

PROFESSIONAL STANDARDS ANNUAL REPORT 2022



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

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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 who 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 recommends 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 of the Law Society (**Council**) including disciplinary proceedings in the New South Wales Civil and Administrative Tribunal (**NCAT**).

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

OUR MISSION

The mission of Professional Standards is to:

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

OUR VALUES

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

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

Many of the Chapter 5 complaints or matters dealt with by Professional Standards involve serious and complex conduct issues. These complaints or matters are reported to and considered by either the Law Society's PCC or the 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 (PSU).

This Annual Report is an overview of the work undertaken by Professional Standards from **1 July 2021 to 30 June 2022 (2021/2022)**. Where relevant, comparative data for the period from **1 July 2020 to 30 June 2021** (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



New challenges continue to arise for the legal profession from economic and social circumstances, legal reforms [and] international competition, coupled with the need to maintain public confidence in the legal system.

The Law Society of New South Wales is a professional body that promotes an independent, transparent and ongoing commitment to maintaining professional standards.

The Law Society and its role in professional standards

In my role as President of the Law Society of New South Wales, it is with great pride that I present the Annual Report of the Professional Standards Department for 2022.

The Annual Report is a concise summary of the varied and important work that is undertaken by the Law Society and describes our unique role in maintaining professional standards by providing specialist support to the profession, and, when required, in the co-regulation, investigation and disciplinary action of legal practitioners.

As a designated local regulatory authority under the Uniform Law, our regulatory function provides a service to the public and provides leadership in professional standards to the legal profession.

We have prepared our annual report for 2021/22 using information obtained from our statistical tables, examples of litigation, and information on disciplinary action that has been undertaken over the last year.

The complaint process – investigation and resolving each complaint

The Law Society has a co-regulatory role with the Office of the Legal Services Commissioner (OLSC). The statutory independence of the Commissioner, in association with the investigatory role of the Law Society, provides a transparent and rigorous complaint process.

Each complaint is assessed and, where appropriate, investigated and disciplinary action taken if conduct is established. This may include the imposition of disciplinary sanctions, when investigations substantiate that professional standards have been breached.

These outcomes and, where required, the disciplinary action taken against a legal practitioner illustrate the diligent and professional approach the Law Society displays in seeking to resolve complaints, and highlight the ongoing role of the Law Society in maintaining professional standards for the legal profession.

Assistance for the legal profession – the Professional Support Unit

The Law Society recognises the needs of the legal profession and provides specialised assistance in the areas of Costs, Ethics and Regulatory Compliance from the Professional Support Unit (PSU). This service is provided in conjunction with a comprehensive education and mentoring role provided to the legal profession and utilises the latest technology of the internet and online digital platforms.

The future and our ongoing role

New challenges continue to arise for the legal profession from economic and social circumstances, legal reform and international competition, coupled with the need to maintain public confidence in the legal system.

With each new challenge that arises, the Law Society continues to provide leadership, professional excellence and service to the legal profession and general community by maintaining professional standards and undertaking active programs in education, guidance, registration and licensing.

This ongoing commitment of the Council and the Law Society as a professional body that promotes an independent, transparent system of maintaining professional standards will ensure public confidence in our legal profession.

J. van der Plaats
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 the settlement of costs disputes.
- Prepare matters for the Law Society's Costs Committee (**Costs Committee**).
- Address policy issues associated with the legal profession legislation, including the effectiveness of the Costs Assessment Scheme and issues associated with legal costs.
- Consult in relation to cost provisions of the legal profession legislation.
- Educate the legal profession.
- Recover costs from any successful disciplinary action taken against solicitors.

Ethics

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

Regulatory compliance

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

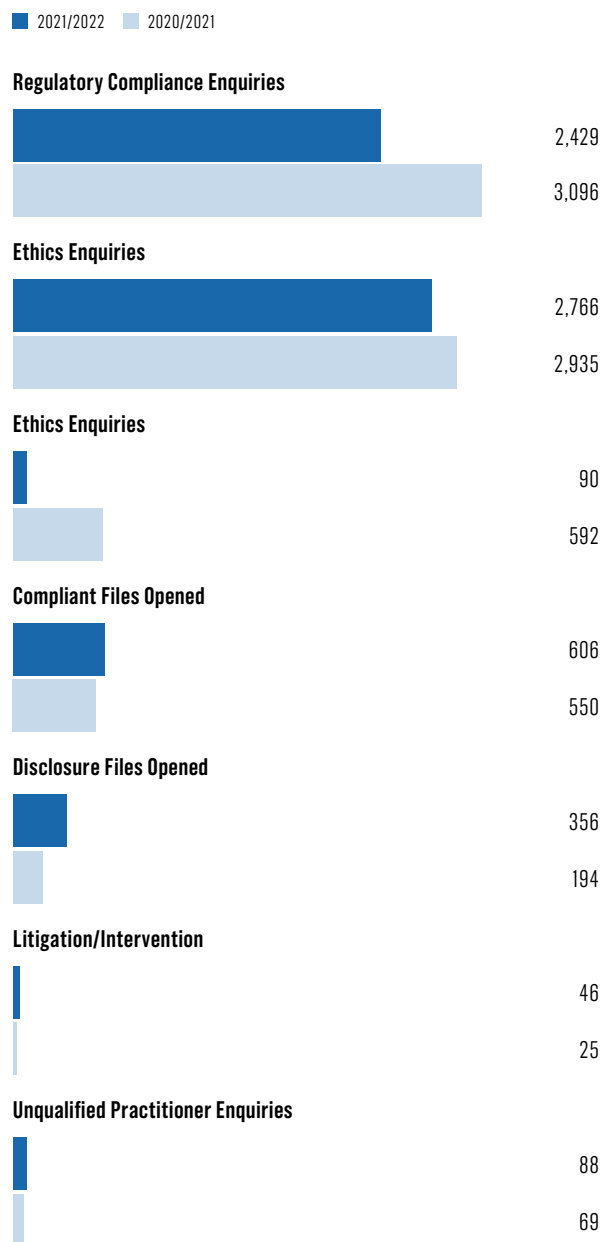
Administration

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

Disclosure

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

Work Undertaken by Professional Standards





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 of the Uniform Law, 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).

Complaints made on or after 1 July 2015 are dealt with in accordance with Chapter 5.

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

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

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

Professional Standards has prepared a brochure titled “Complaints Process Information”, which outlines the complaints process, including the Law Society’s role in dealing with complaints. A copy of this brochure is routinely sent to complainants and solicitors for their assistance and information and is also readily available on the Law Society’s website.

Referrals from the Legal Services Commissioner

In 2021/2022:

- The Commissioner received a total of 2,899 written complaints about solicitors, an increase of 6.82% from the previous reporting period.
- Professional Standards was referred a total of 606 complaints, 7 of which were complaints made by the Law Society. This represents a 10.18% increase on the previous year and a 34.66% increase on 2020.
- 31 findings of unsatisfactory professional conduct were made by the PCC and 9 matters were referred to NCAT for determination.
- 626 matters were closed in total, with 561 complaints closed by PCC during the year.
- At 30 June 2022, 698 Chapter 5 complaints remained open.

