

COMMISSIONER FOR UNIFORM  
LEGAL SERVICES REGULATION

**LSC** LEGAL  
SERVICES  
COUNCIL

# ANNUAL REPORTS

## 2015/2016

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 2015–2016. 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 2014 as in force in each participating State. All references in this report to the Uniform Law 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 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)*. These two Laws are for practical purposes identical and 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 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](http://www.legalservicescouncil.org.au) and at no cost by contacting the Legal Services Council during business hours (9am-5pm) by telephone on (02) 8293 5900, in writing to GPO Box H326, Australia Square, Sydney, NSW 2000 or by email to [lsc@legalservicescouncil.org.au](mailto:lsc@legalservicescouncil.org.au).

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13 October 2016

The Hon Gabrielle Upton MP  
Attorney General of New South Wales  
GPO Box 5341  
SYDNEY NSW 2001

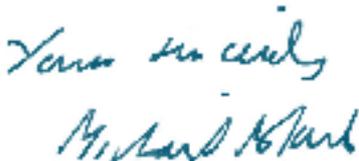
The Hon Martin Pakula MP  
Attorney-General of Victoria  
Level 26, 121 Exhibition Street  
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**Annual Report of the Legal Services Council for 2015 - 2016**  
**Annual Report of the Commissioner for Uniform Legal Services Regulation**

I am pleased to submit the Annual Report of the Legal Services Council for 2015 - 2016 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; it is also included.

I am also pleased to provide the Annual Report of the Commissioner for Uniform Legal Services Regulation for 2015 - 2016 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 Commissioner, consolidated as one entity and have been prepared as above.



Michael Black AC QC  
**Chair**  
**Legal Services Council**

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# Glossary

**ABA:** the Australian Bar Association.

**Australian lawyer:** a person who is admitted to practise law in Australia but who does not necessarily hold a current practising certificate.

**Australian legal practitioner:** a person who is admitted to the Australian legal profession who holds a current 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):** references to the Council in this report 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 collective references to the roles, responsibilities and work, collaboratively performed by the Council, the Chair, the CEO and the Secretariat of the LSC.

**DLRA:** designated local regulatory authority.

**ILP:** Incorporated legal practice.

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

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

**LACC:** Law Admissions Consultative Committee.

**LCA:** the Law Council of Australia.

**Legal costs:** the amount a person has been or may be charged by a law practice for legal services.

**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 Uniform Law, Uniform Rules and Uniform Regulations.

**LIV:** the Law Institute of Victoria.

**LPAB:** Legal Profession Admission Board (NSW).

**LSNSW:** the Law Society of New South Wales.

**NCAT:** NSW Civil and Administrative Tribunal.

**OLSC:** Office of the Legal Services Commissioner.

**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 Department:** The NSW Department of Justice.

**Trust money:** money entrusted to a 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.

**VLSC:** the Victorian Legal Services Commissioner.

# Chair's Report

It is with pleasure that I present the second Annual Report of the Legal Services Council, covering the first complete year of the Council's operation and the first year of the operation of the Legal Profession Uniform Law.

Once again the Council has received strong support from the two main constituent bodies, the Law Council of Australia (LCA) and the Australian Bar Association (ABA) and also from the local regulatory authorities in New South Wales and Victoria.

One of the most striking aspects of our first complete year, and one of the important benefits, has been the way the Uniform Law has driven collaboration between the local regulatory authorities in participating jurisdictions. There has been excellent cooperation between them, and between them and the Council, in an environment in which issues and opportunities have been identified and addressed in a positive and creative way. This experience points to the strength of the model upon which the Uniform Law is based in establishing a national legal profession with uniform regulation for the benefit of practitioners, consumers and the general community whilst retaining, and building upon, the profession's strong local foundations.

Another notable emerging result has been the improvement in the complaints resolution process by local regulatory authorities with more matters being able to be resolved at the Commissioner level, without needing to progress Civil and Administrative Tribunals. Over time, this should reduce delay and save costs for the community and for the legal profession.

During the course of the year the Council has engaged with jurisdictions that have yet to participate in the scheme and I can report considerable interest. It is important that the Council continues this aspect of its work to achieve the logical and necessary corollary of uniform national admission, namely uniform regulation.

Uniform national regulation of the legal profession, whilst remaining locally based, is not only an important microeconomic reform to facilitate the provision of legal services within a national economy. It is also concerned with providing national standards and principles to govern the relationship between the profession and those who engage its services.

The Council has again worked harmoniously and well and has again received excellent support from its Chief Executive Officer and from its small and dedicated Secretariat, to all of whom I express the Council's gratitude.

**The Hon Michael Black AC QC**

Chair

October 2016



“One of the most striking benefits has been the way the Uniform Law has driven greater collaboration between New South Wales and Victoria. It has created an environment in which issues and opportunities are identified and addressed in a much more proactive and creative way.

Ultimately, uniform national regulation is contributing to a dynamic, national profession that promotes the interests of the consumer.”

**The Hon. Michael Black AC QC**  
Chair

# CEO's Report

This year, I am pleased to report that our progress towards uniform regulation of the Australian Legal Profession is already bringing benefits to consumers and contributing to the development of a more agile and responsive profession.

With both NSW and Victoria now participating in the Uniform Law scheme, 70 per cent of the practising lawyers in Australia have operated under the Uniform Rules for a full 12 months. In this time our ongoing consultation and engagement has led us to change only a small number of the Uniform General Rules.

One of the important aspects of the Uniform Law is the introduction of a new costs disclosure regime that is designed to ensure clients of law practices are kept well informed about the services they access and the costs involved. However, while this is an important aspect, there have been many other areas of the Uniform Law to progress.

A significant achievement has been greater collaboration between NSW and Victoria on the implementation of the Uniform regulatory framework. This is translating into more effective identification and efficient resolution of complaints at the designated local regulatory authority (DLRA) level in each State.

## **Stakeholder engagement and consultation**

The Council seeks to be collaborative and transparent, to add value and to be independent and progressive. The Council and its Secretariat operate on a very lean budget, with a small number of staff. In the process of settling in the Uniform Law, we are also able to draw on the great experience of Council Members and on the knowledge and experience of our many stakeholders to achieve the best results.

Ongoing stakeholder engagement and consultation is a critical part of our work. Not only do we follow the formal consultation processes in the Uniform Law, we also seek to reach out to the profession and the community wherever possible and to respond positively where issues and suggestions are raised.

One way we are doing this is via Consultative Forums, which bring consumer and other lawyers together to discuss topics of common interest. Forums held in Sydney and Melbourne to date have discussed concepts such as an Australian Legal Profession Register; a register of Powers of Attorney, whether there may be benefit in a single national trust account and more effective ways of engaging with stakeholders and the community.

Looking to the year ahead, we hope to facilitate opportunities to share experiences to date from Victoria and NSW with other jurisdictions that are considering joining the Uniform Scheme. With the benefit of 12 months in operation and through open communication across the profession, the arguments in favour of uniform regulation are becoming more compelling.

## **Establishing an independent presence**

An important milestone for the LSC Secretariat was moving into our own premises in August 2015 in Sydney's legal precinct. The Council is required to have its primary office in NSW and establishing an independent presence is very important to the Council and my role as Commissioner.

I would also like to acknowledge and thank our first host, the Law Society of NSW, as well as the NSW Department of Justice. The latter seeks to support the administrative arrangements for the Council. Similarly, we enjoy excellent relations with the Department of Justice and Regulation in Victoria, which is the host jurisdiction of the Uniform Law itself.

The year 2015–2016 has been an important one for the Council. I am sincerely grateful to my colleagues in the Secretariat and to our Chair, the Hon Michael Black AC QC for all of their support throughout the year.

I am pleased that the Uniform Law is already proving to be an important and increasingly effective piece of economic reform with benefits for the profession, consumers and governments. I look forward to continuing to work on this initiative in 2016–2017.

**Dale Boucher**

Chief Executive Officer  
October 2016



# Explaining 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 and local regulatory authorities.

The Uniform Law is applied in NSW and Victoria by local application legislation – the *Legal Profession Uniform Law Application Act 2014* (NSW) and *Legal Profession Uniform Law Application Act 2014* (Vic). The Application Acts and local regulations also provide for specific jurisdictional matters, such as the establishment of local regulatory authorities.

While certain provisions (including those establishing the Council and Commissioner) commenced in both States in 2014, most did not begin to apply until 1 July 2015, when the Uniform Law commenced in full.

## UNIFORM RULES

The Uniform Rules provide much of the operational detail and requirements for legal practitioners and legal practice. The Council is ultimately responsible for making the Uniform Rules, and has specific responsibility for the development of the Uniform General Rules. The LCA and ABA 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 (Continuing Professional Development Rules);
- Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (Continuing Professional Development Rules);
- Legal Profession Uniform Legal Practice (Solicitors) Rules 2015 (Legal Practice Rules (Solicitors));
- Legal Profession Uniform Conduct (Barristers) Rules 2015 (Legal Profession Conduct Rules); and
- Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015 (Legal Profession Conduct Rules).

## THE UNIFORM LAW IN OPERATION

Local autonomy remains	<ul style="list-style-type: none"> <li>• Supreme Courts' admission and supervisory roles unchanged</li> <li>• Uniform Law is enacted as a State statute</li> <li>• Local regulatory bodies continue unchanged</li> <li>• State Application Acts provide for local machinery and regulatory arrangements</li> </ul>
A common framework applies to regulation of the legal profession	<ul style="list-style-type: none"> <li>• Standing Committee (SC) of Attorneys-General oversees the framework and the LSC</li> <li>• The Uniform Law is the same in all participating jurisdictions</li> <li>• An Inter-Governmental Agreement provides for relations between participating States</li> <li>• Admission Rules are broadly the same everywhere</li> <li>• Common Continuing Professional Development, Practice and Conduct Rules apply in participating jurisdictions</li> <li>• Uniform General Rules replace most legal profession regulations</li> </ul>
Light touch overarching structure	<ul style="list-style-type: none"> <li>• The LSC is a high-level policy and rule making body. It is not involved in individual cases.</li> <li>• Commissioner oversees dispute resolution and discipline functions of DLRA's</li> <li>• LSC and its Secretariat including the Commissioner are small</li> <li>• The cost is \$20 to \$30 per annum per legal practitioner</li> <li>• The current LSC budget is \$1.35m</li> </ul>
A collaborative approach is being taken and bringing results	<ul style="list-style-type: none"> <li>• Framework encourages collaboration between DLRA's to take the best practice from each and combine into improved approaches</li> <li>• This saves time and costs and creates opportunities for continuous improvement</li> </ul>
In-built consultation requirements	<ul style="list-style-type: none"> <li>• Inter-Governmental Agreement requires consultation on Uniform Law changes</li> <li>• All participating States are part of the Standing Committee</li> <li>• The LSC can be expanded to accommodate a new participating jurisdiction</li> <li>• Mandated 30+ day consultation periods required for most rule changes</li> </ul>
Benefits for governments, the legal profession, law practices and consumers	<ul style="list-style-type: none"> <li>• Single coordinated policy process has been created. This can be adjusted and applied more quickly than changes being made through multiple processes in different jurisdictions.</li> <li>• LSC is becoming an expert advisory body to governments</li> <li>• Profession has an entrenched place in the co-regulatory scheme and benefits from micro economic reform</li> <li>• Law practices benefit from common framework</li> <li>• Consumers benefit from improved legal costs provisions</li> <li>• Practitioners and consumers benefit from faster resolution of complaints</li> </ul>

## FEATURES OF THE UNIFORM LAW

The Legal Profession Uniform Law establishes a single legal services market for participating Australian States and Territories. Both NSW and Victoria adopted the scheme on 1 July 2015. The Council is engaging with other States and Territories to encourage them to join.

Local regulatory arrangements continue to operate under the Uniform Law. The Legal Services Council and the Commissioner for Uniform Legal Services Regulation oversee the operation of the scheme. They do not have a role in the day-to-day regulation of the legal profession through particular complaints or disciplinary matters.

## BENEFITS FOR LEGAL PRACTITIONERS

The common legal framework of the Uniform Law provides the profession with a range of benefits including:

- the ability to practise seamlessly across participating jurisdictions (currently NSW and Victoria) under uniform regulatory standards with a single costs agreement and identical back office systems and precedents;
- a standard (optional) costs disclosure form for matters under \$3,000 (excluding GST and disbursements) delivers basic need-to-know information to clients;
- the ability to reduce the cost of multiple PII policies for inter-state practitioners and ILPs covered by an approved PII that covers work in the participating State;

- the ability to reduce the number of trust accounts;
- preserving the independence of the legal profession through direct contributions to the Uniform Rules on conduct, practice and continuing professional development;
- the ability to move easily between private, in-house and government practise has been enhanced with the Uniform Law practising certificate requirements; and
- quicker and easier dispute resolution at the local level avoids unnecessary delay and means less costs.

## BENEFITS FOR CONSUMERS

The scheme empowers consumers to make more informed choices about their legal options through enhanced cost disclosure obligations and through new dispute resolution practices:

- legal costs must be fair and reasonable and proportionate and reasonably incurred in amount;
- law practices must avoid unnecessary delays that result in increased costs;
- a law practice must provide information that enables their clients to make informed choices about costs and their legal options; and
- there are new and more efficient, low-cost ways to resolve complaints and costs disputes with law practices, and improved access to pro bono legal services.

# 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 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.

# Our Roles and Functions

## OVERVIEW

Together, the Legal Services Council and the Commissioner for Uniform Legal Services Regulation oversee the operation of the Uniform Law scheme.

The Council's primary roles are to set the rules and policy which underpin the Uniform Law and ensure that it is applied consistently across participating jurisdictions.

The Council can also issue guidelines or directions to local regulatory authorities, such as the Victorian and NSW Legal Services Commissioners, the Law Society of NSW and the Bar Association of NSW to achieve consistency.

The Council oversees the work of the Commissioner for Uniform Legal Services Regulation. The Commissioner monitors and reviews the exercise by local regulatory authorities of the dispute resolution and professional discipline powers in Chapter 5 of the Uniform Law.

An Admissions Committee appointed by the Council develops Admission Rules for the legal profession. These are applied by local Admission Boards for the admission of lawyers to the legal profession in Australia. The Admissions Committee also advises the Council on admissions policy.

## THE STANDING COMMITTEE

The Standing Committee comprises the Attorneys-General of the jurisdictions participating in the scheme. It makes the Uniform Regulations and considers the Uniform Rules proposed by the Council. The Standing Committee has a 'general supervisory role' over the Council which includes approving its budget. The Council and Commissioner report at regular intervals to the Standing Committee.

“The Uniform Law provides a timely and much needed opportunity for us to assess where we are at as a profession, and how we can improve in order to better meet the needs of our diverse communities. It's vital that our professional standards reflect modern community attitudes and preferences, that our services adapt with technology and that our regulations reflect the changing needs of a more mobile national profession.”

**Ms Kim Boettcher**  
Council Member

## THE LEGAL SERVICES COUNCIL

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 clients of law practices.

The Council formally makes all the Uniform Rules and, to achieve a consistent approach, can issue guidelines or directions to local regulatory authorities, except in relation to complaints and professional discipline.

The Council consists of five members, including the Chair, drawn from participating jurisdictions and appointed by the Attorney-General of the host jurisdiction for the Uniform Law, the Attorney-General of Victoria:

- 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 consecutively or non-consecutively. 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 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 does not represent the Crown.

### Council Meetings

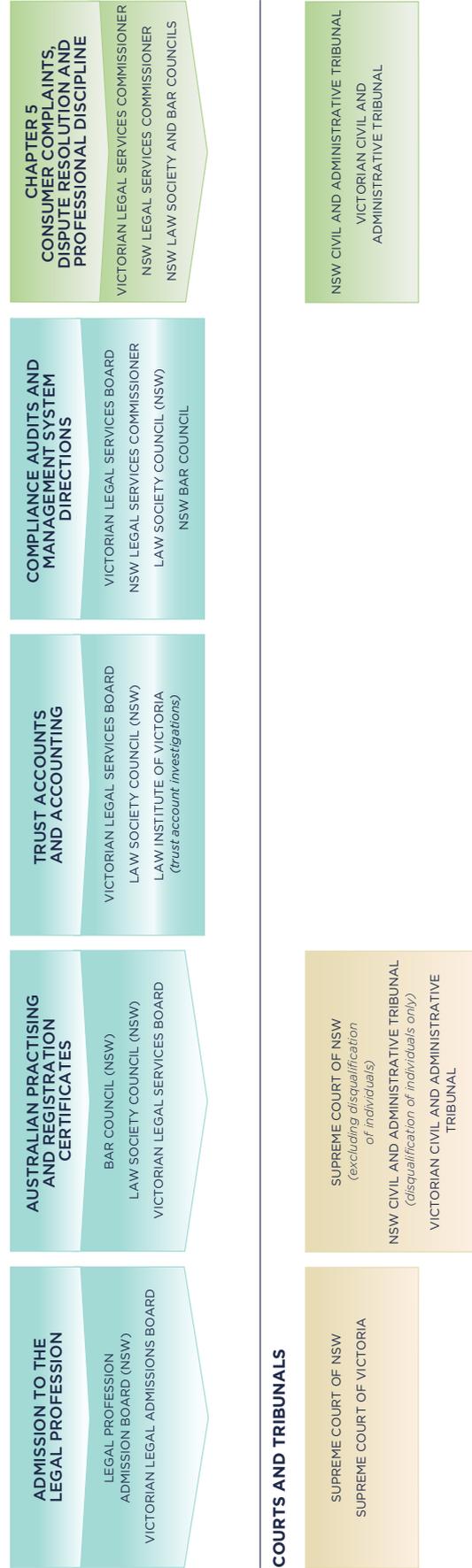
The LSC met or conferred eight times during the year, alternating the location of its face-to-face meetings between Sydney and Melbourne and using teleconferencing and video conferencing to enable participation while containing costs. We appreciate the generosity of the organisations which have provided access to videoconferencing facilities for our LSC meetings.

The LSC is routinely engaged in between meeting discussions on matters of importance and sometimes makes decisions by a circular resolution to prevent delay.

