



**2015 - 2016**

# **ANNUAL REPORT**

**LEGAL PROFESSION  
CONDUCT COMMISSIONER**

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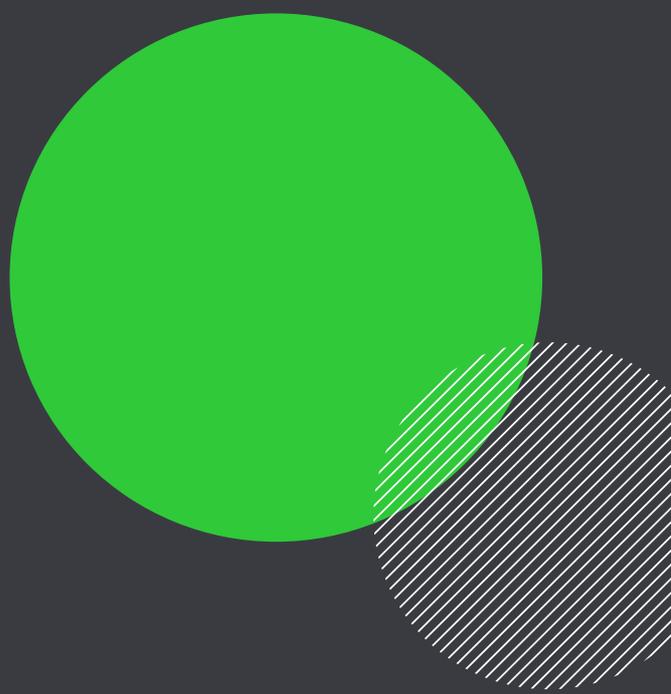
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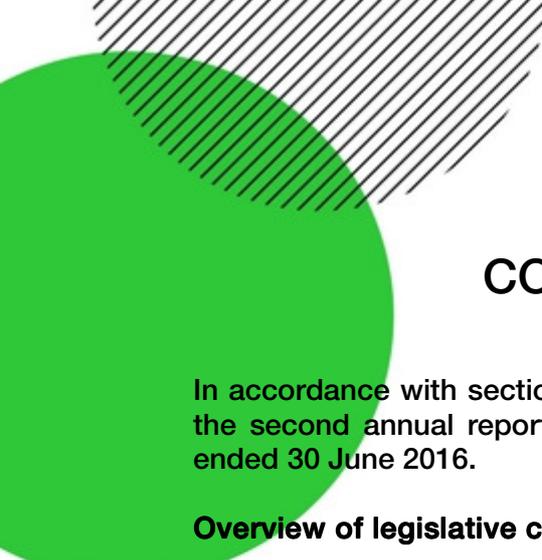
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# COMMISSIONER'S REPORT

In accordance with section 90A, I present to the Attorney-General and the Chief Justice the second annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2016.

## Overview of legislative change

This report relates to the second year of my office's operation. My office was created as part of the substantial changes that were made to the *Legal Practitioners Act 1981* with effect from 1 July 2014.

A large part of the first year of my office's operation was taken up with issues relating to the transition from the old legislation and the Legal Practitioners Conduct Board to the new legislation – and in particular the new processes required of my office to carry out my functions. The second year has been much more focussed just on the day to day operations.

My functions are to handle complaints against legal practitioners (both conduct complaints and overcharging complaints), to investigate those complaints, and to determine whether in any particular case there is misconduct on the part of, and / or overcharging by, the practitioner.

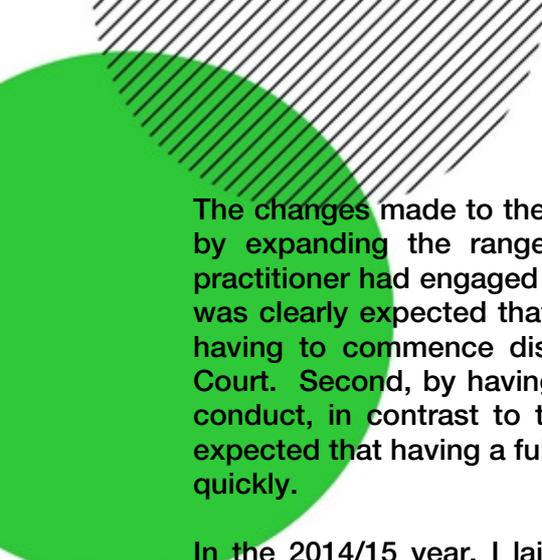
If I find that there is misconduct on the part of a practitioner, then I can discipline the practitioner myself by exercising one or more of a wide range of disciplinary powers. However, if a practitioner's misconduct is particularly serious (for example, conduct that in my view warrants the practitioner's name being struck off the Roll) I don't discipline the practitioner myself but I instead 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 (relatively limited) 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.

## 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 changes made to the Act by the 2013 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. I consider that we have achieved that efficiency in some respects, and we are working towards achieving it in other respects.



The changes made to the Act aimed to achieve those efficiencies 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 a Commissioner engaged full time in making decisions as to conduct, in contrast to the Board mostly only meeting every 5 weeks, it was clearly expected that having a full time decision maker would enable decisions to be made more quickly.

In the 2014/15 year, I laid 4 charges in the Tribunal. In the reporting period, I laid 7 charges in the Tribunal. These figures compare favourably (having regard to this objective of the 2013 Amendment Act) with the 11 charges that were laid by the Board in its final year.

However, any efficiencies that have been achieved have been overshadowed, and at least to some extent hindered, by the significant increase in the number of complaints received during the reporting period. In the Board's last year (2013/14) it received 445 complaints. In my office's first year (2014/15), I received 505 complaints – a 13% increase on the preceding year. In the reporting period, I received 616 complaints – a 22% increase on the preceding year, and a 38% increase when compared to the Board's final year.

I should also note that the increase in complaint numbers during the reporting period would have been even greater if not for the introduction (part way through the 2014/15 year) of our “assisted enquiry” process. This process most likely prevented at least 100 formal complaints being made. I have described that process in more detail in the Conciliation and Enquiries section of this report.

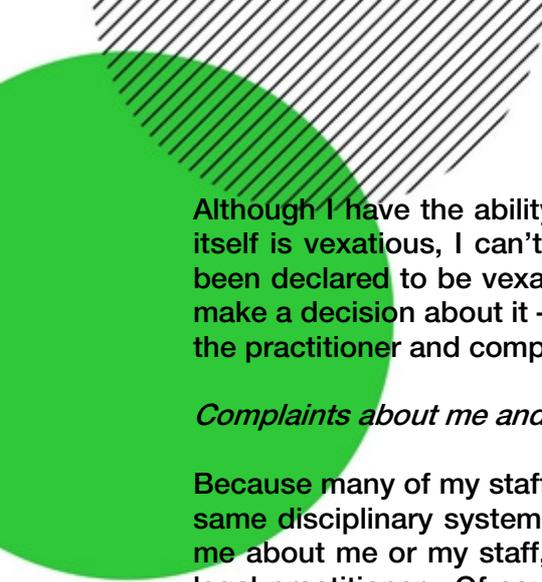
Such a significant increase in complaint numbers has necessitated some analysis, and subsequently some action, on my part. I could not just ignore the impact of such an increase in work levels on the ongoing resource requirements of my office – not just in terms of the workload and the possible need to increase staffing levels, but also in terms of the additional expenses associated with briefing external counsel and the adverse impact on the efficient handling overall of all complaints.

It quickly became clear that there were two significant factors that contributed significantly to this increase in complaints. I have described them in some detail below. Of course, even if they had already been addressed, there would still have been an increase in complaint numbers – it just wouldn't have been quite so dramatic.

#### *Vexatious litigants*

In the 2014/15 year, I received 82 complaints from one person, and 27 complaints from another person. In the reporting period, I received a further 52 complaints from the first person, and 5 more complaints from the second person. Those complainants had both previously been declared by the Supreme Court to be vexatious litigants.

