



2019 ANNUAL REPORT

**Legal Profession
Conduct Commissioner**

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COMMISSIONER'S REPORT

In accordance with section 90A, I present to the Attorney-General and the Chief Justice the fifth annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2019.

Overview

This report relates to the fifth 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, as a result of which my office took over from the Legal Practitioners Conduct Board as the regulator of the conduct of the legal profession in South Australia.

I was initially appointed as Commissioner on 1 February 2014 for a 5 year term. During the reporting period, my appointment was renewed for a further 5 year term from 1 February 2019.

Functions

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 who is the subject of a complaint.

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 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 has increased significantly over the five years since its establishment. 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), 632 complaints (2016/17) and 551 complaints (2017/18). I received 525 complaints in the reporting period.

On the face of it, there has been a reduction in the number of complaints received over the last two years. To a large extent that has resulted from changes to the Act made by the *Legal Practitioners (Miscellaneous) Amendment Act 2016*, as a result of which from part way through the 2016/17 year:

- a person who is a vexatious litigant can no longer complain to me; and
- a person can no longer complain to me about my staff and me.

Those changes have led to a reduction in the numbers of complaints I have received in the last two years, in comparison to those I received in the years to 30 June 2017.

Since the end of the reporting period, there has been progress in relation to some more legislative change that again will almost certainly have an impact on complaint numbers. The 2019 Amendment Act has now passed Parliament and been assented to. It is yet to be proclaimed.

Once the 2019 Amendment Act comes into operation, I expect that the Attorney-General will then approve me fixing a relatively nominal fee (most likely \$100) to lodge a complaint. I will publish some relatively straight-forward guidelines as to the circumstances in which I will waive or refund a fee. For example, if a complaint leads to a finding of misconduct on the part of a practitioner, then the complainant would rightly expect to receive a refund of the fee originally paid.

The other main change that will be made by the 2019 Amendment Act relates to overcharging complaints. I have previously only been able to make a binding determination in relation to an overcharging complaint if the amount in dispute is no more than \$10,000. The 2019 Amendment Act will change that monetary limit, so that for complaints made after the change commences I will be able to make a binding determination if the amount in dispute is up to \$50,000.

So, the first of these changes might be expected to reduce the number of complaints I receive, while the second might increase those numbers (at least in relation to complaints of overcharging).

Tribunal proceedings – extension of time applications

We have run into a significant issue relating to disciplinary proceedings in the Tribunal that need the Tribunal to grant an extension of time before they can proceed. I have expanded on this issue in the section of this report dealing more specifically with Tribunal proceedings but, in very general terms, the uncertainty about the way in which such applications are to be heard by the Tribunal has resulted in very few Tribunal proceedings being heard during the reporting period. That has meant that I have spent less than expected on counsel fees in running those proceedings, which has contributed substantially to the underspend of my budget. While I had hoped that the 2019 Amendment Act would “fix” this issue, in the end it hasn’t helped with any current matters to which it applies, and so I expect that they will continue to present logistical challenges to both my office and the Tribunal for a few years to come.

Staff

My staffing level has remained relatively constant since my office commenced on 1 July 2014. Over the last few years my office has usually had around 20 to 21 FTE employees. As at 30 June 2018, I had 21 FTE employees. As at the end of the reporting period I had 20 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.

Financial arrangements

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

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

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

- my approved expenditure budget was \$4,385,978;
- I received funding of \$4,320,978 from the Fidelity Fund, on the assumption that I would earn interest of \$65,000 on those funds;
- in fact, I only earned \$41,366 in interest on those funds;
- my actual expenditure was \$4,240,245* – that is, I underspent my approved expenditure budget by \$145,733;
- taking into account the lower interest return, my final net result for the reporting period was a total operating underspend of \$122,029.

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

- *adding back LPCC funded capital items (ie computer equipment);*
- *deducting non-cash components (ie depreciation, asset write offs).*

During the period from my office's commencement on 1 July 2014 to 30 June 2018, my financial statements reflected a cumulative deficit of \$264,397. The Attorney-General has not provided additional funding from the Fidelity Fund to make good that deficit. And, rather than setting off the underspend for the reporting period against that deficit, the Attorney-General has required that that amount (ie \$122,029) be returned to the Fidelity Fund.

I should also just note that the Attorney-General has decided that, from the 2019/20 year, my approved budget will not necessarily be fully funded from the Fidelity Fund in the relevant financial year. That will usually mean that I will only receive funding for a percentage of the increase in leave provisions that is included in my budget. In that regard, I refer to Note 15 of the attached financial statements.

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.

Education of the profession

My office continues to spend many hours presenting seminars to the profession on the disciplinary regime generally. This included seminars organised by both the Law Society and Legalwise, as well as direct to some firms. I also regularly contribute articles to the Law Society's monthly Bulletin.

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 continue to provide information about our ISMS to the Office for Cyber Security (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.

Public Disclosure Act 2018

The PID Act commenced on 1 July 2019, replacing the *Whistleblowers Protection Act 1993*.

Although it commenced immediately following the end of the reporting period, I consider it appropriate to say in this report that I am satisfied that my office has complied with the obligations that have been imposed on it, as a Government agency, by the new PID Act.

The relevant procedures document prepared for my office in accordance with the requirements of the PID Act is available on my website at www.lpcc.sa.gov.au.

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. 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 her ongoing support of my office.



