



# 2018 ANNUAL REPORT

**Legal Profession  
Conduct Commissioner**

# TABLE OF CONTENTS

<b>Commissioner's Report</b>	<b>1</b>
<b>People who carried out the work of the Commissioner</b>	<b>5</b>
<b>Investigations by the Commissioner</b>	<b>6</b>
<b>Case Management</b>	<b>15</b>
<b>Conciliation, Prompt Resolution and Enquiries</b>	<b>18</b>
<b>Litigation</b>	<b>21</b>
<b>Interpretation of terms used in this report</b>	<b>27</b>
<b>Financial Statements</b>	<b>28</b>



# COMMISSIONER'S REPORT

In accordance with section 90A, I present to the Attorney-General and the Chief Justice the fourth annual report of the Legal Profession Conduct Commissioner for the year ended 30 June 2018.

## Overview

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

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

If I find that there is misconduct on the part of a practitioner, then I can take disciplinary action against the practitioner myself by exercising one or more of a wide range of disciplinary powers. However, if a practitioner's misconduct is particularly serious (for example, conduct that in my view warrants the practitioner's name being struck off the Roll), I don't take disciplinary action against the practitioner myself but I instead commence disciplinary proceedings in either the Legal Practitioners Disciplinary Tribunal or the Supreme Court.

If I find that there is overcharging by a practitioner, then in some (relatively limited) circumstances I can make a binding determination as to the amount of the overcharging, and in other circumstances I can make a (non-binding) recommendation as to what the practitioner's fees should have been.

## Complaint numbers

I have set out in some detail later in this report some relevant statistics in relation to the number of complaints received by my office during the reporting period, the nature of those complaints, and the outcome in relation to them.

The number of complaints made to my office has increased significantly over the four years since its establishment. In the Board's last year (2013/14) it received 445 complaints. Since then, my office has received 505 complaints (2014/15), 616 complaints (2015/16) and 632 complaints (2016/17). On the face of it, there was a reduction in the reporting period compared to the last two years, with 551 complaints being received in the reporting period.

But, in looking at those figures, it needs to be remembered that changes to the Act made by the 2016 Amendment Act have meant that, for the first time for the whole of a reporting period:

- a person who is a vexatious litigant could no longer complain to me; and

- a person could no longer complain to me about my staff and me.

For the sake of comparison, removing complaints by vexatious litigants and complaints about my staff and me from the figures for the last few years gives the following “adjusted” complaint numbers:

- 2014/15 – 396
- 2015/16 – 555
- 2016/17 – 598
- 2017/18 (ie the reporting period) – 551

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

## **Staff**

My staffing level has remained relatively constant since my office commenced on 1 July 2014. Over the last few years my office has usually had around 20 to 21 FTE employees. As at 30 June 2017, I had 21.4 FTE employees. As at the end of the reporting period I had 21 FTE employees.

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

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

I would like to pay tribute to one of my staff in particular. Ron Fletcher had been a member of my staff, and of the Board’s before me, since March 2010. He was very experienced in relation to estate planning and estate administration, and so he handled most of our complaints that arose from that area of practice. Ron resigned in early June 2018 because of ill health, and sadly he passed away just a few days later. He was a terrific man, and a great contributor to the spirit and culture of the office.

## **Financial arrangements**

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

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

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

- my approved expenditure budget was \$4,239,698;

- I received funding of \$4,174,698 from the Fidelity Fund, on the assumption that I would earn interest of \$65,000 on those funds;
- in fact, I only earned \$40,835 in interest on those funds;
- my actual expenditure was \$4,308,450\* – that is, I exceeded my approved expenditure budget by \$68,752;
- taking into account the lower interest return, my final net result for the reporting period was a total operating deficit of \$92,917.

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

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

As will almost always be the case, the vast majority of my expenditure takes the form of salaries for my staff, rent for our office premises, and counsel fees. Counsel fees are the main variable in relation to budget.

### **New systems**

The Board and my office had for many years operated on very simplistic technology systems, primarily within the Office environment supplemented by a rudimentary database and document management system. During 2016/17, we implemented a modern case management system designed specifically for a complaints organisation. That system has been operating for the whole of the reporting period. As I had expected, that new system is helping us to handle the high volume of complaints we receive more efficiently than before, and should enable us to continue to do so without having either to increase significantly our staffing levels or to see an increase in the duration of the complaint / investigation process.

### **Education of the profession**

My office continues to spend many hours presenting seminars to the profession on the new disciplinary regime. This included seminars organised by both the Law Society and LegalWise. I also regularly contribute articles to the Law Society's monthly Bulletin.

### **Information Security Management System**

As a Government agency, my office must comply with the Government's Information Security Management Framework (**ISMF**). In order to do so, we have developed our own Information Security Management System (**ISMS**). We continue to provide information about our ISMS to the Office for Cyber Security (part of the Department of the Premier and Cabinet) as and when required to do so. I am satisfied that my office continues to meet its obligations under the ISMF.

## Register of Disciplinary Action

I am required by section 89C to maintain a public register of practitioners who, after 1 July 2014, are subject to certain types of disciplinary action.

A finding of professional misconduct against a practitioner (whether made by the Supreme Court, the Tribunal, or by me) **must** be displayed on the Register. A finding of unsatisfactory professional conduct **may** be displayed on the Register. The Register shows what order(s) was made – such as whether the practitioner was struck off, suspended from practice, reprimanded, fined or similar. Links to relevant decisions of the Tribunal and to judgements of the Supreme Court are also provided.

The Register is available on my website at [www.lpcc.sa.gov.au](http://www.lpcc.sa.gov.au). I have no doubt that it is a useful resource for members of the public, and hopefully for the profession too.

To finish my report, I would like particularly to thank both the previous Attorney-General and the current Attorney-General for their ongoing support of my office.