## ROLE OF BODIES UNDER THE LEGAL PROFESSION UNIFORM LAW



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



## 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

**Ms Fiona Bennett**, Council Member  
(14 October 2014–13 October 2017)

Fiona Bennett is a 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.

**Ms Kim Boettcher**, 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. Ms Boettcher has represented her legal centre twice at the United Nations in New York and has presented papers at international conferences on compliance with elder rights regulation and its relationship with consumer law and human rights.

She 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.

Ms Boettcher is Deputy Chair of the Sri Lankan Evidence Project of the International Commission of Jurists Australia. She was previously a Director of the Hornsby Ku-ring-gai Women's Shelter Inc. and a Member of COTA NSW Policy Advisory Group.

**Mr Steven Stevens**, 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 Chair of the Professional Ethics Committee of the Law Council of Australia and 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.

**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 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 is responsible for raising awareness of and promoting compliance with the Uniform Law and Rules and occupies the Office of Chief Executive 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 44.

## THE CHIEF EXECUTIVE OFFICER (CEO)

The CEO administers the day-to-day management of the affairs of the Council in accordance with the policies and directions of the Council. The position of CEO is established by the Uniform Law, which provides that the functions of the CEO are to be exercised by the Commissioner.

Dale Boucher commenced as Commissioner and CEO on 29 September 2014 for a one year term and was reappointed during the year for a further two years. Previously, 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 and he held the personal office of the Australian Government Solicitor, 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 and been admitted in the Northern Territory, Western Australia and the Australian Capital Territory.

## THE ADMISSIONS COMMITTEE

The Admissions Committee's statutory functions are:

- (a) to develop proposed Admission Rules, following consultation procedures specified by the Uniform Law; and
- (b) to advise the Council about matters relating to admission, or any matters referred to it by the Council.

The Council appoints the Admissions Committee from people nominated by bodies identified in clause 21 of Schedule 1 of the Uniform Law. The Committee together comprises members with judicial experience, expertise or experience practising in the manner of barristers and solicitors, teaching in law schools and practical legal training courses, and in developing policy standards for admission and accrediting law courses and practical legal training providers. The Uniform Law provides that members do not have a representational role in relation to any group, body or jurisdiction.

“The Uniform Law is the most important step towards an Australian legal profession after decades of the gradual removal of differences between jurisdictions. The rules that embody the core priorities and best values of lawyers obviously need to be expressed in uniform national regulation.”

**Mr Bret Walker SC**  
Council Member

The inaugural Committee, whose term expired on 11 May 2016, comprised:

- Dr Elizabeth Boros;
- Professor Sandford Clark;
- Professor Carolyn Evans;
- The Hon Justice Emilius Kyrou;
- Mr John Littrich;
- Mr Gary Ulman; and
- The Hon Justice Richard White.

The Committee appointed Professor Sandford Clark as its Chair.

The Council appointed a second Committee on 29 June 2016, when Mr Stuart Clark AM replaced Mr Gary Ulman.

Professor Sandford Clark was again appointed as Chair.

## SECRETARIAT

The Secretariat provides support to the LSC and CEO in administering the day-to-day matters of the Council. It comprises a Senior Executive Officer and Senior Policy Officer (both of whom are admitted lawyers), as well as an Executive Assistant to the CEO/Commissioner. The Secretariat team has extensive experience in legal policy and in providing support to advisory bodies and committees.

“In my view the main benefit of the introduction of the Uniform Law is the improved protection for consumers, central to which is the better disclosure of costs. The cost disclosure form has made a huge difference. It is simpler for practitioners to use and easier for consumers to understand. Dispute resolution is another area where we have seen significant improvement, with the changes helping bring practitioners and consumers together to resolve issues.”

**Ms Fiona Bennett**  
Council Member

# Key Achievements in 2015-2016

The Council's main priorities in 2015-2016 were to work with the Uniform Law bodies to embed the new Uniform Law scheme, ensure it is implemented consistently across NSW and Victoria and explore other opportunities to remove jurisdictional barriers. This year we have worked to settle outstanding rules and guidelines, develop measures for consistent implementation and started work on longer-term strategic initiatives.

The Uniform Law is a co-regulatory model that relies on collaboration between all stakeholders. The efforts of local regulators and professional bodies, who have demonstrated a willingness to work together and see the bigger picture, have been critical to the achievements the LSC is reporting here.

## Benefits of working from the same statute:

- The Uniform Law settings establish a more efficient system; using foreshadowed costs determinations enabling parties to see how disputes might be resolved quicker and at less overall cost;
- Less time and costs for parties in tribunals and courts in costs disputes is a result of this; and
- Streamlined, single path consultation arrangements for legislative or rule changes. The Uniform Law establishes the Council as a rule making body for all participating jurisdictions, subject to the approval of the Standing Committee. This is inherently more efficient and effective than having multiple consultation layers in several States.

## FEWER DISPUTES AND FASTER RESOLUTION

The Uniform Law enables the Legal Services Commissioners to flag in advance what the expected orders in costs disputes may be, through use of the determination power. This provides an impetus for the parties to resolve disputes by consent and is bringing about positive results. To this end the LSC developed a common complaint form and a short cost disclosure form. Together these and other improvements and common practices will serve to unify the profession and to improve its standing in the community. In time there should emerge a common understanding among consumers in participating jurisdictions about what can be expected when they engage a law practice.

The LSC is very pleased to note the Commissioner's advice that the early signs are that smaller numbers of disputes need to go to the Civil and Administrative Tribunals. Matters involving consumer complaints can be determined more quickly and appropriately, making targeted use of the new powers of the Commissioners under section 290. Timely and effective resolution of such matters has achieved better consumer protection outcomes whilst reducing the time spent and resources required by law practices. Parties are required to attempt to resolve matters by informal means first and local regulatory authorities attempt to resolve matters by informal means. Since the commencement of the Uniform Law, there has been a marked decrease in the number of matters referred to the Victorian Civil and Administrative Tribunal (VCAT) or to the Costs Court in Victoria.

This should bring tangible results in operating cost savings for VCAT, and significant cost savings and savings in time, expense and stress for clients and lawyers.

### IMPROVED COOPERATION AND CONSISTENCY

The framework encourages voluntary decisions by Local Regulatory Bodies to take the best of each and combine into an improved approach. Clear but intangible benefits emerge as lawyers and regulatory bodies work from the same statute, the Uniform Law, which inspires cooperation led by goodwill between the local regulatory bodies. For example:

- agreement by Legal Services Commissioners to follow the same practices for out-of-time complaints;
- strong spirit of cooperation being demonstrated in the development of the LSC Uniform Law database, the first results of which can be seen from page 56;
- agreement to use a common complaint form and harmonisation of data collection practices (for dispute resolution and professional discipline matters) across the two States lays the groundwork to encourage consistency and promote best practice;
- harmonisation of practices in the two States for lawyers working overseas has occurred with simplification of the processes in Victoria;

- Admissions Committees and Admission Boards working together (refer to Report of the Admissions Committee on page 36 for more detail); and
- alignment of trust activity year between the two States. From March 2017, Victoria will shift its end of trust account year to close on 31 March to align with NSW and other States. A new risk based trust account inspections system has been developed in consultation with the LIV. There is a new online statement for trust reporting and a single approved examiner's course was being developed during the year.

### RULES, POLICIES AND GUIDELINES

The LSC can make rules to regulate the legal profession where the Uniform Law gives the Council an express power to do so or otherwise where the making of a rule is necessary or convenient to carry out or give effect to the Uniform Law.

#### Legal Costs

The commencement of the Uniform Law brought reform to the cost disclosure and billing obligations of the profession in respect to consumers (while exempting commercial and government clients from most of the provisions). The obligations include a duty to charge fair, reasonable and proportionate costs, take all reasonable steps to ensure a client is giving informed consent and inform a client if there is any significant change, including to legal costs.

The LSC spent a significant amount of time in the first nine months in discussion with the profession, especially in Victoria, about the requirement for disclosure of an estimate of total legal costs. There were also concerns that the Law makes a cost agreement void for any contravention of the disclosure obligations (although, section 178 also allows costs recovery after a cost assessment or determination). This dialogue was helpful in improving understanding of the provisions, which are intended to promote better communication between lawyers and clients.

### **Anti-voiding rule**

The LSC responded by developing a rule change that would address these concerns while upholding the consumer protection objectives set out in section 169. Following several rounds of consultation the LSC made a new 'anti-voiding' rule which came into effect on 22 April 2016. The new rule dis-applies sections 178(1) and (2), which renders a cost agreement void, where a relevant authority, costs assessor, court or tribunal is satisfied that:

- the law practice has remedied a failure to disclose total legal costs within 14 days of becoming aware of the breach;
- the non-disclosure was not substantial;
- objectively it would not be reasonable to expect that the non-disclosure affected the decision making of the client in any relevant respect; and
- the law practice had thereafter taken reasonable steps to comply with the costs disclosure obligations in Part 4.3 of the Uniform Law.

### **LSC Guideline Direction - Costs Estimates**

To facilitate the introduction of the new costs disclosure provisions, the LSC also issued a Guideline and Direction to the DLRA's which set out its view on the obligation to give an estimate of total legal costs. The Direction requires regulatory bodies to inform the LSC on the extent to which the views expressed in the Guideline are applied in practice. The Guideline and Direction was the subject to extensive discussion before being settled in March 2016. The Commissioner also issued a Guideline in the same terms as a part of this package of measures to promote a consistent approach in dispute resolution and professional discipline.

The LSC has been keen to ensure its approach is faithful to the law and practical to implement, and accepts that it is possible (and often helpful to clients) to provide a range of estimates, provided these are accompanied by a single figure estimate of total legal costs.

The LSC did not support proposals to allow a client to waive their core rights to cost disclosure, or for commercial or government clients to opt into cost assessment, which they can address by contract.

### **Amendments to the Uniform General Rules**

A small number of adjustments to the rules were made to address issues identified by the profession in the settling in period. Some of these changes, although apparently small in themselves, affect the day-to-day operation of law practices and help to ensure that regulation is properly targeted and efficient.

### ***Supervised legal practice***

In December 2015 the LSC made an urgent amendment to Uniform General Rule 7 to ensure that practitioners under supervision who are out-posted to a client can be supervised by a senior lawyer who is not a principal of the employing law practice. It is a common practice for large law practices to second junior practitioners to work as part of an in-house legal team for a large client such as a bank or government department. The LSC was mindful of the responsibility of principals, and has required that the supervision must at least be equivalent to the supervision provided by a principal of the employing law practice.

### ***Trust account statements***

In February 2016 the LSC removed the requirement for a law practice to give a client a trust account statement when a statement has already been given in the reporting period; the ledger or account record is zero; and there has been no further transaction on the account since the previous statement was given. Previously, this was allowed on a 12-month transition basis to enable law practices to adjust their internal systems to the Uniform Law. The amendment moved the transitional provision to a permanent basis.

### ***Receipting trust money***

The LSC revisited Uniform General Rule 36(4) that required an original receipt to be given in every instance that trust money is received. The rule was made for consumer protection reasons, but has proved difficult and time consuming to implement. The consultation for this matter will be completed in 2016–2017.

## **OTHER INITIATIVES**

### **Professional Indemnity Insurance (PII)**

The LSC is responsible for approving the professional indemnity insurance policies of the non-participating jurisdictions that cover legal practice in NSW and Victoria. In the first year of operation, we adopted a light touch approach and foreshadowed our intention to extend the minimum standards applicable to NSW and Victorian PII to the other jurisdictions. In June 2016 the LSC formally adopted the minimum standards for the PII of the other States and Territories. It engaged specialist legal advisers and has worked with other States and Territories to settle any outstanding issues for PII for 2016–2017. This means that consumers in NSW and Victoria will have an equal minimum level of protection regardless of where their lawyer is based. The minimum standards will be kept under review by the Council from time to time to ensure consistency with PII standards elsewhere in Australia.

### **External Examiners**

The system of external examination is an important assurance of integrity and probity in the management of trust accounts. The LSC set up an External Examiners Working Group to develop a new course for people wishing to be appointed as external examiners in NSW and Victoria. Once the course has been approved by the LSC, the DLRA's will undertake a major training exercise before the appointments of existing examiners expire (on 1 July 2017). Under the new system, an External Examiner in one participating State will be able to examine trust account records in another.

Other work during the year included harmonising the trust account year and the due dates for the External Examiner's reports.

### **Single Trust Account**

The LSC convened a Single National Trust Account Working Party in October 2015 to investigate how a single trust account model could be achieved. The concept of a single trust account was considered as part of the COAG National Project but not pursued because of the complexity of allocating interest to the Public Purpose Funds. An interim report was provided to the Standing Committee in December 2015. This identified some of the challenges to adopting a single national trust account model. The Working Party will convene again before the end of 2016 and the LSC will make a further report to the Standing Committee.

In the interim, we have been investigating an alternative way of simplifying trust account obligations for law practices operating in more than one State.

### **Legal Profession Register**

The Legal Profession Register was originally conceived as part of the COAG National Project and the LSC has been asked to investigate how a combined Register might be created within the Uniform Law Framework. The LSC has identified the practical and regulatory issues of a single centralised register, and submitted an interim report to the Standing Committee on 15 December 2015.

The Council will continue to work with stakeholders to progress this. The Legal Profession Registers are State-based and the first step

commenced this financial year was to ensure uniformity across the States of the existing Registers.

### **Business structures**

Provisions for partnerships of foreign lawyers were not expressly mentioned in the Uniform Law and following consultation, an amendment was included in the Legal Profession Uniform Law Application Amendment Bill 2016 that was introduced to the Victorian Parliament on 7 June 2016.

The LSC has also consulted the DLRA's on whether partnerships of incorporated law practices should be a business structure allowed under Uniform Law, as is possible under application legislation in Victoria. An interim report was submitted to the Standing Committee in December 2015. The LSC expects to settle this question in the next financial year.

## **STAKEHOLDER ENGAGEMENT**

A key role of the Council and of the Commissioner is to encourage other Australian States and Territories to join the Uniform Law scheme. We are making gradual progress, and the jurisdictions continue to observe with interest the progress with implementation of the Uniform Law.

In addition, the LSC is seeking to consult and engage with a broad range of stakeholders and build consensus on important policy issues. This approach will ensure 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.

### **Regular consultation with the profession and regulators**

The LSC held a Uniform Law Implementation Group Meeting on 29 October 2015 which was the third of three coordination meetings as part of the first phase of implementation. The overall view expressed was that implementation of the Uniform Law is progressing well and that collaboration between organisations has been fundamental to this result.

Over the year the Uniform Law bodies have met in different forums and on specific projects. For example, the LSC convened a Consistency Workshop on 7 November 2015, to discuss opportunities for common practice. Two results were an agreement on common trust years and the development of a single External Examiner's course.

The LSC convenes frequent meetings with State Legal Services Commissioners, and these have proved to be an efficient way of working through a large number of topics. In this reporting period, meetings were held in July 2015, and in January, April and June 2016.

In January 2016, the LSC and the State Commissioners held a combined meeting with representatives of the Victorian and NSW Governments in Melbourne. Another important role of the Council's communication and engagement with stakeholders is to maintain regular contact with them on specific topics.

### **Consultative Forums**

An early priority of the Council is to build awareness and understanding of the Uniform Law Framework within the profession. While most day-to-day obligations that apply to practitioners do not change under the Uniform Law, it is important that practitioners and law practices have accurate, timely information about their obligations and we seek to keep our website up to date to achieve this.

The Council and Commissioner also recognise the importance of their work being shaped and informed by the views of consumers and practitioners. Consultative Forums are an opportunity to sound out ideas, receive advice and encourage innovative ideas and thinking.

The LSC has also launched a twice-yearly open forum that invites a cross section of consumers and practitioners to discuss Uniform Law topics, exchange views and provide feedback to the LSC.

The first forum was held in Sydney in November 2015, with representatives from seniors and disabilities groups as well as legal aid, community legal centres, regional practitioners and larger law firms. Ideas around legal costs, the practitioner-client relationship, powers of attorney and the Legal Profession Register were workshopped. We received a strong message that consumers want clear information. Informed consent and client-practitioner duties were raised as being particularly crucial for older clients with declining mental capacity, clients with disabilities, and people from culturally and linguistically diverse backgrounds.

A second forum was held in June 2016 in Melbourne, involving representatives from consumer, women's and ethnic community organisations. This was conducted with the assistance of a professional facilitator. The forum workshopped costs, disclosure issues, and provided useful feedback on ways to consult and research consumer views more effectively in future.

### **Presentations, seminars and addresses**

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

- On 21 July 2015 the CEO spoke to a group from the Eastern Solicitors Law Association at Box Hill (Victoria);
- On the same day the CEO gave an interview on ABC Radio about the Uniform Law scheme;
- In August 2015 the LSC presented a session at the In-house Government Lawyers Forum organised by the General Counsel Group (Sydney) and made an address to the Eastern Suburbs Law Association (Victoria);
- On 17 November 2015 the CEO was a guest speaker at the Annual General Meeting of The College of Law (Sydney);
- In November 2015 the CEO was the keynote speaker at the annual national Conference of Regulatory Officers (CORO), in Hobart, Tasmania;
- The CEO was a guest presenter to the Australian New Zealand Legal Ethics Colloquium in December 2015 on the impacts of the Uniform Law;
- In early February 2016 the CEO gave a presentation to the Commonwealth Director of Public Prosecutions (CDPP), in Sydney, that was simultaneously broadcast via video link to the CDPP in offices interstate;
- Also in February 2016, the CEO took part in the Law Institute of Victoria's (LIV) annual conferences on a panel of speakers addressing the theme: "The Legal Profession Uniform Law: eight months on: what's happened, what issues have been identified and what are the opportunities?";
- On 18 February 2016, the CEO addressed the Council of the Law Society of NSW;
- In Victoria, the CEO addressed the North East Law Association's annual conference on 25 February 2016 in Wangaratta;
- In April 2016, the Chair and the CEO attended a meeting of the South Australian Law Society Council where the Chair delivered an address to the Council. This event provided an opportunity for the profession in SA to hear first-hand about the Uniform Law Framework; and
- On 10 June 2016 the CEO addressed the Board of the Law Firms Australia, a national grouping of large law practices and a member of the Law Council of Australia.