Greg May
Legal Profession Conduct Commissioner
31 October 2019

PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

Staff Members - as at 30 June 2019

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	Deslie Billich	April 2015
Solicitor (costs)	Rebecca Birchall	September 2005
Solicitor / Conciliator	Paul Blackmore	April 2013
Solicitor	Philippa Branson	March 2011
Solicitor	Kathryn Caird	August 2012
Solicitor	Linda Doré	June 2011
Solicitor	Julia Dunstone	May 2012
Solicitor	Rebecca Geyer	September 2016
Solicitor	Mark Heitmann	October 2018
Solicitor	Sharon Hurren	April 2007
Solicitor	John Keen	January 2017
Solicitor	Nadine Lambert	June 2007
Solicitor	Debra Miels	October 2010
Solicitor	Priya Subramaniam	October 2018
Conciliator	Amelia Taeuber	March 2010
Systems Manager	Bart Fabrizio	March 2010
Paralegal	Yvette Manocchio	October 1997
Executive Secretary	Robyn Delaney	September 2006
Admin Officer	Robyn Hurni	November 2011
Admin Officer	Lee Moulden	August 2012
Admin Officer	Rose Kilgus	June 2016
Admin Officer	Rachel Jonas	December 2018
Receptionist	Pat Porter	August 2006

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. I will often make an Own Initiative Investigation following a report from the Law Society under section 14AB, or a referral from the Judiciary or the Police.

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

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. Some fail to engage with my office at all. During the reporting period, I issued 6 formal notices to practitioners under clause 4(1) of Schedule 4 requiring the production of documents and the provision of information as a result of their failure to respond. I also issued 8 formal notices to

third parties under clause 4(2) of Schedule 4 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 (or no or insufficient evidence of 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 – although sometimes I can only do so with the consent of the practitioner; 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 Board, and now my office, has received the following number of complaints over the last 7 years:

	Regulator	Complaints (including intake files)	Intake files
2012/13	Board	372	
2013/14	Board	445	
2014/15	Commissioner	505	
2015/16	Commissioner	616	
2016/17	Commissioner	632	
2017/18	Commissioner	551	57
2018/19	Commissioner	525	45

For these purposes, a "complaint" comprises the following:

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

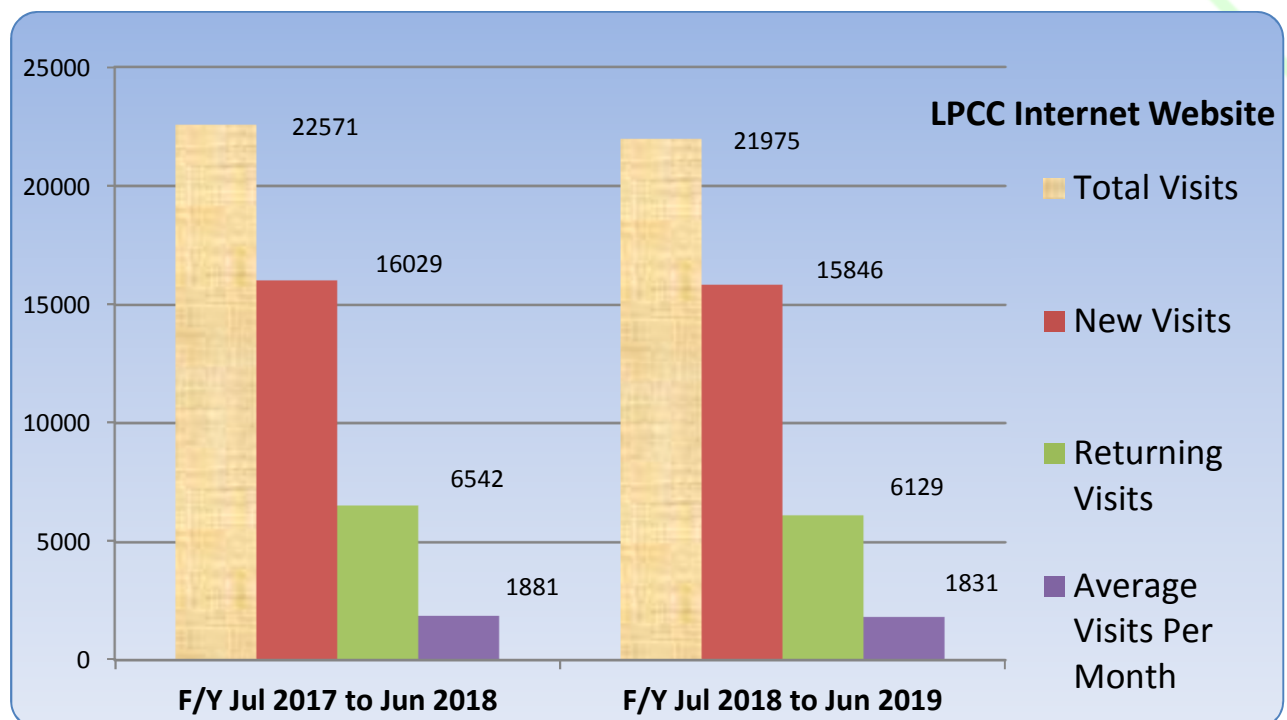
A third party complaint is one where the complaint is made by someone other than the practitioner's client. Common examples are:

