

PROFESSIONAL STANDARDS ANNUAL REPORT 2020



PROFESSIONAL
STANDARDS
THE LAW SOCIETY
OF NEW SOUTH WALES

President: R. Harvey
Senior Vice President: J. Warner
Junior Vice President: J. van der Plaats
Treasurer: C. Banks
Immediate Past President: E. Espinosa

Councillors

J. Ball, A. Billias, A. Boog, D. Bricknell, A. Care, A. Cerny, R. Flitcroft,
C. James, Z. Kekeff, I. Luke, R. MacSweeney, S. McAuley, B. McGrath,
T. Stern, J. Tyrrell, M. Warton, J. Windsor, J. Wong

Professional Conduct Committee (as at 30 June 2020)

J. van der Plaats (Councillor and Chairperson)
B. McGrath (Councillor and Deputy Chairperson)
M. Adamo, J. Ball, R. Benzie, A. Biliias, G. Briot, M. Brogan, J. Brooke-
Cowden, J. Dawson, M. Devitt, R. Everingham, J. Fisher, D. Garnsey, J.
Glowrey, K. Hong, J. Howard, A. Iuliano, J. King, J. Lowbeer, I. Luke,
A. Maisano, K. Martin, S. McAuley, D. Miller, K. Osborne, E. Pilowsky,
J. Pope, J. Prowse, A. Sarmed, B. Saunders, A. Tattersall, M. Warton

Ethics Committee (as at 30 June 2020)

H. Macken (Chairperson)
S. Alden, R. Anderson, G. Bates, A. Best, G. Burton, S. Crellin, B.
Haines, R. Hoyles, M. Meares, D. Miller, J. Moller, S. Pallavicini, K.
Rosati, T. Spohr

Costs Committee (as at 30 June 2020)

Hugh Macken (Chair)
S. Akerman, B. Bellach, L. Hamilton, V. Higinbotham, R. Nicholas,
K. Rosati, P. Rosier, T. Russell, T. Stern, P. Sutherland, R. Walker, S. Robey,
C. Hannah and P. Taylor.

Disclosure Committee (as at 30 June 2020)

Z. Kekeff (Councillor and Chairperson)
J. Bacon, S. Baxter, B. Bryant, R. Hughes, N. Kroesche, K. Osborne,
J. Patterson A. Rogers, A. Sarmed, J. Sutton, A. Tattersall.

Chief Executive Officer

M. Tidball (as at 30 June 2020)

Professional Standards Department

Director, Legal Regulation (current): A. Lean

Annual Report Production:

Professional Standards Department

TABLE OF CONTENTS

Introduction	2
President's Message	3
The Professional Standards Department	4
Complaints	6
Litigation and Intervention	13
Compliance and Disclosure	18
Professional Support Ethics Unit	20
Professional Support Legal Costs Unit	22
Professional Support Regulatory Compliance	24
Appendix	27
Table 1 – Number of complaints opened, by type of complaint	28
Table 2 – Number of complaints opened, by type of complaint	29
Table 3 – Complaints opened, by solicitor type	29
Table 4 – Complaints opened, by practice region	30
Table 5 – Number of matters closed, by result	31
Table 6 – Complaints opened and closed within same period	32
Table 7 – Number and type of proceedings instituted at NCAT	33
Table 8 – Active solicitor statistics at 30 June 2019	35
Table 9 – Amounts expended by the public purpose fund and fidelity fund on regulations, 2018/2019	35

INTRODUCTION

The Annual Report of the Professional Standards Department (**Professional Standards**) of the Law Society of New South Wales (**Law Society**) encapsulates the work of the Law Society in performing its statutory functions, including the education and improvement of the standards of the legal profession in New South Wales. Through its co-regulatory role with the New South Wales Legal Services Commissioner (**Commissioner**), the Law Society not only endeavours to uphold high professional standards but is also committed to protecting members of the public.

Utilising its powers under the Legal Profession Uniform Law (NSW) (**Uniform Law**), and subordinate regulatory instruments Professional Standards undertakes a range of regulatory functions in relation to solicitors. Under the co-regulatory regime, Professional Standards works closely with the Commissioner and his Office (**OLSC**) in relation to the complaints process and policy development.

Specifically, Professional Standards:

- conducts preliminary assessments and investigations of complaints, under Chapter 5 of the Uniform Law against solicitors which are referred to it by the Commissioner (pursuant to a delegation issued by the Commissioner) and makes recommendations to the Professional Conduct Committee (**PCC**) on appropriate action;
- assesses disclosures made by solicitors pursuant to the Uniform Law and recommends to the Disclosures Committee or Council, or takes under delegation, appropriate action. This includes the assessment of Automatic Show Cause Events and Designated Show Cause Events;
- advises Council on matters referred to it (Matters) that identify significant 'fitness' issues in relation to Solicitors, including matters arising from Trust Account investigations, matters referred by other areas of the Law Society, or matters referred by external parties. Action taken may include recommending:
 - suspension, variation or cancellation of practicing certificates,
 - the making of complaints to the Commissioner; or
 - recommending external intervention in a law practice.

Professional Standards conducts litigation on behalf of the Council of the Law Society (**Council**) including disciplinary proceedings in the New South Wales Civil and Administrative Tribunal (**NCAT**).

Professional Standards also investigates allegations about persons who engage in legal practice when they are not entitled to do so.

OUR MISSION

The mission of Professional Standards is to:

- Promote and improve Professional Standards
- Regulate solicitors
- Implement the law relating to professional standards and educate legal practitioners
- Protect members of the public
- Provide timely and practical guidance to the profession
- Conduct timely and impartial investigations

OUR VALUES

The values embodied in the work Professional Standards do:

- Integrity
- Personal and professional effectiveness
- Teamwork
- Motivation to achieve

Many of the Chapter 5 complaints or matters dealt with by Professional Standards involve serious and complex conduct issues. These complaints or matters are reported to and considered by either the Law Society's PCC or the Disclosures Committee or the Council. In undertaking its statutory functions, Professional Standards acts fairly and impartially and aims to ensure that all complaints are dealt with as efficiently and expeditiously as possible.

The work of Professional Standards encompasses more than dealing with complaints and matters. It also provides guidance, assistance and education to the legal profession through its Professional Support Unit.

This Annual Report is an overview of the work undertaken by Professional Standards from **1 July 2019 to 30 June 2020 (2019/2020)**. Where relevant, comparative data for the period from **1 July 2018 to 30 June 2019** (the previous reporting period) is provided. The statistical information set out in this report, in conjunction with the Law Society Annual Report, complies with the reporting requirements of the legal profession legislation.

Importantly, this year's Annual Report seeks to better distinguish and separate reporting on Chapter 5 complaints referred under delegation by the OLSC, from the other matters that are dealt with by Professional Standards. In future years, Professional Standards will report separately on these other matters.

PRESIDENT'S MESSAGE



“This year has provided unusual demands upon the legal profession caused by rare and adverse circumstance that have created a most demanding environment for solicitors and the legal profession.”

The Law Society and Professional Standards

As President of the Law Society of New South Wales, I present the 2020 Annual Report of Professional Standards. This report on the role of the Law Society in maintaining professional standards describes our service to the public and leadership of the legal profession in New South Wales.

This year has provided unusual demands upon the legal profession caused by rare and adverse circumstance that have created a most demanding environment for solicitors and the legal profession.

However, even under such difficult circumstances, the high level of professional standards required from the legal profession have been maintained within the framework of regulation and allowed the profession to respond and continue serving the community during such difficult and demanding times.

The Professional Standards of the Law Society has an ongoing commitment to ensuring professional standards are maintained and ensuring public confidence in the integrity of the legal profession. The Law Society strives to maintain an independent, transparent and ongoing commitment to maintaining professional standards.

The Annual Report will address the complex and sensitive work that is undertaken by the Law Society of New South Wales and describes how the organisation is an active participant within the legal profession.

Complaints: Inquiry, investigation and prosecution

The co-regulatory role of the Law Society, in conjunction with the Office of Legal Services Commissioner, continues a commitment to maintaining professional standards in the profession.

As a result of some significant court decisions, the work of the Department has been adversely impacted resulting in delays in handling complaints and conducting investigations. The Law Society has provided additional resources while these issues are worked through and we expect to see significant improvements over coming months. Complaints referred to the Law Society are dealt with thoroughly and where appropriate, disciplinary action is taken.

The future – Our ongoing role of leadership and guidance

The ongoing role of maintaining professional standards and ensuring public confidence in the legal profession is the focus of the activities of the Professional Standards.

The Law Society continues to provide leadership and guidance to the legal profession with active programmes in ethics education, guidance on maintaining professional standards, registration and licensing. This work has been particularly important in supporting the profession to adapt in the COVID-19 environment.

We shall continue to recognize the needs of the legal profession and provide guidance in maintaining professional standards in the areas of costs, ethics and compliance from the Professional Support Unit of the Law Society.

I therefore submit this Annual Report, confident in our role to the profession, service to the community and to maintaining high professional standards in the legal profession.

A handwritten signature in black ink, appearing to read 'R Harvey', with a stylized flourish at the end.

R. Harvey
President



THE PROFESSIONAL STANDARDS DEPARTMENT

The Law Society has a statutory obligation to uphold and improve the professional standards of the legal profession in New South Wales. Professional Standards fulfils this obligation through a number of key activities detailed below.

Key Activities

Management

- Discharge responsibilities and accountabilities in accordance with statutory requirements.
- Develop and meet budget targets.
- Consult with relevant stakeholders in relation to legal profession legislation, including changes and national uniformity.
- Supervise staff to ensure timely and quality outcomes.
- Take appropriate action in relation to aged files.
- Consistently review and update processes and policies to improve the function and operation of Professional Standards.
- Manage complainant and solicitor expectations through education and communication.

Investigations

- Conduct timely and impartial preliminary assessments of complaints and where appropriate, investigations in relation to solicitors, unqualified practitioners and associates of legal practices.
- Prepare reports and make recommendations on conduct and fitness issues to the PCC, the Disclosure Committee and/or the Council
- Attempt to resolve matters.
- Conduct timely and efficient investigations of disclosure matters including the making of recommendations.