## BUILDING A WELL-GOVERNED ORGANISATION

### Budget

The LSC and the Commissioner operate on a triennial budget. The Standing Committee has approved the 2016 budget and provided assurance of continued funding for the purpose of the 2015–16 financial statements.

The Standing Committee also agreed to amend the Uniform Law to allow for the consolidation of the financial accounts of the Council and Commissioner, and an amendment to this effect is included in the Legal Profession Uniform Law Application Amendment Bill 2016 that was put before the Victorian Parliament on 7 June 2016.

In response to a request from the LSC, the NSW Treasurer prescribed the heads and officers of the LSC and Commissioner as statutory bodies for the purposes of Division 4, Part 3 of *Public Finance and Audit Act 1983 (NSW)*. This amendment provides the legal basis for the NSW Audit Office to audit both the LSC and the Commissioner.

### Defining the relationship between the Council and the Commissioner, as CEO of the Council

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

The day-to-day running of the Council's Secretariat is dictated both by the structure of the Uniform Law and the fact that the Council is a part-time body. The Commissioner and staff of the Secretariat work full time on behalf of the Council. In practice, the day-to-day operations of the Council are run by the CEO and by the staff of the Secretariat, in close consultation with the Chair. These arrangements were endorsed by the Council in August 2015.

The LSC has an express power to delegate any of its functions, except the power of delegation, to an entity specified in the Uniform Rules. During 2015–2016 the LSC issued a delegation to the Commissioner for the approval of the current combined NSW and Victorian External Examiners Course for 2016.

A delegation was also issued to the Chair of the LSC and the Commissioner for the approval of professional indemnity insurance policies of non-participating jurisdictions.

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

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

## Financial operations

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 supported by the Department.

The LSC operates as a cost centre in the Department and the Department provides corporate services to the LSC on a fee for service basis. The costs of the Council and the Commissioner are not large. The current budget total of \$1.35m is shared between participating jurisdictions. Therefore the costs of the Uniform Law are not great by any measure. A national regulatory scheme covering all practitioners in Australia would cost no more than \$20-\$30 per legal practitioner, per year.

Throughout 2015–2016 the LSC continued to work with the Department to define the financial governance arrangements that support the day-to-day financial operations of the LSC and Commissioner. The LSC developed a draft Agreement for Financial Management and Support Arrangements, which remained under discussion at the end of the reporting period.

In June 2016 we also finalised the LSC and Office of the Commissioner for Uniform Legal Services Regulations Governance Manual. The Manual sets out the functions, roles and responsibilities of the LSC and CEO and Commissioner, including the relationship to the Standing Committee and DLRA's. The Privacy Management Plan required by the *Privacy and Personal Information Protection Act 1998 (NSW)* was developed and a draft was submitted to the Privacy Commissioner for comment.

## Staffing

In March and April 2016 the LSC recruited staff for three permanent roles that had been filled by staff on temporary contracts. The LSC has also entered into an MOU with the University of New South Wales, and had the benefit of two excellent interns during the summer and winter recess. This bolstered the capacity of the Secretariat, and provided additional research assistance.



# Progress Against Our Strategic Plan

The Council's operations are guided by a Strategic Plan focussed on four key action areas.

<b>Action 1: Drive strategic initiatives that embed reform and respond to emerging issues and opportunities</b>	
<b>2015–2016 Priority Actions</b>	<b>Work undertaken/underway</b>
<ul style="list-style-type: none"> <li>Establish information exchange framework to monitor dispute resolution and professional discipline functions</li> </ul>	<ul style="list-style-type: none"> <li>We have completed stage one of the Data Exchange project focussing on Chapter 5, which is set out in detail later in this report. We hope to extend the project to the other Chapters of the Uniform Law.</li> </ul>
<ul style="list-style-type: none"> <li>Undertake options analysis about the potential for a single national trust account. Finalise a report for consideration of the Standing Committee by late 2015</li> </ul>	<ul style="list-style-type: none"> <li>We have continued to investigate the possibility of establishing arrangements to permit an overall single national trust account, while noting the flexibility that the Uniform Law already offers.</li> </ul>
<ul style="list-style-type: none"> <li>Collaborate with the Admissions Committee to develop guidelines or directions for DLRAs to exempt persons from satisfying specified academic qualifications or Practical Legal Training or both for section 18 of the Uniform Law and for conditional admission of foreign lawyers for section 20 of the Uniform Law</li> </ul>	<ul style="list-style-type: none"> <li>Refer to Report of the Admissions Committee for detail (page 36).</li> </ul>
<ul style="list-style-type: none"> <li>Collaborate with DLRAs about supervision standards. In particular, work with admitting authorities and Admissions Committee to monitor conditions imposed on Admissions</li> </ul>	<ul style="list-style-type: none"> <li>We raised the issue with local regulatory authorities, insurers and professional associations to ascertain what measures they have/can adopt to identify problems and promote good standards of supervision. The LSC has adopted a watching brief on this matter.</li> </ul>
<ul style="list-style-type: none"> <li>Examine the current exemptions regime for professional indemnity insurance</li> </ul>	<ul style="list-style-type: none"> <li>We have worked to implement minimum standards for lawyers working in Victoria and NSW (as well as in other jurisdictions) and for 2016–2017 and future years until further notice. For more detail see page 2.</li> </ul>
<ul style="list-style-type: none"> <li>Collaborate with DLRAs about arrangements for external examinations of trust accounts; development of a single External Examiner's course and common External Examiners reporting regime</li> </ul>	<ul style="list-style-type: none"> <li>We have worked towards the development of an External Examiner's course, establishing a Working Party with representatives from the Law Society of NSW, the LIV and the VLSC.</li> </ul>
<ul style="list-style-type: none"> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>Potential issues connected with extending the definition of law firm have been identified and we have facilitated discussion between NSW and Victoria to address these.</li> </ul>
<ul style="list-style-type: none"> <li>Undertake options analysis of the potential for an Australian Legal Profession Register to cover NSW and Victoria and any future participating jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>In addition to seeking feedback on providing consistent content for the proposed Australian Legal Profession Register in the Consultative Forums, we have commenced work in conjunction with other stakeholders to establish by suitable links to existing registers of the legal profession registers.</li> </ul>
<b>Priority Actions for 2016–2017</b>	
<ul style="list-style-type: none"> <li>Consumer attitudes review through formal market research, Consultative Forums and other mechanisms as required by the Council</li> <li>Examine operation of the managed investment scheme exemption framework</li> <li>Further progress the Australian Legal Profession Register to cover NSW, Victoria and any future participating jurisdictions</li> </ul>	

<b>Action 2: Develop fit for purpose rules, policies and guidelines</b>	
<b>2015–2016 Priority Actions</b>	<b>Work undertaken/underway</b>
<ul style="list-style-type: none"> <li>Investigate the need for a policy or guideline with respect to retainers</li> </ul>	<ul style="list-style-type: none"> <li>The Council identified and gave initial consideration to a draft rule to better define retainers as “non trust money”. This work is continuing.</li> </ul>
<ul style="list-style-type: none"> <li>Develop Guidelines on internal review of DLRA decisions and Costs</li> </ul>	<ul style="list-style-type: none"> <li>Consultation and drafting of a Guideline is at an advanced stage.</li> </ul>
<ul style="list-style-type: none"> <li>Monitor the requirements of the Admissions Rules for police and student conduct reports, as part of its general monitoring role and take further action, if necessary</li> </ul>	<ul style="list-style-type: none"> <li>Refer to Report of the Admissions Committee for detail (page 36).</li> </ul>
<ul style="list-style-type: none"> <li>Develop an anti-voiding rule for section 178(1) of the Uniform Law</li> </ul>	<ul style="list-style-type: none"> <li>Legal Profession Uniform General Amendment (Costs Disclosure) Rule 2016 (effective 22 April 2016) was made to ameliorate the strict voiding effect of section 178 in the event of a minor contravention that is rectified within 14 days of the law practice becoming aware of it. The intention is to encourage openness and compliance, facilitate disclosure of information to clients and reduced concerns about the risk of a disproportionate penalty.</li> <li>At the same time, we also issued a Costs Estimates Guideline on 20 April 2016 to assist DLRA’s on how clients may be kept informed by legal practitioners of total legal costs and to assist in the implementation of this important aspect of the Uniform Law.</li> </ul>
<ul style="list-style-type: none"> <li>Determine other arrangements needed to support operation of the scheme, including:               <ul style="list-style-type: none"> <li>Supervision by suitably qualified practitioner who is not a principal or employer;</li> <li>Protocols for receiving trust money (r58); and</li> <li>Alignment of trust account reporting year.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Legal Profession Uniform General Amendment (Supervised Legal Practice) Rule 2015 (effective 16 December 2015) was made to ensure that an out-posted practitioner can be supervised by a suitably qualified practitioner who is not a principal of their employer law practice.</li> <li>Legal Profession Uniform General Amendment (Trust Account Statements) Rule 2016 (effective 26 February 2016) was made to relieve law practices of the burden of providing a trust account statement on 30 June where the account balance is zero, a statement has been provided and there has been no further transaction on the account.</li> <li>We worked with Regulatory Bodies to align the trust account reporting year between Victoria and NSW, bringing both States into line with the trust account reporting years of all other Australian jurisdictions.</li> </ul>
<b>Priority Actions for 2016–2017</b>	
<ul style="list-style-type: none"> <li>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)</li> </ul>	

For more detail on some of the rules see the Achievements section on page 49.

<b>Action 3: Undertake highly effective stakeholder engagement and communication</b>	
<b>2015–2016 Priority Actions</b>	<b>Work undertaken/underway</b>
<ul style="list-style-type: none"> <li>• Focus on education activities to assist practitioners and consumers understand the Uniform Law scheme</li> </ul>	<ul style="list-style-type: none"> <li>• We have established a record through a number of seminars, speaking engagements and other activities, on which we intend to build, of seeking to collaborate with other stakeholders.</li> <li>• We have undertaken a range of stakeholder liaison meetings.</li> </ul>
<ul style="list-style-type: none"> <li>• Establish working arrangements with DLRA with respect to the Commissioner’s functions</li> </ul>	<ul style="list-style-type: none"> <li>• Commissioners of participating States meet bi-monthly.</li> </ul>
<ul style="list-style-type: none"> <li>• Hold biannual Consultative Forums</li> </ul>	<ul style="list-style-type: none"> <li>• We have held two Consultative Forums in Sydney and Melbourne and are working to enhance the ways in which we consult.</li> </ul>
<ul style="list-style-type: none"> <li>• Consultation to inform strategic initiatives and development of rules, policies and guidelines</li> </ul>	<ul style="list-style-type: none"> <li>• Consultation was undertaken in accordance with sections 425-426 of the Uniform Law with LCA, Council of Chief Justices, the ABA, the Standing Committee of Attorneys-General and other relevant advisory bodies as required.</li> </ul>
<ul style="list-style-type: none"> <li>• Provide practitioners and consumers with timely and accurate information about the Uniform Law scheme</li> </ul>	<ul style="list-style-type: none"> <li>• The work that we did to make new rule 72A (plus a related Costs Estimates Guideline and worked examples) explain the operation of our opinions expressed in the Guideline, was undertaken in response to significant expressions of concern in one State about how to comply with the costs disclosure provisions. In so doing we received valuable feedback, which we acted on, concerning the nature of an estimate.</li> </ul>
<ul style="list-style-type: none"> <li>• Engage with non-participating jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>• Monthly meeting of the LSC Collaborative Group where the heads of all legal profession regulatory bodies in Australia confer</li> <li>• Regular program of visits and engagements in other jurisdictions</li> <li>• High-level briefing visits conducted in South Australia, Western Australia, Tasmania, ACT</li> </ul>
<ul style="list-style-type: none"> <li>• Build awareness of the scheme</li> </ul>	<ul style="list-style-type: none"> <li>• Several information exchanges and meetings with interstate Law Societies on technical aspects of the Uniform Law</li> <li>• We have undertaken 12 speaking engagements.</li> <li>• Information made available through updates to LSC website</li> </ul>
<b>Priority Actions for 2016–2017</b>	
<ul style="list-style-type: none"> <li>• Review and update communications and engagement strategy</li> <li>• Consultation to inform review of the Council’s strategic plan</li> </ul>	

<b>Action 4: Build a well-governed and unified organisation</b>	
<b>2015–2016 Priority Actions</b>	<b>Work undertaken/underway</b>
<ul style="list-style-type: none"> <li>• Develop a governance document</li> </ul>	<ul style="list-style-type: none"> <li>• LSC and Office of the Commissioner for Uniform Legal Services Regulations Governance Manual completed</li> </ul>
<ul style="list-style-type: none"> <li>• Establish suitable financial administration arrangements through the Department of Justice NSW</li> </ul>	<ul style="list-style-type: none"> <li>• The LSC developed a draft Agreement for Financial Management and Support Arrangements which is currently under discussion with the Department of Justice.</li> </ul>
<ul style="list-style-type: none"> <li>• Establish a Delegations Framework</li> </ul>	<ul style="list-style-type: none"> <li>• Delegations Framework is in place</li> </ul>
<ul style="list-style-type: none"> <li>• Coordinate Admissions Committee nominations</li> </ul>	<ul style="list-style-type: none"> <li>• 2016 Admissions Committee appointments process managed</li> </ul>
<ul style="list-style-type: none"> <li>• Develop a Privacy Plan</li> </ul>	<ul style="list-style-type: none"> <li>• Privacy Management Plan implemented following consultation with the NSW Privacy Commissioner</li> </ul>
<ul style="list-style-type: none"> <li>• Administrative support for Council and Admissions Committee meetings and priority issues</li> </ul>	<ul style="list-style-type: none"> <li>• Administration and policy support provided to both the Council and the Admissions Committee as required</li> </ul>
<b>Priority Actions for 2016–2017</b>	
<ul style="list-style-type: none"> <li>• Coordinate Council and Admissions Committee nominations</li> <li>• Annual reporting</li> <li>• Maintain register of delegations</li> <li>• Compliance with oversight legislation</li> </ul>	

# Organisational Arrangements

## HOSTING ARRANGEMENTS FOR THE LEGAL SERVICES COUNCIL AND COMMISSIONER FOR UNIFORM LEGAL SERVICES REGULATION

NSW hosts the LSC and Commissioner. As a result the LSC and Commissioner's office is based in Sydney NSW. Staff (apart from the Commissioner) are NSW public service employees under the *Government Sector Employment Act 2013* (NSW). The NSW Department of Justice provides communication, human resources, information technology and finance services to support the LSC. These services are currently provided under service level agreement arrangements.

Some oversight legislation which commonly applies to NSW Government agencies, such as the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Government Information (Public Access) Act 2009* (NSW) also applies to the LSC and to the Commissioner. During the year there have been no requests for access to information held by the LSC under oversight legislation.

## FUNDING ARRANGEMENTS

The LSC's funding arrangements are described in an Inter-Governmental Agreement between NSW and Victoria, entitled the *Bilateral Agreement on the Legal Profession Uniform Framework*.

The LSC is jointly funded by the jurisdictions participating in the Uniform Law scheme (currently NSW and Victoria). The LSC's budget is approved by the Standing Committee (currently comprising the NSW and Victorian Attorneys-General).

Each jurisdiction individually determines how it will meet its funding obligations. The contribution required is funded in accordance with each participating jurisdiction's proportion of the total number of 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.

In Victoria, the Victorian Legal Services Board, each financial year, must pay an amount determined by the Attorney-General as Victoria's contribution to the funding of the Legal Profession Uniform Framework. This amount is paid 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). During 2015–2016 the Council worked to formalise the funding arrangements between it and the NSW Department of Justice. This was not able to be completed during the financial year for reasons beyond the control of the Council.

Audited financial statements are presented in this report from page 78.

For 2015–2016 an operating budget of \$1,344,521 was approved. This amount was funded by a contribution from the Law Society of NSW of \$831,855 and a contribution from the Victorian Legal Services Board of \$512,666

## LSC REGISTER OF DELEGATIONS

The LSC may delegate certain functions to the Chair of the Council or the Commissioner.

The Uniform Law requires that the LSC register be reviewed annually. As no delegations were made in 2014–2015, no changes were identified.

The four delegations made during the 2015–2016 are set out in the table below.

Date	Delegate	Function	Duration
14 December 2015	Commissioner for Uniform Legal Services Regulation (under section 397 Uniform General Rules 65 and 107)	Approve course or courses of education by persons who have been designated and are appointed as External Examiners under Part 4.2 of the Uniform Law.	30 June 2016
29 June 2016	Commissioner for Uniform Legal Services Regulation (under section 397 Uniform General Rules 65 and 107)	Approve course or courses of education by persons who have been designated and are appointed as External Examiners under Part 4.2 of the Uniform Law.	29 September 2017
29 June 2016	Commissioner for Uniform Legal Services Regulation (under section 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 Part 4.4 of the Legal Profession Uniform Law.	28 September 2017
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

# Report of the Admissions Committee

The following is the report of the Admissions Committee of the Council for 2015–2016.

Having previously developed the Uniform Admission Rules which came into effect on 1 July 2015, the Committee encouraged, assisted and cooperated with, the Law Admissions Consultative Committee (LACC), the NSW Legal Profession Admission Board (LPAB) and the Victorian Legal Admissions Board (VLAB) in responding to a number of high priority admission policy issues that had been previously identified by the Committee. It also developed proposed amendments to the Admission Rules 2015.

## AMENDMENT TO RULE 11

Practical difficulties are occasionally experienced by people who seek to complete a legal qualification in Australia that has been commenced but not completed overseas. Law schools sometimes give credit for subjects towards an Australian degree that do not comply with one or more of the academic prerequisites for admission. Students may not discover the error until they apply for admission.

After discussions with the Council of Australian Law Deans, LACC thus recommended that people with partially completed overseas legal qualifications should be able to apply to an Admitting Authority for a direction about what additional studies will be required to obtain admission in Australia.

