



# **LEGAL PROFESSION CONDUCT COMMISSIONER ANNUAL REPORT 2014 - 2015**

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# COMMISSIONER'S REPORT

In accordance with section 90A, I present to the Attorney-General and the Chief Justice the inaugural annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2015.

## Overview of legislative change

The *Legal Practitioners (Miscellaneous) Amendment Act 2013* came into operation on 1 July 2014. The Amendment Act made major changes to the *Legal Practitioners Act 1981*, and as a result the disciplinary system for lawyers in South Australia changed dramatically. The Legal Practitioners Conduct Board ceased to exist on 30 June 2014, and the role of Commissioner formally commenced on 1 July 2014.

My functions are similar to those of the Board – to handle complaints against practitioners (both conduct complaints and overcharging complaints), to investigate suspected misconduct by practitioners, and to determine whether in any particular case there is misconduct and / or overcharging on the part of the practitioner. If I find that there is misconduct on the part of a practitioner, then I can discipline the practitioner myself by exercising an expanded range of disciplinary powers (by comparison to those of the Board). However, where a practitioner's misconduct is particularly serious (for example, conduct that in my view warrants the practitioner's name being struck off the Roll) I won't discipline the lawyer myself but I will instead commence disciplinary proceedings in either the Tribunal or the Supreme Court.

The other most significant change made by the Amendment Act in terms of the disciplinary system was to the definitions of what might amount to misconduct – in particular, to include a “fit and proper person” test that relates to a practitioner's conduct outside of practice, as well as conduct in connection with the practice of the law. So far I have only had to consider a couple of matters where the conduct complained of occurred outside of the practitioner's practice – by way of example, one such matter involved a practitioner who was charged following an altercation with police in a social setting.

## Transition from Board to Commissioner

The transition from the Board to the Commissioner's office on 1 July 2014 brought with it a number of challenges. The Board was a Government instrumentality whereas my office is an agency of the Crown, which meant that I had to deal with a range of new legislative requirements. We needed a new website – it had to be written from scratch to take account of the new legislation, and amongst other things it had to make provision for the newly required Register of Disciplinary Action. We needed to explain to everyone involved in a complaint / disciplinary proceedings that hadn't been finalised as at 1 July 2014 exactly how such a matter would transition from the Board to my office. We had to change our insurance arrangements, bank accounts, stationery, office signage – the list goes on.

I had a 5 months transition period in the lead up to 1 July 2014. That seemed like a long time, at least to start with. There was a surprising number of things that had to be attended to. I can't thank, or praise, highly enough the project team from the Attorney-General's Department that was assigned to help me through all of these transitional

issues – I greatly appreciated their commitment, skills and hard work in order to enable my office to open on time and with a smooth transition period behind us.

## New Disciplinary System

I have set out in some detail later in this report some relevant statistics in relation to the number of complaints received by my office during the reporting period, the nature of those complaints, and the outcome in relation to them.

One of the aims of the Amendment Act was to make the disciplinary process a more efficient one, both for the person (often the practitioner's client) who complains about the conduct of a practitioner, and also for the practitioner about whom the complaint is made. We have achieved that efficiency in some respects, and are working towards achieving that objective in other respects.

Efficiencies were to be achieved in 2 main ways. First, by expanding the range of disciplinary powers I could exercise if I found that a practitioner had engaged in misconduct (by comparison to the powers the Board had), it was clearly expected that I would be able to deal with more complaints myself without having to commence disciplinary proceedings in either the Tribunal or the Supreme Court. Second, by having the Commissioner engaged full time in making decisions as to conduct, in contrast to the Board mostly only meeting on a monthly basis, it was expected that having a full time decision maker would enable decisions to be made more quickly.

The reduced number of charges that I have laid in the Tribunal (4), when compared with the number laid by the Board in its final year (11), show that the first of these objectives is being achieved.

However, we have more open files as at 30 June 2015 (458) than there were at 30 June 2014 (345). This is at least partly because of the greater number of complaints made during the reporting period (505) than in the preceding one (445). But I think it is partly reflective too of the fact that our new systems to deal with the new legislation / processes etc took a while to bed down. I expect to have a better outcome in that regard at the end of my second year.

In terms of making the complaint process itself more efficient, my office currently operates primarily within Office systems, supplemented by a rudimentary database and document management system. During the reporting period, we went through the process of identifying the information system requirements of my office, in terms of what is normal for a modern complaints handling organisation. A number of new systems were recommended, and we are now in the process of acquiring and implementing them. I expect that we will have completed that process by the end of this current financial year. In light of the 13% increase in complaint numbers during the reporting period, and the likelihood of that type of increase continuing, the implementation of new systems is the main way in which my office will be able to deal with the increasing workloads without having either to increase significantly our staffing levels or to see an increase in the duration of the complaint / investigation process.

I should also note that the increase in complaint numbers during the reporting period would have been much greater if not for the introduction of our "assisted enquiry" process. A relatively conservative estimate is that that new process prevented about 80 formal complaints being made. I have described that new process in more detail in the Conciliation and Enquiries section of this report.

## Staff

I was very fortunate that all of the Board's staff (other than the Board's Director) transitioned to my new office on 1 July 2014. And I am even more fortunate that virtually all of them are still with me – they all do an outstanding job in what are, on occasions, very difficult circumstances.

It is fair to say that it has been a challenging year for my staff. In particular, we all needed to familiarise ourselves with the new disciplinary system being introduced by the Amendment Act and work out how it would impact on the office's processes and standard documents, what additional investigatory powers we had been given etc. So that we would be ready to "hit the ground running", we held weekly internal discussion sessions in the lead up to 1 July 2014, and reviewed and revised all of our standard documents.

As well as having to cope with new legislation, new systems and a new employer, we have also moved premises (about which I will say more shortly). And all of that has been in the context of an ever increasing workload, but without any additions to our staff numbers. Without exception, they have all pitched in to make sure that we did what we had to do. They have all done so in good humour, and I have never once had to question their commitment to the important role that my office plays in the legal profession in this State. I am grateful to them all. I am particularly grateful to the support I have had from my Principal Legal Officer, Liz Manos, whose experience and knowledge of the disciplinary process has been absolutely invaluable to me during my early days in this office.

## Financial arrangements

My office is funded from the Fidelity Fund (previously known as the Guarantee Fund), which is established and maintained under the Act.

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

This year's financial statements are more complicated than I expect will normally be the case, for two main reasons. First, various assets and liabilities of the Board transferred to me on 1 July 2014 under the transitional provisions in the Amendment Act. Second, I received additional funding part way through the year to cover the cost of relocating to new premises, and those funds were not wholly expended on the relocation process in the last financial year. Both of these arrangements are reflected in the financial statements, but they make it difficult to view the financial statements just from the point of view of my office's normal operating expenditure as against budget.