Litigation

- Institute and conduct, on behalf of the Council, proceedings before NCAT and the Courts.
- Respond, on behalf of the Council, to various applications made before NCAT and the Courts.
- Provide regular and informative reports to the PCC and the Council concerning litigation matters.

Costs

- Provide assistance and guidance to solicitors in relation to costs issues and ensure solicitors understand their obligations and rights pursuant to the legal profession legislation.
- Provide assistance in settlement of costs disputes.
- Prepare matters for the Law Society's Costs Committee (**Costs Committee**).
- Address policy issues associated with the legal profession legislation, including the effectiveness of the Costs Assessment Scheme and issues associated with legal costs.
- Consult in relation to cost provisions of the legal profession legislation.
- Educate the legal profession.
- Recover costs from any successful disciplinary action taken against solicitors.

Ethics

- Provide prompt guidance to solicitors consistent with established ethical and legal principles.
- Research and keep abreast of relevant ethical and legal developments.
- Submit timely and informative reports to the Law Society's Ethics Committee (**Ethics Committee**).
- Maintain accurate records of enquiries.
- Provide legal ethics education through various means, including the publication of articles in the *Law Society Journal* and addresses to the profession and interested groups.

Regulatory Compliance

- Assist solicitors in dealing with issues of a regulatory nature required for compliance with the legal profession legislation.
- Educate solicitors in relation to changes introduced by new regulatory initiatives, including preparation of online material, factsheets and toolkits.
- Undertake research into appropriate compliance standards.
- Review and advise on practice structures permitted under the legal profession legislation.

Administration

- Maintain accurate and timely information stored on the Law Society's databases.
- Provide administrative management and support to ensure the efficient running of Professional Standards, including paralegal support, agenda preparation for the PCC and the Law Society's Disclosure Committee, high level document and file management and financial records administration.
- Provide administrative support to the Director Legal Regulation, as well as the solicitors within Professional Standards.

Disclosure

- Investigate show cause events and other disclosures.
- Prepare matters for the Disclosure Committee.
- Refer appropriate matters to the Council.

Work Undertaken by Professional Standards

■ 2019/2020 ■ 2018/2019

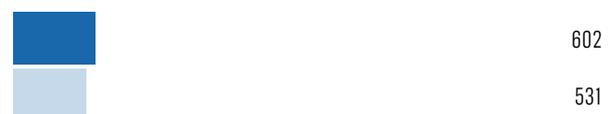
Regulatory Compliance Enquiries



Ethics Enquiries



Cost Enquiries



Complaint Files Opened



Disclosure Files Opened



Litigation/Intervention



Unqualified Practitioner Enquiries





COMPLAINTS

The complaints process

A complaint may be made by any person or body, including by either the Commissioner or by the Law Society itself.

Under Chapter 5, all complaints must be made to or by the Commissioner who may, among other things, refer the complaint to the Council of the Law Society for assessment, and if appropriate investigation pursuant to a delegation issued by the Commissioner. The Law Society may make complaints to the Commissioner (discussed below).

Professional Standards currently deals with complaints made both before and after the commencement of the (NSW) (**Uniform Law**) on 1 July 2015. Complaints made on or after 1 July 2015 are dealt with in accordance with Chapter 5 of the Uniform Law. Complaints made prior to 1 July 2015 continue to be dealt with in accordance with Chapter 3 of the *Legal Profession Act 2004* (NSW) (now repealed).

Professional Standards has certain statutory obligations in relation to its handling of complaints, including ensuring that procedural fairness is afforded and that complaints are dealt with as efficiently and expeditiously as possible. Professional Standards ensures that all complaints are dealt with in an impartial and fair manner.

Professional Standards deals predominantly with those complaints which are provisionally identified, upon referral by the Commissioner, as 'disciplinary matters'. A disciplinary matter relates to conduct of a solicitor or law practice that would, if the conduct concerned is established, amount to professional misconduct or unsatisfactory professional conduct.

In dealing with disciplinary matters, Professional Standards will undertake a preliminary assessment of the complaint. Following that preliminary assessment, a determination may be made to close part or all of the complaint or to proceed to an investigation of it pursuant to the Uniform Law.

Professional Standards has prepared a brochure titled "[Complaints Process Information](#)" which outlines the

complaints process, including the Law Society's role in dealing with complaints. A copy of this brochure is routinely sent to complainants and solicitors for their assistance and information and is also readily available on the Law Society's website. The brochure was updated and reissued early in 2020.

Referrals from the Legal Services Commissioner

In 2019/2020:

- the Commissioner received a total of 2,705 written complaints about solicitors, an increase of 4.52% from the previous reporting period.
- Professional Standards was referred a total of 450 complaints, 10 of which were complaints made by the Law Society.
- 290 complaints were closed by either PCC or Professional Standards during the year.
- At 30 June 2020, 770 Chapter 5 complaints remained open.

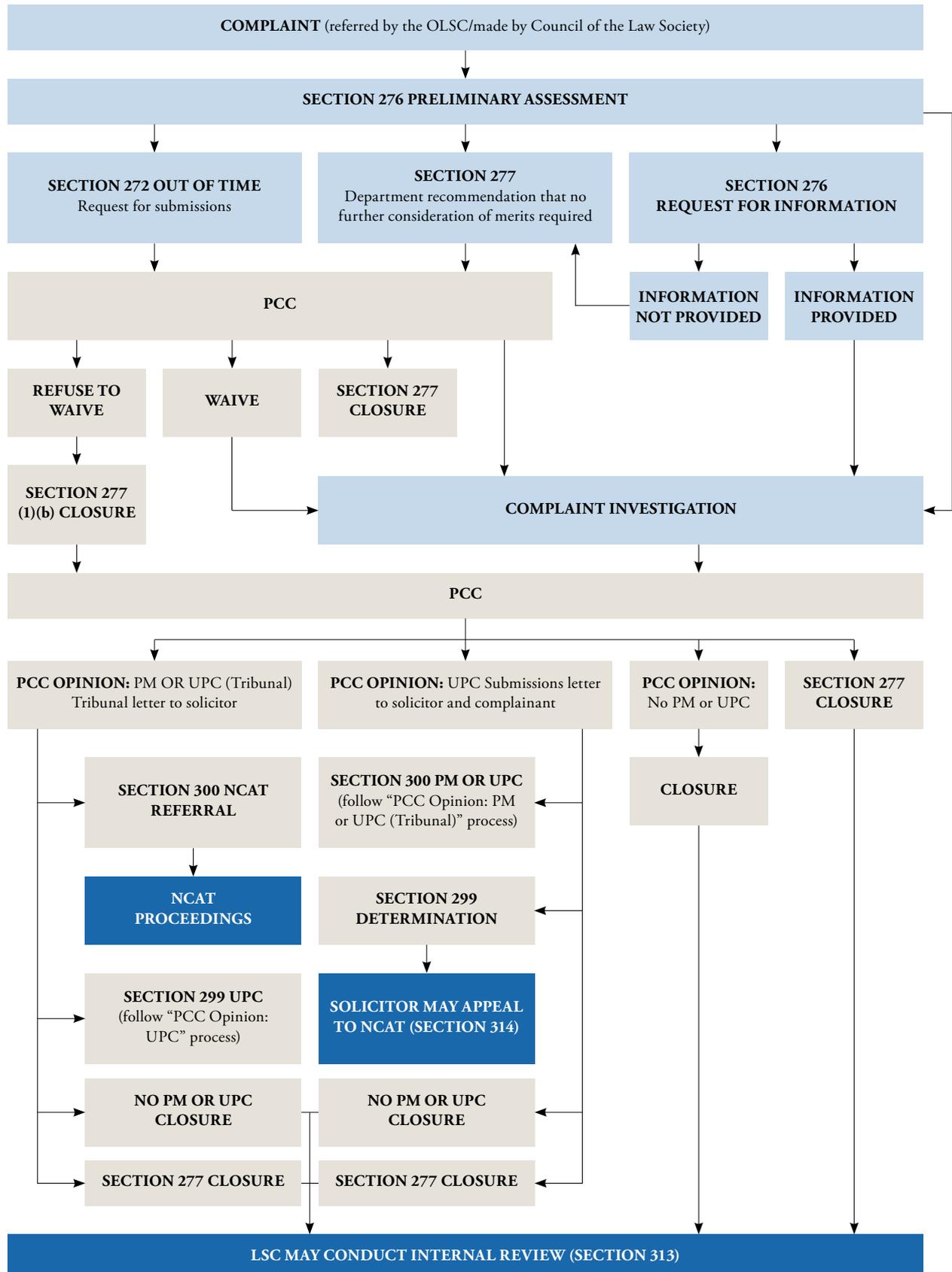
Complaints made by the Law Society

As noted above, the Law Society may, pursuant to section 266 of the Uniform Law, make its own complaints to the Commissioner about the conduct of solicitors.

Generally speaking, Complaints made by the Law Society arise from the following matters:

- Matters referred to Professional Standards by the Law Society's Trust Account Department, usually involving a solicitor's mishandling of trust money or involving a solicitor's failure to comply with trust accounting requirements.
- Matters referred to Professional Standards by the Law Society's Registry, usually involving practising certificate issues.
- Matters referred to Professional Standards by the Disclosure Committee, usually involving misconduct arising outside the practise of law.
- Matters referred to Professional Standards by judicial officers or court registrars usually involving conduct of a solicitor arising in the course of proceedings before a Court or Tribunal.

Complaints investigation process



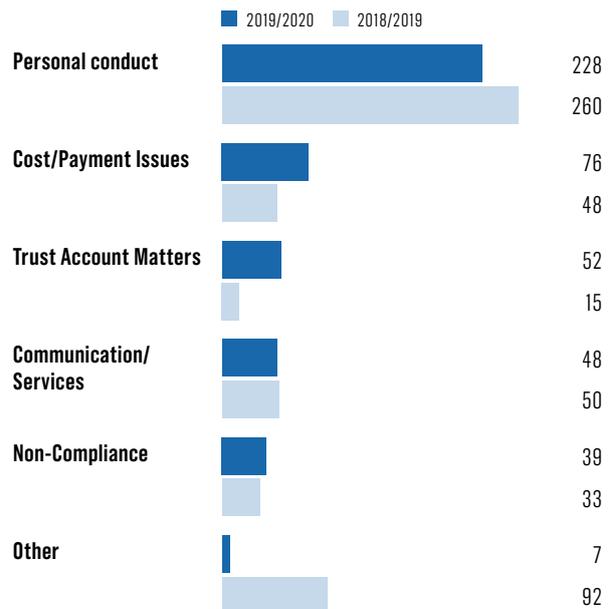
CATEGORIES OF COMPLAINTS

The following section provides a snapshot summary of the type and nature of complaints opened by Professional Standards in 2019/2020.