All Australian Admitting Authorities endorsed this proposal. While other Admitting Authorities can implement this change without changing their Admission Rules, the NSW LPAB and VLAB

cannot do so unless minor amendments are made by substituting “wholly or partially completed” for “completed” in rules 11(1) and 11(3)(a) of the Uniform Admission Rules.

Having undertaken the consultation required by section 426(3) of the Uniform Law about these proposed amendments, the inaugural Admissions Committee, at its meeting on 8 April 2016, resolved to submit a final draft of the amendments to the Council, together with a report demonstrating compliance with the requirements of section 426(3).

## HEALTH ASSESSMENT POLICY

Submissions made to the Committee on the Consultation Draft of the Admission Rules proposed that a policy be developed to indicate how the Boards would use their powers under rules 23 and 24 of the Uniform Admission Rules relating to Health Assessments and Health Assessment Reports.

Accordingly, the Chair of the Committee and the CEOs of the NSW LPAB and VLAB formed an informal working group to develop a possible policy, drawing on a Mental Health Policy previously developed by the Victorian Legal Services Board for its own purposes. The draft was circulated to members of the Committee and both Admission Boards for their comments. After making minor changes as a result of that consultation, a final version was adopted by both Admission Boards.

## ADMISSION OF OVERSEAS APPLICANTS

The Committee convened a Foreign Lawyers Working Group to consider how the provisions of sections 18 and 20 of the Uniform Law might be put into effect. Section 18 allows an Admission Board to exempt an applicant from the usual academic and practical legal training prerequisites, in the light of the applicant's legal skills or experience. Section 20 provides for foreign lawyers to be admitted subject to certain types of condition specified in the Uniform Law, which must be observed after a person is admitted. This has not previously been possible in NSW or Victoria, although it has been possible in some other Australian jurisdictions.

As different views about the potential scope of section 18 emerged at the initial meeting of the Foreign Lawyers Working Group, the NSW LPAB sought to develop interim procedures for processing anticipated applications under these sections which might arise before the Foreign Lawyers Working Group reached a common view. With the assistance of the Committee's Chair, these were developed into *Agreed Interim Procedures* for assessing applications from people with qualifications of experience obtained overseas. They were subsequently adopted by both Admission Boards, endorsed by the Committee, and are now being applied by both Admission Boards.

At the suggestion of the Standing Committee, each of the Admission Boards has also entered into a Memorandum of Understanding with the relevant Practice Regulator about how the Board will inform the Practice Regulator of any conditions attached to the compliance certificate of a foreign lawyer granted conditional admission under section 20.

## COMMON CONSIDERATIONS RELEVANT TO EXPERIENCED PRACTITIONERS

Some years ago, LACC developed a document, based on practices deployed by the NSW LPAB, about granting exemptions from the usual academic and practical legal training prerequisites to experienced practitioners from other jurisdictions. These were subsequently adopted, and are presently applied, by all Australian Admitting Authorities.

As the *Agreed Interim Procedures* referred to in item 3 seek to apply these Common Considerations to applications made under section 18 of the Uniform Law, the Chair of the Committee sought to redraft them, using terms that are more compatible with usage adopted by the Uniform Law and proposed an amended version to LACC.

LACC endorsed the amended version, which has subsequently been adopted and applied by all Australian Admitting Authorities, including the NSW LPAB and VLAB.

## MANDATORY PROFESSIONAL ASSESSMENT OF OVERSEAS APPLICANTS FOR ADMISSION

At its first meeting, the Foreign Lawyers Working Group agreed with the suggestion that the feasibility of developing and administering a means of professional assessment, comparable to the English Qualified Lawyers Transfer Scheme, should be further investigated as a possible aid to applying section 18 of the Uniform Law.

Subsequently, VLAB commissioned Professor Paul Maharg to examine the development and use of mandatory professional assessment of lawyers seeking admission in England, Scotland and parts of North America; and to explain how such a scheme might be developed for use in Australia. His paper, entitled *Mandatory Professional Assessment of Foreign Lawyers Entering Australia: an Overview of Models* was presented to LACC, which sought the views of all Admitting Authorities and of the Admissions Committee.

In view of the guarded responses received from Admitting Authorities and the results of a number of meetings with significant legal firms in England in April 2016, LACC decided to defer any further investigation, pending any conclusions that might arise from the Assuring Professional Competence development program mentioned in item 10 below. This conclusion was reported to the Admissions Committee at its meeting in July 2016.

### **CASE STUDIES OF OVERSEAS APPLICANTS FOR ADMISSION**

In order to consider how applications from foreign lawyers might in future be assessed under the *Agreed Interim Procedures* mentioned in item 3, the Chair, assisted by the responsible committees of the NSW LPAB and VLAB, prepared 12 case studies. These compared how such applications might be assessed pursuant to rule 11 of the Admission Rules 2015, using section 18 and the revised Common Considerations Relevant to Experienced Practitioners, and using conditional admission under section 20 of the Uniform Law.

These case studies were subsequently considered by the Foreign Lawyers Working Group, LACC and the Admissions Committee. Based on comments received, the Chair produced some draft Template Conditions that might possibly be used when applying section 20. These, in turn, were submitted to members of the Foreign Lawyers Working Group and LACC for their comments, before the term of the inaugural Admissions Committee expired.

Comments on the draft Template Conditions were received from the Law Society of NSW. Although no Admissions Committee was then in existence, Professor Clark, in his capacity as Chairman of LACC and with the support of Mr Murray Hawkins of the LCA, produced a further Discussion Paper suggesting ways in which the Admission Boards and Practice Regulators might possibly use their respective powers over admissions and practising certificates in complementary ways to achieve the objectives that underlie section 20. This Discussion Paper was also submitted to members of the Foreign Lawyers Working Group, LACC and the new Admissions Committee, seeking their respective comments. No comments have yet been received.

### **STALE QUALIFICATIONS**

Rules 5(2) and 6(4) of the Admission Rules allow a Board to specify further studies to be undertaken by an applicant for admission who has not previously been admitted, whose academic or practical legal training qualifications are more than five years old. The CEOs of the NSW LPAB and VLAB asked whether more explicit guidelines might be developed to help the Admission Boards apply these discretionary powers consistently.

The Admissions Committee considered a summary of principles that had previously been applied by the Academic Exemptions Subcommittee of the NSW LPAB in such cases and suggested that advice be sought from law school teachers identified by the Council of Australian Law Deans about the assumptions underlying those principles.

In the light of that advice and with the assistance of the relevant committees of the LPAB and VLAB, the Chair produced a report and proposed template for academic studies that might appropriately be required. While the LPAB endorsed the proposed template, VLAB expressed reservations about its prescriptive nature and proposed a more “light-handed” approach. In view of this, the Chair proposed a revised document which has subsequently been adopted by both Admission Boards.

## DISCLOSURE GUIDELINES

Some years ago, LACC developed common guidelines to assist potential applicants for admission to understand what disclosures they need to make to an Admitting Authority when applying for admission. Although the document is for the most part the same in each jurisdiction, an Appendix sets out the particular legislative requirements for each jurisdiction.

When the Uniform Law and Uniform Admission Rules came into effect, it became necessary to correct a number of the previous references in the common part of the document and to prepare an Appendix that would apply in both NSW and Victoria.

The Chair prepared a revised version of the document, which was subsequently adopted by LACC and each of the Admitting Authorities.

## ACCREDITATION STANDARDS FOR LAW COURSES

Submissions made to the Committee on the Consultation Draft of the Admission Rules proposed that explicit Standards should be developed to indicate how Admission Boards would use the powers conferred by rule 7 of the Uniform Admission Rules to accredit or reaccredit law courses and practical legal education providers.

Because of difficulties experienced in applying the existing Council of Australian Law Deans Standards for Australian Law Schools as a tool for accrediting law courses, LACC had already concluded that it would be necessary to try to develop more explicit Standards, specifically for the purpose of accrediting law courses for admission purposes in each Australian jurisdiction. Accordingly, with the approval of LACC, VLAB engaged Mr Chris Roper as a consultant to assist in developing the requisite Standards. This has been done in close cooperation with the Executive of the Council of Australian Law Deans, and successive drafts have been provided to LACC, Admitting Authorities, the Council of Chief Justices and the Admissions Committee for comment. It is anticipated that a final draft might be considered by LACC at its meeting in October 2016.

## ASSURING PROFESSIONAL COMPETENCE DEVELOPMENT PROGRAM

Submissions to LACC's Limited Review of the Academic Requirements for Admission in 2014–2015 urged that further research be conducted about the appropriate future education and training of lawyers, before any significant changes are made to the present academic prerequisites for admission. Coincidentally, as a response to the extensive English Legal Education and Training Review report entitled *Setting Standards* of 2103, the English Solicitors Regulation Authority and the Bar Standards Board had both embarked on developing Competence Statements setting out, in broad terms, the knowledge skills and values expected of modern legal practitioners.

In the light of these developments, LACC prepared a proposal for an *Assuring Professional Competence* development program, comprising two Stages, which may lead to a comparable Competence Statement for Australian legal practitioners, from which the requisite underlying knowledge, skills and values may be derived, and decisions taken about threshold standards for admission to the legal profession; about the academic and practical legal training to precede admission; about regulatory requirements for post-admission supervised legal practice; and about the regulation and content of continuing professional development programs.

The proposal has been endorsed in general terms by all Australian Admitting Authorities, the Council of Chief Justices, and the Admissions Committee. With the support of the Victorian Department of Justice, VLAB has engaged the Nous Group to undertake a Scoping Study for Stage 1.

LACC has also appointed a Steering Committee for the development program, comprising:

- The Hon Justice R S French AC (Chair);
- Professor Sandford Clark;
- Professor Sally Kift (Deputy Vice-Chancellor, James Cook University); and
- Mr John McKenzie (NSW Legal Services Commissioner).

It is anticipated that work on Stage 1 will commence early in 2017.

The Admissions Committee gratefully acknowledges the assistance it has received from the CEOs and committee members of both the NSW LPAB and VLAB, and draws attention to the active cooperation they have displayed in anticipating and resolving issues by agreement between them, in consultation with the Chair of the Committee.

The development of such collaborative relationships between the Admission Boards does much to provide the interjurisdictional consistency foreshadowed by section 3(a) of the Uniform Law.

COMMISSIONER FOR UNIFORM  
LEGAL SERVICES REGULATION

**LSC** LEGAL  
SERVICES  
COUNCIL

**REPORT OF THE COMMISSIONER FOR  
UNIFORM LEGAL SERVICES REGULATION  
2015/2016**

LEGAL PROFESSION  
**Uniform Law**

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13 October 2016

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

Dear Mr Black

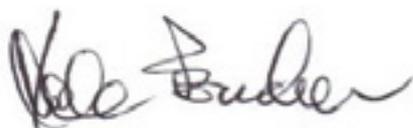
**Annual Report for 2015-2016**

I submit my Annual Report for 2015–2016 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. However, the financial statements have been prepared in accordance with Australian Accounting Standards and have been audited.

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

Yours sincerely



**Dale Boucher**

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

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# Commissioner's Report

This report covers the first full year of operations since Uniform Law commenced on 1 July 2015.

On most occasions it is not necessary to distinguish between the two roles of CEO and Commissioner. I work closely with the Chair and report regularly to the Council as a whole, seeking to keep Council members abreast of all significant issues and developments.

While I am generally engaged in initiatives to advance the Uniform Law, in my role as Commissioner I am more likely to focus on the operation of Chapter 5. In that area I am particularly concerned to ensure the consistent and effective implementation of the Chapter and of the supporting Uniform Rules.

Because the Uniform Law largely adopts independent local regulatory arrangements as it finds them, 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. Where possible we seek to identify areas where there may be opportunities to improve consistency.

Much of my activity from 2015–2016 is noted in the Council's report, but I have also sought to:

- **Promote compliance with the Uniform Law generally**, by working to answer questions about particular provisions of the Act or the rules;
- **Establish data sharing arrangements**, relating to ensuring the consistent and effective implementation of the provisions of Chapter 5, which relate to dispute resolution and professional discipline, but with a view to expanding this to other aspects of the Uniform Law in future;
- **Ensure the Uniform Law scheme is operating cooperatively and well**, and that the Secretariat is operating as efficiently and effectively as possible; and
- **Raise awareness of the Uniform Law Framework** and its objectives, by undertaking speaking engagements and visits, as well as by monitoring developments in other jurisdictions.

## Promoting goodwill and cooperation across participating jurisdictions

As is noted in the Council's Report, there is a tangible spirit of cooperation and goodwill being exhibited by stakeholders to share experiences and adopt consistent practices. This is facilitated by the simple fact that, aside from local administrative arrangements under the Application Acts, everyone is now working from the same statute and the same set of rules.

During the year I took a number of steps to foster this spirit of cooperation and dialogue in the two participating jurisdictions and elsewhere.

This has included:

- convening regular meetings with the Legal Services Commissioners: At these meetings we discuss matters such as:
  - the operation of the Uniform Law or rules generally;
  - adopting consistent practices for complaint handling;
  - practices in respect of making determinations or foreshadowed determinations;
  - costs disclosure questions and identifying examples of better practices being adopted by law firms in this respect;
  - the development of a new external examiners course;
  - a range of project issues including assessing whether the Uniform Law should recognise partnerships of incorporated law practices, developing consistent Uniform law branding; and
  - considering the operation of fidelity funds.
- 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;
- convening a consistency workshop with DLRA stakeholders in October 2015 to discuss a range of topics, all aimed at promoting consistency;
- setting up a working party to look into the concept of a single trust account as requested by the Standing Committee; and
- meeting regularly with professional associations including the LCA, the LIV, the ABA and the LSNSW.

### **Speaking engagements**

I have appeared as Commissioner and represented the LSC in various forums participating in seminars, making presentations and delivering speeches as the special guests of professional bodies. These are listed on page 27.

### **Understanding complaints and harmonising resolution**

Although DLRA's are responsible for handling complaints, I am responsible for promoting consistent practice. To do this I engage in and encourage ongoing dialogue between the Legal Services Commissioners and other stakeholders. I am therefore very pleased that after an initial meeting between the Admissions Boards early in the year there is frequent dialogue about harmonised admission practices. These continue without any further involvement from me as Commissioner and are identified in more detail in the Admissions Committee report on page 36.

I am also grateful to the NSW Law Society for their assistance to date in building and hosting the LSC Uniform Law database and in particular to the CEO for his continuing support. This database will assist me in future by providing detailed information to better understand the complaints process. I would also like to acknowledge the DLRA's for collaborating with us on this project and for the huge amount of goodwill they have displayed. More detail can be found on page 49.

**Dale Boucher**

Commissioner for Uniform Legal  
Services Regulation



“We are already seeing significant benefits to the legal profession and its customers, and other jurisdictions are currently showing more interest in considering whether they wish to join the Uniform Law Scheme in the near future.”

**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. He or she may be reappointed but must not serve for more than a total of ten years.

Mr 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. Mr Boucher's biographical information can be found on page 19.

## RELATIONSHIP TO THE COUNCIL

The Commissioner is independent of the Council in exercising functions under the Uniform Law, except as provided in Part 8.3. Early in the year, he worked at the request of the Council to clarify how the dual relationship of CEO and Commissioner should work. The Commissioner's report was accepted by the Council and was incorporated into the Governance Framework of the Council.

In practice the Commissioner works in close consultation with the Chair and staff of the Secretariat and also serves as 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.

The Commissioner can report 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. 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 as follows:

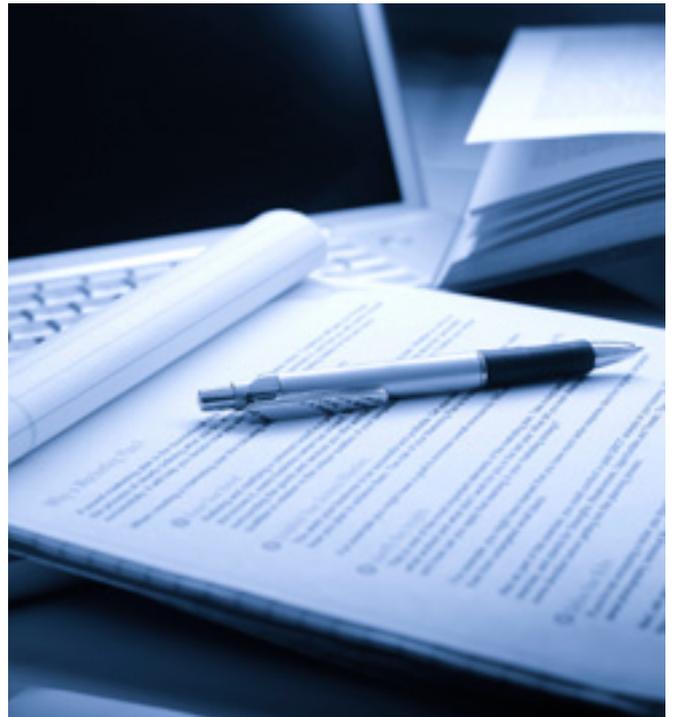
- As Commissioner Mr Boucher reports formally to every meeting of the Council and seeks to keep Council members informed of significant developments or issues between meetings;
- The Council is to examine annual and other reports of the Commissioner and report to the Standing Committee on any matter appearing in or arising from any such report;

- 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. Since the commencement of the Uniform Law, no changes have been suggested; 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 16 of the Council's report depicts the organisational arrangements, including those of the Commissioner.



“I’m particularly pleased to be seeing a substantial reduction in the number of complaints to VCAT. Matters are also being resolved more efficiently, all of which is resulting in significant savings for consumers and practitioners. The Uniform Law is also resulting in jurisdictions working more closely together to resolve differences in policy, and more benefits are becoming apparent every day.”

**Mr Steven Stevens**  
Council Member

# Achievements

## PROMOTING COMPLIANCE WITH THE UNIFORM LAW, INCLUDING COSTS DISCLOSURE REQUIREMENTS

At the commencement of the year there was some concern about the costs disclosure provisions of the Uniform Law, particularly in Victoria, but also to a lesser extent in NSW.