**Greg May**  
Legal Profession Conduct Commissioner  
31 October 2018

## PEOPLE WHO CARRIED OUT THE WORK OF THE COMMISSIONER

### Staff Members - as at 30 June 2018

<b>Title</b>	<b>Name</b>	<b>Commenced (with Board / Commissioner)</b>
Commissioner	Greg May	1 February 2014 (transitional) 1 July 2014 (formal)
Principal Legal Officer	Elizabeth Manos	September 2003
Solicitor	Mike Ahern	September 2013
Solicitor	Deslie Billich	April 2015
Solicitor (costs)	Rebecca Birchall	September 2005
Solicitor / Conciliator	Paul Blackmore	April 2013
Solicitor	Philippa Branson	March 2011
Solicitor	Kathryn Caird	February 2013
Solicitor	Linda Doré	June 2011
Solicitor	Julia Dunstone	May 2012
Solicitor	Rebecca Geyer	September 2016
Solicitor	Sharon Hurren	April 2007
Solicitor	John Keen	January 2017
Solicitor	Nadine Lambert	June 2007
Solicitor	Debra Miels	October 2010
Conciliator	Amelia Taeuber	March 2010
Systems Manager	Bart Fabrizio	March 2010
Paralegal	Yvette Manocchio	October 1997
Executive Secretary	Robyn Delaney	September 2006
Admin Officer	Rebekah Hill	February 2013
Admin Officer	Robyn Hurni	November 2011
Admin Officer	Lee Moulden	August 2012
Admin Officer	Rose Kilgus	June 2016
Receptionist	Pat Porter	August 2006

# INVESTIGATIONS BY THE COMMISSIONER

## Complaint / Investigation process

I am obliged to investigate any complaint I receive about a practitioner, and I also must investigate a practitioner's conduct if I am directed to do so by the Attorney-General or the Law Society. Even without a complaint or a direction, I may decide to commence an "own initiative investigation" into a practitioner's conduct if I have reasonable cause to suspect misconduct. An Own Initiative Investigation will often be commenced following a report from the Law Society under section 14AB, or a referral from the Judiciary 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 will only investigate if the issues raised in the complaint can properly and fairly be put to the practitioner for a response. In some cases, further information will be required from a complainant before a decision can be made as to whether or not to investigate a complaint.

Section 77B(3c) provides that a complaint must be made to me within 3 years of the conduct complained of, or such longer period as I may allow.

Having said that I must investigate in certain circumstances, section 77C also gives me the ability to close a complaint at any stage without having to (further) consider its merits. Some of the circumstances in which I can do so are where:

- the complaint is vexatious, misconceived, frivolous or lacking in substance;
- the subject matter of the complaint has been or is already being investigated, whether by me or by another authority;
- the subject matter of the complaint is the subject of civil proceedings (and there is no disciplinary matter involved);
- I am satisfied that it is otherwise in the public interest to close the complaint.

I have wide powers when investigating a complaint – with the most commonly used being the power to:

- require a practitioner to produce any specified document, to provide written information, or to otherwise assist in, or cooperate with, the investigation;
- require any other person (which may include a non-practitioner) to allow access to documents relating to the affairs of a practitioner.

Despite having a professional obligation to be open and frank in their dealings with my office, and to respond within a reasonable time to any requirement from my office for comment or information, not all practitioners are as prompt in responding to my office as they should be. During the reporting period, I issued 5 formal notices under clause 4 of Schedule 4 to 3 separate practitioners requiring the production of documents and the provision of information as a result of their failure to respond.



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

If I am satisfied that there is evidence of misconduct:

- I can take disciplinary action against the practitioner myself under section 77J – eg by reprimanding the practitioner, ordering the practitioner to apologise for the misconduct, ordering the practitioner to pay a fine, imposing conditions on the practitioner's practising certificate, suspending the practitioner's practising certificate etc – although sometimes I can only do so with the consent of the practitioner; or
- if I consider that I can't adequately deal with the misconduct under section 77J, then I must lay a charge against the practitioner before the Tribunal (unless I decide that it is not in the public interest to do so).

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

In some limited circumstances, if I take the view that a practitioner should be struck off the Roll, then I may be able to institute proceedings directly in the Supreme Court without first having to lay a charge before the Tribunal.

### Number of formal complaints

The number of formal complaints received by the Board, and now me, during the last five years has continued to increase:

	Complaints	Adjusted to remove complaints by vexatious litigants, and complaints against my staff and me
2012/13	372	
2013/14	445	
2014/15	505	396
2015/16	616	555
2016/17	632	598
2017/18	551*	551

*\*This figure includes 57 matters that, for the purposes of our new complaints management system, we did not treat as formal complaints but rather as "intake files". These files do not become formal complaints unless, for example, I exercise my discretion under section 77B(3c) to accept them despite them being made more than 3 years after the conduct complained of occurred. However, for the sake of comparison with earlier years, it is appropriate to include those matters in these figures.*

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

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

- Own Initiative Investigations.

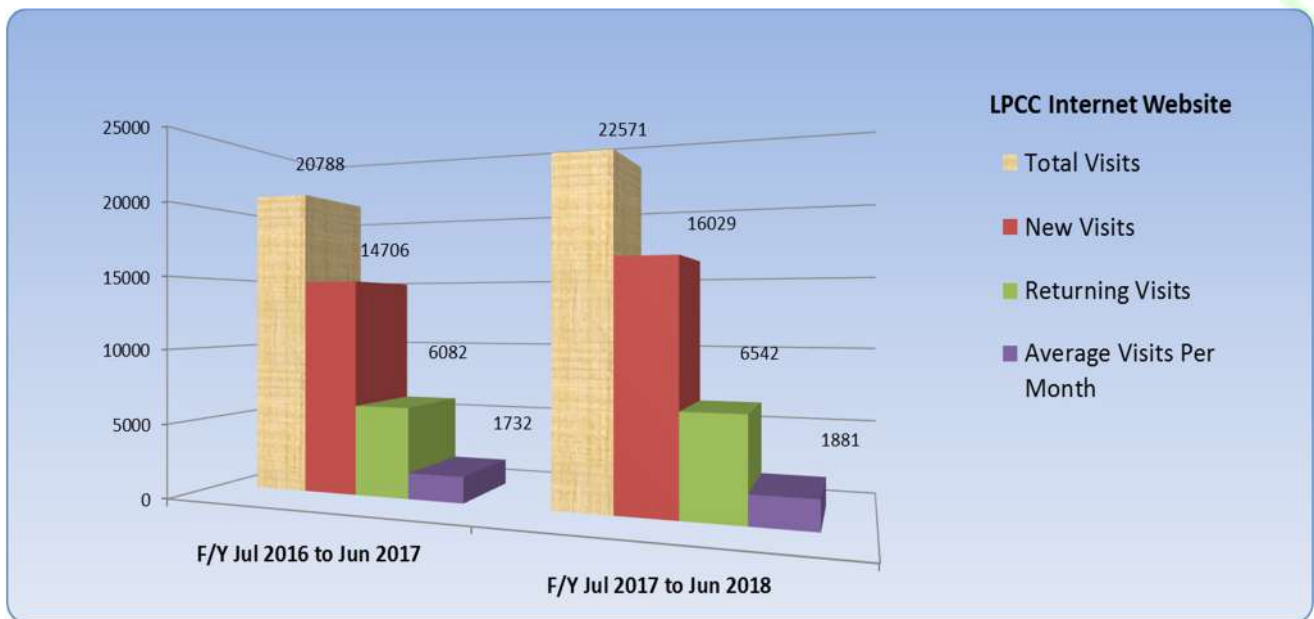
A third party complaint is one where the complaint is made someone other than the practitioner’s client. Common examples are:

