

COMMISSIONER
FOR UNIFORM LEGAL
SERVICES REGULATION

LSC LEGAL
SERVICES
COUNCIL

ANNUAL REPORTS
2016/2017


LEGAL PROFESSION
Uniform Law

About this Publication

This publication contains the Annual Reports of both the Legal Services Council and the Commissioner for Uniform Legal Services Regulation for 2016–2017. The reports are prepared and submitted in accordance with clause 26 of Schedule 1 and clause 10 of Schedule 2 to the Legal Profession Uniform Law as in force in each participating State. All references to legislation in this report should be understood to refer to the Legal Profession Uniform Law unless otherwise indicated.

The Legal Services Council is an inter-governmental statutory corporation created by the Legal Profession Uniform Law, applied in Victoria (Vic) and New South Wales (NSW) by the *Legal Profession Uniform Law Application Act 2014 (Vic)* and the *Legal Profession Uniform Law Application Act 2014 (NSW)*. The intention of the Parliaments of each State is that one single Council and one single Office of Commissioner is created.

The Uniform Law commenced on 1 July 2015 in both Victoria and NSW. The inaugural Commissioner for Uniform Legal Services Regulation and the members of the Council were appointed in September and October 2014 respectively and the Commissioner was reappointed in September 2015 for a further two years.

Copies of this Annual Report are publicly available at www.legalservicescouncil.org.au or by contacting the Legal Services Council by telephone on (02) 8293 5900, in writing to PO Box H326, Australia Square, Sydney, NSW 2000 or by email to lsc@legalservicescouncil.org.au.

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30 August 2017

The Hon Mark Speakman SC MP
Attorney General of New South Wales
GPO Box 5341
SYDNEY NSW 2001

The Hon Martin Pakula MP
Attorney-General of Victoria
Level 26, 121 Exhibition Street
MELBOURNE VIC 3000

Dear Attorney-General,

Annual Report of the Legal Services Council for 2016–2017
Annual Report of the Commissioner for Uniform Legal Services Regulation for 2016–2017

I am pleased to submit the Annual Report of the Legal Services Council for 2016–2017 in accordance with item 26 of Schedule 1 to the *Legal Profession Uniform Law 2014*. The report contains a financial statement for the Council which has been prepared in accordance with Australian Accounting Standards. The statement has been audited and a report provided by the Auditor is also included.

I am also pleased to provide the Annual Report of the Commissioner for Uniform Legal Services Regulation for 2016–2017 prepared in accordance with item 10 in Schedule 2 of the *Legal Profession Uniform Law 2014*. This is included in the same volume as the Council's report. The financial statements of the Council encompass the Office of the Commissioner, consolidated as one entity and have been prepared as noted above.

Yours sincerely,

M. Michael Black

The Hon Michael Black AC QC
Chair
Legal Services Council

Level 40, MLC Centre, 19 Martin Place, Sydney NSW 2000
PO Box H326, Australia Square NSW 1215
T +61 2 8293 5900 F +61 2 8293 5959
E lsc@legalservicescouncil.org.au
www.legalservicescouncil.org.au

Glossary

ABA: the Australian Bar Association.

Admissions Committee: an Admissions Committee established by the Council develops Admission Rules for the legal profession and advises the Council on admissions policy.

ASCRs: Australian Solicitors' Conduct Rules.

ASIC: Australian Securities and Investments Commission.

Australian lawyer: a person admitted to the Australian legal profession in Victoria or NSW or in any other jurisdiction.

Australian legal practitioner: an Australian lawyer who holds a current Australian practising certificate. A legal practitioner could be a solicitor or a barrister.

Australian-registered foreign lawyer: a person who has overseas legal qualifications and is registered to practise foreign law in Australia.

Chapter 5: Chapter 5 of the Uniform Law details how complaints made about legal practitioners are resolved and how legal practitioners are disciplined.

'Council' and 'Legal Services Council' (LSC): these references relate to the five member body, including the Chair who are members of the statutory body called the Legal Services Council.

References to the Legal Services Council or LSC - are also collective references to the roles, responsibilities and work, collaboratively performed by the Council, the Chair, the CEO and the Secretariat.

Commissioner: Commissioner for Uniform Legal Services Regulation.

DLRA: designated local regulatory authority.

ILP: incorporated legal practice.

IGA/Inter-Governmental Agreement: Bilateral Agreement on the Legal Profession Uniform Framework between the State of New South Wales and the State of Victoria.

Law practice: includes sole practitioners, traditional law firm structures, community legal services and incorporated and unincorporated legal practices.

LACC: Law Admissions Consultative Committee, a committee of the Council of Chief Justices.

LCA: the Law Council of Australia.

Legal costs: the amount a person has been or may be charged by or become liable to pay a law practice for legal services, including disbursements (or other costs) but not including interest.

LPUL: Legal Profession Uniform Law – the Legal Profession Uniform Law applied in each participating jurisdiction.

Legal Profession Uniform Framework: the legislative framework for regulation of the legal profession, including the Legal Profession Uniform Law, Uniform Rules and Uniform Regulations.

LIV: the Law Institute of Victoria.

LPAB: Legal Profession Admission Board (NSW).

LSC: Legal Services Council.

LSNSW: the Law Society of New South Wales.

NCAT: NSW Civil and Administrative Tribunal.

OLSC: Office of the Legal Services Commissioner, NSW.

PC: Practising Certificate.

PILPS: partnerships of incorporated law practices.

Pro bono work: legal services performed by a legal practitioner either without charge or at a reduced fee for clients who cannot afford to pay the usual fee.

PII: professional indemnity insurance.

The NSW Department: The NSW Department of Justice.

The Victorian Department: The Victorian Department of Justice and Regulation.

Trust money: money entrusted to the law practice to hold on behalf of somebody else in the course of or in connection with the law practice providing legal services.

Uniform Law: the Legal Profession Uniform Law applied in each participating jurisdiction.

VCAT: Victorian Civil and Administrative Tribunal.

VLAB: Victorian Legal Admissions Board.

VLSB: Victorian Legal Services Board.

VLSB+C: Victorian Legal Services Board and Commissioner.

VLSC: the Victorian Legal Services Commissioner.

Chair's Report

Over the past year, in its second complete year of operation, the Legal Services Council has moved beyond the establishment phase of the Legal Profession Uniform Law in Victoria and New South Wales; the Law has become well established as part of the regulatory framework of the legal profession in those jurisdictions.

But whilst the inaugural Council has achieved its first objective of having the scheme established and operating for over 70 per cent of the Australian legal profession, it now has to continue to look ahead to the extension of the scheme nationally. The Uniform Law scheme has many benefits and as the Council continues to develop its operation within Victoria and New South Wales it will actively seek to work with the jurisdictions that have not joined.

In working towards the extension of the scheme nationally the Council seeks to understand what is important for the other jurisdictions and how any concerns may be addressed. This year saw a renewed impetus to deal with one of the key areas of difference, by examining a harmonised approach to costs disclosure thresholds. This is an area in which the Uniform Law and non-participating jurisdictions are each seeking to ensure that consumers are kept informed, but they do so from starting points that are not the same. Backed by Australia-wide research it commissioned into what consumers want to be told when they engage a law practice, the Council believes that it may have found a way to resolve this issue, in the interests of both law practices and consumers.

Determining what, in the interests of clients and practitioners, lawyers should tell their clients - in as simple and effective a way as possible - is an important aspect of the Council's endeavours to encourage non-participating jurisdictions to join the scheme. At the time of reporting, a third major jurisdiction has expressed a strong interest in joining and this is encouraging, both in relation to that jurisdiction and more generally.

I am pleased to be able to report that all the changes to the Law and the Rules proposed during the year have been the subject of consultation and have been completed. In consulting about the Rules, and making and amending them as required, the Council seeks to harmonise and improve the operation of the Uniform Law in the participating jurisdictions. Although the changes that have been made have not been large in number, all of them have been important to some extent and are covered in this report.

The Council has continued to consult about issues affecting the legal profession including aspects of the Admission Rules, renewal of practising certificates, managed investment schemes and the Australian Solicitors' Conduct Rules.

I should express the Council's gratitude for the excellent work that has been undertaken by the outgoing inaugural Chair of our Admissions Committee, Professor Sandford Clark, AM. Professor Clark and the Admissions Committee have given invaluable service in establishing the Uniform Law Admission Rules.

I also express the Council's thanks to Professor Carolyn Evans and Mr John Littrich whose terms as members of the Admissions Committee ended on 29 June 2017 and to all the other members of the Committee for their work.

There are other contributions that should be recognised in this annual report; my last as Chair of the inaugural Council. We have received excellent support from the Attorneys-General of Victoria and New South Wales and their respective departments, from the Law Council of Australia and the Australian Bar Association and from the local regulatory authorities in New South Wales and Victoria. In particular, the Legal Services Commissioners of both states have given great assistance to the Council and in their cooperation with it and with each other have demonstrated another of the merits of the Uniform Law system, namely its encouragement of cooperation between regulatory bodies. The willingness of all stakeholders to work together and to consult about important issues has enabled the Uniform Law to be established smoothly and to function well. This provides a sound basis for the scheme to be adopted nationally.

Finally, on behalf of the Council I express my appreciation for the excellent work of our small secretariat and that of the inaugural CEO and Commissioner for Uniform Legal Services Regulation, Dale Boucher, PSM. As inaugural CEO and Commissioner, Mr Boucher has been pivotal in the successful establishment of the Council and of the scheme.

The Hon Michael Black AC QC

Chair

30 August 2017



CEO's Report

This is my last report as CEO of the Legal Services Council as it is nearly three years since I was first appointed and my term will soon expire.

As I reflect on what the Legal Services Council has achieved since we commenced, I am proud that the Uniform Law framework continues to provide tangible benefits for the legal profession, consumers and for Governments in participating States.

The Uniform Law has now been in operation for two years. It has proven to be a better system than existed previously in Victoria and NSW. It offers a faster and less complex rule making process, with the time to amend a rule under the Uniform Law taking approximately four to five months, and less where necessary. Dispute resolution processes are also better and swifter, with more flexible remedies available for the benefit of consumers and law practices alike.

The Uniform Law has also facilitated an ability to respond more quickly and in a more coherent manner to a range of policy issues facing the legal profession.

I would like to recognise the leadership and commitment that has been demonstrated by those who have worked with us on this macro-economic reform. I am buoyed by the great spirit of cooperation and collaboration between the regulatory authorities in Victoria and NSW. The strength of the relationships between stakeholders in the participating jurisdictions is extremely encouraging, as has been their willingness to exchange and contribute constructive ideas, solutions and data since the Uniform Law commenced.

Good things take time to achieve, and the LSC continues to engage with other jurisdictions to encourage their participation in the Scheme. As at 30 June another major jurisdiction has indicated its interest in joining the Uniform Law scheme. This is a promising development and we hope to be able to report on this next year.

Improving the engagement process for law practices and consumers alike

A major piece of work that the LSC undertook this year was a consumer survey of more than 2,000 consumers in every State and Territory. This looked at their expectations about what they want to be told about legal costs. The key finding of this research was that 88% of consumers want written advice about fees, either always or at a low dollar threshold.

Despite costs disclosure being very important to consumers, a third of those surveyed said that they were not told by their legal practitioner how much their work was likely to cost. We believe that the work we are undertaking, outlined later in this report, will assist both law practices and consumers. Our work will enable more effective communications about costs to the benefit of all parties.

Standardising and simplifying disclosure obligations for law practices Australia-wide will also be a strong step towards the harmonisation inherent in the vision of the Uniform Law for a single Australian legal profession regulatory system. Cutting red tape for small and larger law practices, when they are instructed by clients, will not only assist to improve their businesses. It will also offer greater transparency and better, more effective communication for consumers; it will also help improve the standing of the legal profession in the community. And, it should also reduce complaints. Ultimately, I believe that this and a range of other benefits for consumers, the community at large, Government - and the legal profession - will be self-evident when Uniform Law is a reality across Australia.

In addition to the formal consumer survey, the LSC has continued to engage with stakeholders and community groups throughout the year informally, and more formally, through consultative forums. These forums help to bring important issues, within the mandate of the Council, into the spotlight.



Policy and regulation

The following is a summary of the other policy work of the Council, which has practical application, and which continued throughout the year.

- **On External Examiners of trust accounts** - The Uniform Rules now call for qualified persons, such as chartered accountants, who can be external examiners, to have successfully completed a course of education approved by the Council. Early in the year we oversaw the development of a revised course of education for external examiners of solicitor's trust accounts and this was completed in December 2016.
- **Operating only one trust account for multiple jurisdiction law practices** - We also identified practical solutions for those law practices which might want to operate a single trust account in only one jurisdiction as opposed to all jurisdictions in which they may operate. These exist under the Uniform Law as it stands.
- **Late renewals and grants of Practising Certificates (PCs)** - We also looked into the issue of the small number of legal practitioners who might seek to renew their PCs later than desirable. The settings of the Uniform Law, in all States, prevent backdating of renewals after 30 June. Legal practitioners have fundamental duties to comply with the law and ensuring that their own registration is kept up to date is of vital importance.
- **Managed investment schemes (MIS) and law practices** - We began work on the extent to which law practices should be involved with MIS in the long term. In June 2017, the Council settled the terms of reference for an inquiry to examine the regulatory effects of the Uniform Law prohibition and to investigate policy options, including alternatives to the ban.

Establishing a Uniform Law Database and Library

Last year, as Commissioner, I reported on work we carried out to establish a database relating to the operation of Chapter 5 of the Uniform Law, to which all designated local regulatory authorities (DLRAs) in each State contribute. A highlight of this year has been to extend that to the other Chapters, like sharing of Admissions Board data, on which we are well advanced. The Council is responsible for overseeing the operation of the other chapters.

Another initiative was establishing the Legal Profession Uniform Law Library (Australia) within the Australasian Legal Information Institute (AustLII) database. The library contains all Guidelines and Directions as well as rules and cases relating to the Uniform Law. Phase Two will add all complaints determinations from the DLRAs made under the Uniform Law since it commenced. This will provide a useful resource for lawyers, students, regulators and the community at large.

In closing, I take this opportunity to sincerely thank the Chair and the Council for their unfailing support and for their spirit of optimism, as well as to thank the local regulatory authorities and other stakeholders for their collaboration and support and the great spirit with which we have all worked.

I am grateful to have had the opportunity to oversee the launch and establishment of the Legal Profession Uniform Law in the two most populous States of Australia, since September 2014. I look forward to observing the continued success of efforts towards uniformity in the years ahead.

Dale Boucher
Chief Executive Officer
30 August 2017

The Uniform Law in Action

THE UNIFORM RULES

The Uniform Rules provide much of the operational detail and requirements for legal practitioners. The Council is ultimately responsible for making the Uniform Rules, and has specific responsibility for the development of the Uniform General Rules. The Australian Bar Association (ABA) and the Law Council of Australia (LCA) are responsible for developing Legal Practice, Legal Profession Conduct and Continuing Professional Development Rules for solicitors and barristers. The Council's specialist Admissions Committee is responsible for developing the Admission Rules.

The Uniform Rules are:

- Legal Profession Uniform General Rules 2015 (General Rules);
- Legal Profession Uniform Admission Rules 2015 (Admission Rules);
- Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015 (Barristers Continuing Professional Development Rules);
- Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (Solicitors Continuing Professional Development Rules);
- Legal Profession Uniform Legal Practice (Solicitors) Rules 2015 (Solicitors Legal Practice Rules);
- Legal Profession Uniform Conduct (Barristers) Rules 2015 (Barristers Legal Profession Conduct Rules); and
- Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Australian Solicitors' Conduct Rules).

“The Uniform Law has improved protection of consumers of legal services in real substantive ways. The requirement that legal costs be fair and reasonable means that people are protected from over charging. The availability of free dispute resolution by the legal service commissioners in each State gives people an independent place to go to if they have a problem with legal costs or other aspects of lawyer conduct. This can work to improve trust and confidence in the profession.”

Gerard Brody,
CEO, Consumer Action Law Centre

A contemporary legal framework for a dynamic legal profession

The Uniform Law establishes a single legal services market for participating states and territories based on a uniform regulatory framework. So far both NSW and Victoria have joined the scheme, covering more than 70 per cent of Australian lawyers.

The single Uniform Law offers a range of advantages and benefits compared to separate frameworks in every jurisdiction to regulate the legal profession. These are:

- **Professional flexibility:** Lawyers can practise seamlessly between private, in-house and government practice under uniform regulatory standards.
- **Simplified practices:** Large and mid-tier firms can operate seamlessly across State and Territory borders, based on fundamentally the same regulatory framework.
- **Improved efficiencies:** A single costs agreement and identical back office systems and precedents reduce administration costs.
- **Quicker and easier dispute resolution:** More flexible Uniform Law remedies and complaints and dispute resolution processes between law practices and their clients save everyone time and money.
- **Informed choice for consumers:** Enhanced costs disclosure obligations, using a standard form, that meet consumer needs for more effective disclosure and cut red tape for law firms.
- **Continuous improvement:** A relatively fast and simple rule making process means that the regulatory process is more responsive to challenges and issues that arise.

- **Low operating costs for the Uniform Law regulatory framework:** The cost to a new jurisdiction of joining the scheme equates to around \$20-\$30 per annum per Australian legal practitioner, tax deductible.
- **Legal Profession Register and Data sharing:** A single Australian Legal Profession Register, a single Uniform Law library and data sharing on the operation of the Uniform Law will improve its operation to the benefit of the public, the profession and regulators.

THE UNIFORM LAW

The Uniform Law sets out the regulatory arrangements for the legal profession, including:

- admission to the Australian legal profession;
- legal practice;
- business practice and professional conduct;
- legal costs between a legal practitioner and their client;
- dispute resolution and professional discipline; and
- functions and powers of the LSC, the Commissioner for Uniform Legal Services Regulation and local regulatory authorities.



The Council's Vision and Values



OUR ROLE AND PURPOSE

The LSC seeks to promote the administration of justice and an efficient and effective Australian legal profession by:

- enhancing protection of the interests of clients and the public generally in accessing legal services;
- empowering clients of law practices to make informed choices about the services they access and the costs involved;
- ensuring lawyers maintain high ethical and professional standards and promoting compliance with the requirements of the Uniform Law and Rules;
- providing and promoting consistency in the Uniform Law applying to the profession and ensuring consistent and effective implementation of the Uniform Law and Rules;
- promoting regulation of the profession that is efficient, effective, targeted and proportionate; and
- raising awareness of the Uniform Law Framework and its objectives.

ROLE OF BODIES UNDER THE LEGAL PROFESSION UNIFORM LAW



LOCAL REGULATORY AUTHORITIES RESPONSIBLE FOR DAY-TO-DAY REGULATION OF THE LEGAL PROFESSION



COURTS AND TRIBUNALS



Our Role and Functions

THE LEGAL SERVICES COUNCIL

Together, the Legal Services Council and the Commissioner oversee the operation of the Uniform Law scheme. The Council is a statutory corporation. It has all the powers of an individual and may do anything necessary or convenient to perform its functions. The Council is not and does not represent the Crown. The Council's objectives under the Uniform Law are to:

- monitor implementation of the Uniform Law to ensure that it is applied consistently;
- ensure the Uniform Law Framework remains efficient, targeted and effective, and promotes the maintenance of professional standards; and
- ensure the Uniform Law Framework appropriately accounts for the interests and protection of consumers of legal services.

The Council formally makes all the Uniform Rules and, to achieve a consistent approach, can issue guidelines and/or directions to local regulatory authorities, except in relation to complaints and professional discipline (which are matters for the Commissioner).

The Council has five members, including the Chair, drawn from participating jurisdictions. The members are appointed by the Attorney-General of the host jurisdiction for the Uniform Law - the Attorney-General of Victoria, as follows:

- one member appointed as Chair on the recommendation of the Standing Committee with the concurrence of the Presidents of the Law Council of Australia and the Australian Bar Association;
- two members – one each recommended by the LCA and ABA respectively; and

- two members recommended by the Standing Committee on the basis of their expertise in legal practice, consumer protection, legal professional regulation or financial management.

Members are appointed for three years and may be reappointed but cannot hold office for a total of more than six years. Council members do not have a representational role in relation to any particular area of expertise or in relation to any particular organisation or jurisdiction.