While a vexatious litigant cannot commence proceedings in most Courts and many tribunals (including the Tribunal) without first obtaining the permission of the Supreme Court, there is currently nothing preventing him or her from making a complaint to me.



Although I have the ability to close a complaint under section 77C(1)(a) if the complaint itself is vexatious, I can't close it under that section just because the complainant has been declared to be vexatious. Rather, I still need to deal with any such complaint and make a decision about it – which involves considering the complaint, corresponding with the practitioner and complainant, making a determination etc.

### *Complaints about me and my staff*

Because many of my staff are legal practitioners, as am I, we are currently subject to the same disciplinary system that we have to administer. That is, if a person complains to me about me or my staff, I have to deal with it as I would a complaint about any other legal practitioner. Of course, the main problem with that is that I can't be the decision maker in relation to any such complaint because I would be conflicted. I have therefore had to delegate my functions and powers under the Act to an external person (usually a senior barrister) to investigate and determine such a complaint.

During the reporting period, we had 9 such complaints. Also, 2 complainants laid charges against me personally in the Tribunal, alleging that I had engaged in misconduct by making a determination under the Act that they have disagreed with. The Tribunal summarily dismissed one of those charges, but the complainant has now appealed against the Tribunal's decision to the Full Court of the Supreme Court. The other charge laid against me is still before the Tribunal.

While the numbers of these types of complaints and proceedings is not so significant, the cost is. In the reporting period, I incurred costs in excess of \$50,000 in briefing barristers to appear for me in the Tribunal and in delegating to barristers to deal with the complaints about me and my staff. I will have already incurred a similar level of costs so far this current financial year (ie 2016/17).

### *Legal Practitioners (Miscellaneous) Amendment Act 2016*

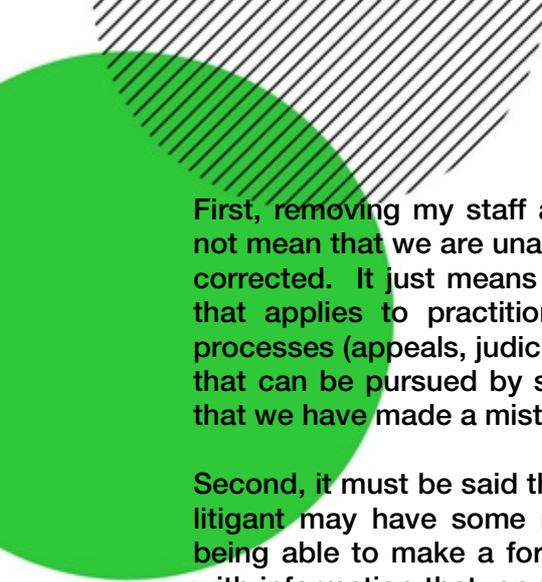
Both of these significant issues are being addressed in the 2016 Amendment Act. As at the time of writing this report, the 2016 Amendment Act has been passed by Parliament and assented to by the Governor. It will come into operation on a day that is still to be fixed by proclamation.

Two of the changes that are to be made to the Act by the 2016 Amendment Act are intended to address the factors I have mentioned above. Those changes will:

- prevent a vexatious litigant from making a complaint to me;
- remove me (in my capacity as Commissioner) and my staff (to the extent that they are acting as my investigating solicitors) from the disciplinary system in the Act.

As these changes will only come into operation part way through this current financial year (ie 2016/17), the way in which they will benefit the efficient running of my office will not be fully apparent until next year (ie 2017/18). Nonetheless, I have no doubt that they will make a significant difference in that regard.

I should just make the following points about these two legislative changes.



First, removing my staff and me from the disciplinary system that we administer does not mean that we are unable to be criticised, or that anything that we get wrong can't be corrected. It just means that it can't happen through the "normal" disciplinary system that applies to practitioners who are in "normal" practice. So, there will still be processes (appeals, judicial review) or avenues of complaint (the Ombudsman, the ICAC) that can be pursued by someone (whether a practitioner or a complainant) who thinks that we have made a mistake or done something wrong.

Second, it must be said that there are occasions when a complaint made by a vexatious litigant may have some merit and, therefore, should be investigated. If, despite not being able to make a formal complaint to me, a vexatious litigant were to provide me with information that, on the face of it, provides a basis for considering that there might be some misconduct on the part of a practitioner, then I will be able to make an Own Initiative Investigation into that conduct under section 77B(1).

In relation to the 2016 Amendment Act, I must thank the Attorney-General for his understanding of the concerns that I considered needed to be addressed, and his support in the preparation and passage through Parliament of the amending legislation itself.

### **Staff**

My staffing level has remained relatively constant since my office commenced on 1 July 2014.

I would like to acknowledge the outstanding job my staff all do in what are, on occasions, very difficult circumstances. The work we do is important, both from the profession's perspective and also from that of the public. Our decisions and processes are not always welcomed, either by the complainant or by the practitioner. I have little doubt that not many in the profession look forward to a call or to receiving correspondence from my office.

Nonetheless, my staff members continue to discharge their responsibilities in an exemplary, professional way. I am very grateful for their hard work and dedicated service.

I am especially thankful for the support I get from my Principal Legal Officer, Liz Manos. Her experience and knowledge of the disciplinary process continues to be absolutely invaluable to me.

### **Financial arrangements**

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

The end result of my second year's operation is as follows (ignoring GST):

- my funding was based on an approved expenditure budget of \$4,079,789;
- I received funding of \$4,014,789 from the Fidelity Fund, and I earned \$92,273 in interest on those funds;
- my actual expenditure was \$4,161,547\* – which represents a net overspend of \$54,485.

*\* This figure is determined by taking the actual expenditure figure from the financial statements and:*

- *deducting expenditure relating to the Special IT grant as referred to in Note 7(b) to the financial statements;*
- *adding back LPCC funded capital items (ie computer equipment);*
- *deducting non-cash components (ie depreciation, asset write offs).*

The expenses referred to in Note 12 to the financial statements were largely responsible for my overspending as against budget.

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.

### **New premises**

I noted in my report last year that my office relocated in May 2015 to new premises at 30 Currie Street. I obtained approval from the Attorney-General for just over \$1m in funding for relocation purposes. I am pleased to say that the total relocation process came in about \$300,000 under budget. The relocation project was managed by Josh Pix, a consultant to my office, in conjunction with Paul Spandrio and Steve Dix from the Attorney's office. My thanks to all of them – together they managed our whole relocation project extremely well.

### **New systems**

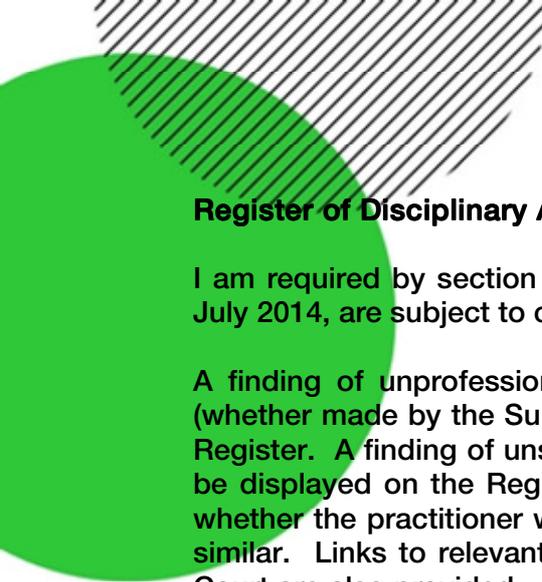
The Board and now my office have operated on very simplistic technology systems, primarily within the Office environment supplemented by a rudimentary database and document management system. We are currently in the process of implementing a modern case management system designed specifically for a complaints organisation. We expect to go live with that new CMS either just before or just after Christmas 2016. I have little doubt that that will help us continue to handle the ever increasing number of complaints without having either to increase significantly our staffing levels or to see an increase in the duration of the complaint / investigation process.