Conduct most complained about

In 2019/2020:

- “Personal Conduct” (including, for example, unethical conduct, misleading behaviour, borrowing from client and negligence) continued to be the major issue complained about, making up 228 of the total complaints.
- “Communication/Services” issues (including, for example, acting contrary to instructions, failing to carry out instructions and no communication) accounted for 48 of the total complaints.
- “Costs/Payment Issues” (including, for example, a failure to pay a third party, overcharging, a failure to provide a detailed account or costs disclosure) accounted for 76 of the total complaints.
- “Non-compliance” issues (including, for example, the failure to comply with an undertaking and failing to comply with the legal profession legislation) accounted for 39 of the total complaints.
- “Trust Account Matters” (including, for example, a breach of the legal profession legislation in relation to trust money, failure to account and misappropriation) accounted for 52 of the total complaints.



AREAS OF LAW WITH THE MOST COMPLAINTS

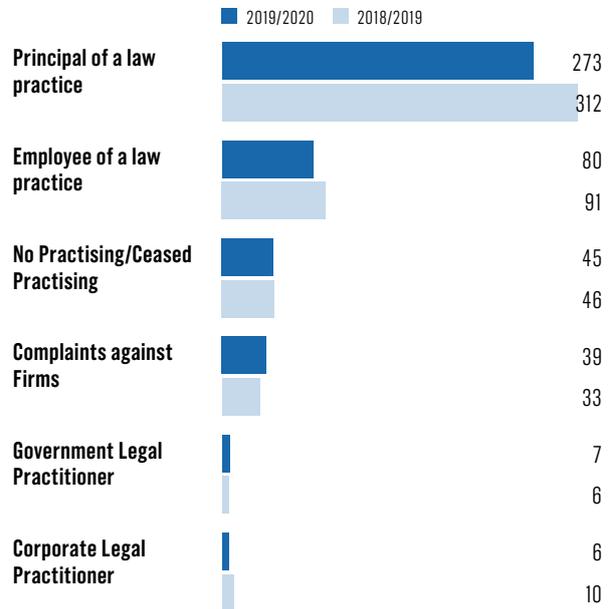
Civil Litigation	100
No Area of Practice	65
Commercial Law	63
Conveyancing/Real Property	59
Advocacy	37
Administrative Law	35
Criminal Law	24
Banking/Finance	19
Family Law	18
Commercial Litigation	11
Personal Injury	6
Employment/Industrial Law	3
Corporate Law	2
Immigration Law	2
Other	2
Wills & Estates	2
Litigation-General	1
Taxation	1

Complaints by solicitor type

In 2019/2020:

- 273 complaints were made against principals of a law practice (comprising 60.67% of the complaints made).
- 80 complaints were made against employees of a law practice (comprising 17.78% of the complaints made).
- From a geographical perspective, 48.44% of complaints made related to solicitors practising in suburban Sydney, 30.67% related to solicitors practising in Sydney’s CBD, 2.89% were interstate and 18% were made against solicitors practising in rural New South Wales.
- 29.33% of complaints concerned female solicitors and by comparison, 70.67% of complaints were made against male.

Note: Percentages quoted are based on all complaints received but one solicitor may generate several complaints, either separately or in the same matter.

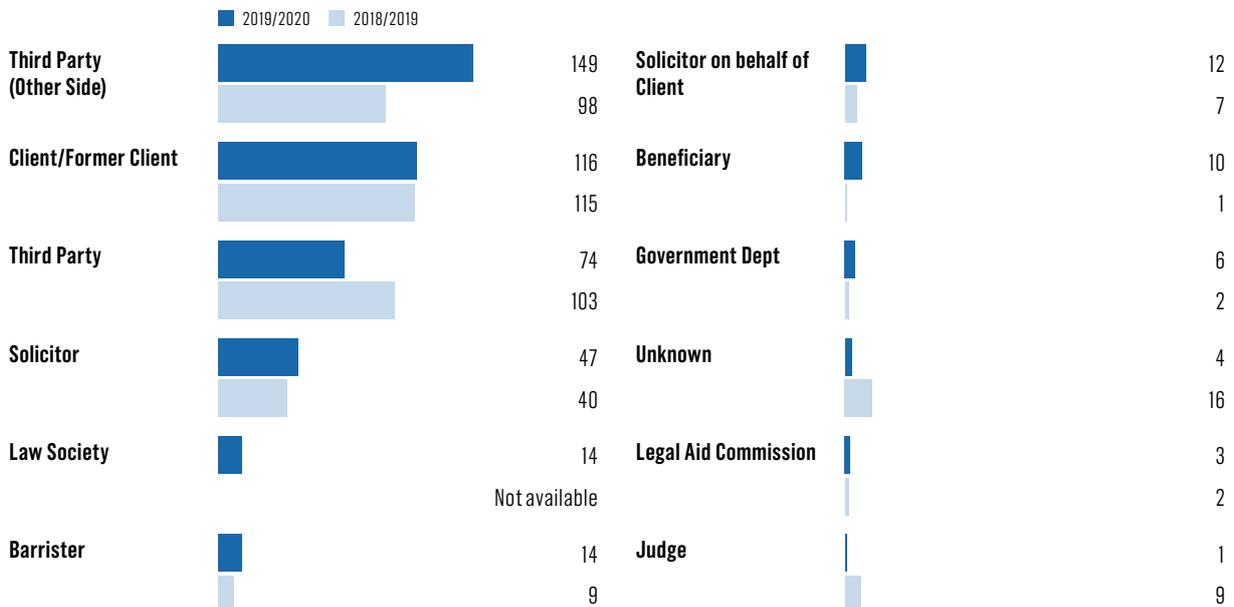


Categories of Complainants

In 2019/2020:

- The highest group of complainants were made by the opposing side of the client(s) or former client(s) which accounted for 33.11% of the total complaints.
- Complaints made by the client(s) or former client(s) of a solicitor or law practice and accounted for 25.77% of the total complaints.

- Complaints made by a solicitor accounted for 10.4% of the total complaints.
- Complaints made by barristers accounted for 3.1% of the total complaints. These complaints often related to the non-payment of their outstanding fees.



Investigation and finalisation of Complaints

In 2019/2020:

- Professional Standards closed 290 complaints.
- 25.17% of complaints were closed as “misconceived/lacking in substance”
- 14.13% of complaints were withdrawn.
- 3.79% of complaints were referred back to the Office of the Legal Services Commissioner.

It is noted that closures were significantly impacted this year as a result of the decision in *Council of the Law Society of NSW v DXW [2019] NSWCATOD 101* which affected delegations to the Law Society from the Legal Services Commissioner. From the date of that decision in June 2019, until remedial legislation was passed by the NSW Parliament in November 2019 and new delegations were made in January 2020 by the Council, matters were not able to be dealt with by Professional Standards or PCC.

Whilst this year’s report only records the closure and dismissal of complaints, a new chapter will be included in future years dealing with other matters considered by Professional Standards.

COMPLAINTS CLOSED UNDER THE UNIFORM LAW		
201	Misconceived/lacking in substance - S277(1)(A)	73
209	No further investigation Required (except as a consumer issue) - S277(1)(H)	47
200	Complaint withdrawn	41
204	Failure/inadequate response to request for info - S277(1)(C)	39
239	Closure - No UPC/PM	13
211	Public interest closure - S277(1)(J)	12
235	Referred back to LSC	11
224	PCC decision - Reprimand - S299(1)(B)	9
238	Closed Enquiry	9
206	Complaint better dealt with by law enforcement/investigatory body - S277(1)(E)	8
207	DLRA Made recommendation under section 82(4) - S277(1)(F)	8
202	Time limit not waived under S272(1) - S277(1)(B)	6
230	PCC decision - Initiate Tribunal proceedings - S300(1)	6
210	No Power to Investigate Complaint - S277(1)(I)	1
223	PCC decision - Caution - S299(1)(A)	1
227	PCC decision - Order requiring training, education, counselling or supervision - S299(1)(E)	1
COMPLAINTS CLOSED UNDER LEGAL PROFESSION ACT 2004		
138	s.511 Summary Dismissal	1
127	Dismissed 155A	2
35	PCC Decision - Reprimand	1
38	Dismissal No UPC/PM	1

Decisions of the Professional Conduct Committee

The Council delegates certain functions under Chapter 5 of the Uniform Law to the PCC.

The PCC is one of the Law Society’s larger committees and plays an essential role in relation to the regulatory functions of the Law Society. In 2019/2020, there were 33 members of the PCC, comprising 6 Councillors of the Law Society, 22 solicitors, 1 Australian Lawyer and 7 lay members.

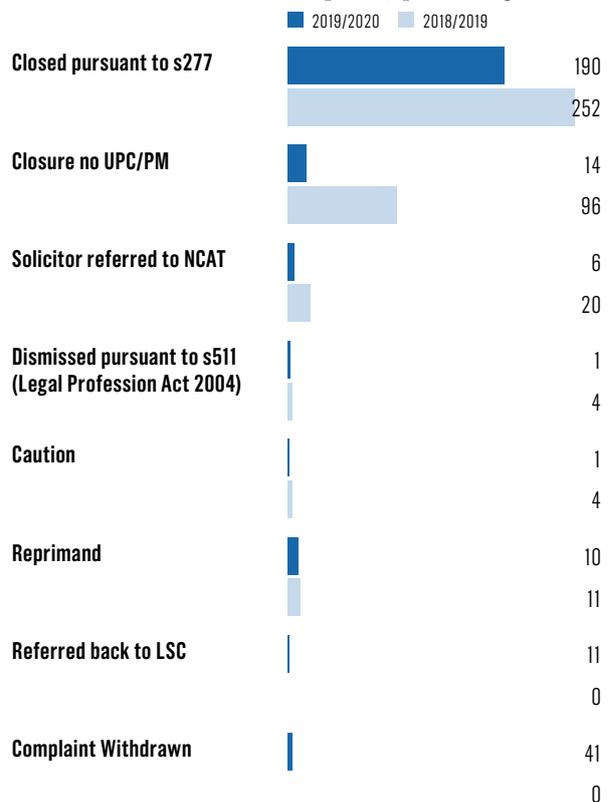
Members of the PCC contribute many hours on a voluntary basis. The PCC is reflective of a broad range of legal expertise, insights and experience. The PCC generally meets fortnightly to consider the reports and recommendations of Professional Standards in relation to complaints.

