



2022 ANNUAL REPORT

**Legal Profession
Conduct Commissioner**

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COMMISSIONER'S REPORT

In accordance with section 90A of the *Legal Practitioners Act 1981*, I present to the Attorney-General and the Chief Justice the eighth annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2022.

Overview

This report relates to the eighth year of the operation of my Office and the last full year of the Office's operations under the inaugural Legal Profession Conduct Commissioner, Commissioner May.

When my Office was created as the successor to the Legal Practitioners Conduct Board it received all of the open files of the Legal Practitioners Conduct Board. As at 30 June 2022, all but a handful of those legacy complaints were finalised.

The role of the Legal Profession Conduct Commissioner in regulating the legal profession in South Australia is an important one. The role is essential to the maintenance of and growth in public trust and confidence in the legal profession in South Australia through ensuring that the legal profession is consistently held to a high standard. I am pleased to say that I have had the good fortune of taking over an office staffed by an experienced, conscientious and industrious team.

I bring to the role of Legal Profession Conduct Commissioner a different skillset to Commissioner May with much of my recent experience being in the public sector and in the role of counsel. I am, therefore, familiar with the primary complaint voiced by members of the public when dealing with the court system, the public sector and, on occasion, my Office: delay. It is my goal to improve turnaround times on complaints where practicable. In part, I hope to do this by enhancing the educative role played by the Legal Profession Conduct Commissioner with a view to reducing complaint numbers through conveying tangible lessons to the profession. It will be for the profession to implement those lessons in order to avoid complaints.

Nevertheless, there will often be constraints on finalising complaints expeditiously: resourcing; the time necessarily taken to provide practitioners and complainants with the opportunity to provide documents and make submissions at multiple points in an investigation; a lack of cooperation in investigations by practitioners or the timely response to requests for information; the need to suspend investigations while practitioners and complainants litigate their disputes are but a few of the constraints. For example:

- two of the oldest legacy complaints have just been determined after the investigations were necessarily suspended for the better part of 13 years whilst practitioners and complainants litigated and taxed costs; and

- a practitioner who acted for the complainants in the costs dispute referred to above was himself the subject of a complaint for, amongst other things, failing to comply with court orders. The complaints against the practitioner were investigated and a determination of misconduct followed including a finding of a failure to cooperate with the investigation.

Purpose

The Legal Profession Conduct Commissioner's role is to regulate the professional conduct of all lawyers in South Australia as well as interstate and Australian-registered foreign lawyers who practise in South Australia and thereby to maintain the integrity of and public confidence in the legal profession in South Australia.

Vision

The Legal Profession Conduct Commissioner strives to be an independent, robust and respected regulator playing a leadership role in ensuring an ethical, accessible and responsive legal profession in South Australia.

Functions

My functions are to receive complaints against legal practitioners (complaints about practitioner conduct and complaints of overcharging by practitioners), to determine which complaints warrant investigation, to investigate those complaints, and to determine whether, in any particular case, there has been misconduct on the part of, and/or overcharging by, the practitioner who is the subject of a complaint.

If I find that there has been misconduct on the part of a practitioner, then I can take disciplinary action against the practitioner myself by exercising one or more of a range of disciplinary powers at my disposal. If I determine that a practitioner's misconduct is particularly serious, such that it warrants a sanction beyond my powers (for example, conduct that in my view warrants the practitioner's name being struck off the Roll), I 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

Complaint numbers are set out in detail later in this report.

In summary, in the year to 30 June 2022, the first full year during which a fee for lodgement of a complaint was payable:

- Commissioner May received 343 complaints in relation to which the fee was potentially payable (ie excluding Own Initiative Investigations);
- the fee was paid for 122 of them and subsequently refunded on 4;
- the fee was waived for 177 of them;

- the fee was not required, not paid, the complaint was withdrawn or it was an own initiative investigation on 81 occasions.

The amount of \$12,200 (after deducting GST) collected in fees has been remitted to the Fidelity Fund.

Total complaint numbers received by my Office peaked in 2016/17 at 632 complaints. That number steadily declined to a total 409 complaints received (2020/21) and now 380 this reporting year. In November 2020, the fee for lodging a written complaint was introduced. It is reasonable to assume that the introduction of that fee has had some impact on the total number of complaints received though, given the four year decline, it is difficult to ascertain the extent of any impact on complaint numbers.

The introduction of the fee to lodge a complaint was intended to ensure that a complainant is serious about making a complaint. The former Commissioner closed, and I now 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 the complainant would not engage with the investigator), or with findings of no misconduct. Although these complaints are disposed of expeditiously, the sheer number of complaints means that a not insignificant amount of resources of my Office are applied to dealing with what are ultimately unproven or unmeritorious allegations about legal practitioners. This, quite obviously, impacts on the time it takes to determine genuine and reasonable complaints and investigations.

The introduction of the fee has resulted in some additional, primarily administrative, work in determining whether the fee is applicable in a specific case and whether it ought to be waived based on general principles (ie, Health Care Card holder) or the specific circumstances of the complaint/complainant. So, although there has no doubt been some savings flowing from the introduction of the fee and a reduction in complaint numbers, I am unable, as yet, to quantify those savings.

Of course, the hope is that those complainants who are dissuaded from lodging a complaint by this lodgement fee 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

Commissioner May made 414 determinations during the reporting period. By way of comparison, 491 determinations were made during 2020-21, 519 during 2019/20, 473 during 2018/19, 451 during 2017/18 and 414 during 2016/17.