### **Education of the profession**

My office continues to spend 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.

### **Information Security Management System**

As a Government agency, I have to ensure that my office complies with the Government's Information Security Management Framework (ISMF). In order to do so, we have developed our own Information Security Management System (ISMS). We have provided information about our ISMS as requested to the Office for Digital Government (part of the Department of the Premier and Cabinet). I am satisfied that we continue to meet our obligations under 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.

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.

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 particularly thank the Attorney-General for his support of my office.



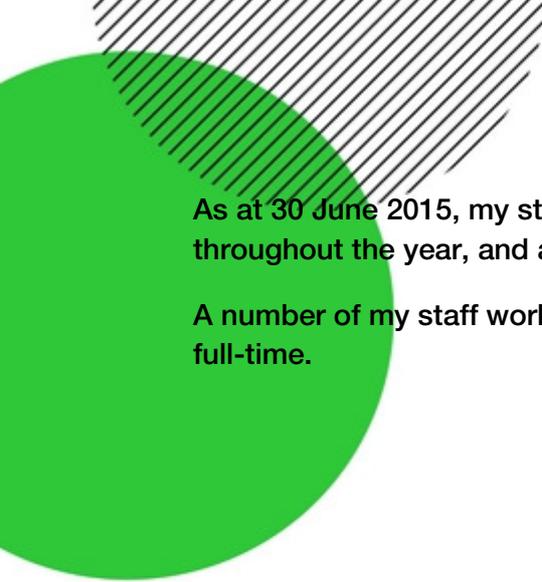
**Greg May**  
Legal Profession Conduct Commissioner  
31 October 2016

## PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

### Staff Members - as at 30 June 2016

Title	Name	Commenced (with Board / Commissioner)
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	Rose Kilgus	June 2016
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 2015, my staff comprised 21 FTE employees. That level was maintained throughout the year, and as at 30 June 2016 my staff comprised 20.9 FTE employees.

A number of my staff work less than full-time. In fact, only 9 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 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;
- 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:

- I 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; 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 take the disciplinary action myself, then I need to be 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:

- 2011/12 – 329
- 2012/13 – 372
- 2013/14 – 445
- 2014/15 – 505
- 2015/16 – 616

(These figures include Own Initiative Investigations.)

The average number of formal complaints over that 5 year period is 453 per year. The number of complaints I received / investigations I commenced in the reporting period represents a 22% increase by reference to the first year of my operations in 2014/15. I have already commented in my Report as to at least one of the contributors to this increase, and the way that is being addressed by the 2016 Amendment Act.

Of the 616 written complaints made last year:

- 358 (or 58.1%) were made by the client of the practitioner complained about;
- 199 (or 32.3%) were made by a third party; and
- 10 (or 1.6%) were either Own Initiative Investigations, or section 14AB reports that weren’t subsequently investigated;
- 30 (or 4.9%) were about practitioners no longer in practice.

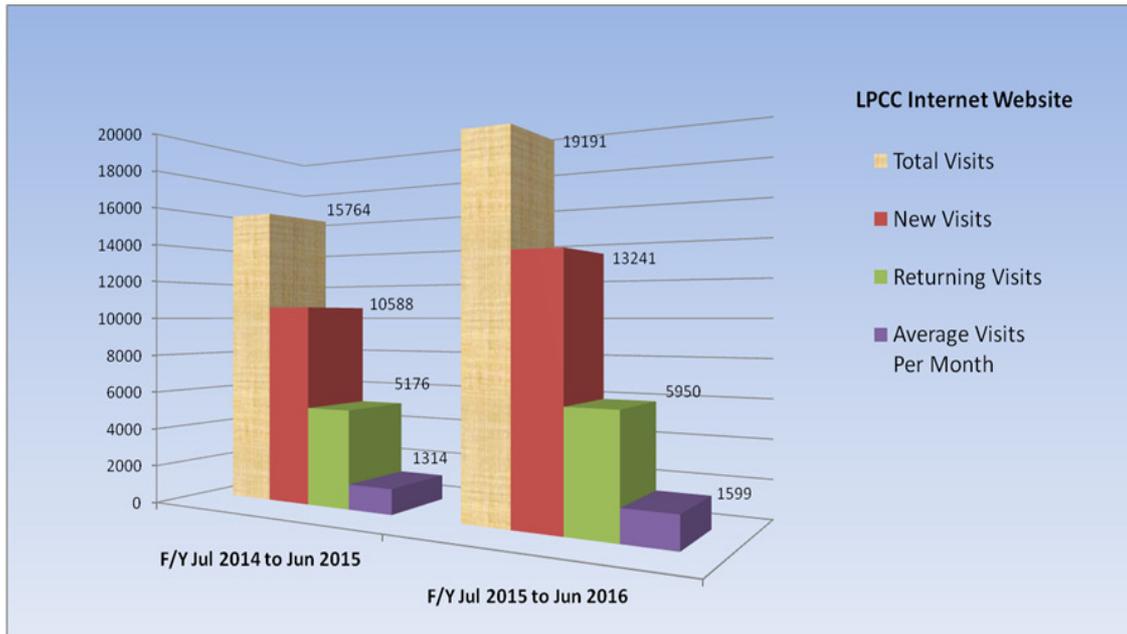
A third party complaint is one where the complaint is made other than by the practitioner’s client. Common examples are:

- 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.

## 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. The following chart shows the number of local, Australian and worldwide visitors to my website over the last 2 years. Total visits for the year are up about 3500 from last year, and average visit per month are up 285.



## Nature of matters complained of / investigated

Areas of law	Enquiries	Percentage of total enquiries	Complaints	Percentage of total complaints
Family (including de facto)	306	22.4%	145	23.1%
Probate and wills	268	19.6%	88	13.9%
Other	1	0.1%	88	13.9%
Personal injury	110	8.1%	49	7.8%
Workers compensation	72	5.3%	47	7.4%
Criminal	95	7%	46	7.3%
Minor Civil	46	3.3%	42	6.6%
Commercial	78	5.7%	38	6%
Administrative	39	2.9%	18	2.8%
Debt Collection	19	1.4%	16	2.5%
Conveyancing	6	0.4%	14	2.2%
Industrial	31	2.3%	12	1.9%
Building disputes	8	0.6%	10	1.5%
Real Property	53	3.9%	9	1.4%
Company (including liquidation)	12	0.9%	3	0.5%
Bankruptcy	9	0.7%	3	0.5%
Consumer law	7	0.5%	2	0.3%
Environment Resources & Development	3	0.2%	1	0.2%
Migration	6	0.4%	1	0.2%
Not disclosed	172	12.6%	0	0
Criminal injuries compensation	9	0.7%	0	0
Tort (not personal injury)	13	1%	0	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	2014/2015		2015/16	
	Complaints		Complaints	
Family	110	21%	145	23.1%
Probate & Wills	67	12.8%	88	13.9%
Personal Injury	43	8.2%	49	7.8%
Workers Compensation	(not top 5)		47	7.4%
Criminal	41	7.8%	46	7.3%
Commercial	60	11.5%	(not top 5)	
<b>Total of top five</b>		<b>61.30%</b>		<b>59.50%</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

