



**2016 - 2017**

# **ANNUAL REPORT**

**LEGAL PROFESSION  
CONDUCT COMMISSIONER**

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# TABLE OF CONTENTS

**01** Commissioner's Report

**05** People who carried out the work  
of the Commissioner

**07** Investigations by the  
Commissioner

**16** Case Management

**19** Conciliation and Enquiries

**22** Litigation

**30** Interpretation of terms used in  
this report

Financial Reports



# COMMISSIONER'S REPORT

In accordance with section 90A, I present to the Attorney-General and the Chief Justice the third annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2017.

## Overview

This report relates to the third 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.

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 take disciplinary action against 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 take disciplinary action against 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.

## Complaint numbers

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.

The number of complaints made to my office continues to increase significantly. In the Board's last year (2013/14) it received 445 complaints. Since then, my office has received 505 complaints (2014/15), 616 complaints (2015/16) and, in the reporting period, 632 complaints.

As I mentioned in my last annual report, at least some of the increase in complaints has been contributed to by the many complaints that have been made by vexatious litigants. In the 2014/15 year I received 109 complaints from two vexatious litigants alone. In the following years I received 57 complaints (2015/16) and 34 complaints (the reporting period)

from them. Various amendments were made to the Act by the 2016 Amendment Act, with effect from 13 November 2016 – one of which was that vexatious litigants could no longer complain to me.

Another concern I raised in my last annual report was that complaints were being made to my office about my staff and me (as many of my staff are legal practitioners, as am I). That of course caused significant difficulties and added expense because I am conflicted in considering any such complaints, which meant that I 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. That difficult situation was also addressed by the 2016 Amendment Act such that, as from 13 November 2016, a person could not complain to me about my staff or me.

Removing complaints by vexatious litigants and complaints about my staff and me from the figures for the last few years, we get to the following “adjusted” complaint numbers:

- 2014/15 – 396
- 2015/16 – 555
- 2016/17 (ie the reporting period) – 598

*[I note that the statistics later in this report are, unless otherwise stated, based on the unadjusted complaint figures.]*

I should also note that the increase in complaint numbers over the last few years 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 approximately 100 formal complaints being made in the 2015/16 year, and at least 70 in the reporting period. I have described that process in more detail later in this report.

## **Staff**

My staffing level has remained relatively constant since my office commenced on 1 July 2014. As at 30 June 2015, my office had 20 FTE employees. As at 30 June 2016 I had 20.9 FTE employees, and as at the end of the reporting period I had 21.4 FTE employees.

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 would like to single out 2 of my staff for special praise. First, 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.

Second, my paralegal Yvette Manocchio has, as of last week, worked for the Board and then me for a combined total of 20 years. Her contribution is always significant, but particularly so in the last 12 months when she has borne a substantial amount of the work required to implement our new complaints system (see below), and has done so with great talent and patience.

### **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 by my office with the assistance of Sothertons Chartered Accountants and then audited by Sothertons.

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

- my funding was based on an approved expenditure budget of \$4,202,477;
- I received funding of \$3,952,723 from the Fidelity Fund, I retained the cash surplus for the 2015 year of \$184,754 and I earned \$71,536 in interest on those funds;
- my actual expenditure was \$4,326,008\* – which represents a net overspend of \$116,996.

*\*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 13 to the financial statements were, to a large extent, the reason 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. Counsel fees are the main variable in relation to budget.

### **New systems**

The Board and now my office had for many years been operating on very simplistic technology systems, primarily within the Office environment supplemented by a rudimentary database and document management system. During the reporting period, we implemented a modern case management system designed specifically for a complaints organisation. My expectation is that that new system 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 seminars organised by both the Law Society and LegalWise, and also presentations to a number of individual firms and organisations.

## Information Security Management System

As a Government agency, my office must comply 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 to the Office for Digital Government (part of the Department of the Premier and Cabinet) as and when required to do so. I am satisfied that my office continues to meet its 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 professional misconduct against a practitioner (whether made by the Supreme Court, the Tribunal, or by me) **must** be displayed on the Register. A finding of unsatisfactory professional conduct **may** be displayed on the Register. The Register shows what order(s) was made – such as whether the practitioner was struck off, suspended from practice, reprimanded, fined or similar. Links to relevant decisions of the Tribunal and to judgements of the Supreme Court are also provided.

The Register is available on my website at [www.lpcc.sa.gov.au](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 particularly to thank the Attorney-General for his ongoing support of my office.

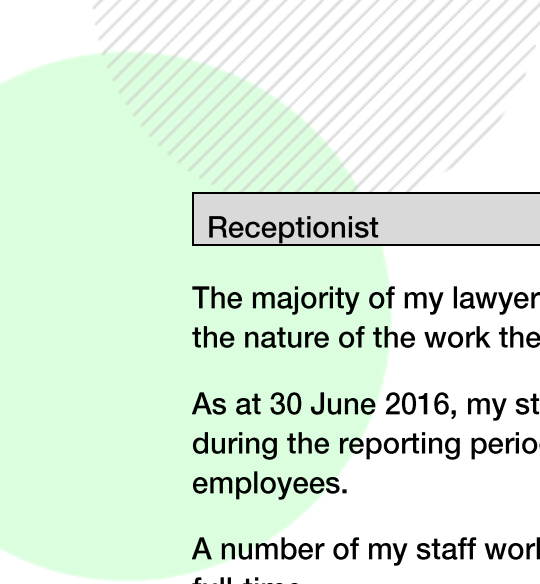


**Greg May**  
Legal Profession Conduct Commissioner  
31 October 2017

## PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

### Staff Members - as at 30 June 2017

Title	Name	Commenced (with Board / Commissioner)
Commissioner	Greg May	1 February 2014 (transitional) 1 July 2014 (formal)
Principal Legal Officer	Elizabeth Manos	September 2003
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	Rebecca Geyer	September 2016
Solicitor	Sharon Hurren	April 2007
Solicitor	John Keen	January 2017
Solicitor	Nadine Lambert	June 2007
Solicitor / Enquiry Officer	Susan McCarthy	October 2016
Solicitor	Debra Miels	October 2010
Conciliator	Amelia Taeuber	March 2010
Finance Manager	Kirstie Bateup	March 2010
Systems Manager	Bart Fabrizio	March 2010
Paralegal	Yvette Manocchio	October 1997
Executive Secretary	Robyn Delaney	September 2006
Admin Officer	Rebekah Hill	February 2013
Admin Officer	Robyn Hurni	November 2011
Admin Officer	Lee Moulden	August 2012
Admin Officer	Rose Kilgus	June 2016



Receptionist	Pat Porter	August 2006
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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 2016, my staff comprised 20.9 FTE employees. That level rose slightly during the reporting period, and as at 30 June 2017 my staff comprised 21.4 FTE employees.

