



2021 ANNUAL REPORT

**Legal Profession
Conduct Commissioner**

TABLE OF CONTENTS

Commissioner's Report	1
People who carried out the work of the Commissioner	7
Investigations by the Commissioner	8
Case Management	16
Conciliation, Prompt Resolution and Enquiries	19
Litigation	21
Interpretation of terms used in this report	27
Financial Statements	

COMMISSIONER'S REPORT

In accordance with section 90A, I present to the Attorney-General and the Chief Justice the seventh annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2021.

Overview

This report relates to the seventh 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. I have since been re-appointed for a further 5 year term that expires on 31 January 2024.

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 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.

Since my office was established, it has received 505 complaints (2014/15), 616 complaints (2015/16), 632 complaints (2016/17), 551 complaints (2017/18), 525 complaints (2018/19) and 471 complaints (2019/20). I received 409 complaints in the reporting period.¹

¹ For the purposes of this paragraph, a "complaint" includes both complaints and Own Initiative Investigations.

I have explained in previous annual reports why the number of complaints reduced from their peak in 2016/17 to around 500 to 550 complaints per year at the end of 2018/19. The reduced number of complaints in 2019/20 was most likely caused by the COVID-19 pandemic.

However, I have no doubt that the much reduced number of complaints in the reporting period resulted from me having commenced, on 1 November 2020, to charge a fee of \$110 (including GST) for the lodging of a written complaint. I decided to charge that fee in accordance with section 72(2) and with the approval of the Attorney-General. I now require the payment of that fee before I will consider a complaint.

The introduction of a fee to lodge a complaint was intended to ensure that a complainant is serious about making a complaint. I close a large number of complaints under section 77C (ie without considering the merits of the complaint because, for example, the complaint is “vexatious, misconceived, frivolous or lacking in substance”), or with findings of no misconduct. A significant amount of resources in my office are applied to dealing with what are ultimately unproven and unmeritorious allegations about legal practitioners.

There are a number of circumstances in which I will, or may, waive the payment of that fee. I will waive the payment of the fee if the complainant provides a valid Pensioner Concession Card, a Health Care Card, a Commonwealth Seniors Health Card, a Department of Veterans Affairs Gold Card, or a student identification card (full-time students only). I will also waive the payment of the fee if the complainant provides evidence that he or she is under 18 years of age, is in prison or detention, or has been granted legal aid within the last 3 months and was not required to make more than the minimum contribution of \$30. I may waive the payment of the fee if the complainant provides certain information to establish that he or she is suffering financial hardship, or that there are special circumstances as to why he or she should not pay the fee.

In the 8 months to 30 June 2021 during which the fee was payable:

- I received 208 complaints in relation to which the fee was potentially payable (ie excluding Own Initiative Investigations);
- the fee was paid for 69 of them;
- I waived the payment of the fee for 127 of them;
- the fee was not paid, or the complaint was withdrawn, on 12 occasions.

The amount of \$6,900 (after deducting GST) collected in fees has been remitted to the Fidelity Fund.

In the (nearly) 12 month period from commencing to charge a fee to the writing of this report (just prior to 31 October 2021), I received 369 complaints (including Own Initiative Investigations). I think that it is reasonable to assume that complaints will now stabilise at between 360 and 400 complaints per year.

Of course, the hope is that those complainants who are dissuaded from lodging a complaint by this new fee paying regime are those who, as I have said above, are not really serious about making a complaint in the first place. It will of course be regrettable if the requirement to pay a fee discourages a complaint being made in circumstances where the practitioner who would have otherwise been complained about has engaged in serious misconduct.

Determination numbers

I made 491 determinations during the reporting period. By way of comparison, I made 519 determinations during 2019/20, 473 during 2018/19, 451 during 2017/18 and 414 during 2016/17.

Sexual Harassment

I highlighted this issue in last year's Annual Report. Since then, it has taken on even greater significance for the profession!

In late 2020, I established in my office a process by which a potential complainant could speak or correspond directly and confidentially / anonymously with one of my staff members, with a view to finding out more information about the investigation process if a complaint were to be made to me. That process is described in detail on my website under the tab "inappropriate personal conduct".

During the reporting period, the then Acting Commissioner for Equal Opportunity (**EOC**) was asked by the South Australian Parliament to conduct an independent review into harassment in the legal profession. In late 2020, the EOC invited me to make submissions in relation to various matters relating to the complaints system that arose from the Parliament's terms of reference. I made those submissions in early 2021.

The EOC released her report in April 2021, following which I gave my views to the Attorney-General on the EOC's recommendations that were related to the complaints system. It is now a question for the Government as to which of those recommendations it pursues.

Staff

My staffing levels had remained relatively constant since my office commenced on 1 July 2014, until the last few years. My office usually had around 20 to 21 FTE employees, and as at 30 June 2019 I had 20 FTE employees. As complaint numbers have reduced though, so have my staffing levels. As at the 30 June 2020, I had 18.8 FTE employees. As at end of the reporting period, I had 17.7 FTE employees. The reduction over the last few years came about through some of my employees reducing their hours, two others returning to private practice, and one retiring.

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 need to mention one person in particular. Liz Manos (mostly) retired on 30 June 2021. Liz

had been with the Board since September 2003 (other than for a few breaks), and then with my office since it was established. She was the Board's, and then my, Principal Legal Officer, and her main role was to oversee the disciplinary proceedings that we ran in the Tribunal and in the Supreme Court. She was, quite simply, outstanding. Liz was an enormous help to me when I first started in the role, and has taught me pretty much everything I know about the disciplinary system. An example of her dedication to my office is that, despite wanting to retire, she agreed to continue this year to act as my delegate in matters in which I am conflicted, and to be involved at a strategic level with some of our more difficult litigation. It is difficult for me to express in words how grateful I am to her for the support, and the wise counsel she has given me, throughout my time in this role.

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.

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. That deficit has not been made good by additional funding from the Fidelity Fund or by utilisation for the purpose of subsequent budget surpluses.