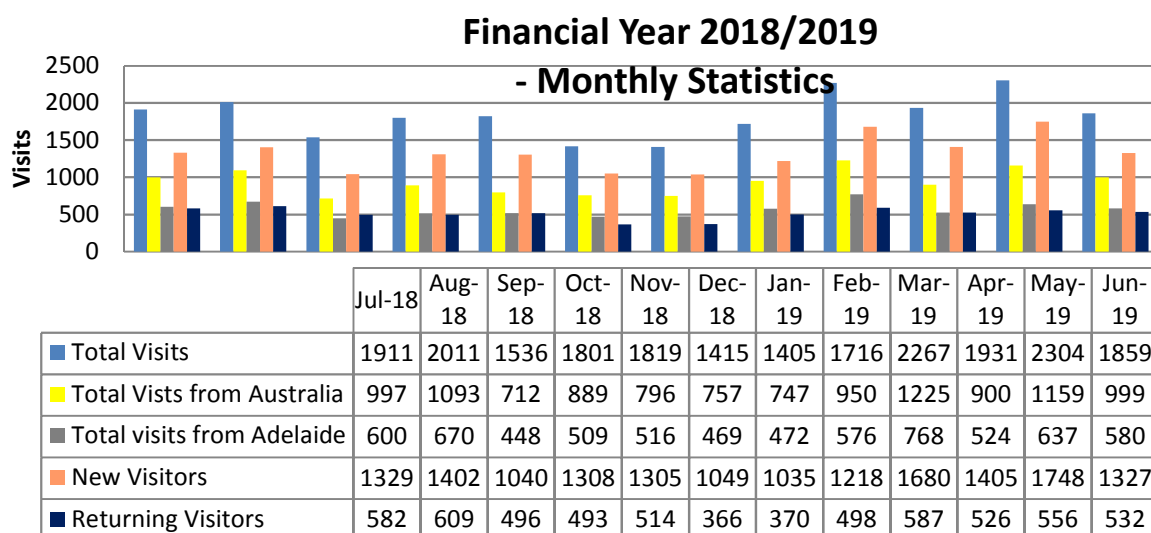
- a person complains about the conduct of the practitioner who is acting for the person's spouse in their family law proceedings;
- a beneficiary of a deceased estate complains about the conduct of the practitioner who is acting for the executor of that estate.

Website – the last 2 years

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





Nature of matters complained of / investigated

Areas of law	Complaints	Percentage of total complaints
Family	126	25.8%
Estate Administration	71	14.5%
Criminal	55	11.2%
Civil Litigation	51	10.4%
Personal Injury	24	5.0%
Other	22	4.5%
Industrial	18	3.7%
Will Preparation	16	3.3%
Workers Compensation	15	3.1%
Commercial	15	3.1%
Real Property	12	2.4%
Defamation	12	2.5%
Administrative	11	2.3%
General	9	1.8%
Debt Collection	6	1.2%
Building Disputes	4	0.8%
Migration	4	0.8%
Criminal Injuries	4	0.8%
Failure to comply with LPCC requirements	3	0.6%
Conveyancing	2	0.4%
Environment, Resources & Development	2	0.4%
Bankruptcy	1	0.2%
Not Disclosed	1	0.2%
SACAT	1	0.2%
Tax/Revenue	1	0.2%
Tort	1	0.2%

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	2017/18		2018/19	
	Complaints		Complaints	
Family	113	22.5%	126	25.8%
Estate Administration	74	14.7%	71	14.5%
Civil Litigation	51	10.1%	51	10.4%
Workers Compensation	38	7.6%		
Will Preparation			16	3.3%
Criminal	36	7.2%	55	11.2%
Total of top five		62.1%	318	65.2%

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. I expect that the number of complaints relating to estate administration will continue to remain high, and on the increase, given the increased ageing of our population and the scourge of dementia – practitioners practising in this area need to be ever vigilant for signs of a lack of testamentary capacity.

Nature of allegations made

Nature of allegation	On complaint
Poor Handling	160
Overcharging	151
Delay	65
Fail to Comply with Instructions	61
Lack of Communication	50
Breach of Legal Practitioner's Act	42
Breach of ASCR's	39
Negligence	34
Other	32
Inappropriate Behaviour	32
Rudeness / lack of respect	30
Conflict of Interest	21
Acting W/O Instructions	20
Incompetence	16
Misleading The Court	15
Retention of Documents	15
Trust Regulatory Breach	14
Breach of Confidentiality	9
Misleading another party	9
Failure to assess capacity	8
Failure to Pay Third Party	7
Acting Against Instructions	4
Breach of Undertaking	4
Unsubstantiated allegation	4
Criminal Offence (Not Theft)	4
Terminating instructions	4
Legal Advice	3
Misrepresentation	2
Theft/Fraud	2
No Cost Advice	2
Failure to Account to Payer	1
Misappropriation of trust money	1

In the reporting period we opened 525 new investigation files. A total of 861 allegations were made as set out in the above table, across those files. The top four allegations – ie poor handling, overcharging, delay, and failing to comply with instructions – amounted to 437 of the 861 allegations made, or 50% of all allegations. They were the same “top four” as last year, and all 4 allegations 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	2017/2018		2018/2019	
	Number of complaints		Number of Complaints	
Sole practitioner	104	21.1%	100	20.8%
Employee	117	23.7%	119	24.8%
Partner	51	10.3%	49	10.2%
Director incorporated practice	97	19.6%	102	21.3%
Non-practising	46	9.3%	38	7.9%
Barrister	20	4%	28	5.8%
Government employee (including Legal Services Commission)	18	3.6%	9	1.9%
Suspended practitioner			7	1.5%
Corporate practitioner	3	0.6%	1	0.2%
Interstate practitioner	17	3.4%	8	1.7%
Judiciary	2	0.4%	1	0.2%
Unknown/Other	19	3.8%	18	3.7%
Total	494*		480*	

**This does not include intake files.*

Complaints by Gender

Gender (2018/19)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	304	63.3%	2015	47.8%
Women	164	34.2%	2200	52.2%
Firm	11		N/A	N/A
Total	479*		4215	

**1 unknown*

**Does not include intake files.*

For the sake of comparison, the same table in 2017/18 was as follows:

Gender (2017/18)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	311	63%	2004	48.6%
Women	173	35%	2123	51.4%
Firm	10		N/A	N/A
Total	494		4127	

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.

