 year time limit referred to in section 77B(3c) (ie, from the date of the conduct being complained of), and he decided not to exercise his discretion to allow a longer period within which to complain;
- 7 decisions that the complaint of overcharging was not received within the 2 year time limited referred to in section 77N(1) (ie from the date of the final bill to which the Complaint related), and he decided not to exercise his discretion to investigate the Complaint; and
- 1 decision to refer the complaint to another body.

Decisions in relation to pre-intake files

During the reporting period, Commissioner May and I made 15 decisions on pre-intake files finalising them without treating them as formal complaints. In each case we did so as the fee to lodge the complaint was not paid or the complaint was withdrawn.

CONCILIATION, PROMPT RESOLUTION AND ENQUIRIES

Conciliation

Sections 72(1)(d) and 77O give my office the power to conciliate complaints. Complaints may be referred to conciliation by my investigating solicitors during the course of their investigation, or by me directly upon receipt of the complaint. Conciliation can be either 'informal' (conducted over the telephone, by email or exchange of written correspondence) or 'formal' (involving the parties attending a meeting at my office facilitated by one of my conciliators).

Complaints are usually only conciliated where there is a dispute between a practitioner and his or her own client, although in some limited circumstances there may be a conciliation between a practitioner and a third party. Conciliation is most commonly used in circumstances where there are costs disputes, communication breakdowns or when a client seeks the return of their documents or client file from the practitioner.

If a complaint is successfully conciliated, my conciliators will assist the practitioner and the complainant to record their resolution in a formal conciliation agreement as required by section 77O(4).

Then, in appropriate circumstances, I am able to bring the complaint to an end. Unless I have already seen conduct issues that concern me, I will most likely close the complaint under section 77C following a successful conciliation on the basis that it is in the public interest to do so. That is, if a conciliated agreement can be reached between practitioner and complainant, then it is likely to be in the public interest that I then devote my office's resources to other complaints that need to be investigated and that aren't yet resolved, rather than further investigating a complaint that has been resolved.

If however the practitioner doesn't comply with the terms of the conciliated agreement, that will give rise to a new misconduct issue that I would most likely need to investigate, as per section 77O(6).

During the reporting period, there were 25 conciliations of complaints undertaken by my conciliators. Of those 25 conciliations, 20 resolved which represents a success rate of 80%. Overwhelmingly, the majority of those complaints concerned disputes about overcharging.

Prompt Resolution

In limited circumstances, I may refer a complaint directly to my conciliators to deal with as a 'Prompt Resolution' complaint.

If I receive a complaint that does not raise any allegations that are capable of amounting to a conduct finding, and if there is a dispute between a practitioner and a complainant that seems capable of resolution by us making a few telephone calls (for instance, the complainant may have waited two weeks for a phone call from the practitioner, or may have misunderstood the content of the practitioner's correspondence), I can provide the parties with a limited

opportunity to resolve the dispute directly between themselves (with some assistance from us) before I determine whether formal conciliation or investigation of the complaint is required. If the dispute resolves in this way then I am likely to close the complaint under section 77C, again on the basis that it is in the public interest to do so. If the complaint does not resolve then I will consider whether conciliation or investigation of the complaint is appropriate.

There were 7 complaints referred to Prompt Resolution during the reporting period. Of those 7 complaints, 4 resolved.

There were two accredited solicitor/ conciliator staff members dedicated to the Conciliation and Prompt Resolution team during the reporting period. These staff carried a file-load of both investigation and conciliation files.

Enquiries

Most enquiries to my office are made by telephone, though my website does permit enquirers to send their enquiry by email.

During the reporting period, we received 629 enquiry contacts, which was 282 more enquiry contacts received than during the previous reporting period. These enquiry contacts were responded to by three solicitors who were each rostered on the enquiry line from 1-4pm on Monday, Wednesday and Friday of each week during the reporting period.

The types and numbers of matters about which we receive enquiries broadly reflect the types and numbers of matters about which we receive complaints. Family Law was the most enquired about area of law, which was followed by Probate and Wills in second place. Both results are consistent with the previous reporting period. The category of 'LPCC' achieved third place, where enquirers queried our role and complaint processes, which was followed closely by personal injury.

Most enquirers who contacted the Enquiry Line discussed concerns of overcharging, which was followed by concerns of poor handling. Complaints process achieved third place, where enquirers queried our process for receiving, investigating and conciliating complaints, which was closely followed by concerns of delay.