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

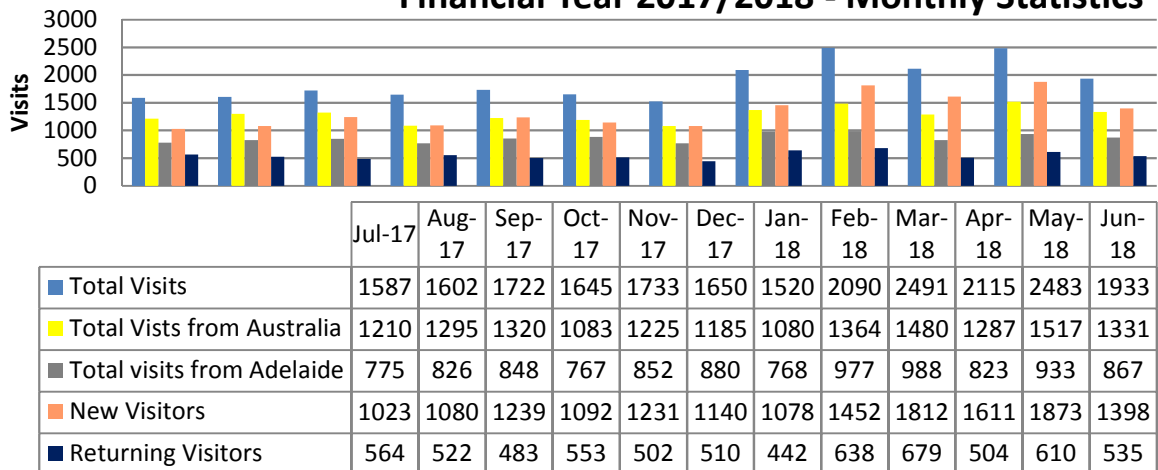
### Website – the last 2 years

A large proportion of complaints received were lodged through my website on a pro forma complaint form.

The number of people accessing information on the Board’s, and now my, website has been increasing significantly. The following chart shows the number of local, Australian and worldwide visitors to my website over the last 2 years. Total visits for the year are up about 1,783 from last year, and average visits per month are up 149.



## Financial Year 2017/2018 - Monthly Statistics



## Nature of matters complained of / investigated

Areas of law	Complaints	Percentage of total complaints
Family	113	22.5%
Probate and Wills	74	14.7%
Other	63	12.5%
Minor Civil	51	10.1%
Workers Compensation	38	7.6%
Criminal	36	7.2%
Personal Injury	28	5.6%
Industrial	21	4.2%
Commercial	20	4%
Real Property	12	2.4%
Administrative	7	1.4%
Bankruptcy	7	1.4%
Building Disputes	6	1.2%
Conveyancing	5	1%
Migration	5	1%
Debt Collection	4	0.8%
Legal Profession Conduct Commissioner	3	0.6%
Criminal Injuries	3	0.6%
Environment, Resources & Development	2	0.4%
Estate Administration	2	0.4%
Not Disclosed	1	0.2%
SACAT	1	0.2%

Some complaints extend to more than one area of law.

## Comparison of complaints for last two years from top five areas of law

Area of Law	2016/17		2017/18	
	Complaints		Complaints	
Family	160	25%	113	22.5%
Probate & Wills	74	11.5%	74	14.7%
Minor Civil	62	9.7%	51	10.1%
Workers Compensation	50	7.8%	38	7.6%
Criminal	46	7.2%	36	7.2%
<b>Total of top five</b>		<b>61.2%</b>		<b>62.10%</b>

As has been consistently the case for many years, family law was the area of practice that generated the most complaints, by quite a considerable margin.

## Nature of allegations made

Nature of allegation	On complaint
Poor Handling	222
Overcharging	139
Other	63
Fail to Comply with Instructions	47
Delay	46
Inappropriate Behaviour	38
Breach of Legal Practitioner's Act	36
Lack of Communication	35
Conflict of Interest	29
Negligence	26
Misrepresentation	19
Incompetence	13
Trust Regulatory Breach	12
Acting Against Instructions	11
Theft/Fraud	11
Acting W/O Instructions	10
Failure to Pay Third Party	10
Misleading The Court	10
Retention of Documents	9
Breach of Undertaking	8
Legal System	4
Failure to Account to Payer	2
Rudeness / lack of respect	1
Unsubstantiated allegation	1
Criminal Offence (Not Theft)	1
No Cost Advice	1

In the reporting period we opened 551\* new investigation files. A total of 804 allegations were made as set out in the above table, across those files. The top four allegations – ie poor handling, overcharging, failing to comply with instructions and delay – amounted to 454 of the 804 allegations made, or 56% of all allegations.

*\*Includes 57 "intake files".*

Allegations of poor handling, overcharging, lack of communication and delay are commonly found in a single complaint.

## Profile of practitioners being complained about

### Complaints by type of practice for the last two reporting periods

Type of practice	2016/2017		2017/2018	
	Number of complaints		Number of complaints	
Sole practitioner	144	22.8%	104	21.1%
Employee	138	21.8%	117	23.7%
Partner	64	10.1%	51	10.3%
Director incorporated practice	129	20.4%	97	19.6%
Non-practising	31	4.9%	46	9.3%
Barrister	37	5.9%	20	4%
Government employee (including Legal Services Commission)	35	5.5%	18	3.6%
Manager/supervisor appointed	2	0.3%		
Consultant	8	1.3%		
Suspended practitioner	1	0.2%		
Corporate practitioner	5	0.8%	3	0.6%
Interstate practitioner	8	1.3%	17	3.4%
Judiciary	10	1.6%	2	0.4%
Unknown/Other	20	3.2%	19	3.8%
<b>Total</b>	<b>632</b>		<b>494*</b>	

*\*These statistics do not include the 57 matters that, for the purposes of our new complaints management system, we did not treat as formal complaints but rather as "intake files".*

As has been the case for many years, the practitioners against whom the most complaints were made were those who are sole practitioners or in small firms (which are most commonly those that are incorporated practices. In my view, these statistics reflect the difficulties inherent in those type of practices – for example:

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

## Complaints by Gender

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

*\*These statistics do not include the 57 matters that, for the purposes of our new complaints management system, we did not treat as formal complaints but rather as "intake files".*

For the sake of comparison, the same table in 2016/17 was as follows:

Gender (2016/17)	Number of Complaints	% of Total Complaints	Number of Practitioners	% of Practising Profession
Men	400	66.1%	1989	49.6%
Women	205	33.9%	2021	50.4%
Unidentified/Corporate	27		N/A	N/A
<b>Total</b>	<b>632</b>		<b>4010</b>	