During the 2018/19 financial year, I had a total operating underspend of \$122,029. Rather than offset that underspend against the cumulative deficit referred to in the last paragraph, the Attorney-General required that I return that amount to the Fidelity Fund. That was done by way of an offset against my approved funding for the reporting period.

During the 2019/20 financial year, I had a total operating underspend of \$230,350. The Attorney-General again required that I return that amount to the Fidelity Fund. That was again done by way of an offset against my approved funding for the reporting period.

Since 1 July 2018, my approved budget has not necessarily been fully funded from the Fidelity Fund in the relevant financial year. The main impact in that regard during the reporting period was that I only received funding for a percentage of the increase in leave provisions that was included in my budget (and in that regard I refer to Note 15 of the attached financial statements).

The Attorney-General approved my expenditure budget for the reporting period of \$4,090,250. I received payments totalling \$4,020,250 from the Fidelity Fund – with that figure being determined by deducting from my approved expenditure budget:

- \$25,000 on account of the interest that I anticipated I would earn on those funds (in fact, I only earned \$14,893 in interest on those funds);
- \$25,000 on account of the underfunding of my leave provisions; and
- \$10,000 by way of an estimate of my unspent funds for 2019/20.

The financial statements for the reporting period show that my total income during the reporting period was \$3,707,280. However, that includes the payment I made to the Fidelity Fund of \$230,350 on account of the 2019/20 underspend. So my total income during the reporting period that related only to the reporting period was \$3,937,630, comprising:

- \$3,922,737 from the Fidelity Fund; and
- \$14,893 earned in interest.

The financial statements for the reporting period show that my expenditure during the reporting period was \$4,022,752. After adding back capitalised costs for computer equipment (ie \$1,361) and deducting non-cash components (ie depreciation of \$100,819), my actual cash expenditure was \$3,923,294.

Accordingly, my net result for the reporting period was:

- an underspend by reference to my approved budget of \$166,956; and
- a total operating underspend (by reference to income received in relation to the reporting period) of \$14,336.

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. I have made some comments about the counsel fees I incurred during the reporting period in Note 16 of the attached financial statements. It is also worth noting that, although I get no budgetary credit for it, I also recovered from other parties to the various proceedings just under \$30,000 on account of my costs relating to those proceedings (as described in more detail in Note 12 of the attached financial statements).

For the sake of comparison, and having regard to the reduction in complaint numbers for the year and my lesser staff numbers, I note that my approved budget for 2021/22 is \$3,648,317.

All of the amounts I have referred to above are GST exclusive amounts.

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.

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

28 October 2021



PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

Staff Members - as at 30 June 2021

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 (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	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 make 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 treat an anonymous complaint as a formal 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 3 formal notices to practitioners under clause 4(1) of Schedule 4 requiring the production of documents and the provision of information as a result of their failure to respond. I also issued 1 formal notice

to a third party under clause 4(2) of Schedule 4 requiring the production of documents and the provision of information. All of those notices were complied with.

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

I have received the following number of complaints over the last 7 years:

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

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:

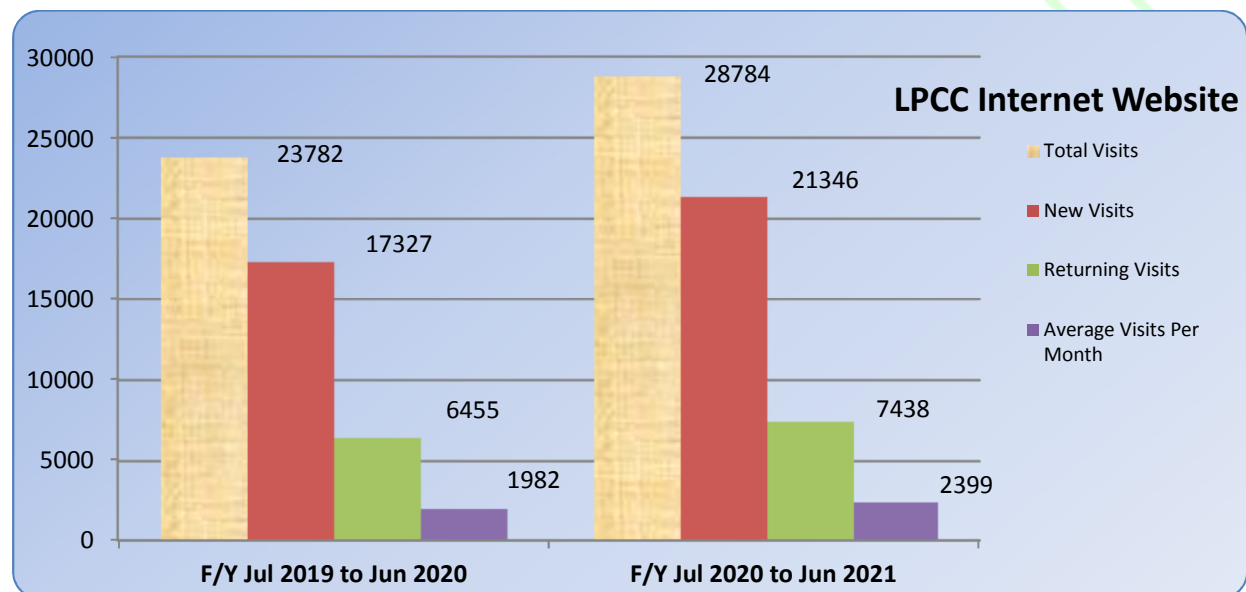
- a person complains about the conduct of the practitioner who is acting for the person's spouse in their family law proceedings;
- a beneficiary of a deceased estate complains about the conduct of the practitioner who is acting for the executor of that estate.

A pre-intake file is one in which the complainant hasn't yet paid the necessary fee to lodge the complaint, and where a fee waiver application hasn't yet been made or is still to be decided.