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

Length of time in practice	2015	2016	2017	2018	2019
Less than 5 years	27	35	48	28	25
	5.3%	5.7%	7.6%	5.7%	5.2%
5–10 years	69	69	92	62	70
	13.7%	11.2%	14.6%	12.5%	14.6%
10–15 years	60	79	78	73	62
	11.9%	12.8%	12.3%	14.8%	13.9%
More than 15 years	320	400	378	299	297
	63.4%	64.9%	59.8%	60.5%	61.9%
Not admitted or not identified or a firm	29	33	36	32	26
	5.7%	5.4%	5.7%	6.5%	5.4%
Total	505	616	632	494	480

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
1951-1958	61 – 68 years	1	0.02%	0	0%
1959-1968	51- 60 years	25	0.6%	4	0.8%
1969-1973	46 – 50 years	69	1.6%	8	1.7%
1974-1978	41 - 45 years	170	4%	34	7.1%
1979-1983	36 - 40 years	257	6.1%	67	13.9%
1984-1988	31 - 35 years	268	6.4%	36	7.5%
1989-1993	26 - 30 years	237	5.6%	46	9.6%
1994-1998	21 - 25 years	333	7.9%	45	9.4%
1999-2003	16 - 20 years	596	14.1%	57	11.9%
2004-2008	11 - 15 years	631	15%	62	12.9%
2009-2013	6 - 10 years	698	16.6%	60	12.5%
2014-2019	up to 5 years	930	22.1%	35	7.3%
Unknown				26	5.4%

CASE MANAGEMENT

Files opened and current numbers

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

Status of file	2015/16	2016/17	2017/18	2018/19
New investigation files opened	616	632	494	480*
New intake files opened**			57	45
Current investigations as at 30 June	562	776	668	767
Intake files closed			23	40

*This includes 40 own initiative investigations

**Intake files that had not been converted to new investigation files by the end of the reporting period

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

Category	30 June 2016	30 June 2017	30 June 2018	30 June 2019
Investigation	562	776	688	767
Tribunal	26	28	32	34
Debt collection	30	38	37	36
Supreme Court	19	23	24	24
High Court	0	2	1	1
Total	637	867	782	862

(The figures in this table 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 initially as intake files. Those that are obviously formal complaints are converted immediately into investigation files. Any matter that I must make a decision to investigate (eg a complaint that is made more than 3 years after the conduct complained of, or a matter about which I must decide to make an Own Initiative Investigation) is only converted to an investigation file once I have made the relevant decision.

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

We also have different categories of files for:

- Supreme Court proceedings – which include:
 - appeals (either by me or by the relevant practitioner) against a Tribunal decision;
 - applications for suspension and/or strike off; and
 - proceedings in relation to show cause events;
- debt recovery matters – ie where a costs order has been made against a practitioner.

Determinations made

I made 473 Determinations during the reporting period, comprising the following:

- 88 Determinations that there was no misconduct (or no or insufficient evidence of misconduct) on the part of the relevant practitioner;
- 317 Determinations to close the complaint under section 77C;
- 20 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);
- 2 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);
- 14 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 (7 of which were laid in the reporting period);
- 32 Determinations and Reports 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;
- 25 reports under section 77N in relation to matters in which I made no finding of overcharging; and
- 3 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 20 occasions, and I took the following disciplinary action under section 77J(1):

- I reprimanded all 20 practitioners;
- I ordered 6 of those practitioners to undertake certain training, education or counselling, or to be supervised;
- I ordered 13 of those practitioners to make an apology;
- I ordered 8 of those practitioners to pay a fine;
- I ordered 2 of those practitioners to make a specified payment or do or refrain from doing a specific act.

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

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

Workflow

Current files by age

Age of current files	2016/17		2017/18		2018/19	
3 years and older	56	7.2%	92	13.4%	145	18.9%
2 – 3 years	88	11.3%	106	15.4%	133	17.3%
1 – 2 years	213	27.5%	185	26.9%	158	20.6%
< 1 years	419	54.0%	305	44.3%	331	43.2%
Total Files	776		688		767	

CONCILIATION, PROMPT RESOLUTION AND ENQUIRIES

Conciliation

Sections 72(1)(d) and 77O give my office the power to conciliate complaints.

Complaints may be referred to conciliation by my investigating solicitors during the course of their investigation, or by me directly upon receipt of the complaint. Conciliation can be either 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 49 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.

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 705 enquiry contacts. These enquiry contacts are responded to by our enquiry officers. (This number only includes the initial contacts, and does not include any subsequent follow up contacts, for example for the purposes of an assisted enquiry.)

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, with Wills and estate administration also a common line of enquiry.

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 26 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 26 assisted enquiries, 18 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
- the Tribunal's Secretary, Mr Glenn Hean (08 8204 8425 / lpdt@courts.sa.gov.au)
- AustLI.

Tribunal charges

As I have said previously, if I consider that I 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 2016/17, I laid 8 charges against 6 practitioners

In 2017/18, I laid 7 charges against 5 practitioners.

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

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

- The practitioner, having previously acted for both the husband and wife, acted in a position of conflict in subsequently acting for the wife against the husband. The practitioner also filed an affidavit knowing it was misleading, and failed to deliver his file to the husband's solicitor or to the Court in response to a subpoena.
- The practitioner breached an order of the Supreme Court, and a condition on his practising certificate, by failing to provide certain medical reports to me. He also filed a false and misleading affidavit, thereby misleading the Supreme Court.
- The practitioner breached various undertakings given to the Law Society as part of an application for a reduction in professional indemnity insurance premiums on the basis that the practitioner was a "low fee earner".