Disregarding both of those complicating factors, the end result of my first year's operation is as follows (ignoring GST):

- my funding was based on an approved expenditure budget of \$4,038,091;
- I received funding of \$3,788,091 from the Fidelity Fund, and I earned \$69,914 in interest on those funds;
- it was intended that the balance of my funding would come from the net assets I received from the Board;
- my actual expenditure was \$3,916,417\* – which represents an underspend as against budget of \$121,674.

*\* This figure does not come directly from the financial statements. Rather, it takes the actual expenditure figure from those statements and:*

- adds back capital items (ie computer equipment);*
- deducts non-cash components (ie depreciation, asset write offs);*
- deducts the Board's liabilities that I received accounts for, and paid, after 30 June 2014 (which amounted to \$45,146).*

As will almost always be the case, the vast majority of my expenditure takes the form of salaries for my staff, rent for our office premises, and counsel fees.

Now that the financial statements are complete, I need to reconcile with the Attorney-General's Department the financial impact of the transfer of the Board's assets and liabilities to me on 1 July 2014. Once agreed, there will then need to be a final reconciliation of funding for 2014/15 with the Fidelity Fund.

### **New premises**

The Board had been located in offices on Franklin Street for many years. Shortly after starting in my role, I formed the view that these offices were no longer suitable. The lease was in any event approaching the end of its term, and it was appropriate to look for new accommodation.

As from the end of May 2015, we moved into new premises at 30 Currie Street. The premises are a significant improvement on those we moved from – in particular, our relatively small workforce is now all located on one floor (instead of 2 and a bit), and we have more conciliation rooms than previously, better security arrangements in place, and better on-site storage.

I obtained approval for just over \$1m in funding for relocation purposes. Although the financial arrangements aren't quite yet finalised, it seems that we will come in substantially under budget in that respect.

### **Education of the profession**

Both before and after the introduction of the Amendment Act, I spent many hours presenting seminars to the profession on the new disciplinary regime. This included a number of seminars that were organised by the Law Society and LegalWise, and also presentations to a number of individual firms.

Including during the 5 month transitional period, I gave 26 presentations to 30 June 2015. One of my lawyers, Nadine Lambert, also has given nearly a dozen presentations.

I should just note that, as well as the changes to the disciplinary regime, the Amendment Act made significant changes to the Act in relation to costs disclosure. The Law Society ran a number of seminars on that topic in the lead up to 1 July 2014. It is fair to say that the profession has had a substantial amount of information to get on top of in that respect. But I would stress the need for all practitioners to be aware of their costs disclosure obligations because, now that we are more than a year down the track from the Amendment Act coming into operation, it will be difficult for anyone from now on to plead ignorance of the changes.

## Information Security Management System

As a Government agency, I needed to ensure that my office complied with the Government's Information Security Management Framework (ISMF). In order to do so, we needed to develop our own Information Security Management System (ISMS). We developed our ISMS, and the new security policies required under it, during the 2014/15 year. We did so with the assistance of an external consultant (CQR). Our ISMS was implemented before the end of the financial year.

While the maintenance of the ISMS is an ongoing process, I am satisfied that it was satisfactorily implemented before the end of the financial year, and that we now comply with the ISMF.

## Register of Disciplinary Action

I am required by section 89C to maintain a public register of practitioners who, after 1 July 2014, are subject to certain types of disciplinary action. No such register has previously been maintained in this State.

A finding of unprofessional conduct / 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 conduct / 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.

In relation to disciplinary action taken before 1 July 2014, I had discretion as to whether to display it on the Register. I decided only to display information in relation to prior disciplinary action if it involved:

- a practitioner who was struck off before 1 July 2014, and who hadn't subsequently been re-admitted to practice; or
- a practitioner who had been suspended from practice or placed under supervision for a period of time, but only if that suspension or supervision was still in effect as at 1 July 2014.

The Register is available on my website at [www.lpcc.sa.gov.au](http://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 to thank the Attorney-General for his support of my office, as well as those from his Department who I dealt with both through the transition period and during the reporting period.

**Greg May**

Legal Profession Conduct Commissioner

28 October 2015

## PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

### Staff Members - as at 30 June 2015

<b>Title</b>	<b>Name</b>	<b>Commenced (with Board / Commissioner)</b>
Commissioner	Greg May	1 February 2014 (transitional) 1 July 2014 (formal)
Principal Legal Officer	Elizabeth Manos	November 2008
Solicitor	Mike Ahern	September 2013
Solicitor	Deslie Billich	April 2015
Solicitor (costs)	Rebecca Birchall	September 2005
Solicitor / Conciliator	Paul Blackmore	April 2013
Solicitor	Philippa Branson	March 2011
Solicitor	Kathryn Caird	February 2013
Solicitor	Linda Doré	June 2011
Solicitor	Julia Dunstone	May 2012
Solicitor	Ron Fletcher	March 2010
Solicitor	Sharon Hurren	April 2007
Solicitor	Paul Keady	February 2013
Solicitor	Nadine Lambert	June 2007
Solicitor	Debra Miels	October 2010
Solicitor	Meredith Strain	January 2008
Conciliator	Amelia Taeuber	March 2010
Finance Manager	Kirstie Bateup	March 2010
Systems Manager	Bart Fabrizio	March 2010
Executive Secretary	Robyn Delaney	September 2006
Paralegal	Yvette Manocchio	October 1997
Admin Officer	Robyn Hurni	November 2011
Admin Officer	Lee Moulden	August 2012
Admin Officer	Ros Spangler	February 2007
Admin Officer	Rebekah Hill	February 2013
Receptionist	Pat Porter	August 2006



The majority of my lawyers are senior practitioners. That is necessarily the case given the nature of the work they carry out.

As at 30 June 2014, the Board's staff comprised 20 FTE employees. That staffing level remained relatively constant throughout the year, and as at 30 June 2015 my staff comprised 21 FTE employees. That is despite a not insignificant increase in the number of complaints received during the year, as well as all of the additional work that came with the change in legislation and the move of premises.

A number of my staff work less than full-time. In fact, only 10 of us (including me) work full-time.

# INVESTIGATIONS BY THE COMMISSIONER

## Complaint / Investigation process

I am obliged to investigate any complaint I receive about a practitioner, and I also must investigate a practitioner's conduct if I am directed to do so by the Attorney-General or the Law Society. Even without a complaint or a direction, I may decide to commence an "own initiative investigation" into a practitioner's conduct if I have reasonable cause to suspect misconduct. An Own Initiative Investigation will often be commenced following a report from the Law Society under section 14AB, or a referral from the Judiciary, the Police or other practitioners.