Sexual Harassment and Workplace Bullying

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

In April 2021, the then Acting Commissioner for Equal Opportunity (**EOC**) released her report into harassment in the South Australian legal profession. The substance of the report was concerning. However, and despite the capacity for confidential and anonymous contact, there was no significant increase in reporting of inappropriate personal conduct in the reporting period.

While this Annual Report is, by its nature, reflective of events in the reporting period, I note that I am working towards implementing an anonymous and encrypted online reporting system consistent with the recommendations of the EOC. Based on anecdotal evidence from interstate, I am hopeful that such a system will result in more potential complainants coming forward in the future.

Covid-19

The SARS-CoV-2 virus and Covid-19 had a continuing impact on the Office during the reporting period if only by requiring staff to remain absent while awaiting test results. The electronic complaint management system combined with remote access limited resultant loss in productivity.

Staff

During the reporting period, two senior staff of Commissioner May's Office retired taking with them a combined 29 years' experience in regulation of the legal profession. They have not been replaced.

Commissioner May would like to acknowledge the outstanding job his, and now my, staff all do in what are, on occasions, very difficult circumstances. The work this Office does 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.

Though I have been Commissioner for but a short time, I second Commissioner May's sentiments in this regard. It is apparent that many of the complaints I receive arise due to a sense of injustice in the outcomes achieved by complainants elsewhere. It is, therefore, unsurprising that an unexpected and unfavourable determination by me will not be well received.

Nonetheless, my staff continue to discharge their responsibilities in an exemplary, professional way. Commissioner May was, and 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.

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 three following financial years, my Office had operating underspends totalling \$366,785. Rather than offset those underspends against the cumulative deficit referred to in the last paragraph, the Attorney-General required that Commissioner May return that amount to the Fidelity Fund. That was done by way of an offset against approved funding for the subsequent reporting periods.

Since 1 July 2018, approved budgets for my Office have 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 Commissioner May only received funding for a percentage of the increase in leave provisions that was included in his budget (and in that regard I refer to Note 15 of the attached financial statements).

The Attorney-General approved a budget for the reporting period of \$3,648,317. My Office received payments totalling \$3,661,317 from the Fidelity Fund – with that figure being determined by:

- deducting from the approved budget \$12,000 on account of the interest that Commissioner May anticipated he would earn on those funds (in fact, only \$4,264 in interest was earned on those funds); and
- adding to the approved budget \$25,000 for leave entitlements not previously provided for.

The financial statements for the reporting period show that the total income during the reporting period was \$3,665,581 comprising:

- \$3,661,317 from the Fidelity Fund; and
- \$4,264 earned in interest.

The financial statements for the reporting period show that expenditure during the reporting period was \$3,342,463. After adding back capitalised costs for capital expenditure (ie \$9,786) and deducting non-cash components (ie depreciation of \$69,151), actual cash expenditure was \$3,283,098.

Accordingly, the net result for the reporting period was:

- an underspend by reference to the approved budget of \$357,483; and
- a total operating underspend (by reference to income received in relation to the reporting period) of \$323,118.

As will almost always be the case, the vast majority of the expenditure of my Office 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 Commissioner May incurred during the reporting period in Note 16 of the attached financial statements. It is also worth noting that, although Commissioner May gets no budgetary credit

for it, he recovered from other parties to the various proceedings just under \$70,000 on account of his costs relating to those proceedings (as described in more detail in Note 12 of the attached financial statements) and forwarded to the Treasurer for General Revenue \$37,250.

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 the approved budget for 2022/23 is \$3,374,851.

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

Education of the profession

During the reporting period, Commissioner May along with staff of my Office continued 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 and the Crown Solicitor's Office. Commissioner May also regularly contributed articles to the Law Society's monthly Bulletin.

Register of Disciplinary Action

Section 89C of the *Legal Practitioners Act 1981* requires the Legal Profession Conduct Commissioner 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 his ongoing support of my Office.



Anthony Keane

Legal Profession Conduct Commissioner

27 October 2022



PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

Staff Members - as at 30 June 2022

Title	Name	Commenced (with Board / Commissioner)
Commissioner	Greg May	1 February 2014 (transitional) 1 July 2014 (formal)
Delegate	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	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
Admin Officer	Robyn Hurni	November 2011
Admin Officer	Lee Moulden	August 2012
Admin Officer	Rose Kilgus	June 2016
Receptionist	Pat Porter	August 2006



INVESTIGATIONS BY THE COMMISSIONER

Complaint / Investigation process

The Legal Profession Conduct Commissioner is obliged to investigate any complaint they receive about a practitioner, and must investigate a practitioner's conduct if they are directed to do so by the Attorney-General or the Law Society. Even without a complaint or a direction, the Legal Profession Conduct Commissioner may decide to make an "Own Initiative Investigation" into a practitioner's conduct if they have reasonable cause to suspect misconduct. I will make an Own Initiative Investigation following a report from the Law Society under section 14AB, or a referral from the Judiciary or the Police as well as in other circumstances in which I receive sufficient information to determine that I have reasonable cause to suspect misconduct.

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 the Legal Profession Conduct Commissioner can decide whether to investigate. The Legal Profession Conduct Commissioner 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 the Legal Profession Conduct Commissioner within 3 years of the conduct complained of, or such longer period as the Legal Profession Conduct Commissioner may allow.