- In a newly established small practice, the practitioner breached numerous trust account requirements, and overdrew several client trust ledgers by significant amounts.
- The practitioner prepared a Will for a client in which the practitioner was named as the executor. The practitioner failed to properly document and record the testator's instructions (including in relation to anticipated legal costs and expenses). After the testator died, the practitioner inappropriately charged for legal work despite the Will not including an appropriate charging clause, incurred significant expenses on behalf of the deceased estate, failed to act in the best interests of the beneficiaries of the deceased estate, and allowed her own interests to conflict with her fiduciary duties.
- The practitioner acted in relation to the intestate estate of a client's deceased partner. The practitioner was grossly negligent in the provision of legal services to the client and/or failed adequately to supervise the firm's staff who carried out the work. The practitioner also grossly overcharged the client for that work.
- The practitioner failed to respond to my office as required in relation to a number of complaints against the practitioner, and then failed to comply with three notices issued under clause 4(1) of Schedule 4.
- The practitioner acted for clients in relation to a building dispute. The practitioner failed to act in the best interests of the clients by failing to communicate at all, or adequately, with them, failing to progress, or adequately progress, the court proceedings, causing excessive delays, and failing to represent, or adequately represent and protect, the clients' interests. The practitioner also failed to comply with orders I made under section 77J following two unrelated complaints about the practitioner's conduct.

In relation to three of those charges, I had originally proposed to deal with the alleged professional misconduct myself under section 77J(2). The relevant practitioner did not however consent to me doing so (as is required by that section before I can exercise any powers under it), as a result of which I considered that I couldn't deal adequately with the conduct in question under that section.

All of the charges related to conduct in relation to which I:

- was satisfied that there was evidence of misconduct;
- was satisfied that I 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 had been heard by the Tribunal in any substantive way before the end of the reporting period. Some of them involve applications to the Tribunal for an extension of time under section 82(2a)(b).

Tribunal decisions about misconduct

The Tribunal handed down 1 decision in this reporting period relating to a charge I had laid prior to the reporting period. The charge related to *Mr Jeffrey Vigar*. The Tribunal found that Mr Vigar had engaged in unprofessional conduct, and it referred the matter to the Supreme Court.

The Tribunal is yet to deliver its decision in relation to 18 charges that were laid against 13 practitioners prior to the reporting period. A number of these matters 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 *Legal Practitioners (Miscellaneous) Amendment Act 2013*, 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, there was 1 appeal to the Tribunal. The appeal was subsequently withdrawn.

Tribunal decisions about extension of time applications

I referred to this issue in my Annual Report for 2017/18, and it has not yet been resolved. So, to some extent at least I am repeating here what I said in my last Annual Report.

Under section 82(2a) of the Act (as it was after 1 July 2014 and until it is amended by the 2019 Amendment Act), if I am going to lay a charge in the Tribunal against a practitioner then I have to do so within 3 years of the practitioner's conduct unless the Tribunal allows an extension of time.

It has not been unusual for me to have to seek an extension of time from the Tribunal. For example, it has not infrequently been the case that I first find out about a practitioner's conduct (whether by way of a complaint or a section 14AB report from the Law Society) after that 3 year period has already expired, or at least until a substantial part of that period has already passed. 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 2016/17, 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 had

reserved its decision on the 6th 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.)

Because of two decisions of the Full Court of the Supreme Court, there are two major concerns in relation to the way in which the Tribunal now has to deal with extension of time applications in comparison to the way it has dealt with them in the past.

First, because of the decision in *Legal Profession Conduct Commissioner v Fittock*, extension of time applications now have to be heard by 3 Tribunal members. That has led to the situation where we will have to re-argue a number of matters in which we have already been allowed an extension of time by a Tribunal comprising of only 1 member.

We have been aware of this first concern for some time. As a result, and in order to try to get these matters heard as efficiently as possible, we asked the Tribunal to hear the extension of time application at the same time that it conducted the inquiry into the practitioner's conduct. However, it wasn't clear from the relevant provisions in the Act whether the Tribunal was able to do that.

As a result, the Tribunal asked the Full Court, by way of a "case stated", whether (where the charge is laid outside of the 3 year time limit) it could commence an inquiry into the practitioner's conduct without having first heard and determined the application to extend the time within which to lay the charge. Essentially, the Full Court decided that the Tribunal could not do so. Accordingly, in relation to any matter in which I have to apply for an extension of time within which to lay a charge, there has to first be an initial hearing before the Tribunal in relation to the application to extend time. Then, once the Tribunal has decided to allow an extension (assuming it does), it can then (and only then) proceed with the inquiry itself (ie the inquiry into the conduct for which the practitioner has been charged).

So, it is now clear that there must be a two-step process. The Court has said that the Tribunal cannot consider the extension of time issue at the same time that it conducts the inquiry. The Tribunal must decide to extend the time first, following which it can proceed with the inquiry.

The combined effect of those two Full Court decisions is that, for any matter in relation to which I need to apply for an extension of time under the current version of section 82(2a):

- the extension application has to be heard by a 3 member Tribunal; and
- that application has to be heard and determined before the inquiry itself can be conducted.

I expect that all of this will have a very significant impact on my office, and presumably also on the Tribunal. I will almost certainly need to seek additional funding from the Fidelity Fund so that I have sufficient resources to run / re-run these various matters.

As I have already mentioned, I had hoped that the 2019 Amendment Act would address this unsatisfactory position in a way that would help the matters in relation to which I had already laid (or at least purported to lay) charges.

Unfortunately, while the 2019 Amendment Act has addressed these legislative shortcomings, it will only do so in relation to any charges I lay as a result of a complaint I receive after that Act is proclaimed.

Supreme Court matters

Disciplinary proceedings

In the reporting period, the Supreme Court handed down a judgment in disciplinary proceedings against *Mr Nathan Thompson*. The Tribunal had previously recommended that I take disciplinary proceedings against Mr Thompson. Mr Thompson appealed against the Tribunal's decision, which appeal was dismissed. I applied to the Supreme Court to have him struck off the Roll. The Supreme Court dismissed my application, and instead reprimanded Mr Thompson. See *Legal Profession Conduct Commissioner v Thompson* [2018] SASCFC 102.