To constitute a valid complaint, the complaint must be sufficiently detailed so that we can decide whether to investigate. We will only investigate 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 or not to investigate a complaint.

Having said that I must investigate in certain circumstances, section 77C also gives me the ability to close a complaint at any stage without having to consider its merits. Some of the circumstances in which I can do so are where:

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

I have significantly wider powers when investigating a complaint than those that were previously available to the Board. Essentially, in various ways (eg by giving a notice, and in some circumstances by executing a search warrant) I can (amongst other things):

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

Once an investigation is complete, I then make a determination in relation to the practitioner's conduct. I can decide either that:

- there is no misconduct on the part of the practitioner; or
- I am satisfied that there is evidence of misconduct – and to be so satisfied, the evidence needs to be sufficiently substantial, admissible, probative and reliable such as would be sufficient to sustain a charge in the Tribunal.

If I am satisfied that there is evidence of misconduct, then I can either:

- 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; or

- if I consider that I can't adequately deal with the misconduct under section 77J, then I must lay a charge against the practitioner before the Tribunal.

If I am taking the disciplinary action myself, then I am conscious that parity and consistency is important, both in regard to whether or not I find misconduct and also as to the penalty that is imposed.

In some limited circumstances, if I take the view that a practitioner should be struck off the Roll, then I 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 number of formal complaints received by the Board, and now me, during the last five years has continued to increase:

- 2010/11 – 313
- 2011/12 – 329
- 2012/13 – 372
- 2013/14 – 445
- 2014/15 – 505

(These figures include Own Initiative Investigations.)

The average number of formal complaints over that 5 year period is 393 per year. The number of complaints I received / investigations I commenced in the reporting period represents a 13.5% increase by reference to the final year of the Board's operations in 2013/14.

Of the 505 written complaints made last year:

- 266 (or 52.7%) were made by the client of the practitioner complained about;
- 203 (or 40.2%) were made by a third party; and
- 24 (or 4.8%) were either own initiative investigations, or section 14AB reports that weren't subsequently investigated;
- 12 (or 4.8%) were about practitioners no longer in practice.

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

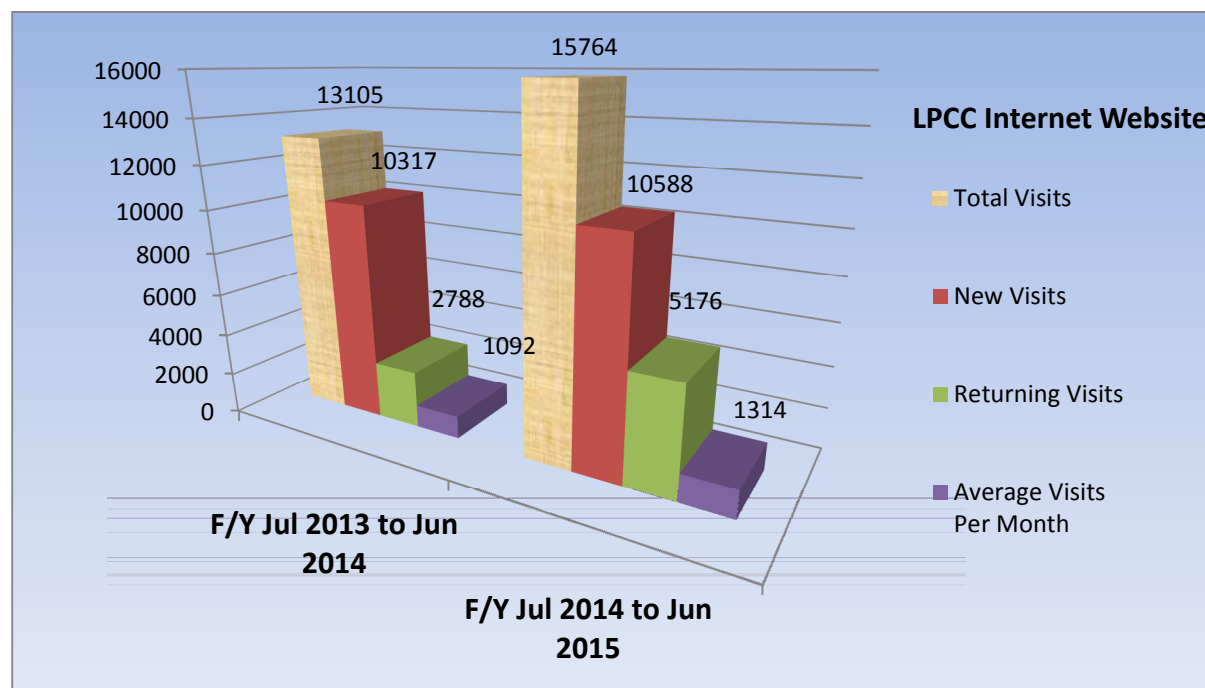
- The husband complains about the conduct of the practitioner who is acting for the wife in their family law proceedings.
- A beneficiary of a deceased estate complains about the conduct of the practitioner who is acting for the executor of a deceased estate.

### Website – the last 2 years

The majority of complaints received were lodged through my website on a pro forma complaint form.

The number of people accessing information on the Board's, and now my, website has been increasing significantly. Since 2010, the Board has been able to track the number

of local, Australian and worldwide visitors to my website, as can I. The results for the last 2 years are set out in the chart below.



### Nature of matters complained of / investigated

Family (including de facto)	110	21%
Probate and wills	67	11.5%
Commercial	60	11.5%
Personal injury	43	8.2%
Criminal	41	7.8%
Minor Civil	38	7.3%
Administrative	33	6.3%
Workers compensation	15	2.9%
Real Property	12	2.3%
Industrial	11	2.1%
Debt Collection	11	2.1%
Criminal injuries compensation	7	1.3%
Migration	5	0.9%
Conveyancing	4	0.8%
Company (including liquidation)	4	0.8%
Building disputes	3	0.6%
Bankruptcy	2	0.4%
Environment Resources & Development	2	0.4%
Consumer law	1	0.2%
Tort (not personal injury)	1	0.2%
Not disclosed	7	1.3%
Other	46	8.8%

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	2013/2014		2014/2015	
	Complaints		Complaints	
Family	96	21.4%	110	21.8%
Probate & Wills	62	13.8%	67	13.3%
Commercial	48	10.7%	60	11.9%
Personal Injury	33	7.4%	43	8.5%
Criminal	74	16.5%	41	7.1%
<b>Total of top five</b>		<b>69.80%</b>		<b>62.60%</b>

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.