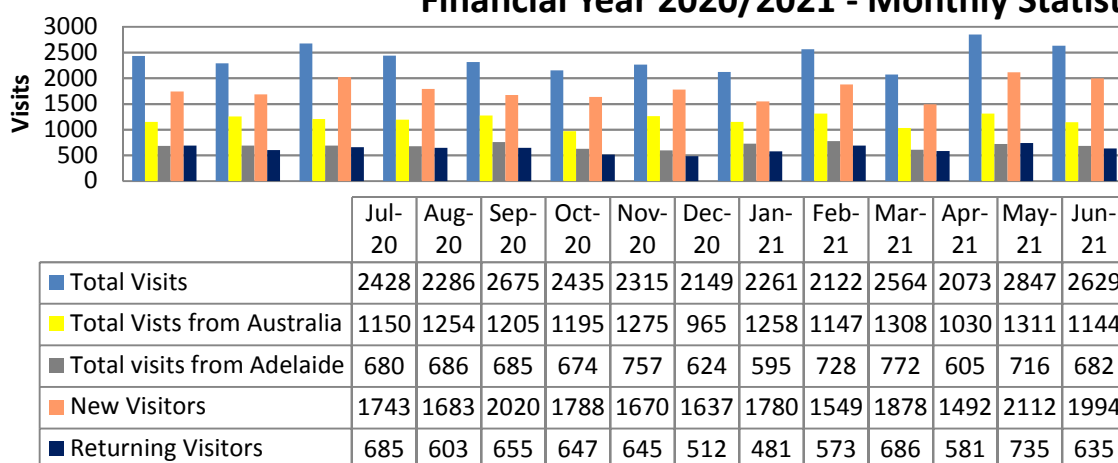
Website – the last 2 years

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 increased significantly over the years. 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.



Financial Year 2020/2021 - Monthly Statistics



Nature of matters complained of / investigated

Areas of law	Complaints	Percentage of total complaints
Family	87	22.4%
Civil Litigation	81	20.8%
Criminal	46	11.8%
Estate Administration	34	8.7%
Workers Compensation	30	7.7%
Other	20	5.1%
Personal Injury	15	3.9%
Commercial	14	3.6%
Real Property	10	2.6%
Will Preparation	8	2.1%
Industrial	7	1.8%
Outside of practice	7	1.8%
Migration	6	1.5%
Administrative	6	1.5%
Bankruptcy	3	0.7%
Failure to comply with LPCC requirements	3	0.7%
Costs recovery / adjudication	3	0.7%
Building Disputes	2	0.5%
Debt Collection	2	0.5%
General	2	0.5%
Not Disclosed	2	0.5%
Criminal Injuries	1	0.3%
Consumer Law	1	0.3%

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	2019/20		2020/21	
	Complaints		Complaints	
Family	92	23%	87	22.4%
Civil Litigation	42	10.5%	81	20.8%
Criminal	39	9.7%	46	11.8%
Estate Administration	36	9%	34	8.7%
Personal Injury	31	7.7%		
Workers Compensation			30	7.7%
Total of top five		59.9%		71.40%

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 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	107
Overcharging	130
Delay	60
Fail to Comply with Instructions	46
Lack of Communication	39
Misleading The Court	30
Other	28
Breach of ASCR's	28
Inappropriate Behaviour	24
Conflict of Interest	24
Breach of LPA (Schedule 3)	23
Rudeness / lack of respect	23
Acting W/O Instructions	21
Negligence	17
Breach of Legal Practitioner's Act	14
Breach of Confidentiality	11
Terminating instructions	11
Retention of Documents	10
Trust Regulatory Breach	9
Acting Against Instructions	9
Criminal Offence (Not Theft)	8
Bullying (client)	7
Failure to Pay Third Party	6
Breach of LPA (not Schedule 3)	5
Incompetence	5
Theft/Fraud	4
Breach of Court Order	4
Capacity issues	4
Making an unsubstantiated allegation	3
Breach of Undertaking	3
Breach of LPCC Order	3

Misleading another party	2
Sexual harassment	2
Failure to assess capacity	1
Misrepresentation	1
Failure to Account to Payer	1
Misappropriation of trust money	1
Legal System	1
Bullying (workplace)	1
Discrimination (client)	1
Complaints process	1
Dishonesty	1
Insufficient accounts	1
Legal Aid related	1

In the reporting period we opened 389 new investigation files (not including pre-intake files). A total of 731 allegations were made as set out in the above table, across those files. The top four allegations – ie poor handling, overcharging, delay, and failure to comply with instructions – amounted to 343 of the 731 allegations made, or 46.9% of all allegations.

Profile of practitioners being complained about

Complaints by type of practice for the last two reporting periods

Type of practice	2019/2020		2020/2021	
	Number of Complaints		Number of Complaints	
Sole practitioner	100	20.8%	76	18.6%
Employee	119	24.8%	92	22.5%
Partner	49	10.2%	40	9.8%
Director incorporated practice	102	21.3%	102	24.9%
Non-practising	38	7.9%	22	5.4%
Barrister	28	5.8%	26	6.4%
Government employee (including Legal Services Commission)	9	1.9%	21	5.1%
Corporate practitioner	1	0.2%	1	0.2%
Interstate practitioner	8	1.7%	13	3.2%
Judiciary	1	0.2%	4	1.0%
Unknown/Other	18	3.7%	12	2.9%
Total	480*		409**	

*This does not include intake files.

**Includes intake and pre-intake files

Complaints by Gender

Gender (2020/21)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	258	63.1%	2045	47.1%
Women	142	34.7%	2303	52.9%
Firm	9	2.2%	N/A	N/A
Total	409**		4,348	

***Includes intake and pre-intake files.*

For the sake of comparison, the same table in 2019/20 was as follows:

Gender (2019/20)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	254	63.2%	2006	47.4%
Women	141	34.5%	2222	52.6%
Firm	7	1.7%	N/A	N/A
Total	402*		4228	

** This does not include intake files*

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	2016	2017	2018	2019	2020	2021
Less than 5 years	35	48	28	25	35	31
	5.7%	7.6%	5.7%	5.2%	8.7%	7.6%
5–10 years	69	92	62	70	36	48
	11.2%	14.6%	12.5%	14.6%	9%	11.7%
10–15 years	79	78	73	62	78	62
	12.8%	12.3%	14.8%	13.9%	19.4%	15.2%
More than 15 years	400	378	299	297	232	244
	64.9%	59.8%	60.5%	61.9%	57.7%	59.6%
Not admitted or not identified or a firm	33	36	32	26	21	24
	5.4%	5.7%	6.5%	5.4%	5.2%	5.9%
Total	616	632	494	480	402	409*