Complaints made by the Law Society

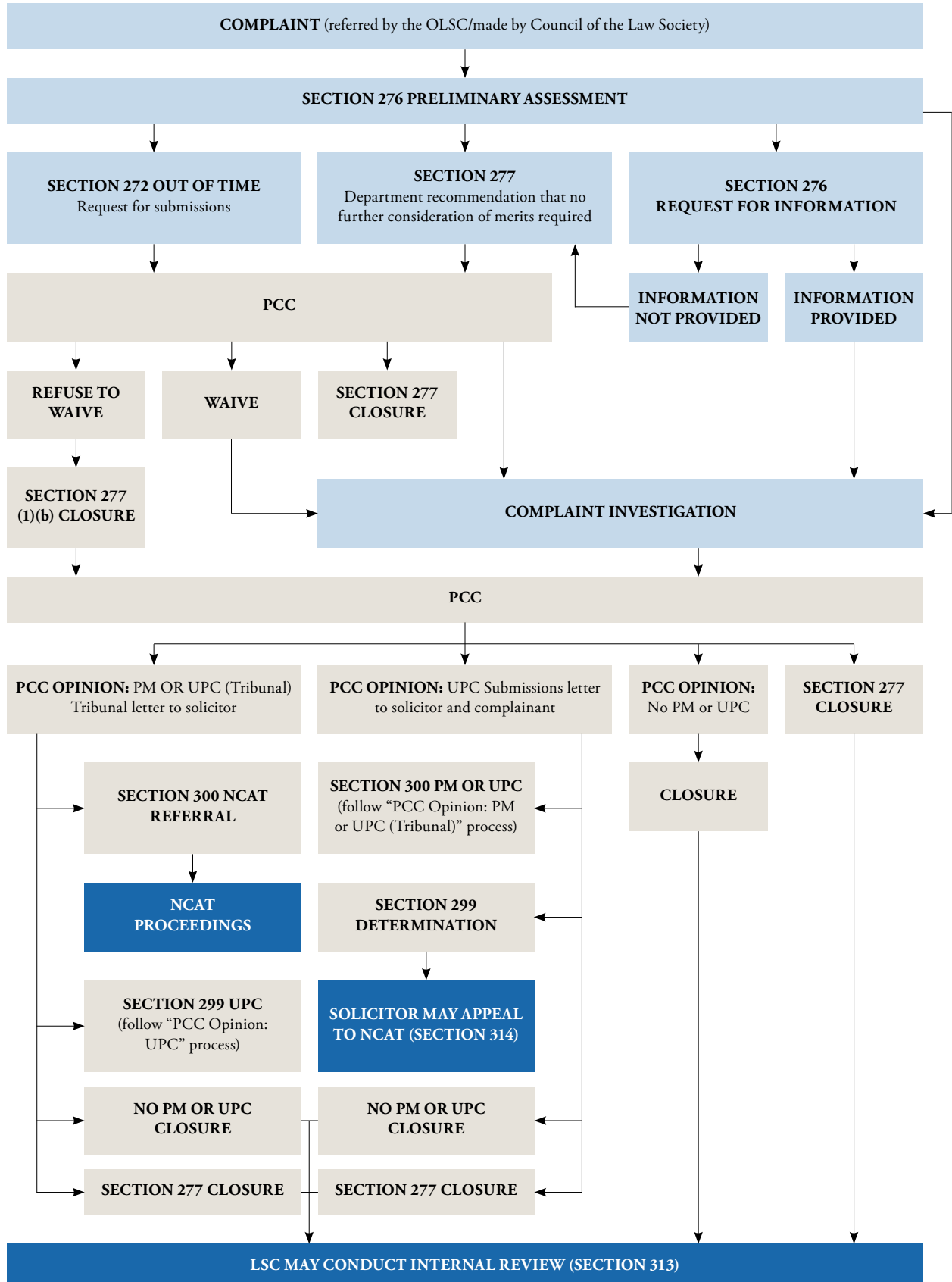
As noted above, the Law Society may, pursuant to section 266 of the Uniform Law, make its own complaints to the Commissioner about the conduct of solicitors.

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

- Matters referred to Professional Standards by the Law Society’s Trust Account Department, usually involving a solicitor’s mishandling of trust money or involving a solicitor’s failure to comply with trust accounting requirements.
- Matters referred to Professional Standards by the Law Society’s Registry, usually involving practising certificate issues.
- Matters referred to Professional Standards by the Disclosure Committee, usually involving misconduct arising outside the 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



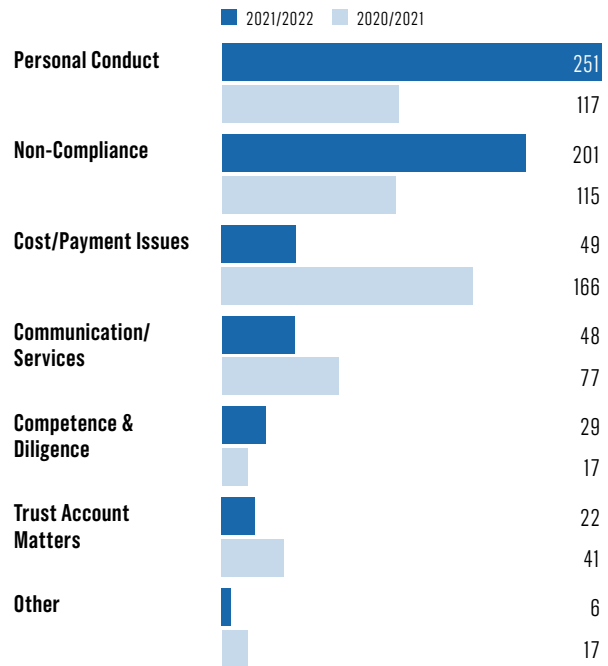
CATEGORIES OF COMPLAINTS

The following section provides a snapshot summary of the type and nature of complaints opened by Professional Standards in 2021/2022.

Conduct most complained about

In 2021/2022:

- “Personal Conduct” (including, for example, unethical conduct, misleading behaviour, borrowing from client and negligence) was the major issue complained about, making up 251 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 201 of the total complaints.
- “Costs/Payment Issues” (including, for example, a failure to pay a third party, overcharging, a failure to provide a detailed account or costs disclosure) accounted for 49 of the total complaints.
- “Communication/Services” issues (including, for example, acting contrary to instructions, failing to carry out instructions and no communication) accounted for 48 of the total complaints.
- “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 22 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			
Corporate / Commercial	177	Personal Injury	8
Conveyancing / Real Property	108	Employment / Industrial Law	7
No Area of Law	65	Wills & Estates Law	5
Criminal Law	62	Immigration Law	2
Family Law	46	Intellectual Property	2
Commercial Litigation	44	Other	2
Administrative Law	27	Civil Litigation	1
Banking / Finance	20	IT / Telecommunications	1
Debts / Insolvency	15	Taxation Law	1
Litigation General	13		

Complaints by solicitor type

In 2021/2022:

- 363 complaints were made against principals of a law practice (comprising 59.90% of the complaints made).
- 105 complaints were made against employees of a law practice (comprising 17.32% of the complaints made).
- From a geographical perspective, 43.23% of complaints made related to solicitors practising in suburban Sydney, 30.85% related to solicitors practising in Sydney’s CBD, 1.81% were interstate and 20.62% were made against solicitors practising in rural New South Wales.
- 26.23% of complaints concerned female solicitors and, by comparison, 67.16% 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.

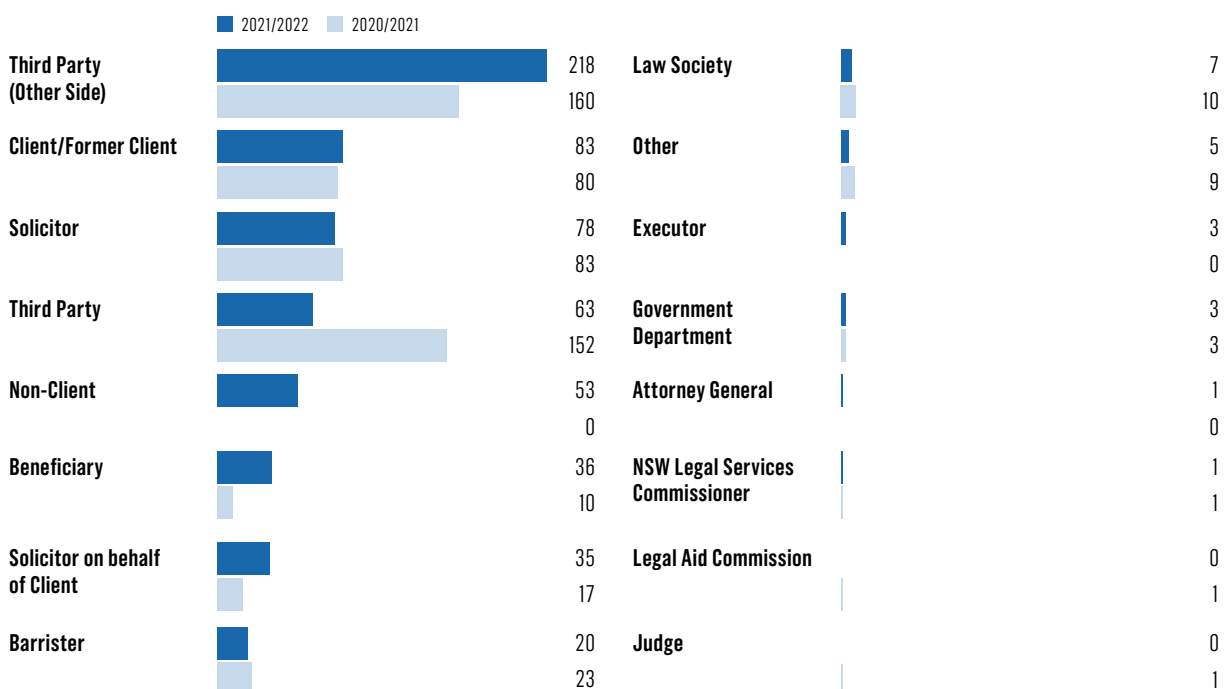


Categories of Complainants

In 2021/2022:

- The highest group of complainants were made by the opposing side of the client(s) or former client(s), which accounted for 35.97% of the total complaints.
- Complaints made by the client(s) or former client(s) of a solicitor or law practice accounted for 13.69% of the total complaints.