Nature of allegation	On enquiry	On complaint
Overcharging	422	208
Delay	197	99
Negligence	58	97
Other	110	94
Inappropriate behaviour	195	92
Lack of communication	257	90
Poor handling	281	80
Incompetence	29	43
Misleading the court	3	39
Breach of confidentiality	0	26
Breach of Legal Practitioners Act	15	25
Conflict of interest	51	25
Failure to comply with instructions	64	23
Trust regulatory breach	12	23
Theft/fraud	14	20
Retention of documents	44	19
Misrepresentation	20	14
Acting without instructions	19	12
Legal advice	151	12
No cost advice	101	12
Acting against instructions	10	11
Legal system	92	11
Failure to pay third party	28	7
No jurisdiction	23	6
Criminal offence (not theft)	4	4
Breach of undertaking	0	1
Insufficient accounts	8	1
Breach of conciliated agreement	0	1
Failure to account to payer	22	1
Breach of Professional Conduct & Practice Rules	0	1

In the reporting period we opened 616 new investigation files. A total of 1,097 allegations were made as set out in the above table, across those files. The top four allegations – ie overcharging, delay, negligence and inappropriate behaviour – amounted to 496 of the 1,097 allegations made, or 45.2% 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	2014/2015		2015/2016	
	Number of complaints		Number of complaints	
Sole practitioner	119	23.6%	147	23.9%
Employee	101	20%	127	20.6%
Partner	81	16%	78	12.7%
Director incorporated practice	64	12.7%	124	20.1%
Non-practising	36	7.1%	30	4.9%
Barrister	26	5.1%	36	5.9%
Government employee (including Legal Services Commission)	16	3.2%	28	4.5%
Manager/supervisor appointed	2	0.4%	0	0
Consultant	5	1%	7	1.1%
Suspended practitioner	7	1.4%	1	0.2%
Corporate practitioner	1	0.2%	2	0.3%
Interstate practitioner	3	0.6%	3	0.5%
Judiciary	14	2.8%	2	0.3%
Unknown	30	5.9%	31	5%
<b>Total</b>	<b>505</b>		<b>616</b>	

As has been the case for many years, the category of practitioner against whom the most complaints were made was the sole practitioner. In my view, that statistic reflects the difficulties inherent in those type of practices – for example:

- a sole practitioner of necessity is more of a generalist than practitioners in larger firms, and therefore can't really afford just to specialise in one particular area;
- a sole practitioner doesn't have a colleague immediately available with whom he or she can discuss issues and problems;
- a sole practitioner tends to deal with less sophisticated clients than do larger firms, those with little or no previous exposure to the legal system, and those with language and communication difficulties;
- some sole practitioners face financial pressures that mean overcharging complaints can't be dealt with as readily as in some larger firms;
- larger firms often have a particular partner who is responsible for dealing with complaints against other partners, which often leads to the complaint being resolved informally before it escalates to a formal complaint to my office.

## Complaints by Gender

Gender	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	407	66.1%	1,965	50.2%
Women	179	29.1%	1,949	49.8%
Unidentified/Corporate	30	4.8%	N/A	N/A
<b>Total</b>	<b>616</b>		<b>3,914</b>	

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

Length of time in practice	2012	2013	2014	2015	2016
Less than 5 years	25	22	40	27	35
	<b>7.6%</b>	<b>5.9%</b>	<b>9%</b>	<b>5.3%</b>	<b>5.7%</b>
5–10 years	51	62	65	69	69
	<b>15.5%</b>	<b>16.7%</b>	<b>14.6%</b>	<b>13.7%</b>	<b>11.2%</b>
10–15 years	37	36	41	60	79
	<b>11.3%</b>	<b>9.7%</b>	<b>9.2%</b>	<b>11.9%</b>	<b>12.8%</b>
More than 15 years	208	239	285	320	400
	<b>63.2%</b>	<b>64.2%</b>	<b>64%</b>	<b>63.4%</b>	<b>64.9%</b>
Not admitted or not identified or a firm	8	13	14	29	33
	<b>2.4%</b>	<b>3.5%</b>	<b>3.2%</b>	<b>5.7%</b>	<b>5.4%</b>
<b>Total</b>	<b>329</b>	<b>372</b>	<b>445</b>	<b>505</b>	<b>616</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 year	115	2.9%	2	0.3%
2010 - 2014	2 - 6 years	793	20.3%	51	8.3%
2005 - 2009	7 - 11 years	719	18.4%	81	13.1%
2000 - 2004	12 - 16 years	635	16.2%	75	12.2%
1995 - 1999	17 - 21 years	413	10.6%	48	7.8%
1990 - 1994	22 - 26 years	274	7%	51	8.3%
1985 - 1989	27 - 31 years	276	7.1%	48	7.8%
1980 - 1984	32 - 36 years	251	6.4%	87	14.1%
1975 - 1979	37 - 41 years	258	6.6%	97	15.7%
1970 - 1974	42 - 46 years	115	2.9%	28	4.6%
1960 - 1969	47 - 56 years	61	1.5%	15	2.4%
1950 - 1959	57 - 66 years	4	0.1%	0	0%
Unknown				33	5.4%

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

- Those practitioners with more than 16 years experience, who represent approximately 42% of the practising profession, received nearly 61% of the complaints. Within that group, those practitioners admitted between 1975 and 1985 (31 - 40 years post admission experience) who represent 13% of the practising profession received nearly 30% of the complaints.
- Those practitioners with less than 6 years experience, who represent approximately 23% of the practising profession, received just over 8% of the complaints.
- Those practitioners admitted less than 11 years who represent just over 40% of the practising profession received nearly 22% of all complaints made last financial year.

All of that is most likely explained by the fact that the more senior practitioners do the more difficult work than do the more junior practitioners, they deal with the more challenging clients, and they are the ones who sign the bills that get complained of.

# CASE MANAGEMENT

## Files opened and current numbers

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

Status of file	2013/14	2014/15	2015/16
New investigation files opened	445	505	616
Current investigations as at 30 June	345	458	562
Investigation files closed	430	339	510

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

Category	30 June 14	30 June 15	30 June 16
Investigation	345	458	562
Tribunal	22	19	26
Tribunal application (Section 23AA of the Act)	0	0	0
Debt collection	31	34	30
District Court	0	1	0
Supreme Court	6	10	19
High Court	0	0	0
<b>Total</b>	<b>404</b>	<b>522</b>	<b>637</b>

(The figures in this table for 30 June 2015 and 2016 do not include matters that have moved from investigation into conciliation, that have been suspended, or that simply remain open for monitoring purposes.)

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 2014/15 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 499 Determinations during the reporting period. (Another 9 investigation files were closed as a result of decisions not to conduct an Own Initiative Investigation, and another 2 were closed because the complaints were withdrawn.)

- 428 Determinations related to the conduct of a practitioner;
- 10 Determinations related to overcharging complaints;
- 61 Determinations related to matters where there was a combination of conduct and overcharging complaints.

Of the 428 matters that related solely to the conduct of a practitioner, my Determinations were as follows:

- I closed 253 complaints under section 77C;
- I found no misconduct on the part of the practitioner on 137 occasions;
- in 9 matters I closed part of the complaint under section 77C and found no misconduct in relation to the other part of the complaint;
- in 29 matters, I was satisfied that there was misconduct on the part of the practitioner.

Of the 10 complaints that were solely about overcharging, my Determinations were as follows:

- I found no overcharging on the part of the practitioner on 4 occasions;
- in 6 matters, I was satisfied that there had been overcharging by the practitioner / firm – and in relation to those 6 matters, I took the following action under section 77N:
  - I made 2 recommendations that the bill should be reduced or an amount refunded;
  - I made 4 binding determinations that there had been overcharging.

Of the 61 matters that involved a combination of conduct and overcharging complaints my Determinations were as follows:

- 5 complaints were closed under section 77C as the complaint was received more than 2 years after the final bill;
- I found no misconduct and no overcharging on the part of the practitioner on 47 occasions;
- on 5 occasions, I found that there was no misconduct on the part of a practitioner, but I found that there was overcharging in relation to which I recommended the bill should be reduced or a refund made;
- in 3 matters I was satisfied there was misconduct on the part of the practitioner and no overcharging; and
- in 1 matter I found there was misconduct and recommended the bill be reduced or an amount refunded.