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

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

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

Length of time in practice	2014	2015	2016	2017	2018
Less than 5 years	40	27	35	48	28
	9%	5.3%	5.7%	7.6%	5.7%
5–10 years	65	69	69	92	62
	14.6%	13.7%	11.2%	14.6%	12.5%
10–15 years	41	60	79	78	73
	9.2%	11.9%	12.8%	12.3%	14.8%
More than 15 years	285	320	400	378	299
	64%	63.4%	64.9%	59.8%	60.5%
Not admitted or not identified or a firm	14	29	33	36	32
	3.2%	5.7%	5.4%	5.7%	6.5%
<b>Total</b>	<b>445</b>	<b>505</b>	<b>616</b>	<b>632</b>	<b>494</b>

## Comparison of practitioners who received a complaint by years of admission

Admission Years	Practice Experience	No. of Practitioners	% of Practising Profession	No. of Complaints	% of total Complaints
1959	59 years	2	0.04%	0	0%
1960-1969	49- 58 years	36	0.9%	5	1%
1970-1974	44 – 48 years	93	2.3%	20	4%
1975-1979	39 - 43 years	228	5.5%	39	7.9%
1980-1984	34 - 38 years	243	5.8%	51	10.3%
1985-1989	29 - 33 years	273	6.6%	30	6.1%
1990-1994	24 - 28 years	246	5.9%	37	7.5%
1995-1999	19 - 23 years	349	8.5%	56	11.3%
2000-2004	14 - 18 years	654	15.9%	61	12.3%
2005-2009	9 - 13 years	672	16.3%	73	14.8%
2010-2014	4 - 8 years	741	18%	62	12.6%
2015-2018	up to 3 years	590	14.3%	28	5.6%
Unknown				32	6.5%

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

- Those practitioners with more than 18 years' experience, who represent approximately 35% of the practising profession, received nearly 48% of the complaints. Within that group, those practitioners admitted between 1975 and 1985 (34 - 43 years post admission experience) who represent 11.3% of the practising profession received just over 18% of the complaints.
- Those practitioners with less than 9 years' experience, who represent just over 23% of the practising profession, received just over 18% of the complaints.
- Those practitioners admitted less than 14 years who represent just under 50% of the practising profession received 33% of all complaints made last financial year.

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



## CASE MANAGEMENT

### Files opened and current numbers

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

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

\*Files that had not been converted to a new investigation file as at 30 June 2018.

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

Category	30 June 2016	30 June 2017	30 June 2018
Investigation	562	776	688
Tribunal	26	28	32
Debt collection	30	38	37
Supreme Court	19	23	24
High Court	0	2	1
<b>Total</b>	<b>637</b>	<b>867</b>	<b>782</b>

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

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

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

We also have different categories of files for:

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

## Determinations made

I made 451 Determinations during the reporting period, comprising the following:

- 161 Determinations that there was no misconduct (or no or insufficient evidence of misconduct) on the part of the relevant practitioner;
- 332 Determinations to close the complaint under section 77C;
- 18 Determinations that there was unsatisfactory professional conduct on the part of the relevant practitioner, as a result of which I took disciplinary action under section 77J(1);
- 3 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);
- 11 Determinations that there was misconduct on the part of the relevant practitioner, as a result of which I determined to lay a charge in the Tribunal (7 of which were laid in the reporting period);
- 13 Determinations relating to overcharging (which are expanded on immediately below).

In relation to overcharging complaints, I made:

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

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

- I reprimanded all 18 practitioners;
- I ordered 4 of those practitioners to undertake certain training, education or counselling, or to be supervised;
- I ordered 6 of those practitioners to make an apology;
- I ordered 6 of those practitioners to pay a fine;

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

- I reprimanded all 3 of those practitioners and ordered that they pay a fine;
- I also ordered that conditions be imposed on the practising certificates of 2 of those practitioners.

# Workflow

## Current files by age

Age of current files	2016/17		2017/18	
	3 years and older	56	7.2%	92
2 – 3 years	88	11.3%	106	15.4%
1 – 2 years	213	27.5%	185	26.9%
< 1 years	419	54.0%	305	44.3%
<b>Total Files</b>	<b>776</b>		<b>688</b>	

# CONCILIATION, PROMPT RESOLUTION AND ENQUIRIES

## Conciliation

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

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

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

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

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

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

## Prompt Resolution

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

If I receive a complaint that does not raise any allegations that are capable of amounting to a conduct finding, and if there is a dispute between a practitioner and a complainant that seems capable of resolution by us making a few telephone calls (for instance, the complainant may have waited two weeks for a phone call from the practitioner, or may have misunderstood the content of the practitioner's correspondence), I can provide the parties

with a limited opportunity to resolve the dispute directly between themselves (with some assistance from us) before I determine whether formal conciliation or investigation of the complaint is required. If the dispute resolves in this way then I am likely to close the complaint under section 77C, again on the basis that it is in the public interest to do so. If the complaint does not resolve then I will consider whether conciliation or investigation of the complaint is appropriate.

During the reporting period, there were 78 active conciliations and prompt resolutions of complaints undertaken by my conciliators. The overwhelming majority of those complaints concerned costs disputes arising in Family Law matters.

## Enquiries

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

During the reporting period, we received 1,066 enquiry contacts. These enquiry contacts are responded to by our enquiry officers. (This number only includes the initial contacts, and does not include any subsequent follow up contacts, for example for the purposes of an assisted enquiry.)

The types and numbers of matters about which we receive enquiries broadly reflect the types and numbers of matters about which we receive complaints. Family Law was the most enquired about area of law, with Wills and estate administration also a common line of enquiry.

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

An assisted enquiry may be assessed as appropriate in circumstances where:

- the enquirer is complaining that the practitioner won’t return phone calls / emails;
- the enquirer hasn’t had any communication from the practitioner at all; or
- there is a costs dispute over a relatively nominal amount,

and the practitioner’s conduct isn’t likely to amount to misconduct in the event a complaint is made. In those circumstances we will most likely call that practitioner and suggest that if he or she attempts to deal with the issue immediately then it might prevent a formal complaint / investigation.

During the reporting period, my conciliators conducted 62 assisted enquiries with a view to resolving the enquirer’s concerns at an early stage in disputes which may have otherwise

become formal complaints. Of those 62 assisted enquiries, 43 of them resolved without a complaint being made to my office at that time.

## LITIGATION WORK

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

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

### Tribunal charges

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

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

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

In 2015/16, I laid 7 charges against 6 practitioners.