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, a complaint must be sufficiently detailed (in terms of describing the alleged conduct the subject of the complaint) so that I can decide whether to investigate. I 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.

Also, as a result of the 2016 Amendment Act, new section 77B(3c) provides that a complaint must be made to me within 3 years of the conduct complained of, or such longer period as I may allow.

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 (further) 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.

Despite having a professional obligation to be open and frank in their dealings with my office, and to respond within a reasonable time to any requirement from my office for comment or information, not all practitioners are as prompt in responding to my office as they should be. During the reporting period, I issued 10 formal notices under clause 4 of

Schedule 4 to 6 separate practitioners requiring the production of documents and the provision of information.

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 on the part of the practitioner.

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 (unless I decide that it is not in the public interest to do so).

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

In some limited circumstances, if 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:

	Complaints	Adjusted to remove complaints by vexatious litigants, and complaints against my staff and me
2012/13	372	
2013/14	445	
2014/15	505	396
2015/16	616	555
2016/17	632	598

The number of complaints I received / investigations I commenced in the reporting period, after adjustment, represents a 51% increase by reference to the first year of my office's operations in 2014/15.

These complaints comprise the following types:

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

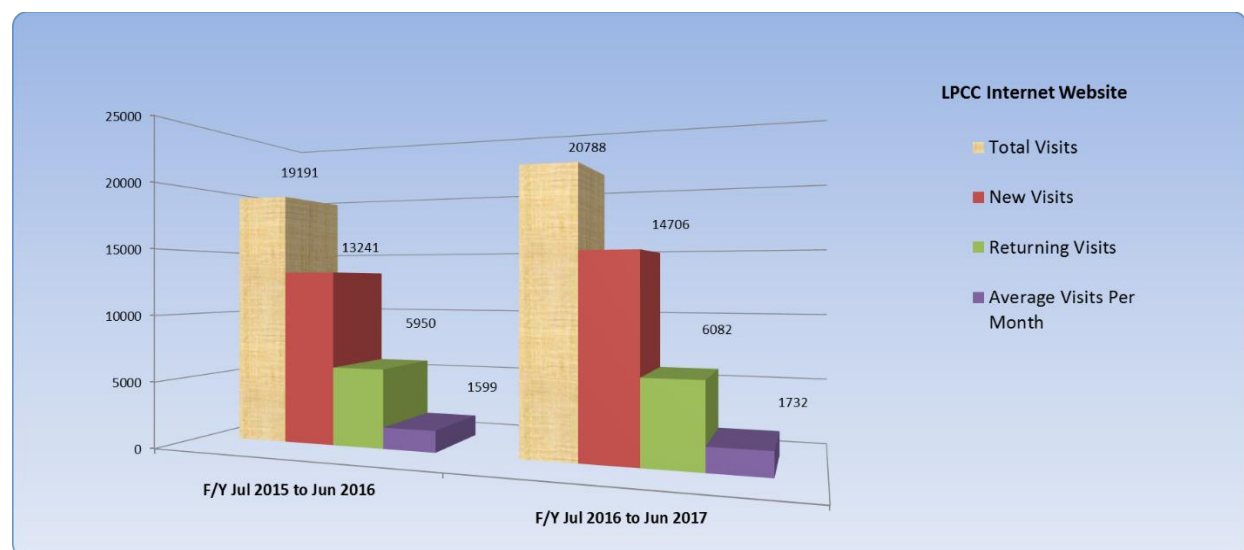
A third party complaint is one where the complaint is made other than by the practitioner's client. Common examples are:

- a person complains about the conduct of the practitioner who is acting for the person's spouse in their family law proceedings;
- 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 1600 from last year, and average visits per month are up 133.



## Nature of matters complained of / investigated

Areas of law	Enquiries	Percentage of total enquiries	Complaints	Percentage of total complaints
Family	270	22.3%	160	25.0%
Probate and Wills	190	15.7%	74	11.5%
Minor Civil	33	2.7%	62	9.7%
Workers Compensation	51	4.2%	50	7.8%
Criminal	70	5.8%	46	7.2%
Personal Injury	78	6.5%	32	5.0%
Other	3	0.2%	26	4.1%
Commercial	60	5.0%	22	3.4%
Debt Collection	21	1.7%	11	1.7%
Administrative	21	1.7%	10	1.6%
Real Property	34	2.8%	10	1.6%
Building Disputes	14	1.2%	8	1.2%
Industrial	36	3.0%	8	1.2%
Bankruptcy	1	0.1%	7	1.1%
Conveyancing	2	0.2%	7	1.1%
Migration	2	0.2%	6	0.9%
Defacto	21	1.7%	4	0.6%
Company	5	0.4%	2	0.3%
LPCC	34	2.8%	2	0.3%
Not Disclosed	263	21.8%	94	14.7%

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	2015/2016		2016/17	
	Complaints		Complaints	
Family	145	23.1%	160	25%
Probate & Wills	88	13.9%	74	11.5%
Personal Injury	49	7.8%	32	5.1%
Minor Civil	(not top 5)		62	9.7%
Workers Compensation	47	7.4%	50	7.8%
Criminal	46	7.3%	46	7.2%
<b>Total of top five</b>		<b>59.5%</b>		<b>67.1%</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
Poor Handling	347	169
Overcharging	385	168
Other	233	107
Lack of Communication	228	85
Inappropriate Behaviour	146	81
Delay	212	66
Breach of Legal Practitioner's Act	8	60
Negligence	68	47
Fail to Comply with Instructions	46	38
Incompetence	105	31
Trust Regulatory Breach	11	28
Theft/Fraud	3	27
Conflict of Interest	35	26
Misleading The Court	1	22
Misrepresentation	9	17
Legal System	135	16
Acting W/O Instructions	23	12
Retention of Documents	49	12
Failure to Pay Third Party	19	11
Legal Advice	122	11
Acting Against Instructions	26	9
Criminal Offence (Not Theft)	1	6
Breach of Undertaking	2	5
No Jurisdiction	29	5
No Cost Advice	94	4
Insufficient Accounts	5	3
Failure to Account to Payer	12	2
Complaints Process	110	0

In the reporting period we opened 632 new investigation files. A total of 1,068 allegations were made as set out in the above table, across those files. The top four allegations – ie poor handling, overcharging, lack of communication and inappropriate behaviour – amounted to 503 of the 1,068 allegations made, or 47% of all allegations.