The relationship between the Council and the Commissioner, as CEO of the Council

The person who is appointed as the Commissioner must also exercise the functions of CEO of the Council. However, in a formal sense the Council administers all chapters of the Uniform Law except Chapter 5, and oversees the Commissioner in their exercise of functions under that Chapter.

In practice, the day-to-day operations of the Council are run by the CEO and by the staff of the Secretariat, in consultation with the Chair.

Council Meetings

The Council met six times during the year, alternating the location of its face-to-face meetings between Sydney and Melbourne and using teleconferencing and video conferencing when possible to enable participation while containing costs. Once again, we appreciate the generosity of the organisations which have provided free of charge access to facilities for our LSC meetings. During the year three circular resolutions were adopted.

LEGAL SERVICES COUNCIL MEMBERS

The Hon Michael Black AC QC Chair (14 October 2014–13 October 2017)

The Hon Michael Black practised at the bar from 1964 until 1990 when he was appointed Chief Justice of the Federal Court of Australia (1991–2010). At various times whilst at the bar he was a member of the Victorian Bar Council, the Victorian Legal Aid Committee and the Council of the Leo Cussen Institute. He was the foundation Chair of the Victorian Bar’s course of instruction for new barristers. As Chief Justice of the Federal Court, he sat as an appellate judge in all areas of the Court’s jurisdiction and was closely involved in the Court’s administration and in its reforms to practice and procedure. Mr Black is a former Co-President of the Paris-based International Association of Supreme Administrative Jurisdictions. Since 2012 Mr Black has been the inaugural Chair of the Australian Law Schools Standards Committee, an independent committee established by the Council of Australian Law Deans.

Ms Fiona Bennett BA (Hons) FCA, FAICD, FIML
Council Member (14 October 2014–13 October 2017)

Fiona Bennett is a non-executive director of a number of entities including Beach Energy Limited and Hills Limited. She has been a member of the Victorian Legal Services Board since 2008 and Chairperson since January 2013. Ms Bennett is a Chartered Accountant and has previously held senior executive positions at BHP Billiton Ltd and Coles Group Ltd.

She has been Chief Financial Officer of several organisations in the health sector and is Chair of the Audit Committee of the Department of Education and Training (Victoria) and of the Risk Committee of the Australian Prudential Regulation Authority.

“The Uniform Law has made it much easier, and less costly, to resolve complaints and cost disputes between consumers and law practices.”

Fiona Bennett,
LSC Board member

Ms Kim Boettcher BA.LLB.GradDipLaw (Cardiff)
Council Member (14 October 2014–13 October 2017)

Kim Boettcher is a Solicitor who has practised commercial and civil litigation law in England and Wales, NSW and Queensland. She is employed at the Seniors Rights Service, an independent legal centre in Sydney, which forms part of an Australian network of community legal centres. Kim has represented her legal centre at the United Nations Open-ended Working Group on Ageing in New York and she presents papers at international conferences on compliance with elder rights regulation and its relationship with consumer law and human rights. She is Co-Chair of the Global Alliance for the Rights of Older People Australia.

Ms Boettcher was appointed to the NSW Minister of Fair Trading’s Retirement Villages Advisory Council in 2013 and to the Minister’s Expert Committee on Retirement Villages Standard Contract Terms and Disclosure Documents in 2011. She is Deputy Chair of the Sri Lankan Evidence Project of the International Commission of Jurists Australia.

“The work in the first term of the LSC, Commissioner and Secretariat has involved interacting with many and varied stakeholders from each jurisdiction, consulting on a large range of issues and policies. The inclusion of many voices takes time, strengthens the results we achieve and rewards our efforts as we implement important projects, bringing the objectives of the Uniform Law to life.”

Kim Boettcher,
LSC Board member

Mr Steven Stevens CTA, LLB (Hons), LLM, B.Ec. (Hons), M.Ec. (Monash) Council Member
(14 October 2014–13 October 2017)

Steven Stevens is a tax practitioner and Principal of Stenas Legal in Melbourne. He is a member of the Victorian Legal Services Board, elected as a legal practitioner representative in July 2013. Mr Stevens practised as an economist before being admitted to legal practice in 1988.

Between 1993 and 2011, Mr Stevens was a tax partner at Herbert Smith Freehills. In addition, he has held a number of positions within the legal profession, including President of the Law Institute of Victoria (2010) and Director of the Law Council of Australia (2010-2011). He is currently the President of the Hellenic Australian Lawyers Association and the Chair of the Professional Ethics Committee of the Law Council of Australia.

In 2016 he was made Co-Chair of the Professional Ethics Committee of the International Bar Association. Mr Stevens has represented the profession on a number of external bodies, including Australian Taxation Office consultative bodies and the Australasian Institute of Judicial Administration.

“The Legal Services Council has faced some challenges during the last year on ensuring consistent approaches to regulatory issues in participating jurisdictions... Having a Uniform Law provides a mechanism for dealing with such issues. The profession and the community are better served by achieving consistency, not just between participating jurisdictions but also preferably with non-participating jurisdictions.”

Steven Stevens,
LSC Board member

Mr Bret Walker SC Council Member (14 October 2014–13 October 2017)

Bret Walker is a barrister at Fifth Floor St James' Hall in Sydney. He was admitted to the NSW Bar in 1979 and was appointed Senior Counsel in 1993 and Queen's Counsel in WA in 1994. Mr Walker has held several senior positions including President of the NSW Bar Association (2001-2003), President of the

Law Council of Australia (1997-1998), and Governor of the Law Foundation of NSW (1996-2007).

He was Australia's first Independent National Security Legislation Monitor from 2011 to 2014. Mr Walker prepared the 1993 NSW Barristers' Rules which provided the basis for the Uniform Rules relating to advocacy. He is a member of the National Criminal Law Committee of the Law Council of Australia and has been editor of the NSW Law Reports since 2006.

THE COMMISSIONER

The Commissioner for Uniform Legal Services Regulation, Dale Boucher, is responsible for raising awareness of and promoting compliance with the Uniform Law and Rules and is the Chief Executive Officer of the Council. The Commissioner also monitors and reviews the dispute resolution and professional discipline functions set out in Chapter 5 of the Uniform Law.

The Commissioner can issue guidelines and directions to local regulatory authorities concerning the exercise of their complaints and professional discipline functions, in order to ensure consistency across participating jurisdictions.

The Commissioner's Report can be found at page 60.

THE CHIEF EXECUTIVE OFFICER

The Commissioner as CEO manages the day-to-day affairs of the Council in accordance with the policies and directions of the Council.

Prior to becoming the Commissioner and CEO on 29 September 2014, Mr Boucher oversaw the creation of the Tax Practitioners Board as its inaugural Chairman, between 2009 and 2013. Earlier he was the CEO Designate of the Australian

Government Solicitor (AGS) and he held the personal office of the AGS between 1993 and 1997.

Mr Boucher has also been a partner in a major national law firm and has practised in Canberra as a solicitor and management consultant. He was first admitted to practise in Victoria and has since worked in the Northern Territory, Western Australia and the Australian Capital Territory. Mr Boucher's term as Commissioner and CEO expires on 29 September 2017.

THE STANDING COMMITTEE

The Standing Committee comprises the Attorneys-General of the participating jurisdictions. It makes the Uniform Regulations and considers and approves the Uniform Rules proposed by the Council, the LCA, the ABA or the Admissions Committee. The Standing Committee has a 'general supervisory role' over the Council, the Commissioner and local regulatory authorities, which includes overseeing the finances of the Council and approving its budget. The Standing Committee supports the vision and values of the Council in promoting the Uniform Law to their counterparts in other states and territories.

The Council and Commissioner report biannually to the Standing Committee, and keep the Standing Committee updated on issues of importance as they arise.

THE ADMISSIONS COMMITTEE

The Admissions Committee appointed by the Council is responsible for developing Admission Rules – that is, the rules that govern how people are admitted to the legal profession – which are applied by the local Admission Boards. The Committee also provides the Council with advice about admission issues.

Under Schedule 1, Part 6 of the Uniform Law, the Admissions Committee consists of seven people drawn from the participating jurisdictions (currently NSW and Victoria). Two of the members must be current or former Supreme Court judges, nominated by the Chief Justice of the host jurisdiction of the Uniform Law (Victoria) with the concurrence of the Chief Justice of each other participating jurisdiction. The LCA and the ABA each nominate a member with expertise or experience in legal practice. Two members are appointed on the nomination of the Dean of a Law School or of a Faculty of Law or the head of an institution that provides practical legal training (or a person of equivalent status or who has equivalent functions).

The Standing Committee nominates a member who is either an officer or employee of a government department with relevant expertise or experience or a person who has expertise or experience in developing policy standards for admission or an accrediting education courses or institution.

The term of the inaugural Admissions Committee appointed by the Council expired on 11 May 2016. On 29 June 2016 a successor Committee was appointed comprising:

- Dr Elizabeth Boros, ABA nominee
- Professor Sandford Clark AM (Chair), Standing Committee nominee
- Stuart Clark AM, LCA nominee*
- Professor Carolyn Evans, University of Melbourne*
- The Hon Justice Emiliios Kyrou, Supreme Court of Victoria
- John Littrich, University of Wollongong*
- The Hon Richard White, Supreme Court of NSW

* The terms of these members expired on 29 June 2017.

With effect from 29 June 2017 the Council appointed the following members to the committee to replace those members whose terms had expired:

- Hon Acting Justice AR Emmett AO, an Acting Judge of Appeal of the NSW Supreme Court (Standing Committee nominee)
- Professor Bronwyn Naylor, RMIT
- Professor Lesley Hitchens, UTS

These members' terms are effective until 1 July 2020.

The report of the Admissions Committee can be found at page 35.

SECRETARIAT

A small Secretariat supports the LSC and CEO in administering the day-to-day work of the Council. It comprises a Senior Executive Officer and Senior Policy Adviser (both of whom are legal practitioners), a part-time Senior Project Officer (Communications) as well as an Executive Assistant to the CEO/Commissioner. The Secretariat team has extensive experience in legal practice and in policy development, as well as in providing support to advisory bodies, Governments and committees.



“The Legal Services Council Consumer Survey 2017, represents the legal profession’s genuine desire to reach out and listen to Australian Consumers. The Uniform Law is the culmination of a positive and cooperative approach by participating states to better understand, inform and serve Australian consumers and is a credit to the Australian legal profession. Better informed consumers are more likely to access legal services and feel positive about using the services again.”

Grant Piazza, Director,
Piazza Research Pty Ltd

Highlights of 2016–2017

The past year has been one of consolidation. This has required steady, collaborative management of the Uniform Law, to ensure that it is working well and delivering the robust legal regulatory framework which the legal profession and consumers of legal services require.

The Council's main priorities in 2016–2017 were to continue to ensure consistent and effective operation of the Uniform Law across Victoria and New South Wales, to research specific policy areas of importance to our stakeholders, consult with the industry and consumers and to advocate for additional jurisdictions to join the Uniform Law scheme. Further details are provided below.

STAKEHOLDER ENGAGEMENT

Encouraging other Australian States and Territories to join the Uniform Law scheme is one of the Council's key roles. We are making progress with some, and the jurisdictions continue to observe with interest the progress with implementation of the Uniform Law.

In addition, the LSC is consulting and engaging with a broad range of stakeholders and building consensus on important policy issues. Examples include: grants and renewals of practising certificates; external examiner qualifications; how to engage most effectively with non-participating jurisdictions; and how to harmonise costs disclosure provisions.

This approach ensures that policy decisions are based on sound information, and are better adapted to achieving the goals of efficient, effective, targeted and proportionate regulation of the profession.

LSC CONSUMER SURVEY 2017

The *Legal Services Council Consumer Survey 2017* was conducted by Piazza Research on behalf of the LSC in December 2016. Its accompanying report was completed in February 2017. The report contains responses from more than 2,000 consumers in every State and Territory in Australia and was conducted in accordance with the ISO 20252 Market, Opinion and Social Research Standard.

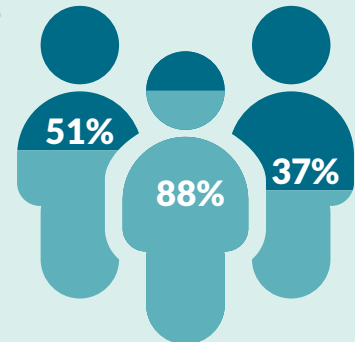
The responses highlighted that written costs disclosure is very important to consumers. This is so not just in choosing a lawyer, but also influences the level of satisfaction of consumers with their lawyer - and whether they seek legal help at all.

The research is an important part of the Council's consultative processes and provided valuable feedback on what consumers want to know about their legal costs and how they want that information to be presented to them. It will inform the work of the Council as it continues monitoring and if necessary, reviews costs disclosure requirements for law practices under the Legal Profession Uniform Law in NSW and Victoria.

Costs disclosure from consumers' perspectives

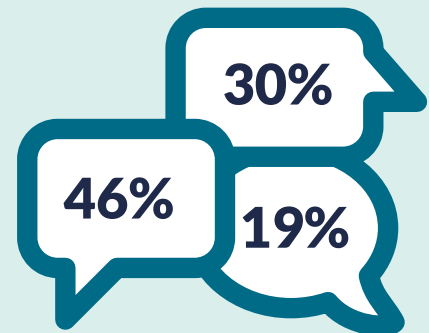
CONSUMERS WANT TO KNOW THEIR COSTS IN ADVANCE

- The overwhelming majority (**88%**) want written advice about fees always or at a low threshold.
- **51%** believed lawyers should always inform them of their fees in writing
- A further **37%** want written advice about fees above \$750



CONSUMERS WANT BETTER COMMUNICATION

- **46%** did not understand, or understood only a little what their costs were likely to be when engaging their lawyer
- **30%** were not told what their matter might cost before work started
- **19%** were unsure whether or not they were told
- Fifty one per cent (**51%**) thought they were told; of those, the majority (**60%**) were informed orally



NEARLY A QUARTER EXPERIENCE BILL SHOCK

- **22%** of consumers paid more than was estimated
- Of these, **80%** would think twice about using a lawyer again, shop around, or switch lawyers in the future
- **53%** of consumers did not understand what a 'disbursement' is



COSTS DISCLOSURE FORM

- **24%** believed the Costs Disclosure Form is a fixed quote, rather than a cost estimate
- **56%** said the form provided sufficient detail to allow them to make an informed decision
- **68%** would be happy for their lawyer to extend the Costs Disclosure Form with a table if new work was required and the costs estimate needed to be revised



REGULAR CONSULTATION WITH THE PROFESSION AND REGULATORS

The LSC held a Uniform Law Implementation Group Meeting in November 2016, following the success of earlier such meetings in 2014 and 2015. As the Uniform Law has now been in operation for two full years, this meeting provided an ideal opportunity to communicate issues between the Council and its stakeholders and discuss any matters requiring further research or policy development. The Council will continue to hold such meetings at regular intervals in future.

Over the year the Uniform Law regulatory and other bodies have met in different forums and on specific projects. For example, a Costs Thresholds Working Group met twice and consultation regarding the development of the new external examiners course was conducted between the Law Institute of Victoria, the VLSB+C and LSNSW over many months.

The CEO convenes regular meetings with State-based Legal Services Commissioners, which have proved to be an efficient way of working through a large number of topics and maintaining consistency in the application of the Uniform Law. In this reporting period, meetings were held in July 2016, September 2016, November 2016 and April 2017.

Another important role of the Council's communication and engagement with stakeholders is to address any concerns, misconceptions or opportunities. The LSC also has regular contact with the LCA, the ABA, and Law Firms Australia on specific topics of interest to the Standing Committee, such as partnerships of incorporated legal practices (PILPS) or single trust accounts and continues this dialogue to coordinate work more generally, or on operational issues, such as in relation to the timing of renewals or grants of practising certificates.

CONSULTATIVE FORUMS

Legal regulators, solicitors and consumer advocates came together in Sydney on 1 December 2016 and in Melbourne on 15 June 2017 to participate in two consultative forums.

At these forums, participants shared insights into how consumers can be best informed about their legal costs. This is consistent with the objectives of the Uniform Law. Participants reviewed and commented on a possible revised approach to costs disclosure using a form. The LSC is considering how to harmonise the Uniform Law approach in respect of costs disclosure with that of other jurisdictions.

The June 2017 forum also discussed what approach the LSC should take in responding to consultations which the Law Council of Australia is undertaking on revisions of the Australian Solicitors' Conduct Rules (ASCRs). In particular, the forum sought feedback concerning Rule 33 – Communication with other solicitor's clients, Rule 9 – Confidentiality, Rule 10 – Conflicts concerning former clients and Rule 11 – Conflict of duties concerning current clients of the ASCRs.

One of the key roles of the Council is to consult widely with stakeholders. This helps us to find ways to best administer the Uniform Law for the benefit of consumers, the legal profession and the general public. Apart from the above means, we undertake this function by regular dialogue and engagement with stakeholders and senior members of the profession.

Four Consultative Forums have now been held since the Uniform Law commenced. All have been informative and highly productive and we will continue to reach out by this and other means, wherever and whenever we can.



Conference where the benefits of the Uniform Law were shared.

- In May 2017, the CEO spoke at an Australian National University Ethics Roundtable in Canberra.

POLICIES AND REGULATION

In the first six months the LSC spent considerable time overseeing the development of a revised course of education for external examiners of solicitor's trust accounts. With considerable hard work by staff from the Law Society of NSW, the Law Institute in Victoria and from the office of the Legal Services Commissioner in Victoria, and with advice from a curriculum expert, we were able to approve a new course in December 2016.

This will help to ensure that the public is protected by competent external examiners, who are fully conversant with the provisions which exist for that purpose and for their benefit. We will continue to monitor the External Examiners Course and will fine tune its content over time.

For those law practices which might want to operate a single trust account in only one jurisdiction, as opposed to all jurisdictions in which they operate, there are two solutions: The law practice might seek an exemption under section 130 (4); or might be provided with a written direction of their client otherwise than by depositing it to a trust account under section 137 (a). However, these do not offer the structural benefits that might possibly be gained from pooling trust moneys into one larger pool. During the year the Council decided that it would look at this wider option in future if a need to do so arises. For instance, it may look into some form of trust account interest equalisation scheme, if necessary, between smaller and larger participating jurisdictions.

PRESENTATIONS, SEMINARS AND ADDRESSES

The CEO participated in seminars, delivered presentations and speeches, and attended events as the special guests of professional bodies on behalf of the LSC:

- In October 2016 the CEO represented the LSC at the Conference of Regulatory Officers (CORO 2016) in Canberra.
- In December 2016, the CEO spoke at an Australian Government Solicitor's function and outlined the importance of the Uniform Law.
- In March 2017 the CEO spoke at the LSNSW FLIP (Future of Law and Innovation in the Profession)

The issue of the small number of legal practitioners who might seek to renew their practising certificates later than desirable was one topic that came before the Council during the year. One issue was whether, after 1 July the grant (a renewal is not possible) of their late certificate be backdated. The settings of the law, in all States, basically prevent backdating of renewals but not all do so in respect of grants.

In April to June 2017 we conducted a survey of all Australian jurisdictions as to their practices on these issues. Those practices are not the same and although some give a discretion to allow a grant to be backdated (for example where the practitioner for some good reason omits to reapply for their registration), at least two jurisdictions adopt the same approach as the Uniform Law States.

The Council took the view in these circumstances, based on the text of the law as it stands that it would not support a change to the law, unless and until there were a need to do so having regard to the practices of all jurisdictions participating in the Uniform Law.

We began work on managed investment schemes (MIS) and the extent to which law practices should be involved with these in the long term. The prohibition on MIS except in limited circumstances in section 258 of the Uniform Law (which will commence unless altered on 1 July 2018), is intended to protect the public from the problems of conflicts of interest, among other important policy aims.

In June 2017, the Council settled the terms of reference for an inquiry to examine the regulatory effects of the Uniform Law prohibition and to investigate policy options, including alternatives to the blanket ban. Professor Pamela Hanrahan has been engaged to work closely with the Council, ASIC, DLRA's and other stakeholders and to provide a report by 30 September 2017.

Professor Hanrahan has extensive and unique academic and regulatory experience in MIS. In addition to her academic career at the UNSW Business School and, previously, the Melbourne Law School, she has over 15 years' experience as a lawyer in private practice and four years as a senior regulator in Commonwealth and State Government agencies.