These provisions seek to ensure that consumers are kept informed about any significant changes, including to total legal costs throughout a matter. The Uniform Law, however, largely exempts commercial and government clients. Such clients are free, and are more able, to make their own arrangements to be kept informed about legal costs and in this way the Uniform Law cuts red tape.

The Commissioner had a number of discussions with the LIV and with other stakeholders about costs questions during the year. The Commissioner issued a Guideline and Direction to DLRAs in March 2016 conveying his opinion about how the costs disclosure obligations can be met by law practices. This Guideline and another issued by the Council at the same time can be found on the Council's website.

It may take time for the total legal costs disclosure obligation to be thoroughly embedded and used as a matter of course by all law practices. Central to this is the notion that the Uniform Law requires an estimate of total legal costs. An estimate is a reasonable approximation of the amount of the costs and it is not a quotation. The Law also requires that as soon as practicable after there is any significant change to anything previously disclosed, the client is to be provided with information disclosing the change including information about the costs.

As is frequently the case with legal work when there are changed circumstances, the costs might change. The Uniform Law seeks to allow clients, through such disclosures, to make informed decisions about the future conduct of their work, as should be their entitlement.

The Commissioner believes that most practitioners understand this notion, and that the LSC was able to successfully explain and answer all of the issues and questions that were raised. Looking ahead, the LSC and Commissioner will continue to keep the cost disclosure provisions under review and in 2016–2017 will begin to examine whether the thresholds in the Uniform Law require adjustment. Any action to be taken will be considered with and by the Standing Committee.

Throughout the year the Commissioner also sought to ensure that questions about a variety of other provisions of the Uniform Law were answered and that they were effectively operating.

## LAUNCHING THE DATA EXCHANGE PROJECT

The Data Exchange Project involves the development of a Legal Services Council Uniform Law database. This will include information from and will operate with the co-operation of DLRAs. The 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 under the Uniform Law. The Project does not rely on the exchange of any personal information and is fully compliant with Privacy legislation.

Stage 1 relating to the Commissioner's reporting obligations under Section 398 has been completed. This was a result of collaborative effort between key stakeholders and of hard work by staff in my office and elsewhere. Key data is now provided by the DLRAs to the Legal Services Council Uniform Law database on a weekly basis using the data layouts created by the Law Society of NSW.

A pleasing aspect of the work on the Data Exchange project has been that regulatory authorities in each State needed to adopt common terminology and reporting codes for data information purposes. The Uniform Law scheme creates the environment for this to occur, which was agreed readily. A common complaint form was also settled without any intervention by me or by the Council.

Notwithstanding the initial focus on Chapter 5 data, Stage 1 also put in place the framework and capacity to support information exchanges about other chapters of the Uniform Law in due course. This is contemplated by Section 440. Section 440 of the Uniform Law requires the Legal Services Council and the Commissioner and local regulatory authorities to share information between them in connection with the exercise of their respective functions.

### MONITORING THE OPERATION OF THE UNIFORM LAW BY OTHER MEANS

Another aspect of data sharing has been the collection of more general information about how the Uniform Law is operating and about how the dispute resolution and professional discipline provisions of Chapter 5 are working. This information is likely to come from various

sources, but in particular from the Legal Services Commissioners. The Guidelines and Directions that both the Commissioner and the Council issued required DLRAs to keep the LSC informed of their assessments of how the cost estimate disclosure requirements of the Uniform Law as described in the Guideline, are being applied in practice.

These were issued in conjunction with the making of a new anti-voiding rule, rule 72A. This rule should have the effect that if a law practice makes an error in their costs disclosure obligations but corrects it, any costs agreement will not be void. The rule was intended to encourage compliance by law practices with their disclosure obligations, rather than them being immediately sanctioned through the voiding of their costs agreement.

In accordance with the Direction contained with the Guideline, the Legal Services Commissioners in NSW and Victoria have provided useful information about how the costs disclosure provisions or rule 72A are working and certain themes are emerging. It is premature to form any definitive view about this or the operation of the Guideline but it will be kept under review. There are also many complaints about practices which are notionally about costs or costs disclosure but which upon further inquiry are not wholly substantiated or are found to be misconceived. Any statistics need to be placed in the context of the relatively small number of complaints that contain some costs elements, compared to the large number of matters conducted, and bills issued by law practices in the two States.

There is some evidence that some law practices may be following a practice of disclosing a range of estimates of total legal costs only albeit with

(desirable) explanations of the major variables that might affect those costs. That practice may be contrasted with what the Uniform Law now effectively requires which is that an estimate of total legal costs be given and if there are changes in circumstances or costs, giving an estimate of total legal costs for various stages of a matter.

It is not uncommon on some occasions to find that a final bill might depart significantly from an estimate. This may not be objectionable if the client has been kept informed of significant changes in the circumstances or the costs along the way.

Some further commentary from the Commissioners in the participating States and in response to the Direction on how the costs provisions are working is set out in the data section of this report.

Another source of information, albeit limited, is from the offices of the Ombudsmen in the participating States. In NSW the ability for someone to complain about the OLSC is somewhat constrained as a matter of law and the NSW Ombudsman has advised that it has only received 60 complaints about the Legal Services Commissioner since 2008. The great majority of these complaints are outside the jurisdiction of *The Ombudsman Act 1974* and none were investigated this year.

In Victoria, 88 complaints were received by the Ombudsman's office relating to the Legal Services Commissioner in the period 2015–2016. The higher number in Victoria reflects the fact that the Victorian Ombudsman has jurisdiction generally over the activities of the Commissioner compared to NSW. The most common issue identified was the way in which the LSC handled complaints (over 70

per cent). Within these, people complained about the LSC reaching the wrong conclusion, offering an inadequate remedy, having inadequate processes and delay. Of the 88 complaints received, the Ombudsman declined to deal with 71 on the basis that the complainant had not exhausted avenues of redress with the LSC.

In nine cases the Ombudsman looked into the matter further and considered that the complaint was not substantiated. In six matters they looked into the matter further and the complaint was resolved by the LSC taking action or providing clarification. In two matters the Ombudsman considered that it was not able to deal with the complaint.

## THE YEAR AHEAD

During the year ahead the Commissioner will continue to seek sources of information about how Chapter 5 and other Chapters of the Uniform Law are operating. This may come from court or tribunal cases, the associations and otherwise. The LSC is also working to enhance its capacity to evaluate and analyse the information it receives, and better communicate the benefits of the Uniform Law nationally.

### **Encouraging other jurisdictions to join the Uniform Law scheme**

In essence the Uniform Law scheme provides a core regulatory framework for the legal profession throughout Australia which is suitable to be adopted, as is, in each jurisdiction. It is supported by a complete set of Uniform Rules. Those rules, while ultimately being made by an independent Council, are developed by the profession and are subject to public consultation. This consultation removes unnecessary duplication and provides a simpler legal framework than existed under the previous legislation in each State for regulating of the legal profession.

Most importantly, under the Uniform Law, local regulatory arrangements are preserved. There does need to be an independent legal regulator under the Uniform Law, but professional associations can and do play a part in this, subject to the arrangements that are set up by each jurisdiction.

As at the date of submission of this report, no other jurisdiction has announced an intention to join the Uniform Law scheme. However, there are many reasons why the Commissioner and the Council consider that joining the Uniform Law may be in the interests of other States and Territories. These features and benefits are spelled out on page 12 in the Council's Annual Report.

The Commissioner recognises that any process of change, such as the introduction of the Uniform Law and of the overarching regulatory framework, always requires patience, persistence and time.

Continuing to meet with key people in each jurisdiction to answer questions and discuss issues that might be important to them as they consider joining the Uniform Law scheme will be a priority for the Commissioner next year.

Other priorities during 2016–2017 will include:

- continuing to address matters that are raised with the Council or the Commissioner by the Standing Committee;
- enhancing the LSC's consultation processes with law practices and with consumers (developing the Uniform Law database with the assistance of our partners will assist with this);
- considering a small flow of rules and legislative proposals that remain; and
- continuing to consult with key stakeholders towards approving a course for External Examiners.

# 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 Commissioner. The Uniform Law requires that the Commissioner maintains a register of delegations, 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. The register of delegations is nevertheless published on the LSC's website.

On 29 June 2016 the Legal Services Council delegated to the Commissioner the power to approve the new External Examiner's course under UGR 65(2). This delegation is time limited and valid for the period 1 July 2016 to 28 September 2017.

The Council also delegated to the Commissioner (and to the Chair) the power to approve PII policies of non-participating jurisdictions for the purposes of section 210(2) of the Uniform Law.

## 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.

That information is set out in the next section.

COMMISSIONER FOR UNIFORM  
LEGAL SERVICES REGULATION

**LSC** LEGAL  
SERVICES  
COUNCIL

**REPORT ON COMPLAINTS HANDLING  
AND DISCIPLINARY PROCEDURES  
2015/2016**

LEGAL PROFESSION  
**Uniform Law**

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Annexure A: Uniform Law complaint category  
types and sub-types

# Report on Complaints Handling and Disciplinary Procedures

## PERSPECTIVE

Every year, throughout Victoria and NSW, legal practitioners provide millions of legal services to members of the community, as well as to corporate and government clients. Overwhelmingly, nothing is heard about most of these interactions by legal profession regulators. It is fair to say that the great majority of legal services are provided professionally and well.

The Uniform Law sets up an overarching regulatory framework. Part of the rationale for this is that where there is an issue it can be dealt with and all stakeholders can benefit from the experience. The following report on the data collected in the first year of the operation of the Uniform Law should be seen in this light.

## 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.

To this end, a LSC Uniform Law database is being developed in two stages in order to store key data from 1 July 2015 provided by the DLRAs in NSW and Victoria. When completed, the 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.

Stage 1 of the project, which currently captures complaints data relating to Chapter 5 was completed in June 2016, with the assistance of the Law Society of NSW, which is hosting the database for the Council. The Victorian Legal Services Commissioner, the NSW Legal Services Commissioner, the Law Society of NSW and the NSW Bar Association provide statistical de-identified data to the LSC Uniform Law database on a weekly basis.

In stage 2 it is hoped that the database will store data from 1 July 2015 for all DLRAs, including the Admission Boards and Tribunals.

## CAUTIONARY COMMENTS ON DATA

At present all data from 1 July 2015 is provided weekly by the Victorian Legal Services Commissioner, the NSW Legal Services Commissioner, the Law Society of NSW and the NSW Bar Association. This data is provided to the host via VPN using a data template developed between representatives from the regulatory authorities.

The data collected during this first year is not complete as the collection capacity of the contributing stakeholders faced significant limitations. This will be addressed for future reports.

For 2015–2016, the Uniform Law related complaint data from the NSW Legal Services Commissioner is limited to complaints opened after 1 July 2015 and closed after 4 January 2016.

A comparison between this data and the number of complaints opened in the previous reporting period ending 30 June 2015 (2,505 complaints) shows that the figure for overall complaints in NSW during 2015–2016 would have been higher.

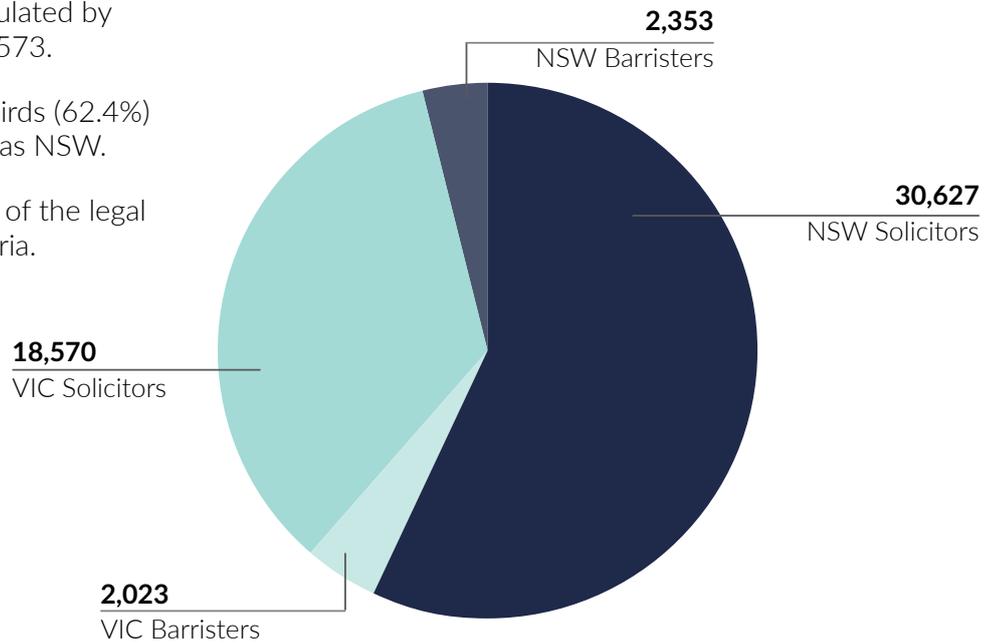


## 1. LEGAL PRACTITIONERS REGULATED BY THE UNIFORM LAW FRAMEWORK

Number of legal practitioners regulated by the Uniform Law Framework: 53,573.

Victoria has approximately two thirds (62.4%) the number of legal practitioners as NSW.

Overall, solicitors make up 91.8% of the legal profession across NSW and Victoria.

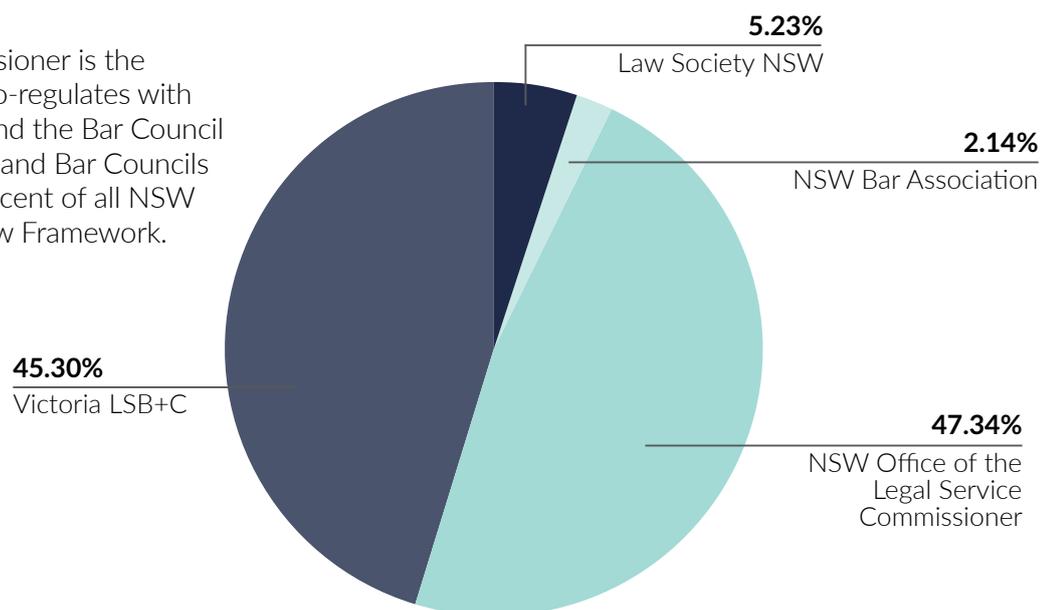


## 2. NUMBER OF TOTAL COMPLAINTS BY JURISDICTION

The following data should be considered having regard to the Perspective section on page 56. The Victorian Legal Services Commissioner deals with all solicitor complaints in Victoria and delegates the handling of most barrister complaints to the Victorian Bar. The Bar handled about one per cent of Victorian complaints under the Uniform Law.

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 Councils handled approximately seven per cent 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-member of the profession basis. The total number of complaints recorded across Victoria and NSW was 2,947. However, upon investigation, more than half of all complaints made were found to be unsubstantiated or misconceived.



### 3. NUMBER OF CLOSED COMPLAINTS BY MONTH

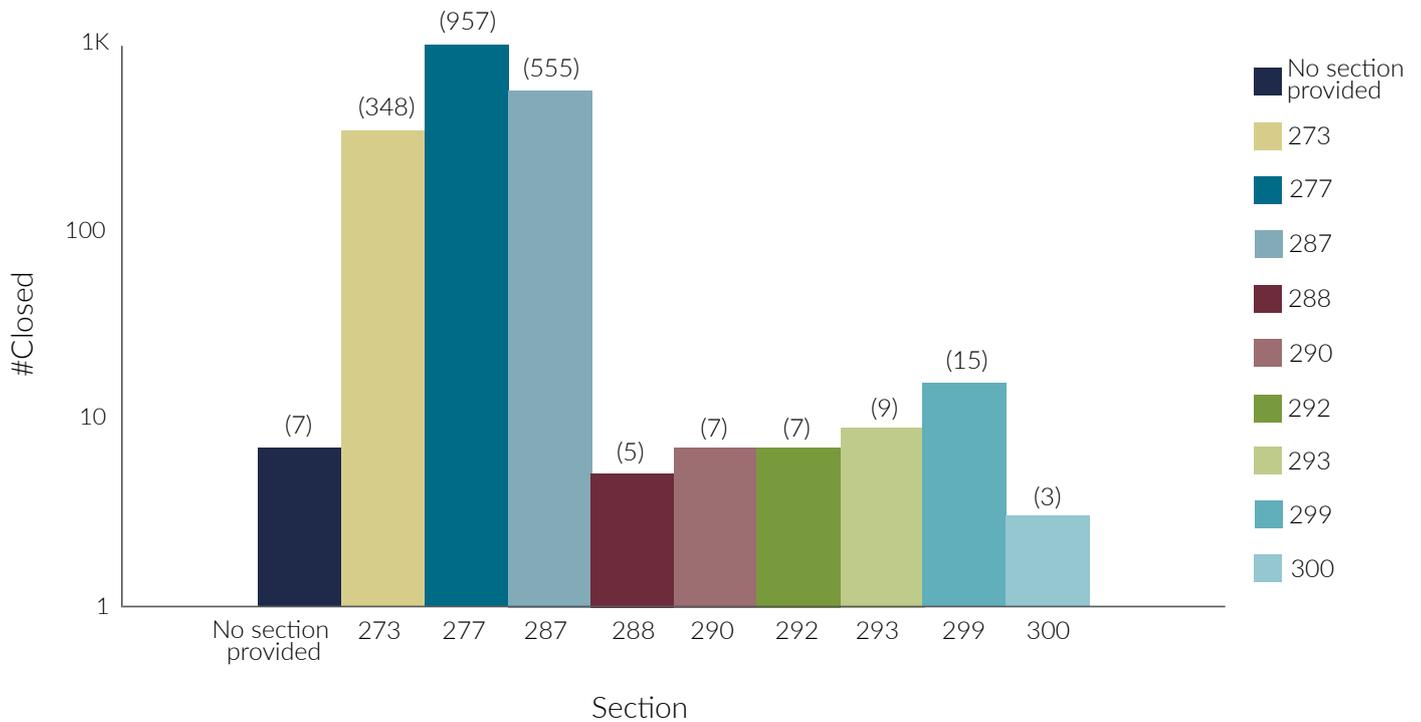
The total number of complaints under the Uniform Law finalised in both Victoria and NSW was 1,913. The chart below provides a breakdown for each month during the reporting period.