Allegations of poor handling, overcharging 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	2015/2016		2016/2017	
	Number of complaints		Number of complaints	
Sole practitioner	147	23.9%	144	22.8%
Employee	127	20.6%	138	21.8%
Partner	78	12.7%	64	10.1%
Director incorporated practice	124	20.1%	129	20.4%
Non-practising	30	4.9%	31	4.9%
Barrister	36	5.9%	37	5.9%
Government employee (including Legal Services Commission)	28	4.5%	35	5.5%
Manager/supervisor appointed	0	0	2	0.3%
Consultant	7	1.1%	8	1.3%
Suspended practitioner	1	0.2%	1	0.2%
Corporate practitioner	2	0.3%	5	0.8%
Interstate practitioner	3	0.5%	8	1.3%
Judiciary	2	0.3%	10	1.6%
Unknown	31	5%	20	3.2%
<b>Total</b>	<b>616</b>		<b>632</b>	

As has been the case for many years, the category of practitioner against whom the most complaints were made was the sole practitioner. And “Director incorporated practice” usually involves a small or sole director firm. In my view, these statistics reflect 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 (2016/17)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	400	66.1%	1989	49.6%
Women	205	33.9%	2021	50.4%
Unidentified/Corporate	27		N/A	N/A
<b>Total</b>	<b>632</b>		<b>4010</b>	

For the sake of comparison, the same table in 2015/16 was as follows:

Gender (2015/16)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	407	66.1%	1965	50.2%
Women	179	29.1%	1949	49.8%
Unidentified/Corporate	30	4.8%	N/A	N/A
<b>Total</b>	<b>616</b>		<b>3914</b>	

So, despite there being approximately equal gender diversity in the profession now, for the last two years nearly two-thirds of all complaints have been against male practitioners.

In my view, that statistic is likely to reflect the fact that, notwithstanding the apparent equality in representation in the profession, male practitioners are still more likely to occupy senior positions in firms than are female practitioners, which results in them having more direct contact with clients and hence they are the subject of more complaints.

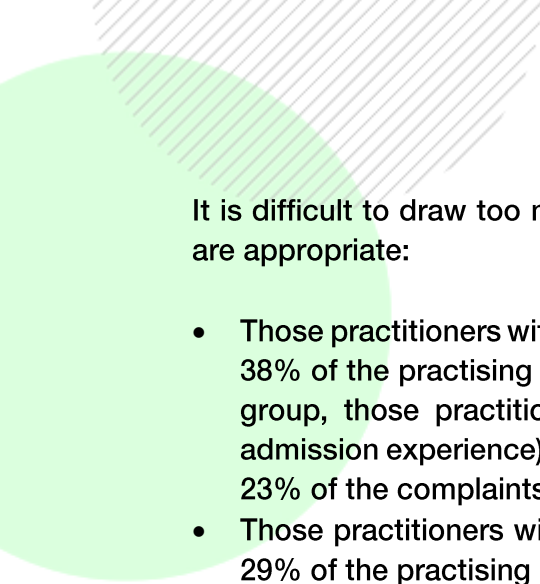
## Comparison of practitioners who received a complaint by post-admission experience

Length of time in practice	2013	2014	2015	2016	2017
Less than 5 years	22	40	27	35	48
	5.9%	9%	5.3%	5.7%	7.6%
5–10 years	62	65	69	69	92
	16.7%	14.6%	13.7%	11.2%	14.6%
10–15 years	36	41	60	79	78
	9.7%	9.2%	11.9%	12.8%	12.3%
More than 15 years	239	285	320	400	378
	64.2%	64%	63.4%	64.9%	59.8%
Not admitted or not identified or a firm	13	14	29	33	36
	3.5%	3.2%	5.7%	5.4%	5.7%
Total	372	445	505	616	632

## 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
1959	58 years	3	.07%	0	0%
1960-1969	48- 57 years	42	1.1%	15	2.4%
1970-1974	43 – 47 years	101	2.5%	24	3.8%
1975-1979	38 - 42 years	240	6%	82	13%
1980-1984	33 - 37 years	249	6.2%	60	9.5%
1985-1989	28 - 32 years	276	6.9%	53	8.4%
1990-1994	23 - 27 years	253	6.3%	45	7.1%
1995-1999	18 - 22 years	346	8.6%	64	10.1%
2000-2004	13 - 17 years	654	16.3%	76	12%
2005-2009	8 - 12 years	682	17%	81	12.8%
2010-2014	3 - 7 years	763	19%	87	13.8%
2015-2017	up to 2 years	401	10%	9	1.4%
Unknown				36	5.7%





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

- Those practitioners with more than 17 years' experience, who represent approximately 38% of the practising profession, received nearly 55% of the complaints. Within that group, those practitioners admitted between 1975 and 1985 (33 - 42 years post admission experience) who represent 12% of the practising profession received nearly 23% of the complaints.
- Those practitioners with less than 8 years' experience, who represent approximately 29% of the practising profession, received just over 15% of the complaints.
- Those practitioners admitted less than 13 years who represent just over 46% of the practising profession received 28% 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	2014/15	2015/16	2016/17
New investigation files opened	505	616	632
Current investigations as at 30 June	458	562	776
Investigation files closed	339	510	423

Also during the reporting period, I decided to close 10 files in circumstances where I considered whether I should make an Own Initiative Investigation, and decided not to do so.

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

Category	30 June 15	30 June 16	30 June 17
Investigation	458	562	776
Tribunal	19	26	28
Tribunal application (Section 23AA of the Act)	0	0	0
Debt collection	34	30	38
District Court	1	0	0
Supreme Court	10	19	23
High Court	0	0	2
<b>Total</b>	<b>522</b>	<b>637</b>	<b>867</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 414 Determinations during the reporting period, comprising the following:

- 171 Determinations that there was no misconduct on the part of the relevant practitioner;
- 199 Determinations to close the complaint under section 77C;
- 18 Determinations that there was unsatisfactory professional conduct on the part of the relevant practitioner, as a result of which I took disciplinary action under section 77J(1);
- 7 Determinations that there was professional misconduct on the part of the relevant practitioner, as a result of which I took disciplinary action under section 77J(2);
- 9 Determinations that there was misconduct on the part of the relevant practitioner, as a result of which I determined to lay a charge in the Tribunal (8 of which were laid in the reporting period);
- 2 Determinations that there was misconduct on the part of the relevant practitioner, as a result of which I determined to take disciplinary proceedings in the Supreme Court (1 of which was commenced in the reporting period – the other was commenced just after the end of it);
- 8 Determinations relating to overcharging (which are expanded on immediately below).