Although the Act provides that complaints meeting the requirements of section 77B(3c) must be investigated, section 77C gives the Legal Profession Conduct Commissioner 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; or
- the subject matter of the complaint has been or is already being investigated, whether by me or by another authority; or
- the subject matter of the complaint is the subject of civil proceedings (and there is no disciplinary matter involved); or
- I am satisfied that it is otherwise in the public interest to close the complaint.

The Legal Profession Conduct Commissioner has 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; and
- 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, Commissioner May 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. Two of those notices were complied with.

Once an investigation is complete, the Legal Profession Conduct Commissioner then makes a determination in relation to the practitioner's conduct. The Legal Profession Conduct Commissioner can decide either that:

- there is no misconduct (or no or insufficient evidence of misconduct) on the part of the practitioner; or
- they are satisfied that there is evidence of misconduct on the part of the practitioner.

If satisfied that there is evidence of misconduct:

- the Legal Profession Conduct Commissioner 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 this can only do so with the consent of the practitioner; or
- if the Legal Profession Conduct Commissioner considers that they cannot adequately deal with the misconduct under section 77J, then they must lay a charge against the practitioner before the Tribunal (unless they 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 the Legal Profession Conduct Commissioner takes the view that a practitioner should be struck off the Roll, then they 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

Commissioner May 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
2021/22	380	33	24

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; and
- a beneficiary of a deceased estate complains about the conduct of the practitioner who is acting for the executor of that estate.

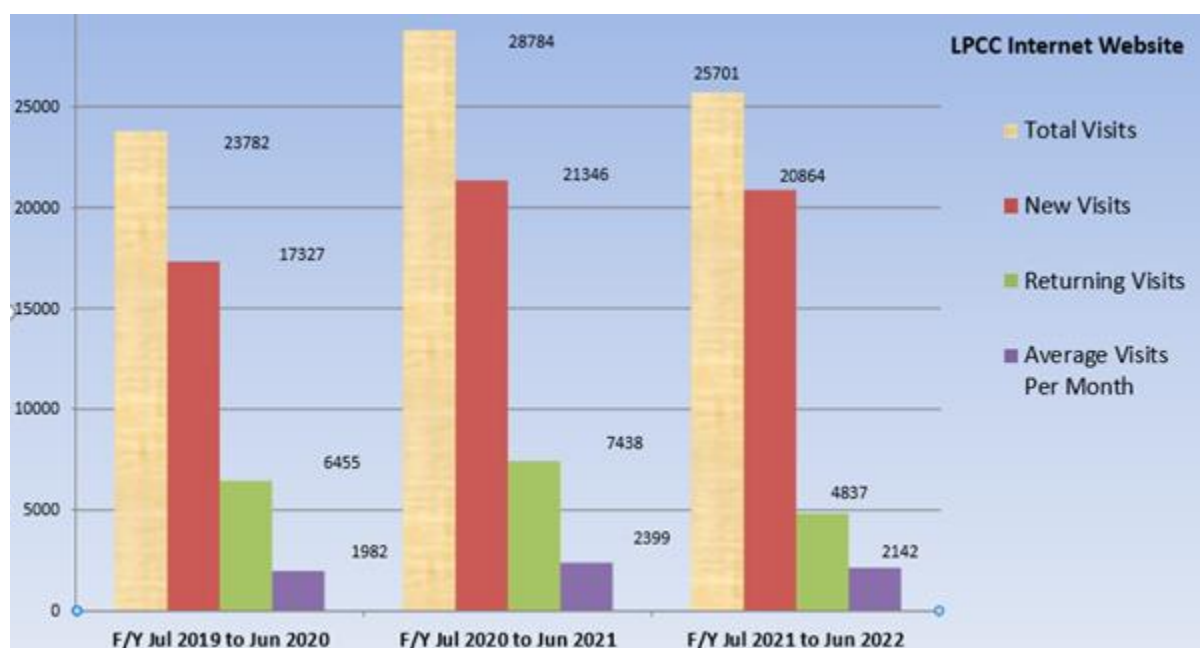
A pre-intake file is one in which the complainant hasn’t yet paid the necessary fee to lodge the complaint, and where a fee waiver application hasn’t yet been made or is still to be decided. An intake file is a file that had passed the pre-intake stage but had not been converted to new investigation files by the end of the reporting period.

Website – the last 3 years

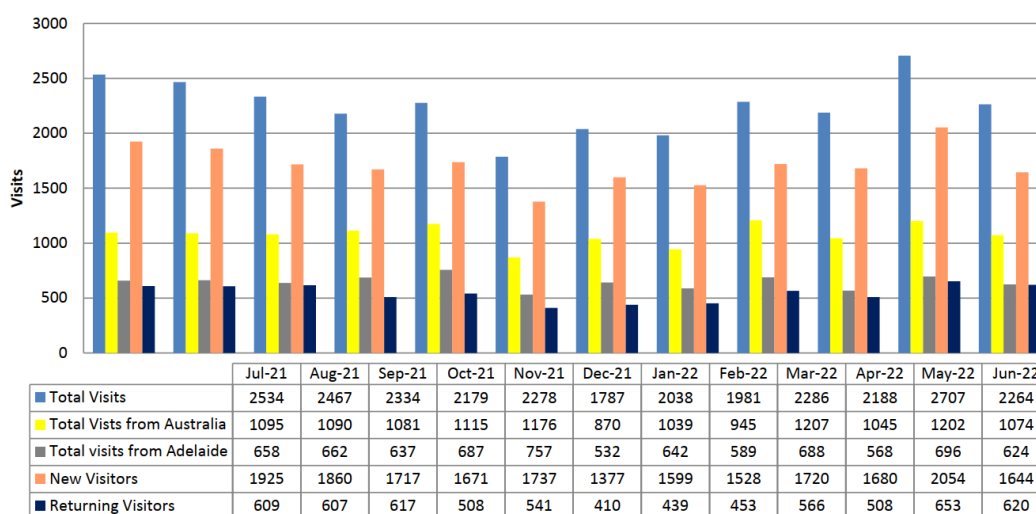
The Legal Profession Conduct Commissioner website remains the source of a large proportion of complaints received with many clients lodging complaints on a pro forma complaint form.