Following its consideration of a complaint, the PCC may:

- Close the complaint.
- Find that the solicitor has engaged in unsatisfactory professional conduct and order that the solicitor:
 - be cautioned;
 - be reprimanded;
 - apologise to the complainant;
 - re-do the work the subject of the complaint at no cost or waive or reduce the fees for the work;
 - undertake education, training, counselling or be supervised;
 - pay a fine of a specified amount not exceeding \$25,000 to the Public Purpose Fund; or recommend a specified condition be imposed on the solicitor’s practising certificate.
- Initiate proceedings in NCAT against the solicitor.

In 2019/2020:

- Of the 290 matters finalised by Professional Standards, 229 comprised of complaints which had been referred to the PCC.
- Of the complaints closed by the PCC or Professional Standards:
 - 65.51% were closed for one or more of the grounds provided under section 277 of the Uniform Law including that the complaint was misconceived or lacking in substance (277(1)(a)); the complainant had not responded, or responded inadequately to a request for further information (277(1)(c)); the subject matter of the complaint had already been investigated (277(1)(d)); or that it was otherwise in the public interest to close the complaint (for example, in circumstances where the solicitor’s name may already have been removed from the roll) (277(1)(j)).
 - 11 determinations of unsatisfactory professional misconduct were made by the PCC, and 1 caution and 10 reprimands were consequently ordered by the PCC.
 - 6 matters were referred to NCAT for the commencement of disciplinary proceedings.



Complaints Management

The staff practices and procedures of Professional Standards are regularly reviewed and updated to ensure complaints are handled as efficiently and expeditiously as possible.

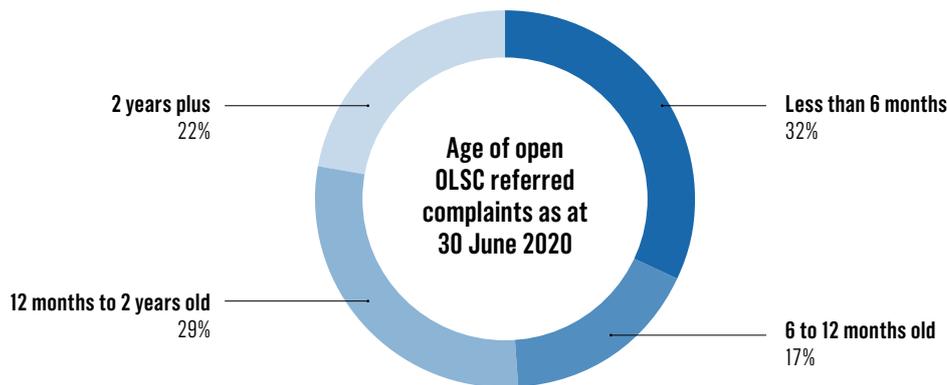
Professional Standards also liaises with the Commissioner concerning the status and progress of all complaints referred to the Law Society. During the reporting period, Professional Standards has implemented a new team structure and has commenced a review of its procedures.

A factor which may often impact the progress of a complaint investigation is where the subject matter of the complaint is also the subject of a court proceeding, an application (such as, costs assessment) or investigation by another body. In those circumstances, the Law Society will generally defer its consideration of the complaint until the court proceeding, application or investigation is finalised.

In previous years Annual Reports, the Department has reported against KPIs relating to turn-around times. That data reported against both OLSC referred complaints and matters.

With the separation of the reporting of OLSC referred complaints from the other matters dealt with by the Department, the Department is reviewing these KPIs going forward and from next year a new metric will apply.

In the interim, the following data relating to turn around times is reported. It is noted that the age profile of complaints has been affected in 2019/2020 by the impact of the DXW decision. Strategies are in place, including increased resources, to deal with this backlog.



Reviews by the New South Wales Legal Services Commissioner

The decisions and determinations of the PCC are subject to review. The avenue of review that may be available under the legal profession legislation will depend upon the type of decision or determination made. For example, in relation to a complaint which has been closed by the PCC under section 277 of the Uniform Law, an application for review must be made to the Commissioner within 30 days of the date of notice of the decision.

The Commissioner has the absolute discretion to conduct an internal review of that decision if he considers it appropriate to do so.

Reviews conducted by the Commissioner are one of the criteria used by Professional Standards to measure its key complaint handling objectives.

In 2019/2020, the Commissioner received 11 requests for reviews. The Commissioner referred 1 complaint back to the Law Society for further investigation. 6 Complaints were closed, and the original decision was upheld. 4 complaints remain under consideration by the Commissioner as of 30 June 2020.



LITIGATION AND INTERVENTION

New South Wales Civil and Administrative Tribunal

If the PCC is of the opinion that the alleged conduct of a solicitor may amount to professional misconduct, it will decide to initiate and prosecute proceedings in NCAT in relation to that conduct. It may also decide to initiate proceedings where it is of the opinion that the alleged conduct may amount to unsatisfactory professional conduct which would be better dealt with by the NCAT.

Proceedings are commenced in NCAT on behalf of the Council by the filing of an Application for Disciplinary Findings and Orders. Applications must be made within 6 months of the date of the PCC's decision.

Many of the matters referred to NCAT are complex and quite often involve multiple issues of conduct. The table on the next page sets out the types of conduct considered by NCAT and orders it made in relation to that conduct.

In 2019/2020:

- 23 proceedings were commenced in NCAT. Of those 15 were matters which were required to be re-filed because of jurisdictional issues.
- Of the matters which were finalised (excluding those affected by appeals):
 - 15 were dismissed on jurisdictional basis
 - 6 practitioners were found to have been guilty of professional misconduct
 - 1 practitioner was removed from the Roll
 - 4 reprimands were issued to practitioners
 - 3 practitioners had restrictions placed on their Practising Certificate
 - 2 fines were imposed on practitioners
 - 6 practitioners were ordered to pay costs

NCAT Orders for reprimands, fines or removals from the Roll

	REPRIMAND	FINE	REMOVAL FROM THE ROLL/ RECOMMENDATION FOR REMOVAL
2019/2020	4	2	1
2018/2019	23	19	8
2017/2018	13	7	8
2016/2017	8	5	11
2015/2016	15	3	9
2014/2015	4	3	6
2013/2014	8	4	4

NAME OF SOLICITOR	CONDUCT	ORDERS MADE	DATE OF ORDERS
Stephen Jiao	<ul style="list-style-type: none"> • Contravention of condition on Practising Certificate • Failure to comply with undertaking to Law Society 	<ul style="list-style-type: none"> • Finding of professional misconduct • Reprimand • Fine • Costs 	15 June 2020 (application by Solicitor to vary orders was dismissed by consent following completion of the reporting period)
Simon Konstantinidis	Initial decision of NCAT of 20 February 2020 was overturned on appeal after the reporting period.		
Andrew Graham Stuart	<ul style="list-style-type: none"> • Misappropriation • Contraventions of trust account provisions • Contravention of Revised Professional Conduct & Practice Rules 1995 • Contravention of Supreme Court Order • Unauthorised payments from Estate funds 	<ul style="list-style-type: none"> • Finding of professional misconduct • Solicitor's name removed from the Roll • Costs 	5 July 2019
Erica Brooke Taylor	Decision of Tribunal on 13 May 2020 on an interlocutory matter overturned on jurisdictional grounds following the reporting period		
Myroslava Zhukovska	<p>See: Council of the Law Society of NSW v Zhukovska [2019] NSWCATOD 66</p> <p>See Orders subsequently made by the Court of Appeal - <i>Council of the Law Society of New South Wales v Zhukovska [2020] NSWCA 163</i></p>	(consequential orders) <ul style="list-style-type: none"> • Suspension • Fine • Reprimand • Costs 	5 November 2019 (4 August 2020)

Court Matters

Supreme Court Matters

The following matters were heard in the 2019/2020 year by the Supreme Court of New South Wales (including the Court of Appeal and Court of Criminal Appeal):

1. Council of the Law Society v O'Brien [2019] NSWSC 1879– Interpretation of prior orders.
2. Council of the Law Society of New South Wales v Jafari [2020] NSWCA 53– Removal of Solicitor's name from Roll.
3. Council of the Law Society of New South Wales v XX [2019] NSWSC 874
4. Council of the Law Society of New South Wales v Yoon [2020] NSWCA 141– Removal of Solicitor's name from Roll.
5. Council of the Law Society of New South Wales v Michael Arthur Hislop [2019] NSWCA 302– Removal of Solicitor's name from Roll.
6. Albert Judah v Law Society of New South Wales – SCNSW Case No. 2019/361925 - Proceedings commenced by practitioner seeking various orders in relation to tribunal and other matters.

Unqualified Practice

The Law Society's role, in addition to protecting the public against the inappropriate conduct of solicitors, includes investigating queries about entities that may have breached sections 10(1) and/or 11 of the Uniform Law.

Section 10(1) of the Uniform Law prohibits entities from engaging in legal practice in New South Wales when they are not qualified to do so. Section 11(1) of the Uniform Law prohibits entities from holding themselves out as entitled to engage in legal practice.

In dealing with queries about potential breaches of sections 10(1) and 11 of the Uniform Law, Professional Standards will usually, in the first instance, attempt to resolve matters without commencing legal proceedings by liaising with the entity the subject of the query.

In 2019/20:

- 97 enquiries about unqualified practice were dealt with, an increase from the 40 enquiries in the previous reporting period.
- No court proceedings were instituted.

97 enquiries about unqualified practice were dealt with, an increase from the 40 enquiries in the previous reporting period.

Disqualification of Individuals

The Law Society may apply to the NCAT for an order, under section 119 of the Uniform Law, disqualifying an individual (other than a legal practitioner) for the purposes of the Uniform Law.