LITIGATION WORK

All Tribunal decisions and Supreme Court decisions referred to in this report can be accessed from any one or more of:

- my website at www.lpcc.sa.gov.au
- the Tribunal's Secretary, Mr Glenn Hean (08 8204 8425 / lpdt@courts.sa.gov.au)
- AustLI.

Tribunal charges

As I have said previously, if I consider that I cannot adequately deal with a practitioner's misconduct under section 77J, then I must lay a charge against the practitioner before the Tribunal (unless I decide that it is not in the public interest to do so). However, I am not the only party who can lay a charge of misconduct against a practitioner before the Tribunal. A charge can also be laid by the Attorney General or the Law Society, or by "a *person claiming to be aggrieved by reason of*" the alleged misconduct. This report generally refers only to charges that I have laid (or that were previously laid by the Board). However, in order to provide a more complete picture of the work undertaken, I do reference proceedings commenced by practitioners.

In 2013/14, the Board laid charges against 11 practitioners.

Between 1 July 2014 and 30 June 2022, Commissioner May laid the following charges:

- in 2014/15, 4 charges against 4 practitioners;
- in 2015/16, 7 charges against 6 practitioners;
- in 2016/17, 8 charges against 6 practitioners;
- in 2017/18, 7 charges against 5 practitioners;
- in 2018/19, 8 charges against 8 practitioners;
- in 2019/20, 5 charges against 4 practitioners;
- in 2020/21, 2 charges against 1 practitioner; and
- in 2021/22, 8 charges against 3 practitioners.

In the reporting period, I commenced 3 proceedings in the Tribunal with a view to laying 8 charges against 3 practitioners.

The charges or proposed charges against the three practitioners related to conduct in relation to which I was satisfied that:

- a practitioner had repeatedly failed to comply with orders of the Supreme Court resulting in a default decision and substantial adverse consequences for the client;
- a practitioner was grossly negligent in failing to protect their clients' interests;
- a practitioner failed to co-operate with an investigation into their conduct;
- a practitioner had acted inappropriately; and

- a practitioner had failed to comply with orders made by Commissioner May.

None of the proceedings were heard by the Tribunal in any substantive way during the reporting period.

In respect of 1 practitioner, their consent had been sought to disciplinary action pursuant to section 77J(2). Consent had been refused. An extension of time to lay charges was required and an application for an extension of time was filed and the Tribunal's receipt of charges was to await a determination whether an extension of time would be granted.

Subsequent to the making of the application to extend time, changed their mind, accepting the section 77J(2) sanctions offered, and the application and charges were withdrawn.

In addition to the proceedings commenced by me, one proceeding was commenced by a former Practitioner seeking permission to undertake a supervised placement required to meet the prerequisites for admission to practise.

Tribunal proceedings

The Tribunal handed down two decisions in this reporting period in respect of disciplinary proceedings commenced by Commissioner May.

The first related to *Mr Atanas Radin*. In 2020, Commissioner May laid charges against Mr Radin in two actions arising from unpaid counsel fees (7 counts) and dealings with his Firm's trust account (3 counts). In 2021, Commissioner May laid further charges against Mr Radin arising from his failure to make payments to the Australian Taxation Office and of the Superannuation Guarantee Charge (3 counts).

In the first action, Mr Radin engaged a number of barristers to act for clients in various proceedings. In respect of the engagement of five barristers, Mr Radin failed to pay, or pay all of, the fees invoiced. In the second action, Mr Radin acted for a client in respect of two separate proceedings. Money was received into trust on account of the first proceeding and subsequently, and without authority, Mr Radin withdrew a portion of that money to meet legal fees in the second proceedings. Though directed to repay those moneys, Mr Radin only ever repaid a portion of the moneys taken. Mr Radin made a series of statements regarding his Firm's trust accounts which were false or misleading. In the third action, Mr Radin operated two businesses: one employing the solicitors at his Firm and the other employing the administrative staff. When both businesses went into liquidation it was identified that substantial sums were owing by both businesses to the ATO for non-payment of PAYG and GST taxes as well as non-payment of Superannuation Guarantee Charges and that he made false representations regarding moneys owed.