The Council Secretariat also undertook work on a range of other issues, including:

- the **ASCR's review** of the LCA; this will carry over into next year;
- the circumstances in which, if at all, a law practice or a DLRA should be able **to terminate the appointment of an external examiner** of trust accounts; this will also carry over into next year;
- whether **true retainers** (which might be paid for example for the promise of the availability of a legal practitioner - as opposed to being as consideration for any work done) are trust moneys; the Council concluded that these are not trust moneys;
- **migration agents** and a Commonwealth proposal to cede their regulatory functions in respect of migration agents who are also legal practitioners to the States and Territories; there had been no conclusion on this at the end of the year;
- whether **police** may be engaging in legal practice for the purposes of the prohibition on entities engaging in legal practice unless they are qualified, under section 10; the Council concluded that they are not doing so;
- Commonwealth proposals to impose reporting obligations on members of the legal profession to counter **money laundering and for anti-terrorism financing purposes**. In our view, there are a number of existing aspects under the Uniform



Law which strongly deter members of the legal profession from engaging in such conduct.

LEGAL PROFESSION UNIFORM LAW LIBRARY (AUSTRALIA)

During the year we established the Legal Profession Uniform Law Library (Australia) within the Australasian Legal Information Institute (AustLII) database. This was done in consultation with VCAT and NCAT, to help to refine the benefits of this resource. Phase One of the Library was completed during the year, containing links to all Guidelines and Directions as well as to the rules and cases or legal journals citing the Uniform Law.

Phase Two will be completed in the coming year, and will contain all complaints determinations made by the DLRAs under the Uniform Law since it commenced. When complete, this resource will provide a rich repository of information on and application of the Uniform Law for lawyers, students and regulators.

RULES AND GUIDELINES

A small number of relatively minor, but nevertheless important, amendments were made to the Uniform Law during the reporting year.

Receipting trust account money

In July 2015, the Council had adopted a new approach to the receipting of trust account money that required a law practice to issue a receipt in every instance that money is received into a trust account, either directly from the client or via bank transfer from the client or a third party payer. The Council was informed that Uniform General Rule (UGR) 36(4) was difficult and, in some instances, impossible to comply with. The Council sought the views of local regulators, law practices, consumer organisations

and the public about the practical implications and value of UGR 36(4) - and whether it should be changed.

The Council was told that UGR 36(4) created a disproportionate administrative effort without commensurate consumer benefit. This was due to the need to establish a system for identifying and sending receipts to the payer; the frequent instances where money is received from financial institutions or other third parties (e.g. multiple share dividends); and the common use of electronic funds transfer, which creates a documentary trail of the payment. These views were expressed by a wide cross section of the profession, and in June 2016 the Council decided that it should return to the previous position that a receipt is to be provided on request only. It has also removed the requirement that the receipt be an original to take account of modern practices of emailing receipts to a client. The proposal was approved by the Standing Committee in August 2016. The Council subsequently made the amendment, which came into effect on 2 September 2016.

Barristers' work

The Legal Services Council amended to Rule 11(d) of the Barristers Conduct Rules, as requested by the ABA, to explicitly provide that barristers' work includes conducting mediation or arbitration or other methods of alternative dispute resolution (ADR) as well as representing a client in these processes. The amendment came into effect on 2 September 2016. This rule change does not affect the ability of other professionals to undertake ADR work.

Amendments to the Uniform Law

In November 2016, four practical changes were made to the Uniform Law in Victoria and NSW:

1/ Partnerships of Australian-registered foreign lawyers

The *Legal Profession Uniform Law Application Amendment Act 2016* (VIC) expressly allows Australian-registered foreign lawyers to practise foreign law in partnerships solely comprising Australian-registered foreign lawyers. This is consistent with the former provisions of the 2004 Victorian and NSW Legal Profession Acts. Section 70 of the Uniform Law sets out the form of practice that can be adopted by Australian-registered foreign lawyers but the section did not allow foreign lawyers to form partnerships independently of Australian practitioners.

A new paragraph has been added to section 70 (1), enabling an Australian-registered foreign lawyer to practise foreign law in a partnership with one or more Australian-registered foreign lawyers in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction.

2/ Local Authorities' power to vary practising certificates

DLRAs now have the power to vary, suspend or cancel a practising certificate on a recommendation of a complaint handling body, where there has been a finding that the lawyer has engaged in unsatisfactory professional conduct.

Under section 299(1)(g) of the Uniform Law a local regulatory authority can make an order recommending the imposition of a specified condition on the practising certificate of a lawyer where the authority has found that the lawyer engaged in unsatisfactory professional conduct. Under section 82(1), the DLRA can vary, suspend, or cancel a practising certificate on a number of grounds.

However, section 82(1)(c) did not include as one of these grounds the imposition of a condition under section 299(1)(g). This omission has now been rectified.

3/ Combined financial reports of the Council and Commissioner

An important regulatory requirement on the Council and Commissioner is that they provide audited financial statements with their annual reports. The Amendment Act now allows the financial statements of the Commissioner and the Legal Services Council to be combined as one. In practice, the Commissioner does not have a separate budget and this amendment therefore was useful and practical for the day-to-day operations of the Secretariat.

4/ Duty to report suspected offences

The duty to report suspected offences under the Uniform Law as first enacted was broader than in the former *Legal Profession Act 2004* (NSW) (LPA) and has now been changed. Section 730A of the LPA imposed a duty only on the NSW Commissioner, the NSW Bar Council, and the NSW Law Society Council to report suspected offences.

Sections 465(1) and (2)(a) of the Uniform Law provides that where a "relevant person" suspects on reasonable grounds that a person has committed a serious offence, they must report the suspected offence to the police or other appropriate investigating or prosecuting authority. "Relevant person" is defined to include the Legal Services Council or the Commissioner, the Admissions Committee, a local regulatory authority, or a delegate of any of these organisations. However, paragraph 465(4)(e) included "a person who is a member of the staff of, or acting at the direction of", any of these organisations. The amendment, which repealed paragraph 465(4)(e), now means that the

obligation to report a suspected serious offence would fall only on the Council, the Commissioner, the Admissions Committee, a local regulatory authority, or a delegate, but not on staff or those acting at their direction.

AMENDMENTS TO THE LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2014 (VIC)

Register of Disciplinary Action

In addition to amendments of the Uniform Law itself, there was an important change to the *Legal Profession Uniform Law Application Act 2014* (the Victorian Application Act). This enables a Register of Disciplinary Action to continue to be maintained there by the Victorian Legal Services Board. The Office of Legal Services Commissioner maintains such a register in NSW. A Register of Disciplinary action was previously maintained in Victoria under sections 4.4.26 and 4.4.27 of the former *Legal Profession Act 2004*.

The Amendment Act amended the Victorian Application Act to provide a legislative basis for the Victorian Legal Services Board to maintain and publish a Register of Disciplinary Action by inserting a new Part 9A – Registers.

This amendment enhances consistency between the participating jurisdictions.



AMENDMENTS TO THE LEGAL PROFESSION UNIFORM RULES

Legal Profession Uniform Admission Rules 2015

Amendments to Admission Rule 11(1) and (3)(a) now permit applicants for admission with partially completed qualifications in a foreign jurisdiction to apply for directions about what additional qualifications they must acquire. Formerly, the class of persons who could make such applications was limited only to those who had completed such qualifications.

The amendment to Schedule 3, clause 8 corrected a typographical error, to make clear that it is the employer who must allow trainees sufficient time to attend courses.

Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015 Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015

The amended definition of DLRA in Rule 5 made clearer which DLRA is being referred to in the Rules.

Legal Profession Uniform General Rules 2015

Rule 65(4)-(7) relating to the period of appointment of external examiners was deleted by the Legal Services Council because those rules were inconsistent with clause 20 in Schedule 4 to the Uniform Law. Clause 20 provides that all external examiner appointments must cease two years after the commencement of the Uniform Law, which meant that their appointments ceased on 30 June 2017. However, new appointments have been made to ensure the continuity of this important process.

Progress against our Strategic Plan

The Council's operations are guided by a Strategic Plan which is focused on four key result areas.

Action plan 1: Drive strategic initiatives that embed reform and respond to emerging issues and opportunities	
2016–2017 Priority Actions	Work undertaken/underway
<ul style="list-style-type: none"> Establish a Uniform Law Data Sharing Initiative framework for chapters 2, 3, 4, 6 and 7 of the Uniform Law Undertake options analysis about the potential for a single national trust account 	<ul style="list-style-type: none"> Stage Two of a Data Sharing Initiative is underway with collaboration from all DLRA's assisting the Council in evaluating and monitoring of the Uniform Law. We continued to investigate the possibility of establishing a single national trust account, while noting the flexibility that the Uniform Law already offers for firms. The LSC will reactivate this work as more jurisdictions join the scheme, if the need arises.
<ul style="list-style-type: none"> Collaborate with the Admissions Committee to develop guidelines or directions for DLRA's to exempt persons from satisfying specified academic qualifications or PLT or both for s 18 of the Uniform Law and for conditional admission of foreign lawyers for s 20 of the Uniform Law Examine the current exemptions regime for professional indemnity insurance 	<ul style="list-style-type: none"> Refer to Admissions Committee report for detail. Page 35. We have worked to implement minimum standards for interstate lawyers working in Victoria and NSW. As at May 2017 all Professional Indemnity Insurance policies in non-participating jurisdictions were found to meet the minimum standards set out in Uniform General Rules 78 and 79.
<ul style="list-style-type: none"> Collaborate with DLRA's about arrangements for external examinations of trust accounts; development of a single external examiners course and common external examiners reporting regime 	<ul style="list-style-type: none"> We oversaw the development of and approved a new External Examiners Course in December 2016. The new one-day course was prepared in consultation with the DLRA's and the LIV and a curriculum development specialist. The external examiners reporting regime was harmonised with the examination of trust money accounts covering the year 1 April–31 March and reporting by external examiners to be completed by 15 May.
<ul style="list-style-type: none"> Prepare advice on whether the Uniform Law should be amended so that the definition of "law firm" is extended to include a partnership between one or more incorporated legal practices PILPS 	<ul style="list-style-type: none"> While Victoria in its Application Act allows these business structures, NSW does not. After relevant consultation, Council agreed to revisit this issue when other jurisdictions join the scheme, if the need arises.
<ul style="list-style-type: none"> Undertake options analysis of the potential for an Australian Legal Profession Register to cover NSW and Victoria and any future participating jurisdictions 	<ul style="list-style-type: none"> NSW Crown Solicitor's advice was obtained in April 2017 on measures to ensure the register is established and maintained in compliance with Privacy Laws. This work is progressing with the support and assistance of the LSNSW and VLSB+C.

Action plan 1: Drive strategic initiatives that embed reform and respond to emerging issues and opportunities

2016–2017 Priority Actions	Work undertaken/underway
<ul style="list-style-type: none"> Review consumer attitudes through formal market research, consultative forms and other mechanisms 	<ul style="list-style-type: none"> A consumer survey on costs disclosure was completed in December 2016. Refer to page 20 for more detail. Consultative Forums were held in Sydney and Melbourne on the issues of costs disclosure and on specific ASCRs. We regularly liaise with our stakeholders either directly and/or through our website to ensure a range of views are considered in our work generally.
<ul style="list-style-type: none"> Examine operation of the MIS exemption framework 	<ul style="list-style-type: none"> In June, the Council settled the terms of reference for an inquiry into MIS and the relevant Uniform Law provisions in section 258. The inquiry is being conducted by Professor Pamela Hanrahan, who will report in September 2017.
<ul style="list-style-type: none"> Review costs disclosure obligations 	<ul style="list-style-type: none"> A Working Group (comprising consumer, legal profession and regulator representatives) has met twice to review costs disclosure obligations and make recommendations for harmonising arrangements across jurisdictions. The LSC is continuing to consult with stakeholders via consultative forums and DLRAAs on costs disclosure thresholds and practices.
<p>Priority Actions for 2017-2018</p> <ul style="list-style-type: none"> Launch a finalised Australian Legal Profession Register Complete LSC Uniform Law Data Sharing Initiative framework for all chapters of the Uniform Law Improve data analysis related to the Uniform Law's operation Finish examining the MIS prohibition framework 	

Action plan 2: Develop fit-for-purpose rules, policies and guidelines	
2016–2017 Priority Actions	Work undertaken/underway
<ul style="list-style-type: none"> Investigate the need for a policy or guideline with respect to retainers 	<ul style="list-style-type: none"> The LSC has concluded that no Uniform Rule is required.
<ul style="list-style-type: none"> Develop an agreed approach with the LCA about the need for specific conduct and practice rules about wills and estates, having regard to the VLRC report on Succession Laws (August 2013) 	<ul style="list-style-type: none"> Victorian legislation was introduced during the year to address this need.
<ul style="list-style-type: none"> Develop Guidelines on internal review of DLRA decisions and costs 	<ul style="list-style-type: none"> Under the Uniform Law DLRA's have the power to review certain decisions at their discretion. On 26 October 2016, the Commissioner issued a Guideline to promote consistency in these statutory functions.
<ul style="list-style-type: none"> Changes to Admissions Rules 	<ul style="list-style-type: none"> See Admissions Committee Report for detail. Page 35.
<ul style="list-style-type: none"> Changes to Uniform Law 	<ul style="list-style-type: none"> A number of changes were made to the Uniform Law during the reporting year. These have been detailed on "Rules and Guidelines" on pages 25-27.
<ul style="list-style-type: none"> Review of the Australian Solicitors' Conduct Rules (ASCRs) by the Law Council of Australia 	<ul style="list-style-type: none"> We are working with the LCA on its review of the ASCRs, including consulting with stakeholders.
Priority Actions for 2017-2018 <ul style="list-style-type: none"> Complete actions required of the Council in respect of the LCA ASCR review. We will complete our consultation on the review of ASCRs and review further drafts submitted to the LSC. 	

Action plan 3: Undertake highly effective stakeholder engagement and communication	
2016–2017 Priority Actions	Work undertaken/underway
<ul style="list-style-type: none"> Focus on education activities to assist practitioners and consumers understand the Uniform Law scheme 	<ul style="list-style-type: none"> We collaborate with other stakeholders whenever and wherever it is practicable to do so and have participated in a range of forums and meetings. We have a set of online information sheets to help legal practitioners and consumers better understand their obligations and rights under the Uniform Law.
<ul style="list-style-type: none"> Establish working arrangements with DLRA's with respect to the Commissioner's functions 	<ul style="list-style-type: none"> Commissioners for Legal Services of participating states met five times. Regular liaison with Admissions Boards, LSNSW, LIV and Bar Associations was undertaken.
<ul style="list-style-type: none"> Hold biannual Consultative Forums 	<ul style="list-style-type: none"> We held two Consultative Forums in Sydney and Melbourne.
<ul style="list-style-type: none"> Consultation to inform strategic initiatives and the development of rules, policies and guidelines 	<ul style="list-style-type: none"> Consultation was undertaken in accordance with ss 425-426 of the Uniform Law with LCA, Council of Chief Justices, The Law Council of Australia, the Australian Bar Association, the Standing Committee of AGs and other relevant advisory bodies throughout the year.

Action plan 3: Undertake highly effective stakeholder engagement and communication

2016–2017 Priority Actions	Work undertaken/underway
<ul style="list-style-type: none"> • Provide practitioners and consumers with timely and accurate information about the Uniform Law scheme 	<ul style="list-style-type: none"> • 17 news articles (highlights) were published on the LSC website. • Information sheets for both consumers and legal practitioners were updated and placed on our website. • Stakeholders were also contacted directly by letter and email on matters that required their attention.
<ul style="list-style-type: none"> • Engage with non-participating jurisdictions 	<ul style="list-style-type: none"> • 11 face-to-face meetings were held between the CEO and non-participating jurisdictions in SA, ACT, Qld and WA as well as phone conferences with TAS and NT. • Monthly Legal Regulators Collaborative meetings were held. • The CEO addressed delegates at Conference of Regulatory Officers (CORO 2016) in Canberra in October and at an ANU Ethics Roundtable in May 2017 in Canberra.
<ul style="list-style-type: none"> • Build awareness of the scheme 	<ul style="list-style-type: none"> • We have developed specific branding for the Uniform Law and distributed it to our stakeholders for use in their communications. • A new Communications Officer position was created and filled. We regularly update our website and seek to ensure new initiatives are communicated to our stakeholders and/or the media in a timely way. • With the assistance of the legal information website, AustLII, we developed a Legal Profession Uniform Law Library to assist in following cases and legislation involving the Uniform Law. • The CEO presented at the LSNSW Future of Law and Innovation in the Profession (FLIP) conference in March 2017, where the benefits of the Uniform Law were promoted.
<ul style="list-style-type: none"> • Review and update the communications and engagement strategy 	<ul style="list-style-type: none"> • In October, we completed a review of our communications strategy and a new Communication and Engagement Strategy is being developed.
<p>Priority Actions for 2017-2018</p> <ul style="list-style-type: none"> • Consult to inform review of the Council's Strategic Plan • Work to increase our publicity through national and local media outlets • Continue to build awareness of the Scheme and its benefits • Continue to engage with non-participating jurisdictions • Guide traffic to the Legal Services Council website through site improvements and search engine optimisation strategies • Complete Stage Two of the Legal Profession Uniform Law Library (Australia) within AustLII 	

Action plan 4: Build a well-governed and unified organisation	
2016–2017 Priority Actions	Work undertaken/underway
<ul style="list-style-type: none"> • Coordinate Council and Admissions Committee appointments 	<ul style="list-style-type: none"> • The Council continued to liaise with the Standing Committee and academic and other bodies on Ministerial and other nominations to the Admissions Committee and LSC. • Two new academic members and a Standing Committee nominee were appointed to the Admissions Committee on 29 June 2017 for three year terms.
<ul style="list-style-type: none"> • Annual reporting 	<ul style="list-style-type: none"> • We submitted timely Annual Reports for the LSC and the Commissioner.
<ul style="list-style-type: none"> • Maintain register of delegations 	<ul style="list-style-type: none"> • The Uniform Law requires each of the local regulatory authorities in NSW and Victoria to maintain a publicly available register of delegations, which must contain a copy of all the instruments of delegation. These are updated at least once per year. We provide a public register of delegations for the LSC, Commissioner and DLRA's on our website.
<ul style="list-style-type: none"> • Compliance with oversight legislation 	<ul style="list-style-type: none"> • LSC has complied with all relevant oversight legislation and all NSW Public Sector legislation applying to the Council and the Commissioner including: <ul style="list-style-type: none"> – Privacy and Personal Information Protection Act 1998 (NSW) – Government Information (Public Access) Act 2009 (NSW) – State Records Act 1998 (NSW) – Ombudsman Act 1974 (NSW) – Government Sector Employment Act 2013 (NSW) – Refer to the Financial Statement Report on page 39.
<p>Priority Actions for 2017-2018</p> <ul style="list-style-type: none"> • Continue to support the Admissions Committee, which was reconstituted in late June 2017. • Settle/renegotiate secretariat accommodation, as necessary for the period after October 2018. • Review Strategic and Business Plan. • Submit a proposed triennial budget to the Standing Committee for the next Triennium (2019–2021). 	

Organisational Arrangements

HOSTING ARRANGEMENTS

New South Wales ‘hosts’ the LSC and Commissioner, who are based in Sydney, NSW. Staff of the secretariat (apart from the Commissioner) are NSW public service employees under the *Government Sector Employment Act 2013* (NSW). The Commissioner is a statutory office holder. The NSW Department of Justice provides human resources, information technology and finance services to support the operation of the LSC and Commissioner.

Oversight legislation that commonly applies to NSW Government agencies including the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Government Information (Public Access) Act 2009* (NSW) also apply to the LSC and to the Commissioner.

FUNDING ARRANGEMENTS

The LSC’s and Commissioner’s funding is provided pursuant to an Inter-Governmental Agreement, ‘The Bilateral Agreement on the Legal Profession Uniform Framework’, between the two participating jurisdictions. The LSC is jointly funded by the jurisdictions participating in the Uniform Law scheme (currently NSW and Victoria) and its budget is approved by the Standing Committee (comprising the NSW and Victorian Attorneys-General).