- Complaints made by a solicitor accounted for 12.87% of the total complaints.
- Complaints made by barristers accounted for 3.3% of the total complaints. These complaints often related to the non-payment of their outstanding fees.



Investigation and finalisation of Complaints

In 2021/2022:

- Professional Standards closed 626 complaints.
- 14.05% of complaints were closed as “misconceived/lacking in substance”
- 4.63% of complaints were withdrawn.
- 5.27% of complaints were referred back to the OSLC

COMPLAINTS CLOSED UNDER THE UNIFORM LAW		
209	No Further Investigation Required Except Cm - S277(1)(H)	307
201	Misconceived/Lacking In Substance - S277(1)(A)	88
205	Complaint Already Has Been Investigated - S277(1)(D)	43
235	Referred Back to the Office of the Legal Services Commissioner	33
200	Complaint Withdrawn - S273(1)	29
206	Complaint Better Dealt With By Law Enforcement/Investigatory Body - S277(1)(E)	23
204	Failure/Inadequate Response To Request For Info - S277(1)(C)	21
224	D Reprimand - S299(1)(B)	20
211	Public Interest Closure - S277(1)(J)	15
202	Time Limit Not Waived Under S272(1) - S277(1)(B)	14
223	D Caution - S299(1)(A)	10
230	D Initiate Tribunal Proceedings - S300(1)	9
206	Complaint Better Dealt With By Law Enforcement/Investigatory Body - S277(1)(E)	3
207	Dlra Made Recommendation Under Section 82(4) - S277(1)(F)	3
208	Complaint Subject to Civil Proceedings - S277(1)(G)	2
238	Closed Enquiry	2
210	No Power to Investigate Complaint - S277(1)(I)	1
227	D Order Requiring Training, Education, Counselling Or Supervision - S299(1)(E)	1
239	Closure - No UPC/PM	1
COMPLAINTS CLOSED UNDER LEGAL PROFESSION ACT 2004		
38	Diss/No PM/UPC	1

Decisions of the Professional Conduct Committee

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

The PCC is one of the Law Society’s larger committees and plays an essential role in relation to the regulatory functions of the Law Society. In 2021/2022, there were 36 members of the PCC, comprising 8 Councillors of the Law Society, 20 solicitors, 1 Australian Lawyer and 7 lay members.

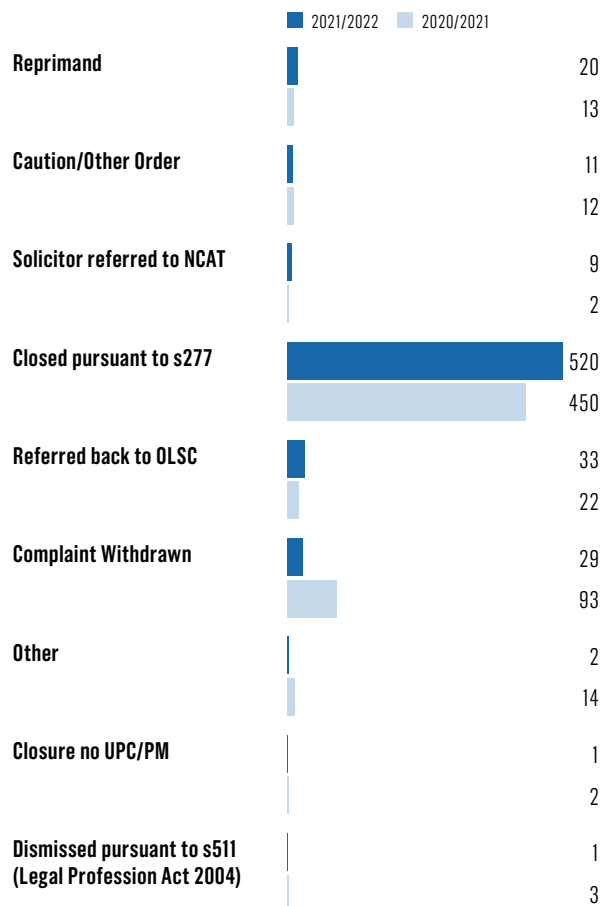
Members of the PCC contribute many hours on a voluntary basis. The PCC is reflective of a broad range of legal expertise, insights and experience. The PCC generally meets fortnightly to consider the reports and recommendations of Professional Standards in relation to complaints.

Following its consideration of a complaint, the PCC may:

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

In 2021/2022:

- Of the 626 matters finalised by Professional Standards, 561 complaints were closed by PCC.
- Of the complaints closed by the PCC:
 - 11 cautions and 20 reprimands were consequently ordered by the PCC.
 - 9 matters were referred to NCAT for the commencement of disciplinary proceedings.
 - 83% 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)).



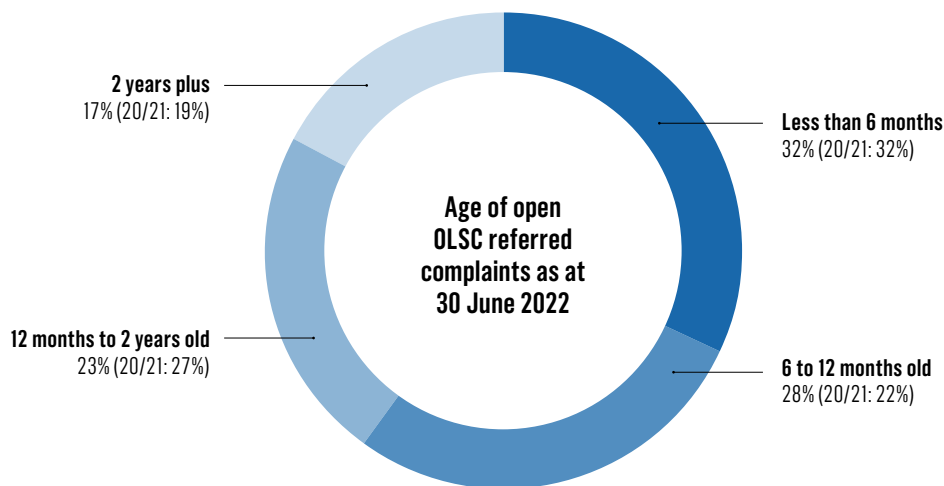
Complaints management

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

Professional Standards also liaises with the Commissioner concerning the status and progress of all complaints referred to the Law Society.

During the reporting period, Professional Standards has continued to review its procedures to improve the handling of complaints.

A factor which may often impact the progress of a complaint investigation is where the subject matter of the complaint is also the subject of a court proceeding, an application (such as costs assessment) or investigation by another body. In those circumstances, the Law Society may close the complaint as it is more appropriately dealt with by another body.



