

# 2

# 1

## **PROFESSIONAL STANDARDS ANNUAL REPORT 2021**



**PROFESSIONAL  
STANDARDS**  
THE LAW SOCIETY  
OF NEW SOUTH WALES

**President:** J. Warner  
**Senior Vice President:** J. van der Plaats  
**Junior Vice President:** C. Banks  
**Treasurer:** B. McGrath  
**Immediate Past President:** R. Harvey

**Councillors**

L. Absalom, J. Ball, A. Biliass, D. Bricknell, S. Bruck, A. Care, C. James,  
Z. Kekeff, I. Luke, H. Macken, R. MacSweeney, S. McAuley, M. Meares,  
J. Tyrell, M. Warton, J. Windsor, J. Wong

**Professional Conduct Committee** (as at 30 June 2021)

J. van der Plaats (Councillor and Chairperson)  
J. Ball (Councillor and Deputy Chairperson)  
L. Absalom, R. Benzie, A. Biliass, G. Briot, M. Brogan, J. Dawson,  
M. Devitt, R. Everingham, D. Garnsey, J. Glowrey, K. Hong, J. Howard,  
T. Iuliano, J. King, J. Lowbeer, A. Maisano, K. Martin, A. McIntyre, M.  
Meares, D. Miller, G. Morahan, K. Osborne, E. Pilowsky, J. Prowse, T.  
Russell, A. Sarmed, A. Tattersall, J. Tyrell, M. Warton, J. Windsor

**Ethics Committee** (as at 30 June 2021)

D. Miller (Chairperson)  
S. Akerman, S. Alden, G. Bates, S. Crellin, R. Hoyles, A. Maisano,  
A. McGowan, M. Meares, J. Moller, S. Pallavicini, K. Rosati, N. Scanlon,  
J. Spear, T. Spohr, T. Stern, C. Wall

**Costs Committee** (as at 30 June 2021)

H. Macken (Chairperson)  
B. Bellach, P. Ferguson, V. Higinbotham, P. Hill, C. Morson,  
D. Nicholas, S. Robey, K. Rosati, P. Rosier, T. Russell, T. Stern,  
P. Sutherland, R. Walker

**Disclosure Committee** (as at 30 June 2021)

Z. Kekeff (Councillor and Chairperson)  
J. Bacon, S. Baxter, B. Bryant, R. Bryden, R. Hughes, J. King,  
N. Kroesche, J. Patterson, A. Sarmed, J. Sutton, A. Tattersall,  
A. Tiedt, J. van der Plaats

**Chief Executive Officer**

S. Stewart (as at 30 June 2021)

**Professional Standards Department**

Director, Legal Regulation (current): A. Lean

**Annual Report Production**

Professional Standards Department

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>Introduction</b>   | <b>2</b>  |
| <b>President's Message</b>  | <b>3</b>  |
| <b>The Professional Standards Department</b>  | <b>4</b>  |
| <b>Complaints</b>   | <b>6</b>  |
| <b>External Intervention</b>  | <b>13</b> |
| <b>Compliance and Disclosure</b>  | <b>20</b> |
| <b>Professional Support Ethics Unit</b>   | <b>22</b> |
| <b>Professional Support Legal Costs Unit</b>  | <b>24</b> |
| <b>Professional Support Regulatory Compliance</b>   | <b>X</b>  |
| <b>Appendix</b>   | <b>26</b> |
| <b>Table 1</b> – Chapter 5 complaints referred by OLSC,<br>by type of complaint                             | <b>30</b> |
| <b>Table 2</b> – Number of complaints opened,<br>by type of complaint                                       | <b>31</b> |
| <b>Table 3</b> – Complaints opened, by solicitor type   | <b>31</b> |
| <b>Table 4</b> – Complaints opened, by practice region  | <b>32</b> |
| <b>Table 5</b> – Number of matters closed, by result  | <b>33</b> |
| <b>Table 6</b> – Complaints opened and closed<br>within same period   | <b>34</b> |
| <b>Table 7</b> – Number and type of proceedings<br>instituted at NCAT                                       | <b>35</b> |
| <b>Table 8</b> – Active solicitor statistics at 30 June 2021  | <b>37</b> |
| <b>Table 9</b> – Amounts expended by the public purpose fund<br>and fidelity fund on regulations, 2020/2021 | <b>37</b> |

# 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 the Council of the Law Society of NSW (**Council**) 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 makes recommendations to the Disclosure 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 practising 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 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

Professional Standards embodies the Law Society values in its work, namely:

- Service
- Integrity
- Teamwork

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 Disclosure 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 2020 to 30 June 2021 (2020/2021)**. Where relevant, comparative data for the period from **1 July 2019 to 30 June 2020** (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.

# PRESIDENT'S MESSAGE



## As President of the Law Society, I take great pride in presenting the 2021 Annual Report of Professional Standards.

The Annual Report illustrates the professional role of the Council as a designated local regulatory authority under the Uniform Law and describes our regulatory functions and how leadership in professional standards is provided to the legal profession.

This year, there has been an additional burden upon the Law Society to demonstrate leadership and stability during a time of unusual circumstance caused by the COVID-19 pandemic.

Overcoming adverse circumstance and maintaining high professional standards in the legal profession has required diligence, industry and good example.

Maintaining the requisite skills for complaints handling and investigation to uphold the integrity of our professional standards was achieved despite the difficult circumstance we have endured.

## The complaint process and public confidence

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

The transparent and rigorous complaint process reflects the importance attached to resolving every complaint referred to the Council. As in past years, every complaint referred to the Council is assessed, and if appropriate investigated. Appropriate regulatory action is taken, including the imposition of disciplinary sanctions, where investigations substantiate that professional standards have been breached.

## The future challenges

The ongoing role of maintaining professional standards and ensuring public confidence in the legal profession is the focus of the activities of Professional Standards. Now and in the future, the Law Society will provide leadership and guidance for the legal profession through complaints handling, active programmes in education, guidance and assistance to maintain professional standards.

This is achieved, primarily through the Professional Support Unit, by providing professional services that include the provision of guidance, advisory services and Continuing Professional Education programmes. Together, these enhance professional standards for the legal profession.

The contents of the Annual Report illustrate how the role of the Council and the Law Society as a professional body promotes an independent, transparent and ongoing commitment to maintaining professional standards. This ensures public confidence in a legal profession that is based on ethics, equity and justice.

I therefore submit this Annual Report as an integral part of a transparent and accountable process, serving the community and maintaining high professional standards in the legal profession.

A handwritten signature in black ink, appearing to read 'J. Warner', with a long horizontal flourish extending to the right.

**J. Warner**  
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 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

■ 2020/2021 ■ 2019/2020

### Compliant Files Opened



### Disclosure Files Opened



### Litigation/Intervention



### Unqualified Practitioner Enquiries



### Regulatory Compliance Enquiries



### Ethics 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 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 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 decision 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.

A new Team Structure was implemented in 2020/2021, and new processes adopted to streamline the handling of complaints. This has enabled Professional Standards to focus resources on more serious matters, while more quickly dealing with less serious matters.

## Referrals from the Legal Services Commissioner

In 2020/2021:

- the Commissioner received a total of 2,714 written complaints about solicitors, an increase of 0.33% from the previous reporting period.
- the Council was referred a total of 550 complaints, 10 of which were complaints made by the Law Society.
- 611 matters were finalised including 496 complaints that were closed by PCC during the year.
- At 30 June 2021, 714 Chapter 5 complaints remained open (down from 770 at 30 June 2020).

## Complaints made by the Law Society

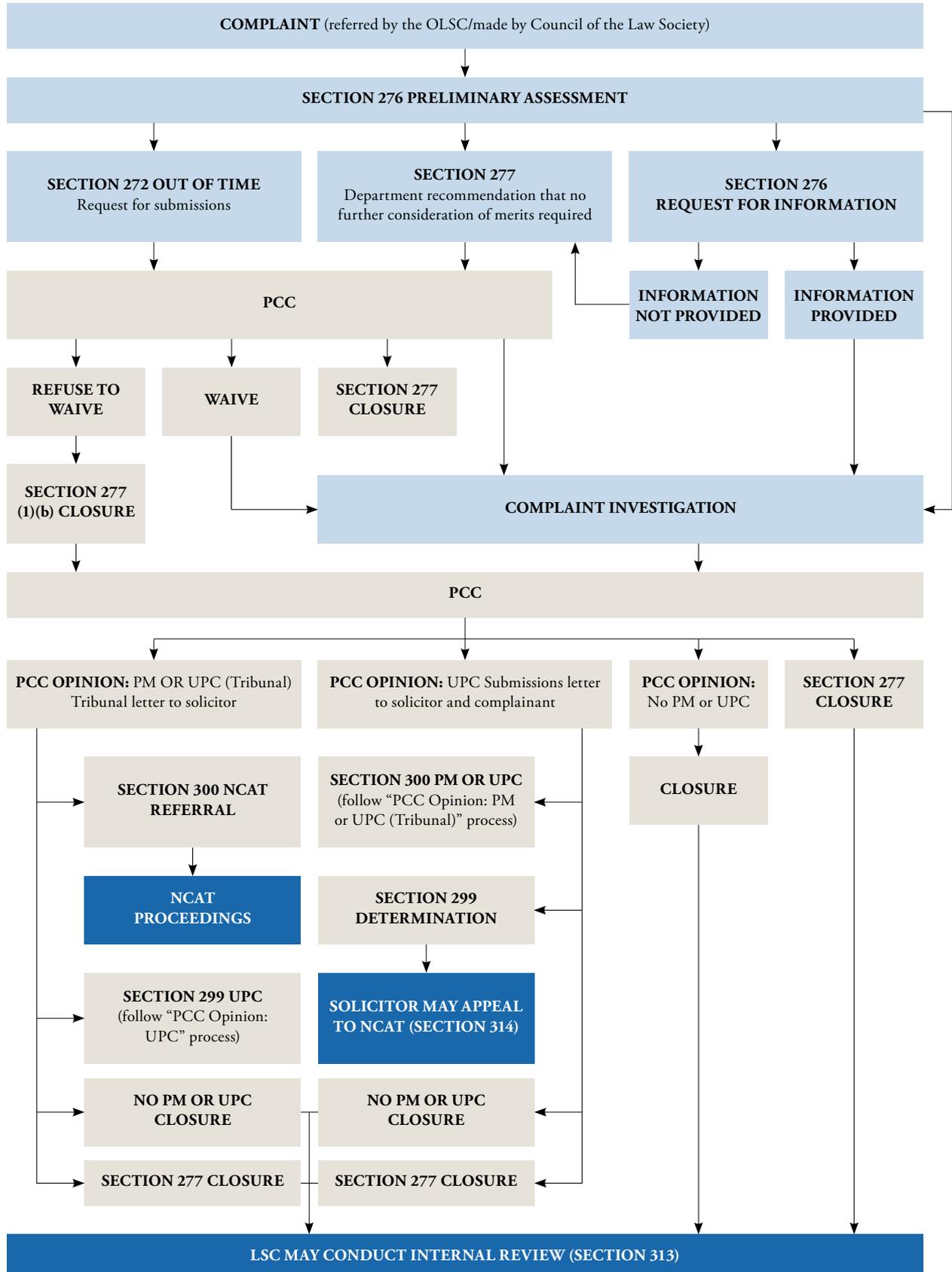
As noted above, the Law Society may, pursuant to s266 of the Uniform Law, make its own complaints to the Commissioner about the conduct of solicitors.