Each jurisdiction individually determines how it will meet its funding obligation-which is determined based on their percentage of the total legal practitioners to whom practising certificates were issued over the preceding financial year. In practice, the NSW contribution is funded by admission fees prescribed by the Legal Profession Uniform Law Application Regulation 2015. Each admission fee of \$900 is to be allocated as follows:

- \$500 to the NSW Legal Profession Admission Board; and
- \$400 to the NSW Department of Justice.

The Victorian Legal Services Board, each financial year, pays an amount determined by the Attorney-General from the Public Purpose Fund.

Financial safeguards, such as controls on when expenditure can be incurred, apply to the LSC under the *Public Finance and Audit Act 1983* (NSW).

The LSC’s Operating Budget

The LSC and the Commissioner operate on a triennial budget (2015-2018). The Standing Committee has approved the budget and provided assurance of continued funding for the purpose of the 2016–2017 financial statements.

For 2016–2017 a one year operating budget of \$1,362,796 was approved. This amount was funded by a contribution from the Department of Justice of \$848,811, in-kind personnel service resources received from the Department of \$1,319 and a contribution from the Victorian Legal Services Board of \$512,666.

Audited financial statements are presented in this report from page 39.

Financial operations

In understanding the financial arrangements which both exist and should exist for the Council and Commissioner, it is important to know the context in which we operate. The Council and the Office of Commissioner have been created as entities which are not the Crown and which do not represent the Crown. This, along with the co-regulatory model established, serve to ensure that the legal profession has an appropriate level of independence from the executive arm of government.

The LSC is established as an inter-governmental statutory corporation because of this need for it to be independent.

While the Council and its members do not report to the NSW Department of Justice they are, however, supported by the Department. During the year the LSC continued to operate as if it were a cost centre in the Department and the Department provides corporate services to the LSC on a fee for service basis. The current budget total of \$1.36 M is shared between participating jurisdictions. A national regulatory scheme covering all practitioners in Australia would cost no more than \$20-\$30 per legal practitioner, per year.

Throughout 2016–2017 the LSC continued to work with the Department to refine the financial governance arrangements that support the day-to-day financial operations of the LSC and Commissioner. While the LSC developed an Agreement for Financial Management and Support Arrangements, which was signed in late November 2016, we are working with the Department to ensure autonomy of the Council’s finances. The Audit and Risk Committee and the Commissioner have also sought improved visibility of the LSC financial position from the Department and we will endeavour to have this resolved satisfactorily in the coming year.

Staffing

In April 2017 the LSC recruited a full-time Senior Policy Adviser to replace the previous officer who retired in March 2017. In the same month we also recruited a permanent part-time Senior Project Officer (Communications). This position had been filled by a contractor since September 2016.

Over the year we also renewed our Memorandum of Understanding with the University of New South Wales which provides us with excellent interns.

LSC REGISTER OF DELEGATIONS

The LSC may delegate certain functions to the Chair of the Council or the Commissioner. During 2016–2017, the LSC issued a delegation to the Commissioner for the approval from time to time of the approved External Examiners Course.

The LSC maintains a register of delegations as required by section 413 and worked with the DLRAs to ensure each of the bodies maintains and publishes a current Register of Delegations.

The LSC publishes a link to each of these Registers on its website and ensures it is updated at least annually.

The delegations made during the reporting period are set out in the table below.

Date	Delegate	Function	Duration	Status
19 December 2016	Commissioner for Uniform Legal Services Regulation (under s 397 Uniform General Rules 65 and 107)	Approve from time to time a course of education for External Examiners under Part 4.2 of the Uniform Law	2 September 2017	Current
29 June 2016	Commissioner for Uniform Legal Services Regulation (under s 397 Uniform General Rules 65 and 107)	Approve a policy of professional indemnity insurance for a jurisdiction that is not a participating jurisdiction for the purposes of Part 4.4 of the Legal Profession uniform Law.	28 September 2017	Current
29 June 2016	Chairperson of the Council	Approve a policy of professional indemnity insurance for a jurisdiction that is not a participating jurisdiction for the purposes Part 4.4 of the Legal Profession Uniform Law.	12 October 2017	Current

Report of the Admissions Committee

The following is a report of the Admissions Committee of the Council for 2016–2017.

AMENDMENTS TO UNIFORM ADMISSION RULES 2015

As previously reported, the primary task of the initial Admissions Committee was to develop Admission Rules to be deployed when the Uniform Law came into effect on 1 July 2015. It has subsequently monitored the operation of those rules and, in the course of 2016–2017, proposed several amendments that were subsequently approved by the Standing Committee and adopted by the Council.

RULES 11(1), 11(3) AND CLAUSE 8 OF SCHEDULE 3

Minor amendments were proposed to these rules. The Committee conducted the consultations relating to the proposed minor amendments and reported to the Council, demonstrating its compliance with section 426(3) of the Uniform Law. In due course, the Standing Committee approved the proposed amendments and the Council made the Legal Profession Uniform Admission Amendment (Qualifications and Supervision) Rule 2016.

RULE 18 POLICE REPORTS

Experience gained by the Admission Boards in NSW and Victoria with the existing rule relating to police reports led to a joint request by their CEOs for an amendment that more closely reflected their current practices, to avoid misleading applicants. Again, the Committee conducted the consultations relating to these proposed minor amendments and reported to the Council, demonstrating its compliance with section 426(3) of the Uniform Law. In due course, the Standing Committee approved the proposed amendments and the Council made the Legal

Profession Uniform Admission Amendment (Police Reports) Rule 2016.

Rule 18 was amended to relieve applicants of the burden of providing a police report from every country or jurisdiction in which they had previously lived, prepared within six months before the application for a compliance certificate was made. The amendment now allows the Admitting Authorities to request a police report after the application has been made, rather than requiring it to be provided in all cases.

ALTERATION OF ACADEMIC QUALIFICATIONS PREREQUISITE

As a result of the Law Admissions Consultative Committee's (LACC) limited review of the 11 academic requirements for admission in 2015, all Australian admitting authorities agreed to:

- (i) alter the name of Civil Procedure to Civil Dispute Resolution, and to include Alternative Dispute Resolution as the description of this area of knowledge; and
- (ii) amend the description of Evidence, so that it could apply to each Australian jurisdiction, whether or not it has adopted the Uniform Evidence Law.

As the Admission Boards in both NSW and Victoria had already agreed to these proposals, at a meeting on 18 November 2016, the Admission Committee determined to substitute the new descriptions for the descriptions set out in Schedule 1 of the Uniform Admission Rules 2015.

The Admissions Committee subsequently proposed that clauses 11 and 12 of Schedule 1 be amended to reflect the determinations made by the Admissions Committee. It accordingly conducted the consultations required by the Uniform Law

and reported to the Council, demonstrating its compliance with section 426(3). In due course, the Standing Committee approved the proposed amendments and the Council made the Legal Profession Uniform Admission Amendment (Academic Areas of Knowledge) Rule 2017.

DISCLOSURE GUIDELINES

Some years ago, the several admitting authorities agreed to adopt common Disclosure Guidelines which had been developed by LACC through a lengthy process of consultation. They seek to help applicants for admission decide what they need to disclose to an admitting authority when applying for admission.

In 2016, the President of the Australian Law Students' Association released an undated open letter "for the consideration of the Legal Education

Community in Australia". It primarily objected to item 7 of the Disclosure Guidelines, which relates to disclosures about capacity. It also sought legislative and regulatory changes in all jurisdictions, to provide that mental and physical health issues may not be taken into consideration when deciding whether an applicant is currently able to carry out the inherent requirements of practice as an Australian legal practitioner. The letter also sought more specific guidance for applicants about what an applicant needs to disclose to an admitting authority.

LACC proceeded to develop a consensus among admitting authorities on a series of amendments to the Disclosure Guidelines. It sought the advice of the NSW and Victorian Admission Boards, and of the Admissions Committee on draft provisions. The Admissions Committee formed a subcommittee to propose a number of amendments to the circulated draft, which were subsequently adopted by LACC.



At the same time, the Victorian Attorney-General wrote to the CEO of the Council asking him to consider both the letter of the President and the Attorney-General's response. The CEO, in turn, sought comments from the Admissions Committee.

All admitting authorities subsequently agreed to an amended draft proposed by LACC, which was adopted by LACC at its meeting on 16 June 2017.

DIRECTIONS ABOUT QUALIFICATIONS

The Committee noted a discrepancy between the way in which the NSW and Victorian Admission Boards report to people applying for directions about their qualifications under rule 11 of the Uniform Admission Rules. Since that discrepancy was pointed out, the NSW Board has altered its practices to comply more precisely with the requirements of the Rules.

ADMISSION OF FOREIGN LAWYERS

As previously reported, following deliberations of a Foreign Lawyers Working Group convened by the Admissions Committee to consider admissions under sections 18 and 20 of the Uniform Law, the NSW and Victorian Admission Boards adopted Agreed Interim Procedures for Overseas Applications in December 2015. These procedures appear to have been operating successfully throughout 2016–2017; but the Admissions Committee proposes to monitor their application and assist to resolve any difficulties that might arise.

The Victorian Admission Board now follows the practice adopted by all admitting authorities except the NSW Admission Board, in relation to applicants from England and Wales who have successfully completed Ethics and Professional Responsibility as part of the English Legal Practice Course.

All admitting authorities that process overseas applications, except NSW, exempt such an applicant from undertaking a further academic course, but require the applicant to undertake practical legal training in the area. In alignment with section 409(1) of the Uniform Law, the Committee seeks to promote consistency in the approaches adopted by admitting authorities. It is exploring with the NSW and Victorian Admission Boards how a consistent approach might be achieved.

The UK Solicitors Regulation Authority (SRA) has recently decided to introduce a Solicitors Qualifying Examination for those seeking to practise as a solicitor in England and Wales by 2020. Under the proposed regime, SRA may require an applicant to hold a law degree, to undertake the Legal Practice Course, or a two-year training contract and the compulsory Legal Skills course, as well as being of satisfactory character and suitability.

These changes may make it more difficult for people admitted in England to be admitted in Australia without undertaking substantially more studies than are presently required. The changes may also affect the ability of Australian practitioners to obtain admission in England and Wales. The Chair of the Committee has suggested that the Council should endeavour to arrange for all admitting authorities and the LSC to make a coordinated submission to the SRA, as part of its consultation on the proposed new regulations, and the Council agreed to this approach at its 29 June 2017 meeting.

ACCREDITATION STANDARDS FOR LAW COURSES

With financial assistance provided by the Victorian Admission Board, the LACC developed Accreditation Standards for Australian Law Schools. Successive versions have been considered by other admitting authorities and by the LSC. In 2016, LACC agreed to use the most recent version for the purposes of reviewing three law schools in Victoria and NSW, and to adjust the Standards in the light of experience gained in those trials, if necessary.

REGISTER OF APPROVED SUBJECTS IN ACADEMIC COURSES

The Committee learned that a person seeking directions about qualifications pursuant to rule 11 of the Uniform Admission Rules 2015 in NSW has been obliged to make a further application to the NSW Admission Board, and pay a further fee, to discover what subjects offered by law courses in NSW, other than the Legal Profession Admission Board course, must be taken in order to comply with directions given by the Board.

The Committee supported a suggestion made by LACC that a national online register of approved subjects in Australian law courses should be established and encouraged the NSW and Victorian Admission Boards to join the initiative.



COMMISSIONER
FOR UNIFORM LEGAL
SERVICES REGULATION

LSC LEGAL
SERVICES
COUNCIL

**FINANCIAL STATEMENTS
FOR YEAR ENDED
30 JUNE 2017**


LEGAL PROFESSION
Uniform Law

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General Information

The audited financial statements for the Commissioner for Uniform Legal Services Regulation for 2016–2017 are included in the financial statements of the Legal Services Council, and have been consolidated as one entity.

These financial statements are presented in Australian dollars, which is the Legal Services Council's functional and presentation currency.

The Legal Services Council is a not-for-profit entity and it has no cash generating units.

The financial statements were authorised for issue, in accordance with a resolution of the Council, on 30 August 2017. The Council has the power to amend and reissue the financial statements.

FINANCIAL STATEMENTS SUMMARY

Net Result for the Year

The net result for the year ended 30 June 2017 was \$117,637 (2016: \$316,137).

Revenue

The revenue for the Legal Services Council for the year ended 30 June 2017 was: \$1,364,739 (2016: \$1,347,807).

Expenses

The expenditure for the Legal Services Council for the year ended 30 June 2017 was \$1,247,102 (2016: \$1,031,670).

Assets

The total assets for the Legal Services Council as at 30 June 2017 were \$551,879 (2016: \$375,900).

Liabilities

The total liabilities for the Legal Services Council as at 30 June 2017 were \$78,342 (2016: \$20,000) representing employee related provisions and other accrued liabilities.

2016–2017 underspend

The net profit is due to an underspend of \$117,637 on operating expenses. This was due to the fact that several projects and spending priorities were carried over into the 2017–2018 year. Other contributing factors were, Council members remaining unremunerated, less travel than expected and continuing prudent management.

Commissioner's declaration for the year ended 30 June 2017

In the Commissioner's opinion:

- The attached financial statements and notes comply with the Australian Accounting Standards – Reduced Disclosure Requirements, *Public Finance and Audit Act (NSW) 1983*, Public Finance and Audit Regulation 2015 and other mandatory professional requirements;
- The attached financial statements and notes give a true and fair view of the Legal Services Council's financial position, incorporating the Commissioner for Uniform Legal Services Regulation, as at 30 June 2017 and of the performance for the financial year ended on that date; and
- There are reasonable grounds to believe that the Legal Services Council, incorporating the Commissioner for Uniform Legal Services Regulation will be able to pay their debts as and when they become due and payable.

Signed in accordance with a resolution of the Legal Services Council made pursuant to Item 26 in Schedule 1 to the Legal Profession Uniform Law (NSW) 2014.



Dale Boucher

Chief Executive Officer

for and on behalf of the Legal Services Council and,
Commissioner for Uniform Legal Services Regulation

30 August 2017
Sydney



INDEPENDENT AUDITOR'S REPORT

Legal Services Council

To Members of the New South Wales Parliament and Members of the Legal Services Council

Opinion

I have audited the accompanying financial statements of the Legal Services Council, incorporating the Commissioner for Uniform Legal Services Regulation (the Council), which comprise the statement of financial position as at 30 June 2017, the statement of comprehensive income, statement of changes in equity, statement of cash flows, for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information.

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Council as at 30 June 2017, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards – Reduced Disclosure Requirements
- are in accordance with section 44 of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2015.

My opinion should be read in conjunction with the rest of this report.

Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under those standards are further described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Council in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants' (APES 110).

I have fulfilled my other ethical responsibilities in accordance with APES 110.

Parliament promotes independence by ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies
- precluding the Auditor-General from providing non-audit services.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

The Members' Responsibility for the Financial Statements

The members of the Council are responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards – Reduced Disclosure Requirements, and the PF&A Act, and for such internal control as the members of the Council determines is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the members of the Council must assess the Council's ability to continue as a going concern except where the Council's operations will cease as a result of an administration restructure. The assessment must disclose, as applicable, matters related to going concern and the appropriateness of using the going concern basis of accounting.

Auditor's Responsibility for the Audit of the Financial Statements

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error,
- issue an Independent Auditor's Report including my opinion.

Reasonable assurance is a high level of assurance, but does not guarantee an audit conducted in accordance with Australian Auditing Standards will always detect material misstatements. Misstatements can arise from fraud or error. Misstatements are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions users take based on the financial statements.

A description of my responsibilities for the audit of the financial statements is located at the Auditing and Assurance Standards Board website at: www.auasb.gov.au/auditors_responsibilities/ar4.pdf. The description forms part of my auditor's report.

My opinion does not provide assurance:

- that the Council carried out its activities effectively, efficiently and economically
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented.
- about any other information which may have been hyperlinked to/from the financial statements.



David Daniels
Director, Financial Audit Services

8 September 2017
SYDNEY

**Statement of comprehensive income
for the year ended 30 June 2017**

	Notes	Actual 2017 \$	Actual 2016 \$
Expenses excluding losses			
Operating expenses			
Personnel services expenses	2	716,638	656,570
Other operating expenses	2	530,464	375,100
Total expenses excluding losses		1,247,102	1,031,670
Revenue			
Grants and contributions	3	1,361,477	1,344,521
Interest revenue	3	1,943	-
Personnel service resource received free of charge	3	1,319	3,286
Total revenue		1,364,739	1,347,807
Net result		117,637	316,137
Other comprehensive income			
		-	-
Total comprehensive income		117,637	316,137

The accompanying notes form part of these financial statements.

**Statement of financial position
for the year ended 30 June 2017**

	Notes	Actual 2017 \$	Actual 2016 \$
ASSETS			
Current assets			
Cash and cash equivalents	4	548,181	374,599
Receivables	5	3,698	1,301
Total current assets		551,879	375,900
Total assets		551,879	375,900
LIABILITIES			
Current liabilities			
Payables	6	78,342	20,000
Total current liabilities		78,342	20,000
Total liabilities		78,342	20,000
Net assets		473,537	355,900
EQUITY			
Accumulated funds		473,537	355,900
Total equity		473,537	355,900

The accompanying notes form part of these financial statements.

**Statement of changes in equity
for the year ended 30 June 2017**

	Notes	Accumulated funds \$	Total equity \$
Balance at 1 July 2016		355,900	355,900
Net result for the year		117,637	117,637
Other comprehensive income		-	-
Total comprehensive income for the year		117,637	117,637
Transactions with owners in their capacity as owners		-	-
Balance at 30 June 2017		473,537	473,537
Balance at 1 July 2015		39,763	39,763
Net result for the year		316,137	316,137
Other comprehensive income		-	-
Total comprehensive income for the year		316,137	316,137
Transactions with owners in their capacity as owners		-	-
Balance at 30 June 2016		355,900	355,900

The accompanying notes form part of these financial statements.

**Statement of cash flows
for the year ended 30 June 2017**

	Notes	Actual 2017 \$	Actual 2016 \$
Cash flows from operating activities			
Payments			
Employee related		(715,319)	(653,284)
Other		(509,268)	(402,450)
Total payments		(1,224,587)	(1,055,734)
Receipts			
Grants and contributions received		1,361,477	1,344,521
Other		36,692	3,251
Total receipts		1,398,169	1,347,772
Net cash flows from operating activities	7	173,582	292,038
Net increase / (decrease) in cash		173,582	292,038
Opening cash and cash equivalents		374,599	82,561
Closing cash and cash equivalents	4	548,181	374,599

The accompanying notes form part of these financial statements.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Reporting entity

The Legal Services Council (the Council) is an incorporated statutory body, and the Commissioner is a Statutory Office holder established under the *Legal Profession Uniform Law Act 2014 (NSW)*. These entities do not represent the Crown. These financial statements are for the Council, and incorporate transactions and balances of the Commissioner for Uniform Legal Services Regulation (Commissioner). The transactions and balances of the Commissioner in isolation are considered immaterial to these financial statements. On this basis, the reporting entity is referred to as the Legal Services Council, incorporating the Commissioner for Uniform Legal Services Regulation.

The Council, incorporating the Commissioner, is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units. Under clause 17 (2) of Schedule 1 of the Uniform Law the functions of the Chief Executive Officer of the Council are exercised by the Commissioner.

The financial statements of the Legal Services Council, incorporating the Commissioner, for the year ended 30 June 2017 have been authorised for issue by the Council on 30 August 2017.

(b) Basis of preparation

The Council's financial statements are general purpose financial statements which have been prepared on an accrual basis and in accordance with the *Public Finance and Audit Act 1983*, Public Finance and Audit Regulation 2015 and applicable Australian Accounting Standards (which include Australian Accounting Interpretations) and Reduced Disclosure Requirements issued by the Australian Accounting Standards Board ("AASB") as appropriate for not-for-profit oriented entities.

Judgements, key assumptions and estimations that management have made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest dollar and are expressed in Australian currency.