*Includes intake and pre-intake files

Comparison of practitioners who received a complaint by years of admission

Admission Years	Practice Experience	No. of Practitioners	% of Practising Profession	No. of Complaints	% of total Complaints
1960 -1969	52 - 61 years	28	0.6%	3	0.7%
1970-1974	47- 51 years	74	1.7%	7	1.7%
1975-1979	42 – 46 years	195	4.5%	35	8.6%
1980-1984	37 - 41 years	206	4.7%	55	13.4%
1985-1989	32 - 36 years	233	5.5%	20	4.9%
1990-1994	27 - 31 years	221	5.1%	24	5.9%
1995-1999	22 - 26 years	335	7.7%	35	8.6%
2000-2004	17 - 21 years	615	14.2%	55	13.4%
2005-2009	12 - 16 years	657	15.1%	63	15.4%
2010-2014	7 - 11 years	673	15.5%	39	9.5%
2015-2019	2 - 6 years	870	20%	44	10.8%
2020-2021	up to 1 year	241	5.5%	5	1.2%
Unknown				24	5.9%

*Includes intake and pre-intake files

CASE MANAGEMENT

Files opened and current numbers

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

Status of file	2017/18	2018/19	2019/20	2020/21
New investigation files opened	494	480	402*	333**
New intake files opened***	57	45	69	56
Current investigations as at 30 June	668	767	863	631
Intake files closed	23	40	50	41

*This includes 36 own initiative investigations

**This includes 24 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 four reporting periods

Category	30 June 2018	30 June 2019	30 June 2020	30 June 2021
Investigation	688	767	863*	631*
Tribunal	32	34	33	28
Supreme Court	24	24	28	24
High Court	1	1	2	4
Total	782	862	962	687

*This includes intake files

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

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

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

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

Determinations made

I made 491 Determinations during the reporting period, comprising the following:

- 74 Determinations that there was no misconduct (or no or insufficient evidence of misconduct) on the part of the relevant practitioner;
- 336 Determinations to close the complaint under section 77C – and, of those matters that were so closed:
 - 138 of them were closed without commencing an investigation; and
 - 47 of them were overcharging complaints;
- 33 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);
- 12 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);
- 6 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 (one of which was as a result of the practitioner not consenting to my Determination under section 77J(2));
- 30 Determinations and Reports relating to overcharging (which are expanded on immediately below).

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

- 1 Determination that there was overcharging by the practitioner;
- 27 reports under section 77N in relation to matters in which I made no finding of overcharging; and
- 1 Determination that there was no overcharging by the practitioner;
- 1 report 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 33 occasions, and I took the following disciplinary action under section 77J(1):

- I reprimanded 32 practitioners;
- I ordered 12 practitioners to undertake certain training, education or counselling, or to be supervised;
- I ordered 17 practitioners to make an apology;
- I ordered 11 practitioners to pay a fine;
- I ordered 1 practitioner to refund an amount to a client, representing a repayment of the amounts he charged for his incorrect work and for correcting that work;
- I ordered 1 practitioner to make a specified payment.

I was satisfied that there was evidence of professional misconduct on the part of the practitioner on 12 occasions, and I took the following disciplinary action under section 77J(2):

- I reprimanded 9 practitioners;
- I ordered 3 of those practitioners to make an apology;
- I ordered 5 practitioners to pay a fine;
- I ordered that conditions be imposed on the practising certificates of 4 of those practitioners;

- I ordered 4 of those practitioners to make a specified payment or do or refrain from doing a specific act.
- I ordered 1 practitioner to provide an undertaking to me with regard to supervision.

Decisions in relation to intake files

During the reporting period, I closed 41 intake files without treating them as formal complaints. I did so for the following reasons:

- 14 files were closed because I decided that I did not have reasonable cause to suspect that the relevant practitioner had been guilty of misconduct, such that I could not make an own initiative investigation under section 77B(1);
- 5 files were closed because the complaint did not satisfy the requirements of section 77B(3a) – that is, because they did not identify the complainant and/or identify the legal practitioner about whom the complaint was being made and/or describe the alleged conduct the subject of the complaint;
- 22 files were closed because the complaint was not made within the 3 year time limit referred to in section 77B(3c) (ie from the date of the conduct being complained of), and I decided not to exercise my discretion to allow a longer period within which to complain.

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 generally 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 was most commonly used in the reporting period in circumstances where there were costs disputes, communication breakdowns or when a client sought 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.

It is important that a practitioner is cognisant of the consequences of reaching an agreement in conciliation and then failing to comply with the terms of the conciliation agreement. A practitioner's failure to comply with the terms of the conciliated agreement is itself conduct that amounts to professional misconduct (section 77O(6)).

Prompt Resolution

In some 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.

Matters referred

During the reporting period, there were 33 new complaints that were referred for conciliation and prompt resolution. This number of complaints however does not reflect the number of active conciliation and prompt resolution files during the reporting period. Of those 33 new complaints referred, 19 matters were resolved. Overwhelmingly the majority of those complaints referred to conciliation and prompt resolution concerned costs disputes between a practitioner and their client.

Enquiries and assisted enquiries

My office received 460 enquiry contacts during the reporting period. 439 of those enquiries were made by telephone, with the remainder being made by email, letter, our website or in person.

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 during the reporting period, with Wills and estate administration also a common line of enquiry.

Of those enquiry calls received and assisted enquiries conducted, a significant number of enquirers contacted my office to enquire about how to make a complaint about a legal practitioner to my office and to access a complaint form. The callers predominantly raised concerns about poor handling, overcharging and delay on the part of the practitioners.

These enquiry contacts were responded to by our dedicated enquiry officers. (The numbers above only include the initial contacts, and not any subsequent follow up contacts, for example for the purposes of an assisted 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.