## Nature of allegations made

Overcharging	167
Inappropriate behaviour	126
Poor handling	94
Lack of communication	73
Delay	65
Negligence	56
Misrepresentation	55
Incompetence	48
Conflict of interest	43
Misleading the court	41
Criminal offence (not theft)	30
Failure to comply with instructions	29
Acting against instructions	27
Acting without instructions	26
Legal advice	18
Legal system	15
Retention of documents	14
Trust regulatory breach	14
No cost advice	11
Breach of the Act	9
Failure to pay third party	9
Theft/fraud	8
No jurisdiction	5
Breach of confidentiality	2
Breach of undertaking	2
Insufficient accounts	1
Breach of conciliated agreement	1
Other	56

In the reporting period we opened 505 new investigation files. A total of 1,045 allegations were made as set out in the above table, across those files. The top four allegations – ie overcharging, inappropriate behaviour, poor handling, and lack of

communication – amounted to 460 of the 1,045 allegations made, or 44% of all allegations.

Allegations of overcharging, poor handling and lack of communication (often with an allegation of delay) are commonly found in a single complaint.

## Profile of practitioners being complained about

### Complaints by type of practice for the last two reporting periods

Type of practice	2013/2014		2014/2015	
	Number of complaints		Number of complaints	
Sole practitioner	119	26.7%	119	23.6%
Employee	102	22.9%	101	20%
Partner	71	16%	81	16%
Director incorporated practice	52	11.7%	64	12.7%
Non-practising	29	6.5%	36	7.1%
Barrister	20	4.5%	26	5.1%
Government employee (including Legal Services Commission)	16	3.6%	16	3.2%
Manager/supervisor appointed	6	1.4%	2	0.4%
Consultant	5	1.1%	5	1%
Suspended practitioner	5	1.1%	7	1.4%
Corporate practitioner	3	0.7%	1	0.2%
Interstate practitioner	2	0.5%	3	0.6%
Judiciary	1	0.2%	14	2.8%
Unknown	14	3.1%	30	5.9%
<b>Total</b>	<b>445</b>		<b>505</b>	

As has been the case for many years, the category of practitioner against whom the most complaints were made was the sole practitioner. This would seem to reflect the difficulties inherent in practices of that nature, and also that they tend to deal with less sophisticated clients than do larger firms.

## Complaints by Gender

Gender	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	325	64.4%	1,963	50.7%
Women	152	30.1%	1,909	49.3%
Unidentified/Corporate	28	5.5%	N/A	N/A
<b>Total</b>	<b>505</b>		<b>3,872</b>	

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

Length of time in practice	2011	2012	2013	2014	2015
Less than 5 years	21	25	22	40	27
	6.7%	7.6%	5.9%	9%	5.3%
5–10 years	45	51	62	65	69
	14.4%	15.5%	16.7%	14.6%	13.7%
10–15 years	40	37	36	41	60
	12.8%	11.3%	9.7%	9.2%	11.9%
More than 15 years	197	208	239	285	320
	62.9%	63.2%	64.2%	64%	63.4%
Not admitted or not identified or a firm	10	8	13	14	29
	3.2%	2.4%	3.5%	3.2%	5.7%
<b>Total</b>	<b>313</b>	<b>329</b>	<b>372</b>	<b>445</b>	<b>505</b>

## 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
2015	< 1	30	0.7%	0	0%
2010 - 2014	1 - 4 years	803	20.7%	31	6.1%
2005 - 2009	5 - 9 years	720	18.6%	69	13.7%
2000 - 2004	10 - 14 years	674	17.4%	64	12.7%
1995 - 1999	15 - 19 years	372	9.6%	57	11.3%
1990 - 1994	20 - 24 years	268	6.9%	44	8.7%
1985 - 1989	25 - 29 years	289	7.5%	39	7.7%
1980 - 1984	30 - 34 years	271	7%	57	11.3%
1975 - 1979	35 - 39 years	266	6.9%	72	14.3%
1970 - 1974	40 - 44 years	122	3.2%	29	5.7%
1960 - 1969	45 - 54 years	53	1.4%	13	2.6%
1950 - 1959	55 – 64 years	4	0.1%	1	0.2%
Unknown				29	5.7%

It is difficult to draw too many conclusions from these statistics, but a few observations are appropriate:

- Those practitioners with more than 15 years experience, who represent approximately 43% of the practising profession, received nearly 62% of the complaints. Within that group, those practitioners admitted between 1975 and 1985 (30 - 39 years post admission experience) who represent just under 14% of the practising profession received nearly 26% of the complaints.
- Those practitioners with less than 5 years experience, who represent approximately 22% of the practising profession, received just over 6% of the complaints.
- Those practitioners admitted less than 10 years who represent 40% of the practising profession received 20% of all complaints made last financial year.



# CASE MANAGEMENT

## Files opened and current numbers

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

Status of file	2012/13	2013/14	2014/15
New investigation files opened	372	445	505
Current investigations as at 30 June	328	345	458
Investigation files closed	358	430	339

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

Category	30 June 13	30 June 14	30 June 15
Investigation	328	345	458
Tribunal	21	22	19
Debt collection	26	31	34
District Court	0	0	1
Supreme Court	12	6	10
High Court	1	0	0
<b>Total</b>	<b>388</b>	<b>404</b>	<b>522</b>

All new complaints are opened as investigation files, as are any Own Initiative Investigations. This category covers both conduct matters and complaints of overcharging, but doesn't include either enquiry files or administration files.

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;
- District Court proceedings – these are rare, but in the reporting period we were involved in one action under the *Freedom of Information Act* relating to a prior decision of the Board not to release certain documents;
- debt recovery matters – ie where a costs order has been made against a practitioner.

## Determinations made

I made 337 determinations during the reporting period, in relation to the following matters:

- 273 determinations related to the conduct of a practitioner;
- 4 determinations related to overcharging complaints;
- 60 determinations were in relation to matters where there was a combination of conduct and overcharging complaints.

Of the 333 matters that related to the conduct of a practitioner, my determinations were as follows:

- I closed 143 conduct complaints under section 77C;
- I found no misconduct on the part of the practitioner on 168 occasions;
- in 2 matters I closed part of the complaint under section 77C and found no misconduct in relation to the other part of the complaint;
- in 20 matters, I was satisfied that there was misconduct on the part of the practitioner.

Of the 20 matters in which I was satisfied that there was misconduct on the part of the practitioner:

- in relation to those involving unsatisfactory conduct / unsatisfactory professional conduct, I took the following disciplinary action under section 77J:
  - I reprimanded 6 practitioners;
  - I reprimanded 5 practitioners and ordered them to make an apology;
  - I fined 1 practitioner \$1,000;
  - I reprimanded 1 practitioner, fined him \$3,000, and ordered that he apologise and undertake certain specified professional development;
  - I reprimanded 1 practitioner and ordered that he undertake certain specified professional development;
  - I ordered 1 practitioner to make an apology and to undertake certain specified professional development; and
- in relation to those involving unprofessional conduct / professional misconduct:
  - I reprimanded 1 practitioner; and
  - I determined to lay charges in the Tribunal against 4 practitioners.