In 2016/17, I laid 8 charges against 6 practitioners

In the reporting period, I laid 7 charges against 5 practitioners.

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

- The practitioner accepted instructions from, and acted for, a relative (not his immediate family) in circumstances in which there was a conflict between the practitioner's duty to serve the best interests of the testator and the interests of the practitioner, and by so doing the practitioner preferred his interests over those of the testator.
- Two charges were laid against the practitioner relating to:
  - his receipt of an amount of cash on account of anticipated legal fees and disbursements, his failure to treat that cash as trust money for the purposes of the Act, and his subsequent misappropriation of that money; and
  - an estate for which he acted as the sole Administrator and solicitor, and in relation to which he misappropriated trust money.
- The practitioner acted as the joint executor of a deceased estate, but failed to perform his duties as executor of the estate – in that he failed to apply for a grant of Probate and failed to take the necessary steps to administer the estate.

- The practitioner failed to act courteously towards another legal practitioner, and made allegations of misconduct against that other practitioner when he did not believe those allegations could be supported.
- Two charges were laid against the practitioner relating to:
  - his practising the profession of the law without a practising for a period, and continuing to do so after being advised of the non-renewal of his practising certificate; and
  - various failures in relation to the lodgement of a low income sole practitioner Statutory Declaration, various failures in relation to his MCPD obligations, and delaying in providing his client's documents to another firm as he had been authorised and instructed to do.

In relation to two of those charges, I had originally proposed to deal with the alleged professional misconduct myself under section 77J(2). Neither practitioner consented to me doing so (as is required by that section before I can exercise any powers under it), as a result of which I considered that I couldn't deal adequately with the conduct in question under that section.

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

- was satisfied that there was evidence of misconduct;
- was satisfied that I could not deal adequately with the conduct in question under section 77J; and
- did not determine that it would not be in the public interest to lay a charge before the Tribunal (section 77L).

None of those charges had been heard by the Tribunal in any substantive way before the end of the reporting period. Some of them involve applications to the Tribunal for an extension of time under section 82(2a)(b).

## Tribunal decisions about misconduct

The Tribunal handed down 3 decisions in this reporting period relating to 3 charges that I had laid prior to the reporting period:

- 1 charge related to *Ms Maddalena Romano*. The Tribunal found that Ms Romano had engaged in unsatisfactory professional conduct, and it reprimanded her and ordered that she pay a \$6,000 fine. The conduct to which that charge related is detailed later in this report.
- 1 charge related to *Mr Nathan Thompson*. The Tribunal found that Mr Thompson had engaged in professional misconduct and referred the matter to the Supreme Court. Mr Thompson subsequently appealed to the Supreme Court against the Tribunal's decision to refer the matter to the Supreme Court. I also commenced disciplinary proceedings against Mr Thompson in the Supreme Court. Both the appeal and those disciplinary proceedings were heard after the end of the reporting period.



- 1 charge related to *Mr George Mancini*. The Tribunal found that Mr Mancini had engaged in unsatisfactory professional conduct. I subsequently appealed against that decision to the Supreme Court. The conduct to which that charge related, and the outcome of the appeal, is detailed later in this report.

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

## Tribunal appeals

Decisions of the Board were not previously able to be appealed against.

As a result of the changes made to the Act by the 2013 Amendment Act, if I determine that there has been misconduct by the practitioner, and if I decide to deal with that misconduct under section 77J, then the complainant and (in some circumstances) the practitioner can appeal to the Tribunal.

Not all of my decisions can be appealed against. The Tribunal has previously decided that there is no right of appeal against my determination if either:

- I find that there is no misconduct by the practitioner; or
- I close the complaint under section 77C.

During the reporting period, there were no appeals to the Tribunal, nor did the Tribunal make any decisions in relation to any appeals made to it previously.

## Tribunal decisions about extension of time applications

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

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

During 2016/17, the Tribunal considered my applications for extensions of time in relation to 8 charges I had laid against 7 practitioners. It did so in relation to 6 of those charges by decision of a 1 member Tribunal. It granted extensions of time in relation to 5 of those charges. It had reserved its decision on the 6<sup>th</sup> charge. (The applications in relation to the other 2 charges were heard by a 3 member Tribunal as part of the hearing of the merits of the charge.)

*Mr Laurence Fittock* was one of the practitioners in relation to whom a 1 member Tribunal granted my extension of time application. He subsequently appealed to the Supreme Court against the Tribunal's decision to allow an extension of time. On that appeal, Justice Vanstone decided that such an application should have been heard by a Tribunal comprising 3 of its members. I appealed to the Full Court against Justice Vanstone's decision, but the Full Court dismissed my appeal in December 2017.

Accordingly, my applications for an extension that had already been heard by a single member of the Tribunal (some of which have already been decided) will need to be re-heard by a 3 member Tribunal. And there will also be an impact on future applications of that type – the process of seeking an extension of time will be more drawn out than before, given the added difficulty for the Tribunal in having to have those applications heard before three members rather than one.

## Supreme Court matters

### *Disciplinary proceedings*

In the reporting period, the Supreme Court handed down judgments in disciplinary proceedings against *Mr Alfonso Strappazon* and *Mr Steven Thomas* that resulted in each of them having their names struck off the Roll.

### *Appeals*

During the reporting period, the Supreme Court decided two appeals to it against decisions made by the Tribunal in relation to alleged misconduct (as opposed to extensions of time).

- *Ms Maddalena Romano*. I had charged Ms Romano with professional misconduct in relation to representations she had made to the Legal Services Commission when completing and/or signing commitment certificates seeking payment of a disbursement and for work. The Tribunal originally found Ms Romano not guilty of professional misconduct, and declined to proceed to make a decision as to whether or not she had engaged in unsatisfactory professional conduct. I appealed both against the former decision and the failure to make the latter decision.

The Full Court of the Supreme Court found that Ms Romano was not guilty of professional misconduct, but said that the Tribunal's decision not to make a decision in relation to unsatisfactory professional conduct was vitiated by error and so it found her guilty of unsatisfactory professional conduct. The matter was then remitted to the Tribunal to determine the appropriate disciplinary action (the result of which I have referred to earlier in this report).

- *Mr George Mancini*. I had charged Mr Mancini with professional misconduct in relation to representations he had made to the Legal Services Commission when completing and/or signing commitment certificates seeking payment of his fees, which I considered to be false and misleading. The Tribunal originally found Mr Mancini not guilty of

professional misconduct but guilty of unsatisfactory professional conduct. I appealed against that decision.

The Full Court of the Supreme Court found that the Tribunal's decision was vitiated by error. It found him guilty of professional misconduct in relation to various representations Mr Mancini had made when he knew them to be false, and remitted the consideration of the other representations that were the subject of the charge to a differently constituted Tribunal for a fresh hearing and determination. That hearing is yet to take place.