So, all in all, I was satisfied that there was evidence of misconduct on the part of a practitioner on 33 occasions.

I was satisfied that there was evidence of unsatisfactory conduct / unsatisfactory professional conduct on the part of the practitioner on 21 occasions, and I took the following disciplinary action under section 77J(1):

- I reprimanded 9 practitioners;
- I reprimanded 4 practitioners and ordered them to make an apology;
- I reprimanded 2 practitioners and ordered them to pay a fine and make an apology;
- I reprimanded 1 practitioner, and ordered that practitioner to make an apology and a specified payment;
- I reprimanded 1 practitioner, and ordered that practitioner to make an apology, undertake certain specified profession development, and make a specified payment;
- I reprimanded 1 practitioner, and ordered that practitioner to make an apology and undertake certain specified professional development;
- I reprimanded 1 practitioner, and ordered that practitioner to pay a fine and undertake certain specified professional development;
- I reprimanded 1 practitioner and ordered that practitioner to pay a fine; and
- I reprimanded 1 practitioner, and ordered that practitioner to undertake certain specified professional development.

I was satisfied that there was evidence of unprofessional conduct / professional misconduct on the part of the practitioner on 3 occasions, and I took the following disciplinary action under section 77J(2):

- I reprimanded 1 practitioner and ordered that conditions be placed on his Practising Certificate;
- I reprimanded 2 practitioners and ordered them to make an apology and undertake certain specified professional development.

In the other 9 matters in which I was satisfied that there was unprofessional conduct / professional misconduct on the part of the practitioner, but which I decided I couldn't adequately deal with under section 77J(2):

- I determined to lay charges in the Tribunal against 7 practitioners; and
- I determined to make application to the Supreme Court under section 89(1a) about 2 practitioners.

## Workflow

### Current files by age

Age of current files	2013/14		2014/15		2015/16	
	Count	Percentage	Count	Percentage	Count	Percentage
3 years and older	29	7.2%	34	5.9%	55	7.8%
2 – 3 years	27	6.7%	52	8.9%	51	7.2%
1 – 2 years	95	23.5%	117	20.1%	162	22.8%
< 1 years	253	62.6%	379	65.1%	441	62.2%
<b>Total Files</b>	<b>404</b>		<b>582</b>		<b>709</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 practitioner 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, 97 matters were referred to conciliation. Of the 97 conciliations conducted, most concerned costs disputes arising in Family Law matters. The majority of those costs disputes resolved following conciliation.

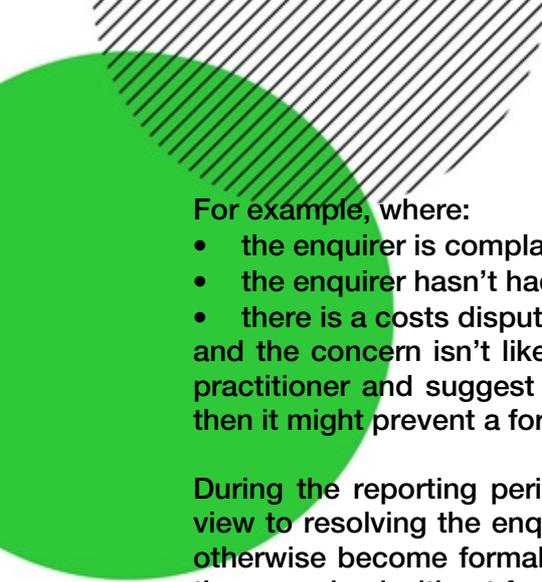
## Enquiries

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

During the reporting period, we received over 1,600 enquiry contacts. 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 was the most enquired about area of law, and overcharging is the most enquired about type of complaint. These results are consistent with the 2014/2015 reporting period.

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.

During the reporting period, my conciliators conducted 115 Assisted Enquiries with a view to resolving the enquirer's concerns at an early stage in disputes which may have otherwise become formal complaints. Of those 115 assisted enquiries, just over 100 of them resolved without formal complaint being made to my office.

# 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 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, the Law Society or “*a person claiming to be aggrieved by reason of*” the alleged misconduct. This report refers only to charges that I have laid (or that were previously laid by the Board).

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

In 2014/15, I laid charges against 4 practitioners.

In the reporting period, I have laid 7 charges against 6 practitioners.

We are still waiting on decisions relating to 5 charges that were laid against 3 practitioners prior to the reporting period. 1 further charge was laid prior to the reporting period that hasn't been heard by the Tribunal yet because of a preliminary issue that arose that had to be referred to the Supreme Court.

The 7 charges laid in this reporting period were laid on the basis of the following alleged misconduct by the practitioners:

- The practitioner provided false and misleading information, including by way of affidavit, to the District Court when seeking permission to bring an application to set aside a default judgment that had been obtained against the practitioner's client. The practitioner also intentionally falsified a client file by the creation of false correspondence and notes of attendances.
- The practitioner failed to progress the administration of a deceased estate, failed to maintain adequate communication with the beneficiaries of the estate or their solicitor, and failed to secure, collect and distribute the assets of the estate with reasonable diligence.
- The practitioner misappropriated \$25,000 from the firm's trust account. Those funds were debited to the trust funds held for one of the client's matters for the firm's costs on another of the same client's matters but without the client's authority to do so, which was a breach of section 31(3) (as it was before the 2013 Amendment Act came into operation). The practitioner then misled the client about the receipt of those funds, failed to restore the money to the trust account when required by the Law Society to do so, and then misled the Law Society about whether or not he had done so.
- A second practitioner who was a partner of the practitioner referred to in the last paragraph participated in the conduct alleged against that practitioner.

Separate charges were also laid against this same practitioner alleging that the practitioner recurrently failed to keep detailed records in order to account for all trust

money received and dispersed, misappropriated money from the trust account by means of banking trust cheques made out to “cash” into a private bank account, overdraw the general trust account, and failed to restore the money to the trust account when required by the Law Society to do so.

- The practitioner made submissions in a hearing in the Federal Court that the solicitor for another party to the proceedings had claimed costs to which he was not entitled. Those submissions were unprofessional and lacked foundation.
- The practitioner made false and misleading representations to the Legal Services Commission as to the work that had been, or was to be, undertaken for certain legal aid funded clients, such that he claimed or attempted to claim fees from the Commission to which he was not entitled.

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 2013 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. And in some circumstances the practitioner can also appeal to the Tribunal.

Not all of my decisions can be appealed against. During the reporting period, the Tribunal decided 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.

Those decisions of the Tribunal then resulted in 1 appeal by a complainant being summarily dismissed, that same complainant withdrawing 2 appeals, and 1 appeal by a different complainant being dismissed.

## **Tribunal decisions**

In the reporting period, the Tribunal handed down 1 decision relating to charges that were laid by the Board prior to 1 July 2014. That decision was in relation to *Mr Fadi Semaan*, and the Tribunal recommended that disciplinary proceedings be commenced against him in the Supreme Court. Details of Mr Semaan’s misconduct can be found by referring to the Tribunal decision, which is available through my website.

## Supreme Court matters

### *Disciplinary decisions*

In the reporting period the Supreme Court handed down one judgment that related to a disciplinary matter that had originally been commenced by the Board. As a result, *Mr Robert Brook* had his name struck off the Roll.

The Supreme Court is still to consider the disciplinary proceedings that have now been commenced against Mr Semaan in the Supreme Court.

The Supreme Court has heard the disciplinary proceedings that I commenced against *Mr Gregory Morcom*. It has reserved its judgment in relation to my application that his name should be struck off the Roll.

### *Appeals against the Tribunal's decisions*

During the reporting period, the Supreme Court decided two appeals to it against decisions made by the Tribunal.