CLOSURE TIMES FOR COMPLAINTS

Closure time within	2022	2021	KPI
2 years	79%	78%	95%
12 months	59%	47%	70%
6 months	34%	28%	30%

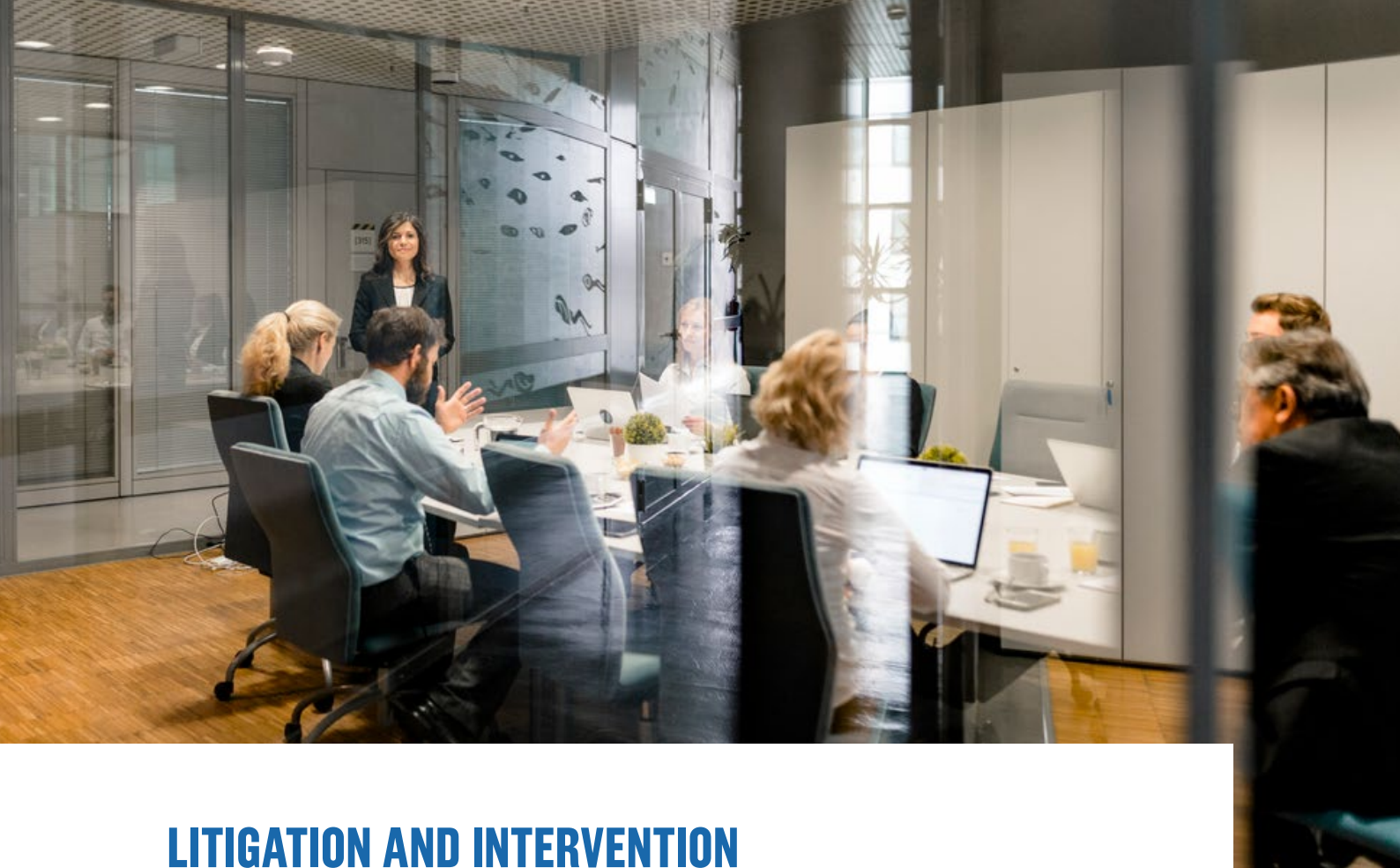
Reviews by the New South Wales Legal Services Commissioner

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 2021/2022, the Commissioner received 32 requests for reviews. There were a total of 37 reviews completed in the last FY year, 19 of which were received in 2021/2022 and 18 in previous years.



LITIGATION AND INTERVENTION

New South Wales Civil and Administrative Tribunal

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

Proceedings are commenced, pursuant to section 300(1) of the Uniform Law, in NCAT on behalf of the Council by the filing of an Application for Disciplinary Findings and Orders (**Application**). Applications must be filed within 6 months of the date of the PCC's decision.

Many of the matters referred to NCAT are complex and quite often involve multiple issues of alleged conduct. The table below labelled 'Number and type of proceedings instituted at NCAT' sets out the types of conduct that NCAT considered in 2021/2022 in disciplinary proceedings that the Council commenced and the orders that it made in those proceedings.

NCAT Orders for reprimands, fines or removals from the Roll – FY2022 (as at 7 October 2022)

See below the trend of disciplinary outcomes, namely, reprimands, fines, and removals from the roll/recommendations for removal issued by the Tribunal over each financial year.

	REPRIMAND	FINE	REMOVAL / RECOMMENDATION FOR REMOVAL FROM THE ROLL
2021/2022	6	1	1
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

NCAT – Disciplinary proceedings

In 2021/2022:

- The Council did not commence any disciplinary proceedings in NCAT pursuant to section 300(1) of the Uniform Law, and the reason for this is that the number of matters referred to NCAT has slowed as a result of the decision in *DXW v Law Society of NSW* in 2019, which required legislative amendments to address certain issues.
- The Tribunal published decisions in relation to 9 disciplinary proceedings that the Council commenced pursuant to section 300(1) of the Uniform Law in a previous period. In those matters the Tribunal:
 - On 5 occasions found that a practitioner engaged in 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 the practitioner’s name from the Roll.
 - On 4 occasions issued a practitioner with a reprimand.
 - On 1 occasion issued a practitioner with a fine.
 - On 3 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 5 occasions made an order requiring a practitioner to pay the Council’s costs of the proceedings.
- On 2 occasions found that a practitioner engaged in unsatisfactory professional conduct only and made disciplinary orders on the basis of that finding. In those matters the Tribunal:
 - On 2 occasions made an order issuing a practitioner with a reprimand.
 - On 1 occasion issued a practitioner with a fine.
 - On 1 occasion made an order requiring a practitioner to undertake further education.
 - On 2 occasions made an order requiring a practitioner to pay the Council’s costs of the proceedings.
 - On 1 occasion found that a practitioner engaged in both unsatisfactory professional conduct and professional misconduct and made disciplinary orders on the basis of that finding. In that matter the Tribunal made orders reprimanding the practitioner, requiring the practitioner to undertake further education, imposing conditions on the practitioner’s practising certificate and requiring the practitioner to pay the Council’s costs of the proceedings.
 - On 1 occasion granted the Council leave to withdraw disciplinary proceedings pursuant to section 147 of the *Legal Profession Uniform Law Application Act 2014* (NSW) (**Application Act**) 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
Jim Kekatos	<ul style="list-style-type: none"> Misled New South Wales Land and Property Information when requesting the removal of caveats. 	Unsatisfactory professional conduct	<ul style="list-style-type: none"> Reprimand Costs 	2 July 2021 (stage 1) 9 December 2021 (stage 2)
Hermansah Elina	<ul style="list-style-type: none"> Contravened section 137 of the Uniform Law Mixed trust money with other money in contravention of section 146 of the Uniform Law Made false declarations in the annual Law Practice Confirmation and Trust Money Statements Part A for numerous financial years Failed to appoint an External Examiner for the law practice for numerous financial years Failed to maintain adequate trust accounting records as required by rules 44(1) and (3), 45(1) and (2)(b), 48(2)(a) and (b) and (3) and 93 of the <i>Legal Profession Uniform General Rules (NSW) (General Rules)</i> 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Education course Costs 	20 July 2021
David Clifton	<ul style="list-style-type: none"> Breached sections 135, 138(1)(b), 145(1), 146 147(2)(a) and 148 of the Uniform Law Breached rule 45 and 47 of the General Rules Authorised false invoices to be prepared 	Professional misconduct	<ul style="list-style-type: none"> Roll removal recommendation Costs 	27 July 2021
DRM (a pseudonym)	<ul style="list-style-type: none"> Took costs and disbursements without first issuing a tax invoice Delayed in providing a tax invoice to the client 	N/A	<ul style="list-style-type: none"> Law Society granted leave to withdraw the proceedings pursuant to section 147 of the Application Act 	30 July 2021