Also during the reporting period, and following the Tribunal's decision in relation to *Mr Jeffrey Vigar* (previously referred to), Mr Vigar consented to his name being struck off the Roll under section 89(1b), which the Court then ordered.

Applications for suspension – failure to comply with a formal notice

During the reporting period, I applied to the Supreme Court under clause 5(7) of Schedule 4 to suspend the practising certificates of two practitioners for so long as they continued to fail to comply with notices I had issued to them under clause 4(1) of Schedule 4.

The Court dismissed the first such application as the practitioner ultimately responded to the notices.

In relation to the second such application, the Court suspended the practitioner on an interim basis. See *Legal Profession Conduct Commissioner v A Practitioner* [2019] SASC 24.

Section 20AH – show cause events

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, one practitioner commenced proceedings before the Supreme Court in relation to a show cause event, being the practitioner's bankruptcy. The Supreme Court was satisfied that the practitioner was a fit and proper person to hold a practising certificate, subject to certain conditions that it imposed on the practitioner's practising certificate for the duration of the bankruptcy. Those conditions:

- limit the practitioner to practising as an employed solicitor;
- prevent the practitioner from operating a trust account or otherwise receiving trust money;
- prevent the practitioner from accepting appointment as a trustee;
- require the practitioner to provide certain information to both the Law Society and me.

Similar proceedings had been commenced before the start of the reporting period by another practitioner, but those proceedings were only finalised during the reporting period. The show cause event was the practitioner's bankruptcy. The Supreme Court was satisfied that the

practitioner was a fit and proper person to hold a practising certificate, subject to certain conditions that were imposed on the practitioner's practising certificate for the duration of the bankruptcy. Those conditions:

- require the practitioner to meet all of his taxation related obligations;
- subject the practitioner to supervision;
- require the practitioner's financial affairs to be monitored;
- allow the practitioner to continue to operate a trust account, subject to certain supervision and monitoring requirements;
- impose other reporting requirements on the practitioner.

I have appealed against the second of these decisions. The appeal has not yet been heard by the Full Court of the Supreme Court.

Other matters

Mr John Viscariello

There are two proceedings in the Supreme Court commenced by *Mr John Viscariello* that either commenced or continued during the reporting period.

The first proceedings were commenced by Mr Viscariello in the Supreme Court against the Board 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 these 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 these proceedings to independent persons.

Mr Viscariello is seeking an order in the nature of *mandamus* against (originally) the Board and now me. He is 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 that he made them, and it had suspended those investigations.

Mr Viscariello had challenged the validity of my delegations, and the proceedings in relation to that issue meant that the substantive judicial review proceedings were not heard until March 2018. They were ultimately heard before Justice Hinton, who handed down his decision on 1 July 2019, dismissing Mr Viscariello's application.

Mr Viscariello commenced the second proceedings in June 2018. He has applied to the Supreme Court to judicially review the decisions of the Board to lay two sets of charges against him in the Tribunal, one of which led to his name being struck off the Roll. He wants to have the decisions of the Tribunal and, ultimately, the Supreme Court reviewed, and overturned such that he should then be able to be re-admitted as a practitioner. Justice Bampton summarily dismissed his application in June 2019.

Mr Viscariello has appealed to the Full Court against both decisions.

Interpretation of terms used in this report

Act – the *Legal Practitioners Act 1981*

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

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

Chief Justice – the Chief Justice of the Supreme Court

Commissioner – the Legal Profession Conduct Commissioner

Fidelity Fund – has the same meaning as in the Act

Law Society – the Law Society of South Australia

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

misconduct means both unsatisfactory professional conduct and professional misconduct

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

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

PID Act means the *Public Interest Disclosure Act 2018*

reporting period – 1 July 2018 to 30 June 2019

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

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 2019



LEGAL PROFESSION CONDUCT COMMISSIONER

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LEGAL PROFESSION CONDUCT COMMISSIONER

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

I declare that, to the best of my knowledge and belief, during the year ended 30 June 2019 there have been:

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

UHY Sothertons

UHY SOTHERTONS Adelaide Partnership

Alex Reade

ALEX READE
Partner

Dated this *28th* day of October, 2019

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2019

	Note	2019	2018
INCOME			
Operating - Fidelity Fund		4,320,978	4,174,698
Interest on Funds		41,366	40,835
Provision Write-back	7	0	208,460
TOTAL INCOME		4,362,344	4,423,993
EXPENDITURE(Commissioner)			
Salaries and Staff Expenses			
Amenities		4,354	4,368
Car Parking		5,680	5,231
First Aid Allowance		824	814
Fringe Benefits Tax		16,835	12,799
Motor Vehicle - Lease Cost		11,203	9,379
Motor Vehicle -Fuel, R & M		4,404	4,602
Motor Vehicle - Salary Sacrifice		(18,165)	(18,059)
Professional Development		10,612	12,440
Provision for Annual Leave		(46,702)	(7,649)
Provision for Long Service Leave		107,849	57,510
Payroll Tax		109,987	110,656
Practising Certificates		10,944	9,923
Salaries - Professional	9	1,903,788	1,891,788
Salaries - Support Staff		552,601	599,243
Salaries - Temp/Casuals		44,525	48,938
Salaries - Parental Leave		17,583.35	-
Subscriptions/Membership		1,956	5,445
Superannuation		237,131	238,687
Reportable Employer Superannuation		52,563	56,008
WorkCover	10	476	12,250
Total Salaries and Staff Expenses		3,028,449	3,054,373
External Expert Expenses			
Costs Assessment Expenses		9,713	9,212
Counsel Fees	16	229,056	307,315
Associated Costs	16	60,650	69,650
External Delegation	16	67,835	73,732
Expert & Witness Fees		2,250	809
Total External Expert Expenses		369,504	460,718