The table reflects the limited data able to be collected during the first six months of operation under the Uniform Law from NSW. Data from January 2016 is more complete.



## 4. TOTAL NUMBER OF CLOSED COMPLAINTS BY SECTION

The following chart provides a breakdown of all closed complaints by reference to the Uniform Law section.



Section	Description	No.
	No section provided in data	7
273	Withdrawal of complaint	348
277	Closure of whole or part of complaint (any reason, any stage) <sup>1</sup>	957
287	Informal resolution of consumer matters	555
288	Mediation	5
290	Determination of consumer matters by local regulatory authority	7
292	Binding determinations in costs disputes	7
293	Cases where binding determinations are not made in costs disputes	9
299	Determination by local regulatory authority - unsatisfactory professional conduct	15
300	Initiation and prosecution of proceedings in designated tribunal	3
<b>Total</b>		<b>1,913</b>

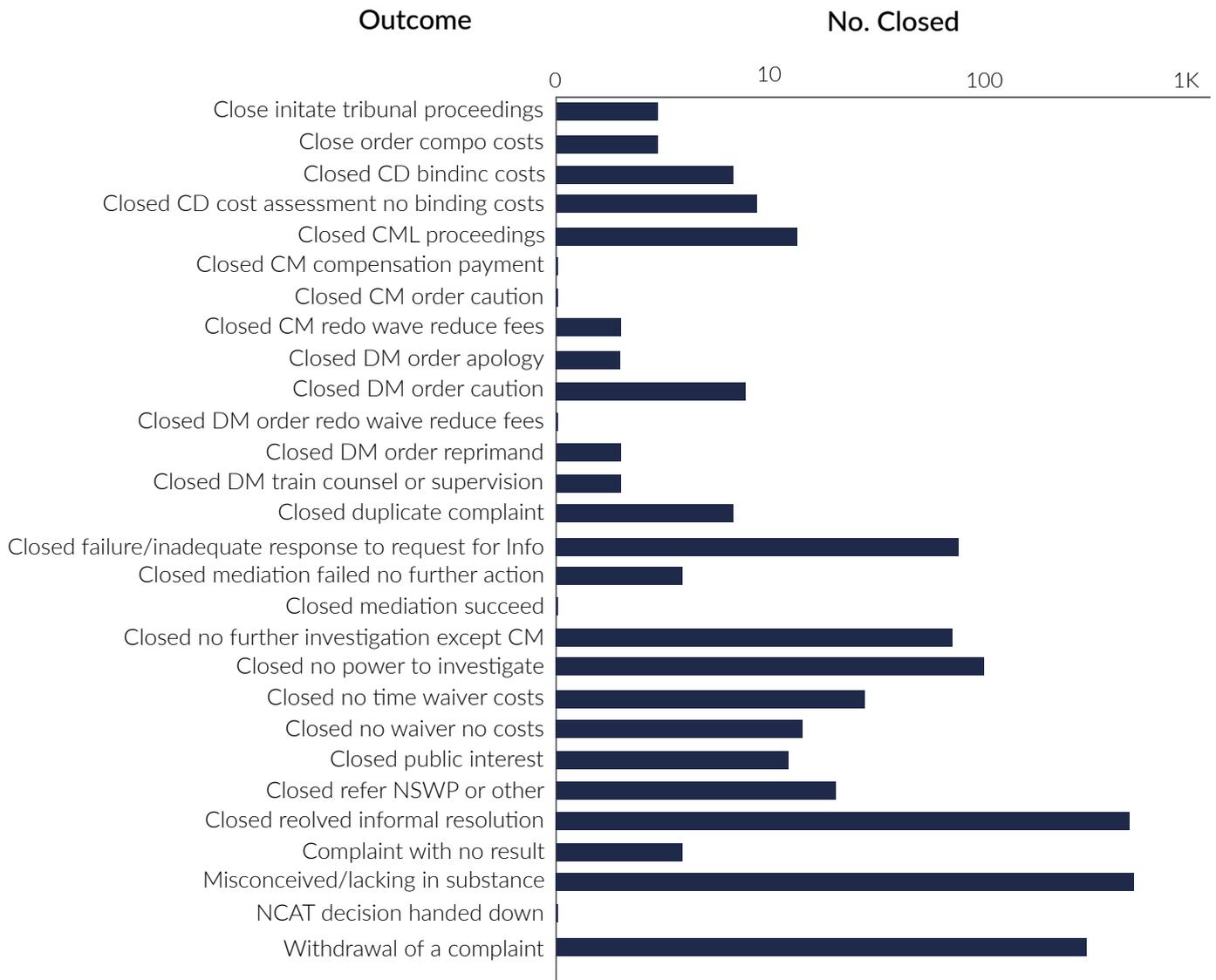
<sup>1</sup>This covers many things at pre-assessment stage and through to matters which have been fully investigated.

Of the 1,913 matters finalised, a large proportion of total complaints (1,238 or 64.7 per cent) opened did not proceed beyond preliminary assessment and were closed. There were a number of reasons for this such as the Commissioners' lack of power to handle the complaint, the complaint lacking in substance or being misconceived, a failure by complainant to provide adequate information, the complaint made out of time or withdrawal of the complaint.

There were four complaints with "no result" because they were not recorded against an existing category on the mapping spreadsheet. A closer look at the data revealed that these complaints related to either duplication; were referred back to the Legal Services Commissioner or closed due to no finding of unsatisfactory professional conduct or professional misconduct.

See the chart below for breakdown of these reasons.

Overall, 35.2 per cent of all finalised complaints (673) were settled through informal resolution means as required by the Uniform Law (section 287). Three matters were closed to enable Tribunal proceedings to be initiated.



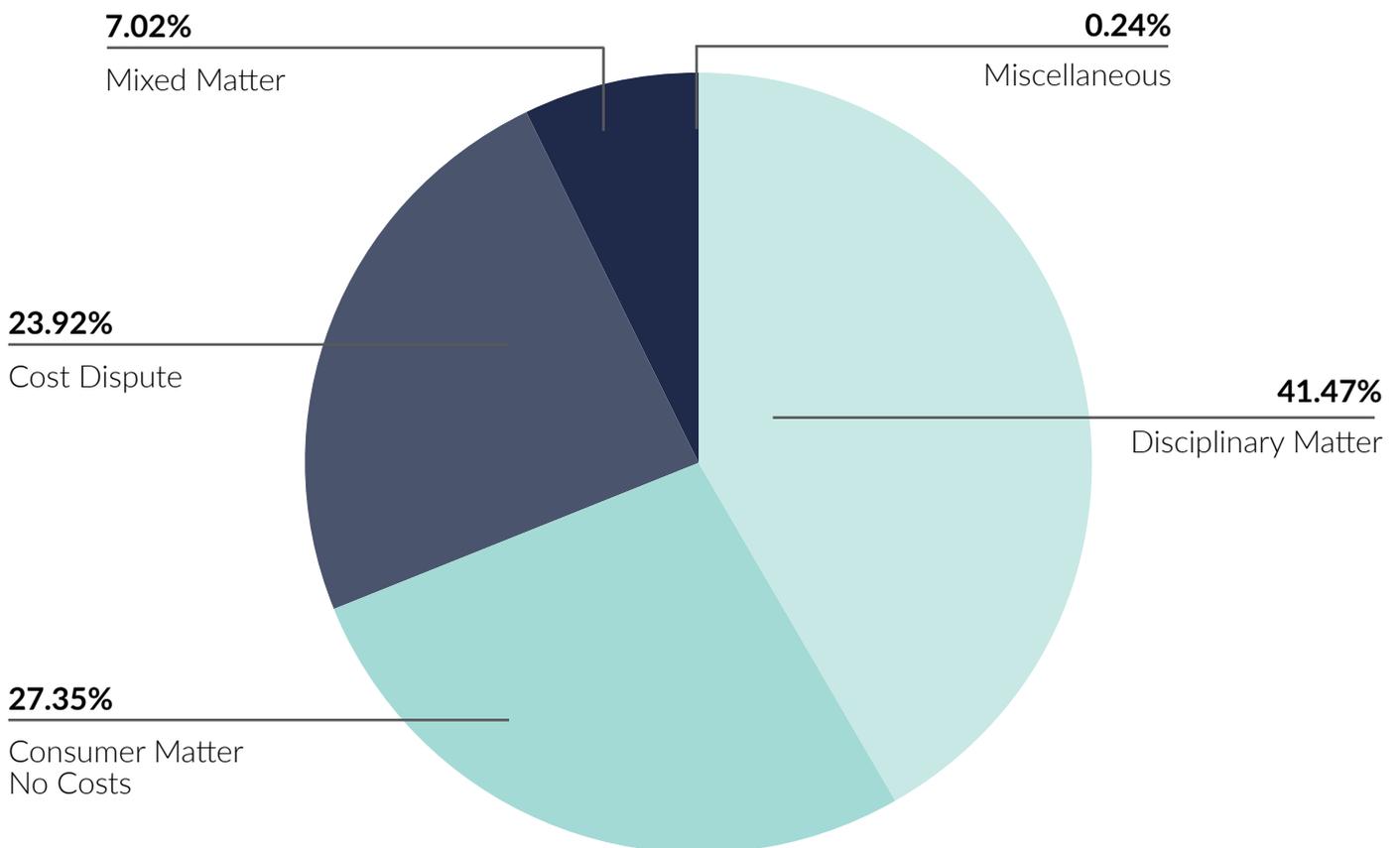
## 5. COMPLAINTS BY CATEGORY

The highest number of complaints by category related to disciplinary matters (41.47 per cent). This category relates to 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.

Consumer matters (section 269(1)) were the second highest category at 27.35 per cent. This category 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, the data below has recorded consumer matters involving costs disputes separately.

The costs disputes category ranked third (23.92 per cent).



## 6. COMPLAINT TYPE

The Victorian Legal Services Commissioner, NSW Legal Services Commissioner, the Law Society of NSW and the NSW Bar Association agreed on a hierarchy of common complaint types and subtypes against which to report as part of the joint mapping exercise at the start of the process. The table as agreed appears as Annexure A (page 75).

The highest number of complaints fell under the broad heading of “ethical matters” (38.14 per cent) which encompasses every aspect of legal practice. Included under this category are complaints or allegations about: 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, or a failure to comply with court orders. As noted above, less than half of these complaints were found to have substance.

Ethics is followed closely by complaints relating to costs issues, and competence and diligence issues.



## 7. TOP TEN SUB-ISSUES

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

The most commonly complained about single issue recorded across the two jurisdictions appeared under "costs" for alleged overcharging (27.78 per cent). This figure needs 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.

Complaints relating to trust money in respect of a failure to account arose in only 5.28 per cent of complaints.

Complaint type	Complaint sub-issue	Number of complaints
Costs	Overcharging	584
Ethical matters	Other	316
Competence and diligence	Poor advice/case handling	250
Ethical matters	Poor advice/case handling	152
Competence and diligence	Delay	151
Competence and diligence	General incompetence	138
Trust money and trust accounts	Failure to account for trust monies	111
Ethical matters	Instructions issues	109
Ethical matters	Practising certificate issues	105
Ethical matters	Fraud (not trust fund)	103
<b>Total</b>		<b>2,947</b>

### Complaint sub-issues

	Complaints All	Complaints NSW	Complaints VIC
Overcharging	27.78%	19.69%	37.43%
Fraud (Not trust fund)	4.90%	0.35%	10.32%
Instructions issues	5.19%	6.30%	3.86%
Poor advice/case handling	19.12%	16.89%	21.79%
Other	18.65%	21.70%	15.02%
Delay	7.18%	8.40%	5.74%
General incompetence	6.57%	12.07%	
Practising certificate issues	5.33%	9.80%	
Failure to account for trust monies	5.28%	4.81%	5.84%

State comparisons cannot be made due to incomplete data for the reporting period, but will be included in future reports. However, emerging themes in each State are worth noting.

## **NSW**

The significant variance in the figures relating to costs complaints in each State is due to the six month gap in NSW Legal Services Commissioner data on Uniform Law. Nevertheless, the available NSW data revealed some noteworthy preliminary findings.

A substantial proportion (24.3 per cent) of all complaints received related to legal costs. Almost 22 per cent of those complaints alleged non-disclosure, failure to notify changes to estimates and that final invoices exceeded estimates. In many such complaints there was found to be some non-compliance with the requirements to provide costs disclosure either under the Uniform Law or the former *Legal Profession Act 2004*. However, there were also many complaints that, upon further enquiry were not proved or not progressed because of a misunderstanding.

## **Victoria**

The VLSC recorded 31 complaints that raised problems with costs disclosure made under the Uniform Law and 13 complaints raised issues with disclosure under the *Legal Profession Act 2004*.

The Commissioner reported that many firms use the LIV standard costs agreement and disclosure statement, which is compliant, but problems have arisen when the legal practitioner alters the terms of the precedent. For example, in one matter, the practitioner changed the single figure estimate to a range of estimates. In one complaint matter, a compliant agreement was issued by a smaller firm. The agreement was comprehensive and well drafted, with the scope of the work well defined, but unfortunately the estimate was not updated for significant changes in costs or circumstances as required by section 174 of the Uniform Law, which resulted in the complaint.

A reasonably common theme, identified in complaints by the Victorian Commissioner was that a consumer is unaware of the exact scope of a matter and of the kinds of issues that may mean the overall estimate is likely to need revision. It is not uncommon

for consumers to complain about an estimate having been increased without understanding the reason why. If a practitioner explains the variables that may make this necessary, for example, a lack of cooperation by the other party, delays in obtaining evidence, or an issue becoming more complex than first thought, the consumer is less likely to be surprised by the need for an updated estimate. One of the biggest factors likely to result in a costs complaint is a lack of forewarning about costs or a failure to report the progress of the matter generally. Another very common issue in costs dispute complaints is where the final legal costs are higher than disclosed in the last estimate. A variation of this problem is a failure to provide a proper estimate of disbursements.

Although too early to call, another possible factor for the variance in the number of costs complaints between the two States may be due the different systems of Costs Assessment.

In NSW costs disputes may be dealt with as a complaint about a legal costs issue by the NSW Legal Services Commissioner (if the bill is under \$100,000 or if more than that amount but the amount in dispute is less than \$10,000). If the amount in dispute is less than \$100,000 or out of time (and in any case) applicants can use the Costs Assessment Scheme in the Supreme Court. If the application is made directly for Costs Assessment, a "complaint" is not recorded by the NSW Legal Services Commissioner unless a Costs Assessor finds that the legal costs of the legal practitioner are "not fair and reasonable (section 202(a)) or where the conduct "may amount to unsatisfactory misconduct or professional misconduct" (section 202(b)).

Similarly in Victoria complaints about a legal costs issue may be directed through the VLSC unless out of time or the bill is over \$100,000 and the amount in dispute is greater than \$10,000. In these cases and in any case, the applicant may choose to commence proceedings at VCAT or in the Costs Court.

Notwithstanding that there are different avenues to achieve a result, from the consumer perspective, making a complaint to the Costs Court (VIC) or the Costs Assessment Scheme (NSW) usually requires the payment of a filing fee, whereas making a complaint to the relevant Commissioner does not.

## 8. COMPLAINTS BY INDIVIDUAL AND FIRM TYPE

### 8.1 Complaints by individual practitioner type

Complaints against solicitors ranked highly constituting more than three quarters of all complaints (2,545/2,947; 86 per cent). This figure is broadly consistent with the proportion of solicitors that make up the legal profession in Victoria and NSW.