Of the 64 overcharging complaints, my determinations were as follows:

- I closed 2 overcharging complaints under section 77C as the complaint was received more than 2 years after the final bill;
- I found no overcharging on the part of the practitioner on 57 occasions;
- in 5 matters, I was satisfied that there had been overcharging by the practitioner / firm.

Of the 5 matters in which I was satisfied that there was overcharging, I took the following action under section 77N:

- I made 2 recommendations that the bill should be reduced or an amount refunded;
- I made 3 binding determinations that there had been overcharging.

## Workflow

### Current files by age

Age of current files	2012/13		2013/14		2014/15	
Older than 5 years	6	1.5%	9	2.2%	4	0.7%
3 - 5 years	29	7.5%	20	5%	30	5.2%
2 – 3 years	26	6.7%	27	6.7%	52	8.9%
1 – 2 years	73	18.8%	95	23.5%	117	20.1%
< 1 years	254	65.5%	253	62.6%	379	65.1%
<b>Total Files</b>	<b>388</b>		<b>404</b>		<b>582</b>	

# CONCILIATION AND ENQUIRIES

## Conciliation

One of my functions under the Act is to conciliate complaints. We have 2 staff members dedicated to our Conciliation section.

Complaints are suitable for conciliation mostly where there are issues between a practitioner and his or her own client (ie not usually where there is a third party complaint, although there are some exceptions), and mostly where those issues relate to overcharging and communication problems. Costs complaints are of course the type that are most obviously amenable to conciliation.

Conciliation can either be formal (involving the parties attending a meeting at my office facilitated by one of my conciliators) or informal (ie conducted over the phone, by email, or by other written correspondence). A complaint makes its way to a conciliator either by referral from an investigating solicitor at some point during the course of the investigation, or by direct referral to conciliation upon receipt of the complaint.

If a complaint is successfully conciliated between a practitioner and the complainant, then in appropriate circumstances I am able to bring the complaint / investigation to an end. Unless we have already seen conduct issues that concern us, then I will most likely close the complaint under section 77C following 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 in my view it is in the public interest that I should then devote my office's resources to other complaints that need to be investigated and that aren't yet resolved.

The end result of a successful conciliation will be a formal agreement under section 77O to which the complainant, the practitioner and I are all parties. If the lawyer subsequently doesn't comply with the terms of the conciliated agreement, that will give rise to a new misconduct issue that I will then need to investigate (section 77O(6)).

During the reporting period, there were 91 matters referred to conciliation. The majority of them were resolved at conciliation.

## Enquiries

Most enquiries are made through telephone contact, although some people still email their queries through my website.

During the reporting period, we received in excess of 1,500 enquiries. Most of those enquiry contacts are taken / responded to by our conciliators.

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 is the most enquired about area of law, and overcharging is the most enquired about type of complaint.



In October 2014, we introduced an “assisted enquiry” process. That involves an enquiry call being, in appropriate circumstances, followed up by us with some limited assistance to try to resolve a dispute before a formal complaint is made. For example, where:

- the enquirer is complaining that the practitioner won’t return phone calls / emails;
- the enquirer hasn’t had any communication from the practitioner at all; or
- there is a costs dispute over a relatively nominal amount,

and the concern isn’t likely to amount to misconduct, then we will most likely call that practitioner and suggest that if he or she attempts to deal with the issue immediately then it might prevent a formal complaint / investigation. In the 9 months to the end of the reporting period in which the assisted enquiry process operated, we took pro-active steps in relation to 97 enquiry calls, and those steps helped resolve the problems that were at the heart of 88 of them.

Of course, some of those resolutions may not have prevented a formal complaint – but, conservatively, my estimate is that they probably did so in at least 80 of them.

## LITIGATION WORK

All Tribunal decisions and Supreme Court decisions referred to in this report can be accessed through my website at [www.lpcc.sa.gov.au](http://www.lpcc.sa.gov.au).

### Tribunal charges

Under the Act, I am not (and the Board was not) the only party who could lay a charge of misconduct against a practitioner before the Tribunal. A charge can (and could) also be laid by the Attorney General, the Law Society or a person claiming to be aggrieved by reason of the alleged misconduct. This report refers only to charges laid by me (and previously by the Board).

In 2012/13, the Board laid charges against 13 practitioners.

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

In the reporting period, I have laid charges against 4 practitioners. Those charges were laid on the basis of the following alleged conduct by the practitioners:

- providing false and misleading information to a financier to enable a client to obtain funding;
- making false representations to the Legal Services Commission in order to obtain funding;
- taking securities from a client purportedly to secure legal fees in circumstances where the securities were found to be shams, subsequently giving false evidence in related court proceedings, and misleading the Board in its investigation;
- failing to diligently prosecute a client's action before the court, and failing to maintain adequate communication with the client.

All of those charges related to conduct in relation to which:

- I was satisfied that there was evidence of misconduct;
- I was satisfied that I could not deal adequately with the conduct in question under section 77J; and
- I did not determine that it would not be in the public interest to lay a charge before the Tribunal (section 77L).

None of those charges have yet been heard by the Tribunal in any substantive way. Some of them involve applications to the Tribunal for an extension of time under section 82(2a)(b).

### Tribunal appeals

Decisions of the Board were not previously able to be appealed against.

As a result of the Amendment Act, if I determine that there has been misconduct by the practitioner, and if I decide to deal with that misconduct under section 77J, then the complainant can appeal to the Tribunal against the penalty I impose. And in some circumstances the lawyer can also appeal to the Tribunal against the penalty I impose.

Not all of my decisions can be appealed against. Some recent decisions of the Tribunal have made it clear that there is no right of appeal against my determination if either:

- I find that there is no misconduct by the practitioner; or
- I close the complaint under section 77C.

In the reporting period, there were only 2 appeals against my decisions. Both of them were appeals against the type of decisions just referred to, and it was in those appeals that the Tribunal decided that those type of decisions could not be appealed against. Both of those Tribunal decisions were handed down after the end of the reporting period.

### Tribunal decisions

In the reporting period, the Tribunal handed down decisions relating to 13 practitioners. All of those decisions related to charges that were laid by the Board prior to 1 July 2014.

In relation to 3 practitioners – *Mr Benjamin Johns*, *Mr Patric Alderman* and *Mr Simon Bojko* – the Tribunal recommended that disciplinary proceedings be commenced against them in the Supreme Court.

In relation to *Ms Rebecca Madden-Graham*, the Tribunal found that she had **not** engaged in misconduct.