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

**STATEMENT OF COMPREHENSIVE INCOME
FOR THE YEAR ENDED 30 JUNE 2019**

	Note	2019 \$	2018 \$
Administration and Operating Expenses			
Equipment Expenses			
Computer - Operating		75,796	54,961
Computer - Provision/Purchase		36,031	10,571
Computer - Repairs and Maintenance		30,470	38,081
Depreciation		330,468	335,893
Lease Charges - Photocopier		14,786	21,176
Photocopier		4,636	5,882
Repairs and Maintenance		4,314	4,050
Total Equipment Expenses		<u>496,501</u>	<u>470,614</u>
General Expenses			
Audit Fees		8,850	7,657
Accounting Services		31,200	13,000
Bank Charges		639	527
Courier Services		2,317	2,201
Insurance		17,354	18,232
Internet Services		6,388	2,086
IT Project Costs	7		-
Library		19,259	17,850
Occupational Health and Safety		3,835	3,204
Postage		5,039	4,251
Printing and Stationery		10,534	14,080
Protective Security Compliance		4,146	25,475
Records Management		22,528	21,050
Telephone and Fax		8,057	9,912
Website Development		853	2,880
Total General Expenses		<u>140,998</u>	<u>142,405</u>
Occupancy Expenses			
Light and Power		25,795	23,902
Office Cleaning	11	33,526	39,691
Rent	11	427,462	404,176
Security		1,022	3,747
Total Occupancy Expenses		<u>487,805</u>	<u>471,516</u>
TOTAL EXPENDITURE		<u>4,523,256</u>	<u>4,599,626</u>
OPERATING SURPLUS/(DEFICIT)		<u>(160,913)</u>	<u>(175,633)</u>
TOTAL OPERATING SURPLUS/(DEFICIT)		(160,913)	(175,633)
ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR		531,041	706,674
ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR		<u>370,128</u>	<u>531,041</u>

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2019

	Note	2019 \$	2018 \$
CURRENT ASSETS			
Cash	2	557,862	325,970
Receivables	3	42,620	43,385
Prepayments	4	40,960	39,126
TOTAL CURRENT ASSETS		<u>641,442</u>	<u>408,481</u>
NON CURRENT ASSETS			
Fixed Assets	5	512,425	795,437
TOTAL NON CURRENT ASSETS		<u>512,425</u>	<u>795,437</u>
TOTAL ASSETS		<u>1,153,867</u>	<u>1,203,918</u>
CURRENT LIABILITIES			
Creditors and Accruals	6	256,853	206,632
Provisions	7	526,885	466,245
TOTAL CURRENT LIABILITIES		<u>783,738</u>	<u>672,877</u>
TOTAL LIABILITIES		<u>783,738</u>	<u>672,877</u>
NET ASSETS		<u>370,128</u>	<u>531,041</u>
ACCUMULATED FUNDS			
Retained Funds	8	370,128	531,041
TOTAL ACCUMULATED FUNDS		<u>370,128</u>	<u>531,041</u>

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2019

	Note	2019 \$	2018 \$
RECONCILIATION OF CASH			
Net Income		(160,913)	(175,633)
Depreciation		330,468	335,893
Movement in Provision for Annual Leave		(46,704)	(7,646)
Movement in Provision for Long Service Leave		107,849	57,511
Movement in Provision for Workers Compensation		(505)	7,582
Payables		50,221	(336,512)
Provision for Special Grant Funds		-	(208,459)
Purchase of Office Furniture		-	-
Purchase of Office Equipment		(47,455)	(40,150)
Purchase of Leasehold Improvements		-	-
Purchase of Case Management System - ICT		-	(213,027)
Prepayments		(1,834)	(1,584)
Receivables		765	40,377
		<u>392,805</u>	<u>(366,015)</u>
Net Increase in Cash Held		231,892	(541,648)
Cash at Beginning of Financial Year		325,970	867,618
Cash at End of Financial Year	2	<u>557,862</u>	<u>325,970</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 2019

NOTE 1: STATEMENT OF ACCOUNTING POLICIES

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

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

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

(a) Revenue

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

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

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

(b) Fixed Assets

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

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

(c) Employee Provisions

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

(d) Cash and Cash Equivalents

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

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2019

NOTE 1: STATEMENT OF ACCOUNTING POLICIES (cont.)

(e) Leases

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

(f) Goods and Services Tax (GST)

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

(g) Income Tax

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

(h) Trade and Other Payables

Trade and other payables represent the liability outstanding at the end of the 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 2019

NOTE 2: CASH

	2019	2018
	\$	\$
Cash on Hand	300	300
Cash at Banks	(1,330)	6,199
Access Saver	158,891	69,471
Term Deposits	400,000	250,000
	<u>557,862</u>	<u>325,970</u>

NOTE 3: RECEIVABLES

	2019	2018
	\$	\$
GST Refundable	42,160	43,385
Sundry Debtors	461	-
	<u>42,620</u>	<u>43,385</u>

NOTE 4: PREPAYMENTS

	2019	2018
	\$	\$
Prepayments - Rent	<u>40,960</u>	<u>39,126</u>

NOTE 5: FIXED ASSETS

	2019	2018
	\$	\$
Office Furniture at cost	75,219	80,131
Less: Accumulated Depreciation	(62,529)	(62,923)
	<u>12,690</u>	<u>17,208</u>
Office Equipment at cost	365,531	409,047
Less: Accumulated Depreciation	(264,366)	(297,226)
	<u>101,165</u>	<u>111,821</u>
Leasehold Improvements at cost	426,624	426,624
Less: Accumulated Depreciation	(184,539)	(137,610)
	<u>242,085</u>	<u>289,014</u>
	2019	2018
	\$	\$
Case Management System - ICT	662,729	662,729
Less: Accumulated Depreciation	(506,245)	(285,335)
	<u>156,484</u>	<u>377,394</u>
Total Fixed Assets	<u>512,425</u>	<u>795,437</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2019

NOTE 6: CREDITORS & ACCRUALS

	2019	2018
	\$	\$
Bank SA Visa	2,654	1,531
PAYG Tax Withholding	52,473	52,896
Accrual	10,862	7,725
Trade Creditors	177,838	131,018
Superannuation	13,026	13,462
	<u>256,853</u>	<u>206,632</u>

NOTE 7: PROVISIONS

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

	2019	2018
	\$	\$
Workcover Provision	7,077	7,582
Annual Leave	63,813	110,517
Long Service Leave	455,995	348,146
	<u>526,885</u>	<u>466,245</u>
Number of employees at 30 June 2019 (FTE)	20	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. Refer to note 15 in relation to the funding of that provision.