The Tribunal found that Mr Radin's conduct:

- in the first action, in not paying five barristers, constituted five counts of professional misconduct;
- in the second action, by engaging in false and misleading conduct, constituted three counts of unprofessional conduct; and'
- in the third action, in failing to pay moneys owed and in making misleading statements in that respect, constituted a further three counts of professional misconduct.

Though not during the reporting period, the Tribunal ultimately determined that the appropriate sanction was for me to bring an application in the Supreme Court for Mr Radin to be removed from the Roll of practitioners.

The second related to *Mr David Stokes*. In 2020, Commissioner May instituted two proceedings against Mr Stokes, each proceedings consisting of two charges of failing to comply with disciplinary orders the Commissioner had made. Mr Stokes admitted the charges and the Tribunal was called upon to determine whether the conduct amounted to unsatisfactory professional conduct or professional misconduct. In May 2022, Mr Stokes was found guilty of four counts of professional misconduct. On 6 December 2022, the Tribunal imposed a fine of \$3,000 for each count of misconduct.

In addition to those two matters, the Tribunal handed down two decisions in appeals by practitioners against disciplinary action taken by Commission May.

The first related to an appeal by *Ms Claire O'Connor* from a June 2019 Determination of Commissioner May that Ms O'Connor was guilty of unsatisfactory professional conduct as a consequence of an October 2016 Facebook post. For reasons not readily summarised here, the Tribunal allowed Ms O'Connor's appeal. For the sake of completeness, I note that I appealed the Tribunal's decision to the Full Court but, after reaching an agreement with Ms O'Connor that she would not pursue the costs of either appeal, I withdrew my appeal.

The second related to an appeal by *Mr Peter Scragg* from a Determination of Commissioner May. In March 2017, Commissioner May received a complaint about the conduct of Mr Scragg. Later, in June 2018, Commissioner May commenced an own initiative investigation arising from the conduct of Mr Scragg in Federal Court proceedings. In October 2021, Commissioner May Determined that Mr Scragg had been guilty of unsatisfactory professional conduct. Commissioner May imposed a sanction under section 77J(1)(a). Mr Scragg sought to appeal the Determination. The Tribunal largely affirmed Commissioner May's Determination and the finding of unsatisfactory professional conduct stands.

In addition to these disciplinary matters, and as I mention above, the Tribunal received an application by a former practitioner, pursuant to section 23AA of the Act, to be permitted to undertake and complete the required practical component of the Graduate Diploma in Legal Practice under the supervision of a practitioner holding an unrestricted practising certificate. The practitioner, Mr Peter Kerin, had his name struck from the roll of practitioners in 2006 due to conduct demonstrating that he was not fit to remain a member of the profession. The application was not dealt with during the reporting period.

At the conclusion of this reporting period, I was awaiting a number of decisions in 8 proceedings involving 7 practitioners including decisions on interlocutory applications the most aged of which were argued in 2016 (application for security of costs) and 2019 (particulars of charges).

Supreme Court matters

Decisions relating to disciplinary matters

During the reporting period, the Supreme Court handed down two decisions in proceedings commenced by Commissioner May.

The first decision delivered on the day I commenced in this role, the Full Court of the Supreme Court allowed Commissioner May's application to have the name of *Mr George Mancini* struck from the roll of practitioners. This decision brought to an end long running disciplinary action in which nine counts of professional misconduct were laid in the Tribunal in May 2016. The Tribunal initially rejected Commissioner May's categorisation of the misconduct as professional misconduct, finding Mr Mancini guilty of unsatisfactory professional conduct on all nine counts. Commissioner May appealed that decision and in May 2018, the Full Court allowed that appeal finding Mr Mancini guilty of 3 counts of professional misconduct and remitting the remaining six counts to the Tribunal for rehearing. On rehearing, the Tribunal found Mr Mancini guilty of four counts of professional misconduct. The primary concern in respect of the seven provide counts of professional misconduct was dishonesty; a decision was made to apply to have Mr Mancini's name removed from the roll. The Full Court, took into account Mr Mancini's lengthy disciplinary history and concluded that no order short of strike-off would be appropriate.

The second decision by the Full Court allowed Commissioner May's application to have the name of *Mr Kieran Moore* struck from the roll of practitioners. The application arose as a consequence of Mr Moore's dealings with trust money in the context of estate administration.

Section 20AG – show cause events

Under section 20AG, where a show cause event happens to a practitioner who subsequently applies for practising certificate, he or she must give a statement to the Supreme Court as to why the practitioner is a fit and proper person to hold a practising certificate. Both the Law Society and I can then make written representations to the Supreme Court in that regard.