Number and type of proceedings instituted at NCAT (continued)

NAME OF SOLICITOR	CONDUCT	FINDING/S	ORDERS MADE	DATE OF ORDERS
Aaron Kernaghan	<ul style="list-style-type: none"> Breached an undertaking to the Office of the Legal Services Commissioner. Breached section 137 of the Uniform Law Breached section 138 of the Uniform Law Caused a trust account deficiency Breached section 146 of the Uniform Law Failed to comply with fiscal obligations Failed to comply with a notice issued to him under section 370 of the Uniform Law Failed to comply with cost disclosure obligations under section 174 of the Uniform Law Failed to pay an invoice issued by an expert witness 	Professional misconduct and unsatisfactory professional conduct	<ul style="list-style-type: none"> Reprimand Education course Conditions imposed on practising certificate Costs 	6 August 2021 20 June 2022 (stage 2)
Michael Rogers	<ul style="list-style-type: none"> Failed to pay employer superannuation contributions Failed to issue to the complainant any Group Certificates or PAYG summaries in respect to her employment 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Education course Conditions imposed on practising certificate Costs 	25 August 2021
Catherine Fisher	<ul style="list-style-type: none"> Contravened a practising certificate condition Failed to comply with her 1 September 2015 undertaking to the Law Society of New South Wales to complete a practice management course. 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Respondent to pay Law Society's costs 	1 September 2021
Shaun Titmarsh	<ul style="list-style-type: none"> Failed to transfer the interests of the complainant's late father in a property to the complainant's late mother. Failed to transfer the interests of the complainant's late mother in the property to another person. 	Unsatisfactory professional conduct	<ul style="list-style-type: none"> Reprimand Education course Fine Costs 	29 October 2021
Alexander Martin	<ul style="list-style-type: none"> Breached sections 135 and 137 of the Uniform Law 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Fine Education course Costs 	1 December 2021

Section 314 (appeal) proceedings

A practitioner against whom the PCC has resolved to make a finding of unsatisfactory professional conduct may, pursuant to section 314 of the Uniform Law, commence proceedings in NCAT against the Council to appeal that resolution.

In 2021/2022:

- 4 matters were commenced in NCAT against the Council pursuant to section 314 of the Uniform Law. As at 30 June 2022, one of those matters had been discontinued by the Applicant, 2 of those matters had not been heard by NCAT and NCAT had not published a decision in relation to the other matter.

Supreme Court and Court of Appeal proceedings

In 2021/2022 the Supreme Court of New South Wales and the New South Wales Court of Appeal handed down the following decisions in proceedings to which the Council was a party:

1. *Clifton v The Council of the Law Society of New South Wales* [2021] NSWSC 1048 – Decision published 12 August 2021 – The Supreme Court made orders staying the Council’s resolution to not renew the practitioner’s practising certificate and to appoint a manager to the practitioner’s law practice pending determination of the practitioner’s Summons and requiring the practitioner to pay the Law Society’s costs.
2. *Council of the Law Society of New South Wales v Karimjee* [2021] NSWCA 179 – Decision published 17 August 2021 – The Court of Appeal made an order removing the practitioner’s name from the Roll.
3. *Clifton v The Council of the Law Society of New South Wales* [2021] NSWSC 1111 – Decision published 1 September 2021 – The Supreme Court made an order dismissing the practitioner’s Amended Summons, which sought to appeal the Council’s decision to refuse his practising certificate renewal application and to appoint a manager to his law practice, and an order requiring the practitioner to pay the Law Society’s costs.
4. *XY v The Council of the Law Society of New South Wales* [2021] NSWSC 1263 – Decision published 6 October 2021 – The Supreme Court made an order dismissing the practitioner’s Notice of Motion, which sought a stay of Council’s decision to suspend the practitioner’s practising certificate and to appoint a manager to the practitioner’s law practice, and an order requiring the practitioner to pay the Law Society’s costs.
5. *XY v The Council of the Law Society of New South Wales (No 2)* [2021] NSWSC 1353 – Decision published 22 October 2021 – The Supreme Court made orders setting aside non-publication orders and replacing them with new non-publication orders.
6. *Council of the Law Society of New South Wales v Clifton* [2021] NSWCA 340 – Decision published on 10 December 2021 – The Court of Appeal made orders removing the practitioner’s name from the Roll and requiring him to pay the Law Society’s costs.
7. *Buckley v Council of the Law Society of New South Wales* [2022] NSWSC 328 – Decision published 24 March 2022 – The Supreme Court made an order dismissing the practitioner’s Amended Summons, which sought to appeal the Council’s decision to suspend his practising certificate, and an order requiring the practitioner to pay the Law Society’s costs.
8. *Council of the Law Society of New South Wales v Clarke* [2022] NSWCA 57 – Decision published on 12 April 2022 – The Court of Appeal made a declaration that the practitioner is not a fit and proper person to remain on the Roll and made orders removing the practitioner’s name from the Roll and requiring him to pay the Law Society’s costs.

Other matters

In 2021/2022 the following proceedings were commenced against the Council:

1. proceedings seeking a declaration that a practitioner’s practising certificate application was valid and an order requiring the Law Society to issue the practitioner with a practising certificate;
2. contempt proceedings in the Court of Appeal; and
3. injunction proceedings in the Federal Court of Australia.

Unqualified legal practice

The Law Society's role, in addition to prosecuting disciplinary proceedings against solicitors, includes investigating queries about, and commencing prosecutions in relation to, entities which may have breached sections 10(1) and/or 11 of the Uniform Law.

Section 10 of the Uniform Law prohibits unqualified entities from engaging in legal practice in New South Wales.

Section 11 of the Uniform Law prohibits entities from holding themselves and other specified entities out as entitled to engage in legal practice.

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

In 2021/22:

- 88 enquiries about unqualified practice were dealt with, an increase from 69 enquiries in the previous reporting period.
- The Law Society commenced a prosecution against an individual in the Local Court for 8 alleged contraventions of sections 10 and 11 of the Uniform Law.

Disqualification of individuals

The Council may commence proceedings in NCAT to seek an order, pursuant to section 119 of the Uniform Law, which renders a person (other than a legal practitioner) a 'disqualified person' for the purposes of the Uniform Law.

Grounds for disqualification include the following circumstances:

- 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 2021/2022:

- The Council did not commence any proceedings in NCAT pursuant to section 119 of the Uniform Law.
- The Tribunal did not publish any decision making a disqualification order pursuant to section 119 of the Uniform Law in proceedings that the Council commenced in a previous period.

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:

- where 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 2021/2022, the Council appointed a total of 18 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 2021/2022, the Council appointed a total of 6 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 2021/2022, the Court appointed a total of 0 receivers.

Investigators

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

In 2021/2022, the Council appointed a total of 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 requiring 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 preadmission events such as convictions and other incidents affecting their fitness to practise.

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

Disclosure Committee

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

In 2021/2022, there were 20 members of the Disclosure Committee, comprising 3 Councillors of the Law Society, 14 solicitors, 1 Australian Lawyer and 2 lay members. The committee generally meets monthly to make decisions on the matters before it.

In 2021/2022:

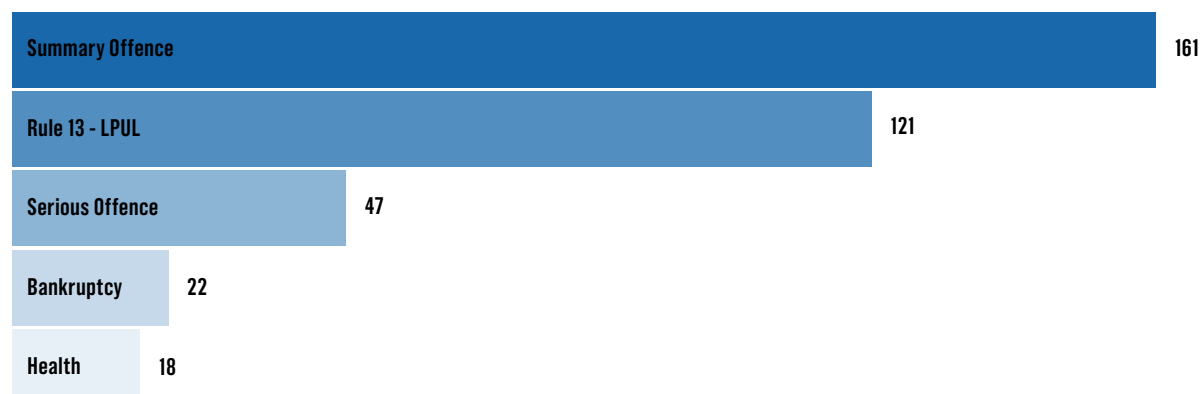
A total of 356 disclosures were made to the Law Society. Of the disclosures received:

- 47 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.