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 practice 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.

PCC Professional Conduct Committee  
 PM Professional Misconduct  
 UPC Unsatisfactory Professional Conduct  
 NCAT NSW Civil and Administrative Tribunal  
 LSC Legal Services Commissioner

## Complaints investigation process



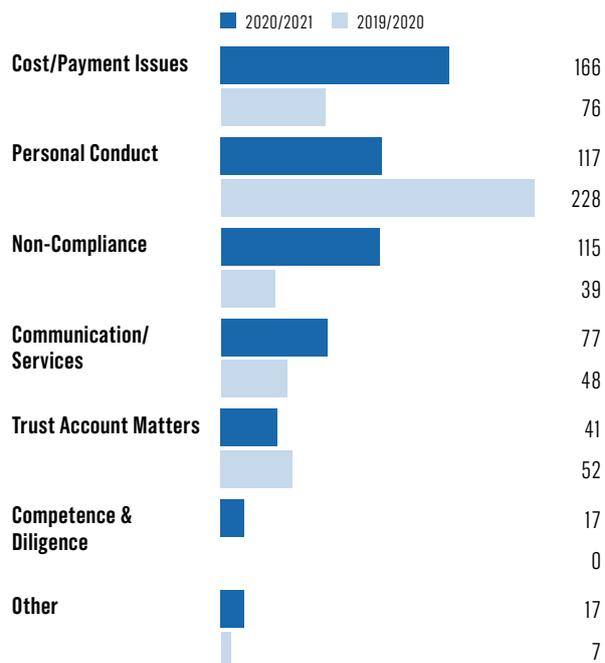
## CATEGORIES OF COMPLAINTS

The following section provides a snapshot summary of the type and nature of complaints opened by Professional Standards in 2020/2021.

### Conduct most complained about

In 2020/2021:

- “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 166 of the total complaints.
- “Personal Conduct” (including, for example, unethical conduct, misleading behaviour, borrowing from client and negligence) making up 117 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 115 of the total complaints.
- “Communication/Services” issues (including, for example, acting contrary to instructions, failing to carry out instructions and no communication) accounted for 77 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 41 of the total complaints.



Care should be taken in comparing trends with previous years as Professional Standards is improving the way it classifies complaints to improve accuracy in future years.

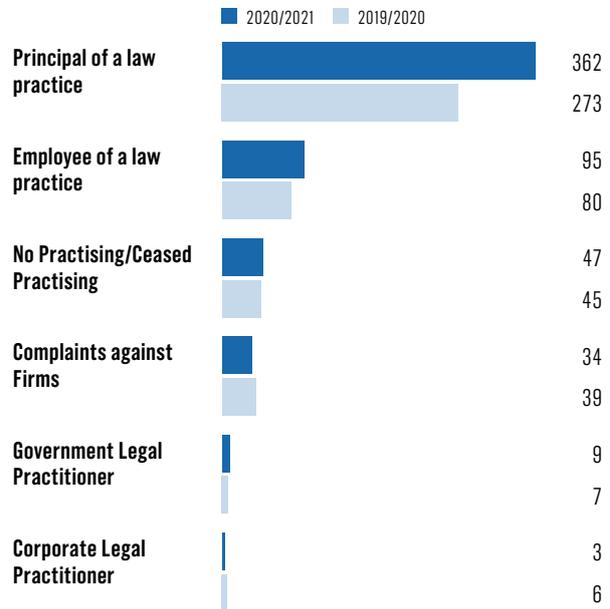
| AREAS OF LAW WITH THE MOST COMPLAINTS |     |                       |    |
|---------------------------------------|-----|-----------------------|----|
| Commercial Law                        | 137 | Litigation/General    | 15 |
| Conveyancing/Real Property            | 116 | Debts/Insolvency      | 8  |
| No Area of Law                        | 65  | Personal Injury       | 5  |
| Criminal Law                          | 52  | Civil Litigation      | 3  |
| Commercial Litigation                 | 48  | Wills & Estates       | 3  |
| Family Law                            | 34  | Immigration Law       | 2  |
| Administrative Law                    | 21  | Intellectual Property | 2  |
| Banking/Finance                       | 21  | Environmental Law     | 1  |
| Employment/Industrial Law             | 16  | Small Business        | 1  |

### Complaints by solicitor type

In 2020/2021:

- 362 complaints were made against principals of a law practice (comprising 65.82% of the complaints made).
- 95 complaints were made against employees of a law practice (comprising 17.27% of the complaints made).
- From a geographical perspective, 39.45% of complaints made related to solicitors practising in suburban Sydney, 36.54% related to solicitors practising in Sydney’s CBD, 3.8% were interstate and 17.27% were made against solicitors practising in rural New South Wales.
- 28.91% of complaints concerned female solicitors and by comparison, 64.73% of complaints were made against male solicitors.

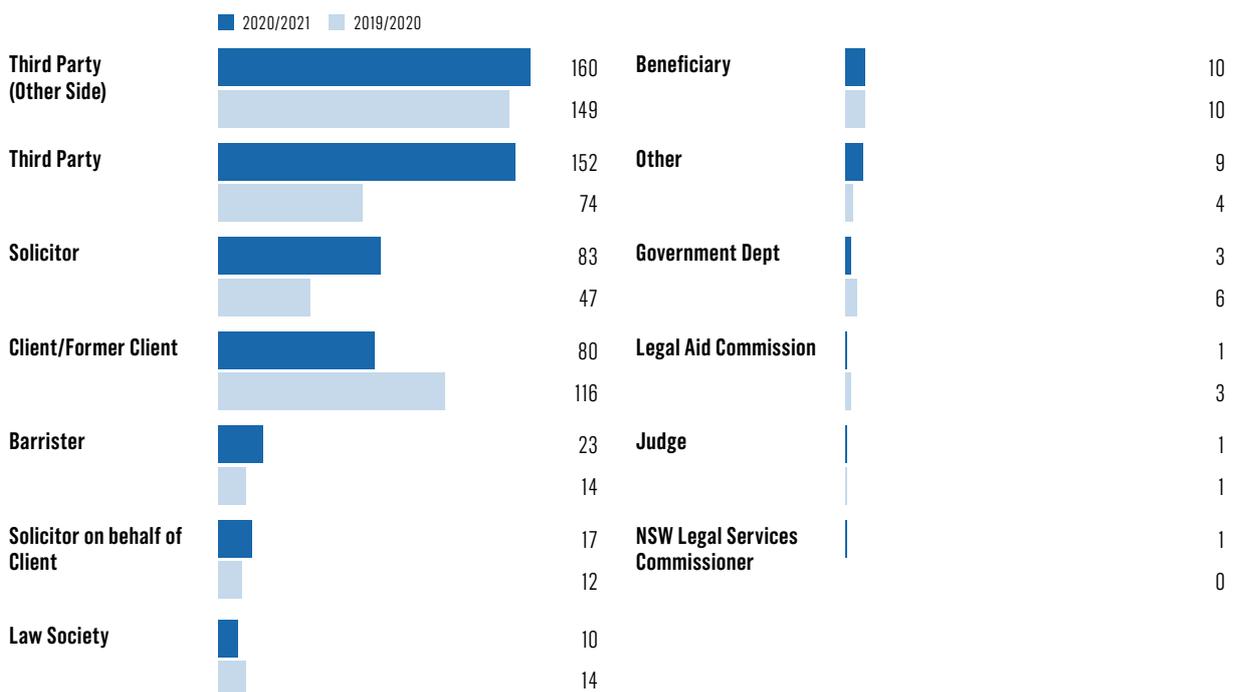
Note: Percentages quoted are based on all complaints received but one solicitor may generate several complaints, either separately or in the same matter.



### Categories of Complainants

In 2020/2021:

- The highest group of complainants were the opposing side of the client(s) or former client(s) which accounted for 29% of the total complaints.
- Complaints made by the client(s) or former client(s) of a solicitor or law practice accounted for 14.54% of the total complaints.
- Complaints made by a solicitor accounted for 15% of the total complaints.
- Complaints made by barristers accounted for 4.1% of the total complaints. These complaints often related to the non-payment of their fees.



## Investigation and finalisation of Complaints

In 2020/2021:

- Professional Standards closed 611 complaints.
- 24.54% of matters were closed on the basis they required no further investigation.
- 19.14% of complaints were closed as “misconceived/lacking in substance”
- 15.22% of complaints were withdrawn.
- 4.4% resulted in disciplinary sanction or referral to NCAT.
- 3.6% of complaints were referred back to the OLSC.

| COMPLAINTS CLOSED UNDER THE UNIFORM LAW           |  |     |
|---|--|-----|
| 209   | No Further Investigation Required Except Cm - S277(1)(H)                       | 150 |
| 201   | Misconceived/Lacking in Substance - S277(1)(A)                                 | 117 |
| 200   | Complaint Withdrawn - S273(1)  | 93  |
| 205   | Complaint Already Has Been Investigated - S277(1)(D)                           | 44  |
| 204   | Failure/Inadequate Response to Request for Info - S277(1)(C)                   | 37  |
| 211   | Public Interest Closure - S277(1)(J)   | 36  |
| 206   | Complaint Better Dealt with By Law Enforcement/Investigatory Body - S277(1)(E) | 25  |
| 207   | DLra Made Recommendation Under Section 82(4) - S277(1)(F)                      | 21  |
| 235   | Referred Back to the Office of the Legal Services Commissioner                 | 22  |
| 202   | Time Limit Not Waived Under S272(1) - S277(1)(B)                               | 16  |
| 224   | D Reprimand - S299(1)(B)   | 13  |
| 223   | D Caution - S299(1)(A)   | 12  |
| 230   | D Initiate Tribunal Proceedings - S300(1)                                      | 2   |
| 238   | Closed Enquiry   | 8   |
| 208   | Complaint Subject to Civil Proceedings - S277(1)(G)                            | 3   |
| 236   | Duplication  | 3   |
| 239   | Closure - No UPC/Pm  | 2   |
| 210   | No Power to Investigate Complaint - S277(1)(I)                                 | 1   |
| 28  | No Further Action  | 1   |
| COMPLAINTS CLOSED UNDER LEGAL PROFESSION ACT 2004 |  |     |
| 38  | Diss/No P.Mc./U.P.C.   | 2   |
| 138   | S.511 Summ Dismiss   | 1   |
| 46  | Resolved   | 2   |

## 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 2020/2021, there were 32 members of the PCC, comprising 8 Councillors of the Law Society, 17 solicitors, 1 Australian Lawyer and 6 lay members.