(c) Personnel services

The Council does not directly employ staff. Employees are provided by the Department of Justice (Department) to carry out the Council's operating functions. While the Commissioner is a Statutory Officer, the Commissioner is for administrative purposes treated as if he were an employee of the Department. The Department recovers its employee related expenses (including entitlement accruals) from the Council. The employee related expenses due to the Department are classified as "Personnel Services" in the Statement of Profit or Loss, and are calculated by the Department using the following recognition and measurement criteria:

- i. Salaries and wages (including non-monetary benefits), and annual leave expenses are recognised and measured at undiscounted amounts of the benefits in the period which the employees render the service.
- ii. Superannuation – the expense for certain superannuation schemes (Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.
- iii. On-costs, such as payroll tax, workers' compensation insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as expenses where the employee benefits to which they relate have been recognised.

iv. Long Service Leave (LSL) expenses of the employees who provide personnel service to the Council are assumed by the Crown. This is a notional expense calculated by Crown Finance Entity (CFE) using a short hand method to approximate the LSL liability assumed, by making a projection for each employee based on their current salary, LSL entitlement and other factors as advised by Treasury's actuary. Expected future payments are discounted to their present value using market yields at year end on Commonwealth government bonds. The personnel service employees' LSL and defined benefit superannuation liability assumed by the Crown Entity is accounted for as part of personnel service expenses.

(d) Revenue recognition

Revenue is measured at the fair value of the consideration or contribution received or receivable.

Grants and contributions

Grant and contribution revenue from other bodies (NSW Department of Justice and Victorian Legal Services Board) is recognised in the year in which it is received or when control of the grant is gained.

Personnel service resource received free of charge

The personnel service employees' liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. The extinguishment of the entity's liability resulting in recognition of a non-monetary revenue item is described as a personnel service resource received free of charge.

(e) Trade and other receivables

Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. These financial assets

are recognised initially at fair value. Subsequent measurement is at amortised cost using the effective interest method, less an allowance for any impairment of receivables. Any changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(f) Goods and services tax ("GST") and other similar taxes

Revenues, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the Australia Taxation Office (ATO). In this case it is recognised as part of the cost of the acquisition of the asset or as part of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recoverable from, or payable to, the tax authority is included in other receivables or other payables in the statement of financial position.

Cash flows are presented on a gross basis in the Statement of Cash Flows. The GST components of cash flows arising from investing or financing activities which are recoverable from, or payable to the ATO, are presented as operating cash flows.

(g) Trade and other payables

These amounts represent liabilities for goods and services provided to the Council prior to the end of the financial year and which are unpaid. Due to their short-term nature they are measured at amortised cost and are not discounted. The amounts are unsecured and are usually paid within 30 days of recognition.

(h) Lease

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of the leased assets, and operating leases under which the lessor does not transfer substantially all the risks and rewards.

An operating lease is a lease other than a finance lease. Operating lease payments are recognised as an operating expense in the Statement of Profit and Loss on a straight-line basis over the lease term.

(i) Accumulated Funds

The category 'Accumulated Funds' includes all current and prior period retained funds.

(j) Comparative information

Except when an Australian Accounting Standard permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

(k) Change in accounting policy, including new or revised Australian Accounting Standards

i. Effective for the first time in 2016-17

The accounting policies applied in 2016-17 are consistent with those of the previous financial year except as a result of AASB 2015-6 *Amendment Accounting Standards – Extending Related Party Disclosures to Not for – Profit Public Sector Entities* which has been applied for the first time in 2016-17. The required disclosures are made at Note 10.

ii. Issued but not yet effective

The following relevant Accounting Standards have not been applied and are not yet effective:

- AASB 16 *Leases*
- AASB 1058 *Income of Not-for-profit Entities*
- AASB 2016-2 *Amendments to Australian Accounting Standards – Disclosure Initiative: Amendments to AASB 107 Specialised Assets of Not-for-Profit Entities*
- AASB 2016-7 *Amendments to Australian Accounting Standards – Deferred of AASB 15 for Not-for-Profit Entities*
- AASB 2016-8 *Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Entities*
- AASB 2017-2 *Amendments to Australian Accounting Standards – Further Annual Improvements 2014-16 Cycle*

Other than AASB 16 Leases, the Council does not expect the adoption of these standards in the future periods to materially impact the financial statements.

AASB 16 is applicable to annual reporting periods beginning on or after 1 January 2019. For leases where the Council is the lessee, AASB 16 will require the Council to recognise assets and liabilities on the statement of financial position where the lease term is for more than 12 months unless the underlying asset is low value. There will be no impact on the total amount of cash flows reported.

2. EXPENSES EXCLUDING LOSSES

(a) Personnel services expenses

	2017 \$	2016 \$
Salaries and wages (including annual leave)	623,620	583,666
Payroll tax	36,599	36,323
Superannuation	52,435	30,830
Workers compensation insurance	2,665	2,465
Long service leave	1,319	3,286
	716,638	656,570

Staff are provided by the Department of Justice to carry out the Council's business operations.

(b) Other operating expenses

	2017 \$	2016 \$
Administration	64,996	24,547
Communications	38,797	33,173
Corporate Service - Department of Justice	120,189	108,482
Agency staff	89,934	45,428
Audit fees	30,700	20,000
Consultancy services	-	4,514
Legal representation	13,087	17,000
Recruitment	18,840	70
Rental	90,000	77,661
Travel	63,921	44,225
	530,464	375,100

The Department of Justice provides corporate services to the Council including financial, HR, IT and asset management services.

3. REVENUE

	2017 \$	2016 \$
Contribution from NSW Department of Justice	848,811	831,855
Contribution from Victorian Legal Services Board	512,666	512,666
Interest	1,943	-
Personnel service resources received free of charge	1,319	3,286
	1,364,739	1,347,807

Funding contributions were provided by the NSW Department of Justice and Victorian Legal Services Board based on the Council's operating budget that was approved by the Standing Committee (currently comprising the Attorneys General of NSW and Victoria). Funding is split between NSW and Victoria and calculated in accordance with the clause 8.2.1 of the Intergovernmental Agreement, that is with reference to each participating jurisdiction's proportion of the total number of legal practitioners to whom practising certificates were issued over the immediately preceding year.

The NSW contribution is funded by a \$400 fee charged on each legal profession admission in NSW. The fee is collected by NSW Legal Profession Admission Board and is allocated to the Department of Justice for the purposes of the Council.

The Council has determined with the agreement of the participating jurisdictions that it is entitled to retain operating surpluses within the three year funding cycle provided through the Intergovernmental Agreement.

As result of acceptance by the Crown Entity of employee long service leave (LSL) and defined benefit superannuation liabilities, a notional revenue is recognised as personnel service resources received free of charge, and the equivalent expense is accounted as LSL expense under the personnel service.

4. CURRENT ASSETS – CASH AND CASH EQUIVALENTS

	2017 \$	2016 \$
Cash and equivalents	548,181	374,599
	548,181	374,599

5. CURRENT ASSETS – RECEIVABLES

	2017 \$	2016 \$
Current receivables		
Sundry debtors	3,697	–
Goods and services tax - input tax credits	1	1,301
	3,698	1,301

6. CURRENT LIABILITIES

	2017 \$	2016 \$
Current liabilities		
Creditors and sundry accruals	50,945	20,000
Owing to Department of Justice	27,397	–
	78,342	20,000

7. RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET RESULT

	2017 \$	2016 \$
Net Result for the year	117,637	316,137
Decrease/(increase) in receivables and prepayments	(2,397)	3,251
(Decrease)/increase in payables	58,342	(27,350)
Net cash flows from operating activities	173,582	292,038

8. COMMITMENTS

	2017 \$	2016 \$
Operating lease commitments		
Aggregate other expenditure for property lease		
Not later than one year	99,000	99,000
Later than one year but not later than five years	24,750	123,750
Total	123,750	222,750

The operating lease commitment relates to a Deed of Licence with the Australia Government Solicitor that is held by the Department on behalf of the Council, for the occupancy of premises in Sydney CBD from 21 August 2015 to 12 Oct 2018. The licence is treated as an operating lease for the purpose of the disclosure.

The commitments above include input tax credits of \$11,250 that are expected to be recoverable from the ATO.

9. CONTINGENT LIABILITIES

The Council is unaware of any matters that may lead to significant contingent liabilities.

10. RELATED PARTY DISCLOSURES

The entity's key management personnel compensation are as follows:

	2017 \$
Short-term employee benefits	
Salaries	336,000
Other monetary allowances	-
Non-monetary benefits	-
Other long-term employee benefits	-
Post-employment benefits	-
Termination benefits	-
Total remuneration	336,000

The Council's key management personnel and their compensation disclosures are limited to the key decision makers, i.e. CEO and all members of the Council.

During the year, the Council received funding contribution from the Victorian Legal Service Board (VLSB). The Chairperson of the VLSB and a director of VLSB are also members of the Council pursuant to Schedule 1, Part 2 of the Legal Profession Uniform Law 2014 (NSW). The aggregate value of the material transactions and related outstanding balances as at and for the year ending 30 June 2017 are as follows:

	Transaction value \$'000	Net receivable/ (payable) \$'000
Natures of transaction		
Funding contribution from Victorian Legal Services Board	512,666	-

11. EVENTS AFTER THE REPORTING PERIOD

No matter or circumstance has arisen since 30 June 2017 that has significantly affected, or may significantly affect the Council's operations, the results of those operations, or the Council's state of affairs in future financial years.

COMMISSIONER
FOR UNIFORM LEGAL
SERVICES REGULATION

LSC LEGAL
SERVICES
COUNCIL

**REPORT OF THE COMMISSIONER
FOR UNIFORM LEGAL SERVICES
REGULATION 2016/2017**

LEGAL PROFESSION
Uniform Law

ANNUAL REPORT 2016/2017

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30 August 2017

The Hon Michael Black AC QC
Chair, Legal Services Council
PO Box H326
Australia Square NSW 1215

Dear Mr Black

Annual Report for 2016–2017

I submit my Annual Report for 2016–2017 to the Legal Services Council, in accordance with Item 10 in Schedule 2 to the Legal Profession Uniform Law.

The report does not include separate financial statements for me as Commissioner, as the financial statements of the Council and for my office have been consolidated with those for the Council, as one entity. The financial statements have been prepared in accordance with Australian Accounting Standards and have been audited.

A report from the Auditor is contained with the financial statements.

Yours sincerely



Dale Boucher

Chief Executive Officer | Legal Services Council
Commissioner for Uniform Legal Services Regulation

Level 40, MLC Centre, 19 Martin Place, Sydney NSW 2000
PO Box H326, Australia Square NSW 1215
T +61 2 8293 5900 F + 61 2 8293 5959
E lsc@legalservicescouncil.org.au
www.legalservicescouncil.org.au

Commissioner's Report

This report covers the second full year of the operation of the Legal Profession Uniform Law in Victoria and NSW. In the past year we have moved from a period of settling in, to one of consolidation and planning for the future.

In my dual role of CEO and Commissioner, I work closely with the Chair and report regularly to the Council, seeking to keep Council members abreast of all significant issues and developments.

Because the Uniform Law largely adopts independent local regulatory arrangements as they exist, my work in relation to Chapter 5 so far has enabled me to work with and encourage the local regulatory authorities to fine tune existing models of regulation to the minor extent that has been desirable. Where possible we seek to identify areas where in practical terms, there may be opportunities to improve consistency.

Much of my activity from 2016–2017 is noted in the Council's report, but I have also sought to:

- reconcile the costs disclosure thresholds between Uniform Law and non-participating jurisdictions, by developing proposals to achieve this result;
- take the costs disclosure work out to other jurisdictions and in NSW and Victoria, to fine tune this important work, for consumers and law practices alike;
- oversee the development of a course for external examiners of trust accounts;
- develop the concept of an Australian Legal Profession Register,
- continue to develop data sharing arrangements as required by section 440 of the Uniform Law; and
- where possible undertake outreach activities.

More generally, as the full time statutory officer and servant of the Council, I have advanced the affairs of the Council with the aid of a capable Secretariat. Concurrently, we have sought to:

- **encourage other jurisdictions to join the Uniform Law scheme** by visiting them, otherwise seeking their participation and by taking part in regular monthly teleconferences;
- **promote compliance and consistency with the Uniform Law generally** including, for example, by issuing a Guideline on a consistent approach to the Internal Review by DLRAs, as requested by and in conjunction with DLRAs;
- **progress data sharing arrangements**, beyond the provisions of Chapter 5, which relate to dispute resolution and professional discipline. We are now working on expanding this to other chapters of the Uniform Law to enable better evaluation of our regulatory system in the future;
- **raise awareness of the Uniform Law Framework** and its objectives, by undertaking speaking engagements, visits, enhanced use of the Web and by monitoring developments in other jurisdictions;
- Seek to ensure that the **Secretariat is operating as efficiently** and effectively as possible; and
- **ensure the Uniform Law scheme is operating cooperatively and well.**

Ensuring the smooth operation of the Uniform Law framework across jurisdictions

During the year I have continued nurturing a strong spirit of cooperation and dialogue in the two participating jurisdictions - and elsewhere.

This has included stakeholder engagement activities, such as:

- convening regular meetings with the Legal Services Commissioners;
- continuing implementation meetings which allow all major stakeholders including the LCA, the ABA, Commissioners, professional associations and others to discuss and share experiences in the implementation of the Uniform Law;
- meeting separately with professional associations including the LCA, the LIV, the ABA and the LSNSW;
- meeting with members of the Standing Committee of Attorneys-General and their supporting Departments; and addressing issues perceived by stakeholders to be hurdles to participation or to promote consistency between participating jurisdictions, for example, by issuing a Guideline and Direction on internal review by DLRAs; and
- appearing as Commissioner and representing the LSC at a small number of forums and other events.

Legal Profession Uniform Law Library (Australia)

We commenced creating an Australian Legal Profession Uniform Law Library within the online legal database, AustLII and Phase One is complete. This includes links to all legislation, Guidelines and Directions, case law and law journal articles that cite the Uniform Law. When Phase Two is completed, this library will allow users to search for material relating to the Uniform Law, including determinations, in all jurisdictions covered by the Uniform Law framework.

Understanding complaints and harmonising resolution

Although DLRAs are responsible for handling complaints, I am responsible for promoting consistent practice in relation to dispute resolution and professional discipline. To do this I have engaged in and encourage ongoing dialogue between the Legal Services Commissioners and other stakeholders.

I am grateful to the NSW Law Society for their continuing assistance in building and hosting the LSC Uniform Law database. This database is already proving useful in analysing data relating to complaints and discipline from Chapter 5. This is working better this year as a result of harmonised language and consistent reporting fields being applied across the two jurisdictions.

This year we turned our attention to expanding the database to include other chapters of the Uniform Law. When complete, we will achieve a fuller picture of the Uniform Law in operation. We will be able to evaluate and adjust the Uniform Law, and share data with stakeholders, so as to better inform regulation of the profession and enable it, Governments and consumers of legal services to better meet the challenges of the digital age.

Australian Legal Profession Register

We are developing a single Australian Legal Profession Register that will ultimately gather all electronically available, public information about registered legal practitioners in all Australian States and Territories in one place. We are progressing the technical requirements of this project, assisted by the Law Society of NSW and the VLSB+C which will initially cover NSW and Victoria. When completed, this will be a useful tool for both the legal profession and consumers.

Dale Boucher

Commissioner for Uniform Legal Services Regulation



“The likely ongoing cost of participating in the Uniform Law scheme for other jurisdictions per practitioner should be negligible – approximately \$20-\$30 per practitioner per year. These costs should be tax deductible for individual practitioners and can be found from a variety of sources.”

Dale Boucher

Commissioner for Uniform Legal Services Regulation

Roles and Responsibilities

THE COMMISSIONER FOR UNIFORM LEGAL SERVICES REGULATION

The office of the Commissioner is established by the Legal Profession Uniform Law 2014. The Commissioner is appointed for a term of up to five years by the Victorian Attorney-General on the recommendation of the Standing Committee and with the concurrence of the Council.

Dale Boucher commenced as Commissioner and CEO on 29 September 2014 for a one year term and was reappointed for a further two years in September 2015 which will expire on 30 September 2017. Mr Boucher's biographical information can be found on page 17.

RELATIONSHIP TO THE COUNCIL

Overview of the role and the year

The Commissioner is independent of the Council in exercising functions under the Uniform Law, except as provided in Part 8.3. In practice the Commissioner works in close consultation with the Chair and staff of the Secretariat and is also the Council's CEO.

The role of the Commissioner is to:

- promote compliance with the Uniform Law and Uniform Rules;
- ensure consistent and effective implementation of Chapter 5 of the Uniform Law (Dispute Resolution and Professional Discipline) and supporting Uniform Rules, through developing and making appropriate guidelines and monitoring and reviewing whether these are being applied consistently; and
- raise awareness of the Legal Profession Uniform Law Framework and its objectives.

As will be seen from this list of functions, the Commissioner's role is broader than focusing only on Chapter 5, although that is a core part of the role. In effect, the Commissioner has an ongoing mission to promote the Uniform Law and see it adopted and functioning well, in all Australian jurisdictions. This is a work in progress. It will take several years for the scheme to work to its fullest potential.

Because the role of CEO of the Council and the role of Commissioner are required by the Uniform Law to be exercised by the same person, it is difficult to distinguish between them. The Commissioner's role has an internal dimension and an external one. The internal focus this year has been on undertaking the background work to ensure that in the long term, the Uniform Law scheme will prosper.

The external focus has been on pursuing the adoption of the scheme nationwide. These two functions work in aid of each other.

The main activities of the Commissioner have been noted in my report earlier.

Commissioner's reporting obligations

The Commissioner can report on matters relating to the exercise of Chapter 5 functions to the LSC for the attention of the Standing Committee. The Commissioner can also recommend that changes to Chapter 5 functions be referred to the Standing Committee. However, no recommendation was made by the Commissioner during the year.

The functions of the Council in relation to the Commissioner and an account of how these have been executed during the year is summarised as follows:

- The Commissioner reports formally to each meeting of the Council and seeks to keep Council members informed of significant developments or issues between meetings;

- The Council examines annual and other reports of the Commissioner and reports to the Standing Committee on any matters appearing in or arising from any such report;
- This Annual Report was examined in draft prior to the 30 August 2017 meeting of the Council. No matters were suggested as the subject of a report to the Standing Committee;
- The Council can make recommendations to the Standing Committee on any changes to the role or functions of the Commissioner that the Council feels is appropriate. No changes have been suggested since the commencement of the Uniform Law, and
- The Council is required to inquire into and report on any question about the Commissioner's functions referred to it by the Standing Committee. No such questions were referred in the year.

More broadly, the Council and Commissioner regularly evaluate the scheme to identify whether outcomes reflect intended objectives, or whether change is needed, including in specific areas referred to them by the Standing Committee.

OVERVIEW OF FUNCTIONS

The flow chart at page 13 of the Council's report depicts the organisational arrangements, including those of the Commissioner.



Highlights of 2016–2017

PROMOTING COMPLIANCE WITH THE UNIFORM LAW

Costs disclosure provisions continued to be a major focus of attention for the Commissioner in 2016–2017, and consultation, including formal market research, has helped to inform this important area under the Uniform Law.

While use of the existing short form for alternative costs disclosure for matters below \$3,000 is not mandatory, we have continued to promote the use of the form to enhance the legal profession's communication to clients and to reduce the likelihood of costs related complaints. The form can now be accessed directly from a link on our homepage.

The Council and Commissioner are committed to furthering the resulting costs disclosure threshold project, and are considering a number of options to revise the costs disclosure form to ensure better protection for the legal profession and consumers. The concept we are looking into is for a law practice to be able to continue to make full disclosure of the information that is required to provide at any time. However, to simplify the engagement process for law practices and consumers alike, we are looking at whether alternative "form" disclosure would be possible between \$1 and \$5,000. This would provide better protection for law practices and consumers. This work has been informed by the *LSC Consumer Survey 2017* (details page 20) and two consultative forums during the year. Work is continuing with more consultation planned in the coming year focusing on both the profession and consumers.

Looking ahead, the LSC will continue to keep the cost disclosure provisions under review and in 2017–2018, we will continue to examine the thresholds in the Uniform Law and the case for adjustment. Any action to be taken will be considered with and by the Standing Committee.