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)
- [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.

Since 1 July 2014, I have laid the following charges:

- in 2014/15, 4 charges against 4 practitioners;
- in 2015/16, 7 charges against 6 practitioners;
- in 2016/17, 8 charges against 6 practitioners;
- in 2017/18, 7 charges against 5 practitioners;
- in 2018/19, 8 charges against 8 practitioners;
- in 2019/20, 5 charges against 4 practitioners.

In the reporting period, I laid 2 charges against 1 practitioner. In those charges I allege that the practitioner had failed to pay the fees of various barristers, and that he had failed to ensure that the appropriate tax was paid and the appropriate superannuation contributions were paid on behalf of employees.

Those 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).

Those charges were not heard by the Tribunal in any substantive way until after the end of the reporting period.

Tribunal decisions about misconduct

The Tribunal handed down 3 decisions in this reporting period.

The first related to *Mr George Mancini*. There is some extensive background to this decision. I first laid a charge against Mr Mancini in May 2016. The charge consisted of 9 separate counts, each alleging professional misconduct, in relation to making false and misleading representations to the Legal Services Commission, and claiming or attempting to claim fees from the Commission to which he knew or should reasonably have known he was not entitled.

The Tribunal initially found that professional misconduct was not proven, but it found Mr Mancini guilty of unsatisfactory professional conduct on each of the 9 counts.

I successfully appealed the findings of that Tribunal to the Full Court of the Supreme Court, which held that the Tribunal's reasoning was flawed, and found Mr Mancini guilty of professional misconduct on 3 of the counts. The remaining 6 counts were remitted back to a differently constituted Tribunal for re-hearing.

The reconstituted Tribunal heard the remaining 6 counts and, in its reasons handed down on 13 August 2020, found Mr Mancini guilty of professional misconduct on 4 of the remaining 6 counts.

The Tribunal recommended the commencement of disciplinary proceedings in the Supreme Court. I have now commenced those proceedings.

The second related to *Ms Anna Jones*. I had laid a charge in the Tribunal in relation to her failure to comply within the time stipulated with notices I had issued to her under clause 4 of Schedule 2. The Tribunal found that Ms Jones had engaged in a course of conduct that amounted to professional misconduct. It reprimanded her, ordered that she enter into a mentoring agreement for 2 years from the date of its decision (which was 15 June 2021), and placed certain conditions on her practising certificate relevant to that mentoring agreement. The Tribunal said that it would have imposed a fine in the order of \$25,000 but for a significant costs order made against her in earlier proceedings in the Supreme Court in which I had applied to have her practising certificate suspended until she responded to the notices. Ms Jones also agreed to pay my costs of the Tribunal hearing fixed at \$7,000.

The third related to *Mr Graham Warburton*. Mr Warburton had previously been struck off the Roll in June 2014. He applied under section 23AA to be permitted to undertake and complete the practical component of the GDLP course under the supervision of an unrestricted practitioner. The Tribunal authorised that practitioner to engage Mr Warburton for that purpose.

The Tribunal is yet to deliver its decision in relation to 19 charges that were laid against 10 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.

Before the reporting period, 1 practitioner had appealed against my determination that she had engaged in unsatisfactory professional conduct. The appeal was heard during the reporting period, and we await the decision of the Tribunal.

Supreme Court matters

Disciplinary proceedings

As reported in my last Annual Report, in June 2020 I had commenced disciplinary proceedings in the Supreme Court against *Mr Colin Dorrian*, seeking an order that his name be struck off the Roll. He was struck off by decision dated 4 September 2020.

As also reported in my last Annual Report, as a result of the name of *Mr John Davey* being removed from the Roll maintained by the Supreme Court of the Australian Capital Territory, I issued disciplinary proceedings in the Supreme Court seeking an order that Mr Davey's name be struck off of our Roll. He was struck off by decision dated 11 February 2021.

In December 2020, the name of *Mr Christopher James Rosser* was removed from the Roll maintained by the Supreme Court in Queensland. Mr Rosser's name was also on the Roll in South Australia. I issued disciplinary proceedings in the Supreme Court seeking an order that Mr Rosser's name be struck off of our Roll. He was struck off by decision dated 19 March 2021.

As reported in my last Annual Report, the Tribunal had found that *Mr David Cleland* had engaged in professional misconduct by preparing two Wills for an elderly relative in circumstances in which there was a conflict between his duty to serve the best interests of the testator and his own interests, and that by so doing he preferred his interests over those of the testator. The Tribunal recommended that disciplinary proceedings be commenced against him in the Supreme Court, which I did in November 2020. The Court of Appeal handed down its decision on 17 March 2021. The Court accepted that Mr Cleland had been guilty of professional misconduct, and the Court:

- reprimanded him;
- suspended him from practice as a legal practitioner for a period of 6 months commencing Monday 22 February 2021;
- ordered that he pay a fine of \$50,000.00;
- imposed a condition on any practising certificate issued to Mr Cleland that he is prohibited from engaging in any legal work involving the drawing or execution of any will or other testamentary instrument.

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.

There were 2 proceedings under section 20AH before the Supreme Court that were finalised during this reporting period.

The first involved *Mr Andrew Graham*. In August 2019, Mr Graham was involved in an incident at a night club in Adelaide involving cocaine. When he was detained by the night club's security guard, he offered the guard \$50 to allow him and his acquaintances to leave. Mr Graham subsequently was charged with, and pleaded guilty to, one count of administering a controlled drug to another, and a second charge of attempting to pervert the course of justice. He was convicted in the District Court and ordered to enter into a bond to be of good behaviour for a period of 12 months.

During the show cause proceedings, Mr Graham gave an undertaking not to engage in legal practice from 1 August 2020 until the show cause proceedings were finalised.

The show cause proceedings were finalised on 4 December 2020 by way of a consent order under which certain conditions were imposed on Mr Graham's practising certificate such that:

- for a period of two years, Mr Graham could practice only as an employed solicitor under the supervision of a legal practitioner of not less than 15 years post admission experience;
- during that 2 year period, Mr Graham was subjected to a reporting regime in relation to his supervision, and a drug and alcohol testing regime;
- for a period of one year Mr Graham would comply with any treatment plan that was reasonably recommended by his treating psychologist.