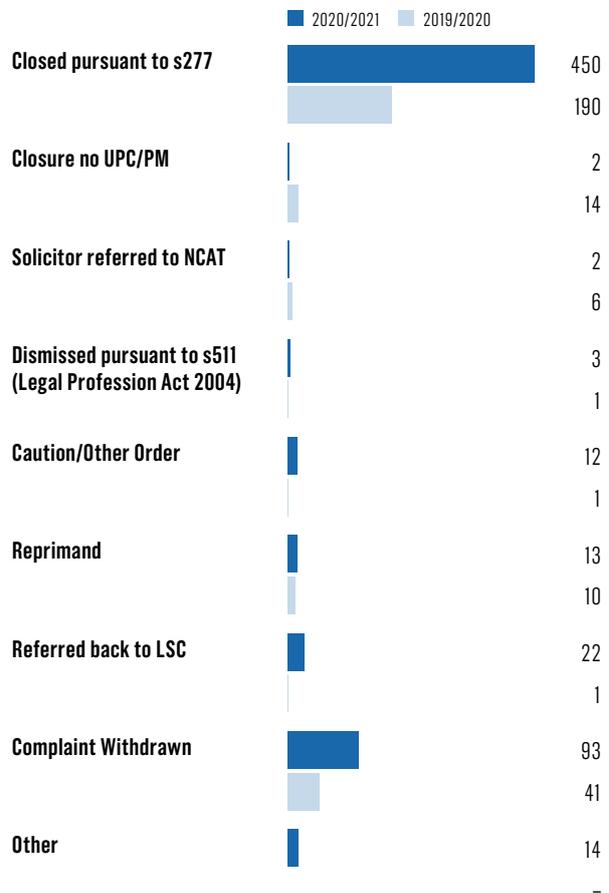
Members of the PCC contribute many hours on a voluntary basis. The PCC is reflective of a broad range of legal expertise, insights and experience. The PCC generally meets fortnightly to consider the reports and recommendations of Professional Standards in relation to complaints.

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.
- Resolve to initiate proceedings in NCAT against the solicitor.

In 2020/2021:

- Of the 611 matters finalised by Professional Standards, 496 complaints had been closed by PCC.
- Of the complaints closed by the PCC:
  - 90.72% 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)).
  - 12 cautions and 13 reprimands were consequently ordered by the PCC.
  - 2 matters were referred to NCAT for the commencement of disciplinary proceedings.



## Complaints Management

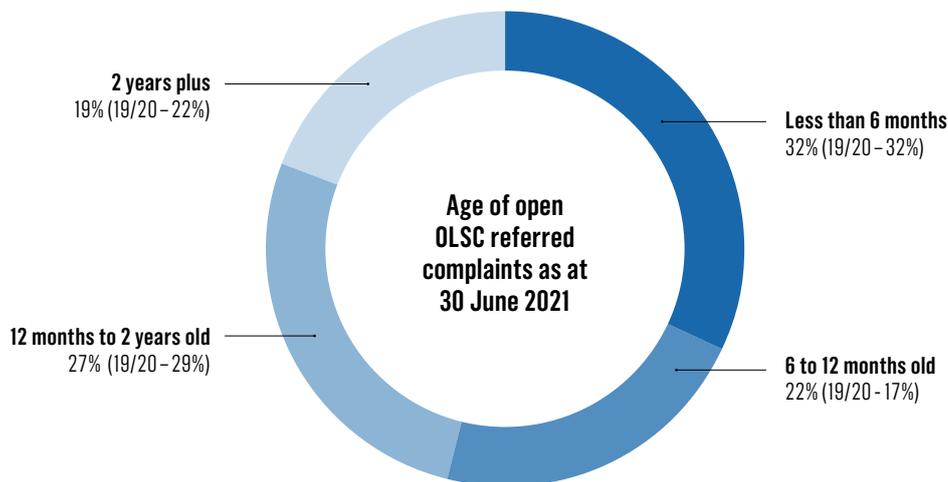
The staff practices and procedures of Professional Standards are regularly reviewed and updated to ensure complaints are handled as efficiently and expeditiously as possible.

Professional Standards also liaises with the Commissioner concerning the status and progress of all complaints referred to the Law Society. Professional Standards is reviewing its procedures on an ongoing basis.

A new Team Structure was implemented in 2020/2021, and new processes adopted to streamline the handling

of complaints. This has enabled Professional Standards to focus resources on more serious matters, while more quickly dealing with less serious matters. Professional Standards closed 611 matters, a significant improvement on previous years, with matters on hand dropping during the period from 770 to 711 at 30 June.

The following data relating to the age of complaints on hand, compares the profile to 2019/2020.



## Reviews by the New South Wales Legal Services Commissioner

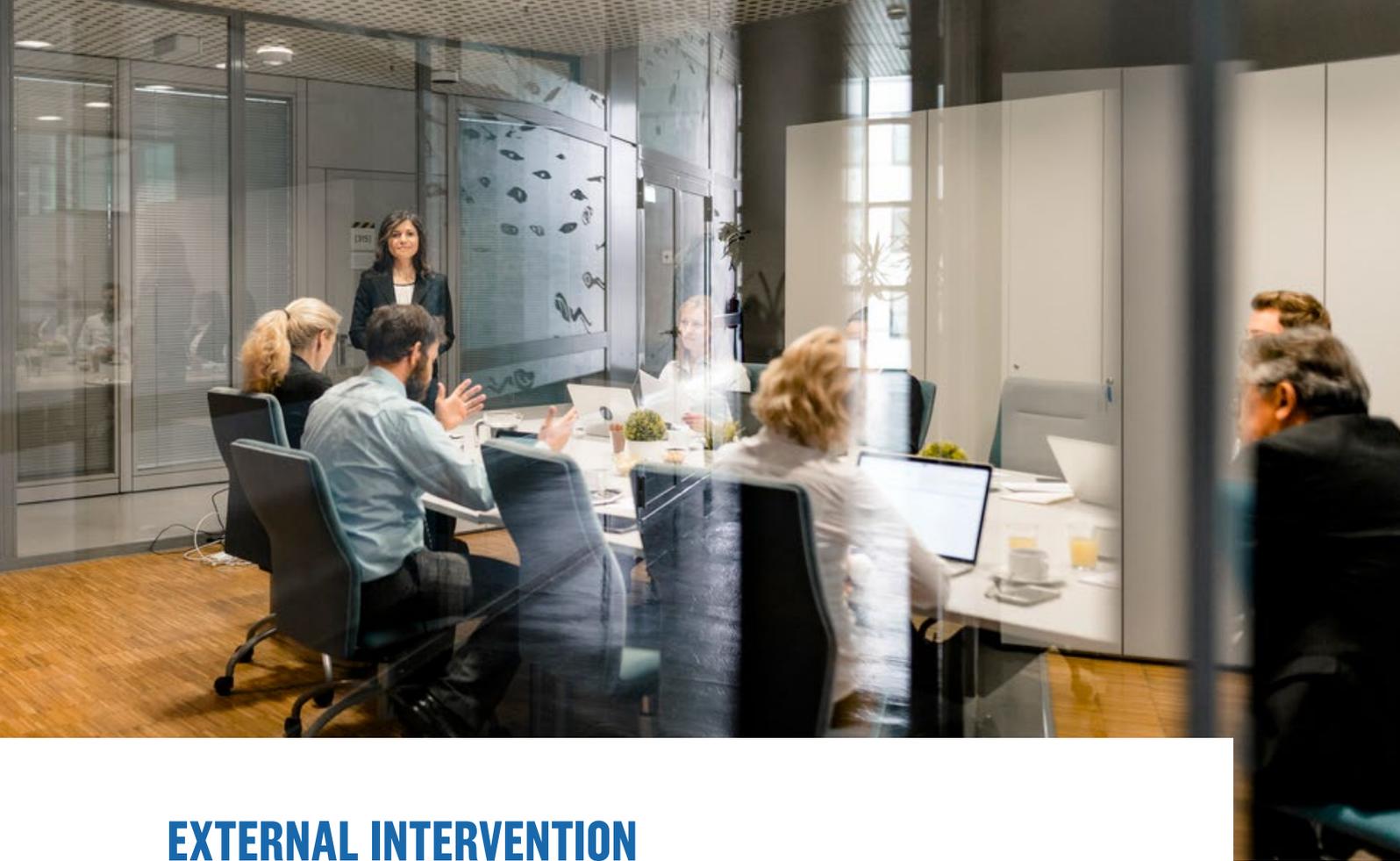
The decisions and determinations of the PCC are subject to review. The avenue of review that may be available under the legal profession legislation will depend upon the type of decision or determination made. For example, in relation to a complaint which has been closed by the PCC under section 277 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 2020/2021, the Commissioner received 26 requests for reviews. Of those 26 requests the Commissioner upheld all decisions.

The Commissioner allowed 1 application for review which had been made in 2019/2020.



# EXTERNAL INTERVENTION

## New South Wales Civil and Administrative Tribunal

The PCC may decide to initiate and prosecute proceedings in NCAT in relation to the alleged conduct of a lawyer if the PCC is of the opinion that the alleged conduct may amount to:

- professional misconduct; or
- unsatisfactory professional conduct which would be better dealt with by NCAT

Many of the matters referred to NCAT are complex and quite often involve multiple allegations about different kinds of conduct. The table on the next page sets out the types of conduct considered by NCAT in disciplinary proceedings commenced by the Council during 2020/2021 and orders it has made in those proceedings.