The number of people accessing information on the Legal Profession Conduct Commissioner website has increased significantly over the years peaking in 2020/21. The number of website visits in the reporting period, though down on last year, follows the general trend of increasing visits. It is reasonable to conclude that the significant increase in website traffic in 2020/21 and the decrease this year was significantly influenced by the Covid-19 pandemic.

The following charts show the number of local, Australian and worldwide visitors to my website over the last 3 years. Total visits for the year are down slightly from last year, as are average visits per month.



Financial Year 2021/2022 - Monthly Statistics



Nature of matters complained of / investigated

Areas of law	Complaints	Percentage of total complaints
Family	94	24.7%
Civil Litigation	64	16.8%
Criminal	32	8.4%
Estate Administration	28	7.3%
Legal Practice	21	5.5%
Personal Injury	20	5.2%
Administrative	15	3.9%
Will Preparation	15	3.9%
Workers Compensation	14	3.6%
Outside of practice	9	2.3%
Other	8	2.1%
Commercial	7	1.8%
Failure to comply with LPCC requirements	6	1.5%
Industrial	6	1.5%
Building Disputes	4	1%
Real Property	4	1%
Bankruptcy	3	0.7%
Debt Collection	3	0.7%
Migration	3	0.7%
Not Disclosed	3	0.7%
Conveyancing	2	0.5%
General	2	0.5%
SACAT	2	0.5%
Company	1	0.2%
Defamation	1	0.2%
Not recorded	25	6.5%

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	2020/21		2021/22	
	Complaints		Complaints	
Family	87	22.4%	94	24.7%
Civil Litigation	81	20.8%	64	16.8%
Criminal	46	11.8%	32	8.4%
Estate Administration	34	8.7%	28	7.3
Workers Compensation	30	7.7%		
Legal Practice			21	5.5%
Total of top five		71.40%		62.7%

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	113
Overcharging	85
Lack of Communication	41
Delay	40
Other	34
Fail to Comply with Instructions	33
Inappropriate Behaviour	27
Conflict of Interest	26
Breach of LPA (Schedule 3)	25
Breach of ASCR's	24
Misleading The Court	20
Rudeness / lack of respect	19
Negligence	13
Breach of LPA (not Schedule 3)	12
Terminating instructions	10
Trust Regulatory Breach	10
Dishonesty	8
Acting W/O Instructions	7
Breach of Confidentiality	7
Retention of Documents	7
Capacity issues	6
No cost advice	6
Breach of Court Order	5
Misleading another party	4
Misrepresentation	4
Theft/Fraud	4
Breach of Undertaking	3
Breach of LPCC Order	3
Bullying (workplace)	3
Criminal Offence (Not Theft)	3
Acting Against Instructions	2
Bullying (client)	2

Failure to Pay Third Party	2
Incompetence	2
Complaints process	1
Failure to Account to Payer	1
Failure to assess capacity	1
Making an unsubstantiated allegation	1
No jurisdiction	1
Sexual harassment	1
Not recorded	25

In the reporting period 323 new investigation files were opened (not including pre-intake files). A total 621 allegations were made as set out in the above table, across those files. The top four allegations ie, poor handling, overcharging, lack of communication and delay, amounted to 279 of the 621 or 44.9% of all allegations made.

Profile of practitioners being complained about

Complaints by type of practice for the last two reporting periods

Type of practice	2020/2021		2021/2022	
	Number of Complaints		Number of Complaints	
Sole practitioner	76	18.6%	77	20.2%
Employee	92	22.5%	78	20.5%
Partner	40	9.8%	33	8.6%
Director incorporated practice	102	24.9%	92	24.2%
Non-practising	22	5.4%	38	10%
Barrister	26	6.4%	16	4.2%
Government employee (including Legal Services Commission)	21	5.1%	15	3.9%
Corporate practitioner	1	0.2%	3	0.7%
Interstate practitioner	13	3.2%	11	2.8%
Judiciary	4	1.0%	6	1.5%
Unknown/Other	12	2.9%	11	2.8%
Total	409*		380*	

* Includes intake and pre-intake files

Complaints by Gender

Gender (2021/22)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	234	61.5%	2115	46.4%
Women	142	37.3%	2443	53.5%
Firm	4	1%	N/A	N/A
Total	380*		4,558	

* Includes intake and pre-intake files.

For the sake of comparison, the same table in 2020/21 was as follows:

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.