The second involved *Ms Catherine Moyse*, relating to her conduct in May 2020 when appearing for a client in the Magistrates Court on an appeal against the disqualification of the client's driver's licence. The client was a family friend and the appeal was outside Ms Moyse's usual area of practice. Ms Moyse had a personal connection with the Magistrate who ultimately heard the matter and had sought his advice about the process prior to instituting the client's appeal. Despite having concerns about the propriety of the Magistrate hearing the matter, Ms Moyse proceeded to appear before him and the client's matter was finalised. There is no suggestion that the outcome of the client's matter was inappropriate. However, following an investigation by the Independent Commissioner Against Corruption into the conduct of the Magistrate, both Ms Moyse and the Magistrate faced criminal charges.

In July 2020, Ms Moyse pleaded guilty in the Adelaide Magistrates Court to a charge of conspiracy for a public officer to improperly exercise power and was committed for sentence in the District Court. This triggered a show cause event and the appropriate notification was filed in the Supreme Court. Prior to sentencing, Ms Moyse gave an undertaking to the Supreme Court pending the determination of the show cause proceedings. The terms of the undertaking required that Ms Moyse be subject to supervision, that she limit her practice to certain identified practice areas, that she not appear in Court, and that she not act for or take or witness affidavits or statutory declarations for a family member or close acquaintance.

In December 2020 Ms Moyse was sentenced in the District Court. She was fined \$600 but no conviction was recorded. The Director of Public Prosecutions appealed against sentence to the Court of Appeal. Notwithstanding the pending appeal, the show cause proceedings were finalised by agreement between all parties in February 2021, with conditions being imposed on Ms Moyse's practising certificate in very similar terms to those of the undertaking that Ms Moyse previously gave to the Court, with those conditions to remain in place until 31 December 2021. On 14 April 2021 the DPP's appeal was allowed and Ms Moyse was resentenced to a fine of \$6,000, with a conviction being recorded. I did not consider it necessary for the terms of the order made in the show cause proceedings to be reviewed or amended as a result.

Application for re-admission

In 2013 the Board laid a charge in the Tribunal alleging unprofessional conduct by *Mr Benjamin Johns* occurring in 2008/2009 when he was employed by the RSPCA. Mr Johns admitted that his conduct amounted to unprofessional conduct. He accepted that it was appropriate for the Tribunal to recommend that disciplinary proceedings be commenced in the Supreme Court.

Mr Johns subsequently consented to his name being struck from the Roll, and that Order was made by the Supreme Court by consent on 9 October 2014.

In June 2020, Mr Johns applied to the Supreme Court for readmission.

In October 2020, the Court said that it was satisfied that Mr Johns is a fit and proper person to be admitted to the profession, and ordered that he be re-admitted subject to the following conditions:

- that he be supervised for a period of 5 years; and
- that he disclose the circumstances of the strike off and the re-admission to any employer during the 5 year period.

Proceedings in both the Tribunal and the Supreme Court

In my 2018/19 Annual Report, I reported on proceedings involving a practitioner who had prepared a Will for a client in which the practitioner was named as the executor, and who, after the testator had died, had then (amongst other alleged misconduct) 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.

I had laid a charge in the Tribunal against that practitioner. She subsequently commenced proceedings in the Supreme Court seeking various declarations and orders relating to the testator's Will, her involvement with the testator's estate following his death, and the remuneration to which she was entitled in relation to that involvement. I sought to intervene in those proceedings, so that I could apply to have them stayed pending the hearing of the disciplinary proceedings in the Tribunal. Justice Stanley decided instead that I should be joined as a defendant to the practitioner's proceedings in the Supreme Court, and that the Tribunal proceedings should await the outcome of the Supreme Court's determination of the practitioner's application.

During the reporting period, both proceedings were finalised by agreement, after the practitioner consented to me making a determination under section 77J(2) in which I reprimanded the practitioner, ordered that she undertake 3 specific units of professional development relating to estates, and ordered that she repay \$10,000 to the estate. The practitioner also gave an undertaking that, for a period of 3 years, she would (in very general terms) not act as an executor of an estate.

Mr John Viscariello

Two proceedings in the Supreme Court commenced by *Mr John Viscariello* 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. Mr Viscariello was seeking an order in the nature of *mandamus* against (originally) the Board and then me. 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.

The substantive judicial review proceedings were ultimately heard in March 2018 by Justice Hinton. He dismissed Mr Viscariello's application in July 2019. Mr Viscariello appealed against Justice Hinton's decision. The Full Court of the Supreme Court dismissed his appeal during the reporting period.

The second proceedings were commenced by Mr Viscariello in June 2018. He 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 wanted 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 appealed against Justice Bampton's decision. The Full Court heard the appeal during the reporting period. His appeal was allowed in part, but his judicial review application was dismissed.

Mr Viscariello subsequently sought special leave to appeal to the High Court against both decisions of the Full Court. The High Court refused special leave in each case.

Interpretation of terms used in this report

Act – the *Legal Practitioners Act 1981*

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

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

Chief Justice – the Chief Justice of the Supreme Court

Commissioner – the Legal Profession Conduct Commissioner

Law Society – the Law Society of South Australia

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

misconduct means both unsatisfactory professional conduct and professional misconduct

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

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

reporting period – 1 July 2019 to 30 June 2020

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

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

Supreme Court – the Supreme Court of South Australia

Tribunal – the Legal Practitioners Disciplinary Tribunal

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

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

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

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

FINANCIAL REPORTS

FOR YEAR ENDED 30 JUNE 2021



LEGAL PROFESSION CONDUCT COMMISSIONER

ABN 74 875 673 354

FINANCIAL REPORT

**FOR THE YEAR ENDED
30 JUNE 2021**

LEGAL PROFESSION CONDUCT COMMISSIONER

TABLE OF CONTENTS

	Page
Auditor's Independence Declaration	1
Statement of Comprehensive Income	2
Statement of Financial Position	4
Reconciliation of Cash	5
Notes to the Financial Statements	6
Statement by the Legal Profession Conduct Commissioner	12
Independent Audit Report	13