## NCAT Orders for reprimands, fines or removals from the Roll

|           | REPRIMAND | FINE | REMOVAL / RECOMMENDATION FOR REMOVAL FROM THE ROLL |
|-----------|-----------|------|--|
| 2020/2021 | 9         | 4    | 1  |
| 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  |

## NCAT - Disciplinary proceedings

In 2020/2021:

- The Council commenced 6 proceedings in NCAT pursuant to section 300(1) of the Uniform Law
- The Tribunal handed down a decision in relation to 1 of the 6 proceedings referred to above

In 2020/2021 the Tribunal handed down a decision in relation to 13 matters commenced by the Law Society pursuant to section 300(1) of the Uniform Law. In those matters the Tribunal:

- On 7 occasions made a finding that a practitioner is guilty of professional misconduct only and made disciplinary orders on the basis of that finding. In those matters the Tribunal:
  - On 1 occasion made an order recommending the removal of a practitioner's name from the Roll
  - On 6 occasions issued a practitioner with a reprimand
  - On 3 occasions issued a practitioner with a fine
  - On 4 occasions made an order requiring a practitioner to undertake further education
  - On 1 occasion made orders imposing conditions on a practitioner's practising certificate
  - On 6 occasions made an order requiring the practitioner to pay the Law Society's costs
  - On 1 occasion made no order as to costs.
- On 1 occasion made a finding that a practitioner is guilty of professional misconduct only and did not, during 2020/2021, make disciplinary orders on the basis of the finding or costs orders.
- On 3 occasions made a finding that a practitioner is guilty of unsatisfactory professional conduct only and made disciplinary orders on the basis of that finding. In those matters the Tribunal:
  - On 2 occasions issued the practitioner with a reprimand
  - On 1 occasion made an order requiring a practitioner to undertake further education
  - On 1 occasion issued a practitioner with a caution
  - On 1 occasion made an order imposing terms relating to the Respondent's law practice's financial affairs
  - On 3 occasions made an order requiring the practitioner to pay the Law Society's costs
- On 1 occasion made disciplinary orders only on the basis of a finding, made during a previous period, that a practitioner was guilty of professional misconduct. In that matter the Tribunal made orders issuing the practitioner with a fine and a reprimand and requiring the practitioner to pay the Law Society's costs.
- On 1 occasion granted the Law Society leave to withdraw the proceedings pursuant to section 147 of the *Legal Profession Uniform Law Application Act 2014* and made no order as to costs.

## Number and type of proceedings instituted at NCAT

| NAME OF SOLICITOR          | CONDUCT  | FINDING/S                               | ORDERS MADE  | DATE OF ORDERS |
|----------------------------|--|---|--|----------------|
| <b>James Edward Leslie</b> | <ul style="list-style-type: none"> <li>• Misappropriation of trust monies</li> <li>• Causing a deficiency in a trust account</li> <li>• Manipulation of trust accounting records to conceal misappropriation</li> <li>• Failure to comply with legislative trust accounting obligations</li> <li>• Contravention of section 139 of the Uniform Law</li> <li>• Failure to comply with a notice issued under section 370 of the Uniform Law</li> </ul> | Professional misconduct                 | <ul style="list-style-type: none"> <li>• Order recommending removal of the Respondent's name from the Roll</li> <li>• Respondent to pay Law Society's costs</li> </ul> | 23 July 2020   |
| <b>Jaruwan Tangsilsat</b>  | Made a false declaration in application for renewal of a practising certificate for 2017/18 year   | N/A (decision on orders and costs only) | <ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Fine</li> <li>• Respondent to pay Law Society's costs</li> </ul>   | 3 August 2020  |

### Number and type of proceedings instituted at NCAT (continued)

| NAME OF SOLICITOR           | CONDUCT   | FINDING/S                           | ORDERS MADE  | DATE OF ORDERS    |
|-----------------------------|---|-------------------------------------|--|-------------------|
| <b>Brian David Thornton</b> | <ul style="list-style-type: none"> <li>Intermixing trust money with other money</li> <li>Causing a trust account deficiency</li> <li>Use of trust monies without authority</li> </ul>   | Unsatisfactory professional conduct | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Respondent to pay Law Society's costs</li> </ul>   | 11 September 2020 |
| <b>DWO</b>                  | N/A   | N/A                                 | Law Society granted leave to withdraw the proceedings pursuant to section 147 of the <i>Legal Profession Uniform Law Application Act 2014</i>                    | 4 December 2020   |
| <b>Chee Kiong Low</b>       | Borrowed \$100,000 from a client in breach of Rule 12.3.1 of the <i>Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015</i> (NSW)  | Professional misconduct             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Fine</li> <li>Education course</li> <li>Respondent to pay Law Society's costs</li> </ul>               | 7 December 2020   |
| <b>Luis Batalha</b>         | <ul style="list-style-type: none"> <li>Contraventions of section 137 of the Uniform Law</li> <li>Released trust funds without authority</li> <li>Contravention of section 146 of the Uniform Law</li> <li>Contravention of section 254 of the <i>Legal Profession Act 2004</i></li> <li>Contravention of section 260 of the <i>Legal Profession Act 2004</i></li> </ul>   | Professional misconduct             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Education course</li> <li>No order as to costs</li> </ul>  | 22 December 2020  |
| <b>DRE</b>                  | <ul style="list-style-type: none"> <li>For the purposes of obtaining an Australian passport for her daughter (AJC), the Respondent: <ul style="list-style-type: none"> <li>Signed a passport application with a signature purporting to be that of AJC's father (PDC)</li> <li>Procured false witnessing of a signature purporting to be that of PDC on the passport application when she knew that the signature of PDC on that document was not that of PDC</li> <li>Lodged the passport application at an Australia Post outlet knowing that the signature on the application was not that of PDC and that the signature had not been witnessed</li> </ul> </li> <li>Attempted to mislead principals of a law firm by stating that there was no irregularity with the passport application.</li> </ul> | Professional misconduct             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Conditions imposed on practising certificate</li> <li>Respondent to pay Law Society's costs</li> </ul> | 19 January 2021   |

### Number and type of proceedings instituted at NCAT (continued)

| NAME OF SOLICITOR               | CONDUCT   | FINDING/S                           | ORDERS MADE   | DATE OF ORDERS   |
|---------------------------------|---|-------------------------------------|---|------------------|
| <b>Jesus Gutierrez Diaz</b>     | <ul style="list-style-type: none"> <li>• Contravention of section 148 of the Uniform Law</li> <li>• Contravention of section 154 of the Uniform Law</li> <li>• Contravention of section 144(2)(b) of the Uniform Law by failing to comply with Rule 42 of the <i>Legal Profession Uniform General Rules 2015</i></li> </ul> | Unsatisfactory professional conduct | <ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Education course</li> <li>• Respondent to pay Law Society's costs</li> <li>• Terms relating to the Respondent's law practice's financial affairs</li> </ul> | 22 January 2021  |
| <b>David Duc Van Nguyen</b>     | <ul style="list-style-type: none"> <li>• Providing the Law Society with misleading information about the supervision of a solicitor</li> <li>• The solicitor, whilst holding a practising certificate subject to condition 2, mistakenly purported to supervise a solicitor</li> </ul>                                      | Unsatisfactory professional conduct | <ul style="list-style-type: none"> <li>• Caution</li> <li>• Respondent to pay Law Society's costs</li> </ul>  | 28 January 2021  |
| <b>David Kevin Hunter</b>       | Failure to comply with an undertaking given to another solicitor  | Professional misconduct             | <ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Fine</li> <li>• Respondent to pay Law Society's costs</li> </ul>  | 23 February 2021 |
| <b>Harland Sebastian Koops</b>  | Contravention of sections 136, 137, 146 and 147 of the Uniform Law  | Professional misconduct             | <ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Fine</li> <li>• Education course</li> <li>• Respondent to pay Law Society's costs</li> </ul>  | 10 March 2021    |
| <b>Frank Douglas Hammond</b>    | <ul style="list-style-type: none"> <li>• Sending an intimidating and threatening letter to another person</li> <li>• Writing threatening and intimidating letters</li> </ul>  | Professional misconduct             | <ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Education course</li> <li>• Respondent to pay Law Society's costs</li> </ul>  | 4 May 2021       |
| <b>Catherine Bridget Fisher</b> | <ul style="list-style-type: none"> <li>• Failure to comply with undertaking to the Law Society to complete a practice management course</li> <li>• Contravention of a condition on Practising Certificate requiring compliance with the undertaking</li> </ul>  | Professional misconduct             | <ul style="list-style-type: none"> <li>• N/A (decision on liability only)</li> </ul>  | 31 May 2021      |

## Section 119 (disqualification) proceedings

The Law Society may apply to 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.

In 2020/2021 the Law Society did not commence any matters in the Tribunal pursuant to section 119 of the Uniform Law.

In 2020/2021 the Tribunal handed down a decision in relation to 1 matter commenced, in a previous period, by the Law Society pursuant to section 119 of the Uniform Law. In that matter the Tribunal made an order disqualifying the respondent indefinitely under section 119 of the Uniform Law and made no order as to costs.

| NAME OF RESPONDENT  | CONDUCT   | ORDERS MADE   | DATE OF ORDERS    |
|---------------------|---|---|-------------------|
| <b>Lisa Brincat</b> | <ul style="list-style-type: none"> <li>• Used trust money for personal benefit</li> <li>• Intermixed trust monies with other monies</li> <li>• Caused a trust irregularity</li> </ul> | <ul style="list-style-type: none"> <li>• An order disqualifying the Respondent indefinitely pursuant to section 119 of the Uniform Law</li> <li>• No order as to costs</li> </ul> | 16 September 2020 |

## Section 314 (appeal) proceedings

In 2020/2021 the Law Society had 1 matter commenced in the Tribunal against it pursuant to section 314 of the Uniform Law. That matter is yet to be determined.