So, despite there being approximately equal gender diversity in the profession now, for the third year running 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	2022
Less than 5 years	35	48	28	25	35	31	18
	5.7%	7.6%	5.7%	5.2%	8.7%	7.6%	4.7%
5–10 years	69	92	62	70	36	48	59
	11.2%	14.6%	12.5%	14.6%	9%	11.7%	15.5%
10–15 years	79	78	73	62	78	62	65
	12.8%	12.3%	14.8%	13.9%	19.4%	15.2%	17.1%
More than 15 years	400	378	299	297	232	244	222
	64.9%	59.8%	60.5%	61.9%	57.7%	59.6%	58.4%
Not admitted, not identified or a firm	33	36	32	26	21	24	16
	5.4%	5.7%	6.5%	5.4%	5.2%	5.9%	4.2%
Total	616	632	494	480	402	409*	380

*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	53 - 62 years	26	0.5%	2	0.5%
1970-1974	48 - 52 years	69	1.5%	7	1.8%
1975-1979	43 - 47 years	180	3.9%	27	7.1%
1980-1984	38 - 42 years	193	4.2%	31	8.1%
1985-1989	33 - 37 years	225	4.9%	27	7.1%
1990-1994	28 - 32 years	212	4.6%	19	5%
1995-1999	23 - 27 years	329	7.2%	28	7.3%
2000-2004	18 - 22 years	603	13.2%	44	11.5%
2005-2009	13 - 17 years	658	14.4%	60	15.7%
2010-2014	8 - 12 years	693	15.2%	61	16%
2015-2019	3 - 7 years	870	19%	51	13.4%
2020-2021	1 - 2 years	455	9.9%	7	1.8%
2021-2022	< 1 year	45	0.9%	0	0
Unknown				16	4.2%

* 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	2018/19	2019/20	2020/21	2021/22
New files opened	525	471	389	356
Current investigations as at 30 June	767	863	631	591
Intake files closed	40	50	41	53

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

Category	30 June 2019	30 June 2020	30 June 2021	30 June 2022
Investigation*	767	863	631	591
Tribunal	34	33	28	28
Supreme Court	24	28	24	14
High Court	1	2	4	
Total	862	962	687	636

* Includes completed investigations where determinations have been made but administrative tasks are yet to be completed.

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

Commissioner May made 414 Determinations during the reporting period, comprising the following:

- 75 Determinations that there was no misconduct (or no or insufficient evidence of misconduct) on the part of the relevant practitioner;

- 269 Determinations to close the complaint under section 77C – and, of those matters that were so closed:
 - 66 of them were closed without commencing an investigation; and
 - 34 of them were overcharging complaints;
- 29 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);
- 5 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);
- 3 Determinations that there was misconduct on the part of the relevant practitioner, as a result of which he determined to lay a charge in the Tribunal (two of which were as a result of the practitioner not consenting to his Determination under section 77J(2)); and
- 33 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), Commissioner May made:

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

Commissioner May was satisfied that there was evidence of unsatisfactory professional conduct on the part of the practitioner on 29 occasions, and took the following disciplinary action under section 77J(1):

- reprimanded 28 practitioners;
- ordered 13 practitioners to undertake certain training, education or counselling, or to be supervised;
- ordered 19 practitioners to make an apology;
- ordered 8 practitioners to pay a fine;
- ordered that conditions be imposed on the practising certificates of 1 of those practitioners; and
- ordered 1 of those practitioners to make a specified payment or do or refrain from doing a specific act.

Commissioner May was satisfied that there was evidence of professional misconduct on the part of the practitioner on 5 occasions, and took the following disciplinary action under section 77J(2):

- reprimanded 5 practitioners;
- ordered 2 of those practitioners to make an apology;
- ordered 4 practitioners to pay a fine;

- ordered that conditions be imposed on the practising certificates of 2 of those practitioners; and
- ordered 2 of those practitioners to make a specified payment or do or refrain from doing a specific act.

Decisions in relation to intake files

During the reporting period, Commissioner May closed 53 intake files without treating them as formal complaints. He did so for the following reasons:

- 22 files were closed because he decided that he did not have reasonable cause to suspect that the relevant practitioner had been guilty of misconduct, such that he could not make an own initiative investigation under section 77B(1);
- 16 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; and
- 15 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 he decided not to exercise his 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). I have two staff members dedicated to the Conciliation and Prompt Resolution team.

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 are not yet resolved, rather than further investigating a complaint that has been resolved.

If, however, a practitioner does not comply with the terms of a 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 31 new conciliation and prompt resolutions of complaints undertaken by my conciliators (ie, excluding complaints that were referred during the previous reporting period and were ongoing during this reporting period). Of those 31 complaints, 17 resolved. This is comparable with the previous reporting period where 33 new complaints were referred to conciliation and prompt resolution and, of those 33 complaints, 19 resolved.

Enquiries

My Office received 347 enquiry contacts during the reporting period. Of those 347 enquiry contacts, 315 were received by telephone, 24 were received by email and 1 was received through my website. By comparison, the number of enquiry contacts received was 113 less than the previous reporting period.

The numbers and types of matters about which enquiries are received broadly reflect the numbers and types of matters about which complaints are received.

Family Law was the most enquired about area of law, which is consistent with the previous reporting period. The second most common area of enquiry was about the Legal Profession Conduct Commissioner: my role and the complaints process (including where the enquirer preferred to not identify the area of law). These were followed by Probate and Wills. Overwhelmingly, and irrespective of the area of law, enquirers contacted the Enquiry Line to discuss the Commissioner's Complaints Process. This was closely followed by enquiring about perceived Poor Handling and Overcharging respectively.

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 cannot 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.