- 161 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
- 22 disclosures were notifications of Bankruptcy

Disclosures made to the Law Society





PROFESSIONAL SUPPORT ETHICS UNIT

The Ethics Unit of the PSU (**Ethics Unit**) and the 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

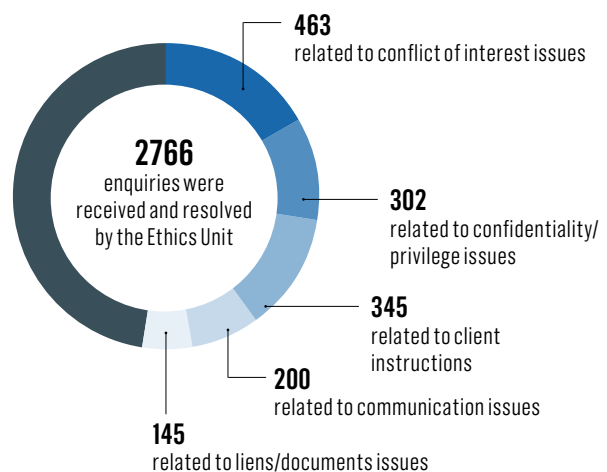
During 2021/22 the legal profession relied heavily upon the services of the Ethics Unit with the need for timely and practical information and guidance, assisting the profession to maintain ethical practices and avoid inappropriate conduct.

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

The Ethics Unit received and resolved 2766 enquiries, which reflects the ongoing need for the services provided. The number of enquiries remains steady from the previous reporting period. Of these 2766 enquiries:

- 463 (16.73%) related to conflict of interest issues
- 302 (10.91%) related to confidentiality/privilege issues
- 345 (12.47%) related to client instructions
- 200 (7.23) related to communication issues
- 145 (5.24 %) related to liens/documents issues

The traditional services were maintained throughout the year by telephone enquiry line, an ethics email inbox and audio visual links to solicitors. Requests for further review and guidance were referred to the Ethics Committee.



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, “Monday Briefs”, and a regular ethics column in the *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 20 members of the legal profession on the Committee.

The Ethics Committee is supported by the Ethics department (part of the PSU of the Law Society) with administrative and legal resources.

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

The year in review – service and guidance

The 2021/22 year continued to present adverse circumstances for practising the legal profession. Changed working conditions, including a transition from the office to the home office and back again, presented unique challenges to maintaining the provision of legal services to the public.

The legal profession has been able to adapt and evolve with a rapid response to these challenging conditions whilst maintaining the required high ethical professional standards.

The Ethics department worked closely with the legal profession during these challenging times, identifying key areas of need to assist the legal profession.

Special education programs were provided to support the legal profession, with many of these presented online. This was in conjunction with our professional advisory services via telephone, email and the Ethics Committee. These were provided in co-ordination with the suite of services relating to costs and regulatory compliance in the PSU of the Law Society of NSW.

The outcomes of the increased support and targeted application of the education programs to assist the legal profession have resulted in maintenance of the stability and capability of the legal profession. This will continue as ongoing support for the next year.

Highlights of 2021/2022

The rapidly changing circumstance of the last year have required a legal profession able to be agile and responsive to adverse circumstance. The issues that arose were quickly

ETHICS ENQUIRIES	
Miscellaneous	730
Conflict Of Interest	463
Client Instructions	345
Confidentiality/Privilege	302
Costs	275
Communications	200
Lien/Documents	145
Termination Of Retainer	66
Trust Monies	62
Client Capacity	58
Improper Instructions	54
Sol Material Witness	17
Undertakings	14
Disclosure	12
Unqualified Persons	8
Advertising	7
Sol Leaving Firm Contacting Clients	6
Misleading	2

identified by the Ethics Unit and Ethics Committee, with timely responses provided as required. Assistance on all ethical issues was provided quickly and accurately to address these issues effectively.

The education program has been an ongoing and essential component of the services provided to the legal profession. Upholding high ethical professional standards, and providing guidance, instruction and guidance to all of the legal profession, was attained with an enhanced suite of services. The timeliness of providing the support services coincided with the constantly changing environment the legal profession was subjected to.

This covered the diverse makeup of the legal profession, including attention to the needs of the legal profession, and assistance and guidance on ethics and education programs for small and medium law firms, government lawyers and the profession in general practice.

Throughout the year the role of leadership and assistance to the legal profession was paramount. The outcomes of upholding ethical professional standards for the legal profession and maintaining public confidence were achieved.



PROFESSIONAL SUPPORT LEGAL COSTS UNIT

The Legal Costs Unit of the PSU (**Costs Unit**) provides specialist costs guidance 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*.

Unfortunately, due to a tight labour market, the Law Society's Costs Unit was only able to provide limited services between July 2021 and April 2022.

From April 2022, however, the Costs Unit returned to being fully staffed and has been busy providing costs guidance and education sessions to the legal profession. The Costs Unit, in conjunction with the Costs Committee, has also been reviewing and promoting the Law Society's updated Costs Guidebook.

This year, the most common problems faced by solicitors requiring assistance included:

- Costs disclosure (49%)
- Costs agreement (41%)
- Billing (22%)

Education

The Costs Unit continues to provide topical CPD seminars in the areas most frequently enquired (namely, costs disclosure, agreements, assessment and recovery). The Costs Unit has also been working closely with the Costs Committee and newly appointed Regulatory Policy team leader on the implications of several recent cases, including *Todorosvka v Brydens Lawyers Pty Ltd* [2002] NSWCA 47 and *Bevan v Bingham* [2002] NSWSC 863.

This year, the Costs Unit has also been involved in regulatory policy issues, including providing feedback to the Legal Service Council's review into consultation on conditional costs agreements.

Due to the ongoing impacts of COVID-19, all seminar delivery this year by the Costs Unit has been online. The online seminars have attracted large audiences, usually drawing at least double the attendance figures compared to the same seminar delivered face to face.

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.

(573,290.98)	2,430,970.22
1,719,872.95	
138,155,111.25	161,858,274.83
42,475,705.63	47,117,788.62
13,312,657.96	14,232,046.65
193,943,474	223,208,110.10
	33.34

The Costs Committee

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

The Costs Committee:

- promotes understanding of costs among the legal profession
- provides education and guidance to the profession on costs
- monitors and reviews policy and legislation relating to costs
- comments on cost issues.

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 at least one responsible legal officer to assist the Committee. It is also committed to facilitating communication between the legal profession and the Costs Committee.

KEY COST ENQUIRY TOPICS FOR 2021/2022*

Cost Agreements	41%
Cost Billing	22%
Cost Recovery	11%
Disclosure	49%
Cost Trust Account	8%
Regulated Costs	11%

*Cost enquiries often cover more than one area, which is why when added the percentages exceed 100%.



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.

Unfortunately, the tight labour market across industries has also affected the Regulatory Compliance Unit, which has not been able to operate at full capacity for the entire financial year. However, the Regulatory Compliance Unit was still able to provide timely responses to practitioners' enquiries as well as present topical educational seminars to members of the profession.

Overview

Over 2021/2022, the highest number of regulatory compliance issues raised by the legal profession were concerned with practice structures, supervision, file management, practising certificates, practice management and business development.

The COVID-19 pandemic continues to prompt enquiries from the legal profession as a result of changed work conditions. A high number of enquiries, for example, related to practitioners having to develop working from home and remote supervision arrangements.

With the tragic floods in Lismore in April 2022, there were a large number of enquiries about lost client files and related documents and regulatory concerns. The PSU provided support and information to local practitioners.

Additionally, enquiries were often multi-faceted, with enquirers frequently finding that they had more questions with improved understanding of their regulatory compliance obligations under the Uniform Law.