In 2020/2021 the Tribunal published a decision in relation to 1 matter commenced, in a previous period, against the Law Society pursuant to section 314 of the Uniform Law. In that matter the Tribunal affirmed the Law Society's resolution to make disciplinary findings and orders against the applicant.

| NAME OF APPLICANT  | ORDERS MADE   | DATE OF ORDERS |
|--------------------|---|----------------|
| <b>Trevor Hall</b> | <ul style="list-style-type: none"> <li>• Law Society's resolution affirmed</li> <li>• No order as to costs</li> </ul> | 26 August 2020 |

## Supreme Court and Court of Appeal proceedings

In 2020/2021 the Supreme Court of New South Wales and the Court of Appeal handed down the following decisions in proceedings to which the Law Society was a party:

1. *Council of the Law Society of New South Wales v Yoon* [2020] NSWCA 141 – The Court of Appeal made an order removing the Respondent’s name from the Roll.
2. *Council of the Law Society of New South Wales v Zhukovska* [2020] NSWCA 163 – The Court of Appeal did not make the orders sought by the Law Society and made orders requiring the parties to file and serve submissions on the conditions to which the Respondent’s practising certificate should be subject.
3. *Konstantinidis v Council of the Law Society of New South Wales* [2020] NSWCA 227 – The Court of Appeal allowed the appeal as to grounds 1 and 3, set aside NCAT’s orders and ordered that the Application that the Law Society filed in the Tribunal against the Respondent be dismissed.
4. *Taylor v Council of the Law Society of New South Wales* [2020] NSWCA 273 – The Court of Appeal allowed the appeal, set aside NCAT’s orders and ordered that the Application that the Law Society filed in the Tribunal against the Respondent be dismissed.
5. *Carr v Council of the Law Society of New South Wales* [2020] NSWCA 276 – The Court of Appeal allowed the appeal, set aside NCAT’s orders and ordered that the Application that the Law Society filed in the Tribunal against the Respondent be dismissed.
6. *Council of the Law Society of New South Wales v Leslie* [2021] NSWCA 59 – The Court of Appeal made an order removing the Respondent’s name from the Roll.
7. *Bowers v the Law Society of New South Wales (No 7)* [2021] NSWSC 611 – The Supreme Court dismissed the Plaintiff’s application for an injunction and for an order requiring the Law Society to issue the Plaintiff with a practising certificate.
8. *Bowers v the Law Society of New South Wales* [2021] NSWCA 118 – The Court of Appeal refused the Applicant’s application for leave to appeal.

### Other matters

In 2020/2021 the Law Society had commenced against it various Court proceedings that the applicants discontinued. Details of those proceedings are not included in this report.

### 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 2020/2021:

- 69 enquiries about unqualified practice were dealt with, a decrease from the 97 enquiries in the previous reporting period.
- No court proceedings were instituted.

## 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 a 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 2020/2021, the Council appointed 27 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 2020/2021, the Council appointed 8 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 2020/2021, the Court appointed zero 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 2020/2021, the Council appointed 1 external investigator.**



## 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 required to be disclosed under 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 pre-admission 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.

## Disclosure Committee

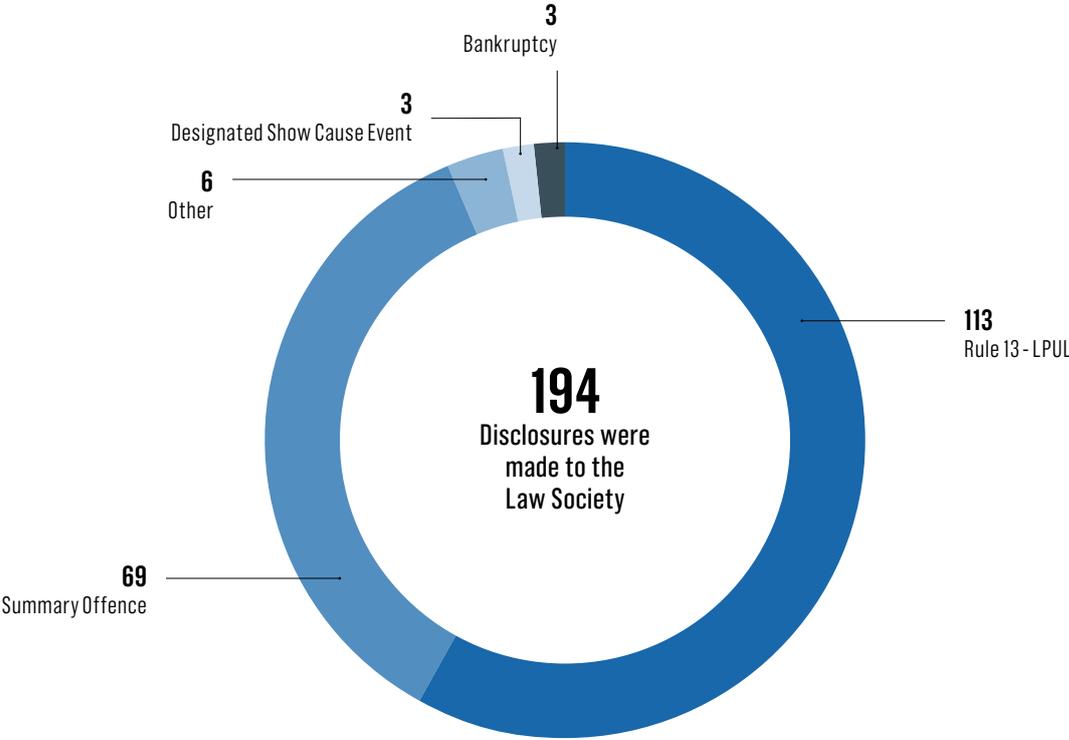
The Disclosure Committee, under delegation from the Council, deals with the matters that solicitors are required to disclose to the Law Society. The Disclosure Committee does not have the power to make a determination adversely affecting a solicitor’s right to practice. Any such determination is reserved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

In 2020/2021, the Disclosure Committee comprised 2 Councillors of the Law Society, 10 solicitors and 2 lay members. It generally meets monthly to make decisions on the matters before it.

In 2020/2021:

- A total of 194 disclosures were made to the Law Society
- Of the 194 disclosures received:
  - 51 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.
- 18 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 behaviour, 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
- 118 related to matters required to be disclosed under Rule 13 of the Uniform Law General Rules, which relate to matters potentially affecting fitness.
- 3 disclosures were notifications of Bankruptcy





## 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

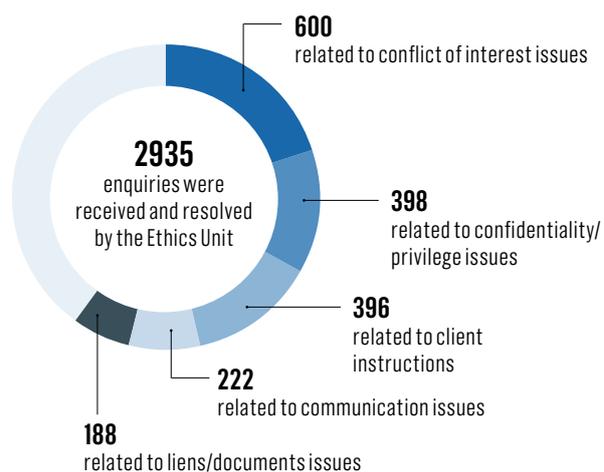
During 2020/2021 the legal profession relied heavily upon the services of the Ethics Unit with the need for timely and practical information and guidance, assisting the profession to maintain ethical practices and avoid inappropriate conduct.

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 2935 enquiries, which reflects the ongoing need for the services provided. The number of enquiries remains steady from the previous reporting period. Of these 2935 enquiries:

- 600 (20.44%) related to conflict of interest issues
- 398 (13.56%) related to confidentiality/privilege issues
- 396 (13.49%) related to client instructions
- 222 (7.56%) related to communication issues
- 188 (6.40%) related to liens/documents issues

The traditional services were maintained throughout the year by telephone enquiry line, an ethics email 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, 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 17 members of the legal profession on the Committee.

The ethics committee is supported by the Ethics Unit (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 2020/2021 year has again presented a year of challenging circumstance for the legal profession serving the community. The continuation of the health crisis and the need to continue providing legal services to the community have caused a testing environment for the practice of law.

The legal profession has responded well to the adverse circumstance and has maintained the ethical standards that are the hallmarks of the legal profession.

The ethics unit has continued to provide a suite of supporting services to the legal profession with the delivery of education programmes on-line, the continuation of the advisory services by telephone, email and Ethics Committee, in conjunction with other sections of the Professional Support Unit.

The increased tempo of delivering these services to the legal profession has ensured the stability and capability of the legal profession during the adverse circumstances endured over the last year.

### Highlights of 2020/2021

- The rapid change of circumstances and difficult conditions caused by the COVID-19 pandemic have required an increased tempo in the delivery of services, attending to the needs of the legal profession by both the ethics unit and the Ethics Committee over the entire year

| ETHICS ENQUIRIES                    |     |
|-------------------------------------|-----|
| Miscellaneous                       | 718 |
| Conflict Of Interest                | 600 |
| Confidentiality/Privilege           | 398 |
| Clients Instructions                | 396 |
| Communications                      | 222 |
| Lien/Documents                      | 188 |
| Costs                               | 104 |
| Trust Monies                        | 61  |
| Termination Of Retainer             | 58  |
| Assist Fraudulent Activity          | 47  |
| Client Lacking Capacity             | 34  |
| Improper Instructions               | 21  |
| Client Capacity                     | 20  |
| Advertising                         | 16  |
| Undertakings                        | 13  |
| Sol Leaving Firm Contacting Clients | 12  |
| Sol Material Witness                | 10  |
| Disclosure                          | 8   |
| Unqualified Persons                 | 8   |
| Practice - General                  | 1   |

- The needs of the legal profession were identified and addressed in a short time frame. Bespoke courses on issues affecting the legal profession to ensure the provision of legal services to the community, duties and obligation to the Court and maintaining standards to the legal profession were provided.
- An enhanced suite of services on-line were developed in a short time frame and disseminated on a regular basis. This was in response to the need by the legal profession for assistance and guidance on ethics, education programmes for small and medium law firms, government lawyers and specialist areas of legal practice.
- Providing leadership and assistance to the legal profession to maintain the provision of legal services and public confidence during adverse circumstance.



## 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 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 a high number of practitioners attending seminars on legal costs this year. There is 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.

Seminars organised by the Law Society were largely held online due to COVID with some being held at its offices. These again attracted large audiences mainly from small to medium law practices with a number of sole practitioners.

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

In addition, the Costs Unit also provided speakers for government, community and educational organisations. 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, fines imposed and costs incurred by the appointment of supervisors, managers, investigators and receivers.