As we have undertaken this work, we have addressed a number of objectives. These were informed by a multi-stakeholder Costs Thresholds Working Party established by the Commissioner. The outcomes include the following:

- Practitioners should be able to quickly and easily update the form for changes in costs or circumstances, and use it to disclose such changes to clients, in accordance with section 174(1)(b) and (2)(b) of the Uniform Law;
- The form should provide better, more useful, or better placed information about clients' rights;
- It should be clear that the form is an estimate only and is not a quote, by placing this information more prominently;
- Because it is common for law practices to offer fixed fee arrangements, it was suggested the Council prescribe a simple costs disclosure form for lower priced work (and potentially fixed fee services), provided it is simple and easy to use;
- A reference should be included to the right of access to independent costs assessment and consumer assistance (as appropriate in each jurisdiction);
- Skilled form designers are to be used, noting that it is of primary importance to ensure the form meets the technical requirements of the law while being user-friendly, and
- Any revised form should be both consumer and practitioner tested.

COMMISSIONER'S GUIDELINE AND DIRECTION

In October 2016, the Commissioner issued a Guideline to promote consistency in the exercise of statutory functions of DLRAs in relation to internal

review of decisions and costs of those authorities. The Guideline is intended to promote consistency in the exercise of statutory functions by DLRA's under section 313 of the Uniform Law, particularly as to the time within which such requests for internal review are made (30 days).

Section 313(1) provides for a DLRA (at its absolute discretion) to conduct an internal review of a decision made by the authority (or its delegate) if the authority considers it appropriate to do so. On review, the authority must consider whether the decision was dealt with appropriately and based on reasonable grounds (section 313(2)). The authority may confirm the original decision, make a new decision, or refer it back to the original decision maker (section 313(3)). As a consistent approach is desirable, the Guideline sets out the types of things DLRA's can consider in deciding whether to conduct an internal review under the section.

BUILDING ON THE DATA EXCHANGE PROJECT

Section 440 of the Uniform Law requires the Council, the Commissioner and local regulatory authorities to share information in connection with their respective functions.

The Data Exchange Project seeks to meet this statutory requirement. It involves the development of a Legal Services Council Uniform Law database which will include information from and will operate with the co-operation of the local regulatory authorities. The project does not rely on the exchange of any personal information and is fully compliant with Privacy legislation.

With the completion last year of Stage One relating to the Commissioner's reporting obligations under Section 398, execution of Stage Two to collect data

relating to the remaining chapters 2, 3, 4, 6 and 7 under the Uniform Law has commenced.

When finished, the data exchange project will enable the Council to fully evaluate compliance with the Uniform Law and provide a rich source of comparative data for our stakeholders and the legal profession in general.

NEW EXTERNAL EXAMINERS COURSE APPROVED

In December 2016, the Commissioner as delegate of the Council under Rule 65 of the Uniform General Rules approved a revised Course of Education for External Examiners of the Trust Records of Law Practices, Barristers and Approved Clerks (External Examiners Course). This approval is effective for five years.

The one-day course was prepared in consultation with educational experts, the DLRA's and their delegates in Victoria and New South Wales. It consists of a course manual, PowerPoint slides, assessment questions and an evaluation form. In order to successfully complete the course, candidates must both undertake the course, and successfully complete the assessment. Together with the candidate's possession of the mandatory qualification for appointment, such as being a chartered accountant, completion of the course should provide assurance external examiners will be fully competent to perform their roles.

The LSC will review the current course in five years' time and may approve changes to the course before that, if necessary. The assessment questions are subject to review and approval by LSC annually and can be evaluated and refined as necessary.

HARMONISATION OF THE TRUST ACCOUNT YEAR

This year marked the first year NSW and Victoria worked to the same timetable for the examination of Trust Accounts after this was harmonised by the Council in 2016.

The trust year in both NSW and Victoria ended on 31 March 2017 and trust money statements were due to be lodged by 30 April. External examiners reports were due to be lodged by 15 May.

During the reporting year, the DLRA's received a number of requests for extensions to this timeframe. The Council may review the practices of participating States in relation to extensions being granted from time to time, to ensure the policy works smoothly.

THE YEAR AHEAD

Encouraging other jurisdictions to join the scheme

In the coming year the Legal Services Council and Commissioner will remain focused on encouraging other jurisdictions to adopt the Uniform Law.

With the passage of two years since Uniform Law commenced fully, the initial benefits have become more apparent. New benefits and reasons for a united approach to regulation of the profession have emerged. These are outlined in the Council's report earlier and include:

- the potential for the collapse of law firms spanning State or Territory borders for which there is no agreed national legal profession regulatory approach, especially in the interests of protecting clients, but for which the Uniform Law offers a great start;
- the growth of technological disruptors to the legal profession such as online legal services. In

response to this ubiquitous and growing influence, it would be far better for all Australian jurisdictions to take a united approach than each needing to find stop-gap solutions and occasionally compare notes; and

- the simple fact that the Uniform law settings for complaint and dispute resolution are proving to be of great benefit to consumers, law practices and the community at large.

Other priorities during 2017-2018 will include:

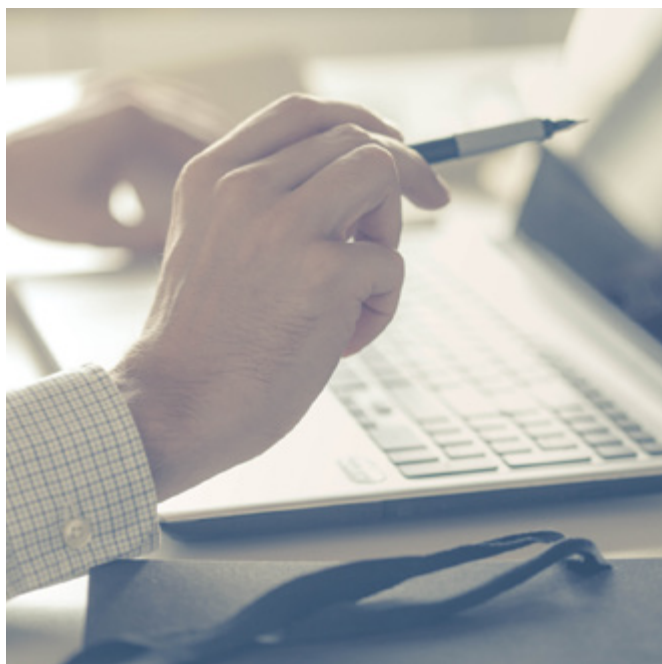
- **monitoring technology** and other developments by staying close to the profession to ensure the legal settings of the Uniform Law are appropriate for the times and improving our capacity to respond to emerging challenges in an agile manner;
- developing and enhancing the Commissioner's role in overseeing Charter 5, including by **improving the analytical capacity of the Council and Commissioner;**
- facilitating an **agreement on refined costs disclosure thresholds;**
- progressing and completing the **Uniform Law Database;**
- progressing and completing the **Australian Legal Practitioners Register;**
- completing Phase Two of the **Legal Profession Uniform Law Library (Australia)** in AustLII by adding Legal Commissioners' determinations;
- **working with non-participant jurisdictions** where they wish to do so to resolve any issues they may see with the Uniform Law; and
- continuing to **refine the financial reporting and governance arrangements for the Council** with the Department.

Reporting and Information

REGISTER OF DELEGATIONS

The Commissioner may delegate any of his or her functions (other than the power of delegation) to a member of the staff of the LSC. The Uniform Law requires that the Commissioner maintains a register of delegation, and that the register must be kept up to date and reviewed at least annually (section 413). There were no delegations of the Commissioner's functions during the reporting period.

On 19 December 2016 the Legal Services Council delegated to the Commissioner the power to from time to time review a course of education for External Examiners under Part 4.2 of the Uniform Law. This delegation is valid until 2 September 2017.



REPORT ON COMPLAINTS HANDLING AND DISCIPLINARY PROCEDURES FOR THE YEAR

The Uniform Law requires that the Commissioner report on the following information each year:

- statistical information about complaints received, resolved and determined;
- a report containing information regarding compliance functions; and
- audit information submitted by fidelity authorities for fidelity funds.

This information is set out in the next section.

Report on Complaints Handling and Disciplinary Procedures

PERSPECTIVE

Every year, throughout Victoria and NSW, legal practitioners provide hundreds of thousands of legal services to members of the community, as well as to corporate and government clients. The great majority of legal services are provided professionally and at a high standard/to clients' satisfaction and do not come to the attention of regulators.

The Uniform Law sets up an overarching regulatory framework. Part of the rationale for this is that where there is any issue it can be dealt with as quickly as possible within the framework which is flexible and consultation-based. The following report analyses the second year of data collected on the operation of the Uniform Law.

THE LSC UNIFORM LAW DATABASE

The Commissioner has a statutory obligation under Clause 10 (2) of Schedule 2 of the Uniform Law to publish statistical information about complaints received, resolved and determined. He is also required to report on compliance functions and audit information submitted by fidelity authorities for fidelity funds. Evaluation of this information will assist the Commissioner and the Council to monitor the operation of the Uniform Law and ensure its objectives are being met.

A LSC Uniform Law database has been developed in order to store key data from 1 July 2015 onwards provided by the Designated Local Regulatory Authorities (DLRAs) in NSW and Victoria. This database will serve as a repository of information and knowledge about the legal profession, identifying trends and demonstrating progress towards uniformity between the participating States.

The Victorian Legal Services Board + Commissioner (VLSB+C), the NSW Office of the Legal Services Commissioner (OLSC), the Law Society of NSW and the NSW Bar Association provide statistical de-identified complaints data to the LSC Uniform Law database on a weekly basis. In 2016–2017, work was undertaken by the Law Society of NSW, which is hosting the database for the Council, to extend the project to the other aspects of the Uniform Law including admission (by the Admission Boards) and compliance with Practising Certificate requirements and Trust Money obligations.

COMMENTS ON DATA

At present all data is provided by the VLSB+C, the OLSC, the Law Society of NSW and the NSW Bar Association. This data is provided to the host (Law Society of NSW) via VPN using the data template developed through a joint mapping exercise to establish a common reporting framework.

As reported in 2015–2016, the data collected during the first year in relation to complaints was incomplete as the collection capacity of the contributing stakeholders faced significant limitations. However, for the reporting period ending 30 June 2017, the data is complete for the first time.

Therefore comparisons made with the previous year will be of limited use, and where they have been made in this report, they are made with this qualification.

Data Analysis

1. LEGAL PRACTITIONERS REGULATED BY THE UNIFORM LAW FRAMEWORK

Number of legal practitioners regulated by the Uniform Law Framework in the year ending 30 June 2017 was: **55,907**.

NSW solicitors: 32,055

NSW barristers: 2,364

Total number of legal practitioners in NSW: 34,419

VIC solicitors: 19,425

VIC barristers: 2,063

Total number of legal practitioners in VIC: 21,488

Solicitors make up 91.1% of the legal profession across the two Uniform Law States and 78.2% of solicitors Australia-wide (71,509: 2016 National Profile of Solicitors Report).

Barristers in Victoria and NSW represent 73.7% of barristers Australia-wide (6,005: 2015 National Profile of Barristers).



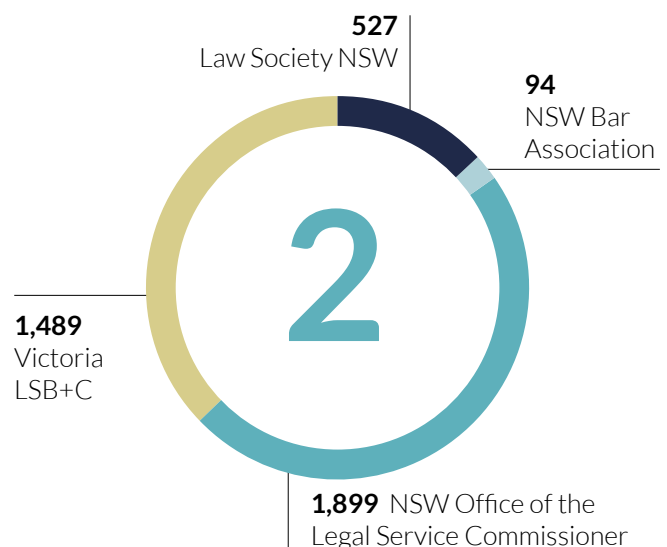
2. NUMBER OF TOTAL COMPLAINTS BY JURISDICTION

The total number of new complaints recorded during the reporting period across Victoria and NSW was **4,009**. The Victorian Legal Services Commissioner deals with all solicitor, and the bulk of barrister complaints, in Victoria. Where a complaint about a barrister requires a full investigation it is delegated to the Victorian Bar. About 0.07% of Victorian complaints under the Uniform Law were handled by the Victorian Bar.

The NSW Legal Services Commissioner is the repository of all complaints and co-regulates with the Law Society Council (NSW) and the Bar Council (NSW). Together the Law Society and Bar Council handled approximately 16% of all NSW complaints under the Uniform Law Framework.

There does not appear to be any material difference in the complaints made between the two jurisdictions on a per-practitioner basis given that Victoria has approximately two thirds (62.4%) of the number of legal practitioners in NSW.

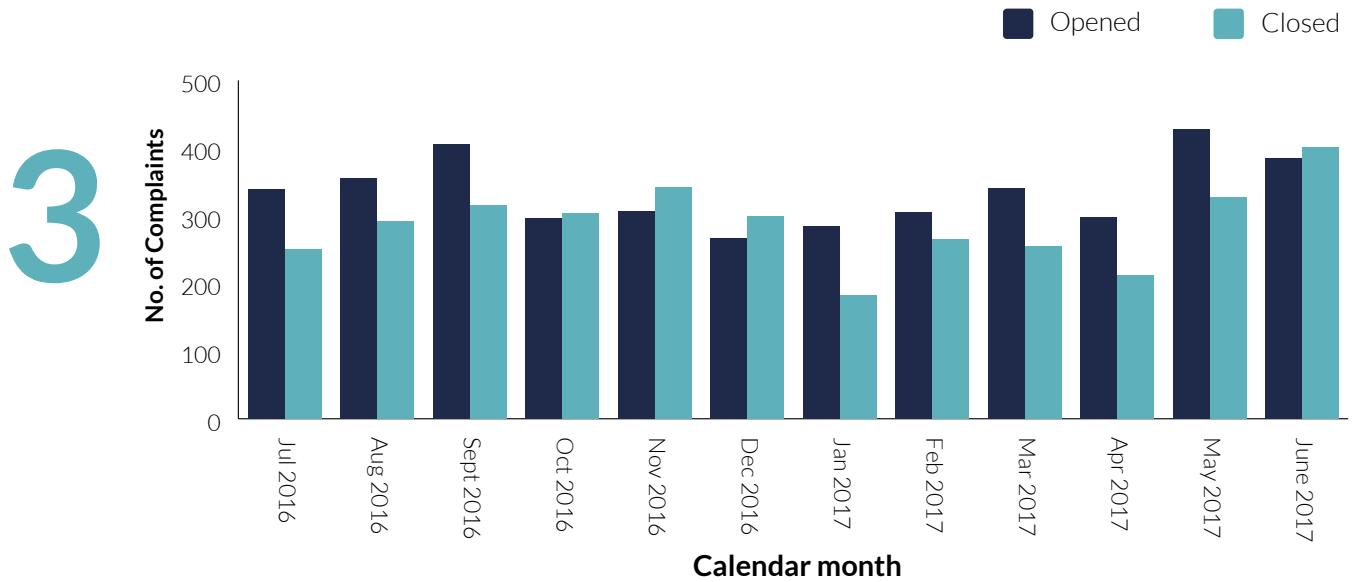
However, upon investigation, approximately a third (31.5% or 1,083) of all complaints made were found to be unsubstantiated or misconceived following preliminary assessment.



3. AVERAGE NUMBER OF OPENED/CLOSED COMPLAINTS BY MONTH

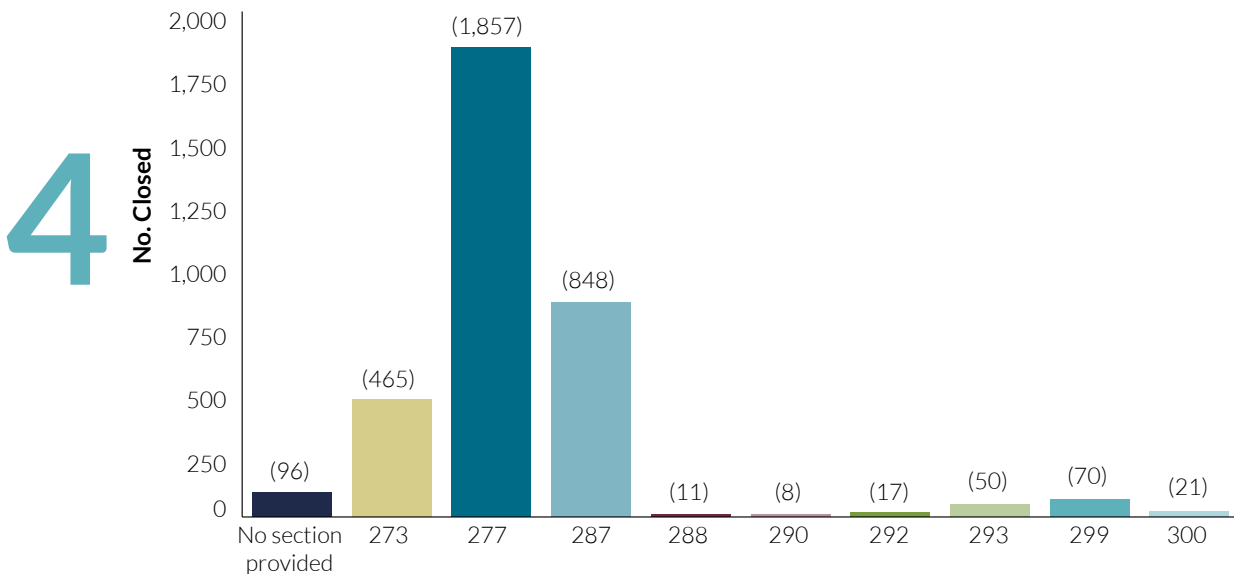
Overall **3,443** complaints were finalised during the reporting period.

The average number of complaints finalised per month under the Uniform Law was 287 compared to the average number of complaints opened per month of 334. The chart below provides a breakdown for each month during the reporting period. In October-December 2016 and in June 2017 more complaints were closed than were received.



4. TOTAL NUMBER OF CLOSED COMPLAINTS BY SECTION OF THE UNIFORM LAW

The below graph provides a breakdown of all closed complaints by reference to the Uniform Law section. The number of complaints finalised includes matters commenced prior to the reporting period and excludes duplicate complaints.



Key to section numbers:

Section	Description	2017	2016
	Another section or no section provided in data	96	7
273	Withdrawal of complaint	465	348
277	Closure of whole or part of complaint (any reason, any stage) after preliminary assessment ¹	1,857 ²	957
287	Informal resolution of consumer matters	848	555
288	Mediation	11	5
290	Determination of consumer matters by local regulatory authority	8	7
292	Binding determinations in costs disputes	17	7
293	Cases where binding determinations are not made in costs disputes ³	50	9
299	Determination by local regulatory authority - unsatisfactory professional conduct	70	15
300	Initiation and prosecution of proceedings in designated tribunal	2-1	3
Total		3,443	1,913

1 This covers many things at pre-assessment stage and through to matters which have been fully investigated.

2 Excludes duplicate complaints which are complaints, the subject matter for which has been or is already being investigated (section 277(1)(d) of the Uniform Law).

3. Where the DLRA could not finalise the case, it gave the parties the right to apply for a costs assessment or to make an application under jurisdictional legislation for the matter to be determined.

Of the 3,443 matters finalised, a large proportion of total complaints opened 1,857 or 53.9% did not proceed beyond preliminary assessment and were closed. There were a number of reasons for this, such as the State Commissioners' lack of power to handle the complaint, the complaint lacking in substance or being misconceived, a failure by the complainant to provide adequate information, the complaint was made out of time or the complainant withdrew the complaint. However, it should be noted that withdrawal of a complaint may occur at any stage of the investigation. In most of these cases the concerns of the complainant were addressed or resolved and the complainant no longer wished to continue with the complaint.

Overall, 465 complaints were withdrawn, which is approximately 13.5% of all complaints.

Nearly a quarter of complaints, 24.6% or 848 (in 2016: 32.5%) of all finalised complaints were settled through informal resolution means as required by the Uniform Law (section 287). When a matter is not resolved by informal dispute resolution, a merits assessment of the information provided by the parties is undertaken and, depending on the outcome, the complaint may be closed for any of the reasons contained in s277(1) of the Uniform Law.