LEGAL PROFESSION CONDUCT COMMISSIONER

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

I declare that, to the best of my knowledge and belief, during the year ended 30 June 2021 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 26 October, 2021

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2021

	Note	2021 \$	2020 \$
INCOME			
Operating - Fidelity Fund		3,922,737	4,196,343
Interest on Funds		14,893	31,785
Prior Year Funds Reconciliation		(230,350)	(122,099)
TOTAL INCOME		3,707,280	4,106,029
EXPENDITURE			
Salaries and Staff Expenses			
Amenities		2,241	1,776
Car Parking		5,098	7,786
First Aid Allowance		1,401	824
Fringe Benefits Tax		16,779	14,164
Motor Vehicle - Lease Cost		8,832	10,393
Motor Vehicle - Fuel, R & M		5,070	5,715
Motor Vehicle - Salary Sacrifice		(19,908)	(19,908)
Professional Development		3,339	3,577
Provision for Annual Leave		21,202	35,287
Provision for Long Service Leave		15,513	9,726
Payroll Tax		102,978	105,261
Practising Certificates		11,354	11,952
Salaries - Professional	9	1,839,502	1,880,462
Salaries - Support Staff		562,939	563,929
Salaries - Temp/Casuals		-	201
Subscriptions/Membership		929	1,222
Superannuation		227,916	231,196
Reportable Employer Superannuation		48,613	49,879
WorkCover	10	3,362	2,874
Total Salaries and Staff Expenses		2,857,160	2,916,316
External Expert Expenses			
Costs Assessment Expenses		3,373	2,313
Counsel Fees	16	309,832	214,142
Associated Costs	16	15,624	9,729
External Delegations	16	95,750	24,845
Expert & Witness Fees		-	2,390
Total External Expert Expenses		424,579	253,419

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2021

	Note	2021 \$	2020 \$
Administration and Operating Expenses			
Equipment Expenses			
Computer - Operating		97,604	77,039
Computer - Provision/Purchase		12,726	17,538
Computer - Repairs and Maintenance		51,037	54,107
Depreciation		100,819	253,070
Lease Charges - Photocopier		18,638	18,638
Photocopier		5,458	4,497
Repairs and Maintenance		2,932	5,366
Total Equipment Expenses		289,214	430,255
General Expenses			
Audit Fees		8,310	7,952
Accounting Services		34,320	34,320
Bank Charges		419	502
Courier Services		1,678	1,878
Insurance		20,120	18,126
Internet Services		8,847	9,301
Library		231	538
Occupational Health and Safety		4,164	5,336
Merchant Fees		116	-
Postage		1,652	5,111
Printing and Stationery		8,450	10,990
Protective Security Compliance		-	7,500
Records Management		18,124	13,439
Telephone and Fax		3,986	3,471
Website Development		8,732	8,960
IT Provision - Security & Website Upgrade		-	25,590
Total General Expenses		119,149	153,014
Occupancy Expenses			
Light and Power		23,220	22,013
Office Cleaning	11	23,100	29,904
Rent	11	285,274	431,970
Security		1,056	1,516
Total Occupancy Expenses		332,650	485,403
TOTAL EXPENDITURE		4,022,752	4,238,407
OPERATING SURPLUS/(DEFICIT)		(315,471)	(132,378)
ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR		237,750	370,128
ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR		(77,721)	237,750

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

**STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2021**

	Note	2021 \$	2020 \$
CURRENT ASSETS			
Cash	2	573,721	636,510
Receivables	3	40,751	33,817
Prepayments	4	27,836	27,367
TOTAL CURRENT ASSETS		642,308	697,694
NON CURRENT ASSETS			
Fixed Assets	5	172,339	271,797
TOTAL NON CURRENT ASSETS		172,339	271,797
TOTAL ASSETS		814,647	969,491
CURRENT LIABILITIES			
Creditors and Accruals	6	279,869	132,562
Provisions	7	612,499	599,179
TOTAL CURRENT LIABILITIES		892,368	731,741
TOTAL LIABILITIES		892,368	731,741
NET ASSETS		(77,721)	237,750
ACCUMULATED FUNDS			
Retained Funds	8	(77,721)	237,750
TOTAL ACCUMULATED FUNDS		(77,721)	237,750

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER**RECONCILIATION OF CASH
FOR THE YEAR ENDED 30 JUNE 2021**

	Note	2021 \$	2020 \$
Operating Surplus/(Deficit)		(315,471)	(132,378)
Depreciation		100,819	253,070
Movement in Provision for Annual Leave		21,202	35,289
Movement in Provision for Long Service Leave		15,512	9,726
Movement in Provision for Workers Compensation		2,196	1,689
Payables		147,307	(124,291)
Movement in Provision for Special Grant Funds		(25,590)	25,590
Purchase of Office Equipment		(1,361)	(12,442)
Prepayments		(469)	13,593
Receivables		(6,933)	8,804
		<u>252,683</u>	<u>211,028</u>
Net Increase in Cash Held		(62,789)	78,650
Cash at Beginning of Financial Year		636,510	557,860
Cash at End of Financial Year	2	<u>573,721</u>	<u>636,510</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 2021

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 2021

NOTE 1: STATEMENT OF ACCOUNTING POLICIES (cont.)