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. In 2020/2021, the Law Society has commenced seeking recovery through the renewal of the solicitor's practising certificate which has significantly improved recovery.

The legal profession legislation allows the 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.

From 1 July 2021, this function has transferred to the Litigation and External Intervention Unit.

| COST ENQUIRIES |              |
|----------------|--------------|
| 2020/2021      | 590<br>(est) |
| 2019/2020      | 602          |
| 2018/2019      | 531          |
| 2017/2018      | 1,004        |
| 2016/2017      | 1,342        |
| 2015/2016      | 1,849        |
| 2014/2015      | 667          |
| 2013/2014      | 1,091        |
| 2012/2013      | 1,364        |
| 2011/2012      | 1,355        |

| KEY TOPICS         |     |
|--------------------|-----|
| Cost Agreements    | 32% |
| Cost Billing       | 19% |
| Cost Recovery      | 15% |
| Disclosure         | 12% |
| Cost Trust Account | 5%  |
| Liens              | 5%  |
| Regulated Costs    | 4%  |
| File Transfers     | 4%  |
| Third Party Payers | 2%  |
| Party Party Costs  | 1%  |



## 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 Uniform Law.

### Overview

In 2020/2021, the Regulatory Compliance Unit responded to more than 3,000 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 COVID-19 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 2020/2021

#### LSJ Articles

In addition to and complimenting 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:

- "Migration law practitioners to cast off the shackles of dual regulation"
- "Setting up an Incorporated Legal Practice under the Uniform Law"
- "Solicitor consultants: have you considered the terms of your practising certificate?"
- "Compliance risks: FAQs in the age of the coronavirus Part 1"
- "Compliance risks: FAQs in the age of the coronavirus Part 2"

#### Monday briefs publications

- Amendments to the Migration Act 1958 commencing Monday 22 March 2021

### Publication on Regulatory updates page of Law Society website 2020/2021

- Practical information for practitioners impacted by the commencement Migration Amendment (Regulation of Migration Agents) Act 2020
- FAQs for practitioners to prepare for the commencement of the Migration Amendment (Regulation of Migration Agents) Act 2020
- A comprehensive checklist for transitioning a Migration Agents business to a new law practice.

The Regulatory Compliance Unit continued to work collaboratively with other departments at the Law Society including the Law Society’s Registry and Licensing Department, 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

- Migration Amendment (Regulation of Migration Agents) Act 2020
- Incorporated Legal Practice - Principals.
- Management Investment Schemes.
- Remote supervision.

### Practice Restructuring

The Regulatory Compliance Solicitors assisted a significant number of practitioners to restructure their law practice during this reporting period. Restructuring issues included the detailed examination of several interrelated sections of the Uniform Law, the Legal Profession Uniform General Rules (2015) and the Australian Solicitors’ Conduct Rules 2015.

Due to the lockdown created by the COVID-19 pandemic, the Regulatory Compliance solicitors provided guidance around restructuring law practices remotely or via Microsoft Teams meetings, instead of face to face.

| REGULATORY COMPLIANCE ENQUIRIES     |     |
|-------------------------------------|-----|
| Practice Management                 | 16% |
| Practising Certificate              | 16% |
| Employment                          | 10% |
| Business Development                | 9%  |
| Establishment Of An ILP             | 8%  |
| Law Practice Demands                | 7%  |
| Consultants                         | 5%  |
| Interstate & Foreign Legal          | 5%  |
| Miscellaneous                       | 5%  |
| In House Practice                   | 4%  |
| Trust Accounts                      | 4%  |
| Letterheads/Business Names          | 4%  |
| Transfer Of A Practice              | 3%  |
| Establishment Of Practice – Non ILP | 3%  |
| Closing/Selling A Practice          | 2%  |
| Show Cause Event/Disclosure         | <2% |
| Establishment Of An UPL             | <2% |
| Unqualified Practitioners           | <2% |

Most commonly, restructuring guidance was sought when a law practice was merging with another law practice or transferring a sole practice to a partnership, or an incorporated legal practice, or an unincorporated legal practice.

There was a noticeable increase in restructure guidance sought from established law practice partnerships and incorporated legal practices, concerning the unincorporated legal practice partnership model.

The Migration Amendment (Regulation of Migration Agents) Act 2020 was passed by both Houses of Parliament on 15 June 2020 and came into effect of 22 March 2021 (the new legislation). The new legislation amended the Migration Act 1958, so that Australian legal practitioners holding practising certificates that are not subject to supervision will no longer be required or entitled, to register with the OMARA as migration agents.

Importantly, after the commencement of the new legislation and subject to the conditions on their practising certificate, Australian legal practitioners are now able to provide immigration assistance in connection with legal practice without holding registration as a migration agent with the OMARA.

Throughout 2020 and early 2021 the Regulatory Compliance solicitors worked closely with the Office of the Migration Agents Registration Authority (OMARA) and the Department of Home Affairs (DHA) to introduce these important amendments to the Migration Act 1958 to legal practitioners in NSW.

The Regulatory Compliance Solicitors published FAQ's on the Regulatory Updates page of the Law Society's website, and provided CPD presentations to further support practitioners who were impacted by these changes.

### 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.
- Migration Act 1958 amendments
- Transitioning a migration agency business to a new law practice

### 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 by almost 20% from 76 to 94 presentations.

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 rooms, 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:

- Compliance Management
- Professional Responsibility for government lawyers
- Practice Management & Business Skills – Immigration Lawyers
- 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.
- In-house Counsel – Practice management and business skills
- Undertakings and client retainers.
- Compliance pitfalls.
- Responsibility of principals – reasonable steps.
- Legal professional privilege 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**

| <b>DISCIPLINARY MATTERS</b>                      | <b>11</b>  | <b>12</b>  | <b>13</b>  | <b>14</b>  | <b>15</b>  | <b>16</b>  | <b>17</b>  | <b>18</b>  | <b>19</b>  | <b>20</b>  | <b>21</b>  |
|--|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| <b>Personal Conduct</b>                          | <b>242</b> | <b>253</b> | <b>195</b> | <b>165</b> | <b>226</b> | <b>284</b> | <b>202</b> | <b>260</b> | <b>228</b> | <b>228</b> | <b>236</b> |
| Unethical Conduct                                | 128        | 150        | 118        | 71         | 77         | 113        | 122        | 91         | 155        | 106        | 102        |
| Negligence                                       | 40         | 25         | 48         | 29         | 24         | 20         | 44         | 23         | 31         | 45         | 17         |
| Misleading                                       | 24         | 22         | 29         | 32         | 23         | 58         | 45         | 35         | 24         | 18         | 19         |
| Conflict of Interest                             | 15         | 17         | 22         | 16         | 16         | 12         | 31         | 18         | 27         | 18         | 22         |
| Failure to Transfer Documents                    | 10         | 7          | 4          | 6          | 3          | 2          | 4          | 6          | 4          | 6          | 3          |
| Communicating with a Client of Another Solicitor | 9          | 3          | 4          | 10         | 8          | 9          | 7          | 7          | 2          | 5          | 12         |
| Breach Confidentiality                           | 4          | 6          | 7          | 4          | 2          | 5          | 6          | 5          | 2          | 3          | 6          |
| False Swearing of Documents                      | 4          | 1          | 7          | 11         | 3          | 2          | 13         | 3          | 3          | 6          | 12         |
| Undue Pressure                                   | 3          | 2          | 1          | 3          | 0          | 0          | 1          | 3          | 2          | 3          | 0          |
| Threatening Behaviour                            | 3          | 4          | 7          | 9          | 7          | 4          | 8          | 10         | 10         | 15         | 42         |
| Failure to Assist Law Society                    | 1          | 0          | 0          | 0          | 2          | 0          | 1          | 0          | 0          | 2          | 0          |
| Borrowing from Client                            | 0          | 5          | 6          | 4          | 0          | 1          | 2          | 1          | 0          | 1          | 1          |
| <b>Cost / Payment Issues</b>                     | <b>65</b>  | <b>58</b>  | <b>62</b>  | <b>52</b>  | <b>48</b>  | <b>59</b>  | <b>68</b>  | <b>49</b>  | <b>48</b>  | <b>76</b>  | <b>66</b>  |
| Failure to Pay Third Party                       | 37         | 31         | 42         | 35         | 29         | 43         | 34         | 33         | 24         | 21         | 47         |
| Overcharging                                     | 14         | 11         | 9          | 8          | 5          | 8          | 17         | 11         | 1          | 2          | 4          |
| No Costs Disclosure                              | 9          | 13         | 6          | 6          | 12         | 6          | 8          | 3          | 19         | 3          | 3          |
| Failure to Provide a Detailed Account            | 3          | 0          | 0          | 2          | 1          | 0          | 5          | 1          | 1          | 9          | 7          |
| Transfer Costs Without Authority                 | 2          | 3          | 5          | 1          | 1          | 2          | 4          | 1          | 3          | 2          | 1          |
| Liens  | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 2          | 2          |
| Unethical Conduct                                | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 37         | 2          |
| <b>Communication / Service</b>                   | <b>68</b>  | <b>72</b>  | <b>40</b>  | <b>65</b>  | <b>67</b>  | <b>68</b>  | <b>75</b>  | <b>65</b>  | <b>50</b>  | <b>48</b>  | <b>77</b>  |
| No Communication                                 | 17         | 24         | 8          | 9          | 10         | 11         | 14         | 13         | 12         | 11         | 4          |
| Failure to Carry Out Instructions                | 12         | 13         | 10         | 14         | 18         | 11         | 15         | 13         | 6          | 10         | 6          |
| No Client Advice                                 | 12         | 5          | 1          | 5          | 3          | 6          | 0          | 2          | 2          | 3          | 2          |
| Discourtesy                                      | 11         | 7          | 1          | 10         | 13         | 6          | 8          | 13         | 9          | 11         | 15         |
| Act Without/Contrary to Instructions             | 7          | 10         | 6          | 15         | 13         | 19         | 15         | 11         | 12         | 6          | 34         |
| Delay  | 4          | 7          | 7          | 9          | 7          | 11         | 15         | 11         | 8          | 5          | 2          |
| Lack of Supervision                              | 4          | 2          | 7          | 2          | 3          | 3          | 7          | 0          | 0          | 1          | 0          |
| No Advice on Progress                            | 1          | 4          | 0          | 1          | 0          | 1          | 1          | 2          | 1          | 1          | 0          |
| Failure to respond to correspondence             | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 14         |
| <b>Non-Compliance</b>                            | <b>55</b>  | <b>43</b>  | <b>64</b>  | <b>53</b>  | <b>45</b>  | <b>42</b>  | <b>102</b> | <b>63</b>  | <b>33</b>  | <b>39</b>  | <b>122</b> |
| Not Complying with Undertaking                   | 15         | 11         | 18         | 13         | 8          | 8          | 19         | 9          | 9          | 2          | 3          |
| Practising without a Practising Certificate      | 12         | 1          | 8          | 11         | 11         | 7          | 36         | 15         | 1          | 4          | 3          |
| Not Complying with a s.660 Notice                | 11         | 1          | 5          | 2          | 4          | 3          | 2          | 0          | 0          | 0          | 0          |
| Not Comply with Legal Profession Act/Regulations | 9          | 19         | 19         | 19         | 15         | 20         | 41         | 38         | 21         | 30         | 108        |
| Not Complying with Fiscal Obligations            | 8          | 11         | 14         | 8          | 7          | 4          | 4          | 1          | 2          | 1          | 1          |
| Practising contrary to practising certificate    | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 2          | 2          |
| Failure to disclose                              | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 5          |