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.

Highlights of 2021/2022

Collaboration with other departments

In addition to and complementing professional skills and practice management seminars, the Regulatory Compliance Unit collaborated with other departments within the Law Society to provide further guidance to the legal profession. This included, for example, contributing articles to the *Law Society Journal* as well as drafting regulatory updates for lawyers to help them keep abreast of regulatory updates.

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
- Supervision (including 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:
 - Retired practitioner
 - Migration law practice issues

Collaboration on:

- Strategic Policy issues
- Foreign-qualified lawyers
- Interstate practising certificates
- Remote supervision
- Retired legal practitioners

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 Rules and the Australian Solicitors' Conduct Rules 2015.

Most commonly, restructuring guidance was sought when a law practice was 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 sole practice and incorporated legal practices.

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

REGULATORY COMPLIANCE ENQUIRIES

Practising Certificate	54%
Practice Management	50%
Employment	30%
Business Development	29%
Establishment of an ILP	19%
Supervision (including remote supervision)	35%
File management	35%
Migration Law Practice	15%
Interstate and Foreign Legal	11%
Miscellaneous	9%
Transfer of a Practice	7%
In House Practice	7%
Law Practice Demands	6%
Letterheads/Business Names	6%
Establishment Of Practice –Non ILP	6%
Closing/Selling a Practice	4%
Consultants	3%
Establishment of an unincorporated law practice (ULP)	1%

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 remote working arrangements for many practitioners since the COVID-19 pandemic, the Regulatory Compliance solicitors provided most CPD seminars remotely, using Microsoft Teams and Zoom platforms.

APPENDIX

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

DISCIPLINARY MATTERS	12	13	14	15	16	17	18	19	20	21	22
Personal Conduct	253	195	165	226	284	202	260	228	228	236	272
Unethical Conduct	150	118	71	77	113	122	91	155	106	102	136
Negligence	25	48	29	24	20	44	23	31	45	17	29
Misleading	22	29	32	23	58	45	35	24	18	19	10
Conflict of Interest	17	22	16	16	12	31	18	27	18	22	32
Failure to Transfer Documents	7	4	6	3	2	4	6	4	6	3	3
Communicating with a Client of Another Solicitor	3	4	10	8	9	7	7	2	5	12	10
Breach Confidentiality	6	7	4	2	5	6	5	2	3	6	4
False Swearing of Documents	1	7	11	3	2	13	3	3	6	12	6
Undue Pressure	2	1	3	0	0	1	3	2	3	0	0
Threatening Behaviour	4	7	9	7	4	8	10	10	15	42	39
Failure to Assist Law Society	0	0	0	2	0	1	0	0	2	0	0
Borrowing from Client	5	6	4	0	1	2	1	0	1	1	3
Cost / Payment Issues	58	62	52	48	59	68	49	48	76	66	49
Failure to Pay Third Party	31	42	35	29	43	34	33	24	21	47	36
Overcharging	11	9	8	5	8	17	11	1	2	4	7
No Costs Disclosure	13	6	6	12	6	8	3	19	3	3	0
Failure to Provide a Detailed Account	0	0	2	1	0	5	1	1	9	7	5
Transfer Costs Without Authority	3	5	1	1	2	4	1	3	2	1	1
Liens	0	0	0	0	0	0	0	0	2	2	0
Unethical Conduct	0	0	0	0	0	0	0	0	37	2	0
Communication / Service	72	40	65	67	68	75	65	50	48	77	48
No Communication	24	8	9	10	11	14	13	12	11	4	1
Failure to Carry Out Instructions	13	10	14	18	11	15	13	6	10	6	4
No Client Advice	5	1	5	3	6	0	2	2	3	2	0
Discourtesy	7	1	10	13	6	8	13	9	11	15	5
Act Without/Contrary to Instructions	10	6	15	13	19	15	11	12	6	34	25
Delay	7	7	9	7	11	15	11	8	5	2	3
Lack of Supervision	2	7	2	3	3	7	0	0	1	0	0
No Advice on Progress	4	0	1	0	1	1	2	1	1	0	0
Failure to respond to correspondence	0	0	0	0	0	0	0	0	0	14	10
Non-Compliance	43	64	53	45	42	102	63	33	39	122	209
Not Complying with Undertaking	11	18	13	8	8	19	9	9	2	3	8
Practising without a Practising Certificate	1	8	11	11	7	36	15	1	4	3	3
Not Complying with a s.660 Notice	1	5	2	4	3	2	0	0	0	0	0
Not Complying with Legal Profession Act/Regulations	19	19	19	15	20	41	38	21	30	108	191
Not Complying with Fiscal Obligations	11	14	8	7	4	4	1	2	1	1	5
Practising contrary to practising certificate	0	0	0	0	0	0	0	0	2	2	1
Failure to disclose	0	0	0	0	0	0	0	0	0	5	1

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

DISCIPLINARY MATTERS	12	13	14	15	16	17	18	19	20	21	22
Trust Account matters	40	60	76	47	40	57	33	15	52	41	22
Breach of Sections of Act / Regs relating to Trust Moneys	19	41	40	23	17	19	2	0	32	37	21
Failure to Account	13	14	10	11	10	22	23	8	6	0	0
Misappropriation	8	5	26	13	13	16	8	7	14	3	1
Intermingling Money	0	0	0	0	0	0	0	0	0	1	0
Other	27	3	0	6	13	14	69	92	7	8	6
OLSC Enquiry	0	0	0	0	0	0	0	69	7	8	0
TOTAL NUMBER OF DISCIPLINARY MATTERS	482	482	441	378	448	600	481	498	450	550	606
CONSUMER DISPUTES	68	64	39	30	1	0	0	0	0	0	0
TOTAL NUMBER OF COMPLAINTS OPENED	550	546	480	408	449	600	481	498	450	550	606

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

COMPLAINANT TYPE	12	13	14	15	16	17	18	19	20	21	22
Client/Former Client	174	124	141	116	115	179	134	115	116	80	83
Law Society	72	94	84	73	60	111	90	104	14	10	7
Solicitor	88	98	81	73	70	72	56	40	47	83	78
Third Party	78	104	84	69	70	69	80	103	74	152	63
Third Party (Other Side)	76	68	56	35	94	121	77	98	149	160	218
Barrister	40	32	11	22	20	22	16	9	14	23	20
Solicitor for Client	18	16	12	11	7	6	13	7	12	17	35
Legal Services Commissioner	2	7	5	4	7	11	3	2	0	1	1
Other ¹	2	3	6	2	6	5	9	16	24	24	8
Beneficiary	0	0	0	0	0	0	0	0	0	0	36
Non-Client	0	0	0	0	0	0	0	0	0	0	53
Trust Account Inspector	0	0	0	0	0	0	0	1	0	0	0
Executor	0	0	0	2	0	2	3	1	0	0	3
Attorney General	0	0	0	1	0	2	0	2	0	0	1
TOTAL NUMBER OF COMPLAINTS OPENED	550	546	480	408	449	600	481	498	450	550	606

Notes: 1 Other includes Legal Aid Commission, Government Department and Judge

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	363	0.923%	59.90%
Employee of Law Practice	105	0.267%	17.32%
Not Practising/Ceased Practising	75	0.190%	12.37%
Complaints Against Firms	40	0.101%	6.60%
Corporate Legal Practitioner	11	0.027%	1.81%
Government Legal Practitioner	12	0.031%	1.98%
TOTAL NUMBER OF COMPLAINTS OPENED	606		

Notes: At 30 June 2022 total active solicitors 39,310

Table 4 – Complaints opened, by practice region

REGION	NUMBER OF COMPLAINTS
Sydney City	192
Suburban	257
Bankstown & District	30
Eastern Suburbs	44
Inner West	33
Liverpool & District	25
Macarthur	6
Nepean Hawkesbury	12
Northern Beaches	13
North Metropolitan	35
Parramatta District	38
St George–Sutherland	21
Regional/Rural	125
Albury District	2
Blue Mountains	2
Central Coast	26
Coffs Harbour	8
Far North Coast	11
Far South Coast	4
Nepean Hawkesbury	2
Newcastle	16
Hunter Valley	6
Mid-North Coast	10
North & North West	10
Orana	1
Riverina	1
Shoalhaven	1
Southern Tablelands	10
South West Slopes	6
Wollongong	9
Interstate	11
Other	21
TOTAL NUMBER OF COMPLAINTS OPENED	606