There was 1 proceeding under section 20AG before the Supreme Court that was finalised during this reporting period.

In October 2022, *Mr Brad Tarbotton* gave notice of a show cause event arising from his bankruptcy. Mr Tarbotton, the Law Society and I were able to agree on orders which would protect the public by placing conditions on Mr Tarbotton's practising certificate. The Court was satisfied with the agreed orders and the conditions imposed without the need for a full hearing.\

Proceedings in both the Supreme Court and the Full Court

Over a number of years, Commissioner May was required to address some 14 complaints by *Mr Marshall Flowers*. Many of those complaints relate to the same practitioners and seek to revisit matters raised in earlier complaints.

In September 2021, Mr Flowers brought an application for judicial review of a decision, pursuant to section 77C of the Act, to close the investigation into a complaint by Mr Flowers. On 4 July 2022, Mr Flowers' application for judicial review was dismissed. Mr Flowers sought permission from the Full Court to appeal that dismissal. On 10 February 2023, refused leave to appeal.

Application for readmission

As I reported in last year's annual report *Mr Graham Warburton* had applied to the Supreme Court pursuant to section 15 of the Act for admission as a barrister and solicitor of the Supreme Court. In April 2023, Mr Warburton withdrew that application.

Interpretation of terms used in this report

Act – the *Legal Practitioners Act 1981*

2019 Amendment Act – the *Legal Practitioners (Miscellaneous) Amendment Act 2019*

Board – the former Legal Practitioners Conduct Board, which ceased to exist on 30 June 2014

Chief Justice – the Chief Justice of the Supreme Court

Commissioner – the Legal Profession Conduct Commissioner

Law Society – the Law Society of South Australia

intake file is a file that is not, for the purposes of our complaints management system, treated immediately as a formal complaint, unless and until the Commissioner exercises his discretion to treat it as such

misconduct means both unsatisfactory professional conduct and professional misconduct

Own Initiative Investigation – an investigation into a practitioner’s conduct commenced by the Commissioner in the absence of a complaint in accordance with section 77B(1)

practitioner – a person duly admitted and enrolled as a barrister and solicitor of the Supreme Court, or an interstate practitioner who practises the profession of the law in South Australia

reporting period – 1 July 2022 to 30 June 2023

Roll – the roll (register) of practitioners duly admitted and enrolled in South Australia as a barrister and solicitor of the Supreme Court, which roll is kept by the Supreme Court

professional misconduct includes, in relation to pre-1 July 2014 conduct, “unprofessional conduct” as that term was defined in section 5 before 1 July 2014

Supreme Court – the Supreme Court of South Australia

Tribunal – the Legal Practitioners Disciplinary Tribunal

unsatisfactory professional conduct includes, in relation to pre-1 July 2014 conduct, “unsatisfactory conduct” as that term was defined in section 5 before 1 July 2014

vexatious litigant – a person who is subject to an order under section 39 of the *Supreme Court Act 1935* prohibiting him or her from instituting proceedings (or proceedings of a particular class)

A reference in this report (without more) to a section or a Schedule is a reference to a section or a Schedule of the Act

Any term that is defined in the Act has the same meaning in this Report as it has in the Act.

FINANCIAL REPORTS
FOR YEAR ENDED 30 JUNE 2023



LEGAL PROFESSION CONDUCT COMMISSIONER

ABN 74 875 673 354

FINANCIAL REPORT

**FOR THE YEAR ENDED
30 JUNE 2023**

LEGAL PROFESSION CONDUCT COMMISSIONER

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LEGAL PROFESSION CONDUCT COMMISSIONER

**AUDITOR'S INDEPENDENCE DECLARATION
TO THE LEGAL PROFESSION CONDUCT COMMISSIONER**

I declare that, to the best of my knowledge and belief, during the year ended 30 June 2023 there have been:

- i. no contraventions of the auditor independence requirements in relation to the audit; and,
- ii. no contraventions of any applicable code of professional conduct in relation to the audit.