In relation to overcharging complaints, I made:

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

I was satisfied that there was evidence of unsatisfactory professional conduct on the part of the practitioner on 18 occasions, and I took the following disciplinary action under section 77J(1):

- I reprimanded 5 practitioners;
- I ordered 1 practitioner to undertake certain training;
- I reprimanded 6 practitioners and ordered them to make an apology;
- I reprimanded 1 practitioner and ordered that practitioner to undertake certain training, to pay a fine and to make an apology;

- I reprimanded 2 practitioners and ordered them to undertake certain training and to pay a fine;
- I ordered 1 practitioner to undertake certain training, to make an apology and to pay a fine;
- I reprimanded 1 practitioner and imposed a condition on that practitioner's practising certificate in relation to the conduct in question;
- I reprimanded 1 practitioner, and ordered that practitioner to make an apology and to waive / refund costs.

I was satisfied that there was evidence of professional misconduct on the part of the practitioner on 7 occasions, and I took the following disciplinary action under section 77J(2):

- I reprimanded 2 practitioners;
- I reprimanded 1 practitioner and ordered that practitioner to make an apology;
- I reprimanded 2 practitioners and ordered them to make an apology, to pay a fine and to refrain from doing the conduct complained of;
- I reprimanded 1 practitioner, ordered him to pay a fine and enter into a professional mentoring agreement, and suspended his practising certificate for 6 weeks;
- I reprimanded 1 practitioner and ordered that practitioner to make an apology and to undertake certain training.

## Workflow

### Current files by age

Age of current files	2014/15		2015/16		2016/17	
3 years and older	34	5.9%	55	7.8%	56	7.2%
2 – 3 years	52	8.9%	51	7.2%	88	11.3%
1 – 2 years	117	20.1%	162	22.8%	213	27.5%
< 1 years	379	65.1%	441	62.2%	419	54.0%
<b>Total Files</b>	<b>582</b>		<b>709</b>		<b>776</b>	

# CONCILIATION, PROMPT RESOLUTION AND ENQUIRIES

## Conciliation

Sections 72(1)(d) and 77O give my office the power to conciliate complaints. We have 2 staff members dedicated to our Conciliation section.

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

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

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

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

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

## Prompt Resolution

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

If I receive a complaint that does not raise any allegations that are capable of amounting to a conduct finding, and if there is a dispute between a practitioner and a complainant that seems capable of resolution by us making a few telephone calls (for instance, the

complainant may have waited two weeks for a phone call from the practitioner, or may have misunderstood the content of the practitioner's correspondence), I can provide the parties with a limited opportunity to resolve the dispute directly between themselves (with some assistance from us) before I determine whether formal conciliation or investigation of the complaint is required. If the dispute resolves in this way then I am likely to close the complaint under section 77C, again on the basis that it is in the public interest to do so. If the complaint does not resolve then I will consider whether conciliation or investigation of the complaint is appropriate.

During the reporting period, there were 97 active conciliations and prompt resolutions of complaints undertaken by my conciliators. The overwhelming majority of those complaints concerned costs disputes arising in Family Law matters. The majority of those costs disputes resolved following the conciliation and prompt resolution processes.

## Enquiries

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

During the reporting period, we received 1241 enquiry contacts. These enquiry contacts are responded to by our two enquiry officers. (This number only includes the initial contacts, and does not include any subsequent follow up contacts, for example for the purposes of a prompt resolution.)

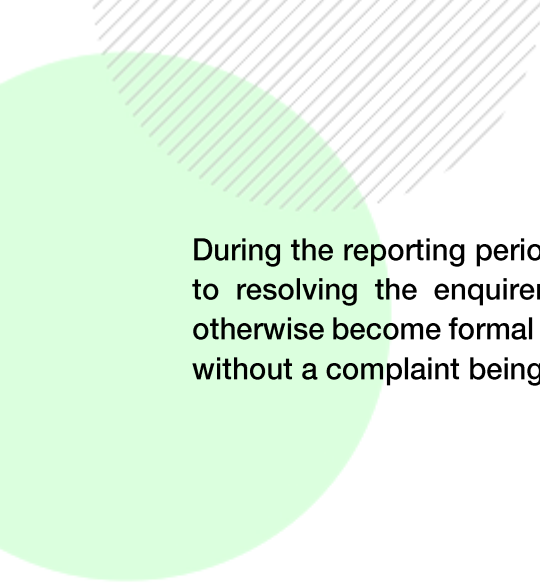
The types and numbers of matters about which we receive enquiries broadly reflect the types and numbers of matters about which we receive complaints. Family Law was the most enquired about area of law, and overcharging is the most enquired about type of complaint. These results are consistent with the 2015/2016 year.

During the reporting period my enquiry officers continued to conduct "assisted enquiries" for eligible enquiry contacts received by my office by telephone or email. That is, in limited circumstances where my enquiry officer considers it appropriate to do so, and in circumstance where express consent was provided by the enquirer, my enquiry officer contacts the practitioner to explore whether a resolution to the enquirer's concerns could be achieved with some limited assistance to attempt to resolve the dispute before a complaint is made.

An assisted enquiry may be assessed as appropriate in circumstances 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 practitioner's conduct isn't likely to amount to misconduct in the event a complaint is made. In those circumstances 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 76 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 76 assisted enquiries, 71 of them resolved without a complaint being made to my office at that time.

## LITIGATION WORK

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

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

### Tribunal charges

As I have said previously, if I consider that I can't adequately deal with a practitioner's misconduct under section 77J, then I must lay a charge against the practitioner before the Tribunal (unless I decide that it isn't in the public interest to do so). However, I am not the only party who can lay a charge of misconduct against a practitioner before the Tribunal. A charge can also be laid by the Attorney General or the Law Society, or by "a *person claiming to be aggrieved by reason of*" the alleged misconduct. This report 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 2015/16, I laid 7 charges against 6 practitioners.

In the reporting period, I laid 8 charges against 6 practitioners.

The Tribunal handed down 2 decisions in this reporting period relating to 4 charges that were laid prior to the reporting period by either the Board or me:

- 3 of those charges related to *Mr Alfonso Strappazon*. The Tribunal found that Mr Strappazon had engaged in professional misconduct, and recommended that disciplinary proceedings be taken against him in the Supreme Court (which I did, and which proceedings are referred to later).
- 1 charge related to *Mr Peter Scragg*. The Tribunal found that Mr Scragg had engaged in unsatisfactory professional conduct, and it reprimanded him and ordered that he pay a \$9,000 fine.