Twenty one matters were closed to initiate tribunal proceedings during the reporting period.

5. COMPLAINTS BY CATEGORY

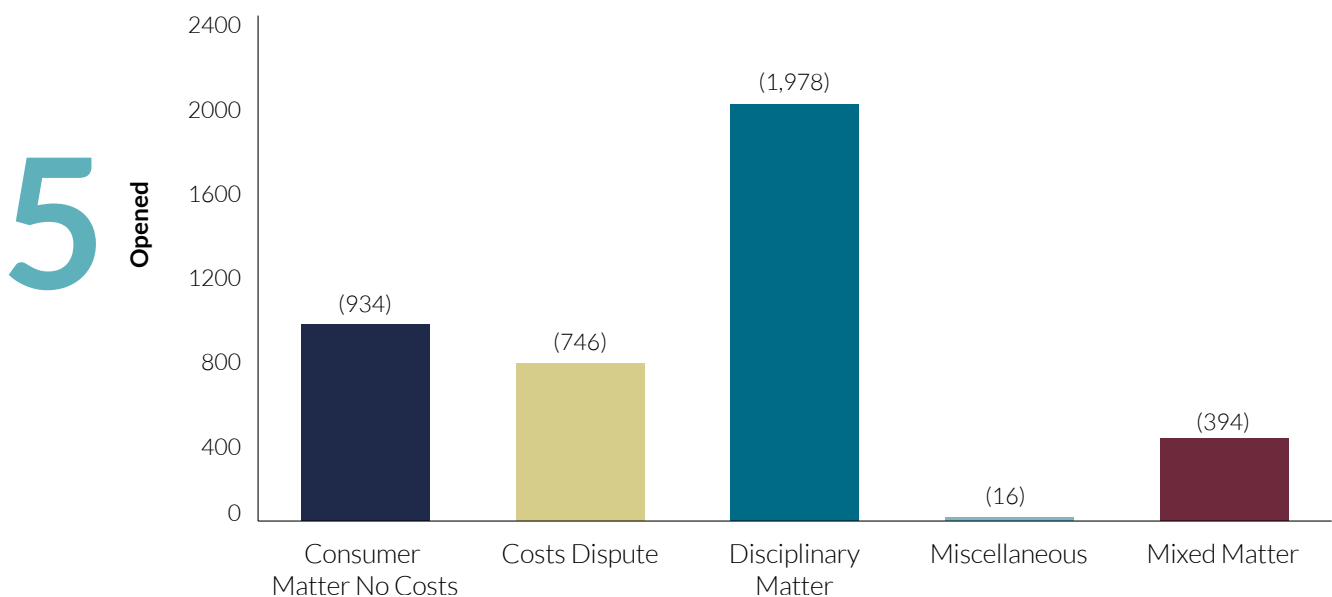
The total number of new complaints open at the end of the reporting period was **4,009**, however, by 30 June 2017 1,189 complaints remained open.*

Just under half of these complaints related to disciplinary matters (1,978). This category is broad and includes many matters that are not consumer matters, as well as section 270 complaints about a lawyer or a law practice which would, if the conduct concerned were established, amount to unsatisfactory professional conduct or professional misconduct.

A majority of these complaints were closed under section 277 after preliminary assessment. Closure in whole or in part of complaints after preliminary assessment may be due to the complaint being assessed as misconceived, out of time, outside the jurisdiction or because the complaint would be better investigated by police or another investigatory or law enforcement agency.

Consumer matters (section 269(1)) were the second highest category at 23% or 934 (in 2016: 27.35%). This number includes complaints about a lawyer or law practice relating to the provision of legal services to the complainant, which the DLRA determines should be resolved by the exercise of the functions relating to consumer matters under Part 5.3 of the Uniform Law.

A consumer matter may also include a costs dispute (section 269(2)). However, for added transparency, the data in table 5 has recorded consumer matters involving costs disputes separately. The costs disputes category ranked third at 18.6% or 746 and was well under last year's figure of 24%.



* Some complaints give rise to more than one category and are recorded in each relevant category. However, the total only shows the overall number of complaints.

6. COMPLAINT TYPE

The VLSB+C, OLSC, the Law Society of NSW and the NSW Bar Association agreed on a hierarchy of common complaint types and subtypes (Annexure A page 86) against which to report as part of the joint mapping exercise during the development of the LSC Uniform Law database.

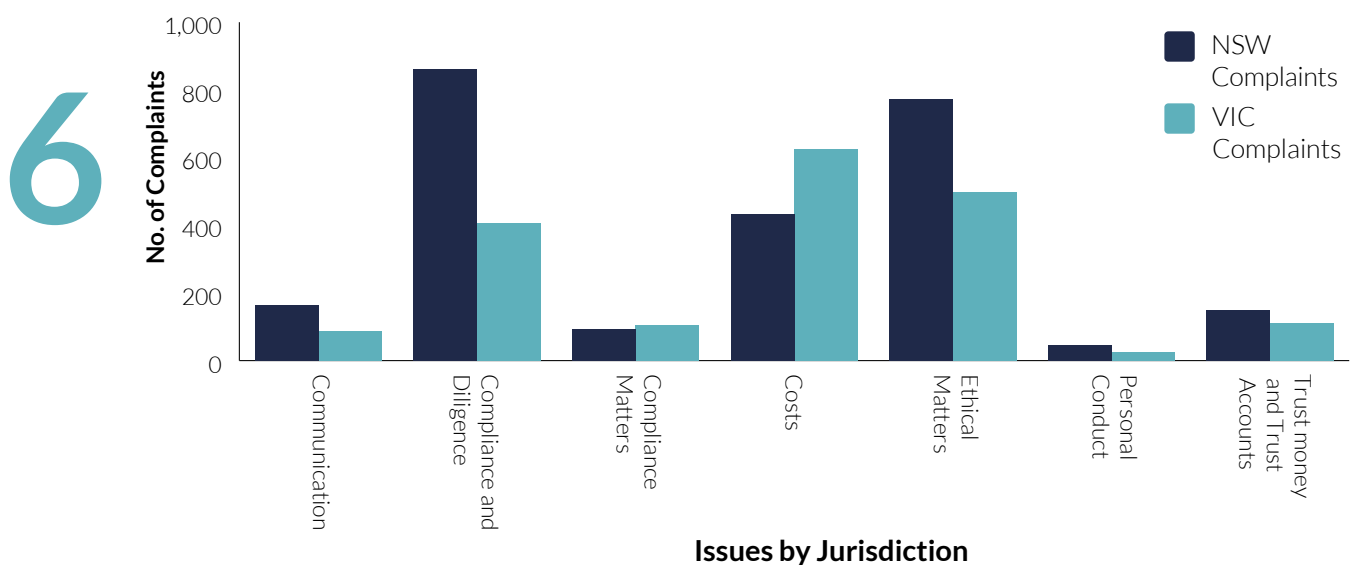
Table 6 below divides the complaints into seven types by jurisdiction.

As in the previous reporting period, the highest number of opened complaints (1,271:31.7%) fell under the broad heading of Ethical Matters which encompass many aspects of legal practice. Included under this category are complaints or allegations about: settlement issues, fraud (not trust fund-related), misleading conduct, ceasing to act, conflict of interest, communicating with another lawyer's client, undertakings, breach of confidentiality, instructions issues, advertising, failure to pay a third party, abuse of process, or a failure to comply with court orders. The proportion of complaints relating to Ethical Matters this year shows an improvement on 2016 figures by approximately 7%.

Ethics complaints were followed closely by complaints relating to a legal practitioner's competence and diligence (1,269: 31.65%). Included under complainant type is: a failure to supervise, delay, poor advice/case handling, client capacity, record management, and general incompetence.

This category is followed by 1,058 complaints relating to cost issues which made up (26.4% (2016: 23.92%) of all opened complaints. Although high this is continuing to trend positively in both States.

Complaints relating to each category were further subdivided into issues under each type heading.



Top Ten Sub Issues

The following table illustrates the top ten subcategories by complaint.

Complaint Type	Complaint Sub Type	# Complaints All	# Complaints NSW	# Complaints VIC
Costs	Overcharging	661	324	337
Competence and Diligence	Poor Advice/Case Handling	579	238	341
Costs	Billing Issues	307	33	274
Compliance matters	Practising Certificate Issues	289	289	0
Competence and Diligence	General Incompetence	274	274	0
Ethical Matters	Other	245	98	147
Competence and Diligence	Delay	201	116	85
Communication	Poor/No Communication	148	61	87
Ethical Matters	Instructions Issues	143	87	56
Ethical Matters	Conflict of Interest	140	63	77

The most commonly complained about single issue (16.5%) recorded across the two jurisdictions remains alleged overcharging (2016:19.8%) under “Costs”. Billing issues were also represented in the top ten sub issues making up 7.7% of all complaints. These figures need to be placed in the context of the number of these complaints that were ultimately dismissed, and the very large number of matters conducted and bills issued by law practices in the period throughout NSW and Victoria.

Although not in the top ten, it is significant that there were 260 or 6.5% of complaints related to trust money in respect of a failure to account compared to 4.9% in 2016.



7. COMPLAINTS BY INDIVIDUAL AND FIRM TYPE

7.1 Individual Practitioner Types

Complaints against solicitors ranked highest constituting more than three quarters of all complaints (87.8%). Barristers were the subject of 245 complaints (6.3% of all complaints).

These figures are broadly consistent with the proportion of solicitors (91.1%) and barristers (8.9%) that make up the legal profession in Victoria and NSW; however, more comparative information would be required to draw any further conclusions.

Table 7.1 provides a breakdown of the types of individuals who were the subject of a complaint.

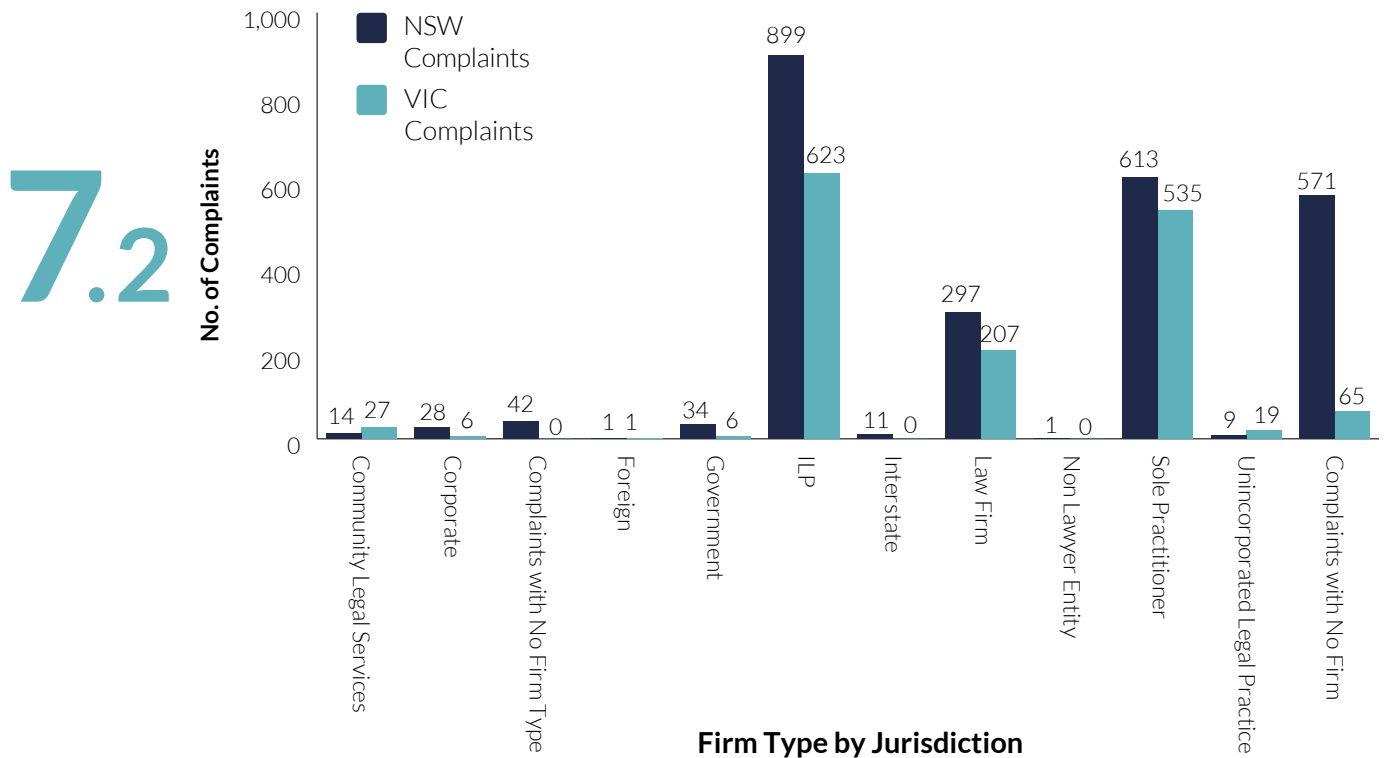
The data should be read subject to the following comments:

- (i) Complaints with “no individual type” are captured in “firm type” in the next table under 7.2 below.
- (ii) NSW has a separate category “former solicitors” whereas VLSB+C record complaints about “former solicitors” under “solicitor complaints”.
- (iii) NSW has a separate category for “struck off” practitioners whereas VLSB+C record complaints about struck off practitioners under “solicitor” or “barrister”.
- (iv) Complaints about conveyancers are recorded in NSW only where the conveyancer is employed by a law practice.

Individual Type	# Complaints All	# Complaints NSW	# Complaints VIC
Solicitor	3,441	2,124	1,317
Barrister	245	159	86
Complaints with No Individual	128	62	66
Former Solicitor	94	94	0
Legal Practitioner	73	56	17
Deceased	6	6	0
Licensed Conveyancer	6	6	0
Not Legal Service Provider	6	6	0
Struck Off	4	4	0
Complaints with No Individual Type	3	0	3
Other (Law Society data only)	1	1	0
Immigration Agent	1	1	0
Review Consultant	1	1	0
Grand Total	4,009	2,520	1,489

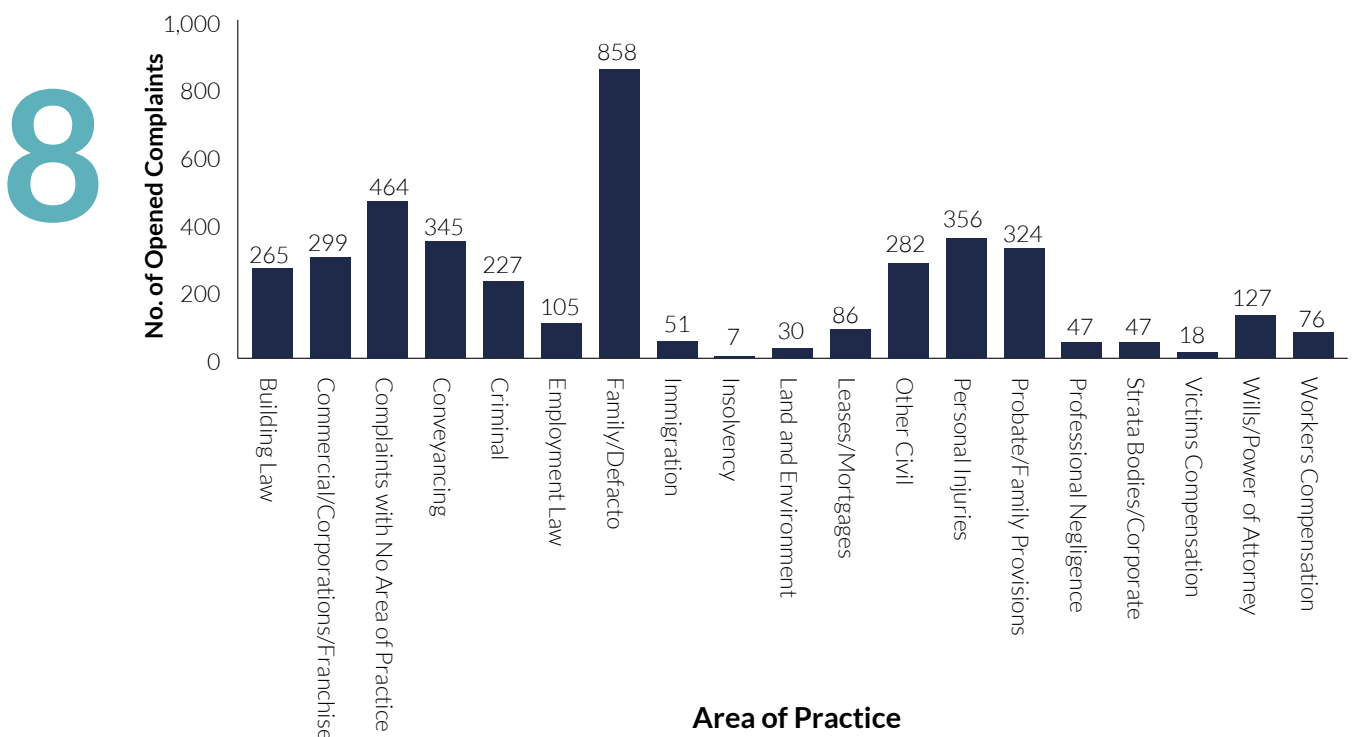
7.2 Firm type

Once again, sole practitioners (1,148) and incorporated legal practices (1,522) were most prominent in the law practices complained about in both States. Complaints with “no firm type” are captured in Table 7.1.



8. COMPLAINTS BY AREA OF PRACTICE

As in 2016, almost one fifth of the complaints, by area of practice, was in relation to family/de facto law (853), followed by personal injury work (356), conveyancing (345) and probate/family provision claims (324).



9. AVERAGE NUMBER OF OPENED/CLOSED COMPLAINTS

The data shows more complaints being closed than were received with an average of 334 complaints being closed per calendar month for the 2016–2017 financial year, compared with an average of 287 complaints being opened. It should be noted however that the DLRA's are also still closing complaints under their respective Legal Profession Acts, and these figures are not captured here.

The average close time relates to the average amount of time in days across both States. The average time between the opening and closing of a complaint is calculated within each category in days. On average, disciplinary issues take the longest to close (85 days) and costs disputes take an average of 68 days to close. The average close time in days for each complaint type under these categories is recorded in the table below.

Average Close Time by Complaint Issue

Category Description	Complaint Type	Average Close time Days
CONSUMER MATTER NO COSTS	Communication	56
	Competence and Diligence	68
	Compliance Matters	54
	Costs	57
	Ethical Matters	51
	Personal Conduct	35
	Trust money and Trust Accounts	61
COST DISPUTE	Communication	56
	Competence and Diligence	76
	Compliance Matters	45
	Costs	65
	Ethical Matters	85
	Trust money and Trust Accounts	66
DISCIPLINARY MATTER	Communication	67
	Competence and Diligence	78
	Compliance Matters	83
	Costs	103
	Ethical Matters	90
	Personal Conduct	53
MIXED MATTER	Trust money and Trust Accounts	82
	Communication	80
	Competence and Diligence	80
	Compliance Matters	49
	Costs	91
	Ethical Matters	70
	Personal Conduct	77
Trust Money and Trust Accounts	31	

10. DETERMINATIONS

10.1 By DLRA

As with many regulatory schemes, it is often the ‘threat’ of making a determination that assists in finalising entrenched disputes. Once it is foreshadowed to parties what a determination is likely to be, a further opportunity exists to settle and parties frequently do that before a determination is made. This is a significant indicator of the success of the Uniform Law scheme as there was no determination power for the Commissioners under the previous legislation.

Determinations by DLRA	LSNSW	OLSC (NSW)	VLSB+C (Victoria)
Disciplinary (including cautions and apologies)	0	15	41
Costs	0	0	17
Non-costs consumer	0	3	4
Total	0	18	62

It should be noted that any given complaint may have more than one Determination (eg. a costs determination and then later a disciplinary determination). Therefore, the above figures are not necessarily indicative of complaint numbers, and, as with issues associated with complaints – there can be more than one.

10.2 By Tribunals

There have been only a few decisions made by the State Tribunals relating to complaints made under the Uniform Law. These are discussed below.