Grounds for disqualification include:

- the individual has been convicted of a serious offence;
- the individual is not a fit and proper person to be employed or paid in connection with the practice of law, or to be involved in the management of a law practice;
- the individual was formerly an Australian legal practitioner and has been guilty of conduct that constituted unsatisfactory professional conduct or professional misconduct; or
- the individual has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct.

External Intervention

In certain circumstances, the Council may determine to initiate external intervention in relation to a law practice. The circumstances, where external intervention may be warranted are outlined in section 326 of the Uniform Law and include:

- when a solicitor ceases to hold a practising certificate;
- where a law practice or an unincorporated legal practice has been wound up or dissolved;
- where the Law Society believes on reasonable grounds that a law practice is not dealing with trust money adequately or where there has been a serious irregularity in relation to trust money;
- where a solicitor is in prison;
- where a solicitor has failed to comply with any requirement of an investigator or external examiner appointed under the legal profession legislation; or
- where a solicitor ceases to be engaged in legal practice without making provision for properly dealing with trust money or for properly winding up the affairs of the law practice.

The particular facts and circumstances of each matter will determine the form of any external intervention. In addition, the facts and circumstances may warrant the appointment, by the Council, of an external investigator.

Managers

The Council may resolve to appoint a manager to a law practice under section 334 of the Uniform Law. Managers are generally appointed to ensure the orderly conduct of the matters of a law practice, for example, upon the death or ill health of a sole practitioner or where a receiver's powers of collecting or tracing trust property are not required. A manager must hold Principal of a Law Practice practising certificate and will take over all of the duties and responsibilities of a solicitor's law practice and dispose of the law practice.

In 2019/2020, the Council appointed a total of 25 managers.

Supervisors

The Council may resolve to appoint a supervisor to a law practice pursuant to section 329 of the Uniform Law. A supervisor of trust money of a law practice has the powers and duties of a law practice in relation to all trust money, that is, to receive trust money into a law practice, to open and close trust accounts and to make payments to those parties entitled.

In 2019/2020, the Council appointed a total of 7 supervisors.

Receivers

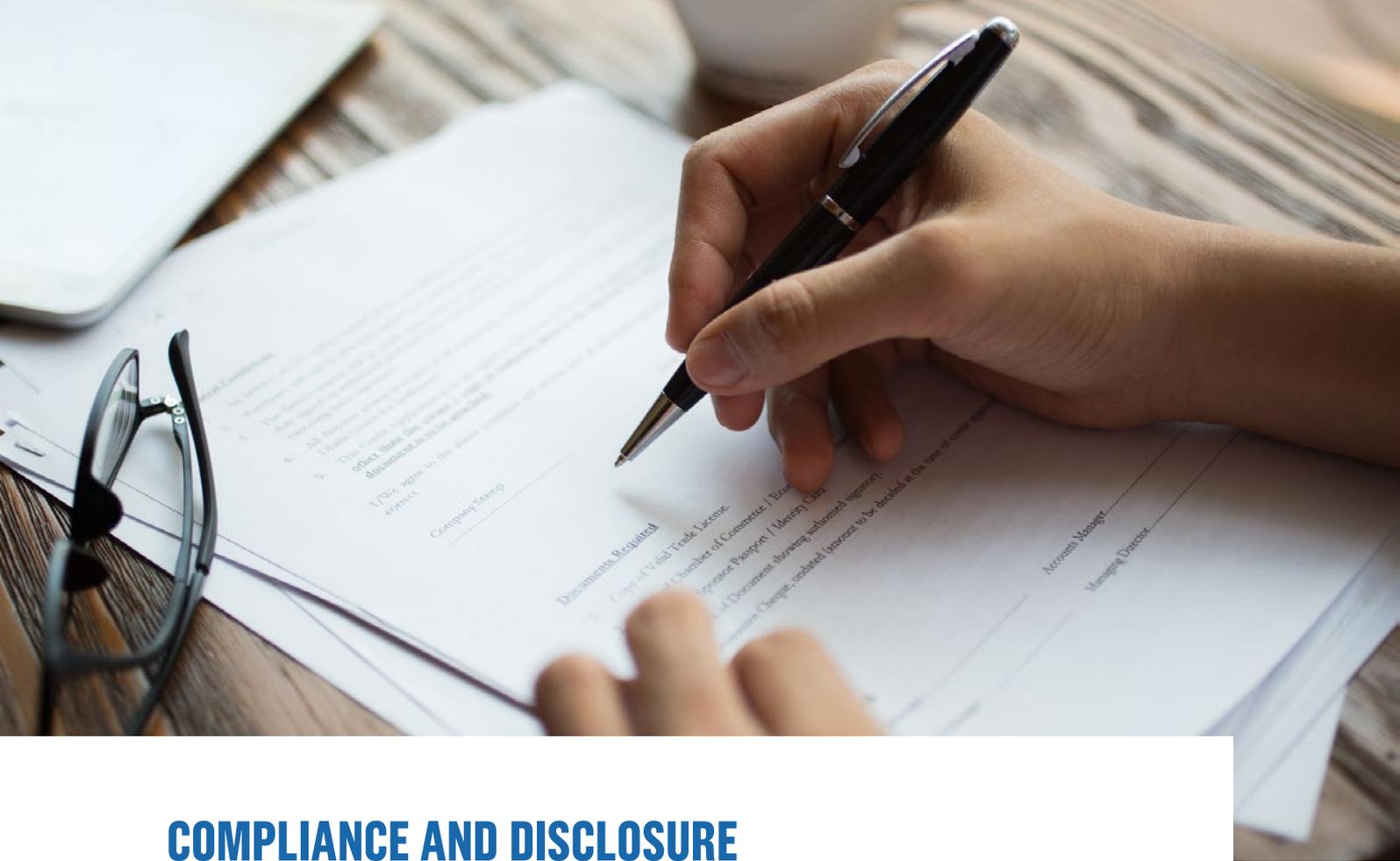
The Council may resolve to apply to the Supreme Court of New South Wales for the appointment of a receiver to a law practice pursuant to the grounds set out in the Uniform Law, including where a solicitor has ceased to hold a practising certificate, is mentally or physically infirm, has abandoned his or her practice, or has died, or when a client cannot obtain trust property. A receiver's powers, as outlined in the Uniform Law, are extensive and include taking possession of all trust property of the law practice.

In 2019/2020, the Court appointed a total of 0 receivers.

Investigators

The Council may also resolve to appoint an external investigator if there is a suspicion of improper conduct or irregularity in relation to a solicitor's law practice or general affairs. The external investigator may be either a solicitor or an accountant and is tasked to examine the affairs of the solicitor or law practice generally or in relation to a specific matter.

In 2019/2020, the Council appointed a total of 2 external investigators.



COMPLIANCE AND DISCLOSURE

The legal profession legislation requires applicants for, and holders of, practising certificates to disclose certain matters to the Law Society.

Relevantly, these are:

1. “Automatic show cause events” - Part 3.5 of the Uniform Law sets out certain “automatic show cause events” that solicitors must disclose to the Law Society. Such “automatic show cause events” are defined in section 86 of the Uniform Law and include a bankruptcy event, conviction for a serious offence (indictable offences) or a tax offence
2. Matters involving section 51 of the Uniform Law – such matters include a charge or conviction for a serious offence, a tax offence or an offence specified in rule 15 of the *Legal Profession Uniform General Rules 2015* (NSW) (**Rules**), a bankruptcy related event or disciplinary proceedings brought against a solicitor in a foreign country.

3. Matters referred to in rule 13 of the Rules - At the time a solicitor renews or applies for a practising certificate, consideration must be given to the disclosure of each of the matters referred to in rule 13(1) of the Rules for the Law Society to determine whether or not s/he is a fit and proper person to hold a practising certificate.

Applicants for a practising certificate are also required to disclose certain preadmission events such as convictions and other incidents affecting their fitness to practise pursuant to section 93 of the Uniform Law.

The Law Society expects that all relevant persons engaging, or seeking to engage, in legal practice in New South Wales are aware of and comply with the mandatory disclosure obligations.

The Law Society expects that all relevant persons engaging, or seeking to engage, in legal practice in New South Wales are aware of and comply with the mandatory disclosure obligations.

Disclosure Committee

The Disclosure Committee, under delegation of the Council, deals with the matters that solicitors are required to disclose to the Law Society. The Disclosure Committee does not have the power to make a determination adversely affecting a solicitor’s right to practice. Any such determination is reserved for the Council.

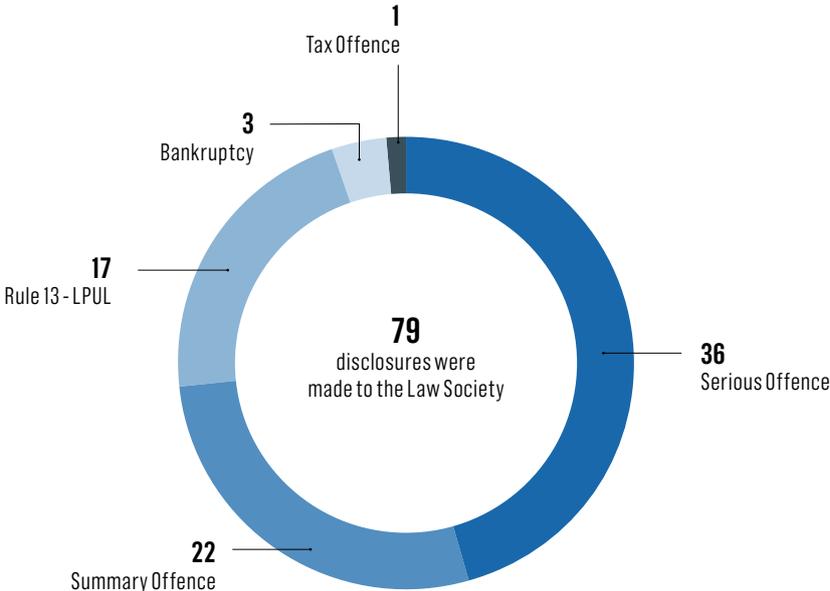
In 2019/2020, the Disclosure Committee comprised 1 Councillor of the Law Society, 10 solicitors and 1 lay member. It met 5 times to make determinations on the reports tabled before it.