UHY Sothertons

UHY SOTHERTONS Adelaide Partnership

Alex Reade

ALEX READE
Partner

Dated 27 October, 2023

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2023

	Note	2023 \$	2022 \$
INCOME			
Operating - Fidelity Fund		3,369,851	3,636,317
Interest on Funds		49,041	4,264
Prior Year Funds Reconciliation		(14,336)	25,000
TOTAL INCOME		3,404,556	3,665,581
EXPENDITURE			
Salaries and Staff Expenses			
Amenities		2,154	2,190
Car Parking		11,514	11,042
Consultants		1,356	3,701
First Aid Allowance		1,836	459
Fringe Benefits Tax		12,220	2,074
Motor Vehicle - Lease Cost		-	3,053
Motor Vehicle - Fuel, R & M		-	491
Motor Vehicle - Salary Sacrifice		-	(230)
Professional Development		11,459	3,831
Provision for Annual Leave		38,482	7,141
Provision for Long Service Leave		37,757	(42,803)
Payroll Tax		78,182	89,625
Practising Certificates		11,941	9,647
Salaries - Professional	9	1,573,584	1,744,420
Salaries - Support Staff		371,643	397,945
Salaries - Parental Leave		-	10,486
Subscriptions/Membership		250	461
Superannuation		196,336	205,114
Reportable Employer Superannuation		36,040	38,273
WorkCover	10	(12,805)	16,354
Total Salaries and Staff Expenses		2,371,950	2,503,274
External Expert Expenses			
Costs Assessment Expenses		653	5,450
Counsel Fees	16	49,092	106,455
Associated Costs	16	3,888	4,011
External Delegations	16	-	-
Total External Expert Expenses		53,633	115,916

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2023

	Note	2023 \$	2022 \$
Administration and Operating Expenses			
Equipment Expenses			
Computer - Operating, Licences, Software		150,716	98,940
Computer - Provision/Purchase		6,580	25,945
Computer - Repairs and Maintenance		50,557	34,333
Depreciation		57,245	69,151
Lease Charges - Photocopier		18,638	18,638
Photocopier		3,500	4,587
Repairs and Maintenance		2,490	1,577
Total Equipment Expenses		289,725	253,171
General Expenses			
Audit Fees		9,000	9,470
Accounting Services		36,000	34,320
Bank Charges		356	361
Courier Services		1,233	1,830
General Office Expenses		419	0
Insurance		26,143	22,887
Internet Services		8,847	7,599
Library		1,122	781
Occupational Health and Safety		2,312	1,675
Merchant Fees		406	359
Postage		2,180	2,467
Printing and Stationery		7,248	6,574
Protective Security Compliance		-	12,500
Records Management		27,063	20,404
Telephone and Fax		3,397	3,093
Travel		917.76	-
Website Development		16,979	2,032
Total General Expenses		143,622	126,352
Occupancy Expenses			
Light and Power		20,364	18,946
Office Cleaning		26,491	23,952
Rent	11	312,253	299,780
Security		1,272	1,072
Total Occupancy Expenses		360,380	343,750
TOTAL EXPENDITURE		3,219,311	3,342,463
OPERATING SURPLUS/(DEFICIT)		185,244	323,118
ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR		245,397	(77,721)
ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR		430,641	245,397

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2023

	Note	2023	2022
			\$
CURRENT ASSETS			
Cash	2	1,086,750	983,113
Receivables	3	33,460	27,323
Prepayments	4	30,079	28,976
TOTAL CURRENT ASSETS		<u>1,150,289</u>	<u>1,039,412</u>
NON CURRENT ASSETS			
Fixed Assets	5	<u>82,980</u>	<u>112,974</u>
TOTAL NON CURRENT ASSETS		<u>82,980</u>	<u>112,974</u>
TOTAL ASSETS		<u>1,233,270</u>	<u>1,152,386</u>
CURRENT LIABILITIES			
Creditors and Accruals	6	148,813	315,500
Provisions	7	653,816	591,489
TOTAL CURRENT LIABILITIES		<u>802,629</u>	<u>906,989</u>
TOTAL LIABILITIES		<u>802,629</u>	<u>906,989</u>
NET ASSETS		<u>430,641</u>	<u>245,397</u>
ACCUMULATED FUNDS			
Retained Funds	8	<u>430,641</u>	<u>245,397</u>
TOTAL ACCUMULATED FUNDS		<u>430,641</u>	<u>245,397</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