NOTE 8: ACCUMULATED FUNDS

	2019	2018
	\$	\$
Accumulated surplus at the beginning of the financial period	531,041	706,674
Operating surplus/(deficit) for the year	<u>(160,913)</u>	<u>(175,633)</u>
Accumulated surplus at the end of the financial period	<u>370,128</u>	<u>531,041</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2019

NOTE 9: SALARIES - PROFESSIONAL

	2019	2018
	\$	\$
Salary and wages	1,829,774	1,656,359
Salary Sacrifice - Superannuation	74,014	235,429
	<u>1,903,788</u>	<u>1,891,788</u>

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

NOTE 10: WORKERS COMPENSATION CLAIMS

	2019	2018
	\$	\$
Return to Work SA annual premium	982	1,067
Compensation paid in relation to employee claim	-	3,601
Movement in Crown workers compensation provision	(506)	7,582
	<u>476</u>	<u>12,250</u>

Because the Commissioner is an agency of the Crown, he is a self-insured employer for the purposes of any workers compensation claim by any of his employees. A provision has been recorded in the 2019 financial statements in accordance with the calculations provided by PWC as the actuary for Crown workers compensation. An annual administration fee is also paid to Return to Work SA.

NOTE 11: OCCUPANCY EXPENSES

	2019	2018
	\$	\$
Office cleaning	33,140	28,800
2017 and 2018 cleaning cost adjustment	386	10,891
Total Office Cleaning	<u>33,526</u>	<u>39,691</u>
Rent	410,313	394,531
Outgoings	18,188	15,948
Refund of prior year outgoings	(1,039)	(6,303)
	<u>427,462</u>	<u>404,176</u>

The office cleaning adjustment relates to invoices received in July and August 2018 for the 2017 and 2018 financial years. Knight Frank issued the invoices after a property audit established that cleaning costs for the respective financial years had not been fully recovered.

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2019

NOTE 12: RECOVERIES OF COSTS OF DISCIPLINARY PROCEEDINGS

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

	2019	2018
	\$	\$
Costs recouped and subsequently remitted to the Fidelity Fund	46,919	40,500
	<u>46,919</u>	<u>40,500</u>

NOTE 13: RECOVERIES OF FINES

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

	2019	2018
	\$	\$
Fines recouped and subsequently remitted to the Treasurer	29,550	22,500
	<u>29,550</u>	<u>22,500</u>

NOTE 14: LEASING COMMITMENTS

Operating Lease Commitments

Being for rent of office premises:

	2019	2018
	\$	\$
Payable:		
- not later than one year	426,725	410,312
- later than one year but not later than the lease period	-	426,725
	<u>426,725</u>	<u>837,037</u>

A leasing commitment later than 1 year has not been recorded in the 2019 financial year. This is because the original lease term expires on 30 June 2020. At the time of the preparation of the financial statements the Commissioner has not executed the 5 year lease renewal option.

NOTE 15: ECONOMIC DEPENDENCY

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

Commencing from 1 July 2018, funding from the Fidelity Fund has covered expected cash outlays in the relevant 12 month period. Leave provisions will no longer be funded in full.

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

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2019

NOTE 16: COUNSEL FEES, ASSOCIATED COSTS AND EXTERNAL DELEGATION

During the reporting period, the Commissioner incurred \$229,056 on Counsel Fees (as against a budget for that item of \$300,000), \$60,650 on Associated Costs (\$50,000) and \$67,835 on External Delegation (\$60,000). Those expenses together totalled \$357,541, as against a total budget of \$410,000. The shortfall in those expenses therefore accounts for just over \$50,000 of the Commissioner's underspend (\$122,029) as against budget for the reporting period.

It is often appropriate for the Commissioner to brief independent counsel when involved in proceedings in the Tribunal and the Supreme Court. The overall fees paid to counsel in any particular reporting period will depend largely on how many proceedings are heard by the Tribunal and the Supreme Court during that period, as well of course as the complexity of those proceedings. As noted in the Commissioner's Annual Report, many of the disciplinary proceedings in the Tribunal did not proceed during the reporting period because of the difficulties associated with extension of time applications. To the extent that that has meant there is a backlog of those proceedings, when those proceedings are ultimately heard there will inevitably be a greater amount spent on counsel fees.

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

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT BY THE LEGAL PROFESSION CONDUCT COMMISSIONER

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

In the opinion of the Commissioner, the financial report as set out on pages 2 to 12:

1. Presents a true and fair view of the financial position of the Commissioner as at 30 June 2019 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 ^{30th}..... day of October 2019.

LEGAL PROFESSION CONDUCT COMMISSIONER**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 2019, consisting of the Statement of Comprehensive Income, Statement of Financial Position, Statement of Cash Flows, 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 2019 and of its financial performance for the year then ended in accordance with the accounting policies described in Note 1 to the financial statements.

Basis of Accounting

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

UHY Sothertons

UHY Sothertons Adelaide Partnership

A P Reade

A P Reade

Dated this *31st* day of *October*, 2019.