#### *Applications for judicial review*

In relation to various complaints made by a complainant against a practitioner, I had previously made a determination that the practitioner had not engaged in misconduct. The complainant commenced proceedings in the Supreme Court for judicial review of my decision. The Supreme Court had previously decided that the complainant had standing to take those proceedings.

Those proceedings were subsequently finalised on the basis that my earlier determination was set aside by the Supreme Court, and I would then delegate my powers to an external delegate (in this case a senior barrister) who would then reconsider them.

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

Under section 20AH, where a show cause event happens to a practitioner who holds a practising certificate, he or she must give a statement to the Supreme Court as to why the practitioner is still a fit and proper person to hold a practising certificate. Both the Law Society and I can then make written representations to the Supreme Court in that regard.

During the reporting period, proceedings were commenced before the Supreme Court in relation to show cause events that happened to 2 practitioners. Both of those matters were, as at the end of the reporting period, still ongoing.

## Other matters

### *Mr John Viscariello*

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

The first proceedings were commenced by Mr Viscariello in the Supreme Court against the Board before 1 July 2014. I took the Board's place in those proceedings on 1 July 2014.

I am conflicted in considering any of Mr Viscariello's various complaints about practitioners or being involved in these court proceedings, both because he has complained about me and because many of his complaints are about practitioners at my former firm. I had therefore delegated my powers and functions in relation to those complaints and these proceedings to independent persons.

Mr Viscariello is seeking an order in the nature of *mandamus* against (originally) the Board and now me. He is seeking to compel the Board (and subsequently me) to undertake investigations into the conduct of various practitioners about whom he had complained to the Board. For various reasons, the Board considered it inappropriate that it do so at the time that he made them, and it had suspended those investigations.

Mr Viscariello had challenged the validity of my delegations, and the proceedings in relation to that issue meant that the substantive judicial review proceedings were not heard until March 2018. They were ultimately heard before Justice Hinton, who has reserved his decision.

Mr Viscariello commenced the second proceedings in June 2018. He has applied to the Supreme Court to judicially review the decisions of the Board to lay two sets of charges against him in the Tribunal, one of which led to his name being struck off the role. He wants to have the decisions of the Tribunal and, ultimately, the Supreme Court reviewed, and overturned such that he should then be able to be re-admitted as a practitioner. Those proceedings were ongoing as at the end of the reporting period.

## Interpretation of terms used in this report

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

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

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

**Board** – the former Legal Practitioners Conduct Board, which ceased to exist on 30 June 2014 as a result of the 2013 Amendment Act coming into operation

**Chief Justice** – the Chief Justice of the Supreme Court

**Commissioner** – the Legal Profession Conduct Commissioner

**Fidelity Fund** – has the same meaning as in the Act

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

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

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

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

**reporting period** – 1 July 2017 to 30 June 2018

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

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

**show cause event** – has the same meaning as in the Act

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

**Tribunal** – the Legal Practitioners Disciplinary Tribunal

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

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

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

**FINANCIAL REPORTS**  
**FOR YEAR ENDED 30 JUNE 2018**



# **LEGAL PROFESSION CONDUCT COMMISSIONER**

## **TABLE OF CONTENTS**

---

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

**LEGAL PROFESSION CONDUCT COMMISSIONER**

Level 5 | 80 Flinders Street | Adelaide | SA | 5000

GPO Box 2193 | Adelaide | SA | 5001

t: 08 8223 7311

info@uhysothadl.com.au

www.uhysothadl.com.au

**AUDITORS 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 2018 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**

  
**J E MCKENZIE**

Dated this 10 day of October 2018.



## LEGAL PROFESSION CONDUCT COMMISSIONER

### STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2018

	Note	2018	2017 \$
<b>INCOME</b>			
Operating - Fidelity Fund		4,174,698	4,137,477
Interest on Funds		40,835	71,536
Provision Write-back	7	208,460	524,174
<b>TOTAL INCOME</b>		<b>4,423,993</b>	<b>4,733,187</b>
<b>EXPENDITURE(Commissioner)</b>			
<b>Salaries and Staff Expenses</b>			
Amenities		4,368	5,667
Car Parking		5,231	4,799
First Aid Allowance		814	918
Fringe Benefits Tax		12,799	15,040
Motor Vehicle - Lease Cost		9,379	10,280
Motor Vehicle -Fuel, R & M		4,602	3,666
Motor Vehicle - Salary Sacrifice		(18,059)	(19,305)
Professional Development		12,440	15,312
Provision for Annual Leave		(7,649)	20,688
Provision for Long Service Leave		57,510	31,293
Payroll Tax		110,656	108,015
Practising Certificates		9,923	11,850
Salaries - Professional	9	1,891,788	1,820,001
Salaries - Support Staff		599,243	601,235
Salaries - Temp/Casuals		48,938	28,857
Salaries - Parental Leave		-	27,382
Subscriptions/Membership		5,445	6,509
Superannuation		238,687	233,921
Reportable Employer Superannuation		56,008	57,694
WorkCover	10	12,250	1,336
<b>Total Salaries and Staff Expenses</b>		<b>3,054,373</b>	<b>2,985,158</b>
<b>External Expert Expenses</b>			
Costs Assessment Expenses		9,212	17,597
Counsel Fees	16	307,315	518,523
Associated Costs	16	69,650	10,066
External Delegation	16	73,732	98,426
Expert & Witness Fees		809	2,540
<b>Total External Expert Expenses</b>		<b>460,718</b>	<b>647,152</b>

The accompanying notes form part of these financial statements.