In 2019/2020:

- A total of 79 disclosures were made to the Law Society
- Of the 79 disclosures received:
 - 36 involved serious offences including: Aggravated break and enter, affray, larceny, destroying and damaging property, indecent assault, common assault, stalking and intimidating, assaulting police and resisting/ hindering arrest, breaching domestic apprehended violence orders, recklessly dealing

with the proceeds of crime, accessory after the fact to murder, child pornography offences, obtaining financial advantage by deception, fraud, conspiracy to defraud, breaching security regulation and participating in criminal group.

- 22 involved Summary Offences consisting predominantly of: Driving offences (such as drink-driving, negligent driving, driving without a licence, traffic infringements and parking infringements), possession of prohibited drugs, academic misconduct, Centrelink overpayments, disorderly behavior, failure to attend jury duty, failure to vote, failure to leave licensed premises, drinking in public, public nuisance, jaywalking, possessing a knife in public, failure to submit to breath test, behaving in an offensive manner, breaching biotechnology regulations, breaching customs regulations and using false identification
- 3 disclosures were notifications of Bankruptcy and 1 Tax Office





PROFESSIONAL SUPPORT ETHICS UNIT

The Ethics Unit of the Professional Support Unit (**Ethics Unit**) and the Law Society’s Ethics Committee provide professional assistance and specialist services to the legal profession and help on a wide range of topics.

These activities have resulted in the maintenance and enhancing of ethical and professional standards within the legal profession.

Overview

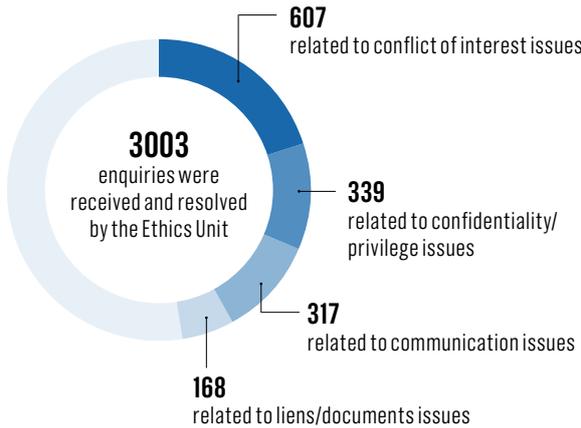
During 2019/20 the legal profession relied heavily upon the services of the Ethics department with the need for timely and practical information and guidance, assisting the profession to maintain ethical practices and avoid inappropriate conduct.

The ethics department responded to all questions from the profession by telephone, in writing or by personal attendance. Additional matters were referred to the Ethics Committee of the Law Society when requested by enquiring solicitors.

The Ethics Unit received and resolved 3003 enquiries, which reflects the ongoing need for the services provided. The number of enquiries remains steady from the previous reporting period. Of these 3003 enquiries:

- 607 (20.21%) related to conflict of interest issues
- 339 (11.28%) related to confidentiality/privilege issues
- 317 (10.55%) related to communication issues
- 168 (5.59%) related to liens/documents issues

The traditional services were maintained throughout the year by telephone enquiry line, an ethics e-mail in-box and Audio-Visual links to solicitors. Requests for further review and guidance were referred to the ethics committee of the Law Society.



Additional practice guidelines were provided on remote witnessing, confidentiality and working from home through web-based information. This was in conjunction with maintaining an electronic newsletter by “Monday Briefs” and a regular ethics column in the NSW Law Society Journal.

The Ethics Committee and its Functions

The Ethics Committee formally obtains its role and function from the directives of the Council of the Law Society, including the general delegation of power and discretion of the Ethics Committee. The activity of the committee is also subject to review and scrutiny by the Council each year to maintain and promote the high ethical standards of the legal profession.

The members of the ethics committee provide a diverse pool of practical skills, drawing on its membership of practitioners from government departments, private practice (large, medium and small) and in-house departments. This provides a broad and comprehensive base of experience of specialist expert guidance on ethical issues for solicitors.

There are currently 15 members of the legal profession on the Committee.

The ethics committee is supported by the Ethics department (part of the Professional Support Unit of the Law Society) with administrative and legal resources.

Regular meetings of the Ethics Committee are held each month which reviews a broad range of ethical matters affecting the legal profession.

The year in review – service and guidance

The 2019/20 year has presented special problems for the legal profession caused by adverse circumstance affecting all parts of the community, including the State’s bushfires and COVID19. The legal profession has been greatly affected and has had to quickly adapt to these difficult and unusual circumstance to continue serving the community. The ethics department has responded to these circumstances by reorganizing the delivery and expanding the level of professional support services offered by the NSW Law Society to the legal profession throughout the 2019/20 year.

This has required increased levels of assistance by the ethics department and the ethics committee to the legal profession to address the special needs of solicitors who have maintained providing legal services during this challenging time.

During these times of emergency and crisis the legal profession was subjected to extreme pressure to maintain professional services and the need for professional ethics guidance was essential.

Highlights of 2019/2020

- Because of the changed circumstances cause by bush fires and the COVID-19 pandemic, there had to be a rapid change and implementation of new methods of providing specialist services on ethics, including guidance, education programmes on ethics for the legal profession and for accredited specialists in training.

ETHICS ENQUIRIES	
Miscellaneous	771
Conflict of Interest	607
Confidentiality/Privilege	339
Client’s Instructions	328
Communications	317
Lien/Documents	168
Costs	88
Termination of Retainer	88
Trust Monies	67
Client Lacking Capacity	65
Assist Fraudulent Activity	59
Undertakings	31
Advertising	22
Disclosure	17
Misleading	10
Sol Leaving Firm Contacting Clients	8
Sol Material Witness	8
Unqualified Persons	8
Practice - General	2

- There was a need to re-design new and enhanced education programmes on ethics for the legal profession to address continuing professional development requirements during the year of crisis. The ethics modules were in new formats using the latest information technology to promote access and availability, content and use by the legal profession.
- Monitoring ethical issues arising before the Courts and providing alerts and education to the profession as appropriate.
- Liaison and monitoring of state and national ethical issues for the legal profession.
- Providing a wide range of assistance to the Law Society, standing committees and departments on ethical issues.



PROFESSIONAL SUPPORT LEGAL COSTS UNIT

The Legal Costs Unit of the Professional Support Unit (**Costs Unit**) provides specialist costs advice and education to all solicitors in New South Wales, regardless of their membership status, as a means of ensuring their compliance with the legislation. It promotes this service in the *Law Society Journal* and the *Law Society Members' Services Guide*. The Costs Unit had a busy and productive year assisting and guiding the legal profession through all their costs enquiries and individual costs needs.

The year was dominated by significant interest and requests for seminar presentations on the costs disclosure obligations under the legal profession legislation. The Cost Unit in conjunction with the Costs Committee also reviewed and promoted the Law Society's updated Costs Guidebooks.

The most common problems faced by solicitors requiring assistance included:

- Costs Agreements and Billing
- Withdrawal of costs and disbursements from money held in trust.
- Recovery of legal costs and assessment.
- Recovery of party/party costs.

Education

Once again the Costs Unit had an increased number of practitioners attending seminars on legal costs this year. Practitioners continue to express concern about the strict disclosure obligations contained in the Uniform Law. There are a number of areas where practitioners could benefit from further guidance such as scoping legal costs for the purposes of providing a single figure estimate of total legal costs.

The costs unit is striving to develop practically oriented "workshop" presentations addressing problem areas such as communication, file transfers, disclosure and billing.

A number of medium and large law practices in the Sydney CBD and Parramatta requested speakers for their in-house Continuing Professional Development (CPD) sessions during the year.

Seminars organised by the Law Society at its office again attracted large audiences. These were mainly from small to medium law practices with a number of sole practitioners.

The Costs Committee is committed to providing CPD sessions to suburban and regional areas.

The suburban and regional areas attended by the Costs Unit included:

- Maitland
- Port Macquarie
- Central Coast
- Wagga Wagga
- Bankstown
- Newcastle

In addition the Costs Unit also provided speakers for government, community and educational organisations such as the Crown Solicitors Office, the Department of Customer Service (NSW), Community Legal Centers and District Court judges' associates. Significant preparation was undertaken to ensure that these seminars were tailored to those entities.

Other Work

The Costs Unit researched and provided seminars on:

- Costs disclosure, costs agreements and billing under the Uniform Law.
- Costs Assessments, costs disputes, determinations by the Commissioner and Compensation Orders under the Uniform Law.
- The various forms of security available to a practitioner with respect to protection of their fees including possessory liens, equitable liens, caveats and mortgages together with what constitutes reasonable prospects of success.
- Regulated costs and withdrawing money from trust to pay professional fees.

The Costs Unit also researched and wrote articles relating to costs for the *Law Society Journal* with new costs issues highlighted by reference in *Monday Briefs*.

The Costs Committee

The Costs Committee consists of practitioners from a range of legal practice.

The Costs Committee:

- monitors the effect of the *Civil Procedure Act 2005* (NSW) and the Rules with respect to costs.
- monitors the efficacy of the Costs Assessment Scheme.
- examines and comment on legislation and law reform proposals relating to solicitors' costs.

These activities aim to reduce the regulatory burden for solicitors, simplify the provisions in the legislation and ensure its effectiveness.

The Costs Committee also produces a range of information resources such as the *Costs Guidebook* and handles direct enquires from solicitors.

The Costs Unit continues to provide assistance to the Costs Committee including providing a responsible legal officer to assist the Committee. It is also committed to facilitating communication between the legal profession and the Costs Committee.

Costs Recovery

The Costs Unit assists with the recovery of legal costs incurred by the Law Society during the course of its disciplinary and investigative functions. The Law Society attempts to recover costs pursuant to costs orders, recovery of fines imposed and costs incurred by the appointment of supervisors, managers, investigators and receivers.

COST ENQUIRIES

2019/20	602
2018/19	531
2017/18	1,004
2016/17	1,342
2015/16	1,849
2014/15	667
2013/14	1,091
2012/13	1,364
2011/12	1,355
2010/11	1,132

KEY TOPICS

Cost Agreements	198
Cost Billing	110
Cost Recovery	84
Regulated Costs	48
Cost Trust Account	43
Disclosure	43
Liens	28
File Transfers	21
Party/Party Costs	17
Third Party Payers	10

Fines and lump sum costs payments ordered by NCAT are enforced by applying to NCAT under section 78 of the *Civil and Administrative Tribunal Act 2013* (NSW) for a certificate, which can then be registered as a judgment.