The Tribunal is yet to deliver its decisions relating to 11 charges that were laid against 9 practitioners prior to the reporting period.

The 8 charges laid in this reporting period were laid on the basis of the following alleged misconduct by the practitioners:



- The practitioner acted as sole executor of a deceased estate. Amongst other things, the practitioner misappropriated trust funds and committed breaches of the various trust account regulations.
- Three separate charges were laid against the practitioner relating to:
  - breaches of the trust account regulations;
  - failing to complete the required MCPD points in the relevant year;
  - practising without a practising certificate, and subsequently signing a false statutory declaration in relation to the relevant period.

Those charges have since been withdrawn, as the practitioner has since been struck off and there was no efficacy in continuing with those charges.

- The practitioner was grossly negligent in defending his client in relation to certain court proceedings, resulting ultimately in the client's bankruptcy. Amongst other things, the practitioner misled the client as to the progress with his proceedings.
- The practitioner failed to respond to my office for a period of time in relation to a number of investigations being conducted into his conduct, and failed to respond to a number of formal notices served on him as a result under clause 4 of Schedule 4.
- The practitioner misused and misappropriate trust money and breached numerous trust account rules in relation to that money.
- The practitioner created false documents in order to mislead others into believing that those documents had existed previously.

All of those charges related to conduct in relation to which I (either myself or through my delegate):

- was satisfied that there was evidence of misconduct;
- was satisfied that I (or my delegate) could not deal adequately with the conduct in question under section 77J; and
- 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 changes made to the Act by 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 and (in some circumstances) the practitioner can appeal to the Tribunal.

Not all of my decisions can be appealed against. The Tribunal has previously 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.

During the reporting period, the Tribunal handed down its decision on an appeal that a practitioner had made against my earlier decision under section 77J(1) that he had engaged in unsatisfactory professional conduct. The Tribunal quashed my decision, but did not make a decision of its own in place of my decision – such that I now need to reconsider the practitioner's conduct afresh.

Also during the reporting period, a practitioner lodged appeals against 2 of my decisions that he had engaged in unsatisfactory professional conduct. The practitioner has since withdrawn his appeals.

### **Tribunal decisions about extension of time applications**

If I am going to lay a charge in the Tribunal against a practitioner, then under section 82(2a) I have to do so within 3 years of the practitioner's conduct unless the Tribunal allows an extension of time.

It is not unusual for me to have to seek an extension of time from the Tribunal – for example, it is not infrequently the case that I first find out about the conduct (whether by way of a complaint or a section 14AB report from the Law Society) after that 3 year period has already expired. And, even if I find out about the conduct relatively soon after it occurs, I still have to investigate it properly, comply with the requirements of procedural fairness and natural justice before making a decision, obtain counsel's advice as necessary, and then prepare properly drafted charges.

During the reporting period, the Tribunal considered my applications for extensions of time in relation to 8 charges I had laid against 7 practitioners. It did so in relation to 6 of those charges by decision of a 1 member Tribunal. It granted extensions of time in relation to 5 of those charges. It has reserved its decision on the 6<sup>th</sup> charge. (The applications in relation to the other 2 charges were heard by a 3 member Tribunal as part of the hearing of the merits of the charge.)

One practitioner appealed to a single Justice of the Supreme Court against the (single member) Tribunal's decision to allow an extension of time. Justice Stanley upheld the Tribunal's decision.

A second practitioner subsequently appealed to a single Justice of the Supreme Court against the (single member) Tribunal's decision to allow an extension of time. On that appeal, Justice Vanstone decided (with her decision being handed down after the end of the reporting period) that such an application should have been heard by a Tribunal comprising 3 of its members.

If that decision stands, it will have significant adverse consequences from my office's point of view. It will almost certainly be the case that my applications for an extension that have already been heard (some of which have already been decided) would need to be re-heard by a 3 member Tribunal. And there will also be an impact on future applications of that type – the process of seeking an extension of time will be more drawn out than before, given the added difficulty for the Tribunal in having to have those applications heard before three members rather than one.

I have appealed to the Full Court of the Supreme Court against Justice Vanstone's decision, with that appeal to be heard next month.

## Supreme Court matters

### *Disciplinary proceedings*

In the reporting period, the Supreme Court handed down judgments in disciplinary proceedings against *Mr Gregory Morcom* and *Mr Fadi Semaan* that resulted in each of them having their names struck off the Roll.

In the reporting period, the Supreme Court heard the disciplinary proceedings that I commenced against *Mr Alfonso Strappazzon*. Mr Strappazzon consented to having his name struck off the Roll (under section 89(1b)). After the end of the reporting period, the Supreme Court delivered its judgment by which Mr Strappazzon's name was struck off the Roll.

### *Suspension application*

I applied to the Supreme Court to have a practitioner's practising certificate suspended for failing to comply with a number of formal notices I issued to that practitioner under clause 4 of Schedule 4. The Supreme Court declined to suspend the practitioner's practising certificate, instead imposing various conditions on his certificate (including the requirement to have regular meetings with a supervisor / mentor, the requirement for regular psychiatric treatment, and a limit on the number of clients the practitioner could have at any one time).

I have already referred to the charges I have laid in the Tribunal against that practitioner in relation to his failure to comply with those notices.

### *Appeals*

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

- *Mr Alexander Mericka* had laid a charge in the Tribunal against the former director of the Board. In June 2015, the Tribunal dismissed the charge against her. Mr Mericka appealed to the Supreme Court against the Tribunal's decision. The Full Court of the Supreme Court dismissed Mr Mericka's appeal.

- I laid charges in the Tribunal against *Mr Paul Richardson*. The Tribunal allowed me an extension of time to do so (under section 82(2a)). Mr Richardson appealed to the Supreme Court against the Tribunal's decision to allow that extension of time. Justice Stanley dismissed his appeal.
- *Mr Brian McFarlane* – see below under “other matters”.

During the reporting period, I appealed to the Supreme Court against certain findings of the Tribunal in disciplinary proceedings before it concerning a practitioner's completion of commitment certificates for the Legal Services Commission. The appeal is yet to be heard.

#### *Applications for judicial review*

I had previously made determinations in relation to complaints made by two separate complainants that the practitioners about whom they had complained had not engaged in misconduct. Those complainants both commenced separate proceedings in the Supreme Court for judicial review. The Supreme Court decided in each case that the complainant had standing to take those proceedings.

In relation to one of those applications for judicial review, the proceedings were settled on the basis that my earlier determinations would be set aside, and the complaints (against 2 practitioners) would be reconsidered by an external delegate (in this case a senior barrister). The senior barrister subsequently made the same decision as I had made previously – ie that there was no misconduct on the part of the relevant practitioners.