**LEGAL PROFESSION CONDUCT COMMISSIONER**

**STATEMENT OF COMPREHENSIVE INCOME  
FOR THE YEAR ENDED 30 JUNE 2018**

	Note	2018 \$	2017 \$
<b>Administration and Operating Expenses</b>			
<b>Equipment Expenses</b>			
Computer - Operating		54,961	17,087
Computer - Provision/Purchase		10,571	12,984
Computer - Repairs and Maintenance		38,081	34,568
Depreciation		335,893	185,426
Lease Charges - Photocopier		21,176	21,175
Photocopier		5,882	5,039
Repairs and Maintenance		4,050	2,487
<b>Total Equipment Expenses</b>		<b>470,614</b>	<b>278,766</b>
<b>General Expenses</b>			
Audit Fees		7,657	7,500
Accounting Services		13,000	
Bank Charges		527	614
Courier Services		2,201	1,978
Insurance		18,232	18,736
Internet Services		2,086	1,904
IT Project Costs	7	-	74,473
Library		17,850	16,453
Occupational Health and Safety		3,204	3,704
Postage		4,251	6,672
Printing and Stationery		14,080	18,050
Protective Security Compliance		25,475	17,036
Records Management		21,050	19,995
Telephone and Fax		9,912	10,332
Website Development		2,880	1,778
<b>Total General Expenses</b>		<b>142,405</b>	<b>199,225</b>
<b>Occupancy Expenses</b>			
Light and Power		23,902	20,136
Office Cleaning	11	39,691	22,458
Rent	11	404,176	378,150
Security		3,747	1,340
<b>Total Occupancy Expenses</b>		<b>471,516</b>	<b>422,084</b>
<b>TOTAL EXPENDITURE</b>		<b>4,599,626</b>	<b>4,532,385</b>
<b>OPERATING SURPLUS/(DEFICIT)</b>		<b>(175,633)</b>	<b>200,802</b>
<b>TOTAL OPERATING SURPLUS/(DEFICIT)</b>		<b>(175,633)</b>	<b>200,802</b>
ACCUMULATED FUNDS AT THE BEGINNING OF THE FINANCIAL YEAR		706,674	505,872
<b>ACCUMULATED FUNDS AT THE END OF THE FINANCIAL YEAR</b>		<b>531,041</b>	<b>706,674</b>

The accompanying notes form part of these financial statements.

**LEGAL PROFESSION CONDUCT COMMISSIONER**

**STATEMENT OF FINANCIAL POSITION  
AS AT 30 JUNE 2018**

	Note	2018 \$	2017 \$
<b>CURRENT ASSETS</b>			
Cash	2	325,970	867,618
Receivables	3	43,385	83,764
Prepayments	4	39,126	37,543
<b>TOTAL CURRENT ASSETS</b>		<b>408,481</b>	<b>988,925</b>
<b>NON CURRENT ASSETS</b>			
Fixed Assets	5	795,437	878,152
<b>TOTAL NON CURRENT ASSETS</b>		<b>795,437</b>	<b>878,152</b>
<b>TOTAL ASSETS</b>		<b>1,203,918</b>	<b>1,867,077</b>
<b>CURRENT LIABILITIES</b>			
Creditors and Accruals	6	206,632	543,144
Provisions	7	466,245	617,259
<b>TOTAL CURRENT LIABILITIES</b>		<b>672,877</b>	<b>1,160,403</b>
<b>TOTAL LIABILITIES</b>		<b>672,877</b>	<b>1,160,403</b>
<b>NET ASSETS</b>		<b>531,041</b>	<b>706,674</b>
<b>ACCUMULATED FUNDS</b>			
Retained Funds	8	531,041	706,674
<b>TOTAL ACCUMULATED FUNDS</b>		<b>531,041</b>	<b>706,674</b>

The accompanying notes form part of these financial statements.

## LEGAL PROFESSION CONDUCT COMMISSIONER

### STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2018

	Note	2018 \$	2017 \$
<b>RECONCILIATION OF CASH</b>			
Net Income		(175,633)	200,802
Depreciation		335,893	185,426
Movement in Provision for Annual Leave		(7,646)	20,688
Movement in Provision for Long Service Leave		57,511	31,291
Movement in Provision for Workers Compensation		7,582	
Payables		(336,512)	208,478
Provision for Special Grant Funds		(208,459)	(831,073)
Purchase of Office Furniture		-	-
Purchase of Office Equipment		(40,150)	(53,521)
Purchase of Leasehold Improvements		-	-
Purchase of Case Management System - ICT		(213,027)	(449,702)
Prepayments		(1,584)	(1,773)
Receivables		40,377	96,045
		<u>(366,015)</u>	<u>(794,141)</u>
Net Increase in Cash Held		(541,648)	(593,339)
Cash at Beginning of Financial Year		867,618	1,460,957
Cash at End of Financial Year	2	<u>325,970</u>	<u>867,618</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 2018**

#### **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 2018**

#### **NOTE 1: STATEMENT OF ACCOUNTING POLICIES (cont.)**

---

**(e) Leases**

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

**(f) Goods and Services Tax (GST)**

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

**(g) Income Tax**

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

**(h) Trade and Other Payables**

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

## LEGAL PROFESSION CONDUCT COMMISSIONER

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2018

#### NOTE 2: CASH

	2018	2017
	\$	\$
Cash on Hand	300	300
Cash at Bank	6,199	944
Access Saver	69,471	616,374
Term Deposits	250,000	250,000
	<u>325,970</u>	<u>867,618</u>

#### NOTE 3: RECEIVABLES

	2018	2017
	\$	\$
GST Refundable	43,385	77,764
Sundry Debtors	-	6,000
	<u>43,385</u>	<u>83,764</u>

#### NOTE 4: PREPAYMENTS

	2018	2017
	\$	\$
Prepayments - Rent	<u>39,126</u>	<u>37,543</u>

#### NOTE 5: FIXED ASSETS

	2018	2017
	\$	\$
Office Furniture at cost	80,131	80,131
Less: Accumulated Depreciation	(62,923)	(58,272)
	<u>17,208</u>	<u>21,859</u>
Office Equipment at cost	409,047	368,897
Less: Accumulated Depreciation	(297,226)	(236,334)
	<u>111,821</u>	<u>132,563</u>
Leasehold Improvements at cost	426,624	426,624
Less: Accumulated Depreciation	(137,610)	(90,682)
	<u>289,014</u>	<u>335,942</u>
	<b>2018</b>	<b>2017</b>
	\$	\$
Case Management System - ICT	662,729	449,702
Less: Accumulated Depreciation	(285,335)	(61,914)
	<u>377,394</u>	<u>387,788</u>
Total Fixed Assets	<u>795,437</u>	<u>878,152</u>

**LEGAL PROFESSION CONDUCT COMMISSIONER**

**NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2018**

**NOTE 6: CREDITORS & ACCRUALS**

	2018	2017
	\$	\$
Bank SA Visa	1,531	3,270
PAYG Tax Withholding	52,896	44,574
Accrual	7,725	7,391
Trade Creditors	131,018	474,479
Superannuation	13,462	13,430
	<u>206,632</u>	<u>543,144</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.

	2018	2017
	\$	\$
Workcover Provision	7,582	-
Annual Leave	110,517	118,165
Long Service Leave	348,146	290,635
	<u>466,245</u>	<u>408,800</u>
Number of employees at 30 June 2018 (FTE)	21	21.4

The policy for the provision of long service leave is that the provision is recognised after the employee has provided 5 years of service.

(b) Provision is made for unspent IT grant funds at balance date.