Individual/firm type	Total complaints	NSW complaints	Vic complaints
Solicitor	2,545	1,351	1,194
Barrister	161	106	55
Complaints with no individual	140	71	69
Former solicitor	43	43	0
Legal practitioner	26	13	13
Other (Law Society data only)	10	10	0
Complaints with no individual type	8	4	4
Licensed conveyancer	8	8	0
Struck off	4	4	0
Not legal service provider	2	2	0
<b>Total</b>	<b>2,947</b>	<b>1,612</b>	<b>1,335</b>

The data should be read subject to the following comments:

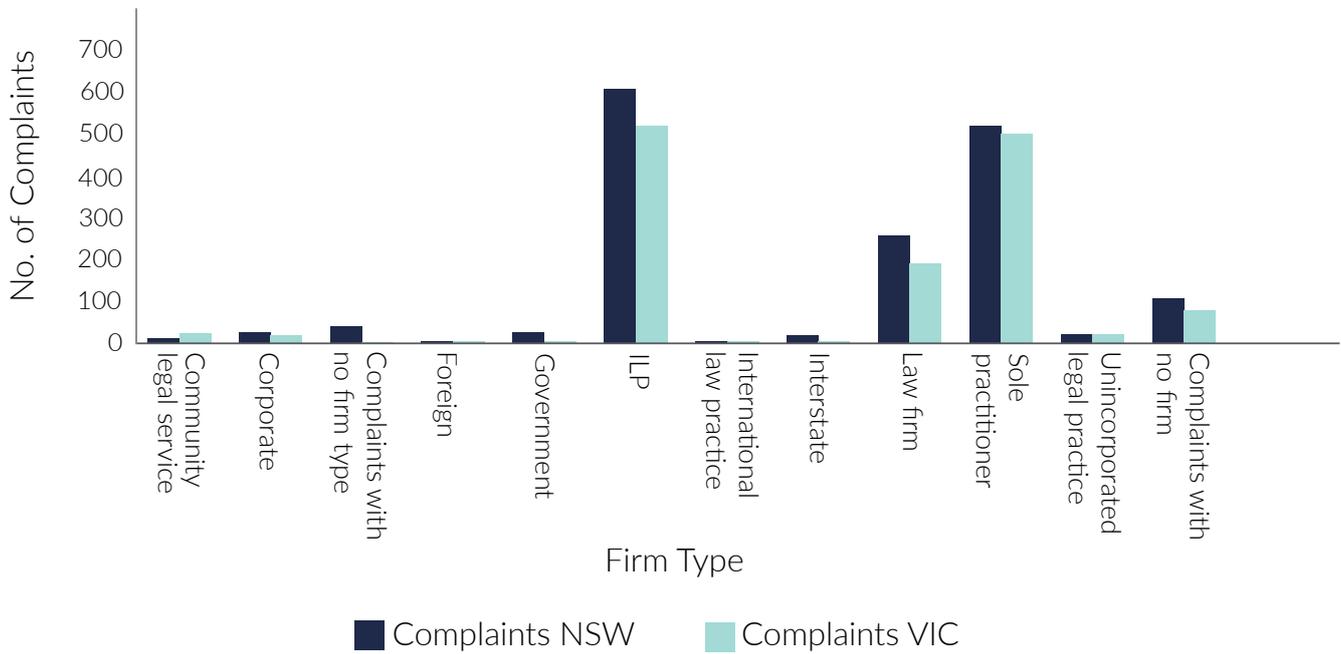
- (i) Complaints with “no individual type” are captured in “firm type” in the next table under 8.2 below.
- (ii) NSW has a separate category “former solicitors” whereas VLSC record complaints about “former solicitors” under “solicitor” complaints.

(iii) NSW has a separate category for “struck off” practitioners whereas VLSC record complaints about struck off practitioners under “solicitor” or “barrister”.

(iv) Complaints about conveyancers are recorded in NSW where the conveyancer is employed by a law practice.

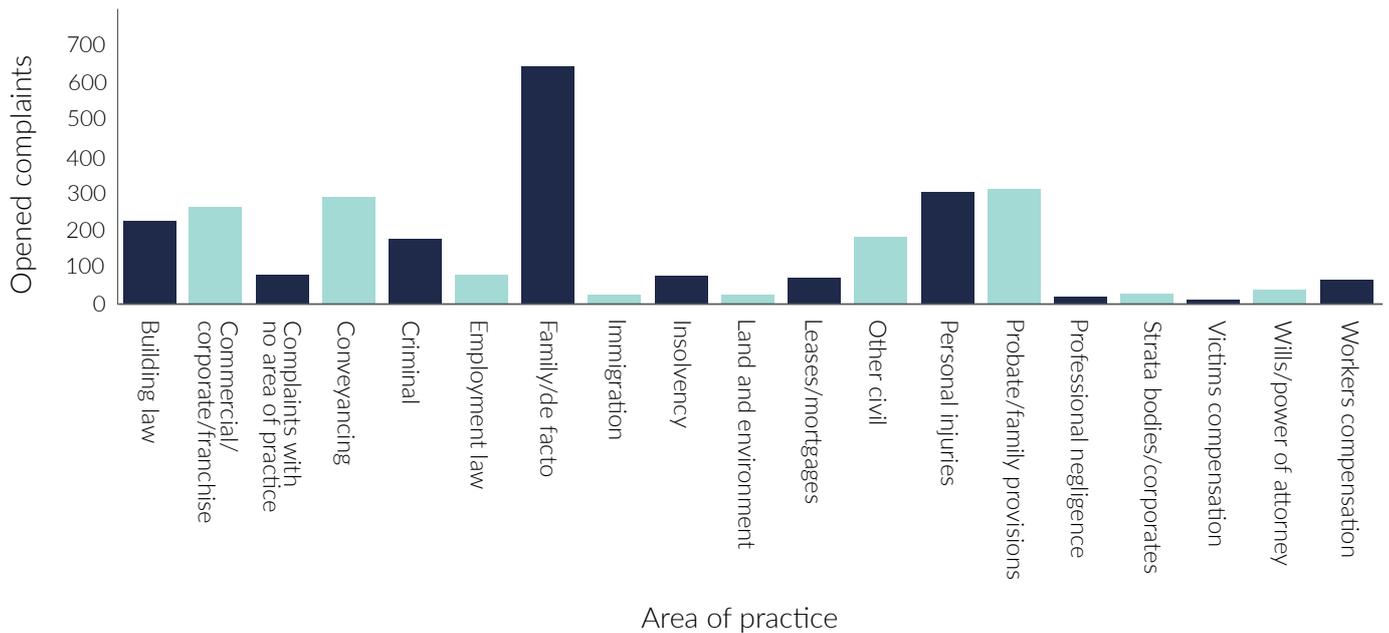
## 8.2 Complaints by firm type

In both States, sole practitioners (1,020) and incorporated legal practices (1,125) were most prominent in the law practices complained about.



## 9. COMPLAINTS BY AREA OF PRACTICE

Approximately one fifth of the number complaints, by area of practice, was in relation to family/de facto law (573), followed by personal injury work (286) and probate/family provision claims (278).



## 10. AVERAGE NUMBER OF OPEN/CLOSED COMPLAINTS

The data shows a high closure rate of complaints under the Uniform Law with on average 149 complaints being closed per calendar month for the 2015–2016 financial year, compared with an average of 240 complaints being opened. It should be noted however that the DLRAs are also still closing complaints under their respective Legal Profession Acts, and these figures are not captured here.

The average figure is the average amount of time in days across both States. The average time between opening and closing of a complaint is calculated within each category in days.

Category	Complaint type	Average close time days
<b>Consumer matter no costs</b>	Communication	37
	Competence and diligence	67
	Compliance matters	46
	Costs	77
	Ethical matters	52
	Personal conduct	15
	Trust money and trust accounts	76
<b>Cost dispute</b>	Communication	88
	Competence and diligence	64
	Compliance matters	232
	Costs	83
	Ethical matters	84
	Trust money and trust accounts	107
<b>Disciplinary matter</b>	Communication	65
	Competence and diligence	84
	Compliance matters	65
	Costs	83
	Ethical matters	60
	Personal conduct	58
	Trust money and trust accounts	80
<b>Miscellaneous</b>	Compliance matters	252
	Trust money and trust accounts	152
<b>Mixed matter</b>	Communication	31
	Competence and diligence	34
	Compliance matters	81
	Costs	85
	Ethical matters	45
	Personal conduct	19
	Trust money and trust accounts	62

## 11. DETERMINATIONS

### 11.1 By DLRA

As with many Ombudsman-style 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 compromise and parties frequently do that before the determination is made. This is a significant indicator of the success of the Uniform Law scheme.

### 11.2 By Tribunals

As the reporting period covers the first year of operation, it is too soon to report on any Determinations made by the State Tribunals under the Uniform Law. There were three complaints referred to the Tribunals under the Uniform Law during the reporting period, one involving a compliance matter; one relating to fraud (non-trust money) and a third one relating to trust money and trust accounts.

Determinations by DLRA	NSW OLSC	VLSC
Disciplinary (including cautions and apologies)	27	5
Costs	0	2
Costs/consumer	1	4
Non-costs consumer	3	3
<b>TOTAL:</b>	<b>31</b>	<b>14</b>

## 12. COMPLIANCE FUNCTIONS

See Achievements section of the Commissioner's Report (page 49).



### 13. FIDELITY FUND AUDIT INFORMATION

The Fidelity Funds are statutory compensation schemes maintained by the VLSB 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.

No claims under the Uniform Law were determined in NSW during this period. In Victoria four claims against the Fidelity Fund were finalised under the Uniform Law.

The following information provided relates to all claims in the reporting period including Uniform Law claims:

2015-2016 Financial Year	Victoria	NSW
1. Number of practitioners paid contributions to the fund	A Fidelity Fund fee is charged at variable rates to both principals and employees who work in firms that carry a trust account. The number of lawyers in Victoria who have paid a Fidelity Funds fee for the period 2015–2016 is <b>11,567</b> .	\$60 fidelity fund fee is only applicable for practitioners who wish to be granted a principal or employee practising certificate.  The number of lawyers in NSW who had paid the Fidelity Funds fee for the period 2015–2016 is <b>21,705</b> .
2. The balance of the fidelity fund as at the end of the financial year	Bank account: \$3,775,996  Investments: \$55,056,815	Cash and investments: \$55,534,000  The balance of the Fund (assets less liabilities):\$48,592,000
3. Number of claims that were outstanding as at the commencement of the financial year	44	61
4. Claims received during the financial year	47 Of the claims made under the Uniform Law: two claims totalling \$21,860 were allowed; one claim totalling \$53,400 was disallowed; one claimant seeking to make a \$97,500 claim for a 1991 issue was not granted an extension of time.	37
5. The classification of claims made	Allegations of a failure to pay or deliver trust money type default: 47; 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 the financial year	\$2,606,463.46	\$2,291,341.19
7. The number of claims allowed/partly allowed	24	22
8. The value of the payments made	\$1,044,724.20	\$868,134.94

2015-2016 Financial Year	Victoria	NSW
9. The reasons for allowing claims	<p>Claims are made in relation to alleged default. Where the Board finds an alleged default it is empowered to determine to make a payment pursuant to section 240 of the Uniform Law. Pursuant to section 240(6) the Board is required to specify how much will be paid whenever a claim is allowed or partly allowed. The Board has continued its practice of allowing claims where there has been a pecuniary loss caused by default, and generally specifying to pay the amount of the pecuniary loss unless extenuating circumstances exist.</p> <p>Accordingly, the reasons that claims have been allowed have been that there has been a default either as a result of a 'fraudulent dealing with trust property' or a 'failure to pay or deliver trust money'.</p>	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. The number of disallowed claims	16	13 claims were totally disallowed.
11. The reasons for disallowing claims	<p>Claims are disallowed where there is no statutory basis on which to pay them. This might include: a claim not made in relation to a default, a claim not made in relation to trust money or trust property, a claim not made in relation to a legal practitioner and claims made in relation to money expressly excluded from fidelity cover, for example money paid to a law practice for the purpose of investment.</p>	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 the financial year	None last financial year; however appeals initiated in previous financial years were progressed.	Two appeals were commenced during the financial year. Both related to claims barred due to late notification where an extension of time was not granted.
13. The number of claims outstanding at the completion of the financial year	56	56

## 14. ADMISSIONS BOARDS

A total of 3,724 applicants were assessed for admission under the Uniform Law in 2015–2016, a small proportion of which (4.7 per cent) were applicants previously admitted outside Australia. Only six applications (five in NSW and one in Victoria) were refused outright for reasons including past findings of dishonesty; serious criminal conviction, providing false documents to the admission authority, and past finding of corrupt conduct. The following reports were provided by the Admitting Authorities to the Commissioner.

### Victorian Legal Admissions Board

The collaborative approach between the two jurisdictions has enabled the Legal Profession Admissions Board in NSW (LPAB) and the Victoria Legal Admissions Board (VLAB) to expand its knowledge source and share concepts and designs for admission documentation, creation of online databases, enhanced transparency and consistency in decision making and created an enriched framework of uniformity.

In Victoria the number of persons admitted since the introduction of the Uniform Law has decreased by 6.8 per cent (from 1,370 to 1,277) and the number of person admitted who were previously admitted overseas decreased by 22 per cent (from 63 to 49). The Supreme Court admitted 776 females and 501 males in 23 ceremonies. The decrease in admission numbers cannot be attributed to the Uniform Law as there has been a gradual decrease in numbers over the past four years.

The VLAB issued compliance certificates to 32 New Zealand practitioners under the Mutual Recognition Principle which is consistent with previous years.

During the year 195 applicants undertook supervised legal training. The VLAB undertakes assessments of all employers who instruct in the compulsory skill areas and conducts random workplace audits to ensure full compliance with the Practical Legal Training competencies.

Full disclosure by applicants remains a priority for the VLAB with 849 disclosure statements and 56 capacity statements. Fifty-two applicants attended informal meetings with the Chairman and CEO and

22 applicants attended formal meetings with the VLAC (a delegated Committee of VLAB).

Five applicants attended special hearings before the VLAC in the Supreme Court. The VLAB assisted the Supreme Court in a readmission and an application outside the scope of section 19 of the Uniform Law.

There is no significant change to the number of disclosures since the introduction of the Uniform Law.

The VLAC has refused outright one applicant during the reporting period and refused one applicant who may apply again in the future. The Uniform Law has had no significant influence on these results.

The Uniform Law has not increased the documentation required in Victoria as national and foreign police reports and conduct reports have always been a requirement for admission. It is agreed with the LPAB that the prescribed character statements for applicants previously admitted overseas raises some difficulties.

There is no change to admission fees in Victoria which currently stand at \$933.20 (\$560.00 library fee and \$373.20 general fee).

Since the introduction of the Uniform Law there has been an increase in administrative work relating to Academic Qualification Assessments (Stale Qualifications) of which 56 applications have been assessed and in a number of cases, reassessed. The VLAB has granted dispensation in relation to police reports and character statements since the *Legal Profession Act 2004* but the stringent requirement of foreign reports and foreign character statements has increased the workload.

The VLAB has only received one objection since the introduction of the publications of names on the website. In the past applicant's names were published in the newspaper and only two objections were received under the *Legal Profession Act 2004*.

Agreements were reached by the LPAB and the VLAB on agreed Interim Procedures for Admitting Applicants relying on qualifications, skills or experience obtained outside Australia; a Policy on Dealing with Stale Qualifications and a Health Assessment Policy.

Conditional Admission is a new area and the two jurisdictions are working together to ensure consistency over time.

### **Legal Profession Admission Board (NSW)**

Compared with the 12 months prior to the commencement of the Uniform Law on 1 July 2015, during 2015-2016 in NSW:

- the number of persons admitted increased by 7.7 per cent (from 2,272 to 2,422);
- the number of persons admitted who were previously admitted overseas increased by 3.5 per cent (from 113 to 117);
- the proportion of applications with a disclosure increased from 19.5 per cent to 25.4 per cent;
- the number of applications refused remained steady (11), although there was an increase in the proportion of those applications which were refused outright, from 27 per cent to 45 per cent; and
- the proportion of applications refused (as a percentage of total applications) fell slightly, from 0.48 per cent to 0.45 per cent.

Changes in the number of admission applications is likely to be driven by factors other than the Uniform Law, such as the number of students graduating from law courses and the availability of employment opportunities for entry-level lawyers.

The increase in the rate of disclosures may be related to new requirements under the Uniform Law to supply police reports and the LPAB's random audits of student conduct reports. On the other hand, the increase may be the result of the LPAB publishing new, clear and concise information and warnings about disclosures on its application forms and in its Guide for Applicants for Admission. These were updated to coincide with the commencement of the Uniform Law.

There was no discernible change in outcomes in terms of applicants refused. The increase in the proportion of applications refused outright is attributable to the unique circumstances of those applicants. Those applicants would likely have been refused outright had they applied prior to the commencement of the Uniform Law.

The commencement of the Uniform Law in NSW has increased the scope of documentation required of admission applicants, particularly in relation to Australian and foreign police reports. The costs of obtaining foreign police reports can be considerable. The requirements in relation to character references also present challenges for some applicants previously admitted overseas, who are required to obtain statutory declarations from two persons with whom they were associated in legal practice.

Further to those additional costs imposed on applicants, the cost of applying for admission in NSW increased by 80 per cent on 1 July 2015, with the admission fee rising from \$500 to \$900. This was the result of the NSW Government's decision

“The collaborative approach between the two jurisdictions has enabled the LPAB and the VLAB to expand its knowledge source and share concepts and designs for admission documentation, creation of online databases, enhanced transparency and consistency in decision making and created an enriched framework of uniformity.”

**Professor Sandford Clark**  
Chair, Admissions Committee

to fund NSW's contribution to the recurrent costs of regulating the Legal Profession Uniform Framework solely from the admission fee.

The Uniform Law has increased the administrative work of the LPAB. Examples include:

- assessing, granting and reporting on requests for dispensation of requirements in relation to foreign police reports and character references (where applicants have demonstrated reasonable efforts to obtain them but have been unable to do so prior to the application deadline);
- maintaining knowledge of the security features of foreign police reports from around the world, and the differing rules for obtaining them from various countries (to verify claims made by applicants that they are having difficulty obtaining a particular report);
- randomly auditing the student conduct of applicants, a process which was introduced by the LPAB as a substitute for requiring every applicant to obtain and pay for at least two student conduct reports (from their law school and Practical Legal Training provider); and

- publishing applicant names on the website and checking for any objections (which may arrive by email or post) prior to determining any application.

Consistent application of the Uniform Law across NSW and Victoria has been supported by several initiatives driven by the Admissions Committee, including the reaching of agreement on:

- Agreed Interim Procedures For Admitting Applicants relying on qualifications, skills or experience obtained outside Australia;
- a Policy on Dealing with Stale Qualifications; and
- a Health Assessment Policy.

In June 2015 the NSW LPAB resolved to recognise, for the purpose of admission in NSW, assessments of academic and practical training qualifications made by the Victorian Legal Admissions Board.



## 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

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# Financial Statements for the Year Ended 30 June 2016

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# General Information

These financial statements contain the consolidated financial statements of the Legal Services Council and the Commissioner for Uniform Legal Services Regulation, as one entity.

The 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 (as profit is not its principal objective) and it has no cash generating units.

The financial statements were authorised for issue, in accordance with a resolution of the Council, on 26 September 2016. 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 2016 was \$316,137. (2015: \$39,763).

### Revenue

The revenue for the Legal Services Council for the year ended 30 June 2016 was \$1,347,807. (2015: \$578,088).

### Expenses

The expenditure for the Legal Services Council for the year ended 30 June 2016 was \$1,031,670. (2015: \$538,325).