Table 5 – Number of complaints closed, by result

RESULT TYPE	2022
209 No Further Investigation Required Except Cm - (S277(1)(H))	307
201 Misconceived/Lacking In Substance - S277(1)(A)	88
205 Complaint Already Has Been Investigated - S277(1)(D)	43
235 Referred Back to the OLSC	33
200 Complaint Withdrawn - S273(1)	29
206 Complaint Better Dealt With By Law Enforcement/Investigatory Body - S277(1)(E)	23
204 Failure/Inadequate Response To Request For Info - S277(1)(C)	21
224 D Reprimand - S299(1)(B)	20
211 Public Interest Closure - S277(1)(J)	15
202 Time Limit Not Waived Under S272(1) - S277(1)(B)	14
223 D Caution - S299(1)(A)	10
230 D Initiate Tribunal Proceedings - S300(1)	9
206 Complaint Better Dealt With By Law Enforcement/Investigatory Body - S277(1)(E)	3
207 Dlra Made Recommendation Under Section 82(4) - S277(1)(F)	3
208 Complaint Subject To Civil Proceedings - S277(1)(G)	2
238 Closed Enquiry	2
210 No Power To Investigate Complaint - S277(1)(I)	1
227 D Order Requiring Training, Education, Counselling Or Supervision - S299(1)(E)	1
239 Closure - No UPC/PM	1
38 Diss/No P.Mc./UP.C	1
TOTAL	626

Table 6 – Number of Complaints opened and Complaints closed within the 2021/2022 reporting period

COMPLAINT TYPE	OPENED	CLOSED
Act Without/Contrary Instructions	25	23
Borrowing From Clients	3	0
Breach Of Confidentiality	4	6
Breach Section 137 LPUL	1	2
Breach Section 138 LPUL	3	7
Breach Section 147 LPUL	0	1
Causing a deficiency in the Trust Account	0	2
Communication with another Solicitor's Client	10	8
Conflict Of Interest	32	31
Delay	3	6
Discourtesy	5	11
Failure to Account	4	6
Failure to Carry Out Instructions	4	10
Failure to Disclose	1	1
Failure to Pay Third Party	36	33
Failure to Provide Detailed Account	1	3
Failure to Respond To Correspondence	10	15
Failure to Supervise	3	0
Failure to Transfer Documents	3	4
False Swearing Docs	6	9
Intermingling Money	0	1
Liens	0	3
Misappropriation	1	4
Misleading	10	17
Negligence	29	35
No Advice Progress	0	1
No Communication	1	1
Non Compliance with Fiscal Obligations	5	3
Non Compliance with LPUL/Regs/Rules	191	123
Non-Compliance with Undertaking	8	11
Non Comply Section 371 Notice	0	2
No Costs Disclosure	0	1
Other	3	16
Other Trust Breaches	17	23
Overcharging	7	5
Practising Contrary to Practising Certificate (PC)	1	4
Practising Without A PC- Post Admission	2	0
Practising Without A PC - Pre Admission	1	1
Threatening Behaviour	39	33
Transfer Costs Without Authority	1	0
Undue Pressure	0	2
Unethical Conduct	136	162
Total	606	626

Table 7 – Number and type of proceedings instituted at NCAT

NAME OF SOLICITOR	CONDUCT	FINDING/S	ORDERS MADE	DATE OF ORDERS
Jim Kekatos	<ul style="list-style-type: none"> Misled New South Wales Land and Property Information when requesting the removal of caveats. 	Unsatisfactory professional conduct	<ul style="list-style-type: none"> Reprimand Costs 	2 July 2021 (stage 1) 9 December 2021 (stage 2)
Hermansah Elina	<ul style="list-style-type: none"> Contravened section 137 of the Uniform Law Mixed trust money with other money in contravention of section 146 of the Uniform Law Made false declarations in the annual Law Practice Confirmation and Trust Money Statements Part A for numerous financial years Failed to appoint an External Examiner for the law practice for numerous financial years Failed to maintain adequate trust accounting records as required by rules 44(1) and (3), 45(1) and (2)(b), 48(2)(a) and (b) and (3) and 93 of the <i>Legal Profession Uniform General Rules (NSW) (General Rules)</i> 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Education course Costs 	20 July 2021
David Clifton	<ul style="list-style-type: none"> Breached sections 135, 138(1)(b), 145(1), 146 147(2)(a) and 148 of the Uniform Law Breached rule 45 and 47 of the General Rules Authorised false invoices to be prepared 	Professional misconduct	<ul style="list-style-type: none"> Roll removal recommendation Costs 	27 July 2021
DRM (a pseudonym)	<ul style="list-style-type: none"> Took costs and disbursements without first issuing a tax invoice Delayed in providing a tax invoice to the client 	N/A	<ul style="list-style-type: none"> Law Society granted leave to withdraw the proceedings pursuant to section 147 of the Application Act 	30 July 2021

Continues

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

NAME OF SOLICITOR	CONDUCT	FINDING/S	ORDERS MADE	DATE OF ORDERS
Aaron Kernaghan	<ul style="list-style-type: none"> Breached an undertaking to the Office of the Legal Services Commissioner. Breached section 137 of the Uniform Law Breached section 138 of the Uniform Law Caused a trust account deficiency Breached section 146 of the Uniform Law Failed to comply with fiscal obligations Failed to comply with a notice issued to him under section 370 of the Uniform Law Failed to comply with cost disclosure obligations under section 174 of the Uniform Law Failed to pay an invoice issued by an expert witness 	Professional misconduct and unsatisfactory professional conduct	<ul style="list-style-type: none"> Reprimand Education course Conditions imposed on practising certificate Costs 	6 August 2021 20 June 2022 (stage 2)
Michael Rogers	<ul style="list-style-type: none"> Failed to pay employer superannuation contributions Failed to issue to the complainant any Group Certificates or PAYG summaries in respect to her employment 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Education course Conditions imposed on practising certificate Costs 	25 August 2021
Catherine Fisher	<ul style="list-style-type: none"> Contravened a practising certificate condition Failed to comply with her 1 September 2015 undertaking to the Law Society of New South Wales to complete a practice management course 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Respondent to pay Law Society's costs 	1 September 2021
Shaun Titmarsh	<ul style="list-style-type: none"> Failed to transfer the interests of the complainant's late father in a property to the complainant's late mother. Failed to transfer the interests of the complainant's late mother in the property to another person. 	Unsatisfactory professional conduct	<ul style="list-style-type: none"> Reprimand Education course Fine Costs 	29 October 2021
Alexander Martin	<ul style="list-style-type: none"> Breached sections 135 and 137 of the Uniform Law 	Professional misconduct	<ul style="list-style-type: none"> Reprimand Fine Education course Costs 	1 December 2021

Table 8 – Practising solicitor statistics at 30 June 2022

GENDER OF SOLICITORS	
Female	21,284
Male	18,026
TOTAL	39,310

CATEGORY OF SOLICITORS	
Corporate	7,656
Government	4,360
Private	27,215
Volunteer	79
TOTAL	39,310

LOCATION OF SOLICITORS	
City	18,938
Interstate	368
Overseas	1,915
Rural	4,731
Suburban	13,358
TOTAL	39,310

Table 9 – Amounts expended by the Public Purpose Fund and Fidelity Fund on Regulation, 2021/2022

EXPENSE DESCRIPTION	RECOVERABLE FROM	TOTAL
Professional Standards / General Regulatory Expenses	Public Purpose Fund	6,407,485
External Interventions	Public Purpose Fund	878,302
Trust Account Inspections / Investigations	Public Purpose Fund	3,214,212
Fidelity Fund Administration	Fidelity Fund	882,964
TOTAL REGULATORY COSTS		11,382,964
TOTAL PAID FROM PUBLIC PURPOSE FUND		10,500,000
TOTAL PAID FROM FIDELITY FUND		882,964



PROFESSIONAL
STANDARDS
THE LAW SOCIETY
OF NEW SOUTH WALES



W Court

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