In the other matters which were determined by the Tribunal in the reporting period:

- *Mr David Johnson* was found to have engaged in unprofessional conduct for which he was reprimanded;
- *Dr John Walsh of Brannagh* was found to have engaged in both unprofessional conduct and unsatisfactory conduct – there has not yet been any decision by the Tribunal on penalty, and both Dr Walsh and I have appealed to the Supreme Court against the Tribunal's decision with those appeals yet to be heard;
- *Mr Craig Sloan* was found to have engaged in unsatisfactory conduct, for which he was reprimanded and fined \$7,000;
- *Mr Darren Kruse* was found to have engaged in unprofessional conduct, for which he was reprimanded, and ordered to enter into a 12 month mentoring agreement;
- *Mr Jeffrey Vigar* was found to have engaged in unprofessional conduct, for which he was reprimanded and fined \$3,000;
- *Mr Gregory Finlayson* was found to have engaged in unsatisfactory conduct, for which he was reprimanded, ordered to enter into a 12 month supervision arrangement, and ordered to undertake additional professional development;
- *Mr Laurence Fittock* was found to have engaged in unprofessional conduct, for which he was fined \$15,000 – Mr Fittock has appealed to the Supreme Court against the Tribunal's decision and that appeal is yet to be determined;
- *Mr Andris Bilkens* was found to have engaged in unprofessional conduct, for which he was reprimanded;
- *Mr Robert Brook* was found to have engaged in unprofessional conduct, for which he was ordered to enter into a 2 year supervision arrangement – I appealed against that penalty to the Supreme Court, and the Supreme Court set aside the Tribunal's penalty and Mr Brook's name was struck off the Roll.

Details of the relevant conduct in each case can be found by referring to the Tribunal decisions, which are available through my website.

## Supreme Court matters

In the reporting period the Supreme Court delivered a number of decisions relating to disciplinary matters that had originally been commenced by the Board. As a result, each of *Mr John-Paul Kassapis*, *Mr Benjamin Johns*, *Mr Patric Alderman* and *Mr Simon Bojko* had his name struck off the Roll.

I commenced disciplinary proceedings in the Supreme Court against *Mr Stephen McNamara*. Those disciplinary proceedings are not yet finalised, but the Supreme Court has made an order suspending Mr McNamara's practising certificate on an interim basis.

There have been three appeals to the Supreme Court in relation to decisions by the Tribunal. Those appeals were:

- *Dr John Walsh of Brannagh* was found by the Tribunal to have engaged in both unprofessional conduct and unsatisfactory conduct – there has not yet been any decision by the Tribunal on penalty, and both Dr Walsh and I have appealed to the Supreme Court against the Tribunal's decision with those appeals yet to be heard;
- *Mr Laurence Fittock* was found by the Tribunal to have engaged in unprofessional conduct, for which he was fined \$15,000 – Mr Fittock has appealed to the Supreme Court against the Tribunal's decision and that appeal is yet to be determined;
- *Mr Robert Brook* was found by the Tribunal to have engaged in unprofessional conduct, for which he was ordered to enter into a 2 year supervision arrangement – I appealed against that penalty to the Supreme Court as a result of which the Tribunal's penalty was set aside and his name was struck off the Roll.

In the matter of *Ms Clare Morel*, the Supreme Court ordered that she be re-admitted to practice, having been struck off the Roll in 2004.

In April 2014, in relation to findings by the Tribunal of unprofessional conduct, the Supreme Court imposed a condition on the practising certificate of *Mr George Mancini* that he practise the profession of the law under supervision for a period of three years. During the reporting period, Mr Mancini's matter went back before the Supreme Court, the result of which was that Mr Mancini gave certain undertakings to the Supreme Court in relation to his practice.

The Amendment Act introduced new provisions into the Act relating to show cause events (eg becoming bankrupt). Under section 20AH, where a show cause event happens to a practitioner who holds a practising certificate, he or she must give a statement to the Supreme Court as to why the practitioner is still 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.

During the reporting period, proceedings were conducted before the Supreme Court in relation to show cause events that happened to 3 practitioners. In each case the Supreme Court was satisfied that the practitioner was a fit and proper person to hold a practising certificate, although for two of them certain conditions were endorsed on their practising certificates mainly for the purpose of restricting their ability to deal with trust money.

Two Supreme Court matters were initiated against the Board by *Mr John Viscariello* before 1 July 2014. I took the Board's place in those proceedings on 1 July 2014.



Mr Viscariello took proceedings for judicial review in the Supreme Court, seeking an order in the nature of mandamus against the Board. Mr Viscariello is seeking to compel the Board (and now me) to undertake investigations into the conduct of various practitioners about whom he has complained. For various reasons, the Board considered it inappropriate that it do so at the time, and it had suspended those investigations. In order to commence his action for judicial review, Mr Viscariello needed to get the leave of the Supreme Court to proceed. In April 2014, Justice Nicholson granted Mr Viscariello leave to proceed with his application.

Mr Viscariello also issued new proceedings on 30 June 2014 against the Board, seeking various orders relating to earlier findings against him in the Tribunal and in the Supreme Court that resulted in Mr Viscariello being struck from the Roll.

I am conflicted in considering any of Mr Viscariello various complaints or being involved in the various court proceedings. I have therefore delegated my powers and functions in relation to those complaints and proceedings to independent persons. Mr Viscariello has challenged the validity of my delegations in the court proceedings. After the end of the reporting period, the Supreme Court upheld the validity of my delegations, but Mr Viscariello has appealed against that decision.

## Interpretation of terms used in this report

**Act** – the *Legal Practitioners Act 1981*

**Amendment Act** – the *Legal Practitioners (Miscellaneous) Amendment Act 2013*

**Board** – the former Legal Practitioners Conduct Board

**Chief Justice** – the Chief Justice of the Supreme Court

**Commissioner** – the Legal Profession Conduct Commissioner

**Fidelity Fund** – the Legal Practitioners Fidelity Fund (established under Division 3 of Part 4 of the Act)

**Law Society** – the Law Society of South Australia

### **Misconduct**

- both “unsatisfactory conduct” and “unprofessional conduct”, as defined in section 5 before 1 July 2014; and
- both “unsatisfactory professional conduct” and “professional misconduct” as defined in sections 68 and 69 from 1 July 2014

**Own Initiative Investigation** – an investigation into a practitioner’s conduct commenced by the Commissioner in the absence of a complaint, which he may undertake if he has reasonable cause to suspect that the practitioner has been guilty of misconduct (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 2014 to 30 June 2015

**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

**Show cause event** – has the same meaning as in the Act

**Supreme Court** – the Supreme Court of South Australia

**Tribunal** – the Legal Practitioners Disciplinary Tribunal

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

**LEGAL PROFESSION CONDUCT COMMISSIONER**  
**FINANCIAL REPORT**  
**FOR THE YEAR ENDED 30 JUNE 2015**

# LEGAL PROFESSION CONDUCT COMMISSIONER

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# LEGAL PROFESSION CONDUCT COMMISSIONER

## AUDITORS 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 2015 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.