- *Mr Laurence Fittock* was found by the Tribunal to have engaged in unprofessional conduct, for which he was fined \$15,000. Mr Fittock appealed to the Supreme Court against the Tribunal's decision. His appeal was upheld. The Supreme Court set aside the decision of the Tribunal that the practitioner was guilty of unprofessional conduct, and substituted a finding of unsatisfactory conduct. The Supreme Court also set aside the order that Mr Fittock pay a fine, and instead reprimanded him.
- *Dr John Walsh of Brannagh* was found by the Tribunal to have engaged in both unprofessional conduct and unsatisfactory conduct. Both Dr Walsh and I appealed to the Supreme Court against the Tribunal's decision. The Supreme Court dismissed both appeals, such that the Tribunal's decision stands. The Tribunal is still to hear submissions as to the appropriate disciplinary action to be taken against Dr Walsh.

### *Declaratory Relief*

Prior to the 2013 Amendment Act coming into operation, the Board had 5 years from the date of the relevant conduct to lay a charge against a practitioner before the Tribunal (unless the Attorney-General consented to the laying of the charge outside of that period). The 2013 Amendment Act amended section 82(2a) such that I only have 3 years to lay a charge after the relevant conduct, unless the Tribunal allows an extension of time.

In relation to charges that I laid in the Tribunal against *Mr Paul Richardson* in the 2014/15 year, a preliminary question arose as to how the transitional provisions in Part 4 of Schedule 2 of the 2013 Amendment Act operated in determining whether old section 82(2a) or new section 82(2a) had to be complied with in laying charges after 1 July 2014.

The parties sought declaratory relief from the Supreme Court as to the proper interpretation of the Act in this regard. The Supreme Court decided that new section 82(2a) applies in relation to all charges laid in the Tribunal after 1 July 2014, regardless of when the relevant conduct took place.

### *Applications for judicial review*

Three new applications for judicial review of my decisions were made to the Supreme Court during the reporting period. No judgments were delivered on those matters during the reporting period.

### *Section 20AH – show cause events*

The 2013 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 2014/15, proceedings were commenced before the Supreme Court in relation to show cause events that happened to 3 practitioners. During the reporting period, proceedings were commenced before the Supreme Court in relation to show cause events that happened to another 3 practitioners.

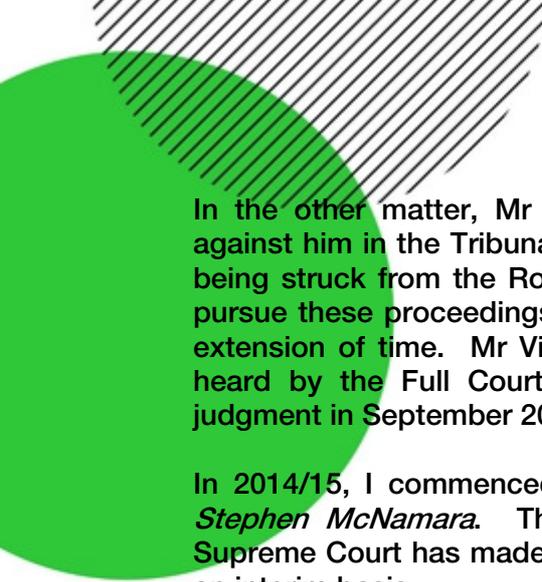
Of those 6 practitioners to whom a show cause event has happened, the Supreme Court has been satisfied that 4 of those practitioners were fit and proper persons to hold a practising certificate, although for 3 of them certain conditions were endorsed on their practising certificates mainly for the purpose of restricting their ability to deal with trust money.

The proceedings relating to the other 2 practitioner were still ongoing as at the end of the reporting period.

### *Other matters*

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. I am conflicted in considering any of Mr Viscariello's various complaints or being involved in the various court proceedings, and I have therefore delegated my powers and functions in relation to those complaints and proceedings to independent persons.

One of these matters involved an application for judicial review, with Mr Viscariello seeking an order in the nature of mandamus against the Board. He was seeking to compel the Board (and now me) to undertake investigations into the conduct of various practitioners about whom he had complained to the Board. 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, which Justice Nicholson granted in April 2014. Mr Viscariello hasn't yet progressed with his application though because he has challenged the validity of my delegations. Justice Parker initially upheld the validity of my delegations, but Mr Viscariello has appealed against that decision. The Full Court has heard the appeal but has not yet handed down its decision.



In the other matter, Mr Viscariello sought various orders relating to earlier findings against him in the Tribunal and in the Supreme Court that had resulted in Mr Viscariello being struck from the Roll. Mr Viscariello needed to be given an extension of time to pursue these proceedings, and in August 2015 Justice Parker declined to grant him an extension of time. Mr Viscariello appealed against that decision, and the appeal was heard by the Full Court during the reporting period. The Full Court delivered its judgment in September 2016, dismissing the appeal.

In 2014/15, 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.

# Interpretation of terms used in this report

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

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

**2016 Amendment Act** – the *Legal Practitioners (Miscellaneous) Amendment Act 2016*

**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 can only be undertaken if the Commissioner 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

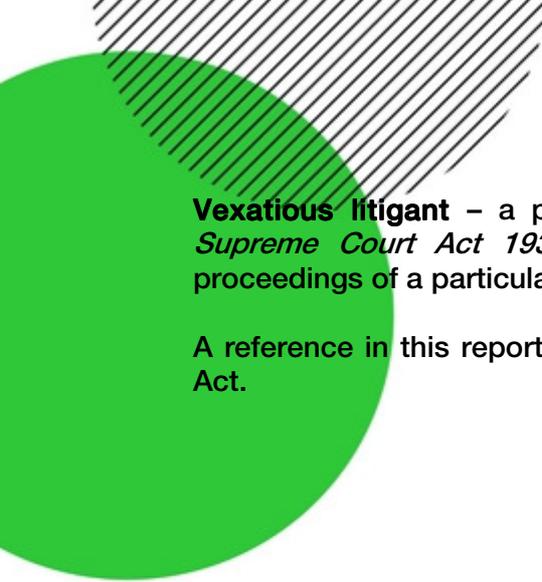
**Reporting period** – 1 July 2015 to 30 June 2016

**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

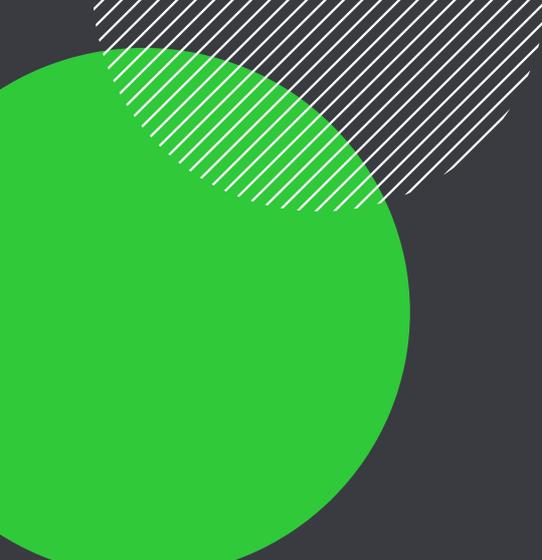
**Supreme Court** – the Supreme Court of South Australia