(e) Leases

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

(f) Goods and Services Tax (GST)

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

(g) Income Tax

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

(h) Trade and Other Payables

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

LEGAL PROFESSION CONDUCT COMMISSIONER**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2021****NOTE 2: CASH**

	2021	2020
	\$	\$
Cash on Hand	300	300
Cash at Banks	1,939	1,211
Access Saver	571,482	334,942
Term Deposits	-	300,057
	<u>573,721</u>	<u>636,510</u>

NOTE 3: RECEIVABLES

	2021	2020
	\$	\$
GST Refundable	40,751	33,817
	<u>40,751</u>	<u>33,817</u>

NOTE 4: PREPAYMENTS

	2021	2020
	\$	\$
Prepayments - Rent	<u>27,836</u>	<u>27,367</u>

NOTE 5: FIXED ASSETS

	2021	2020
	\$	\$
Office Furniture at cost	75,219	75,219
Less: Accumulated Depreciation	<u>(71,565)</u>	<u>(67,047)</u>
	<u>3,654</u>	<u>8,172</u>
Office Equipment at cost	379,334	377,973
Less: Accumulated Depreciation	<u>(358,877)</u>	<u>(309,505)</u>
	<u>20,457</u>	<u>68,468</u>
Leasehold Improvements at cost	426,624	426,624
Less: Accumulated Depreciation	<u>(278,396)</u>	<u>(231,467)</u>
	<u>148,228</u>	<u>195,157</u>
	2021	2020
	\$	\$
Case Management System - ICT	662,729	662,729
Less: Accumulated Depreciation	<u>(662,729)</u>	<u>(662,729)</u>
	<u>-</u>	<u>-</u>
Total Fixed Assets	<u>172,339</u>	<u>271,797</u>

LEGAL PROFESSION CONDUCT COMMISSIONER**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2021****NOTE 6: CREDITORS & ACCRUALS**

	2021 \$	2020 \$
Bank SA Visa	325	1,226
PAYG Tax Withholding	42,225	45,209
Recoveries - Fidelity Fund	13,533	9,900
Recoveries - Treasurer	15,625	5,075
Accrual	16,564	7,779
Trade Creditors	179,440	63,373
Superannuation	12,157	-
	<u>279,869</u>	<u>132,562</u>

NOTE 7: PROVISIONS

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

	2021 \$	2020 \$
Workcover Provision	10,962	8,766
Annual Leave	120,304	99,102
Long Service Leave	481,233	465,721
	<u>612,499</u>	<u>573,589</u>

Number of employees at 30 June 2021 (FTE)	17.7	18.8
---	------	------

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.

(b) Provision is made for unspent website Development and IT security compliance at balance date.

	2021 \$	2020 \$
Special Grant - Website Development	-	13,090
Special Grant - Protective Security Compliance	-	12,500
	<u>-</u>	<u>25,590</u>

The Attorney General approved funding to upgrade the website to accommodate the online receipt of fees that will be paid by complainants in order to lodge a complaint. At 30 June 2021, the funding for website development has been spent in full. The Attorney General also approved funding for security compliance testing. At 30 June 2021, this funding has been fully spent.

NOTE 8: ACCUMULATED FUNDS

	2021 \$	2020 \$
Accumulated surplus at the beginning of the financial period	237,750	370,128
Operating surplus/(deficit) for the year	(315,471)	(132,378)
Accumulated surplus at the end of the financial period	<u>(77,721)</u>	<u>237,750</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2021

NOTE 9: SALARIES - PROFESSIONAL

	2021	2020
	\$	\$
Salary and wages	1,790,890	1,830,583
Salary Sacrifice - Superannuation	48,613	49,879
	<u>1,839,502</u>	<u>1,880,462</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

	2021	2020
	\$	\$
Return to Work SA annual premium	1,166	1,186
Compensation paid in relation to employee claim	-	-
Movement in Crown workers compensation provision	2,196	1,688
	<u>3,362</u>	<u>2,874</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 2021 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

	2021	2020
	\$	\$
Rent	287,943	426,725
Outgoings	-	15,151
Refund of prior year outgoings	(2,669)	(9,906)
	<u>285,274</u>	<u>431,970</u>

NOTE 12: RECOVERIES OF COSTS OF DISCIPLINARY PROCEEDINGS

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

	2021	2020
	\$	\$
Costs recovered but unremitted carried forward from the previous financial year	9,900	1,250
Costs recovered during the financial year	28,833	51,493
Costs remitted to the Fidelity Fund during the financial year	(25,200)	(42,843)
Recovered costs to be remitted to the Fidelity Fund in the next financial year (Note 6)	<u>13,533</u>	<u>9,900</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2021

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.

	2021 \$	2020 \$
Fines paid but unremitted carried forward from the previous financial year	5,075	-
Fines paid during the financial year	39,375	47,925
Fines remitted to the Treasurer during the financial year	(28,825)	(42,850)
Paid fines to be remitted to the Treasurer in the next financial year (Note 6)	15,625	5,075

NOTE 14: LEASING COMMITMENTS

Operating Lease Commitments

Being for rent of office premises:

	2021 \$	2020 \$
Payable:		
- not later than one year	383,780	371,700
- later than one year but not later than the lease period	1,227,813	1,611,593
	<u>1,611,593</u>	<u>1,983,293</u>

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

NOTE 15: ECONOMIC DEPENDENCY

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

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

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

NOTE 16: COUNSEL FEES, ASSOCIATED COSTS AND EXTERNAL DELEGATION

During the financial year, the Commissioner incurred \$309,832 on Counsel Fees (as against a budget for that item of \$330,000), \$15,624 on Associated Costs (\$14,300) and \$95,750 on External Delegations (\$55,000). Those expenses together totalled \$421,206, as against a total budget of \$399,300.

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

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

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT BY THE LEGAL PROFESSION CONDUCT COMMISSIONER

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

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

1. Presents a true and fair view of the financial position of the Commissioner as at 30 June 2021 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 27 October, 2021

Independent Auditor's Report

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

We have audited the accompanying financial report, being a special purpose financial report, of the Legal Profession Conduct Commissioner for the financial year ended 30 June 2021, consisting of the Statement of Comprehensive Income, Statement of Financial Position, Reconciliation of Cash, accompanying notes and Statement by the Commissioner.

Commissioner's Responsibility for the Financial Report

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

Auditor's Responsibility

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

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

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

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

Independence

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

Opinion

In our opinion, the financial report of the Legal Profession Conduct Commissioner gives a true and fair view of the financial position of the Legal Profession Conduct Commissioner as at 30 June 2021 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

Dated 28 October, 2021

Alex Reade

ALEX READE
Partner