Between 1 July 2014 and 30 June 2022, Commissioner May 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; and
- in 2020/21, 2 charges against 1 practitioner.

In the reporting period, Commissioner May commenced 3 proceedings in the Tribunal with a view to laying 8 charges against 3 practitioners. In respect of 2 practitioners an extension of time to lay charges is required and, in those instances, applications for an extension of time have been filed and the filing charges awaits the determinations of the Tribunal.

With respect to two of the three practitioners, Commissioner May's determination to lay charges arose as a consequence of the practitioners rejecting the Commissioner's proposed sanctions pursuant to section 77J(2). One practitioner ultimately changed their mind, accepting the section 77J(2) sanctions offered, and the charges were withdrawn.

Those charges or proposed charges related to conduct in relation to which Commissioner May was satisfied that:

- a practitioner had on a number of occasions mishandled trust monies;
- a practitioner had acted in a situation of conflict by acting against a former client in circumstances where the practitioner was in possession of relevant confidential information arising from the earlier solicitor-client relationship; and

- a practitioner had repeatedly failed to comply with court orders resulting in a default decision and substantial adverse consequences for the client and, compounded the misconduct by failing to cooperate with the investigation into the earlier conduct.

Those charges were not heard by the Tribunal in any substantive way during the reporting period.

Tribunal proceedings

The Tribunal handed down 2 decisions in this reporting period.

The first related to *Mr Kieran Moore*. In 2017, Commissioner May laid charges against Mr Moore in two actions arising from disputes with respect to deceased estates. In the first action, Mr Moore acted for a client in respect of the estates of her deceased parents. In the second action, Mr Moore and his client were both executors and trustees under a last will and testament. On 14 January 2021, the Tribunal found that Mr Moore's conduct in the first action constituted unprofessional conduct prior to the legislative change on 30 June 2014 and professional misconduct thereafter and that his conduct in the second action constituted professional misconduct. The matter was adjourned for submissions as to penalty.

On 4 August 2021, the Tribunal determined to recommend that disciplinary proceedings be commenced against Mr Moore in the Supreme Court. Proceedings were commenced in the Supreme Court and a hearing before the Court of Appeal is listed in November 2022.

The second decision related to *Mr Peter Scragg*. On 7 October 2021, Commissioner May made a determination pursuant to section 77J(1) of the Act. Mr Scragg appealed Commissioner May's determination to the Tribunal. On 15 June 2022, in the course of a directions hearing, the Tribunal made two decisions the reasons for which were subsequently published on 24 June 2022. The first decision was in response to an oral application for the presiding member to recuse themselves. The second decision was on an oral application to split the hearing to determine as a preliminary issue whether Commissioner May's determination was made "out of time". The Tribunal dismissed both applications.

One other proceeding in the Tribunal warranting consideration involves proceedings arising from a determination by Commissioner May wherein the Commissioner, having determined that the behaviour of a Practitioner the subject of complaints amounted to professional misconduct, sought to impose sanctions pursuant to section 77J(2) of the Act (which requires the consent of the Practitioner). As the Practitioner refused to consent, Commissioner May filed charges in the Tribunal. Subsequently, the Practitioner consented to sanctions pursuant to section 77J(2) and the charges were withdrawn.

At the conclusion of this reporting period, Commissioner May was awaiting decisions in 8 proceedings involving 7 practitioners including decisions on interlocutory applications the most aged of which were argued in 2016 (application for security of costs) and 2019 (particulars of charges).

Supreme Court matters

Decisions relating to disciplinary matters

During the reporting period, the Supreme Court handed down four decisions in proceedings involving my Office.

The first decision, a decision of the Full Court, arose from an appeal by *Mr John Viscariello* against an order by a single Judge refusing an application for judicial review. Commissioner May sought an order for costs on the underlying judicial review proceedings; Mr Viscariello sought an order for each party to bear their own costs. Commissioner May was successful.

The second decision, a decision of the Full Court, involved an application by Commissioner May to strike a practitioner, *Mr Janusz Kaminski*, off the roll of practitioners. Mr Kaminski had ceased practising on 30 June 2017 but remained on the roll. Mr Kaminski did not oppose Commissioner May's application and Mr Kaminski's name was struck from the roll.

The third (single Judge) and fourth (Court of Appeal) decisions, ostensibly arose from an April 2021 determination by Commissioner May's delegate to close a complaint. The Complainant has, since 2009, made several complaints against the Practitioner. In 2018, Commissioner May delegated determination of a series of complaints made in 2013 to 2015. In April 2021, the Commissioner's Delegate determined to close the complaints pursuant to section 77C subsections (1)(b) and (c). The Complainant unsuccessfully sought judicial review of the Determination from a single Judge of the Supreme Court and then unsuccessfully sought leave from the Court of Appeal to appeal the decision of the single Judge. Other Court of Appeal proceedings by the Complainant remain unresolved.

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 was 1 proceeding under section 20AH before the Supreme Court that was finalised during this reporting period.

In March 2016, *Ms Katrina Lind* gave notice of a show cause event arising from her sentencing for failures to file taxation returns and BAS statements. A hearing was held over two days in November 2021 on the questions whether the Court ought to make orders pursuant to section 20AI of the Act. Ultimately, the Court held that Ms Lind was a fit and proper person to practice law under a conditional practising certificate under conditions including that she practise only as a consultant to a law firm.