**SOTHERTONS Adelaide Partnership**



**J E MCKENZIE**  
**Partner**

Dated this 27 day of October 2015 .

# LEGAL PROFESSION CONDUCT COMMISSIONER

## INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 2015

	2015 \$	2014 \$
<b>INCOME</b>		
Receipts from Fidelity Fund		
Operating	3,788,091	-
Relocation Funding	979,985	-
Interest on Funds	69,914	-
<b>TOTAL INCOME</b>	<b>4,837,990</b>	<b>-</b>
<b>EXPENDITURE(Commissioner)</b>		
Salaries and Staff Expenses		
Amenities	8,560	-
First Aid Allowance	1,547	-
Professional Development	12,151	-
Provision for Annual Leave	26,472	-
Provision for Long Service Leave	55,496	-
Payroll Tax	96,330	-
Practising Certificates	9,667	-
Salaries - Professional	1,621,154	-
Salaries - Support Staff	584,172	-
Salaries - Temp/Casuals	8,455	-
Subscriptions/Membership	8,508	-
Superannuation	209,592	-
Reportable Employer Superannuation	56,468	-
WorkCover	(3,793)	-
Total Salaries and Staff Expenses	2,694,778	-
External Expert Expenses		
Costs Assessment Expenses	29,920	-
Counsel Fees	333,096	-
Associated Costs	30,919	-
External Delegation	120,237	-
Expert & Witness Fees	5,660	-
Total External Expert Expenses	519,832	-
Administration and Operating Expenses		
Equipment Costs		
Computer - Operating	13,903	-
Computer - Provision/Purchase	3,149	-
Computer - Repairs and Maintenance	39,841	-
Depreciation	36,100	-
Lease Charges - Photocopier	24,270	-
Loss on Asset Write-off	26,581	-
Photocopier	6,855	-
Repairs and Maintenance	4,801	-
Total Equipment Costs	155,501	-

The accompanying notes form part of these financial statements.

# LEGAL PROFESSION CONDUCT COMMISSIONER

## INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 2015

	2015 \$	2014 \$
General Costs		
Audit Fees	8,020	-
Bank Charges	861	-
Business Case Management	83,245	-
Car Parking	2,688	-
Courier Services	1,831	-
Fringe Benefits Tax	9,294	-
Insurance	14,840	-
Internet Services	2,358	-
Library	13,458	-
Motor Vehicle - Lease Cost	9,553	-
Motor Vehicle -Fuel, R & M	3,936	-
Motor Vehicle - Salary Sacrifice	(20,866)	-
Occupational Health and Safety	2,687	-
Postage	6,618	-
Printing and Stationery	24,746	-
Protective Security Compliance	30,950	-
Records Management	19,425	-
Telephone and Fax	10,422	-
Travel	707	-
Website Development	6,587	-
Total General Costs	231,358	-
Occupancy Costs		
Light and Power	16,517	-
Office Cleaning	24,030	-
Rent	233,575	-
Relocation Expenses	216,343	-
Provision - Relocation Expenses	437,027	-
Security	640	-
Total Occupancy Costs	928,133	-
<b>TOTAL EXPENDITURE (Commissioner)</b>	<b>4,529,602</b>	-
<b>OPERATING SURPLUS (Commissioner)</b>	<b>308,388</b>	-

The accompanying notes form part of these financial statements.



# LEGAL PROFESSION CONDUCT COMMISSIONER

## INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 2015

	2015	2014
	\$	\$
<b>EXPENDITURE (Board)</b>		
Audit Fees	3,980	-
Photocopier	746	-
Telephone and Fax	878	-
Light and Power	3,418	-
Transition Costs re Commissioner	810	-
Counsel Fees	28,946	-
External Delegation	6,257	-
Amenities	111	-
<b>TOTAL EXPENDITURE (Board)</b>	<b>45,146</b>	<b>-</b>
 <b>TOTAL OPERATING SURPLUS/(DEFICIENCY)</b>	 <b>263,242</b>	 <b>-</b>
 ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR	 0	 -
 EQUITY TRANSFERRED FROM BOARD	 49,150	 -
 <b>ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR</b>	 <b>312,392</b>	 <b>-</b>

The accompanying notes form part of these financial statements.

# LEGAL PROFESSION CONDUCT COMMISSIONER

## BALANCE SHEET AS AT 30 JUNE 2015

	Note	2015 \$	2014 \$
CURRENT ASSETS			
Cash	2	932,099	185,000
Receivables	3	73,915	-
<b>TOTAL CURRENT ASSETS</b>		<b>1,006,014</b>	<b>185,000</b>
NON CURRENT ASSETS			
Fixed Assets	4	434,535	-
<b>TOTAL NON CURRENT ASSETS</b>		<b>434,535</b>	<b>-</b>
<b>TOTAL ASSETS</b>		<b>1,440,549</b>	<b>185,000</b>
CURRENT LIABILITIES			
Creditors and Accruals	5	378,433	185,000
Provisions	6	749,725	-
<b>TOTAL CURRENT LIABILITIES</b>		<b>1,128,157</b>	<b>185,000</b>
<b>TOTAL LIABILITIES</b>		<b>1,128,157</b>	<b>185,000</b>
<b>NET ASSETS</b>		<b>312,392</b>	<b>-</b>
ACCUMULATED FUNDS			
Retained Funds	7	312,392	-
<b>TOTAL ACCUMULATED FUNDS</b>		<b>312,392</b>	<b>-</b>

The accompanying notes form part of these financial statements.

# LEGAL PROFESSION CONDUCT COMMISSIONER

## RECONCILIATION OF CASH FOR THE YEAR ENDED 30 JUNE 2015

	Note	2015 \$	2014 \$
<b>RECONCILIATION OF CASH</b>			
Net Income		263,242	-
Depreciation		36,100	-
Movement in Bonds		3,898	-
Movement in Accumulated Depreciation		(90,789)	-
Movement in Transition from Board to Commissioner		(12,855)	-
Payables		378,433	185,000
Provision for Annual Leave		26,472	-
Provision for Long Service Leave		55,496	-
Provision for Relocation Costs		437,027	-
Purchase of Office Furniture		(10,415)	-
Purchase of Office Equipment		(103,231)	-
Purchase of Leasehold Improvements		(162,366)	-
Receivables		(73,914)	-
		<u>483,857</u>	<u>185,000</u>
Net Increase in Cash Held		747,099	185,000
Cash at Beginning of Financial Year		185,000	-
<b>Cash at End of Financial Year</b>	<b>2</b>	<u><b>932,099</b></u>	<u><b>185,000</b></u>

The accompanying notes form part of these financial statements.