In the other proceedings, we are still to have a hearing on the merits of the application.

A third set of judicial review proceedings were issued by another complainant in June 2016. Those proceedings were subsequently settled.

#### *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 the reporting period, proceedings were commenced before the Supreme Court in relation to show cause events that happened to 4 practitioners. In relation to 2 of those practitioners, the Supreme Court was satisfied that the practitioners were fit and proper persons to hold a practising certificate. The other 2 matters were, as at the end of the reporting period, still ongoing.

### *Adjudication proceedings*

During the reporting period, I commenced adjudication proceedings in the Supreme Court in relation to the legal costs of a law firm in a particular matter. The proceedings were settled in May 2017, on the basis that the firm would make a substantial refund of fees (in excess of \$25,000) to its client.

### **Other matters**

#### *Mr John Viscariello*

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 about practitioners or being involved in the various court proceedings, both because he has complained about me and because many of his complaints are about practitioners at my former firm. I had 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 subsequently 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.

The substantive judicial review proceedings have not yet been heard, because Mr Viscariello took out an interlocutory application challenging the validity of my delegations. Justice Parker initially upheld the validity of my delegations. Mr Viscariello then appealed against that decision, but the Full Court of the Supreme Court dismissed his appeal.

However, both Justice Parker and the Full Court considered that, in making at least some of my delegations, I had not complied with section 17 of the PSHA Act – I should have sought the Attorney-General's authorisation before making my delegations. (I had advised the Attorney-General of my intention to make the delegations, but the Court found that I had not obtained his authorisation before doing so.)

Shortly after Justice Parker handed down his judgment in those proceedings, I self-reported his finding that I had not complied with section 17 of the PSHA Act to both the Office for Public Integrity and the Attorney-General. The Independent Commissioner Against Corruption, Mr Lander QC, determined to take no further action in respect of my report. The Attorney advised me that he did not consider that my non-compliance warranted any further action.

In the second 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 to the Full Court against that decision. The Full Court dismissed Mr Viscariello's appeal. Mr Viscariello subsequently sought special leave to appeal to the High Court against the Supreme Court's decision. His application was dismissed.

#### *Mr Brian McFarlane*

In October 2014, Mr McFarlane made a complaint to me about a practitioner. I subsequently closed that complaint under section 77C.

In March 2015, Mr McFarlane appealed to the Tribunal against my decision to do so. The Tribunal subsequently decided that there was no right of appeal against a determination of that nature.

In May 2015, Mr McFarlane laid charges against me in the Tribunal alleging misconduct on my part in closing his complaint under section 77C. The Tribunal summarily dismissed Mr McFarlane's charge against me.

Mr McFarlane subsequently appealed to the Full Court of the Supreme Court against the Tribunal's decision to summarily dismiss his charge against me. The Supreme Court dismissed his appeal.

Although it happened after the end of the reporting period, I should note that Mr McFarlane subsequently sought special leave to appeal to the High Court against the Supreme Court's decision. His application was dismissed.

#### *Dr Kenneth Keung*

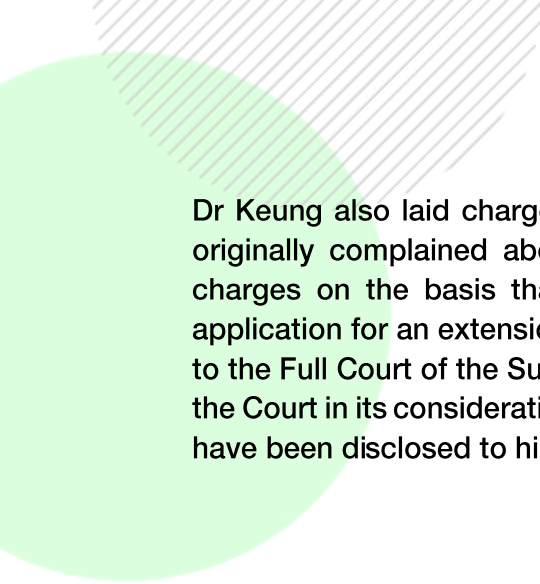
Dr Keung originally complained to the Board about a number of practitioners. The Board had already dealt with many of his complaints, but I assumed a small number of them from 1 July 2014 (as a result of the transitional provisions in the 2013 Amendment Act). In relation to those remaining complaints, I decided that there was no misconduct on the part of the relevant practitioners.

Dr Keung appealed to the Tribunal against my decisions. The Tribunal subsequently decided that there was no right of appeal against a determination of that nature.

In March 2016, Dr Keung laid charges against me in the Tribunal alleging misconduct on my part in relation to the decisions I made about his complaints, as well as various related matters.

I have applied to the Tribunal for an order for security for costs against Dr Keung. The Tribunal has heard my application, and has reserved its decision in that respect.





Dr Keung also laid charges in the Tribunal against two of the practitioners that he had originally complained about to the Board. The Tribunal dismissed a majority of the charges on the basis that they were out of time, and it also dismissed Dr Keung's application for an extension of time. Dr Keung appealed against the Tribunal's decisions to the Full Court of the Supreme Court. I intervened in those proceedings so as to assist the Court in its consideration of the status of certain documents that Dr Keung said should have been disclosed to him.

## 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** – has the same meaning as in the Act

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

**misconduct** means both unsatisfactory professional conduct and professional misconduct

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

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

**reporting period** – 1 July 2016 to 30 June 2017

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

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

**PSHA Act** means the *Public Sector (Honesty and Accountability) Act 1995*

**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

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

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

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





# **FINANCIAL REPORTS**

**FOR YEAR ENDED 30 JUNE 2017**



# LEGAL PROFESSION CONDUCT COMMISSIONER

## TABLE OF CONTENTS

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	<b>Page</b>
Auditors Independence Declaration	1
Income and Expenditure Statement	2
Balance Sheet	4
Reconciliation of Cash	5
Notes to the Financial Statements	6
Statement by the Legal Profession Conduct Commissioner	13
Independent Audit Report	14

## 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 2017 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 31 day of October 2017.