| DISCIPLINARY MATTERS                                      | 11         | 12         | 13         | 14         | 15         | 16         | 17         | 18         | 19         | 20         | 21         |
|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| <b>Trust Account matters</b>                              | <b>43</b>  | <b>40</b>  | <b>60</b>  | <b>76</b>  | <b>47</b>  | <b>40</b>  | <b>57</b>  | <b>33</b>  | <b>15</b>  | <b>52</b>  | <b>41</b>  |
| Breach of Sections of Act / Regs relating to Trust Moneys | 22         | 19         | 41         | 40         | 23         | 17         | 19         | 2          | 0          | 32         | 37         |
| Failure to Account  | 14         | 13         | 14         | 10         | 11         | 10         | 22         | 23         | 8          | 6          | 0          |
| Misappropriation  | 7          | 8          | 5          | 26         | 13         | 13         | 16         | 8          | 7          | 14         | 3          |
| Intermingling Money                                       | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 1          |
| <b>Other</b>  | <b>5</b>   | <b>27</b>  | <b>3</b>   | <b>0</b>   | <b>6</b>   | <b>13</b>  | <b>14</b>  | <b>69</b>  | <b>92</b>  | <b>7</b>   | <b>8</b>   |
| OLSC Enquiry  | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 69         | 7          | 8          |
| <b>TOTAL NUMBER OF DISCIPLINARY MATTERS</b>               | <b>477</b> | <b>482</b> | <b>482</b> | <b>441</b> | <b>378</b> | <b>448</b> | <b>600</b> | <b>481</b> | <b>498</b> | <b>450</b> | <b>550</b> |
| <b>CONSUMER DISPUTES</b>                                  | <b>68</b>  | <b>68</b>  | <b>64</b>  | <b>39</b>  | <b>30</b>  | <b>1</b>   | <b>0</b>   | <b>0</b>   | <b>0</b>   | <b>0</b>   | <b>0</b>   |
| <b>TOTAL NUMBER OF COMPLAINTS OPENED</b>                  | <b>545</b> | <b>550</b> | <b>546</b> | <b>480</b> | <b>408</b> | <b>449</b> | <b>600</b> | <b>481</b> | <b>498</b> | <b>450</b> | <b>550</b> |

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

| COMPLAINANT TYPE                         | 11         | 12         | 13         | 14         | 15         | 16         | 17         | 18         | 19         | 20         | 21         |
|--|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Client/Former Client                     | 159        | 174        | 124        | 141        | 116        | 115        | 179        | 134        | 115        | 116        | 80         |
| Law Society                              | 87         | 72         | 94         | 84         | 73         | 60         | 111        | 90         | 104        | 14         | 10         |
| Solicitor                                | 87         | 88         | 98         | 81         | 73         | 70         | 72         | 56         | 40         | 47         | 83         |
| Third Party                              | 85         | 78         | 104        | 84         | 69         | 70         | 69         | 80         | 103        | 74         | 152        |
| Third Party (Other Side)                 | 63         | 76         | 68         | 56         | 35         | 94         | 121        | 77         | 98         | 149        | 160        |
| Barrister                                | 37         | 40         | 32         | 11         | 22         | 20         | 22         | 16         | 9          | 14         | 23         |
| Solicitor for Client                     | 22         | 18         | 16         | 12         | 11         | 7          | 6          | 13         | 7          | 12         | 17         |
| Legal Services Commissioner              | 3          | 2          | 7          | 5          | 4          | 7          | 11         | 3          | 2          | 0          | 1          |
| Other 1                                  | 2          | 2          | 3          | 6          | 2          | 6          | 5          | 9          | 16         | 24         | 24         |
| Trust Account Inspector                  | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 0          | 1          | 0          | 0          |
| Executor                                 | 0          | 0          | 0          | 0          | 2          | 0          | 2          | 3          | 1          | 0          | 0          |
| Attorney General                         | 0          | 0          | 0          | 0          | 1          | 0          | 2          | 0          | 2          | 0          | 0          |
| <b>TOTAL NUMBER OF COMPLAINTS OPENED</b> | <b>545</b> | <b>550</b> | <b>546</b> | <b>480</b> | <b>408</b> | <b>449</b> | <b>600</b> | <b>481</b> | <b>498</b> | <b>450</b> | <b>550</b> |

Notes:

1 Other includes Legal Aid Commission, Government Department, Judge 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                | 362                  | 0.955%                               | 65.81%                |
| Employee of Law Practice                 | 95                   | 0.250%                               | 17.27%                |
| Not Practising/Ceased Practising         | 47                   | 0.124%                               | 8.54%                 |
| Complaints Against Firms                 | 34                   | 0.089%                               | 6.18%                 |
| Corporate Legal Practitioner             | 3                    | 0.007%                               | 0.54%                 |
| Government Legal Practitioner            | 9                    | 0.023%                               | 1.66%                 |
| <b>TOTAL NUMBER OF COMPLAINTS OPENED</b> | <b>550</b>           |                                      |                       |

Notes:

At 30 June 2021 total active solicitors 37,877

**Table 4 – Complaints opened, by practice region**

| REGION                                   | NUMBER OF COMPLAINTS |
|--|----------------------|
| <b>Sydney City</b>                       | <b>201</b>           |
| <b>Suburban</b>                          | <b>217</b>           |
| Nepean Hawkesbury                        | 9                    |
| Northern Beaches                         | 13                   |
| Parramatta District                      | 35                   |
| Liverpool & District                     | 23                   |
| Bankstown & District                     | 19                   |
| Inner West                               | 26                   |
| Eastern Suburbs                          | 23                   |
| North Metropolitan                       | 36                   |
| St George-Sutherland                     | 29                   |
| Macarthur                                | 4                    |
| <b>Regional/Rural</b>                    | <b>95</b>            |
| Albury District                          | 3                    |
| Blue Mountains                           | 1                    |
| Central Coast                            | 8                    |
| Coffs Harbour                            | 5                    |
| Central West                             | 5                    |
| Far North Coast                          | 10                   |
| Far South Coast                          | 5                    |
| Nepean Hawkesbury                        | 2                    |
| Newcastle                                | 18                   |
| Hunter Valley                            | 3                    |
| Orana                                    | 1                    |
| Riverina                                 | 1                    |
| Shoalhaven                               | 6                    |
| Southern Tablelands                      | 5                    |
| South West Slopes                        | 1                    |
| Mid-North Coast                          | 5                    |
| Wollongong                               | 13                   |
| North & North West                       | 3                    |
| <b>Interstate</b>                        | <b>21</b>            |
| <b>Overseas</b>                          | <b>1</b>             |
| <b>Other</b>                             | <b>15</b>            |
| <b>TOTAL NUMBER OF COMPLAINTS OPENED</b> | <b>550</b>           |

**Table 5 – Number of complaints closed, by result**

| <b>RESULT TYPE</b>   | <b>2021</b> |
|--|-------------|
| 209 No Further Investigation Required Except Cm - (S277(1)(H))                     | 150         |
| 201 Misconceived/Lacking In Substance - S277(1)(A)                                 | 117         |
| 200 Complaint Withdrawn - S273(1)  | 65          |
| 205 Complaint Already Has Been Investigated - S277(1)(D)                           | 44          |
| 204 Failure/Inadequate Response To Request For Info - S277(1)(C)                   | 37          |
| 211 Public Interest Closure - S277(1)(J)   | 29          |
| 10 Complaint Withdrawn   | 28          |
| 206 Complaint Better Dealt With By Law Enforcement/Investigatory Body - S277(1)(E) | 25          |
| 207 Dlra Made Recommendation Under Section 82(4) - S277(1)(F)                      | 21          |
| 235 Referred Back To Lsc   | 19          |
| 202 Time Limit Not Waived Under S272(1) - S277(1)(B)                               | 16          |
| 224 D Reprimand - S299(1)(B)   | 13          |
| 223 D Caution - S299(1)(A)   | 12          |
| 230 D Initiate Tribunal Proceedings - S300(1)                                      | 9           |
| Closed Enquiry   | 8           |
| Referred Back To Legal Services Commissioner                                       | 3           |
| Complaint Subject To Civil Proceedings - S277(1)(G)                                | 3           |
| Duplication  | 3           |
| Closure - No UPC/Pm  | 2           |
| Diss/No P.Mc./UPC  | 2           |
| Resolved   | 2           |
| S.511 Summ Dismiss   | 1           |
| No Power To Investigate Complaint - S277(1)(I)                                     | 1           |
| No Further Action  | 1           |
| <b>TOTAL</b>   | <b>611</b>  |