Proceedings in both the Tribunal and the Supreme Court

In last year's annual report Commissioner May reported on an application by *Mr Graham Warburton* to the Tribunal pursuant to section 23AA of the Act to be permitted to undertake and complete the practical component of the Graduate Diploma in Legal Practice under the supervision of a practitioner holding an unrestricted practising certificate. Mr Warburton's name was struck from the roll of practitioners in 2014 due to conduct demonstrating that he

was not fit to remain a member of the profession. The Tribunal granted permission and I await written reasons for that decision.

In December 2021, Mr Warburton applied to the Supreme Court pursuant to section 15 of the Act for admission as a barrister and solicitor of the Supreme Court. My Office is entitled, along with a number of other entities, to be heard on the application for admission. This matter is proceeding in the Supreme Court.



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 2022



LEGAL PROFESSION CONDUCT COMMISSIONER

ABN 74 875 673 354

FINANCIAL REPORT

**FOR THE YEAR ENDED
30 JUNE 2022**

LEGAL PROFESSION CONDUCT COMMISSIONER

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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 2022 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 Adelaide Partnership



ALEX READE
Partner

Dated 27 October, 2022

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2022

	Note	2022 \$	2021 \$
INCOME			
Operating - Fidelity Fund		3,636,317	3,922,737
Interest on Funds		4,264	14,893
Prior Year Funds Reconciliation		25,000	(230,350)
TOTAL INCOME		3,665,581	3,707,280
EXPENDITURE			
Salaries and Staff Expenses			
Amenities		2,190	2,241
Car Parking		11,042	5,098
Consultants		3,701	-
First Aid Allowance		459	1,401
Fringe Benefits Tax		2,074	16,779
Motor Vehicle - Lease Cost		3,053	8,832
Motor Vehicle - Fuel, R & M		491	5,070
Motor Vehicle - Salary Sacrifice		(230)	(19,908)
Professional Development		3,831	3,339
Provision for Annual Leave		7,141	21,202
Provision for Long Service Leave		(42,803)	15,513
Payroll Tax		89,625	102,978
Practising Certificates		9,647	11,354
Salaries - Professional	9	1,744,420	1,839,502
Salaries - Support Staff		397,945	562,939
Salaries - Parental Leave		10,486	-
Subscriptions/Membership		461	929
Superannuation		205,114	227,916
Reportable Employer Superannuation		38,273	48,613
WorkCover	10	16,354	3,362
Total Salaries and Staff Expenses		2,503,274	2,857,160
External Expert Expenses			
Costs Assessment Expenses		5,450	3,373
Counsel Fees	16	106,455	309,832
Associated Costs	16	4,011	15,624
External Delegations	16	-	95,750
Total External Expert Expenses		115,916	424,579

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2022

	Note	2022 \$	2021 \$
Administration and Operating Expenses			
Equipment Expenses			
Computer - Operating		98,940	97,604
Computer - Provision/Purchase		25,945	12,726
Computer - Repairs and Maintenance		34,333	51,037
Depreciation		69,151	100,819
Lease Charges - Photocopier		18,638	18,638
Photocopier		4,587	5,458
Repairs and Maintenance		1,577	2,932
Total Equipment Expenses		253,171	289,214
General Expenses			
Audit Fees		9,470	8,310
Accounting Services		34,320	34,320
Bank Charges		361	419
Courier Services		1,830	1,678
Insurance		22,887	20,120
Internet Services		7,599	8,847
Library		781	231
Occupational Health and Safety		1,675	4,164
Merchant Fees		359	116
Postage		2,467	1,652
Printing and Stationery		6,574	8,450
Protective Security Compliance		12,500	-
Records Management		20,404	18,124
Telephone and Fax		3,093	3,986
Website Development		2,032	8,732
Total General Expenses		126,352	119,149
Occupancy Expenses			
Light and Power		18,946	23,220
Office Cleaning		23,952	23,100
Rent	11	299,780	285,274
Security		1,072	1,056
Total Occupancy Expenses		343,750	332,650
TOTAL EXPENDITURE		3,342,463	4,022,752
OPERATING SURPLUS/(DEFICIT)		323,118	(315,471)
ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR		(77,721)	237,750
ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR		245,397	(77,721)

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2022

	Note	2022 \$	2021 \$
CURRENT ASSETS			
Cash	2	983,113	573,721
Receivables	3	27,323	40,751
Prepayments	4	28,976	27,836
TOTAL CURRENT ASSETS		1,039,412	642,308
NON CURRENT ASSETS			
Fixed Assets	5	112,974	172,339
TOTAL NON CURRENT ASSETS		112,974	172,339
TOTAL ASSETS		1,152,386	814,647
CURRENT LIABILITIES			
Creditors and Accruals	6	315,500	279,869
Provisions	7	591,489	612,499
TOTAL CURRENT LIABILITIES		906,989	892,368
TOTAL LIABILITIES		906,989	892,368
NET ASSETS		245,397	(77,721)
ACCUMULATED FUNDS			
Retained Funds	8	245,397	(77,721)
TOTAL ACCUMULATED FUNDS		245,397	(77,721)

The accompanying notes form part of these financial statements.