# LEGAL PROFESSION CONDUCT COMMISSIONER

## INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 2017

	Note	2017 \$	2016 \$
<b>INCOME</b>			
Operating - Fidelity Fund		4,137,477	4,014,789
Special Fund - IT	7	-	840,600
Interest on Funds		71,536	92,273
Prior Year Funds Reconciliation	3	-	122,145
Provision Write-back	7	524,174	437,027
Return Funds to Fidelity Fund	7	-	(306,897)
<b>TOTAL INCOME</b>		<b>4,733,187</b>	<b>5,199,937</b>
<b>EXPENDITURE(Commissioner)</b>			
Salaries and Staff Expenses			
Amenities		5,667	5,296
Car Parking		4,799	4,058
First Aid Allowance		918	1,580
Fringe Benefits Tax		15,040	14,163
Motor Vehicle - Lease Cost		10,280	10,421
Motor Vehicle -Fuel, R & M		3,666	3,513
Motor Vehicle - Salary Sacrifice		(19,305)	(20,550)
Professional Development		15,312	11,287
Provision for Annual Leave		20,688	(13,641)
Provision for Long Service Leave		31,293	57,763
Payroll Tax		108,015	104,282
Practising Certificates		11,850	8,925
Salaries - Professional		1,820,001	1,774,708
Salaries - Support Staff		601,235	602,217
Salaries - Temp/Casuals		28,857	5,310
Salaries - Parental Leave		27,382	-
Subscriptions/Membership		6,509	5,015
Superannuation		233,921	225,543
Reportable Employer Superannuation		57,694	59,374
WorkCover		1,336	991
Total Salaries and Staff Expenses		2,985,158	2,860,255
External Expert Expenses			
Costs Assessment Expenses		17,597	28,418
Counsel Fees	13	518,523	479,391
Associated Costs		10,066	30,510
External Delegation	13	98,426	40,297
Expert & Witness Fees		2,540	1,875
Total External Expert Expenses		647,152	580,491

The accompanying notes form part of these financial statements.

# LEGAL PROFESSION CONDUCT COMMISSIONER

## INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 2017

	Note	2017 \$	2016 \$
Administration and Operating Expenses			
Equipment Expenses			
Computer - Operating		17,087	58,259
Computer - Provision/Purchase		12,984	8,201
Computer - Repairs and Maintenance		34,568	23,683
Depreciation		185,426	88,908
Lease Charges - Photocopier		21,175	21,176
Photocopier		5,039	4,905
Repairs and Maintenance		2,487	1,108
Total Equipment Expenses		278,766	206,240
General Expenses			
Audit Fees		7,500	8,780
Bank Charges		614	827
Business Case Management		-	45,000
Courier Services		1,978	2,121
Insurance		18,736	16,703
Internet Services		1,904	3,176
IT Project Costs	7	74,473	41,502
Provision - IT Funding	7	-	732,634
Library		16,453	14,733
Occupational Health and Safety		3,704	3,923
Postage		6,672	8,179
Printing and Stationery		18,050	17,337
Protective Security Compliance		17,036	48
Records Management		19,995	18,010
Telephone and Fax		10,332	12,243
Travel		-	245
Website Development		1,778	1,319
Total General Expenses		199,225	926,780
Occupancy Expenses			
Light and Power		20,136	17,032
Office Cleaning		22,458	24,080
Rent		378,150	387,839
Security		1,340	3,740
Total Occupancy Expenses		422,084	432,691
<b>TOTAL EXPENDITURE</b>		<b>4,532,385</b>	<b>5,006,457</b>
<b>OPERATING SURPLUS</b>		<b>200,802</b>	<b>193,480</b>
<b>TOTAL OPERATING SURPLUS/(DEFICIENCY)</b>		<b>200,802</b>	<b>193,480</b>
ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR		505,872	312,392
<b>ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR</b>		<b>706,674</b>	<b>505,872</b>

The accompanying notes form part of these financial statements.

# LEGAL PROFESSION CONDUCT COMMISSIONER

## BALANCE SHEET AS AT 30 JUNE 2017

	Note	2017 \$	2016 \$
CURRENT ASSETS			
Cash	2	867,618	1,460,957
Receivables	3	83,764	179,808
Prepayments	4	37,543	35,770
TOTAL CURRENT ASSETS		988,925	1,676,535
NON CURRENT ASSETS			
Fixed Assets	5	878,152	560,355
TOTAL NON CURRENT ASSETS		878,152	560,355
<b>TOTAL ASSETS</b>		<b>1,867,077</b>	<b>2,236,890</b>
CURRENT LIABILITIES			
Creditors and Accruals	6	543,144	334,666
Provisions	7	617,259	1,396,352
TOTAL CURRENT LIABILITIES		1,160,403	1,731,018
<b>TOTAL LIABILITIES</b>		<b>1,160,403</b>	<b>1,731,018</b>
<b>NET ASSETS</b>		<b>706,674</b>	<b>505,872</b>
ACCUMULATED FUNDS			
Retained Funds	8	706,674	505,872
<b>TOTAL ACCUMULATED FUNDS</b>		<b>706,674</b>	<b>505,872</b>

The accompanying notes form part of these financial statements.

## LEGAL PROFESSION CONDUCT COMMISSIONER

### RECONCILIATION OF CASH FOR THE YEAR ENDED 30 JUNE 2017

	Note	2017 \$	2016 \$
<b>RECONCILIATION OF CASH</b>			
Net Income		200,802	193,480
Depreciation		185,426	88,908
Movement in Provision for Annual Leave		20,688	(13,640)
Movement in Provision for Long Service Leave		31,291	57,764
Payables		208,478	(43,766)
Provision for Special Grant Funds		(831,073)	602,504
Purchase of Office Furniture		-	(19,705)
Purchase of Office Equipment		(53,521)	(84,598)
Purchase of Leasehold Improvements		-	(110,425)
Purchase of Case Management System - ICT		(449,702)	-
Prepayments		(1,773)	(35,770)
Receivables		96,045	(105,895)
		<u>(794,141)</u>	<u>335,378</u>
Net Increase in Cash Held		(593,339)	528,858
Cash at Beginning of Financial Year		1,460,957	932,099
Cash at End of Financial Year	2	<u>867,618</u>	<u>1,460,957</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 2017

### 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 2017**

### **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 2017

#### NOTE 2: CASH

	2017	2016
	\$	\$
Cash on Hand	300	300
Cash at Bank	944	1,311
Access Saver	616,374	524,750
Term Deposits	250,000	934,596
	<u>867,618</u>	<u>1,460,957</u>

#### NOTE 3: RECEIVABLES

	2017	2016
	\$	\$
GST Refundable	77,764	57,463
Sundry Debtors	6,000	200
Prior year Funding Request (shortfall)	-	122,145
	<u>83,764</u>	<u>179,808</u>

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

	2017	2016
	\$	\$
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>-</u>	<u>122,145</u>