# LEGAL PROFESSION CONDUCT COMMISSIONER

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2015

### 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.

Assets held by the Legal Practitioners Conduct Board ("Board") were transferred to the Commissioner on 1 July 2014 at cost less accumulated depreciation.

#### **(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.

The balance of Employee provisions of the Board recognised at 30 June 2014 were transferred to the Commissioner on 1 July 2014.

#### **(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 2015

### NOTE 1: STATEMENT OF ACCOUNTING POLICIES (cont.)

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#### **(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 reporting period for goods and services received by the Commissioner during the reporting period 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 2015

### NOTE 2: CASH

	2015	2014
	\$	\$
Cash on Hand	300	-
Cash at Bank	1,215	185,000
Access Saver	225,879	-
Term Deposits	704,706	-
	<u>932,099</u>	<u>185,000</u>

### NOTE 3: RECEIVABLES

	2015	2014
	\$	\$
GST Refundable	70,874	-
Trade Debtors	3,040	-
	<u>73,914</u>	<u>-</u>

### NOTE 4: FIXED ASSETS

	2015	2014
	\$	\$
Office Furniture at cost	60,426	-
Less: Accumulated Depreciation	(48,877)	-
	<u>11,549</u>	<u>-</u>
Office Equipment at cost	230,778	-
Less: Accumulated Depreciation	(121,093)	-
	<u>109,685</u>	<u>-</u>
Leasehold Improvements at cost	316,200	-
	(2,898)	-
	<u>313,301</u>	<u>-</u>
Total Fixed Assets	<u>434,535</u>	<u>-</u>

# LEGAL PROFESSION CONDUCT COMMISSIONER

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2015

### NOTE 5: CREDITORS & ACCRUALS

	2015	2014
	\$	\$
Advance - Board	-	185,000
Bank SA Visa	1,089	-
PAYG Tax Withholding	68,462	-
Recoveries - Fidelity Fund	11,100	-
Accrual	96,083	-
Trade Creditors	183,392	-
Superannuation	18,307	-
	<u>378,433</u>	<u>185,000</u>

### NOTE 6: PROVISIONS

(a) Provision is made for the liability for employee entitlements arising from services rendered by employees to balance date.

	2015	2014
	\$	\$
Annual Leave	111,118	-
Long Service Leave	201,580	-
	<u>312,698</u>	<u>-</u>

Number of employees at 30 June 2015 (FTE)	21	20
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The policy for the provision of long service leave is that the provision is recognised after the employee has provided 5 years of service.

(b) Provision is made for unspent relocation grant funds at balance date.

	2015	2014
	\$	\$
Special Grant - Relocation Costs	437,027	-
	<u>437,027</u>	<u>-</u>

On 11 November 2014, the Attorney General approved special funding of \$979,985 (excluding GST) for the costs associated with relocation to new premises. As of 30 June 2015, \$542,958 has been spent and the remaining \$437,027 has been accrued for future costs or to be returned to the Fidelity Fund if unspent.

	2015	2014
	\$	\$
Leasehold Improvements - Capitalised	316,200	-
Furniture & Equipment - Capitalised	10,415	-
Relocation Expenditure	216,343	-
Provision - Special Grant	437,027	-
	<u>979,985</u>	<u>-</u>



# LEGAL PROFESSION CONDUCT COMMISSIONER

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2015

### NOTE 7: ACCUMULATED FUNDS

	2015	2014
	\$	\$
Accumulated surplus at the beginning of the financial period	-	-
Equity transferred from Board	49,150	-
Operating surplus/(deficit) for the year	263,242	-
Accumulated surplus at the end of the financial period	312,392	-

### NOTE 8: RECOVERIES OF TRIBUNAL COSTS - AMOUNTS OUTSTANDING

Monies received by the Commissioner are the result of party and party costs awarded in favour of the Commissioner by the Legal Practitioners Disciplinary Tribunal and the Supreme Court. Such costs are recovered from practitioners in proceedings. The Commissioner remits the recovered funds to the Law Society of South Australia in its capacity as administrator of the Fidelity Fund.

	2015	2014
	\$	\$
Recoveries recouped and remitted to the Fidelity Fund	80,850	-
	80,850	-

### NOTE 9: LEASING COMMITMENTS

Operating Lease Commitments  
Being for rent of office premises:

	2015	2014
	\$	\$
Payable:		
- not later than one year	364,767	-
	364,767	-

### NOTE 10: ECONOMIC DEPENDENCY

The statutory authority is dependent on the continuation of grants from the Legal Practitioners Fidelity Fund.

### NOTE 11: WINDING UP OF THE BOARD AND TRANSFER OF OPERATIONS TO THE COMMISSIONER

As of 1 July 2014 the Board was replaced by the Commissioner pursuant to amendments to the Legal Practitioners Act 1981 made by the *Legal Practitioners (Miscellaneous) Amendment Act 2013*.

Pursuant to Section 16(1) of Part 4 of Schedule 2 of the Amendment Act, "all assets, rights and liabilities of the Board are transferred to the Commissioner" on 1 July 2014, which included all existing contracts of the Board as at 30 June 2014.

## 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 12:

1. Presents a true and fair view of the financial position of the Commissioner as at 30 June 2015 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.

  
.....  
Greg May  
Legal Profession Conduct Commissioner

Dated this .....<sup>27</sup>..... day of October 2015 .

## LEGAL PROFESSION CONDUCT COMMISSIONER

### INDEPENDENT AUDITOR'S REPORT TO THE LEGAL PROFESSION CONDUCT COMMISSIONER

PARTNERS:  
David Ellis  
James McKenzie  
Alexander Reade  
Kym Howard  
Ravi Rajan  
Tim Finos

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 2015, consisting of the Income and Expenditure Statement, Balance Sheet, 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.

**LEGAL PROFESSION CONDUCT COMMISSIONER**

**INDEPENDENT AUDITOR'S REPORT  
TO THE LEGAL PROFESSION CONDUCT COMMISSIONER**

PARTNERS:  
David Ellis  
James McKenzie  
Alexander Reade  
Kym Howard  
Ravi Rajan  
Tim Finos

*Opinion*

In our opinion, the financial report of the Legal Profession Conduct Commissioner presents fairly, in all material respects, the financial position of the Legal Profession Conduct Commissioner as at 30 June 2015 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.

*Sothertons*

**Sothertons Adelaide Partnership**



**J E McKenzie**  
**Partner**

Dated this 27 day of October 2015.