**Table 6 – Number of Complaints opened and Complaints closed within the 2020/2021 reporting period**

| COMPLAINT TYPE                                   | OPENED     | CLOSED     |
|--|------------|------------|
| Act On Subpoena                                  | 0          | 2          |
| Act Without/Contrary to Instructions             | 34         | 15         |
| Borrowing from Client                            | 1          | 1          |
| Breach of Confidentiality                        | 6          | 4          |
| Breach Section 137 LPUL                          | 0          | 1          |
| Breach Section 138 LPUL                          | 8          | 20         |
| Breach Section 147 LPUL                          | 0          | 1          |
| Communicating with a Client of Another Solicitor | 12         | 6          |
| Conflict of Interest                             | 22         | 22         |
| Delay  | 2          | 12         |
| Discourtesy                                      | 15         | 14         |
| Failure to Account                               | 6          | 10         |
| Failure to Carry Out Instructions                | 6          | 10         |
| Failure to Disclose                              | 5          | 1          |
| Failure to Pay Third Party                       | 47         | 48         |
| Failure to Provide a Detailed Account            | 1          | 2          |
| Failure to respond to correspondence             | 14         | 7          |
| Failure to Supervise                             | 0          | 3          |
| Failure to Transfer Documents                    | 3          | 4          |
| False Swearing of Documents                      | 12         | 9          |
| Intermingling Money                              | 1          | 0          |
| Liens  | 2          | 1          |
| Misappropriation                                 | 3          | 15         |
| Misleading                                       | 19         | 35         |
| Negligence                                       | 17         | 32         |
| No Advice on Progress                            | 0          | 2          |
| No Client Advice                                 | 2          | 4          |
| No Communication                                 | 4          | 13         |
| No Costs Disclosure                              | 3          | 11         |
| Non-compliance with LPUL./Regs/Rules             | 108        | 57         |
| Non Comply Section 371 Notice                    | 0          | 1          |
| Not Complying with Fiscal Obligations            | 1          | 2          |
| Not Complying with Undertaking                   | 3          | 2          |
| OLSC Enquiry                                     | 0          | 25         |
| Other  | 8          | 4          |
| Other Trust Breaches                             | 29         | 17         |
| Overcharging                                     | 4          | 2          |
| Practising Contrary to Practising Certificate    | 3          | 10         |
| Practising Without a Practising Certificate      | 2          | 8          |
| Section 255 Breach Trust Money                   | 0          | 4          |
| Threatening Behaviour                            | 42         | 20         |
| Transfer Costs without Authority                 | 1          | 2          |
| Undue Pressure                                   | 0          | 1          |
| Unethical Conduct                                | 104        | 151        |
| <b>Total</b>                                     | <b>550</b> | <b>611</b> |

Table 7 – Number and type of proceedings instituted at NCAT

| NAME OF SOLICITOR           | CONDUCT  | FINDING/S   | ORDERS MADE  | DATE OF ORDERS    |
|-----------------------------|--|---|--|-------------------|
| <b>James Edward Leslie</b>  | <ul style="list-style-type: none"> <li>Misappropriation of trust monies</li> <li>Causing a deficiency in a trust account</li> <li>Manipulation of trust accounting records to conceal misappropriation</li> <li>Failure to comply with legislative trust accounting obligations</li> <li>Contravention of section 139 of the Uniform Law</li> <li>Failure to comply with a notice issued under section 370 of the Uniform Law</li> </ul> | Professional misconduct                             | <ul style="list-style-type: none"> <li>Order recommending removal of the Respondent's name from the Roll</li> <li>Respondent to pay Law Society's costs</li> </ul> | 23 July 2020      |
| <b>Jaruwan Tangsilsat</b>   | Made a false declaration in application for renewal of a practising certificate for 2017/18 year   | N/A (Decision on hearing re: Stage 2 (orders) only) | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Fine</li> <li>Respondent to pay Law Society's costs</li> </ul>   | 3 August 2020     |
| <b>Brian David Thornton</b> | <ul style="list-style-type: none"> <li>Intermixing trust money with other money</li> <li>Causing a trust account deficiency</li> <li>Use of trust monies without authority</li> </ul>  | Unsatisfactory professional conduct                 | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Respondent to pay Law Society's costs</li> </ul>   | 11 September 2020 |
| <b>DWO</b>                  | N/A  | N/A   | Law Society granted leave to withdraw the proceedings pursuant to section 147 of the <i>Legal Profession Uniform Law Application Act 2014</i>                      | 4 December 2020   |
| <b>Chee Kiong Low</b>       | Borrowed \$100,000 from a client in breach of Rule 12.3.1 of the <i>Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015</i> (NSW)   | Professional misconduct                             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Fine</li> <li>Education course</li> <li>Respondent to pay Law Society's costs</li> </ul>                 | 7 December 2020   |
| <b>Luis Batalha</b>         | <ul style="list-style-type: none"> <li>Contraventions of section 137 of the Uniform Law</li> <li>Released trust funds without authority</li> <li>Contravention of section 146 of the Uniform Law</li> <li>Contravention of section 254 of the <i>Legal Profession Act 2004</i></li> <li>Contravention of section 260 of the <i>Legal Profession Act 2004</i></li> </ul>  | Professional misconduct                             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Education course</li> <li>No order as to costs</li> </ul>  | 22 December 2020  |

**Table 7 – Number and type of proceedings instituted at NCAT**

| NAME OF SOLICITOR              | CONDUCT   | FINDING/S                           | ORDERS MADE   | DATE OF ORDERS   |
|--------------------------------|---|-------------------------------------|---|------------------|
| <b>DRE</b>                     | <ul style="list-style-type: none"> <li>For the purposes of obtaining an Australian passport for her daughter (AJC), the Respondent: <ul style="list-style-type: none"> <li>Signed a passport application with a signature purporting to be that of AJC's father (PDC)</li> <li>Procured false witnessing of a signature purporting to be that of PDC on the passport application when she knew that the signature of PDC on that document was not that of PDC</li> <li>Lodged the passport application at an Australia Post outlet knowing that the signature on the application was not that of PDC and that the signature had not been witnessed</li> </ul> </li> <li>Attempted to mislead principals of a law firm by stating that there was no irregularity with the passport application.</li> </ul> | Professional misconduct             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Conditions imposed on practising certificate</li> <li>Respondent to pay Law Society's costs</li> </ul>  | 19 January 2021  |
| <b>Jesus Gutierrez Diaz</b>    | <ul style="list-style-type: none"> <li>Contravention of section 148 of the Uniform Law</li> <li>Contravention of section 154 of the Uniform Law</li> <li>Contravention of section 144(2)(b) of the Uniform Law by failing to comply with Rule 42 of the <i>Legal Profession Uniform General Rules 2015</i></li> </ul>   | Unsatisfactory professional conduct | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Education course</li> <li>Respondent to pay Law Society's costs</li> <li>Terms relating to the Respondent's law practice's financial affairs</li> </ul> | 22 January 2021  |
| <b>David Duc Van Nguyen</b>    | <ul style="list-style-type: none"> <li>Providing the Law Society with misleading information about the supervision of a solicitor</li> <li>The solicitor, whilst holding a practising certificate subject to condition 2, mistakenly purported to supervise a solicitor</li> </ul>  | Unsatisfactory professional conduct | <ul style="list-style-type: none"> <li>Caution</li> <li>Respondent to pay Law Society's costs</li> </ul>  | 28 January 2021  |
| <b>David Kevin Hunter</b>      | Failure to comply with an undertaking given to another solicitor  | Professional misconduct             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Fine</li> <li>Respondent to pay Law Society's costs</li> </ul>  | 23 February 2021 |
| <b>Harland Sebastian Koops</b> | Contravention of sections 136, 137, 146 and 147 of the Uniform Law  | Professional misconduct             | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Fine</li> <li>Education course</li> <li>Respondent to pay Law Society's costs</li> </ul>  | 10 March 2021    |

**Table 7 – Number and type of proceedings instituted at NCAT**

| NAME OF SOLICITOR               | CONDUCT  | FINDING/S               | ORDERS MADE  | DATE OF ORDERS |
|---------------------------------|--|-------------------------|--|----------------|
| <b>Frank Douglas Hammond</b>    | <ul style="list-style-type: none"> <li>Sending an intimidating and threatening letter to another person</li> <li>Writing threatening and intimidating letters</li> </ul>   | Professional misconduct | <ul style="list-style-type: none"> <li>Reprimand</li> <li>Education course</li> <li>Respondent to pay Law Society's costs</li> </ul> | 4 May 2021     |
| <b>Catherine Bridget Fisher</b> | <ul style="list-style-type: none"> <li>Failure to comply with undertaking to the Law Society to complete a practice management course</li> <li>Contravention of a condition on Practising Certificate requiring compliance with the undertaking</li> </ul> | Professional misconduct | <ul style="list-style-type: none"> <li>N/A (decision on liability only)</li> </ul>   | 31 May 2021    |

**Table 8 – Practising solicitor statistics at 30 June 2021**

| GENDER OF SOLICITORS |               |
|----------------------|---------------|
| Female               | 20,195        |
| Male                 | 17,682        |
| <b>TOTAL</b>         | <b>37,877</b> |

| CATEGORY OF SOLICITORS |               |
|------------------------|---------------|
| Corporate              | 7,380         |
| Government             | 4,161         |
| Private                | 26,242        |
| Volunteer              | 94            |
| <b>TOTAL</b>           | <b>37,877</b> |

| LOCATION OF SOLICITORS |               |
|------------------------|---------------|
| City                   | 18,160        |
| Interstate             | 304           |
| Overseas               | 1,847         |
| Rural                  | 4,623         |
| Suburban               | 12,943        |
| <b>TOTAL</b>           | <b>37,877</b> |

**Table 9 – Amounts expended by the Public Purpose Fund and Fidelity Fund on Regulation, 2020/2021**

| EXPENSE DESCRIPTION                                  | RECOVERABLE FROM    | TOTAL            |
|--|---------------------|------------------|
| Professional Standards / General Regulatory Expenses | Public Purpose Fund | 5,696,993        |
| External Interventions                               | Public Purpose Fund | 894,874          |
| Trust Account Inspections / Investigations           | Public Purpose Fund | 2,434,133        |
| Fidelity Fund Administration                         | Fidelity Fund       | 751,132          |
| <b>TOTAL REGULATORY COSTS</b>                        |                     | <b>9,777,132</b> |
| <b>TOTAL PAID FROM PUBLIC PURPOSE FUND</b>           |                     | <b>9,026,000</b> |
| <b>TOTAL PAID FROM FIDELITY FUND</b>                 |                     | <b>751,132</b>   |



PROFESSIONAL  
STANDARDS  
THE LAW SOCIETY  
OF NEW SOUTH WALES

THE LAW SOCIETY OF NEW SOUTH WALES

ACN 000 000 699 ABN 98 696 304 966

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney

[lawsociety.com.au](http://lawsociety.com.au)

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

E [lawsociety@lawsociety.com.au](mailto:lawsociety@lawsociety.com.au)