#### NOTE 4: PREPAYMENTS

	2017	2016
	\$	\$
Prepayments	<u>37,543</u>	<u>35,770</u>

#### NOTE 5: FIXED ASSETS

	2017	2016
	\$	\$
Office Furniture at cost	80,131	80,131
Less: Accumulated Depreciation	(58,272)	(53,090)
	<u>21,859</u>	<u>27,041</u>
Office Equipment at cost	368,897	315,376
Less: Accumulated Depreciation	(236,334)	(164,933)
	<u>132,563</u>	<u>150,443</u>
Leasehold Improvements at cost	426,624	426,624
Less: Accumulated Depreciation	(90,682)	(43,753)
	<u>335,942</u>	<u>382,871</u>

# LEGAL PROFESSION CONDUCT COMMISSIONER

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2017

	2017	2016
	\$	\$
Case Management System - ICT	449,702	-
Less: Accumulated Depreciation	(61,914)	-
	<u>387,788</u>	<u>-</u>
Total Fixed Assets	<u>878,152</u>	<u>560,355</u>

### NOTE 6: CREDITORS & ACCRUALS

	2017	2016
	\$	\$
Bank SA Visa	3,270	2,332
PAYG Tax Withholding	44,574	47,342
Recoveries - Fidelity Fund	-	1,000
Accrual	7,391	10,052
Trade Creditors	474,479	273,940
Superannuation	13,430	-
	<u>543,144</u>	<u>334,666</u>

### NOTE 7: PROVISIONS

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

	2017	2016
	\$	\$
Annual Leave	118,165	97,477
Long Service Leave	290,635	259,344
	<u>408,800</u>	<u>356,821</u>

Number of employees at 30 June 2017 (FTE) 21.4 20.9

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 IT grant funds at balance date.

	2017	2016
	\$	\$
Special Grant - Relocation Costs	-	306,897
Special Grant - IT	208,459	732,634
	<u>208,459</u>	<u>1,039,531</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. \$306,897 was returned to the Fidelity Fund in the 2017 financial year.

## LEGAL PROFESSION CONDUCT COMMISSIONER

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2017

	2017	2016
	\$	\$
<u>Relocation Grant</u>		
Leasehold Improvements - Capitalised	-	110,425
Furniture & Equipment - Capitalised	-	19,705
Special Grant Refundable to Fidelity Fund	-	306,897
	<u>-</u>	<u>437,027</u>

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 had been spent and the remaining \$732,633 had been accrued. In 2017 a further \$524,175 was spent leaving \$208,459 for future costs or to be returned to the Fidelity Fund if unspent.

	2017	2016
	\$	\$
<u>IT Grant</u>		
Office Equipment - Capitalised	449,702	66,464
IT Expenditure	74,473	41,503
Provision - Special Grant	208,459	732,634
	<u>732,634</u>	<u>840,601</u>

#### NOTE 8: ACCUMULATED FUNDS

	2017	2016
	\$	\$
Accumulated surplus at the beginning of the financial period	505,872	312,392
Operating surplus/(deficit) for the year	<u>200,802</u>	<u>193,480</u>
Accumulated surplus at the end of the financial period	<u>706,674</u>	<u>505,872</u>

#### NOTE 9: RECOVERIES OF TRIBUNAL COSTS - AMOUNTS OUTSTANDING

The Commissioner receives some money from practitioners in payment of party and party costs awarded in disciplinary proceedings in favour of the Commissioner by the Tribunal and the Supreme Court. The Commissioner remits the recovered funds to the Law Society of South Australia in its capacity as administrator of the Fidelity Fund.

	2017	2016
	\$	\$
Recoveries recouped and remitted to the Fidelity Fund	14,000	76,097
	<u>14,000</u>	<u>76,097</u>

# LEGAL PROFESSION CONDUCT COMMISSIONER

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2017

### NOTE 10: RECOVERIES OF FINES

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

	2017	2016
	\$	\$
Fines recouped and remitted to the Treasurer	34,000	5,500
	<u>34,000</u>	<u>5,500</u>

### NOTE 11: LEASING COMMITMENTS

---

Operating Lease Commitments  
Being for rent of office premises:

	2017	2016
	\$	\$
Payable:		
- not later than one year	394,531	379,357
	<u>394,531</u>	<u>379,357</u>

### NOTE 12: ECONOMIC DEPENDENCY

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

### NOTE 13: COUNSEL FEES AND EXTERNAL DELEGATION

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During the reporting period, the Commissioner incurred \$616,949 on Counsel Fees and External Delegation. That is nearly \$100,000 more this financial year than last. Some comments about that are appropriate.

(a) The *Legal Practitioners (Miscellaneous) Amendment Act 2016* ("2016 Amendment Act") came into operation on 13 November 2016. Amongst other things, that meant that:

- (i) complainants could no longer complain to the Commissioner about him or his staff, or lay charges in the Tribunal against them; and
- (ii) vexatious litigants would no longer be able to complain to the Commissioner.

The vexatious litigant amendment applied, to some extent, to complaints received prior to the 2016 Amendment Act coming into operation, as well as those received after that date. However, some complaints by vexatious litigants made before that date, as well as any complaints made about or charges laid against the Commissioner or his staff before that date, still needed to be dealt with.

(b) During the reporting period, the Commissioner paid:

- (i) \$7,915.20 to counsel and an external delegate for dealing with a charge laid in the Tribunal against the Board's previous director;
- (ii) \$2,200 to one of the Commissioner's external delegates for dealing with a complaint against the Board's previous director;
- (iii) \$13,400 to one of the Commissioner's external delegates for dealing with various complaints against the Commissioner's staff members and his counsel;
- (iv) \$53,719.68 to one of the Commissioner's external delegates for dealing with various complaints by vexatious litigants in relation to which the Commissioner was conflicted.

## **LEGAL PROFESSION CONDUCT COMMISSIONER**

### **NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2017**

(c) Now that the 2016 Amendment Act has been in operation for some time, these type of fees are unlikely to be incurred in future years. However, some counsel fees will be incurred in the 2017/18 financial year in relation to two separate charges that were laid against the Commissioner in the Tribunal before the 2016 Amendment Act came into operation. One charge was summarily dismissed by the Tribunal, but the complainant then appealed unsuccessfully to both the Supreme Court and the High Court against the Tribunal's decision. The other charge has not yet been considered by the Tribunal.

## 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 2017 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 31<sup>st</sup> day of October 2017.

## **LEGAL PROFESSION CONDUCT COMMISSIONER**

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

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

We have audited the accompanying financial report, being a special purpose financial report, of the Legal Profession Conduct Commissioner for the financial year ended 30 June 2017, 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 2017 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 31 day of October 2017.