### Assets

The total assets for the Legal Services Council as at 30 June 2016 were \$375,900. (2015: \$87,113)

### Net Assets

The net assets for the Legal Services Council as at 30 June 2016 were \$355,900. (2015: \$39,763)

### Liabilities

The total liabilities for the Legal Services Council as at 30 June 2016 were \$20,000, (2015: \$47,350) representing employee related provisions and other accrued liabilities.

### 2015-2016 underspend

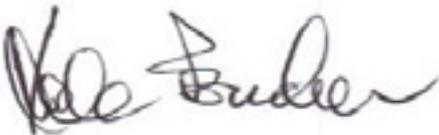
The net profit is due to an underspend of \$266,000 on operating expenses and \$50,000 on employee related expenses. This was due to a senior staff position being vacant for two months and the fact that several projects and spending priorities were carried over into the 2016-2017 year.

**Commissioner's declaration  
for the year ended 30 June 2016**

In the Commissioner's opinion:

- the attached financial statements and notes comply with the Australian Accounting Standards – Reduced Disclosure Requirements, 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 2016 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 its 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**

11 October 2016  
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 report 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 2016, the statement of profit or loss and other comprehensive income, the statement of changes in equity and the 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 report:

- gives a true and fair view of the financial position of the Council as at 30 June 2016, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards – Reduced Disclosure Requirements
- is 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 auditor independence requirements of:

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

I have also fulfilled my other ethical responsibilities in accordance with the Code.

The PF&A Act further 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, but precluding the provision of non-audit services.

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

#### Other Information

The members of the Council are responsible for the Other Information, which comprises the information in the Council's Annual Report for the year ended 30 June 2016, other than the financial report and my Independent Auditor's Report thereon.

My opinion on the financial report does not cover the Other Information. Accordingly, I do not express any form of assurance conclusion on the Other Information. However, I must read the Other Information and consider whether it is materially inconsistent with the financial report, the knowledge I obtained during the audit, or otherwise appears to be materially misstated.

If, based on the work I have performed, I conclude there is a material misstatement of the Other Information, I must report that fact.

I have nothing to report in the regard.

### **The Members' Responsibility for the Financial Report**

The members of the Council are responsible for preparing a financial report that gives a true and fair view 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 of a financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the members of the Council must assess the Council's ability to continue as a going concern unless the Council will be dissolved by an Act of Parliament or cease operations. The assessment must include, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

### **Auditor's Responsibility for the Audit of the Financial Report**

My objectives are to:

- obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and
- 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 report.

A further description of my responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at: <http://www.auasb.gov.au/Home.aspx>.

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 report on any website where they may be presented.



David Daniels  
Director, Financial Audit Services

13 October 2016  
SYDNEY

**Statement of profit or loss and other comprehensive income for the year ended 30 June 2016**

		Actual 30 June 2016	Restated 30 June 2015
	Notes	\$	\$
<b>Expenses excluding losses</b>			
Operating expenses			
Personnel services expenses	2	656,570	370,471
Other operating expenses	2	375,100	167,854
<b>Total expenses excluding losses</b>		<b>1,031,670</b>	<b>538,325</b>
<b>Revenue</b>			
Grants and contributions			
Personnel service resource received free of charge	3	1,344,521	574,229
	3	3,286	3,859
<b>Total revenue</b>		<b>1,347,807</b>	<b>578,088</b>
<b>Net result</b>		<b>316,137</b>	<b>39,763</b>
<b>Other comprehensive income</b>			
		-	-
<b>Total comprehensive income</b>		<b>316,137</b>	<b>39,763</b>

**Statement of financial position  
as at 30 June 2016**

		Actual 30 June 2016	Restated 30 June 2015
	Notes	\$	\$
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	5	374,599	82,561
Receivables	6	1,301	4,552
<b>Total current assets</b>		<b>375,900</b>	<b>87,113</b>
<b>Total assets</b>		<b>375,900</b>	<b>87,113</b>
<b>Liabilities</b>			
<b>Current liabilities</b>			
Payables	7	20,000	47,350
Provisions	7	-	-
<b>Total current liabilities</b>		<b>20,000</b>	<b>47,350</b>
<b>Non-current liabilities</b>			
Provisions	8	-	-
<b>Total non-current liabilities</b>		<b>-</b>	<b>-</b>
<b>Total liabilities</b>		<b>20,000</b>	<b>47,350</b>
<b>Net assets</b>		<b>355,900</b>	<b>39,763</b>
<b>Equity</b>			
Accumulated funds		355,900	39,763
<b>Total equity</b>		<b>355,900</b>	<b>39,763</b>

**Statement of changes in equity  
for the year ended 30 June 2016**

		Accumulated funds	Total equity
	Notes	\$	\$
<b>Balance at 1 July 2014</b>		-	-
Prior period adjustment	4	39,763	<b>39,763</b>
<b>Restated opening balance 1 July 2015</b>		<b>39,763</b>	<b>39,763</b>
<b>Net result for the year</b>		<b>316,137</b>	<b>316,137</b>
Other comprehensive income		-	-
<b>Total comprehensive income for the year</b>		<b>316,137</b>	<b>316,137</b>
Transactions with owners in their capacity as owners		-	-
<b>Balance at 30 June 2015</b>		<b>355,900</b>	<b>355,900</b>
<b>2015 Restated*</b>			
<b>Balance at 1 July 2013</b>		-	-
<b>Restated net result for the year</b>		<b>39,763</b>	<b>39,763</b>
Other comprehensive income		-	-
<b>Total comprehensive income for the year</b>		<b>39,763</b>	<b>39,763</b>
Transactions with owners in their capacity as owners		-	-
<b>Balance at 30 June 2015</b>		<b>39,763</b>	<b>39,763</b>

\*Certain amounts shown here do not correspond to the published 2015 financial statements and reflect adjustments made, refer to Note 4. The adjustments occurred during 2014-15, and did not impact 1 July 2014 balances.

**Statement of cash flows  
for the year ended 30 June 2016**

		Actual 30 June 2016	Restated 30 June 2015
	Notes	\$	\$
<b>Cash flows from operating activities</b>			
<b>Payments</b>			
Employee related		(653,284)	(370,470)
Other		(402,450)	(207,969)
<b>Total payments</b>		<b>(1,055,734)</b>	<b>(578,439)</b>
<b>Receipts</b>			
Grant & contribution received		1,344,521	657,141
Other		3,251	3,859
<b>Total receipts</b>		<b>1,347,772</b>	<b>661,000</b>
<b>Net cash flows from operating activities</b>	<b>9</b>	<b>292,038</b>	<b>82,561</b>
<b>Net increase / (decrease) in cash</b>			
Opening cash and cash equivalents		82,561	-
<b>Closing cash and cash equivalents</b>	<b>5</b>	<b>374,599</b>	<b>82,561</b>

**NOTE 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).

The Council, incorporating the Commissioner for Uniform Legal Services Regulation, 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 Uniform Legal Services Regulation, for the year ended 30 June 2016 have been authorised for issue by the Council on 11 October 2016.

**(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 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 have directly employed staff. Except for the Commissioner, employees are provided by the Department of Justice (Department) to carry out the Council's operating functions. The Department recovers its employee's 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 the 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 CFE is accounted for as part of personnel service expenses.

#### **(d) Income recognition**

Income 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 recognized 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 CFE. The extinguishment of the entity's liability is recognised as a non-monetary revenue item and 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) 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.

**(i) Change in accounting policy, including new or revised Australia Accounting Standards**

***i. Policies Effective for the first time in 2015–16***

The accounting policies applied in 2015–16 are consistent with those of the previous financial year. There were no new or revised Australian Accounting Standards that were applied by the Council for the first time in 2015–16.

***ii. Issued but not yet effective***

At the reporting date, a number of Accounting Standards adopted by the AASB had been issued but are not yet effective and were not adopted by the Council. An assessment was made and it was concluded that the adoption of the new standards will not affect the current nor future financial results of the Council.

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

- AASB 9 and AASB 2014-7 regarding financial instruments
- AASB 14 and AASB 2014-1(Part D) regarding Regulatory Deferral Accounts
- AASB 15, AASB 2014-5 and AASB 2015-8 regarding Revenue from Contracts with Customers
- AASB 16 Leases
- AASB 1056 Superannuation Entities
- AASB 1057 and AASB 2015-9 Application of Australian Accounting Standards
- AASB 2014-3 regarding accounting for acquisitions of interests in joint operations
- AASB 2014-4 regarding acceptable methods of depreciation and amortisation
- AASB 2014-6 regarding bearer plants
- AASB 2014-9 regarding equity method in separate financial statements
- AASB 2014-10 and AASB 2015-10 regarding sale or contribution of assets between and investor and its associate or joint venture
- AASB 2015-1 regarding annual improvements to Australian Accounting Standards 2012-2014 cycle
- AASB 2015-2 regarding amendments to AASB 101 (disclosure initiative)

- AASB 2015-5 Amendments to Australian Accounting Standards – Investment Entities: Applying the Consolidation Exception
- AASB 2015-6 Amendments to Australian Accounting Standards – Extending Related Party Disclosures to Not-for-Profit Public Sector Entities
- AASB 2015-7 Amendments to Australian Accounting Standards – Fair Value Disclosures of Not-for-Profit Public Sector Entities

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

	2016	2015
<b>NOTE 2. EXPENSES EXCLUDING LOSSES</b>	<b>\$</b>	<b>\$</b>
<b>(a) Personnel services expense</b>		
Salaries and wages (including annual leave)	583,666	333,953
Payroll tax	36,323	19,908
Superannuation	30,830	12,717
Workers compensation insurance	2,465	34
Long service leave	3,286	3,859
	<b>656,570</b>	<b>370,471</b>

Four full time and one part time Council staff were provided by the Department of Justice to carry out the Council's business operations as at the reporting date.

<b>(b) Other operating expenses</b>		
Administration	24,617	16,395
Communications	33,173	36,589
Corporate Service - Department of Justice	108,482	65,651
Agency staff	45,428	3,753
Audit fees	20,000	20,000
Consultancy services	4,514	10,001
Legal representation	17,000	8,982
Rental	77,661	-
Travel	44,225	6,483
	<b>375,100</b>	<b>167,854</b>

			2016	Restated 2015
NOTE 3. REVENUE			\$	\$
Contribution from NSW Department of Justice			831,855	454,545
Contribution from Victorian Legal Services Board			512,666	119,684
Personnel service resources received free of charge			3,286	3,859
			<b>1,347,807</b>	<b>578,088</b>

Funding contributions were provided by the NSW Department of Justice and the 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.

As result of the 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.

**NOTE 4. PRIOR PERIOD ADJUSTMENT – RETROSPECTIVE APPLICATION OF ACCOUNTING POLICIES**

The following prior period adjustments have been made retrospectively during the year as required by AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors*.

**Contribution revenue recognition and 2015 operating surplus adjustment - \$39,763**

The Council’s operating budget was approved by the Standing Committee. The Council has determined that it is entitled to retain operating surpluses within the three year funding cycle provided through the Intergovernmental Agreement (IGA). \$39,763 of contribution revenue was transferred to deferred income to achieve a nil operating surplus at the end of 2015 financial year. This now has been fully recognised as revenue.

**NOTE 4. PRIOR PERIOD ADJUSTMENT – RETROSPECTIVE APPLICATION OF ACCOUNTING POLICIES - CONT.**

**Personnel service and employee related liabilities**

The Council’s staff, who are employees of the Department of Justice, and the Commissioner are remunerated by the Department. The employee’s provision was disclosed in the Council’s 2015 financial statements, which implies the employee liabilities were those of the Council. The Department subsequently decided to recover the personnel service cost through its operating account with the Council, and the Council does not carry the employees’ provision.

The above adjustments have been made by restating each of the affected financial statement line items for the prior periods as follows:

	Published 30 June 2015	Adj 1 Contribution & operating surplus	Adj 2 Employee related liabilities	Restated 30 June 2015
	\$	\$	\$	\$
<b>STATEMENT OF COMPREHENSIVE INCOME</b>				
<b>Expenses excluding losses</b>				
<b>Operating expenses</b>				
Employee related expenses	370,471			370,471
Other operating expenses	167,854			167,854
<b>Total expenses excluding losses</b>	<b>538,325</b>	-	-	<b>538,325</b>
<b>Revenue</b>				
Grants and contributions	534,466	39,763		574,229
Acceptance by the Crown Entity of employee benefits and other liabilities	3,859			3,859
<b>Total revenue</b>	<b>538,325</b>	39,763	-	<b>578,088</b>
<b>Net result</b>	-	39,763	-	<b>39,783</b>

	Published 30 June 2015	Adj 1 Contribution & operating surplus	Adj 2 Employee related liabilities	Restated 30 June 2015
STATEMENT OF FINANCIAL POSITION	\$	\$	\$	\$
<b>Assets</b>				
<b>Current assets</b>				
Cash and cash equivalents	135,795		(53,234)	82,561
Receivables	4,552			4,552
<b>Total current assets</b>	<b>140,347</b>	-	(53,234)	<b>87,113</b>
<b>Total assets</b>	<b>140,347</b>	-	(53,234)	<b>87,113</b>
<b>Liabilities</b>				
<b>Current liabilities</b>				
Payables	106,760	(39,763)	(19,647)	47,350
Provisions	33,447		(33,447)	-
<b>Total current liabilities</b>	<b>140,207</b>	(39,763)	(53,094)	<b>47,350</b>
<b>Non-current liabilities</b>				
Provisions	140		(140)	-
<b>Total non-current liabilities</b>	<b>140</b>	-	(140)	<b>-</b>
<b>Total liabilities</b>	<b>140,347</b>	(39,763)	(53,234)	<b>47,350</b>
<b>Net assets</b>	-	39,763	-	<b>39,763</b>
<b>Equity</b>				
Accumulated funds	-	39,763		39,763
<b>Total equity</b>	-	39,763	-	<b>39,783</b>

**NOTE 4. PRIOR PERIOD ADJUSTMENT – RETROSPECTIVE APPLICATION OF ACCOUNTING POLICIES - CONT.**

	Published 30 June 2015	Adj 1 Contribution & operating surplus	Adj 2 Employee related liabilities	Restated 30 June 2015
<b>STATEMENT OF CASH FLOWS</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Cash flows from operating activities</b>				
<b>Payments</b>				
Employee related	(317,236)		(53,234)	(370,470)
Other	(207,969)			(207,969)
<b>Total payments</b>	<b>(525,205)</b>	-	<b>(53,234)</b>	<b>(578,439)</b>
<b>Receipts</b>				
Grant and contribution received	657,141			657,141
Other	3,859			3,859
<b>Total receipts</b>	<b>661,000</b>	-	-	<b>661,000</b>
<b>Net cash flows from operating activities</b>	<b>135,795</b>	-	<b>(53,234)</b>	<b>82,561</b>
<b>Net increase / (decrease) in cash</b>	<b>135,795</b>	-	<b>(53,234)</b>	<b>82,561</b>
Opening cash and cash equivalents	-	-	-	-
Cash transferred in as result of administrative restructuring	-	-	-	-
<b>Closing cash and cash equivalents</b>	<b>135,795</b>	-	<b>(53,234)</b>	<b>82,561</b>

	2016	Restated 2015
<b>NOTE 5. CURRENT ASSETS – CASH AND CASH EQUIVALENTS</b>	<b>\$</b>	<b>\$</b>
Cash and cash equivalents	374,599	82,561
	<b>374,599</b>	<b>82,561</b>

The Council does not have its own bank account at the reporting date. The Council’s cash is held by the Department in its treasury function. The Department provides corporate services to the Council including financial, communications and IT services. The balance of funds in the Council’s intercompany receivable account with the Department, is a cash and cash equivalent in the statement of financial position and statement of cash flows.

<b>NOTE 6. CURRENT ASSETS – RECEIVABLES</b>		
Goods and services tax - input tax credits	1,301	4,552
	<b>1,301</b>	<b>4,552</b>

<b>NOTE 7. CURRENT LIABILITIES</b>		
<b>Employee related</b>		
Recreation leave provision	-	-
Recreation leave on costs provision	-	-
Long service leave on costs provision	-	-
Accrued salaries	-	-
Accrued payroll tax	-	-
	-	-
<b>Other</b>		
Creditors and sundry accruals	20,000	24,183
Deferred income	-	23,167
	<b>20,000</b>	<b>47,350</b>

	2016	Restated 2015
<b>NOTE 8. NON CURRENT LIABILITIES</b>	<b>\$</b>	<b>\$</b>
<b>Employee related</b>		
Long service leave on costs provision	-	-
	-	-
<b>Aggregate employee benefits and related on-costs</b>		
Provisions - current	-	-
Provisions - non current	-	-
Accrued salaries and on costs	-	-
	-	-

<b>NOTE 9. RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET RESULT</b>		
<b>Net Result for the year</b>	<b>316,137</b>	39,763
Decrease/(increase) in receivables and prepayments	3,251	-
Decrease/(increase) in other assets	-	(4,552)
(Decrease)/increase in payables	(27,350)	47,350
(Decrease)/increase in provisions	-	-
(Decrease)/increase in other liabilities	-	-
<b>Net cash flows from operating activities</b>	<b>292,038</b>	<b>82,561</b>

	2016	Restated 2015
<b>NOTE 10. COMMITMENTS</b>	<b>\$</b>	<b>\$</b>
<b>Other expenditure commitments</b>		
Aggregate other expenditure for operational expenditure		
Not later than one year	-	5,805
<b>Operating lease commitments</b>		
Aggregate other expenditure for property lease		
Not later than one year	99,000	85,167
Later than one year but not later than five years	123,750	226,208

The operating lease commitment relates to a Deed of Licence held by the Department on behalf of the Council in relation to the occupancy of premises in Sydney CBD from 21 August 2015 to 12 Oct 2018.

The commitments above include input tax credits of \$20,250 that are expected to be recoverable from the ATO.

**NOTE 11. CONTINGENT LIABILITIES**

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

**NOTE 12. EVENTS AFTER THE REPORTING PERIOD**

No matter or circumstance has arisen since 30 June 2016 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.

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