RECONCILIATION OF CASH FOR THE YEAR ENDED 30 JUNE 2023

	Note	2023 \$	2022 \$
Operating Surplus/(Deficit)		185,244	323,118
Depreciation		57,245	69,151
Movement in Provision for Annual Leave		38,482	7,141
Movement in Provision for Long Service Leave		37,757	(42,803)
Movement in Provision for Workers Compensation		(13,912)	14,652
Payables		(166,688)	35,631
Purchase of Office Furniture		(4,170)	-
Purchase of Office Equipment		(23,081)	(9,786)
Prepayments		(1,103)	(1,140)
Receivables		(6,137)	13,428
		<hr/>	<hr/>
		(81,607)	86,274
		<hr/>	<hr/>
Net Increase in Cash Held		103,637	409,392
Cash at Beginning of Financial Year		983,113	573,721
		<hr/>	<hr/>
Cash at End of Financial Year	2	1,086,750	983,113

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

NOTE 1: STATEMENT OF ACCOUNTING POLICIES

The Legal Profession Conduct Commissioner ("Commissioner") has prepared the financial statements on the basis that the Commissioner is a non-reporting entity. These financial statements are therefore special purpose financial statements.

The financial statements have been prepared on an accruals basis and are based on historical costs unless otherwise stated in the notes.

The following significant accounting policies, which are consistent with the previous period unless otherwise stated, have been adopted in the preparation of this financial report.

(a) Revenue

Grant revenue is recognised in the income and expenditure statement when the Commissioner obtains control of the grant and it is probable that the economic benefits gained from the grant will flow to the Commissioner and the amount of the grant can be measured reliably.

If conditions are attached to the grant which must be satisfied before it is eligible to receive the contribution, the recognition of the grant as revenue will be deferred until those conditions are satisfied.

All revenue is stated net of the amount of goods and services tax (GST).

(b) Fixed Assets

Leasehold improvements and office equipment are carried at cost less, where applicable, any accumulated depreciation.

The depreciable amount of all fixed assets is depreciated over the useful lives of the assets to the Commissioner commencing from the time the asset is held ready for use. Leasehold improvements are amortised over the shorter of either the unexpired period of the lease or the estimated useful lives of the improvements.

(c) Employee Provisions

Provision is made for the Commissioner's liability for employee benefits arising from services rendered by employees to balance date. Employee benefits have been measured at the amounts expected to be paid when the liability is settled. Long service leave is accrued after 5 years of service.

(d) Cash and Cash Equivalents

Cash and cash equivalents includes cash on hand, deposits held at call with banks, and other short-term highly liquid investments with original maturities of three months or less.

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

NOTE 1: STATEMENT OF ACCOUNTING POLICIES (cont.)

(e) Leases

Lease payments for operating leases, where substantially all the risks and benefits remain with the lessor, are charged as expenses in the period in which they are incurred.

(f) Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Australian Taxation Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense. Receivables and payables in the balance sheet are shown inclusive of GST.

(g) Income Tax

No provision for income tax has been raised as the Commissioner is exempt from income tax under Div 50 of the Income Tax Assessment Act 1997.

(h) Trade and Other Payables

Trade and other payables represent the liability outstanding at the end of the financial year for goods and services received by the Commissioner during the financial year which remain unpaid. The balance is recognised as a current liability with the amount being normally paid within 30 days of recognition of the liability.

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

NOTE 2: CASH

	2023	2022
	\$	\$
Cash on Hand	300	300
Cash at Banks	3,805	3,257
Access Saver	282,646	979,556
Term Deposits	800,000	-
	<u>1,086,750</u>	<u>983,113</u>

NOTE 3: RECEIVABLES

	2023	2022
	\$	\$
GST Refundable	33,460	27,323
	<u>33,460</u>	<u>27,323</u>

NOTE 4: PREPAYMENTS

	2023	2022
	\$	\$
Prepayments - Rent	30,079	28,976
	<u>30,079</u>	<u>28,976</u>

NOTE 5: FIXED ASSETS

	2023	2022
	\$	\$
Office Furniture at cost	79,389	75,219
Less: Accumulated Depreciation	(75,983)	(75,202)
	<u>3,406</u>	<u>17</u>
Office Equipment at cost	412,201	389,120
Less: Accumulated Depreciation	(386,997)	(377,462)
	<u>25,204</u>	<u>11,658</u>
Leasehold Improvements at cost	426,624	426,624
Less: Accumulated Depreciation	(372,253)	(325,325)
	<u>54,371</u>	<u>101,299</u>
Case Management System - ICT	662,729	662,729
Less: Accumulated Depreciation	(662,729)	(662,729)
	<u>-</u>	<u>-</u>
Total Fixed Assets	<u>82,980</u>	<u>112,974</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