**Tribunal** – the Legal Practitioners Disciplinary Tribunal



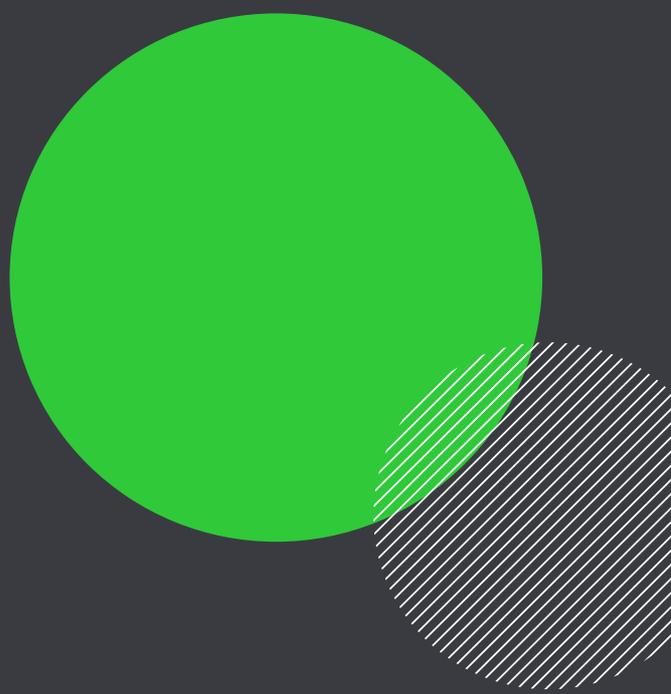
**Vexatious litigant** – a person who is subject to an order under section 39 of the *Supreme Court Act 1935* prohibiting him or her from instituting proceedings (or proceedings of a particular class)

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



# **FINANCIAL REPORTS**

**FOR YEAR ENDED 30 JUNE 2016**



# LEGAL PROFESSION CONDUCT COMMISSIONER

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**LEGAL PROFESSION CONDUCT COMMISSIONER**



**AUDITORS INDEPENDENCE DECLARATION  
TO THE LEGAL PROFESSION CONDUCT COMMISSIONER**

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

I declare that, to the best of my knowledge and belief, during the year ended 30 June 2016 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 ..... 2016 ..

## LEGAL PROFESSION CONDUCT COMMISSIONER

### INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 2016

	Note	2016 \$	2015 \$
<b>INCOME</b>			
Operating - Fidelity Fund		4,014,789	3,788,091
Relocation Funding			979,985
Special Fund - IT	7	840,600	
Interest on Funds		92,273	69,914
Prior Year Funds Reconciliation	3	122,145	
Provision Write-back	7	437,027	
Return Funds to Fidelity Fund	7	(306,897)	
<b>TOTAL INCOME</b>		<b>5,199,937</b>	<b>4,837,990</b>
<b>EXPENDITURE(Commissioner)</b>			
Salaries and Staff Expenses			
Amenities		5,296	8,560
Car Parking		4,058	2,688
First Aid Allowance		1,580	1,547
Fringe Benefits Tax		14,163	9,294
Motor Vehicle - Lease Cost		10,421	9,553
Motor Vehicle -Fuel, R & M		3,513	3,936
Motor Vehicle - Salary Sacrifice		(20,550)	(20,866)
Professional Development		11,287	12,151
Provision for Annual Leave		(13,641)	26,472
Provision for Long Service Leave		57,763	55,496
Payroll Tax		104,282	96,330
Practising Certificates		8,925	9,667
Salaries - Professional		1,774,708	1,621,154
Salaries - Support Staff		602,217	584,172
Salaries - Temp/Casuals		5,310	8,455
Subscriptions/Membership		5,015	8,508
Superannuation		225,543	209,592
Reportable Employer Superannuation		59,374	56,468
WorkCover		991	(3,793)
Total Salaries and Staff Expenses		2,860,255	2,699,383
External Expert Expenses			
Costs Assessment Expenses		28,418	29,920
Counsel Fees		479,391	333,096
Associated Costs		30,510	30,919
External Delegation		40,297	120,237
Expert & Witness Fees		1,875	5,660
Total External Expert Expenses		580,491	519,832

The accompanying notes form part of these financial statements.

## LEGAL PROFESSION CONDUCT COMMISSIONER

### INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 2016

	Note	2016 \$	2015 \$
<b>Administration and Operating Expenses</b>			
<b>Equipment Expenses</b>			
Computer - Operating		58,259	13,903
Computer - Provision/Purchase		8,201	3,149
Computer - Repairs and Maintenance		23,683	39,841
Depreciation		88,908	36,100
Lease Charges - Photocopier		21,176	24,270
Loss on Asset Write-off			26,581
Photocopier		4,905	6,855
Repairs and Maintenance		1,108	4,801
<b>Total Equipment Expenses</b>		<b>206,240</b>	<b>155,501</b>
<b>General Expenses</b>			
Audit Fees		8,780	8,020
Bank Charges		827	861
Business Case Management		45,000	83,245
Courier Services		2,121	1,831
Insurance		16,703	14,840
Internet Services		3,176	2,358
IT Project Costs	7	41,502	
Provision - IT Funding	7	732,634	
Library		14,733	13,458
Occupational Health and Safety		3,923	2,687
Postage		8,179	6,618
Printing and Stationery		17,337	24,746
Protective Security Compliance		48	30,950
Records Management		18,010	19,425
Telephone and Fax		12,243	10,422
Travel		245	707
Website Development		1,319	6,587
<b>Total General Expenses</b>		<b>926,780</b>	<b>226,754</b>
<b>Occupancy Expenses</b>			
Light and Power		17,032	16,517
Office Cleaning		24,080	24,030
Rent		387,839	233,575
Relocation Expenses			216,343
Provision - Relocation Expenses			437,027
Security		3,740	640
<b>Total Occupancy Expenses</b>		<b>432,691</b>	<b>928,133</b>
<b>TOTAL EXPENDITURE (Commissioner)</b>		<b>5,006,457</b>	<b>4,529,602</b>
<b>OPERATING SURPLUS (Commissioner)</b>		<b>193,480</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 2016**

	2016	2015
	\$	\$
<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>		<u>45,146</u>
<b>TOTAL OPERATING SURPLUS/(DEFICIENCY)</b>	<b>193,480</b>	<b>263,242</b>
ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR	312,392	
EQUITY TRANSFERRED FROM BOARD		49,150
<b>ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR</b>	<u><b>505,872</b></u>	<u><b>312,392</b></u>

The accompanying notes form part of these financial statements.

## LEGAL PROFESSION CONDUCT COMMISSIONER

### BALANCE SHEET AS AT 30 JUNE 2016

	Note	2016 \$	2015 \$
<b>CURRENT ASSETS</b>			
Cash	2	1,460,957	932,099
Receivables	3	179,808	73,915
Prepayments	4	35,770	
<b>TOTAL CURRENT ASSETS</b>		<u>1,676,535</u>	<u>1,006,014</u>
<b>NON CURRENT ASSETS</b>			
Fixed Assets	5	560,355	434,535
<b>TOTAL NON CURRENT ASSETS</b>		<u>560,355</u>	<u>434,535</u>
<b>TOTAL ASSETS</b>		<u>2,236,890</u>	<u>1,440,549</u>
<b>CURRENT LIABILITIES</b>			
Creditors and Accruals	6	334,666	378,433
Provisions	7	1,396,352	749,725
<b>TOTAL CURRENT LIABILITIES</b>		<u>1,731,018</u>	<u>1,128,157</u>
<b>TOTAL LIABILITIES</b>		<u>1,731,018</u>	<u>1,128,157</u>
<b>NET ASSETS</b>		<u>505,872</u>	<u>312,392</u>
<b>ACCUMULATED FUNDS</b>			
Retained Funds	8	505,872	312,392
<b>TOTAL ACCUMULATED FUNDS</b>		<u>505,872</u>	<u>312,392</u>

The accompanying notes form part of these financial statements.