	2018	2017
	\$	\$
Special Grant - IT	-	208,459
	<u>-</u>	<u>208,459</u>

On 21 June 2015, the Attorney General approved special funding of \$840,600 (excluding GST) for the costs associated with the development of new information systems. As of 30 June 2016, \$107,967 had been spent and the remaining \$732,633 had been accrued. In 2017 a further \$524,175 was spent leaving \$208,459 for future costs or to be returned to the Fidelity Fund if unspent. In 2018 the remaining \$208,459 was spent as well as an additional \$4,567 which has been paid from the budget. None of the special funding will therefore be returned to the Fidelity Fund.

	2018	2017
	\$	\$
<u>IT Grant</u>	-	-
Office Equipment - Capitalised	-	449,702
IT Expenditure	-	74,473
Provislon - Special Grant	-	208,459
	<u>-</u>	<u>732,634</u>



## LEGAL PROFESSION CONDUCT COMMISSIONER

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2018

#### NOTE 8: ACCUMULATED FUNDS

	2018	2017
Accumulated surplus at the beginning of the financial period	\$ 706,674	\$ 505,872
Operating surplus/(deficit) for the year	<u>(175,633)</u>	<u>200,802</u>
Accumulated surplus at the end of the financial period	<u>531,041</u>	<u>706,674</u>

#### NOTE 9: SALARIES - PROFESSIONAL

	2018	2017
Salary and wages	\$ 1,656,359	\$ 1,559,113
Salary Sacrifice - Superannuation	<u>235,429</u>	<u>260,888</u>
	<u>1,891,788</u>	<u>1,820,001</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: WorkCover

	2018	2017
Return to Work SA annual premium	\$ 1,067	\$ 1,336
Compensation paid in relation to employee claim	3,601	-
Crown workers compensation provision	<u>7,582</u>	<u>-</u>
	<u>12,250</u>	<u>1,336</u>

The employees of the Commissioner are insured against work place injuries as an agency of the Crown. A provision has been recorded in the 2018 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

	2018	2017
Office cleaning	\$ 28,800	\$ 22,458
2017 and 2018 cleaning cost adjustment	<u>10,891</u>	<u>-</u>
Total Office Cleaning	<u>39,691</u>	<u>22,458</u>
Rent	394,531	379,357
Outgoings	15,948	10,440
Refund of prior year outgoings	<u>(6,303)</u>	<u>(11,647)</u>
	<u>404,176</u>	<u>378,150</u>

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

## LEGAL PROFESSION CONDUCT COMMISSIONER

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2018

#### **NOTE 12: RECOVERIES OF TRIBUNAL COSTS - AMOUNTS OUTSTANDING**

---

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

	2018	2017
	\$	\$
Recoveries recouped and subsequently remitted to the Fidelity Fund	40,500	14,000
	<u>40,500</u>	<u>14,000</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.

	2018	2017
	\$	\$
Fines recouped and subsequently remitted to the Treasurer	22,500	34,000
	<u>22,500</u>	<u>34,000</u>

#### **NOTE 14: LEASING COMMITMENTS**

---

Operating Lease Commitments  
Being for rent of office premises:

	2018	2017
	\$	\$
Payable:		
- not later than one year	410,312	394,531
- later than one year but not later than the lease period	426,725	837,037
	<u>837,037</u>	<u>1,231,568</u>

#### **NOTE 15: ECONOMIC DEPENDENCY**

---

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

## LEGAL PROFESSION CONDUCT COMMISSIONER

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2018

#### NOTE 16: COUNSEL FEES, ASSOCIATED COSTS AND EXTERNAL DELEGATION

---

During the reporting period, the Commissioner incurred \$307,315 on Counsel Fees, \$69,650 on Associated Costs and \$73,732 on External Delegation – a total of \$450,697. That is approximately \$176,000 less this financial year than last. But these expenses are still substantial, and some comments about them are therefore appropriate.

(a) The Commissioner usually (but not always) briefs independent counsel when involved in proceedings in the Tribunal and the Supreme Court. The overall fees paid to counsel in any particular reporting period will depend largely on how many proceedings are heard by the Tribunal and the Supreme Court during that period, as well of course as the complexity of those proceedings.

(b) In the reporting period, the Full Court of the Supreme Court handed down its decision in *Legal Profession Conduct Commissioner v Fittock* [2017] SASCF 169. That decision is referred to in more detail in the Commissioner's Annual Report, but essentially it has had the practical consequence of delaying the hearing of a number of disciplinary proceedings that would otherwise have been heard in the Tribunal in the second half of the reporting period. The expenses incurred in relation to counsel fees in that period were therefore also less than predicted.

(c) In relation to the proceedings in *Fittock*, the Commissioner incurred counsel fees of just over \$30,000, and about \$50,000 on account of Mr Fittock's legal costs. The former amount is reflected in Counsel Fees, and the latter in Associated Costs.

(d) Note 13 to the Financial Statements for the last reporting period referred to the potential impact of some of the restrictions introduced by the Legal Practitioners (Miscellaneous) Amendment Act 2016. Amongst other things, that Act coming into operation meant that no-one could lay charges against the Commissioner in the Tribunal, and vexatious litigants would no longer be able to complain to the Commissioner. It was noted that some complaints and proceedings that would be prevented as a result of that Act coming into operation had been made or commenced before it did so, and so they would still need to be dealt with regardless. During the reporting period, the Commissioner paid:

(i) \$14,175 to counsel in relation to proceedings that commenced with a charge being laid against the Commissioner in the Tribunal; and

(ii) \$3,656.50 to one of the Commissioner's external delegates for dealing with various complaints by a vexatious litigant in relation to which the Commissioner was 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 2018 and its performance for the year ended on that date.
2. At the date of this statement, there are reasonable grounds to believe that the Commissioner will be able to pay its debts as and when they fall due.



.....  
Greg May  
Legal Profession Conduct Commissioner

Dated this <sup>10<sup>th</sup></sup>..... day of October 2018.

**LEGAL PROFESSION CONDUCT COMMISSIONER**

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

We have audited the accompanying financial report, being a special purpose financial report, of the Legal Profession Conduct Commissioner for the financial year ended 30 June 2018, consisting of the Statement of Comprehensive Income, Statement of Financial Position, Statement of Cash Flows, accompanying notes and Statement by the Commissioner.

*Commissioner's Responsibility for the Financial Report*

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

*Auditor's Responsibility*

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

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

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

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

*Independence*

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

**LEGAL PROFESSION CONDUCT COMMISSIONER**

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

*Opinion*

In our opinion, the financial report of the Legal Profession Conduct Commissioner presents fairly, in all material respects, the financial position of the Legal Profession Conduct Commissioner as at 30 June 2018 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**



**J E McKenzie**

Dated this 10 day of October 2018.