The legal profession legislation allows Council to specify the fees of supervisors, managers, investigators and receivers, making those fees a debt payable by the law practice the subject of the investigation.



PROFESSIONAL SUPPORT REGULATORY COMPLIANCE

The Regulatory Compliance Unit provides guidance to solicitors and other stakeholders on compliance issues related to the provision of legal services under the *Legal Profession Uniform Law* (NSW).

Overview

In 2019/2020, the Regulatory Compliance Unit responded to more than 3,674 compliance issues raised by the legal profession. Practice Management, Business Development and Practising Certificates remained the highest categories of enquiry to the Regulatory Compliance Unit.

The coronavirus pandemic prompted significant changes in employment for many practitioners.

It also forced many law practices to change the way that their employed solicitors were supervised, including having to develop working from home and remote supervision arrangements. While the employment related enquiries remained high the changed working conditions meant that the nature of the calls were new.

Additionally, the calls were often multi-faceted or emotionally charged. Some employed solicitors were retrenched during this period and made enquiries about moving out of their employed solicitors' roles completely to become principals of their own law practices.

Incorporated Legal Practices (ILPs) continue to rank strongly as a category of enquiry. Senior solicitors of existing law practices regularly sought technical guidance about, either establishing a new ILP or transferring their existing non ILP to a new ILP.

Enquires from practitioners about the practical ramifications of taking up employment as an in-house solicitor has shown a steady increase throughout the reporting year. The in-house enquiry statistic reflects this trend and is up slightly from the previous year.

Highlights of 2019/2020

LSJ Articles

In addition to and complementing professional skills and practice management seminars, the Regulatory Compliance Unit prepared practice management and compliance risk articles for publication in the *Law Society Journal*. Published articles include:

- “Conflict of interest- do you have a conflict of interest procedure system”
- “Ethics must be part of your trust account’s DNA”
- “Cyber Fraud – be aware and stay alert”
- “Important questions to ask before engaging in Legal Practice as a consultant”
- “Top 5 tips to boost your productivity at work”.
- “Better business management for a sustainable practice”.
- “Three compliance considerations for staff recruitment”.
- “Contingency and succession planning”.
- “Responsibilities of Principals”.

Monday briefs publications

- Checklist to assist principals of NSW law practices plan for and respond to the current COVID-19 crisis.
- Contingency Planning strategy for sole principals to nominate their personal representative and an alternate.

The Regulatory Compliance Unit continued to work collaboratively with other departments at the Law Society including the Law Society's Registry and Licensing Departments, and the Strategic Policy Unit.

Collaboration on Licensing Issues

The Regulatory Compliance Unit assisted Registry staff and Licensing solicitors with regulatory issues including:

- Registration of business names.
- Incorporated Legal Practice.
- Interstate practice including interstate practice by ILPs.
- Supervised legal practice
- Remote supervision
- Pro-bono practice
- Registration of foreign lawyers.
- Conditional Admission of foreign lawyers
- Foreign law and overseas practice.
- Principal place of practice.
- Practising certificate limitation

Collaboration on Strategic Policy issues

- Anti-Money Laundering & Counter Terrorist Financing Tranche 2.
- Migration Amendment (Regulation of Migration Agents) Bill 2017.
- Incorporated Legal Practice Principals.
- Management Investment Schemes.
- Review of admission of foreign qualified lawyers in New South Wales.
- Remote supervision.

Practice Restructuring

The Regulatory Compliance Unit assisted a significant number of law practices with restructuring during the reporting period. Prior to March 2020 these enquiries were often done face to face because many restructuring issues include the detailed examination of several interrelated sections of the *Legal Profession Uniform Law* (NSW) and the *Solicitors'* rules. Following the pandemic lock down in March 2020 the Regulatory Compliance Solicitors' used Microsoft Teams to provide a similar service to the profession and other stakeholders around restructuring issues.

REGULATORY COMPLIANCE ENQUIRIES

Practising Certificate	613
Practice Management	561
Business Development	422
Establishment Of An ILP	313
Miscellaneous - See Comments	285
Employment	275
Interstate & Foreign Legal	200
In House Practice	174
Establishment Of Practice - Non Ilp	172
Law Practice Demands	134
Letterheads/Business Names	96
Transfer Of A Practice	88
Trust Accounts	69
Establishment Of An Ulp	56
Unqualified Practitioners	56
Closing/ Selling A Practice	54
Show Cause Event/Disclosure	54
Consultants	52

Practice Management Guidance

One of the key roles of the Regulatory Compliance Unit is to provide guidance for practitioners on practice management issues, including:

- establishing compliance risk/management systems.
- appropriate titles for professional and non-legal staff.
- employment related queries.
- pro-bono practice.
- interstate practices/solicitors.
- bullying or discrimination in the workplace.
- succession planning for sole principals.
- 'reasonable supervision' requirements.
- remote supervision.

Education

The Regulatory Compliance Unit provided face to face CPD seminars for practitioners in both metropolitan and regional NSW.

In response to an increase in *home-based* working arrangements for many practitioners from March 2020, the Regulatory Compliance solicitors also provided CPD seminars remotely, using Microsoft Teams and Zoom platforms.

The total number of seminars provided during the year increased slightly to 76.

Seminars in metropolitan and regional areas were presented with the assistance of the respective metropolitan or regional law society including Eastern Suburbs, Chatswood, Parramatta, Fairfield, Toongabbie, BASIL, Clarence Chambers and the Women Lawyers Association, Gosford, Grafton, Maitland, Albury, Newcastle Wagga Wagga and Wollongong, where 1 hour CPD workshops and lectures were presented.

The Regulatory Compliance Unit also provided an increased number of seminars on-site in law practices, in the Law Society's training rooms and at government conference centers, including ASIC, the ATO (Sydney and Newcastle), the Department of Customer Service (NSW).

In response to enquiries surrounding practice management during Covid-19, the Regulatory Compliance Unit developed a series of seminars on 'essential skills in the new world of legal practice'. These seminars were delivered online during the reporting period and were well received by the profession.



1-hour CPD seminar topics included:

- Practice management systems.
- Productivity skills for legal practitioners.
- Induction seminar for in-house solicitors.
- Risk management systems for legal practitioners.
- Supervision of legal services.
- Delegation skills.
- Practice structures.
- Marketing a law practice.
- Building client relationships,
- Succession planning.
- Undertakings and client retainers.
- Compliance driving profit.
- Compliance pitfalls.
- The cost of not communicating.
- Managing a law practice trust account.
- Written communication seminar.
- Responsibility of principals – reasonable steps.
- Legal professional privilege for in-house solicitors.
- Undertakings for in-house solicitors
- Essential skills in the new world of legal practice

APPENDIX

Table 1 – Chapter 5 complaints referred by OLSC, by type of complaint

DISCIPLINARY MATTERS	10	11	12	13	14	15	16	17	18	19	20
Personal Conduct	307	241	242	253	195	165	226	284	202	260	228
Unethical Conduct	165	128	150	118	71	77	113	122	91	155	106
Negligence	40	40	25	48	29	24	20	44	23	31	45
Misleading	46	24	22	29	32	23	58	45	35	24	18
Conflict of Interest	25	15	17	22	16	16	12	31	18	27	18
Failure to Transfer Documents	7	10	7	4	6	3	2	4	6	4	6
Communicating with a Client of Another Solicitor	5	9	3	4	10	8	9	7	7	2	5
Breach Confidentiality	8	4	6	7	4	2	5	6	5	2	3
False Swearing of Documents	6	4	1	7	11	3	2	13	3	3	6
Undue Pressure	2	3	2	1	3	0	0	1	3	2	3
Threatening Behaviour	1	3	4	7	9	7	4	8	10	10	15
Failure to Assist Law Society	0	1	0	0	0	2	0	1	0	0	2
Borrowing from Client	2	0	5	6	4	0	1	2	1	0	1
Cost / Payment Issues	76	65	58	62	52	48	59	68	49	48	76
Failure to Pay Third Party	40	37	31	42	35	29	43	34	33	24	21
Overcharging	14	14	11	9	8	5	8	17	11	1	2
No Costs Disclosure	10	9	13	6	6	12	6	8	3	19	3
Failure to Provide a Detailed Account	12	3	0	0	2	1	0	5	1	1	9
Transfer Costs Without Authority	0	2	3	5	1	1	2	4	1	3	2
Liens	0	0	0	0	0	0	0	0	0	0	2
Unethical Conduct	0	0	0	0	0	0	0	0	0	0	37
Communication / Service	94	68	72	40	65	67	68	75	65	50	48
No Communication	16	17	24	8	9	10	11	14	13	12	11
Failure to Carry Out Instructions	39	12	13	10	14	18	11	15	13	6	10
No Client Advice	6	12	5	1	5	3	6	0	2	2	3
Discourtesy	4	11	7	1	10	13	6	8	13	9	11
Act Without/Contrary to Instructions	9	7	10	6	15	13	19	15	11	12	6
Delay	11	4	7	7	9	7	11	15	11	8	5
Lack of Supervision	8	4	2	7	2	3	3	7	0	0	1
No Advice on Progress	1	1	4	0	1	0	1	1	2	1	1
Non-Compliance	69	55	43	64	53	45	42	102	63	33	39
Not Complying with Undertaking	20	15	11	18	13	8	8	19	9	9	2
Practising without a Practising Certificate	12	12	1	8	11	11	7	36	15	1	4
Not Complying with a s.660 Notice	16	11	1	5	2	4	3	2	0	0	0
Not Comply with Legal Profession Act/Regulations	15	9	19	19	19	15	20	41	38	21	30
Not Complying with Fiscal Obligations	6	8	11	14	8	7	4	4	1	2	1
Practising contrary to practising certificate	0	0	0	0	0	0	0	0	0	0	2

Table 1 – Chapter 5 complaints referred by OLSC, by type of complaint (continued)