## LEGAL PROFESSION CONDUCT COMMISSIONER

### RECONCILIATION OF CASH FOR THE YEAR ENDED 30 JUNE 2016

	Note	2016 \$	2015 \$
<b>RECONCILIATION OF CASH</b>			
Net income		193,480	263,242
Depreciation		88,908	36,100
Movement in Bonds			3,898
Movement in Accumulated Depreciation			(90,789)
Movement in Transition from Board to Commissioner			(12,855)
Movement in Provision for Annual Leave		(13,640)	26,472
Movement in Provision for Long Service Leave		57,764	55,496
Payables		(43,766)	378,433
Provision for Special Grant Funds		602,504	437,027
Purchase of Office Furniture		(19,705)	(10,415)
Purchase of Office Equipment		(84,598)	(103,231)
Purchase of Leasehold Improvements		(110,425)	(162,366)
Prepayments		(35,770)	
Receivables		(105,895)	(73,914)
		<u>335,378</u>	<u>483,857</u>
Net Increase in Cash Held		528,858	747,099
Cash at Beginning of Financial Year		932,099	185,000
<b>Cash at End of Financial Year</b>	2	<u><b>1,460,957</b></u>	<u><b>932,099</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 2016

### NOTE 1: STATEMENT OF ACCOUNTING POLICIES

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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 2016

### 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 2016

#### NOTE 2: CASH

	2016	2015
	\$	\$
Cash on Hand	300	300
Cash at Bank	1,311	1,215
Access Saver	524,750	225,879
Term Deposits	934,596	704,706
	<u>1,460,957</u>	<u>932,099</u>

#### NOTE 3: RECEIVABLES

	2016	2015
	\$	\$
GST Refundable	57,463	70,874
Sundry Debtors	200	
Trade Debtors		3,040
Prior year Funding Request (shortfall)	122,145	
	<u>179,808</u>	<u>73,914</u>

The prior year funding request (shortfall) has been approved by the Attorney-General in the 2016-17 budget. The funding request consists of:

	2016	2015
	\$	\$
Negative working capital transferred from the Legal Practitioners Conduct Board ("Board") on 1 July 2014	18,587	
Negative working capital from financial statements for 2014/15	103,558	
	<u>122,145</u>	

#### NOTE 4: PREPAYMENTS

	2016	2015
	\$	\$
Prepayments	<u>35,770</u>	

#### NOTE 5: FIXED ASSETS

	2016	2015
	\$	\$
Office Furniture at cost	80,131	60,426
Less: Accumulated Depreciation	(53,090)	(48,877)
	<u>27,041</u>	<u>11,549</u>
Office Equipment at cost	315,376	230,778
Less: Accumulated Depreciation	(164,933)	(121,093)
	<u>150,443</u>	<u>109,685</u>
Leasehold Improvements at cost	426,624	316,200
	(43,753)	(2,898)
	<u>382,871</u>	<u>313,301</u>
Total Fixed Assets	<u>560,355</u>	<u>434,535</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2016

NOTE 6: CREDITORS & ACCRUALS

	2016	2015
	\$	\$
Bank SA Visa	2,332	1,089
PAYG Tax Withholding	47,342	68,462
Recoveries - Fidelity Fund	1,000	11,100
Accrual	10,052	96,083
Trade Creditors	273,940	183,392
Superannuation	-	18,307
	<u>334,666</u>	<u>378,433</u>

NOTE 7: PROVISIONS

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

	2016	2015
	\$	\$
Annual Leave	97,477	111,118
Long Service Leave	259,344	201,580
	<u>356,821</u>	<u>312,698</u>

Number of employees at 30 June 2016 (FTE) 20.9 21

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.

	2016	2015
	\$	\$
Special Grant - Relocation Costs	306,897	437,027
Special Grant - IT	732,634	
	<u>1,039,531</u>	<u>437,027</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. \$437,027 of unspent funds were accrued at 30 June 2015. In 2016 a further \$130,130 was spent leaving \$306,897 to be returned to the Fidelity Fund.

	2016	2015
	\$	\$
Relocation Grant		
Leasehold Improvements - Capitalised	110,425	316,200
Furniture & Equipment - Capitalised	19,705	10,415
Relocation Expenditure		216,343
Provision - Special Grant	-	437,027
Special Grant Refundable to Fidelity Fund	306,897	
	<u>437,027</u>	<u>979,985</u>

## LEGAL PROFESSION CONDUCT COMMISSIONER

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2016

On 21 June 2015, the Attorney General approved special funding of \$840,600 (excluding GST) for the costs associated with the development of new information systems. As of 30 June 2016, \$107,967 has been spent and the remaining \$732,633 has been accrued for future costs or to be returned to the Fidelity Fund if unspent.

	2016	2015
IT Grant	\$	\$
Office Equipment - Capitalised	66,464	
IT Expenditure	41,503	
Provision - Special Grant	732,634	
	<u>840,601</u>	<u>-</u>

#### NOTE 8: ACCUMULATED FUNDS

	2016	2015
Accumulated surplus at the beginning of the financial period	\$ 312,392	\$
Equity transferred from Board		49,150
Operating surplus/(deficit) for the year	<u>193,480</u>	<u>263,242</u>
Accumulated surplus at the end of the financial period	<u>505,872</u>	<u>312,392</u>

#### NOTE 9: 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.

	2016	2015
Recoveries recouped and remitted to the Fidelity Fund	\$ 76,097	\$ 80,850
	<u>76,097</u>	<u>80,850</u>

#### NOTE 10: LEASING COMMITMENTS

Operating Lease Commitments

Being for rent of office premises:

	2016	2015
Payable:	\$	\$
- not later than one year	379,357	364,767
	<u>379,357</u>	<u>364,767</u>

#### NOTE 11: ECONOMIC DEPENDENCY

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

## LEGAL PROFESSION CONDUCT COMMISSIONER

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2016

#### **NOTE 12: COUNSEL FEES AND EXTERNAL DELEGATION**

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During the reporting period, the Commissioner incurred the following expenses totalling \$201,655.88:

- (a) \$13,173.77 to counsel for dealing with a charge laid in the Tribunal against the Board's previous director;
- (b) \$42,505.61 to counsel and to the Commissioner's external delegates for dealing with charges against, and complaints about, the Commissioner;
- (c) \$10,212.50 to the Commissioner's external delegates for dealing with complaints about the Commissioner's staff;
- (d) \$14,269.00 to the Commissioner's external delegates for dealing with complaints by vexatious litigants where the Commissioner was conflicted in relation either to the complainant or the practitioner complained of;
- (e) \$104,920.00 to counsel (both the Commissioner's and the practitioner's) in relation to Supreme Court proceedings to determine the meaning of one of the transitional provisions in the *Legal Practitioners (Miscellaneous) Amendment Act 2013* ("2013 Amendment Act")
- (f) \$16,575.00 to counsel in relation to advice on, and proceedings in the Tribunal dealing with, the proper meaning of the new appeal provisions that were included in the *Legal Practitioners Act* by the 2013 Amendment Act.

After the *Legal Practitioners (Miscellaneous) Amendment Act 2016* ("2016 Amendment Act") comes into operation:

- complainants will not be able to complain to the Commissioner about him or his staff, or to lay charges in the Tribunal against them – accordingly, while some expenses in the nature of those referred to in paragraphs (a) to (c) above will have been incurred in the 2016/17 financial year, they will not be incurred after the 2016 Amendment Act comes into operation;
- vexatious litigants will not be able to complain to the Commissioner – accordingly, while some expenses in the nature of those referred to in paragraphs (d) above will have been incurred in the 2016/17 financial year, they will not be incurred after the 2016 Amendment Act comes into operation.

The expenses referred to in paragraphs (e) and (f) above were necessary to clarify interpretational issues arising from the 2013 Amendment Act, and will not need to be repeated (at least in relation to those provisions).

## 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 2016 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 27<sup>th</sup> day of October 2016 .

## 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 2016, 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**

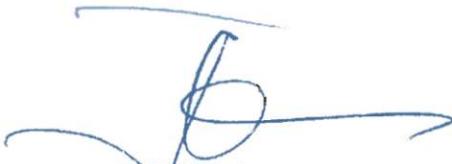
*Opinion*

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 2016 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 Adelaide Partnership**



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

Dated this 27 day of October 2016.