NSW Civil And Administrative Tribunal

During the reporting period there were 10 applications filed. Only one decision⁴ was handed down by NCAT with a finding of professional misconduct for attempting to procure a falsely witnessed statutory declaration. The solicitor had sent his clients’ statutory declarations for execution (required for replacing a lost certificate of title) together with a pen and instructions on a post it note that the clients sign the statutory declarations “in the marked places” and that “I will witness your signature when you return them & complete all the balance details – please send the same pen back”. The Tribunal found that the solicitor’s behaviour lacked integrity because he engaged in behaviour which he knew at the time to be wrong. The solicitor was reprimanded, fined \$2,500, ordered to pay the Legal Services Commissioner’s costs and undertake a professional education course in ethics and integrity.

Victorian Civil and Administrative Tribunal

During this reporting period, the VLSB+C filed four disciplinary applications at VCAT under the Uniform Law and two other disciplinary actions filed in 2015–2016 were decided.

The VCAT made an order under section 119 of the Uniform Law that an unqualified individual, holding himself out as a legal practitioner, was not fit and proper to engage in legal practice. The tribunal also found that this conduct justified the making of an order of ‘a disqualified person’ within the meaning of the Uniform Law for a period of five years for the protection of the public.⁵

In the second matter the Tribunal found a solicitor guilty of professional misconduct for handling trust money without authority, and for misrepresenting an unregistered business as a registered law firm.⁶

4 Legal Services Commissioner v Huggett [2017] NSWCATOD 67

5 Victorian Legal Services Board v Cooper [2016] VCAT 1501 (5 September 2016)

6 Victorian Legal Services Commissioner v Wise (Legal Practice) [2016] VCAT 2112 (13 December 2016)

11. EMERGING THEMES IN UNIFORM LAW STATES

Some emerging themes in each State are noted below.

NSW

Complaints of overcharging often also raise issues about the quality of the legal services provided by a lawyer. Whilst the bill usually becomes the focus of a client's dissatisfaction and the complaint may be successfully resolved by a reduction or waiver of costs, there are a number of complainants who also request monetary compensation, often for a perceived loss of opportunity to achieve a better outcome in their legal matter. It is difficult in these cases to establish first that a lawyer's incompetence caused the client's loss and, second, to quantify the amount of such loss.

Often the compensation sought far exceeds the maximum amount that can be ordered under the Uniform Law in any event. The Tribunal has in the past made clear that the complaints process is no substitute for a civil action in professional negligence, and regulators are not equipped to deal with difficult issues of causation and quantification. This raises an issue about the importance of better and earlier notification to clients about recourse to make a claim with the professional insurer but also the need for further examination in light of the expanded Determination jurisdiction of the Commissioners under the Uniform Law.

Victoria

This year the VLSB+C made a number of improvements to its preliminary assessment process. This is expected to increase the efficiency of the complaint handling process and lead to the following improvements:

- It will increase the information available to the Commissioner's Dispute Resolution Officers at the front end, to better understand the position of both parties, leading to a more rapid informal dispute resolution process.
- If a dispute is not resolved at the informal dispute resolution stage, it will ensure VLSB+C has as much material available before referral to the Investigations Officers.
- It will close complaints where they lack jurisdiction, where they are not made out, or where the complainant has provided insufficient evidence to support their claims.

LSC Guidelines for costs estimates

No judicial or other decisions that concern the interpretation of section 174(1)(a) and (b) of the Uniform Law were reported during the year.

VLSB+C continues to receive a number of complaints with varying levels of compliance with the Guidelines about costs agreements and disclosure statements. The DLRA also continues to see law practices use a range of estimates, rather than a single figure estimate.

While there is generally no excuse for a lawyer not to abide by the Uniform Law, the VLSB+C is encouraged by the attitude of many lawyers when deficiencies have been raised with them. For example, in one instance, the lawyer failed to update his costs estimate after it became evident the complainant was providing instructions outside of the scope of the retainer. The lawyer accepted his error and resolved the matter with the complainant, by reducing his fees.

Appropriate estimates

Precedent costs agreements and disclosure statements supplied by the Law Societies are commonly used in the profession. However, there are reports of lawyers altering these precedents, and in doing so, at times voiding these documents. One example occurred where a lawyer altered a precedent, and by doing so, created a range of costs rather than a single figure estimate. Once the lawyer was advised that the Costs Agreement would likely be voided, he offered to resolve the matter by reducing his fees in accordance with the likely reduction of his costs through a costs review. The offer was accepted during this reporting period and the complaint finalised.

Adequate disclosure of variables

One of the most prevalent issues noted in costs complaints is a lack of forewarning to clients about an increase in costs and the reasons why costs have increased. This usually comes about from a lack of communication and explanation from the lawyer.

There are times where complainants do not understand the scope of the retainer. There are also factors which might move the costs outside of any estimate.

Lawyers are obliged under the Uniform Law to ensure their clients have given informed consent to those costs in matters where the estimate of total legal costs exceeds \$3,000, not including GST. However, the VLSB+C reports that it frequently

sees unsigned costs agreements in complaints, as well as poor scoping of work. In one example, the complainant claimed that she did not sign a costs agreement, nor did she understand the way the costs would be incurred. The VLSB+C observed deficits in the provision of a costs agreement in this matter – in particular, there was a delay in providing the costs agreement to the complainant.

However, it was clear that the complainant continued to give instructions in accordance with the retainer and as described in the retainer, showing some understanding of the scope of the retainer. The lawyer accepted his shortcomings by not more clearly obtaining the client’s understanding of consent, and reduced his fees accordingly with the matter being settled during this reporting period.

Final Legal Costs higher than Disclosed Estimate

The VLSB+C continued to receive a significant number of complaints where:

- Costs exceeded the original cost estimate;
- There was a failure to communicate updates to the estimated costs due to changes in circumstances, and
- Oral estimates or updates were provided by the lawyer without being followed up in writing, as required under the Uniform Law.

Determinations

Determinations are a last resort of the VLSB+C for its complaint handling processes. Eighty-one complaints were successfully determined since the commencement of the Uniform Law. The bulk of these, 62, were determined during the 2016–2017 period.

From time to time, the VLSB+C also receives complaints whereby the consumer matter does not involve a dispute about costs. In one example the complainant requested compensation for losses arising from the lawyer’s handling of his conveyancing matter. The complainant was unable to substantiate that the loss was caused by the lawyer’s conduct. In this case the VLSB+C issued a Notice of Determination ordering the lawyer to undertake a practice management course as a result of the poor state of his file.

Overall figures

In Victoria, complaint numbers increased in the 2016–17 year by about 8%. Although the increase is not marked, and reflects an increase in lawyer

numbers, two things are worth noting regarding Commissioner Initiated Complaints (CIC) under s266 (2) of the Uniform Law.

First, under the Uniform Law these disciplinary investigations initiated at the VLSB+C’s own motion are counted as complaints. Under the previous Legal Profession Act they were not counted as complaints but were identified separately.

During the reporting year the VLSB+C saw an increase in CIC, primarily arising from the practising certificate renewal cycle, in respect of issues such as late renewal of practising certificates and consequential unauthorised trust money handling. The reporting year saw 73 Commissioner Initiated Complaints compared to 43 in the previous reporting period.

There were also 90 complaints recorded where Costs Disclosure was inadequate or non-existent. The table below provides a breakdown.

Section	No. of Complaints
Section 174(1)(a)	27
Section 174(1)(b)	32
Delay in provision	6
No consent/understanding	4
None given	21

12 COMPLIANCE FUNCTIONS

Refer to the Commissioner’s Report on page 65.

13 FIDELITY FUND AUDIT INFORMATION

The Fidelity Funds are statutory compensation schemes maintained by the VLSB+C for Victorian legal practitioners and the NSW Law Society for NSW legal practitioners.

In NSW, contribution to the Fidelity Funds is made by legal practitioners who wish to be granted a principal or employee practising certificate. In Victoria, the Fidelity Fund fee is charged at variable rates to both principals and employees who work in firms that carry a trust account. Corporate legal practitioners and government legal practitioners are not required to make a contribution.

Thirty-eight claims in NSW and 46 in Victoria were determined against the respective Fidelity Funds under the Uniform Law. The following information provided relates to all claims in the reporting period including Uniform Law claims.

2016–2017 Financial Year	Victoria	NSW
1. Number of practitioners who paid contributions to the fund	12,021	22,290
2. The balance of the Fidelity Fund as at 30 June 2017	\$50,000,000	\$56,567,000 The balance of the Fund (assets less liabilities) was \$48,830,000.
3. Number of claims that were outstanding as at 1 July 2016	56	56
4. Claims received during the financial year	31	37
5. The classification of claims made	Allegations of a failure to pay or deliver trust money: 31; allegations of a fraudulent dealing with trust property: 0.	All 37 are allegations regarding trust money; 0 relate to trust property.
6. The value of claims received during 2016–2017	\$1,973,772.70	\$4,562,805.52
7. The number of claims allowed/ partly allowed	41	30
8. The value of the payments made	\$2,222,595.74	\$1,195,667.27
9. The reasons for allowing claims	Claims were allowed where it was found that there had been a default either as a result of a 'fraudulent dealing with trust property' or a 'failure to deliver trust money'.	A claim is allowed or partly allowed where it satisfies the statutory requirement that a claimant has suffered pecuniary loss because of default or (where a claimant has accrued rights) failure to account under relevant legislation.
10. Number of disallowed claims	9	19
11. The reasons for disallowing claims	Claims were disallowed where: <ul style="list-style-type: none"> – There was no failure to pay or deliver trust money; – There was no act or omission of an associate involving dishonesty; – Proper and usual records were not kept and the Claimant knew or ought to have known they were not kept; – The Claimant's negligence contributed to the loss, if any; – The Claimant failed to comply with a Board requirement to provide information and/or documents; – The money was not trust money received in the course of legal practice. 	A claim is disallowed where it does not fall within the statutory requirements. This could be for a number of reasons, e.g. there is no trust money or property, it was not received within the course of legal practice, there was no failure to pay, no dishonesty or it was excluded from fidelity cover as it related to investment. A claim may be disallowed because it fails one or more elements.
12. Appeals were made by unsuccessful claimants during 2016–2017	2	0
13. The number of claims outstanding at the completion of the financial year	25*	35
14. Number of court proceedings commenced as a result of claims	0	0

* A further component of claims that were outstanding as at 1 July 2016 were either withdrawn or otherwise settled during the period.

14. ADMISSIONS BOARDS

A total of **3,748** applicants were admitted under the Uniform Law in 2016–2017, a small proportion of which (4.24%: Vic 40, NSW 119) were applicants previously admitted outside Australia. Only four applications (two in NSW and two in Victoria) were refused outright for reasons including criminal offences, bankruptcy, and applicants' failures to be honest and candid and to provide truthful and complete information.

Victorian Legal Admissions Board

During the current reporting period the number of persons admitted in Victoria increased marginally when measured against the previous year (1,277 admitted) with the Supreme Court admitting 1,362 applicants, an increase of 6.6%.

Sixty-six per cent (899) of applicants were female and 34% (463) were male.

A total of 40 previously admitted overseas applicants from 17 countries comprised 3% of admissions in Victoria. One quarter of the applicants were from the United Kingdom, 8 from Malaysia and the others were from Canada (2), China (1), Germany (1), Hong Kong (2), India (1), Ireland (2), Nigeria (1), Pakistan (1), Papua New Guinea (1), Philippines (1), Scotland (2), Singapore (1), South Africa (2), Sri Lanka (2), and the USA (2).

A total of 15 qualified overseas applicants comprised 1% of admissions.

A total of 1,307 applicants who attained their academic qualifications wholly in Australia comprised 96% of admissions.

There was an increase from 32 to 37 of New Zealand practitioners admitted under the Mutual Recognition principle.

VLAB undertook 44 academic and/or practical legal training assessments of qualifications that were more than five years old. Ten applicants were required to undertake further study.

Admission of Foreign Lawyers Subject to Conditions

VLAB assessed eight applications for conditional admission of foreign lawyers. Six applications were approved and two were refused as both applicants had no employment or supervisory arrangement in place in Australia.

During the current reporting period, VLAB admitted two foreign lawyers, one from Sri Lanka and one from USA, under conditional admission.

No objections were received to the publication of applicants' names on the VLAB website.

Disclosures

The proportion of applicants with disclosures increased immensely with many applicants making more than one type of disclosure. Disclosure types and percentages are shown below:

- 66% related to traffic, transit and parking offences;
- 11.5% related to social security offences;
- 7.5% related to other offences, including bankruptcy or tax;
- 4.5% related to plagiarism, collusion and other academic misconduct offences;
- 4.5% related to alcohol or drug intervention, AVO, dishonesty or indictable offences;
- 0.4% related to general misconduct offences; and
- 5.6% related to capacity issues such as mental health and physical impairment.

Individual meetings were held with 49 applicants who had significant disclosures and 24 applicants attended formal meetings to determine whether a compliance certificate should be issued. Three special hearings were conducted by VLAB in the Supreme Court and two directions hearings were held at the VLAB offices.

VLAB refused to issue a compliance certificate in respect of two applicants, however, both applicants have been invited to reapply in the future. One application related to criminal offences and the other to bankruptcy.

Law Course Accreditation

VLAB ensures its standards and processes are clear and transparent when performing its regulatory functions of accrediting law schools as providers of approved academic law courses. VLAB reaccredited the existing Victoria University's LLB course in 2017.

Legal Profession Admission Board of NSW

In October 2016, the LPAB launched its online Admission Portal; abolished application deadlines for routine applications; delegated the determination of certain categories of applications; and introduced more frequent admission ceremonies. Due to the associated changes in the admission cycle,

comparison with the previous financial year's applications are provided with this caveat.

Compared with the previous year, during 2016–17:

- the number of applicants for admission decreased slightly by 2.6% (from 2,422 to 2,358);
- the number of persons admitted decreased marginally by 0.7% (from 2,402 to 2,386);
- the proportion of persons admitted who were previously admitted overseas remained stable, at around 5%, compared to 3% in Victoria;
- the proportion of applications with a disclosure increased from 25.4% to 28.3%;
- the number of applications refused increased from 11 to 17; and
- the proportion of applications refused (as a percentage of total applications) increased marginally from 0.45% to 0.72%.

Online processes have simplified requirements for applicants, streamlined administrative tasks for LPAB staff, and reduced processing times. Since October 2016, 98% of admission applicants with a routine application have received a determination within three weeks of lodgement (reduced from up to nine weeks). Admission applicants rated their experience of the new online services an average score of nine out of ten.

Statistics about admission, which are now readily available to the LPAB as a result of its online processes since October 2016, include:

- 61% of admission applicants were female;
- 95% were residents of NSW;
- 95% attained their academic qualification in law within Australia, compared to 96% in Victoria;
- 50% of disclosures related to traffic and other minor infringements;
- 11% of disclosures related to academic misconduct;
- 10% of disclosures related to criminal matters (other than a conviction);
- 8% of disclosures related to bankruptcy, insolvency, debt, tax or overpayment issues;
- 5% of disclosures related to a criminal conviction; and
- 4% of disclosures related to a mental health issue, compared to 5% in Victoria.

As many applicants made more than one disclosure, the above percentages reflect the number of times a matter within the particular category was disclosed, rather than the proportion of applicants who disclosed such a category of matter.

Refusals

The LPAB refused to issue a compliance certificate in respect of eight other applicants (who were not seeking conditional admission), of whom:

- two applicants were 'refused outright'; and
- six applicants were advised they may consider re-applying after meeting specific conditions.

The reasons for the LPAB's decisions to 'refuse outright' related to the applicants' failures to be honest and candid with the LPAB, and to provide truthful and complete information.

Admission of Foreign Lawyers Subject to Conditions

The LPAB determined 12 applications by foreign lawyers for conditional admission in accordance with section 20 of the Uniform Law. One application was approved and two were withdrawn. Nine applications were refused, although the applicants were advised they may consider re-applying after meeting the academic and/or practical legal training prerequisites. Examples of common reasons for the Board refusing to recommend to the Supreme Court that a foreign lawyer be admitted subject to conditions include that:

- the applicant had no employment, supervisory or professional support arrangements in place in Australia;
- the conditions proposed by the applicant would not adequately protect consumers of legal services and the administration of justice, in the absence of the applicant having met the academic prerequisite for admission; or
- it would be impractical for the applicant to avoid practice that pertains to the academic areas of knowledge in which the applicant has not completed studies.

When considering applications for conditional admission, the LPAB has welcomed comments from the VLAB, the Law Society of NSW and on occasions the NSW Bar Association. The formulation of proposed conditions in each case has been guided by the work of the Legal Services Council's Admissions Committee Foreign Lawyers Working Group and

by the invaluable exchange of information and precedents between the VLAB and the LPAB.

Other Initiatives

The LPAB supported amendments made by the Legal Services Council to Rule 11, Rule 18 and Schedule 1 of the Legal Profession Uniform Admission Rules 2015. After feedback from the Admissions Committee, the LPAB amended its practice in relation to issuing notices of decisions about assessment of academic qualifications, to include the names of the academic areas of knowledge listed in Schedule 1, as well as the names of the equivalent subjects in the LPAB's Diploma in Law course.

Accreditation of Law Courses

The LPAB accredited a new combined Juris Doctor degree/Practical Legal Training course to be offered by the University of Technology Sydney from Autumn 2017. No reaccreditation of any existing law course or PLT provider in NSW was undertaken during 2016–2017. The LPAB has agreed to trial new Accreditation Standards for Australian Law Courses, and released a draft policy framework on accreditation, for the purpose of consultation with institutions and other stakeholders.

LPAB and VLAB Working Together

The VLAB and LPAB continue the collaborative approach and share their knowledge and ideas to maintain the high standards and processes required to assess and admit Australian Lawyers. The LPAB and VLAB worked cooperatively to align their practices in relation to several initiatives. Both have launched an online client portal for admissions which has dramatically decreased the processing time for applications. They are also working closely with the LSC to map Admissions data and develop reporting capability for Stage 2 of the LSC Uniform Law Database.

During the current reporting period the LPAB introduced the International English Language Testing System (IELTS) Exemptions Guidelines (NSW Guidelines). VLAB adopted the NSW Guidelines and has found them to be of great assistance when considering whether an applicant has sufficient knowledge of written and spoken English to engage in legal practice.

The VLAB and LPAB are working together on a Register of Conditional Admissions to ensure transparency and consistency in their decision making. In considering applications for conditional admission, VLAB has benefited from the invaluable insight and commentary from the Legal Profession Admission Board of NSW.

When LPAB released a draft policy framework on Accreditation Standards for Australian Law Courses, the VLAB is appreciative of the work performed by LPAB. The VLAB provided comments and believes it will be valuable in conducting further reviews in Victoria. VLAB will continue to work with the LPAB in ensuring consistency in the accreditation and reaccreditation of law courses.

Together, VLAB and LPAB have created a framework of uniformity that is invaluable to both States and will continue to review their processes to minimise regulatory burden whilst ensuring regulatory compliance.



ANNEXURE A: UNIFORM LAW COMPLAINT CATEGORY TYPES AND SUB-TYPES

	Level A	Level B
1.	Communication	Rudeness/threatening behaviour Poor/no communication Other
2.	Compliance matters	Practising certificate issues Failure to respond to regulator (e.g. section 371, rule 43) Other breaches of the Legal Profession Uniform Law, Regulations or Rules Other
3.	Costs	Disclosure Billing issues Overcharging Other
4.	Ethical matters	Settlement issues Fraud (not trust fund) Misleading conduct Ceasing to act Conflict of interest Communicating with another lawyer's client Undertakings Breach of confidentiality Instructions issues Advertising Failure to pay third party Abuse of process Failure to comply with court orders Other
5.	Competence and diligence	Failure to supervise Delay Poor advice/case handling Client capacity Record management General incompetence Other
6.	Trust money and trust accounts (as per Legal Profession Uniform Law, Chapter 4)	Failure to account for trust monies Regulation breach
7.	Personal conduct	Personal conduct Other

COMMISSIONER
FOR UNIFORM LEGAL
SERVICES REGULATION

LSC LEGAL
SERVICES
COUNCIL

Level 40 MLC Centre
19 Martin Place
Sydney NSW 2000

PO Box H326
Australia Square
NSW 1215

T +61 2 8293 5900
F +61 2 8293 5959
E lsc@legalservicescouncil.org.au