DISCIPLINARY MATTERS	10	11	12	13	14	15	16	17	18	19	20
Trust Account matters	59	43	40	60	76	47	40	57	33	15	52
Breach of Sections of Act / Regs relating to Trust Moneys	31	22	19	41	40	23	17	19	2	0	32
Failure to Account	11	14	13	14	10	11	10	22	23	8	6
Misappropriation	17	7	8	5	26	13	13	16	8	7	14
Other	3	5	27	3	0	6	13	14	69	92	7
OLSC Enquiry	0	0	0	0	0	0	0	0	0	69	7
TOTAL NUMBER OF DISCIPLINARY MATTERS	608	477	482	482	441	378	448	600	481	498	450
CONSUMER DISPUTES	72	68	68	64	39	30	1	0	0	0	0
TOTAL NUMBER OF COMPLAINTS OPENED	680	545	550	546	480	408	449	600	481	498	450

Table 2 – Number of complaints opened, by type of complainant

COMPLAINANT TYPE	10	11	12	13	14	15	16	17	18	19	20
Client/Former Client	222	159	174	124	141	116	115	179	134	115	116
Law Society	110	87	72	94	84	73	60	111	90	104	14
Solicitor	91	87	88	98	81	73	70	72	56	40	47
Third Party	82	85	78	104	84	69	70	69	80	103	74
Third Party (Other Side)	95	63	76	68	56	35	94	121	77	98	149
Barrister	43	37	40	32	11	22	20	22	16	9	14
Solicitor for Client	27	22	18	16	12	11	7	6	13	7	12
Legal Services Commissioner	4	3	2	7	5	4	7	11	3	2	0
Other ¹	6	2	2	3	6	2	6	5	9	16	24
Trust Account Inspector	0	0	0	0	0	0	0	0	0	1	0
Executor	0	0	0	0	0	2	0	2	3	1	0
Attorney General	0	0	0	0	0	1	0	2	0	2	0
TOTAL NUMBER OF COMPLAINTS OPENED	680	545	550	546	480	408	449	600	481	498	450

Notes:

¹ Other includes Legal Aid Commission, Government Department and Beneficiary**Table 3 – Complaints opened, by solicitor type**

SOLICITOR TYPE	NUMBER OF COMPLAINTS	COMPLAINTS AS % OF TOTAL ACTIVE SOLS	% OF TOTAL COMPLAINTS
Principal of Law Practice	273	0.757%	60.67%
Employee of Law Practice	80	0.221%	17.78%
Not Practising/Ceased Practising	45	0.124%	9.99%
Complaints Against Firms	39	0.108%	8.67%
Corporate Legal Practitioner	6	0.016%	1.33%
Government Legal Practitioner	7	0.019%	1.56%
TOTAL NUMBER OF COMPLAINTS OPENED	450		

Notes:

At 30 June 2020 total active solicitors 36,046

Table 4 – Complaints opened, by practice region

REGION	NUMBER OF COMPLAINTS
Sydney City	138
Suburban	218
Nepean Hawkesbury	10
Northern Beaches	6
Parramatta District	34
Liverpool & District	17
Bankstown & District	6
Inner West	21
Eastern Suburbs	10
North Metropolitan	16
St George-Sutherland	14
Macarthur	12
Other	72
Regional/Rural	81
Albury District	1
Coffs Harbour	2
Central West	2
Far North Coast	10
Far West	1
Newcastle	20
Hunter Valley	1
Orana	3
Riverina	1
Shoalhaven	2
South West Slopes	4
Central Coast	8
Mid-North Coast	3
Wollongong	13
North & North West	6
Other	4
Interstate	13
TOTAL NUMBER OF COMPLAINTS OPENED	450

Table 5 – Number of complaints closed, by result

RESULT TYPE	2020
Misconceived/Lacking In Substance - S277(1)(A)	73
No Further Investigation Required Except Cm - S277(1)(H)	47
Complaint Withdrawn	41
Failure/Inadequate Response To Request For Info - S277(1)(C)	39
Closure - No UPC/PM	13
Public Interest Closure - S277(1)(J)	12
Referred Back To LSC	11
PCC Decision - Reprimand - S299(1)(B)	9
Closed Enquiry	9
Complaint Better Dealt With By Law Enforcement/Investigatory Body - S277(1)(E)	8
Dlra Made Recommendation Under Section 82(4) - S277(1)(F)	8
Time Limit Not Waived Under S272(1) - S277(1)(B)	6
Initiate Tribunal Proceedings - S300(1)	6
No Power To Investigate Complaint - S277(1)(I)	1
PCC Decision - Caution - S299(1)(A)	1
PCC Decision Order Requiring Training, Education, Counselling Or Supervision - S299(1)(E)	1
s.511 Summ Dismiss	1
Dismissed 155A	2
Reprimand	1
Diss/No P.Mc./U.P.C.	1
TOTAL	290

Table 6 – Number of Complaints opened and Complaints closed within the 2019/2020 reporting period

COMPLAINT TYPE	# - OPENED	# - CLOSED
Act Without/Contrary to Instructions	6	8
Borrowing from Client	1	0
Breach of Confidentiality	3	3
Communicating with a Client of Another Solicitor	5	2
Conflict of Interest	18	11
Delay	5	2
Discourtesy	11	9
Failure to Carry Out Instructions	10	7
Failure to Pay Third Party	21	12
Failure to Provide a Detailed Account	9	3
Failure to Transfer Documents	6	5
Failure to Account	6	6
False Swearing of Documents	6	4
Lack of Supervision	1	1
Misappropriation	14	5
Misleading	18	18
Negligence	45	17
No Advice on Progress	1	1
No Client Advice	3	1
No Communication	11	10
Not Complying with Fiscal Obligations	1	1
Not Complying with Undertaking	2	2
No Costs Disclosure	3	11
Not Complying with Legal Profession Act/Regulations	30	27
Other Trust Breaches	0	6
Overcharging	2	8
Practising Without a Practising Certificate	4	3
Section 255 Breach Trust Money	32	0
Transfer Costs without Authority	2	2
Threatening Behaviour	15	10
Undue Pressure	3	1
Unethical Conduct	143	75
Liens	2	0
Failure to Assist Law Society	2	0
Breach Section 138 LPUL	0	5
OLSC Enquiry	7	7
Practising Contrary to Practising Certificate	2	6
Causing a Deficiency in the Trust Account	0	1
TOTAL	450	290

Table 7 – Number and type of proceedings instituted at NCAT

NAME OF SOLICITOR	CONDUCT	ORDERS MADE	DATE OF ORDERS
Bassem Aslan	Conduct as a non-lawyer	<ul style="list-style-type: none"> Permanent disqualification pursuant to Section 119 LPUL 	14 October 2019
Anthony Autore	<ul style="list-style-type: none"> Failure to comply with Section 371 Notice 	<ul style="list-style-type: none"> Finding of professional misconduct made 15 April 2019 (consequential orders) Reprimand Restriction on issuing further Practising Certificate Costs 	9 March 2020
Barry Bunton	<ul style="list-style-type: none"> Failure to comply with undertaking to Law Society 	<ul style="list-style-type: none"> Finding of professional misconduct Reprimand Costs 	22 June 2020
Malcolm Douglas Carr	Decision of NCAT of 14 January 2020 overturned on appeal following completion of the reporting period.		
Chona Encarnacion Castillo Davidson	<ul style="list-style-type: none"> Misappropriation Failure to comply with trust account requirements Breach of Section 370 LPUL Misleading trust account inspector 	<ul style="list-style-type: none"> Findings of professional misconduct and unsatisfactory professional conduct Restrictions on further Practising Certificate Costs 	3 July 2019 30 June 2020
Stephen Jiao	<ul style="list-style-type: none"> Contravention of condition on Practising Certificate Failure to comply with undertaking to Law Society 	<ul style="list-style-type: none"> Finding of professional misconduct Reprimand Fine Costs 	15 June 2020 (application by Solicitor to vary orders was dismissed by consent following completion of the reporting period)
Simon Konstantinidis	Initial decision of NCAT of 20 February 2020 was overturned on appeal after the reporting period.		

Table 7 – Number and type of proceedings instituted at NCAT (continued)

NAME OF SOLICITOR	CONDUCT	ORDERS MADE	DATE OF ORDERS
Andrew Graham Stuart	<ul style="list-style-type: none"> • Misappropriation • Contraventions of trust account provisions • Contravention of Revised Professional Conduct & Practice Rules 1995 • Contravention of Supreme Court Order • Unauthorised payments from Estate funds 	<ul style="list-style-type: none"> • Finding of professional misconduct • Solicitor's name removed from the Roll • Costs 	5 July 2019
Erica Brooke Taylor	Decision of Tribunal on 13 May 2020 on an interlocutory matter overturned on jurisdictional grounds following the reporting period		
Myroslava Zhukovska	<p>See: Council of the Law Society of NSW v Zhukovska [2019] NSWCATOD 66</p> <p>See Orders subsequently made by the Court of Appeal - <i>Council of the Law Society of New South Wales v Zhukovska [2020] NSWCA 163</i></p>	(consequential orders) <ul style="list-style-type: none"> • Suspension • Fine • Reprimand • Costs 	5 November 2019 (4 August 2020)

Table 8 – Practising solicitor statistics at 30 June 2020

GENDER OF SOLICITORS	
Female	18,957
Male	17,089
TOTAL	36,046

CATEGORY OF SOLICITORS	
Corporate	6,995
Government	3,879
Private	25,102
Volunteer	70
TOTAL	36,046

LOCATION OF SOLICITORS	
City	17,279
Interstate	283
Overseas	1,851
Rural	4,395
Suburban	12,238
TOTAL	36,046

Table 9 – Amounts expended by the Public Purpose Fund and Fidelity Fund on Regulation, 2019/2020

EXPENSE DESCRIPTION	RECOVERABLE FROM	TOTAL
Professional Standards / General Regulatory Expenses	Public Purpose Fund	4,725,148
External Interventions	Public Purpose Fund	1,195,744
Trust Account Inspections / Investigations	Public Purpose Fund	2,594,108
Fidelity Fund Administration	Fidelity Fund	810,006
TOTAL REGULATORY COSTS		9,325,006
TOTAL PAID FROM PUBLIC PURPOSE FUND		8,515,000
TOTAL PAID FROM FIDELITY FUND		810,006

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney

ACN 000 000 699 ABN 98 696 304 966

lawsociety.com.au

T +61 2 9926 0333 F +61 2 9231 5809

E lawsociety@lawsociety.com.au