LEGAL PROFESSION CONDUCT COMMISSIONER

RECONCILIATION OF CASH FOR THE YEAR ENDED 30 JUNE 2022

	Note	2022 \$	2021 \$
Operating Surplus/(Deficit)		323,118	(315,471)
Depreciation		69,151	100,819
Movement in Provision for Annual Leave		7,141	21,202
Movement in Provision for Long Service Leave		(42,803)	15,512
Movement in Provision for Workers Compensation		14,652	2,196
Payables		35,631	147,307
Movement in Provision for Special Grant Funds		0	(25,590)
Purchase of Office Equipment		(9,786)	(1,361)
Prepayments		(1,140)	(469)
Receivables		13,428	(6,933)
		86,274	252,683
Net Increase in Cash Held		<u>409,392</u>	<u>(62,789)</u>
Cash at Beginning of Financial Year		573,721	636,510
Cash at End of Financial Year	2	<u>983,113</u>	<u>573,721</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 2022

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 2022

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 2022

NOTE 2: CASH

	2022	2021
	\$	\$
Cash on Hand	300	300
Cash at Banks	3,257	1,939
Access Saver	979,556	571,482
	<u>983,113</u>	<u>573,721</u>

NOTE 3: RECEIVABLES

	2022	2021
	\$	\$
GST Refundable	27,323	40,751
	<u>27,323</u>	<u>40,751</u>

NOTE 4: PREPAYMENTS

	2022	2021
	\$	\$
Prepayments - Rent	<u>28,976</u>	<u>27,836</u>

NOTE 5: FIXED ASSETS

	2022	2021
	\$	\$
Office Furniture at cost	75,219	75,219
Less: Accumulated Depreciation	<u>(75,202)</u>	<u>(71,565)</u>
	<u>17</u>	<u>3,654</u>
Office Equipment at cost	389,120	379,334
Less: Accumulated Depreciation	<u>(377,462)</u>	<u>(358,877)</u>
	<u>11,658</u>	<u>20,457</u>
Leasehold Improvements at cost	426,624	426,624
Less: Accumulated Depreciation	<u>(325,325)</u>	<u>(278,396)</u>
	<u>101,299</u>	<u>148,228</u>
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>112,974</u>	<u>172,339</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2022

NOTE 6: CREDITORS & ACCRUALS

	2022	2021
	\$	\$
Bank SA Visa	1,511	325
PAYG Tax Withholding	26,735	42,225
Recoveries - Fidelity Fund	69,486	13,533
Recoveries - Treasurer	37,250	15,625
Accrual	22,420	16,564
Trade Creditors	147,503	179,440
Superannuation	10,595	12,157
	<u>315,500</u>	<u>279,869</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.

	2022	2021
	\$	\$
Workcover Provision	25,614	10,962
Annual Leave	127,445	120,304
Long Service Leave	438,430	481,233
	<u>591,489</u>	<u>612,499</u>

Number of employees at 30 June 2022 (FTE)	15.1	17.7
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The policy for the provision of long service leave is that the provision is recognised after the employee has provided 5 years of service. Refer to note 15 in relation to the funding of that provision.

NOTE 8: ACCUMULATED FUNDS

	2022	2021
	\$	\$
Accumulated surplus at the beginning of the financial period	(77,721)	237,750
Operating surplus/(deficit) for the year	323,118	(315,471)
Accumulated surplus at the end of the financial period	<u>245,397</u>	<u>(77,721)</u>

NOTE 9: SALARIES - PROFESSIONAL

	2022	2021
	\$	\$
Salary and wages	1,706,147	1,790,890
Salary Sacrifice - Superannuation	38,273	48,613
	<u>1,744,420</u>	<u>1,839,502</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.

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2022

NOTE 10: WORKERS COMPENSATION CLAIMS

	2022	2021
	\$	\$
Return to Work SA annual premium	1,702	1,166
Movement in Crown workers compensation provision	14,652	2,196
	<u>16,354</u>	<u>3,362</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 2022 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

	2022	2021
	\$	\$
Rent	299,780	287,943
Refund of prior year outgoings	-	(2,669)
	<u>299,780</u>	<u>285,274</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".

	2022	2021
	\$	\$
Costs recovered but unremitted carried forward from the previous financial year	13,533	9,900
Costs recovered during the financial year	69,486	28,833
Costs remitted to the Fidelity Fund during the financial year	<u>(13,533)</u>	<u>(25,200)</u>
Recovered costs to be remitted to the Fidelity Fund in the next financial year (Note 6)	<u>69,486</u>	<u>13,533</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.

	2022	2021
	\$	\$
Fines paid but unremitted carried forward from the previous financial year	15,625	5,075
Fines paid during the financial year	37,250	39,375
Fines remitted to the Treasurer during the financial year	<u>(15,625)</u>	<u>(28,825)</u>
Paid fines to be remitted to the Treasurer in the next financial year (Note 6)	<u>37,250</u>	<u>15,625</u>

LEGAL PROFESSION CONDUCT COMMISSIONER

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2022

NOTE 14: LEASING COMMITMENTS

Operating Lease Commitments

Being for rent of office premises:

	2022	2021
Payable:	\$	\$
- not later than one year	396,253	383,780
- later than one year but not later than the lease period	831,560	1,227,813
	<u>1,227,813</u>	<u>1,611,593</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 \$106,455 on Counsel Fees (as against a budget for that item of \$280,000), \$4,011 on Associated Costs (\$13,000) and \$0 on External Delegations (\$50,000). Those expenses together totalled \$110,466, as against a total budget of \$343,000.

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 2022 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.

.....

Anthony Keane

Legal Profession Conduct Commissioner

Dated 27 October, 2022

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 2022, 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 2022 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
Adelaide Partnership



Alex Reade
Partner

Dated 27 October, 2022