NOTE 6: CREDITORS & ACCRUALS

	2023	2022
	\$	\$
Bank SA Visa	2,161	1,511
PAYG Tax Withholding	34,219	26,735
Recoveries - Fidelity Fund	10,000	69,486
Recoveries - Treasurer	24,950	37,250
Accrual	12,006	22,420
Trade Creditors	55,791	147,503
Superannuation	9,687	10,595
	<u>148,813</u>	<u>315,500</u>

NOTE 7: PROVISIONS

Provision is made for the liability for employee entitlements arising from services rendered by employees to balance date and self insured workers compensation payments.

	2023	2022
	\$	\$
Workcover Provision	11,702	25,614
Annual Leave	165,927	127,445
Long Service Leave	476,187	438,430
	<u>653,816</u>	<u>591,489</u>

Number of employees at 30 June 2023 (FTE) 15.1 15.1

The policy for the provision of long service leave is that the provision is recognised after the employee has provided 5 years of service. Refer to note 15 in relation to the funding of that provision.

NOTE 8: ACCUMULATED FUNDS

	2023	2022
	\$	\$
Accumulated surplus at the beginning of the financial period	245,397	(77,721)
Operating surplus/(deficit) for the year	185,244	323,118
Accumulated surplus at the end of the financial period	<u>430,641</u>	<u>245,397</u>

NOTE 9: SALARIES - PROFESSIONAL

	2023	2022
	\$	\$
Salary and wages	1,537,543	1,706,147
Salary Sacrifice - Superannuation	36,040	38,273
	<u>1,573,584</u>	<u>1,744,420</u>

Salaries - Professional consists of wages paid to professional staff and salary sacrifice contributions deducted from employees wages and paid directly to their nominated superannuation fund.

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

NOTE 10: WORKERS COMPENSATION CLAIMS

	2023	2022
	\$	\$
Return to Work SA annual premium	1,107	1,702
Movement in Crown workers compensation provision	(13,912)	14,652
	<u>(12,805)</u>	<u>16,354</u>

Because the Commissioner is an agency of the Crown, he is a self-insured employer for the purposes of any workers compensation claim by any of his employees. A provision has been recorded in the 2023 financial statements in accordance with the calculations provided by PwC as the actuary for Crown workers compensation. An annual administration fee is also paid to Return to Work SA.

NOTE 11: OCCUPANCY EXPENSES

	2023	2022
	\$	\$
Rent	312,253	299,780
Refund of prior year outgoings	-	-
	<u>312,253</u>	<u>299,780</u>

NOTE 12: RECOVERIES OF COSTS OF DISCIPLINARY PROCEEDINGS

Disciplinary proceedings in the Supreme Court and the Legal Practitioners Disciplinary Tribunal ("Tribunal") can result in costs orders to the successful party. Sometimes those orders will be in the Commissioner's favour, and sometimes against him. When costs are awarded to the Commissioner, he remits any costs he recovers from the other party to the Legal Practitioners Fidelity Fund ("Fidelity Fund") maintained by the Law Society. When costs are awarded against the Commissioner, or if he otherwise agrees to pay the other party's costs, those costs are recorded as "Associated Costs".

	2023	2022
	\$	\$
Costs recovered but unremitted carried forward from the previous financial year	69,486	13,533
Costs recovered during the financial year	10,000	69,486
Costs remitted to the Fidelity Fund during the financial year	(69,486)	(13,533)
Recovered costs to be remitted to the Fidelity Fund in the next financial year (Note 6)	<u>10,000</u>	<u>69,486</u>

NOTE 13: RECOVERIES OF FINES

The disciplinary action the Commissioner can take against a practitioner includes a fine. When a fine is paid by the practitioner to the Commissioner, the Commissioner remits the fine to the Treasurer and those funds form part of the State Government's general revenue.

	2023	2022
	\$	\$
Fines paid but unremitted carried forward from the previous financial year	37,250	15,625
Fines paid during the financial year	24,950	37,250
Fines remitted to the Treasurer during the financial year	(37,250)	(15,625)
Paid fines to be remitted to the Treasurer in the next financial year (Note 6)	<u>24,950</u>	<u>37,250</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

NOTE 14: LEASING COMMITMENTS

Operating Lease Commitments

Being for rent of office premises:

	2023	2022
Payable:	\$	\$
- not later than one year	409,131	396,253
- later than one year but not later than the lease period	422,429	831,560
	<u>831,560</u>	<u>1,227,813</u>

A new lease was executed by the Commissioner for 5 years commencing 1 July 2020 to 30 June 2025 with a right of renewal for an additional 3 years commencing 1 July 2025. The rent is to increase by a fixed 3.25% annually on 1 July.

NOTE 15: ECONOMIC DEPENDENCY

The Commissioner is financially dependent on the continuation of grants from the Fidelity Fund.

Commencing from 1 July 2018, funding from the Fidelity Fund has covered expected cash outlays in the relevant 12 month period. That has resulted in leave provisions from 2018/19 onwards no longer being funded in full.

In the event that a significant liability for payment of leave entitlements arises in any one year, the Commissioner would need to seek additional funding from the Fidelity Fund to pay the entitlements when they became due.

NOTE 16: COUNSEL FEES, ASSOCIATED COSTS AND EXTERNAL DELEGATION

During the financial year, the Commissioner incurred \$49,092 on Counsel Fees (as against a budget for that item of \$200,000), \$3,888 on Associated Costs (\$5,000) and \$0 on External Delegations (\$50,000). Those expenses together totalled \$52,980, as against a total budget of \$255,000.

It is often appropriate for the Commissioner to brief independent counsel when involved in proceedings in the Tribunal and the Supreme Court. The overall fees paid to counsel in any particular financial year will depend largely on how many proceedings are heard by the Tribunal and the Supreme Court during that period, as well of course as the complexity of those proceedings.

In relation to the amounts paid to external delegates, those delegates consider and investigate complaints in relation to which the Commissioner considers that he and his staff are conflicted.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT BY THE LEGAL PROFESSION CONDUCT COMMISSIONER

The Commissioner has determined that this special purpose financial report should be prepared in accordance with the accounting policies outlined in Note 1 to the financial report.

In the opinion of the Commissioner, the financial report as set out on pages 2 to 11:

1. Presents a true and fair view of the financial position of the Commissioner as at 30 June 2023 and its performance for the year ended on that date.
2. At the date of this statement, there are reasonable grounds to believe that the Commissioner will be able to pay its debts as and when they fall due.



.....

Anthony Keane

Legal Profession Conduct Commissioner

Dated 30 October, 2023

Independent Auditor's Report

To the Legal Professional Conduct Commissioner ("the Commissioner")

We have audited the accompanying financial report, being a special purpose financial report, of the Legal Profession Conduct Commissioner for the financial year ended 30 June 2023, consisting of the Statement of Comprehensive Income, Statement of Financial Position, Reconciliation of Cash, accompanying notes and Statement by the Commissioner.

Commissioner's Responsibility for the Financial Report

The Commissioner is responsible for the preparation and fair presentation of the financial report and he has determined that the accounting policies described in Note 1 to the financial report are appropriate. The Commissioner's responsibilities also include designing, implementing and maintaining internal controls relevant to the preparation of a financial report that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the financial report based on our audit. No opinion is expressed as to whether the accounting policies used, as described in Note 1, are appropriate to meet the needs of the Commissioner. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend upon the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Commissioner, as well as evaluating the overall presentation of the financial report.

The financial report has been prepared for the purpose of fulfilling the Commissioner's financial reporting obligations. We disclaim any assumption of responsibility for any reliance on this report or on the financial statements to which it relates to any person other than the Commissioner or for any purpose other than that for which it was prepared.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independence

In conducting our audit, we have complied with the independence requirements of Australian professional ethical pronouncements.

Opinion

In our opinion, the financial report of the Legal Profession Conduct Commissioner gives a true and fair view of the financial position of the Legal Profession Conduct Commissioner as at 30 June 2023 and of its financial performance for the year then ended in accordance with the accounting policies described in Note 1 to the financial statements.

Basis of Accounting

Without modifying our opinion, we draw attention to Note 1 to the financial report, which describes the basis of accounting. The financial report has been prepared for the purpose of fulfilling the Commissioner's financial reporting responsibilities. As a result, the financial report may not be suitable for another purpose.

UHY Sothertons

UHY SOTHERTONS
Adelaide Partnership

Alex Reade

Alex Reade
Partner

Dated 30 October, 2023